

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

FRANCISCO PINEDA-BARRIENTOS,
Petitioner,

v.

STATE OF MARYLAND,
Respondent.

On Petition for a Writ of Certiorari
to the Supreme Court of Maryland

**APPENDIX TO PETITION FOR
A WRIT OF CERTIORARI**

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TABLE OF CONTENTS

Appendix A. Opinion of the Appellate Court of Maryland in Francisco Pineda-Barrientos v. State of Maryland, No. 1444, September Term, 2023 (filed September 2, 2025)	1a
Appendix B. Order of the Supreme Court of Maryland denying the petition for a writ of certiorari, Petition No. 336 (entered December 23, 2025)	67a
Appendix C. Order of the Supreme Court of Maryland denying the motion for reconsideration, Petition No. 336 (entered March 23, 2026)	72a
Appendix D. Relevant excerpts from the jury-trial transcript, Circuit Court for Montgomery County, State of Maryland v. Francisco Pineda-Barrientos, Case No. C-15-CR-22-001348 (June 26, 2023)	78a
Appendix E. Petition for a Writ of Certiorari filed in the Supreme Court of Maryland, Petition No. 336 (filed October 20, 2025)	108a
Appendix F. Motion to Reconsider Denial of Certiorari filed in the Supreme Court of Maryland, Petition No. 336 (filed January 22, 2026)	112a

Circuit Court for Montgomery County
Case No. C-15-CR-22-001348

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 1444

September Term, 2023

FRANCISCO PINEDA-BARRIENTOS

v.

STATE OF MARYLAND

Graeff, Kehoe, S.,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: September 2, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Montgomery County convicted Francisco Pineda-Barrientos, appellant, of second-degree rape. The court sentenced appellant to 20 years' imprisonment, all but 15 years suspended.

On appeal, appellant presents four questions for this Court's review:

1. Did the circuit court err and/or abuse its discretion by refusing to give an introductory instruction on the presumption of innocence and the requirement of proof beyond a reasonable doubt?
2. Did the circuit court infringe on appellant's rights to testify and to a fair trial before an impartial jury?

–Unreported Opinion–

3. Did the circuit court err and/or abuse its discretion by refusing to allow appellant's prior consistent statements for rehabilitation?
4. Did the circuit court err by refusing to ask a proposed voir dire question to the venire?

For the reasons set forth below, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Appellant was arrested and charged with second-degree rape of his niece, A.1 A. who was 20 years old at the time of trial, testified that appellant began sexually abusing her when she was 10 years old. Between 2012 and 2014, appellant sexually abused A. multiple times at the home of her

¹ We use the victim's initial in this case to protect the victim, who was a minor child at the time of the crime. *See* Md. Rule 8-125.

–Unreported Opinion–

grandparents. In the summer of 2013, appellant sexually abused A. “more than 10 times.”

A. testified that the first instance of abuse occurred while she was looking for a pair of sandals in the basement of her grandparents’ home. Appellant, who was living in the home with his wife and daughter, came out of the downstairs restroom, grabbed her by the shoulders, put her on the bed, took off her pants, and got on top of her. A. remembered feeling pain and “something warm” on her vaginal area.

Several weeks later, appellant asked A. for help. Appellant put A. in the downstairs bathroom and tried to put his penis in her anus, but he was unable to do so, and he then “made

–Unreported Opinion–

[her] give him oral sex.” Appellant then told A. that he would hurt her or her family if she said anything.

Another time, appellant showed A. pornographic images on his phone of a woman performing oral sex on a man and said: “do that for me.” A. told him that she did not “know how to do that.” Appellant removed A.’s pants and got on top of her. A. testified that she “kind of just blacked out,” but she remembered feeling “pain in [her] vagina.” A. testified that appellant abused her three or four other times, and on two of those occasions, appellant made her perform oral sex.

Appellant testified in his own defense. Appellant denied all of A.’s allegations.

DISCUSSION

I.

Jury Instructions

A.

Parties Contentions

Appellant contends that the circuit court erred or abused its discretion in refusing to give a preliminary instruction at the outset of the trial regarding the presumption of innocence and the requirement that the State prove the defendant’s guilt beyond a reasonable doubt. He asserts that these “fundamental rights are simply too important . . . not to explain until the end of trial.”

The State contends that the court properly exercised its discretion in denying appellant’s request for preliminary instructions. It notes that appellant failed “to cite a single

–Unreported Opinion–

case from any jurisdiction finding error for failing to give such an instruction.”

B.

Proceedings Below

On the first day of trial, prior to jury selection, appellant asked the court to “read the pattern introductory instruction,” MJPI-Criminal 1:00, to the jury. That instruction, which can be found in MPJI-Cr 1:00 “Pretrial Introductory Instructions,” reads as follows:

Members of the Jury, as you heard during jury selection, this is a criminal case in which the State of Maryland has charged (defendant's name) with (crime(s)). At this time, I would like to give you an overview of how this case is going to proceed so that you will be better able to perform your important duty of deciding the facts diligently and conscientiously.

The prosecutor and the

–Unreported Opinion–

defense attorney may choose to make an opening statement. Opening statements are not evidence. They are an opportunity for the lawyers to give you an overview of what the case is about and what they expect the evidence will be at trial.

After the openings, the evidence portion of the trial begins. Evidence may come to you from two sources. Evidence comes to you primarily through the sworn testimony of witnesses. When witnesses are called to the stand, they are first examined by the side that calls them, and then the opposing side is permitted to cross examine them.

During the course of testimony, the lawyers may object from time to time. It is the duty of a lawyer to make objections that the lawyer believes are proper. You should not be influenced by the fact that a lawyer has made objections or by the number of objections that a lawyer may make. You should not draw conclusions from my

–Unreported Opinion–

rulings, either as to the merits of the case, or as to my views regarding any witness. My responsibility during the evidence portion of the trial is to decide what you, as the jury, should consider in deciding this case. If the evidence is something you should consider, I will overrule the objection. However, if the matter is not something that should be considered, I will sustain the objection, and you should not consider the question or speculate about any possible answer. You must not guess or speculate about evidence that is not before you, and you must decide this case based only upon evidence properly admitted in this courtroom.

In addition to the testimony of witnesses, there may be documents, photographs, or other forms of physical evidence that are admitted at trial. Items that are marked as an exhibit and admitted into evidence at trial will generally be available to you to examine in more detail, if you wish to do so, during your

–Unreported Opinion–

deliberations at the end of the case.

If at any time you are unable to hear a witness or see an exhibit being displayed, please let me know. In addition, if you need a break or a recess for some reason, please let me know.

Following the evidence portion of the case, I will instruct you on the law that applies to the case. You must apply the law as I explain it to you in arriving at your verdict.

Following my instructions, the lawyers are permitted to give closing arguments. These arguments are not evidence. They are an opportunity for the lawyers to summarize and to comment on the evidence that you have heard, and to argue to you how to decide the charges in this case. The State proceeds first with its closing, followed by the defense, and then the State is permitted to make a final rebuttal argument.

–Unreported Opinion–

The State proceeds first in the trial process because the State has the burden of proving its case against the defendant beyond a reasonable doubt.

Presumption of Innocence and Reasonable Doubt

The defendant is presumed to be innocent of the charges. This presumption remains throughout every stage of the trial and is not overcome unless you are convinced beyond a reasonable doubt that the defendant is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt. This means that the State has the burden of proving, beyond a reasonable doubt, each and every element of the (crime(s)) charged. The elements of a crime are the component parts of the crime about which I will instruct you later. This burden remains on the State throughout the trial. The defendant is not required to prove (pronoun) innocence. However, the State is not

–Unreported Opinion–

required to prove guilt beyond all possible doubt or to a mathematical certainty. Nor is the State required to negate every conceivable circumstance of innocence.

A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant's guilt to that extent for each and every element of [a] [the] crime charged, then reasonable doubt exists and the defendant must be found not guilty of [that] [the] crime.

After closing arguments, you will begin your deliberations. You must decide this case based upon the evidence produced at trial. Nothing the court may say or do during the course of the trial is intended to indicate, or should be taken by you as

–Unreported Opinion–

indicating, what your verdict should be.

During any break or recess, including any overnight break, you must not conduct any research or investigation about the case or any of the individuals involved in it. You may not consult with any dictionaries, reference materials, search the internet, websites or blogs, or consult any other source for information about the case. You must not visit any place mentioned in this case. You must decide this case fairly and impartially based only upon information presented together to you and your fellow jurors in this courtroom.

Until you retire to deliberate and decide this case, you may not discuss this case with anyone else. You should not even discuss the case with your fellow jurors. I know that request seems odd, as this case is the only reason you all are together. The reason I am asking you not to discuss this case until you begin

–Unreported Opinion–

your deliberations is that evidence comes to you in little bits and pieces throughout a trial. If you start to talk about the case too soon, you may start to form opinions before you have heard all of the evidence, the instructions on the law, and the arguments of counsel. In order to remain fair and impartial, you should not discuss and decide this case until you begin your deliberations.

Many of you use cell phones and other electronic devices to communicate with family, friends, co-workers, and others. During this trial, you must not communicate any information or opinions about this case, or about the individuals involved in it, by any method to anyone, including by sending text or electronic messages. You also must not communicate in any way about the case on any social media platform or networking site.

You should also not allow anyone to talk to you or

–Unreported Opinion–

communicate with you about the case. Outside the courtroom, avoid the people involved in the case, including the lawyers and any witnesses. Do not read, watch or listen to any media reports about the case, including newspaper, television, radio, or internet reports. Do not visit any internet sites where there may be reports or discussions about the case.

Relying on information from any other source outside the courtroom, including social media sources, is unfair because the parties do not have the opportunity to refute, explain, or correct the information, and the information may be inaccurate or misleading. You must base your decision only on the evidence presented in this courtroom.

If anyone tries to communicate with you about the case, or if you inadvertently overhear or receive any information from any outside source about this trial that is not part of the evidence presented in

–Unreported Opinion–

this courtroom, or that violates the rules that I have just explained, please immediately write me a note and give it to [person responsible for handling jury] as soon as possible, and do not discuss the matter with anyone else.

MPJI-Cr 1:00.

After appellant requested that instruction, the following colloquy ensued:

THE COURT: Okay. I usually do my own version. One, it tells the jurors about not looking up, researching anything when they're about to start listening to evidence. That's better for in a break. It talks about partially the reasonable doubt instruction, which I found encourages attorneys to start arguing the law. And it's long and unwieldy, so I'll do – try to cover a lot of the areas. And if there's some other area you need me to cover, you can approach the bench.

[DEFENSE COUNSEL]: Thank you.

–Unreported Opinion–

The court then began jury selection. The court informed prospective jurors during voir dire that appellant was “presumed innocent of the charges” and the State was “required to prove a defendant’s guilt beyond a reasonable doubt.” The court then asked if the prospective jurors disagreed with those statements of the law. None of the prospective jurors responded in the affirmative.

After the jury was selected, the court gave several preliminary instructions addressing some of the items contained in MPJI-Cr 1:00, but it did not again address the presumption of innocence and the State’s burden of proving a defendant’s guilt beyond a reasonable doubt. At the conclusion of its preliminary instructions, the court asked if counsel had any comments before

–Unreported Opinion–

he dismissed the jury for a break, and defense counsel and the State responded: “No, Your Honor. Thank you.”

After swearing in the jury, before opening statements, the court told the jury that it would give them instructions “at the end of the case,” including that “[o]pening statements are not evidence.” At that point, the following colloquy ensued:

[DEFENSE COUNSEL]:
Your Honor, I hate to interrupt. I just -- I was under the impression that Your Honor would say that you do give some version of beyond a reasonable doubt and some version of presumption of innocence as an introductory instruction.

THE COURT: Well, I mean, we already told them a couple of times the defendant is presumed innocent during voir

—Unreported Opinion—

dire; but I'm not going to read them jury instruction[s] now. No, I will not do that myself.

[DEFENSE COUNSEL]:
Okay. So may I just make the record? THE COURT: You should, yes.

[DEFENSE COUNSEL]:
Okay. I don't think that the jury has been told that the presumption of innocence applies to every stage of the case. Every stage of the case, to my recollection, has not been mentioned in voir dire or extemporaneously at any other time.

Also, the concept of beyond a reasonable doubt is something that is so foreign to the average layperson that just a little bit of --

THE COURT: That's a level of certainty, but they're not told a certainty of what.

[DEFENSE COUNSEL]:
Right. My request is to give the entire introductory pattern

–Unreported Opinion–

instruction. In the alternative, I think it is critical to mention that the presumption of innocence applies throughout every stage of the case. I also think that it is critical to give at least one of the definitions of reasonable doubt that is, I'll call it, on the pro-defendant's side; and I would even consent to the two sentences right in the pattern jury instructions that are pro-State, which is not to a mathematical certainty and the other sentence.

* * *

THE COURT: Okay. Well, they have already been told the defendant is presumed innocent. They have been told the State has to prove its case beyond a reasonable doubt. And they have been told that their job is to listen to the elements with an open mind, and they should be doing that.

Now, as to the jury instruction at the beginning of the case, I haven't given it since it was created. Having been in the

–Unreported Opinion–

room where that was created is probably the worst instruction by the pattern jury committee. It's unwieldy, lengthy, and it's just encouraging a fast answer. So as far beyond a reasonable doubt when (unintelligible) so in opening statements. So I think the jury will follow the law and the jury instructions that I give them. And so I will deny that request.

At the conclusion of the evidence, the court instructed the jury on the presumption of innocence and the State's burden of proving a defendant's guilt beyond a reasonable doubt. Those instructions tracked the pattern jury instructions on the presumption of innocence and reasonable doubt, as set forth in MPJI-Criminal 2:02.

C.

Analysis

Jury instructions are governed by

Maryland Rule 4-325, which states, in pertinent part: “The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate.” Md. Rule 4-325(a) (emphasis added). The rule further states that, “[i]n its discretion the court may also give opening and interim instructions.” Id.

“A court interprets a Maryland Rule by using the same canons of construction that the court uses to interpret a statute.” *Fuster v. State*, 437 Md. 653, 664 (2014). We begin with the rule’s plain language, which we examine in light of the rule’s scheme and purpose. *Satterfield v. State*, 483 Md. 452, 475 (2023). “If the text is not ambiguous, we may stop our analysis there and simply apply its ordinary

meaning.” *State v. Thomas*, 488 Md. 456, 465 (2024).

Rule 4-325(a) unambiguously states that a court “may” give a preliminary instruction “[i]n its discretion.” Unlike instructions at the conclusion of the evidence, which the court “shall” give, *id.*, the Rule makes clear that, whether to give preliminary instructions is a matter for the court’s discretion.²

To be sure, the concepts of the presumption of innocence and the State’s burden of proof beyond a reasonable doubt are fundamental rights. *Kazadi v. State*, 467 Md. 1, 7 (2020). Accordingly, the court, on request, must

² We also note that the comments to MPJI-Cr 1:00 reflect that it is within the discretion of trial judges to determine whether to give preliminary instructions. The comment specifically says: “the court, in its discretion, may give opening and interim instructions.” It further states that “[i]f this instruction is given, it is further recommended that the proof-beyond-a-reasonable-doubt portion be read in its entirety.”

ask on voir dire whether the prospective jurors are unwilling to comply with these principles, and it must instruct the jury on these principles at the conclusion of the evidence. *Id.* at 8; *Ruffin v. State*, 394 Md. 355, 372-73 (2006). The trial court complied with these cases. Neither case, however, supports a conclusion that a court is required to give preliminary instructions. We reject appellant’s argument that such preliminary instructions should be mandatory on request.

We also conclude that appellant’s claim that the court failed to exercise its discretion in refusing to give the requested instruction is without merit. When appellant initially asked for MPJI-Criminal 1:00 to be read in its entirety, the court considered the request and stated that

–Unreported Opinion–

it usually gave its own version of the instruction, but it would “try to cover a lot of the areas” outlined in the pattern instruction. After the court gave its preliminary instructions and appellant asked the court to specifically instruct the jury as to the presumption of innocence and the State’s burden of proof, the court again considered the request, but it decided not to give the instruction, noting that the jurors had already been informed about those principles during voir dire. Although the court did state that it did not like the instruction and had never given it, the court did not say that it would never read the instruction. See *Adkins v. State*, 258 Md. App. 18, 35 (2023) (“[A] ‘general rule’ is not in and of itself a failure to exercise discretion, but rather ‘one of the myriad ways in which

discretion may be exercised.”) (quoting *Cagle v. State*, 462 Md. 67, 75 (2018)).

Appellant’s claim that the court applied “a hard and fast rule” without exercising the necessary discretion is not supported by the record.

The record reflects that the court exercised its discretion in deciding to give the requested instruction. It noted that the jury was told about the principles regarding the presumption of innocence and proof beyond a reasonable doubt in voir dire, and that it would give instructions on the principles at the end of the case.

Under the circumstances of this case, we cannot say that the court abused its discretion in refusing to give the requested instruction. “[A]n

–Unreported Opinion–

abuse of discretion occurs when the court acts without reference to any guiding rules or principles, where no reasonable person would take the view adopted by the court, or where the ruling is clearly against the logic and effect of facts and inferences before the court.” *Brown v. State*, 470 Md. 503, 553 (2020) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)) (internal quotations omitted). As noted, the court considered the request and decided to give a version of the instruction that covered many of the areas outlined in MPJI-Criminal 1:00. When defense counsel specifically requested a preliminary instruction on the presumption of innocence and the State’s burden of proof, the court again considered the request, but it ultimately declined, finding that such an

instruction was unnecessary given that the jurors had already been informed of those principles during voir dire. We perceive no abuse of discretion in that regard.

II.

Right to Testify and Fair Trial

Appellant contends that the circuit court’s “repeated criticism and interruptions” of appellant during his direct testimony infringed upon his right to testify and his right to a fair trial. He asserts that the court’s “interruption of perfectly responsive and appropriate testimony unfairly prevented [him] from effectively presenting his defense to the jury.” Appellant argues that “it is very likely that the jurors understood the [court’s] reaction as a sign of the [court’s] irritation, and disrespect for, the

–Unreported Opinion–

defense,” and the court’s actions and attitude “so infected his right to a fair trial that his motion for a mistrial should have been granted.”

The State contends that the court properly exercised its discretion in its response to appellant’s actions during his direct testimony. It argues that the court’s limited interruptions did not infringe on appellant’s rights, as he was permitted multiple opportunities to express his innocence, and the court’s comments “went to the form of his testimony – the volume, addressing the jurors directly, and repetitiveness– rather than to the substance.”

A.

Proceedings Below

A. testified that appellant sexually abused

–Unreported Opinion–

her when she was 10 years old. When appellant subsequently testified, defense counsel asked about A.’s allegations:

Q You had heard that [A.] told this jury that you put your penis in her vagina. I want you to tell this jury, sir, did you do that to that young girl?

A Absolutely not. I didn’t do it. You guys got to believe me.

THE COURT: Hey. (Unintelligible), sir. Next question. He can’t tell the jury what they have to do. Next question. Question and then answer.

[STATE]: I would move to strike that response.

THE COURT: Disregard.

BY [DEFENSE COUNSEL]:

–Unreported Opinion–

Q Did you put your penis
in her vagina, sir?

A Absolutely not. I didn't
do –

[STATE]: Objection.

THE COURT: All right.
Sir, will you follow the Court's
rules?

THE WITNESS: Oh.

THE COURT: Just answer
the question.

THE WITNESS: Oh.

THE COURT: You can't
yell at the jury –

THE WITNESS: Oh, okay.
I'm sorry.

[DEFENSE COUNSEL]:
May we approach, Your Honor?

THE COURT: -- and make
arguments.

[DEFENSE COUNSEL]:

–Unreported Opinion–

May we approach?

THE COURT: No. Next question.

BY [DEFENSE COUNSEL]:

Q I'll ask the same question again.

THE COURT: No. He said, no, he did not. That answer is accepted.

BY [DEFENSE COUNSEL]:

Q Did you, sir, put your penis, as [A.] said, between her butt cheeks? Please tell the jury.

A Not -- I didn't do it. I did not do it.

[STATE]: Objection.

THE COURT: Overruled. Next question.

BY [DEFENSE COUNSEL]:

–Unreported Opinion–

Q Sir, did you force [A.] to give you oral sex? Please tell the jury.

A No. I didn't force her anything. I didn't do it.

[STATE]: Objection.

THE COURT: Next question.

[STATE]: May we approach?

THE COURT: No. Overruled.

[DEFENSE COUNSEL]: If it's overruled, may I ask the same question again?

THE COURT: He answered it.

[DEFENSE COUNSEL]:
But he –

BY [DEFENSE
COUNSEL]:

Q Sir, did you, as [A.] said,

—Unreported Opinion—

put your fingers in any part of her private parts? Please tell the jury.

A No. I didn't touch her.

Sir, you heard evidence from [A.] that you showed her porn. Did you do that? Please tell the jury.

A No. I never showed her anything.

Q Sir, I want you -- in summing it all up, did you in any way touch [A.] or do anything with her in any sexual manner? Please tell the jury.

A No, I never touched her.

[DEFENSE COUNSEL]:
May we approach now?
(Bench conference begins.)

[DEFENSE COUNSEL]:
Most respectfully, Your Honor,
respectfully, I mean, with all due respect, I move -- I --

THE COURT: That your

—Unreported Opinion—

client should be able to say you believe me and start arguing to the jury about anything? You're entitled to your opinion.

[DEFENSE COUNSEL]:
I'd move for a mistrial.

THE COURT: Denied.

[DEFENSE COUNSEL]:
Okay. May I just -- it goes beyond the first statement about you guys need to believe me. Okay? It goes beyond that.

THE COURT: You asked him a yes-no question, and he starts trying to argue to the jury in a loud voice, and maybe you can -- I wouldn't allow the victim to do that, nor would I allow the defendant to do that. That's --

[DEFENSE COUNSEL]:
Okay. If I --

THE COURT: --
inappropriate, and you know that.

[DEFENSE COUNSEL]:

–Unreported Opinion–

Well, I do -- honestly, Your Honor, I do, with the last part that you said, taking away the you got to believe me, taking away that, I do disagree with you on that, respectfully.

THE COURT: What do you disagree on?

[DEFENSE COUNSEL]:
What -- so here's my point, right? So I still think that he should not have interrupted on the first one, but in addition to the first one, where he said you got to believe me, then the second one he didn't say that and he was interrupted again, right, and I think -- he did not say you guys got to believe me, but Your Honor interrupted him in the middle of his denial.

THE COURT: Well, he said, no, I didn't do it, and then kept going.

[STATE]: It's just nonresponsive, is the point.

THE COURT: Okay.

[DEFENSE COUNSEL]:

–Unreported Opinion–

Number three, I just want to make the record, and I'm not --

THE COURT: Go ahead.
Go ahead.

[DEFENSE COUNSEL]: --
I'm not delaying --

THE COURT: Yes.

[DEFENSE COUNSEL]: --
right? Number three, then the third statement he was interrupted again from expressing his denial in his way. Right? Everybody has a different way of denying. Right?

THE COURT: So is there a different law on answering questions for defendants?

[DEFENSE COUNSEL]:
Well, what if his answer is I swear I didn't do it, I'm telling you it didn't happen, it never -- whatever he's going to say? If somebody accused me of something, I bet you I would have eight statements, one after another --

–Unreported Opinion–

THE COURT: Then that --

[DEFENSE COUNSEL]: --
that even if -- okay, because that
would be my way. Any human
being has a different way --
granted, if an appellate court
thinks that he should not have
said you got to believe me, that's
a separate issue, and the issue
now is interrupting him in his
way of giving a stream of
statements, explaining to the jury
in his unique vernacular, in his
unique indignation, his unique
feelings, his unique way of
expressing things.

THE COURT: Are there
separate rules defendants can do
differently than other witness? So
the victim can start expressing
different ways and in her own
way and --

[DEFENSE COUNSEL]:
Well, I think --

THE COURT: -- not
answering questions directly?

–Unreported Opinion–

[DEFENSE COUNSEL]: I think the analogy is inappropriate because victims are not asked that type of question, where normal, indignant human beings are going to express a denial in many different ways, one after the other --

THE COURT: Okay.

[DEFENSE COUNSEL]: -- and you know, even the point is, he was just interrupted at the beginning. What if Your Honor is right and he's not allowed to say eight different ways I didn't do it --

THE COURT: All right. We'll talk about -- you can put -- you've finished your record for a mistrial. I denied it, but you can put more on the record now. We're going to keep going.

(Bench conference concluded.)

At that point, appellant's direct examination

—Unreported Opinion—

concluded, and the State began cross-examination. At the conclusion of the State's cross-examination, defense counsel requested another bench conference, and the following colloquy ensued:

[DEFENSE COUNSEL]:

So just very -- thank you for allowing me to finish, Your Honor. This is what I was going to continue to say, is that there was, I think, a fourth time that he was interrupted, whether through objection. There was even one time where you overruled the objection. So I just want to loop in, it's all four or five times that he was interrupted, and I don't mean interrupted in a disrespectful way. I'm just -- that's my vernacular.

Number two, the reason I asked to approach, Your Honor, is that I felt that Your Honor's voice was -- of course, if it was inappropriate, it would have been appropriately stern, your voice. I

–Unreported Opinion–

feel that the jury -- it was very stern rebuke. I'm not saying an inappropriate rebuke, right? I'm just saying the --

THE COURT: No, I'm not offended.

[DEFENSE COUNSEL]:
That's why I approached, is that the volume was very loud and it was -- the facial expression was also, like, very critical toward him, and I just want to point that out for the record for whatever that means. It was certainly -- I'll just let that speak for itself, and I would just compare that, Your Honor, to the way you dealt with the young lady in the back row. It was incredibly, you know, restrained when she didn't stand. Remember that?

THE COURT: I thought I was pretty tough with her too.

[STATE]: I thought that she -- that was also --

[DEFENSE COUNSEL]:
No, but it --

–Unreported Opinion–

[STATE]: -- outside the presence of the jury.

[DEFENSE COUNSEL]:
Oh, I know, but it was -- but it was -- you -- your voice was restrained, right, and this was different. So the problem with that is that the jury, when Your Honor, as the judge, does that, they blame me and/or the defendant. So I would weave that into the motion for a mistrial.

And finally, I asked permission to ask the same question again about the vaginal intercourse because that was the first two interruptions. So I just want to tell you that I think, you know, since that's the one charge left, right, that has greater importance, and I wanted to ask it again so that he could express it in his way.

Your Honor had already told him, don't tell them, you know, you got to believe me. So he understood that, and I can just -- I need to proffer that in, you

–Unreported Opinion–

know, going over his testimony with him, his way of speaking is the way I personally would do it, which is to express one's indignation at feeling like there's a false charge against you by saying three, four, five ways of -- or more. Sometimes -- whatever comes out. It might be two. The next time it might six, and they might be repetitive, but it's his way of saying to the jury, believe me, without saying the words believe me. Right?

So he has a, respectfully, a due process right to put on a defense. He has a Fifth Amendment right to testify. So I would weave in the constitutional implications as well. That's it.

THE COURT: Okay. After the first -- or answer, question and answer where he, in a loud, pleading voice, started shouting at the jury that you must believe me, [] going way beyond the question, but I did have to sternly tell him that is inappropriate and stop, and then as he's been in this trial all week, he knows we're

–Unreported Opinion–

supposed to have question and answer, be responsive to the questions and answers.

I think [defense counsel] is right, normally a defendant does say something, I didn't do it, I did not do it, but he cannot plead. He was on a short leash after that first answer because he seemed to be going well beyond until -- I don't know what facial expression I had and stuff but probably very disappointed because it did seem very much like a tactical maneuver on his part in order to, as [defense counsel] says, say believe me, which [defense counsel] from his argument seems to suggest he can do that without saying these words. I'm not so sure that is the law, and so I had to make sure that he was not trying to get an unfair tactical advantage, because a fair trial is the right of both sides, and so I did let him know that he had to just answer the questions, and it was a yes-or-no-answer question for that and then for all the other ones.

–Unreported Opinion–

Normally, if he had not done that initially, he might have had (unintelligible). I don't believe that people have a right to say three, four, five, six times to the jury, repeat themselves, but that will be for the appellate court. So I will deny the request for a mistrial.

B.

Analysis

A criminal defendant has a constitutional right to testify in his own defense. *Burnside v. State*, 459 Md. 657, 669 (2018). In addition, a defendant has a due process right to a fair trial. *Sewell v. Norris*, 148 Md. App. 122, 136 (2002). “It is well settled in Maryland that fundamental to a defendant’s right to a fair trial is an impartial and disinterested judge.” *State v. Payton*, 461 Md. 540, 559 (2018) (quoting *Jefferson-El v.*

State, 330 Md. 99, 105 (1993)). “Therefore, ‘[i]f a judge’s comments during [the proceedings] could cause a reasonable person to question the impartiality of the judge, then the defendant has been deprived of due process and the judge has abused his or her discretion.’” *Furda v. State*, 194 Md. App. 1, 62-63 (2010) (quoting *Diggs v. State*, 409 Md. 260, 289 (2009)), *aff’d*, 421 Md. 332 (2011).

The conduct of a criminal trial, however, “is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.” *Choate v. State*, 214 Md. App. 118, 151 (quoting *Bruce v. State*, 351 Md. 387, 393 (1998)), *cert. denied*, 436 Md. 328 (2013). “Consistent with the trial court’s

–Unreported Opinion–

authority concerning the conduct of trial, ‘the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is a clear abuse of discretion.’” *Thomas v. State*, 143 Md. App. 97, 109-10 (quoting *Oken v. State*, 327 Md. 628, 669 (1992)), *cert. denied*, 369 Md. 573 (2002).

Here, we are not persuaded by appellant’s argument that the circuit court infringed on appellant’s rights to testify and to a fair trial. We explain.

Initially, appellant’s claim that the court prevented him from presenting an effective defense by “repeatedly” interrupting “perfectly responsive and appropriate testimony” is not supported by the record. To

–Unreported Opinion–

be sure, at the outset of the relevant colloquy, the court did sua sponte interrupt appellant's response to defense counsel's question as to whether appellant had put his penis in A.'s vagina. The court explained, however, that it interrupted appellant because appellant, "in a loud, pleading voice, started shouting at the jury that you must believe me." The court chastised appellant and struck his answer, noting that appellant had been in trial all week and knew that answers needed to be responsive to the question asked. After that, it was the prosecutor, not the court, who interjected by lodging an objection. The court then advised appellant to "[j]ust answer the question" and not "yell at the jury." Nonetheless, the court accepted appellant's

–Unreported Opinion–

response. Defense counsel then asked several more yes-or-no questions about the allegations, and appellant was permitted to answer. When the State objected to those questions, the court overruled the objections and told defense counsel to continue with his line of questioning.

Under the circumstances here, we are not persuaded by appellant’s argument that the court prevented him from effectively presenting his defense. The court interrupted appellant only one time, and that was because appellant exceeded the scope of defense counsel’s question and loudly pleaded with the jury to believe him. All other interruptions were objections from the State, which the court affirmatively overruled. Beyond that,

–Unreported Opinion–

there is nothing in the record to indicate that appellant’s testimony was curtailed or inhibited in any way by the court. Appellant’s right to testify and right to a fair trial were therefore not implicated by the court’s “interruptions.”

Moreover, the court’s conduct did not give the appearance of partiality. The court’s comments were directed, not at the substance of appellant’s testimony, but rather at the volume of appellant’s voice and the fact that appellant had pleaded with the jury to believe him. The court responded by stating that appellant could not “tell the jury what they have to do” and asking appellant if he could “follow the Court’s rules” and “answer the question” without “yell[ing] at the jury.” Even accepting defense

counsel’s characterization that the court’s voice was “loud” and its expression “critical,” the record does not establish that the court’s actions would cause a reasonable person to question the court’s partiality.³

With respect to appellant’s request for a mistrial, we note that “[t]he granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances.” *Bynes v. State*, 237 Md. App. 439, 457 (2018) (quoting *Molter v. State*, 201 Md. App. 155, 178 (2011)). “We review the denial of a motion for mistrial for

³ The cases upon which appellant relies are distinguishable from the facts in this case. Here, we are not faced with a trial judge who improperly instructed the jury, see *Butler v. State*, 392 Md. 169, 192 (2006), questioned an attorney’s integrity, see *Spencer v. State*, 76 Md. App. 71, 79 (1988), or bullied a witness into changing his testimony, see *Archer v. State*, 383 Md. 329, 359 (2004). Rather, the circuit court’s actions here fell well short of the threshold at which a reasonable person would begin to question the court’s impartiality.

abuse of discretion and will reverse only where ‘the prejudice to the defendant was so substantial that he was deprived a fair trial.’” Choate, 214 Md. App. at 133-34 (quoting Cooley v. State, 385 Md. 165, 173 (2005)). As discussed, the court’s actions did not implicate appellant’s right to a fair trial. Under the circumstances, the court did not abuse its discretion in denying appellant’s motion for a mistrial.

III.

Prior Consistent Statements

Appellant contends that the circuit court erred and/or abused its discretion in refusing to admit his prior consistent statements for rehabilitation. He argues that, because the State attacked his credibility on

–Unreported Opinion–

cross-examination, and because the statements at issue were designed specifically to rehabilitate his credibility, the statements should have been admitted pursuant to Maryland Rule 5-616(c).

The State contends that the court properly declined to admit the prior consistent statements under Rule 5-616 because the statements did not “rebut logically” the impeachment. The State notes that appellant’s statements were “flat denials” of the allegations made by A., which did not detract from any impeachment.

“Generally, statements made out of court that are offered for their truth are inadmissible as hearsay, absent circumstances bringing the statements within a recognized

exception to the hearsay rule.” *Thomas v. State*, 429 Md. 85, 96 (2012) (quoting *Su v. Weaver*, 313 Md. 370, 376 (1988)). One exception can be found in Maryland Rule 5-616, which provides, in pertinent part, that “[a] witness whose credibility has been attacked may be rehabilitated by . . . evidence of the witness’s prior statements that are consistent with the witness’s present testimony, when their having been made detracts from the impeachment.” Md. Rule 5-616(c)(2). That rule serves as an exception to the hearsay rule because the “witness’s prior consistent statements are admissible, not as substantive evidence, but for nonhearsay purposes to rehabilitate the witness’s credibility.” *Thomas*, 429 Md. at 97. To be

admissible, however, such prior statements “must meet at least the standard of having some rebutting force beyond the mere fact that the witness has repeated on a prior occasion a statement consistent with his trial testimony.”

Id. at 107 (citations and quotations omitted).

“[A] decision to admit or exclude hearsay is an issue of law that we review *de novo*.”

Quansah v. State, 207 Md. App. 636, 657

(2012), cert. denied, 430 Md. 13 (2013).

Appellant claims that the prosecutor attacked his credibility during cross-examination by asking him whether he had watched the recorded interviews that some of the witnesses, including A., had with the police prior to trial, and by questioning him about when he had turned himself in to the

–Unreported Opinion–

police upon learning that there was a warrant for his arrest. Appellant contends that his denial of the allegations during a recorded phone call with A. in November 2022, several days before his arrest, was relevant to counter the attacks on his credibility, particularly given that, at the time of the call, he had not been charged and there was no indication that he was aware that he was being recorded.

We hold that the circuit court did not err in refusing to admit appellant’s recorded statements pursuant to Rule 5-616. Appellant’s recorded statements were, like his trial testimony, merely general denials of the allegations, and they did not detract from the State’s cross-examination of appellant. See Thomas, 429 Md. at 108 (“The mere fact that

–Unreported Opinion–

[a witness] gave police the same information he testified to at trial . . . does not detract from the impeachment.”). As previously stated, for a prior consistent statement to be admissible under Rule 5-616, the statement must have “some rebutting force beyond the mere fact that the witness has repeated on a prior occasion a statement consistent with his trial testimony.” *Id.* at 107 (emphasis added) (citations and quotations omitted). Appellant’s recorded statements did not meet that threshold, and the circuit court did not err in excluding the evidence.

IV.

Voir Dire

Appellant contends that the circuit court erred by refusing to ask during voir dire

–Unreported Opinion–

whether anyone would “believe the testimony of a family member of [appellant] more or less than any other witness simply because they’re related to him.” He argues that, in a child sexual abuse case, where several of his family members would testify about key facts, the proposed voir dire question was proper, as it was aimed at uncovering potential bias. Appellant contends that the proposed question was not covered by any other question, including the “defense witness” question, because none of those questions explored juror bias related to a witness’s familial association with the accused.

The State contends that the court properly declined to ask the proposed

question.⁴ It argues that a question about “testimony of a family member” is not a mandatory question, and the court properly determined that it was fairly covered by other questions.

A.

Proceedings Below

Prior to jury selection, defense counsel submitted a list of proposed voir dire questions, which included the following question: “Would any of you believe the testimony of a family

⁴ The State also argues that appellant’s claim was unpreserved because defense counsel did not dispute the circuit court’s statement that the requested instruction was fairly covered by the “defense witness” question. We disagree. Defense counsel asked for the proposed question to be posed during voir dire, and the court declined. Defense counsel then renewed his request, and the court declined again. That was sufficient to preserve the issue. See *Smith v. State*, 218 Md. App. 689, 700-01 (2014) (“An appellant preserves the issue of omitted voir dire questions . . . by telling the trial court that he or she objects to his or her proposed questions not being asked.”)

–Unreported Opinion–

member of [appellant] more or less than any other witness simply because they’re related to him?”

The court, in its voir dire, did not ask that question. The court did, however, ask prospective jurors if they would be more inclined to believe the testimony of a witness that was called by the Defense or by the State.

After the court finished asking its preliminary questions, defense counsel repeated his request to have the question regarding family members posed to prospective jurors. The court denied the request, stating that defense counsel’s proposed question was “covered by [the question regarding] Defendant’s witnesses.” Shortly thereafter, defense counsel requested

–Unreported Opinion–

that the court ask prospective jurors if they were less inclined to believe the testimony of a witness because they were called by the Defense or by the State. The court agreed, and that question was asked of prospective jurors.

B.

Analysis

“Voir dire is the primary mechanism through which the constitutional right to a fair and impartial jury, guaranteed by the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights, is protected.” *Mitchell v. State*, 488 Md. 1, 16 (2024) (quoting *Curtin v. State*, 393 Md. 593, 600 (2006)). “[I]n Maryland, the sole purpose of voir dire ‘is to ensure a fair and

–Unreported Opinion–

impartial jury by determining the existence of specific cause for disqualification.” *Collins v.*

State, 463 Md. 372, 376 (2019) (quoting

Pearson v. State, 437 Md. 350, 356 (2014)).

“Thus, a trial court need not ask a voir dire

question that is ‘not directed at a specific

cause for disqualification or is merely fishing

for information to assist in the exercise of

peremptory challenges.” *Mitchell*, 488 Md. at

16 (quoting *Pearson*, 437 Md. at 357) (internal

quotations omitted). Moreover, a court “need

not ordinarily ask a particular requested

question if the matter is fairly covered by the

questions the court puts to the prospective

jurors.” *Id.* at 28.

“There are two categories of specific

–Unreported Opinion–

cause for disqualification: (1) a statute disqualifies a prospective juror; or (2) a collateral matter is reasonably liable to have undue influence over a prospective juror.”

Collins, 463 Md. at 376 (quoting Pearson, 437 Md. at 357). “The latter category is comprised of biases [that are] directly related to the crime, the witnesses, or the defendant.” *Id.* at 377 (quoting Pearson, 437 Md. at 357).

Regarding questions related to the status of a witness, the Supreme Court has held that a court must inquire into disqualifying biases about witnesses who are police officers, witnesses who are called by the State, witnesses who are called by the defense, and witnesses who are children. *Mitchell*, 488

–Unreported Opinion–

Md. at 17-27. The Supreme Court has noted that, when a requested voir dire question is aimed at the status of a witness, there must be a “qualifying witness,” *id.* at 22, i.e., a witness that possesses the particular status at issue, such that “it is reasonable to conclude that a potential juror might believe or disbelieve the [witness’s] testimony based solely on [the witness’s status].” *Id.* at 27. In addition, the witness must be “important” and “not a tangential witness with no other connection to the parties.” *Id.* We review a court’s decision whether to ask a voir dire question for abuse of discretion. *Lopez-Villa v. State*, 478 Md. 1, 10 (2022).

Here, we agree with the circuit court

–Unreported Opinion–

that the “family member” question was “fairly covered” by the court’s questions whether prospective jurors were more or less inclined to believe the testimony of a witness called by the State or the Defense. Those questions probed whether a prospective juror might harbor a bias toward a witness based on that witness’s relationship or association with the party calling the witness, including appellant. Under the circumstances of this case, the circuit court did not abuse its discretion in refusing to ask appellant’s proposed “family member” question.

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

PETITIONS FOR
WRIT OF
CERTIORARI

IN THE
SUPREME COURT
OF MARYLAND

*

* September Term,
2025¹

ORDER

It is this 23rd day of December 2025, by the Supreme Court of Maryland, ORDERED that the following petitions for writ of certiorari are denied:

Pet. No. 277 – Timothy O. Dean v. Woodmore

Towne Centre at Glenardon

Homeowners Association

Pet. No. 288 – Marvin Lois Carroll v. Derek

Jones, et al.

Pet. No. 291 – Kamita Gray v. Synchrony

Bank

⁵ All petitions and motions were filed in September Term 2025 unless otherwise indicated.

Pet. No. 298 – Denneishja Cromwell, et al. v.

Joseph L. Henson, Jr.

Pet. No. 306 – In the Matter of Presidential

Title LLC

Pet. No. 316 – Safiyya Abdul Bari v. State

Employees Credit Union of Md Inc.

Pet. No. 317 – Hesman Tall v. Howard

Community College

Pet. No. 318 – In Re: M.M. & A.M.

Pet. No. 320 – Farhad Hejazi v. Caroline

Colella

Pet. No. 321 – Wayne B. Adams v. Gelfund 2

Milford Station Pikesville t/a Milford

Station

Pet. No. 322 – Sebastian A. Campbell v. State

of Maryland

Pet. No. 324 – Dylan Goodrow Sheehan v.

Damali Okera Smith

Pet. No. 325 – Lisa Smith v. Marie Maissen, et

al.

Pet. No. 326 – Vincent Banks v.

Manufacturers and Traders Trust
Company

Pet. No. 330 – James Ryan v. State of
Maryland

Pet. No. 331 – Eric Harley v. State of
Maryland

Pet. No. 334 – Amitab Ratra v. Cross Falls
Homeowners Association, Inc.

Pet. No. 336 – Francisco Pineda-Barrientos v.
State of Maryland

Pet. No. 337 – M.H. & M.H. v. State of
Maryland

Pet. No. 341 – Vincent Davis v. State of
Maryland

Pet. No. 346 – Deborah Fried v. State of
Maryland

Pet. No. 348 – Marc Brown, Jr. v. State of

Maryland

Pet. No. 349 – Vincent Davis v. State of

Maryland

Pet. No. 351– Stephen Nivens v. State of

Maryland

Pet. No. 371 – Robert L. Stephenson v.

William M. Savage, et al.

*Motion to Stay Further Sale or
Enforcement denied.*

And it is further

ORDERED that the following petitions for writ
of certiorari are dismissed:

Pet. No. 315 – In the Matter of Thelma

Floyd

*Petition is dismissed for failure to
pay the required filing fee.*

And it is further

ORDERED that the motions for
reconsideration filed in the following matters
are denied.

Pet. No. 233 – Rodrick D. Cannon v.

State of Maryland

/s/Matthew J. Fader

Chief Justice



* IN THE
* SUPREME COURT
PETITIONS FOR WRIT * OF MARYLAND
* OF CERTIORARI * Term, 2025¹
*

ORDER

It is this 23rd day of March 2026, by the Supreme Court of Maryland, ORDERED that the following petitions for writ of certiorari are denied:

Pet. No. 393 – Juliana Mbanusi v.

Charlestowne Village Condominium,
Inc.

Pet. No. 394 – Cherese Knight v. JP Morgan

Chase Bank, N.A.

Pet. No. 417 – Eramosi Oyathelemi v. James

Clarke

Pet. No. 418 – Edward Winston, Jr. v.

⁵ All petitions and motions were filed in September Term 2025 unless otherwise indicated.

Kenneth Leon Smith

Pet. No. 419 – Jo Antoinette Bell v. Addison
Woods Homeowner's Association, Inc.

Pet. No. 422 – Norbert Pickett, et al. v.
Chizorom Wosu

Pet. No. 428 – In the Matter of Betty Anne
Davis

Pet. No. 431 – Rabitah Moses v. Alex Vasquez
Pet. No. 432 – In the Matter of Micah

Hill

Pet. No. 433 – Denroy Lucien Haines Defreitas
v. State of Maryland

Pet. No. 434 – Mark A. Scherer v. David
Cunningham

Pet. No. 435 – Deamonte Spencer v. State of
Maryland

Pet. No. 437 – Athena McCrary v. Aetna
Better Health of Maryland, et al.

Pet. No. 438 – Ahmed R. Rucker v. State of

Maryland

Pet. No. 439 – Michael Anthony Edwards v.

State of Maryland Pet. No. 441 – Serena

Bryson, et al. v. Wes Moore, et al.

Pet. No. 442 – Aaron Clubb v. State of

Maryland

Pet. No. 443 – Yonathan Ambaye v. Pineway

Towers Condominium, Inc.

Pet. No. 445 – Sidney Hilton Thompson v.

State of Maryland

Pet. No. 447 – Elicia Y. Paisley v. Nicole

Lipinski, et al.

Pet. No. 448 – Jacqueline McBride v. Israel

Antonio Hernandez, et al.

Pet. No. 449 – Kaycee Duree v. Frank Gizzo

Pet. No. 450 – Shawna Sharpe v. Achilles

Creighton

Pet. No. 452 – Francisca Mendoza v. Carlos

Cornelius Austin

Pet. No. 455 – Esendege Fonjunge v. Capital
One, N.A.

Pet. No. 456 – Joshua Trippett v. State of
Maryland

Pet. No. 457 – Matthew Talley, Sr. v. Brenda
Simmons
*Motion to Strike Informal Petition for
Writ of Certiorari denied as moot and
Respondent's request for attorney's
fees is denied.*

Pet. No. 458 – Rodney Chase, Jr. v. State of
Maryland

Pet. No. 459 – Yakoubou Ousmanou v.
Ahmadou Maryam Roukayatou

Pet. No. 465 – Anthony Johnson v. State of
Maryland

Pet. No. 475 – Robert William Stone, Jr. v.
State of Maryland Pet. No. 480 –
Teshan Dion Jordan v. State of
Maryland

And it is further

ORDERED that the following petitions

for writ of certiorari are dismissed:

Pet. No. 420 – Marlboro Auto Repair,

LLC v. Kimberly Coard

*Motion for Extension of Time to
File Supplement Nunc Pro
Tunc is denied, and the petition
is dismissed for failure to file a
timely supplement.*

*Justice Killough did not
participate in the consideration
of this matter.*

And it is further

ORDERED that the motions for

reconsideration filed in the following

matters are denied.

Pet. No. 322 – Sebastian A. Campbell v.

State of Maryland

Pet. No. 336 – Francisco Pineda-

Barrientos v. State of Maryland

Pet. No. 352 – Robert Hailey, et

al. v. Walgreens Co.

Pet. No. 407 – Ramez Ghazzaoui v.

Russett Community Association,

Inc.

Motion to Stay

Enforcement of Judgment

Pending Petition for

Certiorari is denied as

moot.



/s/ Matthew J. Fader

Chief Justice

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

-----X	:	
STATE OF	:	
MARYLAND,	:	Criminal No.
	:	C-15-CR-22 001348
v.	:	
FRANCISCO	:	
PINEDA-	:	
BARRIENTOS,	:	
	:	
Defendant.	:	
-----X	:	

JURY TRIAL

Rockville, Maryland	June 26,
---------------------	----------

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

2023

-----X	
STATE OF	:
MARYLAND,	:
	: Criminal No.
v.	: C-15-CR-22 001348
	:
FRANCISCO	:
PINEDA-	: Rockville, Maryland
BARRIENTOS,	:
	: June 26, 2023
Defendant.	
-----X	

WHEREUPON, the proceedings in the
above-entitled matter commenced

BEFORE: THE HONORABLE JOHN
M. MALONEY, JUDGE

APPEARANCES:

IN THE CIRCUIT COURT FOR
MONTGOMERY COUNTY, MARYLAND

FOR THE STATE:

SHEILA BAGHERI, Esq.
State's Attorney's Office
50 Maryland Avenue, 5th Floor
Rockville, Maryland 20850

FOR THE DEFENDANT:

ANDREW JEZIC, Esq.
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2730 University Boulevard West,
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Wheaton, Maryland 20

I N D E X

	<u>Page</u>
Jury Selection	36
<u>Opening Statements:</u>	
Sheila Bangheri, Esq. For the State	288
Andrew Jezic, Esq. For the Defendant	296

WITNESSES

For the State:

Astrid Hernandez-Zamora
 Direct, 315
 Cross, 392
 Redirect, 471
 Recross, --

For the Defendant:

(None)

EXHIBITS MARKED RECEIVED

For the State:		
Exhibit No. 1	--	319

I N D E X

Exhibit No. 2	324	325
Exhibit No. 3	327	327
Exhibit No. 4	473	473

For the Defendant:

Exhibit No. 1	12	--
Exhibit No. 2	15	--



THE COURT: Thank you.

Has anyone here ever served on a criminal jury before as a juror?

Yes, sir.

PROSPECTIVE JUROR NO. 12: 12

THE COURT: 12?

PROSPECTIVE JUROR NO. 12:

Yes.

THE COURT: Thank you.

PROSPECTIVE JUROR NO. 18: 18.

THE COURT: 18. Thank you.

PROSPECTIVE JUROR NO. 20: 20.

THE COURT: 20. Thank you.

PROSPECTIVE JUROR NO. 80: 80.

THE COURT: 80. Thank you.

PROSPECTIVE JUROR NO. 95: 95.

THE COURT: 95. Thank you.

PROSPECTIVE JUROR NO.

100: 100.

THE COURT: 100. Thank you.

PROSPECTIVE JUROR NO. 125:

125.

THE COURT: 125. Thank you.

PROSPECTIVE JUROR NO. 165:

165.

THE COURT: 165. Thank you.

The defendant is presumed innocent
of
the charges.

Does anyone here disagree with that
statement of the law?

(No response.)

No affirmative response.

If the defendant chose to testify is
there anyone
here who would not be able to judge his
testimony credibility
the same as any other witness?

(No response.)

No affirmative response.

The State is required to prove a
defendant's guilt
beyond a reasonable doubt, and I'll read
you instruction on
that at the end of the case. Does anyone
disagree with that
statement of law?

(No response.)

No affirmative response.

Does anyone feel the State
must prove
the defendant
is guilty beyond all doubt and to a
mathematical certainty?
Yes?

PROSPECTIVE JUROR NO. 18: 18.

THE COURT: 18. Thank you.

Would anyone here be unable to
convict the defendant
based solely upon the testimony of a
victim
even if you
believed it beyond a reasonable doubt – or
believed her beyond
a reasonable doubt?

UNIDENTIFIED PROSPECTIVE

JUROR: Could you please state
that one
more time?

THE COURT: Would anyone be
unable to convict the
defendant based solely upon the
testimony
of a victim if --

PROSPECTIVE JUROR NO.

17:

Okay.

THE COURT: And if you have a problem, We can explain it to you. Okay?

PROSPECTIVE JUROR NO. 17:

Thank you.

THE COURT: All right. 1 o'clock. Be ready.

Hello.

PROSPECTIVE JUROR NO. 18:

Hello.

THE COURT: Are you Juror No. 18?

PROSPECTIVE JUROR NO. 18:

Yes,

I am.

THE COURT: Hi, No. 18. You answered a lot of questions.

PROSPECTIVE JUROR NO. 18:
Yes.

THE COURT: You said you could not convict based upon just the word of a victim?

PROSPECTIVE JUROR NO. 18: I –
I didn't hear what you said.

THE COURT: Did you answer the question that you would have trouble -- you wouldn't be

able
to convict someone
even if you believed the victim beyond a
reasonable doubt, if
there wasn't any other evidence?

PROSPECTIVE JUROR NO. 18:

Well,
as long as -- but
I -- I just I don't get reasonable doubt.
Because as long as
someone else is saying that's not true --

THE COURT: Well, I'll read you an
instruction on
that. You're not supposed to know that
until the end of the

case.

PROSPECTIVE JUROR NO. 18:

Yeah.

Okay.

THE COURT: And one of the parts
of the
instruction
are that State has to prove a case beyond
a
reasonable doubt
but not to a mathematical certainty.

PROSPECTIVE JUROR NO. 18: I
don't get that. I – I
have served on a jury before, and we did
convict the person.
And it caused me such emotional distress,
I

could never convict
anybody again.

THE COURT: You couldn't do it?

PROSPECTIVE JUROR NO. 18: (No
audible response.)

THE COURT: Okay. Then I better
let you go. This is
probably not the right case for you.
Okay?

PROSPECTIVE JUROR NO. 18:
Thank you.

THE COURT: All right. You go on
home.

Cause.

Hi.

PROSPECTIVE JUROR NO. 19: Hi.

THE COURT: Are you Juror No. 19?

PROSPECTIVE JUROR NO.

19: I am.

THE COURT: Hi, 19. You answered
a lot of questions,
one about being fair and having strong
feelings about the
charges?

PROSPECTIVE JUROR NO. 19:
Yeah.

THE COURT: Tell me about that.

the evidence? If so, say I do.

THE JURY: I do.

THE COURT: All right. Have a seat.

All right. We're going to start with the opening statements. One of the instructions I'll give you at the end of the case: Opening statements are not evidence, nor are closing arguments. The opening statement is what the evidence the attorneys think will come out during the trial, and closing arguments are the attorneys applying the

law that I have just
read to you to the evidence that actually
did come out during
the trial and why it coincides -- goes with
their version of
events and how they think the case
should
be decided. Okay?

State, whenever you're ready, you
may address the
jury.

MR. JEZIC: May we approach?

THE COURT: Sure.

(Bench conference begins.)

MR. JEZIC: Your Honor, I hate to
interrupt. I

just -- I was under the impression

that

Your Honor would say

that you do give some version of beyond a

reasonable doubt and

some version of presumption of innocence

as an introductory

instruction.

THE COURT: Well, I mean, we

already told them a

couple of times the defendant is

presumed

innocent during voir

dire; but I'm not going to read them jury

instruction now. No,

I will not do that myself.

MR. JEZIC: Okay. So may I just make the record?

THE COURT: You should, yes.

MR. JEZIC: Okay. I don't think that the jury has been told that the presumption of innocence applies to every stage of the case. Every stage of the case, to my recollection, has not been mentioned in voir dire or extemporaneously at any other time.

Also, the concept of beyond a reasonable doubt is

something that is so foreign to the
average
layperson that just
a little bit of --

THE COURT: That's a level of
certainty, but they're
not told a certainty of what.

MR. JEZIC: Right. My request is to
give the entire
introductory pattern instruction. In the
alternative, I think
it is critical to mention that the
presumption of innocence
applies throughout every stage of the
case.
I also think that
it is critical to give at least one of the

definitions of
reasonable doubt that is, I'll call it, on the
pro-defendant's
side; and I would even consent to the two
sentences right in
the pattern jury instructions that are pro
State, which is not
to a mathematical certainty and the other
sentence.

So specifically what I'm asking, Your
Honor, to give
with respect to beyond a reasonable
doubt
- pardon me. I'm
sorry for putting this here -- is that I'm
looking at Pattern

Jury 100: "Proof beyond a
reasonable
doubt requires such proof
as would convince you of the truth of a
fact
to the extent that
you would be willing to act upon such
belief without
reservation in an important matter in
your
own business or
personal affairs." I would ask that you
give that.

And then I would consent to the
State getting the
defendant -- "the State is not required to
prove guilt beyond

all possible doubt or to a
mathematical
certainty, nor is the
State required to negate every
conceivable
circumstance of
innocence." But I would ask for the
entire
first sentence of
the beyond a reasonable doubt
instruction
in the preliminary
instruction, which is: "The defendant is
presumed to be
innocent of the charges. This
presumption
remains throughout

every stage of the trial and is not
overcome
unless you are
convinced beyond a reasonable doubt that
the defendant is
guilty."

I would ask that you at least give
those
portions --
and again, especially the presumption of
innocence -- because
at this particular --

THE COURT: Well, don't keep
repeating yourself.

MR. JEZIC: Well, no. There's a
reason for that. I
apologize if I'm being repetitive. It's

because the State --
the jury can't unwind at the end of the
trial
once they hear
the instructions and go, oh, I was
supposed
to presume the
defendant innocent throughout every
stage, including the very

end of the State's case when I was
already
feeling like they
were convincingly winning this case. I
didn't realize I was
supposed to keep it through every stage
of
the case. Or maybe
a juror might say, you know what? That
defendant was so bad on
cross, I didn't know that I was supposed
to
continue to presume
that he was innocent through cross-
examination of his worst
moment when he was on the stand. And
they can't unwind those

things after they hear it. It's like
learning
the rules of the
game after the final whistle.

THE COURT: Okay. Well, they
have
already been told
the defendant is presumed innocent.
They
have been told the
State has to prove its case beyond a
reasonable doubt. And
they have been told that their job is to
listen to the elements
with an open mind, and they should be
doing that.

Now, as to the jury instruction at

the beginning of
the case, I haven't given it since it was
created. Having been
in the room where that was created is
probably the worst
instruction by the pattern jury
committee.
It's unwieldy,
lengthy, and it's just encouraging a fast
answer. So as far
beyond a reasonable doubt when
(unintelligible) so in opening
statements. So I think the jury will
follow
the law and the
jury instructions that I give them. And
so

I will deny that
request.

MR. JEZIC: And may I ask for
guidance based on what
Your Honor just said? I plan to just
reiterate everything Your

FRANCISCO

PINEDA-

BARRIENTOS

Petitioner

V.

STATE OF

MARYLAND,

Respondent

IN THE

SUPREME COURT

OF MARYLAND

September Term,

2025

No. **336**

PETITION FOR WRIT OF CERTIORARI

Saying, "I haven't given it since it was created," the trial judge in this case refused to give the preliminary pattern jury instructions on the presumption of innocence and reasonable doubt. This Court has recognized (1) that on request judges must ask prospective jurors whether they would be unwilling or unable to comply with these bedrock principles, *Kazadi v. State*, 467 Md. 1, 46 (2020), and (2) the necessity

of uniformity in defining those terms for the jury. *Ruffin v. State*, 394 Md. 355, 373 (2006). This petition presents the next logical question in the development of the law: Is a criminal defendant entitled, on request, to the preliminary pattern jury instructions on these fundamental rights, so that from the start the jury will know what these rights mean and will apply them at every stage of the trial?

A jury in the Circuit Court for Montgomery County in Case No. C-15-CR-22-001348, Judge John M. Maloney presiding, convicted Petitioner, Francisco Pineda-Barrientos, of second-degree rape. He was sentenced to twenty years in prison, with all but fifteen years suspended, to be followed by five years of supervised probation. In *Francisco Pineda-Barrientos v. State of Maryland*, September Term, 2023, No. 1444, an unreported opinion filed on

September 2, 2025, mandate issued on October 6, 2025, the Appellate Court affirmed the judgment of the circuit court. Pursuant to Maryland Rule 8-303, Petitioner, by counsel, Piedad Gomez, Assistant Public Defender, petitions this Court to issue a writ of certiorari to the Appellate Court to review that Court's decision. Copies of the opinion of the Appellate Court (App. 1-29) and docket entries (App. 30-32) are attached.

QUESTIONS PRESENTED

1. Is a criminal defendant entitled, upon request, to the preliminary pattern jury instructions on the presumption of innocence and reasonable doubt?
2. Did the trial court err by refusing to give the preliminary pattern jury instructions on the presumption of innocence and reasonable doubt, which the court said it had never given "since it was created"?
3. Did the Appellate Court err by concluding that

the trial court did not fail to exercise its discretion in refusing to give the preliminary pattern jury instructions on the presumption of innocence and reasonable doubt because, “[a]lthough the court did state that it did not like the instruction and had never given it, the court did not say that it would *never* read the instruction”?

PERTINENT AUTHORITY

Md. Rule 4-325

(a) The court shall give instructions to the jury at the conclusion of all the evidence and before closing arguments and may supplement them at a later time when appropriate. In its discretion the court may also give opening and interim instructions.

MPJI-Cr 1:00 Pretrial Introductory Instructions --
Presumption of Innocence and Reasonable Doubt

FRANCISCO IN THE SUPREME
PINEDA-BARRIENTOS COURT OF
Petitioner MARYLAND
v. SEPTEMBER TERM,
STATE OF MARYLAND, 2025
Respondent. NO. 0336

MOTION TO RECONSIDER DENIAL OF
CERTIORARI

“When was the last time you learned the rules of the game after you played it?” Kassin & Wrightsman, *American Jury on Trial: Psychological Perspectives* 144 (1988).

This case presents an issue of first impression—error that will continue unless this Court intervenes.¹ The judge declined to give the

⁵ The Petition for Writ of Certiorari, following the unreported opinion, *Pineda-Barrientos v. State of Maryland*, Sept. Term, 2023, No. 1444, was denied on December 23, 2025.

Pretrial Introductory Instructions, MPJI-Criminal 1:00; as a result, the jury was never instructed, until the end of trial, on the burden of proof, the presumption of innocence, and that it remains through *every stage* of the trial.

Social science research, which was not emphasized in the Petition, reveals that jurors have serious difficulty in understanding and properly applying these fundamental instructions.² First, jurors cannot possibly “unwind” their opinions about the evidence, upon being instructed for the first time, at the end of the case, that the Presumption of Innocence must be applied “throughout every stage of the trial.” Without a pretrial

⁵ Even after receiving simplified instructions on the presumption of innocence, 82% of the potential jurors in a study did not understand the instruction. Mitchell J. Frank et al., The Silent Criminal Defendant and the Presumption of Innocence: In the Hands of Real Jurors, Is Either of Them Safe?, 10 LEWIS & CLARK L. REV. 237, 250 (2006).