UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0423

September Term, 2014

ANTHONY WILLIAMS

v.

STATE OF MARYLAND

Woodward,
Kehoe,
Arthur,

JJ.

Opinion by Kehoe, J.

Filed: August 10, 2015

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

Anthony Williams, was convicted by a jury sitting in the Circuit Court for Baltimore City of second-degree assault and obstructing and hindering a law enforcement officer in the performance of his official duties.[1] The court sentenced appellant to 45 days of imprisonment for assault, and a concurrent sentence of one year all but 45 days suspended for obstructing and hindering, followed by 18 months of probation. Appellant raises four questions on appeal:

I. Did the trial court err when it failed to remove an allegedly sleeping juror?

II. Did the trial court err when it allowed the State to elicit from a witness a lay opinion that invaded the province of the jury?

III. Did the trial court err when it admitted a photograph allegedly not disclosed during discovery?

IV. Did the trial court err when it refused to sever the joint trial of appellant and his co-defendant?

For the following reasons, we shall affirm the judgments.

Facts

The State's theory of prosecution was that appellant, an off-duty police officer, assaulted Antoine Green after Green was arrested by Baltimore City police officers in Nakishia Epps's home. The State also presented evidence that appellant attempted to cover up the assault by asking Epps, his girlfriend, to lie about the assault. Green, Epps, and

[1] Appellant was tried with co-defendant Sergeant Marinos Gialamas, who was charged with second-degree assault and two counts of misconduct of a police officer. The jury found Gialamas guilty of one count of misconduct but acquitted him of the two remaining charges.

several Baltimore City police officers testified for the State. The theory of the defense was that appellant neither assaulted Green nor obstructed the investigation into the alleged assault. Appellant testified in his defense. Although appellant's convictions relate to the events that occurred after Green was placed in the transport vehicle following his arrest, we will relate some of the surrounding facts to place in context the questions raised by appellant. Viewing the evidence in the light most favorable to the State, the prevailing party, the following was established.

Around 7:00 p.m. on October 27, 2011, three Baltimore City police officers, Sergeant Gialamas and Detectives Joseph Crystal and Keith Tiedemann, were in a police car near the 2200 block of Prentiss Place when they observed a group of men involved in what appeared to be a drug transaction. When the officers approached the group, one of the men, later identified as Antoine Green, threw down a plastic bag and ran. A foot and car chase ensued, and several units responded to the area. The police eventually lost sight of Green, but several minutes later a woman called 911 from 2235 Prentiss Place and said that a man had kicked down her back door and was hiding in her basement. She was in an upstairs bedroom with her daughter. Three other Baltimore City police officers responded to the row house. The officers entered through the front door, which opened onto a small foyer area in which was a set of stairs leading to the second floor. To the left of the stairs was a dining room that opened into the kitchen where the door to the basement was located.

One of the officers walked into the kitchen and opened the basement door where he found Green on the stairs. The officer grabbed Green, and he and the other two officers did a forceful take down – Green was dragged from the stairs onto the kitchen floor where he was pinned to the ground. Around this time Sergeant Gialamas arrived, and he gave the officers his handcuffs to arrest Green. Green was placed in handcuffs and set on the floor against a wall in the kitchen. The lead officer, who had grabbed Green from the basement, testified that he saw no blood or abrasions on Green.

Around this time, Detectives Crystal and Tiedemann arrived at the house, and shortly thereafter, the three responding officers readied to leave. As the lead officer walked to the front door, he saw Epps talking on a cell phone. Epps said she was talking to her boyfriend, who was "a cop." The officer took the cell phone and told the man that the suspect was in custody and everything was fine.

Shortly after the three responding officers left, Officer Kevin Kolb arrived with the prisoner transport vehicle and escorted and placed appellant in the vehicle. Around this time, a man walked into Epps's home passing Detective Crystal, who was standing on the front steps. The man, later identified as appellant, seemed "agitated." From the front door, Detective Crystal saw Sergeant Gialamas and appellant speaking. He saw Sergeant Gialamas nod his head in a "yes motion" and heard him say, "I'll take care of it." Sergeant Gialamas then told Officer Kolb over the radio to "ten-six," which meant to "stand by."

At this point, the parties disagree as to what happened next; specifically, why Sergeant Gialamas called the transport vehicle back and what happened when Green was escorted from the transport vehicle back into the house. The State's evidence suggested that Sergeant Gialamas called the transport vehicle back at appellant's request, and once Green had been taken back into the house, appellant assaulted him. The defense argued that no assault occurred, and that Sergeant Gialamas called the transport vehicle back alternatively because he wanted: (1) his handcuffs back; (2) Epps to identify Green; or (3) Green to be photographed at the crime scene.

Officer Kolb, the driver of the prisoner transport vehicle, testified that after Sergeant Gialamas told him to "ten-six," he stopped the vehicle and returned to Epps's home. The sergeant told him to bring Green back into the house to be photographed. Officer Kolb testified that he had never seen a prisoner taken back into a house for photographs. Detective Tiedemann testified that Sergeant Gialamas told him that he wanted Green returned because he wanted his handcuffs back and he wanted to take pictures of Green at the crime scene.

As Officer Kolb readied to retrieve Green from the vehicle, appellant, whom the officer did not know, appeared. According to Officer Kolb, appellant was "upset." Appellant told Officer Kolb to turn on the light inside the transport vehicle, which the officer did. Officer Kolb heard appellant speak to Green but did not pay attention to what he said. Officer Kolb then escorted Green back to the house. Green was apprehensive and yelled to the crowd that had gathered to get out their cameras because "they're gonna fuck me up." When they

got to the front stairs, Green grabbed the railing with his hands, which were handcuffed behind his back, and wrapped his legs around the railing. Eventually, he was extricated and taken into the house.

While Officer Kolb and Detectives Crystal and Tiedemann stood near the front door, Sergeant Gialamas escorted Green into the kitchen where appellant was present. As to what happened in the kitchen, Detective Crystal testified that he heard "a loud bang" like something hit the floor. Appellant yelled, "[s]he's got fucking kids," and Green replied that he was sorry. Green and appellant then traded retorts. Detective Tiedemann testified that he heard appellant and Green shouting at each other, some scuffling, and a thump, followed by more shouting and scuffling. According to Detective Tiedemann, when Green was being taken from the house back to the transport vehicle, Green attempted to headbutt appellant.

When Green was escorted out of the house, Detective Crystal noticed that his shirt was ripped, and it was not ripped when he had gone in. Officer Kolb testified that he did not know what happened in the kitchen, but Green did not look the same leaving the house as he had when he had entered – his shirt was torn and he was walking with a limp. Detective Tiedemann testified that Green's shirt was ripped when he brought him into the house but it was more ripped when he escorted him back to the transport vehicle. Detectives Crystal or Tiedemann or Officer Kolb never testified that they saw Epps identify Green, any photographs taken of Green, or Sergeant Gialamas exchange his handcuffs.

Officer Kolb drove Green to Central Booking, which refused him because he was injured. Officer Kolb then took Green to the hospital where he was treated. Later that night, Detective Tiedemann filed an offense report regarding Green's arrest, which Sergeant Gialamas, as the supervising officer, signed. In the report, Detective Tiedemann wrote that Green was permitted to re-enter the house because he wanted to apologize to Epps, and that Green had tried to headbutt appellant but Green had fallen to the floor. When Detective Crystal saw the report the day following the incident, he thought it was inaccurate. Detective Crystal testified that he had never seen or heard of anyone allowing a prisoner to be brought back to the house to apologize.

Green's testimony filled in some of the gaps left by the officers's testimony. Green testified that once the transport vehicle was brought back, appellant looked in at him through the window and the two started verbally sparring. Green testified that once in Epps's kitchen, appellant grabbed him by the shirt and threw him into the kitchen table. Green fell to the floor and was "stomped on." During the assault, he and appellant yelled at each other, with appellant saying he was protecting his family and Green shouting "you f----- up . . . you stomped the wrong n-----." Sergeant Gialamas finally said, "[t]hat's enough[,]" and Green was escorted back to the transport vehicle and taken to a hospital for treatment. Green further testified that Sergeant Gialamas came to the hospital and apologized to him for taking him back into the house. The medical records note that Green told the attending medical personnel that he had been "stomped" and that his whole body ached. Photographs of his

injuries, specifically abrasions and hematomas to his lower chest, arm and legs, were taken at the hospital and admitted into evidence. Green contacted the Internal Affairs Division (IAD) of the police department four days after the incident.

Epps testified for the State, and her trial testimony mirrored in large part the testimony of the defenses' witnesses. Epps testified that when appellant arrived at the house, he told her she would have to identify the man who had broken into her home, which she did when Green was escorted back into the house. As Sergeant Gialamas and appellant escorted Green out of the house, Green attempted to headbutt appellant.

Epps's testimony, however, was impeached by statements she made to investigators after the incident. Epps testified that almost a year after the incident, on October 4, 2012, she met with detectives from the IAD and gave a taped statement similar to her trial testimony. Six days later, however, she contacted them and told them that she had lied in her first statement. In her second statement, she admitted that she had heard Green being assaulted. She said that appellant, who was her fiancé, had told her to say that she made an identification of Green when he was brought back into the house, and that Green was "really aggressive" and had tried to head bump appellant while being escorted out of the house. Six days later, on October 16, 2012, IAD asked her to sign her second statement, but she refused. At trial, she testified that her statement on October 4, was her true statement. She explained that she had called IAD and made the second statement on October 10, because she had learned that appellant was married, and she was angry.

Both defendants testified at trial. Sergeant Gialamas testified that he called the transport vehicle back because he had learned from Epps that there might have been two men in the house, and he wanted her to make an identification. Epps identified Green while she stood near the top of the stairs, and Green stood at the bottom. Green then started arguing with appellant, who was in the kitchen attempting to secure the back door of the house. Appellant dropped the door. When Sergeant Gialamas tried to escort Green out of the house, Green fell and started to flail around. Sergeant Gialamas explained that Green's shirt ripped when he tried to get Green under control and escort him back to the transport vehicle. Detective Gialamas testified that he was surprised that none of the other three officers standing near the front door, Detectives Crystal and Tiedemann and Officer Kolb, saw Epps identify Green.

Appellant testified that on the evening of October 27, 2012, he was off-duty when he received a call from Epps. He and his wife had separated; he characterized his relationship with Epps as "just friends." Appellant drove to Epps's home and when he arrived, he went to the rear of the transport vehicle and identified himself to Officer Kolb as an off-duty police officer. Appellant denied speaking to Green or asking Officer Kolb to turn on the light so he could see Green's face. Appellant then went inside Epps's home and found her crying on the steps. After telling her that it was "going to be okay," he proceeded to the kitchen where he tried to secure the back door. Sergeant Gialamas was escorting Green into the kitchen, and because he was having a "tough time" controlling Green, appellant let go of the

door to assist. The door made a loud noise as it hit a kitchen chair. Green fell to his knees as he struggled with Sergeant Gialamas, and as appellant helped Green up by grabbing the inside of his arm, Green attempted to "head bump" him but missed. Green was then escorted out of the house. Appellant denied assaulting Green in any way, and he denied telling Epps to lie about what had happened. Notably, he did not testify that any identification occurred in the house.

Analysis

I. The Sleeping Juror

Md. Rule 4-312(g)(3) provides that in all non-capital cases "[a]t any time before the jury retires to consider its verdict, the trial judge may replace any jury member whom the trial judge finds to be unable or disqualified to perform jury service with an alternate[.]" "[T]the substitution *vel non* of a supernumerary for a regular juror lies within the sound discretion of the trial judge. Such an exercise of discretion will not be disturbed on appeal unless arbitrary and abusive in its application." *James v. State*, 14 Md. App. 689, 699 (1972).

Appellant argues that he is entitled to a new trial because one of the jurors was asleep during trial, and the trial court did nothing when appellant brought the problem to the court's attention. Appellant argues that the court should have "stop[ped] the trial, ma[de] appropriate inquiries, and replace[d] the juror with the alternate[.]" The State responds that appellant's argument is not preserved for our review, and even if preserved, it is meritless

because appellant has failed to show any resulting prejudice from the juror's alleged inattentiveness. We agree with the State.

After the State finished its closing argument, Gialamas's attorney began her closing argument. Toward the end of her argument, the State objected. While addressing the unrelated objection at an ensuing bench conference, the following colloquy occurred:

> [APPELLANT'S COUNSEL]: Your Honor, if I may mention, the juror in the back row, three, she's been sleeping about ten minutes now.
>
> THE COURT: Well, what do you want me to do about that?
>
> [APPELLANT'S COUNSEL]: Well, I want to replace her on the jury with the alternate.
>
> THE COURT: Okay, well, let's get to that in the –
>
> [APPELLANT'S COUNSEL]: Well (inaudible) afternoon break.
>
> THE COURT: Okay.
>
> [APPELLANT'S COUNSEL]: Okay, I'm (inaudible).

The parties proceeded back to their respective trial tables and Gialamas's attorney finished her closing argument in two-typed pages of transcript, after which the court called a recess. When trial reconvened, appellant's counsel gave his closing argument, the State followed with rebuttal closing, and the trial court released the jurors for lunch. After the lunch break, the court and the parties discussed several unrelated matters but at no time did the parties mention the allegedly inattentive juror.

We agree with the State that appellant has failed to preserve his argument for our review because he failed to pursue it before the trial court. When a defendant presents a motion to the trial court, the defendant has a "commensurate responsibility" to pursue that motion until it is resolved. *See White v. State*, 23 Md. App. 151, 156 (1974). *See also Jackson v. State*, 52 Md. App. 327, 331-32 (1982)("If a defendant, after filing a . . . motion, fails to pursue it, a waiver may result."). Appellant agreed with the trial court to discuss the alleged sleeping juror at the lunch break. Appellant, however, never reminded the court at the lunch break or any other time, and by failing to reiterate his concern to the court, he has waived his argument.

Looking past the issue of preservation, appellant has failed to show he suffered any prejudice. Thus any error on the trial court's part is not a basis for reversal.

To support a claim of juror misconduct, the party asserting the claim must "prove that the . . . misconduct actually occurred and that [appellant] was prejudiced by the" misconduct. *Schwartz v. Johnson*, 206 Md. App. 458, 486 (2012)(internal quotation marks and citation omitted). *See also* George L. Blum, Annotation, *Inattention of Juror from Sleepiness or Other Cause as Ground for Reversal or New Trial*, 59 A.L.R. 5th 1 (1998).

In *Hall v. State*, 223 Md. 158 (1960), the Court of Appeals addressed the problem of a sleeping juror. In *Hall*, appellant alleged that three jurors appeared to be asleep and a newspaper reporter stated that "it appeared that one of the jurors was sleeping." *Hall*, 223 Md. at 177. In contrast were the statements from the three jurors involved, all of whom

denied sleeping or being inattentive, and a statement from the State's Attorney that "he did not notice any inattentiveness on the part of the jury." *Id*. at 178. The Court held that a party alleging juror misconduct is required to prove that the misconduct actually occurred and that the party was prejudiced by the misconduct. The Court found no conclusive proof that the jurors were asleep. Additionally, appellant failed to show any prejudice. The Court noted that "[t]he length of time the juror was asleep is not shown, nor does it appear what testimony was introduced during that time, nor that it was of any importance or extent, nor whether favorable or unfavorable to the accused." *Id*. (quotations and citation omitted). The Court concluded: "Without stronger evidence that the misconduct alleged actually occurred, and a showing of prejudice to the appellant, we cannot say that there are grounds for reversal." *Id*.

We considered the issue of prejudice in *Schwartz v. Johnson*, 206 Md. App. 458, 497 (2012), a case in which Schwartz's counsel asserted that a juror was asleep during the testimony of Dr. Kafonek, Schwartz's expert witness. In concluding that Schwartz failed to show prejudice, we explained:

> Even if the evidence supported the conclusion that Juror 4 was inattentive or sleeping, appellants did not adduce sufficient evidence to show that they were prejudiced. Appellants stated that they observed Juror 4 falling asleep on the fourth day of trial, when appellants presented Dr. Kafonek for examination. There was no evidence, however, about the length of time that Juror 4 was asleep, what testimony was being introduced during that time, or whether such testimony was of any importance or favorable or unfavorable to appellants. *See Hall*, 223 Md. at 178. Without such evidence, as in Hall, we cannot conclude that appellants were prejudiced by the trial court's decision not to strike Juror

> 4. Accordingly, we hold that the trial court did not abuse its discretion in deciding not to strike Juror 4.

Applying the reasoning of *Hall* and *Schwartz* to the case before us, we conclude that appellant has failed to show prejudice. We accept, for purposes of analysis, that the statement by trial counsel was accurate. According to appellant, the juror was asleep for, at most, 10 minutes during the closing argument of appellant's co-defendant's attorney. Appellant has failed to show (1) the substance of the relevant portion of the closing argument; (2) what significance, if any, the relevant part of his co-defendant's closing had to his own case; and (3) whether the same arguments were presented by his own trial counsel. We find no reversible error.

II. Lay Opinion Evidence

Appellant argues that the trial court erred when it allowed the State to elicit a lay opinion from the IAD investigator, Detective Kline, that appellant obstructed her investigation. Appellant asserts that the opinion amounted to a legal conclusion that invaded the province of the jury on a point critical to resolution of the case. We disagree.

Appellant was charged with the common law crime of obstructing and hindering a police officer in the performance of his duties. To sustain a conviction, the State must prove beyond a reasonable doubt four elements: "(1) a police officer engaged in the performance of a duty; (2) an act . . . by the accused which obstructs or hinders the officer in the performance of that duty; (3) knowledge by the accused of facts comprising element (1); and

(4) intent to obstruct or hinder the officer by the act or omission constituting element (2)." *Titus v. State*, 423 Md. 548, 552-53 (2011) (citation omitted). It was the State's theory of prosecution that appellant obstructed and hindered Detective Kline when appellant told Epps, his girlfriend, to make false statements to Kline, who was investigating a complaint of officer misconduct that occurred in Epps's home while appellant was present.

As related above, Epps gave a statement to Kline on October 4, 2012. She gave a second statement on October 10, 2012, in which she said that appellant had instructed her to lie in her earlier statement. At trial, Epps recanted her October 10th statement. The State called Detective Kline with IAD. When asked about her interview with Epps on October 4th, the following colloquy occurred:

> [THE STATE]: Okay, did that interview present an obstruction or a hindrance to your investigation?
>
> [WITNESS]: Yes.
>
> [DEFENSE COUNSEL]: Object.
>
> THE COURT: Overruled.
>
> [THE STATE]: You may answer.
>
> [WITNESS]: Yes, it did.

Md. Rule 5-701 states that a witness, who is not qualified as an expert, may testify "in the form of opinions or inferences . . . which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the

determination of a fact in issue." The Rule further provides that, except where the opinion is based on mental state or condition, "testimony in the form of an opinion or inference otherwise admissible is not objectionable merely because it embraces an ultimate issue to be decided by the trier of fact." Md. Rule 5-704. *See also Zachair, Ltd. v. Driggs*, 135 Md. App. 403, 438 (2000)("[e]ven a lay witness may offer an opinion on an ultimate issue of fact . . . if the opinion is rationally based on the perception of the witness and helpful to the determination of the trier of fact."). The decision to admit lay opinion testimony, like all evidentiary rulings, lies within the sound discretion of the trial court and will not be overturned on appeal unless it is shown that the trial court abused its discretion. *Moreland v. State*, 207 Md. App. 563, 568-69 (2012) (citations omitted). An abuse of discretion occurs when the trial court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id*. (quotation marks and citations omitted).

Appellant argues that Detective Kline's opinion testimony was improper. Specifically, the testimony "invaded the province of the jury because it offered a legal conclusion on the ultimate issue which only the jury was qualified to decide: *i.e.*, whether [a]ppellant engaged in actions that constituted an obstruction and hindrance to the investigation" of the IAD. We agree with the State that appellant fails to appreciate the distinction between a legal conclusion and the factual conclusions needed to support it. Detective Kline testified that appellant did in fact hinder and obstruct her investigation —

a factual conclusion clearly within her purview and one of the elements of the crime. She did not offer a legal opinion as to whether appellant had in fact committed the crime of obstructing and hindering. Accordingly, we find no error by the trial court in admitting Detective Kline's testimony.

III. The Discovery Violation

Appellant argues that the trial court erred in admitting a photograph of a ring Epps testified appellant had given her for her birthday. Appellant argues that the photograph violated the discovery rules because it was not disclosed prior to trial. He claims that the discovery violation "resulted in unfair surprise to [him] and prevented defense counsel from investigating the circumstances surrounding how the ri[ng] was provided to Ms. Epps." The State responds that appellant has not preserved his argument for our review because he did not object below, and in any event, the argument is meritless. We agree.

Md. Rule 4-263 governs discovery in criminal cases in the circuit courts. Md. Rule 4-263(d)(9) provides that "the State's Attorney shall provide to the defense . . . [t]he opportunity to inspect, copy, and photograph all . . . photographs . . . that the State's Attorney intends to use at a hearing or at trial." If a discovery violation occurs, the Rule provides:

> the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances.

Md. Rule 4-263(n). "[I]n fashioning a sanction, the court should impose the least severe sanction that is consistent with the purpose of the discovery rules" which "is to assist the defendant in preparing his defense, and to protect him from surprise." *Thomas v. State*, 397 Md. 557, 571 (2007)(citations omitted) and *Hutchins v. State*, 339 Md. 466, 473 (1995)(quotation marks and citation omitted). Because the Rule on its face does not require the court to take any action, the trial court "has the discretion to select an appropriate sanction, but also has the discretion to decide whether any sanction is at all necessary." *Thomas*, 397 Md. at 570 (citation omitted). The exclusion of evidence, while an option, is disfavored. *Id*. at 572-73. Prejudice to the party arguing a discovery violation is a factor a trial court should consider when imposing a sanction in the exercise of its discretion. *See id.* at 570-71.

Epps was asked on direct examination how she knew appellant. She testified that she had known him for "a very long time," adding that "he was helping me out when I needed help. I was going through some situations. He was just being a friend, helping me out." She testified that she did not recall telling Detective Kline that appellant was her fiancé but admitted that appellant bought her what she called a "promise ring," explaining that it was essentially a "friendship ring" that appellant had given her around her birthday. The following colloquy occurred (emphasis added):

> [THE STATE]: I'm showing you what's been marked as State's 51 for identification purposes. Do you recognize this?

[THE WITNESS]: Yes, that's the ring.

[THE STATE]: Is that your hand?

[THE WITNESS]: Yes, that is.

[THE STATE]: And, is this the promise ring you were talking about?

[THE WITNESS]: Yes, that's my birthday gift.

[THE STATE]: I'd like to move this in as State's 51, Your Honor.

THE COURT: Any –

[GIALAMAS'S ATTORNEY]: Objection.

[APPELLANT'S ATTORNEY]: Objection.

THE COURT: Counsel, approach.

(Whereupon, counsel and Defendants approached the bench and the following occurred:)

THE COURT: Let me see it. I'd say that looks like an engagement ring to me. So, I'll overrule the objection.

[GIALAMAS'S ATTORNEY]: Your Honor, I don't believe that that was disclosed in discovery. I don't ever recall ever seeing that before; nor am I clear about the relevance of –

THE COURT: Okay.

[GIALAMAS'S ATTORNEY]: – (continuing) what her jewelry is.

THE COURT: All right. Objection overruled.

The photograph was admitted into evidence. On cross-examination, Epps admitted that she and appellant were "involved in a relationship."

We agree with the State that appellant's argument is not preserved for our review. Although appellant lodged a contemporaneous objection to the admission of the photograph, general objections do not preserve appellate claims based on a factual assertion collateral to the issues presented at trial, such as a discovery violation. *See Addison v. State*, 188 Md. App. 165, 179 (2009) ("[C]ontesting the lack of foundational facts on appeal based on a general objection, would lead to nonsensical results, forcing trial judges to become clairvoyant gatekeepers.") (footnote omitted). Moreover, appellant cannot rely on Gialamas's attorney's objection for Maryland courts have consistently held that an objection by one co-defendant will not suffice to preserve a claim on behalf of another co-defendant. *See Evans v. State*, 174 Md. App. 549, 566 (2007) ("[A] bedrock principle of Maryland law is that a defendant may not rely on an objection made by a codefendant for the purpose of raising an appeal as to that issue.") (citations omitted).

Even if appellant had preserved his argument for our review, however, we would have found it without merit. Appellant admitted to buying the ring for Epps. Thus, appellant's argument that the photograph of the ring was a surprise that "prevented [him] from investigating the circumstances surrounding how the ri[ng] was provided" to Epps is disingenuous and without merit for appellant himself was in the unique position to explain the circumstances. Accordingly, we would have found no abuse of discretion by the trial court in admitting the photograph, even if appellant had preserved his argument for our review.

IV. Severance

Lastly, appellant argues that the trial court erred when it refused to sever his trial from his co-defendant, Gialamas, because the evidence was not mutually admissible as to both defendants and was prejudicial. Specifically, appellant argues that the general orders setting out the duties of a police officer were inadmissible to him as he was not charged in his official capacity as a police officer, unlike Gialamas. He adds that the general orders were prejudicial because they may have influenced the jury to hold him to a higher standard than a similarly situated defendant who was not a police officer. He also argues that evidence of obstructing and hindering an investigation was inadmissible and prejudicial to Gialamas. The contention is unpersuasive.[2]

Md. Rule 4-253 provides, in pertinent part:

> **(a) Joint trial of defendants.** On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.

* * *

[2]The State also asserts that appellant failed to preserve this argument because appellant did not file a written motion to sever within the thirty day time limit imposed by Md. Rule 4-252.

Appellant did not file a motion to sever. At a pre-trial motions hearing, the court noted co-defendant Gialamas's motion to sever. When the court asked appellant if he was joining in that motion, he replied in the affirmative. The court then heard argument from both defendants. We are persuaded that appellant has preserved the issue he raises on appeal. *See* Md. Rule 8-131(a) ("Ordinarily, the appellate court will not decide any other") (emphasis added). Accordingly, we shall address the merit of appellant's argument.

> **(c) Prejudicial joinder.** If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

"Prejudice" means "damage from inadmissible evidence, not damage from admissible evidence." *Eiland v. State*, 92 Md. App. 56, 72 (1992), *rev'd on other grounds*, 330 Md. 261 (1993)(quotation marks and citation omitted).

The Court of Appeals has set forth a two-part test with which to analyze jury trial joinder issues: "(1) is evidence concerning the offenses or defendants mutually admissible [applying the "other crimes" analysis announced in *State v. Faulkner*, 314 Md. 630 (1989)]; and (2) does the interest in judicial economy outweigh any other arguments favoring severance?" *Conyers v. State*, 345 Md. 525, 553 (1997). If the answer to part one is no, then severance is "absolutely mandated, as a matter of law[.]" *Solomon v. State*, 101 Md. App. 331, 340 (1994), *cert. denied*, 337 Md. 90 (1995). If, however, the answer to step one is yes, and the evidence is mutually admissible, "the trial judge has discretion to join or sever the charges, and that decision will be disturbed only if an abuse of discretion is apparent." *Carter v. State*, 374 Md. 693, 705 (2003).

One of the well-established exceptions to other crimes evidence is the exception that "permits the admission of evidence of other crimes when the several offenses are so connected or blended in point of time or circumstances that they form one transaction, and cannot be fully shown or explained without proving the others." *Solomon*, 101 Md. App. at

374 (citing *Tichnell v. State*, 287 Md. 695, 712 (1980)). Although joinder of defendants can result in a presumption of prejudice,"[w]here the crimes arise out of a single, indivisible series of events, a common scheme or other such circumstances, however, no presumption is applied, and the defendant shoulders the burden of demonstrating prejudice." *Wilson v. State*, 148 Md. App. 601, 647 (2002); *see also Carter*, 374 Md. at 705.

Without rehearsing the lengthy evidence presented in this case, it is clear that the crimes charged here were part of a single, indivisible series of events that cannot be fully explained without proving the other crimes. Although it was made very clear from the evidence presented and the parties' arguments that appellant was off-duty during the events, the events occurred because of the intermingled actions of both defendants and the other police officers present.

The State's theory of prosecution was that the defendants are "all part of the same family; they all wear this badge." Appellant testified on direct examination that when he arrived at Epps's home he identified himself as a Baltimore City police officer and showed the officers present his badge. He testified that officers are "actually on duty 24/7" and "never take a day off." The general order documents, which were on the topics of ethical conduct; general rules and regulations for a police officer; persons in police custody; and use of force, were relevant to both defendants because, as the State's Attorney argued, they "tell[] us circumstantially about what did and did not happen that day and what should and should not have happened that day." Thus, the regulations clearly informed both defendants' actions

while at Epps's home, regardless of whether appellant was on duty. *Cf. Carter*, 374 Md. 693 (a defendant is not prejudiced and not entitled to severance where the charges are closely related to each other and arise out of incidents that occur within proximately the same time, location, and circumstances).

Appellant also contends that severance was mandated because the evidence relating to appellant's obstructing and hindering charge, that is, the testimony of Epps was not admissible as to his co-defendant. We do not agree. The obstructing and hindering charge against appellant arose out of his attempt to dissuade Epps from speaking truthfully to the IAD investigator. Epps's testimony as to what occurred in her house on the day of the assault was clearly relevant to the misconduct charges against Gialamas. Evidence as to why her story changes over time (the crux of the charges against appellant) would certainly be admissible in Gialamas's trial, if the two had been tried separately.

Because severance was not mandated by law, the trial court had discretion to join or sever the charges. In exercising that discretion, we note that possible prejudice to a defendant from a joint trial is one of the factors to be weighed, and that "judicial economy is a heavy counterweight on the joinder/severance scales." *Solomon*, 101 Md. App. at 346. There are significant public benefits to joinder. One trial requires a single courtroom, judge, and courtroom personnel. Only one group of jurors need serve. In addition, the public is served by the reduced delay in the disposition of criminal charges both in trial and through

the appellate process. Here, the judicial economy considerations of joining the charges outweighed the likelihood of prejudice.

THE JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY ARE AFFIRMED.

COSTS TO BE PAID BY APPELLANT.