Circuit Court for Montgomery County
Case Nos. 136788-C & 138270-C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

Nos. 15 & 973

September Term, 2022

CARLOS E. PINEDA

v.

STATE OF MARYLAND

Kehoe,
Leahy,
Ripken,

JJ.

Opinion by Ripken, J.

Filed: August 15, 2023

*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).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Following a trial of two consolidated cases, a jury in the Circuit Court for Montgomery County found Appellant, Carlos E. Pineda ("Pineda"), guilty of two counts of sexual abuse of a minor, two counts of second-degree rape, and four counts of third-degree sex offense. The court sentenced Pineda to a total term of 130 years of incarceration, with all but 30 years suspended, and five years of supervised probation.[1] Pineda noted these consolidated appeals. For the following reasons, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Pineda presents the following issues for our review:[2]

I. Whether the circuit court erred in denying Pineda's request to subpoena the victim's confidential medical records.

II. Whether the circuit court erred in excluding written police directives that the detective assigned to the case was questioned about on cross-examination.

III. Whether the circuit court abused its discretion in declining to *voir dire* an alternate juror who attempted to ask a question of the prosecutor during a break in the proceedings.

[1] Pineda states that he was sentenced to a total of 100 years in his brief. However, according to the sentencing transcript and the commitment records in each case, Pineda was sentenced to a total of 130 years of incarceration.

[2] Rephrased from:

1. Did the circuit court err by denying defense counsel's motion to compel disclosure of medical records?
2. Did the circuit court err by not admitting copies of relevant police directives that defense counsel used to cross-examine the lead investigator?
3. Did the circuit court err in declining defense counsel's request to question an alternate juror who approached the prosecutor in the courthouse during the middle of trial?

FACTUAL AND PROCEDURAL BACKGROUND[3]

In Case 138270, the State charged Pineda with one count of sexual abuse of a minor and two counts of second-degree rape. The offenses were alleged to have occurred in a "continuing course of conduct" between September 1, 2011, and January 31, 2016. The charges originated in Prince George's County but were transferred to Montgomery County and consolidated there with Case 136788.

In Case 136788, the State charged Pineda with one count of sexual abuse of a minor and four counts of third-degree sex offense. The offenses were alleged to have occurred in a "continuing course of conduct" between February 1, 2016, and June 6, 2019.

The victim of the alleged crimes was identified as Pineda's niece, "J."[4] Prior to trial, Pineda requested that the court issue a subpoena for J.'s confidential medical records, as we shall discuss in more detail below. The court denied the motion.

A four-day trial was held in June of 2021. J., then 15 years old, testified that, during the relevant time periods, she lived with her mother, brother, and several other family members, including Pineda, her uncle. She testified that, on more than one occasion, beginning when she was seven or eight years old, Pineda touched her "boobs" and her vagina and put his penis into her vagina. Pineda told J. not to say anything or he would get in trouble. J. could not remember specifically how many times the abuse occurred.

[3] Because Pineda does not contend that the evidence was insufficient to support his convictions, we recite only those facts necessary to provide context for our resolution of the issues. *See Washington v. State*, 180 Md. App. 458, 461 n.2 (2008).

[4] To protect the child's identity, we refer to the child as "J."

When J. was in the fifth grade, J.'s family, including Pineda, moved from Prince George's County to Montgomery County. J. testified that the incidents of vaginal intercourse stopped sometime before the move but that the inappropriate touching continued. J. stated that each night, Pineda came into the bedroom she shared with her cousin, "E.",[5] who is Pineda's daughter, to "say good night." Pineda put his hands on J.'s "boobs" or vagina, told her to kiss him on the lips, and would not leave until she complied.

J. told E. about the abuse in 2018. E. was called as a witness and testified that J. told her that Pineda "touched [her] all the time" and that he had "raped [her]." At some point subsequently, J. told Pineda that she did not want him to touch her and that she was going to tell her mother.[6] The abuse then stopped.

J. disclosed the abuse to her mother in June of 2019. J. testified that she did not tell her mother sooner because she "was scared" that it would "ruin [their] family." J. explained: "[W]e all lived together since we were little, and if I were to tell my mom or something, we were all going to separate."

The State did not introduce any forensic evidence or medical records in its case. The detective who investigated the case testified that no medical examination was offered to J. and no physical evidence was collected because of the lapse in time between the assaults

[5] This witness was a minor at the time she testified at trial. To protect the minor witness's identity, we refer to the minor as "E."

[6] At trial, J. did not testify as to precisely when she told Pineda to stop touching her. However, it is apparent from the record that J. had this conversation with Pineda in 2019, sometime prior to disclosing the abuse to her mother in June of 2019.

and J.'s disclosure.

Dr. Ellen Levin, the State's expert witness in the field of child and adolescent mental health and child sexual abuse, testified that delayed disclosure is not uncommon in cases of child sexual abuse. Dr. Levin explained: "[T]he younger the child, the longer the delay. There's a lack of maturity that comes into play, also lack of understanding of what sex and sexuality is, and also some confusion about the abuse, about what's happening to them[.]" She testified that a child will typically take longer to disclose sexual abuse by a family member.

Pineda testified in the defense's case in chief and denied the allegations. The jury convicted Pineda of all charges. Additional facts will be introduced in the discussion of the issues.

DISCUSSION

I. THE COURT DID NOT ERR IN DENYING PINEDA'S REQUEST TO SUBPOENA THE VICTIM'S MEDICAL RECORDS.

Prior to trial, Pineda filed a "Motion to Compel Brady Disclosure Confirming the Non-Existence of Medical Evidence Corroborating the Al[l]eged Victim's Physical Injuries and Other Appropriate Relief." Pineda alleged that the State's pretrial disclosures did not include any medical records, sexual assault exam notes, DNA reports, or "letters of examination of the alleged child victim." Among other things, Pineda requested (1) an order compelling J. to undergo an independent medical examination, and (2) an order compelling the State to accept service, on J.'s behalf, of a subpoena for her medical records or, alternatively, to disclose J.'s address for the purpose of serving her with a subpoena.

The court held a hearing on the motion, during which Pineda presented the court with a "Motion to Serve and Obtain Subpoenaed Documents from Alleged Victim[.]"[7] In the supplemental memorandum in support of that motion, Pineda requested that the court issue a subpoena for J.'s medical records from 2011 to 2019. Pineda alleged that the medical records would contain no "'abnormal' findings" on routine examinations of J.'s vaginal and anal area; no reports of rape, sexual assault, or battery; no indication of physical trauma or sexually transmitted disease; no prescriptions for medication to treat various vaginal conditions; no referral to child protective services; and no "tanner-scale examination."[8]

At the hearing, defense counsel argued:

> The State has already proffered that the child was not examined as a result of these allegations . . . so, in light of that, we still need to ascertain if there [are] any medical trails, or any medical evidence linking the child to my client beginning back in 2011. The child has alleged [that Pineda] violently raped [her] in a violent act, and that goes back to 2011, and the abuse occurred, according to the child, spanned and continued all the way up to 2019. On different occasions, at different times, and in different locations.
>
> The State has no medical evidence of this, or no physical evidence of any of this, but surely the child's medical records would have either traces,

[7] In its written opinion, the court noted that while the motion presented at the hearing had not been docketed, the court had considered Pineda's "supplemental memorandum" related to the motion in making its decision. In this Court, Pineda filed, and this Court granted, an unopposed motion to correct the record to include the supplemental memorandum referenced by the court below.

[8] "[T]he Tanner Scale of Human Development for females is the recognized scientific test utilized for determining the age of postpubescent Caucasian females and consists of separately rating, on scales of 1 to 5, breast development and pubic hair development, with Stage 1 being pre-adolescent and Stage 5 being adult." *United States v. Katz*, 178 F.3d 368, 370 (5th Cir. 1999).

> or indicia of contact, STDs, valuable medical exams, exams of the child to see if the child is well and healthy or not, or to see if the child has reported anything to her treating doctors. So, we proffer that that would be incredibly probative at a trial . . . .
>
> If we subpoena those records from the child, and the child produces her medical records dating back to 2011, and there is no indicia whatsoever involving her medical exams, dating back to 2007, then I'll need to subpoena those doctors to trial to testify as to those examinations, to show the jury that the child has not reported any type of trauma, assault, and surely no sexual assaults . . . .
>
> ***
>
> I'm not only asking for the subpoena to find out if . . . the hymen is intact. No, that's not just it. It is also [for] statements by the . . . alleged victim to any medical provider, the statements by her mother to any medical provider during medical visits; also, presentation of the patient for the medical provider; also, examinations of the patient (unintelligible) medical visits and check-ups.
>
> Keep in mind, Your Honor, that we are dealing with an eight-year offense. So, we're talking about substantial medical records that span eight years, that should show either a difference in the anatomy of the child, or normalcy in the anatomy of the child, or at least a different presentation of the anatomy of the child from 2011 all the way to 2018, and in all those presentations of the anatomy of the child, and with statements made during those interviews, and those examinations, and also the source of any type of vaginal exam, or anatomical exam done by those doctors, is highly relevant and highly probative to our defense.

When the court asked defense counsel to explain how a "difference in the anatomy" was relevant, defense counsel responded:

> Let's assume for arguments sake that we get records . . . that go from 2011 all the way to 2018, and in those eight years the child has had a vaginal exam, an anatomical exam by physicians, . . . and all those exams those doctors never accounted, never reported, or never noticed abnormality with the child's vaginal anatomy, or the doctors never reported any description or assault, or any descriptions of statements by the child that the child was assaulted, or that the child had any type of sexual experience or contact.

> Those normal reports would be highly probative to show to the jury that the child was not touched, . . . that the child in fact was not assaulted. . . . [I]f the medical records are consistent with a normal anatomy, those would be highly relevant and probative to our defense, and I can call those doctors to come to court to testify that when they examined the child from 2007 to 2018, the child's anatomy presented normally, and the child, or the mother never reported assault, and that is highly probative.

The State maintained that J.'s medical records were not relevant because the absence of any evidence of rape or sexual assault in J.'s medical records would not amount to proof that the assault did not occur. The State referenced scientific articles it had cited in its written opposition, explaining "[t]here is no evidence that the examination of the hymen is an accurate or a reliable test of a previous history of [sexual] activity, including sexual assault[,]"[9] and that "in most cases of child sexual abuse, there will be few, if any, medical findings that are diagnostic of penetrating [trauma]."[10] The State asserted that Pineda was free to argue at trial that the State did not produce J.'s medical records to substantiate the allegations. However, the State maintained that Pineda was not entitled to review the medical records because they were not relevant to prove, as Pineda had proffered, that the abuse did not occur.

The court took the matter under advisement to review the articles cited by the State. The court noted that it "tend[ed] to agree" with the State that "just because there is nothing

[9] *See* Ranit Mishori et al., *The Little Tissue That Couldn't – Dispelling Myths About the Hymen's Role in Determining Sexual History and Assault*, 16 Reprod. Health 74 (2019).

[10] *See* Nancy D. Kellogg et al., *Genital Anatomy in Pregnant Adolescents: "Normal" Does Not Mean "Nothing Happened"*, 113 Pediatrics 1 (2004).

in the [medical] record, doesn't mean that nothing happened[.]" The court subsequently denied the request for a subpoena.[11] The court explained its reasoning in a memorandum opinion:

> Like the defendant in *Goldsmith* [*v. State*, 337 Md. 112 (1995)], [Pineda] has not established a reasonable likelihood that the medical records and the doctor's testimony would provide exculpatory information. [Pineda] proffered what the records would *not* contain – not what they would contain. That is insufficient to override the confidentiality of the medical records. Accordingly, [Pineda] has not met his burden.

A. Parties' Contentions

Pineda asserts that he provided a sufficient basis for believing that the records contained "exculpatory information, impeachment information, or information that could otherwise lead to evidence beneficial to the defense." He argues that the medical records were relevant to show "[w]hether or not [J.] made disclosures to medical professionals, whether or not medical exams showed signs of explained or unexplained physical injury, [and] whether or not the medical exams revealed that [J.] was healthy[.]" He further contends that "a lack of information in the records" would "signal to him that he would need to subpoena [J.'s] doctors." Pineda maintains that the court applied the wrong legal standard and erred by denying his motions without first conducting an *in camera* review of the records.

The State asserts that Pineda "failed to point to anything specific he reasonably believed was contained in the victim's medical records or explain how the victim's medical

[11] The court also denied Pineda's request for an independent medical examination. That ruling is not challenged on appeal.

records were possibly relevant to her credibility." The State submits that the trial court properly concluded that Pineda failed to establish a "need to inspect" the victim's confidential medical records and that, therefore, there was no need to conduct an *in camera* inspection. Alternatively, the State maintains that, even if the court erred in denying Pineda's motion, it was harmless beyond a reasonable doubt, because Pineda argued to the jury that the absence of medical records tended to undercut the victim's credibility. We agree with the State that the court did not err and thus do not reach the issue of harmless error.

B. Standard of Review

"[A] criminal defendant has no right to pre-trial discovery by deposition or other forms of pre-trial discovery for information possessed by third parties."[12] *Goldsmith v. State*, 337 Md. 112, 126 (1995). Although records of a third party may be subpoenaed by a criminal defendant, pursuant to Maryland Rule 4-264, that Rule "does not guarantee a criminal defendant the absolute right to subpoena and examine the private records of every private individual or entity that may conceivably possess exculpatory records." *Id.* at 122. "A judge is given discretion whether to order a subpoena under the rule." *Id.* Accordingly, we review the denial of a request for a subpoena pursuant to Rule 4-264 for abuse of discretion.

[12] The State is obligated to disclose certain information without the necessity of a request, pursuant to Maryland Rule 4-263(d). "The main objective of the discovery rule is to assist the defendant in preparing his defense[] and to protect him from surprise." *Alarcon-Ozoria v. State*, 477 Md. 75, 101 (2021) (citations omitted).

"An abuse of discretion exists where 'no reasonable person would take the view adopted by the [trial] court, or when the court acts without reference to any guiding rules or principles.'" *Otto v. State*, 459 Md. 423, 446 (2018) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)). "The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Id.* (quoting *Evans v. State*, 396 Md. 256, 277 (2006)).

C. Analysis

By law, an individual's medical records are confidential and cannot be disclosed without patient authorization unless provided by law. Md. Code Ann., Health–Gen. ("HG") § 4-302(a). One exception, relevant here, authorizes a health care provider to disclose medical records upon receipt of a court order "expressly authorizing disclosure of the designated medical records[.]" HG § 4-306(b)(6)(i)(3).

"When reviewing a defendant's request for confidential documents, the court 'balances competing interests: those of the party holding the protection of confidentiality and those of the defendant who has the right to confront witnesses against him or her.'" *Bellard v. State*, 229 Md. App. 312, 345 (2016) (quoting *Fields v. State*, 432 Md. 650, 667 (2013)). The analysis has two parts:

> *First*, the defendant must demonstrate a "need to inspect," which is a reasonable possibility that review of the records would result in discovery of usable evidence. The strength of this need to inspect depends upon factors such as the nature of the charges brought against the defendant, the issue before the court, and the relationship . . . between the charges, the information sought, and the likelihood that relevant information will be obtained as a result of reviewing the records. *Then*, if the court finds that the defendant has established a need to inspect, the court may elect to review the

> records alone, to conduct the review in the presence of counsel, or to permit review by counsel alone, as officers of the court, subject to such restriction as the court requires."

Id. at 345–46 (internal quotation marks and citations omitted).

Before the court, Pineda proffered that the medical records from 2011 to 2019 would show no "abnormality with the child's vaginal anatomy" or other signs of genital trauma and no report of sexual abuse. As for how that evidence would be relevant, Pineda proffered that "normal reports would be highly probative to show to the jury that the child was not touched[,] . . . was not assaulted." The court, however, impliedly accepted the State's argument that the absence of such findings was not relevant to prove that the alleged offenses did not happen. Based on our review of the record and the proffer made, we cannot say that the court abused its discretion in determining that Pineda's proffer as to what the medical records would *not* contain was sufficient to override the confidentiality of those documents.

Pineda contends that, the court incorrectly applied the standard that is required to establish a need to inspect privileged records, rather than the standard for confidential records. The State submits that, while the court may have referred to case law discussing privileged records and stated that Pineda failed to establish a reasonable likelihood that the medical records contained *exculpatory* information (rather than *relevant* information), the court's conclusion was nonetheless correct.

In its memorandum opinion, the court expressly recognized, more than once, that the records at issue were confidential. Quoting *Goldsmith*, 337 Md. at 128, the court noted,

correctly, that the applicable standard for confidential records "require[s] the defendant to show a likelihood of obtaining relevant information." The court then, having articulated the standard for confidential records, further relayed the standard for privileged records, which were at issue in *Goldsmith*, for which the defendant must show "a reasonable likelihood that the privileged records contain exculpatory information necessary for a proper defense." *Id.* at 133–34. In explaining its ruling, the court stated that, "[l]ike the defendant in *Goldsmith*," Pineda had not established a reasonable likelihood that the medical records he sought to subpoena "would provide exculpatory information."

In sum, the court clearly articulated the different standards for confidential and privileged medical records. To be sure, the court concluded that there was not a reasonable likelihood that exculpatory information for privileged records as applicable in *Goldsmith*, nor relevant information as per the standard for confidential records, would result from a subpoena for J.'s medical records. Thus, the court appropriately held that Pineda did not meet his burden to override the confidentiality of the records.

II. THE COURT DID NOT ERR IN EXCLUDING COPIES OF POLICE DIRECTIVES FROM EVIDENCE.

On direct examination, the Montgomery County Police detective in charge of the investigation testified that no physical evidence was collected because it was "out of the time frame that any physical evidence would have been collected." He explained that there was no DNA testing done because "DNA evidence has a matching timeline for pubescent females of five days." The detective stated that no medical examination was offered to the victim because the incidents of rape had occurred four years prior to the date of reporting.

Defense counsel cross-examined the detective at length about three written police department directives regarding evidence handling, child abuse/neglect cases, and the investigation of rapes and sex offenses.[13] The detective agreed that there was nothing in the directives that stated that DNA cannot be collected after five days. He acknowledged that he did not collect evidence from the address in Prince George's County, where the victim had reported that she had been raped. He explained that it was outside of his jurisdiction, and that he "notified the detectives in [Prince George's County] so . . . they could do their investigation and charge accordingly[.]" The detective effectively conceded that there was nothing in the directives stating that investigations cannot cross county lines. He explained that state law governs law enforcement's jurisdiction to investigate crimes.

The detective stated that the only crimes that he was investigating were the "touching over the clothes" incidents that had allegedly taken place in Montgomery County. The detective did not collect any physical evidence because the crimes that he was investigating had occurred "two to four months prior to the reporting date" and that "[a]ny kind of physical evidence would be non-existent."

Following the detective's testimony, defense counsel moved to admit into evidence the three written directives, in their entirety. The State objected, acknowledging that the directives were properly used for impeachment purposes but arguing that they should not

[13] The three directives are identified in the record as Defendant's Exhibits 1–3 for identification. Exhibit 1 is a four-page document titled "INVESTIGATION OF RAPE AND SEX OFFENSES". Exhibit 2 is an eight-page document titled "EVIDENCE/PROPERTY *HANDLING*" (italics in original). Exhibit 3 is a four-page document entitled "CHILD ABUSE/NEGLECT".

be admitted as substantive evidence. The court sustained the objection, stating that, while defense counsel had used the directives "very effectively and very appropriately" to cross-examine the detective, much of the content of the directives had no relevance to the issues before the jury and would not assist the jury in resolving the issues before it but, rather, would "distract and confuse" the jury. The court declined to reconsider its ruling after reading an unreported opinion cited by defense counsel.[14] The court explained: "I think that [the directives] would be confusing to the jury, they would be distracting to the jury, and they are not helpful to the jury to allow the entire directives, of which there are several pages each, to go back to the jury."

A. Parties' Contentions

Pineda asserts that the court committed reversible error in excluding the police directives from evidence. He maintains that the directives were "eminently relevant" and that their authenticity was undisputed. The State concedes that "a snippet of each directive was relevant," but argues that, because "large swaths" of the directives contained information that was irrelevant to any issue before the jury, the "probative value was

[14] The unreported opinion in question was *Nunez v. State*, No. 795, 2021 WL 785802 (Md. Ct. Spec. App. Mar. 1, 2021). The trial court explained to defense counsel that Nunez was not a basis for it to reconsider its ruling. The court was correct for two reasons. First, prior to July 1, 2023, Maryland Rule 1-104 precluded the use of an unreported opinion of the Court of Special Appeals of Maryland (now the Appellate Court of Maryland) as either precedent within the rule of stare decisis or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland Court. *See* Md. Rule 1-104 (2022 Repl. Vol.) (amended 2023). The current, amended version of the rule is still codified as Md. Rule 1-104. Second, as the trial court correctly informed counsel, *Nunez* dealt with different issues.

substantially outweighed by the likelihood that they would confuse the jury."

B. Standard of Review

To be admissible at trial, evidence must be relevant. Md. Rule 5-402. "Evidence is relevant if it has 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.'" *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *Fuentes v. State*, 454 Md. 296, 325 (2017)); Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams*, 457 Md. at 564 (citing *State v. Simms*, 420 Md. 705, 727 (2011)).

"It is not enough, though, for evidence to be relevant." *Smith v. State*, 218 Md. App. 689, 704 (2014). Relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." *Simms*, 420 Md. at 728 (quoting Md. Rule 5-403).

In reviewing a court's evidentiary ruling, "we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5–403." *Id.* at 725. "During the first consideration, we test for legal error, while the second consideration requires review of the trial judge's discretionary weighing and is thus tested for abuse of that discretion." *Id.*

C. Analysis

We perceive no abuse of discretion in the court's ruling. The directives were offered to demonstrate that the investigation in this case did not implement procedural directives that apply to the collection of physical evidence and forensic examinations of sexual assault victims. The detective acknowledged during his testimony that the directives include information relating to the collection of physical evidence and forensic examinations of sexual assault victims and then explained why the directives were not applicable to his investigation. Although the directives contained some relevant information, the probative value of the directives in their entirety was outweighed by the potential to confuse or mislead the jury with a substantial amount of information that related to the investigation of the charged crimes.

III. THE COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO QUESTION AN ALTERNATE JUROR.

During the third day of trial, following a break in the proceedings, the prosecutor informed the court on the record of an interaction with an alternate juror. The prosecutor stated:

> [T]his afternoon, I had a juror interaction that I reported to . . . your law clerk. To the best of my memory, that juror interaction was that we were waiting in the elevator bay[,] . . . [and an] alternate juror in this case asked me if he could talk to me or ask me a question. I immediately responded, no, you cannot. That is the rule. We then boarded the elevator together. We went up to the third floor. As we were getting out of that elevator, he asked me[,] well can I talk to you or ask you a question after the case is over[,] and I said, yes, after the case is over, you can talk to me, but you cannot talk to me before then. . . . And that was the end of the interaction.

Defense counsel requested that the court question the juror, outside of the presence of the rest of the jury, about the "nature of [his] request" to speak with the prosecutor. The court ruled that no further inquiry was necessary and declined to question the juror. No further relief was requested.

A. Parties' Contentions

Pineda asserts that "the juror's interest in asking the prosecutor a question may have reflected an improper bias that was conveyed to other jurors[.]" He claims that the court did not have sufficient facts to determine the "actual and possible impact of the juror misconduct" and that the court therefore abused its discretion in denying his request to *voir dire* the alternate juror as to the nature of his question.

The State submits that the trial court was not obligated to question the juror in the absence of any indication that the juror had formed an opinion regarding Pineda's guilt or innocence or that the juror's question was even related to the issues before the jury. The State maintains that the court had sufficient information before it to conclude that no further inquiry was necessary. Alternatively, the State asserts that any error was harmless because the alternate juror was excused before deliberations began, and there was no indication of any misconduct prior to that time.

B. Standard of Review

"In handling the progress of a trial, for instance, as where the judge rules on a leading question, permits a continuance, or assesses the need for a mistrial, the range of discretion is very broad and the exercise of discretion will rarely be reversed." *Alexis v.*

State, 437 Md. 457, 479 (2014) (quoting *Canterbury Riding Condo. v. Chesapeake Invs., Inc.*, 66 Md. App. 635, 648 (1986)). A trial court's handling of allegations of jury bias or misconduct during trial is reviewed for abuse of discretion. *Nash v. State*, 439 Md. 53, 66–69 (2014).

C. Analysis

"The potency of the Sixth Amendment right to a fair trial relies on the promise that a defendant's fate will be determined by an impartial fact finder who depends solely on the evidence and argument introduced in open court." *Dillard v. State*, 415 Md. 445, 455 (2010) (quoting *Wright v. State*, 131 Md. App. 243, 253 (2000)). "A private communication between a third party and a deliberating juror raises a serious concern that the juror may reach a verdict on the basis of the matters communicated, rather than the trial evidence." *Eades v. State*, 75 Md. App. 411, 420 (1988). Because "[i]mpropriety and the appearance of impropriety . . . diminish[] the integrity" of the judicial system, "the trial court has an obligation to resolve questions of impropriety or threats to the integrity of the jury trial." *Dillard*, 415 Md. at 460 (citations omitted).

We disagree with Pineda's claim that the court abused its discretion in declining to *voir dire* the juror to determine whether he was capable of rendering an impartial verdict or had "conveyed anything problematic to other jurors." The three cases Pineda relies on in support of this claim are distinguishable on their facts. In *Dillard*, the facts before the court demonstrated that two jurors "intentionally made contact with a key prosecution witness and that the contact may have been about the substance of his testimony, and that

the jurors may have discussed and formed an opinion on the ultimate question of the defendant's guilt or innocence[.]" *Dillard*, 415 Md. at 459. In *Wardlaw v. State*, 185 Md. App. 440 (2009), a juror informed the court that another member of the jury had conducted internet research of an issue and reported her finding to the rest of the jury. *Id.* at 444–45. Lastly, in *Johnson v. State*, 423 Md. 137 (2011), a juror gained access to "highly prejudicial" information that was not in evidence. *Id.* at 149, 154. In each case, it was held that the court abused its discretion in denying the defendant's motion for a mistrial based on juror misconduct without first conducting a *voir dire* examination of the juror. *Dillard*, 415 Md. at 457–58; *Wardlaw*, 185 Md. App. at 453–54; *Johnson v. State*, 423 Md. at 155.

Here, the juror's brief and non-substantive contact with the prosecutor raised none of the concerns that were present in *Dillard*, *Wardlaw*, or *Johnson*. The court had the benefit of the prosecutor's first-hand and complete account of the interaction. Nothing about the interaction suggested that the juror held any bias, had acquired access to information not in evidence, was unable to render an impartial verdict, or had engaged in anything that could be characterized as misconduct. On these facts, no further inquiry was necessary. The court did not abuse its discretion in declining to *voir dire* the juror.

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

The correction notice(s) for this opinion(s) can be found here:

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