UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

CONSOLIDATED CASES

MIKAL A. MARTIN

v.

STATE OF MARYLAND

No. 0120
September Term, 2014

MICHAEL DESMON MARTIN

v.

STATE OF MARYLAND

No. 0331
September Term, 2014

Zarnoch,
Graeff,
Friedman,

JJ.

Opinion by Graeff, J.

Filed: June 12, 2015

Michael Desmon Martin and Mikal A. Martin, appellants, were tried jointly in the Circuit Court for Baltimore County on charges relating to the shooting death of Robert Holiday.[1] The jury convicted Michael of first degree murder, conspiracy to commit first degree murder, and use of a handgun in the commission of a felony. The court imposed a life sentence, without the possibility of parole, on the conviction for first degree murder, a consecutive term of life on the conspiracy conviction, and a consecutive 20-year term of imprisonment for the conviction of use of a handgun in the commission of a felony. The jury convicted Mikal of second degree murder and use of a handgun in the commission of a felony, and the court sentenced him to a total term of 35 years' imprisonment.

On appeal, Michael, proceeding *pro se*, raises the following six questions for our review, which we have rephrased, as follows:

1. Did the circuit court properly poll the jury regarding their verdict?

2. Did the circuit court properly accept Detective Gruss as an expert in cell phone interpretation, tower analysis, mapping, and PennLink?

3. Did the circuit court err in denying Michael's motion to suppress?

4. Did the circuit court abuse its discretion in finding good cause to postpone Michael's trial beyond 180 days after the initial appearance of counsel?

5. Did the court abuse its discretion in denying Michael's motion for a mistrial?

6. Was Michael's constitutional right to due process violated by the prosecutor's knowing use of perjured testimony?

[1] On October 2, 2014, this Court granted a motion to consolidate the appeals in each case. Because appellants have the same last name and first initial, we shall refer to each appellant by his first name.

Mikal, who is represented by counsel, raises three questions for this Court's review, which we have rephrased, as follows:

7. Did the circuit court abuse its discretion in conducting voir dire by delegating its authority to the potential jurors to decide if they were disqualified?

8. Did the circuit court err in denying Mikal's *Batson* challenge?[2]

9. Did the circuit court abuse its discretion in declining to admit evidence that the victim, Mr. Holiday, belonged to a gang?

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

FACTUAL BACKGROUND

Evidence Adduced at the Suppression Hearing

On February 18, 2013, at approximately 11:47 p.m., Detective Donald Anderson, a member of the Baltimore County Police Department Homicide Unit, responded to a call for a shooting at the corner of Eastern Boulevard and Old Eastern Avenue. Three victims were at the scene. Robert Holiday was deceased and the other two victims, Shyteirra Deas and Lvar Young, were transported to the hospital. Detective Anderson found Mr. Holiday's cell phone on the ground.

Detective Anderson talked to several witnesses in the area. Harry Horney stated that he was driving to work near the time of the shootings. He saw two African American males standing outside of a Pontiac G6 with the engine running. They looked as if they purposefully were looking away from Mr. Horney as he drove by, arousing his suspicion. Another witness, Chad Martinez, heard gunshots and then saw a Pontiac G6 driving at a

[2] *Batson v. Kentucky*, 476 U.S. 79 (1986).

high rate of speed with its headlights turned off. James Edwards saw a black male with a puffy jacket running down the street at the time of the shooting. The man was running in the same direction that Mr. Martinez saw the Pontiac G6 driving.

Sherrie Hicks, Mr. Holiday's mother, told police investigators that Mr. Holiday had been at her home at approximately 9:40 p.m. that night. He told her that he had seen Laquesha Lewis, and they argued about visitation and custody of their daughter, Grace.[3] This argument turned into a physical altercation. Mr. Holiday subsequently received a text message from Ms. Lewis stating: "U DEAD."

Police reviewed Ms. Lewis' cell phone records and interviewed her. Prior to the shooting, Ms. Lewis had a 40-minute phone call with Mr. Holiday. During that call, Mr. Holiday told her that he was at the bus stop, but he missed the bus and had to walk to another bus stop, where the shooting occurred. As Ms. Lewis was communicating with Mr. Holiday, she was texting Michael, with whom she had a romantic relationship.[4]

The police obtained Michael's cell phone records and tracked the location of his phone.[5] During the night of the shooting, as he was texting with Ms. Lewis, Michael's

[3] Ms. Lewis, who is also referred to as "Ashley," was tried separately in the Circuit Court for Baltimore County. She was convicted of first degree murder, conspiracy to commit first degree murder, and use of a handgun in the commission of a felony. Ms. Lewis is not a party to this appeal; she has a separate appeal pending before this Court, *Lewis v. State*, No. 2447, Sept. Term, 2013 (argued March 2, 2015).

[4] Ms. Lewis explained to detectives that she used her cell phone to text, but she often used a land line at her residence to make phone calls.

[5] The subscriber of record for the phone was Derek Allen. Mr. Allen told detectives that he gave the phone to Michael a couple weeks prior to the shooting.

phone moved from the first bus stop to within 100 yards of the murder scene. After the shooting, Michael's phone was in Essex, and two days later, the phone was in Prince George's County. After learning that Mikal had rented a Pontiac G6, police also tracked the location of his phone on the night of the shooting.

On February 21, 2013, the Baltimore County Career Criminal Apprehension Unit ("CCAU") tracked Michael to Suitland. They observed him exit a residence at 2325 Barclay Place and get into a vehicle. CCAU stopped the vehicle, and they immediately seized the cell phone that they had been tracking to protect against deletion of any information contained on the phone. They then obtained a warrant and searched the contents of the cell phone. Michael was released from custody at 7:00 a.m. the next morning. On March 14, 2013, Michael was arrested and charged with the murder of Mr. Holiday.

During a search of 2325 Barclay Place, the police recovered a single live round of ammunition that was the same caliber and manufacturer as the spent casings found at the crime scene. Tests later confirmed that the live round had been chambered in the same weapon used to commit the shooting. Mikal's identification card also was recovered at the residence.

Evidence Adduced at Trial

Rabee Boynes, Mr. Holiday, and Mr. Young took a bus from Baltimore City to Middle River. They stopped at Ms. Lewis' house so Mr. Holiday could visit Grace. Mr. Holiday and Ms. Lewis argued, and Mr. Holiday grabbed Ms. Lewis by her neck. Ms. Lewis' family members, with Mr. Boynes and Mr. Young, were able to break up the fight.

At approximately 10:00 p.m., Mr. Boynes, Mr. Holiday, and Mr. Young left Ms. Lewis' house and traveled to Mr. Holiday's mother's house. While Mr. Holiday visited with his mother, Mr. Boynes and Mr. Young waited outside. Mr. Holiday told his mother about the argument with Ms. Lewis and showed her a text message that Ms. Lewis had sent to him, stating: "U DEAD." Mr. Holiday then left his mother's house, and the three men went to a bar, Benchwarmers. On their way, they met several female friends, including Ms. Deas. Mr. Boynes did not stay with Mr. Holiday at the bar. Instead, he escorted another friend, Julie, to her home.

Ms. Deas, Mr. Holiday, and Mr. Young stayed at Benchwarmers for a few minutes, and they then walked together to the first bus stop. After waiting a few minutes for the bus, the three decided to walk to another bus stop on Eastern Avenue. While the group traveled from the first bus stop to the second bus stop, Mr. Holiday was talking on his cell phone and was agitated. After they arrived at the second bus stop, Ms. Deas heard shots fired, and she observed a person running away. Ms. Deas, Mr. Young, and Mr. Holiday were all shot, and they fell to the ground. A few minutes later, people in the area came to assist them. Mr. Holiday was unresponsive, and he died at the scene from two gunshot wounds.

Mr. Martinez was on the front porch of his brother's house, across the street from the shooting, when he heard "at least five" gun shots. Mr. Martinez then saw a Pontiac G6 speeding the wrong way on a one-way street with no headlights on. The car was 10-15 feet away from Mr. Martinez. Mr. Martinez saw silhouettes of "at least two" occupants in the vehicle.

Mohammed Ali, the manager of EZ Motors, testified that, on February 15, 2013, Masharie Martin, a friend of Mikal's, rented a Pontiac G6 on behalf of Mikal. Mikal paid for the rental in cash. When Mikal did not return the car the next day, Mr. Ali called Masharie. Masharie called Mikal and asked where it was, but when Mikal did not return the car as Masharie requested, she reported it stolen.

Langston Hughes, one of Michael's and Mikal's friends, walked to the home of Rebecca Romero on the evening of the murder. Michael and Mikal arrived at the house at approximately midnight in a Pontiac G6. Mikal asked Mr. Hughes to hold onto the car overnight, and he gave Mr. Hughes the keys. Mr. Hughes and Ms. Romero then drove Mikal and Michael to Holcomb Court. Michael and Mikal were both wearing dark colors that night, and they had a black book bag with them. Ms. Romero previously had seen a black gun in the book bag.

The next day, at 7:30 p.m., Michael, Mikal, Mr. Hughes, and Ms. Romero returned the Pontiac G6 to EZ Motors and rented a Dodge Stratus. Mr. Hughes dropped Michael and Mikal off in Prince George's County.

Detective Anderson testified that the shooting occurred at approximately 11:43 p.m. on February 18, 2013, and the police recovered a "U DEAD" text from Ms. Lewis on Mr. Holiday's cell phone. Police obtained phone records for Ms. Lewis, Michael, and Mikal. Ms. Lewis' phone records indicated that she had texted Michael's cell phone 19 times in the hour before the murder. At the same time, Ms. Lewis was talking with Mr. Holiday on her land line phone. Detective Anderson was unable to retrieve any of the text messages from either Ms. Lewis' or Michael's phones.

Detective Anderson and other officers testified regarding the search of 5 Holcomb Court, the address Michael listed as his residence, and 2325 Barclay Place, the home where Michael was observed. At the Holcomb Court residence, the police recovered a .40 caliber hollow point bullet, which was the same type of bullet used in the shooting. At the residence on Barclay Place, the police recovered a single live round of ammunition that matched the casings found at the crime scene, as well as an identification card that belonged to Mikal.

Detective Gruss, an expert in "cell phone interpretation, tower analysis, mapping, and PennLink," mapped the cell phone data. He testified that, at 11:07 p.m., Michael's phone was on Martin Boulevard, close to the first bus stop. At 11:18 p.m., Michael's phone was closer to the second bus stop, and at 11:45 p.m., the phone was about 200 yards from the bus stop where the three victims were shot. At 11:55 p.m., the phone was moving away from the bus stop.

Lewis Sanchez, a Sprint employee, reviewed the maps created by Detective Gruss. He testified that the maps properly reflected the data Sprint provided.

STATE'S MOTION TO DISMISS

Prior to addressing the questions presented in appellants' briefs, we address the State's motion to dismiss the appeals on the ground that the briefs do not provide a clear, concise statement of the facts, as required by Md. Rule 8-504(a)(4). The State notes that, although the transcripts in this case are extensive, covering more than 2,600 pages, Michael's brief includes only a vague two-paragraph Statement of Facts, which it argues is inadequate to apprise this Court of the material facts necessary to reach a decision in this

case, and Mikal merely accepts Michael's Statement of Facts, without adding more. Accordingly, the State moves to dismiss this appeal, or in the alternative, requests that this Court strike appellants' briefs, pursuant to Md. Rule 8-504(c) (appellate court may dismiss the appeal or make any other appropriate order with respect to the case for a party's noncompliance with Rule 8-504).

We agree with the State that appellants' statement of facts is deficient and not in compliance with Md. Rule 8-504(a)(4). As this Court recently explained, however, we "generally will not dismiss an appeal unless the appellee is prejudiced by appellant's noncompliance with the Maryland Rules." *Shih Ping Li v. Tzu Lee*, 210 Md. App. 73, 92 (2013), *aff'd on other grounds*, 437 Md. 47 (2014).

Here, although the deficient statement of facts caused the State extra work, it does not assert that it was prejudiced in its ability to respond to this appeal. Accordingly, we will deny the State's motion to dismiss the appeal or strike the briefs.

DISCUSSION

I.

Polling of Jury

The first six issues are those raised by Michael. His first argument is that the verdict for first degree murder was void because each member of the jury did not announce that was his or her individual verdict. He asserts that, although the foreman stated for the panel that they found him guilty of first degree murder, when individually polled regarding whether that was their verdict, the remaining members said "Yes," without specifying the degree in words.

The State contends that, because Michael did not object to the form of the polling or to the jury's responses, this claim of error is not preserved for this Court's review. In any event, it contends that Michael's contention is without merit because the court properly polled the jury regarding its verdict.

A.

Proceedings Below

The circuit court accepted the jury's verdict as follows:

> THE CLERK: Ladies and gentlemen of the jury, have you agreed upon a verdict?
>
> THE JURY: We have.
>
> THE CLERK: Who will say for you?
>
> THE JURY: Our foreperson.
>
> THE CLERK: Mr. Foreman, what say you in the case of State of Maryland v. Michael Martin in Case No. K-13-2125 as to Question 1, first degree murder?
>
> THE FOREPERSON: Guilty.
>
> THE COURT: Go down to 5.
>
> THE CLERK: As to Question 5, conspiracy to commit first degree murder of Robert Holiday?
>
> THE FOREPERSON: Guilty.
>
> THE CLERK: As to Question 6, use of a handgun in the commission of a crime of violence?
>
> THE FOREPERSON: Guilty.

The court then polled the jury, and each juror individually and unambiguously answered "yes," as follows:

> THE COURT: What's going to happen next, folks, as to Michael Martin is [the clerk] is going to ask each one of you if the verdict that's been rendered by your foreperson is indeed your verdict. You may proceed, [clerk].
>
> THE CLERK: Ladies and gentlemen of the jury, you have heard the verdict that your foreman has rendered. Juror No. 1, is that your true verdict?
>
> JUROR NO. 1: Yes, it is.
>
> THE CLERK: Juror No. 2, is that your true verdict?
>
> JUROR NO. 2: Yes.
>
> THE CLERK: Juror No. 3, is that your true verdict?
>
> JUROR NO. 3: Yes.
>
> THE CLERK: Juror No. 4, is that your true verdict?
>
> JUROR NO. 4: Yes.
>
> THE CLERK: Juror No. 5, is that your true verdict?
>
> JUROR NO. 5: Yes.
>
> THE CLERK: Juror No. 6, is that your true verdict?
>
> JUROR NO. 6: Yes.
>
> THE CLERK: Juror No. 7, is that your true verdict?
>
> JUROR NO. 7: Yes.
>
> THE CLERK: Juror No. 8, is that your true verdict?
>
> JUROR NO. 8: Yes.
>
> THE CLERK: Juror No. 9, is that your true verdict?

JUROR NO. 9: Yes.

THE CLERK: Juror No. 10, is that your true verdict?

JUROR NO. 10. Yes.

THE CLERK: Juror No. 11, is that your true verdict?

JUROR NO. 11: Yes.

THE CLERK: Juror No. 12, is that your true verdict?

JUROR NO. 12: Yes.

THE COURT: Harken the verdict.

THE CLERK: Ladies and gentlemen of the jury, harken to your verdict as the [c]ourt has recorded it, your foreman sayeth, you find as to Question 1, first degree murder, guilty; as to Question 5, conspiracy to commit first degree murder of Robert Holiday, guilty; as to Question 6, use of a handgun in the crime of violence, guilty, and so say you all?

THE JURY: Yes.

No objection was made to the responses the jury gave or to the form of the questions asked by the court.

B.

Unanimous Verdict

We agree with Michael that he was entitled to a unanimous verdict, and the verdict becomes final only after the jury has expressed its assent to the verdict delivered by the foreman by: (1) hearkening to the verdict; and/or (2) polling of the jury. "[H]earkening requires the trial court to inquire in open court, before the jurors are discharged, whether the jury agrees with the verdict just announced by the foreperson." *State v. Santiago*, 412 Md. 28, 31 (2009). When the verdict is hearkened, and if requested, the jury is polled, then

the verdict becomes final. *See Jones v. State*, 384 Md. 669, 683-84 (2005); *Givens v. State*, 76 Md. 485, 487 (1893). Whether a verdict satisfies the unanimous assent requirement is a mixed question of fact and law, which we review *de novo*. *Alford v. State*, 202 Md. App. 582, 613-14 (2011).

Before addressing whether the court properly accepted the verdict, we address the State's preservation claim. In *Alford*, 202 Md. App. at 616, a jury was polled regarding its verdict, and the claim on appeal was that the response was not sufficient. We held that this claim was not preserved for review where Alford did not object to the response at trial. *Id.* We also declined to employ plain error review under these circumstances. *Id.* That same analysis applies here. Where appellant failed to object below to the responses of the individual jurors on polling, the propriety of the jury poll is not preserved for this Court's review. *See* Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court.").

Even if Michael's argument was preserved, we would find it to be without merit. The foreman specified in the verdict that the jury found him guilty of first degree murder, and each individual juror unambiguously answered "yes" to the question whether that was their true verdict. The jury rendered a unanimous verdict, and there was no error in the court's acceptance of the verdict.

II.

Expert Qualification of Detective Gruss

Michael next argues that the circuit court erred in admitting Detective Gruss' testimony regarding the location of Michael's phone. His initial brief asserted error on the ground that this constituted expert testimony, and Detective Gruss was not qualified as an expert. In his reply brief, however, he asserts that the court abused its discretion in accepting Detective Gruss as an expert, asserting that he did not have the qualifications to give expert testimony.

The State contends that the court properly exercised its discretion in accepting Detective Gruss as an expert in "cell phone interpretation, tower analysis, mapping, and PennLink." In support, it lists the significant training and experience Detective Gruss had in those areas.

The Maryland appellate courts previously have addressed cell phone site location testimony, and Michael is correct that such testimony must be given by an expert. *See State v. Payne*, 440 Md. 680, 701-02 (2014); *Wilder v. State*, 191 Md. App. 319, 368, *cert. denied*, 415 Md. 43 (2010); *Coleman-Fuller v. State*, 192 Md. App. 577, 612 (2010). This Court has explained that, because such testimony involves "opinions based on a witness's 'training and experience,'" it "'should only [be] admitted as expert testimony, subject to the accompanying qualifications and discovery procedures.'" *Wilder*, 191 Md. App. at 368 (quoting *Johnson v. State*, 408 Md. 204, 225 (2009)).

Here, the State produced expert testimony. Detective Gruss was accepted as an expert in "cell phone interpretation, tower analysis, mapping, and PennLink." The question presented here is whether the court properly admitted Detective Gruss' expert testimony.

"'[T]he admissibility of expert testimony is within the sound discretion of the trial judge and will not be disturbed on appeal unless clearly erroneous.'" *Blackwell v. Wyeth*, 408 Md. 575, 618 (2009) (quoting *Wilson v. State*, 370 Md. 191, 200 (2002)). The admissibility of expert testimony "will seldom constitute a ground for reversal." *Myers v. Celotex Corp.*, 88 Md. App. 442, 460 (1991), *cert. denied*, 325 Md. 249 (1992).

Maryland Rule 5-702, which governs the admissibility of expert testimony, provides as follows:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Michael appears to challenge the first factor, i.e., whether Detective Gruss was qualified to testify as an expert. In that regard, this Court has explained that an expert is qualified to give an opinion if he or she demonstrates a "minimal amount of competence or knowledge in the area in which [he] purports to be an expert." *Naughton v. Bankier*, 114 Md. App. 641, 655 (1997). "The trial court is free to consider any aspect of a witness's background in determining whether the witness is sufficiently familiar with the subject to render an expert opinion, including the witness's formal education, professional training,

personal observations, and actual experience." *Stevenson v. State*, 222 Md. App. 136 (2015) (quoting *Massie v. State*, 349 Md. 834, 851 (1998)).

Here, the circuit court properly exercised its discretion in accepting Detective Gruss as an expert in cell phone interpretation, tower analysis, mapping, and PennLink. For seven years prior to joining the homicide unit, Detective Gruss' daily duties required him "to obtain and analyze phone records." In October 2009, Detective Gruss attended a three-day conference in Washington, D.C. that addressed how to analyze, obtain, and record cell phone data. In the summer of 2013, Detective Gruss assisted in conducting a training class in "cell phone analysis of records and mapping the calls" for the Baltimore County Police Department. He testified that he has looked at "tens of thousands of pages of cell phone records in [his] 21 years as either a detective in the narcotics unit or as an analyst in the narcotics unit," and from this information, he has created hundreds of maps. Detective Gruss had been accepted as an expert in cell phone records and mapping in more than ten cases in the Baltimore County Circuit Court, as well as three times in the United States District Court for the District of Maryland. Detective Gruss demonstrated more than the "minimal amount of competence" necessary to qualify as an expert. There was no abuse of discretion in this regard.

III.

Motion to Suppress

Michael next contends that the court erred when it denied his motion to suppress evidence. Although his reasoning is not entirely clear, he appears to be challenging both the search of 2325 Barclay Place and his March 14, 2013 arrest.

The State contends that Michael has failed to preserve his argument regarding his March 14 arrest because he did not raise that argument at the suppression hearing. In any event, it asserts, there was probable cause to arrest him. With respect to the search of 2325 Barclay Place, the State argues that the search was proper because it was conducted pursuant to a warrant supported by probable cause.

A.

March 2013 Arrest

With respect to the propriety of his March 14, 2013 arrest, the record supports the State's assertion that this issue was not raised at the suppression hearing. Rather, Michael argued only that the arrest on February 21, 2013, was improper, asserting that the police, "in effect, conced[ed] that they [did not] have probable cause when they elected to release him the following morning." The court rejected that argument, finding that "there was probable cause to arrest the Defendant Michael Martin on February 21, 2013." Because the only arrest that Michael challenged below was his February 21 arrest, and he did not challenge his March 14 arrest, this issue is not preserved for this Court's review, and we will not consider it. Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court.").[6]

[6] We further note that Michael does not state what evidence should have been suppressed as a result of his arrest in March. Thus, even if the arrest was unlawful, he states no ground for reversal. *See Johnson v. State*, 548 S.W.2d 700, 706 (Tex. Crim. App. 1977) ("A reversal of the judgment is necessary when fruits of a search and seizure made incident to an unlawful arrest are admitted over a timely objection, but an unlawful arrest itself does not necessarily require the reversal of a judgment of conviction.").

B.

2325 Barclay Place

We turn next to Michael's argument that the search of 2325 Barclay Place was improper. He appears to argue that, because the search of the residence was made when he was in custody in February, but the formal arrest did not follow until 23 days later, the search of the residence was not a proper search incident to arrest, and therefore, the round of ammunition found and the identification card that belonged to Mikal should have been suppressed. As we explain, the circuit court properly denied the motion to suppress the evidence obtained during the search of the residence because it was based on a warrant supported by probable cause.

The Fourth Amendment to the United State Constitution[7] and Article 26 of the Maryland Declaration of Rights[8] prohibit unreasonable searches and seizures. *See Jones*

[7] The Fourth Amendment provides:

> The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

[8] Article 26 provides:

> That all warrants, without oath or affirmation, to search suspected places, or to seize any person or property, are grievous and oppressive; and all general warrants to search suspected places, or to apprehend suspected persons, without naming or describing the place, or the person in special, are illegal, and ought not to be granted.

(continued . . .)

v. State, 407 Md. 33, 51 (2008). The search of a person's home, subject to certain exceptions, is unreasonable if conducted without a warrant. *Id.* A warrant issued to search a person's home must be based on probable cause. *State v. Faulkner*, 190 Md. App. 37, 45-46 (2010). *Accord West v. State*, 137 Md. App. 314, 321, *cert. denied*, 364 Md. 536 (2001). Probable cause means "'a fair probability that contraband or evidence of a crime will be found in a particular place.'" *Patterson v. State*, 401 Md. 76, 91 (2007) (quoting *Malcolm v. State*, 314 Md. 221, 227 (1988)), *cert. denied*, 552 U.S. 1270 (2008).

In reviewing the decision to issue a search warrant, we determine only whether there was a substantial basis for an objective, reasonable person to conclude that probable cause existed. *Patterson*, 401 Md. at 89. *Accord Greenstreet v. State*, 392 Md. 652, 668 (2006). In so doing, we apply a deferential standard that favors the judge's determination. *Patterson*, 401 Md. at 89-90. As the Court of Appeals has explained:

> "Because a search warrant provides the detached scrutiny of a neutral magistrate, which is a more reliable safeguard against improper searches than the hurried judgment of a law enforcement officer engaged in the often competitive enterprise of ferreting out crime, we have expressed a strong preference for warrants and declared that in a doubtful or marginal case a search under a warrant may be sustainable where without one it would fall. Reasonable minds frequently may differ on the question whether a particular affidavit establishes probable cause, and we have thus concluded that the preference for warrants is most appropriately effectuated by according great deference to a magistrate's determination."

Greenstreet, 392 Md. at 668 (quoting *United States v. Leon*, 468 U.S. 897, 913-14 (1984)).

(. . . continued)
MD. DECL. RIGHTS, art. 26.

Here, there was a substantial basis to conclude that probable cause existed to search 2325 Barclay Place. At the time the police applied for the warrant, they knew that Mr. Holiday and Ms. Lewis had an altercation on the night of the murder. After the altercation, Ms. Lewis sent Mr. Holiday a text stating: "U DEAD." Mr. Lewis had a phone conversation with Mr. Holiday for 40 minutes prior to the shooting, during which conversation Mr. Holiday described traveling to two different bus stops. At the same time, Ms. Lewis sent 19 texts to Michael, and Michael's phone moved from the first bus stop where Mr. Holiday initially tried to catch the bus to within 100 yards of the second bus stop, where the shooting occurred. After the shooting, Michael's phone moved away from the scene. By tracking his cell phone, police were able to associate Michael with 2325 Barclay Place. From this information, the police applied for a warrant based on probable cause that they would find evidence related to the shooting there.

The foregoing amounted to a substantial basis for an objective, reasonable person to conclude that probable cause existed. Accordingly, the circuit court properly denied the motion to suppress and ruled that the evidence obtained as a result of the warrant was admissible.

IV.

Hicks Rule

Michael argues that the circuit court erred in overruling his objection to the State's request for a continuance based on a finding of good cause. He asserts that there was not good cause to try the case more than 180 days after the initial appearance of his counsel

pursuant to *State v. Hicks*, 285 Md. 310 (1979). Other than a bald assertion, however, Michael does not explain why the finding of good cause was an abuse of discretion.

The State contends that the court "properly exercised it discretion in finding good cause to postpone Michael's trial beyond 180 days after the initial appearance of counsel." It asserts that good cause existed because the State was waiting for DNA results.

The Court of Appeals has made clear that, pursuant to Md. Code (2012 Supp.) § 6-103(a) of the Criminal Procedure Article ("C.P.") and Maryland Rule 4-271(a)(1), "the trial in a circuit court criminal prosecution must begin no later than 180 days after the earlier of (1) the entry of the appearance of the defendant's counsel or (2) the first appearance of the defendant before the circuit court." *State v. Huntley*, 411 Md. 288, 290 (2009).[9] The last day that the trial date can occur pursuant to Rule 4-271(a) "is commonly referred to as [the] *Hicks* date." *Ashton v. State*, 185 Md. App. 607, 619, *cert. denied*, 410

[9] Md. Code (2012 Supp.) § 6-103(a) of the Criminal Procedure Article provides as follows:

> (a) *Requirements for setting date.* – (1) The date for trial of a criminal matter in the circuit court shall be set within 30 days after the earlier of:
>
> (i) the appearance of counsel; or
>
> (ii) the first appearance of the defendant before the circuit court, as provided in the Maryland Rules.
>
> (2) The trial date may not be later than 180 days after the earlier of those events.

Maryland Rule 4-271(a)(1) provides, in pertinent part:

> The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events.

Md. 165 (2009). C.P. § 6-103 and Maryland Rule 4-271 "codify and implement the chief legislative objective that 'there should be a prompt disposition of criminal charges in the circuit courts.'" *Dorsey v. State*, 349 Md. 688, 700 (1998) (quoting *Hicks*, 285 Md. at 334). "[T]he mechanism of the *Hicks* Rule serves as a means of protecting society's interest in the efficient administration of justice." *Id.* at 701.

There is, however, an exception to this requirement. "On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date." Md. Rule 4-271(a)(1). "[A] determination of what constitutes good cause is dependent upon the facts and circumstances of each case as the administrative judge, in the exercise of his discretion, finds them to be." *State v. Toney*, 315 Md. 122, 132 (1989). Abuse of discretion has been described as

> "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. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice."

Nash v. State, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)) (some quotations omitted), *cert. denied*, 135 S. Ct. 284 (2014).

Here, the record reflects that Michael's trial counsel filed an entry of appearance on April 19, 2013. The *Hicks* date, therefore, was October 16, 2013, and the case was set for

trial on September 30, 2013. On August 26, 2013, the court heard the State's arguments that it needed a postponement, as follows:

> I did notify [defense] counsel last week in advance, and the reason is that there is DNA evidence that has been obtained and is pending. When this case was originally assigned before it even had a trial date, I contacted our biology lab, had an analyst assigned to it who was able to try to begin working on it.
>
> [I] think they are down in numbers, so she has been working on an item. It is my understanding in speaking with [the lab] that they are close to finishing it, but it would take another roughly two to four weeks with everything completed, done, and through peer review.
>
> That would, in effect, put us close to the trial date and inside the 30-day notice for both [counsel] in each Martin case. So for that reason, we're asking for the one brief postponement on those two cases from September 30th.

The court stated that, "[g]iven the circumstances of the DNA, the [c]ourt's going to find good cause." We perceive no abuse of discretion.

V.

Motion for Mistrial

Michael next contends that the court erred in denying his motion for a mistrial after Detective Anderson testified that he obtained Michael's phone number from parole and probation records. He asserts that this testimony was prejudicial because it "indicated to the jury that [he] had a criminal past."

The State contends that the court properly exercised its discretion in denying the motion for a mistrial. In support, it asserts that the objected-to testimony did not refer to Michael as being on parole or probation, the testimony was a single, isolated reference during a lengthy trial, Detective Anderson's testimony was non-responsive to the State's

question, Detective Anderson was not the principal witness on which the State's case depended, and the evidence of Michael's guilt was overwhelming.

The testimony at issue was elicited during Detective Anderson's direct examination regarding locating and tracking Michael's cell phone to the murder scene and connecting the phone to 2325 Barclay Place. The testimony was as follows:

> [THE STATE]: And did you get a latitude and longitude for the number ending in 3269?
>
> [DETECTIVE ANDERSON]: Yes, I did.
>
> [THE STATE]: And is that when you requested Career Criminal to set up surveillance?
>
> [DETECTIVE ANDERSON]: Yes, it was.
>
> [THE STATE]: And did you know who you were looking for at that point?
>
> [DETECTIVE ANDERSON]: We knew Michael Martin used that cell phone in the past, so we were guessing it was him, but we knew he had used it in the past. We had obtained parole and probation records.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Your Honor, may we approach.
>
> THE COURT: Yes.
>
> (Counsel approached bench and the following occurred:)
>
> THE COURT: Yes, we're all here.
>
> [DEFENSE COUNSEL]: I would move for a mistrial.
>
> THE COURT: Put your reasons on the record.

> [DEFENSE COUNSEL]: The detective just said for the whole world to hear that they got parole and probation records regarding my client.
>
> THE COURT: Anything else?
>
> [MIKAL'S COUNSEL]: I join [defense counsel] in moving for a mistrial.
>
> THE COURT: Okay. The mistrial is denied. For all we know, it's an employee of parole and probation. Let's make sure the detective doesn't mess this up.

"'[T]he declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice.'" *Simmons v. State*, 208 Md. App. 677, 690 (2012) (quoting *Braxton v. State*, 123 Md. App. 599, 666-67 (1998)), *aff'd*, 436 Md. 202 (2013). The decision whether to grant a motion for a mistrial "'lies within the discretion of the trial judge,'" because "'[t]he trial judge, who hears the entire case and can weigh the danger of prejudice . . . is in the best position to determine if the extraordinary remedy of a mistrial is appropriate.'" *Behrel v. State*, 151 Md. App. 64, 142 (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)), *cert. denied*, 376 Md. 546 (2003). "We will not reverse a trial court's denial of a motion for mistrial 'unless it is clear that there has been prejudice to the defendant.'" *Molter v. State*, 201 Md. App. 155, 178 (2011) (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)).

Here, we cannot conclude that the court abused its discretion in denying Michael's motion for mistrial. The objected-to testimony was a singular reference in a 10-day trial with two dozen testifying witnesses. Moreover, Detective Anderson did not testify that Michael was on parole or probation. Rather, the testimony was a general reference to parole or probation that, as the trial court noted, could have been interpreted to mean that

Michael was an employee of parole and probation. And finally, there was overwhelming evidence regarding Michael's guilt. Ms. Lewis sent Mr. Holiday the "U DEAD" text shortly before his death, and immediately prior to the shooting, she was talking to Michael, whose phone was located 100 yards from the shooting. Michael also was seen shortly after the murder in a Pontiac G6, the same type of vehicle seen speeding away with its lights off right after the shooting. Under these circumstances, the circuit court properly exercised its discretion in concluding that the "extraordinary act" of declaring a mistrial was not warranted.

VI.

Admission of Mr. Sanchez's Testimony

Michael next contends that his constitutional right to due process was violated by "the presentation of testimony known to the [prosecutor] to be perjured." In support, he cites an inconsistency in Mr. Sanchez's testimony, asserting that Mr. Sanchez testified at Ms. Lewis' trial on October 25, 2013, that the margin of error for cell phone data was 300-400 yards, but during his trial, Mr. Sanchez testified that the margin of error in cell phone location technology was 200-300 feet. Based on that inconsistency, Michael argues that the State knowingly suborned perjury in prosecuting him.

The State contends that Michael has failed to preserve this argument for this Court's review because he did not object below to Mr. Sanchez's testimony on this ground. In any event, it asserts that Mr. Sanchez did not give perjured testimony. Rather, he explained that the narrower margin of error he testified to in Michael's case was due to improvements in technology.

A.

Proceedings Below

Prior to Mr. Sanchez's testimony, the State moved to have him admitted as an expert. Counsel for both Michael and Mikal argued that Mr. Sanchez was not qualified as an expert because his testimony in Ms. Lewis' case was that the margin of error for cell phone data was 300-400 yards, and his testimony at trial in this case would be that the margin of error was 200-300 feet. The court disagreed and admitted Mr. Sanchez as an expert witness.

Mr. Sanchez then testified that the margin of error was an estimate based on calculations from collected data. The following then occurred:

> [THE STATE]: Now, you've previously stated [the margin of error] was 300 to 400 yards?
>
> ***
>
> [MR. SANCHEZ]: Previously, yes.
>
> ***
>
> [THE STATE]: Why are you testifying differently today?
>
> [MR. SANCHEZ]: I don't think it was intentional. I think that I see a lot of numbers, and I see a lot of probabilities; and I see a lot of changes in the probabilities. So this is why I'm telling you that it's not 100 percent, and that's why there is a margin of error.
>
> [THE STATE]: So the 200 to 300 feet, is that based on today's data?
>
> [MR. SANCHEZ]: There is signs that there's an improvement, so yes, these numbers change from time to time.

On cross-examination, Mr. Sanchez further explained:

> [MICHAEL'S COUNSEL]: . . . [I]n this case since this data was collected 11 months ago in February, would you agree with me that the technology as it existed then would make it such that you would still say 400 to 500 yards rather than today's technology that might put it 200 to 300 feet?
>
> [MR. SANCHEZ]: Okay. It's still the same technology. It's still the same technology, and the numbers that I was providing were still based on the same technology. There has been some changes, yes, so I cannot tell you that the technology itself hasn't changed, but there is constant improvements in software that enhance how the hardware and everything else is collected, and those things can impact what exactly what you're saying. And I, in a sense, haven't made changes in technology, but in improvement.
>
> On cross-examination by Mikal's counsel, the following transpired:
>
> [MIKAL'S COUNSEL]: When you testified when you first got on the stand that the margin of error was 2- or 300 feet, was that a guess? Was that just a guess?
>
> [MR. SANCHEZ]: It's not just a guess. It's by what I've said before, just a bunch of samples. The same place on the samples, we can, you know, create a margin of error based on probability.

Mr. Sanchez testified that his testimony regarding the margin of error changed "based on the collections that we've done now. It's all sample data. The probability is not coming from the – these actual records. The probability is coming from samples that we've taken." He further explained:

> The data has not changed. The system has changed to some minor extent, and I'm being totally honest here. So there have been some software upgrades. There have been some changes. The samples are taken on a regular basis. Even the process, the process that you take as the process improves, the margin of error changes because you're improving on your process –
>
> ***
>
> Let me tell you something. It relates to the data as it is now. There have only been minor changes. This is not exactly how you're interpreting it, okay. What you're trying to tell me is that I have a system, I'm testing that system.

> This data is coming from that system. I take samples from that system. As I improve in collecting this data and my margin of error is improving because I'm finding ways to get better measurements, that doesn't change. The data –
>
> ***
>
> [B]ut the probability is improving because the process – I'm finding that out with these readings are better than they used to be.

B.

Appellate Contentions

Initially, we address the State's argument that Michael's argument is not preserved for this Court's review. The record supports the State's assertion that Michael did not object below to the admission of Mr. Sanchez's testimony on the ground that the State knowingly suborned perjury. Instead, appellant's only objection was that Mr. Sanchez was not qualified to testify as an expert. Because appellant did not argue below, as he does on appeal, that his right to due process was violated by presentation of known perjured testimony, this contention is not preserved for review. *See* Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court.").

Even if his argument was preserved, we would find it to be without merit. Courts have found a violation of the defendant's rights to due process only if: "1) the prosecution's case included perjured testimony; 2) the prosecution knew, or should have known, of the perjury; and 3) there is any likelihood that the false testimony could have affected the judgment of the jury." *United States v. Adebayo*, 985 F.2d 1333, 1341 (7th Cir.), *cert. denied*, 508 U.S. 966 (1993). Testimony that is merely inconsistent does not constitute

subornation of perjury. *Grandison v. State*, 341 Md. 175, 241 (1995), *cert. denied*, 519 U.S. 1027 (1996).

Here, although Mr. Sanchez's testimony at Michael's trial was inconsistent with that given at Ms. Lewis' trial, it was not false. When confronted with the inconsistency, Mr. Sanchez repeatedly explained that, although the data remained the same, the margin of error had decreased because of improvements in technology. Such testimony does not amount to perjury, and Michael's due process claim is without merit.

VII.

Voir Dire

The next three issues are raised by Mikal. Mikal first argues that the court "violated [his] constitutional rights to equal protection under the law and a trial by a fair and impartial jury when it asked the panel compound questions in voir dire because it delegated its authority to the potential jurors to decide if they were disqualified." The State contends that this issue is not preserved because Mikal did not argue below that that the form of the court's question was improper, and he accepted the jury. In any event, it asserts that the court properly exercised its discretion in conducting *voir dire*.

During *voir dire*, the court explained to the venire that it would ask questions as follows:

> I ask you to be candid and thoughtful in your responses. Now, the one question you will hear me ask of you collectively and individually if I bring you to the bench following an affirmative response to the first part of my question is going to be this.
>
> It's going to be consistently this. For whatever reason you responded to the first part of my question, would that factor, would that response affect

> your ability to render a fair and impartial verdict in this case? That's really the bottom line.

The court then asked various questions. With respect to the question that is at issue on appeal, the court stated as follows:

> [I]f you or any member of your immediate family or close personal friends are affiliated with any law enforcement agency, please stand. Okay. Not a problem. What I'm going to do is I'm going to ask you your number. And I'm going to [ask you] to just tell me what the relationship is. Okay. You all can do that. When I finish getting everyone's number and ask you to remain standing, I will ask you that follow-up question as I indicated.

There were 46 persons who responded affirmatively to this question. The court asked each member to state their affiliation with a member of law enforcement. Counsel then requested that the court ask each person who responded to the question affirmatively to be asked the question a second time because "it was impossible to take notes and accurately digest the information." The court declined to do so, but it asked the "follow-up question" to the venire-persons who remained standing:

> To all of you who responded to that question, is there anything about your affiliation with any of the people that you know or are friends with or family involving law enforcement that would affect your ability to render a fair and impartial verdict if you were selected as a juror in this case? If it would not, remain seated. If you think it might, I need you to stand up again. All right. What I'm going to do is just verify your number and bring you up and get some details.

The court subsequently asked those who remained standing — Jurors 37, 48, 59, 67, 70, 117, 138, 214, and 231 — additional questions. Each of those jurors was struck for cause. The other venire-persons who sat down when asked about bias, through their act of sitting, answered the question as to bias in the negative, according to the court's instructions.

Mikal's claim, that the court violated the principle set forth in *Dingle v. State*, 361 Md. 1 (2000), by asking compound questions that allowed potential jurors to determine if they were qualified, fails for several reasons.

First, the issue is not preserved for review, both because Mikal did not object below to the form of the court's *voir dire* question, *see* Md. Rule 8-131(a) (An appellate court ordinarily will not decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court."), and because he accepted the jury panel without objection, *see State v. Stringfellow*, 425 Md. 461, 469 (2012) ("Generally, a party waives his or her voir dire objection going to the inclusion or exclusion of a prospective juror (or jurors) or the entire venire if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process."). Accordingly, we need not address his claim of error.

Second, even if the issue was preserved, we would find it to be without merit. In Maryland, "the sole purpose of voir dire is to ensure a fair and impartial jury by determining the existence of cause for disqualification." *Washington v. State*, 425 Md. 306, 312 (2012). The *voir dire* process "entails examination of prospective jurors through questions propounded by the judge (or either of the parties, if allowed by the judge) to determine the existence of bias or prejudice, and literally translated, means 'to say the truth.'" *Charles v. State*, 414 Md. 726, 733 (2010).

As this Court has explained:

> The manner of *voir dire* is governed by Maryland Rule 4-312, and the Court of Appeals has held that "[i]n the absence of a statute or rule prescribing the questions to be asked of the venire persons during the examination[,] the

> subject is left largely to the sound discretion of the court in each particular case." *Moore v. State*, 412 Md. 635, 644 [] (2010) (internal quotation marks and citation omitted). The trial court's discretion "extends to both the form and the substance of questions posed to the venire." *Wright [v. State]*, 411 Md. [503,] 508 [(2009)].

Morris v. State, 204 Md. App. 487, 491 (2012).

On appeal, we give deference to "the exercise of discretion by trial judges with respect to the particular questions to ask and areas to cover in voir dire." *Washington*, 425 Md. at 314. That is so because "[t]he trial judge has had the opportunity to hear and observe the prospective jurors, to assess their demeanor, and to make factual findings. The judge's conclusions are therefore entitled to substantial deference, unless they are the product of a voir dire that 'is cursory, rushed, and unduly limited.'" *Id.* (citations omitted).

Here, the court asked venire-persons to stand if they had any affiliation with any law enforcement personnel. *See Pearson v. State*, 437 Md. 350, 367 (2014) (addressing when court must ask whether venire-person had been a member of a law enforcement agency). The court then asked each standing venire-person about their affiliation with law enforcement. At that point, the court asked them to remain standing if their respective affiliations would affect their ability to render a fair and impartial verdict. Those who remained standing were asked additional questions and were struck for cause.

The court's inquiry did not, as Mikal alleges, violate the principles set forth in Dingle. In that case, the court told venire-persons to stand only if they were both affiliated with law enforcement and biased by that affiliation. 361 Md. at 4. As a result, the venire-persons were never asked to disclose their affiliations with law enforcement to the trial court. Here, by contrast, the court received information about the venire-person's

affiliation, separate from its question about whether those affiliations would render the juror impartial. There was no *Dingle* violation, and the court did not abuse its discretion in conducting *voir dire*.

VIII.

Batson Challenge

Mikal next argues that the court "violated [his] constitutional rights to equal protection when it rejected his *Batson* challenge." He asserts that the court improperly exercised its discretion in finding that he did not establish a *prima facie* pattern of discrimination after the State used three of its four peremptory challenges to strike African American jurors. Noting that the circuit court subsequently revisited the issue, he asserts that "[t]his court should not consider the State's subsequent attempt to explain race-neutral reasons for the three disputed strikes because the [c]ircuit [c]ourt did not consider them and did not make the necessary factual findings to determine the explanations' reasonableness."

The State contends that the court properly exercised its discretion in denying Mikal's *Batson* challenge. It asserts that there was no pattern of discrimination in the State's exercise of its peremptory challenges, and the court properly found that the State's proffered explanation was race-neutral.

"The Equal Protection Clause of the Fourteenth Amendment to the United States Constitution forbids the striking of a venireperson on the basis of race." *Edmonds v. State*, 372 Md. 314, 328 (2002). *Accord Batson v. Kentucky*, 476 U.S. 79, 89 (1986). The purpose of *Batson* is to ensure a defendant's right to a fair trial, to protect a venire-person's right

against impermissible exclusion, and to preserve public confidence in the judicial system. *Powers v. Ohio*, 499 U.S. 400, 409-10 (1991).

In *Batson*, the Supreme Court outlined a three-step analysis "for determining whether a peremptory challenge has been exercised in violation of the Equal Protection Clause." *Edmonds*, 372 Md. at 329. This process is as follows:

> The burden is initially upon the defendant to make a *prima facie* showing of purposeful discrimination [step one]. If the requisite showing has been made, the burden shifts to the State to come forward with a neutral explanation for challenging black jurors [step two]. Finally, the trial court must determine whether the defendant has carried his burden of proving purposeful discrimination [step three].

Id. at 329-30 (quoting *Whittlesey v. State*, 340 Md. 30, 46-47 (1995)).

In evaluating a trial judge's determination on a *Batson* challenge, we note that the judge's findings are "essentially factual and accorded great deference on appeal." *Id.* at 331. "The trial judge is in the best position to assess credibility and whether a challenger has met his burden." *Id.* Thus, "on appellate review, we 'will not reverse a trial judge's determination as to the sufficiency of the reasons offered unless it is clearly erroneous.'" *Id.* (quoting *Gilchrist v. State*, 340 Md. 606, 627 (1995)).

We begin with the first step, whether Mikal made a *prima facie* case. The Court of Appeals has treated this issue as moot once the party making the peremptory challenges has offered explanations for its peremptory challenges, and the "court ruled . . . on the ultimate question of intentional discrimination." *Id.* at 332. *Accord Gilchrist*, 340 Md. at 628.

With respect to the second step, the prosecutor's "explanation must be race-neutral, but it does not have to be persuasive or plausible." *Edmonds*, 372 Md. at 330. "Any reason offered will be deemed race-neutral unless a discriminatory intent is inherent in the explanation." *Id.*

During jury selection, 22 African American jurors were struck. Of the sixteen peremptory strikes exercised by the State, Jurors 8, 38, 54, 64, 69, and 203 were African American.

The following day, the court revisited the issue and made a "more complete record." The court stated that, of the State's sixteen strikes, six were African American. The court noted that Michael's counsel exercised twenty strikes, and of those, five were African American. Mikal's counsel exercised eighteen strikes, none of whom were African American. The prosecutor asked the court if it would like him to put his reasons for its strikes on the record, but the court noted that it had found "that the threshold was not met."

After hearing further argument from Mikal's counsel, the court allowed the State to explain its reasons for its strikes. The prosecutor stated that he exercised peremptory strikes against Juror 8, an African American male, because he was in his early 20's and the prosecutor had concerns about this juror's attention span and lack of life experience. He stated that he struck Juror 38, another African American male, because he had just started a new job at and seemed "highly concerned" about missing time at his new job. With respect to Juror 54, an African American female, the prosecutor stated that he struck the juror because she "immediately made a grimace, a huff, an eye roll" after both the State and the defense deemed her acceptable.

The above-mentioned reasons, which included occupation, age, and inattentiveness, were not based on race. Accordingly, the prosecutor satisfied the second step by providing a race-neutral explanation.

We thus turn to the third step, whether appellant carried his burden to show purposeful discrimination. Here, the circuit court found that Mikal had "not met a threshold burden," but even if he had, the court accepted and believed the prosecutor's race-neutral reasons for the strikes, and it would have permitted those jurors to be stricken. As indicated, we reverse a trial court's determination as to the sufficiency of the reasons offered only if the court is clearly erroneous. *Edmonds*, 372 Md. 329.

The trial judge presiding over the jury-selection process enjoys "'the immeasurably superior vantage point to sense the mood and catch the tone of the entire proceeding.'" *Eiland v. State*, 92 Md. App. 56, 94 (1992) (quoting *Bailey v. State*, 84 Md. App. 323, 328 (1990)), *rev'd on other grounds sub nom.*, *Tyler v. State*, 330 Md. 261 (1993). "If the trial court finds the prosecutor's explanation credible, there is little left to review." *Acquah v. State*, 113 Md. App. 29, 58 (1996). Accordingly, we cannot conclude on the record here that the circuit court was clearly erroneous in accepting the prosecutor's explanation.

IX.

Gang Affiliation

Mikal next argues that the court erred in refusing to allow him to introduce evidence that Mr. Holiday, the victim, belonged to a gang.[10] The State contends that "the trial court

[10] Mikal presents the issue as a Md. Rule 5-404(b) "other crimes" issue.

(continued . . .)

properly exercised its discretion in declining to admit evidence that [Mr.] Holiday was affiliated with a gang, as [Mr.] Holiday's gang affiliation was irrelevant."

Maryland Rule 5-401 defines "relevant evidence" as "evidence having 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." "[R]elevant evidence is admissible, under Maryland Rule 5-402, subject to the court's exercise of discretion to exclude it, under Maryland Rule 5-403, 'if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury.'" *Odum v. State*, 412 Md. 593, 615 (2010). Evidence that is not relevant is inadmissible. Md. Rule 5-402.

As the Court of Appeals explained in *State v. Simms*, 420 Md. 705 (2011), we review a trial court's decision to admit or exclude evidence for abuse of discretion, but we conduct an independent analysis of whether evidence is relevant:

> It is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded "is committed to the considerable and sound discretion of the trial court," and that the "abuse of discretion" standard of review is applicable to "the trial court's determination of relevancy." Maryland Rule 5-402, however, makes it clear that the trial court does not have discretion to admit irrelevant evidence. . . . [T]he "de novo" standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not "of consequence to the determination of the action."

(. . . continued)
Rule 5-404(b), however, applies only to criminal defendants, *Sessoms v. State*, 357 Md. 274, 281 (2000), and the exclusion of evidence Mikal is challenging relates to gang affiliation of Mr. Holiday, the victim. Accordingly, Rule 5-404(b) is inapplicable.

Id. at 724-25 (quoting *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619-20 (2011)) (citations omitted).

Here, Mikal sought to introduce Mr. Boynes' testimony that Mr. Holiday was in a gang in an effort to show that his gang activity and affiliation resulted in his shooting. Out of the presence of the jury, the court questioned Mr. Boynes, who stated that Mr. Holiday was involved in gang related activity. Specifically, he stated that Mr. Holiday was involved in the Crenshaw Mafia gang selling drugs. Mr. Holiday was a leader, which meant "basically he helped out everybody. He kept everybody on track, made sure everybody had what they needed," such as "[m]oney, helping their family . . . [to] live, things to eat."

The court allowed defense counsel to question Mr. Boynes about Mr. Holiday's gang affiliation. Mr. Boynes stated:

> [Mr. Holiday] became Blood from jail, all the time he was in jail. [He] will do what he had to do to help his family and his friends from the neighborhood. Yeah, we sold drugs, but we wasn't gang related as in ganging. We wasn't ganging. We was just slinging. We just sold drugs. It wasn't no problems. We didn't even own guns. We didn't have any guns. We didn't need guns because we knew everybody.

Mr. Boynes stated that, contrary to counsel's "understanding" that the gang was violent, the Crenshaw Mafia was not "in the same category with a gang that's from a different territory." He continued that Crenshaw Mafia was a "group of people that we grew up that we help, we brothers, you know what I'm saying? We fed each other. We did what we had to do to make sure everybody was good." He denied that Crenshaw Mafia had any rival groups in Essex or in Middle River, and he denied that there were any other groups that would consider Crenshaw Mafia part of the "Bloods" for purposes of rivalry.

After hearing Mr. Boynes' testimony, and after giving counsel "more than sufficient latitude to lay a foundation" that Mr. Holiday was killed by someone else due to his gang affiliation, the court found, as a matter of fact, that the proffered evidence was not relevant. We perceive no abuse of discretion.

MOTION TO DISMISS APPEAL DENIED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED. COSTS TO BE PAID 67% BY MICHAEL MARTIN AND 33% BY MIKAL MARTIN.