Circuit Court for Howard County
Case No. C-13-CR-19-000650

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 0291

September Term, 2022

RIGOBERTO A. ALVARES MARTINEZ

v.

STATE OF MARYLAND

Reed,
Zic,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zic, J.

Filed: July 13, 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.

A jury in the Circuit Court for Howard County convicted appellant, Rigoberto A. Alvares Martinez, of two counts of second-degree rape, third-degree sexual offense, and visual surveillance of another person in a private place with prurient intent.[1] On April 12, 2022, the trial court sentenced Mr. Martinez to a total of ten years in prison,[2] after which he filed a timely notice of appeal.

Mr. Martinez asks us to consider whether the trial court: (1) "err[ed] in denying his motion for mistrial"; and (2) "abus[ed] its discretion in allowing the State and State's witnesses to refer to the complaining witness as 'the victim.'" Because we answer the first question in the negative and find that the second question is not preserved for appellate review, we affirm the circuit court's judgments.

BACKGROUND

On the evening of May 26, 2019, R.Y. went out to dinner with Mr. Martinez, her then-romantic partner of four years. Ms. Y. testified that she drank two margaritas at the restaurant and a shot of tequila upon returning home. She did not remember anything that happened that night after drinking the shot of tequila.

The next morning, Ms. Y. woke, naked, in the bed she shared with Mr. Martinez. Mr. Martinez laughed and told Ms. Y. that he had had anal sex with her the night before, something she previously had not permitted him to do. He showed her some photographs

[1] The jury acquitted Mr. Martinez of second-degree assault, and the State entered a *nolle prosequi* for a charge of sodomy.

[2] The court also ordered Mr. Martinez to register as a lifetime Tier III sexual offender.

and two videos he had made of him having vaginal and anal intercourse with her while she was asleep or unconscious. Ms. Y. told Mr. Martinez what he had done was a crime, but he continued to laugh and say he did not believe she would report him.

Ms. Y. denied having consented to any sexual activity that night or to being recorded. She further denied ever having given Mr. Martinez consent to have sexual intercourse with her while she was unconscious.

Upset, but still involved romantically and living with Mr. Martinez, Ms. Y. did not report the sexual assault immediately. Approximately a week later, Ms. Y. moved out of Mr. Martinez's house. She, however, remained in contact with him and took care of him when he was hospitalized for appendicitis shortly thereafter. Once he recovered from his surgery, Mr. Martinez began to "yell at [Ms. Y.]," so she again moved out, that time for good. She reported to the police that Mr. Martinez would not leave her alone and that she wanted her "documents"—including her passport, identification, and a paper requiring her to report to Immigration—from his house, but she did not mention rape at that time.[3]

On August 31, 2019, Ms. Y. reported to the police that Mr. Martinez had threatened her family and that he maintained compromising videos of her, which he said he would post online if she did not return home. Howard County Police Detective Carly Dorsey investigated Ms. Y.'s allegations of rape and was able to review and preserve the two videos Mr. Martinez had made, along with four still photos, because they were stored

[3] Ms. Y., born in El Salvador, had been in the United States since 2014. She testified at trial through a Spanish interpreter.

on a Google drive that could be accessed through both Mr. Martinez's and Ms. Y.'s cell phones.[4]

Mr. Martinez elected to testify at trial. He testified that Ms. Y. did not drink any alcoholic beverages on the night in question. Instead, he said, when they came home from dinner, Ms. Y. took off her clothes, after which she watched pornographic videos with him on his phone, as they had on prior occasions. Afterwards, they had consensual sexual intercourse and recorded it, with Ms. Y.'s permission. Mr. Martinez testified that Ms. Y. was awake during the sexual activity but remained quiet because her son was asleep in the same room. The next morning, Ms. Y. told Mr. Martinez she wanted to see the videos and the photos he had taken, after which she hugged and kissed him.

Sometime in June 2019, Mr. Martinez said he became aware Ms. Y. was seeing another man. After he saw her kissing the other man, they argued, and Ms. Y. moved out. She returned when he was hospitalized, but she moved out again in August 2019.

Up until Ms. Y. moved out permanently, Mr. Martinez stated, they continued to have sexual relations, and she never accused him of rape. He denied raping Ms. Y., again asserting that she had given her consent for the intercourse and for the recording of the acts on May 26, 2019.

Defense counsel, in closing argument, asserted that the intercourse and recording on the night in question was another example of the couple's unusual sex play and that it

[4] In addition, pursuant to a search warrant, Detective John Bonney extracted all the data from Mr. Martinez's cell phone. The videos and the photographs were shown to the jury and admitted into evidence at trial.

occurred between two consenting adults. Moreover, it was the defense's theory that Ms. Y. reported a rape because she learned that, as the victim of a crime, she might obtain the benefit of a U visa, which would permit her to remain legally in the country.[5]

The jury found Mr. Martinez guilty of two counts of second-degree rape, third-degree sexual offense, and visual surveillance of another person in a private place with prurient intent. On April 12, 2022, the trial court sentenced Mr. Martinez to a total of ten years in prison: five years of imprisonment for each of the two second-degree rape convictions, to be served consecutively to one another, and one year of imprisonment for the visual surveillance conviction, to be served concurrently to the rape sentences. The

[5] According to U.S. Citizenship and Immigration Services:

> The U nonimmigrant status (U visa) is set aside for victims of certain crimes who have suffered mental or physical abuse and are helpful to law enforcement or government officials in the investigation or prosecution of criminal activity. Congress created the U nonimmigrant visa with the passage of the Victims of Trafficking and Violence Protection Act (including the Battered Immigrant Women's Protection Act) in October 2000. The legislation was intended to strengthen the ability of law enforcement agencies to investigate and prosecute cases of domestic violence, sexual assault, trafficking of noncitizens and other crimes, while also protecting victims of crimes who have suffered substantial mental or physical abuse due to the crime and are willing to help law enforcement authorities in the investigation or prosecution of the criminal activity. The legislation also helps law enforcement agencies to better serve victims of crimes.

https://www.uscis.gov/humanitarian/victims-of-criminal-activity-u-nonimmigrant-status (last visited July 11, 2023).

conviction for third-degree sexual offense merged for sentencing purposes with the rape convictions. Mr. Martinez then filed a timely notice of appeal.

DISCUSSION

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. MARTINEZ'S MOTION FOR MISTRIAL.

Mr. Martinez contends that the trial court committed reversible error in denying his motion for mistrial after Ms. Y., during cross-examination, referenced a visit Mr. Martinez's attorneys had paid her at her home prior to trial and accused defense counsel of trying to "buy her." In Mr. Martinez's view, Ms. Y.'s comment amounted to an "unfounded accusation[] of witness tampering and bribery by the defense," which was unduly prejudicial and warranted a mistrial. The State, on the other hand, argues that the trial court "properly exercised its discretion in denying the motion for mistrial."

Prior to trial, Mr. Martinez moved *in limine* to have the trial court instruct the State's witnesses, specifically Ms. Y., "that there be no reference whatsoever to the investigation of Ms. [Y.] which included an in-person interview between her and [defense counsel] in her home in 2020—no matter when the meeting took place."[6] Mr. Martinez asserted that any reference to an inquiry by his attorneys of whether Ms. Y. had spoken with an immigration attorney would be irrelevant and "highly prejudicial."

During argument on the motion, the State responded that the "crux of the defense" was either that Ms. Y. reported the rape because she sought a U visa, or she was lying

[6] Mr. Martinez's written motion was not accepted as a proper filing by the clerk's office, but the trial court permitted oral argument on the issue prior to jury selection.

about never having previously given Mr. Martinez consent to undertake sexual activity with her while she was asleep. The prosecutor proffered that Ms. Y. had notified her after defense counsel came to her house late one night in January 2020 because Ms. Y. felt threatened when the attorneys told her they had her passport and immigration papers, which Mr. Martinez had withheld from her. In addition, Ms. Y. stated, the defense attorneys asked her questions about why she was reporting a sexual assault and whether her friends and family had told her she could obtain a visa as a victim of a crime.

According to the prosecutor, that discussion with defense counsel was the first time Ms. Y. learned about the existence of a U visa for a crime victim.[7] Her testimony about the meeting, therefore, would be relevant to rebut the impeachment that Ms. Y. was motivated to bring the charges against Mr. Martinez in order to get the U visa.

The trial court ruled that the State could bring up the visit and visa issue only on redirect examination of the witness. The court noted that defense counsel created the situation and "can't now complain that the situation is contrary to their client's interest because they were there, they did it, and they did it in the manner that they chose to do it, and it is fair game."

[7] Ms. Y. later testified that she first became aware of the possibility of a visa as the victim of a crime when defense counsel came to her house and that she first met with an immigration attorney after that visit. Ms. Y.'s immigration attorney testified that she first spoke to Ms. Y. in January 2020 and that Ms. Y. retained her in August 2020. The immigration attorney requested a U visa certification from the State's Attorney's Office on June 19, 2021, and obtained the certification on June 23, 2021. At the time of trial, Ms. Y. had not applied for a U visa.

During her testimony, Ms. Y., on several occasions made reference to defense counsel coming to her home. The defense and the State objected and requested that the court advise Ms. Y. to limit her testimony to the questions asked. The court did so instruct Ms. Y., along with stopping the interpreter from repeating Ms. Y.'s non-responsive answers in English for the jury.[8]

During cross-examination, defense counsel asked Ms. Y. about her immigration status. The court sustained the State's objection to the question, and defense counsel went on to ask Ms. Y. what year she came into the country and what papers she had sought to retrieve from Mr. Martinez's house. Ms. Y. responded, "Yes, madame but I'm not (indiscernible) document. I'm here because of what he did to me because he drugged me and raped me."

Then, Ms. Y. made a comment in Spanish (which was not interpreted on the record),[9] and defense counsel asked to approach the bench, where the following colloquy occurred:

> [DEFENSE COUNSEL]: Just for the record, I'm sure you're going to deny it, but I am going to move for a mistrial. She said [co-defense counsel] went to my house and bought me, meaning like tried to pay her off. Yes, that's exactly what she said. And I have a serious problem with that.
>
> THE COURT: You know, ma'am --

[8] On at least three occasions, the court made clear to the jury that the interpreter's words were "the official court record of what [the witness] says," and "[w]e listen only to the interpreter."

[9] Mr. Martinez asserts that the audio recording of the trial reveals that Ms. Y. said, "Ella vino a mi [] casa a comprarme," which translates to "She came to my house to buy me." We make no conclusion about the accuracy of Ms. Y.'s testimony or its translation.

[DEFENSE COUNSEL]: No, ma'am.

THE COURT: I don't know how many times --

[DEFENSE COUNSEL]: Judge --

THE COURT: I did not hear the interpreter say anything about someone --

[DEFENSE COUNSEL]: I just said for the record. I'm preserving it. Why are you snapping? I'm preserving the record. That's all.

THE COURT: Okay. I am telling you --

[DEFENSE COUNSEL]: You don't need to snap or get --

THE COURT: Excuse me, ma'am, I'm speaking.

[DEFENSE COUNSEL]: Okay.

THE COURT: I don't appreciate your rudeness.

[DEFENSE COUNSEL]: Your Honor, but I don't appreciate you getting snappy at me. I didn't do anything. I just said for the record.

THE COURT: Ma'am, please stop talking.

[DEFENSE COUNSEL]: Okay.

THE COURT: The interpretation is the official court record --

[DEFENSE COUNSEL]: Okay.

THE COURT: -- of what is said. And I have warned you three times not to come up and interpret other things that were said.

[DEFENSE COUNSEL]: I'm not interpreting. I'm just saying I'm preserving it for the record what I just said.

THE COURT: What are you preserving for the record?

[DEFENSE COUNSEL]: The record speaks -- the record speaks for itself. Like you said, it's recorded what she said and that's all. I'm just saying, based --

[PROSECUTOR]: But it wasn't interpreted.

[DEFENSE COUNSEL]: It wasn't interpreted. They are Spanish speaking people. I can hear it all the way. So, for that reason --

THE COURT: Ma'am, do not make this objection again. Just say objection and I'll say overruled. I'm not going to repeat myself again and again and again.

[DEFENSE COUNSEL]: I'm just preserving --

THE COURT: The interpretation is the official court record of what was said.

[DEFENSE COUNSEL]: I understand that. Correct.

THE COURT: That's that.

[DEFENSE COUNSEL]: Oh, it's not my interpretation. Correct.

THE COURT: Step back.

* * *

THE COURT: I stopped you, yes. Okay, the interpreter was confirming what we had said. I stopped her before that was interpreted.

[DEFENSE COUNSEL]: You did.

THE COURT: Because I heard things that sounded suspicious to me. If that comes out in front of the juror, make your motion. Okay?

* * *

THE COURT: Okay. Okay. If it gets interpreted, come up and make your motion.

[DEFENSE COUNSEL]: Thank you.

THE COURT: But they've been instructed, and I will instruct them again at the end of the evidence that you are to hear only what the interpreter said, not anything you may have interpreted for yourself. And I can remind them of that now if you would like me to.

[PROSECUTOR]: Yes, please.

[DEFENSE COUNSEL]: If you could -- if it wasn't interpreted -- when she spoke, and it wasn't interpreted --

THE COURT: It's not evidence.

[DEFENSE COUNSEL]: -- back into English, you are not to consider anything she says. I would appreciate that.

THE COURT: Point well taken.

[DEFENSE COUNSEL]: Thank you.

THE COURT: I'll be happy to make that --

[DEFENSE COUNSEL 2]: But Your Honor, again, I feel like this woman has decided that no matter what the question is, she's going to get to the fact that we went to see her. She's brought it up three times now.

THE COURT: She's probably outraged that you did, obviously. And --

[DEFENSE COUNSEL]: So, Your Honor, but we can -- but she's trying to divert the fact from the fact that she had already gotten a lawyer, had already done a new visa. I don't know that we're even going to go there. But for her to blame us for her getting a new visa.

THE COURT: Okay.

(Counsel talking over each other and the Court has caused the record to be indiscernible.)

[DEFENSE COUNSEL]: If I just make one suggestion --

[PROSECUTOR]: There's no evidence that she ever spoke to an attorney prior to January. I want to say it was the twenty-something, after they came to visit her. So, for them to keep saying that she had spoken to a lawyer and all these things, there's no evidence of that and I'm really getting tired of it.

[DEFENSE COUNSEL 2]: I just said that's my theory.

[DEFENSE COUNSEL]: Can I just make one suggestion, maybe to stop from continuing on, maybe just excuse the jury and for her to tell her not to keep repeating anything about attorneys going to her house or anything. Because if not, she might continue because of her level of education.[10]

THE COURT: There's no motion in limine on that. I've instructed her twice to answer the question.

[DEFENSE COUNSEL]: You did. Okay.

THE COURT: I am going to instruct the jury that if they hear something in Spanish and believe they understand it, they are to disregard it. It is not in evidence until the interpreter says it.

[DEFENSE COUNSEL]: Okay.

[10] Ms. Y. testified that she had attended school through the second grade in El Salvador.

> THE COURT: And if I stop the witness from answering, which I have, that they're not to consider her answer if it wasn't interpreted.
>
> [DEFENSE COUNSEL]: Okay. Thank you.
>
> [PROSECUTOR]: Okay. Thank you.

The court then instructed the jury:

> Members of the jury, in response to a recent question, the witness began to give her answer and I stopped her. If you understand Spanish, you are to disregard that answer. The only evidence you take from this witness is the words the interpreter speaks. That is the only testimony you are to hear. Okay? All right. You may continue, Counsel.

Defense counsel then continued her cross-examination of Ms. Y.

The grant or denial of a motion for a mistrial lies within the discretion of the trial court, and we do not reverse that court's ruling absent an abuse of that discretion. *Kosmas v. State*, 316 Md. 587, 594 (1989) (citations omitted); *Nash v. State*, 439 Md. 53, 66-67 (2014) (citations omitted). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas*, 316 Md. at 595).

On occasion, a trial witness will say something that constitutes a "blurt" or "blurt out," that is, "an abrupt and inadvertent nonresponsive statement made by a witness during his or her testimony." *Washington v. State*, 191 Md. App. 48, 100 (2010). In cases where the jury may have heard such a "blurt" comprising improper information or evidence, "the trial judge 'must assess [its] prejudicial impact . . . and assess whether the

prejudice can be cured.'" *Walls v. State*, 228 Md. App. 646, 668 (2016) (quoting *Carter v. State*, 366 Md. 574, 589 (2001)) (alterations in *Walls*). "If the prejudice cannot be cured, 'a mistrial must be granted.'" *Walls*, 228 Md. App. at 668 (quoting *Carter*, 366 Md. at 589).

The Supreme Court of Maryland (formerly the Court of Appeals of Maryland)[11] has set forth "a well established analytical framework for determining whether the prejudice to a defendant resulting from a blurt-out is real and substantial enough to warrant a mistrial." *Washington*, 191 Md. App. at 100 (internal quotation marks omitted). The "factors to be considered in determining whether a mistrial is required" include:

> "[W]hether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]"

Rainville v. State, 328 Md. 398, 408 (1992) (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). These factors are not exclusive and do not comprise the test; they are "simply helpful in the resolution of the question." *Kosmas*, 316 Md. at 595.

[11] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022. *See also* Md. Rule 1-101.1(a) ("From and after December 14, 2022, any reference in these Rules or, in any proceedings before any court of the Maryland Judiciary, any reference in any statute, ordinance, or regulation applicable in Maryland to the Court of Appeals of Maryland shall be deemed to refer to the Supreme Court of Maryland . . . .").

The Supreme Court has also recognized that prejudice stemming from extraneous information generally can be cured by striking the improper testimony and instructing the jury appropriately. *See, e.g.*, *Simmons v. State*, 436 Md. 202, 222 (2013). Only when a blurt is so prejudicial that it cannot be disregarded by the jury—or as courts have described such circumstances, the "bell cannot be unrung"—will measures short of a mistrial be an inadequate remedy. *See Quinones v. State*, 215 Md. App. 1, 23-24 (2013) ("We agree with the State's 'bell cannot be unrung' argument, which is in line with the holding of the [Supreme Court of Maryland] . . . [that] there comes a point when a theoretically available remedy becomes ineffective.") (citing *Carter*, 366 Md. at 592).

Here, Ms. Y.'s alleged statement that defense counsel came to her house to try to buy her was a "blurt." Before we consider the *Rainville* factors, however, we first point out that Ms. Y. blurted her statement in Spanish, but it was not interpreted in English on the record. Therefore, despite defense counsel's assertion that at least one juror was a fluent Spanish speaker, and that other jurors who didn't consider themselves fluent in Spanish may still have understood Ms. Y.'s comment, it is reasonable to presume that most of the jurors did not understand the un-interpreted blurt, and it was not part of the official trial record, in any event.

Also, notably, immediately following discussion pertaining to Mr. Martinez's motion for mistrial, the trial court gave a curative instruction again reminding the jury that only the interpreter's English interpretation comprised the official record of Ms. Y.'s

testimony.[12] During jury instructions at the close of the evidence, the trial court reiterated that the case must be decided "only on the evidence that you and your fellow jurors heard together in the courtroom" and that testimony that the court had stricken or advised to be disregarded was not evidence and should not be considered. The Supreme Court has repeatedly held that we presume that juries follow the court's instructions, particularly when there is no evidence in the record to indicate otherwise. *See Donaldson v. State*, 416 Md. 467, 499 (2010) (". . . Maryland courts long have subscribed to the presumption that juries are able to follow the instructions given to them by the trial judge, particularly where the record reveals no overt act on the jury's part to the contrary.").

Under the circumstances—a blurt that was likely not understood by the majority of the jurors, was not part of the record, and was addressed by curative instructions that we assume the jurors followed—a mistrial was not warranted.

Moreover, even were we to assume, for the sake of argument, that every juror understood Ms. Y.'s blurt, or even if the interpreter had interpreted the blurt so that it was part of the official trial record, applying the *Rainville* factors would similarly lead to a conclusion that a mistrial was not required. Ms. Y.'s single statement that defense counsel came to her house to buy her was isolated. It was not elicited by the prosecutor,

[12] The one fluent Spanish speaking juror was asked, during *voir dire*, if that juror would be able to accept the interpreter's interpretation "even though you understand every word that's being said." The prospective juror answered, "Yeah."

nor responsive to a question by an attorney for the defense.[13] Although Ms. Y. was the State's main witness, the State's case did not rest entirely on the credibility of her testimony. The jury was in the unusual position of having evidence of the incident recorded by the defendant himself, from which it could make the determination of whether the sexual intercourse was consensual or amounted to rape, the central issue to be decided.

[13] We point out, however, that defense counsel later raised the issue of the visit to Ms. Y.'s home, putting it properly before the jury:

> Q. Let's talk about that coming to your house. You're talking about me and [co-defense counsel] coming to interview you, correct?
>
> A. Yes.
>
> Q. Okay. So and we came to interview you, correct?
>
> A. Yes.
>
> Q. So back to the papers. You talked to us that night about the papers, correct?
>
> A. I didn't speak about anything about those papers. You spoke to me. She told me. She had some Immigration papers and that if I wasn't afraid --
>
> Q. No.
>
> A. -- that Immigration would pick me up. And that that's the reason why I reported him. I said no. That it was because of what he did to me. And she told me we have the Immigration papers and we have your pictures. And we have a lot of videos where you gave him permission to take the videos. I responded no. And she said yes that he didn't have anything against me. That if I was doing it for those papers or what was I reporting. And I responded again that it was because of what he did to me. And she told me I don't believe you.

We acknowledge that the trial court was in the best position to gauge the jury's reaction to Ms. Y's statement. *See State v. Hawkins*, 326 Md. 270, 278 (1992) (recognizing that the trial court is better equipped than we are "to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters"). Given the weight of the evidence, there is no indication in the record that Ms. Y.'s single comment was likely to have contributed to the jury's verdict, and we cannot say it prejudiced Mr. Martinez's trial to the point that the trial court's curative instructions were ineffective. We hold, therefore, that the trial court did not abuse its discretion in denying the motion for a mistrial based on Ms. Y.'s non-responsive statement. Accordingly, we affirm the circuit court's judgment.

II. MR. MARTINEZ DID NOT PRESERVE FOR APPELLATE REVIEW THE ISSUE OF WHETHER THE CIRCUIT COURT ABUSED ITS DISCRETION BY ALLOWING USE OF THE WORD "VICTIM."

Prior to the selection of the jury, Mr. Martinez raised a motion *in limine* to prohibit reference to Ms. Y. as a "victim." Defense counsel asserted that "she's not a victim, she's a complaining witness," and "that's for the jury to make that determination if she is a victim." The prosecutor responded, "we use it all the time in court." Furthermore, the prosecutor continued, the defense had provided no legal authority for why the word should not be permitted or was inadmissible. The court responded simply, "I don't have a problem with the use of the word 'victim,' so I'm going to deny that motion."

On appeal, Mr. Martinez argues that the trial court abused its discretion in permitting the State and its witnesses to refer to Ms. Y. as a "victim," rather than a

"complaining witness," when the defense theory was that the sexual activity between Ms. Y. and Mr. Martinez occurred but was consensual.

The State responds, first, that Mr. Martinez did not preserve the issue for appellate review when, following the denial of his motion *in limine*, he failed to object to the State's witnesses' use of the term or to request a continuing objection. Second, the State continues, even if the issue were preserved, the trial court did not abuse its discretion in permitting the State's witnesses to refer to Ms. Y. as a "victim" because the use of the word was sporadic and did not unduly prejudice Mr. Martinez in the eyes of the jury, particularly in light of the trial court's instructions on the presumption of innocence and the State's burden of proving Mr. Martinez guilty beyond a reasonable doubt. Finally, the State concludes, any error would be harmless beyond a reasonable doubt, for the same reasons.

The question of whether the challenge was preserved is a question of law that we review without deference. *Young v. State*, 234 Md. App. 720, 731 (2017), *aff'd on other grounds*, 462 Md. 159 (2018). We agree with the State that Mr. Martinez has not preserved the issue for our review.

Maryland Rule 4-323(a) makes clear that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." Mr. Martinez moved *in limine* to prohibit references to Ms. Y. as "the victim," but after the trial court denied the motion, he did not lodge objections when the State and its witnesses used the word during trial. Nor did Mr. Martinez request a continuing objection to

references to Ms. Y. as a victim. *See* Md. Rule 4-323(b) ("At the request of a party . . . , the court may grant a continuing objection to a line of questions by an opposing party.").

It is well established that "when a motion *in limine* to exclude evidence is denied, the issue of the admissibility of the evidence that was the subject of the motion is not preserved for appellate review unless a contemporaneous objection is made at the time the evidence is later introduced at trial." *Klauenberg v. State*, 355 Md. 528, 539 (1999) (citations omitted). *See also Huggins v. State*, 479 Md. 433, 447 n.7 (2022) (explaining that after the denial of a motion *in limine*, "[a]n objection is required to let the court know that the party still believes the evidence should be excluded, and gives the court the opportunity to make a more informed decision with the benefit of the evidence adduced since the initial ruling") (citation omitted); *Reed v. State*, 353 Md. 628, 638 (1999) (explaining that when evidence that has been contested in a motion *in limine* is admitted at trial, a contemporaneous objection must be made in order for that question of admissibility to be preserved for appellate review). Because Mr. Martinez did not renew his objection during trial, this issue was not preserved for our review, and we decline to further address it.

JUDGMENT OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED; COSTS ASSESSED TO APPELLANT.