Circuit Court for Baltimore County
Case No. 03-K-17-003357, 03-K-17-003419, 03-K-17-004041

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 411, 707, 708

September Term, 2018

JEREMIAH EZEKIEL EDWARDS

v.

STATE OF MARYLAND

Meredith,
Shaw Geter,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw Geter, J.

Filed: August 13, 2019

This is a consolidated appeal from the Circuit Court for Baltimore County from Jeremiah Edwards' convictions and denial of motion for specific performance to enforce the plea agreement. Following failed plea negotiations, Edwards elected a jury trial and was found guilty of first and second-degree assault and carrying a dangerous weapon with intent to injure. He was sentenced to eighteen years' imprisonment for first-degree assault, and a concurrent three-year sentence for carrying a dangerous weapon with intent to injure.[1] Edwards presents the following questions for our review:

1. Whether the trial court erred in denying defense counsel's motion for specific performance of the plea deal where the essential terms of the deal were proposed by the prosecutor, the sentence was slightly restricted by the court, and the deal was accepted by the defense?

2. Whether the trial court abused its discretion when it denied defense counsel's motion for mistrial after Officer Sheckells told jurors that appellant's photo array picture was a "booking photograph" and Officer Roche told them police responded to appellant's house after he "confronted" his girlfriend?

3. Whether the evidence used to convict appellant of carrying a dangerous weapon openly with the intent to injure was legally sufficient where there was no evidence the "little pocket knife" was not a pen knife?

We discuss issues one and two only as the State has conceded error as to issue three. For the reasons below, we shall reverse in part and affirm in part.

BACKGROUND

On March 26, 2018, the parties participated in an off-the-record chambers conference to discuss a plea agreement. Edwards had three active cases, but if he pled

[1] The conviction for second-degree assault was merged into the conviction for first-degree assault.

guilty to first-degree assault in the first case, and an amended charge of second degree assault in the second case, the third case would be dismissed. In exchange the State offered Edwards a "flat 12-year sentence." Defense counsel rejected this offer and countered that Edwards might be willing to accept an eight to nine-year sentence. The judge then stated he would be willing to impose a 15-year sentence with all but five years suspended. Defense counsel left chambers to convey this offer to Edwards. Shortly after, the judge sent his law clerk to notify the parties that he had made an error. The State was notified first, and then defense counsel was made aware of the error as he returned to chambers to relay Edwards' acceptance of the plea. The judge had intended to suspend five years and impose ten years of incarceration. Edwards then rejected the offer and defense counsel filed a motion to enforce the plea agreement. Following a denial of the motion, Edwards proceeded to trial on one of the cases that was a part of the proposed plea agreement.

The case involved a stabbing incident that occurred on June 11, 2017. On the day in question, the victim, Silas Hilliard, was in the vicinity of Jaydee Avenue to visit a woman named Krista Malczewski. He stated Edwards came from behind him asking "Do you know Krista?" Hilliard responded no, and he was then assaulted and stabbed. Jamie Bryant testified that she was sitting in her parked vehicle on Mildred Avenue when she witnessed the assault. She observed the suspect was a "black male, maybe about 5-6, 5-7 . . . [t]hin . . . [with] dreads in his hair and they were bleached blond[e] on the tips." Bryant also testified that when she attempted to intervene, the assailant took off.

At the police station, Bryant was shown a photo array that included a photograph of Edwards. She lingered on his photo but was ultimately unable to identify him as the

assailant. Hilliard identified Edwards as his assailant on two occasions, once when he was in the hospital from a photo array and, again, while testifying in court. During trial, Officer Sheckells, the responding police officer, testified that he identified Edwards as a suspect from the information he was given by Hilliard. Based on this information, Officer Sheckells "crossed [Krista's name] with the address."[2] He found an individual named Krista in the area with prior "incidents at that address." After reviewing the reports of known associates of Krista, Officer Sheckells determined Edwards was a suspect.

During Officer Sheckells' testimony, the prosecutor inquired about the photo array Officer Sheckells had shown to Hilliard and Bryant. The prosecutor asked, "do you know or have any idea when that photograph may have been taken?" To which Officer Sheckells responded, "we compile these photo shows from the MVA or arrests, booking pictures. To my recollection, this was a booking photograph." Defense counsel then objected and moved for a mistrial. The judge sustained the objection, but denied the motion for a mistrial and issued a curative instruction.

The State called Officer Roche to testify regarding his encounter with Edwards and Krista on June 9, 2017, at Jaydee Avenue. When asked, over objection, what Edwards said to him while he was at the home, Officer Roche responded, "there was a phone call to Malczewski's cell phone and he had answered the phone and heard a male's voice and then went to the shower where Ms. Malczewski was and confronted her about a male calling her cell phone." Officer Roche further testified that Officer Sheckells contacted him to

[2] The mentioned address is a row home located at Jaydee Avenue.

obtain a description of Edwards.

Following deliberations, the jury found Edwards guilty of first-degree assault, second-degree assault, and carrying a dangerous weapon openly with the intent to injure. This timely appeal followed.

Additional facts will be incorporated in our discussion of the issues as they become necessary.

Discussion

I. The trial court did not err in denying defense counsel's motion for specific performance of the plea deal.

Edwards argues he is entitled to specific performance of the plea agreement because he communicated his acceptance of the judge's initial offer. Edwards contends that while the plea agreement proposed by the judge is slightly different from the one offered by the prosecutor, it nevertheless should be upheld. The State argues that no agreement was formed between Edwards and the State because the State did not agree to the offer proposed by the judge. The State also argues that the trial judge did not state he would be bound by a particular sentence.

Maryland Rule 4-243 sets out plea agreement parameters as follows:

> (a) **Conditions for Agreement.**
>
> (1) *Terms.* The defendant may enter into an agreement with the State's Attorney for a plea of guilty or nolo contendere on any proper condition, including one or more of the following:
>
> ***
>
> (F) That the parties will submit a plea agreement proposing a particular sentence, disposition, or other judicial action to a judge for consideration pursuant to section (c) of this Rule.

***

> **(c) Agreements of Sentence, Disposition, or Other Judicial Action.**
>
> (1) *Presentation to the Court.* If a plea agreement has been reached pursuant to subsection (a)(1)(F) of this Rule for a plea of guilty or nolo contendere which contemplates a particular sentence, disposition, or other judicial action, the defense counsel and the State's Attorney shall advise the judge of the terms of the agreement when the defendant pleads. The judge may then accept or reject the plea and, if accepted, may approve the agreement or defer decision as to its approval or rejection until after such pre-sentence proceedings and investigation as the judge directs.
>
> In *Rios* we stated:
>
> There are two steps in the implementation of a plea agreement. First, the State and defendant must reach an agreement. Md. Rule 4–243(a) (*l*) (2008). Second, the parties must then present the agreement to the court, which has the discretion to accept or reject the plea. Md. Rules 4–242(c), (d).

Rios v. State, 186 Md. App. 354, 362–63 (2009). The court can state charge(s) or sentence(s) it finds acceptable, "but the parties must then decide among themselves, outside of the presence of the court, whether to accept or reject the plea agreement tendered by the court." *Barnes v. State*, 70 Md. App. 694, 706 (1987) (internal quotations omitted).

Creating a plea agreement is similar to a contract. *Hartman v. State*, 452 Md. 279, 289 (2017). The plea negotiation standard "is one of fair play and equity under the facts and circumstances of the case, which, although entailing certain contract concepts, is to be distinguished from what the State appears to advocate[.]" *State v. Brockman*, 277 Md. 687, 697 (1976). Proper contract formation requires an acceptance "and common to all manifestations of acceptance is a demonstration that the parties had an actual meeting of the minds regarding contract formation." *Cochran v. Norkunas*, 398 Md. 1, 23 (2007).

> An offer must be definite and certain. *Peoples Drug Stores v. Fenton*, 191 Md. 489, 494, 62 A.2d 273 (1948). . . . Accordingly, a mere expression of intention to do an act is not an offer to do it, and a general willingness to do something on the happening of a particular event or in return for something to be received does not amount to an offer.

Rios v. State, 186 Md. App. 354, 367–68 (2009) (citing *Maryland Supreme Corp. v. Blake Co.*, 279 Md. 531, 539 (1977)). "An 'offer' that requires a third party's approval before it becomes effective is no offer at all." *Id.* at 368.

In determining whether the court committed error, we must first determine if a valid plea offer was made and accepted. On review, in analyzing whether a plea agreement was formed "we are bound by the circuit court's findings of fact unless we conclude they are clearly erroneous." *Y.Y. v. State*, 205 Md. App. 724, 743 (2012).

Here the initial offer made by the State was a guilty plea to first and second-degree assault with a 12-year sentence of incarceration. This offer was rejected by Edwards, who countered that he would be willing to accept eight to nine years of incarceration. The judge, in an attempt to facilitate a plea agreement, mistakenly stated he would be willing to impose a different sentence whereby Edwards was to serve five years of incarceration. According to the judge, he intended to say ten years of incarceration. A ten-year proposed sentence appears to have been a middle ground between the 12-year sentence offered by the State and the eight to nine years sentence countered by Edwards. Defense counsel perceived the judge's statement as an offer and he communicated it to his client, who agreed to plead guilty under those circumstances. The State, however, never agreed, and the judge corrected his mistake through his law clerk.

In denying the motion for specific performance on the plea, the judge recalled the chambers conference:

> I remember [defense counsel] talking about that maybe [Edwards] could take a sentence that would be more in the eight or nine-year range as opposed to twelve and when I —I was not comfortable with that in my mind, and that's when I thought, and obviously mistakenly, but I thought I had said that I would be inclined to or willing to impose a sentence of 15 years suspend all but ten.

The record before us is devoid of the specific discussions surrounding plea negotiations because it was held in chambers and off the record, which makes the issue difficult for us to analyze. The State and Edwards do not agree on the details of the discussion. The trial judge stated at the motions hearing that he was only "trying to facilitate a resolution" and we have no record to the contrary.

In *Barnes v. State*, the appellant entered a plea of guilty, but appealed his conviction claiming his guilty plea was involuntarily given. 70 Md. App. 694 (1987). We agreed, holding the trial judge's participation in the plea negotiation made the guilty plea coercive. *Id.* at 711. Prior to the commencement of trial, defense counsel made a motion to strike his appearance because of appellant's dissatisfaction with him wanting to waive "an in-courtroom identification." *Id.* at 696. Appellant believed that his counsel was waiving a Constitutional right, to which the judge informed him that he was incorrect because there was no such right. *Id.* at 696–97. The judge then inquired if appellant knew the crime with which he was charged and informed him of how lengthy his sentence would possibly be without a guilty plea. *Id.* at 697–98. The trial judge stated:

> [Assistant State's Attorney] is recommending 50 years . . . But if you wanted to plead guilty, I was willing, even though the State is screaming and kicking

> for 50 years, I was willing to go around it today in 15 minutes. I would give you a total of 30 years. That is what I told [defense counsel], and [Assistant State's Attorney] got angry. She walked out the door.

Id. at 706–07. We stated:

> The role of the judge contemplated by Rule 4-243 is consistent with the judicial role in plea negotiations suggested by Standard 14–3.3 of the American Bar Association's Standards for Criminal Justice, Pleas of Guilty (2d ed. 1980 & 1986 Supp.).
>
> Subsection (c) of that standard states that the judge may meet with defense counsel and the prosecutor when the parties are unable to reach a plea agreement on their own, but that the judge's role in such a meeting should be to "serve as a moderator." The judge "may indicate what charge or sentence concessions would be acceptable," but the parties must then "decide among themselves, outside of the presence of the court, whether to accept or reject the plea agreement tendered by the court." Subsection (f) further cautions that "the judge should never through word or demeanor, either directly or indirectly, communicate to the defendant or defense counsel that a plea agreement should be accepted or that a guilty plea should be entered."

Barnes v. State, 70 Md. App. 694, 704–06 (1987). We ultimately held that the trial judge "exceeded the permissible bounds of judicial participation in plea bargaining" as expressed in Md. Rule 4-243 because he did more than approve or deny the plea agreement, which resulted in him being an "active negotiator" rather than a mediator helping to facilitate a plea agreement. *Id.* at 706–07.

We then considered the totality of the circumstances to determine whether appellant's guilty plea was involuntary. We concluded the judge's statements were coercive and influenced appellant's acceptance of the guilty plea.

Edwards maintains the offer made by the judge is valid because the prosecutor did not state otherwise. Incorrectly relying on *Barnes*, Edwards states that in *Barnes* we "noted that the prosecutor must make any objection to a proposed plea known to the parties."

However, in *Barnes*, we did not note such a requirement, but rather analyzed whether the judge unduly involved himself in plea negotiations, and thus, coerced a plea.

The prosecutor in this case made his terms known, both in chambers and in court, when he stated that he would only accept a plea offer with a 12-year sentence. The judge's involvement was to serve as a facilitator and, in our review, there was no formal agreement between the State and Edwards. Thus, we hold the trial judge's refusal to grant specific performance was not clearly erroneous.

II. The trial court did not abuse its discretion in denying Edwards' motion for a mistrial.

Edwards argues that certain testimony given by two of the State's witnesses, Officer Sheckells and Officer Roche, was so unduly prejudicial that it denied him a fair trial, and thus, the trial court's denial of his motion for a mistrial was an abuse of discretion. Specifically, Edwards contends his "conviction must be vacated" because "unduly prejudicial other crimes evidence was introduced to the jury." Conversely, the State asserts the trial court properly exercised its discretion in denying the motion for a mistrial.

During trial, Edwards objected to several statements that he argues are inadmissible other crimes evidence. Edwards first objected to Officer Sheckells' testimony about the photo array shown to Ms. Bryant, during which the following exchange ensued:

> [Prosecutor]: And the photograph we see here today, the ladies and gentlemen of the jury, of Mr. Edwards, do you know or have any idea when that photograph may have been taken?
>
> [Officer Sheckells]: Um, we compile these photo shows from MVA or arrests, booking pictures. To my recollection, this was a booking photograph.

[Defense Counsel]: Objection.

[The Court]: Sustained.

[Defense Counsel]: Approach?

[The Court]: Come on up.

(whereupon, counsel and the Defendant approached the bench and the following ensued):

[Defense Counsel]: Your Honor, I make a motion for a mistrial at this point. The witness just testified that the photo that was shown it [sic] to witness was [a] booking photo and said that they come from two forms, MVA photos and booking photos and the witness was shown [a] booking photo. This is not a lay witness. This is a professional Police Officer witness. I don't think that there is a curative instruction that the Court can give at this point to give Mr. Edwards a fair trial going forward. So I'm making a motion for mistrial.

[The Court]: Okay. [Prosecutor].

[Prosecutor]: And. Your Honor, I would argue at this point that obviously that the officer constructed (inaudible) careful about how they compile it when they do it. He indicated there are a number of photos that they pull them from but this is just a master booking photo. That doesn't mean the Defendant was convicted or he hasn't said anything about a specific case or facts. So at this point it is not highlighted. I think the Court can address that it is only for purposes of pulling something together, not to conject or what have you. There is a curative instruction that you can give them to disregard that at this point.

So I don't think it rises to a mistrial. . . .

[Defense Counsel]: Your Honor, I completely disagree. I completely disagree because a curative instruction only highlights the fact that the professional witness, a Police Officer said that this is [a] booking photo. All that that says is

> that Mr. Edwards was arrested and therefore likely charged with a crime. There – we don't know what it was for . . . Again, I don't think the Court as carefully as the Court may attempt to craft a curative instruction can cure the harm to the fairness of Mr. Edwards' trial at this point. So again I'm making a motion for a mistrial.
>
> [The Court]: All right. Well, I think you made your record, [Defense Counsel]. I'm going to overrule your objection. I am going to give an instruction to the jury that they are to disregard the last question and answer made to officer Sheckells and that they are not to speculate as to any information that they, that they may have heard.

When the parties returned to their tables, the trial judge stated the following to the jury:

> [The Court]: Members of the jury, you are instructed at this time to disregard that last question and answer that, that you – that [Prosecutor] asked and Officer Sheckells answered with respect to the type of photo that was the subject of the examination and you are not to speculate in any form, anything else about about that photos origins, whatever else, alright. So everybody understand that? I want to make sure I see head nod? All right. Thank you.

Edwards' second objection to Officer Sheckells' testimony regarding the photo array shown to Mr. Hillard was as follows:

> [Prosecutor]: Were all the photographs shown [to] Ms. Bryant all the same ones shown to Mr. Hillard?
>
> [Officer Sheckells]: Um, I don't believe so. I again could refer to my notes to confirm that.
>
> [Prosecutor]: And would looking at your notes help refresh your recollection about whether or not they were the same photographs?
>
> [Officer Sheckells]: Yes

[Prosecutor]: Okay. Take a moment look at those. Let me know when you are ready.

[Officer Sheckells]: The photo sources used with the first photo show were the same photo sources –

[Defense Counsel]: Objection.

[Officer Sheckells]: -- at the second photo show.

[Defense Counsel]: Objection.

[The Court]: Overruled.

Finally, Edwards objected to Officer Roche testifying about responding to Edwards' residence two days prior to the incident that occurred July 11, 2017. In overruling the objection, the trial judge stated:

[The Court]: I will not allow Officer Roche to testify as to the nature of the call. He can testify that he received a call that he responded to, period. I'm not going to have him get into that there was any kind of domestic issue, there was any kind of matter that there – and that's that's as far as I will let it go. And otherwise what he observed with his own senses, he may testify as to that.

During Officer Roche's direct examination, Edwards objected to the following exchange:

[Prosecutor]: And was there a time back on June 9th of 2017 that you were at . . . Jaydee Avenue?

[Officer Roche]: Yes, sir.

[Defense Counsel]: Objection.

[The Court]: Overruled.

***

[Prosecutor]: Okay. And on that date were you able to speak with resident inside that home?

[Defense]: Objection.

[The Court]: [Defense counsel], would you like a continuing objection to this line of questioning?

[Defense Counsel]: Yes, Your Honor. Thank you.

[The Court]: All right. You may have that. Go ahead.

[Prosecutor]: Were you able to speak to the residents of that home?

[Officer Roche]: Yes, sir.

[Prosecutor]: Okay, and on that date on June 9th of 2017, who specifically did you speak with that day?

[Officer Roche]: Krista Malczewski and Jeremiah Edwards.

[Prosecutor]: And when you say Jeremiah Edwards, do you know Mr. Edwards?

[Officer Roche]: Yes.

[Prosecutor]: Okay. And the person that you spoke with that day, do you see him, if at all, here in the courtroom?

[Officer Roche]: Yes.

[Prosecutor]: Can you identify the person you spoke with on June 9th 2017?

[Officer Roche]: Seated at the defense table.

[Prosecutor]: Now, did you personally interact with Mr. Edwards that day on June 9th of 2017?

[officer Roche]: Yes, sir.

***

[Prosecutor]: Okay. And what, if anything, did he tell you that day?

[Defense Counsel]: Objection

[The Court]: Overruled.

[Officer Roche]: He stated that there was a phone call to Ms. Malczewski's cell phone and he has answered the phone and heard a male's voice and he then went to the shower to where Ms. Malczewski was and confronted her about a male calling her phone.

"Prior bad acts evidence refers to activity or conduct which although not necessarily criminal, after taking into consideration the facts of the particular case, is evidence that tends to reflect adversely on or impugns a person's character." *Snyder v. State*, 210 Md. App. 370, 393 (2013). Maryland Rule 5-404(b) bars the admission of a defendant's prior bad acts as evidence. The rule provides:

> Evidence of other crimes, wrongs, or other acts . . . is not admissible to prove the character of a person in order to show action in the conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident.

Md. 5-404(b). The purpose of this rule is to prevent unfair prejudice to the accused, due to the possibility that "jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted." *Harris v. State*, 324 Md. 490, 497 (1991). In the event the accused suffers unfair prejudice, a mistrial may be warranted. *See Rutherford v. State*, 160 Md. App. 311, 323 (2004) (noting that whether a mistrial is warranted depends on "the extent to which, if at all, the defendant has been unfairly prejudiced.").

We review the grant or denial of a motion for a mistrial under an abuse of discretion standard. *Kosmas v. State*, 316 Md. 587, 594 (1989); *Nash v. State*, 439 Md. 53, 66–67 (2014). "A mistrial is 'an extreme sanction' that courts generally resort to only when 'no other remedy will suffice to cure the prejudice.'" *Webster v. State*, 151 Md. App. 527, 556 (2003) (quoting *Burks v. State*, 96 Md. App. 173, 187 (1993)). Accordingly, "[w]e will reverse a decision to deny a mistrial only when the defendant was so severely prejudiced that he was denied a fair trial." *Id.* at 557 (citations omitted). Furthermore, "an appropriate

curative instruction may prevent material prejudice." *Id.* When a curative instruction is given, it must be "timely, accurate, and effective." *Kosh v. State*, 382 Md. 218, 226 (2004).

The Court of Appeals has identified several factors to be considered in determining whether to grant a mistrial:

> whether 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)) (brackets in original). "[T]hese factors are not exclusive," instead, they are "simply helpful in the resolution of the question." *Kosmas*, 316 Md. at 594–95.

In *Rainville*, the defendant was on trial for the alleged rape and sexual abuse of a seven-year-old girl. 328 Md. at 399 (1992). During the testimony of the victim's mother, the prosecutor asked her to describe "[the victim's] demeanor when she told you about the incident?" *Id.* at 401. The witness responded that her daughter was "very upset" and said that "because [the defendant] was in jail for what he had done to [the victim's brother] that she was not afraid to tell me what had happened." *Id.* The court denied the defense's motion for a mistrial, and instead gave the jury a curative instruction. *Id.* at 402.

The Court of Appeals reversed and remanded for a new trial. *Id.* at 411. The Court noted that although the mother was not a principal witness and her comment was a single, isolated statement, it was, nonetheless, incurably prejudicial because "[t]he State's case rested almost entirely upon the testimony of a seven-year-old girl." *Id.* at 109. The Court

further noted a lack of physical evidence of sexual abuse or rape, several inconsistencies in witness testimony given at trial and in prior statements made to police, and evidence of some antagonism between the mother and the defendant. *Rainville v. State*, 328 Md. 398, 409–10 (1992). Considering those circumstances, the Court concluded that the mother's comment "almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction." *Id.* at 410. Therefore, the curative instruction "no matter how quickly or ably given" could not "salvage a fair trial for the defendant." *Id.* at 411.

In the present case, with respect to Edwards' first objection, the State maintains that Officer Sheckells' reference to a booking photograph "was a classic 'blurt'" that falls within the *Rainville* analysis, and any "potential prejudicial effect was properly ameliorated by the trial judge's decision to issue a curative instruction." We agree.

Here, as in *Rainville*, Officer Sheckells' comment was a single, isolated, unsolicited remark that was not made by a principal witness. This case is distinguishable from *Rainville* in two aspects. First, unlike in *Rainville* where the witness expressly stated that the defendant "was in jail for what he had done to [the victim's brother"] and thereby implicated that the defendant had been in jail for a related offense, in the instant case, Officer Sheckells' remark did not expressly implicate Edwards in any crime, or that he was charged or convicted in a prior case. Second, in *Rainville*, the State's case rested entirely on the testimony of the victim. Here, however, the State presented ample evidence, including the testimony of Bryant, as to the appearance of Edwards, and the testimony of

Hillard, identifying Edwards as his assailant. Thus, unlike in *Rainville*, the curative instruction in this case alleviated any potential prejudice.

With respect to Edwards' second objection to Officer Sheckell's comment that the photo sources used with the first photo array shown to Ms. Bryant were the same photo sources shown to Mr. Hillard, he argues this comment "reminded the jurors of the booking photo origin of the picture [,]" and thus, caused further prejudice. We disagree.

A jury is presumed to follow curative instructions. *Cantine v. State*, 160 Md. App. 391, 409 (2004). Since the judge instructed the jury, "you are not to speculate in any form, anything else about [sic] that photos origins," we presume the jury obeyed. Further, the jury asked no questions regarding the instructions or photos that would indicate they were confused or would not follow the instruction.

Turning to Edwards' third objection, he argues the trial court abused its discretion in allowing Officer Roche to testify about responding to his residence two days prior to the incident that occurred July 11, 2017. Specifically, he argues "Officer Roche's testimony about being called to a domestic dispute involving Mr. Edwards was not adequately sanitized to prevent the 'other crimes' nature of the evidence from being obvious." The State contends that Officer Roche's testimony "did not describe a 'prior bad act' that warranted exclusion," and even if it did, the testimony established motive to assault Hillard, thus it was "properly admitted."

When the court is presented with evidence challenged as "other crimes" evidence, the court must undergo the following three-step analysis:

> First, the court determines whether the evidence falls into one of the recognized exceptions, such as motive, opportunity, intent, or preparation. This is not a matter of discretion, and we review that categorization de novo. Second, if the evidence falls into a category of exceptions, the court decides by clear and convincing evidence whether the defendant was involved in the prior crime or bad act, and we review that finding for sufficiency of the evidence. Third, the court balances the probative value of the evidence against the danger of unfair prejudice, a determination we review for abuse of discretion.

Bellard v. State, 229 Md. App. 312, 342 (2016), *aff'd*, 452 Md. 467 (2017) (citing State v. Faulkner, 314 Md. 630, 634 (1989)).

Here, in overruling Edwards' objection to Officer Roche's testimony, the trial judge determined the evidence was relevant to Edwards' identity. The court stated, "I think this is circumstantial in nature as to what this is, an identity case . . . I think it is only to establish his presence at a place and with a person who he's named Krista." The court also found by clear and convincing evidence that Edwards was involved in the purported bad act and noted further, "I am weighing the probative value versus the prejudice due to the Defendant, and I find that the probative values does outweigh the prejudice."

We hold, the trial court exercised proper discretion in admitting the testimony of Officer Roche.[3] The court determined that the testimony fell into a recognized exception

[3] Similarly, Edwards argues "the jurors also heard that Officer Sheckells requested the 'police report' from this [June 9, 2017] incident from Roche." We find this contention without merit, as Edwards' brief mischaracterizes this testimony. When asked by the Prosecutor, "did you provide [Officer Sheckells] that information, your notes or any police report about [the June 9, 2017 incident]," Officer Roche responded, "I did advise him I recall speaking with Mr. Edwards that day and providing a description of him." Officer Roche did not mention a police report. This testimony does not constitute other crimes evidence, and thus, was properly admitted.

under Rule 5-404(b), namely identity and motive. Officer Roche's testimony, that on June 9, 2017, he spoke with the residents of a home located at 831 Jaydee Avenue and his identification of Edwards as one of the residents, supported the trial court's finding that such evidence was relevant to identity. Also, Officer Roche's testimony that while at the residence he had a conversation with Edwards who told him he had reason to believe that Malczewski received a phone call from another man established a motive to assault the victim. Officer Roche's testimony established that Edwards was involved in the prior act by clear and convincing evidence. Furthermore, the probative value of this evidence substantially outweighed any unfair prejudice, primarily because Officer Roche never mentioned the words or alluded to a "domestic dispute." The trial judge limited the scope of the testimony and did not allow Officer Roche to testify about "the nature of the call" or "get into that there was any kind of domestic issue." As such, the trial court did not abuse its discretion.

Finally, Edwards argues "the cumulative effect of testimony from Officer Roche and Sheckells, and references to their testimony during the State's closing arguments, was so prejudicial to Mr. Edwards that it denied him a fair trial." The State contends there is no cumulative effect that compels reversal. We agree.

First, Edwards did not preserve any claim relating to the prosecutor's statements during closing argument, as he failed to make a timely objection during closing argument. Maryland Rule 8-131(a) provides that, except for issues of subject matter and personal jurisdiction, "the appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." As such, "a defendant

must object during closing argument to a prosecutor's improper statements to preserve the issue for appeal." *Shelton v. State*, 207 Md. App. 363, 385 (2012). Since Edwards did not object to the prosecutor's statements during closing argument, he cannot argue that such statements were improper on appeal.

Further, we find there was no cumulative effect regarding the testimony of Officer Sheckells and Officer Roche. As we stated prior, any potential prejudicial effect relating to Officer Sheckells' mention of a booking photo was alleviated by the trial court's timely curative instruction. Moreover, Officer Roche's testimony was admissible as it was relevant to motive and identity and its prejudicial effect was outweighed by its probative value. The testimony, taken separately or together, was not so unduly prejudicial that it denied Edwards a fair trial. Accordingly, the motion for mistrial was properly denied.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED IN PART AND THE CONVICTION OF CARRYING A DANGEROUS WEAPON OPENLY WITH INTENT TO INJURE IS REVERSED; COSTS TO BE PAID BY APPELLANT.