Circuit Court for Montgomery County
Case No. 137746C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1367

September Term, 2023

CHARLES UPTON CARTER

v.

STATE OF MARYLAND

Berger,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: September 26, 2025

*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).

Appellant, Charles Upton Carter, was convicted by a jury in the Circuit Court for Montgomery County of second-degree rape.

Appellant presents the following questions for our review:

> "1. Did the trial court err in granting the State's motion to preclude the admission of evidence relating to J.B.'s prior report of a sexual assault, violating Mr. Carter's constitutional right to confront witnesses and present a defense?
>
> 2. Did the trial court err in denying Mr. Carter's motion to exclude certain irrelevant, prejudicial, cumulative, and/or otherwise inadmissible, portions of the audio recorded jail calls, and in denying his motion to admit certain other portions of the jail calls for verbal completeness?
>
> 3. Did the trial court err in denying the motion for mistrial?"

Finding no error, we shall affirm the judgments of the circuit court.

I.

The Grand Jury for Montgomery County indicted appellant of a single count of second-degree rape on October 1, 2020. A jury convicted appellant of second-degree rape and the court imposed a term of incarceration of twenty years, suspending all but eight years, with credit for 1,130 days' time served, followed by five years' probation and registration as a tier three lifetime sex offender.

At trial, A.B.[1] testified to the events of December 11, 2019. At the time, A.B. was twenty-six years old and had moved to Silver Spring to work at a nonprofit,

[1] Pursuant to Md. Rule 8–125(a)(2)-(b)(1), the name of "a victim of crime that would require the defendant, if convicted, to register as a sex offender . . . "shall not be used in any opinion, oral argument, [or] brief . . . pertaining to the appeal that is generally available to the public." Other information from which the victim could be identified is not required to be excluded. Md. Rule 8–125(b)(2).

nongovernmental organization on housing and homelessness solutions for Veterans. After work on December 11, A.B. went to a happy hour at McGinty's Irish bar in Silver Spring. A.B. testified that at that period in her life, she drank frequently and heavily. At McGinty's, A.B. had between five and ten drinks, which she considered enough to make her drunk. She said that she had a very high tolerance and could function with that number of drinks in her system.

At approximately 9:00 p.m., A.B. left McGinty's and went to Chipotle to get dinner. After Chipotle, A.B. walked to a 7-11 to buy cigarettes. A.B. met the defendant, Charles Upton Carter, at 7-11, where he was also buying cigarettes. A.B. testified that she "checked out quickly and tried to leave quickly" but appellant "walk[ed] up behind" her on the sidewalk and tried to get her attention. The two walked and talked, and appellant explained to A.B. why he was outside asking for money. A.B. testified: "we get into a brief conversation about why he's out there asking for money, and I'm like, okay, yeah, I know, I work in this stuff. I could definitely help you." A.B. felt at this point that she did not want to go anywhere else with appellant, so she decided the pair should go to Mama Lucia's, an Italian restaurant in the parking lot of her building, where A.B. could get appellant food and she could have a drink and discuss housing with appellant. A.B. testified that she chose Mama Lucia's because she "wanted to be somewhere [she] knew and where [she] could just get out and go home."

At this point, A.B.'s memories of the night became fuzzy. The pair sat and talked until after the restaurant closed. A.B. recalled speaking with appellant about documents he would need to qualify for subsidized housing, drinking, and going to the bathroom "often."

At one point, A.B. remembers a waiter taking a photo of her and appellant. A.B. testified that she did not give appellant any indication that she had a romantic or sexual interest in him and that she did not consent to have sex with him. She does not recall leaving the restaurant or how she got to her apartment, and she has no memory of the rest of the night.

A.B.'s next memory is of waking up "face down" in bed the next morning when her alarm went off. She was wearing "boxers and a V-neck t-shirt" that were "inside out, flipped around the wrong way." She was not wearing underwear. A.B. observed that her apartment was in a state of disarray: her bags appeared to have been gone through, the bathroom was messy, her belongings were thrown around the living room, and there was "Chipotle poured on the wall." She also found a sandwich bag which she initially believed to contain soap and which later forensic tests determined was semen.

A.B. testified that this kind of mess was unusual for her, as she is typically a "neat freak." When she woke, appellant was to her right putting on his shoes. A.B. told appellant "you got to go. I got to get ready for work. I'm already late, like sun's up, alarms are going off, I'm going to be late."

At that point in the morning, A.B. began to feel pain in her vagina. She noticed that her vaginal piercing was missing, and she later found it "on the floor in the carpet by [her] bed. She stated, "Everything's a mess and my body hurts, and now I am so confused." A.B. called her mom and "went back and forth about going to the hospital." Once A.B. felt pain in her vagina and realized her vaginal piercing was missing, she decided to go to the hospital. She stated: "So…at this point I went to the hospital hoping she could tell me if something happened. I was still trying to figure out if something even happened and I hoped

from the physical exam she would be able to say, yes, something happened to you." A.B. stated that she did not get any concrete answers because "[t]hey can't tell for sure." While waiting in the hospital lobby, A.B. received a text message from Alfredo Ramos, the waiter from Mama Lucia's, with the picture he had taken of A.B. and appellant the night before.

At the hospital, forensic nurse Kathleen Wells conducted a Sexual Assault Forensic Exam (SAFE) of A.B. and collected swabs from various location on her body. Ms. Wells testified that A.B. was "tearful at times" and had "pretty much [a] complete loss of memory of what had happened." Ms. Wells performed a physical exam and noticed redness on the left side of A.B.s neck, bite marks on her neck, a "3.5 centimeter linear abrasion" on her upper left arm, and a "5.5 centimeter linear abrasion" on her upper right arm. During the genital exam, Ms. Wells observed "abrasions to A.B.'s posterior fourchette leading down to the perineal area" and noted that the "area was very tender" and showed "TB dye uptake." Ms. Wells explained that TB dye is "used to visualize injury" and adheres to "any tissue that's been damaged[.]" Ms. Wells testified that "most of the time after a sexual assault," there is injury to the posterior fourchette. Ms. Wells observed abrasions to the perineum. She testified that she could not determine from her examination of A.B. whether there was any consensual or nonconsensual intercourse.

Forensic toxicologist Jolene Bierly testified that A.B.'s urine specimen from the SAFE kit contained the presence of substances found in over-the-counter cold medicines and in the muscle relaxant "Flexeril." Ms. Bierly explained that combining these drugs would result in "additive effects," such as enhanced sleepiness, drowsiness, and fatigue[.]"

Dr. Jessica Volz, the State's expert witness in forensic nursing and drug-facilitated sexual assaults, testified that alcohol consumption combined with these drugs could enhance the effects of each and potentially lead to memory loss. A.B. testified and reported at the hospital that she had not taken any cold medicines, sleeping aids, or muscle relaxants in the days leading up to the encounter with appellant. She stated that, as someone who "drank on and off for . . . 10 years" she was well aware that combining these substances could lead to "sudden death[.]" A.B. had a recent prescription for muscle relaxants, explaining that after taking the pills once, she determined not to take them again because the pills "knocked" her out.

When A.B. was asked whether she ever had "sex with this defendant knowingly," A.B. responded, "No. I've learned all this stuff after the fact." She testified that she did not learn appellant's name until "after being asked to testify in this trial."

Primary investigator Detective Abigail Gaines testified that A.B. provided her with a bag of various items of physical evidence that A.B. collected from her apartment, and Detective Gaines sent these items, including the sandwich bag which was suspected to have been used as a physical contraceptive, for DNA testing. Detective Gaines obtained DNA samples from appellant. The State's DNA experts, Kristiana Kuehnert and Christian Lachance, testified regarding items swabbed for DNA testing that appellant's DNA was present on some of these items.

At trial, the State moved *in limine* to exclude admission of evidence that on November 29, 2019, a few weeks prior to A.B.'s encounter with appellant, A.B. reported a sexual assault which involved a different person. A.B. reported that on November 27,

2019, she drank to excess and a stranger called her an Uber to her Silver Spring residence. When A.B. attempted to retrieve security footage from her building the next morning to see if anything odd had occurred in terms of a sexual attempt, she was advised to call the police to start an investigation, which would provide her access to the footage that she would not otherwise be able to obtain. A.B. called the police. After viewing the security footage, A.B. decided not to receive a SAFE exam and did not pursue the claim, nor did she recant it. Defense counsel argued that this evidence was relevant to show that A.B. had a motive to use sexual assault allegations to obtain information she would not otherwise have access to, and that the report speaks to A.B.'s credibility and her ability to drink to excess all on her own. The State argued that this prior report was not relevant to the current case and was barred by Maryland's Rape Shield Law.

The trial court granted the State's motion to exclude testimony and evidence regarding this prior allegation of sexual assault, finding the evidence not "relevant to . . . reflect [A.B.'s] pattern of behavior" and not "relevant in any way to what happened on December the 11th." The judge found that the report did not speak to her credibility as there was no lie with which to impeach A.B. and no "information that would show that she had done any recanting of an allegation." Nor did the judge find the evidence probative of untruthfulness. Defense counsel requested reconsideration, which the trial judge denied.

At trial, defense counsel asserted he wanted to cross-examine A.B. regarding the prior report. The trial court concluded that the evidence was inadmissible under the rape shield law and that the prejudicial nature of the report outweighed any asserted probative value.

The State played for the court its proposed excerpt of a recorded jail call between appellant and an unidentified male speaker from August 2, 2020:

> "CARTER: Do they have my DNA? Because I did. You know, she invited me back to her place, bro. Why the fuck do you think I'd go there? I can't be talking on the phone really clearly, but I did use a – I put a – what's that -- a surgical glove. Yeah, there was a surgical glove used. But do they have my DNA?"

The trial court also admitted the State's excerpt of a recorded jail call from July 19, 2020:

> "CARTER: You need to see if they got my DNA in this girl. Somebody (unintelligible) my DNA on her because if there is no DNA, they have really no case on me. And I don't think I left my DNA on that girl, and I didn't take anything from that girl but $60. Everything else was like really given to me."

Defense counsel sought to exclude the July 19 excerpt. He argued the repeated statement about DNA was cumulative and the portion about the $60 was prejudicial "other crimes." Defense counsel sought to admit additional portions of the August 2 call before and after the State's section for verbal completeness. Defense counsel played his proposed redacted version of the August 2 call for the court outside the presence of the jury:

> "CARTER: The last thing I expected. This girl took me on, okay? She drank some wine with me, she picked the restaurant, she took me back to her door, and now, you know, things happened. I slept on the bed with this girl, you know. But we had drinks. They had country music. So (unintelligible) listen to country music talking about one beer and what happens after that. You know, so I didn't do nothing wrong with this person, man. I did not drug this person. If anybody was drugged it was me too, because the waiter sat down after hours, man, the restaurant closed. This nigga sitting with us like in our face, having a conversation like he was with us. You know, he (unintelligible) out the restaurant. He was letting us stay in there. I took a picture with the girl. Why would I -- if I was going to violate this girl, why would I take a picture with her?
>
> [UNIDENTIFIED MALE SPEAKER]: Right.

CARTER: If I was going to rob and rape this girl, why would I take a picture with her, so she can fuck me out? That doesn't make sense bro. Nobody -- no she has the picture. Why would I let her have the picture?"

[UNIDENTIFIED MALE SPEAKER]: What?

CARTER: If I did something to her, why would I -- why would I take a picture with her so she can see my face forever? Nobody does that. Nobody does a crime and takes a picture with the victim first. You know, that just doesn't make sense. (Unintelligible) she met me on the street, which was true, we met each other (unintelligible), hey, how you doing? What's up? She said, oh, I'm going to go get some cigarettes, do you want to have a drink with me? Okay, let's go. You know? So we -- she takes me to a restaurant she picked. She picked the restaurant. Then she took me to her place that's across the street from the restaurant. She lives in downtown Silver Spring off of East-West Highway and (unintelligible) Road. There's a shopping center. There's Giant, CVS, and Mamma Lucia's on the corner. Her apartment is across the street of this parking lot. If I drugged this girl -- I just had four wisdom people moved [sic]. I don't know if you saw my Facebook picture. I wish that they -- they sedated me for that operation. And I know that feeling now. So when I read this shit that I sedated somebody in the report, I couldn't have done that to her. Nigga, I was barely even walking, you know, I was fucked up. I was unconscious for the surgery. So I know I didn't do that to this person.

[UNIDENTIFIED MALE SPEAKER]: What?

CARTER: You know, so -- and there's nobody – if they were sedated, how could they get into their apartment I've never been to? I didn't know where the fuck this person lived; it's a stranger.

[UNIDENTIFIED MALE SPEAKER]: What?

Carter: How am I going to get them to their door if I drugged them, bro? And I wasn't driving. We had to walk there. Do they have my DNA? This the thing because yes I did. You know, she invited me back in her place, bro. What the fuck you think I go there? I did use a -- I put, what's that – a surgical glove. Yeah, you know, there was a surgical glove used, but –"

The trial court rejected the defense counsel's motion to exclude the July 19 excerpt. The court granted the State's motion *in limine* to preclude the defendant's request to play the longer excerpt of the August 2 call, ruling that the additional requested portions had no relation to the specific act of appellant's semen or DNA being in a glove or plastic bag.

During direct examination of Detective Gaines, the prosecutor asked her why she decided to have items of physical evidence collected from A.B.'s apartment sent out for testing.

"[PROSECUTOR]: And then at some point, did you decide to send off a baggie for testing?

DETECTIVE GAINES: Yes.

[PROSECUTOR]: Why did you do that?

DETECTIVE GAINES: In listening to some jail calls and taking the overall –"

Defense Counsel objected, the court excused the jury, and the parties had a bench conference, during which defense counsel moved for a mistrial due to the mention of a jail call. The trial court denied the motion, ruling that the reference to jail calls was a quick, passing remark not specifically tied to the defendant.

The defense did not call any witnesses. The jury convicted appellant of the sole count of second-degree rape. Following sentencing, appellant noted this timely appeal.

II.

Before this Court, appellant first argues that the trial court erred in granting the State's motion to exclude evidence relating to A.B.'s prior report of a sexual assault, which

appellant argues violated his constitutional right to confront witnesses and to present a defense. Appellant asserts that this evidence was relevant and that, without it, the jury had no opportunity to assess A.B.'s credibility or her motivations for reporting the incident as a sexual assault.

Second, appellant argues that the trial court erred in denying his motion to exclude portions of the July 19 recorded jail call which were irrelevant, prejudicial, cumulative, and/or otherwise inadmissible and in denying appellant's motion to admit additional portions of the August 2 jail call. Appellant argues that the additional statements on DNA evidence in the July 19 call were unnecessarily cumulative, and the statement that appellant stole $60 from A.B. was prejudicial "other crimes" evidence. Appellant contends that the trial court erred in denying his motion to admit additional portions of the August 2 jail call. Appellant sought to include additional portions for verbal completeness to give context to his statements regarding consent and his "consciousness of innocence."

Third, appellant argues that the trial court erred in denying his motion for a mistrial based upon Detective Gaines's blurt-out regarding the jail call. Appellant asserts that this blurt-out was highly prejudicial and constituted inadmissible bad character evidence and that the prejudice could not be cured with a curative instruction.

On the first issue, the State argues that the trial court properly excluded evidence of A.B.'s prior report. The State asserts that the evidence had no relevance to the December incident with appellant and its probative value was outweighed by unfair prejudice. The State contends that the evidence of the prior report is barred under Maryland's rape shield statute, which bars evidence of a specific instance of a victim's prior sexual conduct. The

prior report, the State maintains, is covered by the Rape Shield statute as prior sexual conduct because the report implies sexual contact.

On the second issue, the State argues that the trial court was correct to deny both of appellant's motions regarding the jail calls. The State asserts that the excerpt including appellant's concern over DNA evidence was probative of appellant's consciousness of guilt, and the details regarding the theft of $60 were probative of appellant's state of mind and knowledge of A.B.'s incapacitation. Moreover, the State maintains that appellant's requested additional portions of the August 2 jail call were inadmissible under the doctrine of verbal completeness because the proposed excerpt did not clarify or explain the portion offered by the State, which focused on appellant's use of a glove or sandwich bag as a physical contraceptive.

On the third issue, the Statue contends that the trial court was correct to deny appellant's motion for a mistrial. The reference to a jail call, it argues, was a single, isolated event, an unintentional statement not solicited by the prosecutor and one which was not unfairly prejudicial.

III.

We address first whether the Maryland Rape Shield law is applicable to the prior report and turn then to the relevancy of the report. Trial court decisions on the relevance or inflammatory nature of evidence under the rape shield law rest in the sound discretion of the court and will not be reversed on appeal absent a showing that the decision was clearly erroneous. *Smith v. State*, 71 Md. App. 165, 182 (1987).

Maryland's Rape Shield statute, Md. Code (2002, 2020 Repl. Vol.) § 3-319 of Maryland's Criminal Law Article ("Crim. Law"),[2] was enacted by the General Assembly to "protect sex crime victims from the psychological trauma of being unnecessarily confronted with tangential and potentially harmful evidence, to avoid improperly shifting the focus of the trial to the victim, and to thereby encourage victims to report sex crimes." *Westley v. State*, 251 Md. App. 365, 378 (2021).

Crim. Law § 3-319 provides, in pertinent part as follows:

> "(b) Evidence of a specific instance of a victim's prior sexual conduct may be admitted in a prosecution described in subsection (a) of this section only if the judge finds that:
>
> (1) the evidence is relevant;
>
> (2) the evidence is material to a fact in issue in the case;
>
> (3) the inflammatory or prejudicial nature of the evidence does not outweigh its probative value; and
>
> (4) the evidence:
>
> (i) is of the victim's past sexual conduct with the defendant;
>
> (ii) is of a specific instance of sexual activity showing the source or origin of semen, pregnancy, disease, or trauma;
>
> (iii) supports a claim that the victim has an ulterior motive to accuse the defendant of the crime; or
>
> (iv) is offered for impeachment after the prosecutor has put the victim's prior sexual conduct in issue."

The State maintains that the term "conduct" in the statute covers the activities contained within A.B.'s prior report. We agree.

In *Westley*, the Court determined that the question of whether evidence qualifies as "prior sexual conduct" is one of statutory interpretation. *Westley*, 251 Md. App. at 386. The Court held that Crim. Law § 3-319 applies to both consensual and nonconsensual prior

[2] All subsequent statutory references herein shall be to Md. Code, Criminal Law Article.

sexual conduct. *Id*. at 400. The *Westley* court cites the Maryland Supreme Court's interpretation of "sexual conduct" as more general than "sexual activity" and embracing a wider range of activity than "physical contact." *Id*. at 391 (quoting *Shand v. State*, 341 Md. 661, 677 (1996)).

In *Shand*, the Maryland Supreme Court examined the legislative history of Crim. Law § 3-319 and held that evidence of sexual conduct need not "require physical contact indicating a willingness to engage in either vaginal intercourse . . . or a sexual act[,]" in part based on the General Assembly's use of the broader term "sexual conduct," which it chose to use in Crim. Law § 3-319(b), rather than the more specific term "sexual activity," which it chose to use in Crim. Law § 3-319(b)(4)(ii). *Shand*, 341 Md. at 674-75. The Court read into this word-choice an intent to use a broader term which could encapsulate more than physical interactions and concluded that Crim. Law § 3-319 could cover evidence of an oral offer to trade drugs for sex. *Id*. at 680; *see also White v. State*, 324 Md. 626 (1991) (holding that testimony that the victim had previously offered or exchanged drugs for sex was inadmissible under Crim. Law § 3-319); *but see Johnson v. State*, 332 Md. 456 (1993) (holding that evidence that the victim had previously traded sex for drugs was admissible where both parties agreed sexual contact occurred). "Proffered evidence of past sexual conduct must contain a direct link to the facts at issue in a particular case before it can be admitted." *White*, 324 Md. at 638.

The State alleges that A.B.'s prior report encompasses activities that imply sexual contact and is therefore covered by Crim. Law § 3-319. According to defense counsel in the motions hearing, A.B. never alleged that sexual activity occurred in the prior report.

She simply recounted what she recalled of the night. The medical records from the emergency room, where the police sent her after she filed the report, note that A.B. visited the hospital following an alleged sexual assault, though A.B. never actually alleged she was assaulted. The security footage A.B. obtained shows A.B. entering her apartment building with an unknown male at 2:14 a.m. The unknown male left the building at 2:25 a.m. Although A.B. never specifically alleged sexual conduct, these facts could imply sexual conduct. Moreover, if, as the General Assembly and this Court have noted, the intent behind Crim. Law § 3-319 is to encourage more reporting of sex crimes,[3] then the law must shield reports of potential sex crimes as well as reports of completed sex crimes.[4] It would run counter to the General Assembly's intent to punish A.B. for filing a report in order to investigate whether she had been assaulted. There is no allegation that A.B. misrepresented in the report. The contents of the report sufficiently allege sexual conduct under the *Shand* court's loose interpretation of the term. The trial court did not err in finding that Crim. Law § 3-319 applied.

We hold that the trial court did not err or abuse its discretion in addressing Crim. Law § 3-319. The prior report is not relevant to the instant case. Contrary to appellant's argument, the prior report has no bearing on A.B.'s credibility or on what occurred between A.B. and appellant. In *White*, the Court held that evidence that a witness had previously

[3] *See Westley*, 251 Md. App. at 378-79, 394

[4] Different judges in the Circuit Court for Montgomery County addressed the admissibility of this evidence. In concurring with Judge McCally to deny appellant's motion to reconsider the preclusion of the prior report, Judge Hessler noted that this issue "implicates the underlying policies of the Rape Shield Statute, which are to encourage victims to report sexual assaults."

traded sex for drugs was not relevant to the claim that she had fabricated a rape charge so that her fiancé would not get mad at her for smoking cocaine with two men. *White*, 324 Md. 626 at 637-38. Here, too, evidence of a prior report of potential sexual assault is not relevant to the claim that A.B. fabricated an assault claim. Nor is the report material to the issue in the case. The prior report is highly prejudicial to A.B. Were we to accept appellant's argument that A.B. is not a trustworthy witness because she had previously filed a report for a potential sexual assault, it would mean that anyone who had been sexually assaulted more than once and filed a report each time could be distrusted. Even if we were to disagree with the trial judge's conclusions, it was not clearly erroneous of the trial judge to determine that the evidence was not relevant or material, and that it was highly prejudicial.

Nor does the prior report fit within any of the four statutory categories which would make evidence of prior sexual conduct admissible under Crim. Law § 3-319(b)(4). The report does not involve an encounter with appellant, and it does not show the source or origin of semen, pregnancy, disease, or trauma. There is no allegation that the prosecutor put A.B.'s prior sexual conduct in issue, and the prior report cannot impeach A.B. because it does not contain inconsistent statements. Appellant does allege that the report supports a claim that A.B. had an ulterior motive to accuse appellant. However, it is unclear as to what motive appellant is talking about. Appellant's argument—that A.B.'s prior report displays a motive to report to obtain access to information she would not otherwise have—casts an attempt to use legal procedures to conduct an investigation as an ulterior motive.

Irrespective of Crim. Law § 3-319, the court did not err in finding the evidence of the prior report not relevant. We review the question of relevancy, a legal question, *de novo*. *State v. Simms*, 420 Md. 705, 725 (2011). Generally, relevancy is a low bar and evidence that has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence" is relevant. Md. Rule 5-401. "Evidence that is relevant is admissible, but the trial court does not have discretion to admit evidence that is not relevant." *Smith v. State*, 218 Md. App. 689, 704 (2014) (citing Md. Rule 5-402). If evidence is relevant, the trial court's decision to admit it is reviewed for abuse of discretion. *Williams v. State*, 457 Md. 551, 563 (2018).

The prior report has no relevancy to whether A.B. is telling the truth regarding her interactions with appellant. The report related to another person, not this defendant, and does not shed light on whether her encounter with appellant was consensual. Even if A.B. did report the encounter as a sexual assault to receive access to security footage, this in and of itself has no bearing on whether an assault actually took place, either then or now. A.B.'s motive for reporting either encounter is not relevant. The question at issue is not why she filed a report, but whether or not she was assaulted on December 11, 2019. The evidence therefore does not make any fact that is of consequence more probable or less probable. The trial judge did not err in precluding the evidence.

We agree with the State that excluding evidence under Crim. Law § 3-319 does not trigger the 6th Amendment to the United States Constitution Confrontation Clause. "[T]he trial court in the proper exercise of discretion may exclude evidence under" Crim. Law §

3-319 "without offending a defendant's constitutional rights of confrontation and due process." *White*, 324 Md. at 640.

IV.

Appellant next argues that the trial court erred in denying appellant's motion to exclude the statements from the July 19 jail call referring to DNA evidence as cumulative and the statement referring to $60 as evidence of other crimes or bad acts evidence. Appellant argues the trial court erred in denying his motion to admit additional portions of the August 2 jail call for verbal completeness. We disagree.

Rule 5-403 provides: "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice," or amounts to the "needless presentation of cumulative evidence." According to Rule 5-404(b),

> "Evidence of other crimes, wrongs, or 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 […]."

State v. Faulkner, 314 Md. 630 (1989), set forth the now well accepted test to determine whether the admission of evidence of another crime is appropriate, stating: first, the trial court must determine whether the evidence fits within one of the categories in Rule 5-404(b), which is a legal determination not involving discretion; second, the trial court must determine if the defendant's involvement in the other crimes is established by clear and convincing evidence, which the appellate court will review; and third, the trial court must weigh the probative value of the evidence against any undue prejudice which is likely to

result. The trial court's decision weighing probative value against prejudice will not be reversed absent abuse of discretion. *Collins v. State*, 164 Md. App. 582, 609 (2005).

Turning to the statement about the $60 in the July 19 call, appellant argues that the trial court was incorrect to conclude that the alleged theft was proven by clear and convincing evidence and that it is probative of A.B.'s incapacitation. Appellant argues that there is no evidence when or how the money was taken or that the money was taken due to A.B.'s incapacitation. To start, appellant admitted on the jail call that he took $60 from A.B., which is clear and convincing evidence. The timing of when this taking occurred, whether in the restaurant or in A.B.'s apartment, is irrelevant. At some point, the money was taken, and, although A.B. testified that she was missing money, she has no specific recollection of how the money vanished. These events are enough for the trial court in its discretion to conclude that appellant's statement that he was responsible for taking the money is probative of A.B.'s incapacitation. As the State argues, appellant's statement has special relevance regarding A.B.'s incapacitation. *Browne v. State*, 486 Md. 169, 190 (2023) ("When other bad acts evidence has substantial relevance to a contested issue other than propensity, it is said to have 'special relevance.'") The trial court did not err in admitting this statement.

Nor did the trial court err in admitting the statement from the July 19 call regarding DNA evidence. Once again, the trial court has broad discretion to determine whether evidence is probative. We defer to the trial court's discretion on this matter.

Next, we address appellant's claim regarding verbal completeness of the August 2 call. For a statement to be admissible for verbal completeness:

> "i. The utterance to be admitted may not be irrelevant to the issue;
> ii. No more of the remainder of the utterance than concerns the same subject, and explains the part of the utterance already in evidence, may be admitted; and
> iii. The remainder is received as an aid in construction of the utterance as a whole and is not in itself considered to be testimony."

Churchfield v. State, 137 Md. App. 668, 692 (2001). Determining whether separate statements are admissible under the doctrine of verbal completeness is reviewed for abuse of discretion. *Conyers v. State*, 345 Md. 525, 556 (1997). Under *Conyers* and Rule 5-106, admission of otherwise inadmissible evidence is not allowed except "as an explanation of previously admitted evidence and not as substantive proof." *Id*. at 541. Moreover, under *Conyers*, "[t]he doctrine of verbal completeness does not allow evidence that is otherwise inadmissible as hearsay to become admissible solely because it is derived from a single writing or conversation." *Id*. at 545. When a defendant attempts to introduce his own statements, those statements are hearsay *Id*. at 544-45. "Inadmissible evidence will only be admitted by the rule of completeness if it is particularly helpful in explaining a partial statement." *Otto v. State*, 459 Md. 423, 452 (2018).

The disagreement of appellant and the State boils down to whether the additional portions appellant seeks to admit aid in explaining the State's admitted portion. Appellant attempts to distinguish *Otto v. State*, a case with remarkably similar facts. In *Otto*, also a second-degree rape case, appellant sought to introduce additional portions of a recorded jail call with his mother pursuant to the doctrine of verbal completeness after the State introduced redacted excerpts. *Id*. at 430. The Court held that appellant's requested additional portions were inadmissible because, while the State's admitted excerpt concerned appellant's plan to have his family care for the alleged victim to convince her to

recant her allegations, appellant's proposed additions referred not to this scheme but to appellant's finances, the upcoming bond hearing, and the presiding judge. *Id*. at 453. Appellant failed to explain how these additional statements related to the attempt to convince the victim to recant. *Id*. The Court deferred to the trial court's construction of the subject of the State's admitted portion (the scheme to convince the victim to recant) as reasonable and not an abuse of discretion. *Id*.

Appellant attempts to distinguish *Otto* by arguing that, unlike in *Otto*, appellant's proposed excerpts directly relate to the issue of consent. However, the trial judge construed the subject of the State's excerpt not as consent but rather as appellant's use of a bag as physical contraception. As in *Otto*, we defer to the trial judge's construction of the subject and agree that appellant's proposed additions bear no relation to the use of the bag. As the State notes, the excerpt is not independently admissible because appellant's statements are hearsay. *Conyers*, 345 Md. at 544-45.

V.

The trial court did not abuse its discretion in denying appellant's motion for a mistrial. A mistrial is a drastic remedy, warranted only when trial error results in substantial prejudice to the defendant, depriving him or her of a fair trial. *See, e.g.*, *Cooley v. State*, 385 Md. 165, 173 (2005). Whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for a mistrial will not be disturbed absent an abuse of discretion. *See Simmons v. State*, 436 Md. 202, 212 (2013). Recognizing that the trial judge has a greater vantage point from which to evaluate evidence and witness testimony for prejudice, we review a trial court's decision to deny a mistrial for abuse of

discretion. *Wilhelm v. State*, 272 Md. 404, 429 (1974). The decision by the trial court to deny a mistrial will not be reversed on appeal unless the defendant has been prejudiced. *Rainville v. State,* 328 Md. 398, 408 (1992); *Wright v. State*, 131 Md. App. 243, 253 (2000).

A mistrial is "an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Wright*, 131 Md. App. at 253. Appellant must show significant and substantial prejudice to justify a reversal of the trial court's decision. *Wagner v. State*, 213 Md. App. 419, 462-63 (2013). The significant question here is "whether the evidence was so prejudicial that it denied the defendant a fair trial," such that "the damage in the form of prejudice to the defendant transcended the curative effect of the instruction, . . ." *Kosmas v. State*, 316 Md. 587, 594 (1989). To constitute an abuse of discretion, the trial court's decision must be "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (citations and internal quotation marks omitted).

The Supreme Court of Maryland has adopted the following factors a trial court should consider in determining whether a mistrial is warranted after the jury hears inadmissible evidence: (1) "whether the reference to the inadmissible evidence was repeated or whether it was a single, isolated statement"; (2) "whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement"; (3) "whether the witness making the reference is the principal witness upon whom the entire prosecution depends"; (4) "whether credibility is a crucial issue"; and (5) "whether a great deal of other evidence exists." *Rainville*, 328 Md. at 408 (quoting *Guesfeird v. State*, 300 Md. 653, 659

(1984)). We are mindful that in analyzing these factors "no single factor is determinative in any case, nor are the factors themselves the test. . . . Rather, the factors merely help to evaluate whether the defendant was prejudiced." *McIntyre v. State*, 168 Md. App. 504, 524 (2006) (internal citations omitted).

Appellant argues that Detective Gaines' statement that she had listened to jail calls was irrelevant and highly prejudicial because it communicated to the jury that appellant had been, or currently was, imprisoned, either for this crime or for another. Appellant relies on *Rainville*, a case with similar facts. In *Rainville*, a sex offense case involving a seven-year-old girl, the victim's mother blurted out in response to the prosecutor's question that the defendant had been in jail for a separate offense. *Rainville*, 328 Md. at 401. The Court held that this blurt-out was highly prejudicial and could not be cured with a curative instruction. *Id*. at 411. However, the Court noted that it was a difficult case, with the evidence resting mainly on the conflicting testimony of a seven-year-old girl. *Id*. at 409. Moreover, the witness' blurt-out specifically mentioned the defendant and that the defendant was in jail. In this case, Detective Gaines never specifically mentioned appellant or tied appellant to the jail call. There is more evidence available in this case than in *Rainville*, and the remark, as the prosecutor noted, was inadvertent. We defer to the trial judge's discretion is determining that the blurt-out was a quick remark not tied to the defendant and that any prejudice could be addressed with a curative instruction. We hold the trial court did not abuse its discretion in denying the motion for a mistrial.

JUDGMENTS OF CONVICTION IN THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.