Circuit Court for Prince George's County
Case No. CT170724X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1393

September Term, 2023

OTIS THOMAS WOOD, III
v.

STATE OF MARYLAND

Wells, C.J.,
Ripken,
Woodward, Patrick L.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Wells, C.J.

Filed: January 27, 2026

A jury empaneled in the Circuit Court for Prince George's County convicted appellant, Otis Wood, III, of possession of a regulated firearm by a prohibited person. The court sentenced Wood to five years' incarceration and this appeal followed. Wood presents one issue for our review, which we have slightly rephrased:

1. Whether the trial court abused its discretion in denying Wood's motion for mistrial.

For the reasons that follow, we hold the circuit court did not abuse its discretion in denying Wood's motion for mistrial and affirm.

FACTUAL AND PROCEDURAL BACKGROUND

In 2015, Larry Esho was shot multiple times near his family home in Upper Marlboro. Esho testified that he had received a phone call from Wood asking him to come outside. While walking up a hill, Esho saw Wood sitting in a vehicle, after which Esho lost consciousness and later awoke in the hospital having sustained multiple gunshot wounds. The last thing Esho remembers is walking towards a car Wood was sitting in.

The State charged Wood in connection with the shooting with attempted first- and second-degree murder, first- and second-degree assault, and possession of a regulated firearm while prohibited. Wood was tried three separate times in this matter, with two trials having ended in mistrials. The second mistrial was declared after a witness, Kimberly Young, testified that Wood was a "drug dealer." The third trial began on April 4, 2025.

The State's case relied on evidence including text messages between Wood and Esho, cell phone records, and witness testimony. Kimberly Young, who was dating Wood at the time, testified that Wood arrived at her home on the day of the shooting "upset,"

wearing a bloody shirt, sweating, and asking for bleach. Young provided the bleach and ran a brief errand. When she returned, Wood was upset with her for leaving the house, as he had instructed her to stay inside.

Shortly thereafter, Wood and Young smoked marijuana together and Wood told her he needed to leave a gun at her house, which he placed in a drawer on the first floor. After Wood left the house, Young called one of Wood's friends, nicknamed "Cash," to come get the gun, which Cash did.

On direct examination during the third trial, the State asked Young: "So when was the next time that you spoke to Otis Wood, the Defendant, who you knew as Obie, about what had happened on May 15, 2015?" Young responded: "When he found out that I had had Cash pick the gun up, he was mad at me, so he assaulted me that day because—"Wood immediately objected and moved for a mistrial. The trial court reserved ruling on the motion, asked the parties to research and brief the issue, and then adjourned for the day.

The next morning, the court heard extensive argument on the motion. The prosecutor argued the remark was inadvertent, that he had specifically instructed Young—"more than anyone else"—not to mention any assaults or other bad acts, and that the statement was closely tied to the events of the charged crimes rather than constituting a separate "other bad act." Wood argued that the statement was highly prejudicial, constituted inadmissible evidence of intimate partner violence, and that no curative instruction could remedy the harm.

The circuit court denied Wood's motion for mistrial, finding:

> So, there's no suggestion, Counsel, that you asked her to say this. The statement appeared to be inadvertent. And just so that the record is hopefully clear, this case was before me and I granted a mistrial in the last case because of a similar type, blur[t]ed by the same witness, wherein she indicated that, something to the effect, and you all have the transcript, so you know what the exact statement was, that the Defendant was selling drugs to her or he was a drug dealer. And I felt that that rose to the level of unduly prejudicial. I do not agree that the statement that she made today rises to that same level.
>
> The question was asked and I think the problem was that it was an open-ended question, at least from my memory, 'What happened next,' I think was the question. And she answered, you know, 'Then he assaulted me.' But again, I don't believe that that statement, you know, really rises to the level of prejudice in the context of the way she made it and when she made it[.]

The circuit court also noted that during voir dire, several jurors had indicated they were victims of domestic violence and had been questioned about their ability to remain impartial:

> [T]he jurors did get an instruction. When I asked the question about anybody, the victim of, witness to a crime, as you both know, many of them came up here and said that they were victims of domestic violence. And so they are aware and they indicated, the ones who had that as an issue indicated that they were the victims of domestic violence.

The court then provided the following curative instruction to the jury before continuing with Young's testimony:

> So we're going to continue the trial today. So yesterday, when, you were excused, the last thing was that there was a witness on the witness stand, Ms. Young, and her last statement was that the defendant committed an assault. So as I explained to you earlier, I am sustaining that objection. Defense objected to it. So I want you to disregard completely the question and the answer. All right. So I saw some of you writing. Just scratch it off because that's not something that you can consider in this case. You can only consider the evidence that's relative to this case, okay."

During jury instructions, the court instructed the jury that it "must not make decisions in this case based on personal . . . sympathies, prejudices, or known or implicit biases"; that the verdict "must be based solely on the evidence that was presented in this courtroom"; and that "any testimony that I struck or told you to disregard" is not evidence.

The jury ultimately acquitted Wood of attempted first- and second-degree murder, first- and second-degree assault, and use of a firearm in the commission of a felony. The jury convicted Wood only of possession of a regulated firearm while prohibited. Wood was sentenced to five years' imprisonment. Wood now challenges the court's denial of his motion for mistrial after Young's testimony.

STANDARD OF REVIEW

"A mistrial is no ordinary remedy[.]" *Winston v. State*, 235 Md. App. 540, 569 (2018). "The grant of a mistrial is considered an extraordinary remedy and should be granted only 'if necessary to serve the ends of justice.'" *Carter v. State*, 366 Md. 574, 589 (2001) (citing *Klauenberg v. State*, 355 Md. 528, 555 (1999)). Only "clear and egregious prejudice" depriving the defendant of his opportunity for a fair trial warrants the remedy of mistrial. *Allen v. State*, 89 Md. App. 25, 42 (1991).

A trial court is in the best position to assess any potential unfair prejudice because it has its "finger on the pulse of the trial," *State v. Hawkins*, 326 Md. 270, 278 (1992), and this Court will not disturb a trial court's ruling on a motion for mistrial absent a clear abuse of discretion. *Rutherford v. State*, 160 Md. App. 311, 323 (2004). A trial court abuses its discretion only when no reasonable jurist would rule as the trial court did. *Fontaine v. State*,

134 Md. App. 275, 288 (2000). "The decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Mack v. State*, 244 Md. App. 549, 573 (2020).

DISCUSSION

I. The Trial Court Did Not Abuse its Discretion When it Denied Wood's Motion For a Mistrial.

A. Parties' Contentions

Wood contends the trial court abused its discretion in denying the motion for mistrial because Young's testimony regarding an assault was irrelevant under Maryland Rules 5-401 and 5-402, unfairly prejudicial under Maryland Rule 5-403, and constituted inadmissible "other crimes" or "bad acts" evidence under Maryland Rule 5-404(b). Wood argues the reference to an assault introduced evidence of intimate partner violence that was so prejudicial that no curative instruction could remedy the harm.

The State concedes the challenged statement should not have been made because it lacked logical relevance under Rule 5-401 and posed "at least a minor risk of misleading the jury" under Rule 5-403. The State argues, however, the remark did not constitute "other bad acts" evidence under Rule 5-404(b) because the alleged assault was part of the same "criminal episode" and was "intrinsic to the charged crime." Above all, the State contends any unfair prejudice Wood suffered was modest, did not warrant the "extreme sanction" of a mistrial, and was adequately cured by the court's instruction.

B. Analysis

Even when evidence is relevant, a trial court may exclude it if its probative value is substantially outweighed by the risk of unfair prejudice, jury confusion, or the possibility that it will mislead the jury, as well as concerns regarding undue delay, wasted time, or the needless presentation of cumulative evidence. Md. Rule 5-403.

Both parties concede Young's statement was not logically relevant under Rule 5-401, nor legally relevant under Rule 5-403. Therefore, we need only address whether Young's statement constitutes "other crimes" or "bad acts" evidence, and if so, whether the statement was so unfairly prejudicial as to warrant a mistrial.

1. Young's statement did not constitute inadmissible "other crimes" evidence under Rule 5-404(b).

Under Maryland Rule 5-404(b), "[e]vidence 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." The prohibition "reflects a fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking[.]" *Behrel v. State*, 151 Md. App. 64, 124 (2003) (citations and further internal quotations omitted). As our Supreme Court has explained, "there are few principles of American criminal jurisprudence more universally accepted than the rule that evidence which tends to show that the accused committed another crime independent of that for which he is on trial, even one of the same type, is inadmissible." *State v. Taylor*, 347 Md. 363, 369 (1997).

Not every reference to a defendant's conduct, however, constitutes a bad act subject to Rule 5-404(b). An act does not constitute separate bad act if it arose out of the same "criminal episode" as the one charged. *See Freeman v. State*, 259 Md. App. 212, 256 (2023). *See also Odum v. State*, 412 Md. 593, 615 (2010) (allowing jury to consider evidence of robberies, carjackings, and murders that surrounded the alleged kidnapping because they took place "during the criminal episode"). In *Odum*, our Supreme Court ultimately explained that evidence of "other acts" is admissible if those acts occurred "during the same transaction and are intrinsic to the charged crime." *Id.* at 611.

Here, the subject of Young's challenged remark—Wood's assault of her—occurred during the same criminal episode of the charged offenses. According to Young's testimony, Wood allegedly assaulted her on the same day as the shooting and at the same location to which he fled after the shooting (Young's house). Young also testified that the assault was directly motivated by her actions to conceal the weapon Wood had allegedly used in the assault. This context places the alleged assault squarely within the criminal episode. Thus, Young's challenged statement did not constitute inadmissible "other acts" evidence under Rule 5-404(b).

2. Young's statement did not warrant a mistrial.

It is well-settled that a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is abuse of discretion. *Carter*, 366 Md. at 589 (citations omitted). Whether a mistrial is warranted depends on the degree to which the defendant has been unfairly

prejudiced. *Rutherford*, 160 Md. App. at 323. The Supreme Court of Maryland has "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 v. State*, 191 Md. App. 48, 100 (2010). While not exclusive, the court considers the following factors:

> [(1) W]hether 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 v. State, 328 Md. 398, 408 (1992) (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)).

The Supreme Court of Maryland has also recognized that striking improper testimony and providing a proper curative instruction to the jury can be an appropriate remedy for prejudice arising from testimony. *Simmons v. State*, 436 Md. 202, 222 (2013). "Only when the inadmissible evidence is so prejudicial that it cannot be disregarded by the jury—or as courts and counsel have described such circumstances, when 'the bell cannot be unrung'—will measures short of a mistrial be an inadequate remedy." *Vaise v. State*, 246 Md. App. 188, 240 (2020) (quoting *Quinones v. State*, 215 Md. App. 1, 23–24 (2013)). However, "[i]f a curative instruction is given, the instruction must be timely, accurate, and effective." *Carter*, 366 Md. at 587. A mistrial is warranted only when the prejudice has "had such a devastating and pervasive effect that no curative instruction, no matter how

quickly and ably given, could salvage a fair trial for the defendant." *Rainville*, 328 Md. at 411.

Considering the factors enumerated above and the facts at issue here, Young's statement did not warrant a mistrial. *First*, Young's reference to an assault was a single, isolated statement. *Second*, the reference was inadvertent and unresponsive. The State asked an open-ended question about Wood's subsequent communications with Young when it asked her, "when was the next time that you spoke to Otis Wood, the Defendant, who you knew as Obie, about what happened on May 15, 2025?" The State did not ask about any assault. In fact, the record reflects that the prosecutor had specifically instructed Young, "more than to anyone else," not to mention assaults or other criminal acts. Based on this, the trial court expressly found the statement inadvertent. *Third*, Young was not the sole witness upon whom the State depended. The State's case also included another witness's testimony that he had heard Wood admit to shooting the victim. While Young's testimony was certainly important to the State's case, the case did not rest entirely upon her. *Fourth*, there is no evidence in the record to suggest the rest of Young's testimony was not credible. *Finally*, albeit circumstantial, there was a great deal of other evidence, including text messages between Wood and Esho, cell phone records, and testimony of other witnesses, connecting Wood to the crime.

It is worth noting that the presiding judge was best positioned to assess the level of prejudice. The same judge had presided over the previous trial in which the court had granted a mistrial after Young blurted out that Wood was a "drug dealer." In considering

the motion for mistrial during the third trial (the one at issue here), the judge's comparison of the two incidents reflects a thoughtful, case-specific evaluation of the relative prejudice. The judge said:

> And just so that the record is hopefully clear, this case was before me and I granted a mistrial in the last case because of a similar type, blur[t]ed by the same witness, wherein she indicated that, something to the effect . . . that the Defendant was selling drugs to her or he was a drug dealer. And I felt that that rose to the level of unduly prejudicial. I do not agree that the statement that she made today rises to that same level.

The presiding judge's familiarity with both incidents, as well as the other evidence in the case, allowed it to better assess each statement's comparative prejudicial impact. The drug-dealing testimony suggested ongoing criminal activity unrelated to the charged offenses. By contrast, the assault testimony here was a single reference to an incident that was temporally and circumstantially connected to the charged crimes. The court's comparative judgment between the two instances reflects that the court held its "finger on the pulse of the trial," *Hawkins*, 326 Md. at 278, to gauge the impact of Young's testimony on the jury in real time. Its determination that the testimony did not warrant the extreme remedy of mistrial falls well within the bounds of reasonable discretion.

This case is also distinguished from *Carter v. State*, 366 Md. 574 (2001), where the curative instruction was found to be ineffective in eliminating prejudice because it exacerbated and highlighted, rather than cured, the prejudicial evidence. Here, that was not the case. The judge told the jury "to disregard completely the question and the answer." And if the prohibited information made its way into a juror's notes, to "[j]ust scratch it off because that's not something that you can consider in this case. You can only consider the

evidence that's relative to this case. . . ." Additionally, during final jury instructions, the court instructed the jury that it "must not make decisions in this case based on personal . . . sympathies, prejudices, or known or implicit biases"; that the verdict "must be based solely on the evidence that was presented in this courtroom"; and that "any testimony that I struck or told you to disregard" is not evidence. The record contains no indication that the jury disregarded the court's instructions.

Perhaps the strongest evidence that the curative instruction was adequate comes from the jury's verdict itself. The jury acquitted Wood of attempted first- and second-degree murder and first- and second-degree assault—the very charges that were most directly related to the shooting incident and most susceptible to being decided on a prohibited basis from Young's assault reference. As we see it, the jury's verdict signals that it carefully evaluated the evidence rather than being influenced by the challenged remark.

Overall, the trial court was in the best position to exercise its discretion as to whether the challenged testimony had a "devastating and pervasive effect" on the proceedings. The court's determination that it did not, and that the extreme remedy of mistrial was unnecessary, was a sound exercise of that discretion. Finding no abuse of discretion, we affirm.

THE JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY IS AFFIRMED. APPELLANT TO PAY THE COSTS.