UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1424

September Term, 2014

GARY E. MADDOX

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: August 21, 2015

Gary E. Maddox was convicted by a jury in the Circuit Court for Howard County of two counts of human trafficking; he was acquitted of another trafficking charge and of kidnapping. On appeal, he challenges the victim's out-of-court identification of him in a show-up procedure, the circuit court's denial of a motion for mistrial, the court's refusal to ask certain *voir dire* questions, and the sufficiency of the evidence supporting his convictions. We affirm.

I. BACKGROUND

On October 2, 2013, Gabrielle Reid, who had recently lost her job and regularly used heroin, stood on the side of a road in Providence, Rhode Island, asking passers-by for money. A black Mercedes driven by a man who went by "James" and by a woman who went by "Henna" pulled up alongside her; at trial, she identified Mr. Maddox as the driver. She testified that Mr. Maddox gave her his phone number and told her to call him if she wanted to make some money. Later that day, Ms. Reid reached out to Mr. Maddox and indicated she was interested in his offer, initially believing he was offering her an opportunity to sell drugs. Mr. Maddox came to her apartment and, after a brief conversation, Ms. Reid agreed to work for him.

Shortly thereafter, Ms. Reid joined Mr. Maddox and Henna in the Mercedes and drove to a number of different locations. Ms. Reid testified that she was with them for a couple of days and that during this time, she was forced to have sex with men in exchange for money. Henna made all of the arrangements, and Ms. Reid never spoke to the men before meeting with them to have sex. Ms. Reid said that she had three "encounters" with

men during her time with Mr. Maddox, although she claimed that with at least two of them, she took the man's money and did not have sex with him.

At one point during her time with Mr. Maddox, Ms. Reid texted her roommate, Cassidy, the following message: "I'm scared. They're making me do things. Want me to change my number. Making me call him daddy. I'll call you tonight. Shutting my phone off." Ms. Reid was never left alone, except when she was with a man for sex, and even then, Mr. Maddox and Henna waited outside in the Mercedes. When she was alone with Henna in the bathroom, she asked if she could leave and, according to Ms. Reid, Henna responded, "[i]t wouldn't be a good idea to ask him." Ms. Reid said that Mr. Maddox had a tendency to get angry at times, but she conceded she was never threatened directly by Mr. Maddox or by Henna.

Ms. Reid testified that over the course of the following two days, the group traveled from Rhode Island, stopping along the way, and arrived on October 4, 2013, at the White Elk Motel in Elkridge, Maryland. She registered for a motel room in her name while Mr. Maddox and Henna waited outside in the Mercedes, then went inside, where she met a truck driver who paid her $140 to have sex. After she was finished, she took the money to Mr. Maddox. Mr. Maddox told Ms. Reid that he had to drive to Virginia to pick up Henna, and instructed her to stay at the motel. After Mr. Maddox left, Ms. Reid went to an Exxon gas station down the street and called the police. Ms. Reid admitted at trial that she was under the influence of heroin at the time she spoke with the police.

Officer Tara Goswick of the Howard County Police Department spoke with Ms. Reid at the scene. Ms. Reid described "James" to the officer as a 6'5", 190-pound black man wearing a plaid shirt and jean shorts who had his hair in braids. She also described the Mercedes and provided its exact license plate number. Officer Joel Henderson of the Howard County Police Department then saw a car matching the description of the Mercedes pull into a Shell gas station across the street from the Exxon station where Ms. Reid called the police. Officer Henderson stopped the vehicle and conducted a traffic stop. The vehicle was driven by Mr. Maddox and was occupied by a female passenger named Amina Philip. The police then brought Ms. Reid to the Shell station; while she stayed in the car, the police showed her the two people in the Mercedes, and she identified them as "James" and "Henna."

Mr. Maddox was tried by jury in April 2014. At trial, Detective Joshua Mouton testified as an expert in prostitution. He testified that solicitation for prostitution occurred primarily online and that the most popular website for this type of solicitation was Backpage.com. During his investigation, Detective Mouton reviewed numerous online advertisements for prostitution on Backpage.com and discovered seven advertisements featuring pictures of Ms. Philip and five featuring pictures of Ms. Reid. Nathan Yockey, a custodian of records for Backpage.com, testified that each of these advertisements was paid for with a credit card that matched a set of Visa prepaid cards the police recovered from inside the Mercedes at the time Mr. Maddox was arrested.

In his defense, Mr. Maddox called his mother to the stand. She testified that she recalled seeing him around her house in Rhode Island on October 2 and 3, 2013 and that she saw him at the house in the early morning of October 4, 2013. Mr. Maddox testified that, on October 2, 2013, he had a doctor's appointment in the afternoon and, following the appointment, spent the rest of his evening at his father's house before returning to his mother's house for the evening. Mr. Maddox testified that on the next day, October 3, 2013, he had a dental appointment in the afternoon and took his car to be repaired, dropping it off around 4:00 p.m. On October 4, 2013, he said that he got up early, picked up the car, and drove to Maryland to see his cousin, Presley Burnett. After leaving his cousin's house, he picked up Ms. Philip, who lives with him and his mother, from a bar in Elkridge and took her to the White Elk Motel to pick up some of her clothes. After Ms. Philip picked up her clothes from the motel, Mr. Maddox saw her arguing with a woman he had never seen before, whom he identified as Ms. Reid. Mr. Maddox testified that he drove off with Ms. Philip, but was stopped by the police when he went to get gas at a nearby Shell station. He denied ever facilitating any type of prostitution or having anything to do with advertisements posted on Backpage.com. Mr. Maddox's account was corroborated somewhat by Mr. Burnett, who testified that he lives in Maryland and that Mr. Maddox came to visit him on a Friday after Labor Day, most likely in October 2013 (October 4, 2013 was a Friday).

The jury convicted Mr. Maddox of two offenses: (1) knowingly persuading, inducing, or encouraging another to be taken to or placed in any place for prostitution, and

(2) knowingly persuading, inducing, or encouraging another to be taken to or placed in any place for prostitution for financial benefit. He was acquitted of a separate charge of doing so by force or threat of force and of kidnapping. This timely appeal followed.

II. DISCUSSION

Mr. Maddox asserts four errors on appeal. *First*, he argues that the circuit court erred in refusing to suppress Ms. Reid's out-of-court identification because it was the product of an impermissibly suggestive show-up procedure. *Second*, he claims that the circuit court should have declared a mistrial after the prosecutor asked a question that revealed that he had been incarcerated at some point before trial. *Third*, he contends that the circuit court erred in declining to ask four *voir dire* questions that, he says, were designed to uncover potential bias in the jurors. *And fourth*, he maintains that the evidence was insufficient to support his convictions.[1]

[1] Mr. Maddox's brief phrased the questions as follows:

> 1. Did the circuit court err in refusing to suppress a pre-trial identification made of [Mr. Maddox] while he stood restrained in handcuffs and surrounded by police officers and police vehicles?
>
> 2. Did the circuit court err in refusing to declare a mistrial when the prosecutor asked during cross-examination of [Mr. Maddox] about a handwritten piece of paper that was "taken from [his] cell at the Howard County Detention Center"?
>
> 3. Did the circuit court err in refusing to ask four *voir dire* questions requested by the defense?
>
> 4. Was the evidence sufficient to convict [Mr. Maddox]?

A. The Circuit Court Did Not Err In Denying Mr. Maddox's Motion To Exclude Ms. Reid's Out-Of-Court Identification.

Mr. Maddox claims that the circuit court erred in refusing to suppress Ms. Reid's October 4, 2013 out-of-court identification of him at the Shell station in Elkridge. As the Court of Appeals recently reaffirmed, we look not only at whether the identification was impermissibly suggestive, but, if it was, at whether any suggestiveness impaired its reliability:

> The admissibility of an extrajudicial identification is determined in a two-step inquiry. "The first question is whether the identification procedure was impermissibly suggestive." If the procedure is not impermissibly suggestive, then the inquiry ends. If, however, the procedure is determined to be impermissibly suggestive, then the second step is triggered, and the court must determine "whether, under the totality of circumstances, the identification was reliable." If a *prima facie* showing is made that the identification was impermissibly suggestive, then the burden shifts to the State to show, under a totality of the circumstances, that it was reliable.

Smiley v. State, 442 Md. 168, 180 (2015) (internal citations omitted). In assessing the admissibility of an extrajudicial identification, we look exclusively to the record of the suppression hearing and view the facts in the light most favorable to the State. *See White v. State*, 374 Md. 232, 249 (2003). We accept the circuit court's factual findings unless they are clearly erroneous, but extend no deference to the circuit court's ultimate conclusion as to the admissibility of the identification. *Id.*

The evidence at the suppression hearing revealed that Ms. Reid, shortly after engaging in prostitution, contacted the police and informed them that a man going by the name of "James" was acting as her "pimp." After the police reported to the scene, Ms.

Reid provided a physical description of "James" and the black Mercedes he was driving, including the exact license plate number of the vehicle. Within an hour, the police located a vehicle matching the description provided by Ms. Reid pulling into a Shell station across the street from the Exxon station from which she called. After detaining the vehicle, the police brought Ms. Reid to the scene and, while she was still in the police car, she identified the occupants of the vehicle, Mr. Maddox and Ms. Philip, as "James" and "Henna."

Under these circumstances, we find that Ms. Reid's identification of Mr. Maddox was not the product of an impermissibly suggestive procedure. "A show-up has always been considered a perfectly permissible procedure in the immediate wake of a crime while the apprehension of the criminals is still turbulently unsettled." *Turner v. State*, 184 Md. App. 175, 185 (2009) (citations omitted). In this case, the show-up took place less than an hour after Ms. Reid called police, informed them that she had been compelled to act as a prostitute at the behest of "James," and provided a description of him and his vehicle, the vehicle and driver the police then detained. To determine whether to arrest the occupants of the stopped vehicle or to let them go and continue the search for "James," the police brought Ms. Reid to the scene and asked her whether the individual in the vehicle was, in fact, the man she knew as "James." "We would be hard pressed to say that the show-up here was not a permissible procedure," but rather was justified by the police's need to assess quickly whether they had the culprit, in which case the search could be concluded, or whether the culprit was still at large, in which case the suspect in custody could be released and the search could be continued while the trail was still fresh. *Id.*; *see also*

Green v. State, 79 Md. App. 506, 514-15 (1989) (noting that the "practice of presenting single suspects to persons for the purpose of identification [may be justified by] 'the desirable objectives of fresh, accurate identification which in some instances may lead to the immediate release of an innocent suspect and at the same time enable the police to resume the search for the fleeing culprit while the trail is still fresh'" (citations omitted)). Moreover, any suggestiveness inherent in the show-up procedure the police utilized was mitigated by the advisement administered by the police to Ms. Reid before she made the identification:

> You are about to see one or more persons detained by the police. The persons you will see may or may not be associated or involved with the crime. The persons you will see may be handcuffed, this is no indication that the person is associated or involved with the crime. Do not focus on hairstyles and or clothing because these can change since the timeframe of the crime. And this may or may not be the case in this instance. If you determine that the person or persons is associated or involved with the crime report this to the officer. And if you recognize the person from something other than the crime please report this to the officer.

Because we find "the procedure [was] not impermissibly suggestive, . . . the inquiry ends." *Smiley*, 442 Md. at 180. However, even were we to assume that the show-up was impermissibly suggestive, we cannot "say that under all the circumstances of this case there is a very substantial likelihood of irreparable misidentification." *Turner*, 184 Md. App. at 186 (internal citations and quotation marks omitted). Ms. Reid (1) spent several days with both Mr. Maddox and Ms. Philip; (2) paid a high degree of attention to them while she was with them, evidenced by her ability to recite the exact license plate number of the

Mercedes; (3) described "James" and his clothing in a manner that was largely consistent with the physical appearance of Mr. Maddox; (4) was certain that Mr. Maddox was "James;" and (5) made the identification less than an hour after reporting the crime. Although some of the details of her description were inaccurate, most notably Mr. Maddox's height, there were sufficient indicia of reliability overall to support the court's decision to admit the identification, even if we were to find it impermissibly suggestive.

B. The Circuit Court Did Not Abuse Its Discretion In Denying Mr. Maddox's Motion For A Mistrial.

At trial, the State sought to introduce a handwritten note, purportedly written by Mr. Maddox to Ms. Philip while he was awaiting trial at the Howard County Detention Center, in which Mr. Maddox sought to reconcile his version of events with Ms. Philip's. To lay a foundation that the note was written by Mr. Maddox, the State admitted into evidence another note he wrote and signed. Then, based on the mistaken belief that she needed to establish that both notes were recovered from the same location, the prosecutor asked Mr. Maddox whether the notes were "taken from your cell at the Howard County Detention Center[?]" Mr. Maddox objected, then moved to strike and for a mistrial on the ground that he was unfairly prejudiced by the prosecutor's unnecessary mention that he had been incarcerated. The circuit court sustained the objection, struck the question, and preemptively declared that the letter would not be admitted, but declined to grant a mistrial. Instead, after discussion with counsel at the bench, the court gave a curative instruction:

> [THE COURT]: (Speaking while white noise resetting) the question, when I strike something, whether it be a question and

> an answer or just a question or sometimes when somebody just blurts something out when they shouldn't.
>
> As I may have said on another occasion, you're not to consider anything that has been stricken, you're to act as though it never occurred. That's because of a number of reasons, including, information contained within a question can be inaccurate and misleading.
>
> And the State asked a question, I'm ordering you, and I'm striking that question, and you're not to consider it in any way.

Mr. Maddox contends that the circuit court erred in refusing to grant a mistrial. We disagree.

"'[A] request for a mistrial in a criminal case is addressed to the sound discretion of the trial court and the exercise of its discretion, in a case involving a question of prejudice which might infringe upon the right of the defendant to a fair trial, is reviewable on appeal to determine whether or not there has been an abuse of that discretion by the trial court in denying the mistrial.'" *Cooley v. State*, 385 Md. 165, 173 (2005) (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)). "'The determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Id.* (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)). "In assessing the prejudice to the defendant, the trial judge first determines whether the prejudice can be cured by instruction." *Kosh*, 382 Md. at 226. The curative instruction must "ameliorate[] the prejudice to the defendant," otherwise a mistrial is necessary. *Id.*

Mr. Maddox argues that the circuit court was required to grant a mistrial because he was prejudiced irreparably by the State's revelation that he had been incarcerated pending

trial. He cites to *Rainville v. State*, 328 Md. 398 (1992) and *Carter v. State*, 366 Md. 574 (2001). Both cases, though, involved the revelation that the defendants had committed crimes *beyond* the ones they were charged and the trial courts attempted to ameliorate the prejudice with curative instructions. *See Rainville*, 328 Md. at 399; *Carter*, 366 Md. at 579-81. The Court of Appeals reversed in both instances, finding that a mistrial was warranted because the prejudice stemming from the improper "other crimes" evidence could not be overcome by curative instructions. *See Rainville*, 328 Md. at 411; *Carter*, 366 Md. at 590. But *Rainville* and *Carter* are inapposite: here, the State inadvertently revealed that Mr. Maddox had been incarcerated at a local jail, with no suggestion that he was there in connection with other charges (and he wasn't). Although it was an obvious error to reveal this fact, it would hardly surprise this jury that a defendant facing charges as serious as these would have been incarcerated at some point. And to the extent Mr. Maddox was prejudiced by the State's question, the prejudice was completely ameliorated by the curative instruction and the decision to exclude the document that gave rise to the question, and we find no reversible error in the court's decision not to take the next, and ultimate, step in response.

C. The Circuit Court Did Not Err In Declining To Ask The *Voir Dire* Questions Mr. Maddox Requested.

During *voir dire*, Mr. Maddox asked the circuit court to ask the venire four questions: (1) Does any juror believe Mr. Maddox has a duty or responsibility to prove his innocence?; (2) Does any prospective juror believe Mr. Maddox is or probably is guilty of the charges that have been filed?; (3) Would any prospective juror give more weight to the

testimony of an expert witness merely because that witness is called as an expert?; and (4) Has any member of the jury panel ever served as a juror previously? The circuit court declined to ask these questions, and Mr. Maddox asserts that the refusal constitutes reversible error.

A trial court has broad discretion to determine whether *voir dire* questions requested by a defendant should be propounded to a prospective jury. *Wilson v. State*, 148 Md. App. 601, 658 (2002) (citation omitted). The purpose of *voir dire* is to ascertain whether the prospective jurors harbor "any bias, prejudice, or preconception regarding the accused, a central matter in the case such as the crime, or any relevant collateral matter" and any requested *voir dire* questions should serve these ends. *Id.* (citation omitted). In this case, the first three questions Mr. Maddox proposed more closely resemble jury instructions than *voir dire* questions. These questions asked the prospective jurors whether they would (1) presume Mr. Maddox was innocent; (2) believe he was guilty simply because he was charged with a crime; and (3) give more weight to expert witness testimony, all issues that normally are covered by the circuit court's instructions to the jury. And here they were: this jury was instructed that Mr. Maddox was presumed innocent unless the State proved the charges against him beyond a reasonable doubt, that the charging document should not be given any weight because it is not evidence of guilt, and that the testimony of an expert witness is not required to be accepted or given any special weight. Accordingly, the circuit court was well within its discretion not to ask these *voir dire* questions. *See Twining v. State*, 234 Md. 97, 100 (1964) ("It is generally recognized that it is inappropriate to instruct

on the law at this stage of the case, or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law.").

As for the last question Mr. Maddox requested, whether the jurors had previously served on a jury, we agree with the circuit court that any answers would fail to "disclose the prospective jurors' potential biases, prejudices, or preconceptions regarding [Mr. Maddox], the crimes for which [he was] being tried, or any other relevant collateral matter" and the circuit court did not err in refusing to ask this question. *Wilson*, 148 Md. App. at 660.

D. Mr. Maddox's Convictions Were Supported By Sufficient Evidence.

Mr. Maddox asserts that there was insufficient evidence to support his convictions. To answer this question, we assess "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Handy v. State*, 175 Md. App. 538, 561 (2007) (emphasis omitted) (citation omitted). "[I]t is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case." *State v. Pagotto*, 361 Md. 528, 533 (2000). "Nor is it the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Handy*, 175 Md. App. at 562 (citation omitted).[2]

[2] The State contends that Mr. Maddox's "failure to particularlize" his sufficiency argument in his motion for judgment forecloses any appellate review. We agree that the (continued…)

There was, to be sure, conflicting evidence in this case, but more than enough to sustain the conviction. Ms. Reid testified that, on October 4, 2013, Mr. Maddox knowingly drove her to a motel in Elkridge to have sex with a truck driver in exchange for money and financially benefitted from the transaction. She testified that the entire transaction was arranged by Mr. Maddox and Ms. Philip. Ms. Reid's account was corroborated by the testimony of Mr. Yockey, a custodian of records for Backpage.com, who testified that five advertisements for prostitution had pictures of Ms. Reid posted on Backpage.com and were paid for with a credit card that matched a set of Visa prepaid cards the police recovered from inside Mr. Maddox's vehicle at the time he was arrested. This was more than sufficient to convict Mr. Maddox of knowingly encouraging prostitution for financial gain. Mr. Maddox asserts that his convictions were not supported by sufficient evidence because Ms. Reid's testimony contained a number of inconsistencies as to when she left Rhode Island with Mr. Maddox and where they traveled before reaching Maryland. But the jury was free to believe one version of the facts over another, even an imperfect one, and it is not for us to "determine the credibility of witnesses or the weight of the evidence." *Handy*, 175 Md. App. at 562 (citation omitted).

JUDGMENTS OF THE CIRCUIT COURT FOR HOWARD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

(…continued)
motion could, and normally should, have been more detailed, but that question is close enough that we will proceed to the merits, which are not so close.