Circuit Court for Baltimore City
Case No. 118184028

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1426

September Term, 2019

CARLOS RIVERA-MARTINEZ

v.

STATE OF MARYLAND

Kehoe,
Nazarian,
Leahy,

JJ.

Opinion by Nazarian, J.

Filed: April 7, 2021

In 2019, Officer Carlos Rivera-Martinez was convicted in the Circuit Court for Baltimore City of second-degree assault and misconduct in office after he used excessive force on a sixteen-year-old who had complied with his instructions. On appeal, he raises a variety of arguments grounded particularly in his claim that he had not used excessive force, and he contends as well that the circuit court erred by failing to declare a mistrial. We affirm.

I. BACKGROUND

A. The Incident.

On July 5, 2016 at around 2:00 a.m., Officer Rivera-Martinez, an officer in the Baltimore Police Department ("BPD"), was called to the 400 block of East Baltimore Street in Baltimore City (an area known colloquially as The Block) to perform crowd control at an active crime scene. Marvin Townes, who was sixteen-years old at the time, testified that he was walking home through The Block when he stopped to observe what was happening. Officer Rivera-Martinez asked Mr. Townes to leave, and he didn't—he stayed and yelled at the officers and called them names. Mr. Townes testified that when asked to leave he told officers that he had a "right to observe and watch." When Mr. Townes was told again to leave, he asked officers if it was a "lawful order." They responded "yes," and he proceeded toward Gay Street.

Officer Rivera-Martinez testified that the second time he asked Mr. Townes to leave, Mr. Townes stayed to continue hurling insults at him and the other officers. Officer Rivera-Martinez stated that Mr. Townes yelled that he would "shoot [the officers] and he would put bullets on [the officers], on [their] heads, and take [them] out." After these

statements, Officer Rivera-Martinez told Mr. Townes that he was under arrest, but when Officer Rivera-Martinez tried to grab and handcuff Mr. Townes, he ran.

Mr. Townes testified that after being ordered to leave the second time, he began walking toward Gay Street and was followed by Officer Rivera-Martinez, who called for backup on his radio. This made Mr. Townes "nervous" and, he said, caused him to run. Officer Rivera-Martinez chased Mr. Townes toward Gay Street with his taser in hand, as a show of force, and Mr. Townes ran into War Memorial Plaza.

Mr. Townes testified that once he entered the plaza, he stopped running, turned around, put his hands up, and dropped to the ground to show officers that he was complying and was not being aggressive.[1] When Officer Rivera-Martinez caught up to Mr. Townes, he knocked him off his knees and rammed him to the ground. Officer Rivera-Martinez testified that after knocking Mr. Townes to the ground he attempted to handcuff Mr. Townes who was face up and refusing to be handcuffed. Officer Rivera-Martinez proceeded to strike Mr. Townes repeatedly with his taser—as a "pain compliance tool"—until he could get Mr. Townes handcuffed. Once handcuffed, Officer Rivera-Martinez and other officers who arrived at the scene walked Mr. Townes two blocks to the Central District Station. Later that evening, Mr. Townes was taken to the University of Maryland Medical Center and treated for a broken leg and cuts to the face.

[1] The probable cause statement and administrative incident report that Officer Rivera-Martinez prepared after the incident omitted the part about how Mr. Townes stopped, dropped to his knees, and put his hands in the air before the Officer knocked him to the ground. But a closed-circuit camera captured the encounter in War Memorial Plaza and confirmed Mr. Townes's account.

B. The Trial

At trial, the jury heard testimony from Mr. Townes, Officer Rivera-Martinez, expert witnesses, and additional officers present at the incident. After a three-day trial and about eight-and-a-half hours of deliberations, the jury found Officer Rivera-Martinez guilty of second-degree assault and misconduct in office. He was given an executed term of incarceration for six months for second-degree assault and a two-year suspended sentence for misconduct in office with two years' probation. Officer Rivera-Martinez filed a timely appeal. We supply additional facts as necessary below.

II. DISCUSSION

On appeal, Officer Rivera-Martinez raises five issues that we rephrase.[2] *First*, he

[2] Officer Rivera-Martinez phrased the Questions Presented in his brief as follows:

> 1. Did the Trial Court err, as a matter of law, in failing to grant the Appellant's motion for judgment of acquittal when the evidence produced by the State was insufficient to support a conviction for second degree assault and misconduct in office?
> 2. Did the Trial Court err in precluding the defense use of force expert to testify as to whether Appellant's actions on the date in question were in conformance with BPD policy and issuing curative instructions that likely misled the Jury as to the appropriate legal standard?
> 3. Did the Trial Court err in finding that Appellee did not improperly use the "golden rule" argument when Appellee placed the jurors in the shoes of the victim during closing arguments?
> 4. Did the Trial Court err in issuing jury instructions that likely misled the Jury as to Appellee's burden of proof thereby unfairly prejudicing the Jury against Appellant in violation of his Fourteenth Amendment rights?
> 5. Did the Trial Court err by failing to declare a hung jury under the circumstances?

argues that the trial court erred by failing to grant a motion for acquittal because, he says, no rational jury could have found him guilty of second-degree assault and misconduct in office. *Second*, he contends that the trial court improperly excluded his expert's testimony and misled the jury when it gave a curative instruction. *Third*, he argues that the trial court erred by allowing the State to make a "golden rule" argument during closing. *Fourth*, he claims that the trial court improperly instructed the jury on the burden of proof. And *fifth*, he argues that the trial court erred by failing to declare a hung jury. We disagree with each of these contentions.

A. The Trial Court Had Sufficient Evidence To Convict Officer Rivera-Martinez Of Second-Degree Assault And Misconduct In Office.

Officer Rivera-Martinez couches his first argument in sufficiency of the evidence terms—he asserts that the trial court erred in failing to grant his motion for judgment of acquittal because the evidence was insufficient to convict him of second-degree assault and misconduct in office. In reviewing the sufficiency of evidence to convict, we ask "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." *Taylor v. State*, 346 Md. 452, 457 (1997) (*quoting Jackson v. Virginia*, 443 US 307, 319 (1979)). And "[we] will not set aside the judgment of the trial court on the evidence unless clearly erroneous." *Jones v. State*, 178 Md. App. 454, 476 (2008) (citing Md. Rule 8-131(c)). But after reciting these standards in his brief, Officer Rivera-Martinez reveals the real essence of his argument: "In this matter, the use of force by Officer Rivera-Martinez, judged from the perspective of an objectively reasonable police officer facing a similar

situation, was not excessive." The facts themselves aren't seriously in dispute, and the evidence presented at trial was more than sufficient to support the convictions.

To convict Officer Rivera-Martinez of second-degree assault, a jury must find that (1) he caused *offensive* physical contact or physical harm to Mr. Townes; (2) the contact was the result of an intentional or reckless act of Officer Rivera-Martinez and was not accidental; and (3) the contact was *not* legally justified. *Pryor v. State*, 195 Md. App. 311, 335 (2010); *see* MPJI-Cr 4:01 Second Degree Assault, MPJI-Cr 4:01(c).

Officer Rivera-Martinez doesn't challenge the facts themselves, although his version of events left out some of the more serious force he initiated, most notably the part about how he tackled someone who had already stopped and dropped to his knees. Instead, he disputes that his contact with Mr. Townes was offensive. His privilege argument has two parts. *First*, he assumes that as a police officer, he is privileged to use reasonable physical force without criminal liability in ways regular citizens can't and that his status as a police officer is an affirmative defense to a second-degree assault charge grounded in the reasonable use of force during a lawful arrest. But as far as it goes, he glosses over the *second* half of the test: police officers can use force that otherwise would qualify as a battery, but "the privilege that a law enforcement officer possesses to commit a battery in the course of a legally justified arrest extends only to the use of *reasonable* force, not *excessive* force. To the extent that the officer uses excessive force in effectuating an arrest, the privilege is lost." *French v. Hines*, 182 Md. App. 201, 265 (2008) (emphasis added).

Reasonable force is judged objectively but, importantly, "from the perspective of a

reasonable officer on the scene, rather than one with the 20/20 vision of hindsight." *Graham v. Connor*, 490 U.S. 386, 396 (1989). This requires the fact finder to consider the totality of the circumstances, including:

> "[T]he severity of the crime at issue, whether the suspect poses an immediate threat to the safety of the officers or others, [ ] whether he is actively resisting arrest or attempting to evade arrest by flight[,]" and that law enforcement officers "are often forced to make split-second judgments [ ]in circumstances that are tense, uncertain, and rapidly evolving[.]"

Estate of Blair by Blair v. Austin, 469 Md. 1, 23 (2020) (alterations in original) (*quoting Graham*, 490 U.S. at 396–97). In reviewing evidence weighed by the jury, we "defer [ ] to any possible reasonable inferences that the trier of fact could have drawn from the evidence [, and we will] . . . not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Grimm v. State*, 447 Md. 482, 495 (2016) (first *quoting Jones v. State*, 440 Md. 450, 455 (2014); then *quoting State v. Mayers*, 417 Md. 449, 466 (2010)).

The jury in this case was tasked first with deciding, based on a totality of the circumstances, whether Officer Rivera-Martinez had acted as a reasonable officer would under the circumstances. The jury heard Officer Rivera-Martinez's testimony about Mr. Townes's behavior and the reasons why he reacted as he said he did. But the jury also heard testimony from Mr. Townes about how he stopped running, turned around, put his hands up, and dropped to the ground to show officers that he was complying and was not being aggressive. The jury saw closed-circuit camera footage of Officer Rivera-Martinez

tackling Mr. Townes and striking him with his taser before handcuffing him. This visual image contradicted the Officer's account. The jury heard from Paul Mincarelli, a civilian employee of the BPD Best Practices Unit, who testified that BPD had a use-of-force policy and the baton impact weapons policy that officers were required to follow, which was in effect on the date of the incident. And the jury heard from Officer Adrian Maralusha of the BPD Firearms Training Unit, who testified that on June 21, 2016 he taught a three-hour training session on the new use-of-force policy and the baton impact weapons policy which Officer Rivera-Martinez attended. That training was to make clear to officers that impact weapons such as a taser and hand/foot strikes should be used only to combat active aggression or aggravated aggression.

Based on the evidence presented at trial, a rational fact finder readily could find that Officer Rivera-Martinez's use of force was not objectively reasonable under the totality of these circumstances. As such, Officer Rivera-Martinez loses the "privilege that a law enforcement officer possesses to commit a battery in the course of a legally justified arrest," *French*, 182 Md. App. at 265, and he could be found guilty of second-degree assault. And because we "defer to any possible reasonable inferences the jury could have drawn from the admitted evidence," *Jones*, 440 Md. at 455 (*quoting Hobby v. State*, 436 Md. 526, 538 (2014)), we affirm Officer Rivera-Martinez's conviction for second-degree assault.[3]

[3] Officer Rivera-Martinez doesn't address his conviction for misconduct separately in his brief, but its fate follows that of his conviction for second-degree assault. Misconduct in office is "corrupt behavior by a public official in the exercise of the duties of his office or while acting under color of his office." *Duncan v. State*, 282 Md. 385, 387 (1978)). "A person can be found guilty of misconduct in office under one or more of the three types

B. The Trial Court Properly Excluded Expert Testimony And Correctly Provided A Curative Instruction To The Jury.

Under Maryland Rule 5-702, "[e]xpert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue." A trial judge has broad discretion in deciding whether or not to admit expert testimony. *Wise v. State*, 132 Md. App. 127, 135 (2000). We review decisions to admit or exclude expert testimony for abuse of discretion. *Wise*, 132 Md. App. at 135.

At trial, Officer Rivera-Martinez offered expert witness Charles J. Key of the BPD to testify about BPD Policy 1115 ("use-of-force policy"), which was in effect on July 5, 2016. Mr. Key explained to the jury the different levels of force defined in the policy, the continuum of force officers could use in response to varying levels of resistance, and the level of force appropriate to combat particular levels of resistance. He testified that the

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of behavior: (1) misfeasance, (2) malfeasance, and (3) nonfeasance." *Pinheiro v. State*, 244 Md. App. 703, 721 (2020); *see Sewell v. State*, 239 Md. App. 571, 601 (2018). "Nonfeasance is the omission of an act which a person ought to do; misfeasance is the improper doing of an act which a person might lawfully do; and malfeasance is the doing of an act which a person ought not to do at all." *State v. Carter*, 200 Md. 255, 262 (1952). Determining whether the State satisfied its burden at trial here raises the question of whether the "'direct or circumstantial' evidence at trial could have 'persuaded a rational [factfinder] to conclude' that [Officer Rivera-Martinez] was guilty of the underlying offense." *Pinheiro*, 244 Md. App. at 723 (*quoting Sewell*, 239 Md. App. at 607).

The underlying offense alleged in this case is assault while performing a lawful arrest. There is no dispute that Officer Rivera-Martinez was a public officer and was acting in his official capacity during his encounter with Mr. Townes. The State provided direct evidence of the assault in War Memorial Plaza, including closed-circuit camera footage of the incident. From the direct evidence alone, a rational factfinder easily could conclude that Officer Rivera-Martinez used unreasonable force while performing a lawful arrest and thus, committed misconduct in office.

standards outlined in the use-of-force policy were "consistent with nationally accepted standards and policies." The trial court allowed Mr. Key to assist the jury in understanding the breadth and depth of the use-of-force policy and how it aligned with nationally accepted standards and policies. But the court blocked Mr. Key from opining directly on whether Officer Rivera-Martinez had complied with the BPD's policy:

> [MR. KEY]: Specifically [the use-of-force policy] defines the time when the take-downs, again, taken to the ground, can be used against a passive resistor. The strikes with an improvised impact weapon can be used under [the use-of-force policy] for an active aggression. Part of the training for active aggression includes the—a verbal threat as being part of what the officer would consider when a person is an active aggressor in—which would allow the officer to use personal weapons and/or the impact weapon. Under the older training, he could use as I indicated earlier, just against active resistance, meaning pulling away while they're on the ground, not allowing himself to be handcuffed. *So under these circumstances, from my hearing the testimony and review of the material, then what occurred was consistent with both policies.*

(Emphasis added.) After that statement, and in response to an objection from the State, the court gave the jury a curative instruction that it was not the expert's role to opine on whether the force the officer used was unreasonable:

> [THE COURT]: Ladies and gentleman, you are to disregard this witness' last testimony. I have instructed him and I have said repeatedly the decision as to whether or not the conduct observed or the evidence contained in this case rises to a criminal level is for the jury to decide, and not for the expert witness. His opinion is to help you understand use of force, the criteria, principle[s] and training given to police officers, the terms, the tools, the weapons, the type of training received by [Officer Rivera-Martinez], if any, but the decision as to whether or not the conduct contained in this case rises to a criminal level, and what, if any, evidence you find supports that

is for you as the jury to decide.

The trial court cautioned counsel that the expert's testimony stated an opinion that embraced the ultimate issue of this case, *i.e.*, that if the conduct engaged in by Officer Rivera-Martinez was permissible under the use-of-force policy and was consistent with national standards, it was not criminal.

Experts can testify to a wide range of information based on their knowledge, skill, expertise, training, or education so long as their testimony assists the trier of fact, in this case the jury. The trial judge has broad discretion to admit or deny testimony from parties. "[T]here is [no] hard and fast rule for the acceptance or rejection of expert opinion evidence as to ultimate facts that may tend to encroach upon the jury's function to determine guilt or innocence, or the credibility of witnesses, or to resolve contested facts." *Cook v. State*, 84 Md. App. 122, 142 (1990).

In this case, it was for the jury to decide whether Officer Rivera-Martinez committed second-degree assault and misconduct in office, and in turn whether the force the Officer had used was unreasonable under the circumstances. That task required the jury to understand the policies in place at the time, the relevant law associated with the issues at hand, and the elements of the crimes. But once the jury was able to understand the contours of the use-of-force policy, they were equipped to determine if Officer Rivera-Martinez used reasonable force against Mr. Townes under the circumstances. We discern no abuse of discretion in the court's decision to limit the expert's testimony as it did and in instructing the jury about the appropriate scope of the expert's opinion.

C. The State Did Not Violate The Golden Rule And The Trial Court Correctly Allowed The State To Argue During Closing Argument.

"The prosecutor is allowed liberal freedom of speech and may make any comment [during closing argument] that is warranted by the evidence or inferences reasonably drawn therefrom." *Jones v. State*, 310 Md. 569, 580 (1987) (overruled on other grounds). Not every inappropriate statement requires a new trial, though. "Reversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Id*. (citing *Wilhelm v. State*, 272 Md. 404, 415 (1974)). The "determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court. On review, an appellate court should not reverse the trial court unless that court clearly abused the exercise of its discretion and prejudiced the accused." *Degren v. State*, 352 Md. 400, 431 (1999).

Officer Rivera-Martinez argues that he was prejudiced when the court allowed the State to make a prohibited "golden rule" argument. A "golden rule" argument is one in which an arguing attorney asks the jury to place themselves in the shoes of the victim or the community and that appeals to the jurors' emotions or broader sense of justice or outrage. *Lawson v. State*, 389 Md. 570, 594 (2005). A golden rule argument "improperly appeals to [the jurors'] prejudices and asks them to abandon their neutral fact-finding role." *Id*. In contrast, statements that ask jurors to "use their own experiences" during the process of deliberations *are* permissible. *Mines v. State*, 208 Md. App. 280, 308 (2012) (counsel can tell jurors to draw reasonable inferences or conclusions from the evidence that they

believe to be justified by common sense and their own experience).

Officer Rivera-Martinez takes issue with the following statements made by the State during closing argument. First the prosecutor stated "[l]ook at my knees, folks. Imagine being in this position and being tackled backwards. Madam Clerk, may I have any one of those props, the billy clubs, et cetera." A few minutes later the prosecutor stated:

> [STATE]: Remember seeing these, folks? Okay. I'm swinging at your head. (Banging noise.) Is there really a difference? Is there really a difference? Is there one of you sitting there saying, oh, I'd rather be hit with this than this or this than this. I can't imagine if I'm you—
>
> [OFFICER RIVERA-MARTINEZ]: Objection.
>
> [STATE]: -- sitting over there--
>
> [COURT]: Overruled. It's argument.
>
> [STATE]: --that I have a preference. I don't want to be hit with either of these.

Officer Rivera-Martinez argues that these statements asked jurors to place themselves directly into Mr. Townes's shoes, prejudicing him and seeking to appeal to the jury's emotions. We disagree that this comment rose to the level of a "golden rule" violation. Asking jurors whether they would rather be hit with something hard asks a rhetorical question, not for the jurors to put themselves in Mr. Townes's position or to act on behalf of the community. *See Lawson*, 389 Md. at 594–95 (addressing the offensiveness of the prosecutor's question to the jurors that asked them to place themselves in the shoes of the mother whose child had been sexually molested); *see Hill v. State*, 355 Md. 206, 225 (1999) (cautioning this Court to "remain cognizant of [our] own conclusion that appeals to jurors to convict a defendant in order to preserve the safety or quality of their communities are

improper and prejudicial"); *Holmes v. State*, 119 Md. App. 518, 526–27 (1998) (disapproving of prosecutor's comments to a jury that the case is "about the day of reckoning, the day of accountability, the day we say no, Mr. Holmes, no longer will we allow you to spread that poison on the streets"); *cf. Couser v. State*, 36 Md. App. 485, 501–02 (1977) (characterizing as improper the prosecutor's remarks to the jury that "by your vote you can say no to drug dealers, to people who rain destruction" but holding that the remarks did not constitute reversible error because of a curative instruction). We agree with the trial court that the statements of the prosecutor in this instance weren't deliberate pleas for jurors to step into Mr. Townes's shoes, but instead encouraged them to use their common sense or life experience as they evaluated the evidence. The trial court did not abuse its discretion in overruling Officer Rivera-Martinez's objection to these statements during closing argument.

D. The Trial Court Properly Instructed The Jury On The Burden Of Proof.

Officer Rivera-Martinez contends that the trial court erred in instructing the jury about the State's burden of proof. He claims that the instruction shifted the burden from the State to Officer Rivera-Martinez. We disagree.

Maryland Rule 4-325(c) provides that "[t]he court *may*, and at the request of any party *shall*, instruct the jury as to the applicable law and the extent to which the instructions are binding." (emphasis added). The trial judge must "give a requested jury instruction where '(1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere

in instructions actually given.'" *Holt v. State*, 236 Md. App. 604, 620 (2018) (*quoting Cost v. State*, 417 Md. 360, 368–69 (2010)). We review the trial court's application of this standard for an abuse of discretion. *Smith v. State*, 403 Md. 659, 663 (2008). This Court will not reverse unless it has determined that the instruction was "ambiguous, misleading, confusing" or otherwise does not "fairly cover" the applicable law. *Id*. (first quoting *Battle v. State*, 287 Md. 675,684–85 (1988); and then quoting *Farley v. Allstate Ins. Co.*, 335 Md. 34, 46 (1999)).

In this instance, the instruction the court gave this jury was derived from Maryland Civil Pattern Jury Instruction on excessive force:

> *Every person has the right not to be subjected to excessive or unreasonable force while being arrested by a police officer, even if the arrest is otherwise lawful.* In making a lawful arrest, an officer has the right to use reasonably necessary force to complete the arrest.
>
> Reasonable force is that degree of force a reasonable police officer would have applied in making the arrest under the same or similar circumstances.
>
> In determining whether the force used was excessive, you should consider: the need for application of force; the relationship between the need and the amount of force that was used; the extent of the injury inflicted; and whether a reasonable officer on the scene, without the benefit of hindsight, would have used that much force under similar circumstances. You must decide whether the officer's actions were reasonable in light of the facts and circumstances confronting the officer.

MPJI-Cv 28.4 (emphasis added).

Officer Rivera-Martinez takes issue with the first sentence of the instruction, claiming that it "ever so slightly shifts the burden by placing emphasis on the rights of the

arrestee or victim." But that sentence simply sets the stage, first for the sentence that follows (that the officer has the right to use reasonable force), then for the definition of what force is reasonable. The instruction doesn't say anything directly about the burden of proof, but in the third sentence, it correctly directs the jury to measure reasonableness as "that degree of force a reasonable police officer would have applied in making the arrest under the same or similar circumstances." The instruction is a correct statement of the law and governs a critical issue in this case: whether Officer Rivera-Martinez used force against Mr. Townes that, viewed through his own eyes under the circumstances of the case, was unreasonable. This idea or concept was not content covered elsewhere in the jury instructions. The trial judge advised counsel that "the first sentence is necessary. . . because it advises the jury that [the case] is not about whether or not there was a lawful arrest, it's the manner in which that arrest took place that is the issue here before the Court." Moreover, the court delivered this instruction *verbatim* from the pattern instructions, without amending it or otherwise attempting to deviate from the standard language. The court's inclusion of this instruction didn't mislead the jury or deprive Officer Rivera-Martinez of a fair trial, and there was no error in the court's decision to include it.

E. The Trial Court Properly Denied Declaring A Hung Jury.

Finally, Officer Rivera-Martinez contends that the trial court erred by declining to declare a hung jury, and thus a mistrial, and instructing the jury to continue deliberating in response to questions and indications that they were deadlocked. "It is within the trial judge's discretion to require an apparently deadlocked jury to continue deliberating or to

declare a mistrial. Whether the trial judge abused his or her discretion in denying a mistrial motion in a deadlock situation depends on the circumstances of the particular case." *Browne v. State*, 215 Md. App. 51, 57 (2013) (citing *Mayfield v. State*, 302 Md. 624, 632 (1985)). We review the denial of a mistrial motion for abuse of discretion. *Dillard v. State*, 415 Md. 445, 454 (2010).

By the time the jury began deliberating, it had heard three days of testimony and evidence, then had reconvened on a fourth day for jury instructions and closing arguments. At 12:53 p.m., jurors were dismissed for a 30-minute lunch break then returned and began deliberations. About three hours later, at 4:47 p.m., the court and the parties reconvened to answer several questions from the jury. One question asked whether deliberations would continue if the jury did not reach a decision that day, or if the court would declare a mistrial. The court gave the following answer, without objection: "[P]lease do not concern yourself with what will or may take place in the future and continue your deliberations at this time. It is your duty to deliberate and we ask that you do that." The jury was excused and reconvened for deliberations at 5:16 p.m.

At around 6:57 p.m., the court received another note from the jury "indicating that they [did] not have a unanimous verdict." The court, with the agreement of all counsel, sent the jury a written response containing an *Allen*-type charge[4] allowing the jury the

[4] An *Allen* charge is derived from *Allen v. United States*, 164 U.S. 492 (1896). That case approved the use of an instruction in which the jury was specifically asked to reconcile their differences and reach a verdict. Since that case, the *Allen* charge has been presented using diverse language, which is why we, in this opinion, refer to such an instruction or one simply reminding the jury of its responsibilities, as an *Allen*-type charge.

option to "continue their deliberations or . . . continue in the morning if they would like." About thirty minutes later, the jury sent another note stating "we are deadlocked and do not believe we will ever reach a unanimous verdict. Each of the 12 jurors is final in their decision. We also want to note that there are a few people who cannot be here tomorrow." At this point, Officer Rivera-Martinez moved for a mistrial, which the court denied:

> [T]hey started out from the very beginning, once they got in the jury room talking about what do we do if we don't have a verdict, and they hadn't even been deliberating more than an hour or two. I believe we may have a juror who doesn't understand their duty . . . .
>
> But I don't want to give the *Allen* charge again, which I've already given that's the other instruction and I also do not want them to think that having deliberated a half a day, which they have at this point, that that is sufficient in a case where there's an abundance of exhibits, video, testimonial evidence from both the State and the Defense, and a myriad of jury instructions.
>
> I think that I hear you, and I certainly understand why you might want a mistrial declared at this point, but I'm not satisfied that they have been out long enough.

After another thirty minutes, at 7:56 p.m., the jurors were brought back into the courtroom having sent a note asking for a one-hour break to contact their families. At 8:02 p.m., the jurors were excused to take a break and then return to deliberations. After almost two hours at 9:45 p.m., the court gathered the parties to inform them that the court intended to send the jurors home and ask them to return the next day to resume deliberations. Officer Rivera-Martinez renewed his motion for a mistrial, which the court again denied:

> I have not received another note from them. I can only conclude that they are continuing their deliberations. You and I well know that it is very likely one or more of the jurors is unable to return tomorrow, and in that event—eventuality, we

> would have a mistrial. But until I hear otherwise from the jury, it is my intention to allow them to continue their deliberations [ ] tomorrow.

Court staff went to retrieve the jury and escort them to the courtroom to be excused for the evening, but the jurors informed the court that they had in fact reached a verdict. The jury entered the courtroom at 9:51 p.m., after about eight-and-a-half hours of deliberating, and delivered their verdict.

Officer Rivera-Martinez argues that the guilty verdicts are suspect because the decision not to declare a mistrial put the jurors to the difficult choice between completing deliberations or rearranging their schedules to come back for another day. Inconvenient as that might have been, though, it didn't compel a mistrial at that point. This jury had heard three days of evidence and testimony from several parties and been presented multiple exhibits and video footage, and it was not unreasonable to direct them to continue deliberating after only eight-and-a-half hours. The court was in no way coercive to the jurors in its direction to keep deliberating. The jury had been instructed appropriately, and the court readily believed that continued deliberations would be productive. We find no abuse of discretion in the trial court's decisions to deny the Officer's motions for mistrial and to allow the jury to continue its deliberations to completion as it did.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. APPELLANT TO PAY COSTS.