Circuit Court for Calvert County
Case No.: C-04-CR-20-000170

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1455

September Term, 2021

JOSEPH MARTIN BLANKENSHIP

v.

STATE OF MARYLAND

Arthur,
Shaw,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),
JJ.

PER CURIAM

Filed: April 28, 2022

Following trial in the Circuit Court for Calvert County, a jury found Joseph Martin Blankenship, appellant, guilty of second-degree assault. Thereafter, the court sentenced him to ten years' imprisonment. Appellant noted an appeal wherein he raises the following questions for our review:

> 1. Did the trial court abuse its discretion when it denied [a]ppellant's motion for a mistrial?
>
> 2. Was the evidence offered to support [appellant's] conviction insufficient because the testimony of the only witness to the alleged assault for which [appellant] was convicted was not credible and there was no other credible evidence on which his guilt could be found beyond a reasonable doubt?

We answer both questions in the negative, and therefore shall affirm.

BACKGROUND

On the evening of January 11, 2020, Jordan Clements, the victim, arrived with her friend Jagr Croson at the home of her uncle, Daniel Sadosky. There she, along with a group of family and friends, watched a Ravens football game. Among those in attendance were Nicole Overly, appellant's brother (Matthew Blankenship), his two children, and Sadosky's two children.

Appellant, whom the victim had not met before, arrived at the house sometime later. Sometime in the early morning hours, appellant decided to leave and drive his brother's children and Overly home and announced that he was going to use Overly's car to do it. The victim testified that, at the urging of Overly, she agreed to ride with the group "to make sure nothing happened and to make [Overly] feel more safe." The victim, Overly, appellant, and the two children then got into Overly's car to leave. Appellant sat in the

driver's seat, the victim sat in the front passenger seat, and Overly and the children sat in the back seat.

The victim testified that as appellant pulled the car out of the driveway, he announced that he wanted to have sex with Overly once they arrived at their destination.[1] The victim asked him to stop because it was making Overly uncomfortable and because there were young children in the car.[2] The victim said that, as soon as she said that, appellant "got very, very mad, slammed the car in park and told [the victim] to get out." After the victim refused, appellant got out, went to the passenger's side, and attempted to open her door. The victim attempted to get into the driver's seat, but appellant ran back around and pulled her out of the drivers' side of the car by her left arm. The victim testified that she was screaming for help and hoping someone in the house would hear her. Appellant then punched the victim in the nose causing her to fall on the ground.

Sadosky eventually emerged from the house and began fighting with appellant. The victim initially climbed back into the car and locked the doors, but eventually went back inside the house and got cleaned up with the assistance of the Croson. The police were called, statements were taken, and the victim rode to the hospital in an ambulance. She had injuries to her nose and right arm, and scrapes to her body, especially to her feet, from being dragged.

[1] According to the victim, appellant said he "wanted to f-ck the sh-t out of her."

[2] According to the victim, the children were three or four years old at the time.

DISCUSSION

I.

Appellant first contends that the trial court erred, or abused its discretion, when it failed to grant a defense motion for a mistrial that was based on a comment the State made during its opening statement indicating that appellant was represented by the Office of the Public Defender, which, according to appellant, was an impermissible and prejudicial reflection of appellant's financial inability to afford private counsel.

During its instructions to the jury issued prior to the opening statements of the parties, the trial court instructed the jury, among other things, that opening statements of counsel are not evidence. In addition, early in the State's opening statement, the State "reemphasize[d]" to the jury that opening statements "are not evidence." The State then encouraged the jury to pay close attention to the evidence so that it could fairly judge appellant's guilt or innocence. The State then recounted what it believed would be the evidence adduced at trial and how that evidence amounted to the offense of second-degree assault. After that discussion, and near the conclusion of the State's opening statement, the State said:

> Keep your minds open, listen to the case, listen to the cross-examination, [defense counsel] is a very good Public Defender and she's going to try to get to the heart of this matter, I'm sure of that.

Thereafter, prior to concluding its opening statement, the State briefly discussed the beyond a reasonable doubt burden of persuasion and suggested that, at the conclusion of the case, the jury would find appellant guilty.

After the State concluded its opening statement, appellant moved for a mistrial on the basis of the State's comment about appellant being represented by the Office of the Public Defender. At that time, the court elected to reserve ruling on the motion. Later in the trial, when the court entertained the motion, appellant argued:

> I do believe there's a prejudicial impact in this case. I think the relevant case on that would be [*Vitek v. State*, 295 Md. 35 (1982)[3]] where

[3] In *Vitek*, the State cross-examined defendant on trial for robbery about the fact that, prior to the robbery, he was unemployed as a result of recently being released from jail. In reversing Vitek's convictions, the Court of Appeals relied on the proposition that, generally, it is improper to use a defendant's poverty to establish a criminal motive. *Vitek*, 295 Md. at 41-42. The Court noted the following about the prejudicial impact of such evidence, absent some showing of special relevance to the offense:

> It is up to the jury to determine whether the appellant was guilty of robbery as charged in the indictment. We believe that the fact that the appellant was unemployed and recently had been released from jail was irrelevant to the main issue of guilt or innocence and could not be used to infer motive. Most importantly, it was prejudicial because once the inference was brought out, the burden shifted to the appellant to show that he did not need money and, therefore, had no motive. As the Court of Appeals of Michigan observed in *People v. Andrews*, 88 Mich. App. 115, 276 N.W.2d 867, 868-69 (1979):
>
> > "Whether defendant – or his girlfriend for that matter – was poor or unemployed is legally irrelevant to the issue of guilt or innocence. This Court refuses to 'assume that wealth exerts a greater attraction on the poor than on the rich'. To do so would 'effectively establish a two-tiered standard of justice and demolish *pro tanto* the presumption of innocence'. Our system of justice and its constitutional guarantees are simply too fragile to permit this type of unfounded character assassination. As stated in *People v. Henderson*, 80 Mich. App. 447, 454, 264 N.W.2d 22, 25-26 (1978):
> >
> > > 'The motive for a theft offense seldom requires explanation. The motive is so pervasive that its proving will establish little more than the defendant's typicality; such proof increases but little the likelihood that this defendant is guilty of the charged offense. If poor and rich share a

(continued)

> they found that evidence that somebody was unemployed and just out of jail indicated they were impoverished and that that was prejudicial to, because of any implications that the person was indigent and therefore more likely to commit an offense.
>
> I don't think there is a cure, any cure at this time in this case.

In response, the State acknowledged its erroneous and inadvertent comment, noted that opening statements are not evidence, and distinguished the case that defense counsel relied on, stating:

> Judge, if this was a crime involving some type of fraud or theft or something to that effect or that could be motivations because he was indigent on, you know, by the suggestion that he's represented by the Public Defender, I will argue that that would be a stronger case for the Public Defender's motion for mistrial.
>
> However, there's not. This is a [s]econd[-d]egree [a]ssault charge and that, I would indicate, too, I also said that, you know, this is a very good Public Defender, I don't mean to besmirch the Defendant or the Office of the Public Defender. Matter of fact, I think that they do a great job and that's why I kind of used the word she's a very good Public Defender at the same time.
>
> Why I did it, I can't explain it, it just happened. It was inadvertent. I did not make that statement with the, with the idea to throw the case so we could re-try it again, it was at the very opening.

The trial court denied appellant's motion for a mistrial, finding that the statement was brief, inadvertent, not repeated, and not from a witness. The court reasoned:

> So the opening statement was approximately seven minutes or so by the [State]. He went through the fact that the jurors are not going to have a transcript or audio of it, that they have to take notes. Went through the

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> common and obvious motive, then why prove poverty?'" (Footnotes omitted).

Vitek, 295 Md. at 40-41.

> elements of the case. In fact, not only went through the elements of assault, of the specific assault that the State's alleging in this case, but went through the other two types of assaults and demonstrated that.
>
> Went through the facts that he believed would be presented based on testimony and in there he said, very briefly, and I believe it was inadvertent, he said [defense counsel] is a very good Public Defender and then moved on.
>
> So we're really talking about two words, which is Public Defender. It was not at the beginning or the end of his opening, it was kind of jumped in the middle or right in the middle where I don't think that there was, even if it was prejudicial, that it's enough to warrant granting a mistrial.
>
> It wasn't a repeated statement, it was inadvertent, it was not from the primary witness, obviously it wasn't from a witness at all.
>
> And again, it was two words. I don't even know that . . . it was enough for it to be considered deemed to be prejudicial.
>
> Again, I don't believe that it rises to the level of manifestly necessary or under urgent circumstances to declare a mistrial, so therefore the Court's not going to declare a mistrial.

After the trial court asked appellant if he wanted a curative instruction, appellant said "I would … state for the record that we don't believe a curative instruction is sufficient, but if we're going to do a curative instruction, I think that would be appropriate." Thereafter, the trial court instructed the jury, "You heard in opening statements regarding where the lawyers are employed. You are to disregard that portion of the opening statements, all right."

"A mistrial is an extreme remedy and it is well established that the decision whether to grant it is within the sound discretion of the trial court." *Walls v. State*, 228 Md. App. 646, 668 (2016) citing *Carter v. State*, 366 Md. 574, 589 (2001). Further, "the trial court is ordinarily in a uniquely superior position to gauge the potential for prejudice in a particular case." *Simmons v. State*, 208 Md. App. 677, 691 (2012) (quotation marks and

citation omitted), *aff'd*, 436 Md. 202 (2013). A trial court's decision to not grant a mistrial will not be deemed to be an abuse of discretion unless it is "well removed from any center mark imagined by the reviewing court and is beyond the fringe of what that court deems minimally acceptable." *Id.* at 690 (quotation marks and citation omitted).

In this case, the court noted that the State's remark, which it instructed the jury to ignore, was inadvertent and never repeated. In addition, the jury had already been instructed that opening statements did not constitute evidence (which the State "reemphasized" during its opening statement). Moreover, unlike the circumstances of *Vitek*, the remark had nothing to do with appellant's motive for committing the offense. For these reasons, we agree with the circuit court that the remark caused no prejudice to appellant. Therefore, under the circumstances, we do not find that the circuit court's decision to not grant a mistrial constituted an abuse of discretion.

II.

Appellant contends that the evidence was legally insufficient to support his conviction because, according to him, the victim's testimony was not worthy of belief.

In reviewing the sufficiency of the evidence, we review the record to determine 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.'" *Pinheiro v. State*, 244 Md. App. 703, 711 (2020) (quoting *Titus v. State*, 423 Md. 548, 557 (2011), in turn quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). In doing so, we defer to the jury's evaluations of witness credibility, resolution of evidentiary conflicts, and discretionary weighing of the evidence, by crediting any

inferences the jury reasonably could have drawn. *Grimm v. State*, 447 Md. 482, 495 (2016). Moreover, "[i]t is well settled that the evidence of a single eyewitness is sufficient to sustain a conviction." *Handy v. State*, 201 Md. App. 521, 559 (2011).

This Court has affirmatively rejected the argument that the evidence is legally insufficient because the witness from whom the evidence came should not be believed. *Rothe v. State*, 242 Md. App. 272, 285 (2019). Here, the victim's testimony concerning appellant's attack on her made the evidence legally sufficient to support appellant's conviction for second-degree assault. At that point, it became up to the jury to decide whether or not to believe the victim's testimony, which, apparently, it did.

Consequently, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR CALVERT COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.