Circuit Court for Baltimore City
Crim. No. 114176033-44

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1740

September Term, 2016

BRANDON WILDER

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Graeff,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: May 11, 2018

Around 4:30 a.m. on May 9, 2014, the bullet-ridden body of Ramon Wilder was discovered in an alleyway near St. Agnes Hospital in Baltimore. The State charged the victim's half-brother, appellant Brandon Wilder, with that murder. Appellant was tried jointly with his friend and accomplice Theodore "Teddy" Grice. *See Grice v. State*, No. 1894, Sept. Term, 2016, 2018 WL 1036880 (Md. Ct. Spec. App. Feb. 21, 2018).

A jury in the Circuit Court for Baltimore City convicted appellant of premeditated first-degree murder, felony first-degree murder, second-degree murder, armed carjacking, carjacking, attempted robbery with a dangerous weapon, conspiracy to commit armed robbery, conspiracy to commit robbery, and use of a firearm in the commission of a crime of violence.[1]

In this appeal, appellant challenges his convictions on three grounds, raising the following questions, which we have re-ordered:

1. Did the circuit court err in the manner in which it conducted voir dire?

2. Did the circuit court err by declining to individually question an alternate juror after that juror indicated in a note that, *inter alia*, she did not "feel safe with all the killings going on in the news," that she "fe[lt] like the courtroom is the last place [she] should be," and that she "ha[s] been thinking about this for a couple of days . . . and as the days go on, [her] feelings are worse"?

3. Did the circuit court err in denying multiple motions for mistrial?

[1] Although appellant and Grice were acquitted of conspiracy to murder, and Grice was acquitted of murder, Grice was convicted of carjacking and conspiracy to commit robbery.

Because we conclude that the trial court did not err or abuse its discretion, we shall affirm appellant's convictions.

FACTUAL AND PROCEDURAL HISTORY

Appellant and co-defendant Teddy Grice were jointly tried over nine days, from June 29 to July 13, 2016. Because another panel of this Court recently summarized that trial record in the course of affirming Grice's convictions, we adopt pertinent portions of that unreported opinion, as follows:[2]

I. Background

> Ramon and Brandon Wilder shared a father and grew up together. In the years leading up to Ramon's death, however, they had a falling out. Brandon and Ramon were in competition for drug sales, and Ramon pursued women who were or had formerly been Brandon's intimate partners.
>
> Grice and Brandon, on the other hand, were very close. Their relationship was described as being like that of a father and son. Grice would provide anything Brandon needed and vice versa. The two were described as seeming to be together all day, every day.
>
> In the days before Ramon's death, Brandon complained that Ramon had taken money from him and was a bad brother. Brandon said that he was going to rob his brother or beat him up for taking drug sales. Grice encouraged Brandon and agreed that Ramon had been a bad brother, stating that if Ramon were his brother, he would do the same.
>
> Labria Paige, who was also charged in connection with Ramon's death, had known Brandon since middle school and been involved in an intimate relationship with him off and on over the years. In May 2014, she was in a relationship with Brandon and had recently given birth to one of his children.

[2] The issues in Grice's appeal were whether the trial court erred in denying his motions for severance, mistrial, and judgment of acquittal. *See Grice v. State*, No. 1894, Sept. Term, 2016, 2018 WL 1036880 (Md. Ct. Spec. App. Feb. 21, 2018). For clarity, that opinion referred to Brandon and Ramon Wilder by their first names.

Paige had first met Brandon's half-brother, Ramon, in 2007. According to Paige, Grice never liked Ramon. She described Grice as manipulative, opining that Ramon would still be alive if it were not for Grice.

Breauna Diggs, also charged in connection with Ramon's death, was Grice's girlfriend. Diggs had become an opiate addict following surgery, and she procured her Oxycontin from Grice. She testified that she was high most of the time during the events leading up to and following Ramon's death.

Celeste Price, one of the State's witnesses, knew Grice from the neighborhood and knew that Ramon sold drugs during the day around St. Agnes Hospital. She had been in an intimate relationship with Brandon in 2012, but in May 2014 she was in an intimate relationship with Ramon, which, she said, was not public knowledge.

II. Ramon's Road Trip to Atlantic City

On Thursday, May 8, 2014, Ramon surprised Price with a trip to Atlantic City for her birthday. While they were en route in a limousine, Ramon received a phone call from Labria Paige, the mother of Brandon's child. During the conversation, Ramon put Paige on the speaker phone so that Price could hear her. According to Price, Paige said that she wanted to have sex with Ramon and no longer wanted to be with his brother, Brandon. For the remainder of the day, Ramon texted a lot, but Price did not know with whom.

Although they had originally planned to stay the night in Atlantic City, Ramon and Price returned to Baltimore, arriving home at around 2:00 a.m. on the morning of May 9, 2014. Ramon told Price that the limousine driver would drop him off where he had parked his rental vehicle, a black Chevy Silverado pickup truck, so that he could go to his night job.

III. Meanwhile, in Baltimore

At around noon on May 8, Grice had picked up his girlfriend, Breauna Diggs, in his silver Cadillac. The two drove to a motel in Halethorpe, where they met Brandon and Paige. Brandon and Paige were fighting because Brandon had found out that Ramon had been at Paige's house while Brandon was out of town. Grice told Brandon that Ramon had had sex with Paige.

Brandon, Paige, and their five-month-old son left the motel in Paige's van, following Grice and Diggs to a neighborhood in southwestern Baltimore City, where Grice parked his Cadillac. From there, the group drove around in Paige's van and used drugs. While they were driving, Grice told Brandon that Ramon was taking drug sales away from them and that Ramon had shown him disrespect. Grice repeated the theme of disrespect throughout the day.

IV. The Set-Up

At some point during the day on May 8, 2014, Brandon called Ramon from Paige's phone and put the phone to her ear. According to Paige, Brandon wanted her to find out where Ramon was. She explained that throughout the day Brandon, pretending to be her, sent sexually explicit texts to Ramon from her phone. Paige asserted that Brandon wanted her to trick Ramon into thinking that she wanted to have sex with him, to lure him into meeting her. Brandon said that he was going to rob Ramon and that he was upset with Ramon for trying to have sex with his "baby mother" in front of his son. Grice egged Brandon on by emphasizing the amount of disrespect Ramon had been showing him. Paige heard Grice say that he had given Brandon a handgun.

After midnight on Friday, May 9, 2014, Grice parked the van near his Cadillac and got out with Diggs and Brandon, while Paige remained in the van with her infant son. Grice and Brandon had a brief conversation, and Brandon got back in the van. According to Diggs, she and Grice nodded off once they got to the Cadillac. When they woke up, they drove around for a while and then went back to the parking spot, where they got a call from Brandon.

V. The Trap

After dropping off Diggs and Grice, Paige and Brandon drove to a parking lot a few blocks away, near St. Agnes Hospital, where they anticipated a rendezvous with Ramon. Brandon instructed Paige that when Ramon arrived she was to tell him to walk over to her vehicle to see his nephew (Brandon's son). Brandon then exited the van and walked into an alley.

Shortly after Brandon left, Ramon pulled up in his rental car, the black Silverado. Paige signaled to him by flashing her lights, and she could hear Ramon singing as he approached her. Then she heard gunshots and saw Ramon run away. When she tried to drive away, she was stopped by Brandon, who was holding a gun. Paige later discovered that one of the shots struck the van near where her child was seated. Grice covered up the bullet hole with a bumper sticker.

VI. The Aftermath

Brandon took Ramon's truck and told Paige to follow him. Paige tried to call Ramon's phone, but Brandon answered.

Grice, who was parked nearby with Diggs, panicked when his phone rang and said that he hoped "he" wasn't calling on "his" phone. Breaunna Diggs later learned that Grice was expressing concern that Brandon was calling him from Ramon's phone.

Grice, Brandon, and Diggs went to Grice's house, where they dropped off Grice's Cadillac. From there, Grice, Brandon, and Diggs drove Ramon's Silverado to a Microtel hotel near BWI Airport. Grice told Brandon that he hoped Brandon had not been using a "dead person's" phone to call him.

Grice, Brandon, and Diggs met up with Labria Paige at the Microtel, where she was waiting in her van. From there, Paige and Diggs drove the van, while Grice and Brandon drove Ramon's truck, to a nearby Red Roof Inn. At the Red Roof Inn, Grice and Brandon searched Ramon's truck.

The two women walked to a 7-Eleven, and Grice and Brandon joined them there a few minutes later. The four then returned to the Microtel and got a room, and Grice and Brandon said that they would be back on foot after they took Ramon's truck to an Extended Stay hotel.

At the Microtel, Brandon told Paige that he shot Ramon because Ramon was "too happy" to have sex with her in front of Brandon's son. Paige told Diggs that she had lured Ramon to meet up with her by texting and calling him.

VII. The Investigation

Detective Frank Miller of the Baltimore City Police Department was the lead investigator. He testified that Ramon's truck was found at an Extended Stay hotel near . . . BWI Airport. He also testified that he had reviewed surveillance footage from that hotel and saw that at around 5:30 a.m. on May 9, 2014, a vehicle pulled into a parking space and that two men emerged from it. He testified that, when Grice was interviewed, he wore a baseball hat similar to the one worn by one of the persons in the video.

Detective Miller also reviewed surveillance footage from a 7-Eleven near BWI. He thought that the two persons in the video looked like the two persons in the Extended Stay video.

Diggs testified that when the police first interrogated her on May 28, 2014, she denied having any knowledge of Ramon's death; instead, she said that she was at a shop when she found out about the murder. After she was released from the interview, Diggs told Grice that she had not said anything to the police. He rewarded her with an expensive purse.

In subsequent interviews, however, Diggs and Paige each implicated [Brandon and] Grice in the murder. Both [women] pleaded guilty, Paige to murder, Diggs to being an accessory after the fact to a murder and to car theft. As a condition of their plea deals, they were required to testify against Grice and Brandon.

VIII. The Legal Proceedings

* * *

According to Grice, the State's theory was that he was the ringleader of the attack on Ramon. To refute that alleged theory, Grice said that he planned to take the stand in his own defense and to testify about the nature of his relationship with Brandon, about how the relationship had fallen apart, about threats that Brandon had made against him in open court, and about a stabbing that he had suffered, purportedly at Brandon's behest. Grice proffered that he would present testimony about Brandon's motives to order the attack and about other murders allegedly committed by Brandon.

The circuit court denied Grice's motion to sever, but left open the possibility that it might revisit the motion as the case progressed.

> Throughout the trial, Grice argued that, to prove that Brandon required no encouragement to murder Ramon, he (Grice) should be allowed to introduce evidence that Brandon attempted to murder someone else three days after the crime for which they were charged and that Brandon ordered a hit on him (Grice) while he was detained in the Baltimore City jail. The court, however, found none of this evidence relevant.
>
> Grice ultimately did not take the stand at trial. He was convicted of conspiracy to commit robbery and carjacking, but acquitted of all other charges, including murder.

Grice v. State, No. 1894, Sept. Term, 2016, 2018 WL 1036880 at *1-8 (Md. Ct. Spec. App. Feb. 21, 2018).

The jury found appellant guilty of premeditated, felony-, and second-degree murder, along with related robbery, carjacking, conspiracy, and weapon offenses. He was sentenced to life with the possibility of parole for murder, plus a consecutive twenty years for attempted armed robbery, another consecutive ten years for using a firearm, a concurrent twenty years for armed carjacking, and a concurrent five years for conspiracy to commit armed robbery. The other convictions were merged for sentencing purposes.

We shall add pertinent facts in our discussion of the issues raised by appellant.

DISCUSSION

I. Voir Dire of Prospective Jurors

Appellant contends that the trial court "committed reversible error by denying defense counsel's request to engage in follow-up questioning of numerous prospective jurors who answered certain voir dire questions." He specifically points to the court's decision to

> summarily dismiss[] jurors who answered [affirmatively to] any of the following questions: (1) whether anyone's religion forbids jury duty; (2)

> whether anyone's decision-making would be influenced by race, sex, color, religion, national origin or other personal attributes; (3) whether anyone would allow the fact that a witness was called by the Defense or State to affect their decision-making; and (4) whether anyone would "treat police officer and civilian witnesses different[ly] on the question of believability."

In appellant's view, this "method of voir dire violated [his] right of informed & comparative rejection in selecting a jury and violated the rights of prospective jurors" to participate in the criminal justice system.

The State counters that the court properly exercised its discretion to excuse, without any individualized voir dire, jurors who "answered questions which, on their face, demonstrated unacceptable bias." For the reasons that follow, we agree.

A. Legal Standards Governing Voir Dire

Under Maryland law. "the sole purpose of voir dire is to ensure a fair and impartial jury by determining the existence of cause for disqualification, and not as in many other states, to include the intelligent exercise of peremptory challenges." *Collins v. State*, 452 Md. 614, 622 (2017) (citation and quotation marks omitted). Although trial courts have "significant latitude in the process of conducting voir dire and the scope and form of questions presented to the venire[,]" we are mindful that

> "[u]ndergirding the voir dire procedure and, hence, informing the trial court's exercise of discretion regarding the conduct of the voir dire, is a single, primary, and overriding principle or purpose: to ascertain the existence of cause for disqualification." "[W]e do not require perfection in its exercise." The "trial court reaches the limits of its discretion only when the voir dire method employed by the court fails to probe juror biases effectively."

Id. at 622-23 (citations omitted).

Appellate courts "review a judge's conduct of voir dire for abuse of discretion and, when a judge's approach provides reasonable assurance that prejudice will be discovered, the judge has acted within his or her discretion." *Id*. at 628. Nevertheless, to accomplish that objective, the Court of Appeals has held

> that certain substantive elements [must] be incorporated. If relevant to the case and requested by one of the parties, we have held that it is reversible error for a trial court not to question the venire regarding racial, ethnic, cultural or religious bias; whether more or less credence would be given to a police officer simply because of that officer's position; and whether the venire harbors an unwillingness to convict a defendant of a capital crime. Yet, even for these mandatory subjects of inquiry, generally, "neither a specific form of question nor procedure is required."

Id. at 624 (citations and footnote omitted).

B. The Voir Dire Record

The trial court asked members of the venire panel questions taken verbatim from the pattern voir dire approved for criminal trials. *See* Maryland State Bar Ass'n., *Model Jury Selection Questions for Criminal Trials.* After eleven members of the venire responded affirmatively to the objective demographic questions concerning statutory qualification to serve on the jury, the trial court addressed subjective bias factors that could affect the ability of remaining members to decide the case fairly. Of relevance to this appeal, the court asked a series of questions to determine whether venire members had religious objections to serving on juries, if their decisions would be influenced by the race of the accused, and if they would afford more or less weight to the testimony of a police officer or to a witness presented by one side or the other.

Twenty-five individuals responded that they would weigh the testimony of a police officer differently. Seven answered that their religious beliefs would not allow them to serve as jurors; one indicated that he would be biased because of the race, religion, or nationality of the accused; and another responded that he would be influenced by which party presented the witness. After accounting for overlapping affirmative responses, a total of twenty-eight venire members responded affirmatively to these bias questions.[3] When the State moved to strike for cause all of these prospective jurors, the court granted the motion without conducting any individual voir dire.

C. Appellant's Challenge

Appellant contends that the trial court "committed reversible error" by excusing members of the venire based on their responses to group voir dire, without conducting any individualized inquiry. With respect to individuals whose answers indicated that they were statutorily disqualified to serve on the jury, based on their citizenship, age, physical ability, or criminal record, appellant concedes that the trial court did not abuse its discretion in concluding that further voir dire was not necessary. Instead, appellant argues that the court "erroneously believed that affirmative answers to the [bias] questions at issue created a presumption of prejudice that could not be rehabilitated." For this reason, he maintains,

[3] Some individuals who answered the police bias question affirmatively also answered affirmatively to one or more other biases (i.e., religious views, race etc., or witness called by prosecution or defense).

The next morning, when voir dire continued, only three members of the next venire panel answered affirmatively to the same bias questions. All three, however, were struck based on other disqualifications for cause.

the court abused its discretion in failing to interview any of the prospective jurors who were struck for cause based on their responses to the pattern voir dire questions concerning unacceptable biases. In his view, the effect was to deny appellant his "right to intelligent exercise of his peremptory strikes."

"Maryland law does not require the trial judge to question the venire at the bench. Instead, in Maryland, . . . the trial judge may, at his or her discretion, conduct individual voir dire out of the presence of other jurors but is not required to do so." *Collins*, 452 Md. at 627 (citation and quotation marks omitted). Although appellant contends that further voir dire could have revealed that some of the members' responses to the bias questions were incorrect, defense counsel did not proffer to this Court any particularized reason that the trial judge should have challenged individual sworn responses to such bias questions.

In the absence of specific indicia of unreliability, the trial court did not abuse its discretion in crediting these group voir dire responses as grounds for striking members of the venire. We agree with the State that a contrary conclusion, holding that it was unreasonable for the judge to rely on responses to the group voir dire questions, could effectively require individualized voir dire for every prospective juror in order to confirm the accuracy of such answers, thereby undercutting "questions to the venire as a whole[.]"

We acknowledge that twenty-five is a significant number of individuals indicating bias stemming from a witness's attitude concerning law enforcement officers. Even if, in another case, that number might raise a particularized ground to question the reliability of such responses, we cannot say that in the unique circumstances that existed when this voir

dire occurred, that large number of law-enforcement-biased members of the venire required individualized voir dire. As the State points out, when trial began on June 29, 2016, disqualifying biases both for and against law enforcement officials were likely to be prevalent in the venire pool. At that time, there had been months of controversy about the credibility of police officers in the aftermath of police-involved deaths of citizens, as well as popular support both for and against police expressed through social movements such as #BlackLivesMatter and #BlueLivesMatter.

Of particular significance, the April 2015 death of Freddie Gray, from injuries sustained while in the custody of Baltimore police officers, sparked widespread debate and protests in the community where members of the venire lived.[4] When trial began in late

[4] The death of Freddie Gray resulted in unrest and debate over the relationship between police and citizens in Baltimore, as summarized in a recent federal court decision:

> At about 9:15 in the morning of April 12, 2015 ("April 12"), Baltimore City Police Officers detained Freddie Carlos Gray, Jr. ("Gray"), a 25-year-old black man . . . . Considering possession of [a] Knife to be a crime, the police arrested Gray, obtained a police vehicle to transport him to the police station, and placed Gray in the vehicle.
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> After making four stops along the way, the police vehicle arrived at the station and Gray was observed to be in need of medical care. A medical unit was called and took Gray to the University of Maryland Shock Trauma Unit where he underwent surgery. A week later, on April 19, Gray died from a spinal cord injury sustained in the course of the events of the morning of April 12.
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> On April 21, six of the Baltimore City Police Officers who had interacted with Gray on April 12 . . . were suspended . . . .

(continued)

June 2016, relations between Baltimore's citizens and its police force reflected not only longstanding strains,[5] but also the recent trials of police officers charged in Mr. Gray's

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> On April 27, Gray's funeral was held. After the funeral there was substantial unrest in Baltimore City including riots, declaration of a state of emergency, deployment of the National Guard, and a curfew.

(. . . continued)

* * *

> On May 1, State's Attorney Marilyn Mosby ("Mosby") held a press conference, announced that she had filed charges against the Six Officers, and read from the Statement of Charges. . . .
>
> Mosby further called upon the public, including those who, themselves, "had experience[d] injustice at the hands of police officers" to be peaceful as the Six Officers were prosecuted. . . .

* * *

> On May 21, a Baltimore City grand jury indicted the Six Officers . . .

* * *

> None of the Six Officers was convicted of any crime. Three proceeded to trial. First, Porter was tried by a judge and jury that failed to agree upon a unanimous verdict. Second, Goodson, Nero, and Rice were tried separately by Judge Williams of the Circuit Court of Baltimore City without a jury, and all three Officers were acquitted. On July 27, 2016, Mosby dismissed all charges against Miller, Porter, and White.

Nero v. Mosby, 233 F. Supp. 3d 463, 471-73 (D. Md. 2017) (footnotes omitted).

[5] In an investigatory report issued less than a month after appellant's trial, on August 10, 2016, the Civil Rights Division of the U.S. Department of Justice concluded that

(continued)

death.[6] Appellant's trial began one week after the only officer charged with murder in Gray's death was acquitted in the same courthouse.[7] Given the prevalence of strong sentiments regarding law enforcement officials in the community from which members of the venire were selected, we agree with the State that "[i]t is not at all surprising that a large number of people answered affirmatively to the police occupational bias question."

When the group voir dire is viewed in this context, the trial court did not abuse its discretion by excusing jurors who indicated a disqualifying bias, without conducting individualized voir dire in an effort to "rehabilitate" them. The court was entitled to consider the length of time it would take to conduct such questioning, the risks of exacerbating existing biases and/or distracting members of the venire from the case at hand,

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> the unrest following the death of Freddie Gray in police custody in April 2015 demonstrated the deep and enduring divide between police officers and parts of the Baltimore community. [Baltimore Police Department] Commissioner Davis acknowledged that BPD's legacy of zero tolerance enforcement contributed to these tensions: "Some of [the] things that we did

(. . . continued)

> in the past, like zero tolerance policing, didn't work and arguably led in part to the unrest that we experienced in 2015."

U.S. Dep't of Justice, Civil Rights Div., *Investigation of the Baltimore City Police Dep't*, at 19 (Aug. 10, 2016), https://www.justice.gov/opa/file/883366/download.

[6] *See* Justin Fenton & Kevin Rector, *Freddie Gray case: Officer Caesar Goodson Jr. not guilty on all charges*, Baltimore Sun, June 23, 2016, http://www.baltimoresun.com/news/maryland/freddie-gray/bs-md-ci-goodson-verdict-20160623-story.html (last visited Apr. 4, 2018).

[7] *Id.*

and the likelihood that a qualified jury panel could be assembled from other prospective jurors who did not indicate such bias. Given the "hot button" nature of the topic, we cannot say that the court abused its discretion in declining to individually voir dire members of the venire who, under oath, self-identified as biased.

II. Note from Alternate Juror

Appellant contends that the trial court erred or abused its discretion in responding to the following note from alternate juror number 2, which was received on the sixth day of trial, at 9:10 a.m. on July 8, 2016:

> Judge Dorry [sic]:
>
> I have a concern about the defendant Teddy [Grice] constantly looking around especially at the Jurors. I also don't feel comfortable sitting at the last seat closest to the door with all of the security people and sheriffs coming in and out. If anything I feel like a convict as a couple of them are sitting right behind me. I don't feel safe. I also don't feel safe with all of the killings going on in the news. I feel like the courtroom is the last place that I should be. I have been thinking about this for a couple days now and as the days go on my feelings are worse.
>
> Thanks,
>
> Alt #2

Appellant argues that the trial court abused its discretion in responding to this juror note by merely moving the alternate's position in the jury box without questioning her individually. Citing precedent involving responses to allegations of juror misconduct, appellant argues that "[b]y declining defense counsel's reasonable request to voir dire alternate juror no. 2, the circuit court committed reversible error." *Cf. Johnson v. State*, 423 Md. 137, 153-55 (2011) (trial court erred in failing to "ascertain . . . the identity of the

investigating juror" who had used his own cell phone battery to turn on a cell phone admitted into evidence, and in failing to conduct individual voir dire in order to determine what the investigating juror had learned, whether other jurors were "aware of what that juror had learned," and the effect of such "extrinsic and highly prejudicial information . . . upon some or all of the jurors"); *Dillard v. State*, 415 Md. 445, 448 & 460 (2010) (trial court abused its discretion by failing to voir dire two jurors who patted the back of a key police witness for the prosecution after he testified, commending him for doing a "good job," in order "to determine the intent or meaning of their contact with Detective Smith, whether they had reach[ed] a fixed opinion as to Dillard's guilt, and whether they had engaged in premature deliberations"); *Wardlaw v. State*, 185 Md. App. 440, 452-53 (2009) (trial court abused its discretion by failing to voir dire jurors after receiving a note during deliberations that a juror had investigated and provided extrinsic information about the victim's diagnosed disorder, in order "to determine whether [jurors] could still render an impartial verdict based solely on the evidence presented at trial").

The State counters that the trial court "was within its discretion in refusing to voir dire [the] alternate juror about her anxiety about the trial and 'all the killings,'" and that in any event, "any error was harmless given that the alternate juror did not deliberate." As explained below, we again agree with the State.

A. Standards Governing Response to Juror Note

When a trial court receives a note from a juror

> pertain[ing] to the action, the judge shall promptly, and before responding to the communication, direct that the parties be notified of the communication and invite and consider, on the record, the parties' position on any response. The judge may respond to the communication in writing or orally in open court on the record.

Md. Rule 4-326(d)(2)(C).

The court may undertake a broad range of reasonable responses short of questioning individual jurors. For example, in *Nash v. State*, 439 Md. 53, 87 (2014), the Court of Appeals held that the trial court did not abuse its discretion in declining to voir dire a juror who expressed her willingness to find the defendant guilty if that meant she would not have to return after a long weekend in order to continue deliberations. A key issue in *Nash* was whether a presumption of prejudice, and therefore a corollary obligation to conduct individualized voir dire, attached to the juror's remark. The *Nash* Court concluded that because there was only a potential for future juror misconduct, and the trial judge had sufficient information to rule and remedy that situation without conducting individual voir dire, the court did not abuse its discretion in responding to the juror's remark "by recessing for the long weekend, based on her interpretation that the Subject Juror's assumed statement was the result of exhaustion or frustration," and relying on "the original and additional instructions she provided[.]" *Id*. at 96.

Pertinent to our resolution of this appeal is the *Nash* Court's analysis of why the juror's remark did not raise a presumption of prejudice or require individual voir dire. As the Court explained,

> [w]hen a party moves for a mistrial based upon the conduct of jurors, we impose on trial judges the duty to conduct *voir dire sua sponte*, prior to ruling on the motion, in two sets of circumstances. The first circumstance occurs when a juror's actions constitute misconduct sufficient to raise a presumption of prejudice that must be rebutted before a mistrial motion may be denied. The second, ancillary circumstance occurs when a material and relevant fact regarding a juror's conduct is unknown or obscure and must be resolved before a trial judge has "sufficient information to determine whether the presumption of prejudice attached to the [conduct] or to rule on [the] motion for a mistrial."

Id. at 69 (citations omitted).

The Court "decline[d] . . . to apply the presumption of prejudice doctrine" to Nash's case, *id*. at 76-77, reasoning that it differed from instances of past misconduct that tainted the pool of evidence and/or deliberations.

> Although the alleged statement of the Subject Juror, if true, is troublesome on its face, it is different for two reasons, in our view, from the cases in which we applied the presumption. First, we agree with the State's argument that **the reputed statement of the Subject Juror constituted but the possibility of future misconduct.** Here—unlike in the cases . . . concerning juror contact with witness, parties to the case, or third parties, and independent investigations by jurors—**the judge had the ability to prevent prejudice from occurring to Nash.** In other words, the actual misconduct would have been if the Subject Juror acted on his or her stated desire of reaching a verdict merely to go home and not return, as opposed to threatening to act in that fashion.
>
> * * *
>
> A second reason to decline to apply a presumption of prejudice in Nash's case is that, to the extent that the Subject Juror's statement could be

> considered actual misconduct, it does not fit within the type of "limited" circumstance in which the presumption applies. **A statement made by a single juror, which did not concern the evidence or any of the witnesses, does not have the same likelihood of poisoning the well of deliberations as the type of juror contact with witnesses, parties to the case, or third parties** . . . .
>
> * * *
>
> In our view, . . . **the Subject Juror's reputed statement in the present case does not constitute the type of "excessive or egregious jury misconduct" that raises a presumption of prejudice**.

Id. at 76-79 (emphasis added and citations omitted).

The *Nash* Court also distinguished the problem presented by that juror's statement about not wanting to return for deliberations, from the problems that required further voir dire in *Dillard* and *Johnson:*

> **We conclude that the trial judge had sufficient information before her to rule on the mistrial motion.** She was not faced with the type of alarming factual issues arising from juror-witness contact that went unresolved in *Dillard*—i.e., what precipitated the contact between jurors and the witness, whether any of the jurors formed an opinion as to Dillard's guilt before he presented his case, and whether two or more jurors engaged inappropriately in discussions or conducted premature deliberation regarding Dillard's guilt or the credibility of the witness with whom the inappropriate contact was made.
>
> Moreover, unlike in *Johnson*, the Subject Juror's alleged statement did not concern the introduction into deliberations of extrinsic "information . . . of central importance to what the jury ultimately had to decide." Nash argues that the Subject Juror's reputed statement concerned the issue of his guilt, and was, thus, of central importance to what the jury had to decide ultimately. His argument is misplaced. The information at issue in *Johnson* consisted of evidence not presented at trial that bore directly on the credibility of a key witness for the State. By contrast, **the Subject Juror's supposed statement in the present case did not add to or otherwise affect the universe of evidence upon which the jury as a whole was to base its deliberation. Thus, the trial judge in Nash's case did not have essential factual issues to resolve before ruling on the mistrial motion.**

Id. at 85 (emphasis added and citations omitted).

Nor was the Court of Appeals persuaded by the defense argument that individual voir dire was necessary to assure a fair and impartial jury:

> We turn now to . . . whether [the trial judge] abused her discretion by denying his motion without first "ask[ing] for or receiv[ing] any assurance that the jury's verdict would be fair, impartial, and based on the evidence after a clear indication to the contrary."
>
> **We think the range of discretion allotted to the trial judge in ensuring fairness and impartiality is greater than with respect to Nash's arguments based on presumption of prejudice and the alleged failure to resolve factual questions.** Where a presumption of prejudice applies, garnering evidence through *voir dire* to rebut the prejudice is likely the "only method" at a trial judge's disposal to ensure a fair and impartial verdict. Thus, a trial judge's failure to conduct *voir dire* in such an instance likely will be an abuse of discretion. Similarly, where there are essential factual questions that must be answered before a judge has a sufficient quantum of information on which to base the exercise of her discretion, *voir dire* of the jurors is likely the only way that the judge may obtain access to the additional information he or she needs, and, thus, a failure to *voir dire* in those circumstances constitutes necessarily an abuse of discretion. **As to the need to ensure fairness and impartiality, viewed in light of the particular facts of the present case, there was more than one avenue available to the trial judge before confronting the decision what to do with Nash's mistrial motion.**
>
> Where there exists more than one reasonable course a trial judge may take with respect to a discretionary decision, our job is not to weigh merely whether one option is better than the other. Nor is it to determine whether the trial judge's chosen course was the one we would have taken in his or her position. Our task . . . is to determine whether the route the trial judge traveled does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective, and, thus, constituted an abuse of discretion. In doing so, **we must remember the trial judge's unique role and distinct advantage in evaluating questions of prejudice to a criminal defendant . . . [an] observation [that] applies equally to the trial judge's ability to ascertain the demeanor of jurors[.]**

In light of the nature of our task, our understanding that the trial judge was the one with her "finger on the pulse of the trial," and the timing of the court's receipt of the Note, we cannot conclude that the trial judge's choice to respond to the Note by sending the jurors home and providing a curative instruction, instead of directly "ask[ing] for or receiv[ing]" an assurance of impartiality from the jurors, was an abuse of discretion. Indeed, her conclusion that the reported comment of the Subject Juror in the Note was likely a product of fatigue and her decision to send the jurors home for the long weekend was not only within the range of what is "minimally acceptable" under the circumstances, it was on point with what we suggested was an appropriate response to very similar circumstances in *Butler* [*v. State,* 392 Md. 169 (2006)]. In that case, after declining to apply a presumption of prejudice to the note stating that a particular juror "does not trust the police no matter the circumstance," we stated the following:

> In the case *sub judice*, we agree with the trial judge's assessment that the note "may just be an exhausted and frustrated reaction." As a result, his decision to allow the jury to continue deliberations may have been proper had he refrained from admonishing the juror.

Butler v. State, 392 Md. at 190.

If it was reasonable for the trial judge in *Butler* to deduce, from a note concerning a juror's lack of trust in law enforcement, that the jury was exhausted and frustrated and for that judge to allow the jury to continue deliberating without conducting *voir dire*, or otherwise asking for or receiving a direct assurance of impartiality, we cannot say that the trial judge in the present case abused her discretion. The Subject Juror's reported statement indicated that, on a Friday evening before a three-day weekend, after four days of trial, she wanted to go home. That statement is even more susceptible to interpretation as being the result of fatigue and frustration, as the trial judge in the present case inferred, than the statement at issue in *Butler*, particularly in light of the fact that the note in *Butler* came from the jury in the morning, after they had been sent home the night before to take a rest from their deliberations. *See Butler*, 392 Md. at 175-76. Thus, we cannot say here that it was grossly unreasonable for the trial judge to respond to the Note by allowing the jurors to go home for the long holiday weekend, with an additional instruction reminding them of their duties, before returning to continue their deliberations the following Tuesday.

Id. at 86-88 (emphasis added; footnotes, and some citations and quotation marks omitted).

B. The Relevant Record

The trial court shared the note from alternate juror 2 with counsel and the parties, stating, "I don't think I'm going to do anything about it." Counsel for both co-defendants expressed concern that this alternate juror "may be talking to the other jurors back in the deliberation room" or elsewhere, about being "scared, concerns about all the security." The court replied that "[i]f any of the alternates are talking in terms of this being a scary circumstance, they're free to do so."

Counsel for appellant moved both to strike the alternate and "to voir dire this particular individual to see if he or she has shared their concerns with anybody else, because I want to make sure the whole well hasn't been poisoned[.]" Counsel was worried that "her concerns about the security, about all the shootings, about Mr. Grice may also impact her view of [appellant] as well" and that "if she is placed on the jury . . . her feelings and her fears would impact her ability to be fair and impartial." He argued that even "if she does not become a member of the jur[y], it's still [a] concern that she may share her fears with the rest of the jury panel[.]"

The prosecutor, although she had "no objection to voir diring" the alternate juror, suggested moving the alternate juror's seat away from the door and that she be asked "if that would make [her] feel more comfortable." The State also opposed the defense requests to excuse the alternate based on her fears, pointing out

> for the record, trials do not exist in a vacuum. Today is July 8th, I believe. We woke up this morning to the news about the murder of five police officers at a Black Lives Matter rally in Dallas right near . . . Daily [sic] Plaza and

> the JFK Memorial [8] and then we, also yesterday, learned – last night after court learned more about two young men in other states who were African-American that . . . may have been murdered or certainly were killed by police officers. We're living in very volatile times. The Freddy [sic] Gray trial, one of them is even occurring as we speak.[9] It is what it is. We cannot create a sterile environment and change the world.

[8] As reported by *The New York Times*, the victims of the shootings referenced by the prosecutor were targeted because they were police officers:

(. . . continued)

> The heavily armed sniper who gunned down police officers in downtown Dallas, leaving five of them dead, specifically set out to kill as many white officers as he could, officials said Friday. . . .
>
> The gunman turned a demonstration against fatal police shootings this week of black men in Minnesota and Louisiana from a peaceful march focused on violence committed by officers into a scene of chaos and bloodshed aimed against them.
>
> The shooting was the kind of retaliatory violence that people have feared through two years of protests around the country against deaths in police custody, forcing yet another wrenching shift in debates over race and criminal justice that had already deeply divided the nation.

Manny Fernandez, Richard Perez-Pena, Jonah Engel Bromwich, *Five Dallas Officers Were Killed as Payback, Police Chief Says*, N.Y. Times, July 8, 2016, https://www.nytimes.com/2016/07/09/us/dallas-police-shooting.html (last visited Apr. 4, 2018).

[9] On June 23, 2016, six days before appellant's trial began, Officer Caesar Goodson was acquitted on all charges stemming from Mr. Gray's death as a result of injuries sustained while in police custody. *See* Fenton & Rector, *supra*, note 6. On July 18, 2016, five days after the verdict in appellant's trial, Lt. Brian Rice was also acquitted on all charges arising from Mr. Gray's death. *See* http://www.baltimoresun.com/news/maryland/freddie-gray/bal-transcript-of-ruling-in-lt-brian-rice-trial-20160718-htmlstory.html (last visited Apr. 4, 2018).

The trial court denied defense counsel's request to question the author of the note, but did move her seat to the other end of the jury box, farther from the door, Mr. Grice, and law enforcement officers. The court explained:

> [T]he concerns expressed by the juror of fear of crime, are not, in and of themselves, disqualifying. That they made a comment about the behavior of one of the Defendants and observed that that was intimidating. I share with you for whatever purpose you wish to make of it. I am not changing the person's view about that nor do I believe that they're [sic] observations of the people in the courtroom . . . .
>
> * * *
>
> The information has been shared with you about behavior in the courtroom and . . . watching what is being presented and the interaction between people at all times. I'm not taking any action at this time, because nothing has been presented in this note that is disqualifying. That one juror feels concern about the level of security near the door, we are moving the juror chairs to be at the opposite end of the jury.

Counsel for appellant again noted "for the record" that he was requesting that alternate juror number 2 be "stricken" and "voir dired to see if she has expressed her concerns to the rest of the jury." Declining those requests, the trial court pointed out that it had "constantly" advised the jurors "not to discuss their thoughts or observations" throughout the trial.

C. Appellant's Challenge

In appellant's view, "the prudent course of action would have been for the court to question the juror about her feelings and whether she had shared them with other jurors." Instead, the court

> failed to engage in a "meaningful inquiry" to determine what remedy, if any, was necessary and whether the jury was still capable of rendering an impartial verdict. Such an inquiry was required to assess whether alternate

> juror no. 2 discussed her concerns with other jurors, whether other jurors needed to be questioned, whether alternate juror no. 2 needed to be stricken from the panel, and potentially whether a mistrial was necessary. As a starting point, the court needed to question alternate juror no. 2 about her note generally and, specifically, whether she had discussed its content with any of the other jurors.

As discussed, appellant has the burden of persuading us that no reasonable trial judge would have failed to voir dire the alternate juror regarding the concerns expressed in her note. *See Nash*, 439 Md. at 86-88. He has not satisfied that burden.

Alternate juror 2 identified two specific things that made her uncomfortable: (1) that Grice seemed to be "looking around especially at the jurors," and (2) that she was "sitting at the last seat closest to the door with all of the security people and sheriffs coming in and out." She also told the court that she felt "like a convict" because "a couple of them are sitting right behind me." She said that she felt unsafe "with all of the killings going on in the news" and that "the courtroom is the last place that [she] should be." After discussing the note with counsel, the trial judge moved her seat to the opposite side of the jury box, putting distance between her and the law enforcement officers, Mr. Grice, and the courtroom door.

Appellant tacitly concedes that was a reasonable response and remedy for the author's concerns. In appellant's view, however, the court abused its discretion when it refused to question the alternate about whether she shared her anxieties with other jurors. The State responds that doing so would have effectively

> isolate[d] and call[ed] attention to a particular alternate juror's generalized anxiety on the off chance that she (a) had ignored every single prior admonishment of the trial court, (b) had shared her undefined sense of dread

> with the other jurors, and (c) had done so in such a persuasive fashion that the other jurors were also incapable of following the judge's instructions or of deciding the trial on the basis of the evidence. It was neither unreasonable nor illogical of the judge to decline to do so, and thus there was no abuse of discretion.

As a threshold matter, appellant mistakenly relies on *Johnson*, *Dillard*, and *Wardlaw* for the proposition that prejudice is presumed and voir dire is essential to a meaningful investigation. Those cases are inapposite because this note did not express any concerns about misconduct, either by the author or others; nor did it allege matters that raised a factual dispute. In the absence of presumptive prejudice, there was no presumptive need to individually voir dire jurors. *See Nash*, 439 Md. at 84-85.

Here, as in *Nash*, the trial court did not abuse its discretion in interpreting the alternate juror's note as being the result of concerns that could be redressed without individually questioning the juror. The trial court repeatedly instructed jurors that they were not to discuss the trial with each other before deliberations. Nothing in the note itself suggested that alternate juror 2 had shared her concerns with other jurors. Nor did the author ask to be excused from the jury or to talk with the judge.

Like the note in *Nash*, alternate number 2 "did not add to or otherwise affect the universe of evidence upon which the jury as a whole was to base its deliberation," so that the trial court "did not have essential factual issues to resolve" through individual voir dire. *See id.* at 85. Moreover, it was reasonable for the trial judges in *Nash* and *Butler* to deduce, from notes concerning, respectively, a juror's willingness to find the defendant guilty to avoid further deliberation and a juror's lack of trust in all police officers, that those

deliberating jurors were merely exhausted, and to allow those juries to continue deliberations without conducting individual voir dire. Likewise, it was perhaps even more reasonable for this trial judge to deduce that concerns about "the level of security" in the courtroom, as expressed in a note from an alternate juror, sent long before deliberations began, were "not, in and of themselves, disqualifying" and could be remedied without voir dire. We cannot say that the trial court was required to call an already anxious alternate into court for individual questioning, at the risk of escalating her fears, coercing her to change her view of Mr. Grice's behavior in the courtroom, and/or sparking "rubbernecking" from other jurors curious as to why she was being singled out by the court. Instead, the trial judge acted reasonably by simply "moving the juror chairs to be at the opposite end of the jury" and resuming trial, while observing the author for behavioral indications that she was unable to fulfill her duties.

As trial proceeded over the next two days, there were no other notes from alternate juror number 2. Nor did any other juror express anxiety about his or her safety in the courtroom. And neither defense counsel nor the court raised any further concerns about the ability of alternate juror 2 to fulfill her duties. Before deliberations began, alternate juror number 2 was excused, eliminating any risk that she might interject her concerns in rendering verdicts.

Based on this record, the trial court did not err or abuse its discretion in responding to the juror's note with a remedy that effectively resolved her concerns without individual voir dire.

III. Mistrial Motions

Appellant's final assignment of error challenges the denial of five motions for a mistrial, which all related to evidence that appellant complains was inadmissible because it revealed other crimes and bad acts by appellant. We address each ruling in turn, explaining why none merits reversal.

A. Standards Governing Mistrial Stemming from Other Crimes Evidence

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 conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Admission of such "other crimes" or "other acts" evidence is subject to three prerequisite findings: (1) that the evidence has special relevance other than to show propensity; (2) that the proponent has established by clear and convincing evidence that the prior act occurred; and (3) that the probative value of the prior act outweighs the risk of unfair prejudice. *See Skrivanek v. State*, 356 Md. 270, 291 (1999); *Wilder v. State*, 191 Md. App. 319, 343-44 (2010).

Appellate review of a decision to deny a mistrial is conducted "under the abuse of discretion standard." *Nash*, *supra*, 439 Md. at 66-67. Our benchmark for appellate relief "is whether 'the prejudice to the defendant was so substantial that he [or she] was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594-95 (1989)). In making that assessment, we are mindful that

> the trial court is peculiarly in a superior position to judge the effect of any of the alleged improper remarks. The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able . . . to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial.

Simmons v. State, 436 Md. 202, 212 (2013) (quotation marks and citations omitted).

When the erroneous admission of evidence generates a request for a mistrial, we may consider whether a timely objection or curative instruction could have prevented the prejudice about which an appellant complains. *See Carter v. State*, 366 Md. 574, 589-90 (2001); *Rainville v. State*, 328 Md. 398, 408 (1992). Courts typically consider the following factors in evaluating whether to give a curative instruction or to declare a mistrial:

> whether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Rainville, 328 Md. at 408 (citation omitted).

Rainville provides an instructive example of an inadequate corrective instruction. In that case, the defendant was on trial for sexually abusing a seven-year-old girl. *Id.* at 409. When the prosecutor asked the victim's mother to describe the child's "demeanor when she told you about the incident[,]" the witness unexpectedly responded that her daughter "was very upset" but "came to me and she said where [the defendant] was in jail for what he had done to [the victim's brother] that she was not afraid to tell me what happened." *Id.* at 401. The trial court denied a mistrial and instead instructed the jury to

disregard the mother's testimony regarding the alleged incident involving the brother. *Id.* at 402.

The Court of Appeals reversed. *Id.* at 411. Even though the prosecutor's question and the trial court's curative instruction were "appropriate," the inadmissible information was not repeated, and the mother was not the State's primary witness, nevertheless, "informing the jury" about the defendant's incarceration for a crime against another child "almost certainly had a substantial and irreversible impact upon the jurors," so that "no curative instruction, no matter how quickly and ably given, could salvage a fair trial for the defendant." *Id.* at 410-11.

B. Appellant's Challenges

Appellant contends that the trial court erred in denying the five requests for a mistrial discussed below, because "the pervasive unfair prejudice created by" such portrayals of him as a "bad" individual who "had a reputation for lawlessness," impermissibly "injected an egregious array of bad-acts/other-crimes evidence into the proceedings[.]" The State responds that although defense counsel "demanded mistrial at every opportunity," "many of these requests were untimely," and in any event, none of these circumstances "demonstrate an overall lack of a fair trial justifying a new trial in this case." We shall consider each motion in the context it arose.

1. First Mistrial Motion: Opening Statement by Co-Defendant Grice

Appellant argues that a mistrial was warranted at the outset of the trial, after counsel for co-defendant Grice told the jury in opening: "When [appellant] gets in a jam, which he

tends to do a lot . . . he calls [Grice] and that's exactly what happened in this and you're going to hear about it." The trial court overruled appellant's general objection. The next morning, counsel for appellant, while renewing his motion to sever the trials of appellant and Grice, moved for a mistrial, arguing that the challenged argument impermissibly "implied that my client is a person that frequently gets into trouble" and "that he's a person of bad character" who "has committed prior bad acts on frequent occasions." The court denied the motion, concluding that counsel for Grice "did not go over any line in speaking about helping people out when they're in a jam. All of us have had that experience. It is not in any way reflective of prior bad acts."

Like closing arguments, remarks made by counsel in opening statements must be read in context, as "the jury would naturally interpret" them. *See Oken v. State*, 343 Md. 256, 295 (1996).

> The primary purpose or office of an opening statement in a criminal prosecution is to apprise with reasonable succinctness the trier of facts of the questions involved and what the State or the defense expects to prove so as to prepare the trier of facts for the evidence to be adduced. While the prosecutor should be allowed a reasonable latitude in his opening statement . . . his opening statement should not include reference to facts which are plainly inadmissible and which he cannot or will not be permitted to prove[.]

Wilhelm v. State, 272 Md. 404, 411-12 (1974), *abrogated on other grounds, as recognized in Simpson v. State*, 442 Md. 446, 458 n.5 (2015).

Here, the court reasonably concluded that the jury, which had been instructed that opening statements are not evidence, would not misinterpret and misapply the challenged remark that appellant routinely asked Grice for help when he "gets in a jam" to mean that

he is a "bad person" who "frequently" commits crimes or other "bad acts." Counsel's reference to "a jam" simply does not connote that appellant had a criminal history. Moreover, as the court pointed out, turning to a friend in times of difficulty is so common that nearly "[a]ll of us have had that experience." Accordingly, the trial court did not abuse its discretion in ruling that the challenged remark did not refer to inadmissible evidence of appellant's "bad character" and therefore did not merit a mistrial.

2. Second Mistrial Motion: Direct Examination of Ms. Paige by the Prosecutor

Appellant's next three requests for a mistrial occurred during the testimony of co-conspirator and key prosecution witness Labria Paige, who was with appellant and Grice before and immediately after the murder. On direct, Ms. Paige explained why she initially lied to police about what happened, as follows:

> [Prosecutor]: Why didn't you tell the police the truth back in 2014?
>
> [Ms. Paige]: Because I was scared.
>
> * * *
>
> [Prosecutor]: Did there come a time that you decided to stop lying and tell the truth?
>
> [Ms. Paige]: Yes.
>
> [Prosecutor]: And why did you decide to do that?
>
> [Ms. Paige]: **Because they was locked up.**
>
> [Prosecutor]: What's that got to do with anything?
>
> [Ms. Paige]: **I was locked up. They was locked up. Wasn't nothing nobody could do to me at that point. I wasn't scared because they was incarcerated.**

(Emphasis added.)

After the prosecutor completed her direct examination, counsel for appellant moved for a mistrial on the grounds that the jury had been informed that appellant was incarcerated and that Ms. Paige had implied that keeping him incarcerated would keep the community safe. The trial court denied the motion because "[t]here was no objection" and the witness "answered a question that was presented in a relatively logical way."

This was not an abuse of discretion for several reasons. Having failed to object to the testimony at the time it was given, when the trial court could have taken curative measures, appellant waived any claim that it was so patently prejudicial that the trial court's failure to exclude it deprived him of a fair trial. *See* Md. Rule 4-323(a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived."). In this regard, appellant asks us to extend the holding in *Height v. State*, 185 Md. App. 317, 337 (2009)(emphasis added), that "objections to improper **argument** are timely if interposed . . . immediately after the argument is completed[,]" so as to excuse his failure to object to the **evidence** that he belatedly challenged via his motion for a mistrial, made after the conclusion of Ms. Paige's cross-examination. *See Curry v.* State, 54 Md. App. 250 (1983). We reject appellant's contention that his motion for a mistrial was sufficient to preserve his right to obtain appellate relief based on testimony to which he did not lodge a contemporaneous objection. A contrary ruling would undermine the contemporaneous objection rule. That rule exists to prevent the necessity of a mistrial by

requiring counsel to bring allegations of error to the attention of the trial court "in real time," so that error can be avoided or remedied. *Cf. Perry v. State*, 357 Md. 37, 77 (1999) ("The requirement of a *contemporaneous objection* is a necessary and salutary one, designed to assure both fairness and efficiency in the conduct of trials. A party cannot be permitted to sit back and allow the opposing party to establish its case, or any part of its case, through unchallenged evidence and then, when it may be too late for the opposing party to recover, to seek to strike the evidence."); *Prince v. State*, 216 Md. App. 178, 194 (2014) ("the objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time").

In any event, to the extent Ms. Paige referred to appellant being "locked up" on the murder charges for which he was on trial, that testimony did not constitute evidence of "other" crimes or bad acts and was relevant to explain why she initially lied to police about appellant's role in the murder. Likewise, Ms. Paige's fear of appellant and Grice did not refer to other crimes or acts.

3. Third Mistrial Motion: Cross-examination of Ms. Paige by Appellant's Counsel

Appellant's next mistrial motion occurred during the cross-examination of Ms. Paige when counsel for appellant sought to impeach her credibility by establishing that she had mental health problems that included hallucinations, as well as prior convictions for assaulting corrections officers. Appellant cites to the following portions of the transcript:

> [Counsel for appellant]: Ma'am, during your [competency] evaluation, Dr. Heller, he asked you questions about your statements to the social worker about hallucinating; isn't that correct?

[Ms. Paige]: Huh?

[Counsel for appellant]: Do you recall Dr. Heller, when he interviewed you, asking you questions about your statements to the social worker concerning hallucinating?

[Ms. Paige]: I was just lying because **I wasn't safe at NCIW, so I was going to go to – try to go to Perkins because I was dealing with a lot of gang retaliation because they're BGF, so I was dealing with a lot of gang retaliation.**[10] So that's why I went in there and did that for my safety. But the officer, correctional officer, told me if I keep acting like that I'm going to lose custody of my kids, my passport I will never get, and I'm not going to be able to get my driver's license, so that's why I cut the crap.

[Counsel for appellant]: So it's your testimony that you lied about the hallucinations because you wanted to be moved to a mental health hospital; is that your testimony?

[Prosecutor]: Objection.

[Ms. Paige]: I wanted to be safe. I don't care where the hell they move me. **I've been dealing with a lot of retaliation this incarceration.**

[Counsel for appellant]: So it's your testimony that you lied about the hallucinations because you wanted to be moved to another institution?

[Ms. Paige]: **My life was in jeopardy.**

[Counsel for appellant]: **Ma'am, you keep on saying that your life is in jeopardy, but isn't it true that you were moved from institution to institution because of your assaults on various DOC officers?**

[Ms. Paige]: The first time . . . . I actually got beat up by officers, got a broken foot, and that's why I was moved . . . for safety reasons.

[Counsel for appellant]: But Ms. Paige, you were the one who was convicted of assaulting . . . a correctional officer . . . . on September 3rd, 2015; isn't that correct?

[10] Ms. Paige's shorthand references are apparently to the Maryland Correctional Institutional for Women ("MCIW" rather than "NCIW"); the Clifton T. Perkins Hospital Center ("Perkins"), Maryland's forensic psychiatric hospital; the Black Guerilla Family ("BGF"), a criminal gang; and the Maryland Department of Corrections ("DOC").

* * *

[Ms. Paige]: Oh. You talking about Denise Bowie . . . she assaulted me . . . .

* * *

[Counsel for appellant]: Ma'am, isn't it true you were convicted again of assaulting a correctional officer . . . . on June 20th, 2016.

[Ms. Paige]: They all think I killed Ramon or they – it's Brandon got his crazy correctional officers that was coming to my house getting money from me to take drugs into the prison before he even got locked up, giving me a hard way to go. I been dealing with a lot. I haven't seen my kids because **Brandon's getting people – telling people things about me and Teddy, all types of stuff, immature behavior because they trying to get me killed because they don't want me to testify.**

(Emphasis added.)

When counsel for appellant then turned the questioning to police interviews, Ms. Paige again referred to prior conduct by appellant. She explained, again without objection, that even though homicide detectives "came to [her] grandparents' house" on May 27, 2014, to take her "to the Homicide Unit to be questioned," "it wasn't for" the murder of Ramon Wilder, "[i]t was **because of [appellant] hitting the Mexican.**" (emphasis added). Regarding her meeting with police on June 5, 2014, Ms. Paige denied being "scared of the detective," testifying instead that she "was scared of dying from telling the truth."

Later, as counsel for appellant attempted to impeach Ms. Paige's credibility by portraying her as a spurned lover, the following exchange occurred:

[Counsel for appellant]: You know who Laronda (phonetic) is, right?

* * *

[Ms. Paige]: Oh, the girl he was having sex with in my bed? Yes, I do know who she is.

* * *

[Counsel for appellant]: On June 5th, 2014 when you met with detectives, you told them that you saw pictures of Brandon with Laronda on Instagram, correct?

[Ms. Paige]: Yes, I probably did.

* * *

[Counsel for appellant]: And you believed that back in May of 2014, Brandon was cheating on you with Laronda; isn't that correct?

[Ms. Paige]: Actually, I spoke with her the day [i]n May the – the day before Ramon was killed, and I didn't believe it at first. And she was like I was in your house. I was in your bed. I said so if you know where I live at, come to my house. And she pulled up outside, and that's when my father talked to Brandon and had told him Ramon was at my house. And I was talking to Laronda, and she was showing me all the text messages in her phone. And **that's when he beat me up after that** when I pulled up in front of Breauna house and told me about Ramon. That's how all this stuff even happened and started from the beginning.

[Counsel for appellant]: When you met with the detectives and with the state's attorney back in February 2016, you told them that you believed that Brandon was cheating on you with Laronda; isn't that correct?

[Ms. Paige]: That's what Laronda said. Yes.

[Counsel for appellant]: And you were not happy about Brandon seeing Laronda behind your back; isn't that true?

[Ms. Paige]: **I was doing Mee (phonetic) when he cut the box off, so I really wasn't worried about what he was doing.** In fact, I got a letter that he wrote talking about a guy that was on my Instagram –

[Counsel for appellant]: **Objection, Your Honor. Nonresponsive.**

THE COURT: Better present the next question then.

(Emphasis added.)

Except for that lone objection, defense counsel initially did not challenge any of the testimony appellant now contends was so nonresponsive and prejudicial that it required a mistrial. Instead, counsel waited until the next day to move for a mistrial, complaining that Ms. Paige

> started to talk about how Mr. Wilder [appellant] cut off the box. She started talking about how both Mr. Wilder and Mr. Grice are incarcerated. She started talking about how Mr. Wilder was trying to hurt her at the jail. She started to talk about how Mr. Wilder is part of BGF.
>
> The questions on cross, as well as direct, in no way opened the door or elicited such responses. This witness was completely off the chain. Time and time again, she would respond to legitimate impeachment questions about prior inconsistent statements, both in letters and in statements to the police with non-responsive answers about other crimes evidence.

The State responded that appellant

> can't strategically decide not to object to answers that . . . he perceives, although I do not share that perception, as unresponsive to his questions and wait until the next day and then move for a mistrial. He has chosen not to preserve his objections for appeal and, instead, asks for a draconian remedy, whereas he could have strategically chosen to object the first time he thought something inappropriate happened.
>
> We could have asked the Court to instruct the witness to confine her answers to the questions asked and could have asked to approach the bench, had the witness admonished, had the jury instructed. All those things are normal proper remedies for perceived misconduct on the part of a witness.
>
> In point of fact, I have stressed on the record that I have told all of my witnesses not to bring up any forboden (sic) subjects such as prior crimes, gang activity and the like or other crimes for which these Defendants are currently standing trial – standing charged on direct examination. . . .
>
> Perhaps, if Counsel had, at the first question that he didn't like the answer to, approached and asked the Court to set some limits and to advise the witness, we wouldn't have the problems he's protesting. However, . . . I think all of the answers were responsive. The problem with cross-

> examination . . . [is] he took some risks. He got some answers he didn't like and that is not a basis for a mistrial.

The trial court denied a mistrial, ruling

> that the examination and cross-examination resulted in questions fairly well-directed to the question that was asked. There were a few stray phrases or clauses, but no long-involved answers. There was no request to strike them.
>
> The one example was mentioning "cut off the box." I specifically put it in my notes with a question mark and there was no reference to who had the box on and who cut the box off. I thought, my initial impression was, she had the box and that he cut if off. Even still, I don't see any substantial prejudice that resulted and certainly the day after granting a mistrial is not the appropriate solution, so your motion is denied.

The trial court did not abuse its discretion in denying a mistrial on these grounds. The challenged testimony, including Paige's references to appellant's gang membership, was responsive to appellant's cross-examination. Because appellant failed to either object or move to strike it, appellant has not preserved his complaints for appellate review. *See* Md. Rule 4-323(a). In summary, for all of the reasons ably articulated by the prosecutor, we agree with the trial court that waiting until the following day to seek relief based on the "other crimes" nature of the evidence was not an "appropriate solution."

As for the lone preserved objection to Ms. Paige's testimony that "he cut the box off," appellant is limited to his complaint that it was nonresponsive. *See, e.g., Klauenberg*, 355 Md. at 541. Quite obviously, the fact that a witness gives an unresponsive answer, in and of itself, did not warrant the grant of a mistrial. Moreover, an answer that someone "cut off the box" on its face is unintelligible and for that reason alone didn't suggest that appellant had engaged in some crime or other act. Accordingly, the trial court did not abuse

its discretion in denying appellant's belated request for a mistrial following his cross-examination of Ms. Paige.

3. Fourth Mistrial Motion: Cross-examination of Ms. Paige by Counsel for Grice

Appellant again sought a mistrial during the cross-examination of Ms. Paige by counsel for co-defendant Grice. Like appellant, Grice also sought to impeach Ms. Paige's account of the murder by eliciting much of the same information about: 1) what she told police, (2) why she lied, and (3) why she changed her story. In discussing her fear of Grice and Wilder, Ms. Paige referred to other violent and criminal acts.

The court sustained objections to testimony that appellant attempted to kill a "Mexican" individual, as well as references to appellant's incarceration and that he "cut[] off the box."[11] Yet the trial court overruled objections by counsel for appellant, to testimony that Ms. Paige did not have access to her cell phone at a certain point because appellant "had beat me up and took the phone" and that appellant "beat [her] up, basically, about Ramon being at [her] house." Similarly, the court overruled appellant's objection when Ms. Paige, testifying about a claimed attack that was "set up" by members of criminal gangs, again stated that appellant and Grice were "BGF." Regarding her conviction for assaulting a corrections officer, Ms. Paige again testified, this time over appellant's objection, that she was the victim of a "BGF hit" to "make [her] look bad."

[11] In neither his opening nor reply brief does appellant provide even a hint as to what the witness meant when she said that someone "cut off the box."

Although some of appellant's objections were sustained, defense counsel requested a mistrial based on the testimony about appellant's gang affiliation, incarceration on another charge, prior assault of the witness, and other evidence of bad acts. Counsel for appellant argued that "[o]ne of the facts that is certain to stick in the jury's minds . . . is that Mr. Wilder is accused of attempted murder for running somebody over." Because "[t]hat bell cannot be unrung," and the "the jury would be much more likely to convict because they would believe that he's a dangerous person with bad character[,]" counsel argued that appellant could not "possibly receive a fair trial."

The court denied the motion, explaining:

> I believe that I have minimized all of these [forays] off of the focus path and have made very clear to the jury that it's not part of their consideration and I am exercising my discretion in the belief that the jury is following my instructions to the letter as they seem to.
>
> Before I turn to them and say "disregard that," they seem to be basically shaking their head disregarding it already. It's my assessment of the evidence and the dynamic that is going on here that nothing that will be improperly prejudicial to the Defendant has happened yet.

We conclude that the trial court did not err in denying a mistrial based on the challenged testimony by Ms. Paige under cross-examination by Grice's attorney. Appellant cannot complain that he was deprived of a fair trial on the ground that the jury considered the same information that was previously elicited from Ms. Paige, without objection, by appellant's own defense counsel. *See generally DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection"). This includes the testimony regarding

appellant's BGF affiliation, his incarceration, and his prior assaults against Ms. Paige and a "Mexican" individual. Because that testimony was responsive to the impeachment inquiry and previously admitted without objection, it did not warrant a mistrial. *See id.* With respect to other evidence excluded by the court, the trial court did not abuse its discretion in concluding, based on its observations of the jury's reactions to curative and limiting instructions not to consider such evidence, that a mistrial was not warranted. *See generally Dillard v. State*, 415 Md. 445, 465 (2010) ("Jurors generally are presumed to follow the court's instructions, including curative instructions").

4. Fifth Mistrial Motion: Cross-examination of Det. Miller by Counsel for Grice

Lastly, appellant complains that the trial court abused its discretion in denying his request for a mistrial based on evidence of other crimes elicited during cross-examination of Detective Frank Miller. When counsel for Grice elicited the detective's testimony that Grice was stabbed while in custody awaiting trial, the trial court sustained objections by both the State and appellant, struck that testimony, and instructed the jury not to consider it. Grice's attorney then asked the detective whether Ms. Paige told him that she and appellant wanted to kill Grice. Detective Miller denied she made that statement. The court thereafter sustained appellant's objection to a follow-up question about "eliminat[ing] the witness."

Appellant moved for a mistrial on the basis of this "other crimes" testimony. The trial court denied the motion, "exercising [its] discretion" that after sustaining objections to the stabbing evidence, striking that testimony, making it "very clear to the jury that it's

not part of their consideration," and admitting the detective's testimony that Ms. Paige did not say that she and appellant sought to kill Grice, the jury would "follow [its] instructions to the letter as they seem to" in other respects. On this record, we cannot say a mistrial was required as a matter of law. Because this was not a situation like the one that existed in *Rainville, supra*, in which a curative instruction could not possibly be effective in remedying prejudice, the trial court did not abuse its discretion in concluding that the jury could and would follow its instructions not to consider such evidence.

5. Cumulative Prejudice

Whether appellant's motions are considered by themselves or collectively, the trial court did not abuse its discretion in denying a mistrial, because, as the State points out, "[f]ive times nothing 'is still nothing.'" (quoting *Gilliam v. State*, 331 Md. 651, 686 (1993)) ("This is not a case where the cumulative effect of numerous interrelated errors in aggregate amount to inadequate representation. This is more a case of the mathematical law that twenty times nothing is still nothing."). As discussed, appellant's first three mistrial motions stemmed from challenges to argument or evidence that was either not objectionable, was elicited by appellant, or could have been excluded or cured if a timely objection had been made. In the fourth and fifth motions, appellant again belatedly sought the windfall of a mistrial based on evidence that was either previously admitted or successfully excluded. Because none of appellant's demands for a mistrial warranted such relief, the trial court did not abuse its discretion in denying those motions.

JUDGMENT AFFIRMED. COSTS TO BE PAID BY APPELLANT.