

Circuit Court for Anne Arundel County  
Case No. C-02-CR-23-001327

UNREPORTED\*  
IN THE APPELLATE COURT  
OF MARYLAND

No. 1945

September Term, 2023

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ANTONIO MIGUEL WESTMORELAND

v.

STATE OF MARYLAND

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Leahy,  
Zic,  
Raker, Irma S.  
(Senior Judge, Specially Assigned),

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Opinion by Raker, J.

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Filed: April 18, 2025

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In the Circuit Court for Anne Arundel County, appellant, Antonio Westmoreland, was convicted of second-degree assault and reckless endangerment. After multiple sustained objections to improper witness testimony, the court denied appellant’s motion for a mistrial.

Appellant presents the following question for review:

“Did the court abuse its discretion in denying Appellant’s motion for mistrial after the complaining witness repeatedly testified to alleged prior damage to her property by Appellant despite the court ruling that such testimony was inadmissible and instructing the State and the witness accordingly?”

Finding no abuse of discretion, we shall affirm.

## I.

By statement of charges, appellant was charged with fourth-degree burglary, second-degree assault, reckless endangerment, and malicious destruction of property. After a two-day jury trial in the Circuit Court for Anne Arundel County, the jury convicted appellant of second-degree assault and reckless endangerment and acquitted him of fourth-degree burglary and malicious destruction of property. The court imposed a total sentence of 10 years’ incarceration, suspended all but 5 years, followed by 3 years’ probation.

The charges arose from an alleged altercation between appellant and his former girlfriend, Darshinika Allen. Ms. Allen accused appellant of following her into her home on April 15, 2023, physically attacking her and destroying her cell phone. According to appellate counsel, although appellant did not testify in the case, his “theory of the case”

was that there was a reasonable doubt whether appellant was at the property, and he asserted that there were no witnesses to the event, no video recording, even though Ms. Allen alleged the event had been recorded, no medical treatment and no visible evidence showing a physical altercation. Ms. Allen told police that she had video footage of some of the incident from her outdoor home security camera but did not produce this for trial.

Prior to trial, the State sought a ruling permitting the State to produce evidence of prior abusive behavior that allegedly occurred in February 2023, involving appellant pushing Ms. Allen and threatening her life. The court denied the State’s motion titled “Motion in limine to Introduce 404(b) Evidence,” finding that the evidence would be more prejudicial than probative in this case. The State agreed to instruct Ms. Allen that she may testify only to the incidents occurring on April 15, 2023. The State represented, “I will instruct Ms. Allen prior to her testifying that the scope—it is clear on the record that she cannot testify about anything else.”

At trial, Ms. Allen testified that she was in a romantic relationship with appellant that ended after less than a year in January or February 2023. Ms. Allen testified that on the morning of April 15, 2023, she saw appellant pull up to her house via a security camera she had installed outside her garage, and that when he exited his vehicle, he began kicking her front door. She told appellant to leave her home by speaking through her security camera. She testified that appellant “smacked the camera, like smacked it and turned it some so [she] couldn’t really see anymore.”

Ms. Allen, thinking appellant left her property, went downstairs and left her house to see what damage appellant may have done. She testified as follows:

“[STATE]: Okay. So what happened—well, let me ask you this. Why did you go downstairs at that point?

MS. ALLEN: Because I knew he was outside. *He damaged property before, so—*

[DEFENSE COUNSEL]: Objection.

[COURT]: Sustained.”

Following this objection, Ms. Allen again repeated that appellant had damaged her property previously, prompting defense counsel to request a mistrial.

“[STATE]: So why did you go—

MS. ALLEN: I—

[STATE]: —on this day?

MS. ALLEN: On this day, I went out because he was outside of my home, and *I wanted to make sure he didn’t damage more property.*

[STATE]: Okay.

MS. ALLEN: So when he smacked the camera, I couldn’t see pretty much anything. So *I went outside to check my cars, which he has damaged before.*

[DEFENSE COUNSEL]: Objection.

[COURT]: Sustained. Counsel, approach.”

At the bench, the following colloquy took place:

“[COURT]: She has been instructed, right?

[DEFENSE COUNSEL]: She is doing it on purpose. I ask for a mistrial, Your Honor. If you instructed her and she is still doing it, she is going against the Court's order.

[COURT]: Well, the objections have been sustained. All right, your request for a mistrial is denied. I am going to instruct the jury to disregard her answers. The denial of a mistrial is not going to stay the same if she keeps doing this, [State], so I don't know if we need to take a break with the jury so that you can reinstruct her again.

[STATE]: Whatever Your Honor prefers. If we think that might resolve any further issues, I am happy to instruct her again.

[COURT]: All right, step back."

The court instructed the jury to disregard any statement by this witness that does not relate to the April 15<sup>th</sup> incident.

Ms. Allen's testimony resumed, stating that appellant chased her into her house and that he prevented her from closing her front door by jamming "his leg and foot in and pushed his way inside [her] house." Once appellant entered her home, Ms. Allen testified that he put his hand around her neck, choking her, and hitting her in the face with his other hand. She testified that he took her phone from her, threw it on the ground, and left.

Ms. Allen testified during cross-examination that appellant damaged her vehicle before April 15, 2023, stating as follows:

"[DEFENSE COUNSEL]: So your testimony is that [appellant] was in your driveway, and then you came down and you actually walked out. You couldn't see him? Because you can see your driveway. You already testified to that.

MS. ALLEN: So—um-hum. So I could not see him there. I did not. I was walking out, and I looked to the left of my Lexus to

look at my cars to see what damage he did. And I did not see him at that time.

[DEFENSE COUNSEL]: To what damage he did? What, he damaged your car that day?

MS. ALLEN: *At that time he did not, but he previously did.*

[DEFENSE COUNSEL]: May we approach?”

During the bench conference, defense counsel argued that Ms. Allen violated the court ruling that she could speak only about the events on April 15, 2023, that she answered beyond the scope of the question, and again requested a mistrial. The State contended that defense counsel invited Ms. Allen to speak about prior damage to her vehicle. The trial court denied the motion for a mistrial but agreed that Ms. Allen spoke beyond the scope of the question. The court excused the jury and instructed Ms. Allen to only speak about events on April 15, 2023. The court explained that it had a responsibility to provide a fair trial to appellant, stating “it is my job to make sure [appellant] gets a fair trial. And bringing up incidents that did not happen on the date of these charges is not fair.” Ms. Allen agreed and said she understood. The jury returned and defense counsel resumed cross-examination.

After testimony from Corporal Reilly that Ms. Allen was upset when she spoke with him and that she had minor redness on her neck, the State rested its case. The defense presented no witnesses.

Appellant was convicted as indicated above and filed a motion for a new trial, pursuant to Maryland Rule 4-331, arguing that Ms. Allen’s three instances of testifying

outside the permissible scope warranted a new trial. The court denied the motion, ruling as follows:

“The motion for a new trial is denied. The Court did review the record of the proceedings. Does note that the first occasions when the witness referenced prior incidents between her and the [appellant], the Court sustained the objection and struck the testimony. In the second instance, the Court similarly sustained the objection and ordered the testimony stricken.

After the third instance, the Court excused the jury to instruct the witness that she could not reference any incident prior. The Court does believe that those instances of corrective action on the part of the Court were appropriate, and so the motion for new trial is denied.”

Appellant was sentenced as indicated above and this timely appeal followed.

## II.

Before this Court, appellant argues that the trial court abused its discretion in denying appellant’s motion for a mistrial after Ms. Allen ignored the court’s ruling three times and testified about damage to her property allegedly caused by appellant in a prior incident. Appellant asserts that Ms. Allen’s testimony provided details to the jury that tainted appellant’s right to a fair trial by indicating unfairly he had a history of damaging Ms. Allen’s property. Appellant argues that Ms. Allen’s credibility was a crucial issue in the case, there were no independent witnesses to the alleged assault, and that although she testified that the assault was recorded by a camera outside her home, she never gave that recording to the State. In sum, appellant argues that the prejudicial references were not

isolated remarks, and were repeated, inadmissible assertions of appellant's alleged prior bad acts that infected appellant's trial, depriving him of a fair and unbiased jury.

Appellant argues that the State cannot demonstrate the error was harmless beyond a reasonable doubt. Appellant asserts that the court's limiting instruction was not sufficient to outweigh the cumulative effect of the complaining witness's testimony about alleged prior bad acts by appellant.

The State argues that appellant has failed to demonstrate that the trial court abused its discretion in denying his motion for a mistrial and the remarks were not highly prejudicial such that they manifestly necessitated the extraordinary remedy of a mistrial. The State notes that the trial court's curative instruction to the jury was prompt, clear, and effective, as evidenced by the jury split verdict in which it found appellant not guilty of two counts, including a count of malicious destruction of property, a similar crime to the improper comments.

In its brief, the State appears to be arguing that the evidence of prior abusive incidents was admissible and relevant to demonstrate motive, intent and identity. However, we will not review the correctness of the trial court's evidentiary ruling on admissibility of the prior events and decide this case solely on the abuse of discretion in denying the mistrial motion.

### III.



It has often been said that a mistrial is a drastic remedy, warranted when trial error results in substantial prejudice to defendant, depriving him or her of a fair trial. *See, e.g., Cooley v. State*, 385 Md. 165, 173 (2005). Whether a mistrial should be granted is within the sound discretion of the trial court, and the denial of a motion for a mistrial will not be disturbed absent an abuse of discretion. *See Simmons v. State*, 436 Md. 202, 212 (2013). Recognizing that the trial judge has a greater vantage point from which to evaluate evidence and witness testimony for prejudice, we review a trial court’s decision to deny a mistrial for abuse of discretion. *Wilhelm v. State*, 272 Md. 404, 429 (1974). The decision by the trial court to deny a mistrial will not be reversed on appeal unless it is clear that there has been prejudice to the defendant. *See Rainville v. State*, 328 Md. 398, 408 (1992); *Wright v. State*, 131 Md. App. 243, 253 (2000).

Moreover, impermissible reference to other crimes is subject to a harmless error analysis. *See Urbanski v. State*, 256 Md. App. 414, 439 (2022) (noting that potential prejudice from other crimes evidence is reviewed “through the lens of harmless error”). Errors are harmless if we can say, beyond a reasonable doubt, that the error did not contribute to the guilty verdict. *Gonzalez v. State*, 487 Md. 136, 184 (2024) (noting appellate courts do not reverse on a trial court’s error or abuse of discretion where the court’s error or abuse of discretion did not influence the verdict.)

A mistrial is “an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.” *Wright*, 131 Md. App. at 253. Appellant must show significant and substantial

prejudice to justify a reversal of the trial court’s decision. *See Wagner v. State*, 213 Md. App. 419, 462-63 (2013). The significant question here is “whether the evidence was so prejudicial that it denied the defendant a fair trial,” such that “the damage in the form of prejudice to the defendant transcended the curative effect of the instruction, . . .” *Kosmas v. State*, 316 Md. 587, 594 (1989). To constitute an abuse of discretion, the trial court’s decision must be “well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Nash v. State*, 439 Md. 53, 67 (2014) (citations and internal quotation marks omitted).

The Supreme Court of Maryland has adopted the following factors a court should consider when determining whether a mistrial is warranted after the jury hears inadmissible evidence: (1) “whether the reference to the inadmissible evidence was repeated or whether it was a single, isolated statement”; (2) “whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement”; (3) “whether the witness making the reference is the principal witness upon whom the entire prosecution depends”; (4) “whether credibility is a crucial issue”; and (5) “whether a great deal of other evidence exists.” *Rainville*, 328 Md. at 408 (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). We are mindful that in analyzing these factors “no single factor is determinative in any case, nor are the factors themselves the test. . . . Rather, the factors merely help to evaluate whether the defendant was prejudiced.” *McIntyre v. State*, 168 Md. App. 504, 524 (2006) (internal citations omitted).

This case presents the unusual situation where the complaining witness for the State had been instructed by the prosecutor and the trial court before testifying not to mention any prior incidents related to appellant. Notwithstanding that admonition, and defense counsel's objections, which the court sustained, the witness three times mentioned the prior unlawful incident with appellant. Given the trial court's pre-trial ruling that the evidence was not admissible, and the prosecutor's admonitions, the witness was clearly wrong in repeatedly testifying to what is characterized in Maryland law as other crimes evidence.

Were we to stop here in our analysis, we might conclude that the trial court abused its discretion in denying appellant's motion for a mistrial. But the law is clear that the analysis does not end with the purported misconduct of the witness. We must look to the prejudicial impact of the evidence and whether the error, if error, was harmless.

Here, there is no evidence that the prosecutor elicited the evidence intentionally. In fact, the record supports a finding that the prosecutor admonished the witness to refrain from discussing evidence of earlier incidents. We look to the evidence in the case and any possible prejudice.

The only evidence before this jury was the evidence presented by the State, and cross-examination of the witnesses by defense counsel. Ms. Allen was the only witness testifying about the alleged abuse and the assault. The court gave the jury a cautionary instruction to disregard any evidence other than the evidence of the date of the charged assault. The State introduced photographic evidence of Ms. Allen's bruises and the 911 call after the incident. While Ms. Allen's credibility was at issue, as are all trial witnesses, there

was no significant evidence presented to impeach her credibility, other than perhaps her failure to give the garage video to the State. She explained at trial that she did not provide it because it did not show anything of value. There was no evidence to the contrary that an assault took place. In addition, the jury acquitted appellant of two charges, the malicious destruction of property, and fourth-degree burglary, indicating that the jury considered the evidence presented at trial and was not influenced by any comments made by Ms. Allen as to any previous event.

One fact gives us pause. That is the judge’s comment after the second statement. The court stated “[t]he denial of a mistrial is not going to stay the same if she keeps doing this, [State], so I don’t know if we need to take a break with the jury so that you can reinstruct her.” It is clear, from the outset, that the trial judge was intent in ensuring appellant a fair trial. Simply because the trial judge failed to follow through with her “threat” to perhaps grant a mistrial if the witness’s behavior continued does not lead to the inevitable conclusion that the judge abused her discretion in not granting the mistrial after the third event. As we have noted, the trial judge is in the best position to determine what prejudice, if any, ensues from improper testimony. *See, e.g., State v. Hawkins*, 326 Md. 270, 278 (1992) (“The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters.”).

Notwithstanding the judge’s comment, and, considering all the evidence presented at trial, the court’s cautionary instruction to the jury, and the jury’s verdict, we hold that the court did not abuse its discretion in denying appellant’s motion for a mistrial. Moreover,

any error, if there was error, was harmless beyond a reasonable doubt as the witness's improper remarks did not contribute to the guilty verdict.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR ANNE ARUNDEL  
COUNTY AFFIRMED. COSTS TO BE  
PAID BY APPELLANT.**