UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0332

September Term, 2015

RICK A. JEAN

v.

STATE OF MARYLAND

Wright,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: April 8, 2016

Rick A. Jean ("Jean"), in February of 2015, was convicted by a jury in the Circuit Court for Montgomery County of one count of possession of a controlled dangerous substance with intent to distribute and two counts of distribution of a controlled dangerous substance. After sentencing, Jean filed this timely appeal in which he raises two issues that he phrases as follows:

> 1. Whether the trial court erred when it prevented defense counsel from impeaching the State's key witness to demonstrate her potential bias in light of the highly favorable charge she received from the State.
>
> 2. Whether the trial court abused its discretion by not granting a mistrial after the [S]tate asked a question that implied the appellant had a propensity to deal drugs.

Finding no error, we shall affirm Jean's convictions.

I.
THE STATE'S EVIDENCE

A. Testimony of Officer Jonathan Green

On April 14, 2014, Montgomery County Police Officer Jonathan Green was conducting narcotics surveillance in the area around Maple Leaf Drive and Shadow Oak Drive in Montgomery Village, Montgomery County, Maryland. At approximately 6:00 p.m., Officer Green observed a woman, whom he later discovered to be Sharon Hite, drive into the area. He then saw her double-park her vehicle. After a few minutes, another car approached the area and double-parked behind Ms. Hite's car. Using binoculars he saw a man get out of the second car and walk up to Ms. Hite's vehicle. In court, he identified that man as Jean. The officer then saw Ms. Hite speak to Jean. According to Officer Green,

Jean then leaned against Hite's car, reached his hand briefly into her vehicle, and walked back to his automobile. Both Jean and Ms. Hite then left the area. Officer Green followed Ms. Hite's automobile and stopped it. During the course of that stop, Ms. Hite told Officer Green that she had purchased cocaine from Jean. Later she gave Officer Green the baggie of cocaine she had just purchased.

II.
B. Testimony of Sharon Hite

As of April 14, 2014, Sharon Hite had known Jean for approximately three years. On that last mentioned date, Ms. Hite texted Jean in order to set up a meeting so that she could buy drugs from him. As a result of the text message, the two made contact and arranged to meet "[o]ff of Montgomery Village Avenue." When she arrived at the address, she called Jean on her cell phone to find out exactly where he was at that moment. While Ms. Hite was still in her car, Jean approached her vehicle, reached into her car, and gave her a baggie of "coke." Ms. Hite gave Jean $40. Jean said nothing and left in his car. Shortly after the aforementioned transaction, she was stopped by a police officer and interviewed by him. She told the officer that she had just purchased cocaine from Jean. She then gave the cocaine she had bought to the officer.

C. Other Evidence Introduced by the State

After Officer Green observed the transaction between Ms. Hite and Jean, he instructed other officers to place Jean's residence under surveillance. About 30 minutes

after surveillance commenced, police officers saw a car pull up in front of Jean's address and saw a woman, later identified as Jetina McRoy, sitting in the front passenger's seat of that automobile. Jean then came out of his house, walked up to the car, talked with Ms. McRoy for a few moments, placed his hand inside the vehicle very briefly, and then walked back inside his house. The car in which Ms. McRoy was a passenger then left the area.

Montgomery County police officers followed the vehicle in which Ms. McRoy was a passenger and then stopped it. During that stop, Ms. McRoy turned over a small package of cocaine to the officers. She was taken to a police station and questioned. There she gave a written statement to the police in which she said that she had just purchased cocaine from Jean.[1]

Several officers continued surveillance outside of Jean's home after his transaction with Ms. McRoy. One or two hours later, Jean's wife and children arrived home. Shortly after those family members arrived, Jean left the house and drove to the Milestone Shopping Center in Germantown. He was followed by Montgomery County police officers. There, he was arrested as he walked towards a gas station. While being transported to the police station, Jean cooperated with the officers and told them that there was cocaine at his residence. Jean and the officers then coordinated with Jean's wife, via telephone, to locate

[1]At trial, Ms. McRoy was a classic "turncoat" witness. She told the jury that she had no knowledge as to the identity of the person from whom she purchased the drugs. As a consequence, pursuant to Md. Rule 5-802.1(a)(2), the State introduced, as substantive evidence, Ms. McRoy's written statement that she gave to the police.

the cocaine. Officers at the home followed Jean's direction and located three small bags of cocaine in Jean's bedroom along with a digital scale. In regards to their actions on April 14, 2014, Ms. McRoy and Ms. Hite received criminal citations for possession of drug paraphernalia. Neither was charged with the more serious charge of possession of cocaine, as they could have been.

D. The Defense's Evidence

Jean called Jean Brown ("Brown") as an alibi witness. She testified that she was an acquittance of Jean's whom she had known for approximately five years. Brown told the jurors that on the evening in question, between 5:30 and 6:00 p.m., she arrived at Jean's house to attend a barbeque. She stayed at Jean's house until "around 11:00," at which time the police came to search the house. According to Brown, once she arrived, Jean was in her presence until 9:00 p.m. with one possible exception. That exception was that Jean possibly went to the bathroom during that period, although she didn't remember him doing so.

II.
FIRST ISSUE PRESENTED

On the morning that the trial commenced, just before the court started its *voir dire* of the prospective jurors, Jean's counsel told the judge that he wanted to prove Ms. Hite's bias in favor of the State based on a prior conviction. In the words of defense counsel, Ms. Hite had a 1986 prior conviction "for possession with intent and/or distribution." Apparently

relying on Md. Code (2012 Repl Vol.), Criminal Law Article ("Crim. Law"), § 5-608, defense counsel continued:

> In Maryland, you are subject to 10 years minimum mandatory in prison and that is a heck of a motive to fabricate. Your Honor, . . . I don't think I need to ask permission, but like I said, I just want to avoid a storm a little while [later]. I think that goes directly to motive to fabricate. I have case law[,] which gives, on cross-examination, the Defense wide latitude.

The judge reserved on his ruling, and said that he would make a final ruling once the witness (Ms. Hite) was called to testify.

Immediately before defense counsel commenced his cross-examination of Ms. Hite, the court and counsel engaged in a lengthy colloquy concerning the issue of whether Ms. Hite could be cross-examined about her 1986 drug conviction. In arguing that the prior conviction was admissible, defense counsel said that in 1986 Ms. Hite "was charged and convicted of distribution of CDS." He did not say what CDS she was convicted of distributing. Defense counsel added that Ms. Hite would be facing at least a minimum mandatory 10 years if the State had not allowed her to simply plead to possession of drug paraphernalia. The prosecutor replied by pointing out that whether Ms. Hite could get a mandatory 10 years sentence, if convicted for her activities on April 14, 2014, depended on what substance she had been convicted of distributing in 1986. The prosecution maintained that defense counsel had "no good faith basis to know what the substance was" that Ms. Hite distributed in 1986. She added that if, for instance, the CDS Ms. Hite distributed in 1986

was marijuana, a second conviction would not subject her to the possibility of a mandatory minimum sentence of 10 years.

The trial judge then asked defense counsel if, hypothetically, it were true that the State could have charged Ms. Hite with an offense that would have subjected her to a mandatory minimum sentence of 10 years, whether there was any evidence that Ms. Hite was aware that she could have been charged with an offense that carried such a severe penalty. To that question, defense counsel replied: "[a] citizen is presumed to know the law as it is applied to them." The trial judge ruled that defense counsel could not use the 1986 conviction in his cross-examination of Ms. Hite.

In his opening brief, appellant made two very similar arguments. He first argues:

> The trial court, relying principally on the fifteen-year time limit imposed by Md. Rule 5-609, did not allow defense counsel to cross-examine the State's key witness about her 1986 drug convictions for possession, possession with intent to distribute, common nuisance, and possession of paraphernalia.[2] This line of questioning was intended to expose the witness' motive to testify in a manner that favored the State, since she avoided a repeat offender penalty under either § 5-607 or § 5-608 of the Criminal Law title of the Maryland Code by only being issued a criminal citation for paraphernalia despite her undisputed possession of a baggie of cocaine. MD. CODE ANN., CRIM. LAW, § 5-607 and § 5-608. This ruling constitutes reversible error by the trial court because defense counsel should have been given wide latitude

[2]In the trial court, there was no proof or proffer of proof that Ms. Hite had previously been convicted of possession of CDS or common nuisance or possession of paraphernalia. The proffer was that in 1986 she had been convicted of distribution of CDS and/or possession with intent to distribute CDS.

> to impeach the credibility of a witness, under the "credibility rule" of *Cox v. State*, 51 Md. App. 271 (1982), *aff'd*, *State v. Cox*, 298 Md. 173 (1983).

(Emphasis added.)

Later in his opening brief, appellant argues:

> [D]efense counsel had a sufficient factual foundation for his intended line of inquiry. As defense counsel explained, he had records of Ms. Hite's prior conviction on multiple drug charges,[3] the fact that she only received a criminal citation when she could have been charged with drug possession, and the fact that she would have faced severe repeat offender penalties if she had been charged with drug possession in this case.

(Footnote omitted.) (Emphasis added.)

As the State asserts in its brief, neither of those arguments have merit. While it is true, as appellant points out, that the State could have prosecuted Ms. Hite (as a result of her actions on April 14, 2014) for possession of cocaine, such a conviction would not have subjected her to the possibility of receiving a mandatory minimum sentence under any statute.

Crim. Law Article, section 5-607 reads:

> **Penalties – Certain Crimes.**
>
> (a) *In general*. – Except as provided in §§ 5-608 through 5-609 of this subtitle, a person who violates a provision of §§ 5-602 through 5-606 of this subtitle is guilty of a felony and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $15,000 or both.

[3]No evidence was introduced or proffered that Ms. Hite had previously been convicted of "multiple drug charges."

> (b) *Repeat offender*. – (1) A person who has been convicted previously under subsection (a) of this section shall be sentenced to imprisonment for not less than 2 years.
>
> (2) The court may not suspend the mandatory minimum sentence to less than 2 years.
>
> (3) Except as provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

Section 5-607 of the Criminal Law Article provides no support for appellant's argument that, based on Ms. Hite's prior conviction, she faced an enhanced sentence if the State had elected to prosecute her for possession of cocaine. This is shown by reviewing §§ 5-602 - 5-606 of the Criminal Law Article. Section 5-602 prohibits distributing, possession with intent to distribute, or dispensing controlled dangerous substances. At the time defense counsel sought to cross-examine Ms. Hite, the only evidence that had been presented or proffered was that Ms. Hite had bought a baggie of cocaine from appellant. There was no evidence, either direct or circumstantial, that she distributed cocaine on April 14, 2014 or intended to do so. Therefore, the State could not have successfully prosecuted her for violation of § 5-602.

Crim. Law Article section 5-603 makes it unlawful (with exceptions not here relevant) for a person to "manufacture a controlled dangerous substance, or manufacture, distribute, or possess a machine, equipment, instrument, implement, device, or a combination of them that is adapted to produce a controlled dangerous substance under circumstances that reasonably indicate an intent to use it to produce, sell, or dispense a

controlled dangerous substance in violation of this title." Obviously, based on her activities on April 14, 2014, Ms. Hite could not have been successfully prosecuted for violation of § 5-603. Criminal Law Article § 5-604 prohibits a person from creating or possessing counterfeit controlled dangerous substances; Criminal Law Article § 5-605 prohibits keeping a common nuisance; and § 5-606 of the Criminal Law Article states that "a person may not pass, issue, make, or possess a false, counterfeit, or altered prescription for a controlled dangerous substance with intent to distribute the controlled dangerous substance." Based on the evidence, nothing Ms. Hite did, or failed to do on April 14, 2014, made her eligible for prosecution for having violated sections 5-604, 5-605 or 5-606. Therefore, Ms. Hite, based on the evidence concerning her activities on April 14, 2014, could not have received an enhanced sentence, of any sort, under § 5-607.

We turn now to § 5-608, which is the section of the Criminal Law Article exclusively relied upon by appellant's trial counsel when he argued that Ms. Hite could have received a mandatory minimum sentence of ten years. Section 5-608 reads, in pertinent part:

> **Penalties – Narcotic drug.**
>
> (a) *In general*. – Except as otherwise provided in this section, a person who violates a provision of §§ 5-602 through 5-606 of this subtitle with respect to a Schedule I or Schedule II narcotic drug is guilty of a felony and on conviction is subject to imprisonment not exceeding 20 years or a fine not exceeding $25,000 or both.
>
> (b) *Second time offender*. – (1) A person who is convicted under subsection (a) of this section or of conspiracy to commit a crime included in subsection (a) of this section shall be sentenced to imprisonment for not less than 10

> years and is subject to a fine not exceeding $100,000 if the person previously has been convicted once:
>
> (i) under subsection (a) of this section or § 5-609[4] of this subtitle;
>
> (ii) of conspiracy to commit a crime included in subsection (a) of this section or § 5-609 of this subtitle; or
>
> (iii) of a crime under the laws of another state or the United States that would be a crime included in subsection (a) of this section or § 5-609 of this subtitle if committed in this State.
>
> (2) The court may not suspend the mandatory minimum sentence to less than 10 years.
>
> (3) Except as provided in § 4-305 of the Correctional Services Article, the person is not eligible for parole during the mandatory minimum sentence.

(Emphasis added.)

As can be seen, in order for § 5-608 to be applicable, appellant would have had to show that had the charges not been reduced, Ms. Hite could have been convicted of violating provisions of either §§ 5-602, 5-603, 5-604, 5-605 or 5-606 and that the prior violation(s) concerned "Schedule I or Schedule II narcotic drug . . . ." Cocaine is a Schedule II narcotic drug. *See* Crim. Law Article § 5-403(b)(3)(iv).

Based on her activities on April 14, 2014, Ms. Hite could not have been given an enhanced sentence under § 5-608. For starters, there was no evidence or proffer of evidence that she had violated any of the provisions of Crim. Law §§ 5-602 - 5-606. In other words, to show that Ms. Hite could have received a 10 year minimum (no parole) sentence, it would

[4]We note that § 5-609 of the Criminal Law Article concerns narcotic transactions involving hallucinogenic substances. Ms. Hite could not have been given a sentence, much less an enhanced sentence, under § 5-609 because she was not alleged to have possessed or sold any of the hallucinogenic substances mentioned in § 5-609.

not have been sufficient to prove that she possessed cocaine. Moreover, even if, hypothetically, a conviction for possession of cocaine would somehow constitute a violation of one of the provisions of Crim. Law §§ 5-602 - 5-606, there was no proffer that the 1986 conviction involved distribution of a Schedule I or Schedule II CDS. Based on the proffer made by defense counsel, all defense counsel knew was that in 1986 Ms. Hite had been convicted of distribution of CDS or possession with intent to distribute CDS. The prior conviction could have been, for instance, distribution of marijuana, which is not a Schedule I or II CDS.

In his reply brief, appellant makes a very different argument from the one that appears in his opening brief. Instead of arguing, as he did in his opening brief, that Ms. Hite, based on her activities on April 14, 2014, could have been prosecuted for possession of cocaine, he argues that in exchange for her cooperation, the State gave up its right to prosecute Ms. Hite for possession of cocaine with intent to distribute it. He phrases this new argument as follows:

> Jonathan Green, the police officer who observed Ms. Hite's interaction with Mr. Jean, suggested that Ms. Hite appeared to be looking for someone and testified that he saw her using her telephone. When Rick Jean appeared, the officer saw what he believed to be an exchange between Hite and Jean. However, the officer did not observe any contraband or money change hands between Ms. Hite and Mr. Jean, instead only observing a conversation at a car window. Although the officer believed he had just witnessed a drug exchange, he offered no reason to believe that Rick Jean was not the buyer throughout his testimony. Indeed the record reflected that Hite had at least

> one prior conviction for drug sales.[5] Thus, the contention that Hite was not the seller in the exchange with Jean is dependent upon acceptance of Ms. Hite's version of events and the government's subsequent failure to investigate this witness at all.
>
> But, the jury was not required to assume the truth of Hite's narrative. More importantly, defense counsel was entitled to test that narrative, and Ms. Hite's motive to testify falsely. Had the State not immediately accepted her version of her encounter with Mr. Jean, she could have been charged very differently, including with charges that triggered the repeat offender penalties at issue here. The fact of Ms. Hite's prior convictions for drug distribution and the fact that they exposed her to significant punishment as a repeat offender bring into question the narrative that she had not sold drugs to Rick Jean. Her credibility was the central issue of the trial and a question for the jury to decide, not the trial court. *DeLilly* [*v. State*], 11 Md. App. [676] at 681 [(1971)]. There was indeed a proper factual foundation for the proposed inquiry and the failure to so allow it constitutes reversible error.

(References to record omitted.)

It is true that Officer Green did not offer a reason why he believed that Jean was selling drugs, not buying them. But the State proved that both Ms. Hite and Ms. McRoy told Officer Green, shortly after the drug transaction, that this was so. Secondly, although there was a proffer that Ms. Hite distributed CDS in 1986, there was no proof or proffer of proof that what she had previously sold was a Schedule I or Schedule II CDS and such a proffer was necessary to show she was eligible to receive a mandatory minimum sentence of 10

[5]Technically, there was no proffer in the trial court that Ms. Hite, in 1986, was convicted "of drug sales." Although trial counsel said at one point that Ms. Hite was convicted of "distribution of CDS," a person can be convicted of distribution without selling drugs; for example, a person can be convicted of distribution of CDS if he or she makes a gift of CDS to a third party.

years. Thirdly, the trial judge, contrary to what appellant suggests in his reply brief, never restricted appellant's counsel from cross-examining Ms. Hite in order to show that she sold drugs to appellant. Defense counsel simply elected not to pursue this line of cross-examination.[6]

Aside from all the above, it must be remembered that defense counsel wanted to show that Ms. Hite, in exchange for some benefit or favor that the prosecutor gave to her, slanted her trial testimony in favor of the State. That favor, according to appellant's argument in his reply brief, was that the State did not charge Ms. Hite with the sale of cocaine to appellant. But, in order for this failure to prosecute to be considered a favor or benefit, appellant would have to prove or proffer facts sufficient to show that if the State had wanted to do so, it could possibly have convicted Ms. Hite of selling cocaine to appellant. There was no such proof or proffer of proof.

Of course, as appellant stresses, the jury was not compelled to believe Ms. Hite when she testified that she bought drugs from appellant. But, as the Court of Appeals said in *Hayette v. State*, 199 Md. 140, 145 (1952): "Ordinarily disbelieving evidence is not the same thing as finding evidence to the contrary." In summary, there was not a scintilla of evidence

[6]Defense counsel did cross-examine Ms. Hite about the fact that the State could have, but did not, prosecute her for possession of cocaine. Counsel cross-examined Officer Green as to the same subject. The likely reason counsel did not attempt to show, through cross-examination of Ms. Hite, that she sold drugs to appellant, was that appellant presented an alibi defense and if the alibi witness was believed, Ms. Hite could not have sold CDS to appellant because he was at his home when the alleged transaction occurred.

presented or proffered in the circuit court that indicated that if the State had elected to do so, it could have proven that Ms. Hite sold drugs to appellant. Therefore, the court did not err when it did not allow appellant to introduce evidence concerning Ms. Hite's 1986 conviction.

III.
SECOND ISSUE PRESENTED

During direct examination, the prosecutor, after establishing that she was currently employed as a waitress, had the following exchange with Ms. Hite:

Q. Can you tell the ladies and gentlemen of the jury what brought you into contact with the police on April 14th of 2014?
A. I mean, from the beginning, or –
Q. Let me ask you this, did there come a point in time in which you were in the area of Maple Leaf Drive and Shadow Oak Drive?
A. Yes.
Q. Okay. Do you know what brought you to that location on that date?
A. I was meeting somebody to buy drugs.
Q. Okay. And do you see that person here in Court today?
A. Yes.
Q. Can you identify him by an article of clothing?
A. He has a pink or purple shirt on.

* * *

[PROSECUTOR]:

Q. And on that day in question, did you know him by his name or by a different nickname?
A. By his name.
Q. Okay and what was that?
A. Rick.
Q. Okay. How did you know him?
A. I used to work with him.

Q. Okay. Do you remember how far back you used to work with him?
A. Three or four years.
Q. On the date in question, was that the first time you had purchased drugs from him or had there been an earlier occasion?

(Emphasis added.)

At that point, counsel objected and the following occurred at a bench conference:

> [DEFENSE COUNSEL]: The prosecution is attempting to prove that my client has the propensity to deal drugs. This is completely outside of the charging document. The prejudicial value greatly outweighs any possible probative value.
>
> THE COURT: Counsel, isn't this other acts evidence?
>
> [PROSECUTOR]: Your Honor, I'm just seeking to see how she knows the defendant. If he wants me to move away from this type of question, that's fine. But she obviously is going to testify that she purchased drugs from him. I'm just trying to see if that's the only way she knew him or just simply from waitressing.
>
> [DEFENSE COUNSEL]: Your Honor, this is actually grounds for a mistrial. I don't even - - It's something I've never even done before. But to ask about other crimes of this nature, in front of this jury, I would ask for a mistrial. It's completely improper.
>
> THE COURT: Well, all right - - well, I don't think necessarily that that's the case. I think the reason for asking the question is a fair reason, although it might be a bit early to get into other acts. Under 404(b) I'm not yet sure that that bell has been rung. So what I'm going to do just now, is I'm going to deny the motion for a mistrial. I'm simply going to give the jury very brief limiting instructions saying, objection sustained, please disregard the question, do not speculate as to possible answers and we'll move on.
>
> [DEFENSE COUNSEL]: Thank you, Your Honor.

[PROSECUTOR]: Thank you.

THE COURT: You're welcome.

(Bench conference completed.)

THE COURT: Objection sustained. Ladies and gentlemen, please disregard the question, do not speculate as to possible answers.

At the end of the evidentiary phase of the case, the trial judge, in his instructions, once again told the jurors that they could not consider questions that the court did not allow a witness to answer because "[t]hat's not evidence."

Appellant now argues:

> This question unfairly prejudiced the appellant to such an extent that he was deprived of a fair trial right at the outset and thus should have been granted a mistrial.

Later in his brief, in support of the aforegoing argument, appellant asserts:

> In the instant case, the question asked by the prosecutor was the central question presented to the jury, whether the appellant, a husband and father of four, dealt drugs. At the opening of testimony, the prosecutor asked Ms. Hite a few introductory questions about her involvement in the case. After Ms. Hite identified Mr. Jean and stated that she had previously worked with him, the prosecutor asked, "On the date in question, was that the first time you had purchased drugs from him or had there been an earlier occasion?" (emphasis added). Defense counsel objected and asked for a mistrial, stating this question was "completely improper." Mr. Jean's fate depended on the jury's answer to that question of whether he was a drug dealer.[7] To suggest, as one of the first statements the jury heard to the most important witness of the trial,

[7]Appellant's "fate" did not depend on the answer to the question to which defense counsel successfully objected. His "fate" depended on whether the jury believed that he sold cocaine to Ms. Hite and/or to Ms. McRoy on April 14, 2014.

> that Mr. Jean not only dealt drugs on the instant occasion but also was a repeat dealer was substantially prejudicial to the appellant's right to a fair trial.
>
> On top of this prejudice, the trial court's brief instruction to the jury did nothing to cure this prejudice. The trial court denied the motion for a mistrial and only gave a brief limiting instruction to the jury, telling them to "please disregard the question, do not speculate as to possible answers." This instruction was ineffective because the prejudicial question had already been asked and the idea planted in the minds of the jury that Mr. Jean was a drug dealer. The fact that the jury then observed a bench conference as this question was left hanging only added to the prejudice because the jury undoubtedly realized how important this question was and likely speculated as to the answer during the pause in the trial. No instruction could reasonably cure such prejudice to Mr. Jean.

(References to record omitted.)

The State counters that the trial judge did not abuse his broad discretion by denying the mistrial motion. We agree with the State.

A trial judge's denial of a motion for a mistrial will not be disturbed "absent a clear showing of abuse of discretion." *Reed v. Baltimore Life Ins. Co.*, 127 Md. App. 536, 566 (1999) (citing *Owens-Corning Fiberglas Corp. v. Garrett*, 343 Md. 500, 517 (1996)). "The focus of our inquiry is whether the court's denial of the motion egregiously prejudiced appellant." *Id*. (citing *Braxton v. State*, 123 Md. App. 599, 667 (1998)). In *Hunt v. State*, 321 Md. 387, 422 (1990), *cert. denied*, 502 U.S. 835, 112 S. Ct. 117 (1991), the Court of Appeals explained:

> [T]he declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice. . . . The trial judge, who hears the entire case . . . is in the best position to determine if the extraordinary

> remedy of a mistrial is appropriate. We will not reverse a trial court's denial of a motion for mistrial unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion.

(Citations omitted.)

In *Hill v. State*, 355 Md. 206, 221 (1999), the Court of Appeals explained that

> [t]he fundamental rationale in leaving the matter of prejudice *vel non* to the sound discretion of the trial court is that the judge is in the best position to evaluate it. The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his [or her] finger on the pulse of the trial.

(Citation omitted.)

Turning to the case at hand, it cannot be said, without equivocation, that the prosecutor's question, standing alone, did suggest that in the past appellant had sold drugs to Ms. Hite because it is not clear from the question itself what the anticipated answer would have been. From appellant's perspective, the best that can be said is that the question might possibly have suggested that appellant had sold drugs to Ms. Hite "on an earlier occasion." Assuming that the jury may have interpreted the question as suggesting that on an occasion in the past that Jean sold Ms. Hite cocaine, that suggestion is presumed to have been cured by the trial judge's immediate instruction to the jury that they should "disregard the question" and should not speculate as to what the witness's answer might have been if the question had been allowed. *See State v. Gray*, 344 Md. 417, 425, n.6 (1997)(Generally, with

a few narrow exceptions, jurors are presumed to have understood and to have followed the judge's instructions). Here, the judge's curative instruction was straightforward and easily understood. Moreover, it was reiterated in the court's instructions at the end of the evidentiary phase of the trial. Appellant's assertion that because the "idea" that appellant had previously sold drugs to Ms. Hite "had been planted" in the minds of the jurors, the curative instruction was ineffective is unpersuasive. Appellant provides no reason, and we can think of none, why the usual presumption that curative instructions are effective should not apply.

We hold that the trial judge did not abuse his broad discretion when he declined to grant the extraordinary remedy of a mistrial based on the fact that a single question was asked by the prosecutor but was never answered.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.