UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0543

September Term, 2015

WILLIAM STEVENS HAMILTON

v.

STATE OF MARYLAND

Wright,
Nazarian,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: February 18, 2016

Craig Parker disappeared in 2009, was not reported missing until 2011, and his body was never found. William Stevens Hamilton was convicted of first-degree murder, second-degree murder, and first-degree assault in the Circuit Court for Dorchester County in the death of Mr. Parker; the court granted Mr. Hamilton's motion for judgment of acquittal on the charge that he committed the crime "[b]ecause of" Mr. Parker's race. *See* Md. Code (2002, 2012), § 10-304 of the Criminal Law Article ("CL"). The State contended at trial, and the jury apparently agreed, that Mr. Hamilton killed Mr. Parker because he thought Mr. Parker, who had occasionally performed work for Mr. Hamilton on his farm, had stolen from him. On appeal, Mr. Hamilton argues that the trial court should not have permitted the State to introduce certain racist statements he made, that the court should have barred testimony from one of the State's witnesses, and that the evidence was insufficient to sustain his conviction, particularly given that Mr. Parker's body was never found. We disagree and affirm.

I. BACKGROUND

Mr. Hamilton owned an eighty-acre farm in Hurlock, and was sixty-seven years old at the time of trial in February 2015. He occasionally hired Mr. Parker to do odd jobs for him, and paid him in cash. According to Mr. Parker's mother, Cassandra Parker, Mr. Parker frequently got in trouble with the law ("maybe every three or four months")—not for violent crimes, but "mainly taking cars and driving cars, and . . . one time he got caught for marijuana." One of Mr. Hamilton's employees testified that Mr. Parker had a drinking problem.

Mr. Hamilton had been known to help Mr. Parker out both by going with him to court when he got in trouble and by buying food and other essentials for him. But the relationship was hardly a consistently friendly one: Mr. Hamilton suspected Mr. Parker of stealing from him, and on at least one occasion, used racial slurs when talking about Mr. Parker as he shared his concerns about the theft.

In August 2009, Mr. Parker lived with his mother in Hurlock. On the morning of August 27, 2009, Mr. Parker's sister, Yosheka Quailes, who was resting in her mother's apartment, heard Mr. Parker in the parking lot below screaming at some unknown individual or individuals (she couldn't get to the window in time to see anyone), and heard a car "squeal off." This was the last she saw of her brother, and apparently the last anyone saw of him. His mother made a notation on her calendar on August 27, 2009: "Craig left."

No one in Mr. Parker's family reported him missing. Two years later, however, police investigated Mr. Parker's disappearance after Mr. Hamilton's girlfriend, Shirley Killmon, related to her co-workers that Mr. Hamilton had killed Mr. Parker and buried his body on the farm. Searches of the farm yielded no evidence to support this claim. But in May 2013, Mr. Hamilton told his niece, Holly Dickerson, about the killing, explaining that he shot Mr. Parker and buried him on the farm because Mr. Parker had stolen from him. She informed police, and she agreed to record a conversation with Mr. Hamilton about the murder and where he had buried Mr. Parker's body.

Mr. Hamilton was indicted on charges of first-degree murder, second-degree murder, first-degree assault, and a violation of Maryland's "hate crime" statute, CL § 10-304. The State portrayed Mr. Parker as a poor, African-American laborer who had few

connections in the world, and who worked for Mr. Hamilton for little pay. The State's theory was that Mr. Hamilton killed Mr. Parker because he stole gas and copper wire from him, along with taking the registration stickers from one of his vehicles, and that the killing occurred in a brutal manner: Mr. Hamilton asked Mr. Parker to dig a hole (ostensibly for a concrete pad on which he would later place a generator), and then shot Mr. Parker and buried him in the hole.

The State called a total of seventeen witnesses, who testified not only about Mr. Hamilton's suspicions of Mr. Parker, but also that he called Mr. Parker a "n*****" and cast him in a derogatory light. These witnesses (whose testimony we will recount in further detail below) also testified about certain statements Mr. Hamilton made—beyond the initial confession to Ms. Dickerson—in which he insinuated that he had killed Mr. Parker. Finally, the State provided testimony that helped establish that Mr. Parker had not been heard from since August 2009.

In turn, the defense called three witnesses, one of whom was Mr. Hamilton. Counsel for Mr. Hamilton argued that the only evidence against him was circumstantial, that Mr. Hamilton was one of Mr. Parker's few friends, and that the police investigation turned up no body because Mr. Hamilton did not kill Mr. Parker.

At the close of all the evidence, the circuit court granted Mr. Hamilton's motion for judgment of acquittal with respect to Count IV, the "hate crime" charge. The jury convicted Mr. Hamilton on the three remaining counts, and he filed a timely appeal.

II. DISCUSSION

Mr. Hamilton's counsel portrays the State's strategy at trial in sinister terms right out of the gate: "In prosecuting this case, the State wove a web of circumstantial evidence to explain Mr. Parker's disappearance that appeared to use a single strand to connect the web to a structure . . . . That strand was Shirley Killmon." But upon a closer look at the trial testimony and the court's rulings below, that assertion isn't correct—the trial court supported its decision to allow the case to go to the jury with numerous facts and testimony. The same can be said of his other arguments:[1] we disagree with how he characterizes the

[1] Mr. Hamilton frames the issues on appeal as follows, although we consolidate and reorder them in our discussion:

> I. Did the trial court err in denying the motion *in limine* to exclude the introduction of inflammatory and derogatory statements, transcripts and testimony regarding [Mr. Hamilton's] use of racist words and racist comments that did not occur contemporaneous with the crime of murder alleged, or with any degree of nexus to the motivation for the crime of murder thereby unduly injecting race into the trial?
>
> II. Did the trial court err in denying [Mr. Hamilton's] request for mistrial when state's witness, Holly Dickerson, committed perjury on the witness stand during questioning by the court out of the hearing of the jury?
>
> III. Did the trial court err in denying [Mr. Hamilton's] request to strike the testimony of witness Holly Dickerson, and further exclude any future testimony of Holly Dickerson, for violating the court's sequestration order and for committing perjury in the Court's presence?
>
> IV. Was the evidence legally sufficient to sustain [Mr. Hamilton's] conviction for first degree murder absent a body or any other

trial court's decision to permit Ms. Dickerson to testify—we don't see how the trial court could possibly have suspected her to have committed the "perjury" he claims or why it would have justified either a mistrial or striking her testimony—and Mr. Hamilton's attempts to keep out testimony about alleged racist statements attributable to him overlooks the very elements of one of the crimes that the State was attempting to prove.

A. The Evidence Sufficed To Convict Mr. Hamilton In Spite Of The Absence of A Body.

Mr. Hamilton contends that the evidence was insufficient to sustain the convictions because Mr. Parker's body was never recovered and no other physical evidence supported the theory that Mr. Parker "was dead, much less murdered."[2] The State counters *first*, that it introduced sufficient evidence for the jury to find that Mr. Parker was dead, and *second*, that it introduced sufficient evidence aside from Mr. Hamilton's confession to establish that he shot Mr. Parker. We agree.

> physical evidence indicating that a murder ever took place, resting solely on a single strand of circumstantial evidence?
>
> V. Did the trial court err in submitting the matter to the jury based on the lack of sufficient corroboration of the *corpus delecti* [sic] independent of the statements and admissions of [Mr. Hamilton]?

[2] Mr. Hamilton also complains that the circuit court "relied exclusively on the testimony of Shirley Killmon" as corroboration of his recorded statements. Our discussion below will debunk that theory; the court actually cited to numerous facts in evidence over the course of its eleven-page denial of Mr. Hamilton's motion for judgment of acquittal. Mr. Hamilton also fails to provide a record citations for this claim in any event, and so we do not address it.

We review a claim for sufficiency not to perform a retrial, but to satisfy ourselves that a "rational trier of fact could have found the elements of the crime beyond a reasonable doubt." *Belton v. State*, 152 Md. App. 623, 638 (2003) (citations omitted). We review the evidence presented in the light most favorable to the State, *State v. Albrecht*, 336 Md. 475, 478 (1994), and we defer to the jury's factual findings, given the jurors' "ability to observe the demeanor of the witnesses and to assess their credibility." *Streater v. State*, 119 Md. App. 267, 275 (1998), *rev'd on other grounds*, 352 Md. 800 (1999).

A body is not a prerequisite for a homicide conviction, and we don't reward success in disposing of a victim's body. *See Hurley v. State*, 60 Md. App. 539, 550 (1984) (noting that "the fact that a murderer may successfully dispose of the body of the victim does not entitle him to acquittal. That is one form of success for which society has no reward" (citations and quotations omitted)). Rather, the *corpus delicti* may be proven by circumstantial evidence. The Latin term does not embody the notion that a murder may be proven without the presence of a victim's body. *See* Bryan A. Garner, Garner's Dictionary of Legal Usage (3d ed. 2011). Instead, the term translates as "the nature of the transgression," *id.*, which in turn permits for the absence of a body in the sense that it "does not require evidence that the defendant was the criminal agent." *Riggins v. State*, 155 Md. App. 181, 211 (2004). Put differently, the State can prove a homicide if it establishes *first* that the victim is dead, and *second*, "'that the death occurred under circumstances which indicate that it was caused criminally by someone.'" *Lemons v. State*, 49 Md. App. 467, 473 (1981) (quoting *Jones v. State*, 188 Md. 263, 272 (1947)).

We explained in *Lemons* that the State need not have the body to prove the homicide, but must produce independent direct *or* circumstantial evidence supporting its homicide theory. *Id.* at 496. We need not require any *direct* evidence to support a conviction:

> [I]f a conviction is to be supported on circumstantial evidence, that evidence "must be such that, in conjunction with weighing the evidence and assessing the credibility of the witnesses, *there are sufficient strands interconnected to establish criminal agency and corpus delicti beyond a reasonable doubt.*" Even in the absence of the [defendant's] statements . . . [to two individuals], we are satisfied that the circumstantial evidence in this case would have permitted a rational trier of fact to determine, beyond a reasonable doubt, that appellant committed the crime of first degree murder.

Riggins, 155 Md. App. at 216 (quoting *Morgan v. State*, 134 Md. App. 113, 127 (2000) (emphasis added)). And the circumstantial evidence that can support a conviction under circumstances such as these need not be legion. *Riggins* presented a similar factual scenario (though without a direct confession such as Mr. Hamilton's to his niece). In that case, a husband was convicted of killing his wife in spite of the fact that her body was never found. We agreed that the evidence adduced at trial sufficed for the jury to find, beyond a reasonable doubt, that the husband murdered his wife: the victim had a young daughter with whom she was close and the State argued she would not have abandoned her voluntarily, she had not resurfaced after a five-year absence, she and the defendant had fought about his long-term affair with their babysitter, and the defendant had made numerous statements to friends and co-workers about finding a gun, wanting to kill the victim and dispose of the body, and he had tried to fabricate an alibi. Evidence about the night the murder allegedly took place also corroborated the State's theory. We held that

"[i]t is sufficient that the proof of the *corpus delicti*, even if '*small in amount*, . . . when considered with the confession, convinces the jury beyond a reasonable doubt of the guilt of the accused.'" *Id.* at 215 (quoting *Ballard v. State*, 333 Md. 567, 575 (1994) (internal citations omitted) (emphasis added)); *see also Tetso v. State*, 205 Md. App. 334, 395-96 (2012) (upholding conviction in spite of absence of a corpse, where victim was close to her family, searches could not locate her, she had made plans for the future, and the evidence supported a motive).

Here, the most compelling piece of evidence was Mr. Hamilton's confession (which, notably, he has failed to have transcribed for the record before us, and which was played to the jury without introduction of a transcript at trial). We agree that the evidence may not consist *only* of a confession by the defendant. *Pierce v. State*, 227 Md. 221, 225 (1961) ("[A]n extra-judicial confession of guilt by a person accused of crime, uncorroborated by other evidence, is not sufficient to warrant his conviction."). But there was a lot more to hold this story together than a single strand. To the contrary, numerous other statements and evidence that came in over the course of the trial, which we have organized into categories, supported the jury's finding:

- *Statements by Mr. Hamilton, beyond the taped confession, that implied he killed Mr. Parker*.[3]

    - Ms. Dickerson testified that in May 2013, Mr. Hamilton told her (while laughing) that he got Mr. Parker to dig a hole, pulled his truck up, put his gun on the hood and "blew [Mr.] Parker away," and

[3] Even if we deemed these statements to fall within the ambit of "extrajudicial confessions" that still require additional circumstantial evidence, the categories that follow provide more than ample evidence without them.

provided graphic details about the shooting. He did so, according to Ms. Dickerson, because Mr. Parker stole from him. Ms. Dickerson testified that Mr. Hamilton told her he put the body under a shed at the farm, where a generator was later built on a concrete pad. (Ms. Dickerson referred to the shed as the "memory building." She described it as the place "[w]here [Mr. Hamilton] intends to keep his farm memories at," and further elaborated that "[he] had older tractors that had been redone in there, he had pictures of people that he wasn't happy with in there, that kind of thing.") No concrete pads were moved or disturbed during searches of the property.

- Dr. Hawkins, Mr. Hamilton's treating dentist, testified that his family owned a funeral home, and that Mr. Hamilton asked if his family conducted "black funerals"—*i.e.*, for African-Americans. Mr. Hamilton told Dr. Hawkins that one of his workers had robbed him, that bad things happen to people who do things like that, and that the wrongdoer (whom he referred to in racially derogatory terms) could be badly injured, saying (while smirking), "I don't think they'll ever find that man."

- Mr. Hamilton's niece, Patricia McMahon, spoke with him about a car she wanted to sell, that Mr. Hamilton evidently was going to resell to Mr. Parker. There was some confusion when it came to the transfer of the car's title, and in the fall of 2009 Mr. Hamilton simply gave Ms. McMahon one hundred dollars in cash for the car. When she asked why he took it to the scrap yard rather than selling it to Mr. Parker, Mr. Hamilton "said that he had taken care of everything about the car, there would be no more problems with [Mr. Parker] and the car. And he told me don't worry about [Mr. Parker], don't worry about it and don't ask anymore."

- Ms. McMahon also had a conversation with Mr. Hamilton where he took her into the farm building where the generator was located, and told her that it was "where we remember all things dead and gone."

- David Williams was a farmer and mechanic whom Mr. Hamilton asked to look at a pick-up truck that wouldn't run. Mr. Williams discovered that the truck's two fuel tanks were full of water, and Mr. Hamilton thought Mr. Parker had used it most recently. Mr. Williams saw Mr. Hamilton in the fall of 2009, and Mr. Hamilton told him then that "the problem he had had with the pickup had been taken care of, and that problem would not bother anybody else again."

- Two of Ms. Killmon's co-workers testified that she told them a story about how Mr. Hamilton had killed someone.

- *Evidence regarding the day of the alleged murder*.

  - Mr. Parker's sister, Yosheka Quailes, testified that she heard Mr. Parker call Mr. Hamilton on August 27, 2009, asking for work.

  - Ms. Killmon testified that she heard a "pop" on the day in question, that Mr. Hamilton gave her a gun to put away and said, "it's done."[4]

  - Ms. Dickerson testified that Mr. Hamilton told her he used a .22 caliber shotgun to kill Mr. Parker. Police later recovered a .22 caliber rifle in their search of Mr. Hamilton's home.

- *Evidence to suggest motive (that Mr. Hamilton believed Mr. Parker stole from him)*.

  - Officer Marlon Parker testified that Mr. Hamilton had filed a complaint with police claiming that Mr. Parker stole the vehicle registration tags off his trailer. Ms. Killmon corroborated the theft.

  - Officer Parker also responded to Mr. Hamilton's complaint on August 22, 2009, just one week before Mr. Parker's disappearance, that someone had stolen copper wire from him. Mr. Hamilton told him he suspected Mr. Parker.

  - Gayle Carey, who worked for Mr. Hamilton, confirmed Mr. Williams's testimony about Mr. Hamilton's suspicions when his pick-up truck's engine was ruined. It seems that when Mr. Hamilton believed Mr. Parker was stealing gas from his car, he tried to catch Mr. Parker by putting water in his own gas tank and then waited for Mr. Parker to steal it. Apparently Mr. Parker later complained that his car had been ruined, leading Mr. Carey and Mr. Hamilton to believe that he had put the water in his car believing it to be gasoline.

[4] Although Ms. Killmon at one point suggested that Mr. Hamilton was referring to shooting a dog, this was obviously a point of dispute and one that the jury could have believed or chose to ignore.

- *Evidence to suggest Mr. Parker is dead*.

    - Ms. Parker marked August 27, 2009 as the day her son left, and she testified that she had not seen him since then.

    - Ms. Parker testified that Mr. Parker had never previously been gone for more than two days (other than periods of incarceration).

    - Mr. Hamilton never called the house looking for Mr. Parker to do work for him after August 27, 2009.

    - Erica Boykin, the mother of a baby born in November 2009 believed to be Mr. Parker's baby, testified that Mr. Parker was excited about the birth and that they planned to raise the child together. She had not heard from him since August 2009.

    - Data bank searches revealed no reports of criminal activity for Mr. Parker since 2009 (which was particularly unusual because of his pattern of customary encounters with law enforcement).

    - Deputy Marlon Parker testified that he had not seen Mr. Parker since before August 22, 2009.

    - Ms. McMahon and Mr. Carey each testified about grinders owned by Mr. Hamilton. Ms. McMahon testified that Mr. Hamilton had a backhoe that he called a "gravedigger," and a hamburger grinder that he said he used to get rid of things he killed. Mr. Carey testified that he had a "huge" grinder for grinding corn. It was the State's position that Mr. Hamilton could have disposed of Mr. Parker's body using one of these machines.

Mr. Hamilton counters this evidence by claiming that Mr. Parker's nomadic lifestyle and lack of an "electronic footprint" (no cell phone, no email address, no technological connections to society) meant he could have simply gone off the grid, and that numerous pieces of evidence supported this theory. He claims that Mr. Parker was "a violent man, prone to drug and alcohol abuse, a loner." He cites the fact that the farm was searched on several occasions, and that the searches revealed no disturbance to the soil. Mr. Hamilton

also points to testimony that Mr. Parker had been fired from his job, and had a strained relationship with his girlfriend (who, when she gave birth, did not list him as the father on the birth certificate).

To be sure, Mr. Hamilton attempted at trial to paint a very different picture of Mr. Parker than the State had. But that isn't the point. Both sides offered an account of what happened to Mr. Parker, and the jury was within its rights to believe *either*. The evidence came from numerous sources—friends, relatives, law enforcement personnel, and co-workers, at different times and both before and after police began their investigation. The "strand" of Ms. Killmon's testimony, while assailable from a credibility standpoint, was by no means the sole piece of evidence on which the State relied, and the evidence sufficed to support factual findings *both* that Mr. Parker is dead *and* that Mr. Hamilton caused the death.

B. The Trial Court Properly Permitted Ms. Dickerson To Testify And Properly Declined Mr. Hamilton's Request For A Mistrial.

Mr. Hamilton claims next that the trial court should not have permitted Ms. Dickerson to testify because it became apparent in the course of her testimony that she had looked at documents she obtained from law enforcement. He argues *first*, that the court should have declared a mistrial because of the discrepancies between Ms. Dickerson's testimony and that of Sergeant Blades as to when the sergeant provided her with the reports, and *second*, that the court should have stricken her testimony as a violation of the court's sequestration order. The State responds that the judge acted within his discretion to deny the motion for mistrial (and that the matter really was one of witness credibility rather than

the appropriate subject of a mistrial motion), and that a close look at the timeline of events reveals that no violation of a sequestration order took place. We agree with the State, and take Mr. Hamilton's claims in order.

1. The mistrial motion.

A trial court has broad discretion when ruling on a motion for mistrial because the judge "is in the best position to assess the relative impact" of the testimony at issue and the appropriate remedy. *Burks v. State*, 96 Md. App. 173, 189 (1993); *see also Walker v. State*, 373 Md. 360, 398-99 (2003). A mistrial should not be granted lightly, as it is an "extreme sanction" reserved for curing "overwhelming prejudice [such] that no other remedy will suffice to cure the prejudice." *Id.* at 187. And the defendant bears the burden to establish that the prejudice flowing from the error requires a mistrial. *Hunt v. State*, 312 Md. 494, 503 (1988).

The State called Ms. Dickerson near the end of the first day of trial. Evidently, the witness stand in the courtroom where Mr. Hamilton was tried is raised, with a ledge, so that counsel can't see what (if any) materials sit in front of the witness. Just as counsel for the State was completing her direct examination, counsel for Mr. Hamilton realized that Ms. Dickerson had been referring to documents. The court noted that this was "not unusual," but allowed counsel to look further into the matter and excused the jury because of the late hour.

Counsel for Mr. Hamilton then inspected the documents and determined that Ms. Dickerson was referring to police reports about the incident, and the court permitted counsel to *voir dire* her. She stated that she got the reports from Sergeant Chastity Blades

and used them only to reference dates during her testimony. She reiterated in response to questions from the State that she did not need the reports to testify about the details of the events, which she recalled independently. On recross-examination by defense counsel, she stated that she had not even read the police reports, and merely requested them for the dates.

Ms. Dickerson then explained in response to the *court's* inquiry that she had asked for the reports on Friday, January 30, and that Sergeant Blades handed them to her the night before she testified, *i.e.*, February 2, 2015. (Ms. Dickerson testified on February 3.) At that point she was excused, and counsel for Mr. Hamilton moved to strike her testimony because she "requested and received" the reports "after the sequestration order went into effect." She moved alternatively for a mistrial: "I don't know how else we can cure or know that her testimony was her own and not the recollection of Sergeant Blades." While counsel for Mr. Hamilton continued to express her "shock" upon discovering Ms. Dickerson referring to the police reports, the court pointed out that counsel for the State also had not been aware Ms. Dickerson was referring to documents.

The court then called Sergeant Blades into the courtroom. (It seems she was there, but had not testified.) She testified that she gave the police reports to Ms. Dickerson at a pre-trial conference between counsel for the State, Ms. Dickerson, and her, though she didn't "particularly remember" whether Ms. Dickerson requested them or they were simply given to her. Sergeant Blades stated that she did not give the reports to Ms. Dickerson the day before her testimony. The trial judge excused the sergeant and said that he would take the issue up the following day.

The next morning, defense counsel continued to argue that Ms. Dickerson had had the documents "spread out" the entire time she was testifying. (Interestingly, the trial judge stated that he had a video of the testimony—which he made available to counsel—that showed Ms. Dickerson looking at the documents for only "a limited amount of time. In fact, for most of her testimony she did not." The judge also stated that Ms. Dickerson did not in fact "spread out" the reports or other documents from a folder she took to the stand.) The court pointed out, "I have no legal prohibition for a witness having a police report." Nonetheless counsel for Mr. Hamilton continued to press for a mistrial, based on (as he puts it in his brief before us) "lies told by witness [Ms.] Dickerson which were promulgated on the court [sic] out of the presence of the jury. The court was a direct witness to [Ms.] Dickerson's untruthful statements." She argued that Ms. Dickerson had not obtained the reports on the stand by way of the proper procedures, but the court explained that the remedy was for defense counsel "to cross-examine and impeach and ask about that. The remedy is not mistrial. The remedy is not disallowing the witness." The court freely permitted counsel to ask Ms. Dickerson about her testimony the evening before (*i.e.*, the testimony about the reports that took place after the jury had been excused), and to recall Sergeant Blades: "you can make all of the hay out of that you want."

Although the court mused that "[s]omebody is lying," and later said, "we don't know who committed perjury, but we suspect that somebody did," the trial judge determined that the appropriate remedy was not a mistrial, but to allow defense counsel the opportunity on cross-examination to attack Ms. Dickerson's credibility, and to leave credibility determinations to the jury: "[T]hose 12 people over there can decide who's

lying." The court also pointed out that the conduct could not violate a sequestration rule because *neither* party had testified at trial at the time Ms. Dickerson obtained the police reports, and it ultimately denied both the motion to strike and the motion for a mistrial.

During the cross-examination that followed (at this point, we mean the cross after the completion of Ms. Dickerson's testimony in front of the jury), counsel for Mr. Hamilton asked Ms. Dickerson about the documents she brought up to the witness stand when she testified. She explained that she had asked for the reports about a week before, and got them the Monday of trial. Counsel continued to ask Ms. Dickerson about when she got the reports, what she wrote down from the reports, and what she recalled without referring to the reports, at great length (over a full fifteen pages of the trial transcript). But then, in spite of all the discussion that had swirled around the conflicting testimony the evening before of Ms. Dickerson and Sergeant Blades as to when she got the reports, counsel for Mr. Hamilton *moved on*. Counsel did not seek to impeach Ms. Dickerson with the contradictory statements (or "make hay," as the court said) in any event.

Mr. Hamilton claims now that he was "hamstrung" because "the very lies told by [Ms.] Dickerson that the jury would be required to assess, occurred outside of their presence. . . . It is impossible to show inconsistency when the trier of fact only hear's [sic] one side." But this cannot be true: counsel never sought to introduce Ms. Dickerson's contradictory statements. Although counsel claimed at the new trial motion after trial that she couldn't get a transcript of the testimony from the evening before, the judge explained then that she could have simply replayed the recorded testimony that was available in the

courtroom at that time, and that she had been free to cross-examine Ms. Dickerson about the discrepancy:

> You ask her, isn't it true you gave testimony under oath about X, Y, and Z? And she said, no. And we got X, Y, and Z right over there, it gets played back. I mean, it was there. It was there for you to use it, if you wanted to use it. I assumed you didn't want to use it because of, you know, trial tactics.

After the jury came back in, it was not incumbent on the trial court to be sure Mr. Hamilton's counsel understood that the statements just made by Ms. Dickerson (the ones outside the presence of the jury, where she gave details about when she got the statements) were available to her to use for impeachment. The record reveals no attempt to use the "perjury" on cross, nor any opportunity that the court denied.

Moreover, the discrepancy isn't all that significant. We understand that counsel viewed it as "perjury," and the trial court did at one point allow that someone was lying. The court later stated that "we all agree *that somebody misremembered, perhaps, that's the best way of putting it.* But it could have been Ms. Dickerson, it could have been Sergeant Blades, it could have been some combination of that." (Emphasis added.) An inconsistency between two witness accounts does not always carry with it the assumption that one is lying. *Hunter v. State*, 397 Md. 580, 595-96 (2007) (noting the possibility, where a defendant and a police officer presented conflicting stories, that "neither the petitioner nor the police officers deliberately misrepresented the truth"). And here, even we were to assume that Ms. Dickerson lied, it certainly would not have justified the circuit court's declaring a mistrial.

2. The motion to strike.

Mr. Hamilton also argues that Ms. Dickerson's testimony should have been stricken because she violated the sequestration rule. Maryland Rule 5-615, which governs exclusion of witnesses, states that "upon the request of a party made before testimony begins, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses." *Id.*

We struggle to follow this argument, because we see no violation of the rule in the first place. Counsel does not claim that Ms. Dickerson actually sat in on Sergeant Blades's testimony. It appears instead that counsel views Ms. Dickerson's use of the police reports as a violation of the sequestration rule, an argument that fails at three different levels.

First, the timeline of events demonstrates that Sergeant Blades gave Ms. Dickerson the police reports *either* ahead of trial (according to Sergeant Dickerson) *or* on the evening of February 2, 2015 (according to Ms. Dickerson), and that the court entered the sequestration order on the morning of February 3. So even assuming Ms. Dickerson's testimony was correct (which, ironically, is what Mr. Hamilton asks us to assume in spite of his effort above to portray her as a perjurer), there was no sequestration order in place at the time when Ms. Dickerson obtained the reports from Sergeant Blades.

Second, and timing aside, obtaining the police reports wasn't a violation of the sequestration order in any event. The order, issued from the bench on February 3, 2015, restricted discussions of the case and the witnesses' testimony:

> Now, Counsel, there was a request yesterday at the end of jury selection that witnesses in this matter be sequestered. The Court will grant that request. . . . Counsel, will you advise the

> witnesses, I know there are many witnesses, some of whom are not here, please advise them that they will be prohibited from *discussing their testimony or the subject matter of this case . . .*
>
> * * *
>
> [J]ust make sure witnesses are advised that *they are not to discuss the subject matter of the case or their testimony* and are to remain outside of the courtroom.

(Emphasis added.)

Neither witness had testified at the time the police reports changed hands—as the trial court explained, "[a]t worst, you had a person having contact with another witness before either had testified." And Ms. Dickerson's testimony that Sergeant Blades "handed" the police reports to her "as we were leaving" the courtroom after the pre-trial conference does not suggest that any "discussion" took place that would have violated the order the court put in place.

Finally, Mr. Hamilton offers no authority for the proposition that the act of giving documents to a witness violates a sequestration rule. The point of the sequestration rule is to prevent witnesses from "'being taught or prompted by each other's testimony.'" *Reddit v. State*, 337 Md. 621, 628-31 (1995) (quoting *Bulluck v. State*, 219 Md. 67, 70-71 (1959)). It prevents "one prospective witness from being taught by hearing another's testimony; its application avoids an artificial harmony of testimony that prevents the trier of fact from truly weighing all the testimony; it may also avoid the outright manufacture of testimony." *Hurley v. State*, 6 Md. App. 348, 351-52 (1969). We review a decision about whether

violation of a sequestration order has occurred for an abuse of discretion. *Reddit*, 337 Md. at 629.

C. The Trial Court Properly Denied Mr. Hamilton's Motion *In Limine* To Exclude Testimony About His Use Of Racist Terms.

Mr. Hamilton's *third* contention challenges the trial court's denial of his motion *in limine* to prohibit the introduction of testimony about his referring to Mr. Parker as a "n*****." Although he suggests that this and other racial slurs were introduced time and again at trial, the only testimony that he actually cites in the record came in through Mr. Hamilton's dentist, Dr. Hawkins. The State responds that the testimony was admissible to support its charge that Mr. Hamilton committed a hate crime against Mr. Parker, and we agree.

We previously have reviewed the admissibility of prior racially derogatory statements in a hate crime prosecution in *Ayers v. State*, 335 Md. 602, 633 (1994), where we looked at whether such statements constituted "other wrongs" that were admissible under an exception to the general rule prohibiting the introduction of hearsay evidence. Md. Rule 5-404(b) (permitting the introduction of evidence of "other crimes, wrongs, or acts" under certain circumstances). In *Ayers*, we laid out the test that the trial court should apply: *first*, the court must determine whether there is an exception "to the general prohibition against the admission of other crimes evidence," 335 Md. at 633; *second*, it must ask "whether the accused's involvement in the prior criminal acts is established by clear and convincing evidence," *id.* at 634; and *third*, the court must "weigh the necessity

for and probative value of the other crimes or bad acts evidence against any undue prejudice likely to result from their admission." *Id.*

As to how we review the circuit court's ruling, and "whether a matter fits within an exception in the first instance, we extend no deference to a trial court's decision." *Wynn v. State*, 351 Md. 307, 318 (1998). But here we assume that the conduct falls within an exception, and Mr. Hamilton does not contest that his involvement—*i.e.*, that he made the statements—was proven by clear and convincing evidence. We move on, then, to review the trial court's balancing of relevance against prejudice for an abuse of discretion. *Smith v. State*, 218 Md. App. 689, 704 (2014).

Mr. Hamilton's counsel provides the testimony of Dr. Hawkins "as but one example" of racial slurs introduced at trial, arguing that the use of the word "n*****" was "inflammatory," and "had no relevancy to the State's burden of proof and elements of the crime of murder or the motive therefore." She claims that this, "coupled with the State's remarks during their opening statement regarding the devaluation of a black man's life and comparing [Mr. Hamilton] to a slave owner, crossed the line," and served to "do nothing but arouse a jury's prejudice and hostility toward a defendant."

First, other than Dr. Hawkins's testimony, there are *no* other instances of Mr. Hamilton's use of racially inflammatory language in the trial record. Although we can assume for purposes of understanding the story that Mr. Hamilton also used such language in his call with Ms. Dickerson, there is no transcript of the call. *See* Md. Rule 8-411.

Second, the defense never objected to Dr. Hawkins' testimony about Mr. Hamilton's use of the racial slurs. Counsel objected broadly that questions were leading, but the

transcript shows no objection based on the court's ruling on the motion *in limine*, and counsel never moved to strike Dr. Hawkins's assertion that Mr. Hamilton referred to Mr. Parker using a racial slur. *See* Md. Rule 4-323(a) (requiring that objection be made at the time evidence is offered); *Boyd v. State*, 399 Md. 457, 478 (2007) (requiring a contemporaneous general objection when evidence is introduced, even if a motion *in limine* has been made beforehand). But because the court cautioned counsel prior to trial about treading carefully when the statements came up, and because specific conversations about the issue *were* in fact had at trial, we will nevertheless look at the substance of the claim.

Third, evidence about racial slurs Mr. Hamilton may have used *specifically* with reference Mr. Parker were admitted properly because Mr. Hamilton had been indicted on a charge of violating CL § 10-304. The statute states that "[b]ecause of another's race . . . a person may not . . . commit a crime . . . against that person." *Id.* "The prosecution is required to show that the defendant has committed a crime upon a person '*because of that person's race.*' Thus, motive is an essential element of the crime." *Ayers*, 335 Md. at 633.

In *Ayers*, where the defendant was charged with a hate crime, the trial court permitted the State to introduce evidence about the defendant's run-in with several young African American teens several days before he assaulted a different young African American female (the latter incident formed the basis of the charges at issue). The State offered testimony of the defendant's friend that "the racial nature of the prior incident provided the incentive for the two men to go 'n***** hunting' on the evening in question." *Id.* The trial court admitted the evidence of the prior incident to show motive, but the defendant argued on appeal that it should have been prohibited because it did not tend to

establish a violation of the hate crime statute. The court considered whether the statements could come in as "prior bad acts," in spite of the general rule that evidence of other crimes may not, to show motive for committing the alleged hate crime. *Id.* at 631. The Court of Appeals held that the statements could be admitted only after the trial court "carefully weigh[s it] against any undue prejudice likely to result from its admission. This segment of the analysis implicates the exercise of the trial court's discretion." *Terry v. State*, 332 Md. 329, 335 (1993) (quoting *State v. Faulkner*, 314 Md. 630, 634-35 (1989)). And when weighing the probative value of a statement against its prejudicial effect, the trial court should only permit "speech actually connected with the offence . . . as evidence of motivation." *Id.* at 637. The Court then found that such a "tight nexus" existed between the defendant's initial confrontation with the teens, and the assault shortly thereafter of which he was convicted, and served to establish a racially-based motive behind that assault. *Id.*

Here, the trial court similarly exercised its discretion and permitted only statements with a tight nexus to the alleged crime. Although they were not made contemporaneously with Mr. Parker's disappearance, the statements admitted here were limited to Mr. Hamilton's references to Mr. Parker—the trial court only denied the motion *in limine* in part, foreclosing admission of general statements about Mr. Hamilton's broad views on race. Its reasoning, as it explained later, was based on a proper analysis under *Ayers*: the trial judge would allow testimony about "any views [Mr. Hamilton] had toward the *particular alleged victim* leading up to the event and statements about that victim after the event that had a racial component" (emphasis added) because of the hate crime charge.

Mr. Hamilton has not raised it, but it's worth pointing out that the fact that the hate crime charge was ultimately dismissed by the court does not bear on our analysis. Although he could have sought to sever the trial of the hate crime charge from the remaining counts, he did not do so. Given that the charge remained, the State had every reason to introduce—and indeed was duty-bound to introduce—any evidence about Mr. Hamilton's racial views *relating to Mr. Parker* that bore a "tight nexus" to the crime, and the statement Mr. Hamilton made to Dr. Hawkins did just that.

JUDGMENTS OF THE CIRCUIT COURT FOR DORCHESTER COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.