UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1668

September Term, 2015

CORNELL HARVEY

v.

STATE OF MARYLAND

Graeff,
Nazarian,
Leahy,
JJ.

Opinion by Graeff, J.

Filed: October 26, 2016

A jury sitting in the Circuit Court for Baltimore City convicted appellant, Cornell Harvey, of first degree murder of 15-month-old Carter Scott ("Carter"), and conspiracy and attempted first degree murder of Carter's father, Rashaw Scott.[1] The court sentenced appellant to life imprisonment on the murder conviction, life imprisonment with all but 50 years suspended on the attempted murder conviction, and life imprisonment on the conviction for conspiracy to commit murder, all to run consecutively.

On appeal, appellant presents six questions for our review, which we have rephrased slightly, as follows:

1. Did the trial court abuse its discretion in denying appellant's motion for mistrial after Mr. Scott testified that he knew appellant because they had been in jail, "locked up for murder," together?

2. If preserved, did the trial court abuse its discretion in admitting the lay testimony of Detective Kevin Allen that he retrieved data from three cell phones, and in admitting a copy of that data into evidence?

3. Did the trial court abuse its discretion in admitting Mr. Scott's prior statement?

4. Was the evidence insufficient to support appellant's convictions?

5. Did the trial court err in instructing the jury on transferred intent?

6. Did the trial court abuse its discretion in failing to grant a mistrial after the prosecutor mischaracterized the evidence in closing argument?

For the reasons set forth below, we shall reverse the judgment of the circuit court.

[1] Appellant was tried together with four co-defendants: Eddie Tarver, Dequan Shields, Rashid Mayo, and Reginald Love. After a five-defendant trial with twelve full days of witness testimony that lasted nearly six weeks, the jury determined that it could not reach a verdict regarding these defendants. Accordingly, the judge granted a mistrial on the charges against these four defendants.

FACTUAL AND PROCEDURAL BACKGROUND

The underlying facts are not in dispute. Accordingly, we shall set forth the facts only to the extent necessary for purposes of background.

On May 24, 2013, Mr. Scott and his son, Carter, were shot as they waited for appellant in Mr. Scott's car in the parking lot of the Cherrydale Apartments. Carter died from his injuries. The State's theory of the case was that appellant lured Mr. Scott to the shooting, and appellant's four co-defendants were the shooters. There was no dispute at trial that appellant was with Mr. Scott prior to the shooting. Appellant, however, told the police that he was not involved in the shooting.

Baltimore City Police Officer John Zohios[2] testified that, at approximately 7:05 p.m., he was in an unmarked patrol vehicle a few blocks from the Cherrydale Apartments when he heard eight to ten gunshots. He drove to the apartments and observed a male running toward Giles Street. Officer Zohios ordered the man to stop, but the man did not comply, running instead to an unoccupied Toyota Solara with its engine running. The man got into the vehicle and fled the scene. After having a description of the vehicle and partial tag number announced over the police radio, Officer Zohios returned to the Cherrydale Apartments to check on the victims. Five days after the incident, Officer Zohios identified the man he saw fleeing the scene in a photo array, and he identified him in court as Rashid Mayo.

[2] At the time of the incident, Officer John Zohios was a member of the Baltimore City Police Department. At the time of trial, however, he was employed by the New York City Police Department.

Officer James Brooks and Sergeant Troy Blackwell were driving near Giles Road at approximately 7:00 p.m. when Officer Brooks heard gunshots. As he looked to the left, he saw three males standing around a red car and appearing to fire guns into the car. One of the males was standing toward the front of the car wearing a brown hoodie, one was standing toward the rear of the car wearing a white T-shirt, and another was on the opposite side of the car. Officer Brooks drove into the apartment complex, and two of the men ran toward a bus lot.

Sergeant Blackwell also testified that he heard gunshots, he turned to his left, and he saw men shooting into a car. Sergeant Blackwell and Officer Brooks exited their vehicle and saw three men running toward the woods. They then got back into their vehicle, and after hearing a police dispatch description of the Toyota Solara, Sergeant Blackwell saw the vehicle, with a driver and a passenger, drive past at a high rate of speed. He and Officer Brooks followed the vehicle, along with a police helicopter and several other police vehicles, until the vehicle crashed into a row of parked cars.

Detective Timothy Copeland was following the Toyota Solara, and he saw someone, later identified as Eddie Tarver, running from the vehicle after it crashed. When he was apprehended, Mr. Tarver was wearing a light gray Old Navy hooded sweatshirt and had a rubber glove on one of his hands. After he was taken into custody, police recovered a cell phone from him.

Officer Daniel Gillgannon was in the police helicopter when he received a call regarding the shooting. He followed the vehicle for at least twenty minutes and recorded

video. When the vehicle crashed, two people got out. The passenger was apprehended, but the driver was not.

Detective Melissa Warczynski responded to a call for a shooting in Cherry Hill. When she arrived, she saw a red car with bullet holes in the windshield. As she walked up to the driver's side of the car, she saw Mr. Scott, who was trying to drive away. Mr. Scott had gunshot wounds and stated: "Cornell Harvey set me up." Detective Warczynski found Carter in the back seat, "purple and shaking," with bullet holes in each of his legs. She tried to stop the bleeding and called for a medic, who arrived approximately five to ten minutes later.

Joyce Martin, who lived in the Cherrydale Apartment complex, testified that she looked out of her window that evening and saw three or four men shooting into a red vehicle. One of the shooters was wearing a brown hoodie and was shooting into the windshield. The two other men, also wearing brown hoodies, were shooting into the driver's side of the vehicle. The three men turned and started running toward the apartment rental office, and the red car started to pull slowly out of the parking lot.

Ms. Martin had observed the red vehicle pull into the apartment complex approximately five or ten minutes prior to the shooting. She observed a short, thin man, wearing a green hoodie, get out of the passenger side of the vehicle and "mingl[e] around in the complex," "talking to people, sitting on the step." The man was talking to a lady in the next building and sitting on the step. The man returned to the vehicle once and got in for "about a second." The man remained on the scene after the shooting, but he had changed into a gray hoodie.

Tessa Simmons, who also lived in the Cherrydale Apartments, testified that, at approximately 7:00 p.m., she saw four men wearing gloves jump over a fence and run between the apartment buildings. She then saw three of the men begin shooting at a red car; she did not know where the fourth man went. After the shooting, the three men ran back in the direction from which they came.

At the time of trial, Mr. Scott was in custody because he did not want to testify. He stated that he had planned to meet appellant on the day of the shooting. He talked to appellant on the phone, but he could not remember who had called whom. When Mr. Scott went to meet appellant, he had Carter in the car with him. Immediately after Mr. Scott picked up appellant, appellant asked him to drive "around the corner" to the parking lot at the Cherrydale Apartments. When they arrived, appellant got out and went to meet a girl. Mr. Scott saw appellant go into one of the apartment buildings, and he did not see him again. At that point, somebody ran up to Mr. Scott's car and began shooting. Mr. Scott tried to cover Carter and ducked down. After the shooting, Mr. Scott tried to drive away, but he was cut off by the police.

The State showed Mr. Scott a photo array at trial. He initially stated that he did not remember seeing it before, that the police had shown him a lot of photos and told him who to pick out, that the signature on the array was not his, and that he had never gone by the name "Shawn." He said that the handwriting on the back of the array was his, but that did not refresh his recollection that he previously had seen the array. He stated that the police never told him to pick appellant's picture out of an array, and he picked appellant's photo because police asked him who he was going to meet. He subsequently testified that he

recalled seeing the array, and he agreed that he had written the following on the back of the array: "Cornell Harvey, which I know as Lowhead, lured me into the apartment complex where I was shot and my son was killed after I picked him up and drove him there." He stated that he wrote those words after police told him how to "word it."

After further questioning, and after having been shown his prior statement to the police, Mr. Scott testified that he contacted appellant about meeting a few days before the shooting, but he was unable to meet appellant. A day or two later, appellant called Mr. Scott and told him to "come holler at me or whatever." When he went to pick up appellant, appellant was on the phone and stated: "I'm coming right back, don't lock the door" and then hung up.

Mr. Scott testified that appellant saw Carter in the back seat and interacted with him. They were supposed to go to Mr. Scott's neighborhood, but after appellant got into the car, he said that he needed to "holler at" a girl and see someone leave for prom. Appellant told Mr. Scott to pull "real quick" into the parking lot in the Cherrydale Apartment complex and told him where to go. Mr. Scott testified that he did not see appellant again after he got out of the car, and "the riding part did suggested that he lured me, so, but I believe he lured me." Shortly after appellant got out of the car, somebody ran up to Mr. Scott's car and began shooting.

Mr. Scott believed appellant lured him to the parking lot "[j]ust by his actions and his way," because "he's a cruddy dude," but he did not have any proof that appellant set him up "besides me going there and getting shot." He claimed that, before the police recorded a statement from him, they said: "Did he lure you? Well just say it." He denied

telling police that appellant set him up and repeatedly told them that he came to meet appellant, "[a]nd I guess they assumed that he set me up." He subsequently stated, however, that he did not remember his statement to police; he only remembered police telling him what to say. He testified that he was high on medication at the time and did not "really remember."

Nancy Morse, a crime scene technician, collected evidence at the scene of the shooting. She collected 16 shell casings from the area around the car. Two shell casings were found in the vehicle. Ms. Morse also collected from a grassy area between two apartment buildings, a blue sweatshirt, a brown sweatshirt, a knit cap, two yellow gloves, a piece of a yellow glove, two purple gloves, a Hi-Point handgun, and a Kimber handgun. She did not recover any fingerprints.

Another crime scene technician, April Taylor, processed the Toyota Solara. She collected fingerprints, a sweatshirt, gloves, a cell phone, and another five pairs of gloves wrapped in a scarf. A Latent Fingerprint Examiner, Roy Jones, testified that fingerprints lifted from the car matched Mr. Love, Mr. Tarver, and Dequan Shields. None of the prints matched appellant or Mr. Mayo. William Young, a forensic serologist,[3] examined eight pieces of evidence, including yellow gloves, purple gloves, a brown sweatshirt, a blue sweatshirt, and a black knit hat. DNA samples from two gloves, the black-knit hat, and blue sweatshirt were consistent with Mr. Love, and samples from a glove piece and brown

[3] At the time of trial, William Young was a forensic DNA analyst.

sweatshirt were consistent with Mr. Shields. None of the DNA samples matched Mr. Tarver, Mr. Mayo, or Breyon Cason, the registered owner of the Toyota Solara.

Karen Sullivan, a Firearms Examiner, test fired the Hi-Point and Kimber handguns and examined the cartridge casings, bullets, and bullet fragments found at the scene. Two casings matched the Hi-Point .45 caliber gun, none matched the Kimber .45 caliber gun, seven were fired from a .380 caliber gun, and nine were fired from a .40 caliber gun. The Kimber was at "maximum capacity" when she received it. Based on the evidence, she opined that at least three weapons were used on the day of the shooting.

Detective Jonathan Jones, the primary detective in the case, responded to the scene on the night of the shooting and executed a search and seizure warrant on the Toyota Solara. On May 26, 2013, he interviewed Mr. Scott in the hospital and audio-recorded the interview. Detective Jones also interviewed appellant and obtained an audio-statement from him.

The recording of appellant's statement was played for the jury. In the statement, appellant said that Mr. Scott called his home at approximately 3:00 p.m. and picked him up an hour or two later. Appellant's girlfriend, Amanda, called and asked him to come see her cousin leave for prom, so appellant asked Mr. Scott to drive him to the Cherrydale Apartments. After Mr. Scott parked, appellant met Amanda and they walked to some steps. A minute or two later, four people wearing hoodies jumped over a gate and started shooting into Mr. Scott's car. Appellant was "shocked" and "scared" because he was just going to visit Amanda and her family, so after grabbing Amanda's son, appellant went inside the apartment until everything calmed down. Then he left. Appellant did not call the police

because he was scared, and the police already were there. He denied being involved in the shooting and stated that Mr. Scott knew he had not set him up. Additionally, appellant said that he did not recognize a picture of Mr. Tarver.

Police also questioned appellant about phone records that indicated that Mr. Scott called appellant "over and over," "constantly," and asked why, if appellant was not interested in connecting with Mr. Scott on the day of the shooting, he had "multiple conversations with him" prior to their meeting. Appellant answered that Mr. Scott was having trouble finding his way to where appellant was waiting to be picked up.

Detective Jones spoke to Dequan Shields in July 2013. Mr. Shields signed a statement saying that he had never been in the Toyota Solara. After Mr. Shields was advised that his fingerprints were found in the vehicle, he stated that it was "Breyon's car," and he admitted that he previously had been in the car.

Detective Jones located Mr. Mayo in Ruston, Louisiana after searching for several months. Mr. Mayo advised Detective Jones that he left the Toyota Solara on "Pop and North with keys in the seat" on the day of the shooting, and he then went out with his friends and got drunk and high. Mr. Mayo denied knowing the other defendants. The State introduced photos from Ms. Cason's phone showing Mr. Mayo with Mr. Tarver and Mr. Love.

Detective Jones collected a cell phone from the back seat of the Toyota Solara. The phone, which had Ms. Cason's phone number in the contacts under "Wifie," was attributed to Mr. Mayo. The phone also had the number associated with the phone taken from appellant in its contacts.

DISCUSSION

I.

Motion for Mistrial

Appellant's first contention is that the court erred in denying his motion for a mistrial after Mr. Scott stated during cross-examination that he met appellant in jail when they were "[b]oth locked up for murder." He argues that this testimony, which Mr. Scott had been instructed not to say, "required a mistrial as the only possible cure," and the court abused its discretion by not granting his motion.

The State does not dispute that Mr. Scott's testimony was improper. It contends, however, that "[u]nder the circumstances of this case, the trial court acted within its discretion in declining to declare a mistrial based on the isolated statement made during the fifth of 12 days of testimony, and instead instructing the jury to 'disregard and ignore'" Mr. Scott's testimony.

A.

Proceedings Below

Prior to Mr. Scott's testimony, the State asked the court to advise Mr. Scott "to make no mention of [appellant] being in jail, since that's how he knows him." The Court granted the State's request and advised Mr. Scott prior to his testimony that he could not "testify as to the circumstances of . . . meeting" appellant for the "first time, which is in jail."

On direct examination, Mr. Scott did not testify regarding how he knew appellant. On cross-examination by counsel for Mr. Love, however, after Mr. Scott stated that he did not remember whether appellant went into the apartment building, the following transpired:

Q. Okay. Well weren't you paying attention? I mean, this was your boy. Back then, this was somebody that you had planned to holler at.

A. I met him in jail. Like, I mean I don't know him that well. I mean we know each other well. We know each other through bad stuff. Both of us locked up for murder, and that's how we know each other.

[APPELLANT'S COUNSEL]: Your Honor! May I approach?

THE COURT: Do you want to make an objection?

[APPELLANT'S COUNSEL]: Yes, I have an objection.

THE COURT: Do that first, rather than just yelling out.

[APPELLANT'S COUNSEL]: Sorry, Your Honor.

THE COURT: You're the only person I've had to say tone the volume down in this courtroom. (Laughter)

[APPELLANT'S COUNSEL]: It's a big room, Your Honor. It's a big room.

THE COURT: It's a big room, but I can hear you in a much lower voice. The histrionics we don't need.

At that point, counsel approached the bench and the following ensued:

[APPELLANT'S COUNSEL]: Your Honor, the State's witness has just told the jury that my client was locked up for murder with him.

THE COURT: What did he actually say?

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THE STATE: He said they knew each other from doing bad stuff. They both had been locked up for murder.

[APPELLANT'S COUNSEL]: I knew him. I knew him from –

THE COURT: Right. Well, he was told not to say that . . . he knew [appellant] from being in jail.

> [APPELLANT'S COUNSEL]: I think locked up for murder would imply the jail.
>
> THE COURT: Well, it might imply jail, but so what are you asking for here?
>
> [APPELLANT'S COUNSEL]: I'm asking for a mistrial.
>
> THE COURT: No.
>
> [APPELLANT'S COUNSEL]: On behalf of [appellant].
>
> THE COURT: You're not going to get a mistrial for that. But I will remind him of the – but he's not inconsistent with any instructions he's been given.

The State then suggested that Mr. Scott "be advised he's not to make any mention of anybody being in jail or any criminal history, and perhaps advised of the penalties for violating a Court Order, particularly if violating that Court Order disrupts the entirety of these proceedings via a mistrial." The court then instructed the jury: "Ladies and gentlemen, disregard and ignore the last response." It then excused the jurors for lunch.

Counsel then continued argument on the motion, stating that appellant was on trial for murder, and the State's witness had "just now informed the jury that [appellant] was previously charged and incarcerated on a murder charge," and under those circumstances a curative instruction was not sufficient. The following then occurred:

> THE COURT: -- I don't – well, I understand that. And you want a mistrial. And you want your client severed. And you want – yeah I understand all those things.[4]
>
> [APPELLANT'S COUNSEL]: Severance has nothing to do with a mistrial, Your Honor.

[4] Counsel for appellant had made a pretrial motion to sever.

> THE COURT: I know, and I understand that. But ever since the beginning of this case you want your client out of this courtroom in conjunction with the other defendants. I understand that.
>
> [APPELLANT'S COUNSEL]: I did not solicit the statement, Your Honor. This is not some fraud perpetrated by me.
>
> THE COURT: I understand you didn't. But he also didn't violate any instruction that I gave him.
>
> [APPELLANT'S COUNSEL]: He said he met my client in jail – which he was specifically instructed not to do. And on top of that, he told the jury that my client was pending a charge –
>
> THE COURT: I heard – I'm going to listen to what he said.
>
> [APPELLANT'S COUNSEL]: Okay.
>
> After listening to the recording, the court stated:
>
> I stand corrected with regard to one thing, [appellant's counsel]. He did say "I met him in jail" and that's a direct quote, from listening to the tape. Mr. Scott, you were specifically advised not to mention that. Where you met him. You were told not to do that.

Mr. Scott responded: "I thought I had to answer a question. She asked like is he my friend and – "

Following a lunch recess, the court held a bench conference. The court explained that it was still denying the motion for mistrial, but it inquired as to whether it should "revisit the instruction" it previously gave to the jury, recognizing that this could "potentially highlight it more." The following then occurred:

> [APPELLANT'S COUNSEL]: I mean, they've been instructed to disregard the statement. And I've made my position clear.
>
> THE COURT: Right.

> [APPELLANT'S COUNSEL]: I think that's not sufficient because of the – I mean now the jury knows that my client has pending two murders now.
>
> THE COURT: No, they didn't hear – they didn't hear the answer. They've been instructed to –
>
> [APPELLANT'S COUNSEL]: Right, but I don't think you can unring that bell.
>
> THE COURT: I'm under – you know I'm not – but well –
>
> [APPELLANT'S COUNSEL]: But I understand what the [c]ourt's attempting to do and as long as my motion is preserved and my request is preserved then –
>
> THE COURT: All right, I will re-instruct [Mr. Scott], but I will not give further instruction on this subject to the jury.

B.

Declining to Grant a Mistrial

As indicated, the State concedes, appropriately, that the testimony by Mr. Scott that appellant previously had been in jail for murder was inadmissible. *See Carter v. State*, 366 Md. 574, 583 (2001) (evidence of prior criminal acts generally is inadmissible). The question presented here is whether this evidence was so prejudicial as to require a mistrial or whether the curative instruction was sufficient to cure the prejudice.

In making that determination, we are cognizant that "'the declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice,'" *Simmons v. State*, 208 Md. App. 677, 690 (2012) (quoting *Braxton v. State*, 123 Md. App. 599, 666-67 (1998)), *aff'd*, 436 Md. 202 (2013), and the decision whether to grant a motion for a mistrial "'lies within the discretion of the trial judge.'" *Braxton*, 123 Md. App. at 667 (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)). As this Court recently

stated: "When a trial judge decides that the prejudice can be remedied by a curative instruction, and denies the mistrial motion and gives such an instruction, appellate review focuses on whether 'the damage in the form of prejudice to the defendant transcended the curative effect of the instruction.'" *Walls v. State*, 228 Md. App. 646, 668-69 (2016) (quoting *Kosmas v. State*, 316 Md. 587, 594 (1989)).

In *Rainville v. State*, 328 Md. 398 (1992), the Court of Appeals addressed the analysis to be applied when the defense requests a mistrial based on the admission of prejudicial evidence. In that case, the Court set forth several factors to consider in assessing whether an accused's right to a fair trial was adequately protected by a jury instruction after the admission of inadmissible and prejudicial testimony:

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

Id. at 408 (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). The Court of Appeals subsequently stated that these factors should be considered to determine "'whether the evidence was so prejudicial that it denied [a party] a fair trial.'" *Simmons v. State*, 436 Md. 202, 221 (2013) (quoting *Kosmas*, 316 Md. at 594).

Here, we agree with appellant that Mr. Scott's testimony, in a murder trial based on circumstantial evidence, that appellant previously had been in jail for murder, was very prejudicial. *See Rainville*, 328 Md. at 407 (a prior conviction that is "'similar to the crime for which the defendant is on trial may have a tendency to suggest to the jury that if the

defendant did it before he probably did it this time'") (quoting *Prout v. State*, 311 Md. 348, 364 (1988)). Indeed, it was too prejudicial to be cured by the court's instruction.

Assessing the facts set forth by the Court of Appeals, it is true, as the State argues, that Mr. Scott's remark was a "single, isolated statement," made on the fifth day of twelve full days of witness testimony, in a five-defendant trial that lasted nearly six weeks. And the remark was not solicited by the State, but instead, it was an unresponsive statement made during Mr. Scott's cross-examination by counsel for Mr. Love, appellant's co-defendant.[5]

Appellant argues that the circuit court erroneously "focused almost exclusively" on the second factor, and rather than focusing on the prejudice to appellant, focused on "whether the State elicited" the "harmful testimony." He asserts that, pursuant to *Longshore v. State*, 399 Md. 486 (2007), a decision whether a mistrial should be granted is not a question "of good faith/bad faith on the part of the State," and the fact that the testimony "was not solicited or expected by the State does not diminish the prejudice" to appellant.[6] *Id.* at 538. We agree that the ultimate focus is on prejudice to the defendant,

[5] Indeed, as the State notes, the prosecution had taken preventative steps to prevent Mr. Scott from testifying that he knew appellant from jail, specifically asking the court to admonish Mr. Scott to limit any such testimony, and the court complied. Mr. Scott, however, nevertheless blurted out that he met appellant in jail, where they both were "locked up for murder."

[6] In *Longshore v. State*, 399 Md. 486 (2007), during the State's case in chief, a police detective testified that he pulled the appellant's vehicle over, and when he asked for consent to search, the appellant "denied consent." *Id.* at 536. Defense counsel moved for a mistrial, but the court declined, instead delivering a curative instruction. *Id.* The Court of Appeals held that the court abused its discretion in refusing to grant a mistrial, analogizing the detective's statement to a violation of the appellant's assertion of his (continued . . .)

and the fact that the testimony was elicited by a co-defendant should not be given significant weight in this analysis or this case.

With respect to the third and fourth factors, whether the witness was a principal witness and whether credibility was a crucial issue, appellant asserts that Mr. Scott was "*the* principal witness" against him; Mr. Scott "was nearly the State's entire case." And appellant's credibility "was at stake in terms of his belief that Mr. Scott set him up." We agree. Mr. Scott was the primary witness upon which the State relied in its case against appellant.

Moreover, appellant's credibility in his statement to the police that he was not involved in the shooting was directly at issue. We would be hard pressed to say that the jury would not have doubt regarding his assertion, that he just happened to be there at the time of the shooting, after they heard that he previously had been in jail for murder.

This is especially the case given the last factor, the amount of evidence against appellant. In that regard, appellant notes that the State's case against him was circumstantial, arguing that the inadmissible evidence was "incredibly prejudicial here because of the closeness of the case." He states that there "was little other evidence against [him] other than the fact that he had met with Mr. Scott and told him to go to the apartment complex."

(. . . continued) Fifth Amendment right to remain silent. *Id.* at 537. The Court concluded that, despite the fact that the State had not solicited the detective's response, because an "important issue in the case was whether petitioner had knowledge of the contraband contained within the car," the jury "may have considered his refusal to consent to search as evidence of knowledge that the drugs were within the automobile." *Id.* at 538.

We agree. Given the facts of this case, the "prejudice caused by the improper statement 'transcended the curative effect of the instruction.'" *Simmons*, 436 Md. at 222 (quoting *Kosmas*, 316 Md. at 594). Under these circumstances, the circuit court abused its discretion in denying the motion for mistrial.

II.

Sufficiency of the Evidence

Because we are reversing appellant's convictions, and because the contentions of error regarding evidentiary issues, jury instructions, and closing argument may not arise again on retrial, we will not address them. We will, however, address the claim that the evidence was insufficient to support appellant's convictions. As this Court has explained: "In cases where this Court reverses a conviction, and a criminal defendant raises the sufficiency of the evidence on appeal, we must address that issue, because a retrial may not occur if the evidence was insufficient to sustain the conviction in the first place." *Benton v. State*, 224 Md. App. 612, 629 (2015).

Appellant contends that the evidence was insufficient to support his convictions because the "State's entire case came down to 'strong suspicion or mere probability.'" He asserts that, although the "circumstances of the shooting and [appellant's] presence may appear suspicious, no rational trier of fact could conclude from his presence that he was guilty of murder, attempted murder, and conspiracy to commit murder."

The State disagrees. It contends that the evidence was sufficient to support appellant's convictions. On this point, we agree with the State.

In *Donati v. State*, 215 Md. App. 686, 716, *cert. denied*, 438 Md. 143 (2014), this Court set forth the applicable standard of review in determining the sufficiency of the evidence on appeal:

> The test of appellate review of evidentiary sufficiency is whether, "'after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Coleman*, 423 Md. 666, 672 (2011) (quoting *Facon v. State*, 375 Md. 435, 454 (2003)). The Court's concern is not whether the verdict is in accord with what appears to be the weight of the evidence, "but rather is only with whether the verdicts were supported with sufficient evidence -- that is, evidence that either showed directly, or circumstantially, or supported a rational inference of facts which could fairly convince a trier of fact of the defendant's guilt of the offense charged beyond a reasonable doubt." *State v. Albrecht*, 336 Md. 475, 479 (1994). "We 'must give deference to all reasonable inferences [that] the fact-finder draws, regardless of whether [the appellate court] would have chosen a different reasonable inference.'" *Cox v. State*, 421 Md. 630, 657 (2011) (quoting *Bible v. State*, 411 Md. 138, 156 (2009)). Further, we do not "'distinguish between circumstantial and direct evidence because [a] conviction may be sustained on the basis of a single strand of direct evidence or successive links of circumstantial evidence.'" *Montgomery v. State*, 206 Md. App. 357, 385 (quoting *Morris v. State*, 192 Md. App. 1, 31 (2010)), *cert. denied*, 429 Md. 83 (2012).

Applying this standard of review, we conclude that the evidence was sufficient to support appellant's convictions. The State produced evidence that appellant called Mr. Scott on the day of the shooting. When Mr. Scott picked appellant up, he heard appellant tell someone not to lock the door, because he would be coming right back. Mr. Scott thought that was unusual because the two men had plans to travel to Mr. Scott's part of town. Appellant got into the car he asked Mr. Scott to bring him to a nearby apartment building. When they arrived, appellant got out and began talking to a woman. Appellant was acting "jittery" and "fidgety," and he returned to the car to tell Mr. Scott not

to leave. Shortly thereafter, several men approached Mr. Scott's vehicle and started shooting.

The evidence showed that the shooters were wearing gloves, and there was an empty vehicle with the engine running parked nearby. A phone found in this vehicle had a number associated with the phone taken from appellant in its contacts. Mr. Scott believed that appellant lured him to the place where he was shot.

From this evidence, a reasonable jury could have concluded that Mr. Scott's shooting was planned in advance, and appellant's role in the shooting was to ensure that Mr. Scott would be in the designated location at the designated time. The evidence was sufficient to support appellant's convictions.

JUDGMENTS REVERSED AND REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.