UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 2583 & 2662

September Term, 2015

BRANDON MILLER

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Woodward,
Nazarian,

JJ.

Opinion by Woodward, J.

Filed: December 23, 2016

The State charged Brandon Miller, appellant, in two separate indictments for his alleged participation in two bank robberies that occurred approximately a week apart at the same location in Baltimore. On motion from the State, the cases were consolidated for trial. A jury in the Circuit Court for Baltimore City convicted appellant of robbery and related offenses as to the first incident and attempted robbery and related offenses concerning the second. The court imposed an aggregate prison sentence of 25 years, with all but 10 years suspended, to be followed by a three-year period of probation. Appellant noted two appeals, which we consolidated into one. On appeal, appellant presents three questions for our review:

> 1. Did the trial court err in granting the State's motion for joinder?
>
> 2. Did the trial court err in denying the motion to suppress the extrajudicial photo identifications?
>
> 3. Did the trial court err in denying the motion for mistrial and/or in denying the motion to strike because of a violation of the sequestration order?

For the reasons stated below, we answer these questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

On July 8, 2014, Janine Thomas was working as a teller at the Wells Fargo Bank branch on 4820 Eastern Avenue in the Highlandtown area of Baltimore. Shortly after 2 p.m., two men approached Thomas's teller window. Thomas stated that she is separated from the main lobby by a thick, clear plexiglass partition. She described the men as young

and African-American; both men were wearing hats, and one was wearing "shades." Thomas testified that the taller man stood on her left.

The taller man slid a note to Thomas that read: "Give all 100's 50's 20's unmarked untraced bills No ink packs or Gps or get shots." Thomas reached into her drawer, withdrew money, and placed the cash in the window. The two men then took the money and left the bank.

Thomas notified the branch manager, Samara Cook, of the robbery. Cook conducted an audit and determined that the men had stolen $17,450. Cook notified police, and Detective William Taylor, of the Baltimore City Police Department, FBI Violent Crime Task Force, was assigned as the lead detective. The robbery was captured by surveillance footage, which was played for the jury at trial.

Six days later, Vanessa Fernandez-Salazar was working as the commercial account teller at the same Wells Fargo branch. Around 4:30 p.m., two men entered the bank and approached Fernandez-Salazar's window. She testified that the taller man was saying something quietly, but she did not understand him initially. She twice asked for clarification, and the man said, a little louder, "Hurry up, hurry up, give me the money, give me the money."

Coincidentally, Thomas was at that time working the drive-through window immediately behind Fernandez-Salazar's window. Attracted by the commotion, Thomas turned to observe Fernandez-Salazar's work area and made eye contact with the taller man. She recognized him as the same man who had robbed her on July 8th. Fernandez-Salazar testified that other bank employees began yelling, "that's the guy, that's the guy, it's the

same guy, it's the same guy." The two men ran out without taking any money. This event was also captured on surveillance footage, which was played for the jury at trial.

Approximately six weeks later, Detective Anthony Kreafle, of the Baltimore City Police Department, conducted photographic arrays with Thomas and Fernandez-Salazar. Thomas identified appellant as the taller man who had robbed her on July 8th and had attempted to rob Fernandez-Salazar on July 14th. Fernandez-Salazar independently identified appellant as the taller man who had demanded money from her on July 14th. A search of appellant's home did not, however, reveal any of the clothing items worn during the events at issue, nor any fruits of the robbery. Additionally, there was no forensic evidence linking appellant to the events at the bank.

The State charged appellant with robbery, conspiracy to commit robbery, second-degree assault, theft of property valued between $10,000 and $100,000, and conspiracy to commit theft as to the July 8th robbery. The State filed a separate indictment for the July 14th event and charged appellant with attempted robbery, conspiracy to commit robbery, attempted theft, and conspiracy to commit theft.[1] Prior to trial, the State moved to join the indictments into a single trial, which was granted over appellant's objection. After the court granted a motion for a judgment of acquittal as to attempted theft of property valued between $10,000 and $100,000 and its corresponding conspiracy to commit theft charge relative to the July 14th event, the jury convicted appellant of all remaining charges. The

[1] The State further sub-divided this indictment by separating the attempted theft and corresponding conspiracy to commit theft charges into value categories of between $1,000 and $10,000 and between $10,000 and $100,000.

court subsequently sentenced appellant as indicated above. We shall include additional facts in the discussion that follows.

DISCUSSION

I. Joinder of Cases

Appellant first contends that the trial court erred in consolidating his cases for trial. He asserts that the evidence of his alleged participation in the bank robberies was not mutually admissible – that is, evidence of the first robbery would not have been admissible in a trial for the second robbery, and *vice versa*. Furthermore, he maintains that *McKnight v. State*, 280 Md. 604 (1977), stands for the proposition that, where the alleged offenses are similar, a court should not order joinder for the sake of judicial efficiency because there is a danger of unfair prejudice in that the jury will conflate the evidence. Ultimately, appellant maintains that there was no necessity for the State to consolidate the cases, and the court should have denied the motion for joinder.

The State responds that the trial court properly joined the cases for trial because the evidence of the individual crimes was mutually admissible. Specifically, the State maintains that evidence of the other crime would have been admissible in separate trials as evidence of appellant's identity and/or intent. Furthermore, the State argues that the court did not abuse its discretion in joining the cases for trial because the interest in judicial efficiency was "significant." The State notes that the witnesses were the same and were mostly civilian bank employees, and appellant's defense was the same in both cases – mistaken identity.

Joinder of offenses is governed by Rule 4-253(b), which provides: "If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial." A trial court may not order the cases joined "[i]f it appears that any party will be prejudiced by the joinder[.]" Rule 4-253(c). This Court recognized that a defendant may face "[s]pecific dangers that may arise from joinder at a jury trial includ[ing] 'difficulty in presenting separate defenses, cumulation of evidence by the jury bolstering a weaker case, and the danger that a jury may infer a criminal disposition on the defendant's part from which he may be found guilty of other crimes charged.'" *Reidnauer v. State*, 133 Md. App. 311, 319 (quoting *McGrier v. State*, 125 Md. App. 759, 764 (1999)), *cert. denied*, 361 Md. 233 (2000).

We have remarked that "'[t]he decision to join or sever defendants or charges is a matter within the trial court's discretion. The exercise of that discretion requires balancing the 'prejudice' caused by the joinder against 'the considerations of economy and efficiency in judicial administration.'" *Wilson v. State*, 148 Md. App. 601, 647 (2002) (quoting *Ogonowski v. State*, 87 Md. App. 173, 186 (1991)), *cert. denied*, 374 Md. 84 (2003). "'Prejudice' within the meaning of Rule 4-253 is a 'term of art, and refers only to prejudice resulting to the defendant from the reception of evidence that would have been inadmissible against that defendant had there been no joinder.'" *Id.* (quoting *Ogonowski*, 87 Md. App. at 186-87).

Accordingly, we engage in a two-part test to determine whether the trial court abused its discretion in joining the cases: "'(1) is evidence concerning the offense or

defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance?'" *Harper v. State*, 162 Md. App. 55, 88 (2005) (quoting *Conyers v. State*, 345 Md. 525, 553 (1997)). "'If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must apply the first step of the 'other crimes' analysis announced in [*State v.*] *Faulkner*[, 314 Md. 630 (1989)].'" *Id.* (quoting *Conyers*, 345 Md. at 553).

"The first step prescribed by *Faulkner* is 'the purely substantive determination of whether evidence of another crime is *prima facie* admissible, singly or mutually, by virtue of its utility to prove motive, intent, absence of mistake, identity, common scheme or plan, etc.'" *Reidnauer*, 133 Md. App. at 319 (quoting *Solomon v. State*, 101 Md. App. 331, 343 (1994)). Stated another way, "the judge 'has to look to the circumstances under which evidence of 'other crimes' would be admitted in the trial of a single defendant on a single charge.'" *Id.* (quoting *Solomon*, 101 Md. App. at 342).

This analysis involves a three-part test of its own: (1) does the evidence fit within one of the recognized exceptions for "other crimes" evidence; (2) is involvement in the other crime established by clear and convincing evidence; and (3) would it be an abuse of discretion to admit the evidence? *Oesby v. State*, 142 Md. App. 144, 158-65, *cert. denied*, 369 Md. 181 (2002). This Court has remarked that there are five "classic" exceptions for the admissibility of other crimes evidence, "brought to the front of the mind by the mnemonic aid MIMIC:" "1) motive; 2) intent; 3) absence of mistake or accident; 4) identity; and 5) common scheme or plan." *Id.* at 160 (emphasis omitted). This Court has recognized, however, that the list of exceptions continues to expand, *see id.* at 160-62,

including "'[o]ther like crimes by the accused so nearly identical in method as to earmark them as the handiwork of the accused.'" *Id.* at 161 (quoting *Ross v. State*, 276 Md. 664, 670 (1976)). Whether this *modus operandi* or "signature" crime evidence is an exception within its own right, or a subset of the identity exception, it is, nevertheless, relevant evidence. *Id.* at 161-62.

In this case, the trial court ordered the cases joined on the basis of the robberies being close in time and at the same location with the same witnesses. Accordingly, the court concluded that the evidence of the two bank robberies would have been mutually admissible under the "other crimes" exceptions for identity or common scheme or plan. The court also found that the interests of judicial economy outweighed any prejudice to appellant.

Appellant contends that the trial court erred in its conclusion because the bank robberies were not part of a common scheme or plan, as that phrase has been defined in Maryland law. Indeed, this Court has defined the common scheme or plan exception as follows: "'Wrongful acts planned and committed together may be proved in order to show a continuing plan or common scheme . . . there must be evidence . . . of one grand plan; the commission of each is merely a step toward the realization of that goal.'" *Reidnauer*, 133 Md. App. at 322 (quoting *Emory v. State*, 101 Md. App. 585, 613 (1994)). "'The fact that the crimes are similar to each other or occurred close in time to each other is insufficient.'" *Id.* (quoting *Emory*, 101 Md. App. at 613). Stated another way, in order to comport with the common scheme or plan exception, "'it is necessary that the crimes, including the crime charged, so relate to each other that proof of one tends to establish the other.'" *Id.* (quoting

Cross v. State, 282 Md. 468, 475 (1978)). We are persuaded that evidence of appellant's participation in both bank robberies was not part of a common scheme or plan, as there was no indication that the robberies were part of any sort of grander scheme or plan.

Appellant also argues that there was no evidence of a "signature" sufficient to fit the evidence into the *modus operandi* exception because the only similarity was the location. There were, however, additional similarities between the two robberies, including the time of day, the number of participants involved (notwithstanding that there was evidence that a different man accompanied appellant at the separate robberies), and the tactic of approaching the commercial teller's window. We are persuaded that the two crimes are sufficiently similar so as to fit into the *modus operandi* exception. *See Hurst v. State*, 400 Md. 397, 414 (2007) (stating that *modus operandi* exception is useful in identifying a defendant who claims not to have committed the crimes); *McGrier*, 125 Md. App. at 765 (concluding that joinder of cases for sexual assault was proper where three attacks occurred at same time of day in same building within a fifteen-day period, the victims were all teenage girls who were attacked from behind, and the victims gave similar descriptions).

Moreover, in this case, Thomas, one of the witnesses, identified appellant during the second incident as the man who had robbed her six days prior. Consequently, evidence of the first robbery was relevant to Thomas's identification of appellant in the second robbery.

Finally, we are not persuaded that the trial court abused its discretion in weighing the interests of judicial efficiency against whatever prejudice appellant asserted existed as

a result of a joint trial. Accordingly, we hold that the circuit court did not abuse its discretion in granting the State's motion for joinder.

II. The Photographic Identifications

Prior to trial**,** defense counsel moved to suppress the extra-judicial identifications of appellant by Thomas and Fernandez-Salazar. Detective Kreafle interviewed Thomas and Fernandez-Salazar on August 28, 2014, and asked them to identify the robber from a photographic array. Detective Kreafle stated that he conducted the identifications with Thomas and Fernandez-Salazar separately. The arrays for the witnesses included the same photographs, but the pictures were in a different order. For both identifications, Detective Kreafle read the instructions to the witnesses, had them sign the instructions indicating that they understood them, and then showed the pictures to the witnesses. Detective Kreafle testified that he was unaware of the identity of the suspect, and at no point did he "coach" the witnesses or suggest anything to them. Thomas and Fernandez-Salazar corroborated Detective Kreafle's account of the identification procedures.

Defense counsel argued that the identification by the witnesses was unreliable. When prompted by the trial court, defense counsel stated that the array was impermissibly suggestive because appellant's photograph was the only one in which the subject was looking down and away. The State contended that the array was not impermissibly suggestive, and Detective Kreafle did not corrupt the result. The circuit court denied the motion to suppress, finding that the identification procedure was not impermissibly suggestive. The trial court stated:

> The Court, having reviewed and considered the evidence presented and the Defendant's motion to suppress the two separate pre-trial identifications, the Court having considered the testimony of Detective Kreafle, the testimony of [] Jasmine Thomas as well as the testimony of … Vanessa Fernandez-Salazar, as well as the Court's review of State's Exhibits 1 and 2, the actual arrays, and the Court considered argument made by Counsel, the Court does not find that the identification was in any way impermissibly suggestive. So the Court, therefore, will deny the motion to suppress the identifications.

On appeal, appellant maintains that the photographic array was impermissibly suggestive due to appellant's gaze in his photograph. Appellant contends that this is a "glaring difference" and did, in fact, "contaminate the test." Appellant argues that the burden should have then shifted to the State to demonstrate that the identifications by Thomas and Fernandez-Salazar were, nevertheless, reliable, although he does not present any argument as to how those identifications were unreliable.

The State contends that the "minor deviations" in appellant's photograph did not suggest the answer to the witnesses, and the array was, therefore, not impermissibly suggestive. Therefore, according to the State, appellant has failed to carry his initial burden in challenging the array, and the court was correct to deny appellant's motion to suppress.

This Court recently commented on the review of a motion to suppress extra-judicial photographic identifications as follows:

> In reviewing the court's decision to deny appellant's motion to suppress, ordinarily, we consider only the record of the suppression hearing and not the evidence at trial. We review the evidence presented at the suppression hearing in the light most favorable to the prevailing party. We extend great deference to the factual findings of the suppression judge with respect to determinations about witness credibility. The suppression judge's findings on witness credibility will not be disturbed unless clearly erroneous.

> In the context of pre-trial identifications, we are mindful that due process principles apply to protect against the admission of identifications obtained through unnecessarily suggestive police procedures. In doing so, we apply a two-step inquiry to determine the admissibility of identifications alleged to be the product of impermissibly suggestive procedures. First, the burden falls on the accused to establish that the procedures employed by the police were impermissibly suggestive. If the accused demonstrates that the identification was tainted by suggestiveness, the burden shifts to the State to prove by clear and convincing evidence that the reliability of the identification outweighs "the corrupting effect of the suggestive procedure." The linchpin of the analysis is the reliability of the identification. If the accused fails to carry his or her burden demonstrating impermissibly suggestive police procedures, however, our inquiry ends and the identification is deemed reliable.

Morales v. State, 219 Md. App. 1, 13-14 (2014) (citations omitted).

The Court of Appeals has explained that "[s]uggestiveness can arise during the presentation of a photo array when the manner itself of presenting the array to the witness or the makeup of the array indicates which photograph the witness should identify." *Smiley v. State*, 442 Md. 168, 180 (2015). Stated another way, "'[t]o do something impermissibly suggestive is not to pressure or to browbeat a witness to make an identification but only to feed the witness clues as to which identification to make.'" *Morales*, 219 Md. App. at 14 (quoting *Conyers v. State*, 115 Md. App. 114, 121 (1997)). Judge Moylan, writing for this Court, stated that the "'sin is to contaminate the test by slipping the answer to the testee. All other improprieties are beside the point.'" *Id.* (emphasis omitted) (quoting *Conyers*, 115 Md. App. at 121).

The Court of Appeals has held that "'to be fair, [an array] need not be composed of clones.'" *Smiley*, 442 Md. at 181 (quoting *Bailey v. State*, 303 Md. 650, 663 (1985)). Rather, the photographs need to depict similar-looking individuals. *See id.* (noting that the

array in *Bailey* was not impermissibly suggestive because the photographs were similar in many respects including the race of the individuals, the slight mustaches, and similar clothing). The photographic arrays in this case portray six similar-looking young African-American males. We are not persuaded that the slight variation in appellant's gaze directed the witnesses to select his photo, or otherwise suggested that appellant's photo was the "right one" to choose. Furthermore, Detective Kreafle did not indicate to the witnesses expressly or impliedly, which photograph to select.

We conclude, then, that the trial court was correct in its determination that the photographic arrays were not impermissibly suggestive. Accordingly, our inquiry ends. *See Morales*, 219 Md. App. at 14.

III. Motion for Mistrial

Lastly, appellant contends that the court erred in denying his motion for a mistrial, based on the State's alleged violation of the court's sequestration order. Prior to the suppression motion, defense counsel made a motion to "sequester for the witnesses, for the motion as well as the trial[,]" which the State joined. Thomas, Fernandez-Salazar, and Detective Kreafle then testified at the suppression hearing.

The next day, which was the first day of trial, defense counsel noticed that Thomas's testimony "had undergone a transformation" from that of the suppression hearing. Specifically, defense counsel noted that Thomas had been unable to recall the color of clothing the suspect wore at the July 14th robbery at the suppression hearing, but at trial she testified that the robber wore a tan hat and a red shirt. When asked how she remembered, Thomas stated that the prosecutor "gave me papers this morning."

Defense counsel asked to approach the bench, and the following colloquy ensued:

[DEFENSE COUNSEL]: Your Honor, I made a motion to sequester before the motion, I don't understand why the State gave any information to these witnesses since then.

[PROSECUTOR]: These were transcribed statements that the Baltimore City Police Detectives interviewed both of the witnesses on the 28th, they were transcribed.

THE COURT: Is she talking about –

[DEFENSE COUNSEL]: She says she has new information now that she didn't have yesterday.

[PROSECUTOR]: There's not – there's nothing new about this, other than the fact that she provided a recorded statement to [d]etectives on July the 28th. She was – she along with Ms. Salazar was properly interviewed, that was clearly disclosed to Counsel. Nothing is new as far as that is concerned.

[DEFENSE COUNSEL]: She has a refreshed recollection based on anything – a communication that she had with the State's attorney during – while there was a sequestration order. And now –

THE COURT So you're suggesting it's a violation because –

[DEFENSE COUNSEL]: It's a violation, there's been communications between the sequestered witnesses and the attorneys. Just like we can't talk to the jurors, we can't talk to the witnesses, either, with the exception of myself and with my client. The fact is that the

reason why she has information, the reason why I was so upset that she was basically lying on the stand, that I thought she was lying on the stand earlier –

[PROSECUTOR]: Well, Your Honor, I would object to that characterization.

[DEFENSE COUNSEL]: Well, the reason why I thought she was lying was because she was so confident on the stand today about things that she had no idea about yesterday. And now I find out that the reason why she had no idea yesterday and now she has all the information is because she was given the information by the State –

[PROSECUTOR]: Well, Your Honor –

[DEFENSE COUNSEL]: -- during the sequestration.

[PROSECUTOR]: -- in all fairness, this is also a case where the State has shown Ms. Thomas the footage from both of those days.

THE COURT: And you're –

[DEFENSE COUNSEL]: I'm making a motion to – that this is a mistrial with jeopardy attached.

THE COURT: Okay.

[PROSECUTOR]: And I would object. I think –

[DEFENSE COUNSEL]: It completely ruins the –

[PROSECUTOR]: -- one, that is the appropriate remedy, nor do I think there's a violation there.

THE COURT: I'm not sure if it's a violation either. I mean, if you're – the sequestration rule

is that she's not to discuss her testimony, right?

[DEFENSE COUNSEL]: And we are not to have any communication with witnesses.

While the court ascertained the wording of the sequestration rule, the State noted that it had provided Fernandez-Salazar with the transcription of her interview with police, as well. The State maintained that there is nothing improper about providing a witness with his or her own statement. The following then occurred:

[DEFENSE COUNSEL]: To refresh their recollection, it should be refreshed on the stand in front of the jury, so that they can see what was remembered and what wasn't remembered.

[PROSECUTOR]: Counsel can clearly impeach her with her own statement –

THE COURT: Yeah, I'm just – I guess you'd have to point –

[PROSECUTOR]: -- I'm not exactly sure –

THE COURT: -- my direction to the –

[PROSECUTOR]: I mean, if Counsel has authority as to the sequestration violation, I do not see it. This is a case which was done – I mean, she was – all of the State's witnesses were present for purposes of a motion as to the photographic array. Again, we are now at trial –

[DEFENSE COUNSEL]: Counsel knew what she –

THE COURT: Well, non-disclosure says, "Any party or an attorney may not disclose to a witness excluded under this rule the

nature or substance or purpose of testimony, exhibits or other evidence introduced during the witness' absence." Now, what's the – how does that fit within –

[DEFENSE COUNSEL]: Well, the – what was –

THE COURT: -- during her absence?

[DEFENSE COUNSEL]: The information that she didn't know at the time that she was testifying in the motion, this information is additional information that she didn't have. I mean, a witness is supposed to be – is not supposed to be – it's supposed to be –

THE COURT: But that's not in the evidence that was –

[DEFENSE COUNSEL]: May I?

THE COURT: -- before the Court, unless I'm reading it wrong.

[DEFENSE COUNSEL]: I'm sorry, which – oh, non-disclosure by a party –

THE COURT: And I'm still not clear if she's – she's saying that –

[DEFENSE COUNSEL]: She's saying that she did not have that information, she did not know the answer to that –

THE COURT: Until she read her transcript –

[DEFENSE COUNSEL]: -- to those questions yesterday –

THE COURT: -- until she read her –

[DEFENSE COUNSEL]: -- until she was given her transcript by the State's Attorney that had – to

	refresh her recollection, so she can have it for her today. So that when I asked her today, she'll already have the information and it will sound like she already knew it since the beginning.
THE COURT:	But you're saying that's just restricting or hurting your ability to impeach what she said yesterday?
[DEFENSE COUNSEL]:	Yes.
THE COURT:	I'm not certain if it's a violation. . . .

The trial court reserved ruling on the motion, and on the following day, defense counsel renewed the motion for mistrial, presenting additional arguments. Essentially, defense counsel contended that the State went against the "general spirit" of the rule of sequestration. In the alternative, defense counsel asked that Thomas's testimony be stricken and that the jury be instructed to disregard her statements. The court concluded that there was no violation of the sequestration order, because the State's actions did not violate the non-disclosure aspect of Rule 5-615.

On appeal, appellant maintains that the State's actions in providing the transcribed statements to Thomas and Fernandez-Salazar violated the sequestration order. Appellant argues that the trial court abused its discretion in this case by failing to exercise its discretion and to question Thomas about the State's provision of her statement to her. Appellant contends that the State effectively manipulated the testimony of Thomas and Fernandez-Salazar, which should have resulted in a mistrial.

The State counters that there was no violation of the sequestration order. First, the State contends that there was no proceeding in progress between the conclusion of the motion hearing and the beginning of trial. The State argues, moreover, that appellant's argument does little to "effectuate" the purposes of the sequestration rule. Furthermore, the State contends, the proper remedy for the alleged problem defense counsel perceived in the discrepancies in the witnesses' testimony is cross-examination, not a mistrial. Second, the State argues that there was no violation of the sequestration order because Thomas had not been provided with information about trial events that occurred in her absence. Accordingly, the State maintains, declaring a mistrial would not have been a proper remedy.

Rule 5-615(d)(1) governs the exclusion of witnesses at court proceedings. Notably, subsection (d)(1) of that rule provides: "A party or an attorney may not disclose to a witness excluded under this Rule the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence." This Court has explained that the "object of the rule 'is to prevent one prospective witness from being taught by hearing another's testimony; its application avoids an artificial harmony of all the testimony; it may also avoid the outright manufacture of testimony.'" *Anderson v. State*, 227 Md. App. 329, 344 (2016) (quoting *Tharp v. State*, 362 Md. 77, 95 (2000)).

"'When there has been a violation of a sequestration order, whether there is to be a sanction, and, if so, what sanction to impose are decisions left to the sound discretion of the trial judge.'" *Hill v. State*, 134 Md. App. 327, 349 (quoting *Redditt v. State*, 337 Md. 621, 629 (1995)), *cert. denied*, 362 Md. 188 (2000). This Court has also noted that the

"'declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice.'" *Id.* at 348-49 (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)). Similarly, the decision to grant a mistrial is left to the discretion of the trial court. *Id.* at 349. "A court abuses its discretion where the ruling under consideration is 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Thompson v. State*, 229 Md. App. 385, 404 (2016) (quoting *Consol. Waste Indus., Inc. v. Standard Equip. Co.*, 421 Md. 210, 219 (2011)).

Initially, we are not persuaded that there has been a violation of the sequestration order. The disclosure of Thomas's transcribed statement to her and Fernandez-Salazar's statement to her does not reveal any disclosure of "the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence." Rule 5-615(d)(1). The respective witnesses' transcribed statements were not discussed in their absence, and there is no indication that the State provided either witness with information about the proceedings that occurred in their absences. We fail to perceive how the prosecutor's actions in this case introduced the specter of manufactured testimony or harmony of testimony among the witnesses.

Even if we regarded the State's provision of the statements to the witnesses as a violation of the sequestration order, we fail to perceive an abuse of discretion in the court's refusal to declare a mistrial. The Court of Appeals has noted that "'[t]he ascertainment of the truth is the great end and object of all the proceedings in a judicial trial[.]'" *Redditt*, 337 Md. at 629 (quoting *Frazier v. Waterman Steamship Corp.*, 206 Md. 434, 446 (1955)).

Part of that trial process may include the preparation of witnesses, during which the attorneys may review the facts of the case as known by a particular witness. *See State v. Earp*, 319 Md. 156, 170-72 (1990). The Court of Appeals has cautioned attorneys that during this process, "the attorney should exercise great care to avoid suggesting to the witness what his or her testimony should be." *Id.* at 171.

In cases where trial preparation may appear to supplant the "ascertainment of truth," the proper remedy may be "disclosure through cross-examination of a witness concerning the pretrial activity that created the potential for influencing the witness's testimony [that] will allow the trier of fact to adequately assess the witness's testimony." *Id.* at 172. Indeed, in this case, defense counsel was afforded ample opportunity to question both Thomas and Fernandez-Salazar as to the source of their information and whether any statements they may have made at the suppression hearing were inconsistent with their trial testimony. Accordingly, defense counsel made the jury aware of the possible problems with Thomas's and Fernandez-Salazar's testimony. Moreover, appellant does not point to any evidence that the State coached the witnesses on their testimony. We, therefore, perceive no abuse of discretion in the trial court's refusal to declare a mistrial.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.