Circuit Court for Anne Arundel County
Case No. 02-K-14-002339

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2081

September Term, 2015

ANTOINE S. PROUT

v.

STATE OF MARYLAND

Kehoe,
Graeff,
Shaw Geter,

JJ.

Opinion by Kehoe, J.

Filed: August 2, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

A jury in the Circuit Court for Anne Arundel County convicted Antoine S. Prout, appellant, of theft of property valued between $1,000 and $10,000 and theft of property valued under $1,000, but acquitting him on fifteen related armed robbery, assault, reckless endangerment, and firearms charges. Prout was sentenced to concurrent terms of 18 months for the misdemeanor theft, and ten years, with all but 18 months suspended, for the felony theft. He raises the following issue for our review:

> Did the court abuse its discretion in denying a mistrial after erring in permitting the State to elicit substantially prejudicial other crimes testimony about an uncharged car theft?

We conclude that the trial court did not err or abuse its discretion in admitting the challenged testimony or denying a mistrial.

Facts and Legal Proceedings

The State charged Prout with crimes stemming from an October 17, 2014 armed robbery in a parking lot outside a Longhorn Steakhouse at Arundel Mills Mall. Among the circumstantial evidence linking Prout to that robbery was a key to a stolen car used in the robbery. The issue raised in this appeal relates to that car. Viewing the evidence in the light most favorable to the State as the prevailing party, *see Smith v. State*, 415 Md. 174, 186 (2010), the jury could have found the following.

After 9 p.m. that evening, Dylan Wiley and Danielle Dubyoski returned to their parked car following a dinner date. While they were sitting in the vehicle, two men simultaneously tapped on the driver and passenger windows with handguns, then forced the two to get out on opposite sides of the vehicle, where each assailant stole cash and

valuables. The robbers then jumped into a four-door sedan parked a few spaces away. That car drove past the two victims as they studied its occupants, the make of the vehicle, and its license plate number.

Using a bystander's cell phone, Wiley and Dubyoski called 911 to report the robbery. They described the two individual robbers and reported that the getaway car contained four or five males wearing dark clothing. According to Wiley, who "knows cars," the vehicle was a tan Buick Century. Ms. Dubyoski reported the license plate number as 41958D.

A short time after that report was broadcast to police officers in the area, Prout and two companions were detained on foot, about a mile away from the robbery. During their detention, an officer observed Prout lift up his left foot to reveal a key, which, when retrieved, had a "Buick symbol on it." Although Prout's companions apparently had the stolen cell phones in their possession, Prout did not have any identifiable proceeds of the robbery on him.

Police conducted a show-up at the site of the detention. Mr. Wiley identified one of Prout's two companions as the individual who robbed him. Although Prout's build matched Ms. Dubyoski's description, she was not able to make any identification.

While leaving the show-up, Ms. Dubyoski noticed the Buick, which was parked near where Prout and his companions were detained. She identified that car as the getaway car used in the robbery. (Id.) The license plate number was **5**1945B.

An officer used the key recovered from Prout to unlock that vehicle. A subsequent warrant search of the tan Buick yielded an air gun and a black shirt, which was wrapped around much of the property stolen in the robbery, including Mr. Wiley's wallet, Ms. Dubyoski's purse and student identification card, as well as other distinctive personal property belonging to the two victims. Forensic testing later linked Prout to DNA found on the steering wheel of the vehicle, establishing that only one in a population of 490,000 would have the same match based on 14 of 15 loci.

As we shall discuss below, during trial, the prosecutor advised the court that, although the Buick had been stolen from Baltimore City eight hours before this robbery, she had instructed the officer who opened it with the key recovered from Prout not to reveal during his testimony that the vehicle was stolen. Instead, the officer was directed to simply relate that the vehicle was not registered to Prout or his companions. Nevertheless, that witness unexpectedly testified on direct that the Buick had been reported stolen. After counsel debated the special relevance of that information, the trial court overruled the defense objection to it, as well as a motion for a mistrial.

Later, under cross-examination, the same police officer testified that he charged Prout with the theft of the Buick. The trial court again denied a defense motion for a mistrial. Because both the prosecutor and the defense agreed that the State did not charge Prout in that theft, the parties jointly stipulated that neither Prout nor anyone else had been charged in the theft of the Buick.

In closing, the State argued that Prout was either the gunman who robbed Ms. Dubyoski or that he drove the car used in the robbery, citing the key, the DNA, and the presence of the stolen property in the Buick. Defense counsel countered that the key and DNA were not enough to link Prout to the robbery given that Ms. Dubyoski could not identify him as her attacker and that, unlike his companions, he had no proceeds of the robbery in his possession. The jury acquitted Prout on all charges of armed robbery, robbery, reckless endangerment, and firearms offenses, but convicted him on two theft charges corresponding to the value of the cash and goods stolen from the two victims.

We shall add facts in our discussion of the issues raised by Prout.

Analysis

Prout contends that "the trial court abused its discretion in denying a mistrial after erring in permitting the State to elicit substantially prejudicial other crimes testimony about an uncharged car theft." The court, he maintains, "compounded" its initial error in allowing the State to present evidence that the tan Buick was stolen, which should have been excluded as impermissible "other crimes" under Maryland Rule 5-404(b), when it refused to declare a mistrial after the same officer told the jury that Prout had been charged with the theft of that vehicle. In Prout's view, because there was "no proof" that he was involved in the car theft, and "the State had foresworn 'bring[ing] up' that testimony moments before," the joint stipulation, advising the jury that Prout had not been charged in that car theft, "did not ameliorate the actual prejudice[.]"

The State counters that because the "evidence elicited by the State was not 'other crimes' evidence," it "was admissible as long as it was relevant," and the trial court properly exercised its discretion in ruling that the probative value of that information outweighed the danger of unfair prejudice. In any event, the State argues, "any prejudice was cured by the introduction of the joint stipulation, and the court was within its discretion in denying a mistrial."

After reviewing the record discussed below, we agree with the State that the trial court did not err in overruling the defense objection to evidence that the Buick was stolen and did not abuse its discretion in denying a mistrial.

The Record

When the second day of trial began, the State raised the issue of whether it would be permitted to inform the jury that the tan Buick "was reported stolen out of Baltimore City . . . about eight hours before the incident." The prosecutor[1] questioned whether defense counsel had opened the door during the previous day's cross-examination of the police officer who recovered the key from Prout, when counsel challenged whether the witness was sure it was a Buick key, then established that the key had not been photographed. The prosecutor expressed concern that defense counsel might later make a "missing evidence" argument to the jury, based on the combined absence of a photo and the key itself, which had been "given back to the rightful owner of the vehicle[.]" She

[1] Although the State was represented by two prosecutors, we shall simplify our references by referring to them in the singular.

further proffered to the court that the key found on Prout "unlocks the Buick" and that DNA evidence showed that Prout was "a contributor to DNA inside of that vehicle."

Defense counsel maintained that she had not "open[ed] the door" to evidence that the Buick was stolen and proffered that she would not ask the officer why he did not "have the key with [him] today" and would not argue to the jury, "we don't have this key." Defense counsel then asked the court not to allow the State "to get into the fact that this car was a stolen car or reported stolen several hours earlier," arguing that it was not relevant and would result in "huge" prejudice because such information would suggest to the jury, "if he did that, then he must have done this." The court, noting the as-yet unestablished relevance of the key, deferred ruling on the competing requests to allow and to prohibit evidence that the Buick was stolen, without yet knowing "the context in which this will come up."

The State called Anne Arundel County Police Officer Lester Brumfield, who testified, *inter alia*, that after Ms. Dubyoski was unable to identify Prout or his two companions in the parking lot "show-up," she did identify a tan vehicle in a nearby parking lot "as the vehicle the suspects entered and left after the robbery." When asked what drew the officer's attention to that vehicle, he explained that it matched Mr. Wiley's description and that he had "received a Buick key from" one of the officers who detained Prout. After seeing a "black tee shirt that was all tied up" on the right rear passenger floorboard, Corporal Brumfield used the Buick key to unlock the driver's side door.

When the prosecutor asked whether he was "able to gather any other information about the vehicle[,]" Corporal Brumfield responded that he "conducted a check through our teletype -- " at which point defense objected before the witness completed his response. In the ensuing bench conference, the prosecutor proffered that she had "instructed him not to bring up that information on direct. He's just going to verify that the vehicle was not registered to any of the three defendants that were arrested that evening." In light of that proffer, which defense counsel agreed was "fine," she withdrew her objection.

When direct examination resumed, however, Corporal Brumfield did not follow the prosecutor's admonition, prompting defense counsel to strenuously object and demand a mistrial:

> [Prosecutor]: Corporal Brumfield, what information you were able to gather when you ran the vehicle?
>
> **[Corporal Brumfield]: My teletype advised me that the Oldsmobile [sic]– tan Oldsmobile used in the robbery was reported stolen in Baltimore City[2] –**
>
> **[Defense Counsel]: Objection.**
>
> THE COURT: Come on up.
>
> BENCH CONFERENCE . . . .
>
> **[Defense Counsel]: Your Honor, I [am] going to move for a mistrial.** This is exactly why I objected beforehand, asked for a motion. It's why I

[2] Because Oldsmobiles and Buicks apparently have identical frames and motors, the vehicle at issue in this case, which is a Buick, was occasionally referred to as an Oldsmobile.

objected just now. The State's Attorney proffered . . . . something that was discussed with the officer. This is not relevant, this is highly prejudicial and I would ask for a mistrial at this time.

[Prosecutor]: And, Your Honor, I would note that this morning when I talked to Officer Brumfield in the hallway, . . . I specifically told him that when we get into this portion of it that we're not going to bring up that it's stolen, just that the three individuals were not registered to the vehicle. . . .

[Defense Counsel]: Your Honor, this trial is now going to become whether or not my client stole that car and I now have to put on a defense which . . . I shouldn't have to . . . regarding the fact that my client did not steal this car, had nothing to do with the theft of this car. . . . I think it's so prejudicial that I think –

THE COURT: Well, he's not charged –

[Defense Counsel]: -- you're not going to cure –

THE COURT: -- with stealing this car.

[Prosecutor]: He's not, Your Honor. And . . . I have absolutely no objection to moving to strike that and if she'd like to –

[Defense Counsel]: **Your Honor, I would ask the Court to grant a mistrial in this case.** I believe that this is highly prejudicial. The second that he said it I objected. The jury was all watching me, they were watching him, and the last thing that they said was the car was reported stolen out of Baltimore City.

THE COURT: Okay. Well, let me ask you this. I didn't rule one way or the other earlier . . . . about whether or not the evidence of the vehicle being stolen was admissible or not. Why is it inadmissible? . . . .

[Defense Counsel]: Because, Your Honor, it's highly prejudicial to my client.

THE COURT: And –

[Defense Counsel]: The prejudicial value completely outweighs the probative value. . . . .

THE COURT: Wait a minute. Let me stop you. The State is – its case is designed to prejudice your client by proving he did something.

[Defense Counsel]: Not to show that he was perhaps involved in another crime in another jurisdiction, Your Honor, involving the same vehicle that his DNA is now found on. . . .

State is going to put on evidence from a DNA expert that says that my client's DNA cannot be excluded from the steering wheel of this vehicle, this vehicle that they now know was stolen from Baltimore City. So the implication is whether or not he was charged with it or not is that my client stole this car, came to Anne Arundel County and committed a robbery. In the same car.

[Prosecutor]: And, Your Honor, . . . what's essential to our case is that the Defendant was in this vehicle, that this . . . was the vehicle that the individuals [who] committed the armed robbery were in when the armed robbery . . . occurred. To put – the way were are able to put the Defendant into this vehicle is through the DNA evidence and through the key. To show the key was in this vehicle, we need to show that he was in the vehicle at the time of the armed robbery. By showing – **by the evidence that the vehicle was stolen only eight hours earlier, we're collapsing the time window in which the Defendant could have been in that vehicle.** Then we can't have argument that the Defendant was in this vehicle last week and that's when his DNA was put into the vehicle. The vehicle could only have been – he could only have been in this vehicle some time during that eight-hour time period because before that this vehicle was in Baltimore City in the possession of the rightful owner of this vehicle. **So the evidence that this vehicle was stolen earlier is relevant not to show that the Defendant stole the vehicle, but to show that this vehicle could not have been in his possession earlier in the week, even earlier that day.** There is a very limited time period during which this Defendant could have been in possession of this vehicle and could have put this DNA onto the steering wheel of this vehicle. **So, while yes, it is always prejudicial to introduce information like this, there is a lot of probative value to the information that the vehicle was stolen because the vehicle was in the possession of the rightful owner only eight hours earlier.**

[Defense Counsel]: Your Honor, his DNA could have been deposited 20 minutes before, it could have been deposited eight hours before. I can get that in through the DNA expert as far as the fact that the DNA expert can't . . . time stamp the DNA. The fact that the State is saying, well, that

collapses the argument, no, it doesn't. . . . But the fact that the State is saying . . . that my client was standing on the key . . . that then opens up the stolen vehicle that all of the results of the robbery were found in with my client's . . . DNA as a contributing factor is showing them that he stole this car or that he was one of the people who stole this car from Baltimore City and came to Anne Arundel County in a very short time period and committed a crime. Because . . . if I'm the State, my argument is well, why else would his foot be over a key?

Because he knew the vehicle was stolen and he knew what he had done. And that's what the jury is going to go back there and think. . . .

THE COURT: But the State's not intending to – they're not interested in proving whether this Defendant stole the vehicle or not.

[Defense Counsel]: But it's out there. They're all sitting there thinking that this man stole a vehicle.

THE COURT: Well, it's . . . . out there because it's apparently a fact that the vehicle was a stolen vehicle. How is that –

[Defense Counsel]: Then, Your Honor, why did the State's Attorney have a conversation with the officer earlier today to say . . . . don't get in there, because they know it's prejudicial. They know that this is grounds for a mistrial. . . .

[Prosecutor]: That's not entirely true . . . . That's not why I had the conversation. I just want to put that on the record. We put it – we were going to lay the ground work to bring up the stolen vehicle later in the testimony and get a ruling. At this point in the testimony what we had discussed was that it wasn't registered to any of them. . . .

I just want to make sure the record is clear that this morning his answer at this point was not supposed to be what he had said. It does not mean we were not going to go down that road and explore it . . . . We were intending to explore it down the road. That's why we wanted the motion in limine. . . .

THE COURT: All right. **I'm going to overrule the objection and I deny your request for a mistrial.** Whether the State had some discussion with a witness and thought that they were going to limit it, that's fine. Apparently this witness didn't pay attention to the State. But that doesn't change the

> fact that . . . if it turns out that the evidence is admissible in any event, then I don't see why – at this point this officer simply testified that this vehicle had been reported stolen. So . . . that's a fact. Apparently that's a fact and it seems to me that this vehicle has also been identified as a vehicle involved in a robbery. . . .
>
> He's not charged with robbery and stealing this vehicle. That's not . . . . what the charge is.
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> [Defense Counsel]: -- the jury wants to know how did he become [sic] into possession of a key to a car that was stolen. Now I have to address that in the defense.
>
> THE COURT: No, no, no, no, no, no, no.
>
> [Defense Counsel]: Absolutely I do.
>
> THE COURT: No. No. No. I – my guess is the State's question is how did he have a key under his foot to a vehicle that perhaps was stolen, but was the vehicle identified as the vehicle the four or five men left [in] after a robbery. **That's relevant to what the State's case is.** You might have a different view, so . . . **this witness did not indicate that this Defendant stole the vehicle. Just that it was a stolen vehicle**. . . .
>
> So I suggest you might want to – well, I'm not going to make any suggestion because I don't know where you intend to go, and I'll rule on any issues that come[] up. **So your objection is overruled and request for a mistrial is denied.**

(Emphasis added.)

The prosecutor finished Corporal Brumfield's direct examination without returning to the stolen nature of the Buick. On cross-examination, defense counsel, attempting to distance Prout from the car theft, tried to elicit the fact that he had not been charged with that crime. But that did not go well for defense counsel either. She asked Corporal Brumfield: "And someone else has already pled guilty to the theft of the car from Baltimore City, correct?" The prosecutor objected and advised the court and

defense counsel, in a bench conference, that "nobody's been charged in that incident." Defense counsel, noting that she mistakenly believed that someone else had pleaded guilty to the car theft, agreed to change direction and ask whether her client "was never charged with the theft of the car, if he knows." After looking at his report, however, Corporal Brumfield testified: "I believe he was charged with the theft of the vehicle from Baltimore City."

Defense counsel objected. At a bench conference, the prosecutor proffered again that no one had been charged and agreed to stipulate to that fact. Defense counsel thereafter elicited an admission by the corporal that his written report did not reflect that Prout had been charged with the car theft. But the witness then added that his statement of charges included the car theft, even though that crime did not occur in Anne Arundel County.

Following a lunch recess, outside the presence of the jury, court and counsel again addressed the "stolen vehicle" evidence. The prosecutor confirmed that none of the theft charges in the indictment pertained to the theft of the Buick. She explained, however, when police completed the statement of charges against Prout, a charge of vehicle theft was included. Because the prosecutor decided not to take that charge to the grand jury, it was not included in Prout's indictment.

Defense counsel moved again for a mistrial, citing the cumulative effect of Corporal Brumfield's testimony regarding the stolen Buick and the prohibition against other crimes evidence, pursuant to Maryland Rule 5-404(b). Counsel renewed her

complaint that she would have to be "having a trial within a trial" to refute the implication that "Mr. Prout stole this car[.]"

The trial court denied the motion. The court pointed out that the State was willing "to stipulate that the Defendant was not charged with stealing the car," and that on direct examination the officer only said "the vehicle was reported stolen," not adding that Prout had been charged with stealing it until defense counsel elicited that testimony on cross-examination. The court ruled that the fact the car was stolen was admissible, "[n]ot for the purpose of showing that this Defendant stole the car," but because "it's also the same vehicle that is a get-away vehicle from an armed robbery," was a fact that has "some relevance," in making it more likely that "the State can tie this Defendant into being in that car."

Thereafter, the court admitted, as evidence, the following joint stipulation:

> The State and Defense agree that no individuals, including the Defendant Antoine Prout, have been charged in connection to the stolen automobile case originating out of Baltimore City.

The court instructed the jury that "[t]hese facts are now not in dispute and should be considered proven because the parties have stipulated to those facts."

In closing, the State did not mention that the Buick was stolen. But defense counsel addressed that evidence at length, as follows:

> And let's talk about the key for a second. **You heard yesterday from Corporal Brumfield that that car was stolen.** And I objected. I . . . lost my mind because he's not charged with stealing a car. He was never charged with stealing a car. Officer Brumfield, by the way, was wrong when he said . . . that he charged him with theft. . . .

> I asked him about the theft and he said, oh, yeah, I charged him with theft. I charged him with theft of the car. And I was like, what? The . . . two counts of theft that Corporal Brumfield charged him with are the ones you saw in the State's PowerPoint. He was wrong. Flat out wrong. **He did not charge him with theft of a car.** He charged Mr. Prout with theft of Dylan Wiley's belongings, and he charged Mr. Prout with theft of Ms. Dubyoski's belongings – her purse, her keys, her clicker, her money, her gift cards, and all of that. He did not – that – that's the theft that he was referring to.
>
> **But in any event it came out yesterday that the car was stolen out of Baltimore.** Maybe Mr. Prout knew it was stolen. I don't know. You don't know. But maybe if we are to believe Officer Campbell, maybe [Prout] put his foot over the key because he knew somebody stole that car. I don't know. You don't know. But I know one thing. We're not here to guess.

(Emphasis added).

Discussing the significance of Prout's DNA on the steering wheel, defense counsel again discussed the stolen car:

> The other smoking gun for the State is the DNA . . . . They can't put a time on it, they can't say that he was the last person on the wheel or anything like that. So he drove the car at some point that day. **Did he know it was stolen? Did he not know it was stolen? We don't know. Someone gives me a key and a car and says, here, drive my car, okay. It's not like there was a screw driver in the steering column that he obviously should have known it was stolen. There was a key.**

(Emphasis added.)

In rebuttal, the State made its only other reference to the stolen vehicle, in an effort to "clear the air" regarding Corporal Brumfield's credibility. The prosecutor explained that although a police officer might charge certain offenses, ultimately the State's Attorney "makes the determination, what are the best charges to go forward on[,]" so "[s]ometimes that changes along the way." Thus, the prosecutor argued, when

Corporal Brumfield said that he charged Prout "with that stolen vehicle," "[h]e in fact did charge him with that" and "wasn't lying to" the jury. The prosecutor, suggesting that although "[w]hat happens in Baltimore City happens in Baltimore City" for jurisdictional reasons, asserted that Corporal Brumfield "had every right . . . that night to charge what he believed was fit[,]" even if the State ultimately did not bring that charge.

The "Other Crimes" Challenge

Prout argues that "[t]he court was wrong in viewing as admissible the corporal's first-level testimony, relating the car as stolen; and, abused its discretion in subsequently denying the defense's mistrial request." He relies on Maryland Rule 5-404(b), which provides in pertinent part that " [e]vidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith."

"The primary concern underlying the Rule is a 'fear that jurors will conclude from evidence of other bad acts that the defendant is a 'bad person' and should therefore be convicted, or deserves punishment for other bad conduct and so may be convicted even though the evidence is lacking." *Hurst v. State*, 400 Md. 397, 407 (2007). *See also State v. Faulkner*, 314 Md. 630, 633 (1989) ("Evidence of other crimes may tend to confuse the jurors, predispose them to a belief in the defendant's guilt, or prejudice their minds against the defendant."). In practice, this "anti-propensity" rule means that "evidence of a defendant's prior criminal acts may not be introduced to prove guilt of the offense for which the defendant is on trial." *Ayers v. State*, 335 Md. 602, 630 (1994). "Yet, other

crimes, wrongs or acts evidence may be admissible when it has 'special relevance,' *i.e.*, when the evidence 'is substantially relevant to some contested issue and is not offered simply to prove criminal character.'" *State v. Westpoint*, 404 Md. 455, 488 (citation omitted). Indeed, the rule expressly allows such evidence to be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5-404(b).

The Court of Appeals has held that the proponent of other crimes evidence bears the burden of establishing its admissibility, a three-part task that requires (1) a showing of special relevance, such as when the evidence falls within one of the exceptions enumerated in Rule 5-404(b); (2) proof by clear and convincing evidence that the defendant committed the other crime; and (3) the court's determination that the probative value of such evidence outweighs its prejudicial effect. *See Hurst,* 400 Md. at 408; *Faulkner*, 314 Md. at 634-35.

Prout asserts that "Corporal Brumfield's reporting of the tan Buick as stolen failed all three prongs of the 5-404(b) analysis." The State counters that the "stolen Buick" evidence does not need to satisfy these prerequisites, because it is not "other crimes" evidence.

As the excerpted transcript shows, the State only sought admission of evidence that the Buick was stolen in Baltimore earlier that day but was willing to simply elicit that the vehicle was not registered to Prout or his companions. After Corporal Brumfield unexpectedly testified that the Buick was stolen, the prosecutor did not mention that fact

again until rebuttal argument. It was defense counsel who elicited that Corporal Brumfield charged Prout with the Buick theft and reminded jurors that the Buick was stolen, suggesting that Prout might have been trying to hide the key under his shoe, not because he knew the proceeds of the Arundel Mills robbery were still in the vehicle, but because he knew the vehicle was stolen. Counsel yet again reminded jurors that Corporal Brumfield claimed that Prout was charged in that theft, suggesting that he was lying. Only then did the prosecutor respond, in rebuttal argument, to explain that Corporal Brumfield had written up a statement of charges pertaining to the Buick theft, but that prosecutors had elected not to bring that charge against Prout. Thus, as Prout tacitly concedes in framing the issue, the threshold question is whether the trial court abused its discretion in admitting evidence that the Buick was stolen, and if so, in denying a mistrial based on the impact of that evidence, which included the subsequent evidence that Corporal Brumfield initially charged Prout with that car theft.

After reviewing the full trial record, we are satisfied that the State did not attempt to use the fact that the Buick was stolen to suggest a criminal propensity, but only sought to use that fact to preclude reasonable doubt based on the missing Buick key and the "lack of a time stamp" on Prout's DNA. Moreover, the State did not attempt to use the fact that Corporal Brumfield initially charged Prout with the theft of the Buick for any purpose, and did not do so until defense counsel's closing argument that Brumfield lied about this matter required the prosecutor to refer to the charges in order to rebut the defense challenge to Brumfield's credibility.

We agree with the State that in these circumstances, where the State did not accuse Prout of committing another crime, Rule 5-404(b) is inapplicable. The question, instead, is whether the evidence that the car was stolen from Baltimore should have been excluded on the ground that it was not relevant or substantially more prejudicial than probative.

Relevancy Challenge

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. Under Md. Rule 5-402, "[e]vidence that is not relevant is not admissible." "Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403.

"The trial court's relevancy determination, as well as its decision to admit relevant evidence over an objection that the evidence is unfairly prejudicial, will not be reversed absent an abuse of discretion." *Collins v. State*, 164 Md. App. 582, 609 (2005). *See Merzbacher v. State*, 346 Md. 391, 404-05 (1997). "[E]vidence is considered unfairly prejudicial when 'it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Burris v. State*, 435 Md. 370, 392 (2013). "The more probative the evidence, . . . the less likely it is that the evidence will be unfairly prejudicial." *Id.*

As set forth above, the prosecutor initially proffered to the court that the fact the Buick was stolen would allow the State to explain why it did not have the key, which in turn would rebut defense attempts to raise reasonable doubt about whether the key found under Prout's foot was the same key that opened the getaway Buick. Later, the prosecutor also proffered that the fact the Buick was stolen in Baltimore would "collapse" the window of time during which Prout's DNA could have been deposited on its steering wheel, which in turn would make it more likely that Prout was at the wheel of the Buick during the Arundel Mills robbery.

We agree that the trial court did not abuse its discretion in concluding that Prout's possession of the key to a Buick reported stolen in Baltimore, but discovered only a mile from the Arundel Mills robbery and identified as the getaway car in that robbery, when considered in combination with the presence of Prout's DNA on the steering wheel, made it significantly more likely that Prout was either driving or present in that vehicle at the time of the robbery. Because that was the central issue in this prosecution, the trial court did not abuse its discretion in ruling that the fact the Buick was reported stolen in Baltimore had "some relevance" in "[tying] this Defendant into being in that car" during the robbery, by showing that he was "one of five people, getting into a car that is stolen, regardless of who stole it, but it's also the same vehicle that is a get-away vehicle from an armed robbery[.]"

Moreover, the trial court properly exercised its discretion in determining that the probative value of the "stolen Buick" evidence was not substantially outweighed by its

prejudicial effect. The court appropriately reminded defense counsel that the damaging nature of the State's evidence did not make it *unfairly* prejudicial. It then rejected defense counsel's complaints that she would have to put on a trial within a trial to defend her client against "an uncharged charge" of vehicle theft, pointing out that it was the defense who elicited Corporal Brumfield's testimony that Prout had been charged in that theft and that the jury had been informed that the State had agreed that no one, including Prout, had been charged in the theft of the Buick. On this record, the court did not abuse its discretion in ruling that the probative value of the evidence that the Buick was stolen was not outweighed by unfair prejudice.

Mistrial Challenges

Even if the trial court had erred or abused its discretion in ruling that the fact the Buick was stolen was admissible, we are not persuaded that the court abused its discretion in denying a mistrial, either because that evidence was admitted or because it resulted in the jury hearing that Prout may initially have been charged in that theft. Appellate review of a decision to deny a mistrial is also conducted "under the abuse of discretion standard." *Nash v. State*, 439 Md. 53, 66-67, *cert. denied*, 135 S. Ct. 284 (2014). Such an abuse "has been said to occur where no reasonable person would take the view adopted by the [trial] court," "when the court acts without reference to any guiding rules or principles[,]" and "when the ruling under consideration appears to have been made on untenable grounds" or "is clearly against the logic and effect of facts and inferences before the court[.]" *Id.* at 67 (internal quotation marks and citations omitted).

Because "'a ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling[,]'" appellate courts reviewing the denial of a mistrial afford trial judges "a wide berth." *Id.* at 67, 68 (citation omitted).

Moreover, we are mindful that "declaring a mistrial is an extreme remedy not to be ordered lightly." *Id.* at 69. Generally, a mistrial is warranted "only when 'no other remedy will suffice to cure the prejudice.'" *Rutherford v. State*, 160 Md. App. 311, 323 (2004) (citations omitted). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (citation omitted).

When a mistrial request stems from the exposure of inadmissible information to the jury, "[t]he trial judge must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured." *Carter v. State*, 366 Md. 574, 589 (2001). In many instances, a timely corrective instruction to the jury is a sufficient remedy. *Kosh*, 382 Md. at 226. Courts typically consider the following factors in evaluating whether to give a curative instruction or declare a mistrial:

> "whether the reference to [the inadmissible information] 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[.]"

Rainville v. State, 328 Md. 398, 408 (1992) (citation omitted).

Rainville provides an instructive example of an inadequate corrective instruction. In that case, the defendant was on trial for sexually abusing a seven-year-old girl. *Id.* at 409. When the prosecutor asked the victim's mother to describe the child's "demeanor when she told you about the incident[,]" the witness unexpectedly responded that her daughter "'was very upset'" but "'came to me and she said where [the defendant] was in jail for what he had done to [the victim's brother] that she was not afraid to tell me what happened.'" *Id.* at 401. The trial court denied a mistrial and instead instructed the jury to disregard the mother's testimony regarding the alleged incident involving the brother. *Id.* at 402.

The Court of Appeals reversed. *Id.* at 411. Even though the prosecutor's question and the trial court's curative instruction were "appropriate," the inadmissible information was not repeated, and the mother was not the State's primary witness, nevertheless, "informing the jury" about the defendant's incarceration for a crime against another child "almost certainly had a substantial and irreversible impact upon the jurors," so that "no curative instruction, no matter how quickly and ably given, could salvage a fair trial for the defendant." *Id.* at 410-11.

Prout argues that his "case is indistinguishable from *Rainville*" because he "could do nothing to rebut that uncharged charge, having no information about the auto theft and the evidence in support of it." We are not persuaded that a jury learning that a car, to which the accused has a key and in which his DNA was found, is a stolen vehicle is comparably prejudicial to evidence that the accused was jailed for sexually abusing a

second child in the same family. Here the fact that the Buick was stolen did not inform the jury that Prout was charged, much less convicted of that crime. Nor was that information, or the subsequent testimony about Prout being charged with theft of the Buick, likely to evoke the type of emotional and irremediable responses as the evidence in *Rainville* that the accused was incarcerated for sexually assaulting the brother of the child he was on trial for sexually assaulting. The prejudicial effect of Brumfield's inaccurate testimony was attenuated by the subsequent stipulation and the court's instruction to the jury that "[t]hese facts are now not in dispute and should be considered proven because the parties have stipulated to those facts."

Applying the *Rainville* factors to this record, we conclude that the trial court did not abuse its discretion in denying a mistrial. Even if Corporal Brumfield's reference to the Buick being reported stolen from Baltimore was inadmissible, that was a single statement, made by a police officer who, whether deliberately or inadvertently, disregarded express instructions by the prosecutor. Although this prosecution witness provided important factual testimony, including that the key in question opened the Buick which contained most of the stolen belongings, he was only one among many professional witnesses to present evidence regarding the State's investigation, and his credibility was not crucial to the State's case because his testimony was largely corroborated by other evidence. Most significantly, we observe that the State did not repeat the statement or attempt to use it as evidence of criminal propensity. It was defense counsel who returned to the stolen Buick again and again. Although the fact that

the Buick was stolen was relevant to battle reasonable doubt about whether the key and the DNA put Prout behind the wheel of the Buick during the robbery, it may not have been essential to the State's case given the prosecutor's initial willingness to merely inform the jury that the vehicle was not registered to Prout or his companions, as well as the State's failure to refer to the stolen nature of the vehicle in presenting other witnesses and in arguing its theories to the jury. Moreover, we are not persuaded that jurors would find it difficult or impossible to credit the ameliorative stipulation that Prout was not charged with that crime. In these circumstances, the trial court did not abuse its discretion in denying the defense requests for a mistrial.

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