Circuit Court for Caroline County
Case No. 05-K-15-010782

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2656

September Term, 2015

ANTHONY WILLIAM MAUS, SR.,

v.

STATE OF MARYLAND

Woodward, C.J.,
Leahy,
Friedman,

JJ.

Opinion by Leahy, J.

Filed: October 5, 2017

Following a two-day trial in the Circuit Court for Caroline County, a jury convicted Anthony William Maus, Sr., ("Appellant") of one count of theft under $1,000 and three counts of possession of a rifle or shotgun by a person with a felony conviction. The jury acquitted Appellant of several counts of burglary, malicious destruction of property, and theft between $1,000 and $10,000. The trial court imposed an aggregate sentence of eight years in prison.

Appellant filed a timely notice of appeal, presenting the following questions for consideration:

1. "Did the trial court err in finding good cause to postpone the trial beyond the *Hicks* date?"

2. "Did the trial court err in admitting evidence of other bad acts in violation of Maryland Rule 5-404(b)?"

3. "Did the trial court err in admitting hearsay?"

4. Did the trial court err in declining to issue a curative instruction following the State's improper closing argument?[1]

For the reasons discussed below, we conclude that the trial court did not err when it found good cause to postpone Appellant's trial beyond the *Hicks* date. Although we find the trial court erred in its admission of evidence of other bad acts, we determine the error was harmless beyond a reasonable doubt given the abundance of strong evidence that Appellant was guilty of theft, his acquittal for burglary, and the uncontested admission of

[1] Of the four questions presented by Appellant, we have taken editorial liberties with only the last, which originally read: "Was Appellant denied a fair trial by the State's closing argument and by the trial court's refusal to provide a curative instruction?" Neither Appellant's brief, nor any part of the record, takes up the constitutional issue suggested by that phrasing.

his prior arrest. Next, we determine that Appellant waived the third issue by failing to object to substantially identical testimony offered the following day at trial. And finally, we conclude that the State's closing argument, while improper, was not likely to mislead the jury, and thus, we perceive no abuse of discretion on the part of the trial court. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

On April 2, 2015, at about 5:00 p.m., Linda Parenteau returned from work to her home located at 27076 River Bridge Road in Caroline County, Maryland, to find that it had been burglarized. Her back door had been forcibly opened and a guest bedroom "trashed." With the help of her sons, Justin Parenteau and Drew Parenteau, she determined that three of her late husband's firearms and two $2 bills she had been saving for her grandchildren were missing. The Parenteaus provided descriptions of the missing guns to the police.

Earlier that day, Maryland State Police Senior Trooper Joyce Bilbrough reported a vehicle pulled over on the shoulder of Route 301 in Centreville, Maryland, "just south" of a rest stop. According to her trial testimony, she observed "a white male" in "a "dark ball cap, a blue jacket … and blue denim jeans" exit a light colored sedan and begin walking south on Route 301. When Trooper Shawn Hoffman later responded to a report of an unattended vehicle in the same area, he found a blue Ford Escort with three firearms inside. The car was determined to belong to Tamara Dodge and the firearms to be those taken from Ms. Parenteau's house.

Also on April 2, 2015, Deputy Charles Harris and Deputy First Class Jason Rickard of the Queen Anne's County Sheriff's Office responded to another burglary complaint at 1304 White Marsh Road in Queen Anne's County—a residence near the rest stop on Route 301 where Ms. Dodge's Ford Escort was found. There, they found and detained Appellant, who, according to both deputies, was highly intoxicated.

Deputy Harris recalled that Appellant had one or two, $2 bills on his person when he was arrested. Corporal Clarence Johnson, a correctional officer at the Queen Anne's County Detention Center where Appellant was subsequently taken, also recalled that Appellant was in possession of two $2 bills.

On April 7, 2015, Detective Bryan Peris of the Caroline County Sheriff's Office, conducted an unrecorded interview with Appellant at the Detention Center. According to Detective Peris, Appellant indicated during that interview that Tamara Dodge was his girlfriend, that he had driven Ms. Dodge's Ford Escort to Dover Downs Casino in Dover, Delaware, and that he had become intoxicated at the casino. When Detective Peris asked Appellant about the Ford Escort being found in Centreville, Appellant said that it must have been stolen. Appellant knew, however, without prompting from the detective, where the car was found.

In a separate proceeding in Queen Anne's County, Appellant pleaded guilty to, and was convicted of, charges stemming from the burglary at 1304 White Marsh Road. The underlying case, which was originally tried in the Circuit Court for Caroline County, deals only with charges stemming from the burglary of Ms. Parenteau's residence on River Bridge Road in Caroline County—specifically, four counts of burglary, one count of

malicious destruction of property, one count of theft under $1,000, one count of theft between $1,000 and $10,000, and three counts of possession of a rifle or shotgun by a person with a felony conviction.

A jury in the Circuit Court for Caroline County convicted Appellant of theft under $1,000 and the three firearms-possession charges. Appellant was acquitted of the burglary, malicious destruction of property, and theft between $1,000 and $10,000 charges. The trial court imposed an aggregate sentence of eight years in prison.

Additional facts relevant to the parties' arguments are presented in the discussion.

DISCUSSION

I.

Trial Postponement

Relevant Facts

Appellant's trial was originally scheduled to begin on December 4, 2015. Four days before that date, the State identified two additional witnesses, Trooper Bilbrough and Corporal Johnson. Although the substance of these witnesses' testimony had been produced several months earlier in the form of police reports, their identities were, until November 30, unknown to both parties. During a December 2, 2015, pre-trial hearing conducted in the absence of Appellant, the administrative judge ruled that the State would be allowed to call Trooper Bilbrough and Corporal Johnson despite the late disclosure of their names.

Recognizing that Appellant's counsel would need additional time to interview these witnesses and adjust his legal strategy, the judge offered a continuance. He noted,

however, that rescheduling the trial before the case's December 27, 2015, *Hicks*[2] date was impossible. Addressing this potential issue, the judge said: "[I]f [Appellant] says ['']yes[,] I'll waive my [180],['] then that[;] if he doesn't[,] then I will find good cause" to postpone the trial beyond the *Hicks* date.

The next day, during another pre-trial hearing, Appellant chose not to waive his right to a trial within 180 days, and, true to his word, the administrative judge found good cause for postponement beyond the *Hicks* date. Explaining his decision, the judge said that rescheduling the trial before December 27, 2015, would require the court to "jettison the entire calendar" and coordinate the schedules of the State's ten witnesses on short notice.

The Parties' Arguments

Appellant argues that because the State's "discovery violation"—the late disclosure of Trooper Bilbrough's and Corporal Johnson's names—caused the postponement of Appellant's trial beyond its *Hicks* date, it cannot form the basis for a finding of good cause. The State counters, first, that Appellant's counsel is attempting to obtain a discovery sanction that he is not entitled to receive and, second, that "good cause" does not require

[2] *State v. Hicks*, 285 Md. 310 (1979). Interpreting a prior iteration of the statute that proscribed the time limits for what constitutes a "speedy trial," *Hicks e*stablished that under Maryland law the State must bring a criminal defendant to trial or else dismiss the case within 120 days unless a court finds "extraordinary cause" to postpone trial. *Id.* at 319-21. As the Court of Appeals explained in *State v. Frazier*, the legislature amended the statute following *Hicks* to change the period from 120 to 180 days, and the modified the cause required for postponement from "extraordinary cause" to "good cause." 298 Md. 422, 458-62 (1984).

the party seeking or causing the postponement to have exercised "reasonable diligence" to avoid the postponement.

Standard of Review and Law

Maryland Rule 4-271—which was given effect in *State v. Hicks*, 285 Md. 310 (1979)—reads in relevant part:

> (a) *Trial Date in Circuit Court.* (1) The date for trial in the circuit court shall be set within 30 days after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court pursuant to Rule 4-213, and shall be not later than 180 days after the earlier of those events. . . . On motion of a party, or on the court's initiative, and for good cause shown, the county administrative judge or that judge's designee may grant a change of a circuit court trial date.

The Court of Appeals has explained that the "good cause" requirement in Rule 4-271 applies to two aspects of a postponement of a criminal trial beyond its *Hicks* date: (1) the decision not to commence the trial on the assigned trial date and (2) the extent of the delay. *State v. Frazier*, 298 Md. 422, 448 (1984). However, "the Legislature did not delineate the specific reasons which would satisfy the good cause requirement, nor did it precisely define good cause. Rather it intended that good cause be defined by an administrative judge upon review of the particular circumstances of each case." *State v. Toney*, 315 Md. 122, 133 (1989). This is because an administrative judge's duties—which require a broad view of the court's business—ordinarily put that judge "in a much better position than another judge of the trial court, or an appellate court, to make the judgment as to whether good cause for the postponement of a criminal case exists." *Frazier*, 298 Md. at 454.

The Court of Appeals has affirmed good cause findings when the discovery of new evidence necessitates postponement, *Morgan v. State*, 299 Md. 480, 487 (1984); when

judges or courtrooms are unavailable, *State v. Bonev*, 299 Md. 79, 81 (1984); and when it would be inconvenient for the State to try codefendants separately, *McFadden v. State*, 299 Md. 55, 57-58 (1984); *Satchell v. State*, 299 Md. 42, 45-46 (1984). In fact, an order complies with Rule 4-271 unless the *defendant* demonstrates "clear abuse of discretion or a lack of good cause as a matter of law[,]" "even in the situation where the administrative judge does not expressly or even consciously frame an order in terms of [Rule 4-271], if an order has the effect of postponing a circuit court criminal trial beyond the 180-day period, and if the order was issued by the county administrative judge or his designee for such purposes[.]" *State v. Fisher*, 353 Md. 297, 307 (1999) (emphasis in original).

In his effort to meet that burden, Appellant's counsel relies on our discussion of Rule 4-271 in *Tapscott v. State*, in which the defendant's trial was postponed beyond its *Hicks* date because of the time needed to obtain and process DNA evidence. 106 Md. App. 109, 117 (1995). In that case, we affirmed the administrative judge's ruling, finding that "[t]he State's need to obtain crucial evidence that could not reasonably have been obtained earlier is sufficient good cause for a postponement." *Id.* 123 (citation omitted). Appellant's counsel mistakes the negative construction "could not reasonably have been obtained earlier" for a positive standard that would preclude a finding of good cause for an evidence-related postponement where the evidence in question could have been obtained earlier. We decline, however, to accept Appellant's construction of the holding in *Tapscott*. As the Court of Appeals has explained, courts are not free to impose their own conception of good cause when reviewing an administrative judge's decision to postpone. *State v. Toney*, 315 Md. 122, 131-32 (1989). To accept Appellant's argument would require us to apply a

"good cause" standard—namely, that the party responsible for the postponement have exercised reasonable diligence—that was manifestly not based on the administrative judge's determination. . In the past, the Court of Appeals has declined to do precisely this, *id.*, and we decline to do so now. We find no error in the trial court's finding of good cause for the postponement of Appellant's trial beyond the *Hicks* date.

II.

Evidence of Other Bad Acts

Pre-Trial Motion

Before the trial began, Appellant moved *in limine* to restrict the testimony of Deputies Harris and Rickard, the officers who took Appellant into custody at 1304 White Marsh Road in Queen Anne's County for burglarizing that address. Noting that Appellant had already pleaded guilty to the Queen Anne's County burglary in a separate proceeding, Appellant's counsel argued that the deputies' testimony, insofar as it went "into any kind of detail" about that burglary or Appellant's conviction for it, constituted evidence of other bad acts under Maryland Rule 5-404(b) and "would undoubtably […] affect [the jury's] deliberations and their verdict in this case." He asked the trial court "to rule that the State's witnesses be limited in their testimony and not be allowed to delve into any kind of detail [about] the circumstances of that Queen Anne's County burglary, or the fact that Appellant was convicted of that burglary."

The State agreed that "talking about a conviction for burglary when the jury is here would be too prejudicial," but argued that it could not meet its burden of proof without showing where Appellant was taken into custody or introducing certain statements made

by Appellant at the scene of his arrest. As the State put its argument, "the testimony will be […] that a statement was made by Appellant that he did take the car, but he has no knowledge of how the guns got there. So, it's a lack of knowledge. So, I think the jury would be beneficial [*sic*] to hear the facts of the case in Queen Anne's County because [Appellant] makes that claim."

When asked by the trial court whether there was "any reason why the officers have to say that they were responding to a burglary at that residence," the State responded, "[p]erhaps not the word burglary," and offered to ask the deputies questions "more direct in nature" than those "typically . . . from [the] prosecution." To this, Appellant's counsel responded: "I'm not going to object if the State's Attorney leads his witnesses away from the . . . terminology of burglary."

Before making its ruling, the trial court recited the pertinent facts as it understood them:

> [T]he facts I think are well established[,] at least from what you're relaying to me, that ah, allegedly the [Appellant] entered the home of Ms. Parenteau at 27076 River Bridge Road and it's alleged that guns were taken from that location as well as some money. Ah, he had previously borrowed a vehicle, I think a [*sic*] older model car from someone, that was found [] at the Route 50/301 truck stop, rest stop, and it contained guns. . . . And subsequently [] the police investigated an alleged now turned out to be a burglary of a property in Queen Anne's County near or not far from the rest stop. In the process of that investigation[,] they came upon Appellant in a building or near a building on that property I think it was established, would be established that he was on a tractor and he had consumed alcohol to the point that he was not conscious.

The court then observed that it must weigh "the necessity of that testimony against the prejudicial inferences that a jury could make from it." It ruled that the second burglary be allowed to come in during testimony, but reasoned that

> certainly the investigation by the police lead [*sic*] them to the location of Appellant at that Queen Anne's County address, for purposes of this prosecution. And the necessity of the State being permitted to show that, is to show that location was near the Route 301/50 rest stop where the guns and the car that Appellant admitted he was driving or had borrowed, or had taken no matter what. . . . **The State should certainly be permitted to show that, where Appellant was found, near that location[,] is certainly relevant, and probative as to showing that [Appellant] or at least the inference that [Appellant] had knowledge of the guns in the car that he had been driving.** That there was no mistake as to the guns in the car, that there was a scheme, perhaps a common scheme. **But the common scheme aspect of it should not come in because I don't want there to be any reference to the fact that there was a burglary at the Queen Anne's County address.**

(Emphasis added). The court then noted that the State would caution its witnesses not to mention that they were investigating a burglary when they discovered Appellant except to the extent that

> their investigation led them to find [Appellant] at that address unresponsive or unconscious, whatever the condition was. Ah, and that later they found I think money in his pocket as a result of that arrest. Ah, that they linked to the alleged burglaries that we are today in court on. So, I think there's a necessity argument as to this issue, I feel that the prejudicial effect certainly is not to the . . . degree as long as the second offense is not mentioned. **The probative value certainly is important and it is not out weighed by the danger of unfair prejudice as long as … as the second burglary is not mentioned as a burglary, or a house breaking, or only the fact that they found [Appellant] there.** Perhaps . . . as a result of a complaint by the property owner. I think perhaps that it certainly explains why the police came there.

Finally, the court clarified that it found that

> the admissibility of those facts out weigh [*sic*] against undue prejudice **as long as we sanitize it to the point there is no reference to the second burglary. And I will admit that testimony . . . for purposes of the State showing the circumstances and the location of the car and the guns in the car.** And [Appellant's] location near, at or near, I don't think it was at, but it was perhaps in walking distance as far as I know of the rest stop. Perhaps the police officers can clear that up. So . . . **I'm going to deny the motion in part, but require the State not to refer to that second burglary . . . as a second offense.** I think that gets the State, where the State needs to go without unfair or undue prejudice to the [Appellant].

(Emphasis added).

Trial Testimony and Bench Conference

During Deputy Rickard's testimony at trial, the State established that he was dispatched to 1304 White Marsh Road at about 6:00 p.m. on April 2, and that he was called to that location at the request of the property owner. He testified further that when he arrived at the scene, he was directed to a shed where Deputy Harris already had Appellant restrained in handcuffs. The State's attorney then asked Deputy Rickard if Appellant had indicated to him how he had gained entry to 1304 White Marsh Road. Before Deputy Rickard could answer, Appellant's counsel requested to approach the bench, where he expressed his concern that "the jury could conclude" from Deputy Rickard's answer "that [Appellant] was there for a burglary." Appellant's counsel explained that Deputy Rickard's answer—that "the suspect advised that he walked into the rear garage, walked in the door"—amounted to an admission of burglary and would serve only to prejudice the jury against Appellant. "[I]f [Deputy Rickard] answers [the State's] question," he continued, "then . . . the following question would be, was, you know (unintelligible)

residence or do you have permission to be there, quickly establish[ing] all the elements for a burglary inside the residence."

The trial court reasoned: "we need to know that this wasn't [Appellant's] residence"—"[i]t's simply a question about how he got to where he was. You're not getting into the fact that he was charged with a burglary or convicted of a burglary." The discussion continued as follows:

> [Defense Counsel]: . . . [M]y contention is what difference does it make how [Appellant] got into where he was. I mean, we've already established that he was arrested there. We've already established that [Deputy Rickard] was called there, the property owner called and complained that [Appellant] was there . . . I don't understand the utility of the question. How did you get into the residence where you were found. Well, I opened the door and I walked in[.]
>
> THE COURT: There was no breaking, there's no forced entry in that.
>
> [Defense Counsel]: I …
>
> THE COURT: I mean[,] I think the State should be permitted to at least get into where [Appellant] was and how he got there. As I understand it one of these troopers is going to say he was asleep or passed out.
>
> [Defense Counsel]: Yeah.
>
> THE COURT: So, I'm going to permit that question, but you're not going to go any further on that are you?
>
> [The State]: The only other question I'm going to ask is . . . [d]id the property owners say that [Appellant] had permission to be there? That's the only other question I'm going to ask [Deputy Rickard].
>
> THE COURT: And I'll …
>
> [Defense Counsel]: Well …
>
> THE COURT: … I'll permit that.

[Defense Counsel]: Okay.

Following the bench conference, Deputy Rickard answered both of the State's questions: Appellant had informed him that he "had walked into the rear garage door," and the property owners had informed him that they had not given Appellant permission to be there. The State did not put these questions to Deputy Harris.

The Parties' Arguments

Appellant argues that the trial court erred in allowing the State to pose these questions because they "elicited details that proved elements of burglary" (on which the jury later received instructions)—specifically, that Appellant was arrested on another's property, that he entered the property through a garage door, and that he did not have the property owner's permission to be there. These details, Appellant claims, were "not needed to prove where [Appellant] was found or why the officers arrested him" and "functioned almost entirely as evidence of [Appellant's] criminal propensity." Appellant's counsel maintains that Deputy Rickard's testimony could have improperly swayed the jury's decision to convict Appellant on the theft and possession of firearms charges.

The State counters that Deputy Rickard's testimony was relevant to establishing Appellant's identity as the person who abandoned the Ford Escort containing Ms. Parenteau's guns. Pointing only to a portion of Deputy Rickard's testimony concerning the proximity of the unattended vehicle and the location of Appellant's arrest, the State claims that the deputy's testimony as a whole "established directly or inferentially that [Appellant] was the person that Trooper Bilbrough had seen on the side of Route 301, that he abandoned the Ford Escort with Parenteau's guns on the side of [R]oute 301, and that

he then walked on the property at 1304 White Marsh Road without the property owner's permission." The State adds that, even if the testimony was erroneously admitted, the error was harmless because the jury acquitted Appellant of the charges related to the burglary of Ms. Parenteau's home.

Maryland Rule 4-505(c) and Our Standard of Review

Whether the court properly admitted Deputy Rickard's testimony turns on the proper application of Maryland Rule 5-404(b), which reads:

> Evidence of other crimes, wrongs, or acts including delinquent acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

To determine when the admission of such evidence is appropriate, the Court of Appeals has established a three-step process. *State v. Faulkner*, 314 Md. 630, 634-35 (1989). In *Page v. State*, we explained that process, and the standards of review applicable to each of its steps, as follows:

> In order for "other crimes" evidence to be admissible, the circuit court—in its role as the evidentiary sentry—must conduct a threefold determination before permitting the evidence to be presented to the jury. First, the court must find that the evidence is "'relevant to the offense charged on some basis other than mere propensity to commit crime.'" *Skrivanek v. State*, 356 Md. 270, 291 (1999) (quoting *Whittlesey v. State*, 340 Md. 30, 59 (1995)). In other words, the question is whether the evidence falls into one of the recognized exceptions. *Faulkner*, 314 Md. at 634. This determination does not involve discretion; on review by this Court, it "is an exclusively legal [question], with respect to which the trial judge will be found to have been either right or wrong." *Oesby v. State*, 142 Md. App.144, 159 (citing *Faulkner*, 314 Md. at 634). Second, the court must "decide whether the accused's involvement in the other crimes is established by clear and convincing evidence[,]" and we "review this decision to determine whether the evidence was sufficient to support the trial judge's finding." *Faulkner*,

> 314 Md. at 634–35 (citations omitted). Third, "[t]he necessity for and probative value of the 'other crimes' evidence is to be carefully weighed against any undue prejudice likely to result from its admission[,]" and this is a determination that we review for abuse of discretion. *Id.* Not until the court determines that the evidence can clear these hurdles may the court open the gates for the admission of "other crimes" evidence. Indeed, "[t]hese substantive and procedural protections are necessary to guard against the potential misuse of other crimes or bad acts evidence and avoid the risk that the evidence will be used improperly by the jury against a defendant." *Streater v. State*, 352 Md. 800, 807 (1999).

222 Md. App. 648, 661-62 (2015).

Of the three steps that the Court of Appeals laid out in *Faulkner*, Appellant's appeal ultimately implicates only the first: whether the other-crimes evidence presented to the jury was relevant to the crimes charged on some basis other than mere propensity to commit crime. Our conclusion on this factor—that the other-crimes evidence presented to the jury lacked any coherent connection between the evidence elicited by the State and the crimes with which Appellant was charged in this case—voids the necessity of weighing the probative value of that evidence against its prejudicial effect. And because Appellant pleaded guilty to the other crime in question (the second burglary), we need not address the sufficiency of the evidence supporting his involvement in that act.

We begin, then, by determining whether the evidence of the burglary at 1304 White Marsh Road was, as a matter of law, admissible under an exception to Maryland Rule 5-404(b) and, thus, whether the trial court's ruling was right or wrong. The court appears to have grounded its pre-trial ruling on either the "knowledge" or "absence of mistake" exceptions to Rule 5-404(b), stating that the evidence would permit "at least the inference that Appellant had knowledge of the guns in the car that he had been driving. That there

was no mistake as to the guns in the car." While the fact that Appellant was detained by police in the vicinity of the unattended car, and the fact that he did not reside in that area were arguably relevant to his knowledge or ignorance of the guns in the car, the testimony that brought those facts to light is not at issue here. Appellant's counsel argued during the pre-trial motion hearing, again at trial during the bench conference, and again in his appellate brief, against the admission of testimony detailing the burglary to which Appellant had already pleaded guilty. We discern no connection between Appellant's mode of entry at 1304 White Marsh Road and the question of whether he had knowledge of the guns found in the unattended Ford Escort.

The State evokes the "identity" exception to Rule 5-404(b), arguing that Deputy Rickard's testimony was relevant to establishing that Appellant was the person who abandoned the Ford Escort containing the firearms on the side of Route 301. And indeed, the portion of Deputy Rickard's testimony that the State cites in support of its argument—which addressed only the proximity of the vehicle to the location of Appellant's arrest—was relevant to that question. But, again, Appellant has not challenged the propriety of that portion of Deputy Rickard's testimony. Instead, Appellant has argued consistently and specifically against testimony indicating how he gained entry to 1304 White Marsh Road and whether he had permission from the property owner to be there. Because these subjects have no relevance to the question of Appellant's identity as the person who abandoned the Ford Escort, the State's argument is without merit.

Among other possible rationales for introducing the testimony in question, only the doctrine of "inextricably intertwined" or "intrinsic" evidence presents itself. Under this

doctrine, courts in other jurisdictions have allowed evidence of acts unrelated to the crime charged simply because police originally responded to those unrelated acts. *See U.S. v. Muhammad*, 928 F.2d 1461, 1468 (7th Cir. 1991) (holding that evidence of a shooting incident in which defendant was involved, later used by police to secure a search warrant was admissible as "intrinsic" to a possession of ammunition charge brought against defendant as a result of the search). Maryland case law, however, defines "intrinsic" narrowly "as including, at a minimum, other crimes that are so connected or blended in point of time or circumstances with the crime or crimes charged that they form a single transaction, and the crime or crimes charged cannot be fully shown or explained without evidence of the other crimes." *Odum v. State*, 412 Md. 593, 611 (2010). The fact that Appellant burglarized 1304 White Marsh Road does nothing to elucidate the crimes with which he was charged in the case at bar; nothing about the alleged burglary at Ms. Parenteau's residence, the alleged theft of her guns, or Appellant's alleged possession of those guns as a felon was elucidated by his mode of entry on, or status at, 1304 White Marsh Road.

Because none of the exceptions to Rule 5-404(b) authorize the admission of evidence of that burglary, and because the Queen Anne's County burglary cannot be described as intrinsic to any of the crimes for which Appellant was tried in Caroline County, we find the trial court's decision to admit that evidence erroneous.

Harmless Error Analysis

We must now determine whether the circuit court's error was harmless or if it was reversible error. For criminal cases, Maryland law requires an error's beneficiary—in this

case, the State—"to demonstrate, beyond a reasonable doubt, that the error did not contribute to the verdict." *Dorsey v. State*, 276 Md. 638, 657-59 (1976) (citations omitted). Moreover, "[t]he record must affirmatively show that the communication (or response or lack of response) was not prejudicial." *Denicolis v. State*, 378 Md. 646, 659 (2003).

In its effort to meet this burden, the State suggests that, "[t]he danger" that Rule 5-404(b) seeks to avert in this case "is that the jury would improperly conclude that [Appellant] had a propensity to commit burglaries, and convict him of burglarizing the Parenteau residence on that basis." Because Appellant was acquitted of the burglary charges in the underlying case, the State concludes that "this type of improper reasoning did not occur."

Appellant counters that we cannot deem harmless the erroneous admission of bad acts evidence—which carries with it the "significant potential for unfair prejudice"—because "it cannot be disproven beyond a reasonable doubt that the jury was leaning toward[] acquittal on the other counts, but elected to reach a compromise verdict because it was improperly swayed by evidence of [his] criminal propensity."

As the Court of Appeals has explained, Rule 5-404(b) is intended to allay the "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*[.]" *Harris v. State*, 324 Md. 490, 496 (1991) (emphasis added). The evidence here was not lacking, however, and we can say that the court's admission of bad acts evidence was harmless beyond a reasonable doubt.

The State presented ample evidence at trial to support Appellant' conviction of the crimes the jury found him guilty of committing. A man matching Appellant' description was seen near an abandoned car, which was owned by Appellant' girlfriend, and contained the guns stolen from Ms. Parenteau's residence. When the police arrested Appellant, he had in his possession two $2 bills—the other items that Ms. Parenteau reported stolen.

The lack of prejudice resulting from the court's error is made more evident by the fact that the jury convicted Appellant of only theft, not burglary. Although Appellant suggests on appeal that the verdicts could be the jury "splitting the difference," it seems clear to us that he was convicted of the crimes for which the State presented sufficient evidence. Again, Appellant was arrested with some of the stolen goods in his pocket, wearing an outfit that matched the clothes worn by the man seen abandoning the car that contained the remaining stolen goods—a car which was registered to Appellant' girlfriend. If the jury had been so prejudiced by the evidence of Appellant's propensity for burglary, it surely would have found him guilty for burglary as well—particularly considering the goods it found him guilty of stealing had been burglarized from Ms. Parenteau's residence. Instead, it only found him guilty of theft.

Additionally, Appellant's own argument cuts against him. As the State points out, Appellant did not and does not contest the admission of testimony that he was arrested at 1304 White Marsh Road—a property unrelated to the crime for which he was on trial—for reasons seemingly unrelated to the crime for which he was on trial. The thrust of Appellant' argument on appeal is that *any* mention of prior bad acts would prejudice the jury beyond repair; yet, Appellant does not object to the reference to his other arrest. As

we already explained, the jury was clearly not infected with a prejudice to believe that Appellant had a specific propensity for burglary. And any general prejudice that would result from the jury knowing that the arresting officers responded to a call from the property owner, or that Appellant walked onto the property without permission is, at best, a minimal increase over the jury knowing Appellant was arrested in the first place. Given the abundance of strong evidence that Appellant was guilty of theft, his acquittal for burglary, and the uncontested admission of his prior arrest, we conclude that the testimony that Appellant was on another property without permission, causing the property owners to call the police, was harmless beyond a reasonable doubt.

III.

Admission of Hearsay

On the first day of Appellant's trial, Trooper Hoffman, who had searched the unattended Ford Escort on Route 301, testified that he passed on the vehicle's registration information to the Maryland State Police Centreville Barrack, and that someone at the barrack responded with information indicating that Ms. Dodge was the vehicle's owner. Appellant's counsel objected to the latter part of this testimony on hearsay grounds, and the following exchange ensued:

> THE COURT: It is hearsay[,] but […] was [the car's registration information] communicated to the Centreville Police Department[,] is that what you're saying, [the] Sheriff's Department?
>
> TROOPER HOFFMAN: Centreville Barrack, Your Honor.
>
> THE COURT: Centreville Barrack.
>
> TROOPER HOFFMAN: Yes[,] sir.

THE COURT: Of the Maryland State Police.

TROOPER HOFFMAN: Yes[,] sir.

THE COURT: And you got a response.

TROOPER HOFFMAN: Correct.

THE COURT: Very well[,] overruled.

Detective Peris offered substantially identical testimony on the second day of the trial, however: Trooper Hoffman had given him the car's registration information and, from that information, he identified Ms. Dodge as the owner of the Ford Escort. Appellant's counsel did not object to this portion of Detective Paris's testimony.

On appeal, Appellant argues that the trial court erred when it admitted Trooper Hoffman's testimony over his hearsay objection and that the error cannot be considered harmless. Appellant maintains that Trooper Hoffman's testimony lent credibility to Detective Peris's account of his unrecorded interview with Appellant and, in particular, to the "critical link" that the interview established between Appellant and the unattended Ford Escort—*i.e.*, that Appellant was involved in a romantic relationship with the owner of the car, Ms. Dodge. The State, for its part, argues that Appellant waived his objection when he did not object to Detective Peris's substantively identical testimony the following day. For the same reason, the State argues that the court's error, if any, was harmless.

We need not determine whether Trooper Hoffman's statement was hearsay, because Appellant failed to preserve the issue. Maryland Rule 4-323 stipulates: "an objection to the admission of evidence shall be made at the time the evidence is offered or as soon

thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." From this principle, the Court of Appeals has developed a "general rule" that applies where the same testimony is introduced by multiple witnesses: "where testimony objected to comes in later without objection from another witness, there can be no successful claim on appeal that the original error, if any, was prejudicial." *Peisner v. State*, 236 Md. 137, 144 (1964) (citations omitted).

Our decision in *Kang v. State* is instructive on applying the *Peisner* rule in the case at bar. 163 Md. App. 22 (2005). In *Kang*, the trial court permitted a State's witness to offer hearsay testimony over two objections and a request for a continuing objection from defendant's counsel. *Id.* at 41-42. On appeal, we held that the defense failed to preserve the issue because two additional State's witnesses later offered substantively identical hearsay testimony without objection. *Id.* at 44. We noted that nothing in the record showed that the trial court had granted the defense a continuing objection, much less one that would extend to subsequent witnesses. *Id.* at 45; *see also Hall v. State*, 119 Md. App. 377, 390 (1998) (noting that an interruption of the improper line of questioning, by other testimony or evidence, requires counsel to renew a continuing objection). We held, as a result, that any objection pertaining to the admissibility of that testimony was waived when the defendant failed to object to the admission of similar testimony from the State's later witnesses. *Kang*, 163 Md. App. at 45.

Like the defense counsel in *Kang*, Appellant's counsel objected to the testimony when it was first offered by Trooper Hoffman, but failed to object when substantively

identical testimony offered by Detective Peris. Therefore, we do not reach the merits of Appellant's hearsay argument.

IV.

Improper Closing Argument

Relevant Facts

Reciting Maryland Criminal Pattern Jury Instruction 4:32.2, the trial court informed the jury that abandonment of property in a manner that deprives its rightful owner of that property may constitute proof of theft. The State, during its closing argument, apparently attempted to quote the court on this point, but failed to do so accurately, effectively applying the logic of the court's theft instruction to Appellant's charge of firearms possession:

> When you get to the definition of possession, I don't know if you wrote down or you were listening when the Judge said it. The Judge said possession includes[] the abandonment of items. And you can infer from abandonment that he possessed them. These guns are abandoned in this car.

Appellant's counsel brought the discrepancy to the trial court's attention immediately after the State's closing argument, and requested that the court re-read its jury instructions on the possession of firearms charges. The court, however, declined to give a curative instruction, reasoning that the inference described by the State was available to the jury in relation to the firearms charges, and that a curative instruction risked confusing the jury on the subject.

The Parties' Arguments

On appeal, Appellant argues that the State improperly "argued the law" and, relatedly, that the trial court erred by declining to give a curative instruction. According to Appellant, the State's misquotation of the trial court amounted to a manipulation of its jury instructions that either did or was likely to cause the jury to apply the law in a manner different from that prescribed by the trial court. The trial court, he continues, had a duty to address the improper remark at the time that it occurred: it was not entitled to rely on the authority of the jury instructions it delivered prior to the parties' closing arguments.

The State counters that its argument was not a manipulation of the trial court's jury instructions, but a permissible evidentiary inference (essentially: 'one cannot abandon an item without first possessing it'), and that, even if the statement was improper, it was not prejudicial to Appellant. In support of the latter argument, the State points out that trial court agreed with the State's reasoning, remarking: "Well, if [the jury] find[s] that [Appellant] had the guns and abandoned the guns[,] isn't that an indication of possession[?]" Because the State's misstatement did not have the effect of misleading the jury, the State concludes, it was within the trial court's discretion to decide that no curative instruction was necessary.

Standard of Review and Law

The law affords attorneys "great leeway in presenting closing arguments to the jury." *Degren v. State*, 352 Md. 400, 429 (1999) (citations omitted). Recognizing that a trial court is in the best position to judge the proper scope of that leeway in light of the facts of each case, the Court of Appeals has stated that "'[r]eversal is only required where

it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.'" *Evans v. State*, 333 Md. 660, 679 (1994) (citation omitted). Determining whether a prosecutor's comments were prejudicial, however, is left to "the sound discretion of the trial court." *Degren*, 352 Md. at 431 (citations omitted). We will "'not disturb the trial court's judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party.'" *Mitchell v. State*, 408 Md. 368, 380-81 (2009) (citation omitted). A trial court abuses its discretion when its "'ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005) (citation omitted).

Despite the leeway we grant attorneys in formulating their closing arguments, Maryland law imposes certain restrictions designed to protect a defendant's right to a fair trial. *Degren*, 352 Md. at 430 (citation omitted). "Arguing the law," in the absence of a "'sound basis'" for disputing the law of the crime, is among those restrictions. *Newman v. State*, 65 Md. App. 85, 101 (1985) ((emphasis omitted) quoting *Montgomery v. State*, 292 Md. 84, 89 (1981)). "Arguing law includes 'stating, quoting, discussing or commenting upon a legal proposition, principle, rule or statute[,]'" and is improper even when consistent with the court's instructions. *White v. State*, 66 Md. App. 100, 118 (1986) (citation omitted). This is because "allow[ing] counsel to embellish the trial court's instructions is fraught with the danger that the trial judge's binding instructions will be manipulated by counsel, resulting in the jury applying law different than that given by the trial court." *Id.*

As the case at bar demonstrates, the notion of "embellishment" is not limited to such overt instances of arguing the law as "stating, quoting, discussing or commenting upon a legal proposition, principle, rule or statute." By misattributing its own evidentiary inference to the trial court's firearms-possession instructions, the State embellished those instructions and, thus, put at risk the integrity of the jury's decision. While clearly improper, the trial court apparently did not consider the comments prejudicial or sufficiently prejudicial to warrant a corrective instruction. We agree.

The court's decision followed logically from its stated premises. Belaboring the provenance of an evidentiary inference that, as the trial court correctly pointed out, was available to the jury in relation to the possession of firearms charges and would serve only to highlight that inference at the expense of the fairness and intelligibility of the proceeding. On the one hand, if the court had, as Appellant's counsel requested, merely re-read its instructions on the possession of firearms charges, the jury might have concluded that the inference in question was not available to them. On the other hand, if the court had corrected the State's misattribution, but indicated that the inference was, in fact, available to the jury, the jury might have misinterpreted the court's correction as an endorsement of the State's argument. Either response risked further muddying the distinction between the court's binding jury instructions and the evidentiary inferences available to the jury. Also relevant is the fact that the trial court's jury instructions were supplied to the jury in writing, permitting them to compare the language that the State misattributed to the trial court with the court's own words. We conclude that the State's argument, while improper, was not

likely to mislead the jury, and thus, we perceive no abuse of discretion on the part of the trial court. *See Mitchell*, 408 Md. at 380-81; *Degren*, 352 Md. at 431.

JUDGEMENTS OF THE CIRCUIT COURT OF CAROLINE COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.