UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0930

September Term, 2013

MAURICE SHABAZZ RAMEY

v.

STATE OF MARYLAND

Meredith,
Graeff,
Leahy,

JJ.

Opinion by Meredith, J.

Filed: June 25, 2015

After a jury trial in the Circuit Court for Prince George's County, Maurice Shabazz Ramey, appellant, was convicted of carjacking, robbery, second degree assault, theft, theft of an automobile, and the unauthorized use of a motor vehicle. He was sentenced to incarceration for a term of 30 years' imprisonment for the carjacking conviction and a concurrent term of 10 years' imprisonment for the second-degree assault. The remaining counts merged for sentencing purposes. This timely appeal followed.

QUESTIONS PRESENTED

Appellant presents three questions for our consideration, which we have reordered and slightly rephrased as follows:

> I. Did the circuit court err in failing to suppress the pre-trial photographic identification of appellant where the identification resulted from an impermissibly suggestive identification procedure and was not independently reliable?
>
> II. Did the circuit court err in denying appellant's motion for mistrial after the State failed to redact references to prior bad acts in appellant's recorded interview with police that was placed for the jury?
>
> III. Did the sentencing judge fail to exercise his discretion in sentencing appellant to 30 years for carjacking - the statutory maximum sentence - where the judge indicated that he was "going to make an issue of this car jacking business" and that he intended to sentence anyone with a prior record to 30 years for carjacking because he had "reached the limit in car jacking"?

For the reasons set forth below, we shall affirm the judgments of the Circuit Court for Prince George's County.

FACTUAL BACKGROUND

At about midnight on April 8, 2012, Rulonda Goines drove to a gas station on Landover Road in Prince George's County to purchase some ginger ale.[1] As she walked up to the window to make her purchase, she saw another vehicle pull into the gas station. After making her purchase, she returned to her car. As she was attempting to put her keys into the ignition, a man she later identified as appellant grabbed her open car door, pressed a "shiny" handgun with "a brown handle" into her face, and told her "to get the fuck out of the vehicle or he was going to kill" her. Appellant was wearing a ski mask, a gray and black striped jacket, and a blue shirt. Appellant's nose and eyes were not covered by the ski mask, and Goines could see twists of his hair hanging out from under the mask. Goines surrendered her keys to appellant. He entered her vehicle, backed out of the parking space, rolled down the driver's side window, and pointed the gun out of the window as he drove away.

Goines gave a description of her assailant to the police and, on the day after the incident, viewed a photographic array from which she identified appellant as the man who robbed her. She explained that it took her about "a second or a second and a half" to identify appellant's photograph and she was sure he was the man who robbed her because she remembered "those eyes."

[1] Ms. Goines's name is spelled "Rulonda" and "Rulonea" in the record. For consistency, we shall use the name "Rulonda" herein.

Officer Robert Underwood of the District of Columbia Metropolitan Police Department testified that, at about 4 p.m. on April 8, he observed a Toyota Solara driving erratically and at an excessive rate of speed in the 600 block of Division Avenue in the District of Columbia. He attempted to stop the vehicle by activating the lights and sirens on his police vehicle. The Toyota turned left onto Dix Street and immediately made a right turn onto 53rd Street, where it came to an abrupt stop in the middle of the road. The driver's side door opened and the Toyota began to roll backwards toward the police vehicle. The driver of the Toyota exited the vehicle, fell to the ground, and then attempted to get up again. Officer Underwood testified that he could see the driver's face clearly and, at trial, he identified the driver as appellant.

Appellant eventually got back on his feet and started to run away. Officer Underwood's partner, Officer Nelson, exited the police vehicle and pursued appellant. Officer Underwood put the police vehicle in reverse and moved it out of the way of the oncoming Toyota. The Toyota eventually crashed into a small wooden pavilion.

Officer Nelson was unable to apprehend appellant. After checking the tags on the Toyota, Officer Underwood contacted the Prince George's County Police Department. In response, Prince George's County Police Detective Chad Miller arrived at the scene of the crash. While at the scene, Detective Miller heard a cell phone ringing inside the Toyota, noticed the word "Ma" on the telephone's screen, and answered it. The caller identified himself as Maurice Ramey and gave the detective his birth date. Ramey told Detective

Miller that he had been robbed earlier that day at about 4 p.m. Detective Miller asked Ramey to come to the scene, and Ramey responded that he was not far from that location.

A few minutes later, the cell phone rang again. Again, the word "Ma" was displayed on the screen. Detective Miller answered the cell phone and spoke to an elderly woman. As a result of that conversation, Detective Miller went to 241 53rd Street in northeast Washington, D.C., which was about a block away. There, he met Diane Yancey, appellant's grandmother. After obtaining consent to search her home, Detective Miller recovered a black face mask from the right side of the entryway. That mask was placed in a District of Columbia Metropolitan Police Department property room, but was later lost.

At trial, Yancey testified that appellant had been to her home prior to the time the police arrived and had told her that he had been robbed. He appeared "a little shaken" and his elbow was bleeding. Yancey could not recall if appellant had a mask with him, but she claimed that the item recovered by the police was not a mask, but a "cap" or skull cap. She stated that "all the boys wear caps around their heads. They all have dreads. I can't remember whether [appellant] had the cap on or not."

Detective Miller later met with Rulonda Goines and showed her a photographic array. She immediately identified appellant as the man who had carjacked her.

Prince George's County police officers recovered four fingerprints from the exterior of the Toyota and took two DNA swabs from the steering wheel and the gear shift. Virgie Davis, a fingerprint specialist for the Prince George's County Police Department, who

testified as an expert in fingerprint analysis, opined that two of the fingerprints recovered from the Toyota matched appellant's right index finger and right middle finger. Mary Sanchez, a forensic chemist at the Prince George's County Police Department's DNA Serology Laboratory, testified as an expert in forensic serology and DNA analysis. She opined that the DNA swabs taken from the steering wheel and gear shift of the Toyota yielded a DNA profile from at least three contributors, one of whom was appellant.

Prince George's County Police Detective Zachary O'Lare interviewed appellant on April 10, 2012. A DVD recording of that interview was played for the jury.

We shall provide additional facts as necessary in our discussion of the issues presented.

DISCUSSION

I.

Appellant contends that the suppression court erred in failing to suppress pre-trial photographic identification of him by Goines; he asserts that the procedure was impermissibly suggestive. He argues that his photograph was so light that there appeared to be a spotlight shining on it and that the lighting had the effect of suggesting to Goines that she should identify him. Appellant maintains that Goines's identification of him was, therefore, inherently unreliable. We disagree and explain.

In considering the denial of a motion to suppress, we are limited to the record of the suppression hearing and do not consider the trial record. *Lee v. State*, 418 Md. 136, 148

(2011) (citing *Longshore v. State*, 399 Md. 486, 498 (2007)); *Byndloss v. State*, 391 Md. 462, 477 (2006). We extend great deference to the fact finding of the suppression judge and accept the facts as found, unless clearly erroneous. *Crosby v. State*, 408 Md. 490, 504-05 (2009) (and cases cited therein); *Myers v. State*, 395 Md. 261, 274 (2006); *State v. Green*, 375 Md. 595, 607 (2003) (citing *Dashiell v. State*, 374 Md. 85, 93 (2003)). In addition, we review the evidence in the light most favorable to the prevailing party, in this case, the State. *Lee*, 418 Md. at 148-49; *Myers*, 395 Md. at 274; *Green*, 375 Md. at 607. We make our own independent constitutional appraisal by reviewing the law and applying it to the facts of the case. *State v. Luckett*, 413 Md. 360, 375 n.3 (2010).

At the suppression hearing, Goines testified that on April 8, 2012, she was carjacked by an individual who was wearing a ski mask that covered his mouth but left the rest of his face visible. Approximately ten minutes after the carjacking, she spoke to police officers who arrived at the scene. The following day, she went to the police precinct and viewed six photographs. She identified a photograph of appellant as the man who carjacked her. She testified that she based her selection on the appearance of appellant's eyes. Goines testified that no police officer said anything to influence her selection of appellant's photograph, and that her selection was based on her memory of the crime.

Following Goines's testimony, defense counsel argued that the photograph selected by Goines was "much lighter in appearance than any of the other photographs around it," and that it was "markedly different in terms of the lighting conditions" and "much more faded"

than the other photographs. Defense counsel asserted that the lighting conditions made the photograph of appellant "unnecessarily suggestive."

The suppression court disagreed and denied appellant's motion to suppress, finding that the photograph was not "so unnecessarily suggestive as to taint any further possible identification."

The right to due process of law is guaranteed by the Fifth Amendment to the United States Constitution, which is applicable to the states by the Fourteenth Amendment.[2] "Due process protects the accused against the introduction of evidence of, or tainted by, unreliable pretrial identifications obtained through unnecessarily suggestive procedures." *Webster v. State*, 299 Md. 581, 599-600 (1984) (citations omitted). We apply a two-step inquiry to determine the admissibility of disputed identification evidence alleged to be the product of unduly suggestive pre-trial identification procedures. *James v. State*, 191 Md. App. 233, 252 (2010). First, the defendant bears the initial burden of showing that the procedure employed

[2] The Fifth Amendment to the United States Constitution provides, in relevant part, that "[n]o person shall . . . be deprived of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. V. It applies to the states through the Fourteenth Amendment to the Constitution of the United States which provides, "Nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ." U.S. CONST. amend. XIV. Similarly, Article 24 of Maryland's Declaration of Rights provides that "no man ought to be taken or imprisoned or disseized of his freehold, liberties or privileges, or outlawed, or exiled, or, in any manner, destroyed, or deprived of his life, liberty or property, but by the judgment of his peers, or by the Law of the land." Md. Const. Decl. Rights art. 24. The Court of Appeals has explained that the phrase "law of the land" is synonymous with "due process of the law" as that phrase is used in the Fifth and Fourteenth Amendments to the United States Constitution. *See Sapero v. Mayor and City Council of Baltimore*, 398 Md. 317, 344 (2007) (and cases cited therein).

to obtain the identification was unduly suggestive. *Id.* Our prior cases explain that impermissible suggestiveness "exists where the police, in effect, repeatedly say to the witness: 'This is the man.'" *In re Matthew S.*, 199 Md. App. 436, 448 (2011) (citations omitted). If the defendant shows that the procedure employed to obtain the identification was unduly suggestive, then the court must determine whether, based on the totality of the circumstances, the identification was reliable despite the suggestiveness of the confrontation procedure. *James*, 191 Md. App. at 252. But, if the defendant does not establish that the identification procedure is unduly suggestive, "our inquiry is at an end." *Id.*

In the case at hand, appellant failed to establish that the identification procedure was unduly suggestive. Preliminarily, we note that there was absolutely no evidence to show that the manner in which the photographic array was presented to Goines was suggestive. Appellant's sole contention is that the photographic array itself was unduly suggestive because his photograph, unlike the other photographs in the array, appeared to have a spotlight shining on it. The record reflects that the suppression judge viewed the photographic array, disagreed with appellant's contention about the lighting in appellant's photo, and concluded that, "[u]nder the totality of the circumstances the court does not feel that this particular array is so unnecessarily suggestive as to taint any further possible identification." Our review of the record in this case reveals no clear error in the circuit court's conclusion that the array was not unduly suggestive.

II.

Appellant contends that the circuit court erred in denying his motion for mistrial after the State failed to redact from his recorded interview references to prior bad acts. A mistrial is "'an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.'" *Coffey v. State*, 100 Md. App. 587, 597 (1994) (quoting *Burks v. State*, 96 Md. App. 173, 187, *cert. denied*, 332 Md. 381 (1993)). The decision to grant a motion for mistrial is committed to the sound discretion of the trial judge, and "[o]ur review 'is limited to determining whether there has been an abuse of discretion.'" *Parker v. State*, 189 Md. App. 474, 493 (2009) (quoting *Coffey, supra*, 100 Md. App. at 597). *Accord Carter v. State*, 366 Md. 574, 589 (2001); *State v. Hawkins*, 326 Md. 270, 277 (1992). A trial court's denial of a motion for mistrial will not be reversed unless "'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594-95 (1989)).

In the case at hand, Detective Zachary O'Lare interviewed appellant on April 10, 2012, and that interview was recorded. At trial, during Detective O'Lare's direct examination, the recording was entered into evidence and played for the jury. Although the contents of the recorded interview were not included in the trial transcript, the DVD and a transcription of it are included in the record on appeal. The following is a portion of Detective O'Lare's interview of appellant that preceded appellant's motion for mistrial:

[APPELLANT]: The only place I ever been in Maryland and stay like that ever was Beltsville and Clinton, and that was when I was younger, a little boy. The only time I – the only place I know out in Maryland is Beltsville right now. I don't know my way, I – I can't even drive. Don't even – haven't even had driving or nothing.

[DETECTIVE O'LARE]: Let me explain something to you. I've locked up a lot of people from Clay Terrace and Lincoln Heights for car jacking. Okay?

[APPELLANT]: Well, let me tell you something.

[DETECTIVE O'LARE]: You do not –

[APPELLANT]: I have (indiscernible) my life around Clay Terrace.

[DETECTIVE O'LARE]: I'm going to tell you something. Not one of them had a driver's license.

[APPELLANT]: I never even spent my life around Clay Terrace. I don't –

[DETECTIVE O'LARE]: You say you haven't or you did?

[APPELLANT]: No, I didn't. I left around Clay Terrace in 1998 –

[DETECTIVE O'LARE]: When did you come back?

[APPELLANT]: – when my mother died.

[DETECTIVE O'LARE]: When did you start coming back?

[APPELLANT]: The only time I cam back was when I – I ran away from the Foster Home –

[DETECTIVE O'LARE]: When was that?

[APPELLANT]: – in 2006, when I was 13.

[DETECTIVE O'LARE]: And you've been back and forth – Clay Terrace, Beltsville since?

[APPELLANT]: No. I've been in the Foster Home. They put me in another Foster Home. They – I used to run away from my foster homes and come back around there, but I was never hanging around there when I was coming back from my foster home.

[DETECTIVE O'LARE]: Where were you hanging?

[APPELLANT]: With my Grandmother and with my Godmother.

[DETECTIVE O'LARE]: In Clay Terrace?

[APPELLANT]: No. City Derry Street.

[DETECTIVE O'LARE]: Right outside Clay Terrace?

[APPELLANT]: No, that's not – no. I used to come outside and start running around, going to the basketball court or something, but I never hang with them. I was never hanging with them. They used to get in they trouble, and I used to come in the house. Never hung –never hung with them, never.

[DETECTIVE O'LARE]: So, why are you –

[APPELLANT]: I only - this is my only time. I only time I started hanging with them was when I came home from Residential, in 2011. That was the only time I ever started hanging with them.

[DETECTIVE O'LARE]: So why are you doing dumb stuff now?

[APPELLANT]: I'm not doing no dumb stuff now. The only – the only stuff I'm doing - **I do cut school sometimes coming around there smoking**.

[DETECTIVE O'LARE]: **You broke into a house.** Is that what – is that what a –

[APPELLANT]: **No. No. No. I came in there without her permission. I thought that – I was high on PCP. I thought that was my Grandmother house. I didn't break in there or steal nothing or nothing.** I came in there.

> She looked at me. She was like, you high. I was like, this not my Grandmother's house. She was like, leave out.

(Emphasis added.)

It is undisputed that at this point in the playing of the DVD for the jury, defense counsel asked to approach the bench, and the following colloquy occurred:

> [DEFENSE COUNSEL]: There was a reference, and my understanding from the State was they're going to redact and excerpt everything about the prior bad acts.
>
> [PROSECUTOR]: I had no intention.
>
> THE COURT: I'll instruct them. I'll wait until it's over, so it's not highlighted right now. I'll instruct them to ignore any reference.
>
> [PROSECUTOR]: Because that specific portion, they may or may not have heard about him being in someone's house. He doesn't reference charging. He's talking about a situation that they may or may not infer.
>
> THE COURT: I don't want to highlight it right now.
>
> [DEFENSE COUNSEL]: The problem is that there is no curative instruction.
>
> THE COURT: Well, I'm going to try.
>
> [PROSECUTOR]: The only thing he references back out of presence, the only thing references [sic] is high on PCP and being in a house. He doesn't say the circumstances surrounding it. I got it quick enough before he talked about being arrested.
>
> THE COURT: Is there anything else that needs to be redacted.
>
> [PROSECUTOR]: No. The rest of the video is fine.
>
> [DEFENSE COUNSEL]: And there is a reference to him running away from the foster home.

[PROSECUTOR]: Well, that talks about it.

[DEFENSE COUNSEL]: It's not criminal, but it is a prior bad act.

[PROSECUTOR]: Being in a foster home is not a prior bad act.

[DEFENSE COUNSEL]: Running away from a foster home is a bad act.

THE COURT: Try to finish this.

[DEFENSE COUNSEL]: I would say there is no curative instruction.

THE COURT: I'll deny the motion.[3]

(Counsel returned to the trial tables and the following ensued.)
(Video continued in open court.)

(Emphasis added.)

Thereafter, the trial judge did not give any curative instruction regarding evidence of prior bad acts until the end of the trial, when the judge instructed the jury. After instructing the jurors about what constitutes evidence, the judge gave the following instruction:

> There may also have been some comments on the videotape that had nothing to do with the events surrounding this case. I would instruct you to disregard anything other than those comments and suggestions that dealt with this event.

At the conclusion of the instructions, the judge asked if defense counsel was satisfied with the instructions. Defense counsel indicated that he was not satisfied with the curative instruction, stating:

[3] The docket entries reflect that on April 11, 2013, appellant's motion for mistrial was denied.

> I'm going to object to the curative instructions regarding what was played in the tape. I'm going to object to that, but I would say that in terms of a curative instruction, it's not a proper remedy to have been an instruction.

Appellant contends that the judge's instruction could not have cured the prejudice he suffered because it was so removed from the moment when the jury heard the comments and so vague as to be ineffective. He maintains that the references to him breaking into a house, being high on PCP, and running away from foster homes were so prejudicial that a mistrial was required. We disagree.

The recorded interview contained only two brief references to anything that could be considered a prior bad act. The judge instructed the jurors to disregard "comments that had nothing to do with events surrounding this case." When a trial court provides curative instructions, the jury is presumed to follow them. *See, e.g., Nash v. State*, 439 Md. 53, 95 n.12 (2014); *Dillard v. State*, 415 Md. 445, 465 (2010). In determining whether reversal is required despite a trial court's curative instruction, we must consider whether the prejudice to the defendant "'transcended the curative effect of the instruction.'" *Rainville v. State*, 328 Md. 398, 408 (1992) (quoting *Kosmos, supra,* 316 Md. at 594). In *Parker, supra*, 189 Md. App. at 493, we noted that "the Court of Appeals has found reversible error in a trial court's failure to grant a mistrial in cases in which there was a high probability that the improper reference influenced the jury's verdict."

In the instant case, the mention of the prior bad acts was not so inflammatory that there was a likelihood the jury would have been unable to follow the court's curative

instruction.[4] The prior bad acts were referenced only once during trial. Additionally, appellant's prior use of PCP and running away from a foster home have nothing to do with his predisposition to commit a carjacking. Furthermore, as the State notes, the trial court's instruction did not highlight the bad acts mentioned in the video. In the instruction, the court did not specifically mention the bad acts, but simply stated that anything not related to carjacking may not be taken into account during jury deliberations. We are not persuaded that this is a case in which the prejudice to appellant "transcended the curative effect of the instruction" given by the trial judge. Consequently, we will not overrule the trial court's denial of the motion for mistrial.

III.

Appellant's final contention is that the sentencing judge failed to exercise his discretion in sentencing him to the statutory maximum of 30 years for carjacking. At the sentencing hearing, the following occurred:

> THE COURT: All right. Mr. Ramey, I don't understand two things. I don't understand car jacking. And we seem to have a – just a rash of car jackings in Prince George's County. It feels like I get one a month right here in my

[4] In *Brooks v. State*, 68 Md. App. 604 (1986), we commented on the effectiveness of curative instructions: "While a defendant is entitled to a fair trial, he is not entitled to a perfect one; and when curative instructions are given, it is presumed that the jury can and will follow them." *Id*. at 613 (citing *Bruton v. United States*, 391 U.S. 123, 135 (1968); *Wilson v. State*, 261 Md. 551, 570 (1971)). In *Bruton*, 391 U.S. at 135, the Supreme Court also explained, "[T]here are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great, and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." The present case, however, is not one of those instances.

courtroom and I'm only one of 23 judges in this county – Circuit Court judge. I don't know how to stop it. But I do know that as along [sic] as you're incarcerated, you won't be committing a car jacking. So I – to that extent, I can prevent that.

Second thing I don't understand is you were on probation and this happened. That blows my mind that you would get in trouble again in type [sic] of activity while you're on probation. And then your approach to what happened and willingness [sic] to accept responsibility is certainly disappointing. So **I'm going to go above the guidelines.** And the offender's major role in the offense, you were the major offender in this offense. The – any – **any car jacking is excessive in my mind.** Just – just beyond compare.

Special circumstances of the victim. I don't know if there's anything necessarily there. I appreciate her attendance. This is very serious. It wasn't a situation where I would say there was a [sic] exploitation of a position of trust. It's not a white collar crime. It's not a CDS offense. I find this conduct to be of a (indiscernible) nature. I appreciate the State's recommendation of going above the guidelines. And as I said, you were on probation when this happened, which I take very, very seriously. **So I'm going to make an issue of this car jacking business.** In Count 2, the sentence in the Court is 30 years. I'll recommend Patuxent. I'll give you credit for one year, 53 days time served. I will merge the robbery count in Count 6, the second degree assault. You[r] sentence will be 10 years concurrent with the car jacking count. You'll get credit for one year 53 days time served. Again, I'm recommending Patuxent. All the rest of the counts are merged.

* * *

(Counsel approached the bench, and the following occurred:)

[DEFENSE COUNSEL]: My understanding would be that the second degree assault would also merge with the car jacking.

THE COURT: I – well – yeah I would certainly say that.

[PROSECUTOR]: That was stated correctly.

THE COURT: It would be concurrent.

> [PROSECUTOR]: Robbery does merge, but the assault doesn't merge.
>
> THE COURT: The assault doesn't. Yeah. You've got to file a motion for reconsideration. We all know that. But for right now it would be for 30 days [sic]. I mean (indiscernible). In fact, **I'm going to start making car jacking cases 30 days [sic] pretty much. Anybody with a prior record,** I can't say any (indiscernible) --
>
> [PROSECUTOR]: Uh-huh.
>
> THE COURT: – but I'm – **I've reached the limit in car jacking**.
>
> [PROSECUTOR]: Thank you, Your Honor.
>
> (Counsel returned to the trial tables, and the following occurred in open court:)
>
> [PROSECUTOR]: Thank you, Your Honor. May I be excused?
>
> THE COURT: Certainly.

(Emphasis added.)

Appellant contends that the sentencing judge failed to exercise his discretion in sentencing him and instead applied an impermissible predetermined policy of imposing the maximum sentence in cases involving defendants accused of carjacking who have prior records. We disagree.

In *Holland v. State*, 122 Md. App. 532, 547 (1998), the sentencing judge stated that the defendant participated in bringing "substantial amounts of this killer drug, crack cocaine, into our community" and that "anybody who does that is going to get very strict sentences by this Court." On appeal, Holland argued that his sentence was improper because the

sentencing judge failed to exercise discretion in imposing the sentence. *Id.* at 546. We rejected Holland's argument, stating that "[t]he fact that a judge, even as a general rule, has a policy of imposing stiff sentences on those who bring a 'killer drug' into his community is not a failure to exercise discretion. It is, rather, one of the myriad ways in which discretion may be exercised." *Id.* at 547. We explained:

> That a veteran and experienced judge does not approach each sentencing exercise as if it were some new judicial experience of first impression does not mean that that judge has thereby failed to exercise discretion. That a veteran and experienced judge develops over the years a consistently applied and deeply ingrained sentencing philosophy does not mean that that judge has failed to exercise discretion. That an experienced and veteran judge may fall into predictable and identifiable sentencing habits and patterns does not mean that that judge has thereby failed to exercise discretion.
>
> * * *
>
> The fact that Judge Wright in this case exercised his discretion to be tough on drug dealers was not a failure to exercise discretion. It was a way to exercise discretion. Even an indication that he regularly imposed harsh sentences on drug dealers would not have indicated that he had failed to exercise discretion. It would have meant only that he consistently exercised his discretion the same way in an attempt to shield his community from potential future drug dealers.

Id. at 547-48.

As in *Holland*, the sentencing judge in the case before us gave voice to his observation that there had been a rash of carjackings in Prince George's County, and to his sentencing philosophy that defendants who have prior offenses who commit the serious crime of carjacking should receive the maximum sentence. The sentencing judge did not indicate that

he was applying a predetermined rule with respect to carjacking cases. He qualified his statement by indicating he would impose the maximum sentence "pretty much," for "[a]nybody with a prior record, I can't say any (indiscernible)." And the record did not reflect that he had imposed this sentence in other cases. With respect to the length of appellant's sentence, the judge expressly considered the distinctive facts of the case, including appellant's criminal record and that he was on probation at the time of his offense. For these reasons, we conclude that the sentencing judge did not fail to exercise his discretion in imposing appellant's sentence.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.