

Circuit Court for Prince George's County  
Case No. CT190229A

UNREPORTED\*

IN THE APPELLATE COURT

OF MARYLAND

No. 175

September Term, 2023

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CLINTON BERNARD REVEL

v.

STATE OF MARYLAND

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Zic,  
Tang,  
Moylan, Charles E.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Zic, J.

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Filed: March 28, 2025

\* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

This case arises from the conviction of Clinton Revel, appellant, of murder in the first degree, robbery with a deadly weapon, conspiracy to commit armed robbery, and multiple handgun charges after a five-day jury trial in the Circuit Court for Prince George’s County. Mr. Revel took the stand and brought an alibi defense, arguing that he was not present at the time of the incident and mentioned during his testimony a witness who could testify to that fact. At trial, however, this witness did not appear. During closing arguments, Mr. Revel raised a number of objections to the prosecutor’s comments. Mr. Revel contends the prosecutor’s closing argument unfairly prejudiced him because the prosecution made remarks that constituted impermissible shifting of the burden of proof from the State to Mr. Revel, and that the trial court erred in denying Mr. Revel’s motions for a mistrial based on these remarks.

### **QUESTIONS PRESENTED**

Mr. Revel presents one question for our review, which we have recast and rephrased:<sup>1</sup> Whether the trial court abused its discretion in denying Mr. Revel’s motions for a mistrial. For the following reasons, we affirm.

### **BACKGROUND**

On December 29, 2018, Mr. Revel was stopped by police in Kernersville, North Carolina for driving without a license plate. The police detained Mr. Revel and

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<sup>1</sup> Mr. Revel phrased the question as follows:

1. Did the Circuit Court err in denying [Mr. Revel’s] motion for mistrial, where the State’s closing argument repeatedly shifted the burden of proof to [Mr. Revel]?

discovered a handgun and “about a quarter pound” of marijuana in his car. Upon investigation, police linked the handgun found in Mr. Revel’s car to the murder of David Ruen, which occurred earlier that same day in Beltsville, Maryland.

On February 28, 2019, Mr. Revel was indicted for murder in the first degree, robbery with a deadly weapon, conspiracy to commit armed robbery, and multiple handgun offenses. The case proceeded to a jury trial.

At trial, the State called a witness to testify as to her observations of events that transpired on the day in question. The witness testified that, on December 29, 2018, at 11:30 in the morning, she went to the parking lot of her apartment complex to buy marijuana. The witness testified that she was sitting in a vehicle with Mr. Ruen when she witnessed a man, whom she identified as Mr. Revel, tap on the window of the vehicle with a gun. Mr. Revel opened the door to the vehicle and he and Mr. Ruen began to struggle over the bag of marijuana. The witness then got out of the vehicle and heard a gunshot and heard Mr. Revel threaten her as she fled the scene.

Mr. Revel intended to call his cousin, Shenieka Saunders, to testify and corroborate his alibi, but she did not appear to testify on the day of trial. Mr. Revel elected to proceed without his alibi witness and to take the stand in his own defense. Mr. Revel testified that he was at a McDonald’s restaurant with Ms. Saunders on the morning of December 29, 2018, at the time of the robbery and murder. Mr. Revel further testified that, after eating at the restaurant, he went to his cousin Tarik Revel’s house with Ms.

Saunders, at which time Tarik<sup>2</sup> gave Mr. Revel a gun and a bag of marijuana. Tarik did not testify at trial.

To rebut Mr. Revel’s testimony regarding his alibi, the State called Detective Kenneth Smith. Detective Smith confirmed that he had interviewed Mr. Revel and that Mr. Revel had never mentioned Ms. Saunders, his other cousins, or being at the McDonald’s.

During closing arguments, the prosecutor made a series of comments that referenced Ms. Saunders’ absence, as well as the absence of Tarik Revel. In total, six comments are relevant to our discussion, which we have enumerated below.

***Comment 1***

The first objection lodged by Mr. Revel’s counsel during the State’s closing followed this statement:

[STATE]: I asked him a very simple thing. [Mr. Revel] said he was here for a family reunion, that was the story. He wanted to see his two cousins, Shanika,<sup>[3]</sup> who we don’t know who Shanika is, no last name. Did you see a Shanika come here and tell you anything? No. We don’t know her last name. She never called detectives. There is no Shanika.

[DEFENSE]: Objection, Your Honor. Move to strike.

The objection and motion to strike led to the following bench conference:

[DEFENSE]: He is burden shifting, Your Honor. He is saying, you know, we didn’t put on some evidence. He is

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<sup>2</sup> Because Tarik Revel and Clinton Revel share the same last name, we will refer to Tarik by his first name for clarity.

<sup>3</sup> In the transcript for this day of the trial, Ms. Saunders’ name is misspelled as “Shanika.”

burden shifting.

[STATE]: Your Honor, the defense put on a case they have the power to call witnesses. And so if there is no witness here, the State is -- especially since [Mr. Revel] is the one who said that Shanika is a witness, an alibi witness.

[DEFENSE]: That's burden shifting.

THE COURT: He has no burden. The Defendant has no burden. I'm going to give the jury instruction that the Defendant has no burden of proving guilt. [sic]

\* \* \*

THE COURT: You can poke holes in his story but you can't shift the burden. He has no burden to produce.

The court then gave a limiting instruction to the jury: "Ladies and gentlemen, the State has the burden to prove guilt beyond a reasonable doubt. The Defendant has no burden to produce anything."

***Comment 2***

Immediately following the court's instruction, the prosecutor stated to the jury: "Well, [Mr. Revel] certainly mentioned this person, so called Shanika." No objection was made at that time.

***Comment 3***

Mr. Revel's counsel again objected when the prosecutor stated the following:

[STATE]: So like Mr. Revel said in North Carolina, he f[\*]cked up because he robbed and killed David Ruen. He has no alibi witness, no alibi corroboration.

The objection was sustained, and Mr. Revel's counsel moved to strike the testimony.

The following bench conference then ensued:

[DEFENSE]: That's the second time burden shifting, Your Honor. I'm going to ask for a mistrial.

\* \* \*

THE COURT: I will give them another instruction.

The court gave another limiting instruction, stating: "Ladies and gentlemen, I repeat, it is the State's burden to prove its case beyond a reasonable doubt. The Defendant has no burden and need not produce any evidence."

*Comment 4*

The prosecutor continued:

[STATE]: So I want to leave you with a word. Actually it's a word that can be said many different ways and that's zero. Zero because that's zero times the Defendant told the police about the alibi. It's zero times that Shanika told the --

Mr. Revel's counsel again objected, and the following colloquy occurred at the bench:

[DEFENSE]: Request for a mistrial.

THE COURT: You keep trying to switch the burden.

[STATE]: Your Honor. All I said was Shanika, I wasn't going to say that she wasn't here. I was going to talk about the fact that she did not go to talk to the police.

THE COURT: She what?

[STATE]: That she didn't go to talk to the police.

THE COURT: The fact that she hadn't spoken to the police that's okay.

[STATE]: I'm sorry. I can't hear you.

THE COURT: The fact that she didn't speak to the police is not shifting the burden. If you talk about her not being here that is shifting the burden.

[STATE]: I was not going to say she is not here. I was going to say that she did not go to talk to the police.

[DEFENSE]: He said, again, he led off with -- he led off again with the fact that the Defendant didn't have an alibi.

[STATE]: I didn't say that. I said he didn't tell police.

THE COURT: You said he didn't tell the police. Okay. If it was, he didn't tell the police that's different than saying he didn't have an alibi. He can't say he didn't have an alibi.

[STATE]: Right.

#### ***Comment 5***

The prosecutor then continued:

[STATE]: You don't need to see that slide anymore. Zero times that an alleged person, Shanika, ever tried to talk to detectives. We know that, it's not like detectives are a secret. They don't live in a secret world. They work for the Prince George's County Police Department. They are on the Internet and you can find them in the homicide unit. Detective Smith is not really hard. [sic] If there was such a person, which there is not.

[DEFENSE]: Is there a continuing objection to this, Your Honor.

THE COURT: So noted.

#### ***Comment 6***

The final comment at issue was made during the State's rebuttal closing argument:

[STATE]: And defense can ask all they want where Tarik Revel is. Why would I bring him in? They have the same subpoena power we do.

[DEFENSE]: Objection.

THE COURT: Sustained.

[DEFENSE]: Move to strike, Your Honor.

THE COURT: It will be stricken.

[STATE]: Your Honor, may we approach?

THE COURT: Sure.

At the bench conference, the following exchanged occurred:

[STATE]: When defense counsel raises the issue of a witness not being available it's wholly within the rights of the State to respond by pointing out merely that defense has the same subpoena power as the State.

THE COURT: But a different obligation.

[STATE]: I'm sorry, Your Honor.

THE COURT: A different obligation.

[STATE]: All I said was they could subpoena him.

THE COURT: You said they could have subpoenaed, again, you are talking about their burden of proof. They don't have the burden of proof.

[STATE]: Your Honor, when it is raised, the issue is raised about where are certain witnesses and it's not wholly within the control of the State then the State can mention the fact that the defense has a subpoena power.

THE COURT: Right. But you said they didn't subpoena that particular witness.

[STATE]: That's all I'm saying.

[DEFENSE]: I'm sorry.



THE COURT: I sustain the objection.

After the trial concluded, the jury convicted Mr. Revel on all counts apart from a duplicative handgun offense and Mr. Revel was sentenced to life imprisonment with all but 40 years suspended. Mr. Revel timely appealed.

### STANDARD OF REVIEW

“A mistrial is an extreme remedy and it is well established that the decision whether to grant it is within the sound discretion of the trial court.” *Walls v. State*, 228 Md. App. 646, 668 (2016) (citing *Carter v. State*, 366 Md. 574, 589 (2001)). “Whether a curative instruction is a reasonable alternative to a mistrial depends on whether the prejudice was so substantial as to deprive a party of the right to a fair trial and therefore warrant a mistrial.” *Simmons v. State*, 436 Md. 202, 219 (2013) (citation omitted). “The trial judge must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured. If not, a mistrial must be granted.” *Carter v. State*, 366 Md. at 589. “When a trial judge decides that the prejudice can be remedied by a curative instruction, and denies the mistrial motion and gives such an instruction, appellate review focuses on whether the damage in the form of prejudice to the defendant transcended the curative effect of the instruction.” *Walls*, 228 Md. App. at 668-69 (citation and quotation marks omitted).

Mr. Revel contests this standard and argues we should conduct a *de novo* review on the grounds that the prosecutor’s “impermissible burden-shifting” violated Mr. Revel’s constitutional right to a fair trial, citing *Savage v. State*, 455 Md. 138 (2017), and

*Harriston v. State*, 246 Md. App. 367 (2020). Both of these cases are distinguishable because each addresses circumstances where the prosecutor, in closing arguments, referenced the silence of the defendant himself. *Savage*, 455 Md. at 174 (holding that “there is no discretion with regard to a summation that abridges a defendant’s constitutional right to remain silent.”); *Harriston*, 246 Md. App. at 373 (holding that a burden-shifting claim is an allegation of a violated constitutional right; however, “[t]he State’s comment on the defense’s failure to produce evidence [] will not always amount to impermissible burden-shifting.” (citing *Molina v. State*, 244 Md. 67, 174 (2019))).

Here, the comments made by the prosecutor relate to the absence of testimony by other witnesses. Mr. Revel took the stand in his own defense. As such, the alleged violations in this case do not rise to the level requiring a *de novo* review and we will apply the abuse of discretion standard.

## DISCUSSION

### I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DENYING MR. REVEL’S MOTION FOR A MISTRIAL.

#### A. The Parties’ Contentions

Mr. Revel argues that the prosecutor’s comments at closing arguments constitute “impermissible burden-shifting” and that the circuit court erred when it denied his motions for a mistrial. Mr. Revel presents a collective argument as to all six comments. He asserts that these comments improperly shifted the burden of proof by suggesting to the jury that he was obligated to produce witnesses. Mr. Revel further contends that the

comments were unfairly prejudicial and that the curative instructions did not sufficiently remedy the error.

The State makes several arguments regarding each comment, which we will summarize here and address in more detail as relevant below. The State first argues that several of the comments (1, 2, 5, and 6) are not properly before this Court as the alleged errors are not preserved for appellate review. The State additionally contends that none of the comments present a problem because the comments did not constitute impermissible burden-shifting, and the court gave sufficient curative instructions following the objections.

## **B. Discussion**

“Prosecutors are entitled to comment in closing argument on matters raised by defense counsel under the ‘opened door’ doctrine[,]” however, there is a constitutional limitation on this doctrine and “a prosecutor may not comment on a defendant’s failure to testify[.]” *Johnson v. State*, 229 Md. App. 159, 180-181 (2016) (citing *Griffin v. California*, 380 U.S. 609, 614 (1965)). *See also Mines v. State*, 208 Md. App. 280, 300-02 (2012) (citations and quotation marks omitted) (“In the circumstances, where appellant testified in his own defense and, in his own testimony identified potential exculpatory witnesses, but called none of them to the stand, questions as to their absence did not violate appellant’s Fifth Amendment rights, and did not constitute improper burden shifting.”); *Wise v. State*, 132 Md. App. 127, 148 (2000) (“Maryland prosecutors, in closing argument, may not routinely draw the jury’s attention to the failure of the defendant to call witnesses, because the argument shifts the burden of proof.”). “[O]nce

a defendant has taken the stand in [his or] her own defense, the prosecutor is not precluded from impugning the defendant’s credibility by commenting on [the] failure to produce any corroborating evidence.” More specifically, “[w]here a defendant testifies to an alibi and calls no additional witnesses to support it, the prosecution, by commenting on the nonproduction of corroborating alibi witnesses, is merely pointing out the weakness in defendant’s case.” *Simms v. State*, 194 Md. App. 285, 320-21 (2010), *aff’d*, 420 Md. 705 (2011) (quoting *People v. Shannon*, 276 N.W.2d 546, 549 (Mich. Ct. App. 1979)).

If an improper comment is made at trial, and “a curative instruction is given, the instruction must be timely, accurate, and effective.” *Carter*, 366 Md. at 589. “Maryland courts have long subscribed to the presumption that juries are able to follow the instructions given to them by the trial judge, particularly where the record reveals no overt act on the jury’s part to the contrary.” *Spain v. State*, 386 Md. 145, 160 (2005) (citations omitted).

***Comment 1***

Turning to Comment 1, Mr. Revel’s counsel objected to and moved to strike the prosecutor’s statements regarding Ms. Saunders’ absence at trial. The court instructed the prosecutor that he cannot shift the burden and gave the jury a limiting instruction stating that Mr. Revel “has no burden to produce anything.” Mr. Revel’s counsel did not move for a mistrial at that time. Accordingly, we will only briefly address Comment 1 insofar as the court elected to give a curative instruction.

Mr. Revel acknowledges the instruction given was prompt and accurate but argues that the instruction was not effective. There is nothing in the record, however, to overcome the presumption that the jury was able to follow the instruction given. *Spain*, 386 Md. at 160. Accordingly, the circuit court did not abuse its discretion in providing curative instructions.

***Comment 2***

The State argues that Comment 2 is not properly before this Court because there was no objection lodged at trial, and, even if an objection had been raised, the comment was not improper.

Pursuant to Maryland Rule 8-131(a), “an appellate court will not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]” To preserve a claim, “[a]n 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.” Md. Rule 4-323(a). Mr. Revel did not object to Comment 2 on any basis. Thus, it is not preserved for our review.

***Comment 3***

After the court sustained the initial objection to Comment 3, Mr. Revel’s counsel moved for a mistrial. The court did not grant a mistrial but gave a nearly identical curative instruction in response to Comment 3 as was given in response to Comment 1.<sup>4</sup>

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<sup>4</sup> The State argues that Mr. Revel’s counsel waived the objection to Comment 3 because counsel said “thank you” after the circuit court stated it would give a curative instruction and that, therefore, the issue is unpreserved for appeal. Mr. Revel’s objection  
(continued)

While commentary on the nonexistence of an alibi witness is not ordinarily admissible, Mr. Revel “opened the door” to comment on the absence of an alibi witness when he took the stand and discussed Ms. Saunders. *Mines*, 208 Md. App. at 300-02; *Simms*, 194 Md. App. at 320-21. As such, comments made by the State regarding Ms. Saunders’ absence were not improper burden-shifting. If it were improper burden-shifting, any prejudicial effect of Comment 3 was remedied by the limiting instruction. Because the instruction here was nearly identical to Comment 1, the same analysis applies and there is nothing in the record to indicate the jury was unable to follow the instruction.

We conclude that the circuit court did not abuse its discretion when it responded to the motion for a mistrial by giving limiting instructions to the jury.

***Comment 4***

Mr. Revel again requested a mistrial for improper burden-shifting following Comment 4. During Comment 4, the prosecutor referenced that Mr. Revel had not disclosed his alibi to the police and started to say: “It’s zero times that Shanika told the --”

The State argues that Comment 4 was not improper burden-shifting because the comment addressed Detective Smith’s rebuttal testimony that neither individual mentioned being at McDonald’s on the day in question.

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is not waived, because “although defense counsel thanked the court . . . defense counsel’s response was merely obedient to the court’s ruling and obviously [was] not a withdrawal of the defense’s objection.” *Elliott v. State*, 185 Md. App. 692, 711 (2009) (internal citation and quotation marks omitted).

Commenting on the failure to produce corroborating evidence, after a defendant has taken the stand in his or her own defense, is not precluded. *Mines*, 208 Md. App. at 300-01. The State was “merely pointing out the weaknesses in the defendant’s case[,]” and so, like Comment 3, Comment 4 did not violate Mr. Revel’s right to a fair trial and the circuit court did not abuse its discretion by denying the request for mistrial. *Simms*, 194 Md. at 320-21.

***Comment 5***

Mr. Revel’s counsel noted a continuing objection to Comment 5. Comment 5 again referenced the lack of evidence that Ms. Saunders spoke to detectives. The State argues that, like Comment 4, Comment 5 was permissible because it only addressed whether Ms. Saunders spoke with detectives, not her failure to testify. The State further argues that Mr. Revel did not move to strike Comment 5, nor did he request a mistrial following Comment 5.

Maryland Rule 4-323(b) states that “the court may grant a continuing objection to a line of questions by an opposing party. For purposes of review by the trial court or on appeal, the continuing objection is effective only as to questions clearly within its scope.” In light of the continuing objection, we will address Comment 5.

We apply the same analysis to Comment 5 as we applied to Comment 4, and, therefore, conclude that the circuit court did not err by not granting a mistrial because the comments were not improper burden-shifting.

***Comment 6***

The court sustained the objection to Comment 6 and granted the motion to strike the testimony. Mr. Revel’s counsel did not request a mistrial following Comment 6. The State argues that Comment 6 is not properly before this Court because Mr. Revel received the requested relief at trial.

The Supreme Court of Maryland has stated that when an appellant “asked the trial court for no other remedy[, and] he received the remedy for which he asked, appellant has no grounds for appeal.” *Klaunberg v. State*, 355 Md. 528, 545 (1999). As such, we conclude that there is no further remedy available on appeal as to Comment 6 because Mr. Revel’s objection and motion to strike were both granted, and no further relief was requested.

**CONCLUSION**

We hold that the circuit court did not abuse its discretion in denying Mr. Revel’s motions for a mistrial.

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