Circuit Court for Frederick County
Case No. C-10-CR-20-000433

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0416

September Term, 2023

LEMUEL LEE ROBERTS

v.

STATE OF MARYLAND

Wells, C.J.,
Beachley,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: March 22, 2024

*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 Rule 1-104(a)(2)(B).

Appellant, Lemuel Roberts, was convicted in the Circuit Court for Frederick County of First-Degree Murder. Appellant presents the following question for our review:

> "[Did] the trial court err, after the jury repeatedly heard inadmissible references to Appellant's prior incarceration, in issuing a meaningless "cautionary" instruction rather than granting a mistrial."

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Frederick County of a single count of first-degree murder. A jury found appellant guilty. The court sentenced appellant to life imprisonment.

In the early morning of January 11, 2020, Kaitlin Roberts was found dead on the side of the road in Frederick County. Ms. Roberts had been stabbed many times with a sharp object and had tire marks across her torso. Appellant is Ms. Roberts' former husband. The two had a tumultuous relationship and, in the months leading up to her death, Ms. Roberts had informed a friend that she was very scared of appellant. On the morning of January 10, one day before Ms. Roberts was found dead, appellant visited Ms. Roberts' mother and told her that Ms. Roberts had stolen drugs, cash, and guns from him that belonged to a cartel. He told Ms. Roberts' mother that they were all in danger and that he was going to kill Ms. Roberts.

On January 10, Ms. Roberts left the Olive Garden in Winchester, Virginia where she worked, and went to her mother's house where she was living. She arrived at 10:00

p.m.. She left home shortly thereafter and never returned. Appellant acknowledged to the police that she had gone to his house and that they had fought.

Historical tracking data from Ms. Roberts' phone and appellant's phone indicated that both phones were in the area of appellant's home in Winchester, Virginia at 10:18 p.m. Between 11:20 and 11:49, both phones traveled to the intersection where Ms. Roberts' body was found. Surveillance footage from the intersection around the time when the phones were present showed someone get out of the driver's side door of a vehicle, go to the passenger side of the vehicle, make movements near the passenger side of the vehicle, return to the driver's side, turn the car around, and drive over something in the road.

Phone tracking showed that appellant's phone and Ms. Roberts' phone returned to the area of appellant's residence in Winchester, Virginia around 12:34 a.m. At around 12:50 a.m. both phones traveled with a third GPS device. All three devices traveled to a Sheetz gas station. Surveillance video from that Sheetz station showed an individual resembling appellant purchasing a car wash at the Sheetz station. The GPS tracker and Ms. Roberts' phone then moved to a Sunoco gas station and did not move for the rest of the evening. Appellant's phone then moved back towards Frederick at around 2:15 a.m. and then back to Winchester again by 3:15 a.m. Data from appellant's health app indicated that he walked approximately 3.93 miles between 3:29 and 4:29 a.m.

At 3:30 a.m., a Buick Enclave registered to appellant was found, on fire on a roadway in Winchester, Virginia. A fire investigator concluded that the fire was set with malice and originated from the front interior of the vehicle. The distance between the site

of appellant's burning car and appellant's home is 3.9 miles, the same distance appellant had walked that night.

Both Ms. Roberts' family members and the police visited appellant's house on the morning of January 11. Ms. Roberts' car was parked in front with slashed tires and what appeared to be blood on the rear tire. As the police approached appellant's home, they noticed blood on the front door. Inside the house, there was a bloody butane lighter package and bloody gauze. Inside a Lexus car that appellant used, there were bandages and a bloody napkin. Appellant appeared later that day with bloody, bandaged fingers.

Later that same day, Ms. Roberts' wallet was found in a black container in the dumpster at the Sunoco gas station in Winchester, Virginia. The GPS device that had traveled with appellant and the victim's phones was found inside the black container. Inside the dumpster, there were blood-stained floor mats, an Olive Garden nametag reading "Kaitlin," Ms. Roberts' cell phone, a key fob for Ms. Roberts' car, and a back brace. Appellant's DNA was found on each of the above-listed items found in the dumpster as well as on the slashed tire of Ms. Robert's vehicle. Ms. Roberts' DNA was found under appellant's fingernails.

Appellant's theory of the case, at trial, was that Ms. Roberts had been killed by drug dealers from whom she had stolen money. Ms. Roberts' grandfather testified that he had seen her with a backpack full of approximately $60,000 in cash but that she had requested that her grandfather not tell anyone about it. Appellant testified that he had gotten into an argument with Ms. Roberts, during which he had cut his hand. Afterwards, both went off to complete drug-related errands. Appellant testified to going out that night to look for Ms.

Roberts and trying to contact her but not finding her and then to being shot at before fleeing and running home. He testified that he thought the shooting had ignited his car.

At issue in this case is whether the trial court abused its discretion in not granting defense counsel's motion for a mistrial based upon a number of witnesses' references to appellant having spent time in jail. During the State's case in chief, State's witnesses referred to appellant having been in jail numerous times. On some occasions, appellant objected. On some occasions, appellant did not. On the first day of trial, Ms. Roberts' co-worker testified, without objection:

> "[PROSECUTOR:] Do you know where she lived prior to that?
>
> [WITNESS:] Yes. At one point she lived at Lem's house. And before that, she had an apartment off Senseny Road.
>
> [PROSECUTOR:] Do you know when she had the apartment?
>
> [WITNESS:] I believe she gave her apartment up like maybe *in the summer after Lem had went to jail.*
>
> [PROSECUTOR:] Was that the summer of 2019?
>
> [WITNESS:] Yes."

Shortly thereafter, the same witness testified again to appellant's time in jail, making two references to jail, only one of which drew an objection:

> "[PROSECUTOR:] Was there a time when they lived there together?
>
> [WITNESS:] Yes.

> [PROSECUTOR:] And do you remember when that was?
>
> [WITNESS:] *After he got out of jail, they lived there until she moved into her townhouse officially*. And I believe at a point, she would go back and forth. When she had her apartment, she would stay there. After she had her son Hendrix, she stayed with him until she went back to her apartment.
>
> [PROSECUTOR:] And you said prior to her moving into this town house, she lived there for a little bit. Do you remember when that was?
>
> [WITNESS:] Yes. From November until when she moved into her apartment in December.
>
> [PROSECUTOR:] So November 2019 —
>
> [WITNESS:] At the — yes. The beginning of November, *right after he got out of jail*.
>
> [DEFENSE COUNSEL:] Objection.
>
> [THE COURT:] Sustained."

The same witness testified again that appellant had been in jail, this time drawing an objection:

> "[PROSECUTOR:] Specifically in November 2019, did you have any personal observations of an incident between Mr. Roberts and Ms. Kaitlin Roberts?
>
> [WITNESS:] Yes.
>
> [PROSECUTOR:] And what was that incident?
>
> [WITNESS:] *When he first got out of jail*, he beat her up and —
>
> [DEFENSE COUNSEL:] Yes. We're going —
>
> [PROSECUTOR:] Can you —

> [DEFENSE COUNSEL:] To object, Your Honor. And motion to strike.
>
> [THE COURT:] I'm going to grant—I'll allow you to explore that. (Uninteligible) strike it, that answer as it stands right now."

On the second day of trial, Ms. Roberts' mother testified. Near the beginning of her testimony there was another instance with two references to appellant's time in jail, only one of which defense counsel objected to:

> "[PROSECUTOR:] What do you mean by that?
>
> [WITNESS:] She was a wreck. *Her ex-husband had come out of jail in November.*
>
> [DEFENSE COUNSEL:] Objection.
>
> [THE COURT:] Sustained.
>
> [PROSECUTOR:] You said that she was a wreck.
>
> [WITNESS:] Uh-huh.
>
> [PROSECUTOR:] How did you know she was a wreck?
>
> [WITNESS:] She talked to me.
>
> [PROSECUTOR:] So you observed her?
>
> [WITNESS:] Oh, yeah.
>
> [PROSECUTOR:] And where was she living — where was Kaitlin living before January 2020?
>
> [WITNESS:] She was staying in Oakmont Circle *while Lemuel was in jail*."

Then, later in the testimony, the issue arose again twice, only one of which drew an objection:

> "[PROSECUTOR:] And what, if anything, happened when he came back to the house?
>
> [WITNESS:] He sat down and talked to me, and was talking about, you know, like, how we got this place and Kaitlin had taken money. And I said to him, if she took money, how did she pay — like she was paying your bills *for the last six months while you were in jail.*
>
> [PROSECUTOR:] What else was said during that conversation?
>
> [WITNESS:] I asked him — I'm the one that called the police November 9th, *because he came out of jail and coked my daughter*.
>
> [DEFENSE COUNSEL:] Objection.
>
> [THE COURT:] Sustained.

Finally, Ms. Roberts' grandfather testified:

> "[PROSECUTOR:] Of what year?
>
> [WITNESS:] Of 2019 I guess it was And he had called there— . . . And then there's some things that I did say to him on the phone that what he should be doing was stop this arguing and aggravating with her because of the things that *she did for him while he was in jail*.
>
> [DEFENSE COUNSEL:] Objection.
>
> [THE COURT:] Sustained.

After this final reference to jail time, at the bench, appellant moved for a mistrial on grounds that there had been many objections about witnesses testifying that appellant had

been in jail. Appellant argued that he could not un-ring the bell at this point. The judge denied the mistrial motion but asked that the State instruct its witnesses not to reference appellant's jail time. The State informed the judge as follows:

> "Can I just say one thing? We advised [appellant's counsel] about this because we knew—I mean Mr. Roberts talked about Kait's illness (unintelligible). We told him this was going to happen. He said, let it ride, and just try to minimize it. And we said okay, I can admonish the witness not to say this, but he said no. So that's why we didn't because of that. So I just want to make sure that your honor understands, we're not doing this to make a statement. Its part of the case."

After the bench conference, the court instructed the jury as follows:

> "I'm going to strike that and instruct the jury to disregard any mention of that."

After the mistrial motion, both parties questioned the officer who had detained appellant and had taken him to jail on January 11. Both parties elicited that the officer was transporting appellant for a probation violation.

During appellant's direct examination, appellant offered evidence of his prior criminal history, including all of appellant's impeachable convictions:

> [DEFENSE COUNSEL:] "Mr. Roberts, you have a prior criminal history background. You've been convicted of an abduction and — you've been convicted of abduction. You've been convicted of grand larceny. And you've been convicted of, I believe, abduction twice and grand larceny. Isn't that correct?
>
> [APPELLANT:] Yes, sir."

Shortly thereafter, appellant testified that he had been in jail in 2019 for possession of marijuana.

The jury returned a guilty verdict for first-degree murder. The trial court sentenced appellant as described above. This timely appeal followed.

II.

Appellant argues that the testimony about his previous time in jail constituted inadmissible and prejudicial "other crimes" evidence. He argues that, while the trial court sustained his objections to this testimony each time he objected, nonetheless the jury heard the testimony that he had been in jail enough times to cause substantial prejudice. Furthermore, he argues that the court's curative instruction was too vague to be helpful because the court instructed the jury simply to disregard "that" after a lengthy answer by the witness which touched on multiple topics, leaving the jury unsure as to what information it should disregard. A mistrial, he argues, was the only solution. Appellant concedes that he testified about his time in jail during his case-in-chief, but argues that his explanation would not have been necessary if the State had not placed so much unduly prejudicial evidence onto the record.

The State argues, first, that appellant waived any claim of error based on his testimony about his time in jail. The State argues that it is "uncontested" that appellant's counsel told the prosecutors that they need not admonish their witness not to talk about

appellant's jail time.[1] Further, appellant did not object to each instance of testimony about appellant's jail time and then introduced evidence of his criminal history after the court denied his mistrial motion.

On the merits, the State argues that a mistrial was not warranted because the level of prejudice appellant suffered did not rise to the high level required for a mistrial. Any prejudice appellant suffered was substantially reduced by the fact that the same testimony was offered multiple times by both parties without objection. In addition, because the evidence was so overwhelming, any error was harmless and could not have contributed to the verdict.

III.

We review a trial court's decision to deny a motion for a mistrial under a highly deferential, abuse of discretion standard. *Nash v. State*, 439 Md. 53, 67 (2014). The grant of a mistrial is an "extraordinary remedy that should only be resorted to under the most compelling of circumstances." *Molter v. State*, 201 Md. App. 155, 178 (2011). A mistrial is necessary only where such "overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *McIntyre v. State*, 168 Md. App. 504, 524 (2006).

As a threshold matter, Maryland Rule 4-323 requires that "[a]n objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter

[1] Because we cannot determine from the record precisely what transpired between the prosecutor and appellant's counsel while they were not in the courtroom, we will not consider this allegation by the State.

as the grounds for objection become apparent." A party opposing the admission of evidence must object each time the evidence is offered. *Klauenberg v. State,* 355 Md. 528, 545 (1999). Failure to object to each instance in which the evidence is offered results in a waiver of any claim of error based on that evidence. *DeLeon v. State*, 407 Md. 16, 31 (2008). Here, appellant did not object on four separate occasions when the State's witnesses testified that appellant had been in jail. When appellant first objected, the evidence was in the record without objection twice. Thus, by the time appellant moved for a mistrial, those objections had been waived. Moreover, as to the insufficieny of the curative instruction, defense counsel raised no objection to the language of the curative instruction.

Maryland courts have held that "where evidence is inadmissible but is admitted over objection, the error is harmless if the same evidence is later admitted without objection." *Connor v. State*, 225 Md. 543, 555 (1961). Hence, in this case, the testimony upon which appellant based his motion can have been harmless error, at the very worst. The trial court did not abuse its discretion in failing to grant a mistrial.

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.