Circuit Court for Wicomico County
Case No. C-22-CR-21-000284

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 968

September Term, 2022

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JOSE LUIS GONZALEZ-RUPERTO

v.

STATE OF MARYLAND

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Friedman,
Zic,
Battaglia, Lynne A.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Battaglia, J.

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Filed: July 11, 2023

*This is an unreported opinion. The 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).

**At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

In July of 2021, Jose Luis Gonzalez-Ruperto, Appellant, was indicted in the Circuit Court for Wicomico County on two counts of possession of a controlled dangerous substance (fentanyl and eutylone) in violation of Section 5-601 of Criminal Law Article, Maryland Code (2002, 2012 Repl. Vol., 2020 Supp.);[1] two counts of possession with intent to distribute a controlled dangerous substance in violation of Section 5-602 of the Criminal Law Article; one count of possession of a firearm during and in relation to a drug trafficking crime in violation of Section 5-621(b)(1) of the Criminal Law Article; one count of wearing and carrying a firearm during and in relation to a drug trafficking crime in violation of Section 5-621(b)(2) of the Criminal Law Article; two counts of possession of a controlled dangerous substance near a school in violation of Section 5-627(a) of the Criminal Law Article; two counts of wearing, carrying, and transporting a handgun in violation of Section 4-203(a)(1) of the Criminal Law Article; two counts of possession of a firearm by a prohibited person in violation of Section 5-133 of the Public Safety Article, Maryland Code (2003, 2018 Repl. Vol.);[2] one count of illegal possession of ammunition in violation of Section 5-133.1 of the Public Safety Article; and one count of knowingly obliterating the manufacturer's identification number on a firearm in violation of Section 5-144(a)(2) of the Public Safety Article.

[1] All references to the Criminal Law Article are to Maryland Code (2002, 2012 Repl. Vol., 2020 Supp.).

[2] All references to the Public Safety Article are to Maryland Code (2003, 2018 Repl. Vol.).

Before trial, the State dismissed the two counts of possession with intent to distribute a controlled dangerous substance; one count of possession of a firearm during and in relation to a drug trafficking crime; one count of wearing and carrying a firearm during and in relation to a drug trafficking crime; and two counts of possession of a controlled dangerous substance near a school. (Dec. 21, 2021, Trial T. 122).

A jury trial was held before Judge Kathleen L. Beckstead of the Circuit Court for Wicomico County. During voir dire, Gonzalez-Ruperto asked to excuse a juror for cause and requested to ask another juror a follow-up question during individual questioning. (T. 26-27, 83). Judge Beckstead denied both requests. (T. 83, 96). During trial, Gonzalez-Ruperto also moved for a mistrial based upon a statement given by a witness during his testimony, which the judge also denied. (T. 149).

Gonzalez-Ruperto was convicted of two counts of possession of a controlled dangerous substance; two counts of possession of a firearm by a prohibited person; two counts of wearing, carrying, and transporting a handgun; and one count of illegal possession of ammunition. (T. 356-59). The jury acquitted Gonzalez-Ruperto of knowingly obliterating the manufacturer's identification number on a firearm. (T. 356-57). Judge Beckstead, thereafter, sentenced Gonzalez-Ruperto to ten years' incarceration "of which he has to serve five as a mandatory minimum." (July 15, 2022, Sentencing T. 35). Gonzalez-Ruperto timely filed this appeal.

Gonzalez-Ruperto presents two questions for our review:

1. Did the circuit court err in declining defense counsel's motion to strike one potential juror [Juror 1146] and in preventing defense counsel from asking another potential juror [Juror 1252] a relevant follow-up question?
2. Did the circuit court abuse its discretion in denying defense counsel's motion for mistrial?

We shall hold that the trial judge did not err in declining to strike Juror 1146 for cause, nor in refusing to permit a follow-up question to be posed to Juror 1252. The trial judge also did not abuse her discretion in denying Gonzalez-Ruperto's motion for a mistrial.

## DISCUSSION

### Voir Dire

Gonzalez-Ruperto, initially, argues that the trial judge abused her discretion during voir dire by declining to strike Juror 1146 for cause, and by refusing to allow his counsel to ask Juror 1252 a follow-up question. In response, the State argues that further questioning of Juror 1146 revealed that the juror could be fair and impartial, and the judge properly exercised her discretion in refusing to ask Juror 1252 a follow-up question, which had been adequately covered by previous voir dire questions.

At the beginning of voir dire, Judge Beckstead explained the charges against Gonzalez-Ruperto:

> It is a criminal case in which the Defendant is charged with committing the following criminal offenses: possession of CDS fentanyl, possession of CDS eutylone, possession of a firearm by a prohibited person, illegal possession of a regulated firearm, loaded handgun on person, wear carry transport handgun on person, knowingly alter firearm identification number, illegal possession of ammunition.

(Dec. 21, 2021, Trial T. 9). The judge introduced counsel for the State and Gonzalez-Ruperto by name and asked whether any juror was "related to or personally acquainted" with either counsel. (T. 13). No one on the venire panel responded.

The judge then asked whether any juror had "been involved in any legal matters in which either you or some other person, including the opposing party, was represented by, or prosecuted by, or defended by either attorney?" (T. 13). Neither Juror 1146 nor 1252 responded.

Thereafter, Judge Beckstead asked whether any juror had "formed an opinion concerning whether the Defendant is innocent or guilty of the charges in this case?" (T. 19). Several jurors, including Juror 1146, responded affirmatively. (T. 19-25). Juror 1146 approached the bench, as requested, and the following colloquy ensued:

> [Juror 1146]: He's probably guilty.
>
> The Court: That's based on what, sir?
>
> [Juror 1146]: Some of the charges that you were referring to, do you need to know specific ones, or?
>
> The Court: Yes.
>
> [Juror 1146]: Having the weapon with the serial number removed on his person, basically he knew that he wasn't supposed to have it, so guilty in my opinion.
>
> The Court: So, what if the question was whether he even had possession of those things?
>
> [Juror 1146]: If they were even on him at all? Well, then it might sway me a little bit to think more on point, because if it's not physically on him, you know, maybe somebody put it there, who knows? You know.
>
> The Court: So, it's the nature of the charges that is causing you to form an opinion; is that right?

> [Juror 1146]: Correct.

(T. 26).

Neither the State nor counsel for Gonzalez-Ruperto had any follow-up questions for Juror 1146, but defense counsel did make a motion:

> [Counsel for Gonzalez-Ruperto]: I don't have any follow-up questions. I do have a motion.
>
> The Court: Do you have any objections?
>
> [The State]: Your Honor, I would be opposed based on the response to Your Honor's question.

(T. 26-27). Counsel then approached the bench, and the following ensued:

> The Court: This is an indictment. I have no idea what the facts are in this case. Are there allegations that he was in actual physical possession of the items or how—
>
> [Counsel for Gonzalez-Ruperto]: It depends on how you mean, not to interrupt, but he's alleged to have possessed the item, not alleged that he constructively possessed the item. I don't think there's going to be any evidence produced by any law enforcement officer that any law enforcement officer saw that, there's video or there's anything directly tying him to possession of the item. They're going to be relying upon circumstantial evidence of finding the firearm in close proximity to my client at the time of the arrest, I'll say close proximity, they would say within feet, again—
>
> The Court: It's constructive possession.
>
> [Counsel for Gonzalez-Ruperto]: --constructive possession in that sense, I mean, there are, the officers are going to, I presume, make statements claiming that they had a belief that he had the gun at the point in time that he ran, but that's, you know, not in the sense that they saw him brandish it or in the sense that there's DNA or anything forensically tying him to it.

(T. 27-28).

In response, Judge Beckstead stated that she would "reserve on that juror and see if he responds to anything further," because his assumption of guilt was "just because of the charges":

> So, I'm going to reserve on that last juror because he kind of assumed, and perhaps I should have questioned our other jurors further, he kind of assumed that he was guilty in deciding whether they, you know, just because of the charges, so since I didn't have a factual basis to understand what the allegations were I didn't get into it too much. So, I'll reserve on that juror and see if he responds to anything further.

(T. 28).

The judge then asked whether any juror "or any member of your immediate family or close personal friend…[had] ever been the victim of a crime, a witness to a crime, or a person accused of a crime?" (T. 43). The judge also asked whether there was "anything about the Defendant or his attorney or the State's Attorney that would keep you from giving everyone a fair trial?" (T. 80). Juror 1252 did not respond to either question.

Judge Beckstead, thereafter, inquired as to whether any juror "or any member of your family or close personal friend ever had any experience with drugs in the community that you have not already disclosed at the bench?" (T. 81). Juror 1252 approached the bench and explained that her "husband's son…was into a lot of drugs" and "stole [her] brand new Mustang," and counsel for Gonzalez-Ruperto requested a follow-up question of the juror, which the judge denied:

> [Juror 1252]: So, my husband's son who lived with us for quite a few years was into a lot of drugs, crack cocaine, not the good things, obviously. And he stole my brand new Mustang right out of my garage and did ten thousand dollars' worth of damage to it. He had been in and out of jail his whole life. And it is an issue with me, just in general, because it struck a…
>
> The Court: Thank you for your candor. Given that experience, do you believe that you can put that aside and be fair and impartial in this case?
>
> [Juror 1252]: Yes. I just wanted to express—

> [Counsel for Gonzalez-Ruperto]: Your Honor, can I ask a follow-up question?
>
> The Court: Sure.
>
> [Counsel for Gonzalez-Ruperto]: Would the Court be willing to ask the juror what her husband's son's name is?
>
> The Court: No.
>
> [Counsel for Gonzalez-Ruperto]: Okay.

(T. 82-83).

At the bench, the judge stated that she did not understand how the follow-up question was relevant. (T. 83). Defense counsel explained that he thought he "may have represented her husband's son," given that he had advised someone with the same last name that "was involved in a traffic accident," and he wanted to ensure that Juror 1252 would not harbor any "ill will" towards him for his previous representation. (T. 83-84). Judge Beckstead responded that she had asked the venire "whether they or any member of their family have been accused of a crime, and [Juror 1252] did not relate any of that, so I'm assuming that's not the same person." (T. 84). Counsel for Gonzalez-Ruperto reiterated that he wanted "everyone to be aware of the, what may be a relationship[.]" (T. 84). The judge responded, "I guess if she is not aware of it, I'm not sure that I want to interject it at this point[.]" (T. 85).

Judge Beckstead then asked the jurors whether there was "any reason that you believe you cannot serve as a fair and impartial juror in this case for reasons that you know of but I have not inquired into?" (T. 85-86). No one responded. (T. 86).

At the conclusion, the judge asked counsel whether they wanted to excuse any jurors for cause, and counsel for Gonzalez-Ruperto reminded the judge that "the Court indicated the Court would be willing to talk about" Juror 1146. (T. 95-96). The judge clarified, "I think what I said was I will reserve and see if he answers any further questions." (T. 96). Counsel for Gonzalez-Ruperto then "renew[ed] [his] motion to excuse Juror 1146 for cause," which the State opposed. (T. 96).

In denying defense counsel's motion, the judge explained that she felt Juror 1146 demonstrated that he could be "fair and impartial," and he did not respond to any further questioning that would "suggest that he can't be fair":

> I think that Juror 1146 was expressing his feelings about the charges, but when I asked whether he could be fair and impartial on the issue of guilt or innocence he thought he could be. And so I'm inclined to believe him. I waited to see if he responded to anything else which suggests that he can't be fair, anything about law enforcement or associations with groups, you know, organizations and things of that nature, and he did not. So, I'm going to deny your motion for cause.

(T. 96). Later, defense counsel "want[ed] to make sure" that the judge ruled on his motion to strike Juror 1146 for cause, and the judge reiterated that the motion was "denied." (T. 102).

Counsel for Gonzalez-Ruperto used his peremptory strikes to excuse Jurors 1146 and 1252. (T. 106, 108). After the jury was empaneled, Judge Beckstead asked whether it was acceptable to counsel, and defense counsel stated, "Notwithstanding previous objections, the jury is acceptable." (T. 110).

Before us, Gonzalez-Ruperto has argued that the trial judge abused her discretion by declining to strike Juror 1146 for cause after he initially expressed his opinion that Gonzalez-Ruperto was "probably guilty" based upon the charges and that he had to exercise his peremptory strikes to avoid Juror 1146 from serving on the jury. (Appellant Br. 6-9, 13). The State has responded that Gonzalez-Ruperto waived his objection by ultimately accepting the jury and in the absence of waiver, Juror 1146 was not eligible for being stricken for cause based upon further questioning by the judge. (Appellee Br. 7-16).

Initially, we note that Gonzalez-Ruperto did not waive his objection to the denial of striking Juror 1146 for cause. Our determination is based upon the application of our Supreme Court precedent that a party may waive his voir dire objection to a judge's refusal to strike a juror for cause, "if the objecting party accepts unqualifiedly the jury panel (thus seated) as satisfactory at the conclusion of the jury-selection process." *State v. Stringfellow*, 425 Md. 461, 469-70 (2012) (citing *Gilchrist v. State*, 340 Md. 606, 617 (1995)). "[A]ccepting the empaneled jury without qualification or reservation, 'is directly inconsistent with [the] earlier complaint [about the jury].'" *Id.*

In the instant case, when the judge asked counsel whether the jury was acceptable, counsel for Gonzalez-Ruperto stated, "Notwithstanding previous objections, the jury is acceptable." (T. 110). Although defense counsel said, "the jury is acceptable," he reserved his objections with the use of the word "Notwithstanding." "Notwithstanding" is defined as "despite" or "in spite of." *Notwithstanding*, Merriam-Webster Dictionary, https://www.merriam-webster.com/dictionary/notwithstanding?utm_campaign

=sd&utm_medium=serp&utm_source=jsonld (defining the term to mean "despite"); *Notwithstanding*, Cambridge Dictionary, https://dictionary.cambridge.org/us/dictionary/english/notwithstanding (defining the term to mean "despite the fact or thing mentioned"); *Notwithstanding*, Collins English Dictionary, https://www.collinsdictionary.com/us/dictionary/english/notwithstanding (providing a definition of the term as "[i]f something is true notwithstanding something else, it is true in spite of that other thing" and including synonyms such as "despite, in spite of, regardless of"). Defense counsel's acceptance of the jury, thus, was based upon preservation of his objections.

In addressing the merits of whether it was error not to strike Juror 1146, we acknowledge that the trial judge enjoys wide discretion in excusing jurors for cause, because "the trial court is in the best position to assess a juror's state of mind, by taking into consideration the juror's demeanor and credibility." *Ware v. State*, 360 Md. 650, 666 (2000). The process of voir dire, or "to speak the truth," "refers to 'a preliminary examination of a prospective juror by a [trial court] to decide whether [he or she] is qualified and suitable to serve on a jury.'" *Collins v. State*, 463 Md. 372, 376 (2019) (quoting *Voir Dire*, Black's Law Dictionary (10th ed. 2014)). Maryland employs a "limited voir dire," which means that "the sole purpose of voir dire 'is to ensure a fair and impartial jury by determining the existence of a [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 356 (2014) (quoting *Washington v. State*, 425 Md. 306, 312 (2012)).

> Maryland Rule 4-312 governs the voir dire process and provides, in pertinent part:
>
> (1) *Examination.* The trial judge may permit the parties to conduct an examination of qualified jurors or may conduct the examination after

> considering questions proposed by the parties. If the judge conducts the examination, the judge may permit the parties to supplement the examination by further inquiry or may submit to the jurors additional questions proposed by the parties. The jurors' responses to any examination shall be under oath. On request of any party, the judge shall direct the clerk to call the roll of the array and to request each qualified juror to stand and be identified when called.

Strikes for cause "permit rejection of jurors on a narrowly specified, provable and legally cognizable basis of partiality." *Curtin v. State*, 393 Md. 593, 601 (2006) (quoting *Johnson v. State*, 9 Md. App. 143, 150 (1970)). Peremptory challenges, on the other hand, are those exercised "without a reason, without inquiry and without being subject to the court's control[.]" *Id.* (quoting *Gilchrist v. State*, 340 Md. 606, 619-20 (1995)).

In *Calhoun v. State*, 297 Md. 563, 580 (1983), our Supreme Court, quoting *Irvin v. Dowd*, 366 U.S. 717, 722-23 (1961), limited the use of strikes for cause in a situation when a juror can "lay aside" an opinion and "render a verdict based on the evidence presented in court":

> To hold that the mere existence of any preconceived notion as to the guilt or innocence of an accused, without more, is sufficient to rebut the presumption of a prospective juror's impartiality would be to establish an impossible standard. It is sufficient if the juror can lay aside his impression or opinion and render a verdict based on the evidence presented in court.

*See also Morris v. State*, 153 Md. App. 480, 497-501 (2003) (Denial of strike for cause based upon the fact that the trial judge "observed that the more we talked, the more [the juror] appeared to be understanding the requirement of being fair and impartial.").

In the instant case, Juror 1146 initially expressed his opinion that Gonzalez-Ruperto was "probably guilty" because he had been charged with alleged possession of a "weapon

with the serial number removed on his person." After, however, Judge Beckstead inquired as to whether his opinion would differ "if the question was whether he even had possession of those things?", Juror 1146 explained that, it "might sway him a little bit to think more on point" and further explained that "if it's not physically on him, you know, maybe somebody put it there[.]" Juror 1146, thus, demonstrated that, in this constructive possession case, he could be fair and impartial if seated.

Accordingly, we conclude that Judge Beckstead did not abuse her discretion by denying the motion to strike Juror 1146 for cause.

Gonzalez-Ruperto also claims that the trial judge erred by refusing to allow his counsel to ask Juror 1252 a question regarding the name of her husband's son to determine whether counsel had previously represented the son in an effort to assess, then, somehow, whether she harbored any "ill will" towards counsel. (Appellant Br. 6, 9-10, 13-14).

"In reviewing the court's exercise of discretion during the voir dire, the standard is whether the questions posed and the procedures employed have created a reasonable assurance that prejudice would be discovered if present. On review of the voir dire, an appellate court looks at the record as a whole to determine whether the matter has been fairly covered." *Washington v. State*, 425 Md. 306, 313-14 (2012) (citations omitted).

In determining whether a specific question should be asked, "a trial court must ask a voir dire question if and only if the voir dire question is 'reasonably likely to reveal a [specific] cause for disqualification[.]'" *Pearson v. State*, 437 Md. 350, 357 (2014) (quoting *Moore v. State*, 412 Md. 635, 663 (2010)). *See Collins v. State*, 452 Md. 614, 622-

23 (2017) ("We grant to the trial court significant latitude in the process of conducting voir dire and the scope and form of questions presented to the venire.").

A trial judge cannot abuse her discretion when declining to ask duplicative or repetitive voir dire questions. *Thomas v. State*, 139 Md. App. 188, 201 (2001) ("Significant to the determination of whether there has been an abuse of discretion is whether the proposed question was 'more than adequately covered by the trial court's voir dire.'" (quoting *Miles v. State*, 88 Md. App. 360, 381 (1991))). *See Stewart v. State*, 399 Md. 146, 163 (2007), abrogated on other grounds by *Kazadi v. State*, 467 Md. 1 (2020) ("Questions should not be argumentative, cumulative, or tangential."); *Burch v. State*, 346 Md. 253, 293 (1997) ("[T]he court need not ordinarily grant a particular requested [question] if the matter is fairly covered [elsewhere].") (citations omitted).

In the present case, the basis for the question to Juror 1252 proffered by defense counsel, ostensibly to determine whether the juror held some unexplained ill will towards him related to his alleged representation of her stepson in a traffic matter, would have had to have been only one in a series of questions asked to elicit alleged bias, when, in fact, bias questions had been asked. When asked during voir dire whether Juror 1252 or any juror was "related to or personally acquainted" with either counsel, involved in legal matters in which the juror or "some other person…was represented by, or prosecuted by, or defended by either counsel," had family or close personal friends that had been "the victim of a crime, a witness to a crime, or person accused of a crime," and whether there was "anything about the Defendant or his attorney…that would keep you from giving

everyone a fair trial," Juror 1252 did not offer a response. She also did not respond affirmatively when asked whether there was "any reason the prospective jurors could not serve as fair and impartial."

Judge Beckstead, therefore, did not abuse her discretion in declining to ask the proffered question by defense counsel of Juror 1252.

Motion for Mistrial

Gonzalez-Ruperto, finally, argues that the trial judge abused her discretion in denying his motion for a mistrial during the testimony of Officer Nathan Schrlau, a police officer with the Salisbury Police Department, who was answering a question in response to why he had "respond[ed]" to the area of North Salisbury Boulevard in Wicomico County on March 11, 2021, after being directed by "other officers." (T. 138-39). The following colloquy ensued:

> [The State]: For was purpose did you respond to that location?
>
> [Officer Schrlau]: I believed that there was a suspect vehicle that had been involved in a –
>
> [Counsel for Gonzalez-Ruperto]: Object.
>
> [Officer Schrlau]: – shots fired call.
>
> The Court: Sustained.

(T. 139).

Thereafter, counsel for Gonzalez-Ruperto moved for a mistrial based upon an allegation that an inference could be drawn that Gonzalez-Ruperto had been involved in a shooting, which would have been prejudicial to him. (T. 139-40). The State denied trying to "elicit any type of hearsay or prejudicial testimony from the witness," but was attempting "to

establish the reason that [Officer Schrlau] was stopping the vehicle, to inquire, make inquisition as to the driver of the vehicle." (T. 141). At the bench, Judge Beckstead explained to counsel that she "sustained the objection…because [she] thought [Officer Schrlau's statement] was non-responsive" and that she was not even sure what Officer Schrlau said. (T. 142). The judge also inquired as to whether defense counsel would be requesting a cautionary instruction in the event that the motion was denied and considered addressing a motion in limine:

> The Court: And then if I'm not inclined to grant your motion, do you want a cautionary instruction?
>
> [Counsel for Gonzalez-Ruperto]: Well, this is the issue. I've requested in an informal way, and I requested discovery in the case, because this was only tangentially related, no discovery really was provided as it related to this shots fired incident, currently investigated to some extent. If the Court is going to be ruling against my motion for mistrial, I'm making a further request for discovery as it relates to the shots fired incident.
>
> The Court: Okay.
>
> [Counsel for Gonzalez-Ruperto]: Because I literally know basically nothing about it, other than an event occurred.
>
> The Court: So, in which case we may have to have a motion in limine with the officer present, with the jury not present, and since I don't know how I'm going to rule on the mistrial I'm going to have them come back in an hour.

(T. 143-44).

The court then recessed to confirm what the officer said in his testimony. (T. 147-51).

In denying the motion for a mistrial, Judge Beckstead stated that "this was a single isolated statement." (T. 148). She also explained that she did not believe the statement was solicited by the State:

> I do not believe the State's Attorney attempted to solicit that statement, because she did her opening statement and carefully avoided any implication that there was shots fired prior to this event limiting any reference to the reason for the stop was because, to the fact that this was a vehicle of interest, not that the Defendant was of interest, but it was the vehicle.
>
> And so, I infer from the response and what the State has represented to the Court at the bench in response to the objection and motion, that she was trying to solicit from the officer that…the purpose was to stop the vehicle in question and not why… he [was] trying to stop the vehicle in question.

(T. 148). The judge also relayed that she thought the statement was "unresponsive," which was "one of the reasons that [she] immediately sustained the objection." (T. 148).

Judge Beckstead also found that Officer Schrlau was not the "principal witness upon whom the entire prosecution depends," and the officer's statement was not going to have "a great impact on credibility issues":

> One of the factors the Court is to consider is whether the person making the reference is a principal witness upon whom the entire prosecution depends. And, of course, it sounds to me like there are a number of officers who are going to be called, and that the officer who has the most credibility in question is Officer Robinson who, according to the Defense's opening statement, was kind of the lynchpin for the issues regarding the weapon and what was recovered from the Defendant.
>
> I haven't heard all the other evidence, I'm basing primarily my information on opening statements. And given the fact that I've excluded the evidence, I don't believe that it's going to have a great impact on credibility issues.

(T. 148-49). The judge also explained that she believed the incident referred to in Officer Schrlau's statement was "a collateral matter" that had "no relevance to this case." (T. 149).

Judge Beckstead acknowledged that she did find Officer Schrlau's statement to be "prejudicial," but she did not believe the "remark was so devasting to the prospects of a fair trial as to make the extreme sanction of declaring a mistrial imperatively necessary."

(T. 149). She also recognized that counsel had been instructed to "caution the witnesses" to avoid further references to the shots fired call. (T. 149).

Judge Beckstead then evaluated the appropriate remedy to be given. In addressing defense counsel's request to "explore discovery" of the shots fired incident, the judge explained that such exploration would only "underscore" an "irrelevant matter" to the jury:

> So, then the question is, given the fact that I have denied the motion for a mistrial, I have considered the factors that I'm required to consider, the question is what is the remedy? And the Defense intimated that it wanted to explore discovery and so forth if I did not grant a mistrial, but it seems to me that this is a collateral matter and further exploring it in the presence of the jury is only taking an irrelevant matter and underscoring it by allowing there to be further exploration about a matter that is not relevant to the question before the Court. So, I'm not sure how it advances the interest of the Defense to get into matters at this point which I have sustained and excluded by cross-examination.

(T. 150).

Instead, the judge offered to "strike on the record the comment of the officer and to instruct [the jury] to disregard the comment," but counsel for Gonzalez-Ruperto declined:

> The Court: As a discretionary matter, if the Defense does not wish for me to ask the jury, well, to strike on the record the comment of the officer and to instruct them to disregard the comment, I would certainly honor that as a strategic request. So, how would you like me to proceed in light of my ruling?
>
> [Counsel for Gonzalez-Ruperto]: Given the court's ruling and it's not even before the jury at present, I'm not asking for an additional remedy.

(T. 150-51).

Gonzalez-Ruperto, before us, contends that the trial judge erred by declining the motion for a mistrial, because Officer Schrlau's statement "inject[ed] completely irrelevant, bad acts evidence into the proceeding," and "the reference to the shooting could

very well have meant the difference between acquittal and conviction." (Appellant Br. 18-20).

When considering whether to grant a mistrial, a trial judge should consider various factors, among them being:

> [W]hether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

*Guesfeird v. State*, 300 Md. 653, 659 (1984); *Rainville v. State*, 328 Md. 398, 408 (1992) (stating that the factors in *Guesfeird* are "equally applicable" to "different kind[s] of inadmissible and prejudicial testimony."). The factors, however, "are not exclusive," *Kosmas v. State*, 316 Md. 587, 594 (1989), but instead "merely help to evaluate whether the defendant was prejudiced." *McIntyre v. State*, 168 Md. App. 504, 524 (2006). *See Washington v. State*, 191 Md. App. 48, 100 (2010) ("Every trial is different, and the test articulated in *Guesfeird* is "open-ended and fact specific.").

"Appellate review of a decision to deny a mistrial is conducted 'under the abuse of discretion standard.'" *Vaise v. State*, 246 Md. App. 188, 239 (2020) (quoting *Nash v. State*, 439 Md. 53, 66-67 (2014)). To constitute an abuse of discretion, the trial court's decision must be "well removed from any center mark imagined by the reviewing court and beyond fringe of what the court deems minimally acceptable." *Nash*, 439 Md. at 67 (quoting *Gray v. State*, 388 Md. 366, 383 (2005)).

"[A] mistrial is an extreme remedy not to be ordered lightly." *Nash*, 439 Md. at 69. *See Molter v. State*, 201 Md. App. 155, 178 (2011) ("[T]he granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances."). We afford "a wide berth" to a trial judge's decision to deny a mistrial. *Nash*, 439 Md. at 68-69. *See Alexis v. State*, 437 Md. 457, 479 (2014) (explaining that when a trial judge "assesses the need for a mistrial, the range of discretion is very broad and the exercise of discretion will rarely be reversed.") (citations omitted).

"Our benchmark for appellate relief 'is whether the prejudice to the defendant was so substantial that he [or she] was deprived of a fair trial.'" *Vaise*, 246 Md. App. at 239 (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)). *See Burks v. State*, 96 Md. App. 173, 187 (1993) ("It is rather 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."). Deference is given to the decision of the trial judge, because "the trial court is peculiarly in a superior position to judge the effect of any of the alleged improper remarks," "the judge is physically on the scene, able to observe matters not usually reflected in a cold record," and "the judge is able…to note the reaction of the jurors and counsel to inadmissible matters." *Simmons v. State*, 436 Md. 202, 212 (2013) (citations and quotations omitted). *See Bynes v. State*, 237 Md. App. 439, 456 (2018) ("The trial judge is in the best position to decide whether the motion for a mistrial should be granted. Accordingly, we will not interfere with the trial judge's decision unless appellant can show

that there has been real and substantial prejudice to his case." (quoting *Wilson v. State*, 148 Md. App. 601, 666 (2002))).

Striking improper testimony and offering a curative instruction by the trial judge are generally sufficient. *Vaise*, 246 Md. App. at 244 ("Generally, inadvertent presentation of inadmissible information may be 'cured by withdrawal of it and an instruction to the jury to disregard it[.]'" (quoting *Cooley v. State*, 385 Md. 165, 174 (2005))); *Carter v. State*, 366 Md. 574, 592 (2001) ("[G]enerally cautionary instructions are deemed to cure most errors, and jurors are presumed to follow the court's instructions."). *See Simmons*, 436 Md. at 222 ("[W]hen curative instructions are given, it is generally presumed that the jury can and will follow them….the trial judge is in the best position to determine whether his instructions achieved the desired curative effect on the jury.") (citations omitted). "Only when the inadmissible evidence is so prejudicial that it cannot be disregarded by the jury—or as courts and counsel have described such circumstances, when 'the bell cannot be unrung'—will measures short of a mistrial be an inadequate remedy." *Vaise*, 246 Md. App. at 240 (citing *Quinones v. State*, 215 Md. App. 1, 23-24 (2013)).

In the present case, Judge Beckstead did not abuse her discretion in denying the motion for a mistrial. The judge not only found that Officer Schrlau's statement was a single, isolated reference, but that the State did not elicit such testimony. The judge also found that the State's question was appropriate to elicit why the officer stopped the car, and that Officer Schrlau was not the State's primary witness.

Notably, the danger of unfair prejudice was lessened because Judge Beckstead immediately sustained defense counsel's objection to the statement when it occurred. *See Georges v. State*, 252 Md. App. 523, 536-37 (2021) (explaining that the court's prompt sustaining of the objection diminished the danger of unfair prejudice, as opposed to an erroneous overruling of the objection, which could have "added greater impact to the improper arguments." (quoting *Beads v. State*, 422 Md. 1, 12 (2011))); *see also Curry v. State*, 54 Md. App. 250, 256 (1983) (explaining that when a court overrules an objection, it "emphasiz[es] to the jury the 'correctness' of the comments.").

She also offered to strike the reference and give a curative instruction, but defense counsel declined the offers. As the judge noted, defense counsel's rejection was a "strategic" decision. *See Walls v. State*, 228 Md. App. 646, 674 (2016) (remarking that the "decision to decline the offered curative instruction was a tactic to box the court into granting a mistrial unnecessarily"). As the judge explained, however, the statement was not so devastating to require a mistrial, and any resulting prejudice could have been cured by the remedies offered. *See id.* (explaining that a court does not abuse its discretion "in denying the mistrial motion when [the defendant] rejected the proposed curative [and non-prejudicial] instruction," because that "would create a perverse incentive for defendants to refuse instructions that would otherwise cure prejudice from an improper comment[.]").

In light of Judge Beckstead's consideration of the relevant factors, her immediately sustaining defense counsel's objection, as well as her tender of alternative remedies, we

determine that the judge did not abuse her discretion in denying Gonzalez-Ruperto's motion for a mistrial.

Gonzalez-Ruperto's reliance on *Rainville v. State*, 328 Md. 398 (1992) is distinguishable. In that case, Rainville was on trial for raping and sexually abusing a seven-year-old girl. When the prosecutor asked the victim's mother to describe the girl's "demeanor when she told you about the incident[,]" the mother responded that her daughter "was very upset" and came to her when "[the defendant] was in jail for what he had done to [the victim's brother]." *Id*. at 401. Defense counsel for Rainville objected and moved for a mistrial based upon the mother's statement, which he argued, "hopelessly prejudiced" the case. *Id.* at 401-02. The trial judge denied the motion and instructed the jury to disregard the mother's reference to the alleged incident. *Id*. at 402.

Our Supreme Court reversed Rainville's convictions based upon the motion for a mistrial. Although the Court acknowledged that "it was a difficult case," because the State's case "rested almost entirely upon the testimony of a seven-year-old girl," who Rainville "adamantly denied ever having touched," it recognized that the mother's statement was extremely prejudicial, because the jury could have inferred from it that Rainville had sexually abused another child. *Id.* at 407-09.

Accordingly, the Court found that "informing the jury" about Rainville's incarceration for crime against another child, "almost certainly had substantive and irreversible impact upon the jurors and may well have meant the difference between acquittal and conviction." *Id*. at 410. A mistrial was required, because it was "highly

probable that the inadmissible evidence in this case had such a devastating and pervasive effect that no curative instruction, no matter how quickly and ably given, could salvage a fair trial for the defendant." *Id.* at 411.

*Rainville,* thus, is distinguishable based upon the degree of prejudice evoked by the mother's statement compared to Officer Schrlau's statement. In the present case, Officer Schrlau's statement did not directly implicate Gonzalez-Ruperto in any crime or refer to his involvement. Officer Schrlau's remark, thus, was not "so devasting to the prospects of a fair trial as to make the extreme sanction of declaring a mistrial imperatively necessary." (T. 149).

Accordingly, we hold that Judge Beckstead did not abuse her discretion in denying the motion for a mistrial.

## CONCLUSION

In conclusion, we hold that Judge Beckstead did not abuse her discretion in denying the motion to strike Juror 1146 for cause, nor in declining to ask the question posed by Gonzalez-Ruperto's counsel of Juror 1252. The trial judge also did not abuse her discretion in denying Gonzalez-Ruperto's motion for a mistrial.

**JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.**