Circuit Court for Montgomery County
Case No. 137897C

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1487

September Term, 2022

FERNANDO MOTA RAMIREZ

v.

STATE OF MARYLAND

Graeff,
Berger,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 15, 2023

*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.

A jury in the Circuit Court for Montgomery County convicted Fernando Mota Ramirez, appellant, of second-degree rape. The court sentenced appellant to ten years, with all but 18 months suspended, followed by five years of probation.

On appeal, appellant presents two questions for this Court's review, which we have reordered and rephrased slightly, as follows:

1. Did the circuit court err in allowing the State to argue about the meaning of the term "genital opening" during its closing argument?

2. Did the circuit court err in denying appellant's request for a post-verdict interview with a juror to investigate alleged juror misconduct during the trial?

For the reasons set forth below, we shall affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On November 5, 2020, appellant was indicted on a single count of second-degree rape. The case was tried to a jury over three days in June 2022. We summarize the pertinent testimony and evidence.

On September 5, 2020, R.B., then age 19, and her friend, A.S., then age 18, went out drinking together at a club in Langley Park.[1] They met at A.S.'s house first, where they each consumed one beer. The two women then walked to the club.

[1] Pursuant to Maryland Rule 8-125(a), this Court shall not identify the victim of a crime, except by his or her initials, if the victim was a minor at the time of the crime or is the victim of a "crime that would require the defendant, if convicted, to register as a sex offender." The Rule further provides that this Court shall not include other information from which the victim could be identified. Md. Rule 8-125(b)(2). Consistent with this Rule, we identify the victim and related individuals by their initials.

Sometime before midnight, A.S. invited an acquaintance named Alex to join them at the club. He brought two friends with him, whom R.B. and A.S. had never met. One man, who went by the name "Smokey," subsequently was identified by R.B. and A.S. as appellant. Neither woman could recall the name of the other man. We will refer to him as the "third man." A.S. estimated that she and R.B. each consumed three beers at the club. The group decided to leave the club and rent a hotel room.

They drove to a Quality Inn in Takoma Park, stopping on the way to purchase marijuana and more alcohol, and arriving sometime after midnight on September 6, 2020. Alex rented them a room, which was on the second floor of the motel and opened onto a covered outdoor walkway. Inside the room were two beds and a bathroom.

As R.B. entered the hotel room, she urinated on herself. She removed her wet clothing and wrapped herself in a blanket from the waist down. The third man drove A.S. to her house to get a clean pair of pants for R.B. who stayed behind with Alex and appellant. Appellant offered R.B. a glass of cognac, which she accepted. She also consumed another beer and smoked marijuana.

At some point in the early morning hours, R.B. decided to go to sleep. It was her understanding that Alex, appellant, and the third man would go home when she and A.S. went to bed. R.B. got under the covers in the bed closest to the bathroom and fell asleep. A.S. was sitting on the bed with her when she fell asleep.

R.B. later woke from a deep sleep to the feeling of someone touching her. She was confused at first and thought she was imagining it. She then realized that appellant was

behind her on the bed. He was kissing her neck, touching her breasts, and had "inserted his fingers or his hand inside of [her]." She clarified that appellant's fingers were inside her vagina.

R.B. testified that she began "screaming and crying." Appellant jumped up and ran out of the hotel room. The State introduced still photos taken from a video surveillance system at the Quality Inn showing appellant running along the second floor walkway alone.

A.S. testified that she was very intoxicated in the early morning hours of September 6, 2020. She remembered going into the bathroom with Alex and appellant to smoke cigarettes. She laid down in the bathtub and blacked out. She awoke to the sound of R.B. "crying with screaming." Alex was still in the bathroom with her. She asked him who was crying, and he replied, "nobody," and tried to block her from leaving the bathroom. She pushed past Alex and found R.B. on the bed "holding her private part crying in pain." The door to the motel room was "wide open," and appellant was not there. The third man was on the other bed when R.B. screamed.

R.B. began gathering her belongings. She told A.S., Alex, and the third man that appellant had "just raped [her]." She felt "out of it," and left the room to walk around the hotel. Eventually, the third man drove her and A.S. to A.S.'s house.

Later that morning, after she left A.S.'s house, R.B. received a phone call from her boyfriend, D.T., who was in jail. R.B. testified that she and D.T. were in an exclusive relationship, and she had not had any sexual contact with other men while he was in jail. She testified that D.T. had been in jail for more than two weeks.

A recording of the phone call between R.B. and D.T. was played for the jury and entered into evidence. In it, R.B., who was crying, told D.T. that a man she did not know had raped her the night before. She said she was sleeping and "woke up to him." D.T. told R.B. that she should call the police.

That afternoon, R.B. went to see her cousin, S.R., at the grocery store where she worked. R.B. told S.R. "everything that was happening." S.R. advised R.B. to go to the hospital to be examined.

S.R. testified that R.B. told her that she "woke up with somebody on top of her" and that it felt like he was "trying to scratch inside her vagina." The man was "kissing on her and, like, scratching her back and stuff." R.B. stated that the man was using his fingers and his penis.

R.B. called 911 from the parking lot outside the grocery store and reported that she had been raped that morning. A police officer met her at the parking lot.

At 5:45 p.m., R.B. was interviewed by Detective Victor Glouchkov, a sergeant with the Takoma Park Police Department. R.B. identified Smokey as her assailant. She told the detective that appellant had penetrated her vagina either with his penis or with his hand. Detective Glouchkov testified that R.B. was "emotionally distraught" when he interviewed her. He took R.B. to Shady Grove Adventist Hospital for a sexual assault forensic examination ("SAFE exam") at 8:15 p.m.

Detective Glouchkov interviewed A.S. two days later and was able to obtain appellant's phone number from her. Using that information, he was able to identify appellant.

Cheryl Harrison, the licensed forensic nurse who performed the SAFE exam, testified as an expert in forensic nursing. During her examination of R.B., she did not observe any acute injuries, which was consistent with R.B.'s disclosure about the nature of the sexual assault. Nurse Harrison collected R.B.'s underwear and swabbed her mouth, abdomen, lower back, neck, breasts, vagina, anus, perianal area, external genitalia, and "outer vagina area." Nurse Harrison then testified regarding the female genitalia. She testified that the vagina "is from the outside to the inside," with the labia minora on the outside. She agreed with the prosecutor's statement that the "labia majora" is the "outer lips of the vagina." The swabs of the "external genitalia" were from inside the labia majora.

Naomi LoBosco, a forensic scientist with the Montgomery County Police Crime Laboratory, testified as an expert in forensic biology about her analysis of DNA from R.B.'s examination. A mixed DNA sample was obtained from the swab of R.B.'s breasts, and it was consistent with R.B. being the female contributor and appellant being the male contributor. Male DNA was detected in the samples taken from R.B.'s perianal area, her external genitalia, her back, her abdomen, her neck, and the interior front of her underwear. The samples from R.B.'s abdomen and neck were not sent for further processing because the amount of male DNA was less than that found on the breast swab. The samples from R.B.'s perianal area, external genitalia, back, and underwear were not analyzed further

because the ratio of female DNA to male DNA did not permit further analysis of the male DNA. No male DNA was detected in the cervical sample taken from R.B.'s vagina.

Ms. LoBosco explained that when a body swab is taken from a female patient, the patient's own DNA typically will overwhelm male DNA, making it harder to detect, and if detected, more difficult to analyze. On cross-examination, she acknowledged that the State could have elected to send the mixed samples to a private laboratory for Y-STR testing, which is specific to male DNA, and which the Montgomery County crime lab is not able to perform.

Appellant did not testify or call any witnesses in his case. His theory of the case was lack of criminal agency. In closing argument, defense counsel argued that that R.B was not credible, that appellant's DNA on R.B.'s breast could have been deposited there during consensual contact or by a secondary transfer, and that the presence of male DNA on other portions of R.B.'s body was not probative because it could have been from any male contributor.[2]

We shall include additional facts in our discussion of the issues.

[2] Defense counsel stated that the jury "shouldn't be thinking who else's . . . male DNA is on the genitalia, because it doesn't matter who else is. What matters is that . . . there's no evidence of it being [appellant]." In rebuttal argument, the prosecutor stated that the only reasonable explanation for male DNA on R.B.'s genitalia was that appellant put it there. She argued, however, that even without DNA, the case was proven by R.B.'s testimony.

DISCUSSION

I.

Closing Argument

Appellant contends that the court erred by permitting the prosecutor "to make improper and prejudicial statements" in closing argument. He asserts that the prosecutor argued facts not in evidence regarding the term "genital opening" as it related to the crime of second-degree rape. Appellant argues that these comments deprived him of a fair trial and require reversal of his conviction.

The State contends that appellant's contention is without merit. It asserts that the prosecutor's argument was appropriate, and even if it was not, it did not mislead the jury.

A.

Proceedings Below

During discussion on jury instructions, the State requested that the court give the Maryland Criminal Pattern Jury Instruction ("MPJI-Cr") on the unlawful penetration variety of second-degree rape, based on the victim being substantially cognitively impaired due to intoxication or physically helpless due to being asleep. MPJI-Cr 4:29.3A. That instruction includes the following pertinent definition: "'Unlawful penetration' means *the penetration, however slight,* with an object *or part of a person's body into the genital opening* or anus *of another person's body,* if it can be reasonably construed that the act is intended for sexual arousal or gratification or for the abuse of either person." *Id.* (Emphasis added). The State also requested a supplemental non-pattern instruction, stating:

"'Penetration' means the slightest penetration into the labia majora. Penetration into either the labia minora or the vagina is not required to establish rape." Defense counsel objected to the giving of this additional instruction because it was not part of the pattern instruction.

The State argued that the law was clear that penetration into the genital opening included penetration of the labia majora, and because there was "male DNA on the external genitalia, which is between the labia majora, but there [was] no male DNA in the vagina near the cervix," the instruction was generated by the evidence and would be helpful to the jurors. The court asked the prosecutor whether there was "testimony with respect to what the labia majora and the labia minora are?" The State responded that Nurse Harrison had testified, with a diagram, about the parts of the female genitalia. Defense counsel stated that he was "not going to talk about penetration at all" because there was no sign of penetration. The court declined to give the supplemental instruction, but it stated that the prosecutor could argue that the genital opening included the labia majora.

The court instructed the jury, in pertinent part, as follows:

> The defendant is charged with the crime of second degree rape. In order to convict the defendant of second degree rape, the State must prove (1) that the defendant had unlawful penetration with [R.B.], (2) that [R.B.] was mentally incapacitated or physically helpless at the time of the act, and (3) that the defendant knew or reasonably should have known of the condition of [R.B.]
>
> Unlawful penetration means the penetration, however slight, with an object or part of a person's body into the genital opening or anus of another person's body. If it can be reasonably construed that the act is intended for sexual arousal or gratification or for the abuse of either person.

In closing, the prosecutor argued that R.B.'s testimony that she felt appellant's fingers inside her vagina was sufficient to meet the definition of unlawful penetration. She further asserted that the evidence that male DNA was present both on R.B.'s external genitalia and on the inside of her underwear, coupled with R.B.'s testimony that she had not had sexual contact with any other man since D.T. went to jail more than two weeks before the date in question, supported an inference that appellant had touched her genitalia. The State argued:

> I want to talk with you about what the term genital opening means, and I realize that this isn't your job, it's my job, and it[']s sometimes uncomfortable to talk about these parts of the body. You know, I was talking about this with my sister last night and I said . . . you know what the term labia majora means, right? And she's my age and full-fledge[d] adult and she said no, I have no idea.
>
> So, that's why I want to talk through this with you and that's why I asked the nurse all those questions because for some people the genital opening might mean the actual entrance into the vaginal canal or something different. But in this case, or not in this case, but under the law, *the term genital opening means the* –
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled, go ahead.
>
> [PROSECUTOR]: *Means the outer, any opening into the outer lips essentially.* So, there's an expert in other cases who talks about sometimes it being a hotdog bun, I know that's not a great analogy and it's a little gross, but *the point is anything that goes inside those outer lips of your vagina is the genital opening.*

> So, we had this visual that Nurse Harrison went over with us and showed us where she swabbed. There we go. And she drew for you where she swabs for the genital opening. Oh, excuse me, for the exterior genital sampling, you have these lines here. *All of that is within the genital opening, which is these, the outer lips of the vagina.*

(Emphasis added).

B.

Analysis

"Generally, a party holds great leeway when presenting their closing remarks." *Cagle v. State*, 462 Md. 67, 75 (2018). Although it is improper to refer to matter not in evidence, a party may "discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range." *Wilhelm v. State*, 272 Md. 404, 413 (1974). *Accord Mitchell v. State*, 408 Md. 368, 380 (2009).

"'The permissible scope of closing argument is a matter left to the sound discretion of the trial court. The exercise of that discretion will not constitute reversible error unless clearly abused and prejudicial to the accused.'" *Ware v. State*, 360 Md. 650, 682 (2000) (quoting *Booth v. State*, 306 Md. 172, 210–11 (1986)), *cert. denied*, 531 U.S. 1115 (2001). There is an abuse of discretion when "no reasonable person would take the view adopted by the circuit court, or when the court acts without reference to any guiding rules or principles." *Adkins v. State*, 258 Md. App. 18, 35 (2023) (cleaned up).

Here, there is no contention that the prosecutor's argument improperly stated the law. This Court stated in *Wilson v. State*, 132 Md. App. 510, 519 (2000): "It is a well-settled principle of rape law that the penetration that is required is penetration only of the *labia majora*. No penetration of or entry into the vaginal canal itself is now or has ever been required." *See also In re J.H.*, 245 Md. App. 605, 630 (2020) (noting that "the labia (majora and minora) along with the vulva form the 'opening' of the vaginal genital area").

Appellant's contention is that the prosecutor's argument regarding the term "genital opening" was erroneous because it argued facts not in evidence, "facts that would have required testimony by an expert witness to establish." The State disagrees. It contends that the prosecutor's statement, that "the term genital opening means . . . any opening into the outer lips [of the vagina] essentially," was supported by Nurse Harrison's testimony. We agree with the State.

Nurse Harrison agreed that the "labia majora" are the "outer lips of the vagina," and the "external genitalia sample" was taken from "inside those outer lips." This testimony defined the genitalia as including the outer lips of the vagina, which permitted the inference that the genital opening includes the opening into those outer lips, the labia majora. Given the leeway provided to parties to argue inferences to be drawn from the evidence, and the broad discretion given to the trial judge, who sees and hears the evidence, we cannot conclude that the court abused its broad discretion in overruling appellant's objection to the prosecutor's argument.

Even if there was an abuse of discretion, reversal is not warranted. "[N]ot every improper comment made during closing argument requires reversal." *Herring v. State*, 198 Md. App. 60, 84 (2011) (quoting *Clarke v. State*, 97 Md. App. 425, 432 (1993)). "Reversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Id.* (cleaned up). Here, as indicated, the definition of penetration was not critical to the defense. Defense counsel stated that he was not going to argue that because it was not relevant. The prosecutor's comments do not entitle appellant to a new trial.

II.

Post-Verdict Juror Contact

Appellant contends that the court erred in denying his request for a post-verdict interview to investigate juror misconduct. The State contends that the court properly denied the request.

A.

Proceedings Below

Several days after the verdict was rendered, Juror No. 81 contacted the trial judge and stated that she was "upset with the verdict." The juror informed the court that "she believed the defendant was not guilty," but "she felt pressured into reaching a guilty verdict or to agreeing to a guilty verdict." The court advised the juror that she previously had an opportunity to state that the verdict was not her verdict when the jury was polled, but she did not do so.

After receiving the phone call, the court emailed counsel and summarized the substance of the call. It scheduled a hearing for June 29, 2022, to address defense counsel's response to that email.

At the hearing, defense counsel asked the court to direct the juror to appear in person or virtually for a hearing to take testimony about "why she was pressured [and] how she was pressured." Defense counsel also moved for a mistrial and noted that, when the jury was polled, Juror No. 81 "looked down and seemed very upset about saying yes."

The State responded that Maryland Rule 5-606(b) and Maryland case law expressly prohibited the court from making any inquiry into the jury deliberations. The prosecutor argued that the rule, case law, and the public policy in favor of finality of jury verdicts all made clear that was no "mechanism to overturn a verdict based on a juror's subsequent statement about a concern with the verdict."

Defense counsel replied that there was a difference between the court speaking further with the juror and the juror testifying about the jury deliberations, and only the latter was prohibited by Rule 5-606(b). Moreover, she noted that there was an exception to the rule in cases where racial bias was alleged. Given that the juror in question was a black woman, defense counsel argued that there could have been racial bias involved. She reiterated her request for the juror to be brought before the court to be questioned further about the underlying basis for her concerns with the verdict.

The court denied the defense request to question the jury, stating:

> All right, based on the plain reading of 5-606, I don't think it would be appropriate to bring the juror in because it would be asking her questions

> . . . [and] I think that she would just start talking about . . . the effect of anything . . . or any other sworn juror's mind or emotions as influencing the sworn juror to asse[n]t or [dissent] from the verdict. And also, the sworn juror's mental process in connection with the verdict. So, it just seems that 5-606 is clear. I thought that I had an obligation to let you know that the juror had called and what she had said, but I had not looked at this rule. And I mean, whether or not I had looked at the rule, I still felt I had an obligation to let you know what she said. But this rule seems pretty clear.
>
> And if the Defense wants to file a motion for a new trial, it could file a motion and the State can respond, but based on this rule, at this time, I'm not going to invite her in and have counsel or me question her about what happened. And I will say for the record, that there were I believe three black women on that jury, one black man, so that's not like there were 11 white people and her. It was a mixture of races on that jury.

Two days later, appellant moved for a new trial based, in part, upon the juror's statement to the trial judge, which he argued reflected that the verdict was not truly unanimous. The court denied the motion.

B.

Analysis

"It has long been the rule in Maryland, without any deviation, that a juror may not impeach his or her verdict." *Stokes v. State*, 379 Md. 618, 637 (2004). *Accord Colvin-el v. State*, 332 Md. 144, 184 (1993) ("The well-settled Maryland rule is that jurors cannot be heard to impeach their verdict."), *cert. denied*, 512 U.S. 1227 (1994); *Browne v. Browne*, 22 Md. 103, 113 (1864) ("To allow a verdict of a jury solemnly rendered, to be afterwards impeached upon . . . testimony [from a juror], would, we think, be setting a dangerous precedent, tending in most cases to the defeat of justice."). This rule, known as the "no-impeachment" rule, is codified in Rule 5-606(b), which states in pertinent part:

> (1) In any inquiry into the validity of a verdict, a sworn juror may not testify as to (A) any matter or statement occurring during the course of the jury's deliberations, (B) the effect of anything upon that or any other sworn juror's mind or emotions as influencing the sworn juror to assent or dissent from the verdict, or (C) the sworn juror's mental processes in connection with the verdict.
>
> (2) A sworn juror's affidavit or evidence of any statement by the juror concerning a matter about which the juror would be precluded from testifying may not be received for these purposes.

"Maryland appellate courts have without fail applied the no-impeachment rule or Maryland Rule 5-606(b) in declining to reverse convictions based on statements by jurors about a jury's deliberations after the jury reached a verdict." *Williams v. State*, 478 Md. 99, 133 (2022). *Accord Genies v. State*, 426 Md. 148, 160-61 (2012) (circuit court did not abuse its discretion by denying the defendant's motion for a new trial based upon a juror's post-verdict statement to the Jury Commissioner's office that she had changed her vote during deliberations because she "felt threatened" by another juror who said they would be there for weeks if she did not); *Dorsey v. State*, 185 Md. App. 82, 111 (2009) (trial court did not abuse its discretion in denying a motion for a new trial based upon allegation that, during deliberations, multiple jurors discussed why the defendant elected not to testify). Conversely, when juror misconduct is alleged and can be shown by sources other than a juror's statements about the deliberations, Maryland appellate courts have permitted that information to be considered in assessing the validity of a verdict. *Williams*, 478 Md. at 134. *See Wernsing v. Gen. Motors Corp*., 298 Md. 406, 413 (1984) (testimony of the bailiff and jury notes generated during jury deliberations could be used to establish that the jury used a dictionary during deliberations); *Smith v. Peare*, 96 Md. App. 376, 390 (evidence

that juror viewed a television program, violating the court's instruction prohibiting jurors from viewing local television during the trial, was admissible in motion for new trial as "extraneous material that occurred outside the sanctity of the jury room."), *cert. denied*, 332 Md. 454 (1993).

Appellant contends that Rule 5-606(b) does not prohibit "post-verdict juror contact to discover race-based misconduct." He asserts that, by not permitting any inquiry into the basis for the juror's concerns, the court prevented appellant from determining if the race-based exception to the no-impeachment rule might be implicated here.

The State does not disagree that in some situations involving racial bias, the post-impeachment rule does not prohibit discussion with jurors. It argues, however, that the juror's statements to the trial court did not mention racial animus or otherwise implicate the race-based exception to the no-impeachment rule. Consequently, Rule 5-606(b) barred any further inquiry into the jury deliberations and the verdict.

The issue whether there should be a racial bias exception to the no-impeachment rule was addressed by the United States Supreme Court in *Peña-Rodriguez v. Colorado*, 580 U.S. 206 (2017). In that case, the Court recognized the merit of the no-impeachment rule, which "promot[es] full and vigorous discussion by jurors and provid[es] considerable assurance that after being discharged they will not be summoned to recount their deliberations or otherwise harassed. The rule gives stability and finality to verdicts." *Id.* at 218. The question was whether the constitutional right to a jury trial required "an

exception to the no-impeachment rule when a juror's statements indicate that racial animus was a significant motivating factor in his or her finding of guilt." *Id.* at 221.

The defendant in *Peña-Rodriguez* was convicted by a jury of unlawful sexual contact and harassment. *Id*. at 212. After the verdict, two jurors spoke with defense counsel and stated that one juror had displayed anti-Hispanic bias. *Id.* at 212–13. According to the jurors, the other juror stated during deliberations that, among other things, he believed the defendant to be guilty because, in his experience: "'Mexican men take whatever they want.'" *Id*. at 212–13. Defense counsel reported the statements to the court, obtained affidavits from the two jurors, and moved for a new trial. *Id.* The trial court denied the motion for a new trial on the ground that, under Colorado Rule of Evidence 606(b),[3] which parallels Maryland Rule 5-606(b), a juror was prohibited from testifying

[3] The Rule states:

> (b) Inquiry into validity of verdict or indictment. Upon an inquiry into the validity of a verdict or indictment, a juror may not testify as to any matter or statement occurring during the course of the jury's deliberations or to the effect of anything upon his or any other juror's mind or emotions as influencing him to assent to or dissent from the verdict or indictment or concerning his mental processes in connection therewith. But a juror may testify about (1) whether extraneous prejudicial information was improperly brought to the jurors' attention, (2) whether any outside influence was improperly brought to bear upon any juror, or (3) whether there was a mistake in entering the verdict onto the verdict form. A juror's affidavit or evidence of any statement by the juror may not be received on a matter about which the juror would be precluded from testifying.

Colo. Rule Evid. 606(b).

about any statements made during deliberations and therefore, the affidavits could not be considered. *Id.* at 213.

The Supreme Court noted its efforts through the years to confront racial bias in the justice system. *Id.* at 222. *See, e.g.*, *Batson v. Kentucky*, 476 U.S. 79 (1986) (finding a violation of equal protection where a black defendant is tried by "a jury from which members of his race have been purposefully excluded"). It stated that "racial bias implicates unique historical, constitutional, and institutional concerns," and a constitutional rule that racial bias must be addressed was necessary to prevent a loss of confidence in jury verdicts. *Peña-Rodriguez*, 580 U.S. at 224–25. Accordingly, the Court held that, "where a juror makes a clear statement that indicates he or she relied on racial stereotypes or animus to convict a criminal defendant, the Sixth Amendment [right to an impartial jury] requires that the no-impeachment rule give way in order" for the "trial court to consider the evidence of the juror's statement and any resulting denial of the jury trial guarantee." *Id*. at 225. "To qualify, the statement must tend to show that racial animus was a significant motivating factor in the juror's vote to convict." *Id.* at 225–26. The determination "[w]hether that threshold showing has been satisfied is a matter committed to the substantial discretion of the trial court in light of all the circumstances." *Id.* at 226.

The Supreme Court of Maryland[4] recently noted the limited circumstances in which the holding of *Peña-Rodriguez* applied. *Williams*, 478 Md. at 99. In *Williams*, defense

[4] At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the

counsel filed a motion for a new trial, advising that jurors told him that they did not believe that Mr. Williams was responsible for the shooting and misinterpreted the jury instructions. *Id.* at 114–15. In holding that the circuit court did not abuse its discretion by denying the defendant's motion for a new trial on the basis of the juror's statements, the Court stated that the juror's statements involved discussions during jury deliberations and were the type of "*post hoc* information from jurors [that] was clearly barred from being received by the circuit court under the no-impeachment rule." *Id*. at 137. It noted that "[n]one of the information attributed to the jurors involved allegations of racial bias or discrimination," and therefore, the holding in *Peña-Rodriguez* was not applicable. *Id*.

Similarly, here, Juror No. 81 did not make any reference to racial bias or animus playing a role in the vote to convict appellant. Rather, she stated that she "felt pressured into reaching a guilty verdict or to agreeing to a guilty verdict." This is a far cry from the "clear statement" in *Peña-Rodriguez*, 580 U.S. at 225, that racial animus was a significant factor in the jury's vote to convict Mr. Peña-Rodriguez.

The juror's statement here pertained to the juror's "mental processes in connection with the verdict," and the effect of statements during deliberations on the juror's "mind or emotions" so as to influence her to assent to the guilty verdict. Md. Rule 5-606(b)(1). As in *Williams*, inquiry into this type of information is prohibited by Rule 5-606(b). The circuit court did not abuse its discretion in concluding that there had been no threshold

Supreme Court of Maryland. The name change took effect on December 14, 2022. Md. Rule 1-101.1(a).

showing that racial bias infected the verdict, and therefore, no further inquiry was permitted.

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