UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1482

September Term, 2014

WAYNE BRYON WARREN, JR.

v.

STATE OF MARYLAND

Meredith,
Berger,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: October 23, 2015

Following a jury trial in the Circuit Court for Caroline County, Wayne Bryon Warren, Jr., appellant, was convicted of sexual abuse of a minor, and sexual offense in the second degree. He was sentenced to seven and one-half years in prison on each count, to run consecutively, and was ordered to register as a Tier III sex offender. A timely appeal was filed, in which appellant presents three questions for our review, which we quote:

> 1. Did the court below err by ruling prior to trial that extensive testimony concerning the domestic environment in which the offenses allegedly occurred was admissible?
>
> 2. Did the trial court abuse discretion by admitting into evidence a recorded voicemail message and cumulative testimony about it?
>
> 3. Did the trial court err by denying Appellant's motion for a mistrial when the State's primary witness testified, in violation of a court directive, that what happened to her sister "happened to me"[?]

For the reasons explained herein, we shall affirm the judgments of the circuit court.

BACKGROUND

Appellant married his wife, K., in July 2008, and they moved to a home in Greensboro, Maryland, along with K.'s four daughters: C., J., F., and E.[1] At that time, C. was going into fifth grade, J. was going into third grade, F. was going into first grade, and E. was four years-old. At the time of trial, E. had moved to Pennsylvania to live with her father. Appellant's son, [W.], lived in appellant's house on most weekends, but lived with his mother the rest of the time. In September 2009, appellant and K. had a baby boy.

[1] In view of the nature of the offenses charged in this case, we shall identify all persons other than the defendant by initials only.

According to K., the marriage "started out wonderful," and K.'s daughters liked appellant at first. J. testified that appellant was a "cool person" who was "fun to be around." But the relationships began to change soon after the wedding. C. testified that appellant became a "jerk," and J. related that appellant's "attitude toward everything went down" and he "became a mean person." He yelled at K. over "ridiculous things," like how the house was kept or how dinner was made. Appellant discouraged K., a stay-at-home mother, from leaving the house and having friends. Appellant would often become angry to the point of yelling, punching holes in the walls of their house, ripping the banister from the wall, destroying toys, and throwing items such as a television and a high chair. On one such occasion, during an argument between appellant and K. in May 2009, when K. was pregnant, a small refrigerator was knocked over. C. heard her mother screaming "stop," and called the police because she was worried that her mother was being hit. After the police arrived, things settled down and everything was fine the next day.

Appellant set the rules for the house. He made the decisions about disciplining K.'s daughters, and K. would then have to tell the girls their punishment. If K. objected to any punishment announced by appellant as too harsh, appellant would only make it worse. The girls were grounded for weeks and months at a time, during which they could leave their room only for meals and to use the bathroom. While grounded, they could do their homework, but were not allowed to read for fun, draw, talk to anyone, or have access to the television or radio. The doors to their rooms were to be left open at all times. On one

occasion, C. closed the door to the room she shared with F. while F. was grounded, which resulted in appellant removing the doors to the children's bedrooms as well as the bathroom. The bathroom door was put back on after a couple of days, but the bedroom doors remained off for a year, except for the bottom half of the door to the room F. shared with her brother, which could be locked from the outside so her brother could not get out.

When K. was out of the house, appellant tracked her location using his cell phone, and would often call her to ask where she was and what she was doing. If K. did not answer her phone when he called, he "alerted" her by activating a loud pinging noise on her phone which did not stop until she answered. On a couple of occasions, after arguing with appellant, K. attempted to leave and take the children to their grandparents' home in North Carolina, but appellant disabled her car by removing something from the engine so that she could not leave.

J. testified that when she was nine-years-old, she became interested in taking karate — or, as she called it, "fighting classes" — and asked appellant if he could get her into a class. Instead of signing her up for a class, appellant began to train J. and W. at home on Sundays, while the rest of the family went to church. At first, he taught them how to kick and punch, and she was given a black "gi," which she described as a "ninja costume," to wear during training. After a couple of months, the physical training was replaced by "ice baths" and "weird stuff."

J. explained that the bathtub would be filled with up to six big bags of ice, and appellant would make her get in and meditate for 25 to 30 minutes at a time. Appellant would remain in the room with her. She usually wore a sports bra and underwear, but on one occasion, appellant made her take the ice bath while naked. She did not understand what the point of the ice bath was, but stated that appellant would scold her if she shivered, and would tell her to stop. On one occasion, appellant stripped down to his underwear and got into the bathtub with her.

Appellant also required J. to meditate with him in his home office, with the door closed and locked. The meditation sessions, which J. described as "sitting and breathing," usually occurred when the rest of the family was not at home. At first, J. was completely clothed during these meditation sessions, but during one session, appellant directed her to remove her shirt. Appellant told her to put her hands on her lap, but she felt "really awkward" and tried to cover the top part of her body with her arms. On other occasions, appellant told her to take off all her clothes before meditation. She knew it was "wrong," but she did not say anything because she feared a "really cruel punishment" if she refused to do it.

The "training" took place over the course of a year. On about five occasions during that period, J. would wake up in the middle of the night to find appellant touching her buttocks and breasts. On three separate occasions during this period, appellant directed her to perform fellatio on him. J. testified that he made her think it was part of the training, and

she stated, "I just [knew] I had to do it." During these incidents, she noticed that he had a tattoo that said "[K.]," which she had never noticed before. According to Trooper Nathaniel Van Sant of the Maryland State Police, who interviewed J. after she disclosed the abuse, she placed the tattoo on a diagram as being located just above appellant's genitalia.

Appellant called off the "training" for both J. and W. when he found out that C. had created a prohibited Facebook account on W.'s computer, and that J. knew about it. According to J., appellant thought the training was a privilege, and he was taking that privilege away from them because of what C. had done. J. testified that she was "so happy," and thought, "thank God," when C.'s Facebook account was discovered. It put an end to J.'s "ninja training," although one time, when she wet her bed in the middle of the night, appellant threatened that "orgasm training" would start if she did it again. She understood this to mean fellatio, and was so "freaked out" that she was very careful never to wet the bed again.

J. testified that she did not tell anyone about appellant's inappropriate interactions with her because he had told her that she could not tell anybody, and he made her think that it was all part of the training. Appellant had also threatened that, if the Department of Social Services ("DSS") ever got involved with the family, the children would be put into foster care, and she was concerned that she would be separated from her family. J. did not tell K. because she did not trust her, was "freaked out" to talk to her about "that kind of stuff," and did not think K. would do anything about it. Although she had a close relationship with C.,

she did not tell her either because it would be "especially [ ] weird" and she "couldn't do it." J. related that she "didn't have the courage to stand up to something like that."

In November 2012, appellant explained to J. that, because he had lost his job, they could not afford to go to the doctor. So C., J. and F. had to go into his room, one at a time, where he measured their body fat with calipers while they were clothed only in a hospital gown. He then directed them to take off the gown, and took pictures of them with his cell phone, explaining that the photographs would show whether they had lost any weight. He also took photographs of moles on their skin — including one that J. had on her vagina — purportedly to monitor changes in their appearance.

In the winter of 2012, J. saw C. with appellant, dressed in a ninja gi. J. thought, "oh my God [ ] don't let her start this." J. told C. not to do it, and that it "wasn't a good idea," but did not explain why.

C. testified that "ninjustu training" was her punishment for pouring milk on someone's head. Appellant gave her a gi, and an extensive exercise program involving running and calisthenics that she was to do every day after school. If appellant saw that she was not running, he would shoot in her direction with an "Airsoft" gun. C. also had to take ice baths in the nude, in appellant's presence.

In January 2013, C. skipped a day of exercise because she was very sick and did not feel well enough to do it. When appellant came home that night, C. asked him how his day

was, and he responded: "Good. I did what I was supposed to, hint[,] hint." C. decided to run away, explaining:

> I knew that he knew I didn't do it, um, and that was like my last straw. I was tired of, I was tired of the training, I was tired of how I was treated at home. I was tired of him being a jerk. I was tired of my mom falling for everything. So I packed up a bag and I left.

C. stayed at a friend's house that weekend and contacted the police to tell them about the naked photographs appellant had taken of her and her sisters. Thereafter, DSS became involved with the family, and J. was asked if anything else had happened. Initially, J. did not tell DSS about anything other than the pictures because she was scared that "something bad was going to happen."

In May 2013, J. told DSS about appellant's inappropriate touching, but still did not say anything to DSS about fellatio. She explained that she "didn't tell that 'til later" because it was "too [ ] awkward and weird just to say it," and "it was hard enough for me to just say I woke up with him touching me." All three girls were removed from the home in June 2013, and they went to live with their aunt and uncle. The next week, J. told her mother about the incidents of fellatio, and then told DSS.

A recorded interview that appellant gave to the police was played for the jury. In the interview, appellant denied touching any of the girls inappropriately, and denied that he made J. perform fellatio on him. He suggested that Trooper Van Sant, who was conducting the interview, should read letters C. wrote to her boyfriend about a plan to throw appellant

in jail, and appellant discredited the children's allegations as a "made up big story," a "big plan, big plot," to break up his marriage to K. He speculated that someone may have told J. about his genital tattoo to "further this bullshit that they're trying to do."

Appellant took the stand in the defense portion of the trial, and again denied any inappropriate touching or fellatio with any of the girls. He explained that he took photos of the girls in order to monitor their weight loss, and that, at the time, he did not realize it would be embarrassing for them to have the photographs taken. He admitting to occasionally flying off the handle, and stated that it had always been in his nature to punch holes in walls.

He explained that the ice baths were part of the "nunjitsu" training for J., W. and C., and that they were used for soaking muscles "as if you were a football player, baseball player," as well as for "curbing your fight or flight response." According to appellant, the children did not take ice baths in the nude, but while wearing underwear, which, for J., included a sports bra. He did not stay in the bathroom, but would stand outside the open bathroom door, where he could see if they were not in the tub. He stated that during meditation the children were usually dressed in gis.

Appellant explained that he had two tattoos in his genital region, one above his penis and the other running down his penis. He thought of two instances when one of the children may have seen his tattoos. On one occasion, C. ran up the stairs while he was in the hallway, naked, getting a towel from a closet before taking a shower. On another occasion, appellant

had a "tattoo party" at his home, during which he showed off his "[K.]" tattoo, although he was not sure if the children were in the room at the time.

The case was submitted to the jury on three counts of second degree sex offense, and three counts of child sexual abuse, paired to correspond to three separate events of fellatio described by J. The jury convicted appellant of one count of second degree sex offense and one count of child sexual abuse, both related to the first event of fellatio. Appellant was acquitted of the other charges.

DISCUSSION

I. Evidence of the "Domestic Environment"

Prior to trial, the State filed a motion in limine, seeking a ruling on the admissibility of evidence of appellant's "bad acts," *i.e.*, his extremely controlling nature, verbal and physical abuse of the family, and the "abusive regimen that was ostensibly part of a martial arts and weight loss program." The court held a lengthy evidentiary hearing during which J., F., C. and K. gave testimony largely covering the factual background as stated above. The court ruled that the evidence was relevant and admissible, with certain exceptions.

Appellant argues that the trial court abused its discretion by allowing the State to introduce testimony in its case-in-chief of the "domestic environment," specifically his "bad acts," which the Court of Appeals has defined as activities or conduct which are "not necessarily criminal, that [tend] to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Klauenberg v. State*, 355 Md. 528,

549 (1999)). Appellant contends that such evidence was not relevant to the State's case-in-chief, and would only be admissible in the State's rebuttal case if the defense raised a question about J.'s delay in reporting the abuse and why she had denied the abuse when first asked specifically about it by the Department of Social Services. Appellant also argues, for the first time on appeal, that, if and when evidence of the domestic environment became relevant, only J.'s testimony was necessary on the issue, and that the court's action in permitting three other witnesses — C., F. and K. — to give testimony about appellant's behavior was prejudicial error. Appellant contends that the "overwhelming quantity and inflammatory nature of the evidence" of his bad acts unfairly prejudiced the jury against him, denying him a fair trial.

The State responds that the evidence of appellant's controlling, violent and abusive behavior was relevant to the prosecution's case-in-chief because the evidence was inextricably intertwined with the evidence of the criminal behavior itself. The State further responds that the evidence was necessary to place the sexual abuse in context, to explain why J. initially denied the extent of the sexual abuse, and to show that appellant had the opportunity to commit the offenses. Finally, the State counters that appellant did not raise an objection at trial seeking to limit the volume of evidence of his prior bad acts, and therefore, his claim that the quantity of this evidence resulted in prejudice is unpreserved. We agree with the State.

The standard of review for evidentiary rulings of a trial court has been summarized by the Court of Appeals as follows:

> [T]he admission of evidence is committed to the considerable and sound discretion of the trial court. In that regard, all relevant evidence is generally admissible. A corollary to that rule is that irrelevant evidence is not admissible. To be relevant, evidence must tend to establish or refute a fact at issue in the case. Once a finding of relevancy has been made, we are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion.

Merzbacher v. State, 346 Md. 391, 404-05 (1997) (citations omitted).[2] "'Abuse of discretion' . . . has been said to occur 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)), *cert. denied*, 135 S. Ct. 284 (2014).

"Evidence of other crimes, wrongs, or acts including delinquent acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith." Maryland Rule 5-404(b). As the Court of Appeals has explained, "[e]vidence of other crimes may tend to confuse the jurors, predispose them to a belief in the defendant's guilt, or prejudice their minds against the defendant." *State v. Faulkner*, 314 Md. 630, 633 (1989) (citation omitted). Rule 5-404(b) is not without exception, however. Evidence of other crimes or bad acts may be admitted "for other purposes, *such as* proof of motive,

[2] The same standard of review applies to issue II, below.

opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident." Md. Rule 5-404(b) (emphasis added). The stated exceptions in Rule 5-404(b) are "'a representative list of examples in which evidence has been found to meet the exception to the general rule of exclusion; it is not a laundry list of finite exceptions.'" *Merzbacher*, 346 Md. at 407 (quoting *Harris v. State*, 324 Md. 490, 501 (1991)). As the *Merzbacher* Court concluded, "[a]t base, '[e]vidence of other crimes may be admitted . . . if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal.'" *Id*., quoting *Faulkner*, 314 Md. at 634.

Before a court may admit other crimes/bad acts evidence, it must engage in a three-part analysis:

> The first required determination is whether the evidence fits within one or more of the stated exceptions to Rule 5-404(b). This is a legal determination that does not involve any exercise of discretion. The second requirement is that the trial court determine whether the defendant's involvement in the other act has been established by clear and convincing evidence. We review the trial court's decision to determine if there is sufficient evidence to support its finding. Lastly, the trial court must weigh the probative value of the evidence against any undue prejudice that may result from its admission. This determination involves the exercise of discretion by the trial court.

Sifrit v. State, 383 Md. 116, 133 (2004)(citations to *Faulkner*, *supra*, omitted).

At the conclusion of the hearing on the State's motion in limine, the court properly engaged in the three-part analysis and ruled that the "specter of domestic violence" in the family home was relevant to explain why J. did not report the abuse initially, and that

evidence of the setting of the abuse would assist the fact finder. The court made a finding that the evidence of appellant's "domestic violence, control, intimidation, humiliation and degradation" was proven by clear and convincing evidence. The court voiced a concern about the prejudicial effect of certain evidence, and addressed that concern by ruling that, although testimony about the naked photographs would be admissible, the actual photographs would be excluded. The court also ruled there could be no testimony about the circumstances (discussed below) that led to E. moving to live with her father.

We reject appellant's argument that evidence of the "domestic environment," as testified to by C., F., K. and J., was irrelevant to the State's case-in-chief. We find *Merzbacher*, *supra*, persuasive on this point. In *Merzbacher*, the defendant, a middle school teacher, was charged with raping one of his students. The Court of Appeals affirmed the trial court's admission of other crimes or bad acts evidence, including evidence that the defendant physically abused other students, sometimes in a sexual manner; regularly drank with and purchased alcohol for his students; used offensive and vile language in class; and had stated to a police officer that he liked to insert the pipe that he smoked into various girls, including the victim, and taste the pipe afterward. *Merzbacher,* 346 Md. at 405-06, 411. The Court held that the evidence was necessary to put the sexual abuse evidence in context:

> [The] sexual abuse was not an isolated incident devoid of setting. It took place over the course of a three year period in a very specific relationship and highly intimidating atmosphere. The other crimes or bad acts evidence introduced against Merzbacher were not for conduct wholly independent of that for which Merzbacher was on trial. The jury was entitled to know the setting in which

> the alleged sexual misconduct took place because, under the facts of this case, the setting and the crime were so intimately connected as to be inseparable.

346 Md. at 410 (citation, internal quotation marks and alterations omitted). The *Merzbacher* Court also held that evidence of the "invidious context" in which the rape took place was relevant to explain why the victim waited so long to reveal her story. *Id*. at 409.

In the present case, evidence of the physical and emotional abuse that appellant inflicted on his family, as well as his inappropriate interaction with the three girls under the guise of martial arts training and a weight loss program, was "intimately connected" with the crimes charged, and was necessary to put the crimes in context. As in *Merzbacher*, the sexual abuse that appellant inflicted upon his stepdaughter was not "an isolated incident devoid of setting." The abuse took place in the context of what J. had been led to believe was martial arts training, and she was powerless to refuse to do what appellant said because of her fear of him and his "really cruel punishments." The jury was entitled to know the setting of the crimes. *See also United States v. Powers*, 59 F.3d 1460, 1466 (4th Cir. 1995) ("Bad acts evidence is considered necessary and admissible [either] where it is an essential part of the crimes on trial, or where it furnishes part of the context of the crime."), *cert. denied*, 516 U.S. 1077 (1996) (citations and internal quotation marks omitted, alteration in original). In addition, the environment in which the crimes took place was relevant to explain why J. delayed reporting the crime, even when asked specifically by the authorities. Appellant's overly controlling and abusive behavior, coupled with the extreme regimens and

punishments he imposed upon his family made J. so fearful of him that she was unable to report the abuse right away, or even all at once. Although appellant suggests that this evidence was inadmissible until such time, if any, that the defense made an issue of the delay in reporting, there is nothing in *Merzbacher* or in any other case cited in appellant's brief that would restrict such evidence to the State's rebuttal.

Finally, the court took the proper precautions to ensure that the jury did not utilize the bad acts evidence improperly during its deliberations by instructing the jury as follows:

> [Y]ou have heard evidence concerning [appellant's] methods of discipline [ ] with the alleged victim . . . and her sisters . . . as well as methods of physical fitness training, which included body fat measurements. We have also heard evidence concerning [appellant's] arguments with . . . [K.] . . . as well as other actions taken toward [K.], such as dismantling her car and using a cell phone locator. You may use this evidence only to consider the domestic atmosphere in which the victim was living and why the victim did not disclose the alleged sex abuse promptly. You may not consider this evidence [ ] to determine that [appellant] is of a bad character or has a tendency to commit a crime.

"It is presumed that jurors will follow limiting instructions." *Berry v. State,* 155 Md. App. 144, 172 (citation omitted), *cert. denied*, 381 Md. 674 (2004) .

With respect to appellant's contention that the court abused its discretion by allowing cumulative testimony about his bad acts, we agree with the State that appellant did not preserve this argument. The only objection raised in the circuit court was to the relevance of the bad acts evidence. Appellant did not object to the cumulative nature or excessive quantity of the bad acts evidence. At the hearing on the State's motion in limine, appellant argued only that there would be no probative value of the bad acts evidence unless the delay

in reporting was highlighted in the defense portion of the case. At trial, defense counsel renewed the objections previously made, but presented no further argument. At no time did appellant request that the court limit the number of witnesses presenting such evidence. Accordingly, the argument is waived. *See Thomas v. State*, 183 Md. App. 152, 177 (2008) ("Where a party asserts specific grounds for an objection, all other grounds not specified by the party are waived."), *aff'd*, 413 Md. 247 (2010).

II. Admission of the Voicemail Message

The second issue raised by appellant is whether the trial court erred by admitting into evidence an unintentionally recorded voicemail message received by C. that captured a heated exchange between appellant and K. that occurred in July 2013, after the girls had moved out of the house to live with their aunt and uncle. In the recording, an apparently irate appellant is heard repeatedly demanding the phone from K., cursing, and breathing heavily, while a child is heard screaming in the background. The court determined that voicemail was relevant because it fell "into the same category as just the whole climate of what was going on in the house."

Appellant contends that the evidence in the recording was not relevant because it had no tendency to prove anything about the crimes charged. Appellant further argues that the recording was irrelevant to the timing of J.'s disclosure because, appellant asserts, she had reported the sexual abuse before the voicemail was recorded.

The State responds that the timing of the recording vis-a-vis the report of abuse is not clear, and the recording was therefore potentially relevant to explain why she continued to be fearful of making a full disclosure. Moreover, the State responds that, regardless of the timing of J.'s eventual disclosure, the recording served as an additional example of the sort of temperament appellant had exhibited while J. was still living under the same roof as appellant, and the incident was therefore relevant to the context of the crime. The State also posits, in the alternative, that any error in admitting the recording was harmless because the incident was merely cumulative of the other "bad acts" evidence that was properly admitted. Finally, the State asserts that the objection to the recording was waived because appellant did not object later during the trial when Trooper Van Sant's recorded interview with appellant was played, and the voicemail message was again heard by the jury during the playing of that interview. *See DeLeon v. State*, 407 Md. 16, 31 (2008) ("Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection."). We conclude that, to the extent the argument was preserved, any error in admitting the voicemail message was harmless.

We question whether the arguments made on appeal were preserved because, at the hearing on the motion in limine and at trial, appellant appears to have objected to the recorded voicemail solely on the ground that the recorded argument between K. and

appellant took place after the incidents of sexual abuse occurred. Accordingly, under *Thomas*, *supra*, our review is limited to whether the court abused its discretion in admitting the recorded message even though it was recorded after the incidents of abuse were reported.

Appellant cites no case law to support his argument that bad acts evidence is not admissible if the act occurs after the charged crime, and we note that Md. Rule 5-404(b) does not restrict exceptions to the general rule prohibiting "other crimes" or "bad acts" evidence to crimes or acts occurring before the charged crimes. Furthermore, the three-part test summarized in *Sifrit*, *supra*, does not require the court to determine whether the evidence sought to be admitted occurred before or after the charged crime. Accordingly, the admission of the recording over appellant's stated objection was not an abuse of discretion.

Even assuming that appellant's argument with respect to the general relevance of the recording was preserved and not waived, any error in admitting it was harmless. It was just one of many examples, consistent with other evidence presented at trial, that tended to show that appellant was controlling, was verbally abusive, and was prone to fits of rage. Furthermore, the court's limiting instruction specifically informed the jury that they could not consider evidence of appellant's arguments with K. and other actions taken toward her to determine that appellant had a tendency to commit a crime. Consequently, we are satisfied beyond a reasonable doubt that, even if the recording was improperly admitted, it did not influence the verdict. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (error is not

harmless unless the reviewing court, upon independent review, "is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict").

III. Mistrial

During the hearing on the State's motion in limine, when F. was asked what grade she was in when particular incidents occurred at home, she responded, " . . . I think it was second or third because, um, it was one of those times when, um, E. was there . . . ." It was then explained that E.'s father is someone other than appellant, and E. is F.'s half-sister. Upon further questioning, F. revealed that "the same thing that happened to [J.]" had happened to E., and that E. was taken out of appellant's house when she was five or six. In response to an inquiry from the court, the prosecutor explained that no charges were filed against appellant at that time because E. was "too young," but that, due to the allegations involved, E. would not be returning to live with K. and appellant.

At the conclusion of the pretrial hearing, the court ruled in limine as follows with respect to evidence about E.:

> [T]here cannot be any testimony concerning [E.] or what happened to [E.]. . . . [T]hat is so highly prejudicial. We don't know what happened and so you've got to make sure that you coach all your witnesses that they cannot mention [E.], what happened to [E.], what may have happened to [E.]. That's going to engender a mistrial if anyone blurts it out, well, we know he abused [E.], too. Okay?

At trial, C. testified that her younger sister E. lived with them after appellant married K., but at some point moved to Pennsylvania to live with E.'s father.

Later, while J. was on the stand, J. acknowledged that she initially reported only appellant's inappropriate touching to DSS, but did not mention the incidents of oral sex until later. She explained why she did not report everything at once, and, when she related how she had told her mother "the rest of the story," she blurted out a reference to E.:

[PROSECUTOR]: All right. So at that point what did you tell DSS about in roughly May or whenever. . .

[J.]: I told them that I would wake up with [appellant] touching me.

[PROSECUTOR]: Okay. And that's all you told them?

[J.]: That's, yeah.

[PROSECUTOR]: Okay. Did they ask about whether anything else had happened?

[J.]: Uh, yes, they, they did, but I didn't really go any like further into detail with that.

[PROSECUTOR]: Okay. So you didn't talk about any blow jobs when you talked with them in May?

[J.]: No.

[PROSECUTOR]: Why not?

[J.]: I didn't tell that 'til later. Just 'cause like it was, it was just like a lot. Like it was already really hard enough for me to just say I woke up with him touching me. So, like I was like I can't just go up and say hey this guy did this and it was just like, I was like, too like awkward and weird just to say it.

[PROSECUTOR]: Okay. So how long was [sic] before you finally told them the rest of the story?

[J.]: Uh . .

[PROSECUTOR]: Or who did you tell the rest of the story to first?

[J.]: I, um, I told my Mom one weekend that I, like the first week that I lived with Leann and Aaron. We were, **me and Mom went to the car and I told her, I didn't tell her like detail to detail. I like, I said you know what happened to [E.] and she was like yeah and I was like, happened to me. But I didn't actually tell like . . .**

(Emphasis added.)

Defense counsel objected; a bench conference ensued; and defense counsel moved for a mistrial. The prosecutor argued against a mistrial, proffering that there had not been much testimony about E., there had not been a lot of attention drawn to it, and that all the jury had heard was that something had happened to E., but there had been no evidence of what happened and who might have been involved. The court agreed with the prosecutor and denied the motion for mistrial, ruling: "All the jury heard was and [']you know what happened to E.['] She didn't connect it up with [appellant]. . . . So I think at this point we're just going to go forward and make sure that she doesn't go anywhere near this." No curative instruction was requested, and none was given.

Appellant argues that the trial court abused its discretion in denying the motion for mistrial made after J. testified that the way she told her mother about the abuse was to say

that "what happened to E. . . . happened to me." Appellant argues that the prejudice that resulted from the reference to his unlawful conduct with another child could not be cured. The State responds that, because J.'s statement did not connect appellant with what happened to E., no improper inference was put before the jury, and the trial court properly denied the motion for mistrial. We agree with the State.

A mistrial is "an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Coffey v. State*, 100 Md. App. 587, 597 (1994) (citation and internal quotation marks omitted). When reviewing a denial of a motion for mistrial, the appellate court will reverse the trial court only when it is shown that "the defendant was so clearly prejudiced that the denial constituted an abuse of discretion." *Hunt v. State,* 321 Md. 387, 422 (1990) (citation omitted), *cert. denied*, 502 U.S. 835 (1991). "The determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Cooley v. State*, 385 Md. 165, 173 (2005). "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." *Wilson v. State*, 148 Md. App. 601, 666 (2002).

In determining whether a defendant was prejudiced by an improper remark, we evaluate the following factors:

> "whether 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. . . ."

Rainville v. State, 328 Md. 398, 408 (1992) (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)).

Considering these factors in the present case, J.'s statement was isolated and was not solicited by the prosecutor. Although J. was the principal witness, and her credibility was central to the case, her comment that "what happened to E. . . . [also] happened to me" was so vague that the trial court did not err in concluding that the statement caused no "real and substantial" prejudice to appellant. Furthermore, with respect to the last *Rainville* factor, we conclude that there was "a great deal of other evidence" presented at trial that tended to prove appellant's guilt.

The statement blurted out by J. in this case was not comparable to the incriminating statement that made a mistrial necessary in *Rainville*. In that case, the mother of a seven-year-old sexual abuse victim blurted out that the accused defendant was in jail because of what he had done to her nine-year-old son. The Court of Appeals held that the prejudice to the defendant resulting from the inadmissible comment necessitated a mistrial. *Rainville* is distinguishable from the present case in several respects. First and foremost, the prejudicial testimony in *Rainville* indicated that the defendant had already been convicted of a closely

related crime. Furthermore, the Court pointed to significant weaknesses in the State's case against Rainville, including inconclusive medical evidence to support the allegations of abuse, material inconsistencies in the testimony of the State's witnesses, and a motive the mother may have had to fabricate the story. *Id.* at 409-410. This led the Court of Appeals to conclude that, "[u]nder these circumstances, informing the jury that the defendant was 'in jail for what he had done to Michael' almost certainly had a substantial and irreversible impact upon the jurors, and may well have meant the difference between acquittal and conviction." *Id.* at 410.

The same cannot be said in the present case. J.'s statement about E. made no reference to appellant. The court had the opportunity to observe the witness and the jury's reaction to J.'s testimony; the trial judge had her "finger on the pulse of the trial." *Nash v. State*, 439 Md. 53, 87 (2014). Recognizing "the trial judge's unique role and distinct advantage in evaluating questions of prejudice to a criminal defendant," *Nash*, *id.* at 87, we are persuaded that the circuit court did not abuse its discretion in denying the motion for mistrial.

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