

Circuit Court for Montgomery County
Case No. C-15-CR-23-000503

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0493

September Term, 2024

TYRONE CURTIS

v.

STATE OF MARYLAND

Friedman,
Kehoe, S.,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kehoe, J.

Filed: November 4, 2025

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

On January 24, 2024, in the Circuit Court for Montgomery County, Appellant, Tyrone Curtis (“Mr. Curtis”), was convicted by a jury of first-degree murder. The circuit court acquitted Mr. Curtis of carrying a dangerous weapon with intent to injure at the close of the State’s case. On April 26, 2024, Mr. Curtis was sentenced to life imprisonment with all but fifteen years suspended and five years of supervised probation upon release.

The appeal before this Court results from the circuit court’s denial of Mr. Curtis’s motion in limine to introduce out-of-court, hearsay statements of eyewitness, Jamily Jaramillo (“Mr. Jaramillo”),¹ pursuant to the hearsay exceptions under Maryland Rules 5-803(b)(2) and 5-803(b)(24). In addition, Mr. Curtis moved for a mistrial on the first and third day of trial, alleging disruptions from the gallery and their impact on the jury, *inter alia*, denied him his right to a fair trial. The circuit court denied these motions. Mr. Curtis filed a timely appeal and presents the following questions for our review:

- 1) Did the trial court err or abuse its discretion in failing to conduct any inquiry into the effect of the outbursts from the gallery on the jury, and/or, ultimately, in denying the motions for mistrial, thereby denying Mr. Curtis his right to a fair trial?
- 2) Did the trial court err in refusing to admit the witness statement from [Mr. Jaramillo] under the residual exception to the hearsay rule?

For the reasons discussed below, we affirm the judgments of the Circuit Court for Montgomery County.

¹ In his brief, Appellant spells the name of the witness, “John Javamillo.” However, the State and defense counsel in the trial record spell the name of the witness, “Jamily Jaramillo.” As such, we will use the latter spelling in this opinion.

I. FACTUAL & PROCEDURAL BACKGROUND

A. Facts of the Case²

On April 5, 2023, at approximately 12:25 p.m., officers of the Montgomery County Police Department responded to 11304 Amherst Avenue in Wheaton, Maryland for a reported stabbing. Officers located an individual, identified as Amontae Robert Cunningham (“Mr. Cunningham”), suffering from a stab wound to his torso. Mr. Cunningham was transported to the hospital and later pronounced deceased.

An investigation revealed that Mr. Cunningham was riding a metro transit bus prior to the stabbing. Video surveillance footage from inside the bus showed a second individual, later identified as Mr. Curtis, get on the bus and sit near Mr. Cunningham. Shortly thereafter, a verbal altercation occurred between Mr. Curtis and Mr. Cunningham. The bus driver stopped the bus, intervened, and moved Mr. Curtis to a different part of the bus. The bus then continued along its route.

When the bus stopped at 11304 Amherst Avenue in Wheaton, Mr. Cunningham exited the bus, closely followed by Mr. Curtis. Once outside of the bus, surveillance footage showed Mr. Curtis approach Mr. Cunningham and stab him in the upper torso. Mr. Cunningham fell to the sidewalk and Mr. Curtis walked away, down Amherst Avenue.

Mr. Curtis was identified as the stabbing suspect by comparing the bus surveillance footage with police database photographs and cell phone records confirming his presence

² The facts preceding trial are not necessarily relevant to the issues on appeal; accordingly, we have limited the details.

in the area at the time of the stabbing. He was charged with first-degree murder and carrying a dangerous weapon with intent to injure.

B. Trial Proceedings

Mr. Curtis elected a jury trial, which commenced on January 22, 2024, and consumed three days. On the first day of trial, defense counsel argued a motion in limine for the admission of an out-of-court statement of a witness to the altercation on the bus and subsequent stabbing, Mr. Jaramillo. Mr. Jaramillo provided a verbal statement to Detective Charles Horwitz (“Det. Horwitz”), which was captured on the officer’s body worn camera, as well as a written statement. Defense counsel summarized Mr. Jaramillo’s statement in their written motion in limine as follows:

Mr. Jaramillo stated that [. . .] [t]he conflict began when the decedent attempted, multiple times, to initiate a conversation with Mr. Curtis, even physically touching him on his shoulder at one point. According to Mr. Jaramillo, Mr. Curtis responded by saying “I don’t know you, don’t talk to me” and “don’t touch me!” Mr. Curtis then positioned himself in what Mr. Jaramillo termed a “protective” stance and pulled out his pocketknife, which he held down and at his side. At this point, Mr. Jaramillo stated that other passengers began to move towards the front of the bus. The bus driver then stopped the bus, ordered everyone off, and walked towards the rear of the bus to try to “de-escalate” the situation. Mr. Curtis told the bus driver that it was “cool,” he would be the “bigger man,” and he put the knife back in his pocket. When the bus resumed its route, however, the decedent began to threaten Mr. Curtis, challenging him to a fight and “egg[ing]” him on. Shortly thereafter, when the bus stopped near the Wheaton metro station, both men exited the bus, Mr. Curtis first, followed behind the decedent. When the decedent “reached towards his right pocket,” Mr. Curtis “immediately” pulled out his knife and “stuck him one time.” Mr. Curtis then stepped back, “just to . . . make sure he wasn’t a threat anymore.” At this time, the decedent had a black knife out, in his hand. The decedent “stumbled and fell” to the ground. Mr. Curtis then left the scene.

While the statement is hearsay, defense counsel argued that it was admissible as an exception to the hearsay rule, either as excited utterance, pursuant to Maryland Rule 5-803(b)(2), or under the residual or “catch-all” hearsay exception, pursuant to Maryland Rule 5-803(b)(24). The circuit court denied defense’s motion, and found that:

The Court [had] an opportunity to review the CD of the interview conducted by police of this witness. Throughout the entirety of the interview, the witness was very calm. There was not a hint of excitability or anxiousness in anything that he did.

[. . .]

He -- the interview that was conducted of this witness clearly is, as stated by the defense, certainly relevant and important to their case. The Court does not find that the State is in some position to have a superior ability to locate witnesses than anyone else. That is the entire point of having defense having your investigator do an investigation as well. Certainly there’s no allegation that the State did anything to prevent this witness from being found in any manner.

The Court also finds that the statements being pure hearsay. I do not find that the [*State v.*] *Walker*[, 345 Md. 293 (1997)] factors are all present in this case to admit this testimony under the residual exception to the hearsay statement. The Court does not find that there are exceptional circumstances that warrant this admission. And the Court cannot find that there was the equivalent guarantee of trustworthiness in these statements. The overarching concern about the interests of justice being best served, the Court fully does appreciate the importance of the testimony. But I think it is also important for both parties, State and defense, to be able to examine witnesses and probe their memory and their recollection of events. It is not sufficient to simply have a video which may indeed -- may or may not contradict the testimony of the witness himself or herself.

Other motions were addressed, the jury was selected, and the case proceeded to trial.

On the first day of trial, the State called Michael Johnson, the bus driver, as a witness and played the video footage of the stabbing, captured by the bus surveillance camera. When the video was played, an unidentified individual from the gallery yelled, “[h]e

stabbed him and ran. [. . .] He's a fucking coward." Based on the disruption from the gallery, defense counsel requested a bench conference and moved for a mistrial or in the alternative, curative instructions to the jury and admonishment of the members in the gallery. The circuit court did not find that the disruption from the gallery was of "manifest necessity for [a] mistrial" and denied defense's motion. However, the court provided the following curative instructions to the jury:

Ladies and gentlemen of the jury, I am going to instruct you at this time that you are to disregard everything that you heard from the gallery. Remember, I explained that anyone in the back, you are to disregard any statements made, any noises made that is not part of the evidence in this case. And you are instructed to disregard anything that you may or may not have heard.

After the court's instructions, the jury was directed to exit the courtroom and enter the deliberation room. The circuit court then admonished the members of the gallery and announced its ruling on defense's motion for the record, stating:

The defense has asked for a mistrial. And for the reasons indicated, I'm just going to put this on the record, I do not find that there is a high necessity for a mistrial to be declared, as I find that there is a reasonable alternative to preserve any prejudice or prevent any further outbursts from occurring, and the fact that the Court will give a curative instruction. I just gave a curative instruction, Madam State Ms. Zumwalt was out. Ms. Murphy was here. And I asked that the jury not consider and they shall disregard any statements that they may have heard from the gallery, which is where everyone is seated. And they will be instructed again at the close of the case to disregard any comments or statement made by persons in the gallery.

I do not believe that the State's Attorney's Office in any way predicted that this would happen. And certainly, I credit the assurance by the State that they had spoken to the family prior to the trial about the importance of remaining quiet and not disturbing the proceedings. I fully recognize that this is a difficult matter for those in the gallery, but it is absolutely imperative in order for the Court to be able to have a proceeding that is going to maintain

fairness for all parties that no further outbursts can occur. If anything happens again, I am going to be forced to bar you from being here for the duration of the proceedings, and I do not want to do that. You have the right to observe and see what is happening in a public trial. But you do not have the right to disturb court proceedings. Do you understand that?

And so I am saying to you now that if I hear any more disruption for any reason, I'm going to have to excuse all of you for the duration of the trial. I'm going to ask all people who have an interest in this proceeding to not communicate with each other. Do you understand that? There is to be no looking at each other, no staring at each other. You must just turn away. If anything happens, we have deputy sheriffs that are right here, and you can get a message to us about an incident. But it cannot be in the presence of this jury in the middle of trial. Do you understand that?

[. . .]

So you are permitted to stay, but no more outbursts. Do you understand, sir? I'm not assuming that anything happened or didn't happen. What I am saying is I don't want anyone in the gallery to communicate with each other. If you are here on this side and you're here for the Defense, you're welcome to remain. But you're not to have any signaling, any gesturing, or any comments made to those who are seated at the right. [. . .]

After the admonishment to the gallery, the jury returned to the courtroom and the trial continued.

On the second day of trial, the State rested its case and defense counsel moved for judgment of acquittal. The circuit court granted defense's motion as to count two: carrying a dangerous weapon with intent to injure and denied the motion as to count one: first-degree murder.

On the third day of trial another disruption from the gallery occurred while the State was cross-examining Mr. Curtis on the witness stand. The State was playing the bus

surveillance video footage during the testimony and paused it to asked Mr. Curtis a question. The following ensued:

[DEFENSE] MR. MARTINEZ: Objection, Your Honor.

[THE STATE] MS. ZUMWALT: He didn't even see it coming; isn't that true, Mr. Curtis?

THE COURT: Overruled. I'm sorry. I just did not hear you.

[THE STATE] MS. ZUMWALT: He didn't see it coming.

[DEFENSE] MR. MARTINEZ: Your Honor, may we approach.

THE COURT: Objection is sustained.

(Disruption by members in courtroom gallery - 11:36:16.)

THE COURT: Okay. Would you please – I'm going to have the jury sent back.

(Jury exits the courtroom at 11:37 a.m.)

(Continued disruption in courtroom gallery - 11:36:40.)

The judge immediately excused the jury out of the courtroom to the deliberation room and removed the members of the gallery to the hallway. Defense counsel moved for a mistrial, arguing that there was not “any curative instruction or measure that the [c]ourt can impose at this time” to cure the harm that the disruption has caused to Mr. Curtis and that “manifest necessity requires dismissal.” In addition, defense counsel noted someone in the gallery called Mr. Curtis a “coward” again in the jury’s presence. In response to defense’s motion, the circuit court found and announced the following:

The jury heard nothing other than sobbing before the Court excused them to go to the deliberation room. The Court is very mindful of the cumulative nature of the prejudice that may ensue to the defendant based upon the reactions of those in the gallery and the obvious effect that it could have on the jury’s ability to be neutral, unbiased and fair in their deliberations and assessment of this evidence.

However, I also would add that in no way do I fault the State for having the inability to control any outbursts. I am quite satisfied that they have done everything they could to relay to the members in the gallery,

family and friends, that it is imperative that they remain quiet and not make outbursts in the middle of trial.

That said, I also can see the lady in the front as well as the gentleman two rows behind her have not said or done a thing since the Court asked them yesterday to remain calm and to be quiet during these proceedings.

But, anyone else, they're all excluded from this courtroom because I have no ability to maintain fairness in this courtroom with the repeated conduct of those that are in the gallery and it's potential for disrupting the Court and for disrupting this jury.

So, other than the two individuals that I just referenced, everyone else is to be outside. That would be all of you.

Upon the court's denial of the motion for mistrial, defense counsel pointed out that a woman in the front row of the gallery said directly to the jury, "he didn't see it coming[.]" and alternatively requested individual voir dire of the jurors as to what statements were heard from the gallery. The circuit court denied that request as well, indicating that all members of the gallery who interrupted the proceedings would remain outside of the courtroom and that in the jury instructions, the court would "remind the jurors that they are absolutely not to consider anything that they heard from the gallery." The court removed all but a few members of the gallery from the courtroom, the jury returned, and trial continued.

After the lunch recess on the third day of trial, the State alerted the court to an incident that occurred during the break in the hallway outside of the courtroom. A prosecutor for the State was speaking with members of the gallery, who were apologizing for the disruption that occurred in the courtroom earlier that day. Defense counsel approached the prosecutor to advise her that there were jurors also present in the hallway

that the prosecutor did not see due to her back being turned. The prosecutor indicated to the court that the conversation with the members of the gallery ceased at that time, and she assured the court that the discussion did not involve anything substantive about the case and “there were no statements made about their opinions as to any testimony.”

Defense counsel countered advising the court that they heard individuals “openly discussing the exhibits that they [] saw that triggered the response, and it wasn’t in a low tone of voice.” Defense counsel continued, stating that there were approximately six jurors “or so” present and that they were looking towards “the individuals that were excused from the courtroom, and so their attention was drawn.” In light of the incident in the hallway, defense counsel moved for a mistrial. The circuit court denied defense’s motion and found:

As to counsel’s concerns, once again, understanding your request for a mistrial, I do not find that there is a manifest necessity to declare one given that I do find it was absolutely appropriate at the initial outburst to remind the jury that nothing that is outside of the evidence that is admitted in the courtroom is to be considered by them, and they are to absolutely ignore and not consider any statements made, gestures, facial expressions, anything from members of the audience. And the fact that the Court will reiterate this instruction prior to their deliberation, I think is going to be sufficient to protect the integrity of the proceedings.

Again, the court assured it would provide curative instructions at the appropriate time. Defense counsel renewed their previous motions for mistrial due to the disruptions from the gallery during trial, which were denied also.

The jury returned to the courtroom and the court began to provide the jury instructions; the curative instructions were included:

During your deliberations, you must decide this case based only on the evidence that you and your fellow jurors heard together in the courtroom.

You must not consider any disruptions, outbursts, comments, opinions, sounds or facial expressions by anyone in the gallery of this courtroom, outside the courtroom, or anywhere else. The only thing that you may consider is the evidence that was presented in this courtroom and admitted by the Court.

After jury instructions, the parties conducted their closing arguments, and then the jury was excused to deliberate. The jury convicted Mr. Curtis of first-degree murder.

Additional facts will be included in the discussion as they become relevant.

II. DISCUSSION

A. Disruptions from the Gallery

Mr. Curtis argues that the circuit court abused its discretion in denying his motions for mistrial, thereby denying his right to a fair trial, because the disruptions from the gallery in the jury's presence were prejudicial and the court's instructions to the jury were insufficient to cure such prejudice. In addition, Mr. Curtis alleges that the circuit court erred in denying his request to voir dire the jurors as to the substance and impact of the disruptions from the gallery. As a result, Mr. Curtis asserts that reversal and remand is warranted.

1. Motions for Mistrial

Appellate courts review a trial court's denial of a motion for mistrial for abuse of discretion. *Bynes v. State*, 237 Md. App. 439, 456 (2018). Deference is given to the trial judge's decision because they "observed first hand at the trial the impressions made by the witnesses, the reactions of the jurors—[they] had [their] thumb on the pulse of the trial—[they have] a sense that no cold record can communicate—as to the impact on a trial of a

passing incident of possible error.” *Id.* at 456–57 (citing *Hunt v. State*, 321 Md. 387, 422 (1990)). Therefore, it is the trial court that is in the best position to “weigh the danger of prejudice” and determine whether a mistrial is appropriate. *Id.* “We will not reverse a trial court’s denial of a motion for mistrial unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion.” *Hunt*, 321 Md. at 422.

A mistrial is an “extraordinary remedy that should only be resorted to under the most compelling of circumstances.” *Bynes*, 237 Md. App. at 457 (quoting *Molter v. State*, 201 Md. App. 155, 178 (2011)); *see also Malik v. State*, 152 Md. App. 305, 328 (2003) (A mistrial “is appropriate only when it is the only way to serve the ends of justice and is a manifest necessity.”). It is an extraordinary remedy because “[n]ot only every hard-fought case but every even modestly contested case is permeated with glitches and errors[,] [and] [i]f every modest error could abort a trial, it would be a rare, rare case that would ever make it to the rendering of a verdict.” *Bynes*, 237 Md. App. at 457.

When determining whether a mistrial is appropriate the trial court must determine whether “the prejudice to the defendant was so substantial that [they were] deprived of a fair trial.” *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594–95 (1989)). In its assessment, the trial court must determine whether the prejudice can be cured. *Carter v. State*, 366 Md. 574, 589–90 (2001). Prejudice to a defendant may be cured by a “timely, accurate, and effective” instruction to the jury. *Kosh*, 382 Md. at 226 (citing *Carter*, 366 Md. at 589–90). A jury is “presumed to follow curative instructions.” *Cantine v. State*, 160 Md. App. 391, 409 (2004). If the instruction does not cure the

prejudice, the motion for mistrial must be granted. *Kosh*, 382 Md. at 266; *see also Kosmas*, 316 Md. at 594 (a mistrial must be granted if “the damage in the form of prejudice to the defendant transcend[s] the curative effect of the instruction[.]”).

When a motion for mistrial is based on the conduct of jurors, the trial court may voir dire the jury to assist in its ruling on the motion in two situations: 1) “when a juror’s actions constitute misconduct sufficient to raise a presumption of prejudice that must be rebutted before a mistrial motion may be denied[.]” and 2) “when a material and relevant fact regarding a juror’s conduct is unknown or obscure and must be resolved before a trial judge has ‘sufficient information to [. . .] rule on [the] motion for the mistrial.’” *Nash v. State*, 439 Md. 53, 69 (2014). However, the trial court “is not required to conduct voir dire every time there is an allegation that the jury is prejudiced.” *Id.* at 76 (quoting *Butler v. State*, 392 Md. 169, 189–90 (2006)).

In cases where the motions for mistrial are based on emotional outbursts or disruptions from the gallery in the juries’ presence, “[d]eference to the trial court’s ability to evaluate prejudicial effect is especially appropriate[.]” *Griffin v. State*, 192 Md. App. 518, 551 (2010), *rev’d on other grounds*, 419 Md. 343 (2011) (citing *Parham v. State*, 79 Md. App. 152, 158 (1989)). We reiterate, it is the trial court that is in the best position to assess the prejudicial effect of such disruptions on the jury. *Malik*, 152 Md. App. at 329 (citing *Hunt*, 312 Md. at 500–01). Additionally, motions for mistrial based on emotional outbursts or disruptions from the gallery “should only be granted under very extraordinary circumstances.” *Griffin*, 192 Md. App. at 551 (quoting *Parham*, 79 Md. App. at 158). Our

Supreme Court observed that “[e]motional responses in a courtroom are not unusual, especially in criminal trials, and manifestly the defendant is not entitled to a mistrial every time someone becomes upset in the course of a trial.” *Griffin*, 192 Md. App. at 551 (quoting *Hunt*, 312 Md. at 501).

2. Analysis

In the case before this Court, Mr. Curtis moved for a mistrial after three incidents: 1) on the first day of trial someone from the gallery yelled; “[h]e stabbed him and ran. [. . .] He’s a fucking coward[;]” 2) on the third day of trial another disruption from the gallery occurred; defense counsel alleged that someone called Mr. Curtis a “coward” again and yelled, “he didn’t see it coming[;]” while the court found that the jury only heard sobbing from the gallery; and 3) approximately six jurors observed the prosecutor meeting with members of the gallery, who were removed from the trial proceedings due to their disruptive behavior, in the hallway outside of the courtroom during the lunch recess and speaking about said disruption. The trial court denied each motion, as well as defense’s request to voir dire the jury as to statements heard from the gallery during the disruption on the third day of trial. Instead, the trial court provided curative instructions to the jury immediately after the first disruption and again during jury instructions at the end of trial. In addition, the trial court admonished the members of the gallery after the first disruption and removed all but a few members after the second disruption.

This case is similar to *Griffin v. State* in that the mother of the witness who was testifying yelled from the gallery, “[h]e put the gun in my daughter’s face and you want to

make it seem like—(unintelligible).” 192 Md. App. at 549. The defendant moved for a mistrial, which was denied by the trial court. *Id.* at 550–51. In its ruling, the trial court found that “the outburst occurred on the second day of a lengthy trial, was brief, and did not disclose any factual information that the jury had not already heard[, and] the trial court immediately settled the courtroom, then addressed the jury, giving a model curative instruction that sensitively explained why jurors could not treat the outburst as evidence.” *Id.* at 552. The trial court’s instruction in *Griffin*³ was similar to the instruction provided here in that it warned the jury to disregard what it heard from the gallery, that statements from the gallery are not evidence, and as such they should not be considered when deciding

³ The trial court’s instruction in *Griffin* was as follows:

All right. Ladies and gentlemen, everything that happens in the presence of a jury is seen and heard by the jury. And all of us as adults and as we become more mature as adults have to learn how to sort through what we’re going to pay attention to and what we are not going to pay attention to. None of us can purge our hard drives, so to speak, so that what you’ve seen or heard is not there. But I want to caution you that what you saw and what you heard—frankly, I was preoccupied with getting security moving to stop the outburst, so you heard better than I did whatever was said.

I’m told that the lady who had the outburst is the mother of this witness and is apparently emotionally upset, and all of us as parents feel protective toward our children. Whatever she said is not evidence in this case and you should pay no attention to it whatsoever.

As you may have heard me say numerous times, you have to decide the case based on the evidence that you have. And evidence does not come from outside the courtroom, and in fact, doesn’t come from emotional outbursts inside the courtroom. So please disregard whatever the lady said. It was an emotional outburst. I stopped it and it is not evidence in this matter. You should not let it affect you one way or the other.

192 Md. App. at 550.

the case. *Id.* We affirmed the trial court’s judgment in *Griffin*, holding that “[n]othing in the record of this case indicates a level of prejudice that warrants appellate relief[,]” and that “the outburst was not likely to have a substantial impact on the jury.” 192 Md. App. at 551–52.

Even more egregious than the case before us is *Malik v. State*, where there were two occasions of emotional outbursts on two separate days of trial by the State’s witnesses. 152 Md. App. at 326. In the first instance, when the witness finished testifying and was exiting the courtroom she addressed the defendant, visibly shaking and crying, stating, “you didn’t have to put me through this. You put me through this.” *Id.* at 326–27. Defense’s motion for mistrial was denied. *Id.* at 327. However, the trial court directed the jury to “please disregard anything that the witness may have said or done after she left the witness stand.” *Id.* at 327 n. 11.

During the next day of trial, another witness for the State testified and was shown photographs of the deceased victims, including his mother. *Id.* The witness began to cry and then stated, “[w]hat the fuck is you looking at [. . .] Bitch ass [. . .] I wish all of you mother fuckers would die.” *Id.* Defense counsel moved for a mistrial again, and in denying the motion, the trial court noted at the bench conference that, “I heard names being called and accusations being made, and of course this is an emotional outburst.” *Id.* The trial court found that it was “not uncommon at all for a witness to be moved to tears for one reason or the other on the witness stand,” and that the court was “not aware that it’s ever been considered as a reason for a mistrial[.]” *Id.* at 328. The trial court gave a curative

instruction⁴ to the jury similar to the instruction provided in the case before us here, warning the jury that the outburst is not evidence and that it may not be considered in the jury's deliberations. *Id.* We affirmed the trial court's judgment, concluding that murder trials are clearly going to cause emotion and the best the trial courts can do is to minimize it, and that the curative instructions in *Malik* were "a reasonable and proper way to deal with the outburst." *Id.*

Considering our jurisprudence, we conclude that the trial court here did not abuse its discretion in denying the motions for mistrial based on the disruptions from the gallery in the jury's presence. The outbursts in the present case were relatively minor compared to the outbursts that occurred in *Griffin* and *Malik*, and we held in those cases that the curative instructions in those cases, which were similar to the instructions in this case, were sufficient to cure any prejudice to the defendant. We similarly conclude that the instruction at the end of trial warning the jury to disregard anything not admitted as evidence by the court and anything heard outside of the courtroom, is sufficient to cure any prejudice that

⁴ The trial court's jury instruction in *Malik* after the second outburst was as follows:

I want to instruct you that the outbursts of the witness which you observed in this—just prior to the bench conference is not evidence in this case, and may not be considered by you in any way whatsoever in your deliberations in this case.

And, quite frankly, because of the emotional nature of this matter we may see similar remarks made. We hope not, but human beings being what they are that may occur, and I caution you that you will—you are only to consider those words which come from the witness on the stand under oath in deliberating in this case. . . .

152 Md. App. at 328 n. 12.

may have been caused by the hallway conversation between the prosecutor and members of gallery seen by some of the jurors.

Moreover, we conclude that the trial court did not abuse its discretion in refusing to voir dire the jury as to statements heard after the second disruption from the gallery. There was no jury misconduct that raised a presumption of prejudice that required voir dire. In addition, the trial court had sufficient information to rule on the motion for mistrial, i.e. to determine whether the second disruption had any prejudicial impact on the jury. The trial court found that the jury only heard sobbing from the gallery prior to the court excusing the jury after the disruption. Defense counsel claimed the jury heard members of the gallery call Mr. Curtis a “coward” again and that someone said directly to the jury, “he didn’t see it coming.” However, these statements were previously said in the jury’s presence and the trial court already had the opportunity to assess the prejudicial impact of these phrases. As such, the trial court had sufficient information to rule on the motion for mistrial and did not abuse its discretion in refusing to voir dire the jury. *See Bruce v. State*, 351 Md. 387, 396 (1998) (trial court did not abuse its discretion in refusing to voir dire jury to investigate whether jurors had seen potentially prejudicial information on an electronic bulletin board at the courthouse about the defendant.). Furthermore “we must remember the trial judge’s unique role and distinct advantage in evaluating questions of prejudice to a criminal defendant[.]” and “ability to ascertain the demeanor of jurors[.]” *Nash*, 439 Md. at 87. As such, we affirm the trial court’s denial of the motions for mistrial.

B. Witness Statement from Mr. Jaramillo

Next, Mr. Curtis argues that the trial court erred in refusing to admit an out-of-court statement of a witness, Mr. Jaramillo, thereby denying him of his right to present a defense, because the statement was admissible under the residual exception to the hearsay rule. Alternatively, Mr. Curtis claims that the statement is admissible pursuant to the Due Process Clause of the Fourteenth Amendment. Furthermore, according to Mr. Curtis, the State cannot show that the court's error in refusing to admit the statement was harmless beyond a reasonable doubt and thus, reversal is required.

1. Residual Hearsay Exception: Md. Rule 5-803(b)(24)

While appellate courts generally review the admissibility of evidence for abuse of discretion, the question of whether hearsay qualifies for an exception is reviewed *de novo*. *Wise v. State*, 471 Md. 431, 442 (2020) (citing *Bernadyn v. State*, 390 Md. 1, 7–8 (2005)). Therefore, we review such cases without deference to the trial court. *Wise*, 471 Md. at 442. The factual findings underlying the trial court's legal conclusions, however, are reviewed for clear error. *Id.* at 442–43 (citing *Gordon v. State*, 431 Md. 527, 538 (2013)).

Hearsay is “a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted.” Md. Rule 5-801(c). Hearsay is not admissible unless “otherwise provided by these rules or permitted by applicable constitutional provisions or statutes.” Md. Rule 5-802. Maryland Rule 5-803(b)(24), also referred to as the “residual” or “catch-all” exception to the hearsay rule, reads:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

[. . .]

Under exceptional circumstances, the following are not excluded by the hearsay rule: A statement not specifically covered by any of the hearsay exceptions listed in this Rule or in Rule 5-804, but having equivalent circumstantial guarantees of trustworthiness, if the court determines that (A) the statement is offered as evidence of a material fact; (B) the statement is more probative on the point for which it is offered than any other evidence which the proponent can procure through reasonable efforts; and (C) the general purposes of these rules and the interests of justice will best be served by admission of the statement into evidence. A statement may not be admitted under this exception unless the proponent of it makes known to the adverse party, sufficiently in advance of the trial or hearing to provide the adverse party with a fair opportunity to prepare to meet it, the intention to offer the statement and the particulars of it, including the name and address of the declarant.

Md. Rule 5-803(b)(24); *see also* *Wood v. State*, 209 Md. App. 246, 327–28 (2012).

The Committee Note for the Rule emphasizes that “[t]he residual exception provided by Rule 5-803(b)(24) does not contemplate an unfettered exercise of judicial discretion, but it does provide for treating new and presently unanticipated situations [. . .] It is intended that the residual hearsay exception will be used very rarely, and only in exceptional circumstances.” Md. Rule 5-803(b)(24). Our Supreme Court further explained in *State v. Walker*, that “we made clear in our endorsement of the Committee Note to Rule 5–803(b)(24) what we meant by ‘exceptional circumstances’—‘new and presently unanticipated situations....’” 345 Md. at 325. The “exceptional circumstances” requirement is to be strictly enforced. *Wood*, 209 Md. App. at 329 (citing *Walker v. State*, 107 Md. App. 502, 524 (1995), *aff’d*, 345 Md. 293 (1997)). “Exceptional circumstances”

is the “first prerequisite” and determinative to admissibility under Rule 5-803(b)(24). *Walker*, 345 Md. at 325.

2. Analysis

Mr. Curtis argues that Mr. Jaramillo’s statement should be admitted under Rule 5-803(b)(24) because both the State and the defense have been unable to locate Mr. Jaramillo and “the circumstances were exceptional: the surveillance videos contained no sound, and [Mr. Jaramillo’s] statement was the only evidence that would have given accurate, detailed, objective voice to the verbal exchange that occurred between Mr. Curtis and Mr. Cunningham on the bus, and which precipitated the stabbing incident.” We are not persuaded that such situation is a “new and presently unanticipated situation” as envisioned by the Rule. The inability to locate witnesses is not unanticipated, as evidenced by Rule 5-804(a)(5).⁵ See *Nixon v. State*, 140 Md. App. 170, 185 (2001) (holding that “admission of out-of-court statements of alleged child abuse victims is plainly anticipated and the legislature has crafted a detailed statute that addresses same. [. . .] The fact that this statute exists belies the notion that the circumstances in this case are exceptional.”).

⁵ Maryland Rule 5-804(a)(5) reads:

(a) Definition of Unavailability. “Unavailability as a witness” includes situations in which the declarant:

[. . .]

(5) is absent from the hearing and the proponent of the statement has been unable to procure the declarant’s attendance (or in the case of a hearsay exception under subsection (b)(2), (3), or (4) of this Rule, the declarant’s attendance or testimony) by process or other reasonable means.

Md. Rule 5-804(a)(5).

Moreover, the bus surveillance video containing no sound, combined with Mr. Jaramillo's statement allegedly being the only evidence of what occurred between Mr. Curtis and Mr. Cunningham prior to the stabbing, is neither "unique" nor "exceptional." The circumstances in the present case are relatively unremarkable compared to those in *Walker* and *Wood*, which were held to be nothing "unique" or "exceptional." *Walker*, 345 Md. at 329; *Wood*, 209 Md. App. at 333. In *Walker*, a statement from the girlfriend of defendant given to police prior to their marriage was held inadmissible under Rule 5-803(b)(24) because "[t]here is nothing 'unique' or exceptional about a spouse invoking his or her statutory privilege." 345 Md. at 329. In *Wood*, decedent's identification of his assailants in an assault just days prior to his death was held inadmissible because the "death of a declarant is not a 'new and [] unanticipated situation []' for which the residual hearsay exception [] should be applied." 209 Md. App. at 333. Considering our jurisprudence, the trial court here did not err in finding that there were not exceptional circumstances as a prerequisite for admissibility under Rule 5-803(b)(24).

Similar to the *Wood* case, because we find no exceptional circumstances for admitting Mr. Jaramillo's statement pursuant to Rule 5-803(b)(24), we need not address the other conditions outlined by the Rule. 209 Md. App. at 333 ("Because we determine that there were no exceptional circumstances justifying admission of [the victim's] statements pursuant to Maryland Rule 5-803(b)(24)—and that [the victim's] death was not an exceptional circumstance—we need not address the other factors required for admission of a statement under the Rule as outlined. . ."). We conclude that the trial court did not err

in refusing to admit the statement of Mr. Jaramillo pursuant to the residual hearsay exception under Rule 5-803(b)(24).

Alternatively, Mr. Curtis claims that the statement is admissible pursuant to the Due Process Clause of the Fourteenth Amendment. The State counters that such argument has not been preserved for appellate review, as it was not argued before the trial court. We agree and thus, decline to address this argument. *See* Md. Rule 8-131 (“Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court. . .”).

Furthermore, because we conclude that the trial court did not err in refusing to admit the statement of Mr. Jaramillo, we also need not discuss harmless error. *See Dorsey v. State*, 276 Md. 638, 659 (1976) (“[W]hen an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed ‘harmless’ and a reversal is mandated.”).

III. CONCLUSION

We conclude that the trial court did not abuse its discretion in denying Mr. Curtis’s motions for mistrial based on the disruptions from the gallery in the jury’s presence and the hallway conversation between the prosecutor and members of the gallery seen by some of the jurors because the instructions provided to the jury were sufficient to cure any prejudice to Mr. Curtis. Moreover, the trial court did not abuse its discretion in refusing to voir dire the jury as to statements heard during the second disruption in the gallery because

there was no jury misconduct that raised a presumption of prejudice and the trial court had sufficient information to rule on the motion for mistrial, negating the need for voir dire.

We further conclude that the trial court did not err in refusing to admit the statement of Mr. Jaramillo into evidence pursuant to the residual hearsay exception because the inability to locate a witness is not a “newly and presently unanticipated situation” as envisioned by Rule 5-803(b)(24). Moreover, the fact that the statement is allegedly the only evidence of what occurred prior to the stabbing is not “unique” or “exceptional.” Lastly, Mr. Curtis’ due process argument is unpreserved, and we therefore decline to address it.

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY IS
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**