Circuit Court for Montgomery County
Case No. C-15-CR-23-001036

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 528

September Term, 2024

FLOYD DARNELL POWELL

v.

STATE OF MARYLAND

Graeff,
Beachley,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 8, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

Convicted by a jury in the Circuit Court for Montgomery County of second degree assault and false imprisonment, Floyd Darnell Powell, appellant, presents for our review two issues: whether the court "abused its discretion by refusing to declare a mistrial," and whether the court erred in imposing separate terms of imprisonment for the offenses. For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Paula Schum (hereinafter "Paula"), who testified that she is the mother of Sara Schum (hereinafter "Sara") and the grandmother of Sara and Mr. Powell's children Vanessa, Farrah, and Floyd. On January 2, 2022, Paula received a phone call from Vanessa, who stated "that her parents were having a bad fight," Mr. Powell "had grabbed [Sara] and had her downstairs," and Sara "couldn't come up." Vanessa also "thought that [Sara] was being hurt," and stated that Sara "wanted [Paula] to call the police." Paula could hear Sara "screaming, call the police." Paula called police and drove to Sara's residence. A "couple of minutes" later, police arrived and entered the residence. Sara subsequently exited the residence and entered Paula's car. Paula saw that Sara's "face was puffy" and "swollen," "[h]er eyes were puffy," "her voice was raspy" and "hoarse," and "she had a very difficult time talking." Sara was subsequently "escorted to [an] ambulance."

The State also called Montgomery County Police Officer Megan Duffey, who testified that she and another officer responded to the "call for service at" Sara's residence. Officer Duffey saw "someone in the second-floor window" and "asked if she could come down to the door to speak with" the officers. The person, who was a woman, replied "that she was unsure . . . if he . . . was still in the house." The woman "seemed scared and

fearful," and "[h]er voice was hoarse." The woman "start[ed] to cry," and stated "that she had been screaming for her daughter" to "call 911 because he was choking her and assaulting her, and she needed help." The woman came down to the front door and identified herself as Sara. Officer Duffey testified:

> [Sara] said that when she woke up in the morning, she came downstairs. She said she woke up around 8:00 in the morning. And when she came downstairs, her boyfriend was in the living room on the couch. And she knew he wasn't supposed to be there. At some point, she did ask him to leave, and that caused kind of heated confrontation. And at some point, he came closer to her, and she said that he began to choke her and pulled her around the corner to where the basement stairs are and pulled her down the stairs by her neck. And they fell on the floor. She said the whole time, she was screaming for her daughter to call 911, or anyone to call 911 who could hear her. She said that he was using his feet to keep her in place. And she said she was trying to fight. Eventually, she got away from him choking her by hitting him with a metal pole that she had within reach of her. She said that he had her contained in the basement. There's no door to the outside in the basement, so they were contained within this basement. And she tried to get away from him for about 30 minutes.

The State subsequently played for the jury a video recording of Officer Duffey's interaction with Sara made by the officer's "body-worn camera."

The State also called Joshua Aman, who testified that he is "a firefighter/EMT with the Montgomery County Fire and Rescue." EMT Aman testified that on January 2, 2022, he responded to Sara's residence and spoke with her. Sara, whose "voice was extremely raspy," stated "that she had been hit, strangled, and thrown down a flight of stairs, and that she almost lost consciousness when she was strangled." EMT Aman observed "a burn mark on [Sara's] knee from what looked like a rug burn," "grab marks on her arms," "marks on her back," and "bruises."

Following trial, the court imposed a term of imprisonment of ten years, all but eight years suspended, for the second degree assault. For the false imprisonment, the court imposed a term of imprisonment of ten years, all suspended, to be served consecutively to the sentence for second degree assault.

Mr. Powell first contends that the court "abused its discretion by refusing to declare a mistrial." At trial, the State called Sara, who testified, in pertinent part, that she knew that she "could hurt [Mr. Powell] with the system," that Mr. Powell did not strangle, choke, or assault her, and that she did not "sustain[] injuries from [Mr. Powell] dragging [her] down the basement steps." The State subsequently called Montgomery County Police Detective Leonor Pellot, who confirmed that on January 2, 2022, the detective met with Sara "at the hospital." The following colloquy then occurred:

> [PROSECUTOR:] After that day at the hospital, did she call you?
>
> * * *
>
> [DET. PELLOT:] I called her.
>
> [PROSECUTOR:] And what did you say to her?
>
> [DET. PELLOT:] The first conversation that I had with her was on January 4th, and she was undecided about being interviewed. I also talked about interviewing the children, and she felt that they would not be comfortable with being interviewed.
>
> She also talked about a conversation she had with Child Protective Services, and her feelings there; that – a protective order that she was obtaining; and then that he was on probation.
>
> [PROSECUTOR:] Let me ask you this: Did she ever make any –
>
> [DEFENSE COUNSEL]: Your Honor –

THE COURT: Yes.

I'd ask the ladies and gentlemen of the jury to disregard the last statement made by the witness.

And you can ask your next question.

[DEFENSE COUNSEL]: Your Honor, I apologize. May we very briefly?

(Bench conference begins:)

THE COURT: Yes?

[DEFENSE COUNSEL]: I'd move for a mistrial –

THE COURT: Okay. It's denied. It's denied.

Detective Pellot subsequently confirmed that Sara "said she didn't want charges," because "she express[ed] concern about [Mr. Powell] going to jail."

Mr. Powell contends that the "detective's testimony . . . was incredibly prejudicial testimony, which required a mistrial as the only possible cure." We disagree. We have stated that "[i]n determining whether to grant a mistrial, courts should consider

> whether the reference . . . 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."

Jackson v. State, 230 Md. App. 450, 467-68 (2016) (internal citations and brackets omitted). In reviewing whether a trial court abused its discretion in failing to grant a mistrial in response to impermissible testimony, we consider whether "the trial court immediately sustained [an] objection to the question and struck it," whether the defendant

requested a curative instruction, and whether, following "the presentation of evidence," the court instructed the jury to "give [no] weight or consideration" to "testimony that [the court] struck or told [the jury] to disregard[.]" *Id.* at 468 (quotations omitted).

Here, Detective Pellot's mention that Mr. Powell had been "on probation" was a single, isolated statement. The reference was not solicited by the prosecutor, but was instead an inadvertent and unresponsive statement. Detective Pellot's testimony related primarily to the discrepancy between the statements made by Sara to Officer Duffey and EMT Aman and her testimony at trial, and hence, the entire prosecution did not depend upon Detective Pellot and the jury's determination of the detective's credibility. The State presented a great deal of other evidence, including lengthy and detailed testimony by Paula, Officer Duffey, and EMT Aman, and video footage recorded by Officer Duffey's body-worn camera. Immediately after Detective Pellot made the challenged reference, the court, recognizing the objectionable nature of the testimony, *sua sponte* gave a curative instruction. Finally, following the close of the evidence, the court instructed the jury to give no "weight or consideration" to "[a]ny testimony that [the court] struck[] or told [the jury] to disregard," and if the court "ordered that [an] answer be stricken," to "disregard both the question and the answer." We conclude that, in light of these circumstances, the court's instructions were adequate to cure any prejudice that may have resulted from the challenged reference, and hence, the court did not abuse its discretion in denying the motion for mistrial.

Mr. Powell next contends that "because any confinement was integral to the assault," the "false imprisonment conviction merges into [the] second [] degree assault

conviction" as "a matter of fundamental fairness." The State counters that we "should decline to consider [the] challenge because it is not preserved." Alternatively, the State contends that the court "properly imposed separate sentences for" the offenses.

We agree with the State that the contention is not preserved. We have stated that although a "sentence that should have merged based on required evidence or the rule of lenity is considered to be an illegal sentence under Rule 4-345(a)," an "argument for merger based on fundamental fairness does not enjoy the procedural dispensation of" the Rule, and hence, must be raised at sentencing. *Koushall v. State*, 249 Md. App. 717, 737 (2021) (internal citations, quotations, brackets, and footnote omitted), *aff'd*, 479 Md. 124 (2022). Mr. Powell did not raise such an argument at sentencing, and hence, we shall not reach the contention.

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