Circuit Court for Baltimore City
Case No.: 120195024

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 913

September Term, 2023

MITCHELL LITTLE

V.

STATE OF MARYLAND

Leahy,
Friedman,
Beachley

JJ.

Opinion by Friedman, J.

Filed: July 7, 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 its persuasive value only if the citation conforms to MD. R. 1-104(a)(2)(B).

After a jury trial in the Circuit Court for Baltimore City, appellant Mitchell Little was convicted of one count of first-degree assault, one count of using a firearm in the commission of a crime of violence, one count of reckless endangerment, and one count of carrying a shotgun with the intent to use it in a crime. On appeal, Little argues that (1) the trial court erred in denying his motion for a mistrial based on facial expressions made by the trial judge; (2) the evidence is insufficient to support his convictions for first-degree assault and use of a firearm in a crime of violence; and (3) his sentences for carrying a shotgun and use of a firearm in a crime of violence should be merged. For the reasons that follow, we vacate Little's 60-day sentence for carrying a shotgun with the intent to use it in a crime but otherwise affirm the judgment of the trial court.

BACKGROUND

At trial, the evidence presented by the State established that sometime before noon on June 12, 2020, Little knocked on the front door of the rowhouse at 202 North Chester Street, Baltimore. One of the three residents, Mark Branson, answered. Little held up his phone to show Branson a picture and asked if Branson had seen his daughter. Branson said "no" and closed the door. A few hours later, the doorbell rang again and someone began knocking at the door. This time, another resident of the house, Ian Bravo, answered the door. Bravo testified that he tried to only crack the door open to see who was there. As soon as he opened the door a crack, however, Little pushed it in. Bravo saw that Little was holding a shotgun and immediately grabbed for it. The two men wrestled for control of the shotgun, knocking over and smashing things in the house during the struggle. Eventually, Little dragged Bravo back outside, down the front steps, and onto the sidewalk. Bravo

testified that as they were struggling for the shotgun, Little kept threatening to "blow him up." Bravo was "bashed in the head" several times. As soon as he was able, Bravo ran back into the house and closed the door. During the altercation, Branson had come downstairs and called the police. A doorbell camera captured screenshots of the events.

In addition to the evidence presented by the State, Little chose to testify in his own defense. He explained that he lived in a house across the alleyway from 202 North Chester Street with his girlfriend, his four kids, and her three kids. On the morning of June 12, he was home with four of the children. While he was outside in the backyard, he saw two people emerge onto the third-floor balcony of 202 North Chester St. One of the people was his thirteen-year-old stepdaughter, J., who was supposed to have been at her godmother's house. J. was arguing with a large man who appeared to have pushed her out the door and onto the balcony. Little heard the man yell "I'll smack you in front of your father." The man then struck J., causing her to almost fall over the balcony railing. Little called over to J. asking what she was doing over there, but neither J. nor the man answered. The man then dragged J. back into the house.

Little stated that he immediately went to the front door of 202 N. Chester and rang the doorbell. He said it took several minutes for someone to answer, and the man who eventually came to the door acted weird, like he'd known Little was coming. Little asked about his stepdaughter and showed the man a picture on his phone. He told the man that he "[he] could have sworn that someone just slapped my daughter across the balcony" and asked if she was in the house. The man said no and closed the door. Little testified that he thought he heard the man call him a "bitch" as he closed the door.

Little said that he didn't think to call the police, but knew he needed to get J. out of the house. He went home to get his shotgun and returned to 202 N. Chester Street. Little said that when he returned, he calmly rang the bell and waited about a minute and a half for someone to answer the door. When a different man answered, Little held the gun at his side and asked for his daughter. The man immediately grabbed the shotgun and pulled it, dragging Little into the house. There was a struggle, and Little described that he was pushed up against a wall and he heard a lot of things fall. Little said that he was struggling to get the shotgun back and to get back out the door. Once they got outside, both men fell down the steps. Little let go of the shotgun as he was falling. Out on the sidewalk, Little punched the man with his fist and took the shotgun back. When Little looked back inside the house, he saw the man from his first visit with no clothes on. He yelled for the man to put some clothes on and let his daughter out of the house. At that point, Little thought someone in the house must have called the police, so he ended the struggle and let the man who'd answered the door get up and go back inside. Little then went home.

DISCUSSION

I. MISTRIAL

In his first issue, Little challenges that the trial judge erred in denying his motion for a mistrial based on facial expressions the trial judge allegedly made during Little's testimony. We disagree.

Shortly after the State began to cross-examine Little, Little's attorney asked to approach the bench. At the bench conference, defense counsel informed the trial judge that it was obvious from his facial expressions that he did not believe some of Little's testimony.

Defense counsel expressed concern that the jury might see the trial judge's expressions and be influenced. The trial judge acknowledged that he found Little's testimony "difficult to listen to and in any way believe," but noted that he "had tried [his] best to not indicate [his] views of the testimony" and that to the extent that he found it difficult to do, he "attempted to direct [his] face away from the jury." The trial judge further noted that as he observed the jurors, he could "clearly observe in many of their faces what appears to be trouble understanding or accepting Mr. Little's testimony."

Defense counsel stated that he did not believe the trial judge purposely made faces or intended to influence the jury, but argued that nonetheless, if even one juror had observed the trial judge "smirking" at parts of the testimony, there was no way that Little could receive a fair trial. In response, the State asserted that it had not seen the same facial expressions that defense counsel described, that the jurors were more likely to have been looking at the testifying witness than the trial judge, and that not all the jurors had a direct line of sight to the trial judge. The trial judge held the motion sub curia. After both the State and Defense had rested, the trial judge made his ruling and denied the motion for a mistrial:

> In reviewing, though, the request for a mistrial, certainly it's the extraordinary last resort for the Court to take if there's no other corrective action to save a fair trial on the defendant's behalf. And I think in this case, and again, it should only be granted if there's no manifestly necessary … way to otherwise prevent any prejudice or unfair trial. And … it should only be granted with great caution for the plain and obvious reasons.
>
> I think in this instance, though, that the corrective instruction which we did discuss before where the Court would be expanding upon Instruction 3, Maryland Pattern of Criminal Instructions, 3.0 by adding to that portion of it says that you should not draw any conclusion of my views of the case or any

> witness from my comments, questions[,] or expressions, that the Court believes that that curative instruction would be a corrective action short of declaring a mistrial.
>
> So … the request for a mistrial is denied.

Later, as the trial judge gave the jury their instructions, he admonished that

> [d]uring the trial, I may have commented on the evidence, or asked a question of a witness. You should not draw any conclusion about my views of the case … or of any witness from my comments, questions, or expressions.

We review a trial court's decision to deny a mistrial under the abuse of discretion standard. *Vaise v. State*, 246 Md. App. 188, 239 (2020). Maryland courts have consistently maintained that "the declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice." *See, e.g.*, *Simmons v. State*, 208 Md. App. 677, 690 (2012); *Cooley v. State*, 385 Md. 165, 173 (2005). A trial judge who was "physically on the scene, able to observe matters not usually reflected in a cold record" is in a much better position to weigh the effects of any alleged inadmissible evidence or other improprieties during trial. *Simmons v. State*, 436 Md. 202, 212 (2013) (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)). Thus, a decision to grant or deny a mistrial is within the sound discretion of the trial judge and will not be disturbed unless it is "'manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.'" *Simmons*, 436 Md. at 212 (quoting *Stabb v. State*, 423 Md. 454, 465 (2011) (citations and quotations omitted)).

The threshold for whether to grant a mistrial is "the possible prejudice that a defendant may suffer." *Cooley*, 385 Md. at 173. If "the prejudice to the defendant was so

substantial that he was deprived of a fair trial," a mistrial is necessary. *Id*. at 173 (cleaned up). It is the responsibility of the trial judge to "evaluate the circumstances of the case and '[i]n assessing the prejudice to the defendant, … determine whether the prejudice can be cured by instruction.'" *Id*. (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)). If "the curative effect of [an] instruction ameliorates the prejudice to the defendant," a mistrial is not necessary. *Cooley*, 385 Md. at 173 (quoting *Kosh*, 382 Md. at 226).

Little argues that, when considering a motion for a mistrial, the threshold inquiry for the trial judge should be different if the motion is made by the defendant. Little asserts that when a defendant requests a mistrial, it should be granted as a simple "matter of fairness" without having to find that there was a manifest necessity. Thus, he urges that by considering whether there was a "manifest necessity" to declare a mistrial, the trial judge here failed to properly exercise his discretion to evaluate the simple "fairness or unfairness caused by the court's facial expressions."

We have not found any support for Little's assertion that Maryland law recognizes a lesser standard for granting a mistrial when it is requested by the defendant. "[D]eclaring a mistrial is an extreme remedy not to be ordered lightly." *Nash v. State*, 439 Md. 53, 69 (2014). Whether a mistrial is required "is contingent on the impact of the error" and must sometimes "be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Burks v. State*, 96 Md. App. 173, 187, 188 (1993). The prejudicial effect of an error and its ability to be remedied by a curative

instruction do not change based on who requests the mistrial.[1] We, therefore, conclude that the trial court applied the correct standard in evaluating whether a mistrial was necessary.

Here, Little does not allege that the trial judge was not impartial or that he behaved in a way that suggested he was biased. Little asserts only that the trial judge unintentionally reacted to testimony and displayed facial expressions suggesting that he was "not believing" Little's testimony. It was and is unknown whether any of the jurors saw the judge's reaction to the testimony. "[O]ur legal system necessarily proceeds" on the presumption that jurors follow the instructions provided to them by the court. *Collins v. Nat'l R.R. Passenger Corp*., 417 Md. 217, 252 (2010). We are not persuaded that the possibility that if even one juror saw the trial judge react during Little's testimony that it would cause such overwhelming prejudice that a curative instruction would be ineffective. Under the circumstances, we cannot say that the trial court abused its discretion by denying Little's motion for a mistrial.

[1] Maryland law does recognize a different standard for what happens *after* a mistrial has been declared. After a mistrial, whether or not a defendant can be retried implicates constitutional double jeopardy questions, and the answers to those questions can depend on who asked for the mistrial. *Giddins v. State*, 163 Md App. 322, 329-30, 333-34 (2005). If a mistrial is declared at the request of the prosecution or *sua sponte* by the trial judge, retrial can be barred by double jeopardy protections unless there was a "manifest necessity" to declare the mistrial. *Id*. at 333-34 (citing *Fields v. State*, 96 Md. App. 722, 733 (1993)). When a mistrial has been declared at the request of the defendant, however, it is generally considered a waiver of any double jeopardy claim and the manifest necessity analysis is unnecessary. *Giddens*, 163 Md. App. at 334 (citing *Oregon v. Kennedy*, 456 U.S. 667, 672 (1982)). We are not persuaded, however, that whether a defendant could be retried later is relevant to determining whether the defendant is being deprived of a fair trial now.

II. SUFFICIENCY OF THE EVIDENCE

Little next challenges that the evidence was insufficient to support his convictions for first-degree assault because, while the evidence showed that he was in possession of a firearm during the assault, there was no evidence that he used or intended to use the shotgun. We are not persuaded.

When we review a challenge to the sufficiency of the evidence, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Scriber v. State*, 236 Md. App. 332, 344 (2018) (cleaned up). It is not our role to determine whether we believe "that the evidence at the trial established guilt beyond a reasonable doubt." *Roes v. State*, 236 Md. App. 569, 583 (2018) (cleaned up). The responsibility for "weighing the credibility of witnesses and resolving conflicts in the evidence are matters entrusted to the sound discretion of the trier of fact." *Scriber*, 236 Md. App. at 344 (cleaned up). "We defer to any possible reasonable inferences the jury could have drawn from the admitted evidence and need not decide whether the jury could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence." *Fuentes v. State*, 454 Md. 296, 308 (2017). The "limited question before an appellate court is not whether the evidence should have or probably would have persuaded the majority of fact finders but only whether it possibly could have persuaded any rational fact finder." *Scriber*, 236 Md. App. at 344 (cleaned up).

In making his argument, Little points out that Maryland caselaw has acknowledged a distinction between *using* a firearm and the "bare possession" of a firearm in the

commission of a crime of violence. *Wynn v. State*, 313 Md. 533, 542 (1988) (holding that the evidence did not support a conviction for "use" of a firearm in the commission of a crime of violence where the evidence only showed that the defendant had a handgun in his possession during a housebreaking in which no one else was present). Little asserts that the same distinction is appropriate here: he merely possessed the shotgun but had no intention to use it to frighten the victim.

It was undisputed at trial that Little was holding a shotgun when Bravo opened the door. Moreover, Bravo testified that he was afraid for his life and that Little repeatedly threatened to "blow him up." Although Little denies that he threatened to use the gun and disputes that the gun was meant to threaten or frighten Bravo, it was the jury's role to evaluate the credibility of the witnesses and weigh the evidence. There is sufficient evidence in the record to support the jury's finding that Little used the shotgun during the assault. The evidence was therefore sufficient to support Little's conviction for first-degree assault.

III. SENTENCING

In his final issue, Little asserts that the separate 60-day sentence for carrying a shotgun with the intent to use it in the commission of a crime (Count 5) must merge into his 10-year sentence for use of a firearm in a crime of violence (Count 2). The State agrees and so do we.

Federal double jeopardy law prohibits an individual from being punished multiple times for the same offense. *State v. Frazier*, 469 Md. 627, 640-41 (2020). To "[protect] a convicted defendant from multiple punishments for the same offense," some convictions

are merged for the purposes of sentencing. *Brooks v. State*, 439 Md. 698, 737 (2014) (citing *Nicolas v. State*, 426 Md. 385, 400 (2012)). Sentences "must be merged when: (1) the convictions are based on the same act or acts, and (2) under the required evidence test, the two offenses are deemed to be the same, or one offense is deemed to be the lesser included offense of the other." *Brooks*, 439 Md. at 737 (citing *Nicolas*, 426 Md. at 400)). Thus, "if all of the elements of one offense are included in the other offense, so that only [one] offense contains a distinct element or distinct elements," the two offenses must merge. *Frazier*, 469 Md. at 644 (cleaned up).

Little was sentenced to 60-days incarceration for violation of Baltimore City Police Ordinance § 59-1, which makes it a crime "for any person to carry … about his person … any rifle, shotgun or other firearm the barrel of which is over 14 inches in length." Little was also sentenced to 20 years incarceration with all but 10 years suspended for violation of Criminal Law Article § 4-204, which makes it a crime to use a firearm, including a shotgun, in the commission of a crime of violence. MD. CODE. CRIMINAL LAW § 4-204(a)(2), (b).

As Little argues and the State agrees, all of the elements of the offense of carrying a long-barreled firearm are included in the offense of using a firearm in the commission of a crime, and both convictions are based on the same event during which Little was in possession of a single firearm. The two offenses, therefore, should merge for the purposes of sentencing.

SENTENCE FOR VIOLATION OF BALTIMORE CITY CODE, ART. 19, §59-1, CARRYING A LONG-

BARRELED FIREARM, VACATED. JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN ALL OTHER RESPECTS. COSTS TO BE PAID BY APPELLANT.