Circuit Court for Harford County
Case No.: 12-K-17-001557

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 976

September Term, 2018

MATTHEW LEON MOOREHEAD

v.

STATE OF MARYLAND

Nazarian,
Friedman,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: December 11, 2019

A jury sitting in the Circuit Court for Harford County found Matthew Moorehead guilty of attempted voluntary manslaughter, two counts of second-degree assault, use of a firearm in the commission of a felony or crime of violence, illegal possession of a regulated firearm, and wearing and carrying a handgun.[1] The court sentenced him to consecutive terms of imprisonment totaling 45 years.

Before us now, Moorehead appeals his convictions arguing: (1) that the trial court abused its discretion by denying his request for a postponement to obtain privately retained counsel; (2) the trial court erred in not sustaining his objection to a portion of the victim's mother's testimony; and (3) that the trial court abused its discretion by declining to grant a mistrial. We hold that the trial court did not abuse its discretion in declining to grant a postponement of the trial; that any evidentiary error was harmless; and that the trial court properly exercised its discretion in declining to grant a mistrial. We, therefore, affirm.

BACKGROUND

Moorehead shot the victim, Climesto Coley, Jr., in the head with a handgun during a fight between the two men that took place on September 25, 2017 in the driveway of Coley's mother's home. Moorehead then stomped on Coley's head and ran away. That much was testified to at trial by both Moorehead and Coley and was verified by surveillance video. Moorehead and Coley, however, had different perspectives on the fight and the events that lead to it. Each claimed the other was the aggressor and each claimed to be acting in self-defense or the defense of others after the other one attacked first.

[1] The jury acquitted Moorehead of attempted first-degree murder, attempted second-degree murder, and first-degree assault.

Coley testified that he recognized Moorehead from the neighborhood, but had never had any "real contact" with him. Earlier on the day Coley was shot, Moorehead approached Coley, pulled out a knife, and said that Coley owed him five dollars. Moorehead then became agitated and said that he was going to shoot up Coley's mother's house, where Coley was living. Later that day, Moorehead and Coley had another argument and Moorehead told Coley, "I'll be back." Coley went inside his mother's house. Then, Coley saw Moorehead running towards his mother's house, so he grabbed a knife from the kitchen and put it in his pocket before going outside. When Coley saw Moorehead approach his mother, who was outside, and watched Moorehead pull a gun from his waistband, he jumped off the porch to defend himself and his mother by fighting Moorehead. Eventually, Coley grabbed the barrel of the gun and it went off, firing a bullet through his hand and out of the back of his head. After Coley fell to the ground, Moorehead stomped on his face before running off. Coley said he never brandished the knife that he took from the kitchen during the fight.

By contrast, Moorehead testified that he had a "business" relationship with Coley, as he had sold Coley crack cocaine five times that summer. Moorehead said that three weeks before the shooting, he sold Coley an "eight-ball" of cocaine worth $185 for which Coley had still not paid him. On the day of the shooting, Moorehead asked Coley about the money he owed. Coley became upset and pulled a kitchen knife out of his pocket. About an hour later, when Moorehead and his family were outside of Moorehead's apartment building, the two had another argument. Moorehead said he told Coley not to come to his apartment while his family was with him, and Coley responded "Eff your family. I'll shoot

this motherfucker up." Moorehead explained that he went to Coley's house armed with a gun to protect his family and himself "in case things got out of hand." When he arrived and saw Coley's mother outside, Moorehead said he intended to talk to Coley's mother about the conflict that he was having with her son. Before Moorehead had the chance to speak with her, however, Coley, armed with a kitchen knife, charged at Moorehead and began threatening to kill him if he did not leave. Moorehead said that during the ensuing struggle, he pulled the gun from his waistband, Coley grabbed it, and it "went off." Moorehead testified that he then kicked Coley in the head because he did not know Coley had been shot and wanted to keep Coley from picking the knife back up. Moorehead then "freaked out and ran."

DISCUSSION

I.

On the morning of the first day of Moorehead's trial, just before jury selection began, Moorehead requested a postponement for the purpose of retaining private counsel to represent him at trial instead of counsel from the Office of the Public Defender. When asked to explain why, Moorehead said:

> I'm trying to get a private attorney. Mr. Howard Greenberg. It just so happened in this incident my mother had to relocate to a different house so she had to spend her money on that. She just got her taxes back so she finally can make payment to Mr. Howard Greenberg and that's who I'm trying to go to trial with.

After confirming that Moorehead's public defender was prepared for trial, that Moorehead was not dissatisfied with his services, and that the only reason Moorehead

wanted to retain different counsel was that he did not want counsel from the Office of the Public Defender, the trial court declined to grant his postponement request, noting that:

> [T]he charges stem in this case from an incident that occurred on or about September 25th, 2017. There was an application for charges. … An arrest warrant was issued. That arrest warrant was served on Mr. Moorehead on October 4th of 2017. He appeared before a district court judge on October 5th, 2017. At that time he was advised of his right to counsel. He was served with the charging document, made aware of the charges and the penalties, and he was held no bond.
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> Thereafter, he was indicted on October 17th, 2017 here in the circuit court. He appeared before Judge Eaves on October 23rd, 2017 and at that time again he was arraigned under Maryland Rule 4-215, again advised of his charges, the penalties, and his right to counsel. I believe at that hearing Mr. Andres was there for purposes of the bail review from the Office of the Public Defender.
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> The Office of the Public Defender entered [its] appearance on October 25th, 2017, specifically Mr. Janowich entered his appearance on behalf of Mr. Moorehead. He has been representing Mr. Moorehead throughout these proceedings, which included a scheduling conference on November 17th on which today's trial date was selected. It was a date selected almost five months later. I believe there was a co-defendant also in this case. So Mr. Janowich has been representing him. We had motions scheduled for February 28th and March 1st which were not necessary.
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> The Court has not received any information concerning Mr. Moorehead's desire not to have Mr. Janowich represent him until this morning. In fact, as Mr. Janowich indicated, last week, specifically on April 5th of 2018, I convened a hearing in which Mr. Moorehead was present. … Mr. Moorehead was present there, did not inform the Court of any issues he had with Mr. Janowich. Nor did he inform the Court that he was taking any steps to obtain counsel. Everyone was informed that we were ready to proceed with trial.
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> Today we have 97 jurors [available] … and it is this morning that the Court has received information that Mr.

> Moorehead is seeking to obtain private counsel. He is not dissatisfied with anything Mr. Janowich has done. It appears that Mr. Janowich, based on what I hear today, has done everything necessary to represent him and is ready to represent him in this matter. Mr. Moorehead's only complaint is he wants a private attorney, yet he still has not taken any steps to hire that private attorney or have a private attorney enter his appearance. The fact he's spoken to Mr. Greenberg two weeks ago and that his mother may now have the funds to do it does not establish good cause to this Court, based on the record, to have this matter postponed so that he can make attempts to try to hire private counsel. So Mr. Moorehead's request for postponement is denied.

Moorehead contends that the circuit court abused its discretion in denying his postponement request and violated his constitutional right to counsel of his choosing. We disagree.

The Court of Appeals has explained that "the decision whether to grant a postponement is within the sound discretion of the trial judge." *Ware v. State*, 360 Md. 650, 706 (2000). We, therefore, review the decision to deny a postponement for abuse of discretion, which occurs "only where no reasonable person would take the view adopted by the trial court or where the court acts without reference to any guiding rules or principles." *Prince v. State*, 216 Md. App. 178, 203-04 (2014) (cleaned up).

In *State v. Goldsberry*, the Court of Appeals explained that the Sixth Amendment right to counsel "includes the right of a defendant, who does not require court-appointed counsel, to select the counsel of [their] choosing[,]" but this right is "qualified." 419 Md. 100, 117-18 (2011). A trial court has "wide latitude in balancing the right to counsel of choice against the needs of fairness, … and against the demands of its calendar." *United States v. Gonzalez-Lopez*, 548 U.S. 140, 152 (2006). There is no "unfettered right to

discharge current counsel and demand different counsel shortly before or at trial … [and] [a] defendant may not manipulate this right so as to frustrate the orderly administration of criminal justice." *State v. Taylor*, 431 Md. 615, 645 (2013); *see Goldsberry*, 419 Md. at 120 (noting that the "essential aim" of the Sixth Amendment is to guarantee an "effective advocate" rather than to "ensure a defendant will be inexorably represented by the lawyer whom he or she prefers").

We hold that the trial court did not abuse its discretion in refusing Moorehead's last-minute request for a postponement to obtain a different lawyer. After questioning both Moorehead and his public defender about the request, the court summarized (in great detail) its reasons for denying the request, noting that Moorehead's counsel's appearance in the case had been entered over five months earlier and that, up to and including the point in time when he requested the postponement, Moorehead never expressed any dissatisfaction with his lawyer or his desire to obtain a different lawyer. The trial court also noted that trial counsel was fully prepared to try the case. Because Moorehead's only reason for requesting the postponement was that he just didn't want an attorney from the Office of the Public Defender, we do not believe that the trial court abused its discretion.

II.

Moorehead next contends that the trial court erred in overruling his objection to a portion of Coley's mother's testimony on the basis that the testimony was not responsive to the pending question. While we agree that the trial court erred in overruling the objection, the error was harmless.

During the State's direct examination of Coley's mother, the State asked her whether she came out of her house on the day of the shooting. She responded with a lengthy narrative about the events that took place immediately before, during, and after the fight and subsequent shooting. Moorehead had already testified about these events and they were captured on surveillance video, which was played for the jury. After explaining that Moorehead shot Coley, stomped on his head, and ran away, she said Moorehead "took that gun and he was intentionally trying to shoot [Coley] in the head." At that point Moorehead objected on the basis that the testimony was "[n]onresponsive."[2]

[2] Coley's mother's full response to the question was as follows:

> Q. Did there come a time on Monday, September 25th, 2017 where you came out of your house?
>
> A. Yeah. I was on my front porch. … I went in the yard to get my mail out the box and when I look up, [Coley] is down there talking to [Moorehead]. And I could tell through body language that something wasn't right. You know what I'm saying? I could just tell. And I yelled down there. I said, [Coley], get your (pause) up here. So he turned around and he walks up to the house. [Moorehead] was jumping around real jittery like and took off like he didn't know which way to go first. I think they was having words. And he took off down the street. Next thing, I'm still going through my mail, going through my mail and I look and [Moorehead's] running up and I thought [Moorehead] was – because he's looking, like, past me and I thought maybe he was –
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> * * *
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> A. [Moorehead] looked kind of over my head and the next thing I know [Moorehead's] right in my yard, 10 inches

Maryland Rule 5-611(a) provides that "[t]he court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth,

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> from me, not even arm's length, and [Coley is] on the porch. And [Moorehead] says to [Coley], You got my effing money? And [Coley] says – and [Coley] says, Oh I guess you – [Moorehead] said, You got my fucking money? You got my five dollars? And [Coley] just steady looking. I said, Hell, I got five dollars. [Moorehead] looks at me and says, You got my fucking money? And the look in his face, I ain't never been so afraid in my life. I don't mean to get upset but I don't like reliving this over and over and over again.
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> So I'm standing there right beside [Moorehead], too scared to move, too scared to stay there, don't know which way to go, what to do. I look up there and I see [Coley] and I said, [Coley], stay on the porch. So [Coley] jumps down off the porch. They started wrestling. [Moorehead] pulls out a gun. They start wrestling around, fighting over this gun. [Moorehead] shoots [Coley]. [Coley] lost his balance and falls back. He shoots, psh—psh, like that. And then [Moorehead] stomps on him. The other guy runs up the street. I think he's trying to get [Moorehead] off of him. I don't know what he's doing. How do you run up in somebody's yard, no regard for me, the mother, or another human being and shoot him, try to shoot him in the head? [Moorehead] could have shot [Coley] in the leg. [Moorehead] could have shot [Coley] in the arm. [Moorehead] could have shot [Coley] anywhere. [Moorehead] took that gun and [Moorehead] was intentionally trying to shoot [Coley] in the head.
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> DEFENSE: Objection. Nonresponsive, Your Honor.
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> THE COURT: Overruled.

(2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Thus, "a judge may strike that part of a witness' answer which was nonresponsive to the question asked." *Ingoglia v. State*, 102 Md. App. 659, 666 (1995).

It seems clear to us that Coley's mother's statement that Moorehead "was intentionally trying to shoot [Coley] in the head" was not responsive to the State's question. The trial court, therefore, erred in overruling Moorehead's objection on that basis. Nevertheless, we agree with the State that the error was harmless.

An error is considered harmless if an independent review of the record establishes, beyond a reasonable doubt, that the error in no way influenced the finding of guilt or contributed to the verdict. *Marquardt v. State*, 164 Md. App. 95, 129 (2005) (quoting *Weitzel v. State*, 384 Md. 451, 461 (2004)). In reviewing the record, we weigh "the importance of the tainted evidence; whether the evidence was cumulative or unique; the presence or absence of corroborating evidence; the extent of the error; and the overall strength of the State's case." *Rosenberg v. State*, 129 Md. App. 221, 254 (1999). "This Court has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury without objection through the prior testimony of other witnesses." *Yates v. State*, 429 Md. 112, 120 (2012).

Coley's mother's comment was a reiteration of the same or similar evidence that had already been admitted earlier (without objection). Coley's mother stated: "How do you run up in somebody's yard, no regard for me, the mother, or another human being and

shoot him, try to shoot him in the head?" This was not objected to. She then went on to repeat that Moorehead was intentionally trying to shoot Coley.

Moreover, as is apparent from the jury's verdict acquitting Moorehead of the most serious charges, and convicting him of attempted voluntary manslaughter, the jury was persuaded that Moorehead had established the elements of imperfect self-defense. The jury was persuaded that Moorehead had an honest belief that he was in imminent danger and needed to resort to self-defense, even if that belief was unreasonable or that he responded with too much force. For these reasons, we are persuaded, beyond a reasonable doubt, that the trial court's error in overruling Moorehead's objection to the lone and unrepeated comment from Coley's mother in no way influenced the verdict and was therefore harmless.

III.

Lastly, Moorehead contends that the trial court abused its discretion in refusing to declare a mistrial after the jury heard from a detective that Moorehead had not contacted the police after the shooting. Instead of granting a mistrial, the trial court, in its discretion, chose to strike the State's question and the detective's answer and instructed the jury to disregard both. In fashioning that remedy, we are persuaded that the trial court did not abuse its discretion.

During the State's direct examination of Detective Michael Berg, the State elicited testimony about the investigation and the search for Moorehead which ensued after identifying him as the individual who shot Coley. The following then occurred:

> STATE: Detective Berg, subsequent to all your investigation in this, what, if any, contact was made by the defendant to the Harford County Sheriff's Office from the time this incident occurred on September 25th to the time he was arrested on October 4th?
>
> A. No contact.

Moorehead did not immediately object.[3] Rather, Moorehead asked to approach the bench, where he requested a mistrial on the basis that the State's question and the detective's answer were tantamount to eliciting evidence of Moorehead's invocation of his "right not to give a statement." The trial court agreed with Moorehead that the question and answer were inadmissible, but declined to grant a mistrial, explaining:

> I don't believe that it's proper to ask that question because it does give the inference that he had to go and speak. He has a right to remain silent and not say anything or he could be implicated. So asking that question was certainly not proper. There was no timely objection made so the response came and there was an objection after the fact. So in terms of the request for the mistrial, I don't find manifest necessity to do that at this point. I believe that striking it and giving this jury a curative instruction will satisfy any issue that may be raised. And unless

[3] Moorehead's failure to object immediately upon hearing the State's question presents potentially serious preservation challenges for any claim that the trial court erred in permitting the testimony in the first instance. *See Williams v. State*, 99 Md. App. 711, 717 (1994) (noting that the preservation requirements are "very strict" and counsel must object "immediately"). But, because Moorehead is challenging the trial court's decision to decline to grant a mistrial, we need not decide the preservation issue.

> it is something that's generated with the defense, that's not a proper question to ask.

The trial court then instructed the jury that "the last question to the officer and the response are stricken. You are to disregard it and not consider it at all." The subject never came up again.

In *Grier v. State*, the Court of Appeals explained that:

> In the absence of an accusation, a defendant's failure to come forward does not constitute an admission, and lacks probative value. Citizens ordinarily have no legal obligation to come forward to the police. … Such silence is simply not probative as substantive evidence of guilt. It is thus inadmissible in the State's case-in-chief.

351 Md. 241, 254–55 (1998).

We review a trial court's ruling on a motion for a mistrial under the abuse of discretion standard.

> 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. It has also been said to exist when the ruling under consideration appears to have been made on untenable grounds, when the ruling is clearly against the logic and effect of facts and inferences before the court, when the ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice.

Nash v. State, 439 Md. 53, 67 (2014) (cleaned up). Moreover, "declaring a mistrial is an extreme remedy not to be ordered lightly." *Id.* at 69. Sometimes, however, a mistrial is necessary "when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *Burks v. State*, 96 Md. App. 173, 187 (1993).

We do not believe that Moorehead suffered "overwhelming prejudice" when the State elicited testimony that Moorehead did not contact the police after he shot Coley. *First*, the trial judge struck the question and its answer (and the State never mentioned it again). *Second*, the jury already knew that Moorehead ran from the scene, changed his clothes, and was not arrested for several days after the shooting. To us, it was obvious that Moorehead did not contact the police prior to his arrest. *Third*, Moorehead testified that he did not call 911 after he shot Coley because it was "not in [his] nature" to do so. And, *finally*, the fact that Moorehead was acquitted of the most serious counts demonstrates the lack of prejudice suffered by Moorehead.

Under these circumstances, the trial court, who was in the best position to craft a remedy, did not abuse its discretion in deciding to strike the question and answer and instructing the jury to ignore it instead of resorting to the "extreme remedy" of ordering a mistrial. We believe that the trial court's remedy was sufficient to cure any possible prejudice that Moorehead may have suffered.

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

The correction notice for this opinion can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0976s18cn.pdf