Circuit Court for Wicomico County
Case No. C-22-CR-22-000310

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1078

September Term, 2023

AUSTIN JACOB ALLEN DAVIDSON

v.

STATE OF MARYLAND

Berger,
Leahy,
Getty, Joseph M.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Getty, J.

Filed: December 22, 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 Rule 1-104(a)(2)(B).

On June 12, 2022, Appellant, Austin Jacob Allen Davidson ("Davidson"), shot and killed Wicomico County Deputy Sheriff Glenn Hilliard. Following a seven-day jury trial in the Circuit Court for Wicomico County, Davidson was convicted of first-degree murder, several firearms offenses, and two counts of burglary. He was sentenced to life imprisonment without the possibility of parole, plus sixty-six years, to be served consecutively.

Through this appeal, Davidson asks us to review several elements of his trial. He presents the following questions, which we have rephrased and renumbered for clarity:[1]

1. Did the trial judge err in admitting testimony that Davidson threatened a correctional officer while awaiting trial?

2. Did the trial judge err by failing to act *sua sponte* to sever two of the firearms charges from the murder charge?

3. Did the trial judge err in admitting video evidence of Davidson firing the semi-automatic rifle which he was charged with illegally possessing?

4. Did the trial judge err in denying Davidson's motion for a mistrial after the prosecutor made improper statements during closing argument?

5. Did the trial judge err in declining to remove the trial to another venue due to the jurors' prior knowledge of the case through pretrial publicity?

[1] Davidson's verbatim questions presented are as follows:

1. Whether the court erred under rules prohibiting irrelevant propensity evidence in admitting Appellant's death threat to a correctional officer.
2. Whether the court erred under Rule 4-253(c) in not severing the "AK-47" counts; or in the alternative, whether it erred under rules prohibiting irrelevant propensity evidence by allowing video evidence of Appellant firing the AK-47.
3. Whether the court erred under *Whack* by denying a mistrial motion after the prosecutor's "suicide by cop" arguments.
4. Whether the court erred under Rule 4-254 in keeping the trial local.

We answer all of the above questions in the negative and affirm the judgment of the Circuit Court.

FACTUAL AND PROCEDURAL BACKGROUND

Beginning in spring 2022, Davidson, then twenty years old, was unhoused and staying with a friend, Ian Collins, at Mr. Collins's residence in Salisbury, Maryland. On June 12, Mr. Collins told Davidson that he was no longer welcome to stay with him. Davidson gathered his belongings, which included clothes, shoes, and two guns, and the two, along with other friends, left the house. The group made several stops throughout Pittsville, a town east of Salisbury, during the afternoon and ultimately dropped Davidson off alone at Pittsville Park in the early evening.

Shortly thereafter, Deputy Hilliard was dispatched to the park after the Sheriff's Office received a call that Davidson, who had several outstanding arrest warrants, was there. Deputy Hilliard pursued Davidson, who fled upon seeing police arrive. As Deputy Hilliard gave chase, Davidson withdrew a handgun from his backpack and fired three shots at Deputy Hilliard, causing his death. Deputy Hilliard's body-worn camera captured the event.

Davidson was arrested that night after surrendering himself to officers. He was indicted for first and second-degree murder, use of a firearm in the commission of a violent crime, illegal firearm possession, burglary, and alteration of a firearm serial number. The several firearms charges related to both the handgun used to kill Deputy Hilliard and an unrelated semi-automatic rifle that was also in Davidson's possession.

A jury trial was held from May 1 through 8, 2023, in the Circuit Court for Wicomico County. Davidson's counsel sought to remove the case to a different venue due to the high amount of publicity Deputy Hilliard's murder received in the community. This motion was denied but re-raised by counsel after the jury was selected because several jurors indicated that they had prior knowledge of the case. The motion was once again denied.

The testifying witnesses at trial included several officers from the Wicomico County Sheriff's Office and the Maryland State Police, other officers, as well as eyewitnesses and other persons otherwise connected to Davidson and the events. Among the witnesses was Officer Kenneth Muir, a correctional officer with the Allegany County Detention Center.[2] Officer Muir testified that, while Davidson was in detention awaiting trial, he threatened Muir, saying: "I'll kill you just like the last cop that tried to f--k with me. . . . I'm going to put you in the ground just like him." The State used this statement as evidence of Davidson's premeditation for the murder and attempted to label him as a "cop-killer."

Davidson's counsel objected to the introduction of Davidson's *post hoc* threat to Officer Muir, arguing that it was irrelevant to the events surrounding Deputy Hilliard's murder. Counsel made several other objections throughout trial, including an objection to a video of Davidson shooting his semi-automatic rifle earlier in the afternoon on the day of Deputy Hilliard's murder, and an objection to portions of the State's closing argument wherein they discussed the possibility of Davidson attempting to commit "suicide by cop."

[2] Upon arrest, Davidson was transported to the Maryland State Police Barrack in Salisbury, Maryland. Davidson waived his right to a review of his pretrial detention status and, accordingly, was held without bond pending trial. On June 16, 2022, his pretrial custody was transferred to the Allegany County Detention Center, Cumberland, Maryland.

Davidson's counsel also moved for a mistrial based on the State's "suicide by cop" comments, which the court denied.

The jury returned a verdict of guilty on all counts. On July 6, 2023, Davidson was sentenced to life imprisonment without the possibility of parole for the first-degree murder charge and sixty-six years for the related offenses. He timely noted his appeal on July 28, 2023.

DISCUSSION

DAVIDSON'S THREAT TO OFFICER MUIR

Davidson's first argument on appeal is that the trial court erred in admitting his statement to Officer Muir that "I'll kill you just like the last cop that tried to f--k with me. . . . I'm going to put you in the ground just like him." Davidson argues that this subsequent threat to another officer is not relevant to Deputy Hilliard's murder and could only be used to demonstrate Davidson's propensity for violence against law enforcement officers, and is therefore inadmissible.

The State, however, contends that the threat was relevant to establishing Davidson's state of mind during the murder. The State argues that Davidson not only admitted to killing Deputy Hilliard but suggested that he did so intentionally, and with premeditation. By threatening to "kill" Muir and "put [him] in the ground just like" Deputy Hilliard, he implied that the prior killing resulted from his choice to "kill" another "cop" who "tried to f--k with" him.

"An appellate court reviews *de novo* a trial court's determination as to whether evidence is relevant." *Portillo Funes v. State*, 469 Md. 438, 478 (2020). Evidence is

relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. "Having 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018). Generally, all relevant evidence is admissible, except as otherwise provided by constitutions, statutes, or other rules. Md. Rule 5-402.

Relevant evidence has two components—materiality and probative value. *State v. Joynes*, 314 Md. 113, 119 (1988). "Evidence is material if it bears on a fact of consequence to an issue in the case." *Akers v. State*, 490 Md. 1, 26 (2025). Probative value "'is the tendency of evidence to establish the proposition that it is offered to prove.'" *Id.* (quoting *Joynes*, 314 Md. at 119). "Evidence is probative if it is 'related logically to a matter at issue in the case[.]'" *Id.* (quoting *Snyder v. State*, 361 Md. 580, 591 (2000)). For evidence to be "related logically" to a matter at issue, the court must be satisfied that the evidence's admission "increases or decreases the probability of the existence of a material fact." *Id.*

The cornerstone issue in this case is premeditation. Davidson here admits to shooting and killing Deputy Hilliard, so his identity as the shooter was not in dispute. What was disputed, however, was whether Davidson killed Deputy Hilliard with premeditation, which is required for a conviction of first-degree murder. *See* Md. Code, CR § 2-201(a)(1). Davidson's defense throughout trial was that his actions were motivated by fear and a desire not to return to jail, rather than an intent to kill Deputy Hilliard. Accordingly, evidence tending to prove or disprove his intent to kill was material to this central issue of premeditation.

The probative value inquiry, then, depends upon how attenuated the evidence is to the material fact it is intended to prove or disprove. *Akers*, 490 Md. at 26. Evidence lacks probative value if there are several inferential leaps between the evidence and the material fact, or if the evidence is "ambiguous and equivocal" and equally consistent with multiple interpretations. *Id.* at 26-27.

In this case, the relevance of Davidson's statement to Officer Muir depends upon how attenuated that statement is to his previous intent, or lack thereof, to kill a police officer. Although his threat to Officer Muir came months after Deputy Hilliard's death, Davidson referred directly to the prior shooting, saying that he would kill Officer Muir "just like" he killed Deputy Hilliard. As he said this, he also referred to Deputy Hilliard as "the last cop who tried to f--k with me" which, as the State suggests, implies that Davidson killed Deputy Hilliard because Deputy Hilliard "tried to f--k with" him when he pursued him in Pittsville Park on June 12, 2022.

This one inference does not amount to the "several inferential leaps" that would render this evidence not probative, nor is it equivocal. Rather, Davidson's statement is direct commentary on Deputy Hilliard's murder and increases the probability that he acted with premeditation and the intent to kill. As such, it is relevant under Rule 5-401 and therefore admissible pursuant to Rule 5-402. We find no error in the trial court's admission of this statement.

Davidson, however, draws our attention to the prohibition on propensity evidence.[3] Davidson emphasizes that the State improperly attempted to use his statement to paint him as a "cop-killer" with a propensity for violence, which he argues justifies excluding the evidence. In its rebuttal closing argument at trial, the State characterized Davidson's threat to Officer Muir as an "attempt to earn status" and said that "[v]iolence against law enforcement officers is highly revered in some circles." The court sustained Davidson's counsel's objections to each of these statements.

We need not address this argument for two reasons. First, the State's improper use of Davidson's threat to Officer Muir has no bearing upon whether the statement itself was relevant, and therefore admissible. As we have explained, Davidson's threat was relevant to his state of mind when he killed Deputy Hilliard.

Second, Davidson received the relief that he requested below. When the State began its "cop-killer" argument, Davidson's counsel made numerous objections, all of which were sustained:

> [STATE]: In some circles a reputation for violence, especially violence against law enforcement, specifically cop killers –
>
> [DEFENSE COUNSEL]: Object.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: Move to strike, Your Honor.

[3] Although Davidson refers to "improper propensity" in his brief before this Court, at trial, he challenged the admission of his statement solely on relevance grounds. As a result, we do not examine this evidence under Maryland Rule 5-403, which allows for the exclusion of unfairly prejudicial evidence, or Rule 5-404, which prohibits propensity evidence. *See Townes v. State*, 264 Md. App. 500, 516 (2025) ("When a party specifies particular grounds for an objection, it is deemed to have waived all other grounds not mentioned.").

THE COURT: The jury will disregard the last comment.

[STATE]: Violence against law enforcement officers is highly revered in some circles.

[DEFENSE COUNSEL]: Object. Move to strike.

THE COURT: Approach. The jury will disregard.

***

THE COURT: The jury will disregard the last comment.

[STATE]: The Defendant made it clear to C[orrections] O[fficer] Kenneth Muir, I'll kill you just like I did the last cop that f--ked with me, I'm going to put you in the ground just like him. The Defendant's attempt to earn status.

[DEFENSE COUNSEL]: Object. Move to strike.

THE COURT: Sustained. The jury will disregard the last comment.

"'Where an objection to opening or closing argument is *sustained*, we agree that there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made.'" *Beckwitt v. State*, 249 Md. App. 333, 385 (2021) (quoting *Hairston v. State*, 68 Md. App. 230, 236 (1986)). Here, not only did Davidson receive sustained objections, but the court also instructed the jury to disregard each comment. Davidson's counsel made no further requests for relief, nor did he move for a mistrial on these grounds. As such, there is nothing for us to review as it pertains to the State's use of the threat in rebuttal closing argument.

SEVERANCE OF THE FIREARMS CHARGES FROM THE MURDER CHARGES

Davidson contends that the trial court erred in failing to sever Counts 12 and 14 from the other counts at his trial. Count 12, knowingly altering a firearm serial number,

and Count 14, possession of a regulated firearm while a fugitive, both concerned Davidson's semi-automatic rifle, which was not involved in the commission of Deputy Hilliard's murder. Davidson argues before this Court that these charges should have been severed because evidence relating to the rifle and evidence relating to the murder were not mutually admissible, but did not request severance in the court below. Instead, he contends that the trial court should have acted *sua sponte*.

Maryland Rule 4-253(c) permits a court to order separate trials of counts "[i]f it appears that any party will be prejudiced by the joinder for trial" of those counts. The court may order severance "on its own initiative or on motion of any party[.]" Md. Rule 4-253(c). The question of whether to join or sever charges is left to the sound discretion of the trial judge. *See Galloway v. State*, 371 Md. 379, 395 (2002); *Frazier v. State*, 318 Md. 597, 607 (1990); *Wilson v. State*, 148 Md. App. 601, 646 (2002).

In a jury trial, the analysis of the joinder of offenses can be reduced to a two-part test: "(1) is evidence concerning the offenses [] mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance?" *Conyers v. State*, 345 Md. 525, 553 (1997). If the answer to both of these questions is yes, then joinder is appropriate; if the answer to the first question is no, then there is no need to address the second question and severance is required as a matter of law. *Id.*

At the outset, we note that although Rule 4-253 provides that a court *may* order severance on its own initiative, it imposes no requirement upon a court to do so. It is still incumbent upon a defendant to make a severance request challenging mutual admissibility

or risk waiving the issue. *See* Md. Rule 4-252(a)(5) (stating that a request for separate trial of offenses is waived unless raised in a pretrial motion in conformity with the rule).

In *Carter v. State*, this Court declined to consider whether the trial court erred in refusing to sever the defendant's felon-in-possession count from the other counts for which he was charged. 145 Md. App. 195, 220–21 (2002), *rev'd on other grounds*, 374 Md. 693 (2003). The defendant filed a pretrial omnibus motion which did include a general motion to sever, but he failed to specify which counts he sought to sever and, after filing his omnibus motion, "failed to bring his severance request to the trial court's attention or pursue it in a more particularized way." *Id.* at 221. "Accordingly, the trial court never ruled on the issue of severance." *Id.* We concluded that the defendant's failure to bring any severance request to the attention of the trial court constituted a waiver of his request to sever. *Id. See also Tracy v. State*, 319 Md. 452, 457 (1990) (reasoning that the defendant waived any right to severance by failing to specifically request it because "[a] defendant can lose his rights under joinder and severance law by failing to assert them in a timely fashion[,]" even in the event of misjoinder); *Lee v. State*, 186 Md. App. 631, 668 (2009) (holding that the defendant failed to preserve the issue of whether his charges were improperly joined because he did not make the same argument below that he made on appeal), *rev'd on other grounds*, 418 Md. 136 (2011).

The circumstances here are the same as those in *Carter*. Davidson here made no particularized request to sever Counts 12 and 14 from the murder-related charges. Rather, he included a general request to sever in a pretrial omnibus motion. In his Motion Pursuant to Maryland Rule §4-252 [sic], Davidson moved "that he be tried separately for each

offense and apart from each and every other Defendant, and respectfully avers that to proceed otherwise would be clearly prejudicial to the Respondent's Constitutional and other legal rights." Davidson took no further action on this motion and otherwise failed to bring his severance request to the trial court's attention. As a result, as was the case in *Carter*, "the trial court never ruled on the issue of severance." 145 Md. App. at 221.

Despite his failure to request that the trial court sever Counts 12 and 14, Davidson relies on *Spease v. State*, 21 Md. App. 269 (1974) for the proposition that a party's failure to move for severance does not bar appellate review. In *Spease*, the appellant alleged error in the trial judge's failure to sever, *sua sponte*, a count charging the appellant with conspiracy to distribute cocaine with two other persons from four other counts which did not charge him. 21 Md. App. at 299. This Court did address the merits of whether joinder was appropriate in that instance, but said that the fact that the appellant never requested severance was "[o]f even greater significance to our decision" than any other fact considered. *Id.* at 300. We held that, "[u]nder all of the circumstances, *particularly the failure of [the appellant] to request a severance*, we do not feel that there was any abuse of discretion on the part of [the trial judge] in not taking it upon himself to order severance." *Id.* (emphasis added).

Davidson' counsel conceded, both in his brief and at oral argument, that the failure to specifically request severance is significant to our determination of whether the trial court abused its discretion in failing to sever the counts. Considering that Davidson did not make a request to sever the rifle-related counts from the murder-related counts, we find no abuse of discretion in allowing the counts to be tried jointly.

VIDEO OF DAVIDSON FIRING THE SEMI-AUTOMATIC RIFLE

In the alternative to his contention that the trial court should have severed the rifle-related counts, Davidson argues that the court erred in admitting a video of Davidson firing said rifle on the day of Deputy Hilliard's murder. When the video was introduced into evidence, Davidson's counsel made a general objection, which was overruled without further argument or explanation. A general objection to the admission of evidence "ordinarily preserves for appellate review all grounds which may exist for the inadmissibility of the evidence." *Boyd v. State*, 399 Md. 457, 476 (2007). Davidson now states his challenge as one of relevance, which we review *de novo*. *Portillo Funes*, 469 Md. at 478.

The video at issue was taken by Mr. Collins at approximately 5:30 p.m. on June 12, 2022—about three hours before the shooting—and depicted Davidson firing approximately six or seven rounds from the same semi-automatic rifle that he was charged with illegally possessing. Davidson claims that this video was irrelevant to any charge because "[o]perability was a non-issue; before the video's admission the ballistics expert already testified to test-firing both guns. [] And the firearms' possession was undisputed." The State, however, argues that "video showing Davidson firing the gun was strong evidence that he possessed it."

As we have explained above, relevance is a very low bar to meet because the evidence need only have any tendency to make any fact more or less probable. *See Williams*, 457 Md. at 564. Here, the video of Davidson firing the rifle tended to prove that he in fact possessed it, a material element of the charge of possession of a regulated firearm

while a fugitive. *See* Md. Code, PS § 5-133(b)(5). Davidson, however, argues that the video was not probative because "possession was undisputed." We disagree.

"Probative value does not depend on necessity." *Oesby v. State*, 142 Md. App. 144, 166 (2002). "In cases where the resulting prejudice is legitimate rather than 'unfair,' the fact that the State's case may not, in terms of its sufficiency, desperately need the evidence in question does not diminish in the slightest the weight of the evidence's probative value." *Newman v. State*, 236 Md. App. 533, 551 (2018). Even though Davidson did not contest his possession of the rifle, the video remains probative of that fact. *See State v. Broberg*, 342 Md. 544, 554 (1996) ("[P]hotographs do not lack probative value merely because they illustrate a point that is uncontested."). Accordingly, the video was relevant to the firearms charges.

MOTION FOR MISTRIAL

Davidson further contends that the court erred in denying his motion for a mistrial at the conclusion of closing arguments. During its rebuttal closing argument, the State made brief reference to the possibility of Davidson attempting to commit "suicide by cop" when he shot Deputy Hilliard.[4] The prosecutor argued "this suicide by cop notion is a figment of the Defendant's imagination. Suicide by cop is a law enforcement officer eliminating a deadly threat –" and was greeted with a swift objection by Davidson's counsel. During the

[4] Law enforcement uses the term "suicide by cop" to describe situations where "'an individual engages in behavior which poses an apparent risk of serious injury or death, with the intent to precipitate the use of deadly force by law enforcement personnel towards that individual.'" *Estate of Blair v. Austin*, 469 Md. 1, 56 n.7 (2020) (Getty, J., dissenting) (quoting Kris Mohandie & J. Reid Meloy, *Clinical and Forensic Indicators of "Suicide by Cop,"* 45 J. Forensic Sci. 384, 384 (2000)).

ensuing colloquy at the bench, Davidson's counsel stated that there had been no evidence admitted relating to "suicide by cop" and the court agreed, saying "I've never heard him reference suicide. I mean, suicide by cop and being suicidal are two different things. I mean, I've got, again, I'll ask, I mean, the fact that someone's depressed or suicidal, there's a different connotation to wanting to be, have suicide by a police officer. I don't remember ever hearing it during the course of the trial." The objection was then sustained.

When the State concluded its rebuttal, counsel returned to the bench and Davidson's counsel requested a mistrial, saying: "Based on the State's comments with regard to suicide by police officer, and also the reference to uncontradicted evidence, I think the uncontradicted evidence shifts the burden, and I think the discussion of suicide by cop is grossly prejudicial. I'd move for a mistrial." The court denied the motion, explaining: "I don't think it crossed the bounds of where we need a mistrial. The Court sustained the objection, told the jury to disregard.[5] I'm not going to grant the mistrial."

Davidson analogizes the instant case to *Whack v. State*, 433 Md. 728 (2013) and asserts that *Whack* requires reversal in these circumstances. We disagree. The issue in *Whack* was "whether a prosecutor's incorrect statements during rebuttal closing argument regarding DNA evidence, in a case in which that evidence was of central importance, required a mistrial." 433 Md. at 732. In that instance, the Supreme Court of Maryland held that it did. *Id.* at 754–755. The prosecutor in that case conclusively told jurors during

[5] A review of the trial transcript reveals that, although the court sustained counsel's objection, the trial judge did not instruct the jury to disregard the prosecutor's "suicide by cop" comment.

closing argument that the defendant's DNA "was present" in a truck where the victim was shot, when the DNA analyst testified only that she "could not exclude" the defendant as being the source of the evidence. *Id.* at 732–733. The Court reasoned that, given the significant weight that jurors afford DNA evidence and the fact that DNA was the *only* direct evidence linking the defendant to the victim's truck, the prosecutor's comments likely misled the jury "to the prejudice of the accused," warranting a mistrial. *Id.* at 754–55.

Davidson argues that the "suicide by cop" comment here operates the same as the DNA evidence in *Whack* because "'suicide by cop,' by definition *presupposes* premeditation[,]" the central issue in this case. By contrast, the State asserts that "[t]he comments at issue did not create overwhelming prejudice." In so arguing, the State points to several facts, namely, that the concept of "suicide by cop" was first raised by Davidson's counsel in his opening statement, that the prosecutor's comments in closing were interrupted by counsel's sustained objection, thereby depriving the prosecutor of the opportunity to meaningfully argue the point, and that the one interrupted comment made in rebuttal was insignificant in the full context of the trial.

"[W]e grant attorneys, including prosecutors, a great deal of leeway in making closing arguments." *Whack*, 433 Md. at 742. "Whether a reversal of a conviction based upon improper closing argument is warranted 'depends on the facts in each case.'" *Id.* (quoting *Wilhelm v. State*, 272 Md. 404, 415 (1974)). Not every ill-considered remark made by counsel is cause for a challenge or mistrial. *Id.* (quotations omitted) "A trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence

adduced in the case. As such, we do not disturb the trial judge's judgment in that regard unless there is a clear abuse of discretion that likely injured a party." *Ingram v. State*, 427 Md. 717, 726 (2012) (internal citations omitted).

Improper remarks in closing argument warrant a mistrial only when "the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Lee v. State*, 405 Md. 148, 164 (2008) (quoting *Lawson v. State*, 389 Md. 570, 592 (2005)). "When assessing whether reversible, or its converse, harmless, error occurs when improper statements are made during closing argument, we review various factors, including 'the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused.'" *Id.* at 165.

Although Davidson implores us to rely upon *Whack*, we find *Whack* to be distinguishable from the instant case because the prosecutor's single mention of "suicide by cop" here does not rise to the level of impropriety as the prosecutor's gross mischaracterization of the strength of crucial DNA evidence in *Whack*. Instead, we find our prior decision in *Washington v. State*, 191 Md. App. 48 (2010) to be instructive. In *Washington*, the prosecutor made several objectionable remarks during closing argument which included emotional appeals to the jury and mischaracterizations of evidence. 191 Md. App. at 109–117. One such mischaracterization, for example, was an assertion by the prosecutor that the defendant was having an "out-of-mind" experience when his exact words during testimony were "out-of-body." *Id.* at 114. We applied the three-factor test articulated by the Supreme Court in *Lee v. State* for determining whether a trial court

abused its discretion in denying a mistrial and concluded that it did not. *Id.* at 119–120. We do the same here.

First, as to the severity of the improper remarks, as we have indicated, we conclude that the State's single remark here that "this suicide by cop notion is a figment of the Defendant's imagination. Suicide by cop is a law enforcement officer eliminating a deadly threat –" did not involve the sort of impropriety that demands a mistrial. This Court in *Washington* described some of the circumstances traditionally warranting a mistrial as "invocation of the 'golden rule,' *e.g.* an argument 'in which a litigant asks the jury to place themselves in the shoes of the victim[;]' or a prosecutorial appeal to the jury's own interests, another rhetorical device that warrants a mistrial." 191 Md. App. at 119 (internal citations omitted). Neither of these are present here. Moreover, Davidson's suicidal ideation was a pervasive theme throughout the case. A single reference to "suicide by cop" against that backdrop is not likely to have prejudicially influenced the jury.

Turning to curative measures, the trial court "took prompt and effective measures to mitigate the prejudicial impact of the improper remarks." *Id.* As was the case in *Washington*, the trial judge here sustained Davidson's counsel's objection in open court. Davidson's counsel did not move to strike the offending statement, but the sustained objection prevented the State from continuing that portion of its argument.

Finally, concerning the strength of the State's case, the State adduced evidence of prior statements made by Davidson, Davidson's conduct in the days, hours, and moments leading up to Deputy Hilliard's murder, and the volume of firepower he had in his possession, and then argued that this all supported the inference that Davidson killed

Deputy Hilliard with premeditation. While we recognize that Davidson's mental state was critical to the State's case, we reiterate our statement in *Washington* that the trial court had "its finger on the pulse of the trial," and "was in a better position to evaluate potential prejudice to the appellant." *Id.* at 120 (citing *State v. Hawkins*, 326 Md. 270, 278 (1992)).

We conclude that the trial court did not abuse its discretion in denying Davidson's motion for a mistrial.

REQUEST FOR REMOVAL

Finally, Davidson challenges the trial court's denial of his request for removal of the case to another venue. Maryland Rule 4-254(b)(1) provides that:

> When either party files a suggestion under oath that the party cannot have a fair and impartial trial in the court in which the action is pending, the court shall order that the action be transferred for trial to another court having jurisdiction only if the court is satisfied that the suggestion is true or that there is reasonable ground for it.

Davidson requested removal of his case in three separate instances. First, in October 2022, Davidson filed a Suggestion of Removal alleging that he could not receive a fair and impartial trial in the Circuit Court for Wicomico County because members of the Wicomico County Sherriff's Office—the same office of which Deputy Hilliard was a member—provided security for the courthouse, which could have elicited sympathy and bias from the members of the jury. This request was denied.

Then, in April 2023, Davidson filed a Supplemental Request for Removal arguing that recent publicity surrounding Deputy Hilliard's murder would deprive him of a fair and impartial trial. He cited to several news articles which had been circulating on social media at the time and the fact that a local benefit concert honoring Deputy Hilliard's memory had

been scheduled for April 30, 2023, the day before trial was set to begin. The court denied this motion as well, saying that "*voir dire* examination is still the best way to make a determination of whether or not we can get a fair and impartial jury sat in Wicomico County."

Following jury selection, Davidson's counsel re-raised the request for removal on the same grounds and excepted to the jury. He said:

> Your Honor, just before the jury is sworn, there was a motion for removal that was heard and argued. So at this point I'm raising it again. I'm taking exception to the jury on the grounds previously raised in that motion.
>
> I would also just note for the record the number of people that responded to *voir dire* that had knowledge and the number of people that also had formed an opinion prior to answering the questions.
>
> While they were rehabilitated during the *voir dire* process, I believe the number was staggering to me.

The court again denied the motion, explaining its reasoning as follows:

> The Court would note that, for the reasons I've already stated on the record, and, obviously, the Court found that, we brought in roughly 160 jurors today, we were able to get to a pool of roughly 62 jurors, roughly, I may be off one or two, give or take, in approximately 100 jurors.
>
> The Court didn't find, while it's been a long day, I didn't find it to be, I found it to be a reasonable ability to get a jury sat based on the profile of this case.
>
> The Court would note that while people responded to having knowledge of the case, the Court didn't find that most of it was in-depth knowledge or an inability to be fair and impartial. It was more geared toward having seen it on social media or the news, that a lot of people responded that they didn't really have any specific information about the case but had general information about the case.
>
> I found that we were able to get to what the Court would note, I think, was a fair, a number of fair and impartial jurors, so that we were able to seat a fair and impartial jury. And, therefore, I'm going to deny the motion.

Davidson challenges this denial on appeal as erroneous, highlighting that the empaneled jury contained seven members who admitted to having prior knowledge of the case. He asserts that *voir dire* did not and could not cure the prejudice against him and claims, without any citation to authority, that he was "entitled to a venire that at least mathematically permitted him to seat twelve people that had no prior knowledge of the case." The State responds that "[t]hough seven seated jurors knew *something* about the case, the record does not show that any knew anything *prejudicial*. And *voir dire* showed that those jurors had not predetermined Davidson's guilt."

"Whether a case should be removed is a decision that rests within the sound discretion of the trial court." *Pantazes v. State*, 376 Md. 661, 675 (2003). This decision will not be reversed on appeal absent a showing of an abuse of discretion. *Stouffer v. State*, 118 Md. App. 590, 631 (1997), *rev'd in part and aff'd in part on other grounds*, 352 Md. 97 (1998).

In the context of pretrial publicity, the defendant has the burden of showing that he or she has been prejudiced by the publicity and that *voir dire* examination of the prospective jurors is inadequate to ensure a fair and impartial trial. *Waine v. State*, 37 Md. App. 222, 227 (1977). To meet this burden, the defendant must show that the pretrial publicity is prejudicial, that a juror has been exposed to the prejudicial publicity, and that the jurors' decision at trial was influenced by the publicity. *Id.*; *Simms v. State*, 49 Md. App. 515, 519 (1981).

"Only where the pretrial publicity in and of itself is so massive and widespread that it is clearly prejudicial, or where the publicity is so inherently prejudicial that it 'saturated the community' is the remedial step of *voir dire* meaningless." *Simms*, 49 Md. App. at 518 (citations omitted). If, during *voir dire*, each empaneled juror indicates that he or she has not formed an opinion of the defendant's guilt or innocence as a result of the pretrial publicity or that the pretrial publicity would not in any way derogate from his or her ability to give the defendant a fair and impartial trial, that is sufficient to ensure fairness and impartiality despite the publicity. *Id.* at 519.

When asked, each of the seven jurors that Davidson complains of indicated that they learned of the case either through the news or social media. They each responded that their prior knowledge of the case would not affect their ability to listen to the testimony and evidence and make their own determination as to Davidson's guilt or innocence. When asked if they had formed any opinion as to Davidson's guilt or innocence, all seven of them answered in the negative.

These responses were all that was required to ensure that Davidson received a fair and impartial trial. Contrary to Davidson's assertion that he was entitled to a venire that allowed him to seat twelve jurors with no prior knowledge of the case, "prospective jurors are not required to be totally ignorant of the issues and circumstances surrounding the case." *Id.* at 520. The trial court did not abuse its discretion in denying Davidson's request for removal.

CONCLUSION

For the foregoing reasons, we hold that the challenges raised in this appeal do not warrant reversal. Davidson's threat to Officer Muir was relevant to his state of mind during the murder. The trial judge did not abuse his discretion in failing to sever the charges related to Davidson's semi-automatic rifle from Davidson's murder charges *sua sponte*. The video of Davidson firing said rifle was relevant to proving his possession of it. Further, the trial judge did not abuse his discretion in denying Davidson's motion for a mistrial or his request for removal. Accordingly, the judgment of the Circuit Court for Wicomico County is affirmed.

JUDGMENT OF THE CIRCUIT COURT FOR WICOMICO COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.