Circuit Court for Prince George's County
Case No. C-16-CR-23-000471

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1643

September Term, 2024

THOMAS DAVID GBONGO

v.

STATE OF MARYLAND

Shaw,
Albright,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: April 30, 2026

*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).

Following a jury trial in the Circuit Court for Prince George's County, appellant Thomas David Gbongo was convicted of second-degree rape, sexual abuse of a minor household family member, third-degree sex offense, and second-degree assault. The court sentenced Gbongo to a total of thirty-six years of incarceration with all but thirty years suspended. Gbongo presents three questions for our consideration, which we have modified for clarity[1]:

1. Was Gbongo's right to appeal his convictions rendered meaningless by deficiencies in the trial transcript, such that he is entitled to a new trial?

2. Did the court abuse its discretion in denying Gbongo's motion for a mistrial?

3. Did the court abuse its discretion in declining to voir dire the jury during trial to determine whether they overheard a statement by the prosecutor during a bench conference that accused Gbongo of perjury?

[1] Gbongo phrased his questions as follows:

1. Is Mr. Gbongo entitled to a new trial because his right to appeal his convictions was rendered legally meaningless by the cumulative effect of the transcript deficiencies under *Smith v. State*, 291 Md. 125 (1981) and its progenitors?

2. Did the trial court commit reversible error by denying defendant's motion for a mistrial after admittedly not realizing the State elicited testimony from the [sic] [Mother] that [L.] allegedly attempted suicide following her disclosure, barring defense from cross-examining [Mother] on the issue, and then providing a short admonition to the jury to disregard *further* questions by the State on re-direct concerning [L.'s] commitment to a mental hospital?

3. Did the trial court commit reversible error by refusing to *voir dire* the jurors as to whether they heard the State's Attorney improperly and falsely proclaim that Mr. Gbongo had committed perjury while testifying because the trial had already carried over two days from its initially expected length of three days?

We conclude that a new trial is not warranted and shall affirm the judgments of conviction.

BACKGROUND[2]

In February 2022, the victim, "L.,"[3] who was then eleven years old, disclosed that Gbongo, her paternal half-brother, who is ten years older than L., had been sexually abusing her. Gbongo was charged with second-degree rape, sexual abuse of a minor household member, third-degree sex offense, and second-degree assault. A six-day trial was held in May 2024. The defense theory of the case was that L.'s mother ("Mother"), who was divorced from the father of both L. and Gbongo ("Father"), coached L. to make false allegations against Gbongo to fabricate grounds for a motion Mother subsequently filed, in which she sought sole legal and physical custody of L.

L. was thirteen years old at the time of trial. She testified that Gbongo began sexually abusing her when she was six or seven years old. She described acts of anal intercourse, vaginal intercourse, and fellatio. L. reported the abuse to Father in February 2022, when she learned that Gbongo, who had been away on military deployment since July 2021, would be returning home.

[2] Because Gbongo does not challenge the sufficiency of the evidence, we will limit our discussion of the facts to those necessary to provide context for the issues raised in this appeal. *See, e.g.*, *Joyner v. State*, 208 Md. App. 500, 503 n.1 (2012).

[3] To protect the victim's identity, we refer to her by a fictitious initial.

The detective assigned to the case testified that no physical examination of L. was performed because the disclosure was made several months after the last incident of abuse. The detective observed no signs that L. was "being led" by Mother to make the allegations.

Father testified that L. was "being used" by Mother to make the accusations against Gbongo. According to Father, Mother "wanted to file for modification [of custody] [a]nd this was the route [Mother] wanted to use."

Mother was questioned by defense counsel about the custody case. In December 2021, the court in that case granted Mother and Father joint legal and physical custody. Although Mother had asked for sole legal and physical custody, she denied that she was "upset" by the award of joint custody. She explained that the reason she filed for modification of custody in March 2022, was because L. refused to go to Father's house for court-ordered parenting time after the abuse was disclosed. In that instance, Father called the police, who responded to Mother's home and convinced L. to go to Father's house after speaking with L. for over an hour. According to Mother, police "instruct[ed]" her that, "to avoid this scenario[,]" she would need to file a motion to modify the existing custody order.

Gbongo testified and denied the allegations of abuse. The jury convicted Gbongo of all charges. We will include additional facts as necessary in our discussion of the issues.

DISCUSSION

I.

Gbongo maintains that he has been deprived of an opportunity for "meaningful appellate review" of possible trial court error because of deficiencies in the trial transcript.

He draws our attention to twenty-six portions of the transcript where he claims "there is a specific error[,]" but "the transcript does not fully disclose" arguments by counsel and/or the rationale for the trial court's ruling. Gbongo contends that the transcript deficiencies result in an "inability to assess with sufficient certainty the degree to which" the court abused its discretion or committed legal error, and a "difficulty in isolating and selecting errors by the trial court to argue on appeal[.]"

The State maintains that the transcript gaps Gbongo points to were inconsequential and did not hamper identification of potential appellate issues. The State addresses each instance separately and asserts that, in each instance, "[t]he transcripts reveal arguments and rulings with clarity, requiring only obvious inferences where gaps exist." Having likewise reviewed the questioned transcripts, we agree with the State.

Analysis

The Supreme Court of Maryland has recognized that "'[a]nything short of a complete transcript is incompatible with effective appellate advocacy.'" *Smith v. State*, 291 Md. 125, 133 (1981) (quoting *Hardy v. United States*, 375 U.S. 277, 288 (1964)). That does not mean, however, that "courts must grant defendants a new trial in every case in which some portion of trial testimony cannot be produced for appellate counsel's review[.]" *Id.* As the Court observed:

> [T]ranscripts are seldom perfect. Mistakes inevitably occur. . . . Whenever two or more persons speak simultaneously, it is difficult to assign priority of statement or to reproduce the exact statement of each. Electronic recording or stenographic equipment will occasionally fail. . . . Sometimes the errors or omissions will be insignificant, presenting a situation quite different from

> that in which most or all of the testimony at trial cannot be reviewed verbatim on appeal.

Id. (internal citation omitted). "When the error or omission is insignificant, '[i]t would wreak havoc on the administration of justice to require reversal in each and every case in which it is alleged by [an] appellant that portions of trial testimony have not been preserved verbatim for review.'" *Wilson v. State*, 334 Md. 469, 476 (1994) (quoting *Smith*, 291 Md. at 133).

In cases where the transcript is incomplete, "'[a] new trial will be ordered only if necessary to the protection of a party's rights.'" *Smith*, 291 Md. at 134-35 (quoting *United States v. Di Canio*, 245 F.2d 713, 715 (2d Cir. 1957)). "[T]he petitioner must establish that the missing material rendered his appeal meaningless, *i.e.*, that he was deprived of meaningful appellate review." *Wilson*, 334 Md. at 477. It is not enough for a defendant to point to missing "snippets" of conversations or claim it is possible that "portions of dialogue missing from the transcript might have provided grounds" for a claim of error. *Thompson v. State*, 181 Md. App. 74, 103-04 (2008), *aff'd*, 412 Md. 497 (2010). The defendant bears the burden of showing that "'omissions are not merely inconsequential, but are in some manner relevant on appeal.'"[4] *Id.* at 103 (cleaned up) (quoting *Wilson*, 334 Md. at 476-77).

[4] In addition to showing that omissions in the transcript are not merely inconsequential, the appellant must "demonstrate that he has been diligent in his attempt to reconstruct the missing testimony[.]" *Smith*, 291 Md. at 138. Here, Gbongo filed an affidavit of the court transcriptionist stating that the missing portions of the transcript "cannot be discerned, (continued…)

We are not persuaded by Gbongo's claim that omissions in the transcript prejudiced his ability to obtain meaningful appellate review. "Prejudice is found when a trial transcript is so deficient that it is 'impossible for the appellate court to determine if the [trial] court has committed reversible error.'" *United States v. Huggins*, 191 F.3d 532, 537 (4th Cir. 1999) (quoting *United States v. Nolan*, 910 F.2d 1553, 1560 (7th Cir. 1990)). "[I]n order for an appellate court meaningfully to review an objection, it must know what the precise objection was, perhaps the grounds of the objections, and the context in which the question prompting the objection was asked." *Wilson*, 334 Md. at 478. "Where that knowledge is not known or knowable, through no fault of the parties,[5] the only feasible alternative is to provide the defendant with a new trial, provided that the defendant has borne the burden of establishing the relevance of the missing portions of the record to the issue on appeal." *Id.*

Wilson was convicted of possessing cocaine that was found on the premises of a business he owned. *Id.* at 472. On direct examination, Wilson denied knowledge of the presence of the cocaine. *Id.* On appeal, it was discovered that the recording equipment was not turned on during Wilson's cross- and redirect examination. *Id.* The Court held that

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corrected, or otherwise supplemented." The State does not contend that Gbongo failed to make diligent attempts to reconstruct the missing parts of the transcript.

[5] Gbongo claims the transcript deficiencies were the result of "volitional conduct" of the prosecutor, and that the "prosecution's fault in causing the damage to the transcript" is a factor to be considered in our analysis. Although the transcript reveals one instance during a bench conference where defense counsel admonished the prosecutor for placing her hand over the "microphone[,]" there is nothing in the record to support Gbongo's claim that every "indiscernible" or "away from microphone" comment during the six-day trial was attributable to the State.

Wilson was entitled to a new trial because "the portion of the transcript which could not be reproduced involved an issue that went to the very heart of the appeal, *i.e.*, whether [Wilson] was improperly cross-examined concerning his control of the premises." *Id.* at 477. The Court reasoned that, although there was no dispute that Wilson objected to questions during cross-examination, the record was inadequate to afford meaningful appellate review because there was no record of "the questions asked, the rulings made, or the grounds of the objections[.]" *Id.* at 478.

That is not the case here. We have reviewed the portions of the transcript Gbongo points to as deficient "to a degree" that renders his right to an appeal meaningless, as well as the corresponding sections of the audio recordings of the trial proceedings that the State has made part of the record in this case.[6] As the State points out, in each instance, the transcript sufficiently reveals whether an objection was raised; the grounds (where stated) and context for any objections; and the ruling of the court. Indications of "indiscernible" or "away from microphone" comments represent only brief and inconsequential gaps that

[6] The State moved under seal to correct the record on appeal to include audio recordings of the trial, on grounds that the recordings "provide further detail about the timing and length of inaudible portions of the transcripts[.]" Gbongo opposes the motion on public policy grounds but does not dispute the State's assertion that he provided the recordings to the State and that there is no dispute as to the authenticity of the recordings. We grant the State's motion; the audio recordings are made part of the record.

do not preclude adequate appellate review.[7] Consequently, we conclude that Gbongo is not entitled to a new trial.

II.

L. testified, without objection, that, after she disclosed the sexual abuse, she went to a "mental" hospital. On direct examination, Mother testified, also without objection, that, the day after L. told her about the abuse, L. attempted suicide and was hospitalized for three weeks.

On cross-examination, defense counsel asked Mother about a physical examination L. underwent after the disclosure of sexual abuse. Mother explained: "[the examination] was a follow up, . . . you know, when you go to the hospital, they [recommend] follow up treatment[.]" Defense counsel asked whether the results of the examination were "normal." The court sustained the prosecutor's general objection.

On redirect examination, the prosecutor asked Mother: "the follow up treatment was from the commitment, correct?" which prompted an objection from defense counsel. The court overruled the objection, and Mother answered "Yes." Defense counsel asked to approach the bench, and, at the ensuing bench conference, moved for a mistrial on grounds that the prosecutor "continued . . . to explore the commitment[.]" The prosecutor withdrew the question and the court denied the motion for mistrial, stating that there was no manifest

[7] Gbongo filed a reply brief in which he cited two "examples" of "gaps [that] are not mere snippets." We are satisfied that, in both instances, the objection and the basis for the court's ruling are sufficiently clear to allow for meaningful appellate review.

necessity to do so. The court then instructed the jury to disregard both the question and the response.

Gbongo argues that the court erred in denying his motion for a mistrial after "allowing" the State to introduce evidence of the attempted suicide and commitment to a mental hospital but "estopping" the defense from cross-examining Mother regarding the issue. The State asserts that Gbongo was not prejudiced by the prosecutor's reference to L.'s "commitment" because L. had testified, without objection, that she went to a "mental hospital," and Mother testified, also without objection, that L. had attempted suicide.

Analysis

"'A mistrial is no ordinary remedy[.]'" *Winston v. State*, 235 Md. App. 540, 569 (2018) (quoting *Cooley v. State*, 385 Md. 165, 173 (2005)). It is, instead, "'an extreme sanction' to which courts sometimes must resort 'when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice[.]'" *Id.* (quoting *Burks v. State*, 96 Md. App. 173, 187 (1993)).

"'[G]ranting a motion for a mistrial lies within the discretion of the trial judge.'" *Bynes v. State*, 237 Md. App. 439, 457 (2018) (emphasis omitted) (quoting *Hunt v. State*, 321 Md. 387, 422 (1990)). "'The trial judge, who hears the entire case and can weigh the danger of prejudice arising from improper testimony, is in the best position to determine if the extraordinary remedy of a mistrial is appropriate.'" *Id.* (emphasis omitted) (quoting *Hunt*, 321 Md. at 422). "'We will not reverse a trial court's denial of a motion for mistrial unless the defendant was so clearly prejudiced that the denial constituted an abuse of discretion.'" *Id.* (quoting *Hunt*, 321 Md. at 422).

We perceive no abuse of discretion by the court in denying Gbongo's motion for mistrial. Evidence of L.'s hospitalization following a suicide attempt was received without objection during the testimony of both L. and Mother. Consequently, evidence that a physical exam L. underwent after the disclosure was related to the "commitment" resulted in no prejudice to Gbongo. *See Williams v. State*, 131 Md. App. 1, 26 (2000) ("When evidence is received without objection, a defendant may not complain about the same evidence coming in on another occasion even over a then timely objection."); *Yates v. State*, 429 Md. 112, 120-21 (2012) (stating that "'[w]here competent evidence of a matter is received, no prejudice is sustained where other objected to evidence of the same matter is also received'" (quoting *Jones v. State*, 310 Md. 569, 589 (1987))). *See also Walker v. State*, 21 Md. App. 666, 672 (1974) ("The failure to object when one should have objected is not ground for a mistrial."). On these facts, the court did not abuse its discretion in declining to grant the extreme remedy of a mistrial.[8]

[8] In the section of his brief addressing the court's ruling on the motion for mistrial, Gbongo suggests that the court improperly limited defense counsel's cross-examination of Mother. He did not present such a contention as a separate question for appellate review, however. *See* Md. Rule 8-504(a)(3) (stating that a party's brief must include "[a] statement of the questions presented, separately numbered"). Furthermore, Gbongo fails to point to a specific ruling on cross-examination and/or present any legal argument as to why the ruling amounted to an abuse of discretion. *See Klauenberg v. State*, 355 Md. 528, 552 (1999) ("[A]rguments not presented in a brief or not presented with particularity will not be considered on appeal."). Accordingly, we decline to reach this argument.

III.

On redirect examination, Gbongo testified that he learned about the sexual abuse allegations from Father. The prosecutor objected and asked to approach the bench. The transcript reveals the following:

> (At 3:36:39 p.m. – Counsel approached bench and the following occurred:)
>
> [PROSECUTOR]: He just perjured himself, because he actually found out when the military told him when he came back from deployment. He didn't come back from North Carolina until after being told about it. Then he went and talked to [Mother] and [Father]. So he just perjured himself completely.

During the bench conference, the exchanges between the prosecutor and defense counsel became heated. The court dismissed the jury, and the colloquy between the court and counsel continued in open court. Ultimately, the State withdrew its objection.

Defense counsel then moved for a mistrial on grounds that the prosecutor "rushed up" to the bench and said that Gbongo "perjured himself" within earshot of the jury. The prosecutor responded: "I did not run up saying it. I actually got up on the [j]udge and whispered it to her . . . . I did not scream it. I did not yell it." The court denied Gbongo's motion for mistrial, stating,

> Defense has asked for a mistrial because of the fact that the State accused [Gbongo] of perjuring himself. I don't think that a mistrial is warranted because it was not said outwardly where the jury could hear that. The noise button was on and we did have a discussion at the bench. And the [c]ourt did do it[]s best to try to protect those discussions so that it wouldn't be heard by the jury.

After the motion for mistrial was denied, defense counsel requested that the court voir dire the jurors to determine whether anybody heard the substance of the conversation

at the bench. The court declined to do so, reiterating that the noise button was on "loud and clear[,]" until such time as the jury was excused.

Gbongo argues that, "[g]iven the highly prejudicial nature of [the prosecutor's] comments, the trial court was obligated to ask the jurors whether they heard the prosecutor's comments and whether it affected their ability to fairly determine the defendant's guilt or innocence." The State contends that the court's ruling was not an abuse of discretion because the court found that the jurors could not have heard the comment, therefore there was no need to voir dire the jury. We agree with the State.

Analysis

"[T]he conduct of a criminal trial is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse." *Bruce v. State*, 351 Md. 387, 393 (1998) (collecting cases). The deferential standard recognizes that the trial judge "'is physically on the scene [and] able to observe matters not usually reflected in a cold record[,]'" and therefore, "'is in the best position to evaluate'" potential prejudice. *Id.* (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)).

Here, the court expressly disagreed with defense counsel's claim that the prosecutor made the statement while she was "running up" to the bench. The court found, instead, that the prosecutor's comment was made at the bench, after the husher had been turned on, and was "not said outwardly where the jury could hear[.]" As the State points out, the audio recording of the trial reflects that approximately ten seconds elapsed between the

prosecutor's objection and her statement regarding perjury. The recording also reflects that the husher was activated before the prosecutor began speaking. On these facts, we hold that the court did not abuse its discretion in declining Gbongo's request to voir dire the jury to determine if they had heard the prosecutor's statement. *See Bruce*, 351 Md. at 396 (holding that the court did not abuse its discretion in refusing to voir dire jurors to investigate the defendant's speculation that the jury had been tainted by exposure to facts not in evidence where the record supported the court's finding that there was no reasonable likelihood that such exposure had occurred). The record does not support Gbongo's exaggerated description of the event.

STATE'S MOTION TO CORRECT THE RECORD GRANTED.

JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.