Circuit Court for Prince George's County
Case No. CT160314X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2452

September Term, 2017

MARVIN VASQUEZ JUAREZ

v.

STATE OF MARYLAND

Leahy,
Shaw Geter,
Salmon, James A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Leahy, J.

Filed: September 3, 2019

On New Year's morning in 2016, a runner on the Northwest Trail in Hyattsville discovered the brutally stabbed body of Catherine Alvarado. The runner called 9-1-1 and an officer with the Prince George's County Police Department soon arrived and began an investigation that led to the arrest of Marvin Vasquez Juarez ("Appellant"). Appellant was tried by a jury in the Circuit Court for Prince George's County on a first-degree murder charge.

The State presented evidence that Appellant, who was Ms. Alvarado's former live-in boyfriend, called her and demanded that she meet him on the Northwest Trail on the night of the murder. His blood was found at the crime scene. The jury found Appellant guilty of first-degree murder and he was sentenced to life in prison.

Appellant timely appealed and questions certain rulings by the trial court. We reorder and rephrase those questions as follows:[1]

> 1. Did the trial court err or abuse its discretion in permitting the State to offer evidence of Appellant's past acts of domestic violence against Ms. Alvarado?
>
> 2. Did the trial court abuse its discretion by refusing to ask an impaneled juror about his or her impartiality?

[1] In his brief, Appellant presents his questions as follows:

1. Did the trial court err in allowing Detective Marcos Rodriguez to testify that appellant had been given the *Miranda* warnings?
2. Did the trial court err in denying appellant's motion for a mistrial?
3. Did the trial court err in allowing the State to present evidence of appellant's past acts of domestic violence against Ms. Alvarado?
4. Did the trial court violate appellant's right to the appointment of an interpreter throughout the proceedings?
5. Did the trial court err by refusing to inquire regarding the impartiality of a seated juror?

> 3. Did the trial court abuse its discretion in refusing to appoint a second interpreter, thereby violating Appellant's right to an interpreter throughout the proceedings?
>
> 4. Did the trial court abuse its discretion in denying Appellant's motion for a mistrial after one of the State's witnesses blurted out that the victim "was killed" by Appellant?
>
> 5. Did the trial court err or abuse its discretion in permitting testimony that one of the detectives advised Appellant of his *Miranda*[2] rights?

For reasons that follow, we discern no error or abuse of discretion in the circuit court's rulings identified in the first four questions. Although we conclude that the trial court erred in permitting testimony that Appellant was advised of his *Miranda* rights, this error was harmless beyond a reasonable doubt. Accordingly, we affirm the judgment of the circuit court.

BACKGROUND

On March 10, 2016, a grand jury sitting in Prince George's County indicted Appellant on a single count of first-degree murder. Appellant was tried before a jury over four days from October 30 to November 2, 2017.[3] The State called 19 witnesses, including Officer Ashley Ryder, the responding officer in this case; Maria Duarte, Ms. Alvarado's mother; Sonia Guzman, a tenant in Ms. Duarte's home; Officer Michael Johnson, a

[2] *See Miranda v. Arizona*, 384 U.S. 436, 86 S. Ct. 1602 (1966) (requiring exclusion of statements made obtained during custodial interrogation of persons who have not been advised of their fundamental constitutional rights, including the rights to remain silent and to assistance of counsel).

[3] Because Appellant does not challenge the sufficiency of the evidence supporting his conviction, we shall give only a brief recitation of the underlying facts. *See Washington v. State*, 180 Md. App. 458, 461-62 n.2 (2008) (explaining that a recitation of the full record is unnecessary because there was no challenge to the sufficiency of the evidence).

responding officer in the 2015 Assault case; the State's Assistant Medical Examiner; several experts in DNA and one in serology; an evidence technician, the four homicide detectives on the case, including Detective Marco Rodriguez; Estifanos Asfaw, the 911 caller; Marino Campos, Appellant's roommate at the time of the alleged murder; and Sebastian Perez, Appellant's cousin. The defense did not call any witnesses.

The Murder

Shortly after 7 a.m. on January 1, 2016, Prince George's County police responded to a 9-1-1 call reporting an injured person in a wooded area of the Northwest Branch Trail, behind Rosa Parks Elementary School in Hyattsville. Officer Ryder, the responding officer, arrived at the entrance of the trail and met with Estifanos Asfaw, the 9-1-1 caller, who then led Officer Ryder to the injured person. After arriving at the scene, Officer Ryder soon discovered Catherine Alvarado, dead from multiple sharp-force injuries. The State's Medical Examiner ruled the manner of death homicide.

Mr. Perez, Appellant's cousin, testified that he called Appellant, also known as "Chino," sometime between 1:00 a.m. to 2:00 a.m. on New Year's morning to invite Appellant to his apartment to celebrate the holiday. When Appellant answered, Mr. Perez testified that Appellant asked him to send a taxi and that he would be waiting for it at a McDonalds near 23rd Avenue, which was also in the Hyattsville area. Appellant sounded like he was "running, breathing." Mr. Perez took a taxi to pick up Appellant. He arrived at the McDonalds and about five minutes later, Appellant also arrived and got into the taxi. Mr. Perez noticed that Appellant was bleeding "very much" from a cut on his finger. There was so much blood that when they got back to Mr. Perez's apartment, he would not let

Appellant into his home because he would stain the carpet. When Appellant was arrested on January 13, he had cuts on his index and middle finger of his right hand.

At the crime scene, there was a trail of blood leading away from Ms. Alvarado's body down the park's walking trail and continuing toward Rosa Parks Elementary School. The evidence technician recovered more blood stains on a guard rail and bridge on the walking trail, and also a cell phone screen protector on that same bridge. DNA analysis of the cell phone screen protector and the blood stains on the guard rails yielded a DNA mixture and could not exclude neither Appellant nor Ms. Alvarado as possible contributors. DNA analysis of the blood recovered from the bridge and the walking trail matched the DNA profiles of both Ms. Alvarado and Appellant; there was a one in 2.7 sextillion probability that it came from a Hispanic male other than Appellant. Ms. Alvarado suffered nine defensive stabbing wounds to her chin, neck, shoulder, chest area, left forearm and hand, which meant that the victim tried to "either block the sharp instruments or try to grab the knife to protect the face or chest area." Two of her stabbing wounds caused external and internal bleeding that proved rapidly fatal.

Prior to the Murder

On the evening of December 31, 2015, Ms. Alvarado went to McDonald's with Marino Hernandos Lopez Campos, a tenant in Ms. Duarte's house with whom Ms. Alvarado had a relationship. On the way to McDonalds, Mr. Campos agreed to pick up Ms. Alvarado's friend. Mr. Campos testified that while the three were driving to get food, Ms. Alvarado received a phone call from Appellant, whom Ms. Alvarado had an intimate relationship with previously. Mr. Campos related that he heard Appellant tell Ms.

Alvarado that if she did not return to her house to meet him, he would "take vengeance" on the two men with her.

Mr. Campos also heard Appellant tell Ms. Alvarado to meet him at "[t]he place where you always go looking for me." According to Ms. Duarte, Appellant and Ms. Alvarado used to go to the Northwest Branch Trail when "they were seeing each other." Ms. Duarte said she used to see the two of them at the trail "all the time," the most recent time being December 24, 2015. Ms. Alvarado told Mr. Campos that she was going to meet Appellant at the Northwest Branch Trail; Mr. Campos later led police to that trail.

Mr. Campos eventually dropped Ms. Alvarado back at Ms. Duarte's house around 11:00 p.m., then drove her friend back to where they picked him up. Both Mr. Campos and Ms. Duarte advised Ms. Alvarado to stay at home and not go meet Appellant. When Ms. Duarte woke the next morning, Ms. Alvarado was not in her room and her bed looked like it had not been slept in.

The Evidence of the 2015 Assault

At trial, the State's theory of the case was that the abusive relationship between Ms. Alvarado and Appellant led to Ms. Alvarado's murder. Accordingly, the State sought to expose this relationship by calling two witnesses to testify that Appellant assaulted Ms. Alvarado in October 2015 (the "2015 Assault"). On October 9, 2015, Appellant was living with Ms. Alvarado at Ms. Duarte's home when he was arrested for the assault. Ms. Guzman, who rented the attic in Ms. Duarte's home, was also living in Ms. Duarte's home at the time of this incident. Both Ms. Guzman and Officer Michael Johnson, one of the

responding officers, testified to observing the altercation that led to Appellant's arrest and incarceration.

We shall include additional facts throughout our discussion of the issues on appeal.

DISCUSSION

I.

Other Crimes Evidence

At the start of trial, Appellant's counsel moved in limine to preclude the State from offering testimony about the 2015 Assault through Ms. Guzman and Officer Johnson for three reasons. First, defense counsel argued that it did not receive the State's notice of intent to use other crimes evidence against Appellant until three days prior to trial, giving counsel an insufficient opportunity to respond to the State's notice. Second, counsel contended that the 2015 Assault involved no weapons and was irrelevant to the instant murder case, which the State alleges resulted from sharp-force injuries. Finally, even if the evidence was relevant, Appellant's counsel argued that the 2015 Assault did not fall within the other crimes evidence exception to character evidence because the State's only reason for using the 2015 Assault was "to show that if [Appellant] committed a crime against [Ms.] Alvarado on October 2015, then he must have committed that crime against her December 2015."

The State argued that, although propensity evidence is generally inadmissible, the 2015 Assault, which occurred several months prior to Ms. Alvarado's murder, was admissible to show Appellant's motive and intent for the murder. Moreover, the State argued that the probative value of this evidence outweighed any likelihood of undue

prejudice. The State asserted further that, in compliance with the Maryland Rules, it gave Appellant's counsel notice of its intent to use this evidence through the 462 pages of discovery the State produced in May 2016, which included the district court's case file on the 2015 Assault. The circuit court denied the motion in limine.

At trial, Ms. Guzman testified that on October 9, 2015, she saw Appellant "hitting" and "beating" Ms. Alvarado, who tried to escape Appellant and begged him to stop, telling Appellant she loved him in an effort to calm him down. Officer Johnson also testified that, upon responding to Ms. Duarte's home, he observed Ms. Alvarado "being thrown across the room by [Appellant]." Defense counsel did not object to this testimony under Rule 5-404.[4]

Appellant now contends that the trial court erred in permitting the State to present evidence of the 2015 Assault, which the State used "to demonstrate that [A]ppellant acted in conformity on the date at issue." Appellant argues that this "evidence was not introduced to show *why* [he] assaulted Ms. Alvarado – *i.e.,* to show motive – but to show that [he] *did* attack Ms. Alvarado[.]"

[4] Maryland Rule 5-404(b) governs the admissibility of evidence concerning culpable conduct other than that for which a defendant is on trial. As relevant to this appeal, the rule provides:

> **(b) Other Crimes, Wrongs, or Acts.** Evidence of other crimes, wrongs, or acts . . . is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident[.]

Md. Rule 5-404(b).

The State responds, first, that Appellant has forfeited this claim of error because he failed to object when Ms. Guzman and Officer Johnson testified about the 2015 Assault. Alternatively, the State argues that "there is no merit to Appellant's complaint" because evidence of the "very recent violent assault" on Ms. Alvarado was relevant to establishing intent and motive. In any event, the State continues, any error was harmless beyond a reasonable doubt because "the evidence in this case was overwhelming[.]"

The record is clear that Appellant did not preserve his objection to the evidence concerning the 2015 Assault. Pursuant to Maryland Rule 8-131(a), appellate courts will not ordinarily decide an issue "unless it plainly appears by the record to have been raised in or decided by the trial court[.]" In general, "where a party makes a motion in limine to exclude . . . evidence, and that evidence is subsequently admitted, the party who made the motion . . . must object at the time the evidence is actually offered to preserve [its] objection for appellate review." *Reed v. State*, 353 Md. 628, 637 (1999) (quotation marks and citation omitted). "[A]n objection [must be] made each time that a question eliciting that testimony is posed." *Ridgeway v. State*, 140 Md. App. 49, 66 (2001). A party forfeits an objection "if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon v. State*, 407 Md. 16, 31 (2008). Further, "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999).

Here, at the start of trial, the circuit court denied Appellant's motion in limine. When Ms. Guzman was sworn, Appellant's counsel stated on the record that she was

renewing her objection, which the court overruled, and counsel did not request or obtain a continuing objection. Ms. Guzman then testified, without objection, that Appellant was "hitting" Ms. Alvarado and that "[s]he was escaping, so . . . that he wouldn't hit her." The consequence of failing to lodge a contemporaneous objection to this testimony, with no continuing objection in place, is that Appellant's objection to its admissibility as other crimes evidence is not preserved. Moreover, Appellant failed to object when other evidence about the assault was admitted, without objection, through the testimony of Officer Johnson. *DeLeon*, 407 Md. at 31; *see Ridgeway*, 140 Md. App. at 66 (concluding that although appellant objected to the first witness's testimony regarding the shooting, he failed to object to the second witness's testimony about the same shooting and, therefore, failed to preserve that issue for appellate review).

Accordingly, we conclude that Appellant's challenge to the circuit court's admission of testimony relating to the 2015 Assault as admissible other crimes evidence is not properly before this Court.[5]

Even if Appellant had preserved an objection to the testimony from Ms. Guzman and Officer Johnson about the 2015 Assault, we would conclude that the circuit court did

[5] We note that the Court of Appeals recently reiterated that "objections need not be reasserted if those objections would only spotlight for the jury the remarks of the [State]." *State v. Robertson*, 463 Md. 342, 366-67 (2019) (quotation marks and citation omitted). Applying this principle, the Court concluded that defense counsel's initial and immediate objection to the State's continuing line of questioning was sufficient because right after it was overruled, the State pursued its continuing line of questioning about the incident at issue, rendering any continuing objections futile. *Id*. at 367. We conclude that *Robertson* is inapposite to the instant case because Appellant's counsel did not object when the State began its line of questioning about the 2015 Assault.

not err or abuse its discretion in denying the motion in limine and admitting the 2015 Assault as other crimes evidence. As we explained in *Page v. State*:

> In order for "other crimes" evidence to be admissible, the circuit court—in its role as the evidentiary sentry—must conduct a threefold determination before permitting the evidence to be presented to the jury. First, the court must find that the evidence is "'relevant to the offense charged on some basis other than mere propensity to commit crime.'" In other words, the question is whether the evidence falls into one of the recognized exceptions. *State v. Faulkner,* 314 Md. 630, 634 (1989). This determination does not involve discretion; on review by this Court, it "is an exclusively legal [question], with respect to which the trial judge will be found to have been either right or wrong." Second, the court must "decide whether the accused's involvement in the other crimes is established by clear and convincing evidence[,]" and we "review this decision to determine whether the evidence was sufficient to support the trial judge's finding." *Faulkner*, 314 Md. at 634-35. Third, "[t]he necessity for and probative value of the 'other crimes' evidence is to be carefully weighed against any undue prejudice likely to result from its admission[,]" and this is a determination that we review for abuse of discretion. *Id.* Not until the court determines that the evidence can clear these hurdles may the court open the gates for the admission of "other crimes" evidence.

222 Md. App. 648, 661-62 (2015) (some internal citations omitted). Here, the testimony of Ms. Guzman and Officer Johnson had "special relevance" because it tended to show motive and intent for the murder. *Id.* at 622. ("Evidence of a prior bad act may be admissible if it has 'special relevance' to the case, meaning that it "is substantially relevant to a contested issue in the case, and is not offered merely to prove criminal character." (citations omitted)). As the State points out, the Court of Appeals' decision in *Bryant v. State*, is instructive here. 207 Md. 565, 586 (1955). Bryant challenged the admission of a certified copy of docket entries showing that he was convicted of two assaults on the victim about a month prior to her murder. *Id.* at 586. The Court held that the evidence of collateral offenses was admissible, on the trial of the main charge, to prove intent. *Id*. Similarly, in

Snyder v. State, the Court expressly recognized that "[e]vidence of previous quarrels and difficulties between a victim and a defendant is generally admissible to show motive." 361 Md. 580, 605 (2000).

Ms. Guzman and Officer Johnson's testimony at trial established that Appellant assaulted Ms. Alvarado on October 9, 2015. Less than three months after the assault and less than one month after he was sentenced and released for the assault conviction, Ms. Alvarado was found dead. Thus, the 2015 Assault and the underlying murder was "so linked in point of time . . . as to show intent or motive." *Cf. Snyder*, 361 Md. at 605, 610 (concluding that evidence of a physical dispute that occurred between the victim and defendant *seven months* prior to the murder and also at *some unspecified date* "was not too remote to lack a logical relationship to motive"). Additionally, like the assault convictions in *Bryant*, the 2015 Assault showed Appellant's behavior toward Ms. Alvarado. 207 Md. at 586.

II.

Voir Dire of Impaneled Juror

During *voir dire*, the court asked the State to identify its counsel and the witnesses that the State would call or mention at trial. In identifying its witnesses, the State specifically mentioned Mr. Asfaw, the witness who called 9-1-1 after finding Ms. Alvarado on the trail. The court then asked the prospective jurors:

> [I]s there anyone amongst you that know, [or] may know either assistant attorney in Prince George's County mentioned in this matter or any other witnesses identified by counsel in any capacity? If so, please stand.

Only one juror answered affirmatively and approached the bench for an individual *voir dire*.[6]

The court continued with the general *voir dire* and the jurors were impaneled and sworn. The trial began and the State gave its opening statement, at which time Appellant's counsel interjected, "one of the jurors teaches at Northwestern[.]"[7] Accordingly, counsel requested: "Out [of] [a]n abundance of caution, Your Honor, can we ask that juror be voir dired as to w[h]ether there is any type of connection directly or indirectly with the State's witness?" Without expressly denying the request, the trial judge continued with the proceeding, without any individual *voir dire* of this impaneled juror.

During the State's direct-examination of Officer Ryder, defense counsel again requested that the court individually *voir dire* the impaneled juror, explaining as follows:

> [DEFENSE COUNSEL]: I don't think Your Honor addressed the fact that the juror who [ha]s no[w] been seated tea[ches] at Northwestern.
>
> THE COURT: Yes, I did, and I'm not bringing her up.
>
> [DEFENSE COUNSEL]: Could I voir dire?
>
> THE COURT: I'm not bring[ing] her up.
>
> [DEFENSE COUNSEL]: **We would object to her sitting on the jury. We move for mistrial.**
>
> THE COURT: On what?

[6] Juror No. 31 was the only juror to answer this question affirmatively. Juror 31 indicated that he was a contractor for the Capital Police and that his wife worked with one of the detectives on the case.

[7] Appellant has not identified, either before the circuit court or this Court, the specific juror he complains of.

> [DEFENSE COUNSEL]: Because the defense was not aware until opening statement that the [911 caller] was a student at Northwestern. Had defense been aware of, defense would not have . . . a teacher who teaches at Northwestern on the jury.

(Emphasis added). The circuit court denied Appellant's motion for a mistrial.

On appeal, Appellant contends that the trial court erred because, prior to denying Appellant's motion for mistrial, the court refused "to inquire into the impartiality of an impaneled juror, after it was revealed that the juror was a teacher at the school attended by a State's key witness[,]" Mr. Afsaw. According to Appellant, trial courts are obligated "to take some action to determine whether or not an impaneled juror can render a fair and impartial verdict, once the juror's impartiality has been called into question." The court's failure to conduct such *voir dire*, Appellant continues, violated his right to trial by a fair and impartial jury guaranteed under the Due Process Clause of the Fourteenth Amendment and Article 21 of the Maryland Declaration of Rights.

The State responds that Appellant's claim that the court had a duty to *voir dire* the juror "is without merit," because "it is not even clear that Appellant wanted to inquire whether the unidentified juror could be fair even if he or she knew that Mr. Asfaw was a student at Northwestern." The State notes further that Appellant's counsel "was not even sure that there was a seated juror who was a teacher at Northwestern[,]" much less that the juror taught when Mr. Asfaw was a student. Given the unique name of the student, this unidentified juror would have affirmatively responded to the court's *voir dire* question on whether the prospective jurors knew Mr. Afsaw. In the State's view, Appellant's counsel

was making a belated attempt to exercise its peremptory strikes, "not to ferret out bias amongst the jurors."

We begin with the constitutional principle that "[a] criminal defendant's right to have an impartial jury trial is one of the most fundamental rights under both the [the Sixth and Fourteenth Amendments of the] United States Constitution and [Article 21 of] the Maryland Declaration of Rights." *Dillard v. State*, 415 Md. 445, 454 (2010). "If evidence of [juror] misconduct indicates that a fair and impartial trial could not be had under the circumstances, the court must grant a motion for mistrial." *Dionas v. State*, 199 Md. App. 483, 526 (2011), *rev'd on other grounds*, 436 Md. 97 (2013) (internal quotations omitted). But the decision as to whether to grant a mistrial lies within the sound discretion of the trial court and will not be reversed on appeal except for a clear abuse of that discretion. *Id*.

The sole purpose of *voir dire* in Maryland "is to ensure a fair and impartial jury by determining the existence of specific cause for disqualification. To that end, on request, a trial court must ask a *voir dire* question if and only if the *voir dire* question is reasonably likely to reveal specific cause for disqualification." *Collins v. State*, 463 Md. 372, 376 (2019) (citation and brackets omitted). When evaluating jurors' responses to voir dire questions concerning factors affecting their qualification and fairness, this Court presumes that they "are honest in deciding whether to respond affirmatively to a voir dire question." *Pearson v. State*, 437 Md. 350, 360 n.3 (2014).

There are certain circumstances in which a trial court must conduct further *voir dire* examination before denying a motion for a mistrial. For instance, in *Dillard*, the Court of Appeals held that without a *voir dire* examination of the impaneled jurors "to determine

the intent or sub-text of their comments" to the State's primary witness, "the trial judge did not have sufficient information to . . . rule on [the] motion for a mistrial." 415 Md. at 457. "Direct questioning of a juror, however, is not always required." *Dionas*, 199 Md. App. at 527. There are two situations in which the court is required to *voir dire* a jury panel prior to denying a motion for a mistrial:

> (1) cases involving egregious juror and witness misconduct, which results in a presumption of prejudice; and (2) cases where the judge "lacked sufficient information to determine whether the incident was prejudicial."

Id. (quoting *Dillard*, 415 Md. at 462).

In *Dionas*, an impaneled juror sent a note to the court stating that someone had approached him about the jury's verdict. *Id*. at 524. Dionas moved for a mistrial, arguing that the juror's note indicated that other jurors were influencing him. *Id*. The trial court denied the motion for mistrial. *Id*. On appeal, Dionas argued that "the trial court erred in failing to *voir dire* the juror who indicated he had been approached by someone about the jury's verdict and felt pressured by the jury." *Id*. at 524. As Appellant argues in the instant case, Dionas argued that the trial court had a duty to "take some action to determine whether or not an impaneled juror can render a fair and impartial verdict once the juror's impartiality ha[d] been called into question," and that the court failed to directly *voir dire* the impaneled juror. *Id*. at 524-25 (brackets and quotation marks omitted).

Preliminarily, this Court concluded that Dionas's argument was not preserved for appellate review because he never argued to the trial court that a *voir dire* of the individual juror was necessary to determine whether there was prejudice from the juror's contact with the unknown person. *Id*. at 526-27. We, nevertheless, concluded that even if the argument

was preserved, it was without merit. *Id*. at 527. We reasoned that neither of the two situations requiring the court to conduct a *voir dire* examination of a jury panel prior to denying a mistrial were present in Dionas's case. *Id*. First, "there was no[] egregious conduct by a juror" because the juror did not initiate or engage in the alleged misconduct, "did not initiate the contact, . . . respond to the question, and . . . promptly reported the contact to the court." *Id*. at 528. Moreover, as the notes "clearly conveyed the nature of the contact, there was no need for further inquiry to resolve whether there was prejudice due to the contact. The notes made clear that the substance of the contact was innocuous; there was a mere inquiry into whether the jury had reached a verdict." *Id*. at 528.

In *Mills v. State*, 12 Md. App. 449, 459 (1971), on which Appellant relies, Mills challenged the circuit court's denial of his several requests for a mistrial after one of the jurors "realized she knew the prospective witness, and her knowledge became apparent[.]" *Id*. at 459. This Court recognized that "[t]he relation of a juror to a witness may present an opportunity for prejudice[,]" but cautioned that "mere relationship or mere acquaintance is not a sufficient basis for challenging a juror for cause." *Id*. We held that "the juror's acquaintanceship with the witness, who did not testify, did not furnish a basis for a mistrial, *particularly so because of the trial judge's examination and finding that the juror could render a fair and impartial verdict*." *Id*. at 459-60 (emphasis added).

We reject Appellant's contention that under *Morris v. Wilson*, 74 Md. App. 663 (1988) the trial judge in the present case committed reversible error. In *Morris*, a personal injury case that resulted in a jury verdict in favor of the appellees, this Court addressed whether the trial court erred in denying the appellant's motion for a mistrial in the face of

an allegation of juror bias. *Id.* at 667, 676-77. After the jurors were impaneled and sworn, both parties made opening statements, and the court recessed for lunch, Morris's counsel moved for a mistrial. *Id*. at 677-78. His counsel proffered that Morris had overheard an impaneled juror say, "'these cases are costing too much money' and a stop should be put to it." *Id*. at 677. The trial court denied the mistrial motion, explaining that "uncorroborated alleged statement[s] concerning [j]ury verdicts" did not warrant a mistrial. *Id*. at 678. On appeal, this Court observed that the alleged statements by the juror indicated "a *strong* personal bias" because "[t]hey evidence[d] a belief that cases *such as those brought by appellant* should be prevented, regardless of their individual merit, because they supposedly cost 'too much money.'" *Id*. at 679-80 (emphasis added). Therefore, this Court held that "once an allegation of *patent* juror bias was raised through the motion for a mistrial," "it was incumbent on the judge to conduct *voir dire* to determine if that juror could put aside his personal bias and render a fair and impartial verdict." *Id*. (emphasis added). On certiorari, the Court of Appeals affirmed. *Wilson v. Morris*, 317 Md. 284 (1989).

We return to the case on appeal. There is no evidence in the record on appeal as to the identity of the juror at issue, let alone whether that juror evinced a "patent" bias. *Id*. at 679-80. As we concluded in *Dionas*, neither of the two situations requiring the court to *voir dire* a jury panel prior to denying a mistrial are present in this case. *See* 199 Md. App. at 527. Here, Appellant alleged that the impaneled juror's partiality arose from a *potential* student-teacher relationship between the juror and Mr. Afsaw. Again, Appellant did not even identify the specific juror he was challenging. Notwithstanding, we cannot say that

this potential student-teacher relationship alone, especially with a witness who was not a key witness for the State, creates a presumption of prejudice. Even if the juror did know Mr. Afsaw, a juror's "mere acquaintanceship with the witness" is not sufficient grounds for a mistrial. *See Mills*, 12 Md. App. at 59-60; *see also Bristow v. State*, 242 Md. 283, 285 (1966) (holding that the mere relationship of a juror to one of the witnesses in a criminal trial, other than one of the parties in the case or one having a strong personal interest in its outcome, such as the person instigating the prosecution, is not of itself" grounds for disqualifying that juror).

Accordingly, under the circumstances of this case, we hold that the trial court did not abuse its discretion in refusing to individually *voir dire* the impaneled juror prior to denying the motion for a mistrial.

III.

Right to an Interpreter

Appellant next asserts that the trial court violated his "right to the appointment of an interpreter throughout the proceedings" by using a single Spanish-speaking interpreter for Appellant and other Spanish-speaking witnesses. Specifically, he complains that the court's use of his interpreter when Ms. Duarte testified deprived him of his means to communicate with his attorney. The State retorts that Appellant's challenge is not preserved for appellate review because counsel for Appellant did not renew his objection to the use of the same interpreter for the State's other witnesses: Ms. Guzman, Mr. Campos, and Mr. Perez. Even if preserved, the State avers, the decision to appoint more than one interpreter is purely discretionary and there is nothing in the record to indicate

that the interpreter "was not able to fully serve both Appellant and the four Spanish[-]speaking witnesses."

The Court of Appeals has instructed that "a trial court's decision to appoint an interpreter is a two-part process[.]" *Kusi v. State*, 438 Md. 362, 367 (2014). On appellate review, we will "first examine whether the trial judge's factual findings were clearly erroneous and, if those findings are not clearly erroneous, [we] will then consider whether the trial judge abused his discretion in making the determination regarding whether to appoint an interpreter." *Id*.

In *Biglari v. State*, this Court emphasized that:

> [t]he ability to understand the proceedings is essential to a defendant's right to a fair trial. If a criminal defendant is unable to speak and understand English, an interpreter must be provided to the defendant because a defendant who cannot understand what is being said is not fairly present at trial.

156 Md. App. 657, 665 (2004) (citing *Ko v. U.S.*, 722 A.2d 830, 834 (D.C. Cir. 1998)). Maryland Code (2001, 2018 Repl. Vol.), Criminal Procedure Article ("CP"), § 1-202(a) implements this right and provides:

> [t]he court shall appoint a qualified interpreter to help a defendant in a criminal proceeding throughout any criminal proceeding when the defendant . . . cannot readily understand or communicate the English language and cannot under a charge made against the defendant or help present the defense.

With regard to the appointment of multiple interpreters in the same language, Maryland Rule 1-333(c)(4) provides:

> [a]t the request of a party or on its own initiative, *the court may appoint more than one interpreter in the same language* to ensure the accuracy of the interpretation or to preserve confidentiality if:
>
> (A) the proceedings are expected to exceed three hours;

(B) the proceedings include complex issues and terminology or other such challenges; or

(C) an opposing party requires an interpreter in the same language.

(Emphasis added).

In *Biglari*, the circuit court proceeded without appointing an interpreter for Biglari on the basis that his education, language skills and participation in several hearings and conferences with his counsel made an interpreter unnecessary. 156 Md. App. at 667. Further, at a previous competency hearing, Biglari's counsel stated that he and Biglari did not have difficulty in understanding each other. *Id*. at 667. On appeal, this Court held that there was legally sufficient evidence to support the trial court's decision to deny an interpreter. *Id*. at 668. This Court explained:

> In the case at bar, the record contains ample evidence that [the] appellant could understand and communicate in English, could understand the charges against him, and was capable of helping to present his defense. Under these circumstances, the circuit court did not err in denying appellant's request for an interpreter.

Id. Accordingly, this Court affirmed the trial court on the matter of the interpreter. *Id*.

In the instant case, there is no dispute that the court appointed an interpreter for the Appellant. Appellant suggests that the trial court denied him his right to an interpreter by failing to appoint *another* interpreter for the State's Spanish-speaking witnesses and instead, "borrowing" his own Spanish interpreter during the testimony of those witnesses. As Appellant correctly observes, there appears to be no Maryland decision to date—reported or unreported—addressing the argument he advances on appeal. As such, Appellant relies on the California Supreme Court's decision in *People v. Aguilar*, 677 P.2d 1198 (Ca. 1984), which held that the defendant was deprived of his *state* constitutional

right to an interpreter when the court borrowed his interpreter to translate for the State's two witnesses.[8] *Id.* at 1201.

We need not, however, decide whether the "borrowing" of the interpreter denied Appellant his constitutional right to a fair trial because Appellant has not shown how he was prejudiced by the court's decision. *See Lawson v. State*, 389 Md. 570, 580-81 (2005) (explaining that an appellate court will not reverse an error unless it results in prejudice to the complaining party). As discussed, "[t]he ability to understand the proceedings is essential to a defendant's right to a fair trial." *Biglari*, 156 Md. App. at 665 (citation omitted). When the afternoon interpreter was sworn in on the first day of trial, Appellant's counsel proffered to the court that Appellant "*had been communicating with* [*her*] *in Spanish. He's explained to us that he prefers to communicate in Spanish*[,]" suggesting that Appellant and counsel were capable of communicating with one another in Spanish, without an interpreter. Later, when the court was advising Appellant of his right to not testify, Appellant confirmed that he had not experienced any problems with understanding the Spanish interpreters or "anything [] that the interpreters over the past three days ha[d] interpreted for [him]."

Moreover, Appellant does not contend, nor does the record indicate, that he ever expressed to the court that he desired—but was unable—to communicate with his counsel because his interpreter was translating for the State's witnesses. On the first day of trial,

[8] We note that in *Aguilar*, the California Supreme Court reached its decision based on its own state constitution. 677 P.2d at 1199.

his interpreter was used for the State's witnesses on two occasions: during the testimony of Ms. Duarte and Ms. Guzman, both of whom spoke Spanish like Appellant.[9] Throughout Ms. Duarte and Ms. Guzman's testimony, the court held several bench conferences during which the interpreter approached the bench with counsel, "utilizing a person-to-person microphone communication system to translate for [Appellant] at counsel table[.]" Appellant also does not explain how the court's decision to not appoint another Spanish interpreter impaired his ability to understand this portion of the proceedings. He fails to direct us to any portion of the trial that he could not or would not understand. And given that Ms. Duarte and Ms. Guzman both spoke Spanish like Appellant, and that Appellant's counsel proffered that she communicated with Appellant in Spanish, we find it difficult to conceive how the "borrowing" of Appellant's interpreter prejudiced him. For these reasons, we fail to discern any reversible error on the part of the trial court.

IV.

Witness "Blurt"

At trial, the State sought to elicit testimony from Ms. Guzman about who was present in Ms. Duarte's home when Appellant allegedly assaulted Ms. Alvarado in October 2015. The following exchange occurred:

> [PROSECUTOR]: Who else lived at the house with you and Ms. Duarte back in October of 2015?

[9] On the second day of trial, two interpreters were sworn and both Mr. Campos and Mr. Perez needed an interpreter. Finally, on the third day of trial, one interpreter was sworn, though none of the State's witnesses required an interpreter.

> [MS. GUZMAN]: Well, I lived in the [attic], and in the [attic] [] only my husband and I lived there, and then there was a young man whose name was Junior. . . .
>
> [PROSECUTOR]: And what about in the rest of the house?
>
> [MS. GUZMAN]: And in the main floor lived Miss Mary, Tatia (phonetic), Mariano and [Appellant].
>
> [PROSECUTOR]: Who was Catherine?
>
> [MS. GUZMAN]: **The deceased who was killed by Chino.**

(Emphasis added). Defense counsel objected immediately, arguing that Ms. Guzman "just now testified that [Ms.] Alvarado was killed by a person. . . identified as my client." Defense counsel averred further, "There has been no proof of that. There has been nothing to show that. She was not a witness. There is nothing in the discovery to show she's a witness. It has already gotten out to the jury" and that "the bell can't be unrung." On this basis, defense counsel moved for a mistrial because moving to strike her answer "would just draw more attention [to] what she just said." The trial court denied the motion for a mistrial.

Now on appeal, Appellant asserts that "[a] mistrial was the only appropriate remedy" because "Ms. Guzman's testimony that Ms. Alvarado 'was killed' by [A]ppellant prejudicially encroached on the role of the jury, as fact-finders, to determine [A]ppellant's guilt or innocence." Accordingly, Appellant continues, the trial court erred in "failing to assess the prejudicial impact of [Ms. Guzman's] testimony." Not surprisingly, the State contends that the trial court did not err in denying a mistrial because Ms. Guzman's "blurt" was "a single isolated statement, not responsive to any question by the prosecutor and

offered by a witness who clearly had no first-hand knowledge of Appellant's involvement in the victim's murder."

As discussed, we review a trial court's decision to deny a motion for a mistrial for an abuse of discretion. *Dionas v. State*, 199 Md. App. at 526. We are mindful that "[t]he trial judge is in the best position to decide whether the motion for a mistrial should be granted. Accordingly, we will not interfere with the trial judge's decision unless appellant can show that there has been real and substantial prejudice to his case." *Washington v. State*, 191 Md. App. 48, 99-100 (2010) (citation omitted).

In general, "conclusions based on the resolution of contested facts" are inadmissible. *Bohnert v. State*, 312 Md. 266, 278 (1988). The rationale being that such a "conclusion requires a judgment which invades the province of the jury as the finder of facts." *Id.*; *see also Merrit v. State*, 367 Md. 17, 34 (2001) (holding that a "detective's statement pronouncing 'one of the persons responsible for the murder of [the victim] is [the defendant' was clearly improper and prejudicial opinion evidence on the ultimate issue at the trial"). A witness's statement constitutes a "blurt" or "blurt out" when it is "an abrupt and inadvertent nonresponsive statement made by a witness during his or her testimony." *Washington*, 191 Md. App. at 100 (citing *State v. Hawkins*, 326 Md. 270, 277 (1992)). The Court of Appeals has set forth "a well established analytical framework for determining whether the prejudice to a defendant resulting from a 'blurt-out' is 'real and substantial enough' to warrant a mistrial." *Id*. (citing *Rainville v. State*, 328 Md. 398, 408 (1992)). "The question is one of prejudice[.]" *State v. Hawkins*, 326 Md. 270, 276 (1992). The "factors to be considered in determining whether a mistrial is required" include:

> whether the reference to [to the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Rainville, 328 Md. at 408 (citing *Guesfeird v. State*, 300 Md. 653, 659 (1984)). "These factors are not exclusive and do not themselves comprise the test." *Kosmas v. State*, 316 Md. 587, 594 (1989). Only when a blurt is so prejudicial that it cannot be disregarded by the jury—or as courts and counsel have described such circumstances, the "bell cannot be unrung"—will measures short of a mistrial be an inadequate remedy. *See, e.g.*, *Quinones v. State*, 215 Md. App. 1, 23–24 (2013) ("We agree with the State's 'bell cannot be unrung' argument, which is in line with the holding of the Court of Appeals . . . [that] there comes a point when a theoretically available remedy becomes ineffective." (citing *Carter v. State*, 366 Md. 574 (2001)).

In *Rainville*, a child molestation case, the victim's mother inadvertently "blurted out" that the victim had told her that Rainville "was in jail *for what he had done to*" her other child. 328 Md. at 401 (emphasis added). Counsel for Rainville objected immediately and moved for a mistrial, arguing prejudice. *Id*. at 401-02. The trial court denied the motion but gave a curative instruction. *Id*. at 402. Rainville directly appealed to the Court of Appeals, which reversed the trial court's denial of a mistrial. *Id*. at 411. The Court observed that the mother's remark was particularly prejudicial because "it [wa]s highly likely that the jury assume that 'what the defendant had done to [the other child]' was a crime similar to the alleged crimes against [the victim]." *Id*. at 407. The Court then applied

the analytical framework for determining whether a mistrial was required and concluded that "[t]he State's case rested almost entirely upon the testimony of [the victim]." *Id*. at 409. Accordingly, because much of the witness testimony in the case conflicted and there was a lack of probative medical evidence indicating assault, the Court was "not persuaded that the trial judge's curative instruction could be effective under the circumstances of th[e] case." *Id*. at 409-11.

By contrast, this Court in *Washington* upheld the trial court's denial of a mistrial after applying the *Guesfeird* factors. A State's witness had testified that Washington was "hostile[,]" despite being instructed several times not to characterize Washington. *Id*. at 97. Washington's counsel moved for a mistrial on this basis. *Id*. The court denied the motion for a mistrial and gave a curative instruction. *Id*. at 98. On appeal, this Court concluded that the witness's testimony was a "blurt out" but that the prejudice resulting from the "blurt out" did not warrant a mistrial. *Id*. at 100. The Court explained:

> In applying the *Guesfeird* factors to the instant case, [the witness's] statement was isolated and we do not find that there is any indication that the prosecutor was intending to solicit [his] response. Robinson was certainly not the principal witness in the State's case. . .. While credibility was a crucial factor in the case, the conflict was between the testimony of [another witness] on the one hand and [Washington] and [his wife] on the other. [The witness's] testimony neither enhanced nor detracted from the credibility of any of these witnesses. Unlike *Rainville*, Robinson did not indicate that [Washington] was guilty of a crime similar to which he was being tried. As to the strength of the State's case, there was corroborating evidence to support portions of [the other witness's] testimony. . . . Finally, the trial court took prompt corrective action with the jury.

Id. at 104.

We return to the case before us. Ms. Guzman's testimony was a "blurt out." In applying the *Guesfeird* factors, however, we conclude that the trial court did not abuse its discretion in denying the motion for a mistrial. As in *Washington*, Ms. Guzman's statement that Ms. Alvarado was "killed by Chino" was isolated and the prosecutor's question—"Who was Catherine?"—does not indicate an intent to solicit this response. Although Ms. Guzman's testimony indicated that Appellant was guilty of the crime charged, the State's case here, unlike in *Rainville*, did not rest entirely on Ms. Guzman's testimony. *See, e.g.*, *Guesfeird*, 300 Md. at 659 ("No single factor is determinative in any case. . . but rather, the[factors] help to evaluate whether the defendant was prejudiced."). In addition to Ms. Guzman, the State elicited testimony from Officer Johnson about the 2015 Assault, as well as from Ms. Duarte about Appellant's relationship with Ms. Alvarado to establish motive. Moreover, an overwhelming amount of physical evidence—including evidence of Appellant's DNA—linked Appellant to the scene of the crime.

We recognize that the trial court was in the best position to gauge the jury's reaction to Ms. Guzman's statement. *See Washington*, 191 Md. App. at 104 (recognizing that "the trial court is better equipped than we are to 'ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters'" (citation omitted)). We hold, therefore, that the trial court did not abuse its discretion in denying the motion for a mistrial based on Ms. Guzman's statement.

V.

Evidence of *Miranda* Warnings

At the pretrial hearing on May 30, 2017, counsel informed the Court that the State did not intend to use Appellant's statement to the police at trial. Before attempting to introduce Appellant's DNA samples into evidence at trial, the State elicited testimony from Detective Rodriguez, the officer who questioned Appellant at the police station, about advising Appellant of his *Miranda* rights.[10] Defense counsel objected multiple times:

> [PROSECUTOR]: Let me ask you, did you advise the defendant of his rights?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [DET. RODRIGUEZ]: Yes.
>
> [PROSECUTOR]: Okay. What did you use in order to advise him of his rights?
>
> [DET. RODRIGUEZ]: I used a card.
>
> [PROSECUTOR]: Okay. . . .
>
> Showing you what's been marked as State's Exhibit 52, do you recognize that item?
>
> [DET. RODRIGUEZ]: Yes.

[10] *See Miranda*, 384 U.S. at 478-79 (holding that when an individual is taken into custody, "or otherwise deprived of his [or her] freedom by the authorities in any significant way and is subjected to questioning," the Fifth Amendment privilege against self-incrimination requires that "[h]e [or she] must be warned prior to any questioning that he [or she] has the right to remain silent, that anything he [or she] says can be used against him [or her] in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he [or she] so desires").

[PROSECUTOR]: What do you recognize it to be?

[DET. RODRIGUEZ]: This is a copy of the card that I use to advise Mr. Vasquez of his Constitutional rights.

[PROSECUTOR]: Okay. And what did you tell Mr. Vasquez regarding his rights?

[DEFENSE COUNSEL]: Objection.

THE COURT: Basis?

[DEFENSE COUNSEL]: Your Honor, may we approach, please?

THE COURT: No. Just give the basis, counsel. State the basis of the objection.

[DEFENSE COUNSEL]: This has been a prior motions here [sic] where the State has communicated with counsel and this is inappropriate at this particular time.

THE COURT: Objection overruled.

[PROSECUTOR]: What was the advice that you advised him of?

[DET. RODRIGUEZ]: Yes, advised him of his right to an attorney, the right to remain silent, the right that he didn't have to say anything, also the, you know, that his, the interview was voluntary.

[PROSECUTOR]: Okay.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: Did you advise him that he had the right to stop answering questions if he wanted to?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[DET. RODRIGUEZ]: Yes.

> [PROSECUTOR]: And did you have any conversation with him about whether he had the right to an attorney if he so choose [sic]?
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Ba[s]is? Just give me the, basis counsel. You know that is all you have to do is say the basis of the objection and the Court will rule.
>
> [DEFENSE COUNSEL]: Your Honor, I can't from here.
>
> THE COURT: Okay. Overruled.
>
> * * *
>
> [PROSECUTOR]: Okay. Did you have a conversation with the defendant about whether he was willing to provide a DNA sample?
>
> [DET. RODRIGUEZ]: Yes, I did.

Appellant asserts that "the trial court erred in allowing Detective Marco Rodriguez to testify that Appellant had been given [his] *Miranda* warnings." According to Appellant, "where the State does not seek to introduce a [custodial] statement from the defendant, testimony concerning the use of such warnings lacks relevance and engenders considerable and inherent prejudice to the accused." The State responds that Appellant forfeited this challenge by failing to state, on the court's request, the grounds for his objection to the evidence.[11] The State argues, in the alternative, that the trial court properly exercised its

[11] We are not persuaded by the State's preservation argument. Md. Rule 5-103(a)(1) provides, in pertinent part, that an "[e]rror may not be predicated upon a ruling that admits or excludes evidence unless . . . [i]n case the ruling is one admitting evidence, a timely objection or motion to strike appears of record, stating the specific ground of objection *if the specific ground was requested by the court* or required by rule[.]" In *Bazzle v. State*, the case the State relies on, the Court concluded that defense counsel expressly declined to state a basis for his objection at trial as "a strategic decision . . . so that appellate review would not be limited to the stated basis[.]" 426 Md. 541, 562 (2012). Here, Appellant's counsel did not expressly decline to state a basis but, instead, repeatedly requested a bench conference. Moreover, we cannot say that Appellant's counsel's hesitance to state a basis was a strategic decision for purposes of appellate review.

discretion in allowing the challenged testimony "because it was relevant to the jury's determination that the DNA sample was voluntarily given." In any event, the State contends, the error was harmless because Appellant waived his *Miranda* rights, meaning there was no invocation of silence from which the jury could infer guilt, and there was overwhelming evidence of his culpability.

We review a trial court's determination of relevancy without deference, but we review a trial court's decision to admit or exclude relevant evidence for an abuse of discretion. *Williams v. State*, 457 Md. 551, 563 (2018) (citations omitted).

The Maryland Rules provide that evidence is relevant if it "tend[s] 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. Relevant evidence is admissible unless prohibited by constitutional law, statutes, or the Maryland Rules, "or by decisional law not inconsistent with th[o]se rules." Md. Rule 5-402.

The Court of Appeals in *Zemo v. State* first commented on the evidentiary value of *Miranda* warnings:

> If he had given a "*Mirandized*" statement that the State were offering in evidence, then, to be sure, the State might have to show its compliance with *Miranda* **at the very threshold of admissibility**. Where no statement was being offered and tested for admissibility, on the other hand, [Zemo's] silence in response to the *Miranda* warnings was immaterial. **Indeed, the very fact that [Zemo] had even been interviewed was immaterial.**

101 Md. App. 303, 315 (1994) (emphasis added). The Court, however, explained carefully that its decision did not stand for the proposition that "a gratuitous reference to the giving

of *Miranda* warnings would ever, in and of itself, constitute cause for reversal." *Id*. at 316 n.1. The Court mentioned only the officer's gratuitous reference to the giving of *Miranda* to place "in fuller context the subsequent gratuitous reference to [Zemo's] silence in response to those warnings[,]" the source of the error in that case. *Id*. The Court ultimately found reversible error in the admission of testimony about a defendant's post-*Miranda* silence, emphasizing the constitutional prohibition against bringing to the jury's attention a defendant's post-*Miranda* silence, which lay persons tend to equate to guilt. *Id*. at 316.

Four years later, the Court in *Dupree v. State* applied *Zemo*'s "cogent assessment of the nugatory probative value of *Miranda* warnings" to again address the admissibility of testimony that a defendant was given *Miranda* warnings. 352 Md. 314, 331 (1998). In *Dupree*, the detective testified only that he gave Dupree his *Miranda* warnings, without relaying any statement that Dupree made. *Id*. at 319-20. Before the Court of Appeals, Dupree argued that the admission of this testimony violated his rights under the Fifth and Fourteenth Amendments to the United States Constitution, and Articles 22 and 24 of the Maryland Declaration of Rights. *Id*. at 322. He also challenged the testimony as inadmissible because it was irrelevant under Maryland evidentiary law. *Id*.

The Court of Appeals declined to address the issue on constitutional grounds and instead, decided the case under Maryland's rules of relevancy. *Id*. at 323-34. The Court began its discussion by recognizing that it is "universally accepted" that:

> [E]vidence concerning the advice of *Miranda* rights followed by testimony as to the defendant's waiver of those rights, and as to **any inculpatory statement given thereafter by the defendant**, is permissible in order to enable the jury to assess the voluntariness of the putative waiver and **to**

> **accord the subsequent statement** whatever weight and credibility the jury deems appropriate.

Id. at 325 (emphasis added). In recognizing this principle, the Court found instructive the reasoning of federal courts of appeal heeding the limited evidentiary value of *Miranda* warnings without any inculpatory statement. *Id*. at 329-30. The Court summed up the rationale of these cases as follows:

> It stands to reason, *a fortiori*, that where the defendant has offered *no* statement, the prejudice inherent in the admission of *Miranda*-related testimony far outweighs any probative value such testimony could have: **it lays ground for the double inference that the defendant invoked his right to remain silent and is therefore guilty.**

Id. at 330-31 (emphasis added).

Similarly, the Court reasoned that *Zemo*'s rationale "applie[d] with full force" to the *Dupree* case. *Id*. at 331. Applying the teachings of *Zemo*, the Court concluded that:

> Likewise, in the instant case, the prosecution's needless insistence that the jury be informed that Dupree was "read his rights" put before the jury evidence that was immaterial to any issue in the trial. Because Dupree gave no statement to the police at the time of his arrest, the *Miranda* warnings were not needed by the jury to complete its appointed task.

Id. at 332. Accordingly, the Court held that the trial court abused its discretion in admitting such testimony. *Id*. Moreover, the error was not harmless because once the jury heard testimony about the *Miranda* warnings, without further testimony about a subsequent statement by Dupree, "the inference of Dupree's silence, and thus his guilt, lay dangling for the jury to grab hold. It may well be so that the jury did 'take the bait.'" *Id*. at 333. Moreover, any possibility of an acquittal hinged on Dupree's credibility and the State in closing summed up the evidence in a way that "wanted the jury both *to consider and to*

penalize Dupree for exercising his constitutional right to remain silent upon his arrest." *Id*. at 334 (emphasis added). The Court, therefore, reversed Dupree's convictions and remanded the case for a new trial. *Id*.

As in *Zemo* and *Dupree*, Detective Rodriguez's "gratuitous" reference to giving the *Miranda* warnings to Appellant was immaterial to any issue in the trial. The State did not put forth any evidence of a subsequent *Mirandized* statement by Appellant, thus "the *Miranda* warnings were not needed by the jury to complete its appointed task." *Dupree*, 352 Md. at 332. Indeed, there is "no infringement" of the "Fifth Amendment right identified in *Miranda*" absent a custodial interrogation. *Edwards v. Arizona*, 451 U.S. 477, 485-86 (1981). Accordingly, *Miranda* protections do not extend to "the compelled production of every sort of incriminating evidence," such as "the giving of blood samples, [] the giving of handwriting exemplars, voice exemplars, or the donning of a blouse worn by the perpetrator." *Fisher v. U.S.*, 425 U.S. 391, 408 (1976) (internal citations omitted). A request for a DNA sample, therefore, does not implicate than the Fifth Amendment's *Miranda* requirement. *See Everett v. Sec'y, Fla. Dep't of Corr.*, 779 F.3d 1212, 1244-45 (11th Cir. 2015) ("[T]he Florida Supreme Court did not unreasonably apply clearly established Supreme Court precedent in determining that a request for consent to collect DNA samples from a defendant in custody who has invoked the right to counsel was not an interrogation, did not procure any testimonial communication, and did not run afoul of *Miranda* and its progeny.") (citing *Everett v. State*, 893 So.2d 1278, 1285-87 (Fla. 2004). Under these circumstances, testimony about Detective Rodriguez advising Appellant of his *Miranda* rights was irrelevant and the admission of such testimony was error.

We, nevertheless, conclude that the trial court's error was harmless beyond a reasonable doubt. Unlike in *Dupree*, Detective Rodriguez's testimony about the *Miranda* warnings was followed by testimony raising the inference that Appellant *waived*, rather than invoked, his right to remain silent, by agreeing to a buccal swab. Thus, Detective Rodriguez's testimony did *not* create the prejudicial "inference of [] silence, and thus [] guilt, dangling for the jury to grab hold." *Id*. at 333. The State points out in its brief, "[a]s defense counsel noted in his closing argument, if Appellant had been at all concerned about his participation in the victim's murder he would not consented to the DNA sample."

Additionally, as discussed, there was a significant amount of evidence placing Appellant at the crime scene. Expert testimony established that Appellant's DNA matched the blood recovered at the scene. There was evidence that Appellant's finger was bleeding profusely in the early hours of January 1 when he needed a ride from a McDonalds in the Hyattsville area. Several witnesses testified that Appellant and Ms. Alvarado typically met at the trail where she was found dead, and that Appellant and Ms. Alvarado planned to meet at that trail on the night of her murder.

For the forgoing reasons, we affirm the judgment of the circuit court.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.