Circuit Court for Baltimore City
Case No. 119161021

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2590

September Term, 2019

ROBERT COPES

v.

STATE OF MARYLAND

Graeff,
Ripken,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: May 7, 2021

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Robert L. Copes, Sr., appellant, was convicted of first-degree assault. His sole claim on appeal is that the trial court erred in denying his motion for a mistrial. For the reasons that follow, we shall affirm.

Appellant is the father of the victim, Robert Copes, Jr. On May 17, 2019, Officer Mark Keenan responded to appellant's home and found the victim lying on the floor. The victim had cuts "everywhere," exposed fractures, and a wound on the back of his head. Appellant, who was not visibly injured, was sitting nearby holding a machete. There was blood throughout the house, including on the stairs and in an upstairs bedroom. The victim testified that he and his father had gotten into an argument earlier that day after the victim's mother, and appellant's ex-wife, had called appellant to ask him for money. Following the argument, the victim fell asleep. Approximately one hour later, appellant woke him up and began attacking him with the machete. Appellant denied being the instigator and testified that the victim had attacked him during the argument. He further testified that he had grabbed the machete and used it in self-defense because the victim was "young and fast."

During the victim's testimony, the following exchange occurred:

> PROSECUTOR: Okay. Can you tell me about that argument [on the day of the incident], if you remember?
>
> VICTIM: Well, [appellant] told – he showed me documentations that he never liked [ ] our mother.
>
> PROSCUTOR: Okay.

> VICTIM: And our mother filed for divorce against my father. And he told me, said when you all were kids, he called the police and told the police to get my children out of the house, and my wife, before I kill them.

At this point, defense counsel objected, approached the bench, and requested a mistrial. The trial court indicated that it was not going to grant a mistrial but would give a curative instruction. Following the bench conference, the court instructed the jury: "I am striking the last statement made by the witness from the record. Please disregard it." At the close of trial, the court reinforced that instruction, telling the jury: "The following things are not evidence and you should not give them any weight or consideration. Any testimony that I struck or told you to disregard or any evidence that I struck or did not admit into evidence."

Appellant's sole claim on appeal is that the trial court abused its discretion in denying his request for a mistrial. The grant of a mistrial is "an extraordinary remedy," which should be invoked "only if 'necessary to serve the ends of justice.'" *Klauenberg v. State*, 355 Md. 528, 555 (1999) (citation omitted). We review a court's ruling on a mistrial motion for abuse of discretion. *See Nash v. State*, 439 Md. 53, 66-67 (2014). A court abuses its discretion where its ruling is "violative of fact and logic," or "where no reasonable person would take the view adopted by the trial court." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted).

In reviewing a discretionary ruling, we will not reverse "'simply because [we] would not have made the same ruling'" as the circuit court. *Nash*, 439 Md. at 67 (citation omitted). Moreover, "the range of a trial judge's discretion when assessing the merits of

a mistrial motion . . . is 'very broad,'" and such a ruling "'will rarely be reversed.'" *Id*. at 68-69 (citation omitted)).

> The fundamental rationale in leaving the matter of prejudice vel non to the sound discretion of the trial judge is that the judge is in the best position to evaluate it. The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial.

Washington v. State, 191 Md. App. 48, 103 (2010) (citation omitted).

When a defendant claims that his right to a fair trial has been infringed by the admission of inadmissible and prejudicial testimony, the trial court may consider a number of factors to determine whether a mistrial is required, including:

> [W]hether the reference 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 v. State, 328 Md. 398, 408 (1992) (citation omitted).

Appellant contends that the curative instruction given by the trial court did not ameliorate the prejudice caused by the victim's testimony. We disagree. Generally, inadvertent presentation of inadmissible information may be "cured by withdrawal of it and an instruction to the jury to disregard it[.]" *Vaise v. State*, 246 Md. App. 188, 244 (2020) (quotation marks and citation omitted). Under the circumstances presented here, and taking into account that the trial court was in the best position to determine the possible prejudice to appellant, we are not persuaded that the court abused its broad

discretion in declining to grant the extraordinary remedy of a mistrial. The victim's testimony was isolated and there is no indication that the prosecutor intended to elicit the remark. Moreover, the jury was not informed that appellant had been charged with or convicted of another crime. In fact, the victim did not specifically testify that appellant had committed a prior bad act. Although the victim indicated that, years earlier, appellant had allegedly been upset enough that he had wanted to "kill" his wife and kids, he also testified that appellant had called the police rather than resort to violence. Finally, it is highly doubtful that the jury would have disbelieved the victim's testimony about the incident in question, but then changed its mind after hearing the same victim make an isolated reference to an event that appellant allegedly told him had happened years earlier. Consequently, we hold that the trial court's decision to instruct the jury to disregard the victim's remark, rather than order a mistrial, was not an abuse of discretion.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.