UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0164

September Term, 2016

RICARDO O'NEIL BROOKS

v.

STATE OF MARYLAND

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

JJ.

Opinion by Friedman, J.

Filed: December 27, 2016

The State charged Appellant Ricardo O'Neil Brooks with eight counts of robbery with a dangerous weapon, in violation of Md. Code Ann., Criminal Law Article ("CR") § 3-403, alleging that he had committed a series of early-morning robberies of CVS and 7-Eleven stores in Montgomery County in August and September 2014. A jury sitting in the Circuit Court for Montgomery County subsequently convicted Brooks of two counts of robbery with a dangerous weapon, and one count of robbery. Brooks noted an appeal and raises seven issues for our review:

> 1. Did the trial court err in denying the motion to sever the multiple counts of robbery with a dangerous weapon and in admitting other crimes evidence?
>
> 2. Did the trial court err in finding that defense counsel failed to offer a race-neutral explanation for striking a prospective juror and err in reseating the struck juror?
>
> 3. Did the trial court err in denying defense counsel's motion for mistrial as to all charges after the court found that a discovery violation by the State warranted dismissal of two of the counts of robbery with a dangerous weapon?
>
> 4. Did the trial court err in instructing the jury that as a matter of law State's Exhibit 22 was a dangerous weapon?
>
> 5. Did the trial court err in permitting improper closing argument by the State?
>
> 6. Did the trial court abuse its discretion in instructing on flight?
>
> 7. Did the trial court err in permitting impermissible lay opinion by a police witness?

For the reasons stated below, we answer Brooks' fourth question in the affirmative, vacate his convictions, and remand to the trial court for further proceedings. Brooks'

remaining issues are, therefore, moot. Because Brooks' first issue is exceedingly likely to recur on retrial, however, we address that question, and answer in the negative.

BACKGROUND

At trial, the State introduced testimony alleging that Brooks committed five robberies of 7-Eleven and CVS stores in Montgomery County in August and September 2014. The State also played video surveillance footage of the robberies.

As to the first robbery, Officer Geoffrey Bush of the Montgomery County Police Department testified that at approximately 4:00 a.m. on August 27, 2014, he received a report of a robbery at a 7-Eleven on MacArthur Boulevard in Bethesda. At the scene, Officer Bush spoke with Yaret Wako, a clerk at the store, who reported that the robber was a black male wearing black clothing, including a bandana over his face. Wako stated that the robber held a black handgun, used a black drawstring bag to collect stolen items, and asked for two types of cigarettes, along with money. Girma Hailu, the owner of the 7-Eleven store, recalled that the robber took Newport cigarettes.

Concerning the second robbery, Officer Matthew Davis of the Montgomery County Police Department testified that around 4:45 a.m. on August 28th, he received a report of a robbery at a CVS on Tuckerman Lane in Rockville. At the scene, he spoke with a CVS employee, Nicholas Maru, the victim of the robbery.

Regarding the third robbery, Tracy Christensen testified that she was working as an assistant manager at the CVS on Key West Avenue in Rockville on September 4th. She stated that in the early morning hours, a black male, wearing dark clothing and holding a gun, approached her and said "let's go," motioning her to the cash registers. Christensen

stated that the robber wore a black bandana "with lighter like checks or something" covering his face, as well as dark gloves. The robber placed money taken from the register in a black drawstring bag.

Four days after that robbery, Fahkrul Islam was working as a clerk at the 7-Eleven store in the Laytons Village Shopping Center in Laytonsville. Islam testified that at approximately 4:00 a.m., a robber approached Islam and asked for money. When Islam hesitated, the robber showed him a gun and said, "I'm not playing." The robber took money and left.

As to the fifth robbery, Sarwar Hossain testified that on September 11th, he was working as a clerk at a 7-Eleven in Ashton. He stated that at 4:42 a.m., a man in black clothes entered the store, displayed a gun, and said, "[D]on't talk and give me money." Hossain testified that the robber used a black bag to carry stolen items, which included approximately $200 and Newport cigarettes.

Another robbery took place on September 12th at a CVS in Ellicott City in Howard County. Anna Murrin, a CVS employee, testified that in the early morning hours, a man wearing a black and white mask with a design approached her and displayed a gun. Murrin stated that she gave the man money, which he put into a drawstring bag. Murrin could not describe the robber because she was looking down at the ground. Police later determined that the robber took $437 from the registers.

Officer Demetrius Fortson of the Howard County Police Department responded to the scene of this final robbery and observed a Toyota Camry speeding from the direction of the CVS. Eventually, Officer Fortson and other officers stopped the Camry, which was

driven by Brooks. Howard County officers observed a black drawstring bag in plain view on the floor of the car, with U.S. currency sticking out of the bag. A later search of the vehicle revealed that the bag contained $440.50, and there was also a BB gun, a dark hooded jacket, black gloves, a black and white bandana, and black jeans, as well as a traffic citation indicating that Brooks lived in Montgomery County. Detective Jeremy Terry of the Howard County Police Department testified that the recovered items matched clothing worn by the robber in the surveillance video taken from the Howard County CVS.

Detective Daniel Krill of the Montgomery County Police Department observed the search of the vehicle conducted in Howard County. He testified that the recovered items were the same items used by the robber in the string of crimes in Montgomery County. Another search of the same vehicle revealed more clothing that was similar to that worn by the robber, as well as a pair of Air Jordan shoes that Detective Krill also believed to have been worn by the robber. Additionally, police recovered Newport cigarettes from the vehicle.

Following the presentation of evidence, Brooks moved for a mistrial relative to the first two incidents above—the MacArthur Boulevard 7-Eleven and the Tuckerman Lane CVS—due to discovery violations by the State. The trial court refused to grant a mistrial, but dismissed the charges relating to those two incidents. The jury, thereafter, convicted Brooks of one count of robbery and two counts of robbery with a dangerous weapon. The court subsequently sentenced Brooks to twelve years in prison, with all but eight years suspended, for robbery, and fifteen years, with all but nine years suspended, for each count of armed robbery. All of the sentences were to be served consecutive to each other.

DISCUSSION

As noted above, we will skip directly to the fourth issue raised by Brooks—whether the trial court erred when it instructed the jury that, as a matter of law, the BB gun was considered a dangerous weapon under the applicable criminal law statute. Our resolution of this issue renders moot the remaining issues raised by Brooks. Because the first issue raised by Brooks—whether the trial court erred when it denied the motion to sever the multiple counts of robbery with a dangerous weapon, and admitted other crimes evidence—is exceedingly likely to recur on retrial, however, we will address this issue as well.

I. Jury Instructions

As to the charge of robbery with a dangerous weapon, the trial court instructed the jury as follows:

> The defendant is also charged with the crime of robbery with a dangerous weapon, also known as armed robbery. In order to convict the defendant of robbery with a dangerous weapon the State must prove all of the elements of robbery and must also prove that the defendant committed the robbery by using a dangerous weapon. A dangerous weapon is an object that is capable of causing death or serious bodily harm. You've heard evidence that the defendant used a BB gun, State's Exhibit No. 22, in the commission of the alleged offenses. **I have found, as a matter of law, that the BB gun recovered is a dangerous weapon.** It is up to you, the jury, to determine whether these acts were committed by this defendant.

(Emphasis added). This instruction tracks the Maryland Pattern Jury Instruction on robbery with a dangerous weapon almost word-for-word, except for the trial court's addition of the final three sentences. *See* MPJI-Cr 4:28.1.

On appeal, Brooks contends that the trial court erred with this instruction, specifically with the final three sentences of the instruction, which mandates that the jury consider the BB to be a dangerous or deadly weapon. Brooks argues that by giving this instruction, the trial court was invading the province of the jury, because determining whether an item is dangerous or not, in a specific case, is a question of fact. Brooks cites *Handy v. State*, 357 Md. 685 (2000), for the proposition that while the trial court determines whether an object *could* have been used as a dangerous or deadly weapon, the fact-finder, the jury in this case, and not the trial court, is tasked to determine whether the object was in fact "immediately usable" or "actually used," as one. Brooks maintains that the trial court's flawed instruction may have influenced the jury's verdict.

The State responds that the trial court properly instructed the jury. The State contends that the trial court is supposed to make an initial determination, as a matter of law, whether an item can be used as a deadly or dangerous weapon. Once the trial court makes that determination, then the jury determines whether the State has proven whether the defendant committed the acts as the State alleges in the case. The State maintains that the trial court's instruction in this case tracked the Court of Appeals' decision in *Handy*.

The Court of Appeals has remarked that "the main purpose of jury instructions is to aid the jury in clearly understanding the case, to provide guidance for the jury's deliberations, and to help the jury arrive at a correct verdict." *General v. State*, 367 Md. 475, 485 (2002) (citation omitted). Indeed, "[j]ury instructions direct the jury's attention to the legal principles that apply to the facts of the case." *Preston v. State*, 444 Md. 67, 82 (2015) (internal quotations and citation omitted). We review a trial court's refusal to give

or giving of a jury instruction for abuse of discretion. *See Hall v. State*, 437 Md. 534, 539 (2014) (citation omitted). On appeal, "jury instructions [m]ust be read together, and if, taken as a whole, they correctly state the law, are not misleading, and cover adequately the issues raised by the evidence, the defendant has not been prejudiced and reversal is inappropriate." *Derr v. State*, 434 Md. 88, 133 (2013) (internal quotations and citation omitted).

Section 3-403 of the Criminal Law Article prohibits robbery with a dangerous weapon. The Court of Appeals has defined a deadly or dangerous weapon as follows:

> [T]he instrument must be (1) designed as anything used or designed to be used in destroying, defeating, or injuring an enemy, or as an instrument of offensive or defensive combat [otherwise known as a *per se* dangerous weapon]; (2) under the circumstances of the case, immediately usable to inflict serious or deadly harm []; or (3) actually used in a way likely to inflict that sort of harm [].

Handy, 357 Md. at 693 (internal quotations and citation omitted). The Court of Appeals in *Handy* then explained that the trial court "determine[s] initially, as a matter of law, whether an object *can* be considered a deadly or dangerous weapon under any of the [*Handy*] categories." *Id.* at 694 (emphasis added). If the object can be considered a deadly or dangerous weapon, "then the trier of fact is left to determine whether the criminal use of a deadly or dangerous weapon, actually occurred." *Id.*

At Brooks' trial, the State conceded that a BB gun does not fit into the first category described in *Handy* because it is not a *per se* dangerous weapon. Accordingly, for the BB gun to be classified as a deadly or dangerous weapon, it needed to fall into one of the remaining two categories set out in *Handy*. The State argued that the BB gun fell into the

second category because the gun was heavy and made out of metal. As such, the State maintained, the BB gun was a dangerous weapon because it could have been used as a bludgeon.

"The issue of whether an object not dangerous or deadly *per se may* nevertheless be usable in a dangerous and deadly manner is a matter of law for the court to determine." *Handy*, 357 Md. at 695 (emphasis added). Furthermore, the "issue of whether use of the object in the particular way in which the State alleges it to have been used *constitutes* the commission of a crime … is also a matter of law for the court to determine." *Id.* (emphasis added). The Court of Appeals explained that in this situation, the "trial court might perform this duty [by giving] an instruction informing the jury that *if* a particular object is used in a particular way, it is being used as a dangerous or deadly weapon for the purpose of whatever criminal statute or offense is at issue." *Id.* (emphasis added). Following the dictate of the Court of Appeals, if the object is not a *per se* dangerous weapon, then the trial court determines whether, under the facts of the case, it is *possible* to use a particular object as a dangerous or deadly weapon. Next, the jury decides whether the object was "immediately usable" or "actually used," as a dangerous or deadly weapon in the case.

In this case, we conclude that the trial court's instruction was not a correct statement of the law. A BB gun is not a *per se* dangerous or deadly weapon under the *Handy* formulation, as noted by the court and conceded by the State. The trial court correctly determined that, as a matter of law, a BB gun *could* be a dangerous or deadly weapon—in that it could be used to inflict serious harm if used as a bludgeon. However, in instructing the jury, the trial court did not, as the *Handy* Court suggested, "inform[] the jury that if [the

BB gun] [wa]s used in a particular way [*e.g.*, as a bludgeon], it is being used as a dangerous or deadly weapon … ." *Id.* at 695. Rather, the jury instruction as given appeared to inform the jury that the trial court had already decided the very question the jury is tasked to decide—whether, under the facts of the case, the object that *could* have been used as a dangerous or deadly weapon was in fact "immediately usable" as one. Indeed, the jury's confusion on this issue was evidenced by three separate jury notes asking the trial court if the jury had to accept the court's determination as to the classification of the BB gun as a dangerous weapon.

We are persuaded that the jury instruction for robbery with a dangerous weapon, as given, relieved the State of the burden of proving beyond a reasonable doubt that Brooks used the BB gun in a dangerous or deadly manner. The jury instruction, therefore, was erroneous. We vacate Brooks' convictions and remand for a new trial.

II. Severance

Because this issue is exceedingly likely to recur on retrial, we will also address Brooks' claim regarding severance of his trials. Prior to trial, Brooks filed a motion to sever the eight counts of robbery with a dangerous weapon and to proceed to eight separate trials. The State also filed a motion *in limine* seeking approval to introduce evidence of the Howard County robbery at trial. At a hearing on the motions, the State proposed that three counts would go to separate trials, but that it would proceed to a joint trial on five of the charges. The trial court ruled for the State—denying Brooks' motion to sever the eight counts of robbery into eight separate trials, permitting the State to introduce evidence of the Howard County robbery, and proceeding to trial on five of the eight counts.

Under Maryland Rule 4-253, the trial court may try a defendant on multiple charges against separate victims in one trial. But:

> If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.

Md. Rule 4-253(c).

A court evaluates a severance request by first examining whether the evidence concerning the offenses is mutually admissible. *Conyers v. State*, 345 Md. 525, 553 (1997).

> [I]f a judge could determine that the evidence of any two or more offenses would be mutually admissible, that is, evidence of one crime would be admissible at a separate trial on another charge, then joinder of those offenses would be permissible because the defendant would not suffer any *additional* prejudice as a result of the joinder.

Id. at 549 (emphasis in original) (internal quotations and citation omitted). Mutual admissibility is a question of law that does not allow for any exercise of discretion. *Id.* at 553.[1]

[1] The Court of Appeals recently addressed whether a court must automatically grant severance where the evidence is found *not* to be mutually admissible. *State v. Hines*, ___ Md. ___, 2016 WL 6651891, *10-11 (Nov. 10, 2016). The Court held that both in the context of offense joinder, like in this case, and in the context of co-defendant joinder, "when confronted with a severance question, a trial court must first determine whether there is non-mutually admissible evidence, and then must ask whether the admission of non-mutually admissible evidence results in any unfair prejudice to the defendant." *Id.* at 10. The *Hines* Court went on to clarify that in the context of offense joinder, "non-mutually admissible evidence is *inherently* prejudicial because evidence pertains to only one defendant and is accompanied by the risk of improper propensity reasoning on the part of the jury." *Id.* at *10 (emphasis in original).

If the evidence is mutually admissible, then the court moves on to the second step of the analysis—determining whether the interest in judicial economy outweighs any arguments favoring severance. *Conyers*, 345 Md. at 553. At this second stage, "any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder." *Id.* at 556. The decision to try a defendant on multiple charges in one trial in this second step is committed to the sound discretion of the trial court. *Wilson v. State,* 148 Md. App. 601, 647 (2002) (citations omitted). No Maryland appellate court has ever found an abuse of discretion in this stage of the balancing test. *See Taylor v. State*, 226 Md. App. 317, 376 (2016) (citing *Solomon v. State*, 101 Md. App. 331, 348 (1994)).

First, we will address the first prong of the *Conyers* severability test by considering, as a matter of law, mutual admissibility through the "identity" exceptions to the "other crimes" evidence rule. *Second*, we will address the second prong of the *Conyers* severance test by analyzing whether the trial court abused its discretion in finding that the interest in judicial economy outweighs the arguments favoring severance.

A. Mutual admissibility

Brooks contends that the trial court erred, both in denying the motion to sever and in granting the State's motion *in limine*, because the evidence did not satisfy the "*modus*

Here, as we explain below, because we hold that the "identity" exception to the "other crimes" evidence rule makes the charges in the five robberies mutually admissible against Brooks in a single trial, we need not examine what the outcome would be if the evidence was found not to be mutually admissible.

operandi" and "identity" exceptions to the "other crimes" evidence rule.[2] Specifically, Brooks maintains that because of the commonplace nature of the robberies, there was no *modus operandi* of the robber, and the clothing worn by the robber and recovered from Brooks' vehicle in Howard County were not sufficiently unique to constitute evidence of the robber's identity.

The State maintains that there was no error in holding a joint trial or in admitting testimony regarding the Howard County robbery. The State contends that the evidence of the individual robberies was mutually admissible as evidence of Brooks' identity, as seen through the distinctive *modus operandi* of the crimes and clothing worn by the robber. Therefore, it argues, the charges related to the five robberies were mutually admissible against Brooks and the trials did not have to be severed from one another.

"Whether evidence of one offense would be admissible in a trial on another offense concerns, by definition, 'other crimes' evidence … [which is] evidence that relates to an offense separate from that for which the defendant is presently on trial." *Conyers*, 345 Md.

[2] The parties treat "*modus operandi*" as a separate category than the "identity" exception. This Court explained in *Solomon*:

> Whereas *Ross* [*v. State*, 276 Md. 664, 670 (1976)], treats this use of a peculiar *modus operandi* or "signature" as an exception in its own right, *State v. Faulkner*, 314 Md. [630], 638-40 [(1989)], treats it merely as a variety or aspect of the "identity" exception. This minor difference of opinion in conceptualization makes the larger point—that it is relevant evidence on a material issue in any event, regardless of how one categorizes or conceptualizes it.

101 Md. App. at 354. For the purposes of this Opinion, we will follow *Faulkner* and treat "*modus operandi*" as a sub-category of the "identity" exception.

at 550 (internal quotations and citations omitted). "Other crimes" evidence is only admissible "if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989) (citations omitted). This is the presumptive rule of exclusion. In a severance analysis—a procedural question that must be resolved during a pre-trial hearing—the trial court must consider whether the evidence fits within one of the exceptions to the presumptive rule of exclusion to determine mutual admissibility. *Conyers*, 345 Md. at 551.

One of the recognized exceptions to the presumptive rule of exclusion of "other crimes" evidence is the "identity" exception. *Faulkner*, 314 Md. at 637-38; *see also* Md. Rule 5-404(b) ("['Other crimes'] evidence … 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."). Two of the relevant methods to prove "identity" under the exception is if: "a peculiar *modus operandi* used by the defendant on another occasion was used by the perpetrator of the crime on trial," or, "on another occasion the defendant was wearing the clothing worn by or was using certain objects used by the perpetrator of the crime at the time it was committed." *Faulkner*, 314 Md. at 638 (citation omitted).

In *Faulkner*, the appellant was on trial for robbing a particular Safeway. *Id.* at 636. The trial court allowed the State to introduce "other crimes" evidence of three other robberies of the same Safeway store, including that the thief in all three cases had the same physical characteristics, wore a mask cut out from denim jeans, wore gloves, jumped on

the check-out counter, and demanded bills in large denominations. *Id.* The Court of Appeals held that even though, when isolated, each piece of evidence was unremarkable, taken together they were sufficient as evidence of "identity" through a particular *modus operandi*. *Id.* at 639-40.

Brooks contends that evidence of the individual robberies in Montgomery County and the Howard County robbery does not fit into the "identity" exception because of the commonplace nature of the crimes and the clothing worn by the robber. Brooks relies principally upon *McKnight v. State*, 280 Md. 604 (1977), and *Lebedun v. State*, 283 Md. 257 (1978). In *McKnight*, the State alleged that McKnight committed a series of four robberies over a one month period in the same neighborhood in Baltimore. 280 Md. at 605. Each victim was male, and in three of the crimes, the victim's pocket had been ripped. *Id.* at 605-06. The Court of Appeals concluded that evidence of the four robberies would not have been mutually admissible in separate trials because they were not "so nearly identical in method as to earmark them as the handiwork of the accused; nor were they so unusual and distinctive as to be like a signature." *Id.* at 613 (internal quotations and citation omitted). Brooks contends, then, that the five robberies in this case are similarly commonplace and unremarkable.

Brooks overlooks, however, other differences in the crimes in *McKnight*. The Court of Appeals noted that two of the victims stated they were robbed by two men, while the other two victims claimed they were robbed by one man. *Id.* at 606. Although each victim identified McKnight as an assailant, the attacks happened differently. *Id.* For example, in the first crime, which occurred at night, an attacker grabbed the victim from behind and

pulled him down before tearing the victim's clothes off. *Id.* The second attack occurred around noon some eleven days later; in this instance, an attacker grabbed the victim by the lapel of his jacket, threatened the victim with some hedge shears directed at the victim's genitals, and demanded money while another assailant went through the victim's pockets. *Id.* Three weeks later, in the mid-afternoon, an attacker kicked the victim in the leg before taking money. *Id.* Finally, on the following morning, an attacker grabbed the victim from behind and stole money from the victim's back pocket. *Id.* In short, there were significant dissimilarities in the crimes.

In *Lebedun*, the State alleged that Lebedun and another man robbed two pharmacies within three days. 283 Md. at 259. The Court of Appeals noted that there were several similarities between the offenses, including: the time of day of the crimes; the fact that in both robberies the attackers wore red ski caps; specific drugs and money were taken; the attackers placed the stolen items into a "cloth sack" or "white laundry type bag"; and the victims were told to "play it cool" or "be cool." *Id.* at 281. But, there were also notable differences between the robberies. *See id.* (remarking on differences between the robberies including the jackets and pants worn by the robbers, the weapons used, and the facial hair of the robbers). The Court noted that the similarities between the crimes were close to establishing "a pattern of conduct[,]" but "[s]uch similarities as existed here fit into an obvious tactical pattern which would suggest itself to almost anyone disposed to commit a depredation of this sort." *Id.* (internal quotations and citation omitted). The Court of Appeals concluded that the charges should have been severed for trial because evidence of

the other robbery would not have been mutually admissible in a trial of one robbery. *Id.* at 282.

We are not convinced that *McKnight* and *Lebedun* are so similar to Brooks' case; rather, Brooks' case is more similar to *Faulkner*. In *McKnight* and *Lebedun*, there were sufficient differences between the crimes such that they did not fit into the identity exception of Rule 5-404(b), and thus did not fit the first prong of the test for severance—mutual admissibility. In Brooks' case, however, there was evidence that Brooks wore a remarkably similar outfit—black clothes and a black and white bandana, carried the same black drawstring bag to store the stolen items (money and/or cigarettes), and brought the same BB gun, to each robbery that took place in a two-and-a-half-week time frame. This case is closer to *Faulkner* because even though, when isolated, each piece of evidence was unremarkable, taken together they were sufficient as evidence of "identity" through a particular *modus operandi*. Moreover, unlike in *McKnight*, the robberies in this case occurred at the same time of day. As such, we find Brooks' case analogous to *Faulkner* and distinguishable from *McKnight* and *Lebedun*, as the robberies at issue in this case are "so nearly identical in method as to earmark them as the handiwork of the accused." *McKnight*, 280 Md. at 613 (internal quotations and citation omitted). Therefore, we are not persuaded that the trial court abused its discretion in denying Brooks' motion for severance.

Similarly, we are not persuaded that the trial court abused its discretion in permitting the State to introduce evidence of the Howard County robbery at trial. Evidence recovered after the Howard County robbery, including a dark hooded jacket, black gloves, a black and white bandana, black jeans, a BB gun, and a black cloth bag was probative of Brooks'

identity as the man who robbed both the Howard County CVS and the Montgomery County businesses.

Taking these many circumstances into account, we conclude that the charges related to the five robberies were mutually admissible against Brooks under the "identity" exception to the presumptive rule of exclusion of "other crimes" evidence.

B. Judicial Economy

We next turn to the second prong of the *Conyers* severance test, whether the interest in judicial economy outweighs any arguments favoring severance. Under this step, the trial court found that the strong interest in judicial economy—avoiding five separate trials, in which there were multiple witnesses, and police officers and investigating detectives from multiple jurisdictions that would testify redundantly at each trial—outweighed any arguments against severance.

Brooks argues that the trial court's refusal to sever the trials related to the five robberies caused him undue prejudice. Specifically, Brooks contends that the evidence to be presented at trial about the five robberies was unduly prejudicial because it was merely a cumulation of weak evidence. Brooks alleges that trying the charges together ran a high risk of leading the jury to convict based on the quantity, and not the quality, of the evidence.

We agree with the trial court's assessment that considerations of judicial economy outweighed any prejudice to Brooks in proceeding with a joint trial. The potential costs to the witnesses and to the court inherent in holding five separate trials outweigh the general prejudice described by Brooks—the assertion that trying the charges related to the five robberies together would lead the jury to convict based on the volume of cumulative

evidence. As we said above, no Maryland appellate court has ever found an abuse of discretion by the trial court in this second step of the *Conyers* severance test, and we decline to be the first.

Because we hold that the "identity" exception to the "other crimes" evidence rule renders the charges related to the five robberies mutually admissible against Brooks in a single trial, and because the interests in judicial economy in this case outweigh the prejudice claimed by Brooks, we affirm the trial court's decision to group the trials on the charges related to the five robberies.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY VACATED AND REMANDED FOR FURTHER PROCEEDINGS NOT INCONSISTENT WITH THIS OPINION. COSTS TO BE PAID HALF BY APPELLANT AND HALF BY MONTGOMERY COUNTY.