

Circuit Court for Prince George's County
Case No. CT19-0702X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND*

No. 8

September Term, 2022

DERRICK TIMOTHY WILLS

v.

STATE OF MARYLAND

Arthur,
Albright,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: August 16, 2023

* At the 8 November 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on 14 December 2022.

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation confirms to Rule 1-104(a)(2)(B).

A jury, in the Circuit Court for Prince George’s County, convicted Derrick Wills, appellant, of one count of first-degree murder, one count of attempted first-degree murder, two counts of robbery with a dangerous weapon, one count of home invasion, two counts of use of a firearm in a crime of violence, and one count of conspiracy to commit robbery with a dangerous weapon. The court sentenced Wills to two concurrent life sentences, plus an additional 60 years to run concurrently.

In this appeal, Wills presents three questions, which we have rephrased for clarity:

1. Did the trial court err in preventing Wills from cross-examining a witness about the murder victim’s criminal history?
2. Did the suppression court err in denying Wills’s motion to suppress evidence found at the scene of the crime?
3. Did the trial court err in denying Wills’s motion for a mistrial after the State played for the jury a video that Wills argued contained inadmissible hearsay?

Finding no error, we affirm.

BACKGROUND

At trial, T’Andre Shannon testified that, in the early morning hours of 14 April 2019, he and a friend, Derrell White, went to Shannon’s residence following a night out. Upon their arrival, Shannon realized he had forgotten his key, so he knocked on the front door and waited for his brother, whom lived there also, to open the door. While waiting for his brother to respond, Shannon saw an individual, who he identified later as Wills, walking up to the house with an unidentified man. Shannon testified that he had met Wills at a party a few years prior but had not seen him since. Approaching Shannon, Wills asked if

he could come inside and charge his phone. Shannon agreed and, after Shannon's brother opened the door, the four men went inside.

Once inside, Shannon went to the second floor of the home to check on his mother, who lived there also. When he came back downstairs, Shannon observed Wills and the unidentified man sitting on the couch "rolling" a marijuana cigarette. At that point, Shannon "knew something was going wrong[,] " so he went to the basement to retrieve a gun. White followed Shannon down to the basement and informed Shannon that he was going to his car. A short time later, White returned to the basement, followed by Wills and the unidentified man, both of whom brandished firearms. Wills then pointed his firearm at Shannon and told him to get on the ground. Shannon complied. The two assailants searched Shannon's person, retrieving a gun, marijuana, and several hundred dollars in cash. The two assailants then searched the basement. Sometime later, Wills walked back to where Shannon was lying and shot him in the head, wounding but not killing him. One of the assailants then shot and killed White. The two assailants fled the home.

Following the shooting, the police were called to the scene. Shannon was taken to the hospital for treatment. The police searched Shannon's home and retrieved several pieces of evidence, including a black lighter. The lighter was tested for DNA. A DNA profile was compiled. An expert in DNA analysis testified that that profile matched a known DNA profile taken from Wills.

White's mother, Yolanda White, testified that, on the day of the shooting, she received a call informing her that her son may have been involved in the shooting. She went to the scene and confirmed that her son was the one who had been killed.

Two weeks after the shooting, Shannon met with the police to view a photographic array. Shannon identified Wills as the person who shot him. Shannon identified also Wills in court.

Based on that and other evidence, the jury convicted Wills of the murder of White, the attempted murder of Shannon, and various related charges. This timely appeal followed. Additional facts will be supplied as needed in our Analysis.

DISCUSSION

I.

Wills’s first claim of error concerns the testimony of the murder victim’s mother, Yolanda White. During her direct testimony, the prosecutor asked her to tell the jury “a little bit about [her] son[.]” Ms. White responded that her son “was a good child[.]” “a special child,” and that he “didn’t go out looking for trouble at all.”

At the conclusion of her direct testimony, defense counsel informed the trial court that the murder victim, White, “had prior convictions for guns and drugs[.]” Defense counsel then indicated that he wanted to cross-examine Ms. White about her son’s “prior record.” The State objected. The court sustained the objection. The judge explained that, because Wills had not claimed that he had acted in self-defense or that the murder victim was the aggressor, there was no valid reason to bring up the victim’s criminal record.

Parties’ contentions

Wills claims that the trial court erred in preventing him from cross-examining Ms. White about her son’s criminal record. Wills argues that the court’s decision “prevented the defense from fully exploring, and demonstrating to the jury, that [the victim] was not

the innocent, good boy that [Ms.] White described.” Wills contends that the court’s decision implicated his right to impeach a witness and his constitutional right to cross-examination. Wills asserts further that the court failed to balance properly the probative value of the evidence against its prejudicial effect.

The State disagrees. It contends that the victim’s criminal history was irrelevant and unduly prejudicial. The State maintains further that, even if the court erred in disallowing the evidence, any error was harmless.

Analysis

“A criminal defendant’s right to cross-examine a prosecution witness is guaranteed by the Confrontation Clause of the Sixth Amendment, made applicable to the States through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights.” *Holmes v. State*, 236 Md. App. 636, 671 (2018). “To comply with the Confrontation Clause, a trial court must allow a defendant a ‘threshold level of inquiry’ that ‘expose[s] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.’” *Peterson v. State*, 444 Md. 105, 122 (2015) (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)). “An undue restriction of the fundamental right of cross-examination may violate a defendant’s right to confrontation.” *Pantazes v. State*, 376 Md. 661, 681 (2003).

A defendant’s constitutional right to confront a witness is reflected in Maryland Rule 5-616, which “permits witnesses to be impeached by proof that ‘a witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely.’” *Montague v. State*, 244 Md. App. 24, 64 (2019) (quoting Md. Rule 5-616(a)(4)). In a jury

trial, “questions permitted by Rule 5-616(a)(4) should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion.” *Calloway v. State*, 414 Md. 616, 638 (2010) (quoting *Leeks v. State*, 110 Md. App. 543, 557-58 (1996)) (emphasis omitted).

“Nevertheless, a defendant’s constitutional right to cross-examine witnesses is not boundless[,]” and “[t]he Confrontation Clause does not prevent a trial judge from imposing limits on cross-examination.” *Pantazes*, 376 Md. at 680. “[T]rial courts retain wide latitude in determining what evidence is material and relevant, and to that end, may limit, in their discretion, the extent to which a witness may be cross-examined for the purpose of showing bias.” *Parker v. State*, 185 Md. App. 399, 426 (2009) (quoting *Merzbacher v. State*, 346 Md. 391, 413 (1997)). “Moreover, trial judges are entitled to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues or interrogation that is only marginally relevant.” *Id.* (quoting *Smallwood v. State*, 320 Md. 300, 307 (1990)) (cleaned up); *see also* Md. Rule 5-611(a) (“The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.”). Such decisions are reviewed for abuse of discretion. *Manchame-Guerra v. State*, 457 Md. 300, 311 (2018). To constitute an abuse of discretion, “the trial court’s decision must be well removed from any center mark imagined by the reviewing court and beyond the fringe of

what that court deems minimally acceptable.” *State v. Matthews*, 479 Md. 278, 305 (2022) (quoting *Devincentz v. State*, 460 Md. 518, 550 (2018)).

Against that backdrop, we hold that the trial court did not err in precluding Wills from questioning Ms. White about her son’s criminal history. As the trial court noted correctly, Wills did not claim that he acted in self-defense or that White, the victim, was the aggressor, so there was no need for Wills to establish White’s character for violence. Moreover, because White was not a witness at trial, the impeachment value of airing White’s criminal history was negligible.

To be sure, Ms. White did testify that her son was “a good child” and that he did not “go out looking for trouble[.]” We fail to see, however, how White’s criminal history would have impeached that testimony. His Mother did not testify that her son was law-abiding or that he was “good” because he had never committed a crime. Her passing reference to her son as “a good child” did not render thereby White’s criminal history as relevant.

Even if White’s criminal history was relevant minimally as impeaching Ms. White’s credibility, we cannot say that the trial court abused its discretion in excluding the evidence. On the one hand, her credibility was virtually irrelevant, as her testimony, whether true or not, had almost no bearing on the charges against Wills. Ms. White’s testimony was, more or less, limited to identifying White as the deceased victim, a fact that was and remains undisputed.

On the other hand, introducing White’s criminal record, which included assumedly prior convictions for “guns and drugs,” would have reflected negatively, almost certainly,

on White’s character. Because White’s character was not at issue, such evidence would tend to confuse and inflame the jury. The court was well within its discretion in preventing that line of questioning. *See Martinez v. State*, 416 Md. 418, 428 (2010) (“[The trial court] ‘must allow a defendant wide latitude to cross-examine a witness as to bias or prejudices’ *so long as the questioning does not ‘obscure the trial issues and lead to the factfinder’s confusion.’*” (quoting *Smallwood v. State*, 320 Md. 300, 307-08 (1990))) (emphasis added).

Assuming, *arguendo*, that the court erred in excluding the evidence, any error was harmless. An error is harmless when “the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury’s verdict.” *Gross v. State*, 481 Md. 233, 237 (2022). As noted, neither Ms. White’s credibility nor White’s character was at issue in the case. Thus, Wills’s inability to explore whether White was “the innocent, good boy that [his Mother] described” could not have influenced the jury’s verdict.

II.

Wills’s next claim of error concerns a pre-trial motion to suppress. Wills sought to suppress the black lighter found at the crime scene.

At the suppression hearing, Detective Wesley Burns testified that he responded to the scene of the shooting at Shannon’s residence. Detective Burns testified that a search of the home revealed a black lighter, which was located on the floor of the living room. A picture of where the lighter was found was introduced into evidence.

The Detective testified that a DNA analysis report was compiled. That report, which was introduced into evidence, indicated that a “DNA profile from at least two contributors,

including a major male contributor, was obtained” from the black lighter and a complete DNA profile was obtained from Wills. The report concluded that the major contributor DNA profile taken from the black lighter was consistent with Wills’s DNA profile. The report stated also that the two victims, White and Shannon, were excluded from the major contributor DNA profile.

Detective Burns testified further that he interviewed Shannon. During that interview, Shannon identified Wills as the person who shot him. Shannon stated also that Wills had never been to his house prior to the day of the shooting.

At the conclusion of the evidence at the suppression hearing, Wills argued that the black lighter should be excluded because the evidence did not show any connection between him and the scene of the shooting. Wills argued further that there was no evidence to show when, and by whom, the lighter might have been brought to the house, nor was there any evidence to show that the lighter was “connected in any way with the scene of the alleged homicide.”

The suppression court denied Wills’s motion. The court found that there was sufficient evidence to establish a connection between Wills, the lighter, and the scene of the shooting.

Parties’ contentions

Wills maintains that the suppression court erred in denying his motion to suppress the black lighter. Wills contends, as he did in the circuit court, that there was no evidence presented at the suppression hearing to establish any connection between him and the homicide scene, nor was there any evidence to show how the lighter arrived at the scene.

Wills also contends that the State failed to present “any attendant circumstances to show that the DNA recovered from the cigarette lighter was placed on the lighter at the time and place of the murder.” Relying on *Chandler v. State*, 23 Md. App. 645 (1974), *Mills v. State*, 3 Md. App. 693 (1968), and *Gray v. State*, 4 Md. App. 155 (1968), Wills urges that, because the State did not establish a “sufficient nexus” between him and the lighter, the lighter should have been excluded.¹

The State argues that the suppression court denied properly Wills’s motion. The State maintains that the cases cited by Wills are inapposite and that Wills’s arguments regarding the lack of a “sufficient nexus” go to the weight of the evidence, not its admissibility. The State contends that, even if the admissibility of the lighter hinged upon the connection between Wills and the lighter, such a connection was made by the DNA report and Detective Burns’s testimony.

Analysis

“Our review of a circuit court’s denial of a motion to suppress evidence is ‘limited to the record developed at the suppression hearing.’” *Pacheco v. State*, 465 Md. 311, 319 (2019) (quoting *Moats v. State*, 455 Md. 682, 694 (2017)). “[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party.” *Davis v. State*, 426 Md. 211, 219 (2012). “We accept the suppression court’s first-level findings unless they are shown

¹ In explicating in his brief his view of the standard of review, Wills makes a passing reference to the Fourth Amendment to the United States Constitution. Wills does not argue, however, that the lighter should have been excluded on constitutional grounds.

to be clearly erroneous.” *Brown v. State*, 452 Md. 196, 208 (2017). “We give no deference, however, to the question of whether, based on the facts, the trial court’s decision was in accordance with the law.” *Seal v. State*, 447 Md. 64, 70 (2016).

We hold that the suppression court did not err in denying Wills’s motion to suppress the black lighter. First, we agree with the State that the cases cited by Wills are inapposite. Each of those cases inquired whether the defendant’s fingerprint, which was found at the scene of the crime, was sufficient to sustain the defendant’s conviction. *E.g.*, *Chandler*, 23 Md. App. at 652-55; *Mills*, 3 Md. App. at 695-97; *Gray*, 4 Md. App. at 157-59. Although we did hold in each of those cases that the State failed to establish a sufficient nexus between the fingerprint and the crime, those holdings were made in the context of resolving sufficiency challenges. *See Chandler*, 23 Md. App. at 652-55; *Mills*, 3 Md. App. at 695-97; *Gray*, 4 Md. App. at 157-59.

To be sure, for physical evidence to be admissible, there must be some connection between the physical evidence and either the accused or the charged crimes. *Boston v. State*, 235 Md. App. 134, 156-58 (2017). That said, “[p]hysical evidence need not be positively connected with the accused or the crime to be admissible; it is admissible where there is a reasonable probability of its connection with the accused or the crime[.]” *Id.* at 156 (quoting *Aiken v. State*, 101 Md. App. 557, 573 (1994)) (further quotation marks and citation omitted). “[T]he lack of positive identification affects only the weight of the evidence.” *Aiken*, 101 Md. App. at 573 (quoting *Brooks v. State*, 24 Md. App. 334, 344 (1975)).

Here, Detective Burns testified that Shannon told him that Wills was at Shannon’s house on the night of the shooting and that Wills had not been there before. Detective Burns testified also that he found a black lighter at Shannon’s home following the shooting. DNA found on the lighter was matched to Wills’s DNA. Given that evidence, there was a reasonable probability that Wills handled the lighter at the time of the shooting. That the State did not establish, definitively, when and how the lighter or Wills’s DNA got to the scene went to the weight of the evidence, not its admissibility.

III.

Wills’s final claim of error concerns an issue that arose during the State’s examination of Shannon. As noted earlier, Shannon testified at trial that Wills was the person who shot him. Shannon testified also that, sometime after the shooting, he met with the police and identified Wills from a photographic array.

Following that testimony, the State moved to introduce a video recording of Shannon’s photographic identification of Wills. Wills objected on hearsay grounds, and the State responded that the identification was excepted from the hearsay rule as a statement of identification. The trial court overruled the objection and admitted the video.

The State began play the video. In the video, Shannon makes several statements indicating that he was fearful that something bad may happen to his family. Also, he stated, several times, that Wills was the person who shot him.

A short time after the video began to be played, the trial court stopped the video and stated that the video had “gone beyond” establishing Shannon’s identification of Wills as the shooter. It is unclear from the record exactly how much of the video was played for

the jury before the judge intervened. After stopping the video, the court held a bench conference. The following colloquy ensued:

[DEFENSE]: Your Honor, I move for a mistrial. I move for a mistrial. I begged the [c]ourt not to let this be shown to the jury. I move for a mistrial. This is highly prejudicial.

THE COURT: I'm going to tell the jury to disregard everything after the identification. I do not find that this is – there is any manifest mistakes beyond the identification. And I will tell the jury –

[DEFENSE]: But there is no way they can unhear what they just heard, Judge. There's no way they can unhear this. We move for a mistrial. We vigorously move for a mistrial, Judge.

THE COURT: Give me a second. I don't find that there's a manifest necessity to declare a mistrial. I do find everything subsequent to the identification should be stricken and I'll absolutely instruct the jury to ignore that.

I think that there's nothing new that was added that we haven't already seen between the witness and Mr. Wills. Mr. Wills has been staring at the witness. The witness has been staring back at him.

When you asked to show the – when we asked to show the tattoos, there was clearly staring when the witness looked at him and said, I'm not scared of you. So I don't think it added anything that we didn't already hear in here, but I do believe that the jury should not consider that whatsoever.

So finding no manifest necessity, we will not hear any more of this video. The rest of the video will not be played and I will make that instruction.

The trial court decided to strike the video in its entirety. Thereupon, the judge instructed the jury as follows:

[L]adies and gentlemen of the jury, Exhibit Number 83 will not be admitted. It will be stricken. It's the video you were watching before we broke for lunch.

You are not to consider it when you're deliberating. You are not even to discuss it when you're deliberating. It is not in evidence. Thank you.

Later, in its general jury instructions, the trial court reminded the jury that it should not give any weight or consideration to any exhibits that the court struck or did not admit into evidence.

Parties' contentions

Wills argues that the trial court erred in denying his motion for a mistrial. He asserts that the video should not have been admitted because it was hearsay. He claims that the video was also prejudicial because it included statements by Shannon in which Shannon professed his fear of Wills and repeated his version of events regarding the shooting. He contends that those statements bolstered impermissibly Shannon's testimony. He faults the court's instruction as insufficient to cure the substantial prejudice caused by Shannon's statements.

The State argues that the trial court denied properly Wills's motion. Preliminarily, the State notes that Wills failed to identify the substance of the disputed remarks, which precludes meaningful appellate review. The State maintains that, to the extent that Wills is referring to Shannon's statements regarding the safety of his family, any prejudice Wills may have suffered was cured by the court's instructions.

Analysis

“The granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances.” *Bynes v. State*, 237 Md. App. 439, 457 (2018) (cleaned up). “[A] mistrial is an extreme sanction that sometimes must be resorted

to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice[.]” *Diggs & Allen v. State*, 213 Md. App. 28, 70-71 (2013) (quoting *McIntyre v. State*, 168 Md. App. 504, 524 (2006)). “Put another way, ‘[t]he determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that he [or she] was deprived of a fair trial.’” *Winston v. State*, 235 Md. App. 540, 569-70 (2018) (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)) (further quotation marks and citation omitted). “The defendant bears the burden of showing that the prejudice arising from the trial court’s error demands the declaration of a mistrial.” *Fleming v. State*, 194 Md. App. 76, 94 (2010). We review a court’s decision to decline a mistrial request for abuse of discretion. *Id.*

We hold that the trial court did not abuse its discretion in refusing to grant a mistrial. First, we disagree with Wills’s claim that the video itself was inadmissible hearsay. When, as here, a witness makes an out-of-court statement “that is one of identification of a person made after perceiving the person” and the witness testifies subsequently at trial and is subject to cross-examination, the witness’s statement is not excluded by the hearsay rule. Md. Rule 5-802.1(c). Clearly, that part of the video, played before the jury, of Shannon’s taped statement identifying Wills as the person who shot him fell within the rule and was therefore admissible. To the extent that the played portion of the video contained additional hearsay statements that were otherwise inadmissible, Wills was required to bring those statements to the court’s attention and request that they be redacted. *Belton v. State*, 152 Md. App. 623, 633-34 (2003). He failed to do so.

As for Wills’s claim that the statements were prejudicial, we cannot evaluate properly that claim. Although Wills argues that Shannon made various “bolstering” statements in the video, Wills fails to identify exactly what those statements were. Given that the trial court did not show the entire video to the jury, we cannot rely simply on the transcript of the video because we have no way of knowing which of Shannon’s other statements were exposed to the jury.

Assuming, *arguendo*, that Wills is referring to the statements in which Shannon expresses fear for his family’s safety, we cannot say that, under the circumstances, exposing the jury to those statements resulted in prejudice so substantial that Wills was deprived of a fair trial. As the trial court noted, there was a palpable animosity between Shannon and Wills during Shannon’s trial testimony. Thus, it was unlikely that the jury would be surprised to learn that that hostility was present during Shannon’s pretrial identification. Moreover, Shannon was shot in the head during a violent home invasion that occurred while several family members were present in the home. A reasonable person in Shannon’s position would have felt some fear for the safety of his or her family after such an incident.

In any event, we are convinced that any prejudice was cured by the court’s instructions. When, as a here, a court denies a motion for mistrial and gives a curative instruction, “the question of prejudice becomes whether ‘the damage in the form of prejudice to the defendant transcended the curative effect of the instruction.’” *Johnson v. State*, 156 Md. App. 694, 705 (2004) (quoting *Med. Mut. Liab. Ins. Soc’y of Maryland v. Evans*, 330 Md. 1, 19 (1993)) (further quotation marks and citation omitted). Shortly after

terminating the video being shown to the jury, the court instructed the jury that the entirety of the video was struck, that it was not evidence, and that the jury was not to consider it or even discuss it during deliberations. Also, during its general instructions at the close of the evidence, the court reminded the jurors that they were not to consider any evidence that had been struck. Given those clear instructions and the rather meager risk of prejudice caused by the showing of the portion of the video, we cannot say that the prejudice to Wills transcended the court's curative instruction. The court did not abuse its discretion in refusing to grant a mistrial.

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