

Circuit Court for Baltimore City
Case No: 117354035

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 502

September Term, 2019

TRAVON HARRINGTON

v.

STATE OF MARYLAND

Fader, CJ,
Graeff,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2020

*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.

Travon Harrington, appellant, was convicted of conspiracy to commit murder following a jury trial in the Circuit Court for Baltimore City. On appeal, Mr. Harrington contends that a statement made by Detective Jonathan Riker at trial was “so prejudicial that only the declaration of a mistrial could salve the prejudice attendant to that statement.” Specifically, in explaining why Mr. Harrington was permitted to “stay on the street” for 11 months following the acquisition of incriminating evidence against him, Detective Riker testified that he did not believe that Mr. Harrington was on the street for that entire period and that he “was actually serving some time on a different” offense. Despite the inaccuracy of Detective Riker’s statement, the trial court denied Mr. Harrington’s motion for a mistrial. On appeal, Mr. Harrington contends that the trial court abused its discretion in doing so. For the following reasons, we disagree and shall affirm.

BACKGROUND

In connection with the November 2016 shooting death of Antonio Madeam, Mr. Harrington was indicted by a grand jury for first degree murder, use of a firearm in the commission of a crime of violence, and with conspiracy to commit murder. Though Detective Riker had obtained confirmation that a gun attributed to Mr. Harrington was “a match to this murder” and had obtained Mr. Harrington’s phone containing incriminating “texts and photographs” by early March of 2017, Detective Riker did not obtain a warrant for Mr. Harrington’s arrest until December 2017. At trial, Detective Riker was asked during cross-examination whether it was his “policy to let a man that [he] believe[d] committed murder to stay on the street for 11 months.” In response, Detective Riker stated

that he had “bosses” and that the “State’s Attorneys have the say when and when not to get a murder warrant.”

On redirect, Detective Riker was asked whether he believed that Mr. Harrington was “on the street the whole time” between September and December 2017. Detective Riker replied: “No. He was actually serving some time on a different—”. Before Detective Riker could complete his response, Mr. Harrington objected and immediately moved for a mistrial. Mr. Harrington proffered to the court that Detective Riker’s statement was “inaccurate,” specifying that in the Fall of 2017 he was only “locked up on a fleeing and alluding and was released...the next day by the Commissioner.” The trial court inquired of the parties how Detective Riker’s statement could “effectively get cured.” In response, Mr. Harrington argued that it could not be cured, asserting that “no matter what I say, no matter how I prove [Detective Riker] wrong, they still heard that, and to me that creates the manifest necessity that requires a mistrial.”

Prior to the trial court’s ruling on the motion, the parties agreed that the State would elicit testimony from Detective Riker that he “mistakenly thought [Mr. Harrington] was...incarcerated on another matter in the fall” and that Mr. Harrington would elicit testimony from Detective Riker that his prior testimony was “wrong.” Despite this agreement, Mr. Harrington did not withdraw his motion for mistrial.

Ultimately, the court ruled that there was no manifest necessity for a mistrial and accepted the curative testimony proposed by the parties as “reasonable as anything else.” Detective Riker then testified that he “mistakenly said that [Mr. Harrington] was not on the

street at that time” and affirmed that he was “a hundred percent wrong” that “Mr. Harrington was serving another sentence for another crime.”

DISCUSSION

“An appellate court will not reverse a denial of a mistrial motion absent clear abuse of discretion.” *Winston v. State*, 235 Md. App. 540, 570 (2018). In reviewing a trial court’s exercise of discretion, we consider whether it was “manifestly unreasonable, or exercised on untenable grounds, or for untenable reasons.” *State v. Baker*, 453 Md. 32, 46 (2017) (internal citation and quotations omitted). The central question in deciding a motion for mistrial “is whether the prejudice to the defendant was so substantial that he was deprived of a fair trial.” *Kennedy v. State*, 436 Md. 686, 696 (2014) (internal citation and quotations omitted). The trial court must, therefore, “assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured.” *Carter v. State*, 366 Md. 574, 589 (2001). “If a curative instruction is given, the instruction must be timely, accurate, and effective.” *Id.*

The record does not disclose an abuse of discretion by the trial court. Firstly, we recognize that, “the trial court is peculiarly in a superior position to judge the effect of any of the alleged improper remarks.” *Simmons v. State*, 436 Md. 202, 212 (internal citation omitted). “The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able ... to note the reaction of the jurors and counsel to inadmissible matters.” *Id.* (internal citation omitted).

It was reasonable for the trial court to surmise that Detective Riker’s testimony was not so prejudicial as to deprive him of a fair trial. The court appropriately considered

several of the non-exclusive factors enumerated in *McIntyre v. State*, 168 Md. App. 504, 524-25 (2006), for determining whether a prejudicial statement “had a substantial and irreversible impact upon the jurors.” These factors include:

whether 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 which the entire prosecution depends; the timeliness of the curative instruction; and whether a great deal of other evidence exists.

Id.

The court accurately stated that Detective Riker’s statement “was a single, isolated incident.” As such, it was not so pervasive that correction of Detective Riker’s inaccurate testimony would be ineffective. It was reasonable for the court to determine that the testimony “was not solicited deliberately by another,” but was an “innocent” response to “the accusation that [Detective Riker] was sitting there doing nothing” for 11 months. Further, the court recognized that while Detective Riker was an important witness, he was “not the only witness in the face of two people who have said at least on one occasion that Mr. Harrington acknowledged shooting the decedent.” Moreover, there was testimony from Detective Riker that a gun attributed to Mr. Harrington was “a match to this murder” and there were incriminating “texts and photographs” in Mr. Harrington’s phone suggesting that he was attempting to hide a gun following the shooting. Had there been less evidence mounted against Mr. Harrington, the potential for undue prejudice might have been greater.

Moreover, it was reasonable for the court to conclude that the solution devised by the parties, that Detective Riker would testify that he was “one hundred percent wrong” was a reasonable and effective cure to any potential for prejudice. To the extent that Detective Riker’s statement prejudicially implied that Mr. Harrington had been incarcerated in the Fall of 2017, the prejudice was ameliorated by Detective Riker’s subsequent testimony directly contradicting that statement.

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