Circuit Court for Baltimore County
Case No. K-14-5204

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 612

September Term, 2017

CARLOS LOMAX

v.

STATE OF MARYLAND

Reed,
Friedman,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: December 18, 2018

*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.

Carlos Lomax, appellant, was convicted by a jury sitting in the Circuit Court for Baltimore County of first-degree murder, second-degree murder, first-degree burglary, possession of a firearm by a prohibited person, and use of a handgun in the commission of a crime of violence.[1] Appellant raises three questions on appeal, which we have rephrased for clarity:

I. Did the trial court err when it denied appellant's mistrial motion following the State's admission to a discovery violation?

II. Did the trial court err when it denied appellant's motion for judgment of acquittal because there was insufficient evidence of criminal agency?

III. Did the trial court err when it denied appellant's motion for a new trial because the court failed to sever the charge of possession of a firearm by a disqualified person from the other charges?

For the reasons that follow, we shall affirm.

FACTS

The State's theory of prosecution was that during the early morning hours of August 25, 2014, appellant and an accomplice invaded the home of appellant's half-brother, Charles Mitter, Jr., and wife, Tyra Wise, and then murdered them. The sole eyewitness for the State was Wise's then 13-year-old-sister, Icis S., who lived with Mitter and Wise in their apartment. The defense's theory was lack of criminal agency. The defense called no witnesses. The evidence elicited at trial was as follows.

[1] The jury acquitted appellant of a second charge of first-degree murder. Appellant was sentenced by the court to life imprisonment without the possibility of parole for first-degree murder and concurrent sentences of 30 years for second-degree murder, 20 years for burglary, 15 years for possession of a handgun, and 20 years for use of a handgun.

In August 2014, Mitter and his wife lived in an apartment in the White Marsh area of Baltimore County. Their three-year-old son, Titus, and Wise's sister, Icis, also lived with them. Icis testified that just after midnight on August 25th, she was on the phone with a friend when she heard a knock at the apartment door. She looked through the peephole of the door, saw a man standing outside, and told Mitter that someone was at the door. Mitter then looked through the peephole, after which he opened the door and said, "Why you at my house this late? I have a family." Icis heard Mitter and the man at the door argue. She then heard a gunshot and saw Mitter fall to the floor. Two men entered the apartment.

Icis testified that the men demanded that she bring Titus into the living room and then told her to lay down on the floor.[2] She lay on her stomach on the living room floor and watched the events unfold through her hair. The men took Wise into the kitchen and demanded $25,000 from her. When Wise told them she had $4,000 in her bank account, the men began ransacking the apartment. Icis testified that the men bound Wise's hands and began to hit her causing her to fall. One of the men had a screwdriver and repeatedly stabbed Mitter, who was lying and not moving by the door. Wise yelled to Icis to run, but Icis remained. Icis testified that one of the men started to stab Wise repeatedly with a screwdriver. One of the men grabbed bleach from the laundry room and tried to clean off the blood in the kitchen. After what seemed like an hour, Wise told the men that they could find the $25,000 they were looking for at "Adrian's" home and gave an address on Belair

[2] Mitter's and Wise's three-year-old son was also present during the home invasion and murders but due to his age, was not considered as a witness.

Road. The men then left the apartment. Wise told Icis to check if Mitter was breathing. He was not. Icis then called 911.

When the police arrived at the apartment, Wise was still alive. She was able to speak with the officers but her breathing was short, rapid, and labored. There was blood around and on her body, and the officers could smell a strong odor of bleach from her. An officer repeatedly asked Wise if she recognized the assailants, and she repeatedly said she did not.

Wise died at the hospital later that morning. A subsequent autopsy showed that she suffered 148 stab wounds to the head, chest, and abdomen, including a stab wound that went through her ear and skull and into her brain. Her body also showed evidence of petechial hemorrhaging due to strangulation. Mitter's autopsy revealed that he had been shot in the back of the head, which was immediately fatal, and he had been stabbed 18 times in the head and chest. The medical examiner opined that both victims' stab wounds were sharp forced injuries, consistent with a flat-headed screwdriver.

Icis spoke to Sergeant Glen Atteberry of the Baltimore County Police Department, one of the first officers to arrive at the crime scene. She told the sergeant that she did not know her assailants but could describe them. She then described the assailant whose face she saw as a black man in his 30s or 40s, wearing a sky-blue shirt and work gloves. She described the other assailant "the same way" but wearing a black jumpsuit, black work boots, and a yellow reflective workers' vest.

Later that morning Icis was interviewed at the police station by lead Detective Gary Childs of the Baltimore County Police Department. She again described the two assailants,

giving the detective a similar description to what she told Sergeant Atteberry. She added that the man in the blue shirt was clean-shaven, hair "shaved tight." Although she did not clearly see the face of the assailant wearing the black jumpsuit, she said she "absolutely could" identify the assailant in the blue shirt.

Darrell "Beada" Dixon testified that he was a close friend of Mitter's since childhood and explained that Mitter made his living from selling illegal drugs and operating legitimate businesses. Dixon testified that Mitter was "very private" about who knew his home address, and he made sure that his drug dealings were kept "far away" from his apartment. He added that Mitter would not have opened the door to his apartment if he had not known who was on the other side. Dixon testified that appellant, Mitter's half-brother, was one of only a handful of people that knew where Mitter lived. He testified that Mitter and his siblings and half-siblings were "tight." Dixon also testified that an event occurred about a month before the murders, in July 2014, that "[d]rastically" and negatively impacted Mitter's and appellant's relationship.

When Dixon learned of the murders that morning, he went to the police station where he saw and spoke to Icis, who described the assailants to him, and then he spoke to the police. In the afternoon, he went to Mitter's mother's house where many family members and friends of the victims had gathered. Those at the gathering noticed that appellant was not present and several people attempted to contact him. Dixon grew suspicious and gathered some family photographs. When Icis arrived at the gathering, Dixon pulled her aside and showed her a makeshift array of about seven photographs. Dixon testified that when Icis saw a picture of appellant, she "broke down and said that's

him right there." Icis also recounted this photographic identification at trial, saying that when she saw the photograph, she "knew it was the guy who killed [her] sister" because she "saw his face."

Dixon told Icis to keep the photographic identification between the two of them. However, one of Mitter's siblings who was at the house was a Baltimore City homicide detective, and when he learned that Icis had made an identification, he alerted Detective Childs. At a candlelight vigil later that evening, over 300 people were present but not appellant. Detective Childs obtained the photograph of appellant that Icis had picked out at Mitter's mother's house and re-interviewed Icis the next day, on August 26, 2014. At that time, Icis confirmed the identification and signed and dated the back of the photograph.

The police executed a search warrant for appellant's home in Baltimore City four days after the murders, and at that time searched and seized appellant. A forensic extraction of appellant's cell phone, which Mitter bought for him, showed that all phone calls and text messages were deleted between August 18th and August 29th, 2014, and neither Mitter's nor Wise's contact information were in his phone. From Mitter's cell phone, numerous text messages were extracted and read to the jury between appellant's cell phone and Mitter's cell phone in the months leading up to the murders until the night before the murders, showing a repeated pattern of appellant being broke and asking Mitter for money, which he often gave to him. An expert in cell phone mapping testified that from 11:05 p.m. on August 24th to 3:19 a.m. on August 25th, 2014, there was no activity on appellant's phone, indicating the phone was powered off or there were no incoming or outgoing calls.

From appellant's home, the police also recovered screwdrivers, a reflective vest, and a revolver. A firearms examiner testified that the bullets recovered from the crime scene and Mitter's body could neither be excluded nor included as the weapon that fired the projectiles recovered.

At trial, Icis identified appellant in court as the assailant in the blue shirt who had killed her sister. She admitted that she never got a good look at the face of the second man, the one wearing the jumpsuit. At the end of her direct examination, she acknowledged that two weeks after the murders, she spoke again to the detectives. At that time, she told the detectives that she thought she knew the second man, that his name was "Tony," and that two days before the murders she had seen appellant and Tony at a convenience store. She told the detectives that they were wearing the exact same clothing they did during the murders, and they took screwdrivers from the hardware section of the store. Icis admitted at trial, however, that she had not "seen" this incident personally but had only "heard" of it. She admitted that she had "heard information from the neighborhood" and thought it would help find the second assailant. She nonetheless steadfastly maintained that appellant was one of the murderers.

DISCUSSION

I.

Appellant argues that the trial court erred in denying his motion for a mistrial based on the State's failure to disclose in discovery that Icis told the State months before trial that her statement to the police two weeks after the murders was a lie. The State responds that

the trial court did not abuse its discretion in declining to grant a mistrial, and that a continuance was an appropriate remedy for the State's admitted discovery violation.

Md. Rule 4-263 governs discovery in the circuit court and provides, among other things, that the State shall provide to the defense, without the necessity of a request, all exculpatory information concerning the defendant or impeachment information concerning a State's witness. Md. Rule 4-263(d)(5), (6). The purpose of the discovery rules is to "assist the defendant in preparing his defense, and to protect him from surprise." *Hutchins v. State*, 339 Md. 466, 473 (1995) (quotation marks and citation omitted). The State has the obligation to disclosure this kind of information to the defense within 30 days after defense counsel notes an appearance, and the State "is under a continuing obligation to produce discoverable material and information to the other side." Md. Rule 4-263(j).

The Rule further provides sanctions for violations:

> If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

Md. Rule 4-263(n). In fashioning a remedy for a discovery violation, the trial court should consider: "(1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances." *Thomas v. State*, 397 Md. 557,

570-71 (2007) (citations and footnote omitted). These factors were laid out in *Taliaferro v. State*, 295 Md. 376, 391, *cert. denied*, 461 U.S. 948 (1983). This list of considerations is neither exhaustive nor rigid, and the trial court may also consider "whether the disclosure violation was technical or substantial, the timing of the ultimate disclosure, [and] . . . the overall desirability of a continuance." *Taliaferro*, 295 Md. at 390-91. A trial court should impose the "least severe sanction" that the circumstances warrant, and "drastic measures" like excluding evidence or declaring a mistrial are "not [] favored[.]" *Thomas*, 397 Md. at 570-72.

"We review sanctions imposed for discovery violations for abuse of discretion." *Bellard v. State*, 229 Md. App. 312, 340 (2016), *aff'd*, 452 Md. 467 (2017) (citation and footnote omitted). *See also Evans v. State*, 304 Md. 487, 500 (1985) (the question of what sanction, if any, is to be imposed for a discovery violation, is committed to the discretion of the trial court, and the exercise of that discretion includes evaluating whether the violation prejudiced the defendant) (citation omitted), *cert. denied*, 478 U.S. 1010 (1986). "The exercise of that discretion includes evaluating whether a discovery violation has caused prejudice." *Cole v. State*, 378 Md. 42, 56 (2003) (quotation marks and citations omitted). An abuse of discretion occurs when the trial court's decision is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *McLennan v. State*, 418 Md. 335, 353-54 (2011).

"It is well-settled that a decision to grant a mistrial lies within the sound discretion of the trial judge and that the trial judge's determination will not be disturbed on appeal unless there is abuse of discretion." *Carter v. State*, 366 Md. 574, 589 (2001) (citations

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. That is to say, the judge has his finger on the pulse of the trial." *State v. Hawkins*, 326 Md. 270, 278 (1992). "[A]lthough a reviewing court should not simply 'rubber stamp' a trial judge's ruling of a mistrial, the trial judge is far more 'conversant with the factors relevant to the determination' than any reviewing court can possibly be" to determine if a mistrial is appropriate. *Simmons v. State*, 436 Md. 202, 212–13 (2013) (some quotation marks and citations omitted). We now turn to the facts before us.

At the very end of Icis's direct examination, she recanted her statement to the police two weeks after the murder that she had seen appellant and "Tony" at a convenience store two days before the murder. At the end of her testimony, defense counsel moved for a mistrial. Defense counsel informed the trial court that he had "never been advised by the State that [Icis] disavows that testimony." The prosecutor admitted that Icis had told him that her identification of her two assailants two weeks after the murder was a lie during a trial preparation session eight months earlier, just before an earlier scheduled trial date that was subsequently postponed. The prosecutor explained that he "wasn't trying to withhold anything" but had believed it so "blatantly false" because it was irreconcilable with Icis's three previous statements in which she clearly and consistently stated she never saw the face of the second assailant. After hearing both parties' arguments, the court suggested that it grant defense counsel a recess until tomorrow. Defense counsel replied, "If the Court

is not going to grant [a mistrial], then yes, I would ask to recess until tomorrow." The court then ruled:

> Okay. Well, then I think since they are saying they are surprised by that, then I think that that's the remedy that's appropriate. I don't find it's appropriate to grant a mistrial. So I recognize the State wants to get this young witness out of here, but since the Defense says they are surprised by the fact that the witness has acknowledged that she was not telling the truth when she gave a statement two weeks later, they need an opportunity to prepare.

The court dismissed the jurors.

Before trial resumed the following morning, the parties and the court discussed the issue further. The State conceded that its failure to disclose Icis's recantation was a discovery violation but reiterated that it was not intentionally done, explaining again that "in watching that fourth interview, I just thought everyone would – it seemed very apparent that that could not be true." Defense counsel renewed its request for a mistrial, or in the alternative, asked the court to strike the entirety of Icis's testimony.

The trial court agreed that the State had committed a discovery violation. The court then ruled:

> So the Defense yesterday asked for a mistrial. I didn't find manifestly. The Court under [Md. Rule 4-263(n)] has a range of options to consider in fashioning the appropriate sanction. Not every discovery violation rises to the level of requiring a mistrial. In this case, considering the nature of the disclosure, the timing of the disclosure, the Court found [it] appropriate to instead of requiring the Defense to continue on with cross-examination yesterday afternoon, to recess to allow the Defense to prepare in response to this surprise.
>
> In terms of the option of striking testimony, the sanction, sanction N, actually reads that one of the options of the Court is to strike the testimony to which the undisclosed matter relates. If I strike that testimony, I don't see where that really benefits the Defense because the undisclosed matter is that

> she didn't tell the truth. I would assume that would come out on cross-examination. So I don't find that that's appropriate.
>
> I've already addressed the request for mistrial.
>
> The Court has granted a continuance and you've had an opportunity to consider what has happened as a result of this disclosure. So I have made my ruling.

Following the court's ruling, defense counsel cross-examined Icis.

Appellant argues that the trial court erred in failing to grant his motion for mistrial, or in the alternative to strike all the testimony of Icis. Appellant argues that the failure to inform the defense that Icis, the only eyewitness to the crime who lied in a pre-trial statement where she identified the assailants, was "crucial to preparing an effective defense to a case which relied upon that witness."

To answer the question presented, we turn to the four *Taliaferro* factors while remembering the purpose of discovery and our jurisprudence that a trial court should impose the "least severe sanction" that the circumstances warrant, and "drastic measures" like excluding evidence or declaring a mistrial are "not [] favored[.]" As to the first factor, the trial court did not find the discovery violation intentional. As to the second *Taliaferro* factor, the court saw minimal prejudice from the discovery violation given that the defense was planning all along to vigorously cross-examine Icis on the inconsistencies in her pre-trial statements. Although appellant complains loudly that the State knew for eight months what he had only overnight to process, we agree with the State that appellant "does not explain how his defense strategy would have differed if he had the information earlier, or [] explain what he could have done with additional time to prepare." We also agree with

the State that the only effect of knowing earlier that Icis had "lied" was that defense counsel could have been the one to demonstrate the inconsistency in her prior statements in cross-examination rather than allowing the State to "draw the sting" by eliciting on direct examination that Icis had lied. As to the third *Taliaferro* factor, the trial court recognized that a continuance would allow the defense to adjust its strategy and was feasible. Under the circumstances presented, we cannot say that the trial court abused its discretion.

II.

Appellant argues that the trial court erred when it denied his motion for judgment of acquittal because of a lack of proof of criminal agency. Appellant argues that given "the unusual and unorthodox identification" by Icis, her identification "should not be given dispositive weight in this case." The State disagrees, as do we.

The standard for appellate review of evidentiary sufficiency is "'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *Tracy v. State*, 423 Md. 1, 11 (2011) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). "Where it is reasonable for a trier of fact to make an inference, we must let them do so, as the question is not whether the [trier of fact] could have made other inferences from the evidence or even refused to draw any inference, but whether the inference [it] did make was supported by the evidence." *State v. Suddith*, 379 Md. 425, 447 (2004) (quotation marks and citation omitted) (brackets in *Suddith*). Thus, "the limited question before an appellate court is not whether the evidence *should have or*

probably would have persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Allen v. State*, 158 Md. App. 194, 249 (2004) (quotation marks and citation omitted), *aff'd*, 387 Md. 389 (2005).

It is axiomatic that a jury was free to discredit all or some of her testimony. *See State v. Stanley*, 351 Md. 733, 750 (1998) (It is long settled that "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder.") (citing *Binnie v. State*, 321 Md. 572, 580 (1991)). *See also Jones v. State*, 343 Md. 448, 460 (1996) (a fact-finder is free to believe part of a witness's testimony, disbelieve other parts of a witness's testimony, or to completely discount a witness's testimony) (citing *Muir v. State*, 64 Md. App. 648, 654 (1985), *aff'd*, 308 Md. 208 (1986)).

Icis unequivocally identified appellant as the man who murdered her sister and who, along with another, broke into their home and killed her uncle. As an appellate court "we do not re-weigh the credibility of [the] witnesses or attempt to resolve any conflicts in the evidence." *Smith v. State*, 415 Md. 174, 185 (2010) (citations omitted). The circumstances under which she identified appellant were presented to the jury, and the reliability of the identification was for the jury to determine. As appellant recognizes, the identification by a single eyewitness, if believed, is sufficient to establish criminal agency. *See Branch v. State*, 305 Md. 177, 183-84 (1986). Icis's eyewitness account was also buttressed by the circumstantial evidence that Mitter's and Wise's address was known only to a select few, including appellant; that all contacts (calls/texts) prior to August 29th were deleted from appellant's cell phone; that Mitter's and Wise's contact information was likewise deleted

from appellant's cell phone; and appellant's behavior after the murders in not attending the family gathering or night vigil for Mitter and Wise.

III.

Appellant argues that the trial court erred when it denied his pro se motion for a new trial in which he argued that the trial court erred when it allowed the State to admit "other crimes" evidence. Specifically, he argues that admission of the handgun recovered four days after the murders during a search of his home in Baltimore City was inadmissible because it was not connected to the murders and unduly prejudicial. The State argues that appellant's new trial motion argument is not properly before us because it was untimely filed, and in any event, appellant's argument has no merit. We agree with the State.

Pursuant to Md. Rule 4-331(a), a court may order a new trial "in the interest of justice" on a motion filed by the defendant within ten days after a verdict is entered. Md. Rule 4-331(b), permits a court has revisory power "to set aside an unjust or improper verdict" on a motion filed within 90 days of sentencing and, where more than 90 days have passed, a court has "revisory power . . . to set aside an unjust or improper verdict and grant a new trial" in the "case of fraud, mistake, or irregularity." The "within 90 days" section is generally limited to errors that occur "on the face of the record (the pleadings, the form of the verdict) and not with the evidence or the trial proceedings[.]" *Ramirez v. State*, 178 Md. App. 257, 280 (2008) (quotation marks and citation omitted), *cert. denied,* 410 Md. 561 (2009). The "more than 90 days" section is generally interpreted to apply to "jurisdictional error only." *Id*. at 281 (quotation marks and citations omitted). We are

mindful that Maryland courts "have long held that a defendant in a criminal case who chooses to represent himself is subject to the same rules regarding reviewability and waiver . . . as one who is represented by counsel." *Grandison v. State*, 341 Md. 175, 195 (1995) (quoting *Midgett v. State*, 223 Md. 282, 298 (1960) (stating that holding pro se litigants to a different standard with regard to reviewability and waiver would lead to pervasive delay and confusion in the courts)).

On October 28, 2016, the jury rendered its verdict in this case, and appellant's attorney filed a motion for new trial on November 4, 2016. Over five months later, on April 7, 2017, appellant filed a pro se supplemental motion. In his supplemental motion, appellant raised for the first time his contention that the trial court erred in admitting the handgun because it was inadmissible "other crimes" evidence. Both parties presented their arguments at a hearing before the trial court. The court subsequently ruled that the motion was untimely filed, and in any event, had no merit.

Appellant's argument is not properly before us because it was not filed in a timely manner.[3] The jury rendered its verdict on October 28, 2016, and appellant's supplemental new trial motion, where he first raised the argument he presses on appeal, was not filed until April 7, 2017, well after the 10 days allowed under Rule 4-331(a). Even if appellant had properly preserved his argument for a new trial, we find no error by the trial court in denying the motion.

[3] Appellant has not argued nor is appellant's new trial argument a basis for granting a new trial under Rule 4-331(b).

Ordinarily, the standard of review of the denial of a motion for a new trial is an abuse of discretion. *Jackson v. State*, 164 Md. App. 679, 700 (2005), *cert. denied*, 390 Md. 501 (2006). Where, however, "an alleged error is committed during the trial, when the losing party or that party's counsel, without fault, does not discover the alleged error during the trial, and when the issue is then raised by a motion for new trial, we have reviewed the denial of the new trial motion under a standard of whether the denial was erroneous." *Merritt v.* State, 367 Md. 17, 30 (2001) (concluding that the motion for a new trial should be reviewed under the standard of whether error was committed and, if so, whether it is harmless error). Because the argument raised by appellant is based on facts known to appellant or his attorney at the time of trial, the former, less narrow standard of review applies to the argument before us.

Appellant argues that he deserves a new trial because the court allowed the State to introduce evidence of the handgun recovered four days after the murders from the home where he was staying in Baltimore City. He argues that the handgun was prejudicial "other crimes" evidence and therefore inadmissible. We disagree.

A trial court's decision "to admit or exclude evidence will not be set aside absent an abuse of discretion." *Grymes v. State*, 202 Md. App. 70, 103 (2011) (quotation marks and citation omitted). Evidence is relevant if it "tend[s] either to establish or disprove" the issues in the case. *Id*. (quotation marks and citations omitted). "[P]hysical evidence need not be positively connected with the accused of the crime to be admissible; it is admissible where there is a reasonable probability of its connection with the accused or the crime, the

lack of positive identification affects only the weight of the evidence." *Id*. at 104 (quotation marks and citations omitted)

Although the handgun could not be definitively linked to the murders, a firearms expert opined that it also could not be excluded as the source from which the projectiles recovered from the crime scene were fired. Therefore, it was relevant that a handgun was found in appellant's possession only days after the crimes occurred for it was circumstantial evidence of appellant's involvement in the murders. Although we have only found Maryland case law in which possession of a handgun *prior* to the crime was deemed relevant to evidence of possession of a handgun on the date of the crime, we see no reason why possession *after* the crime is not also relevant. *Cf. Grymes*, 202 Md. App. at 104 (holding that the trial court did not err in admitting evidence that the defendant was seen with a handgun prior to the crime was relevant); *Reed v. State*, 68 Md. App. 320, 330 (holding that the trial court did not err in admitting evidence that a witness saw the defendant carrying a handgun two years prior to the murder), *cert. denied*, 307 Md. 598 (1986), *cert. denied*, 481 U.S. 1005 (1987).

We also believe that evidence of the handgun was unlikely to unduly prejudice appellant by confusing the jury about the possession of a handgun charge, which he claims was "other crimes" evidence. The trial court specifically instructed the jury that to find appellant guilty of possession of a firearm by a prohibited person they would have to conclude "beyond a reasonable doubt that [] the Defendant possessed a regulated firearm on August 25, 2014 in Baltimore County[.]" In closing, defense counsel specifically argued:

> They are not talking about possession of a gun at his house. They are talking about possession of the handgun during the murder. [Appellant] lives in Baltimore City. This is not jurisdiction for possession [of a] handgun on the date of his arrest. It's possession of the gun on the date of the murder only. . . . That is an important distinction.

Lastly, the verdict sheet specified that "Possession of a Firearm by a Prohibited Person on August 25, 2014[.]"

For the reasons stated above, we find no abuse of discretion by the trial court in denying appellant's motion for a new trial based on admission of the handgun at trial.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE COUNTY AFFIRMED.

COSTS TO BE PAID BY APPELLANT.