Circuit Court for Prince George's County
Case No. 160137X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 840

September Term, 2017

JAMES NORRIS

v.

STATE OF MARYLAND

Woodward, C.J.,
Eyler, Deborah S.,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 3, 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.

Following a jury trial in the Circuit Court for Prince George's County, James Norris, appellant, was convicted of voluntary manslaughter and use of a handgun during a crime of violence. Norris's sole contention on appeal is that the trial court abused its discretion in denying his motion for a new trial pursuant to Maryland Rule 4-331(a). For the reasons that follow, we affirm.

At trial, it was undisputed that Norris shot and killed the victim. The sole issue was whether Norris had acted in self-defense. In support of that claim, Norris testified that he only shot the victim after the victim threatened him and pulled out a gun. Although no gun was recovered from the victim, Norris contended that the victim's fiancé had removed the gun after he fled and before the police arrived. During closing, the following occurred:

> [DEFENSE COUNSEL]: Now keep in mind this is no game. This is a criminal case where they have the burden beyond a reasonable doubt. Their burden. We don't have to call a single witness. They have to prove it. And are they going to come up here and tell you there was no gun –
>
> [THE VICTIM'S FATHER]: Because there wasn't.
>
> [DEFENSE COUNSEL]: -- without calling a homicide detective to tell you what they did to prove that there was no gun? The people in the gallery can say whatever they want, they weren't there and they don't know. They don't know anything and you disregard that.

The trial court then instructed the jury, *sua sponte*, to "disregard any comments from the gallery." The court also repeated this instruction at the conclusion of closing argument. Norris did not request a mistrial or any other relief.

After the jury convicted Norris, he filed a motion for a new trial claiming that the court's curative instructions to the jury had been insufficient to remedy the harm caused by the outburst from the victim's father. During the hearing on Norris's motion, the court

acknowledged that the statement by the victim's father had been "loud," "shocking," and "concerned a critical issue in th[e] case." Nevertheless, it denied the appellant's motion, stating:

> I think defense counsel's statement is correct. He continued on in his argument. I recall giving a curative instruction to the jury to disregard any comments from the [gallery] at the close of the defense. The defense not asking for a curative instruction at that moment and he was still in the middle of his closing.
>
> All of that being said, there was, however, no tangible indication from the jury that the blurt in any way impacted their decision in this case. For that reason there was no note, there was no discussion, nothing came from the jury. For that reason, this Court can't make the determination that the Defendant received an unfair trial because of the blurt. [The jury] could have disregarded the statement of the father knowing that it was an emotional case. Listening to the admonition from the Court saying to disregard any blurts from the gallery and that they must decide this case based upon the evidence.
>
> So for that reason, because there was no indications from the jury that it did prejudice their decision, I'm going to have to deny the motion for a new trial.

Pursuant to Maryland 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. The standard of review of the denial of a motion for a new trial is abuse of discretion, *Jackson v. State*, 164 Md. App. 679, 700 (2005), which occurs where "no reasonable person would take the view adopted by the [trial] court." *Fontaine v. State*, 134 Md. App. 275, 288 (2000) (internal quotations and citations omitted). "Thus, where a trial court's ruling is reasonable, even if we believe it might have gone the other way, we will not disturb it on appeal." *Id.*; *see also Williams v. State*, 231 Md. App. 156, 196 (2016).

Norris contends that the trial court abused its discretion in denying his motion for a new trial because it relied solely on the fact that "the jury did not ask [it] anything about

the interruption and did not send out any notes asking for [an] instruction on the interjection." He further asserts that this was an "abidcat[ion] of [the court's] duty to determine whether the interjection of non-evidence before the jury was error" and "impermissibly plac[ed] the burden on the jury to determine whether [he] was denied due process."

As an initial matter, we note that the court would have been well within its right to deny Norris's motion based solely on the fact that he neither objected to the court's curative instruction nor requested any other relief following the outburst from the victim's father. *See Isley v. State*, 129 Md. App. 611, 619 (2000), *overruled on other grounds*, *Merritt v. State*, 367 Md. 17, 24 (2001) ("The non-preservation, moreover, is in and of itself an unassailable reason for the trial judge to deny the New Trial Motion, should he, in his discretion, choose to do so"). In any event, we do not agree with Norris's reading of the circuit court's findings, *i.e.*, that it placed the burden on the jury to determine whether his due process rights had been violated. Rather, when viewed in context, it is clear the court was simply noting that there had been no indication from the jurors that they had not understood the curative instructions and, therefore, no indication that they had failed to follow them. Because the trial court was in the best position to

determine the impact of the victim's father's comments on the jury, we find no abuse of discretion in its denial of appellant's motion for a new trial.

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