Circuit Court for Baltimore County
Case No. C-03-CR-21-002951

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 944

September Term, 2023

MALIK RASHAD GREGORY

v.

STATE OF MARYLAND

Reed,
Tang,
Raker, Irma S.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: April 22, 2025

*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 conforms to Rule 1-104(a)(2)(B).

On February 22, 2023, a jury sitting in the Circuit Court for Baltimore County convicted two brothers, Malik Rashad Gregory ("Appellant") and Kyree Gregory[1] (collectively "Defendants"), of first-degree felony murder, robbery with a dangerous weapon, first-degree assault, and use of a firearm in a crime of violence. The charges stem from the fatal shooting of Deras Washington ("Washington") on the afternoon of July 22, 2021. During the investigation of the shooting, it was determined that Appellant arranged to purchase a small quantity of marijuana from Washington. On July 30, 2021, Appellant was arrested and interrogated by Detective Schrott (the "Interview"). In the recorded Interview, Appellant implicates Kyree as being present during the drug deal and eventually identifies Kyree as the shooter. Only select portions of the Interview would later be presented at trial. Kyree was subsequently arrested, and the Defendants were tried together following a motion by the State for joinder. Defendants opposed the joinder and attempted to sever at trial. During the trial, and following multiple objections by the Defendants, redacted portions of the Interview were presented at trial. Appellant presents the following question for our review:

> I. Did the circuit court abuse its discretion by acting against the interest of justice in denying a new trial where portions of Appellant's exculpatory statements were excluded and redacted?[2]

For the following reasons, we affirm the trial court's ruling.

[1] For clarity, this Opinion will refer to Malik Rashad Gregory and Kyree Gregory by their first names. No disrespect is intended.

[2] We rephrased Appellant's question, which was originally: "Was a new trial in the interests of justice because the state redacted exculpatory evidence creating a substantial possibility of acquittal just to avoid inculpating the co-defendant?"

FACTUAL & PROCEDURAL BACKGROUND

This appeal comes from the joinder of two brothers, Malik Rashad Gregory ("Appellant") and Kyree Gregory (collectively "Defendants"), in a trial for first-degree felony murder, robbery with a dangerous weapon, first-degree assault, and use of a firearm in a crime of violence. The charges stem from the fatal shooting of Deras Washington ("Washington") on the afternoon of July 22, 2021.

Sometime between 4:30 pm and 4:45 pm on July 22, 2021, a resident of an apartment witnessed from her balcony an oddly parked car revving its engine and then heard what sounded like an engine backfiring. Quickly thereafter, she saw two "black males between . . . 16 and 25," one of whom was getting out of the vehicle and another who was already running. The vehicle continued rolling forward until it hit a curb and a nearby tree. Believing she had just witnessed "kids . . . abandoning a stolen vehicle," she called the police non-emergency line.

When police arrived at the scene, they found Washington "slumped over" the passenger seat of the vehicle and clearly deceased. The medical examiner concluded that Washington had been fatally shot in the right ear from a distance of two to three feet. The shooting likely occurred at approximately 4:38 pm.

A. Initial Investigation

During the investigation into the shooting, Washington's roommate would confirm that Washington sold "small quantities" of marijuana and that he suspected that Washington had left to sell marijuana the day he was shot. The roommate would confirm

further that Washington had a Louis Vuitton satchel, comprised of three detachable parts, where he kept the drugs and that he was wearing the day he was shot. One of the small pieces and a broken strap of the satchel were found on the floor of Washington's vehicle. The two larger pieces were not recovered. Cell phones belonging to Washington, a scale, as well as "green and brown vegetable matter," were found scattered in the vehicle.

It was determined from reviewing Washington's phone that Appellant had arranged over text to purchase a small quantity of marijuana from Washington on the day of the shooting. Part of the text message exchange was regarding the method of payment. Appellant asked to pay via CashApp; however, Washington clarified that he only accepted payment via Apple Pay. At 4:20 pm, Washington texted Appellant "I'm here across from da pool." At 4:26 pm, Appellant texted back "Im rey [sic] get cash[.]"[3]

B. Collection of Other Evidence

The apartment building where the Defendants lived and the neighboring apartment complex where the shooting occurred have several cameras throughout the properties. The Appellant's apartment is approximately a two-and-a-half-minute walk from the scene of the shooting. The State presented several clips from these cameras during the trial; however, none of them captured the shooting or Washington's vehicle during the incident. Investigators also collected historical cellphone location data from the Defendant's phones, which placed both of their phones within the apartment complexes from 4:00 pm to 4:52

[3] In this text, "rey" is likely local vernacular for "ready to do something."

pm. A timeline of the events with this evidence is summarized as follows:

- **4:19 pm** – Two individuals are seen on camera exiting the Defendant's apartment. Detective Schrott identified one of the individuals as Appellant during trial. Detective Schrott did not identify the other individual as Kyree until later in testimony.
- **4:20 pm** - Washington texted Appellant "I'm here across from da pool."
- **4:26 pm** – Appellant texted Washington "Im rey [sic] get cash[.]"
- **4:28 pm** – The same two individuals are seen on camera walking back toward the Defendants' apartment, with Appellant entering the apartment.
- **4:30 pm** – Appellant is seen on camera walking back towards the crime scene.
- **4:38 pm** – The fatal shooting of Washington.
- **4:40 pm** – The two individuals return to the Defendants' apartment, approximately 30 seconds apart.
- **5:28 pm** – The two individuals are seen in the lobby of the Defendants' apartment building along with the Defendants' younger brother and his girlfriend. Detective Schrott confirmed the identity of all three brothers in this clip, including the Appellant, during the trial.

Other physical evidence presented included Appellant's fingerprints, which were present on the front door and passenger window frame of Washington's car. Kyree's fingerprints were not found on the car. Defendants' apartment was also searched, and nothing of significance was identified.

C. Arrest & Interview

On July 30, 2021, Appellant was arrested and interrogated by Detective Schrott. The entirety of the Interview was recorded. At first, Appellant denied knowing Washington or that a shooting had taken place. As the questioning continued, Appellant eventually

admitted that he arranged to buy marijuana from Washington on the day of the shooting. Subsequently, Appellant admitted to Detective Schrott that "I was going to go meet him. And when I went to go meet him . . . it was just me and [redacted audio] just walking." The quote represents a portion of the video played for the jury during the trial. The redacted portion contains no audio, including any background noise in the room, however Appellant can be seen speaking. The unaltered version of the video that was not presented to the jury confirms that the missing audio is "[Kyree]."

As the Interview continues, Appellant states that he went to Washington's car to meet him. Upon meeting Washington, Appellant told him that his phone did not work and that he would need to leave to connect to Wi-Fi to pay via Apple Pay. Washington told Appellant that he would not hand over the marijuana until Appellant made the payment from his phone. Appellant returned to his apartment to make the payment and then left to return to Washington's car while his phone was loading and about to send the payment. As he walked back to the car, he claimed he heard a gunshot. Appellant modified his story as the Interview continued, claiming he was standing in the nearby parking garage and was on his phone while Kyree finished the transaction.

Appellant maintained throughout the Interview that he was not the shooter, and at one point, he stated he "kn[e]w who did it," but he did not specify who. When asked by Detective Schrott if Washington was trying to keep the money and not give Appellant the marijuana, he said, "Yes." In segments of the Interview not presented to the jury, Appellant then implicates Kyree as being present during the drug deal and eventually identifies Kyree as the shooter.

D. Procedural Background

Kyree was arrested following Appellant's Interview. Appellant and Kyree were tried together as accomplices to felony murder based upon the underlying robbery of the Louis Vuitton bag. The State's theory of the case was that Appellant and Kyree had an altercation with Washington, committed a robbery by taking the Louis Vuitton bag, and fatally shot Washington during the struggle.

On February 15, 2022, the State filed a motion for joinder, joining Appellant's case to Kyree's. On March 3, 2022, Kyree filed an opposition to the joinder, claiming that it would be "prejudicial." On March 30, 2022, the court held a hearing on the State's joinder motion. The primary issue discussed was "the *Bruton* problem," a reference to the U.S. Supreme Court's decision in *Bruton v. United States*, 391 U.S. 123 (1968), and its holding regarding the admissibility of a co-defendant's confession in the context of a joint trial. The State argued that it had been thorough and "very carefully" redacted statements to remove "all unfair prejudice by way of these defendants." Kyree countered that further redaction is needed to "get rid of any reference that there is even another person." Appellant contested that multiple statements in the Interview reference two people and that it would not be difficult for the jury to conclude the other person was Kyree. On April 4, 2022, the trial court granted the State's motion to join and found that the submitted redacted portions of the Interview were done "so as to negate even a remote potential for prejudicial joinder."

Subsequently, on January 25, 2023, Kyree filed a motion to sever the cases. In the motion, Kyree argued that there remained instances where the recording "inferentially implicate[s] [Kyree]" with terms such as "us," "him," and "we" when combined with other

evidence to be presented at trial. The State filed an opposition, stating that these "linkage[s]" are permissible when linked with the evidence presented later in the trial. On January 31, 2023, a hearing on the motion took place. The following day, the court issued a written order denying the motion to sever but ordered the State "to redact from [Appellant's] statement all references to [Kyree's] name and to his 'existence'," and failure to do so would prevent it from being admitted at trial against either Defendant.

The motion to sever was then renewed again by the Defendants at the beginning of the trial. Appellant argued that the high level of redaction limits his ability to show that another person, who could have been the shooter, was present. Kyree stated he was content with the level of redaction but was concerned about the issues it posed for Appellant. The motion was again denied. However, the following day Kyree objected to the video again, arguing that, upon review, the latest version still contains three instances where he believes it implies the presence of another person. The objection was overruled, and the trial court concluded that "all appropriate redactions have been made[.]"

Some statements were not redacted where Appellant maintained he was not the shooter and claimed he knew who the shooter was:

> "I wouldn't know that that was to go down"
>
> "I know who [shot Washington]"
>
> "But when it come [*sic*] down to the point where you all thinking [*sic*] this was me, I'm not putting myself on the line for something I did not do."

Although partially redacted to remove reference to Kyree, Appellant's statements presented to the jury also show him claiming he was not at the car at the time of the

shooting:

> **Det. Schrott**: You were at the car?
>
> **Appellant**: No, like…where the apartments are, it's, I'm at the garage. [redacted audio] I'm not even. I'm here to buy weed, what could possibly go wrong right now?
>
> **Det. Schrott**: Yup. Go ahead.
>
> [redacted audio]
>
> **Det. Schrott**: And you're watching?
>
> **Appellant**: I'm -- I'm -- no, I'm just sitting there, I'm just on my phone with [redacted audio], I wanted to go back to the house. I'm just sitting there on my phone and the next thing I hear is a shot.[4]

Redacted from the Interview were several general statements that Appellant was with Kyree before and after the shooting. Eventually, Appellant did admit that he and his brother went to buy marijuana from Washington and that Kyree shot Washington: "Me and my brother went down there to buy weed. Nothing further than that. . . . He-he's is not trying to give us the weed though . . . and my brother shot him.'' Additional redacted portions included (1) how Kyree was with Appellant when he walked to initially meet Washington, (2) that Kyree was going to finish the transaction with cash provided by Appellant,[5] (3) Kyree approached the passenger side of Washington's vehicle, (4) Appellant was standing ten feet from the car on his phone when he heard the shots, and (5)

[4] The spacing in "I'm -- I'm -- no" represents pauses in speech, not redactions.

[5] Appellant claims that he needed to pay some of the amount in cash since his Apple Cash balance was insufficient.

Appellant began to run away from the vehicle when he saw Kyree fleeing the vehicle. Throughout the duration of the Interview Appellant maintains that he did not see the shooting occur.

Prior to the redacted Interview being played for the jury, Kyree objected, and the objection was overruled. Invoking their Fifth Amendment Rights, neither Defendant testified during the trial. During the jury charge, the court instructed the following:

> You must consider this recorded statement only as it relates to [Appellant], the Defendant against whom it was admitted as I told you during the trial…edits have been done so that personal information and other irrelevant information is not submitted to the jury. You must not speculate as to what is in the gaps or the muted portions and the edits must not be considered by you in any way or even discussed by you.

On February 22, 2023, the jury found Kyree and Appellant guilty of first-degree felony murder, robbery with a dangerous weapon, first-degree assault, and use of a firearm in a crime of violence. At the sentencing hearing on June 30, 2023, Appellant moved for a new trial under Maryland Rule 4-331(a), arguing that the redacted portions of the Interview included exculpatory evidence that it was Kyree, not Appellant, who shot Washington. Citing its prior rulings and reasoning, the trial court denied the motion. The court imposed an aggregate sentence of life imprisonment. On July 10, 2023, Appellant filed his timely appeal challenging his conviction.

DISCUSSION

I. Did the circuit court err by acting against the interest of justice in denying a new trial where portions of Appellant's exculpatory statements were excluded and redacted?

A. Standard of Review

The abuse of discretion standard applies when reviewing an appeal of a denial of a motion for a new trial. *Williams v. State*, 462 Md. 335, 344–45 (2019); *see also Campbell v. State*, 373 Md. 637, 665 (2003) ("[D]enials of motions for new trials are reviewable on appeal and rulings on such motions are subject to reversal when there is an abuse of discretion."). We apply this standard because a decision to grant or deny that motion "depends so heavily upon the unique opportunity the trial judge has to closely observe the entire trial, complete with nuances, inflections, and impressions never to be gained from a cold record." *Williams*, 462 Md. at 344–45 (quoting *Buck v. Cam's Broadloom Rugs, Inc.*, 328 Md. 51, 59 (1992)). We look whether the "degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial." *Id.* at 345 (quoting *Merritt v. State*, 367 Md. 17, 29 (2001)).

"[T]here is an abuse of discretion where no reasonable person would take the view adopted by the trial court . . . or when the court acts without reference to any guiding principles." *Alexander v. Alexander*, 252 Md. App. 1, 17 (2021) (internal citations, quotations, and brackets omitted). "An abuse of discretion may also be found where the ruling under consideration is clearly against the logic and effect of facts and inferences before the court . . . or when the ruling is violative of fact and logic." *Id.* (internal citations, quotations, and brackets omitted). In *Jackson v. State*, 164 Md. App. 679 (2005), we noted that the appellate control over the trial judge's discretion may be tighter or looser depending upon the ground advanced for the new trial motion:

> It may be said that the breadth of a trial judge's discretion to grant or deny a new trial is not fixed and immutable; rather, it will expand or contract depending upon the nature of the factors being considered, and the extent to

> which the exercise of that discretion depends upon the opportunity the trial judge had to feel the pulse of the trial and to rely on his own impressions in determining questions of fairness and justice.

Id. at 700–01 (quoting *Buck*, 328 Md. at 58–59) (emphasis and brackets omitted).

B. Parties' Contentions

Appellant's argument in favor of a new trial relies on language in the Maryland Rules that a new trial "may" be ordered if "in the interest of justice." Md. Rule 4-331(a). Appellant contends that exculpatory evidence was excluded because the Defendants' cases were not severed, resulting in the introduction of redacted statements without the exculpatory evidence. Appellant points to redacted statements that placed Kyree at the site of the shooting and Appellant's admission that Kyree was the shooter, even if he did not see the shooting occur. Appellant also views the statements as making it clear his intent was only to buy marijuana, not to rob or kill Washington. Appellant believes that if these statements had been allowed to be introduced, he would likely have been acquitted.

The State, in turn, maintains that the Interview was properly redacted to comply with *Bruton* and challenge the proposition that the redacted Interview removed substantially exculpatory information. Under *Bruton* and its progeny, statements naming a co-defendant presented in a joint trial must be redacted if they implicate that co-defendant. *Samia v. United States*, 599 U.S. 635, 652–53 (2023). The State, however, acknowledges that redactions are not allowed "where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant." *United States v. Alvarado*, 882 F.2d 645, 651 (2d Cir. 1989), *overruled on other grounds by Bailey v. United States*, 516 U.S. 137 (1995). The State contends that the redacted segments did

not substantially exculpate Appellant, nor did they distort their meaning. In support, they point to the admitted exculpatory statements where the Appellant claims he was on his phone when he heard the shots, claims he is not the shooter, and didn't think the interaction with Washington would turn deadly. The State argues that Appellant's claims in this appeal are more properly framed as an issue of verbal completeness and that the introduced statements do not justify including statements that name the co-defendant.

Appellant counters that redacted statements are not allowed to "distort the truth" and that the interest of justice standard is not limited by *Bruton*. Appellant also made clear in his submitted briefs and during oral argument that he does not view the issue as one of verbal completeness, arguing that the issue is not before this court and that "the State's lecture on the doctrine of verbal completeness is a strawman at best."

C. Analysis

Maryland Rule 4-331(a) allows the trial court to grant a new trial "in the interest of justice." Md. Rule 4-331(a). As there is little guidance on this standard, the interest of justice analysis leaves the trial judge, "who has [their] thumb on the pulse of the trial and is in a unique position to assess the significance" of what occurred during the trial, a broad range of discretion to determine if the new trial is justified. *Jackson v. State*, 164 Md. App. 679, 699–700 (2005). To accurately assess the new trial motion and whether the trial judge abused his discretion, this court must first look at the context of the trial judge's denial by looking at the joinder of the case and the resulting *Bruton* redactions of the Interview.

i. Joinder

Under the Maryland Rules, two or more defendants' trials may be joined "if they

are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Md. Rule 4-253(a). However, "[i]f it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may . . . order separate trials of . . . defendants, or grant any other relief as justice requires." Md. Rule 4-253(c). The Supreme Courts of Maryland and the United States have both highlighted the preference and need for the efficiency offered by joint trials, even if they can be prejudicial against one or more of the defendants. *See Samia*, 599 U.S. at 654 ("Joint trials have long played a vital role in the criminal justice system, preserving government resources and allowing victims to avoid repeatedly reliving trauma. . . . Further, joint trials encourage consistent verdicts and enable more accurate assessments of relative culpability. . . . Also, separate trials randomly favor the last-tried defendants who have the advantage of knowing the prosecution's case beforehand.") (internal citations, quotations, and brackets omitted); *Hemming v. State*, 469 Md. 219, 260 (2020) ("[P]rejudice is only one component of our analysis under Rule 4-253(c). . . . [W]e aim to strike an appropriate balance between the prejudice a defendant may face and the concerns of judicial economy and efficiency.").

Under the federal rule analogous to Maryland Rule 4-253,[6] hostility between the defendants' defenses or "finger-pointing" is not sufficient to justify separate trials. *See United States v. Lighty*, 616 F.3d 321, 348–49 (4th Cir. 2010) ("The mere presence of

[6] The Federal Rule states "[i]f the joiner of offenses or defendants . . . for trial appears to prejudice a defendant or the government, the court may order separate trials of counts, sever the defendants' trials, or provide any other relief that justice requires." Fed. R. Crim. Proc. 14(a).

hostility among defendants . . . or the desire of one to exculpate himself by inculpating another [are] insufficient grounds to require separate trials. . . . The antagonistic defenses must involve more than finger pointing.") (internal citations, alterations, and quotation marks omitted); *United States v. Allen*, 491 F.3d 178, 189 (4th Cir. 2007) ("[I]t is well settled that defendants are not entitled to severance merely because they may have a better chance of acquittal in separate trials. . . . Without a strong showing of prejudice, severance is not justified based on the mere disparity of the evidence adduced against individual defendants.") (internal citations, and quotation marks omitted). To justify severance because of prejudice, "[t]here must be such a stark contrast presented by the defenses that the jury is presented with the proposition that to believe the core of one defense it must disbelieve the core of the other, . . . or that the jury will unjustifiably infer that this conflict alone demonstrates that both are guilty." *Lighty*, 616 F.3d at 348–49 (citing *United States v. Najjar,* 300 F.3d 466, 474 (4th Cir. 2002)) (internal quotation marks omitted). Such a contrast is "satisfied where a defendant's guilt is dictated by the asserted innocence of the codefendants." *Allen*, 491 F.3d at 189 (citing *Najjar,* 300 F.3d at 474) (internal quotation marks omitted). The United States Supreme Court has similarly held that severance should be granted "only if there is a serious risk that a joint trial would compromise a specific trial right of one of the defendants, or prevent the jury from making a reliable judgment about guilt or innocence." *Zafiro v. United States*, 506 U.S. 534, 539 (1993).

It is not clear that the trial judge in the present case violated these rules and precedent in denying the Defendants' requests to sever the cases. The Appellant's redacted statements constitute finger-pointing by explicitly naming his co-defendant as the shooter. The

charges of felony murder are also relevant in this analysis as the alleged planning and participation in the robbery are sufficient to find the Appellant guilty of the charged crimes. Under a theory of accomplice liability for felony murder, the State does not need to prove that Appellant was the shooter. This standard was properly summarized in the jury instruction provided at the trial:

> [T]he State must prove that the crime occurred and that the Defendant, with the intent to make the crime happen, knowingly aided, counseled, commanded, or encouraged the commission of the crime or communicated to a participant in the crime that he was ready, willing and able to lend support if needed.

See Sweeney v. State, 242 Md. App. 160, 174 (2019) (quoting similar jury instructions on accomplice liability, which the court said, "stated the law of accomplice liability properly" in the context of a second-degree burglary or theft charge"). Even if the statements had been introduced, they would not have addressed Appellant's underlying involvement in arranging the meeting with Washington, alleged communication, or his proximity to the co-defendant leading up to the shooting. Although this Court's holding in this opinion does not make any direct determination on the trial judge's ruling to deny severance, we do not find that the trial judge acted without the guidance of Maryland Rules or precedent in denying severance. With the trials having been joined, the admissibility of Appellant's Interview then presents a *Bruton* issue.

ii. *Bruton*

Redaction of testimonial statements, such as confessions, is appropriate in cases where co-defendants are tried together, and the testimonial statements are introduced into evidence. *See Samia*, 599 U.S. at 643. This is done to resolve a conflict between one

defendant's Fifth Amendment right not to testify[7] and the other co-defendants' Sixth Amendment right to cross-examination.[8] *Id*. at 643–646. Such a conflict prevents the defendant from challenging the veracity of their co-defendant's statements implicating them in the crime, as the co-defendant has made themselves unavailable for cross-examination. *Id*. at 647.

To address this conflict while still allowing the efficiency achieved from jointly prosecuting defendants accused of jointly committing a crime, the courts have created exceptions and limitations on the type of statements that can be introduced. *Id.* Decades ago, incriminating statements by a co-defendant could be admitted in a joint trial so long as clear jury instructions were given stating that a co-defendant's statements could only be considered against that co-defendant. *Delli Paoli v. United States*, 352 U.S. 232, 239–40, 242–43 (1957), *overruled by Bruton v. United States*, 391 U.S. 123 (1968). The ability of the jury to compartmentalize these statements so they do not influence their judgment against the other co-defendants was then challenged by the *Bruton* Court: "there are some contexts in which the risk that the jury will not, or cannot, follow instructions is so great,

[7] The Fifth Amendment to the United States Constitution states "[n]o person . . . shall be compelled in any criminal case to be a witness against himself." U.S. Const. amend. V. The Maryland Declaration of Rights similarly states "[t]hat no man ought to be compelled to give evidence against himself in a criminal case." Md. Decl. of Rts., art. 22.

[8] The Sixth Amendment Confrontation Clause provides "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him . . . ." U.S. Const. amend. VI. The Maryland Declaration of Rights states similarly "[t]hat in all criminal prosecutions, every man hath a right . . . to be confronted with the witnesses against him; to have process for his witnesses; to examine the witnesses for and against him on oath . . . ." Md. Decl. of Rts., art. 21.

and the consequences of failure so vital to the defendant, that the practical and human limitations of the jury system cannot be ignored." *Bruton*, 391 U.S. at 135 (citations omitted). The *Bruton* Court recognized the case it was hearing involved "concededly clear instructions to the jury to disregard . . . inadmissible hearsay evidence inculpating [a co-defendant]." *Id.* at 137. However, the Court held "we cannot accept limiting instructions as an adequate substitute for [defendant's] constitutional right of cross-examination. The effect is the same as if there had been no instruction at all." *Id*.

Bruton's ruling has subsequently been clarified further, "distinguish[ing] between confessions that directly implicate a defendant and those that do so indirectly." *Samia*, 599 U.S. at 652; *compare Richardson v. Marsh*, 481 U.S. 200, 208 (1987) (declining to expand *Bruton* when the confession omitted all references to the co-defendant and "was not incriminating on its face, and became so only when linked with evidence introduced later at trial"); *with Gray v. Maryland*, 523 U.S. 185, 192 (1998) (finding a violation of *Bruton* when the redacted confession "simply replace[s] a name with an obvious blank space" in a manner that "so closely resemble[s] *Bruton*'s unredacted statements"). Limitations related to the Confrontation Clause do not apply if a defendant takes the witness stand and testifies, as the co-defendant could challenge the defendant's testimony at trial.

Such redactions, however, are not allowed to violate the Rule of Completeness "where admission of the statement in redacted form distorts its meaning or excludes information substantially exculpatory of the declarant." *Alvarado*, 882 F.2d at 651. The courts have acknowledged that *Bruton* redactions present such a risk where defendants can face "prejudice if essential exculpatory evidence that would be available to a defendant

tried alone were unavailable in a joint trial." *Zafiro v. United States*, 506 U.S. 534, 539 (1993) (citing *Tifford v. Wainwright,* 588 F.2d 954 (5th Cir. 1979) (per curiam)).

In the present case, *Bruton* redactions are necessary as neither defendant testified at trial, the confession qualifies as a testimonial statement[9] that may be presented at trial, and portions of Appellant's Interview inculpate the co-defendant. The appropriateness of the redactions, however, requires compliance with the Rule of Completeness.

iii. Verbal Completeness & Hearsay

"The general rule is that a defendant is not entitled to admit an exculpatory statement" when that exculpatory statement is inadmissible hearsay, as the defendant would be using the statement for the truth of the matter asserted, which would be that the statement supports the defendant's lack of guilt. *Wagner v. State*, 213 Md. App. 419, 466 (2013) (citing *Conyers v. State*, 345 Md. 525, 544 (1997)). The Rule of Completeness grants that "[w]hen part or all of a writing or recorded statement is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." Md. Rule 5-106. This rule has been constrained to prevent the admission of hearsay evidence "solely because it is derived from a single writing or conversation." *Otto*

[9] As the Supreme Court wrote in *Crawford v. Washington*, "[s]tatements taken by police officers in the course of interrogations are also testimonial under even a narrow standard." 541 U.S. 36, 52 (2004); *see also Samia*, 599 U.S. at 644 (citing same). Here, Malik's statements were from a formalized police interview and would therefore be testimonial and fall under the Confrontation Clause, though as we explained above, the Confrontation Clause does not apply when the testimony is only to be considered against that co-defendant.

v. State, 459 Md. 423, 451 (2018) (quoting *Conyers v. State*, 345 Md. 525, 545 (1997)). The admission of the inadmissible evidence to form a complete statement requires the evidence to be "particularly helpful in explaining a partial statement and that explanatory value is not substantially outweighed by the danger of unfair prejudice, waste of time, or confusion." *Id*. at 451–52. Further, a complete statement is not required to be introduced if the redacted version of the "statement conveyed the substance and context of the statement as a whole." *Cantine v. State*, 160 Md. App. 391, 408 (2004) (citation and internal quotation marks omitted).

Although the Appellant does not view the Rule of Completeness as an issue in this appeal, it is not possible to properly analyze the conduct of the lower court in denying the new trial without the context of the trial court's rulings preventing the admission of the redaction portions of the Interview. Portions of the Interview that were presented to the jury included exculpatory statements by the Appellant that he was not the shooter, he knew who the shooter was, and that he was standing some distance away from the car at the time of the shooting.[10]

The redacted statements from the Interview the Appellant wanted added included multiple references to his co-defendant Kyree. The statements would have been inadmissible under *Bruton* in the case that the Appellant was not going to take the stand. Other than identifying the co-defendant as the shooter, the redacted portions of the

[10] These statements, as presented in the background section above, included "I wouldn't know that that was to go down" and "I know who [shot Washington]". It also included an exchange here the Appellant said he was "at the garage" on his phone when he heard the gunshot.

Interview add little additional value to Appellant's defense. Allowing the statements would have done nothing to further exculpate the Appellant and would have only further implicated the co-defendant in violation of *Bruton*. Additionally, the Appellant would have needed to show that the redacted statements were admissible and not hearsay, since even under the Rule of Completeness, evidence that is otherwise inadmissible still cannot be admitted. *Otto*, 459 Md. at 447.

Although this Court's holding in this opinion does not make any direct determination on the trial judge's ruling regarding the admission of the redacted statements, we do not find that the trial judge acted without the guidance of Maryland Rules or precedent in his ruling to deny admission of the redacted statements. The trial court had multiple hearings on the matter and issued multiple orders about redactions in the video. In making its rulings, the trial court acted with guidance on the rules of *Bruton* and allowed the Defendants to present their case. Accordingly, we hold that the court did not abuse its discretion in denying the Appellant's motion for a new trial. There was no abuse of discretion in finding that "the interest[s] of justice" did not warrant a new trial. Md. Rule 4-331(a).

CONCLUSION

The trial court's joinder of the Appellant's trial with his co-defendant and the exclusion of statements naming the co-defendant were not inconsistent with relevant rules and precedent. The Appellant did not show that the trial court clearly failed to apply fact and logic to its determinations and did not challenge the underlying rulings preventing the introduction of Appellant's complete statements. Accordingly, we hold the trial court did

not act against the interests of justice or abuse its discretion in denying the motion for a new trial.

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