Circuit Court for Dorchester County
Case No.: 09-K-l4-015442

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1057

September Term, 2017

TERRANCE BROWN

v.

STATE OF MARYLAND

Berger,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: August 28, 2018

Appellant, Terrance Brown, was indicted in the Circuit Court for Dorchester County, Maryland, and charged with the first-degree murders of Laron Todd and Ashley Cornish, and other related counts. Prior to trial, the circuit court granted appellant's motion to suppress statements taken in violation of *Miranda v. Arizona*, 384 U.S. 436 (1966). Following the State's interlocutory appeal of that ruling, the Court of Appeals ultimately upheld the circuit court's ruling suppressing those statements. *See Brown v. State*, 452 Md. 196 (2017). The case was remanded and then was tried by a jury, wherein appellant was convicted of the first-degree murders of Laron Todd and Ashley Cornish, use of a handgun in the commission of a felony or crime of violence, and other related crimes. After appellant was sentenced to two consecutive life sentences for the murders and twenty years consecutive for the handgun count, he timely appealed to this Court and presents the following question for our review:

> Did the court abuse its discretion in denying appellant's mistrial motion where a police officer testified "Mr. Brown said that he was involved in the shooting" after the Court of Appeals held that appellant's statements were taken in violation of *Miranda* and must be suppressed?

For the following reasons, we shall affirm.

BACKGROUND

Prior to trial, appellant moved to suppress statements he made to Detective Chris Flynn in an interview/interrogation room at the Cambridge Police Department. In those statements, appellant placed himself at the crime scene where shots were fired. *See Brown*, 452 Md. at 205. The circuit court granted appellant's motion to suppress, finding that appellant was in custody when he made the incriminating statements and that he had not

been properly advised of his rights. *Id*. at 206. Following the State's interlocutory appeal, the Court of Appeals ultimately upheld the circuit court's order, agreeing that appellant was in custody when he was interrogated at the police station and that the police should have advised him, prior to the custodial interrogation, of his rights under *Miranda*. *See Brown*, 452 Md. at 208.

The case was remanded for trial in the circuit court and appellant was convicted, as provided above, by a jury. Because appellant does not challenge the sufficiency of the evidence, we simply summarize some of the pertinent facts adduced at trial. *See Thomas v. State*, 454 Md. 495, 498-99 (2017) ("Because the issue dispositive of this appeal does not require a detailed recitation of the facts, we include only a brief summary of the underlying evidence that was established at trial").

In the early morning hours of October 5, 2014, Laron Todd and Ashley Cornish were fatally shot outside the Elks Club, located at 618 Pine Street in Cambridge, Maryland. Witnesses testified that they heard an argument before the shots were fired. No other shootings were reported in Cambridge on the night in question.

Video surveillance tape recordings from the outside of the club, as well as still photographs from those recordings, were admitted into evidence and portions were displayed for the jury. Sergeant Chris Flynn testified that the photographs showed a man wearing a hooded sweatshirt firing a handgun at both Todd and Cornish. Flynn also testified that the video showed a different man in a red shirt returning fire. The photographs and video were enhanced by the F.B.I. and those enhancements were also presented to the jury.

Multiple shell casings and projectiles were recovered near the crime scene. A firearms expert determined that, of these, seven .380 shell casings and three projectiles were fired from one, unidentified firearm. Projectiles were also recovered following the autopsies of the victims. The firearms expert opined that these projectiles were fired from this same unidentified firearm. Other evidence established that five different .380 shell casings and one projectile were fired from a Beretta .380 caliber handgun that was connected to the second shooter, identified as the man in the red shirt, Draquon Young.

Cardenia Conway, appellant's cousin, was home during the early morning hours of October 5th, after the shooting, when she was woken by the sound of her husband and appellant talking outside her bedroom. She saw appellant standing in the hallway, crying, with blood dripping from his ear. Appellant told Conway that he had been shot while he was in Cambridge. He wanted her to drive him to his mother's house at the Hurlock Village Apartments.

At some point, police became aware that an injured person wanted for questioning in relation to the shooting was travelling to this apartment complex in Hurlock. Maryland State Trooper First Class Greg Fellon was waiting at the apartments when Conway arrived, apparently with appellant and two other passengers, in a green Nissan Maxima. Although appellant was not in the car when he approached the vehicle, Trooper Fellon observed a stone-colored hoody hanging out of the passenger door. And, there were blood stains on the front passenger seat.

Appellant was located moments later inside his mother's nearby apartment. At that time, Trooper Fellon observed blood dripping from appellant's ear, as well as bloodstains

on his t-shirt. An ambulance arrived, and, after appellant removed his t-shirt, Trooper Fellon also saw "what appeared to be a gunshot with an entrance and exit wound to the upper right chest area," which he indicated "appeared to be a through and through about three inches apart." Appellant also had a "brush burn scratch on his right shoulder that appeared to line up with his earlobe injury."

Appellant was transported to the emergency room at Peninsula Regional Medical Center at around 2:25 a.m., where he was treated by Dr. Sughanda Khanna. Appellant had two gunshot wounds to his chest, another injury to his ear, and another to his scalp. During the course of treatment, appellant told Dr. Khanna that "he was at a Club that night I think with other people. And there was – all hell broke loose as it says here. . . . And that he was kind of caught up in it. And then he went home and realized that he had been shot and he called 911."

Kim Vickers, the Communications Chief for the 911 Center in Dorchester County, confirmed that there was only one reported shooting in the Cambridge area on the night in question. At 12:51:07 a.m., a call came in about that shooting from a cellphone using a prepaid Verizon wireless account. The recording of the call was played for the jury during trial.[1]

There was further evidence that this same prepaid phone was used to send a text message earlier that same evening to a cellphone associated with Latia Jones, the mother

[1] Unfortunately, the exhibit is not included with the electronic record on appeal. However, according to the State's proffer prior to admission of the call, the caller indicated that he had been shot in his upper torso and his ear, and that he was driving to the Hurlock Village Apartments.

of appellant's son. The content of that message was "This aint whatwu want 2 hear them niggas in da e1ks and we not we got guns and they dnt it is what it is so we takin our chance" An expert in cellular telephone record analysis testified that this cellphone was using a cell tower in the vicinity of the crime scene from approximately 9:30 to 11:55 p.m. on the night in question.

We shall include additional detail in the following discussion.

DISCUSSION

Appellant contends that the court erred in denying his motion for mistrial made after a State's witness, Sergeant Antoine Patton, testified that appellant told him at the hospital that "he was involved in the shooting." Although appellant's objection was sustained and the jury was given a curative instruction, appellant insists that this effectively undermined the Court of Appeals' decision holding that appellant's custodial statements should be suppressed under *Miranda v. Arizona*, 384 U.S. 436 (1966). The State responds that appellant's claim is meritless for a number of reasons, most notably, that the trial court properly exercised its discretion in denying a mistrial. We agree with the State.[2]

Pertinent to our discussion, Sergeant Patton testified that he responded to Peninsula Regional Medical Center on the night in question and spoke to appellant, who was being treated for gunshot wounds at the time. Appellant had apparent gunshot wounds to his right ear, his right chest, and a graze wound to his neck and shoulder area. Photographs of

[2] We note that Sergeant Patton was not mentioned in either the prior unreported opinion of this Court or the Court of Appeals' opinion. *See State v. Brown*, No. 212 Sept. Term 2015, 2015 WL 5884945 (Aug. 10, 2015), *rev'd*, 452 Md. 196 (2017).

those injuries were displayed to the jury. Following some brief testimony describing appellant's clothing, the following then ensued:

> Q. I'm going to show you now as State's 92 and see if you can identify that?
>
> A. Yes, sir, this the shirt that I took from Mr. Brown the shirt that he said he was wearing on the incident.
>
> Q. Okay. Any observations about it?
>
> A. Yes. When I got there Mr. Brown said that he was involved in the shooting he had been shot in –
>
> [DEFENSE COUNSEL]: Object.
>
> THE COURT: Sustained.

Thereafter, in response to defense counsel's request, the court took a brief recess so that defense counsel could consider what further action to take in response to the witness's testimony. After the recess, defense counsel indicated that this was the first time he heard about the statement at issue, as it was never disclosed in discovery. Accordingly, counsel moved for a mistrial.

The State responded that it was not aware of this statement as well, but that a mistrial was not warranted considering there was no dispute that appellant had been shot and was being treated for gunshot wounds at the hospital. Specifically, the State argued "I don't think you get shot without being involved in a shooting incident."

After hearing a brief additional response from defense counsel, the court denied the motion for mistrial as follows:

> Now, the statement that came in through Officer Patton was that Mr. Brown said he was involved in a shooting. It can be taken a lot of different ways. That a shooting I believe could be if he was a sole victim who got shot

by someone, if he was in a gun battle, if he – there is a lot of ways you can take that.

In order for a mistrial to be declared there has to be that the Court find there is a manifest necessity for it. To determine a manifest necessity exists must engage in a process (inaudible) is determined that there is no reasonable alternative to granting the mistrial. Had we reached a point where or if we ran into a factual scenario where there was no evidence that Mr. Brown had been shot certainly his statement that he was involved in a shooting caries [sic] much more, much more incriminatory effect him saying I was involved in a shooting he's untouched or anything like that. In this case there has never been any real debate about whether or not he was shot. We know he was shot. The theory of the State is you can work in an identification Mr. Brown being the shooter of Cornish and Todd because it appears from video the shooter of Cornish and Todd was invariably shot at.

I can find that from the State's Attorney's Office unless I'm missing my mark here that the State's Attorney's Office is just as surprised as the Public Defender. I guess we do have to look into the prejudicial effect. So we have immediately after testimony and photographs coming of Mr. Brown's gunshot wounds Officer Patton says that he was I was involved in a shooting. Well, yeah, it's obvious it was. And so the Court finds that there is no manifest necessity to grant this . . .

The court continued:

[I]n any case I don't think the issue here that the only reasonable alternative is granting your request for mistrial. You made it part of the record and the Court has found no manifest necessity given the fact that we have in now and – it would have been different, look, it would have been different if he said I was shot at the Elks Club. It's all together different, but he said I was involved in a shooting. And I know we have evidence that there was no other shooting. . . .

So the motion for mistrial is denied with trepidation, but I'm denying it because I think that's where the law takes up.

Defense counsel then asked for a curative instruction. After consultation with defense counsel, the court granted the request and instructed the jury as follows:

Ladies and gentlemen of the jury, you are instructed to disregard any testimony given by Sergeant Patton as to statements made by Mr. Brown in

> the hospital on October 5th, 2014, other than Mr. Brown's statement of ownership with regard to the tee shirt that is in evidence as State's exhibit 93. Any other testimony is stricken and shall not be considered by you in any way or used for any purpose or even discussed by you. [3]

"[D]eclaring a mistrial is an extreme remedy not to be ordered lightly." *Nash v. State*, 439 Md. 53, 69, *cert. denied*, 135 S.Ct. 284 (2014). "We review a court's ruling on a mistrial motion under the abuse of discretion standard." *Nash*, 439 Md. at 66-67. "Ordinarily, the exercise of that discretion will not be disturbed upon appeal absent a showing of prejudice to the accused, and [i]n order to warrant a mistrial, the prejudice to the accused must be real and substantial." *Wagner v. State*, 213 Md. App. 419, 462 (2013) (quoting *Washington v. State*, 191 Md. App. 48, 99 (2010)) (internal quotation marks omitted). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 594-95 (1989)).

Further, "[w]hen a trial judge decides that the prejudice can be remedied by a curative instruction, and denies the mistrial motion and gives such an instruction, appellate review focuses on whether 'the damage in the form of prejudice to the defendant transcended the curative effect of the instruction.'" *Walls v. State*, 228 Md. App. 646, 668-69 (2016) (quoting *Kosmas*, 316 Md. at 594); *see also Cooley v. State*, 385 Md. 165, 174 (2005) ("In the greater number of instances the injection into a trial of matter other than that involved in the issue to be decided is cured by withdrawal of it and an instruction to the jury to disregard it") (citation omitted).

[3] The jury was also instructed at the end of the case that any testimony or exhibits that were struck or that the jury was told to disregard were not evidence to be considered by them in their deliberations.

Here, appellant's objection was sustained to Sergeant Patton's testimony, and the court gave a curative instruction. "[W]here the trial court has admonished the jury to disregard the [objected to] testimony, it has been . . . consistently held that the trial court has not abused its discretion in refusing to grant a motion for mistrial." *Wilson v. State*, 261 Md. 551, 568-69 (1971); *see also State v. Stringfellow*, 425 Md. 461, 475 (2012) ("We assume that jurors follow a judge's instructions"); *McIntyre v. State*, 168 Md. App. 504, 525 (2006) ("Jurors are presumed to have understood and to have followed the trial judge's instructions"); *Cantine v. State*, 160 Md. App. 391, 409 (2004) ("The jury is presumed to follow curative instructions"), *cert. denied*, 386 Md. 181 (2005).

Even despite these measures, there are generally five factors relevant to the mistrial determination:

> 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 whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists.

Rainville v. State, 328 Md. 398, 408 (1992) (*quoting Guesfeird v. State*, 300 Md. 653, 659 (1984)).

Here, the State asked Sergeant Patton about his observations of appellant's shirt. In response, the witness gave an unsolicited and unresponsive answer that was nothing more than an isolated blurt. *See Washington*, 191 Md. App. at 100 (describing a "blurt" or a "blurt out" as "an abrupt and inadvertent nonresponsive statement made by a witness during his or her testimony"). Further, given the colloquy after the appellant's objection

was sustained, it was apparent that the State did not know about this statement and did not solicit its admission. *See Wagner*, 213 Md. App. at 462-63 ("[T]he bald statement was isolated, unsolicited and unlikely to cause significant prejudice. The circuit court did not abuse its discretion in declining to employ the extraordinary remedy of the declaration of a mistrial based on this statement"). In addition, we note that the Court of Appeals' prior decision in this case did not address any statements at the hospital. That decision was concerned with appellant's statements after he was transported from the hospital and in custody at the police station. *See Brown*, 452 Md. at 212.

Moreover, Sergeant Patton was not the State's principal witness, and his credibility was not a central issue. Indeed, this was a case of direct and circumstantial evidence that included surveillance video of the actual shooting, audio recordings of 911 calls, and the appearance of a bloody shooting victim, namely appellant, at the hospital, within a short time after the incident. *See Washington*, 191 Md. App. at 104 ("[The witness's] testimony neither enhanced nor detracted from the credibility of any of these witnesses").

Notwithstanding this, appellant faults the trial court's analysis for not recognizing a distinction in the way the witness described the "shooting." Appellant now insists that Patton's reference to "*the* shooting" directly referred to the shooting at the Elks Club, thus presenting a greater danger of unfair prejudice than if Patton had simply characterized the pertinent event as "*a* shooting." As the State counters, appellant did not make this distinction at trial, therefore this argument is not preserved. *See Sifrit v. State*, 383 Md. 116, 136 (2004) ("To accept this argument, however, we would have to require trial courts to imagine all reasonable offshoots of the argument actually presented to them before

making a ruling on admissibility. We decline to place such a substantial burden on the trial court"), *cert. denied*, 543 U.S. 1056 (2005); *Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (limiting appellate review to "the ground assigned" in the objection during trial) (citation omitted).

Furthermore, whether appellant was involved in "the" shooting or "a" shooting, it was obvious that appellant was shot. And, other evidence, beyond the physical observations of appellant and Sergeant Patton's testimony confirmed this fact. Appellant told the emergency room physician, as well as the mother of his child, Conway, that he had been shot. Accordingly, it was unquestionable that he was involved in some sort of shooting incident. Under the totality of the circumstances, we hold that the trial court properly exercised its discretion in denying the motion for mistrial.

JUDGMENT AFFIRMED.

COSTS TO BE PAID BY APPELLANT.