Circuit Court for Baltimore City
Case No. 118309009

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1081

September Term, 2019

DEONTRA JOHNSON

v.

STATE OF MARYLAND

Arthur,
Beachley,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: September 3, 2020

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Baltimore City, Deontra Johnson, appellant, was convicted of carrying a handgun concealed or openly; possession of a regulated firearm by a prohibited person; and possession of ammunition by a prohibited person. He raises two issues on appeal: (1) whether the court abused its discretion in allowing the State to amend the indictment on the day of trial to change the address of where the handgun-related offenses were alleged to have occurred, and (2) whether the court abused its discretion in denying his motion for a mistrial. For the reasons that follow, we shall affirm.

I.

Mr. Johnson was charged with, but ultimately acquitted of, attempted first-degree murder and other related offenses based on a shooting that occurred on October 10, 2018 in the 100 block of North Highland Street. He was arrested in the 3500 block of Pulaski Highway the day after the shooting when he dropped a backpack that contained a loaded handgun while fleeing from the police.[1] The indictment originally listed the address of all the offenses as "the 100 block of North Highland Avenue Baltimore, MD." However, on the day of trial, the State moved to amend the indictment to change the address of the handgun-related offenses to "3500 Pulaski Highway." The court permitted the amendment over defense counsel's objection, finding that Mr. Johnson was "on notice . . . of the fact that he is being charged with having possessed a regulated firearm after being convicted of

[1] The location of Mr. Johnson's arrest was approximately 1/3 of a mile from the location of the shooting. An officer patrolling the area asked Mr. Johnson to stop because he believed that Mr. Johnson matched the description of the shooting suspect. Mr. Johnson responded "why" and then ran from the officer, dropping his backpack as he fled.

a disqualifying crime" and that the "location is all that is being changed with respect to the amendment."

On appeal, Mr. Johnson claims that the court abused its discretion in allowing the State to amend the indictment to change the location of the handgun offenses. However, Maryland Rule 4-204 provides that the court "at any time before verdict may permit a charging document to be amended" without the consent of the parties if the amendment does not "change[] the character of the offense charged." And we have previously held that "changing the location of the conduct charged from one location to another" does not "change the character of the offense charged." *Thompson v. State*, 181 Md. App. 74, 98-100 (2008); *see also Makins v. State*, 6 Md. App. 466, 470 (1969) (holding that the court did not abuse its discretion in allowing the State to amend the charging document to change the address of the apartment that the appellant had broken into). Moreover, other than generally asserting that he was only "prepared to fight allegations that were alleged to have occurred in the 100 block of North Highland Avenue," defense counsel did not provide the court with any reasons why Mr. Johnson's defense would be prejudiced by the amendment. Nor does Mr. Johnson specifically identify any such prejudice on appeal. Consequently, we hold that the court did not abuse its discretion in permitting the State to amend the indictment.

II.

Mr. Johnson also contends that the court abused its discretion in not declaring a mistrial after an officer testified that Mr. Johnson's photograph, which was used in the

photo array that was shown to the shooting victim, had been obtained from "the Baltimore Police system database . . . . called Arrest Viewer." Again, we disagree.

In determining whether to grant a mistrial, the "trial judge must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured. If not, a mistrial must be granted." *Carter v. State,* 366 Md. 574, 589 (2001). When a defendant claims that his right to a fair trial has been infringed by the admission of inadmissible and prejudicial testimony, the trial court may consider a number of factors to determine whether a mistrial is required:

> 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) (citation omitted). The decision whether to grant a motion for mistrial rests in the discretion of the trial judge, and this Court's review "is limited to whether there has been an abuse of discretion in denying the motion." *Hill v. State,* 355 Md. 206, 221 (1999) (citation omitted).

Here, the officer who created the photo array was not the principal witness in the State's case, his mention of Mr. Johnson possibly having been arrested was isolated, and the remark was not elicited by counsel. Moreover, the evidence as it related to the handgun-related offenses was strong as the handgun was found in a backpack that Mr. Johnson had been seen carrying before he fled from the police and DNA found on the handgun matched

Mr. Johnson's inferred genotype.[2] Finally, and most importantly, the intimation that Mr. Johnson might have been previously arrested was cumulative of other evidence presented to the jury, specifically the parties' stipulation that Mr. Johnson had, in fact, been convicted of an offense which disqualified him from possessing a firearm. For these reasons, we are persuaded that the officer's testimony that Mr. Johnson's photograph had been obtained from a database called "Arrest Viewer" was not so prejudicial as to inhibit the jury's ability to impartially decide the case. Consequently, the court did not abuse its discretion in denying Mr. Johnson's motion for a mistrial.

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

[2] The State's DNA analyst testified that this meant "a match between [Mr. Johnson] and the genotype is 43.8 octillion times more probable than a coincidental match to an unrelated individual in the African-American population, 4.36 decillion times more probable than a coincidental match to an unrelated Caucasian individual and 667 namillion (phonetic) times more probable than a coincidental match to an unrelated individual in the Hispanic-American population."