Circuit Court for Montgomery County
Case No. C-15-CR-23-000058

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1538

September Term, 2023

JOSE IGNACIO MAZARA

v.

STATE OF MARYLAND

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

Opinion by Raker, J.

Filed: May 5, 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).

In the Circuit Court for Montgomery County, Maryland, a jury convicted Jose Ignacio Mazara, appellant, of multiple counts of burglary and various firearms violations. Appellant presents the following questions for our consideration, which we have rephrased as follows:

1. Whether the trial court erred by denying appellant's motion to sever and allowing the State to prosecute firearm offenses and burglary offenses in the same trial.
2. Whether the trial court erred by denying appellant's motion to sever and allowing the State to prosecute the four burglaries along with the unlawful possession of a firearm in a joint trial.

We shall hold that the motions court did not err in denying the motion to sever the charges and shall affirm.

I.

Appellant was indicted by the Grand Jury for Montgomery County for 19 counts related to four separate burglaries and one firearm possession charge. Counts 1-4 related to the Sherman Avenue burglary; Counts 5-8 related to the East West Highway burglary; Counts 9-12 related to the Larch Avenue burglary; Counts 13-16 related to the Erskine Street burglary; and Counts 17-19 related to unlawful firearm possession.

A jury convicted appellant of Counts 5-15, the East-West Highway, Larchmont Avenue, and Erskine Street burglaries, and 17-19, the firearm charges, and acquitted of Counts 1-4 and Counts 15 and 16. Counts 1-4 relate to burglary and theft at 112 Sherman Avenue in Takoma Park. Count 15 related to theft between $1500 and $25,000 at 1300

Erskine Street and Count 16 related to conspiracy to commit theft at 1300 Erskine Street. The court sentenced appellant to terms of incarceration, totaling fifty years, suspend all but eleven years with five years' probation.[1]

Appellant was charged with residential burglaries for 4 houses, all located within a 2-mile radius in Takoma Park, Montgomery County. The houses are located on Sherman Avenue, East West Highway, Larch Avenue and Erskine Street. We glean the following facts from trial.

Sometime between June 16 and June 21, 2022, a two-hundred-pound safe containing mostly jewelry was stolen from 112 Sherman Avenue ("Sherman burglary")

[1] The court imposed the following sentences: Count 5 (first-degree burglary at 956 East-West Highway), a term of incarceration of fifteen years, suspend all but 2 years; Count 6 (conspiracy to commit burglary at 956 East-West Highway), a concurrent term of incarceration of fifteen years, suspend all but 2 years; Count 7 (theft between $100 and $1500 at 956 East-West Highway), a term of incarceration concurrent term of two hundred ninety-six days, time served; Count 8 (conspiracy to commit theft at 956 East-West Highway), a term of incarceration of concurrent term of two hundred ninety-six days, time served; Count 9 (first-degree burglary at 909 Larch Avenue), a consecutive term of 15 years, suspend all but 2 years; Count 10 (conspiracy to commit burglary at 909 Larch Avenue), a concurrent term of fifteen years, suspend all but 2 years; Count 11 (theft between $1500 and $25,000 at 909 Larch Avenue), a concurrent term of 1 year; Count 12 (conspiracy to commit theft at 909 Larch Avenue), a concurrent term of 1 year; Count 13 (first-degree burglary at 1300 Erskine Street), a consecutive term of fifteen years, suspend all but 2 years; Count 14 (conspiracy to commit first-degree burglary at 1300 Erskine Street), a concurrent term of fifteen years, suspend all but 2 years; Count 17 (possession of a regulated firearm), a consecutive term of 5 years; Count 18 (possession of a stolen regulated firearm), a concurrent term of two hundred ninety-six days, time served; and Count 19 (carrying a handgun), a concurrent term of two hundred ninety-six days, time served.

while the occupant was away. The only sign of forced entry was an open door on the second floor.

The next burglary occurred in November 2022 at 956 East-West Highway ("East-West burglary"). On November 13, 2022, neighbors noticed the front door was open and, knowing the owner was away, called the owner's son. The son drove home and discovered that his second-floor bedroom window was open. He reported that his PlayStation 4, a championship ring from high school, jewelry, and other valuables were missing.

The third burglary occurred on or about November 27, 2022, at 909 Larch Avenue ("Larch burglary"). The owner testified that she returned home from Thanksgiving vacation to find a package she had received prior to leaving for the trip ripped open and empty on her curb. She entered through her unlocked front door. She discovered several missing valuables including cash, jewelry, and an Omega gold watch. Outside the home, she saw a ladder propped up against her house, leading to an unlocked second floor window with the screen cut.

The fourth burglary occurred between December 4 and December 7, 2022, at 1300 Erskine Street ("Erskine burglary"). The homeowner returned after a few days away to find some watches and a handgun missing. The owner testified that he and police found two chairs under a window that led to the first-floor bathroom. The bathtub sitting below the window had streaks of mud on it, suggesting this window was the point of entry.

Detective Corporal Glushkov of the Takoma Park Police Department was the lead detective for the Larch and Erskine burglaries. He testified that prior to December of 2022

he interacted with appellant near the site of the Sherman burglary. The detective spoke with appellant while he was parked outside of 7667 Maple Avenue and noticed jewelry scattered in the back of appellant's vehicle. He did not arrest appellant at this time.

Detective Glushkov obtained an arrest warrant for appellant, charging him with first-degree burglary. During a search incident to the arrest, officers found a black handgun on appellant registered to the owner of 1300 Erskine Street. When he was arrested, appellant was wearing jewelry around his neck and rings on his fingers.

Takoma Park Police searched appellant's car and seized a championship ring matching the description of the ring stolen from the East-West burglary, and a receipt from a pawn shop with appellant's name on it for an Omega watch matching the description of the watch from the Larch burglary. Appellant admitted to the police his involvement in all four burglaries.

At trial, Det. Glushkov testified that he interviewed appellant with Detectives Earle and Pedersen, the lead detective on the Sherman and East-West burglaries. The State played audio and video portions of the interview for the jury during Det. Glushkov and Det. Pedersen's testimony.

Det. Glushkov testified that appellant admitted taking the gun from the Erskine Street house. Appellant stated he took the gun from a safe in the closet. Appellant admitted pawning the Omega watch stolen from the Larch burglary. The detective testified that appellant described entering the Larch Avenue residence through an unlocked, second-floor

window and stated that he stole the watch and some rings, which he pawned. Appellant admitted functioning as the look-out for the East-West burglary.

Appellant told Detective Pedersen how he selected the Sherman burglary, stating that he checked mailboxes and newspaper pile-up, signs that indicated to him that the owners were away. Det. Pedersen explained why he believed that the four burglaries were committed by the same person, explaining as follows:

> "[A]ll of the victims' homes were all single-family homes; no alarms; the homeowners had been away for several days; two of the four homes someone used a ladder to get into a second-floor window; one of the third floor -- one of the third homes they used a retaining wall to get up and pull themselves up on a low-lying roofline; the fourth one was, someone used a chair to get in through a bathroom window; all of these homes are within a mile of each other geographically; and the primary items taken were jewelry.
>
> They had some money taken, a handgun was taken in one of them, but the homeowners not being there and jewelry being taken, as well as there was no forced entry for any of these homes -- so what that means is no broken windows, no forced doors. It was either an unlocked door, unlocked window or they were ajar, and that's how entry was made."

Appellant filed a pre-trial motion to sever the charges into five separate trials, one trial for each burglary, and a separate trial for the firearm charge. The motions court denied the severance motion, holding that the circumstances of the alleged burglaries were "very specific" and demonstrated a similar *modus operandi*. The trial court relied on six facts to support its conclusion that the evidence was relevant to the identity of the criminal actor and that the same person committed all the crimes (1) the perpetrator appeared to be familiar with Takoma Park; (2) the evidence suggested the perpetrator cased the homes; (3) the perpetrator targeted homes within a small area; (4) the perpetrator entered each home

through either a window or a door; (5) the perpetrator entered three of the homes through the second floor and one of the homes through the first floor; and (6) the perpetrator stole similar property in each home, mostly jewelry, which was easily grabbable and valuable. Although denying the motion, the court did not state specific reasons for declining to sever the firearm charges.

After the State rested its case, the court denied appellant's motion for judgment, and appellant rested, presenting no witnesses. The parties stipulated that on December 7, 2022, appellant was not permitted to possess a firearm, which the court included in the jury instructions.

The jury convicted appellant of Counts 5-15 and 17-19, and acquitted appellant of all charges related to the Sherman burglary and the theft and conspiracy to commit theft charges related to the Erskine burglary. Appellant filed this timely appeal for our review.

II.

Before this Court, appellant argues that the motion court erred in denying his motion to sever because the firearm offenses were mutually admissible only in the December burglary, and the four burglaries were not sufficiently similar to establish a *modus operandi.* Appellant asserts that the firearms charges were inadmissible evidence in three of the burglaries and constituted inadmissible other crimes evidence which fit no exception to the rule of inadmissibility, *i.e.*, evidence does not speak to motive, knowledge, identity, common scheme or plan, preparation, or absence of mistake with respect to the first three

burglaries because the firearm was related to only one burglary, the Erskine burglary. Appellant argues that the evidence necessary to the firearms charges would not be admissible in a trial for the burglaries, nor would evidence of the first three burglaries be admissible in a trial for the firearm charges.

Appellant argues that the trial court should have severed the burglary offenses and the firearm charges into five separate trials because the evidence for the various crimes was not mutually admissible under the *modus operandi* exception. Appellant maintains that the burglaries were generic in the way they were conducted and as to the items stolen. Appellant notes that there were differences among the crimes, including the points of entry, locations of the homes in different wards of Takoma Park, and that various types of goods were stolen. In his view, harmless error analysis is not applicable to misjoinder cases on the grounds that the misjoinder is per se prejudicial and requires reversal.

The State argues that appellant did not preserve the firearms issue for our review because he did not alert the court to its failure to address his request for severance of those charges. The State asserts that appellant "silently acquiesced" to the ruling and thus waived his right to appeal this issue.

The State argues that even if this issue is preserved for our review, the motion to sever was denied properly because there was sufficient evidence to establish a *modus operandi* of the multiple burglaries. The State asserts that the motions court properly found that all of the burglaries were committed in distinctive manners, similar to each other, that the homes were in close proximity to each other; each victim was away from the home for

multiple days, suggesting the perpetrator cased the homes; the homes were entered through unsecured windows and doors; and jewelry was the primary item stolen. The State acknowledges that these burglaries were not identical but maintains that the totality of the circumstances support the inference that the same person likely committed all the crimes.

The State argues that the firearms charges need not have been severed because appellant, when arrested, was in possession of the gun stolen from Erskine Street and he was in possession of items stolen from three of the four burglaries.

The State asserts that even if the court erred in declining to sever some or all the charges, the error was harmless beyond a reasonable doubt because any error did not affect the outcome of the case. The State argues that appellant did not contest his possession of the gun and moreover, stipulated that he was prohibited from possessing it. Because the State presented evidence that appellant possessed jewelry from two of the burglaries and appellant, in his statement to the police, admitted his involvement in some of the burglaries, the State argues that there is no reasonable possibility that the verdict would have been different had the charges been severed. The State notes that the jury acquitted appellant of the Sherman Avenue burglary committed in June of 2022 and the conspiracy charges related to the Erskine burglary, indicating that the jury was able to discern the various incidents and charges despite the joinder.

III.

We turn first to the preservation issue. At oral argument, the State essentially conceded the preservation argument. An issue is preserved for our review when "it plainly appears by the record to have been raised in or decided by the trial court." Rule 8-131(a); *Fooks v. State*, 225 Md. App. 75, 92 (2022) ("Under the plain language of the Rule, we may consider issues that were not decided by the circuit court so long as the parties raised the issues there.").

We hold that the issue of severance of the firearm counts is preserved for our review. Appellant moved pre-trial to sever the offenses into five separate trials and the motions court heard oral arguments on that motion. Appellant did not waive his right to appeal the question of whether the firearms charges should have been severed from the burglary charges because appellant argued this issue before the court. Although the motions court may have failed to specifically address the firearms violation, the issue had been raised in the severance motion and argued at the hearing, and most significantly, the court denied the motion, in toto, to sever.

IV.

Maryland Rule 4-253 governs joinder and severance considerations in criminal cases. The Rule addresses two distinct joinder/severance situations: defendant joinder and offense joinder. The case before us involves offenses joinder.

Rule 4-253 on Joint or Separate Trials states as follows:

> "(a) Joint Trial of Defendants.-- On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents 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.
>
> (b) Joint Trial of Offenses.-- If a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges. In ruling on the motion, the court may inquire into the ability of either party to proceed at a joint trial.
>
> (c) Prejudicial Joinder.-- If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires."

The purpose of the Rule is based on the policy favoring judicial economy "to save the time and expense of separate trials under the circumstances named in the Rule, if the trial court, in the exercise of its sound discretion deems a joint trial meet and proper." *Lewis v. State,* 235 Md. 588, 590 (1964). Subsection (c) of the Rule "affords a trial judge discretion in making a joinder/severance determination" and provides for a balancing approach between the potential "prejudice caused by the joinder . . . [and] the considerations of economy and efficiency in judicial administration." *State v. Hines,* 450 Md. 352, 369 (2016) (cleaned-up). Justice Clayton Greene, Jr., writing for the Supreme Court of Maryland[2] in *State v. Hines*, 450 Md. 352, 369-70 (2016), addressed the analytical path for prejudice determination, explaining as follows:

> "Thus in exercising discretion to avoid prejudice to a defendant, the trial judge must engage in the following analysis. First, the judge must determine

[2] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

> whether evidence that is non-mutually admissible as to multiple offenses or defendants will be introduced. Second, the trial judge must determine whether the admission of such evidence will cause unfair prejudice to the defendant who is requesting a severance. Finally, the judge must use his or her discretion to determine how to respond to any unfair prejudice caused by the admission of non-mutually admissible evidence. The Rule permits the judge to do so by severing the offenses or the co-defendants, or by granting other relief, such as, for example, giving a limiting instruction or redacting evidence to remove any reference to the defendant against whom it is inadmissible. The judge must exercise his or her discretion to avoid unfair prejudice. Where, as discussed below, a limiting instruction, redaction, or other relief is inadequate to cure the unfair prejudice, and severance remains the only option to avoid unfair prejudice, a denial of severance constitutes an abuse of discretion."

Id. (internal citations omitted).

"Mutual Admissibility" has been interpreted to mean that "evidence of each crime would be admissible in a trial for the other." *Bussie v. State,* 115 Md. App. 324, 333 (1997). In those circumstances, the "defendant will not suffer any additional prejudice if the two charges are tried together." *McKnight v. State*, 280 Md. 604, 610 (1977). In *McKnight*, the Supreme Court of Maryland identified the concerns of improper joinder: (1) joinder can cause the defendant to become embarrassed, or confounded in presenting separate defenses, (2) the jury may use the evidence of the separate crimes and find the defendant guilty when it would not do so if tried in separate trials, and (3) the jury may use the evidence of one of the crimes charged to infer improperly a criminal disposition on the part of the defendant. *Id.* at 609.

The next step is (relatively) analytically clear when the motions court finds that the evidence is "mutually admissible." If the motions court finds that the evidence is "mutually

admissible," the court moves to the balancing stage and considers whether the interest in judicial economy outweighs any other arguments favoring severance. *Conyers v. State*, 345 Md. 525, 553 (1997). The court must balance the likely prejudice to the defendant if the charges are tried together against the considerations of judicial economy and efficiency. *Id.*

In the instant case, appellant argues that the evidence of the separate burglaries is not mutually admissible, and the evidence of the firearm possession charge is not admissible in the burglaries other than the one from which it was stolen. In sum, as we shall explain *infra*, we agree with the State that the evidence of the four burglary charges was mutually admissible to show identity and *modus operandi*. We agree with appellant, however, that the firearm possession charge was not admissible in the burglaries other than the Erskine burglary.

V.

We consider first the mutual admissibility of the four similar charges, the burglaries and thefts. We hold that the motions court did not err or abuse its discretion in denying severance of those charges. The identity of the perpetrator of these burglaries was an issue in the case, in fact, the primary issue, and remained in dispute. The *modus operandi* of each of the burglaries was sufficiently similar to be probative to establish that appellant committed the offenses. Three of the four burglaries had points of entry through either a second-floor door or window. The point of entry in the Erskine burglary was through an unsecured first-floor bathroom window, accessed by moving a chair under the window to

gain entry. In three of the four burglaries, small, valuable items like jewelry, money, and other small items were stolen. All the homes were located within a small area, suggesting that the perpetrator was familiar with Takoma Park. Additionally, each burglary occurred when the residents were away, indicating the burglar cased the homes prior to the burglaries. Appellant admitted to the police, and his statement was admitted into evidence, his involvement in the Erskine and Larch Avenue burglaries. When he was arrested, he was in possession of the handgun stolen from the Erskine burglary, and he was in possession of jewelry stolen from the East-West and Larch burglaries. He admitted stealing the firearm from the Erskine home. The court appropriately considered the time lapse between the crimes, the geographical proximity of the burglarized homes, the similar manner of entry into the homes, common nighttime entry into vacant homes and that jewelry was the primary target of the burglar.

The record confirms that the jury was capable of separating the evidence of each crime, as the jury acquitted appellant of the Sherman Avenue burglary and the conspiracy charges related to the Erskine burglary. In addition, the verdict sheet specified which counts pertained to each victim and listed the value range of the items alleged to have been stolen. Allowing the jury to hear the evidence connecting appellant to each burglary and the gun charge in the Erskine burglary to establish his identity was not error and did not constitute prejudice.

VI.

Appellant argues that the evidence related to the firearm charges was not admissible in three of the burglary charges—the East West burglary, the Larch Avenue burglary and Sherman Avenue burglary. Appellant argues that the evidence related to the firearms charges was not related to the identity of the criminal actor and would not be admissible in a trial for the burglaries, nor would evidence of the first three burglaries be admissible in a trial for the firearm charges.

We agree with appellant as to that proposition, but we part ways with respect to his proposed remedy and decisional methodology. Relying on *State v. Hines* and *McKnight v State*, he asserts that because "non-mutual admissibility of evidence as to unrelated offenses is *per se* prejudicial in the context of a jury trial, there is no harmless error review [and reversal is automatic] when a reviewing court finds error in failing to sever offenses." *Hines*, 450 Md. at 371; *McKnight*, 280 Md. at 612. Thus, in his view, when the court erred in not severing the firearm charges, the error is *per se* reversible. He reads Maryland law to require the motions judge to determine first mutual admissibility of the evidence, and if the answer is "NO," then the motions court does not weigh prejudice versus probative value or consider judicial economy. As for appellate review, he maintains that lack of mutual admissibility mandates reversal, and an appellate court does not consider prejudice or harmless error.

The hurdle for appellant, however, is the case of *Bussie v. State*, 115 Md. App. 324 (1997), written for this Court by Judge Glenn R. Harrell, Jr. *Bussie*, a reported opinion of

the Appellate Court of Maryland (then the Court of Special Appeals) addressed joinder and severance in a context with similarities to the instant case. Following the denial of his motion to sever the drug charges from the other unrelated charges, a jury convicted Bussie of assault with intent to disable, malicious shooting, use of a handgun in a crime of violence, possession of cocaine, and possession of marijuana. *Id.* at 327. He was acquitted of assault with intent to avoid apprehension, attempted murder, and assault with intent to murder. *Id*.

In a well-reasoned opinion, the Court examined the line of cases addressing joinder and severance and considered directly the holding of the Court in *McKnight*, and its progeny, *Kearney v. State*,86 Md. App. 247, 253-55, *cert. denied*, 323 Md. 34 (1991), and specifically the mandate that misjoinder presumes prejudice and requires reversal. The *Bussie* Court acknowledged that "[u]nder certain circumstances, a finding of prejudice is mandated as a matter of law." *Bussie*, 115 Md. App. at 338. However, the Court cautioned against "misconstrue[ing] *Kearney* as dictating reversal in *all* misjoinder cases, based on *presumptive* prejudice." *Id.* at 338-39 (emphasis added). *Kearney* states as follows:

> "[W]here the offenses are joined for trial because they are of similar character, but the evidence would not be mutually admissible [because of the exclusion of "other crimes" evidence], the prejudicial effect is apt to outweigh the probative value of such evidence. Further, in a jury trial, a defendant charged with similar, but unrelated offenses is entitled to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials. Indeed, where the evidence at a joint jury trial is not mutually admissible because of "other crimes" evidence, there is prejudice as a matter of law which compels separate trials."

Kearney, 86 Md. App. at 253 (internal citations omitted).

We quote *Bussie's* significant language: "[t]he remedy for a misjoinder need be no broader than the harm." *Bussie*, 115 Md. App. at 339 (quoting *Wieland*, 101 Md. App. at 19); *Kearney v. State*, 86 Md. App. 247, 253–55, *cert. denied*, 323 Md. 34 (1991). The facts of *Bussie* are distinguishable from *McKnight* and *Kearney,* where the defendants vigorously defended each charge. *Bussie* presented no defense and admitted to the drug possession charges at trial. *Bussie*, 115 Md. App. at 339. The Court cautioned that "[i]f we were to follow heedlessly the verbiage of *Kearney*, we might reverse automatically all misjoinder cases, including the one at bar. Such a result would be troubling because we cannot perceive how appellant, in the instant case, was prejudiced in his drug trial." *Id.* at 339-40.

The Court distinguished the case before it from *McKnight* by holding that once an appellant demonstrates error in joinder of charges in a single trial, the inquiry does not end in automatic reversal, and the appellate court will consider any prejudice from the misjoinder by conforming "to the general standard for ascertaining prejudice in any criminal trial." *Id.* at 340. In essence, an appellate court will conduct a harmless error analysis, explaining as follows:

> "When reviewing an established error in search of prejudice, we must be able to determine beyond a reasonable doubt that the defendant suffered no prejudice. In a jury trial, all reasonable doubts as to the effect of the error on the verdict must be resolved in favor of the defendant. Review of each of the four types of prejudice for each category of crime must be accomplished in order to determine if prejudice resulted. If we perceive reasonable doubt as to the existence of prejudice, we must reverse."

Bussie, 115 Md. App. at 340-41 (internal citations omitted).

Our holding in *Bussie* controls in this case. For dissimilar charges, the firearms possession charges in this case, two of the sources of prejudice, *i.e.*., inability to present separate defenses and aggregation of evidence, will not likely affect a conviction here. As a matter of fact, appellant in this case, just as in *Bussie*, presented no defenses to the firearm charges. He has not identified any defense applicable to the firearm charges that he might have raised in a separate trial that he could not have raised in the burglary trials. No prejudice, therefore, could result from the misjoinder of the firearms charges. From the verdict, we glean that no aggregation of the evidence of the other crimes was used improperly by the jury to satisfy an element of the other, thereby influencing the jury's verdict. The gun evidence against appellant was overwhelming. Appellant, in his statement to the police, admitted to stealing the gun from the Erskine burglary, and he was in possession of the gun when he was arrested. He stipulated before the jury that he was not permitted to possess a firearm at the time of his arrest. His only purportedly exculpatory defense (his statement to the police) was that he was carrying the gun for self-defense. In his opening and closing statements to the jury, he did not mention the gun. As in *Bussie*, "we conclude that, under such circumstances, no prejudice resulted. Therefore, a finding of prejudice from a misjoinder is not *always required* as a matter of law. Under circumstances, like those tendered in the record of this case, prejudice does not result." *Bussie*, 115 Md. App. at 341-42 (emphasis added).

We conclude, beyond a reasonable doubt, that the failure to sever the firearms charges from the three burglaries was not prejudicial to appellant.

Appellant argues that we should not rely upon *Bussie* and that the Maryland Supreme Court overruled *Bussie* in *State v. Hines*, 450 Md. 352, 374 (2016), a case decided by the Supreme Court of Maryland in 2016, obviously well-after *Bussie* was decided. Without stating it explicitly, appellant is arguing that *Hines* overruled *Bussie* by implication, or *sub silentio*.[3] We disagree that *Hines* overruled *Bussie*.

Hines was a joinder/severance case, one concerned with severance of co-defendants, not charges. *Hines* held that "non-mutual admissibility alone does not entitle a defendant to a separate trial from his codefendant. Instead, prejudice under Rule 4-253(c) means damage *from* evidence that would have been admissible against a defendant in a trial separate from his codefendant." *Hines*, 450 Md. at 374. The *Hines* court discussion of *McKnight* language and severance considerations of charges is *dicta*, language not necessary to the *Hines* holding. The *Bussie* distinctions were not raised, argued, nor mentioned in *Hines.* The *Hines* court, in its extensive opinion, does not mention or even cite to *Bussie*. The *Hines* court addressed severance of co-defendants, not charges. To overrule *Bussie*, we would have to find that the Supreme Court, overruled *Bussie by implication.* We decline to do so.

[3] *Sub silentio* is defined as "without notice being taken or without making a particular point of the matter in question." Webster's Third New International Dictionary 2279 (1976).

Overruling cases *sub silentio* or by implication is not favored. *Anne Arundel Cty. v. Fratantuono*, 239 Md. App. 126, 140 (2018). In *Anne Arundel Cty. v. Fratantuono*, a case addressing overruling by implication, authored for the panel by now Chief Justice Matthew Fader, writing then for the Appellate Court of Maryland, observed as follows:

> "The County provides no authority for its assertion that the Court overruled *Pierce*, nor did the Court expressly state an intent to do so in *Whalen* or any other decision. When the Court of Appeals 'intends to overrule a case it tends to do so explicitly.' *Moore v. State*, 412 Md. 635, 657, 989 A.2d 1150 (2010). Absent compelling evidence to the contrary, we will not assume that the Court overruled its precedent by implication."

Id. at 140, n.3.

The overruling by implication attitude around the country is consistent with Chief Judge Fader's observation in *Fratantuono*. *See, e.g.*, *Agini v. Felton*, 521 U.S. 203, 237 (1997); *Columbia Union Coll. v. Clarke*, 159 F.3d 151, 158 (4th Cir. 1998); *United States v. Sterling*, 283 F.3d 216, 219 (4th Cir. 2002). *Cooper v. MRM Inv. Co.*, 367 F.3d 493, 507 (6th Cir. 2004) (noting that implied overrulings are disfavored and when possible, courts will distinguish seemingly inconsistent decisions rather than overrule by implication.); *Mazariegos-Rodas v. Garland*, 117 F.4th 860, 875 (6th Cir. 2024); *United States v. Rodriguez*, 311 F.3d 435, 439 (1st Cir. 2002), *cert. denied*, 538 U.S. 937 (2003); *Mfrs.' Indus. Relations Ass'n v. East Akron Casting Co.*, 58 F.3d 204, 210 (6th Cir. 1995); *Badahman v. Catering St. Louis*, 395 S.W.3d 29, 37 n.10 (Mo. 2013) (en banc) ("If the majority chooses to overrule [a case] it is far preferable to do so by the front door of reason

rather than the amorphous back door of *sub silentio."* (quoting *Keller v. Marion Cty. Ambulance Distr*., 820 S.W.2d 301, 308 (Mo. 1991) (en banc) (Holstein, J., dissenting))).

In sum, we affirm the judgments of the Circuit Court for Montgomery County. Although the motions court erred in denying appellant's motion to sever the firearms charges from the burglaries, he has suffered no prejudice, any error was harmless beyond a reasonable doubt and the reasoning and holding of *Bussie v. State* is applicable.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY, MARYLAND, AFFIRMED. COSTS TO BE PAID BY APPELLANT.