

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

CONSOLIDATED CASES

Nos. 1701 & 2153

September Term, 2014

TERRY ADDISON

v.

STATE OF MARYLAND

JONATHAN WOODARD

v.

STATE of MARYLAND

Woodward,
Leahy,
Moylan, Charles E., Jr.
(Retired, Specially Assigned),

Opinion by Leahy, J.

Filed: December 3, 2015

*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.

Two groups of men engaged in a shootout on November 20, 2012, on Greenmount Avenue in Baltimore City causing the death of Daniel Pearson and serious injury to Dajuan Clinkscale and James Woodfalk. Appellants Terry Addison and Jonathan Woodard were prosecuted jointly in the Circuit Court for Baltimore City for charges arising out of the shooting.

Following a seven day jury trial, on July 24, 2014, Mr. Addison was convicted of first-degree murder, conspiracy to commit murder, two counts of first-degree assault, and three counts of use of a handgun in a crime of violence. Mr. Woodard was also convicted of first-degree murder, conspiracy to commit murder, two counts of first-degree assault, and three counts of use of a handgun in a crime of violence. The jury was polled and hearkened, and all jurors affirmed the verdicts as announced by their foreperson. On September 10, 2014, Mr. Addison was sentenced to a total of life plus 20 years of incarceration. On October 27, 2014, Mr. Woodard was sentenced to a total of life plus 20 years of incarceration.

Both Appellants now challenge, not the evidence presented at trial or its sufficiency, but the fairness and integrity of the trial following a report by one juror that another juror made an inappropriate comment prior to the close of evidence. Appellants noted timely appeals, and on April 2, 2015, this Court ordered that those appeals be consolidated.

Appellant Woodard presents the following question:

Did the court abuse its discretion in (a) denying appellant's mistrial motion after one juror reported that another juror had said that one of the defendants will be going to jail for the rest of his life and/or (b) failing to investigate various troubling statements made by jurors during the individualized *voir dire*?

Appellant Addison presents the following question:

Whether the trial court erred in denying appellant's motion for mistrial or, in the alternative, to strike Juror Number 1 from the jury.

Because the circuit court properly conducted an individual voir dire of each juror and gave defense counsel ample opportunity to question each juror on voir dire, the circuit court did not err in its determination that the jurors could continue fair and impartial deliberations.

We affirm.

BACKGROUND

After the close of evidence, as defense counsel was making a motion for judgment of acquittal, the circuit court was interrupted and, upon return, the court had the following exchange with counsel:

THE COURT: . . . [Juror 6] asked to speak to my law clerk when they were walking out. She said she didn't know whether this was significant or not, or whether it should be brought to the Court's attention or not, but just in case that there have been comments made, just comments about the case, not significant, she didn't think, except someone said

* * *

. . . somebody said that the defendants, or one of the defendants -- and I don't know which one, if it's one or if it's both -- looked angry or upset at the bailiff and one of the jurors responded, "Well, it's not his fault that he's going to go away for the rest of his life," or something of that nature. Something like that. So, my law clerk told her, "Well," she said, "that may be significant. So, I'm going to ask you to come back with me," and she has her outside of the courtroom and that's why she came to tell me this.

Now, this apparently is a communication that took place in the jury room amongst the jurors until this juror communicated it to my law clerk, who then communicated it to me. So, I am, of course, sharing it with counsel.

After a brief discussion, the court and all counsel agreed to first speak with Juror 6 to ascertain what had happened and, thereafter, to individually voir dire each juror. The court brought in Juror 6, and she related the following:

JUROR NUMBER 6: . . . I do not remember verbatim the exact phrasing of what juror number one said During a previous break, not the last break but maybe the second-to-last break that we had, there was a general discussion of how defendant two had an exchange with either the bailiff or somebody else -- I was unclear -- and that defendant two seemed to be very angry and gave him an angry look, whoever this person was, and juror one then made the comment, "Well, it's not that person's fault that he will be going to prison for the rest of his life." I did not say anything at that time because I did not want to be involved in any way, but I almost wanted to say to her, "What did you just say? Are you serious?" There was silence after that and then the conversation was (unintelligible) to something else off the topic, but this really upset me because we are not in deliberation yet, we have not heard all of the case yet, and I know that you give us specific instructions not to discuss the case, but I feel that this went really beyond what any juror should say.

THE COURT: Did -- well, there are several questions. Do you feel, having heard that, that that might in any way affect your ability to decide this case fairly and impartially based on the facts and the evidence presented during the trial?

JUROR NUMBER 6: Me? No. I have taken very good notes. I don't think that I will be swayed by anyone else's opinion.

THE COURT: Did you -- okay. All right. And that was the extent of the conversation you heard?

JUROR NUMBER 6: Correct.

THE COURT: Any other questions?

[ADDISON'S COUNSEL]: When you say "defendant two," you mean my guy, the one in the wheelchair?

JUROR NUMBER 6: Terry Addison, yes.

[ADDISON'S COUNSEL]: Okay. And was the entire jury there together to hear this or --

JUROR NUMBER 6: Yes.

[ADDISON'S COUNSEL]: So, it was the complete jury --

JUROR NUMBER 6: Yes.

[ADDISON'S COUNSEL]: -- that heard this comment?

JUROR NUMBER 6: Yes.

[ADDISON'S COUNSEL]: Okay.

THE COURT: And no one responded to that?

JUROR NUMBER 6: No one responded.

The court then instructed Juror 6 to not discuss this matter with the other jurors and she left the courtroom.

The next morning, July 23, 2014, the circuit court conducted individual voir dire of each juror. The court engaged in the following dialogue with Juror 1, who was alleged to have made the comment:

THE COURT: Did you at any point make a comment that the defendants, or one of the defendants will be going away for a long time, or will be spending the rest of their lives in prison?

JUROR NUMBER 1: No.

THE COURT: Okay. Did you hear any such comment?

JUROR NUMBER 1: No.

THE COURT: All right. Any questions from any of the lawyers?

[PROSECUTOR]: No.

[WOODARD’S COUNSEL]: No, Your Honor.

[ADDISON’S COUNSEL]: No, Your Honor.

Likewise, none of the other 12 jurors (including the two alternates) claimed to have heard the comment reported by Juror 6. Each juror was asked some slight variation of the questions “have you personally said anything, or have you heard anything from the other jurors about the case itself or about the defendants” and “have you heard any indication from any of the other jurors, or have you said anything, indicating how you or they feel that the case will end.” All jurors, excluding only Juror 6, responded to these inquiries with “no.”

Jurors 2 and 4, however, indicated that they had observed some distraction regarding the bailiff in the proceeding. Juror 2 indicated that that one of the bailiffs instructed the jurors to stop looking at the defendants during testimony. Juror 2 stated that the bailiff said “[m]ake sure you-all are paying attention.” Defense counsels declined to question Juror 2 any further. Juror 4 indicated that one of the defendants and some family members had been staring at the jury, and the bailiff “told [the defendant] ‘[d]on’t be doing that.’” Juror 4 admitted saying “thank you” to the bailiff for his intervention. When presented with the opportunity to ask questions of Juror 4, defense counsel only inquired which defendant the bailiff had approached and spoken to.

Jurors 7 and 9 both stated that they had experienced a level of discomfort during the proceedings. However, Juror 7 did not indicate the source of that discomfort and was not asked. Defense counsels declined the opportunity to question Juror 7 further. Juror 9 stated that “[w]e have talked about the defendants a little bit because we felt like there’s been

some intimidation -- some attempt at intimidation -- and a lot of eye contact.” Juror 9 related to the court that one of the other jurors (Juror 11) “was across the street . . . and she was bumped by one of the defendants’ mothers.” On further questioning, Juror 9 indicated that Juror 11 shared that experience with “a few” of the jurors and that other jurors had mentioned the Appellants’ “aggressive eye contact.” When given the opportunity to further question Juror 9, defense counsel only sought to clarify whether another juror had indicated that they live across the street or that he or she was merely across the street during the break in trial.

Regarding the “bumping” incident discussed by Juror 9, Juror 11 stated:

JUROR NUMBER 11: I don't know if it was an encounter. More like an encounter of a third kind. We were at lunch, and Stacy and I were talking about her job. She's a professor. I'm not from Baltimore. So, please forgive me, but we had walked a few blocks north of here maybe and the lady who comes every day -- she's here today -- she was with a group of people, the defendant's -- I mean, the decedent's mother.

* * *

And I thought that strange because we're not -- we're not anywhere near the courthouse, that they would be, you know, blocks ahead with us. And she kind of bumped me a little bit, and because I was talking to Stacy, I said, “Oh” -- you know, I'm running my mouth. I said, “Oh, excuse me. I'm sorry,” and I looked at her and she looked at me, and she kind of walked a little bit ahead. She turned around and she kind of looked at me funny and walked off, and I said, “Well, that was weird,” and Stacy said, “Yeah,” because we're all the way down here eating lunch together. We really didn't expect to find anybody from the courtroom down that way, but I just thought it was strange that, number one, they were there and, number two, I was accidentally bumped and it wasn't crowded. It wasn't like we were with a lot of people. So, I just thought it was kind of a strange thing.

The court then questioned Juror 11 about her discussion of this event with other jurors:

THE COURT: Okay. So, you shared that with other members of the jury.

JUROR NUMBER 11: Well, another jury member was with me.

THE COURT: Okay.

JUROR NUMBER 11: So, she, you know, said that. Then, I think we came back one day and one of the jurors said that they got -- or they were stared - - somebody was staring at them or something, and the sheriff came and said something or did something, and that's when another juror said, "Oh, yeah, and that juror, you know, she got bumped the other day." I didn't even mention it to them. Somebody else mentioned it. So, I was like "Yeah." I just didn't think anything of it.

Defense counsel asked Juror 11 to provide more detail about this conversation and she answered:

JUROR NUMBER 11: When we were back there, one of the jurors said to the sheriff, "Thank you for approaching one of the defendants from looking at me." That's what he said. I didn't see anything. I don't know where I am. I'm like, "Who stared at who?" I was all confused and he said, "You know, I really appreciate that." So, another juror said, "Yeah, you didn't see that, the way he was staring at him when we were (unintelligible)?" So, I said, "No," and then that's when they brought it up about, you know, we were in the park and I kind of got bumped. I didn't bring it up. Someone else did.

Both jurors 9 and 11 indicated that neither the incident, nor any discussion thereof, would impede their ability to keep an open mind and be fair and impartial.

As noted above, none of the other jurors stated that they had heard any statement like that reported by Juror 6. All of the jurors indicated that they could decide the case fairly, impartially, and based on the facts and the evidence presented.

At the conclusion of the individualized *voir dire*, counsel for Mr. Woodard made a motion for mistrial based on "two occasions, jurors noticed the sheriff approaching a defendant and making a comment that seemed to be directing their actions towards the

jury” which he argued “shows another level of my client not being free.” Counsel for Mr. Woodard further argued:

[A]s to what happened in the jury room, . . . some of these jurors are not being candid with the Court. . . . [B]ut juror number six has taken three pads of notes, has been paying attention to every possible thing that she can see that’s going on . . . [I]f [the alleged comment] disturbed her and if other jurors aren’t being honest to what they’ve seen and what they’ve heard, I think that’s a big problem.”

Regarding the “bumping” incident counsel for Mr. Woodard stated, “[t]hat’s not the basis for the mistrial.”

Counsel for Mr. Addison incorporated the arguments made by his colleague and added the argument that the various statements from juror regarding perceived intimidation (through eye contact or bumping) combined with the perception that the bailiff had chastised at least one of the defendants unfairly prejudiced the proceedings. Counsel for Mr. Addison also requested that, if the motion for mistrial be denied, that the court dismiss and replace Juror 1.

The circuit court responded to the arguments presented by counsel and stated:

[A] juror being bumped and talking about being bumped, if that’s the basis for a mistrial, then a party can force a mistrial at any time by following a juror, bumping into them, and we’ve got a mistrial. That’s why the Court inquires specifically and has to be satisfied that it will, in fact, affect that juror’s ability to be fair and impartial.

* * *

We have 14 jurors. . . . Thirteen of them either directly deny or don’t acknowledge that [the comment allegedly made by Juror 1] was made. . . .

One juror, who the Court finds to be rather compulsive^[1], claims this comment was made, claims there have been absolutely no other comments made concerning the case or concerning the defendants or concerning anything about the case, but that one comment was made. That's 13 people that deny that any such comment was made and one that says it was. Quite candidly, I find the 13 people to be more credible on that issue than the one, based on my opportunity to observe their demeanor and my opportunity to speak with all 14 of them.

* * *

First of all, I am very concerned about a fair trial, but there are several issues involved here. A mistrial is obviously an extreme measure; to take the case away from a jury based on speculation, which I find is basically where we are at this point. We try cases in a real world. Jurors are not kept behind one-way glass. Defendants are not kept out of the courtroom behind one-way glass. The public is not kept out of courtrooms. There are some times when defendants stare, sometimes glare. There are times when they don't. People react as human beings. People interpret things as they are. That's the real world of trial. That's the real world of courtrooms.

The question is whether the human beings sitting on the jury can decide the case fairly and impartially based upon the evidence and the facts that are presented in trial, or whether they are unduly influenced by other factors. We spoke with each one of the jurors individually. I had an opportunity to ga[u]ge their credibility and I am satisfied that they can decide this case fairly and impartially based upon the facts and the evidence. Juror number one was asked specifically concerning comments made or things she observed regarding the defendants or the case. I think that, fairly, anything that occurred at a lunch break involving a family member either of the decedent or the defendant falls outside of that.

The motions are noted for the record. I'm denying your motions.

(Emphasis added).

¹ On numerous occasions Juror 6 interrupted the court proceedings to request that questions be repeated, to request that video be replayed or paused at certain times, and to make various other requests of the court and counsels.

DISCUSSION

Appellants contend that the circuit court abused its discretion in denying their motions for mistrial after Juror 6 reported hearing another juror remark, “[w]ell, it’s not that person’s fault that [Appellant] will be going to prison for the rest of his life.” Appellants argue that the alleged comment “demonstrate[d] that at least one juror had prejudged the case prior to the close of evidence.” The State counters that the circuit court did precisely what was required when it “conducted ‘a meaningful inquiry’ of each juror to resolve ‘factual questions’ by conducting individual voir dire of each juror.”

“Generally, appellate courts review the denial of a motion for a mistrial under the abuse of discretion standard, because the ‘trial judge is in the best position to evaluate whether or not a defendant's right to an impartial jury has been compromised.’” *Dillard v. State*, 415 Md. 445, 454 (2010) (quoting *Allen v. State*, 89 Md. App. 25, 42-43 (1991)); see also *State v. Hawkins*, 326 Md. 270, 277 (1992). “‘The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors. . . .’” *Id.* (quoting *Hawkins*, 326 Md. at 278).

A criminal defendant's right to a fair trial, under both the United States Constitution and the Maryland Declaration of Rights, “relies on the promise that a defendant's fate will be determined by an impartial fact finder who depends solely on the evidence and argument introduced in open court.” *Summers v. State*, 152 Md. App. 362, 375 (2003) (quoting *Allen*, 89 Md. App. at 42). Where a defendant moves for a mistrial asserting that a communication between or with jurors was prejudicial the “trial court must balance the probability of

prejudice from the face of the extraneous matter in relation to the circumstances of the particular case.” *Allen*, 89 Md. App. at 46 (citation omitted).

In certain “egregious cases,” inappropriate contact between a juror and third party or inappropriate conduct by the jurors may give rise to a “presumption of prejudice.” *Jenkins v. State*, 375 Md. 284, 319 (2003). If such a presumption arises, the court is required to conduct *voir dire* in order to determine whether the presumption has been rebutted. *Nash v. State*, 439 Md. 53, 69 (2014). However, not all improper communications justify a presumption of material prejudice. *See Summers*, 152 Md. App. at 376 (citing *Jenkins*, 375 Md. at 301).

The matter *sub judice*, unlike the cases cited by the Appellants, does not involve a communication between jurors and witnesses or other third-parties. Rather, the primary allegation of error in this case is premised on an alleged communication between fellow jurors. Presented with a similar factual scenario in *Summers v. State*, this Court stated:

This case differs from all of these cases we have discussed because the allegedly improper communication here occurred between two jurors, not between a juror and a witness, defendant, or third party. We find that distinction significant. Third party communication with a juror raises a concern that the juror may reach a verdict on the basis of the improper extrinsic communication rather than the evidence. That concern is greatly diminished when, as in this case, the improper extrinsic communication occurred solely between two jurors.

152 Md. App. at 379 (internal citation omitted). Moreover, regarding similar juror-to-juror communications in *Abernathy v. State*, this Court stated:

Jurors are not Sphinxes and, inevitably, they make comments to each other in the course of a trial. It is nothing more than an instinctive human reaction to the events unfolding around one, no more significant than the raising of an eyebrow or the taking of a deep breath. It does not constitute deliberation on

the merits of the case and it is not evidence of bias. Bias or prejudice is what a juror brings to the trial before it even begins. The process of beginning to make tentative judgments as the trial progresses, by way of contrast, is something quite different and it is unavoidable.

109 Md. App. 364, 377 (1996).

We reject the Appellants’ assertion that the alleged comment by Juror 1 was prejudicial. The circuit court was not clearly erroneous—after all the other jurors were questioned and denied making or hearing such a comment—in finding that the alleged communication did not happen in the way it was reported by Juror 6. Further, there was no evidence that the alleged communication between the jurors was coercive or that any juror had made up his or her mind about the case prior to hearing all of the evidence.

Nevertheless, assuming (without deciding), as this Court did in *Summers*, 152 Md. App. at 377, that the presumption of prejudice arose, the presumption was rebutted by the voir dire responses to the court. The goal of voir dire is to determine whether there is prejudice. *Dillard*, 415 Md. at 461 (citing *Grandison v. State*, 305 Md. 685, 726 (1986)). In examining the jurors on voir dire “the trial court should exercise its ‘power to assure itself that the . . . jurors could continue fair and impartial deliberations.’” *Id.* at 461 (quoting *Jenkins*, 375 Md. at 308). Here, the trial judge asked each juror a variation of the questions “have you personally said anything, or have you heard anything from the other jurors about the case itself or about the defendants” and “have you heard any indication from any of the other jurors, or have you said anything, indicating how you or they feel that the case will end.” With the exception of Juror 6, all jurors responded to these

inquiries with “no.” Most importantly, each and every juror indicated their continued ability to decide the case fairly and impartially based on the evidence presented.

Next, Appellants argue that, during the voir dire, the circuit court “failed to address other causes for concern that that arose from the juror’s answers, specifically the impressions of several jurors that the [Appellants] were staring at them in an intimidating and aggressive way and that the sheriffs had chastised the [Appellants] for doing so.” Appellants argue that “[t]he inadequacy of the court’s voir dire rendered . . . its ultimate conclusion—that the jurors could render an impartial verdict—fundamentally flawed.” However, as the State points out, defense counsel for both appellants were presented with the opportunity to ask additional questions of each juror on voir dire, and, with only a few exceptions, declined the opportunity.

Addressing these additional concerns, the circuit court stated:

[A] juror being bumped and talking about being bumped, if that’s the basis for a mistrial, then a party can force a mistrial at any time by following a juror, bumping into them, and we’ve got a mistrial. That’s why the Court inquires specifically and has to be satisfied that it will, in fact, affect that juror’s ability to be fair and impartial.

* * *

We try cases in a real world. Jurors are not kept behind one-way glass. Defendants are not kept out of the courtroom behind one-way glass. The public is not kept out of courtrooms. There are some times when defendants stare, sometimes glare. There are times when they don't. People react as human beings. People interpret things as they are. That's the real world of trial. That's the real world of courtrooms.

The question is whether the human beings sitting on the jury can decide the case fairly and impartially based upon the evidence and the facts that are presented in trial, or whether they are unduly influenced by other factors.

We agree. Similarly, the mere allegation by one juror of an improper comment made by another does not, by itself, require the dismissal of the juror (especially where the court found the 13 jurors denying that the comment was made to be more credible than the single complaining juror).

In *Summers v. State*, 152 Md. App. at 378, we quoted with approval from *Rent-A-Car Co. v. Globe & Rutgers Fire Ins. Co.*, 163 Md. 401, 408 (1933):

Not every trivial act on the part of a juror during the course of the trial amounts to such misconduct as requires the withdrawal of a juror and the continuance of the case. A contrary holding would result in a multiplication of mistrials, with attendant additional expense and delay. There are many cases where the misconduct of the jury is sufficient to require an order of mistrial, but the misconduct must be such as to reasonably indicate that a fair and impartial trial could not be had under the circumstances.

In the matter *sub judice*, it is clear that the circuit court took the necessary steps to ensure that Appellants' received a fair and impartial trial. For all of the above reasons, we hold that the trial court did not abuse its discretion by denying Appellants' motion for mistrial, nor did it err in refusing to strike Juror 1.

JUDGMENTS AFFIRMED.

COSTS TO BE PAID BY APPELLANTS.