

Circuit Court for Baltimore City
Case No. 119214002

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1867

September Term, 2022

MICHAEL DANIEL BULL

v.

STATE OF MARYLAND

Graeff,
Shaw,
McDonald, Robert N.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: May 2, 2024

*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).

Appellant, Michael Bull, was convicted by a jury in the Circuit Court for Baltimore City, of issuing a counterfeit private document, attempted theft, and theft under \$100. He was sentenced to ten years' imprisonment, all but three years suspended, and five years of supervised probation. Appellant timely noted this appeal, and he presents one question:

1. Did the court err in denying the motion to sever?

For the following reasons, we affirm the judgment of the circuit court.

BACKGROUND

Appellant was indicted by a grand jury in the Circuit Court for Baltimore City with twenty criminal counts. The first eleven counts charged rape, robbery, and assault of a woman, Y.H., on July 8, 2019, at a home located on Elliott Street in Baltimore City. Counts twelve through fourteen related to the burglary of the home. Counts fifteen through twenty involved the theft of the homeowner's checkbook and Appellant's attempt to cash two of her checks on July 9, 2019.

Appellant filed a pretrial motion to sever the trial of counts charging sexual assault and robbery of Y.H. from those charging theft and an attempt to cash one of the homeowner's checks. At a motions hearing, Appellant's counsel argued that the evidence relating to the rape counts would not be mutually admissible at a trial on the check counts and thus, severance was required. Following arguments, the court noted that the checks were stolen from the same house that Appellant allegedly broke into and where Y.H. was raped. The court found that the evidence was mutually admissible, as Y.H. would have to testify at two trials and that she would establish the identity of Appellant as her attacker

and the person in the home on the day of the incident. Defense counsel argued that to the extent the evidence was mutually admissible, it was unfairly prejudicial because jurors would be more offended by the rape allegations. After “serious consideration in light of the *Garcia*¹ case,” the court denied the motion.

Trial began on March 9, 2020, and the State called Y.H. as a witness. She testified that on July 8, 2019, she was walking to her son’s house when she heard someone ask for help. A man that Y.H. did not know, asked if she could assist him and hold a table while he repaired it. Y.H. testified that the man led her to the basement of a home, and he then went back upstairs briefly to retrieve what she assumed to be a screwdriver. When the man returned, Y.H. testified that he was holding a large knife and began strangling her until she was unconscious. When she came to, she was “face down on the floor” with her “ankles tied with a lot of rope” and her “leg was very sore.” Y.H. testified that her attacker removed the rope from her legs before rifling through her purse. Y.H.’s attacker pulled down her clothing and raped her. He then pulled Y.H.’s clothing up and told her to go upstairs, to which she responded that she could not walk. The man picked her up and carried her up the stairs. He stated that his name was Matt, and he was schizophrenic. He then exited the home and used Y.H.’s cell phone to call for an Uber.

When the Uber arrived, the man carried her to the vehicle. Y.H. asked the Uber driver, later identified as Donte Bailey, to take her to her son’s house, because she knew

¹ The trial court was referring to *Garcia-Perlera v. State*, 197 Md. App. 534 (2011), in which this Court held, in pertinent part, that each of the four charged incidents was mutually admissible as “other crimes evidence” of identity, and denial of severance was not an abuse of discretion.

her son's employee, Kimberly Deane, would be there. Ms. Deane followed the Uber to a nearby urgent care clinic. She testified that Y.H. told her what had happened, and she alerted the nursing staff. The police arrived at the urgent care clinic while Y.H. was being treated for a broken leg and she reported the rape. Y.H. was taken to a hospital for x-rays, and later transferred to another hospital due to the severity of her broken femur. She underwent surgery that included the insertion of a rod and seven weeks of rehabilitation.

Y.H. described her attacker as "African American" with a "very dark complexion." She testified that he was taller than her and quiet-spoken. Y.H. identified Appellant as the person who raped her, both in a photo array presented to her by Detective Lakea Lee in the hospital on July 10, 2019, and in the court room on February 24, 2020.

Donte Bailey testified that on July 8, 2019, he was working as an Uber driver, and received a pickup request for the Elliott Street address around 8:00 or 9:00 a.m. Mr. Bailey testified that the request was unusual because the passenger was not at the address in the pickup request, and he had to drive around the corner to find the passenger. Mr. Bailey testified that a Black man carried the passenger, a woman, to his car. He stated that the woman asked him to drive her to her son's house and thereafter to a nearby clinic.

Forensic scientist Evona Hebb testified that she analyzed Y.H.'s SAFE kit, and a series of items recovered from the scene. No semen was discovered on any of the tested items. DNA analyst Tatyana Shvarstman testified that none of the items she tested resulted in a match to Mr. Bull. Forensic nurse examiner Jane Queen testified that she conducted an examination of Y.H. and identified a number of injuries including petechial hemorrhaging on her neck and mid-chest consistent with strangulation, abrasions on her

lip and bruising, a “grossly deformed” left knee, and vaginal “abrasions and redness from 2:00 all the way around to 10:00” consistent with common sites for injury in victims of sexual assault.

Detective Lakea Lee testified that she responded to Mercy Medical Center for a call reporting rape and robbery on July 8, 2019. Based on Y.H.’s description of the attack, she was able to ascertain that the incident occurred at the Elliott Street address identified by Y.H. Detective Lee stated that Y.H. described her attacker as a Black male “skinny, between the ages of 30 to 35, with . . . athleticwear and canvas material shoes.” On July 12, 2019, a search and seizure warrant was executed at Appellant’s home, which was fifteen minutes away from the Elliott Street address by car. The detective recovered a “check, some clothing, a black sweatshirt, some pants, a bag of tools with a – an open condom wrapper” from the home.

One of the Elliott Street homeowners, Cynthia Cates, testified that she was out of town on July 8, 2019, when she was contacted by the police regarding a break-in at her home. When she returned, Ms. Cates found that the only things missing from the home were an electrical cord, her checkbook, and a spare key usually hidden underneath a doormat. On the day that Ms. Cates was returning home, she received a call from Ace Cash Express, a check cashing company, and as a result, she stopped payment on a check. Ms. Cates testified that the check recovered from Appellant’s home was one of her checks and she did not recognize the handwriting on the check.

Jannette Ford, an employee of Ace Cash Express, located on 33rd Street, testified that on July 9, 2019, a check was presented “written out to Michael Bull for Dragon Ball

Z collectibles” in the amount of \$2,500. Appellant presented her with his state-issued identification, as required to cash a check, and she recorded his information in the Ace Cash Express system. Ms. Ford testified that she followed protocol and attempted to contact the “maker of the check to verify the check,” but she was unable to reach the person. She stated that she told Mr. Bull to take the check to the State Employees Credit Union – the institution listed on the check – and she then returned the check to him. The next day, on July 10, 2019, Ms. Ford was contacted by Baltimore police, who showed her a photo array. Ms. Ford identified Appellant as the person who came into Ace Cash Express the day before. She also identified him in the courtroom.

At the close of the State’s case-in-chief, defense counsel moved for acquittal. The judge granted the motion as to counts sixteen, seventeen, and eighteen.² The defense then rested. Ultimately, the jury found Appellant not guilty of all charges involving the rape, assault, and robbery of Y.H., and the burglary offenses. He was convicted of counts fourteen, sixteen, and seventeen, all involving the check.

Standard of Review

Motions to sever criminal counts are governed by Maryland Rule 4-253(c). The Rule provides that a court “may” order a separate trial for different counts if “it appears that any party will be prejudiced by the joinder[.]” *Cortez v. State*, 220 Md. App. 688, 694 (2014) (citing *Conyers v. State*, 345 Md. 525, 553 (1997)). In deciding whether to sever

² Count sixteen was duplicative of Count 15. There was no evidence adduced as to counts seventeen and eighteen, which alleged an attempt to cash a check at an Ace Cash Express location on Greenmount Avenue.

charges, a court asks two questions. First, “whether evidence as to each of the accused’s individual offenses would be ‘mutually admissible’ at separate trials concerning the offense[s]?” *Cortez v. State*, 220 Md. App. 688, 694 (2014), *cert. denied*, 442 Md. 516 (2015). The second is “whether ‘the interest in judicial economy outweighs any other arguments favoring severance?’” *Id.* (quoting *Conyers v. State*, 345 Md. at 553). The first question involves a legal determination, which we review without deference to the trial court. *See Conyers v. State*, 345 Md. at 553 (citing *Solomon v. State*, 101 Md. App. 331, 338 (1994)); *Cortez v. State*, 220 Md. App. at 694. The second “requires a balancing of interests,” which we will reverse only if “the trial judge’s decision ‘was a clear abuse of discretion.’” *Cortez v. State*, 220 Md. App. at 694 (quoting *Conyers v. State*, 345 Md. at 556).

DISCUSSION

I. The court did not err in denying Appellant’s Motion to Sever the Trials.

Appellant argues the court erred in denying his motion to sever counts one through eleven charging crimes committed against Y.H. from counts twelve through twenty, which were burglary and theft counts committed against homeowners Cynthia Cates and Wayne McIntosh. Appellant argues that evidence of the assault and robbery would not have been admissible in a separate trial of the charges related to the theft and attempted check cashing. Appellant contends that even if the evidence of Y.H.’s attack was minimally relevant to the burglary and theft counts, it had no probative value as to the check cashing counts. Appellant argues, to the extent any of the evidence was mutually admissible, the evidence from Y.H.’s attack was unduly prejudicial.

The State responds, to the extent preserved, evidence from the attack and evidence from the burglary and theft were mutually admissible to prove identity. As a preliminary issue, the State argues Appellant failed to preserve the severance issue for appellate review because, according to the motions judge, the defense “concede[d] that there is evidence that could be mutually admissible.”

Based on our review of the record, we conclude that the characterization made by the motions judge did not alter the express arguments made by defense counsel regarding severance. We shall, thus, address the merits because the issue was properly preserved.

“The purpose of joining offenses ... in a single trial is to save time and money by avoiding additional trials.” *Conyers v. State*, 345 Md. at 552. However, “where the evidence is not mutually admissible, the value of resources saved by consolidating the cases for trial is questionable.” *Garcia-Perlera v. State*, 197 Md. App. 534, 546–47 (2011) (discussing *McKnight v. State*, 280 Md. 604, 609 (1977)). That is due, in part, to the fact that, “[i]n the context of joinder/severance ... the subject matter of the charges against a separate defendant or of separate charges against the same defendant is, by definition, ‘other crimes.’” *Solomon v. State*, 101 Md. App. 331, 341-42 (1994), *cert. denied*, 337 Md. 90 (1995).

“The question of mutual admissibility is simply a method of assessing what difference there would be between a joint and a separate trial in any given case.” *State v. Hines*, 450 Md. 352, 373 (2016). “Mutual admissibility” means 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).

As explained by the Supreme Court of Maryland in *McKnight, supra*, the concern of improper joinder is threefold. First, joinder can cause the defendant to “become embarrassed, or confounded in presenting separate defenses.” *McKnight*, 280 Md. at 609. Second, “the jury may cumulate the evidence of the various crimes charged and find guilt when, if the offenses were considered separately, it would not do so.” *Id.* And third, “the jury may use the evidence of one of the crimes charged, or a connected group of them, to infer a criminal disposition on the part of the defendant from which he may also be found guilty of other crimes charged.” *Id.*

To resolve whether evidence of an accused’s individual offenses would be mutually admissible at separate trials concerning the offenses, a trial court conducts the same analysis that it would conduct in determining whether evidence of other crimes or wrongs would be admissible under Rule 5-404(b). *See Cortez v. State*, 220 Md. App. at 694 (citing *Conyers v. State*, 345 Md. at 553); *Garcia-Perlera v. State*, 197 Md. App. 534, 547 (2011). Under that rule, evidence of other crimes or wrongs “is not admissible to prove the character of a person in order to show action in the conformity therewith,” but “may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, [or] absence of mistake or accident[.]” Md. Rule 5-404(b); *Hart v. State*, 260 Md. App. 491, 527–28 (2024). Evidence of other offenses may be received under the identity exception if it shows “the defendant’s presence at the scene or in the locality of the crime on trial[.]” Evidence of other crimes may also

be received if “the witness’s view of the defendant at the other crime enabled him to identify the defendant as the person who committed the crime on trial.” *State v. Faulkner*, 314 Md. 630, 637 (1989).

Here, it was undisputed that on July 8, 2019, an attack took place at a home on Elliott Street and a woman, Y.H. was the victim. Appellant was identified by Y.H. in a photo array as her attacker. One week prior to the incident, homeowners, Cynthia Cates and her husband, Wayne McIntosh, left the residence for a vacation and Ms. Cates left her checkbook in the home. While she was away, there was an attempt to cash one of her checks at Ace Cash Express. The attempted check cashing occurred one day after the attack. Appellant was identified in a photo array by the store’s employee as the person who attempted to cash the check and his information remained on file at the store. In addition, one of Ms. Cates’ checks was found in Appellant’s home during a search executed four days after the rape. Based on this record, we hold that the evidence was mutually admissible as other-crimes evidence relevant to identity.

We note that, although the nature of the crimes differed, in that one set of offenses related to property and the other set charged crimes against a person, a determination of mutual admissibility is not precluded. Appellant’s possession of Ms. Cates’ checks immediately after the rape of Y.H. was evidence of Appellant’s identity as Y.H.’s attacker, and it was admissible at a trial on the rape charges. Y.H.’s testimony about where the rape occurred was evidence that Appellant was present at the Elliott Street home on the day in question and it was admissible as evidence of Appellant’s identity in the burglary and theft charges.

We next examine the second question, which is “whether ‘the interest in judicial economy outweighs any other arguments favoring severance?’” *Cortez v. State*, 220 Md. App. at 694 (quoting *Conyers v. State*, 345 Md. at 553) (internal brackets omitted). This question requires a balancing of interests by the trial court, including the “likely prejudice” to the defendant if the charges are tried together, against “considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses.” *Id.*

The burden of showing prejudice is on the party alleging prejudice. *Holt v. State*, 129 Md. App. 194, 209 (1999). “Prejudice” means “damage from inadmissible evidence, not damage from admissible evidence.” *Solomon v. State*, 101 Md. App. 331, 349 (1994) (quoting *Osburn v. State*, 301 Md. 250, 254-55 (1984)). A defendant is not prejudiced and not entitled to severance where the charges are closely related to each other and arise out of incidents that occur within proximately the same time, location, and circumstances. *Hart v. State*, 260 Md. App. 491, 531 (2024).

After a court has determined that evidence of other crimes would have been mutually admissible in separate trials, “any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.” *Cortez v. State*, 220 Md. App. at 694–95 (quoting *Conyers v. State*, 345 Md. at 556). As previously stated, we will reverse the trial court’s balancing analysis only for a “clear abuse of discretion.” *Cortez v. State*, 220 Md. App. at 694 (citing *Conyers v. State*, 345 Md. at 556).

In *Garcia-Perlera*, this Court held that the trial court did not abuse its discretion in denying a motion to sever. The appellant was charged with four separate burglaries, one of which resulted in the death of the victim. *Id.* at 540–42. The appellant moved to sever the burglaries into four separate trials, claiming that the murder would taint the jury’s consideration of the other crimes. His motion was denied and he was subsequently convicted. On appeal, we found that evidence related to the four charged incidents was mutually admissible as other-crimes evidence of identity. *Id.* We held that the trial court’s determination that the danger of unfair prejudice was “not outweighed by the relevance and probative value of mutual admission” was not an abuse of discretion. *Id.* at 549.

In the present case, Appellant argues that even if the “other crimes” evidence is relevant, it was outweighed by the danger that Y.H.’s rape would taint the jury’s consideration of the other crimes. We disagree and hold that the relevance and probative value of Y.H.’s testimony outweighed the danger of unfair prejudice to Appellant, as it placed him at the Elliott Street home one day prior to his alleged attempt to cash the homeowner’s check and identified him as the perpetrator of both sets of offenses.

We note that while the possible prejudice to a defendant is one of the factors to be weighed, “judicial economy is a heavy counterweight on the joinder/severance scales.” *Solomon*, 101 Md. App. 331, 346 (1994). In other words, “once a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.” *Conyers*, 345 Md. at 556.

Here, joinder resulted in the conservation of judicial resources. The single trial required one judge, one courtroom, one set of jurors, one set of witnesses and one set of attorneys. In essence, the single trial resulted in the efficient disposition of the criminal charges. Based on the record before us, we hold that the court did not err or abuse its discretion in denying the motion to sever.

**JUDGMENT OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED;
COSTS TO BE PAID BY APPELLANT.**