Circuit Court for Baltimore City
Case Nos. 16344001 & 16277001

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2012

September Term, 2017

ELIAS AVARADO

v.

STATE OF MARYLAND

Reed,
Friedman,
Eyler, Deborah S.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Eyler, Deborah S., J.

Filed: November 30, 2018

A jury in the Circuit Court for Baltimore City convicted Elias Alvarado,[1] the appellant, of two counts of first-degree murder. The court sentenced the appellant to two consecutive terms of life in prison without the possibility of parole.

The appellant presents three questions for review, which we have rephrased slightly:

> I. Did the court err or abuse its discretion by granting the State's motion for joinder of charges?
>
> II. Did the court err by permitting improper prosecutorial argument?
>
> III. Did the court impose an illegal sentence?

For following reasons, we answer all three questions in the negative and shall affirm the judgments of the circuit court.

FACTS AND PROCEEDINGS

The appellant was indicted on two counts of first-degree murder in two separate cases. As we shall discuss in detail below, the State successfully moved to join the charges for trial. The appellant was tried on the charges over four days in July 2017. The following testimony and other evidence was adduced at trial.

On the morning of September 2, 2016, around 10:30 a.m., a woman's body was discovered in the backyard of a house at 3709/3711 Bancroft Road, in northwest

[1] In the case caption, the appellant's last name is spelled "Avarado." It appears as "A**l**varado" elsewhere in the record. In the circuit court, the State filed a motion to correct the case caption to reflect the latter spelling. The record does not reflect that the motion ever was ruled upon. We shall use the "Alvarado" spelling as this is the spelling used by the appellant and the State on appeal.

Baltimore City. The woman's body was lying face down, partially under the back deck of the house. She was wearing shorts that were pulled down below her buttocks and was not wearing underwear. Her left eye was swollen and bruised, and she also had bruising around her right eye. A wig, a purse, and various personal effects were scattered around the yard near the woman's body. The dead woman was identified as Annquinette Dates, a 35-year old African-American. An autopsy revealed Dates had died of asphyxiation caused by manual strangulation.

Moshe Markowitz owned the house, which consisted of two semi-detached houses that had been combined into one residence. He lived there with his family. He testified that the body had not been at the house the night before (September 1-2, 2016), when he and his family had returned home from vacation. Markowitz had had eight video surveillance cameras installed on the exterior of the house, including one (Camera 2) that faced south on Bancroft Road.

Markowitz's neighbor, Joshua Lax, testified that he had heard a woman scream sometime between 3 a.m. and 3:30 a.m. on September 2, 2016, but had thought he was dreaming. The next morning, he saw the body and called 911.

Homicide Detective Eric Ragland, with the Baltimore City Police Department ("BPD"), was the lead investigator on the Dates case. He reviewed video surveillance footage from Markowitz's cameras. Camera 2 captured footage of Dates and a Hispanic male walking northeast on Bancroft Road at 2:49 a.m. on September 2, 2016. As the pair walked on the sidewalk approaching Markowitz's house, the male turned sharply and

walked directly between Markowitz's house and the neighboring house, toward the backyards. Dates followed him, and they disappeared off camera. None of the surveillance cameras captured a view of the area of the backyard where Dates's body was found. The cameras did not show anyone leave the property, but there was testimony that there were multiple ways to exit from the rear of the property.

Detective Ragland's investigation lead him to seek a man known as "Eli" or "Elias" who recently had been captured on video surveillance footage at the Burlington Coat Factory at Reisterstown Road Plaza, which is within walking distance of 3709/3711 Bancroft Road.

Six days later, at 3:50 a.m. on September 8, 2016, a person called 911 and reported that a woman was screaming and struggling with a man behind a row house in the 3900 block of Dolfield Avenue, in northwest Baltimore City. The caller reported that prostitutes frequented the alley behind Dolfield Avenue. Officer Rachelle Lamar Sweet and his partner were patrolling nearby in a marked vehicle and responded to the scene. About three minutes after the call came in, Officer Sweet drove into the alley behind Dolfied Avenue. He had deactivated his siren and his overhead lights and turned on his "alley lights," which are LED lights on the side of the vehicle, to illuminate the backyards of the rowhouses.

Behind the rowhouse at 3942 Dolfield Avenue, Officer Sweet saw a woman's body lying face down on the ground with no clothes on from the waist down. A man, later identified as the appellant, was kneeling next to the body. When the appellant saw

Officer Sweet, he seemed surprised and ran toward the rowhouse. Officer Sweet jumped out of his patrol car and chased the appellant. Officer Sweet found the appellant hiding inside a shed on the property. The appellant identified himself as Elias Josael,[2] age 23. He spoke Spanish as his native language and told Officer Sweet's partner that he was homeless.

The victim, later identified as Ranarda Williams,[3] was a 48-year old African-American woman. She was known to work as a prostitute in the area. An autopsy revealed that she had died from asphyxiation caused by manual strangulation.

Homicide Detective Sean Suiter was the lead investigator on the Williams case. He was aware of the Dates murder and, recognizing the similarities between the two murders, alerted Detective Ragland about the Williams murder.

After the appellant was arrested, Detectives Suiter, Ragland, and a third detective transported him to Mercy Hospital for a "suspect exam." A forensic nurse examined him and observed an abrasion to his scalp and scratches on his face, right shoulder, right arm, left forearm, and left elbow. The forensic nurse took swabs from the appellant for DNA analysis. The appellant then was transported to the Homicide Division.

[2] "Josael" is the appellant's middle name.

[3] Williams's first name is spelled several different ways in the record. We use the spelling that appears in her autopsy report.

Detective Ragland and Detective Daniel Santos, who spoke Spanish fluently, advised the appellant of his *Miranda*[4] rights, which he waived, and then interrogated him. Upon being shown still shots from the video surveillance footage at the Burlington Coat Factory, the appellant identified himself as the man in the video. He then was shown a blown up still shot from Camera 2 on Bancroft Road that depicted only the Hispanic male with Dates. He identified himself as the man in that still shot. Initially he denied knowing Dates, but after being shown the still shot from Camera 2 depicting them together on September 2, 2016, he acknowledged knowing her. He said that Dates worked as a prostitute.

The appellant also initially denied knowing Williams or having had sex with her. Later in the interrogation he acknowledged having had sex with Williams on September 8, 2016, but said he wasn't sure if he had killed her. At other times during the interrogation, however, the appellant said he could not have killed Dates or Williams.[5]

DNA testing was performed in both cases. In the Dates case, DNA consistent with the appellant's DNA was found in Dates's fingernail clippings from both hands, and in swabs taken from the front, back, left, and right of her neck. In the Williams case, DNA consistent with the appellant's DNA was found in Williams's fingernail clippings. In

[4] *Miranda v. Arizona*, 384 U.S. 436 (1966).

[5] The appellant's interrogation was in Spanish. The jurors were given a translation of the interrogation as an aid when it was played in court, but the translation does not appear in the record.

addition, Williams's DNA was found on a swab taken from the appellant's penis. Swabs from Williams's neck were consistent with her DNA and "at least three indeterminate minor contributors."

The appellant did not testify or present any evidence in his case.

We shall include additional facts in our discussion of the issues.

DISCUSSION

I.

Joinder

Offense joinder is governed by Rule 4-253(b), which permits either party to move for a joint trial when a defendant has been "charged in two or more charging documents[.]" If a party will be "prejudiced by the joinder for trial of counts [or] charging documents[,]" however, the court may order separate trials. Md. Rule 4-253(c).

On May 24, 2017, the State filed a "Supplement to Motion for Joinder" of the charges against the appellant for the murders of Dates and Williams.[6] The appellant filed an opposition. On July 5, 2017, the court held a hearing on the State's motion.

The prosecutor explained that Maryland appellate jurisprudence establishes that, in ruling on a motion for joinder of offenses, the court must consider whether the evidence pertaining to the two offenses would be mutually admissible in separate trials and, if so,

[6] The motion is captioned as a supplement because the State noted that it was seeking joinder in its "Initial Disclosures, Notices, and Motions" filed on January 30, 2017.

whether the interest in judicial economy served by joinder outweighs any other interests implicated. Mutual admissibility turns upon whether evidence of the "other crime" would be admissible under Rule 5-404(b), which permits introduction of such evidence if it is relevant to prove "motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident."

The prosecutor argued that the evidence of the appellant's involvement in each murder was mutually admissible to prove identity because the many similarities between the crimes pointed to a unique *modus operandi*. She emphasized that both victims were killed by manual strangulation; both were middle-aged African-American women, of similar height, working as prostitutes; both were found lying face-down behind a house in a residential area; both had their pants removed or pulled down to expose their buttocks; both were murdered in northwest Baltimore in the span of a week; both murders were committed in the early morning hours; and both victims were known to be with a Hispanic male shortly before or after the murder.

Defense counsel responded that the similarities between the crimes were not of a unique character sufficient to establish a *modus operandi*, making joinder impermissible as a matter of law. He argued, alternatively, that even if the similarities were sufficient to satisfy Rule 5-404(b), the prejudice to the appellant made joinder inappropriate. He emphasized that the appellant's presence at the scene when Williams's body was found was highly prejudicial to him vis-à-vis the charge in the Dates case because the jury was likely to assume "if he did one then he probably did the other[.]" Moreover, interests of

judicial economy did not outweigh this prejudicial impact because different police officers, crime scene technicians, and medical examiners would be testifying with respect to the two victims.

After summarizing the applicable law, the court granted the joinder motion, ruling from the bench as follows:

> So based on the factors enumerated by the State, in both of these instances we have the murder of two middle-aged African American females in Northwest District approximately two miles from each other in the early morning six days apart, one on a Friday, the other on a Thursday, both incidences occurring in the backyards of residences. Both women were found naked from the waist down, also both women were found face down. Both women were also similar in height.
>
> The Court did not hear any argument regarding their physical stature, but both were professionally prostitutes. It is also indicated through evidence garnered by the State as well as the Defendant's own statement that the women were last seen with a Hispanic male. And while manual strangulation is not uncommon it is not frequent in the city of Baltimore.
>
> So as to the first prong, is the evidence concerning the offense mutually admissible, the Court's conclusion would be yes, it would be mutually admissible based on identity and modus operandi. In both instances there are similar facts. They don't have to be – I don't think it's in terms of the number of cases. I don't think the courts have indicated that it has to be the volume of incidences, meaning four or more murders, but I think what the court is looking to is the characteristic [sic] of the evidence in the particular cases and their similarity. So the evidence does fit within one of the exceptions for other crimes. It has been established by clear and convincing evidence for the purposes of this motion that the Defendant was involved in both incidences and it would not be an abuse of discretion to admit this evidence.
>
> Then as to does the interest in judicial economy outweigh any arguments favoring the severance, the Court specifically asked [defense counsel] what would the defenses be. And while I appreciate the fact that he does not want to tip his hand and nor does the Court think he should tip his hand, what the Court needs to consider in the analysis of judicial economy is whether there would be difficulty in presenting separate defenses. In this instance it appears plausible that one of the defenses could

> be that the Defendant had sex with the two victims but wasn't responsible for their murder which would be similar defenses and not separate defenses.
>
> Additionally, a danger in terms of . . . prejudice versus judicial economy would be the accumulation [sic] of evidence in one case bolstering the weakness of another case. Based on the evidence or the iteration of evidence that the State anticipates presenting to the jury, it does not appear that one is weaker than the other. While the circumstantial facts may be different, but it doesn't appear that the cases, one case would be bolstering a weaker case. . . .
>
> The State also argues . . . that there will be consistent witnesses including the SAFE nurse team, the DNA analyst, the detectives who investigated these cases and perhaps other witnesses.
>
> . . . . The Court's answer would be judicial economy does outweigh any other arguments favoring severance, therefore, the motion for joinder will be granted.

The court entered an order to that effect on July 13, 2017.

On the first day of trial, defense counsel moved to sever the charges. He argued that if the charges were not severed, the appellant's ability to present a defense of voluntary intoxication in the Williams case would be prejudiced,[7] and the appellant's ability to argue that the DNA evidence was not probative of guilt would be prejudiced in both cases. The court denied the motion to sever for the reasons already stated at the hearing on the joinder motion.

McKnight v. State, 280 Md. 604 (1977), is the seminal Maryland case on offense joinder. There, the Court of Appeals identified three ways that joinder of offenses may prejudice a defendant. First, a defendant "may become embarrassed, or confounded in

[7]During his interrogation by the police, the appellant said he had been drinking and using drugs on September 8, 2016. Officer Sweet, Detective Suiter, and Detective Ragland all testified that they did not smell alcohol on the appellant's breath, or observe any behavior consistent with his being intoxicated, however.

presenting separate defenses." *Id*. at 609 (citing *McElroy v. United States*, 164 U.S. 76, 80-81 (1896)). 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*. 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*.

Focusing on the third category of prejudice, the Court held for the first time that a court has no discretion to join offenses for trial when a defendant has elected to be tried by a jury, is "charged with similar but unrelated offenses[,]" *and* "the evidence as to each individual offense would not be mutually admissible at separate trials." *Id*. at 612. The Court reasoned that "[w]here evidence is not mutually admissible . . . each crime must be proved by its own evidence and witnesses." *Id*. at 609. Thus, under *McKnight*, offense joinder is *per se* unfairly prejudicial if the mutual admissibility threshold is not satisfied.

Under *McKnight*, the analysis of offense joinder/severance analysis is a two-pronged inquiry: 1) "whether the evidence from the 'other crimes' would be admissible if the trials occurred separately, taking into account the danger of unfair prejudice and other concerns under the usual evidentiary inquiry of Rule 5-403" and, if so, 2) whether "'other non-evidentiary factors'" outweigh the interest in judicial economy served by joinder. *Garcia-Perlera v. State*, 197 Md. App. 534, 548 (2011) (quoting *Conyers v. State*, 345 Md. 525, 556 (1997)). The first inquiry is a purely legal determination "of one-directional admissibility" of the evidence on each charged offense. *Solomon v. State*, 101

Md. App. 331, 341 (1994). We review such a decision *de novo*. *Conyers*, 345 Md. at 553. The second inquiry is an exercise of discretion, which we review under the deferential abuse of discretion standard. *Bussie v. State*, 115 Md. App. 324, 338 (1997).

In the case at bar, on the legal issue of mutual admissibility, the State maintains that the similarities between the murders of Dates and Williams were such that they were probative of identity. Evidence of another offense that is probative of "a peculiar modus operandi used by the defendant on another occasion" is admissible under the identity exception to Rule 5-403(b). *Cross v. State*, 282 Md. 468, 477 (1978) (citation and footnote omitted). In assessing whether the characteristics of the charged offenses establish a "signature," a court must determine whether "the 'marks,' considered singly or in combination 'logically operate to set the . . . offenses apart from other crimes of the same general variety and, in so doing, tend to suggest that the perpetrator of the . . . offenses was the [same person]?'" *Moore v. State*, 73 Md. App. 36, 46 (1987) (quoting *People v. Haston*, 444 P.2d 91 (Cal. 1968)); *see also State v. Faulkner*, 314 Md. 630, 639 (1989) (evidence of commonality between offenses must be "considered as a whole, instead of as a set of unrelated parts" under Rule 5-404(b)).

In *Garcia-Perlera*, 197 Md. App. at 534, the trial court denied a motion to sever four charges against a defendant for home-invasion burglaries occurring over a 12-month period along the River Road corridor in Montgomery County. It reasoned that the "the facts of each case . . . [were] so distinctive that they do constitute . . . a 'signature crime[.]'" *Id.* at 543. It emphasized that each crime involved a home invasion within a

small radius of location, the occupants of the homes all were elderly women, and all the women were hog-tied. Items stolen from each home were found at the defendant's home, and DNA evidence linked him to three of the four crimes.

On appeal, we affirmed. We concluded that "[c]onsidering the totality of the circumstances," there were "overwhelming similarities" between the manner of the crimes, the locations, and the victims that were "more than sufficient to establish a distinctive *modus operandi*, and the common facts could prove the alleged identity [of the perpetrator]." *Id*. at 548-49.[8] *See also McGrier v. State*, 125 Md. App. 759, 764-65 (1999) (trial court did not err or abuse its discretion by joining for trial charges arising from two sexual assaults and one attempted sexual assault of teenage girls in the same apartment building over 16 days by a perpetrator with similar features).

By contrast, in *Lebedun v. State*, 283 Md. 257 (1978), the Court of Appeals held that similarities between two robberies of pharmacies in "the same general area" were insufficient to establish a signature, making evidence of each crime non-mutually admissible, and joinder improper. *Id*. at 281. There, two medium build white males wearing red ski caps robbed two pharmacies in the same vicinity four days apart. The men took specific drugs and cash, placed them in a bag, and told the victims to "play it

[8]On the second prong of the severance/joinder inquiry, we held that the court did not abuse its discretion by ruling that the interest in judicial economy was not outweighed by the potential prejudice to the defendant caused by trying the charges arising from the fourth burglary – during which the victim sustained injuries that led to her death – with the other crimes.

cool" or "be cool." *Id*. In one robbery, the perpetrators were wearing windbreakers and jeans, both had guns, one had a mustache, and both had their faces uncovered. In the other robbery, the perpetrators both wore sheepskin jackets, knit pants, sunglasses, one had a gun, and both were clean-shaven. The Court reasoned that the timing of the robberies, the red ski caps, and the build of the robbers were not distinctive and, thus, did not factor into the analysis. Other aspects of the crimes were more distinctive, but were not sufficient to establish a "signature," especially in light of the numerous dissimilarities between the crimes. *See also McKnight v. State*, 280 Md. 604, 613-614 (1977) (four robberies in the same neighborhood in one month were not sufficiently similar in character to establish a signature, especially given how common robberies are "in the urban milieu").

We return to the case at bar. There were numerous similarities between the Dates and Williams murders. Both victims were middle-aged, medium-stature African-American women working as prostitutes; the murders were committed in the early morning hours, six days apart; the locations of the murders were 2 miles apart in residential neighborhoods in northwest Baltimore, along the Reisterstown Road corridor; both victims were found in the backyard of a residence, face-down, and unclothed or partially unclothed from the waist down; both victims were seen with a Hispanic male shortly before or shortly after the murder; and both victims were killed by manual strangulation. Like in *Garcia-Perlera*, we conclude that, under the totality of circumstances, these marks were more than sufficient to establish a signature crime and

were probative on the contested issue of identity. Two murders by manual strangulation of prostitutes in residential backyards in the same precinct over a period of less than a week plainly is uncommon and "set the . . . offenses apart from other crimes of the same general variety[.]" *Moore*, 73 Md. at 46.

Turning to the second prong of the offense joinder analysis, we agree with the State that the court did not abuse its discretion by concluding that any potential prejudice to the appellant did not outweigh the interest in judicial economy served by trying the charges jointly. *See Solomon*, 101 Md. App. at 348 ("once the initial hurdle of mutual admissibility has been cleared, a decision by a trial judge to order a trial joinder [never has] been held to be an abuse of discretion"). As noted, the appellant's first complaint is that joinder prejudiced his defense of voluntary intoxication in the Williams case, because it was not also a defense in the Dates case. However, the only evidence supporting that defense in the Williams case was the appellant's self-serving statements during his interrogation after he was arrested at the scene of Williams's murder. The BPD officers who interacted with the appellant that day refuted his testimony that he was intoxicated. When, during trial, the appellant asked the court for a voluntary intoxication instruction, the court denied the request, finding the evidence legally insufficient to generate such an instruction. Thus, even if the Williams case had been tried separately from the Dates case, it is highly unlikely that the appellant would have been able to raise the defense of voluntary intoxication.

The appellant's second argument – that he was prejudiced by the cumulation of evidence – also lacks merit. He suggests that the jury may have convicted him of the Dates murder merely because there was stronger evidence against him in the Williams case – *i.e.*, that he was found with Williams's dead body. The Dates case was only marginally weaker than the Williams case, however. The appellant identified himself with Dates in surveillance footage taken at the scene of the crime on the night she was murdered; and his DNA was found on her neck and her fingernail clippings. The DNA evidence in the Williams case was slightly weaker, because it was consistent with the appellant's defense that he had had sex with Williams but had not killed her. In any event, damage to the appellant's case caused by the introduction of admissible evidence is not the type of prejudice that precludes joinder. *See id.* (citing cases holding that the term "prejudice" as used in Rule 4-253(c) does not include "the legitimate damage to a defendant's case that is incurred when admissible evidence is received against him"). The circuit court did not abuse its discretion in ruling that any prejudice to the appellant caused by joinder of the charges was outweighed by the strong interest in judicial economy.

II.

Closing Argument

In rebuttal closing argument, the prosecutor reflected on defense counsel's closing argument as follows:

> So [defense counsel] covered a lot of little things. So why not look at the purse? Why not look at the blood at the scene, it wasn't tested? There

> was just one scream, but again, how many screams do you need? One scream should tell you somebody needs help. He says that the Defendant did not lure the victim [to the backyard on Bancroft Road.] . . . .
>
> No camera picks them up [in the backyard at Bancroft Road.] Well I mean he's not going to necessarily walk out the same way that he walked in. You can look at the crime scene photos . . . and those photos are going to show you there are multiple ways that you can exit that back yard without being detected . . . . **And so you have to ask yourself why is defense counsel bringing all this stuff up? And it's because I spent time addressing that instead of what I really want to talk about which are the facts of this case.**

(Emphasis added.)

Defense counsel lodged an objection to the bolded comment and a bench conference ensued. Defense counsel argued that the prosecutor was improperly suggesting that he was trying to distract the jurors with "red herring[s]." The prosecutor responded that it was a permissible argument to suggest that defense counsel was "rais[ing] small issues so that the State is required to address those issues rather than the larger issues." The court overruled the objection, stating that the prosecutor's remarks were within the realm of appropriate argument.

When the prosecutor resumed her argument, she said: "So again, many of you are aware of what a red herring is, right, because the red herring is there to distract you." Defense counsel did not object.

Counsel is afforded wide latitude in closing argument:

> There are no hard-and-fast limitations within which the argument of earnest counsel must be confined – no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

Degren v. State, 352 Md. 400, 429-30 (1999) (citations omitted). A prosecutor's argument calling defense counsel's character or veracity into question is improper, however. *See, e.g., Beads v. State*, 422 Md. 1, 11 (2011).

In this case, the prosecutor's argument that defense counsel was raising inconsequential matters to distract the jury from the crucial evidence – the appellant's presence at the scene of both murders and his DNA linking him to both victims – did not amount to denigrating defense counsel's character and plainly fell within broad range of permissible argument. *See Warren v. State*, 205 Md. App. 93, 138 (2012) (prosecutor's argument that defense counsel's arguments were "red herrings" was not improper). The court did not err or abuse its discretion by overruling defense counsel's objection to the prosecutor's remark.

III.

Illegal Sentence

"Appellate review of sentences is extremely limited in Maryland; only three grounds of review are recognized: (1) the sentence may not constitute cruel and unusual punishment or otherwise violate constitutional requirements; (2) the sentencing judge may not be motivated by ill-will, prejudice or other impermissible considerations; and (3) the sentence must be within the statutory limitations." *Teasley v. State*, 298 Md. 364, 370 (1984). Only the third ground is raised in this appeal.

On June 19, 2017, the State filed notices of its intention to seek a sentence of life without parole in both cases. After the appellant was convicted of first-degree murder in

each case, the State asked the court to impose that sentence for each count, with those sentences to run consecutively. On November 2, 2017, the court sentenced the appellant to two consecutive life sentences, without the possibility of parole.

The appellant contends his sentence is illegal because the law does not permit the imposition of "two consecutive sentences of life without parole." His argument rests upon Md. Code (2002, 2012 Repl. Vol., 2016 Supp.), sections 2-203[9] and 2-304[10] of the Criminal Law Article ("Cr.L."), which govern the notice the State must give of its intent to seek a sentence of life without the possibility of parole, and the procedure for imposing such a sentence. He asserts that because those statutes do not expressly permit imposition of two consecutive life sentences without the possibility of parole, the statutes are ambiguous in that regard and, under the rule of lenity, the ambiguity must inure in his

[9] Cr.L. section 2-203 provides:

> A defendant found guilty of murder in the first degree may be sentenced to imprisonment for life without the possibility of parole only if:
> (1) at least 30 days before trial, the State gave written notice to the defendant of the State's intention to seek a sentence of imprisonment for life without the possibility of parole; and
> (2) the sentence of imprisonment for life without the possibility of parole is imposed in accordance with § 2-304 of this title.

[10] As pertinent, Cr.L. section 2-204(a) provides:

> If the State gave notice under § 2-203(1) of this title, the court shall conduct a separate sentencing proceeding as soon as practicable after the defendant is found guilty of murder in the first degree to determine whether the defendant shall be sentenced to imprisonment for life without the possibility of parole or to imprisonment for life.

favor. Thus, he argues, one of his life sentences without possibility of parole must be vacated and the matter remanded for resentencing.

The State responds that Cr.L. section 2-201(b)(i) prescribes the permissible sentences for a defendant convicted of first-degree murder: "A person who commits a murder in the first degree is guilty of a felony and on conviction shall be sentenced to: (i) imprisonment for life without the possibility of parole; or (ii) imprisonment for life." The statutes cited by the appellant, in contrast, govern the procedure by which such a sentence may be imposed. There is no dispute that the State and the court complied with that procedure.

We agree with the State that Cr.L. section 2-201(b) authorizes life without the possibility of parole as a sentence for each conviction of first degree murder, and that nothing in the statutes relied upon by the appellant is to the contrary. The court had discretion to run those sentences concurrently or consecutively. *See, e.g., Kaylor v. State*, 285 Md. 66, 69-70 (1979) (judicial discretion in sentencing "includes the determination of whether a sentence will be consecutive or concurrent"). The sentence imposed was legal and the court did not abuse its discretion by imposing it.

JUDGMENTS AFFIRMED. COSTS TO BE PAID BY THE APPELLANT.