UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1493

September Term, 2015

HAROLD MALCOLM SINGFIELD

v.

STATE OF MARYLAND

Krauser, C.J.,
Nazarian,
Thieme, Raymond G., Jr.
(Retired, Specially Assigned),

JJ.

Opinion by Nazarian, J.

Filed: May 25, 2016

The features that make convenience stores convenient—all-night hours and location, among other things—also make them convenient targets for robberies. This case involves four convenience store robberies in Washington County during August and September 2014. Although they bore characteristics common to convenience store robberies generally,[1] each occurred at a different location and involved different combinations of individuals, clothes, and facts. Harold Malcolm Singfield was alleged to have been involved in all four, and he was charged in a single eighty-six-count indictment that encompassed all of them.

Prior to trial, Mr. Singfield filed a motion to sever the counts into separate trials. The Circuit Court for Washington County denied the motion and tried him simultaneously for all four robberies, and a single jury found him guilty on all charges. On appeal, he challenges the court's denial of his motion to sever. We reverse and remand for further proceedings consistent with this opinion.

[1] "Wake up, Son. [*aims gun at the clerk*] I'll be taking these Huggies and whatever cash ya got. . . . Better hurry it up, I'm in dutch with the wife." H.I. McDunnough, *Raising Arizona* (1987).

I. BACKGROUND

The four armed robberies at issue[2] took place in greater Hagerstown between August 28, 2014 and September 24, 2014. Because the severance question turns on the mutual admissibility of the evidence of each robbery in the trials of the others, *see* pp. 22-24 below, we start with the facts underlying each robbery, as adduced at the March 20, 2015 hearing on Mr. Singfield's severance motion through the testimony of Detective Jesse Duffey, who investigated the cases.[3] Detective Duffey based his testimony on eyewitness accounts, surveillance videos, a statement from one participant, Erica Licata, cell phone records, and cell phone tower data.

A. August 28, 2014: High's Dairy Store, Smithsberg

At approximately 12:30 AM, a white male with tattoos on his head, later identified as Robert Eugene Hackett, entered the store talking on a cell phone. He paid cash for five dollars in gas, was overheard saying (into the phone) that "the party looks good," and left the store. Shortly thereafter, an African-American man entered the store wearing a red striped shirt, jeans, a white bandana over his head, and a red bandana over his face that left only his eyes showing. He brandished a silver revolver and demanded money. The two

[2] The *dramatis personae* in these four robberies were implicated in a fifth convenience store robbery as well (sequentially, the third of the five) in Frederick County that was not part of this case.

[3] The testimony at trial varied somewhat, but because we are reviewing only the circuit court's decision to deny the motion to sever, we have focused on the factual record on which the court decided the motion.

employees complied with his demands, gave him approximately $141.00 in cash, and he left.

B. September 1, 2014: Sheetz, Virginia Avenue

Two African-American men entered the store at approximately 1:54 AM. One wore a black t-shirt with white striping on the sides, blue jeans, a red bandana covering his face, and a dark bandana tied to his head, also so that only his eyes were visible. He carried a dark-colored revolver. The second man wore a gray plaid hooded sweatshirt with blue jeans, and a bandana covered his face as well. The man with the gun demanded money and the employees opened the register, giving him approximately $700 in cash. The men fled the store, running.

C. September 17, 2014: Sheetz, Eastern Boulevard

At approximately 2:34 AM, a white woman drove into the store parking lot in a red Dodge Avenger, then entered the store, talking on a cell phone and "acting sketchy." She eventually walked up to the counter, paid for ten dollars in gas, pumped gas, and drove away. The woman returned a few minutes later and parked in the farthest parking space in the store lot, then came back into the store, again talking on her phone, and, after waiting for an employee to finish, went into the store's restroom. As she left the bathroom, she told the person on the phone "I had you on mute so you couldn't hear me." She walked around the store some more, left without purchasing anything, and drove away.

A few minutes later, an African-American man entered the store brandishing a revolver-style gun. He wore blue jeans, a dark hooded sweatshirt, and a black bandana that

covered his face. This man, in his mid-twenties and about five feet five inches tall and a hundred-fifty pounds, demanded money; an employee complied, and then the man left the store with $471. Around this same time, two witnesses sitting in a van outside the store saw a white man wearing a gray hooded sweatshirt and a red bandana covering his face. This man displayed a silver handgun, but never went inside. After the African-American man left the store, he and the white man ran off together.

D. September 24, 2014: Sheetz, Huyett's Crossing

At approximately 2:12 AM, two African-American males entered the store wearing bandanas. One man wore a black hooded sweatshirt, blue jeans, and light-colored sneakers. A dark blue bandana covered his face, and he carried a small silver handgun. The other man had a black handgun and wore a white hooded sweatshirt, blue jeans, and dark-colored sneakers, with a gray bandana covering his face. The men demanded money and the employee gave them $576.00, after which the men fled the store and drove away. Surveillance video cameras from the scene showed an African-American male, later identified as Mr. Singfield, had entered the store approximately fifteen minutes before the robbery occurred, gone to the restroom area, then left.

* * *

After he finished describing the robberies, the prosecutor asked Detective Duffey to describe their similarities, and he recounted them in general terms:

> Q. All right. The u'm – In any of the videotapes are the u'm – any of the parties wearing the same clothing, shoes? You described a series of bandanas. They seem to be different colored bandanas.

A. Correct.

Q. Is there any similarities of clothing or identical clothing worn in any of the events?

A. The hooded sweatshirts, the dark colored hooded sweatshirts, u'm, blue jeans, u'm, and I believe a couple pair of sneakers appear to be identical from the uh Sheetz surveillance footage.

The Detective then explained how police executed search warrants at two residences, Mr. Singfield's and Mr. Hackett's, and recovered clothes, but no weapons:

Q. Could you tell the Court about [the searches] and whether any of the, any of the outfits observed in the videotapes were recovered?

A. Yes there were u'm, I prepared two search warrants for two residences, one being uh Mr. Singfield's residence… that was executed by uh Frederick County, Maryland State Police. U'm, and then also the address … where Mr. Hackett resided.

From these search warrants uh—Do you want me to go through all the—

Q. What I'm asking—

A. –the property taken? I mean there was—Obviously there was a white handkerchief, there was Reebok tennis shoes that were white.

Q. Were they consistent with what was in the videos?

A. Correct.

Q. Okay.

A. U'm, white sweatshirt, white jeans, uh black and orange Baltimore Orioles hat.

Q. Was there a black—There was a black and white uh black and orange Orioles hat in the Wawa—

A. The Wawa.

Q. The Wawa in Frederick?[4]

A. Correct.

Q. Okay.

A. U'm red bandana, white tank top, white t-shirt, um—

Q. And there was a red bandana used in the Sheets on Virginia Avenue and High's in Smithburg?

A. Correct.

Q. At least?

A. Correct.

Q. Okay.

A. U'm, a green Nike sneakers, an orange pair of gloves, u'm, yes I mean various amounts of clothing and handkerchiefs that appear to match what was being worn by the su—the suspects in the robberies.

Q. Any weapons recovered?

A. No.

Detective Duffey testified that upon reviewing the videos, police determined that the red Dodge Avenger driven by the white female who entered the Sheetz store before the robbery on September 17, 2017 was registered to Mr. Singfield and his wife and had been

[4] This was the alleged robbery not charged in this case.

seen at the Huyett's Crossroads store before the September 24 robbery. He then placed Mr. Singfield in and around the robbery scenes in two ways: *first*, he testified that "electronic information gathering" showed that Mr. Singfield's cell phone was "accessing towers . . . in the area during the time . . . of all of—all five of the armed robberies," and *second*, he said that Ms. Licata told that police she was talking on the phone with Mr. Singfield when she was observed on video in the September 17 robbery.

The Detective then attempted to draw connections among the five incidents:

> Q. Now there is a black male in each of these five uh burglaries, correct?
>
> A. Robberies.
>
> Q. Or five robberies, correct?
>
> A. Correct.
>
> Q. And u'm he—Sometimes there is also a white male, sometimes there is also a second black male.
>
> A. Correct.
>
> Q. U'm, in each of the cases does the person, does the masked black male uh generally resemble the defendant's build?
>
> A. Mr. Singfield, yes.
>
> Q. And u'm in regards to the Sheetz on Lager Avenue or Huyetts Scheetz uh you can identify Mr. Singfield using the bathroom prior to the robbery occurring.
>
> A. Correct.
>
> Q. And is he dressed in a similar fashion as the robber or as the black male assailant—masked black male assailant dressed in a similar fashion when he comes in?

A. Yeah but I believe whenever he goes in the first time, he's only wearing a white t-shirt.

Q. Okay. And then he has a hooded, hooded shirt on the next time.

A. Correct. Reasonably believed that he put on a sweatshirt for the robbery.

Q. Shoes the same?

A. Correct.

Q. Pants the same?

A. Correct.

Q. Build the same?

A. Yes.

Q. Are those shoes worn in more than one uh robbery, if you know?

A. I don't recall that.

Q. Okay. Now—

A. They were very—They were very identifiable by the markings on them that they were—that it was Mr. Singfield that went in wearing those sneakers prior to and during the robbery at the Huyetts.

Q. So he's wearing the same shoes at least on the two trips into Huyetts, into the Huyetts Sheetz on that morning.

A. Correct.

The rest of the Detective's direct testimony covered Mr. Singfield's arrest and interrogation, neither of which are at issue here.

On cross, the defense sought to accentuate the differences among the five incidents:

> Q. Okay. I thought you had—With regard to uh the five separate and distinct robberies of uh convenience stores, on the first one is August 28th, is that correct, and you testified that there was a white male on a cell phone who said that "The party is good."
>
> A. Correct.
>
> Q. U'm, in the other four, is there ever a white male on a cell phone who says that "The party is good?"
>
> A. I don't recall that.
>
> Q. And in that first instance, a lone black male was the robber.
> …
>
> A. Correct.
>
> Q. And in the other four, there seemed to be multiple players.
>
> A. Yes.
>
> Q. And again in the first case, the white male left before the robbery was—before the robbery occurred.
>
> A. Correct.
>
> * * *
>
> Q. Thank you. So in the second one, it's, it's two black males entered the store. Is that correct? And one—I guess one had a dark colored revolver and in that one I believe you testified you're not sure if someone came in prior to that robbery.
>
> A. Correct.
>
> * * *

Q. And in that [third] instance[5] there is an Orioles hat involved on one of the suspects, correct?

A. Yes.

Q. And a, a uh an Orioles scarf I believe you testified?

A. Yes.

Q. Too. But there is not an Orioles scarf or hat in the first one, the second one, the fourth one or the fifth one.

A. The only one was the one in Frederick.

Q. And then the fourth one… That's the one in which a white female was seen in the store and then I think putting gas in the red Dodge, leaving, then coming back in this—with the red Dodge, right?

A. Yes.

Q. But you didn't—There is no evidence to connect the red Dodge to the first three?

A. I believe that there was a red vehicle observed on video surveillance prior to the robbery at the Wawa Convenience Store in Frederick.

Q. And in—

A. The first one Mr. Hackett was driving a GMC Jimmy.

Q. Okay. So and we can agree that's not a red Dodge.

A. Correct.

Q. And then in the fourth one, September 17, uh, it's a black male and white male are the suspects.

[5] Again, this is the Frederick robbery not at issue here.

A. Yes.

Q. So the first one, two and three, I don't think we, other than the white male casing in the first case, you know apparently casing, uh, we don't have a black male and white male as the suspects, correct?

[A. Correct.]

Q. And on the fifth one, September 24th, you noted white colored sneakers, u'm, did you see—did you note those same sneakers in any other robberies? I mean from app—from appearances? Did you see other white sneakers in those robberies?

A. There were sneakers that, that matched in other robberies.

Q. Okay and you also talk about green sneakers at one point. So—

A. Yeah because there is a picture of Mr. Singfield wearing a flashy green sneaker sitting in the driver's seat of his red Avenger.

Q. But I mean I guess in some of the robberies maybe green sneakers were worn and in some of the robberies white sneakers were worn?

A. Correct. They were not all the same sneaker.

Q. And in the fifth one, it's your testimony that Mr. Singfield arrived without any covering of his face and went in and used the bathroom.

A. Yes.

* * *

Q. And that's not—That doesn't happen in any of the other four that you observed.

A. No sir. Not to my recollection, from recollection.

Q. …And I believe you already testified that—I mean there's, there's a variety of bandanas used in a variety of the robberies.

A. Yes.

Q. Variety of colors uh and they're not.

A. In the same mannerisms, different colors.

Q. When you say "mannerisms," how are they placed? They are covering a person's face.

A. Right.

Q. And there's one—

A. One around the head and one particularly around the face so that only the eyes were visible.

Q. And I think—I didn't really note, but I mean in—Are there blue jeans worn in a lot of them?

A. Yes sir.

Q. Would you agree with me that a lot of people wear blue jeans?

A. I do daily.

Q. So there is nothing really kind of—the point stands out or distinctive about the fact that somebody is wearing blue jeans. Would you agree with that?

A. Right. The only one would be of the Eastern Boulevard where they appear to be uh white and that was worn by uh the white male outside the store.

Q. White jeans?

A. Correct.

> Q. And in the fifth uh incident, there—You're not aware, there's no evidence that anybody came in and checked out the store before the robbery occurred? Correct?
>
> * * *
>
> A. It was at 1:30 in the morning just prior to that robbery that uh Mr. Hackett is driving the red Dodge Avenger and goes into the Sheetz store on a cell phone.
>
> Q. Okay. In number three down in Frederick with the Orioles hat and Orioles scarf, I did not make note of anybody uh checking the store out before the robbery occurred. Is that accurate or am I wrong about that?
>
> A. I believe that was another female but it was not uh Licata.
>
> Q. Licata in that—Licata is only involved in one of these five cases.
>
> A. Yes sir.
>
> Q. And one of the four cases that are in Washington Court.
>
> A. Correct.

After Detective Duffey concluded his testimony, the court heard argument from both sides. The State acknowledged that joinder requires the evidence in the joined cases to be mutually admissible and that these were not "signature" crimes, but argued that the common thread was Mr. Singfield's cell phone:[6]

> *So the thing that ties these events together is that his telephone is on the same side of the tower* and using the tower in the vicinity of each of these events, making them tied together. *Now the test is would the evidence from one case be admissible in each of the other cases*? So let's look at this. So is it relevant, probative, and does that uh probative value outweigh

[6] We have inserted some paragraph breaks purely for visual clarity.

the prejudice for the fact that at 2:41 at the High's, or roughly that time, there was a white guy on the phone and we know who that white guy is because he's in broad you know full view, can be identified as Mr. Hackett who is on the phone with Mr. Singfield and Mr. Singfield is, is uh on that High's, Smithburg side of the tower in the vicinity. Are those facts admissible that he's at the Sheetz on the first, that he's at the Sheetz on the 17th and the Sheetz at Huyett's—That's Sheetz at Eastern on the 17th and the Sheetz at Huyett's on the 24th?

Well I think you have to make a different standard for each one. He is—There is nobody using the telephone on the 1st but the phone is there. The phone is in the vicinity and a black male does the robbery although there are two on the second time matching his basic build on that occasion. But then you go to the Sheetz on Eastern, well, there's a person inside on the phone, the same phone that the person was on the phone inside at the High's robbery and the u'm then the robbery happens immediately thereafter. So you have—While you may have only one factor between the 8th and 28th, 8/28 and 9/1, his presence, his description, and his phone being in the vicinity, you have more than that correlating between uh August 28th and September 17th. You have the same m.o., sending a lookout in before and *the use of the same telephone*, him being present, and you have him, his vehicle being there in addition. And then you have uh in all of these there are some articles of clothing consistent with his eventual arrest.

Now looking again at the correlation between 8/28 and 9/24, we have a person going in and a person going in on the 24th. *It's not a separate lookout on the phone, it's the defendant, himself, and the phone is there*. And this is the key because in any of the trials, we can say, he can say well "How do you know that's my phone?" "It might be registered to me, how do you know it's my phone?" *You'd always have to admit the video from 9/24 where you have Mr. Singfield on the phone moments before going in to rob the place in the same shoes so it's a circle that goes back to well that one is definitely admissible in the other ones because we're relying on the phone information because it's incumbent upon the state to put*

that phone in Mr. Singfield's hand. We do it by the video on the 24th.[7] Again, all of these have the same m.o.

I can make the same repetition for each case but the point is that the events of the 24th are always going to admissible and the 17th, the 1st and the 28th of August because we'll have to put the phone in his hands and you know that makes the fact that he's in the Sheetz robbing it—in the Sheetz with the phone and then in the Sheetz robbing it with a mask and handgun relevant in each of those case[s] up the line.

So it is u'm not admitted to show—And the rule is 5-404(b). It is not admitted to show uh his character or proclivities to u'm do these acts, it is admissible for those other purposes such as proof of motive, maybe not so much. Opportunity, absolutely. Opportunity because we can relate the phone to him and the phone is in the vicinity of each of these.

So u'm—And one bolsters the other. Intent, maybe not. Preparation, yes because the phone is being used to prepare in two of the events and the—I think arguably the third event because he's on the phone and there is a second assailant on the—at the last event on 9/24.

And common scheme or plan, well perhaps not a signature crime because I'm waiting to hear that u'm term, these are all in the middle of the night or early morning hours, they are all u'm relatively uh they are all the same kind of stores and convenience stores. They all uh would appear to need a car to get to and fro. They are all in the general geographic area. And they are all robberies by masked people, always including at least one masked African American matching the defendant's description. And knowledge uh circumstantially that shows the defendant's knowledge of these events if you put them altogether because we have Licata on the 17th saying she was talking to the defendant on that phone and remember that when we are showing the common scheme, this comes back in, why would—why would it be important on 9/17 to show that the phone is in connection with Singfield because Licata is going

[7] As we will discuss later, the defense disputes that the video in fact shows a cell phone in Mr. Singfield's hand.

> to say "I was talking to Singfield" and the record back[s] it up. And the records that he was in the vicinity back it up. And it's the same scheme as at Huyetts where he went in himself and talked to somebody else and especially of the High's on August 28th where again we have Hackett talking to him on that phone, putting that phone—and we have the phone records putting that phone in the vicinity. [S]o this is—goes to proving that uh he knew what was going on.
>
> Identity is the primary one. *Identity because we have this phone at each of these four locations* and we have records showing the phone being used and corresponding records of Hackett's phone inside the High's. We have the corresponding records of Licata's phone for the Sheetz and u'm her testimony against the defendant that she was talking to him at the time and then she brought him there to rob the place. And that uh—*we have himself on the phone on the 24th at the Sheetz*. And this u'm really hits home with identifying who this person is and overcomes the idea that this was all just a coincidence that this u'm Frederick County resident would uh happen to be in the vicinity of all these places and happen to be either in or talking on the phone to somebody who was in three of the four events.
>
> So thank you for listening on that. It is u'm, we're not relying on the m.o. so much as the phone's constant presence to identify the defendant as the person there and they all relate back to each other.

(Emphases added).

The defense challenged the mutual admissibility of the evidence underlying the four robberies, and expressed fear that a jury would consider the incidents cumulatively rather than individually:

> *Your Honor, I think that [the State]'s argument actually makes the point that the Court should sever these separate five, these four separate armed robberies that occurred in Washington County because uh they can be proved independent of each other*. The phone records to show that allegedly and of course

> to put aside the ubiquity of cell phones and who is holding the cell phone and how often cell phones are exchanged, there still could be independent evidence that each independent case that at the time of the robbery a cell phone registered to my client was supposedly bouncing off a cell site tower uh at that point in time. The problem, as I know the Court recognizes, the problem with putting all of these cases together is that it makes it more likely that the jury is going to cumulate the evidence, the various crimes charged and find guilt. When if they were considered separately uh that would not be the case.
>
> *You know there's, there's an overlap as I understand it between uh mutually admissible and other crimes evidence* and I think that in light of my cross-examination uh I pointed out the fact that there really is no u'm common scheme here or I mean the fact that convenience stores unfortunately in this day and age are robbed in the middle of the night is not something that is unique. It certainly is not something that is unusual. The time is not unusual. To—to have it said that they are geographically similar, I mean they are pretty spread out across the, the uh City of Hagerstown and the County of Washington County.
>
> Your Honor, I think I brought out the fact that obviously that the discrepancies between the facts and again [the State] will say "The thing that ties it together is the phone records," but *that doesn't obviate the fact that this is unduly prejudicial to the, to the defendant*. I think that that's the standard the Court has to look at, as you know, with regard to uh the joinder.

(Emphases added).

The court brought the parties back together on April 6, 2015, and denied the motion to sever from the bench on the ground that judicial economy outweighed other considerations:

> Counsel for the defendant had asked the Court to sever these counts from one another, essentially suggesting that the prejudicial value of trying these matters together outweighed any judicial economy that could be achieved and pointed out

> the various differences among the four separate armed robberies suggesting that separate trials would be more appropriate.
>
> The seminal case in Maryland is *McKnight versus State* regarding a motion to sever, motion to consolidate. The Court notes that these offenses all are armed robberies of convenience stores, the same general scheme of unlawful [conduct] has been identified as exhibited in each of these four matters. To the extent that there is a showing that each of the stores were cased, that cell phones were used to effectuate the robberies in each of these, the robberies occurred within the same general timeframe between August the 28th, 2014 and September 24, 2014, the offenses are all linked together by cell phone tower evidence. **Under the circumstances the Court finds that the argument for judicial economy outweighs any other arguments favoring severance in this matter** and the Court will not sever the counts one from the other—the armed robberies one from the other. So the motion to sever is denied.

(Emphasis added).

The case then proceeded to trial on July 21, 22, and 23, 2015. And although the State's opening argument referred to "[n]ot one, not two, not three, but four separate robberies that occurred over a month long period," the State's closing argument aggregated them:

> May it please the Court. Ladies and gentlemen, thank you for your extended time and attention.
>
> My colleague… started off with a great reference, although I chided her that she missed the hero of the story because Ian Fleming's hero is James Bond, not Sherlock Holmes. But maybe some of you are mystery fans or thriller fans, but it doesn't take a super sleuth to figure this one out. That once is happenchance, twice is convice—coincidence, three times is enemy action. Four times is even more enemy action because that's what you have here.

The jury returned guilty verdicts on charges arising from all four robberies, and the court later sentenced Mr. Singfield to sixty-eight years in prison. This timely appeal followed.

II. DISCUSSION

Mr. Singfield raises only one issue on appeal: he contends that the trial court erred by denying his motion to sever, and specifically by failing to find, before considering judicial economy, that the evidence of the four robberies would have been mutually admissible in separate trials.[8] The State counters that the robberies were similar enough that the evidence would be mutually admissible, and that the court did not abuse its discretion in trying the cases together.[9]

[8] Mr. Singfield's Question Presented is phrased as follows: "Did the trial court err in denying a motion to sever, for separate trials, charges arising from four separate armed robberies occurring at different locations, at different times, involving different individuals, and with significant differences in fact pattern?"

[9] The State argues in passing that Mr. Singfield failed to raise mutual admissibility in the circuit court. But the transcript from the motion to sever ("Your Honor, I think that [the State]'s argument actually makes the point that the Court should sever these separate five, these four separate armed robberies that occurred in Washington County because uh they can be proved independent of each other. . . . You know there's, there's an overlap as I understand it between uh mutually admissible and other crimes evidence. . . .") demonstrates otherwise. And although the court characterized Mr. Singfield's argument in more general terms in its ruling ("Counsel for the defendant had asked the Court to sever these counts from one another, essentially suggesting that the prejudicial value of trying these matters together outweighed any judicial economy that could be achieved and pointed out the various differences among the four separate armed robberies suggesting that separate trials would be more appropriate."), we find that the issue was raised adequately and presented for the circuit court to decide.

These robberies were, indisputably, separate incidents, and evidence relating to "other crimes" normally isn't admissible to prove guilt. e.g., *State v. Faulkner*, 314 Md. 630, 634 (1989). As with most rules, though, there are exceptions, and joinder of charges arising from separate incidents is one macro-exception to the "other crimes" evidence prohibition. *McKnight v. State*, 280 Md. 604, 607-12 (1977). But although joinder is allowed, "[i]f 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." Md. Rule 4-253(c).

This heightened concern about prejudice to defendants from offense joinder led the Court of Appeals in *McKnight* to limit trial courts' normally broad discretion over trial management and evidentiary decisions. Although the Court recognized the judicial economy in joining similar offenses into a single trial, it identified three sources of additional potential prejudice. *First*, joinder can cause the defendant to "become embarrassed, or confounded in presenting separate defenses." *Id*. 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*. The Court recognized, then, that trial courts "must balance the *likely* prejudice caused by the joinder against the important considerations of economy and

efficiency in judicial administration," *id*. at 609-10 (emphasis added), and explained that "where offenses are joined for trial because they are of similar character, but the evidence would not be mutually admissible, the prejudicial effect is apt to outweigh the probative value of such evidence." *Id.* at 610. Ultimately, *McKnight* held that "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." *Id.* at 612 (emphasis added). And by characterizing the prejudice as likely and stating that a defendant is entitled to a severance in the absence of mutual admissibility, the Court placed the burden on the State to justify joinder.

Twenty years later, the Court of Appeals reprised *McKnight* in *Conyers v. State,* 345 Md. 525 (1997). The Court explained again the connection, indeed the tension, between the general prohibition on "other crimes" evidence and the opportunity for judicial economy a joint trial can afford, then distilled the severance analysis into a two-step inquiry:

> In sum, the analysis of jury trial joinder issues may be reduced to an analysis that encompasses two questions: (1) is evidence concerning the offenses or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must first apply the first step of the "other crimes" analysis announced in *Faulkner*. If question number one is answered in the negative, then there is no need to address question number two; *McKnight* demands severance as a matter of law.

Conyers, 345 Md. at 553.

Annotated to include the "other crimes" admissibility test from *Faulkner*, *Conyers* requires trial courts to determine *first* whether "the evidence [of the other robberies was] *prima facie* admissible because it fits within any exception to the presumptive rule of exclusion, such as the exceptions discussed in *Solomon* [*v. State*, 101 Md. App. 331 (1994)]." *Id*. at 550 (citing *Faulkner*, 314 Md. at 634) (emphasis added).[10] If, and *only* if, evidence of other robberies surmounted that first hurdle should the court proceed to the *second* step and balance the potential prejudice against judicial economy concerns.

Now back to this case. Mr. Singfield asserts that the circuit court "jumped to the second step identified in *Conyers*: balancing the interest in judicial economy with the arguments favoring severance," and never found the evidence of the four robberies mutually admissible. And he's right. The ruling cited *McKnight*, referenced the general similarities among the four robberies, and noted that "the offenses were all linked together by cell phone tower evidence." But the court made were no findings that the evidence relating to any one of the four robberies was admissible vis-à-vis any of the others, and although the court was not required to incant a particular set of words, we cannot on this record infer a finding of mutual admissibility from this particular ruling. Nor can we infer mutual admissibility from the robberies' mere facial similarities. Indeed, beyond the fact that all involved convenience stores, the similarities blur: each robbery involved different

[10] That is, the State may not present evidence of other criminal acts "unless the evidence is substantially relevant for some other purpose than to show a probability that he committed the crime on trial because he is a man of criminal character." *McKnight,* 280 Md. at 612 (quoting *Ross v. State,* 276 Md. 644, 669 (1976)).

combinations of people, bandanas of various colors, and common forms of clothing and footwear. And although the indictment contained a conspiracy charge, there was no evidence during the severance hearing of any agreement between Mr. Singfield and any of the other alleged participants that might have unified the incidents.

Conyers says, in so many words, that mutual admissibility can't be determined generally. The Court of Appeals described mutual admissibility in a multi-incident joinder situation in terms of "a hypothetical question: Would evidence of each charge be admissible in a separate trial of each other charge?" The key phrase is "each other charge," and a case like this that involves four separate incidents requires twelve separate admissibility analyses before all four can be joined into one trial:

> This hypothetical question, in *McKnight*, was actually twelve separate questions, because admissibility in four criminal events involves several assessments of one-directional admissibility.[11] *See Solomon*, 101 Md. App. at 341. One-directional admissibility is another name for the common

[11] The Court dropped a footnote in this same spot that expressed the principle in mathematical terms:

> The number of analyses of mutual admissibility can be expressed by the formula (n x (n -1)). When there are two offenses, A and B, there will be only two analyses of admissibility (2 x 1 = 2), whether A is admissible in B(AB) and whether B is admissible in A(BA). When there are three offenses, A, B, and C, there will be six analyses of admissibility (3 x 2 = 6) AB; AC; BA; BC; CA; and CB. In *McKnight v. State*, 280 Md. 604 (1977), we assume that the Court made twelve analyses of admissibility (4 x 3 = 12).

Conyers, 345 Md. at 549 n.1.

> evidentiary determination of admissibility that is made many times in every trial.

Conyers, 345 Md. at 549.

We don't read *Conyers* to preclude the possibility that single or common forces could unify these cases—the court might have found, for example, that Mr. Singfield and his colleagues entered into a conspiracy to undertake these robberies, or that his cell phone was a common element to all of the crimes. It might even be that the trial testimony would support those findings or others. But the decision to try these cases together must be made on a hearing record that supports it at the time the decision was made, not retrospectively.

We also don't mean to suggest that the court had to hold a full-blown trial before the trial or to resolve disputed questions of fact. We do hold, though, that the court was required by *Conyers*, and *McKnight* before it, to find from the hearing record that the evidence relating to each of the four robberies was mutually admissible vis-à-vis the others before considering whether judicial economy outweighed other considerations, including the recognized potential for prejudice to defendants from "other crimes" evidence like this. For that reason, we reverse Mr. Singfield's convictions and remand for further proceedings. But this holding should not be read to pre-judge the question of whether Mr. Singfield necessarily must be tried separately on all four robberies—it may be that, on an appropriate

record, the court *could* find mutual admissibility among some or all of these robberies and that judicial economy outweighs the potential prejudice to Mr. Singfield from a joint trial.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY REVERSED, AND CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY WASHINGTON COUNTY.