UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2840

September Term, 2015

SENECA WILLIAMS

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Thieme, J.

Filed: November 10, 2016

A jury in the Circuit Court for Baltimore City convicted Seneca Williams, appellant, of first-degree assault, second-degree assault, reckless endangerment, use of a handgun in the commission of a felony or crime of violence, wearing and carrying a handgun, and possession of a regulated firearm by a prohibited person. Williams was sentenced to a total of 25 years' imprisonment. In this appeal, Williams presents the following questions for our review:

1. Did the trial court err or abuse its discretion in admitting allegedly irrelevant and unfairly prejudicial testimony?

2. Did the trial court err or abuse its discretion in denying Williams' motion for a mistrial?

For reasons to follow, we answer both questions in the negative and affirm the judgment of the circuit court.

BACKGROUND

On March 16, 2015, John Titow was inside his home on Wilkens Avenue when he looked out the window and observed three men get out of a van. The three men proceeded to chase after another man, later identified as Seneca Williams, who ran away. A short time later, Williams returned to the area and fired several gunshots into the van. He then ran towards a nearby house, stumbled, and "came back and shot more times."

After witnessing these events, Titow called the police, and Baltimore City Police Detective Jeffrey Converse responded to the scene. Detective Converse investigated the van and, upon looking inside, discovered an individual suffering from multiple gunshot wounds. By this time, Williams had fled the scene.

Detective Converse eventually made contact with Titow, who reported his observations. Titow also informed the detective that the shooting had been captured by video cameras Titow had installed on the exterior of his Baltimore row house. Titow then told the detective that he could identify the shooter, but only by his nickname, "Spin."

Titow gave a copy of the video to Detective Converse, who later showed it to Baltimore City Police Detectives Dale Mattingly and Tenesha Todd, both of whom were familiar with Williams. After viewing the video, both Detective Mattingly and Detective Todd identified Williams as the shooter. Williams was eventually arrested.

Approximately two weeks after the shooting, Titow called the police, and he and Detective Converse discussed the shooting. During this conversation, Titow reiterated that he knew "Spin" and that he had previously observed him "hanging out, selling drugs." A few days later, Titow went to the police station to look at photographs, but he was unable to positively identify Williams as the shooter.

At trial, the State called Titow as a witness. On cross-examination, defense counsel questioned Titow about his phone conversation with Detective Converse:

[DEFENSE]: You called the police on March the 31st, about two weeks later, and told them that you know who did it?

[WITNESS]: About two weeks later?

[DEFENSE]: Right?

[WITNESS]: No.

[DEFENSE]: No?

[WITNESS]: I think they already had [Williams] locked up.

[DEFENSE]: Will you please answer my questions?

[WITNESS]: Well, I did. No, I didn't.

[DEFENSE]: You didn't call the police on March the 31st?

[WITNESS]: No, absolutely not, not to tell them, "I know who did it." You asked more than just that.

[DEFENSE]: And did you tell them you know who did it?

[WITNESS]: No.

[DEFENSE]: You didn't?

[WITNESS]: I didn't call them up and tell them, "I know who did it," no.

[DEFENSE]: You didn't tell them that "Spin" did it, you know who he is –

[WITNESS]: "Spin" did it? No.

[DEFENSE]: – you've seen him every day?

[WITNESS]: I didn't call them up to tell them that, no. I called them up for other reasons, not to tell them that "Spin" did it.

[DEFENSE]: You never told the detective that you personally witnessed the shooting that occurred on Wilkens Avenue when you called him via telephone on March 31st?

[WITNESS]: Yes, I did. I didn't call him up for that purpose.

[DEFENSE]: Well, let's talk about my purpose.

[WITNESS]: Okay.

[DEFENSE]: Okay?

[WITNESS]: Yes. You made it sound like I called him up, "Hey, 'Spin' did it." I didn't do that.

[DEFENSE]: You did tell him that you personally witnessed the shooting that occurred on Wilkens Avenue?

[WITNESS]: Yes. That came later.

[DEFENSE]: Right?

[WITNESS]: Yes.

[DEFENSE]: And you told him that you knew "Spin," that you've seen him almost every day for one to two years, correct?

[WITNESS]: No, I didn't tell him I knew "Spin." I told him I've seen him selling drugs in the neighborhood for many – for a long time.

* * *

[DEFENSE]: And you call the police all the time?

[WITNESS]: No.

[DEFENSE]: A lot of times?

[WITNESS]: No. I call the police when there's trouble.

[DEFENSE]: Well, when you see drug-dealing and whatever?

[WITNESS]: No. I don't always call on drug-dealing. As long as they don't bother me, I don't bother them, but when they start bothering me, then I bother them.

[DEFENSE]: So, when you called him on the telephone and you say you witnessed what happened, you did not tell him that you knew "Spin," you knew who did it, and you saw it all?

[WITNESS]: Could you say that question – I missed just the beginning.

[DEFENSE]: When you called Detective Converse…and when you told him that you knew who – you witnessed the crime and you know that "Spin" did it, correct?

[WITNESS]: He already knew I witnessed the crime. I mean I didn't call him –

[DEFENSE]: Did you ever tell him that "Spin" did it before March the 31st?

[WITNESS]: I told him who did it that night – the time that it happened. I didn't know exactly his name when it happened.

When defense counsel concluded his cross-examination of Titow, the State requested a bench conference, during which the following colloquy ensued:

[STATE]: Mr. Titow was asked a number of times on cross-examination, "Did you call Detective Converse on March 31st for the purpose of identifying [Williams]?" I would like to ask him why he called.

THE COURT: Do you wish to be heard?

[DEFENSE]: I'm just reading from the detective's notes that "He called me and told me that he witnessed the crime."

THE COURT: You know what he's going to say?

[DEFENSE]: Yeah. He's going to say something about somebody threatening him, which, of course, is not relevant. I would object to that.

THE COURT: Well, it's relevant because you made it relevant.

[DEFENSE]: I made it relevant?

THE COURT: The reason for his call.

[DEFENSE]: What has that got to do with this case? He can't relate it to my client.

THE COURT: Okay. Overruled.

Following the bench conference, the State asked Titow why he called Detective Converse on March 31, 2015. Titow responded that he called Detective Converse because he "was being threatened over and over and intimidated by drug dealers and gang members in my neighbors [sic], me and my family."

Later, during recross-examination, defense counsel questioned Titow about his being threatened:

[DEFENSE]: Is your lawyer using your testifying here to help you get out in Baltimore County?

[WITNESS]: I'm here because…I got involved in this case. I would not be locked up if I didn't get involved in this case. That's a hundred percent. Yeah, it's messed up.

[DEFENSE]: Could you explain that?

[WITNESS]: Yes. I was being threatened, my wife was being threatened, my family over and over and over, and, you know, I go to my P.O. once in a while, and it was getting so bad that we left and my P.O. didn't get the information somehow. I asked also Detective Converse to let her know and she violated me for missing two visits, you know, because I felt that I had to get out of town, and they was waiting to lock up two other people who threatened to fire bomb my house and has made other statements, threw rocks through my window that lived at 2666 Wilkins Avenue. There's about 15 other people involved in threatening me, including one in the court today.

[DEFENSE]: One in court today?

[WITNESS]: Yeah, sitting right there.

[DEFENSE]: Who is that?

[WITNESS]: That little punk right there, who is going to be arrested.

[AUDIENCE]: (Unintelligible.)

THE COURT: Can you put them all out?

The trial court then ordered the courtroom deputy to remove two people from the audience, including the person Titow identified as having threatened him. Following the lunch break, but before the jury was brought back into the courtroom, defense counsel moved for a mistrial:

> [DEFENSE]: [T]he situation that happened right before the break when Mr. Titow points at someone in the back of the courtroom and said that "punk" is one of the people who intimidated him or something to that effect. At that point, the Court had the sheriff go and remove the two people. I think it was a lady – [Williams's] sister and his nephew.
>
> THE COURT: Okay. I didn't know who they were.
>
> [DEFENSE]: Well, that's who it was and I think that the adverse inference from that is also misleading the jury and I think that – because, from what I understand – I mean, I don't know what was said – you know, I know what Mr. Titow said. I don't know what was said in the back. I believe it was something, "You called my son a 'punk,'" or something to that effect.
>
> THE COURT: I didn't hear anything. I just saw the young man started waving at the witness and, so, that's why I asked him to leave, if you want to know.
>
> [DEFENSE]: I don't know, but I think it's – you know, obviously with the sheriff doing what the Court told him to do – and I understand that, you know, because there was some form of disruption – I think, again, that is just very difficult, I believe, at this point, for [Williams] to get a fair trial as to both of those reasons.

After hearing from the State, the trial court denied defense counsel's motion for a mistrial:

> The court does not find that there's a manifest necessity – I'll make a record – specifically with the – a few things….[O]n the ground of the testimony that [Titow] gave, that testimony was directly and specifically elicited by the defense counsel in a recross-examination line of questioning of the witness, and the witness gave the responses as he gave them. I don't find - so, that's the Court's finding, is that you asked the questions and those were the answers he gave, and I do understand that your request is not so much based on his answers as it is about him indicating that there was a person in the courtroom with whom he had a problem.
>
> Let the record reflect that I did ask the deputy to remove the young man because the young man began waving at him and I don't know if the jury saw that or not. Clearly, you didn't see it because you were facing this way. So, that's what that was, and if there is some sort of instruction that you would like to fashion, without withdrawing your motion – obviously, I'm denying your motion, and in order for you to be clear, if there was some sort of instruction that you wanted to fashion and make a motion to have the Court read the instruction in light of the fact that I've denied your motion…the Court will consider that, if that's what you want to do, but the motion is denied.

DISCUSSION

I.

Williams first argues that the trial court erred in permitting Titow to testify, on redirect examination, that he told the police he had been threatened by drug dealers and gang members. Williams maintains that this testimony was irrelevant and prejudicial. We disagree.

A trial court's authority regarding the scope of redirect examination is discretionary, and "no error will be recognized unless there is clear abuse of such discretion." *Oken v. State,* 327 Md. 628, 669 (1992). "The trial judge's discretion in permitting inquiry on

redirect examination is wide, particularly where the inquiry is directed toward developing facts made relevant during cross-examination or explaining away discrediting facts." *Bailey v. State,* 16 Md. App. 83, 110 (1972). Depending on the circumstances, trial courts are even permitted to exceed normal evidentiary restrictions. *See, e.g., State v. Werner,* 302 Md. 550, 560-61 (1985) (holding that other crimes by a defendant, normally inadmissible as direct evidence, becomes "admissible in a criminal case to rehabilitate a State's witness once the witness has been impeached [on cross-examination.]"); *Bailey*, 16 Md. App. at 110 (trial court did not err in permitting the prosecution, on redirect, to readdress testimony that had been covered on direct examination and to elicit testimony that went beyond the scope of cross-examination); *Bernos v. State,* 10 Md. App. 184, 188 (1970) (trial court did not abuse its discretion in permitting the prosecution, on redirect, to question a police officer about a police report that contained inadmissible statements made by the defendant).

In the present case, defense counsel questioned Titow at length regarding his phone call to police following the shooting. This line of questioning included inquiries into the subject of his conversation with Detective Converse, namely whether Titow called Detective Converse for the purpose of identifying Williams as the shooter. In short, the subject of Titow's phone call became relevant because of defense counsel's questioning. Thus, the trial court did not abuse its discretion in permitting Titow to testify, on redirect examination, that he called the police because he was being threatened. *See Tirado v. State,* 95 Md. App. 536, 552-53 (1993) (evidence on redirect was properly admitted because the defendant "opened the door" during cross-examination).

Assuming, *arguendo*, that the court erred in admitting this testimony, any error was harmless. In a criminal case, an erroneous evidentiary ruling is harmless when the reviewing court is "satisfied that there is no reasonable possibility that the evidence complained of – whether erroneously admitted or excluded – may have contributed to the rendition of the guilty verdict." *Dorsey v. State,* 276 Md. 638, 659 (1976). "In performing a harmless error analysis, we are not to find facts or weigh evidence." *Bellamy v. State,* 403 Md. 308, 332 (2008). Rather, once error has been assessed, reversal is required unless the trial court's error was "unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record." *Id.* In other words, "the issue is not what evidence was available to the jury, but rather what evidence the jury, in fact, used to reach its verdict." *Dionas v. State,* 436 Md. 97, 109 (2013).

Here, the fact that Titow called the police to report being threatened was of no consequence to the outcome of the case, nor was it likely to have had any discernible effect on the jury's verdict. At no time did Titow identify Williams as being one of, or even associated with, the individuals that had threatened him. Moreover, the State did not pursue the subject beyond its redirect examination of Titow. Rather, the State relied on Titow's eye-witness testimony and the video evidence, both of which identified Williams as the shooter. This identification was later corroborated by two police officers, who testified that Williams was the person depicted in the video shooting at the van. Accordingly, any error in the admission of Titow's testimony was harmless beyond a reasonable doubt.

II.

Williams next argues that the trial court erred in denying his motion for a mistrial. Williams maintains that, when a mistrial is requested by a defendant, the trial court must exercise its discretion to determine whether, as a matter of fundamental fairness, the request is meritorious. Williams insists, however, that the trial court in the instant case did not exercise such discretion, but rather determined that there was no "manifest necessity" in granting the mistrial. Williams maintains that the court's failure to exercise its discretion was itself an abuse of discretion.

Williams is mistaken. Although the trial court did say the words "manifest necessity" when ruling on defense counsel's motion, there is no evidence that the trial court implemented, relied on, or limited its ruling to a finding of "manifest necessity."[1] Instead, the trial court made clear that its decision to close the courtroom was based on Titow's interaction with two spectators, one of whom Titow identified as having threatened him prior to trial. The trial court further noted that the interaction between Titow and the spectators was the direct result of defense counsel's questioning, specifically his request that Titow identify those in the courtroom who had threatened him. Based on these circumstances, the trial court denied defense counsel's motion for a mistrial. *See Gunning v. State*, 347 Md. 332, 352 (1997) ("A proper exercise of discretion involves consideration

[1] "Manifest necessity" is a legal determination that is relevant in evaluating whether a retrial following a mistrial is barred by double jeopardy. *See Simmons v. State,* 436 Md. 202, 213 (2013) ("When a mistrial is granted over the objection of the defendant, double jeopardy principles will not bar a retrial if there exists 'manifest necessity' for the mistrial.").

of the particular circumstances of each case."). Moreover, after denying the motion, the trial court exercised added discretion by giving defense counsel the option of requesting a jury instruction in light of the court's ruling. *See Cooley v. State*, 385 Md. 165, 173 (2005) (Before granting a mistrial, the trial court should first determine "'whether the prejudice can be cured by instruction.'") (internal citations omitted). Accordingly, we hold that the trial court properly exercised its discretion in denying defense counsel's motion for a mistrial.

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