

Circuit Court for Baltimore City  
Case No. 110271010

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 915

September Term, 2016

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ISAIAH CROWDER

v.

STATE OF MARYLAND

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Nazarian,  
Arthur,  
Friedman

JJ.

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Opinion by Friedman, J.

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Filed: August 24, 2017

\*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

This appeal results from the story of two friends named Isaiah: Isaiah Crowder and Isaiah Gordon. Isaiah Crowder was convicted of second degree murder and use of a handgun in the commission of a crime of violence in connection with the death of his friend, Isaiah Gordon. On appeal, we are asked to determine whether the trial court abused its discretion when it admitted a photo array from which a witness identified Crowder as the shooter. Because we hold that the trial court did not abuse its discretion, we affirm.

### **BACKGROUND**

On August 15, 2010, Gordon was shot and killed on the 400 block of East Chase Street in Baltimore City. Two weeks after the incident, Lamerl Graham contacted the Baltimore City Police Department claiming to have information about Gordon's shooting. Graham met with the police and informed them that he had witnessed Gordon's shooting and that Crowder was the shooter. According to Graham, although Gordon and Crowder were "good friends," there had been tension between Gordon and Crowder on the night of the shooting. Directly after the interview, the police developed a photo array to help identify the shooter. The array was a computer generated compilation of six photographs, one photo of Crowder and five photos of individuals who looked physically similar to Crowder. Graham selected Crowder's photo from the array and wrote on the back, "The person I picked out is Isaiah Crowder. I [saw] him shoot and kill ... Isaiah Gordon. It happened on Chase Street." Crowder was then arrested and charged with the murder of Gordon.

Prior to trial, Crowder filed a motion to suppress the photo array. Crowder argued that because Graham knew him and would make an in-court identification, the use of the photo array identification procedure that contained “mugshot” photographs was cumulative and prejudicial. Because the State anticipated difficulty bringing Graham to court as a witness, the trial court reserved its ruling on the motion to suppress until Graham was produced at trial.

Before the conclusion of the trial, Graham appeared in court to testify. Once again, the trial court heard arguments on the motion to suppress. Crowder argued that the photo array should be suppressed because the SID numbers<sup>1</sup> above the photographs carried the potential to alert the jury to the possibility that Crowder had a prior criminal record. Crowder also renewed his argument that because there had been an in-court identification, the prior out-of-court identification through the photo array was duplicative and had no probative value. The State responded by offering to remove the SID numbers from the photographs and provide the jury with a redacted copy. The trial court ruled, that because “the State [was] willing to take the prophylactic step of whiting out the [SID] numbers, there [was] absolutely no basis for suppressing the photo array.” Subsequently, the trial court denied Crowder’s motion to suppress and introduced the redacted photo array into

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<sup>1</sup> “The SID number is a unique identifier issued by the Maryland Criminal Justice Information System (CJIS) Central Repository. A SID number is assigned to every individual who is arrested or otherwise acquires a criminal history record in Maryland ... .” *Bryant v. State*, 436 Md. 653, 657 n.1 (2014) (citation omitted).

evidence. The trial court then asked if Crowder objected to the admission of the photos into evidence. Crowder stated that he had no objection.

Crowder was convicted of second degree murder and use of a handgun in the commission of a crime of violence. He noted a timely appeal to this court.

### **DISCUSSION**

Crowder contends that the trial court abused its discretion in two different ways when it admitted the photo array. Crowder argues the redacted photo array was unduly prejudicial because even without the SID numbers, the mugshot-style photos suggested to the jury that he had a prior criminal record. Crowder also argues that the State's in-court use of the out-of-court photo array identification procedure was cumulative of Graham's in-court identification and therefore had no probative value. The State responds with three arguments. First, the State contends that Crowder's arguments as to the admission of the photo array were waived because he said that he did not object at the time the photo array was introduced. Second, the State argues that the trial court acted within its discretion to admit the photo array because redacted photos did not look like traditional mugshot-style photos. Third, the State argues that the in-court use of the out-of-court photo array identification procedure was proper because it was probative to the jury's evaluation of who committed the crime. For the reasons discussed below, we disagree with the State's claim that Crowder waived his challenge to the photo array. We hold, however, that the trial court's decision to admit the photo array was not an abuse of discretion.

## I. Waiver

Before reaching the merits of this case, we first discuss the State's argument that Crowder waived this claim. The State argues pursuant to Maryland Rule 4-323(a), Crowder's failure to object at the time that the trial court admitted the photo array into evidence waives this argument on appeal. We disagree with the State, and hold that Crowder's argument is preserved for our review.

Rule 4-323 governs objections to evidence, and provides:

- (a) **Objection to Evidence.** An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived. The grounds for the objection need not be stated unless the court, at the request of a party or its own initiative, so directs. ...

Md. Rule 4-323(a). Adherence to the Rule guarantees the trial court an opportunity to prevent mistakes or cure them in real time, as we explained in *Prince v. State*:

The requirement of a contemporaneous objection is a necessary and salutary one, designed to assure both fairness and efficiency in the conduct of trials. A party cannot be permitted to sit back and allow the opposing party to establish its case, or any part of its case, through unchallenged evidence and then, when it may be too late for the opposing party to recover, to seek to strike the evidence.

216 Md. App. 178, 194 (2014) (citation omitted). There is, however, an exception to this rule when the objection is well-understood and renewing it would be futile. *Watson v. State*, 311 Md. 370, 372 n.1 (1988) (finding that an additional objection was unnecessary to

preserve error where the trial judge had already reiterated his pretrial ruling immediately before the admission of the challenged evidence).

We think that this case fits within the exception carved out by *Watson*. Prior to the trial court’s ruling, Crowder had raised his objections to the photo array several times. His motion to suppress, however, was denied immediately before Graham testified. Requiring Crowder to reassert his objection at the time that the photo array was actually introduced—despite the trial court’s denial of the motion just moments before—would be “to exalt form over substance.” *See Watson*, 311 Md. at 372 n.1; *Norton v. State*, 217 Md. App. 388, 397 (2014) (holding that the issue was preserved, “given the extensive conversation [about] the issue that occurred during the motion *in limine*, and the court’s clear ruling denying the motion just moments before, a subsequent objection would have been futile”) (citation omitted). Therefore, we find that Crowder’s arguments about the introduction of the photo array were properly preserved.

We now proceed to the merits of Crowder’s appeal.

## **II. Photo Array**

As described above, over objection, the State sought to introduce a photo array that included Crowder’s picture. Although the photo array originally included an SID number for each person depicted, when the State agreed to redact the numbers, the trial court agreed to admit the photos. On appeal, Crowder argues that the admission of these photos was error in two regards: (1) despite the redaction, the pictures in the array still looked like

“mugshots;” and (2) the admission of the photo array was redundant to an in-court identification. For the reasons that follow, we reject both contentions.

*First*, although the parties don’t frame it in quite this way, the problem with mugshots is that they are thought to suggest, quite correctly, that the person depicted has had prior interactions with the criminal justice system. As a result, the proper mode of analysis of mugshot-style photographs is under Rule 5-404(b), which governs the admissibility of “other crimes” evidence:

(b) **Other Crimes, Wrongs or Acts.** Evidence of other crimes, wrongs, or acts ... is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, 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). As we have explained, “evidence of [other crimes] may not be introduced to suggest that because the defendant is a person of criminal character, it is more probable that he committed the crime for which he is on trial.” *Behrel v. State*, 151 Md. App. 64, 123 (2003) (citations omitted). Despite these concerns, however, we are very deferential to the trial court’s decision on whether to admit other crimes evidence, including mugshot photos. “Even when it is clear that [mugshots] are [mugshots] ... as a general rule, the admissibility of photographs in a criminal case is a discretionary matter for the trial court.” *Hof v. State*, 97 Md. App. 242, 302-03 (1993) (citations omitted). We will not reverse a decision to admit such photos “unless [the decision] is well removed

from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.” *Jackson v. State*, 216 Md. App. 347, 363-64 (2014) (citations omitted).

Crowder points to our decision in *Arca v. State* to suggest that the admission of a mugshot-style photo of a defendant is so suggestive of other crimes as to warrant reversal. 71 Md. App. 102 (1987). And, it is true that in *Arca* we reversed a trial court for admitting such photos. *Id.* at 106. We think, however, that Crowder’s situation is different from *Arca* in two critical ways. First, in *Arca*, the photographs in the photo array included both front and profile views of the suspects in what was “obviously a police [mugshot].” *Id.* at 104. Second, in *Arca*, the identity of the defendant was not at issue and, therefore, the photographs “were not relevant to any issue that the jury would be asked to decide.” *Id.* at 106. Here, the photos in the array were front only headshot-style photographs, not the traditional front and profile-style photographs commonly associated with “mugshots.” *See Wagner v. State*, 213 Md. App. 419, 455 (holding that a headshot-style photograph, “in which all that was visible was [the] face and neck area ... was not obviously a mug shot”). It is not nearly so obvious that these were mugshots. Moreover, also unlike in *Arca*, identity was *the* issue; the jury was required to consider whether Crowder was the person who shot Gordon. Because we conclude that the photos in the array were not “obviously” mugshots, and because identity was at issue, we hold the trial court did not abuse its discretion in admitting the photo array on the basis of the way the pictures looked.



*Second*, Crowder argues that the State’s in-court use of the out-of-court photo array identification was cumulative to Graham’s in-court identification. The answer here is even easier. Rule 5-403 allows, but does not require, trial judges to exclude otherwise relevant evidence on the grounds that it is cumulative:

Although relevant, evidence *may be excluded* if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Md. Rule 5-403 (emphasis added). The argument here is only that presentation of the photo array to demonstrate Graham’s out-of-court identification of Crowder was cumulative to his in-court identification. Even if it was completely cumulative, we do not think that the decision to admit it would constitute an abuse of discretion. *See Savoy v. State*, 218 Md. App. 130, 158-59 (2014) (affirming admission of cumulative identifications of the defendant). More importantly, however, we do not think that introduction of the photo array was cumulative. We have previously explained that evidence about out-of-court identifications is different and may supplement in-court identifications. In *Savoy* we said that “[e]xtra-judicial photographic identifications made shortly after the incident are admissible in evidence, and lack the suggestiveness inherent in an in-court identification.” *Id.* Moreover, we have explained that the “introduction of the photo array coupled with testimony about the extrajudicial identification permits the jury to evaluate the fairness of the pretrial identification procedure and to test the veracity of the identifying witness.”

*Straughn v. State*, 297 Md. 329, 332-33 (1983) (citation omitted). Thus, we hold that admission of the photo array and testimony regarding Graham's out-of-court identification of Crowder was not cumulative to his in-court identification. There is no error in admitting non-cumulative evidence.

Concluding that the trial court's decision to introduce the photo array was not an abuse of the trial court's discretion, we affirm.

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