Circuit Court for Washington County
Case No. 21-K-14-050788

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2308

September Term, 2017

HAROLD MALCOLM SINGFIELD

v.

STATE OF MARYLAND

Fader, C.J.
Reed,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Sharer, J.

Filed: September 25, 2019

*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.

In 2014, Harold Singfield, appellant, was charged, in the Circuit Court for Washington County, with 86 criminal counts arising from four convenience store robberies, each of which occurred at a different location on a different date. Prior to trial, appellant filed a motion to sever the counts into four separate trials. Appellant also filed a pretrial motion to suppress statements he made to the police. Following a hearing, both motions were denied. A jury ultimately convicted appellant on most of the charges. After appellant noted an appeal, this Court, in an unreported opinion, reversed those convictions, holding that the court, in denying appellant's motion to sever, failed to make an appropriate finding of "mutual admissibility."[1] *Singfield v. State*, No. 1493, Sept. Term 2015, 2016 WL 3002474 (filed May 25, 2016).

Prior to his second trial, appellant renewed his motion to sever. In addition, appellant filed a new motion to suppress, which was based on certain issues that appellant had not raised during the suppression hearing prior to his first trial. Following a hearing, the court denied appellant's motion to sever. The court then refused to consider appellant's motion to suppress, finding that the newly raised suppression issues could have been raised during the first suppression hearing. After appellant waived his right to a jury trial, the court held a bench trial, and appellant was convicted on 54 counts. The court sentenced appellant to a total term of 68 years' imprisonment. In this appeal, appellant presents two questions for our review:

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[1] Ordinarily, "a judge, presiding at a jury trial, is precluded from joining cases when the evidence as to the offenses is not mutually admissible at separate trials." *Reidnauer v. State*, 133 Md. App. 311, 318 (2000).

1. Did the trial court abuse its discretion in denying appellant's motion to sever?

2. Did the trial court err in refusing to consider appellant's motion to suppress?

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

BACKGROUND

At issue here are four armed robberies that occurred in Washington County during August and September 2014. On August 28, 2014, a man entered the High's Dairy Store on Jefferson Boulevard, brandished a gun, and robbed the store's employees of cash. On September 1, 2014, two men, one of whom was armed, entered the Sheetz on Virginia Avenue and robbed the store's employees of cash. On September 17, 2014, a man brandishing a gun entered the Sheetz on Eastern Boulevard and robbed the store's employees of cash. Finally, on September 24, 2014, two men, both of whom were armed, entered the Sheetz on Lager Avenue and robbed the store's employees of cash.

During its investigation into the four robberies, the police uncovered information linking appellant to the robberies. During the investigation, the police obtained search warrants for appellant's residence and vehicle and, upon executing those warrants, the police discovered certain items of clothing consistent with items worn by one of the robbers. Appellant was arrested and taken to the police station, where he made several statements. Appellant was ultimately charged with 86 counts related to the four robberies, and a single trial was scheduled.

First Motion to Sever, First Motion to Suppress, and First Trial

Prior to trial, appellant filed a motion to sever the charges into four separate trials, one for each robbery. In addition, appellant filed a motion to suppress the statements he made to police investigators. Following a hearing, the court denied both motions. Appellant was thereafter tried by a jury and convicted on most of the charges. On his direct appeal, this Court, in an unreported opinion, reversed appellant's convictions, holding that the circuit court erred because the court, in considering appellant's motion to sever, did not make an appropriate finding as to whether the various charges were "mutually admissible." *Singfield v. State*, No. 1493, Sept. Term 2015, 2016 WL 3002474 (filed May 25, 2016). Appellant was thereafter retried under the same charging document.

Second Motion to Sever

Prior to his second trial, appellant again asked the court to sever the charges into four separate trials. At a hearing on that motion, Sergeant Jared Barnhart of the Washington County Sheriff's Department testified as to the circumstances of the four robberies and the subsequent investigation. Sergeant Barnhart testified that, during the first robbery, which occurred on August 28, 2014, at 12:41 a.m. at the High's Diary Store on Jefferson Boulevard, a "green GMC Jimmy" pulled into the store's parking lot and a "heavily tattooed" white male, later identified as Robert Hackett, entered the store while talking on his cellphone. After Hackett purchased some gasoline, he left the store. As Hackett was leaving, some of the store's employees heard him say that "the party is good."

Immediately thereafter, a black male "wearing a bandana over his face brandishing a gun" entered the store and demanded money from the store's employees.

Regarding the second robbery, which occurred on September 1, 2014, at 1:54 a.m. at the Sheetz on Virginia Avenue, Barnhart testified that Hackett, whom the officer described as "the heavily tattooed white male driving the green GMC Jimmy," entered the store while "talking on his phone." After making a purchase and leaving the store, Hackett got back into his vehicle and drove to "the street directly beside the Sheetz." Immediately thereafter, two black males with "bandanas over their faces" entered the store armed with handguns and demanded money.

As to the third robbery, which occurred on September 17, 2014, at 2:56 a.m. at the Sheetz on Eastern Boulevard, Barnhart testified that a female, later identified as Erica Licata, driving a red Dodge Avenger registered to appellant, entered the store while talking on Hackett's cellphone. After approximately ten minutes, Licata left the store. Immediately after she left the store's parking lot, a white male "ran to the front of the store and stayed outside" while a black male armed with a handgun and wearing a bandana over his face "ran to the front of the store and entered the front door." Upon entering the store, the black male "challenged" the store's employees, demanded money, and "made some verbal threats."

Describing the fourth robbery, which occurred on September 24, 2014, at 2:18 a.m. at the Sheetz on Lager Avenue, Barnhart testified that a man, later identified as appellant, entered the store, used the store's restroom, and then left. Around that same time, Hackett,

who had been seen driving a red Dodge Avenger, entered the store while talking on his cellphone. Shortly thereafter, Hackett left the store, at which point two black males wearing bandanas over their faces entered the store, brandished firearms, and demanded money. The two males then fled the store, entered a red Dodge Avenger, and drove away.

Barnhart testified further that, after appellant was developed as a suspect, the officer obtained appellant's and Hackett's cellphone records. Those records revealed that, on August 28, 2014, appellant's phone had received a call from Hackett's phone at "the exact time" of the robbery at the High's Dairy Store. The records further revealed that, on September 1, 2014, appellant's phone had received a call from Mr. Hackett's phone "four minutes prior to the robbery" at the Sheetz on Virginia Avenue. The records also showed that, on September 17, 2014, at 2:40 a.m., appellant's phone had received a phone call from Hackett's phone that lasted ten minutes and 25 seconds, which "was consistent with the approximate ten-minute time that Licata was walking about the store talking on her phone." Finally, the records revealed that, on September 24, 2014, a call was placed from appellant's phone to Hackett's phone approximately 20 minutes prior to the robbery at the Sheetz on Lager Avenue.

Barnhart testified that he also was able to "map" the location of appellant's and Hackett's cellphones during the times of the robberies. In so doing, he determined that, during the call from Hackett's phone to appellant's phone on August 28, 2014, both phones "accessed" a cellular tower that was near the High's Dairy Store on Jefferson Boulevard; that, during the call from Hackett's phone to appellant's phone on September 1, 2014, both

phones accessed cellular towers near the Sheetz on Virginia Avenue; that, during the ten-minute phone call between appellant's phone and Hackett's phone on September 17, 2014, both phones accessed a cellular tower near the Sheetz on Eastern Boulevard; and that, during the call from appellant's phone to Hackett's phone on September 24, 2014, both phones accessed a cellular tower near the Sheetz on Lager Avenue.

Following Barnhart's testimony, the State introduced into evidence a transcript from the hearing on appellant's first motion to sever, which had been heard prior to his first trial. During that hearing, Detective James Duffey of the Hagerstown Police Department, who investigated several of the robberies, provided testimony that was substantially similar to the testimony provided by Barnhart at the hearing on appellant's second motion to sever. In addition, Duffey testified that all of the robberies had been captured by surveillance cameras and that Barnhart's description of the robberies had been gleaned from those recordings. Duffey also testified that search warrants were executed at appellant's residence and Hackett's residence and that, during those searches, the police recovered several items of clothing, including various bandanas, that appeared to match clothing worn by "the suspects in the robberies."

Duffey then testified that, during his investigation, he obtained a statement from Licata regarding the robbery at the Sheetz on Eastern Boulevard. In that statement, Licata informed the detective that, around the time of the robbery, she had given appellant and Hackett a ride to a residential area near the Sheetz, where they got out of the vehicle; that she then went into the Sheetz to make a purchase at appellant's request; that, while in the

store, she had a telephone conversation with appellant; that she ultimately left the store and, at appellant's direction, drove to the same area where she had dropped off appellant and Hackett; that appellant and Hackett got back into the car; and that, at the time, appellant and Hackett "appeared to be out of breath from running."

Lastly, Duffey testified that a "masked black male" was involved in each of the robberies and that appellant's "build" generally resembled that of the masked black male. Regarding the robbery at the Sheetz on Lager Avenue, prior to which appellant was seen using the store's bathroom, Duffey testified that appellant was wearing shoes and pants that were identical to those worn by the "masked black male assailant" who came into the store and committed the robbery shortly after appellant left.

Ultimately, the trial court denied appellant's motion to sever, finding that "evidence of each robbery with the surrounding circumstances of [appellant's] cell phone records and [appellant's] vehicle location, and [appellant] being visually identified as present in the store immediately prior to [the fourth robbery], are all probative and admissible as circumstantial evidence of identity or criminal agency in each other robbery." The court also found that the "cell phone records of calls between [appellant's] phone and Hackett's immediately prior to each robbery and the location of both cell phones in the immediate[] vicinity of each robbery, and the presence of the green GMC Jimmy and [appellant's] red Dodge Avenger at, at least two of the robberies, are also admissible as circumstantial evidence of conspiracy." The court further found that the cell phone records were "mutually admissible in each robbery as circumstantial evidence of opportunity,

[appellant] being in the physical area of each robbery." Finally, the court found that the evidence was mutually admissible "to show lack of coincidence in the cell phone calls between [appellant's] cell phone and Hackett's just before each robbery," as the evidence "undercut[] a possible argument in a separate trial … that it was just a coincidence that there was a call connected between [appellant's] phone and Hackett's phone before one individual robbery."

After determining that the evidence of the four robberies was "mutually admissible," the trial court found that judicial economy was "unquestionably served by the joinder of these four alleged robberies into one trial," as four separate trials would be "an immense waste of time and judicial resources." The court also found that the value to judicial economy "significantly outweigh[ed] any potential for unfair prejudice to [appellant.]" In so doing, the court noted that, although appellant claimed that prejudice would result if severance was denied, he failed to offer any "specifics" as to "potential unfair prejudice." The court explained that "there was no specific argument that the evidence of all four robberies together would confuse [appellant] in presenting separate defenses"; that "there were no defense theories posited for one robbery that undermined the defense theory of any other robbery"; and that "there was no other embarrassment or confusion alleged." The court further found that any danger that the jury may "cumulate the evidence" was minimal because the facts were "not complicated such that any mix up or accidental use of evidence from one alleged robbery as to guilt or innocence of another alleged robbery may result."

Following the trial court's denial of his second motion to sever, appellant filed a motion to reconsider the severance ruling. At a hearing on that motion, defense counsel proffered that appellant intended to testify in "two of the matters"; that he intended to assert his right to remain silent "in two others"; and that having one trial would make that aspect of appellant's defense "difficult." Defense counsel further proffered that there were "certain defenses" available "in one case that aren't available in the other case." Defense counsel explained that, in the case involving the robbery of the Sheetz on Virginia Avenue, a fingerprint was taken from the scene and never analyzed, which meant that there was a "lack of scientific evidence argument in one case, but not the other." Finally, defense counsel argued that, because there was "no actual identification" of appellant, the "cumulative effect of the allegations" was "going to create a latent hostility" toward appellant.

The trial court ultimately denied appellant's motion for reconsideration, finding that appellant's "desire not to testify in all matters but just two of them" was "not sufficient enough" to show prejudice. The court also found that appellant's "proffer concerning a fingerprint" was unpersuasive given that such a defense "could be used to rebut [the] State's identity argument in each of the individual cases."

Second Motion to Suppress

As noted, appellant, prior to his first trial, filed a motion to suppress statements he made to police investigators. Following a hearing, that motion was denied. Prior to his second trial, appellant again filed a motion to suppress, but not on the grounds previously

raised. Instead, appellant's second motion asked the court to suppress evidence seized by the police pursuant to several search warrants that were executed following the robberies.

At a subsequent hearing, the trial court heard argument as to whether it "should re-open suppression issues to litigate." Defense counsel maintained that he was not asking the court to "re-open the other issues that have already been addressed" but was asking the court to consider issues that were "wholly separate from what was ruled upon." The State countered that, because appellant could have, but failed to, raise the newly-raised suppression issues prior to his first trial, those issues had been waived.

In the end, the trial court denied appellant's request for a second suppression hearing. Citing the "law of the case doctrine,"[2] the court found that "no authority raised by [appellant] supports this Court permitting a new suppression hearing on issues that could have been raised during the first hearing." The court further found that, even if it had the discretion to find "good cause" to reopen the suppression hearing, the court would "decline to exercise it when these issues could have been raised during the first hearing."

Second Trial

Immediately following the trial court's denial of his motion to reconsider the severance ruling, appellant waived his right to a jury trial. At the bench trial that followed,

[2] The "law of the case" doctrine states that, "once an appellate court rules upon a question presented on appeal, litigants and lower courts become bound by the ruling, which is considered to be the law of the case." *Allen v. State*, 192 Md. App. 625, 650 (2010) (citing *Haskins v. State*, 171 Md. App. 182, 189-90 (2006)). In addition, the law of the case doctrine "prevents the revisiting of … a question that *could* have been raised and argued in that appeal on the then state of the record." *Id.* (citations and quotations omitted) (emphasis in original).

the State presented substantively similar evidence to that which was presented at the hearing on appellant's second motion to sever. At the conclusion of the trial, the court found appellant guilty on 54 counts: 15 counts related to the robbery that occurred on August 28, 2014; 20 counts related to the robbery that occurred on September 1, 2014; 11 counts related to the robbery that occurred on September 17, 2014; and eight counts related to the robbery that occurred on September 24, 2014.

DISCUSSION

SEVERANCE

Appellant first contends that the trial court erred in denying his second motion to sever, which was filed prior to his second trial. Appellant maintains that the court's ruling was erroneous because the evidence of each robbery was not "mutually admissible" for any reason, including the reasons set forth by the court when it denied appellant's motion. Appellant also maintains that he was prejudiced by the court's ruling because, according to appellant, the evidence against him was "far from overwhelming" and because "the trial court relied on evidence that was not mutually admissible to convict him of all counts." Additionally, appellant asserts that, by combining the four robberies into one trial, the court denied him "the opportunity to limit his testimony to matters relating to the third and fourth robberies."

Maryland Rule 4-253 provides that, "[i]f a defendant has been charged in two or more charging documents, either party may move for a joint trial of the charges." Md. Rule 4-253(b). The Rule further provides that, "[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).

"The purpose of joining offenses … in a single trial is to save time and money by avoiding additional trials." *Conyers v. State*, 345 Md. 525, 552 (1997). The Court of Appeals has observed, however, "that where the evidence is not mutually admissible, the value of resources saved by consolidating the cases for trial is questionable." *Garcia-Perlera v. State*, 197 Md. App. 534, 547-48 (2011) (discussing *McKnight v. State*, 280 Md. 604 (1977)). That is due, in part, to the fact that, "[i]n the context of joinder/severance … the subject matter of the charges against a separate defendant or of separate charges against the same defendant is, by definition, 'other crimes.'" *Solomon v. State*, 101 Md. App. 331, 341-42 (1994); *see also McKnight*, 280 Md. at 609 (noting that a defendant may be prejudiced by joinder because "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."). And evidence of other crimes "would generally be inadmissible unless circumstances of special relevance, other than proving a mere propensity to commit crime, are present." *Galloway v. State*, 371 Md. 379, 395-96 (2002).

Thus, in deciding whether to join or sever charges, a court must first determine "whether evidence as to each of the accused's individual offenses would be 'mutually

admissible' at separate trials concerning the offenses[.]" *Cortez v. State*, 220 Md. App. 688, 694 (2014). In other words, "the court must determine whether the evidence from the 'other crimes' would be admissible if the trials occurred separately[.]" *Garcia-Perlera*, 197 Md. App. at 548. In that situation, although evidence of "other crimes" is generally inadmissible, it may be admitted "if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989); *See also Cortez*, 220 Md. App. at 694 (noting that, to resolve the issue of mutually admissibility, "the trial court is to apply the 'other crimes' analysis announced in [*Faulkner*.]"). "[T]here are numerous exceptions to the general rule that other crimes evidence must be suppressed," including, but not limited to, "if it tends to establish motive, intent, absence of mistake, a common scheme or plan, identity, opportunity, preparation, knowledge, absence of mistake or accident." *Faulkner*, 314 Md. at 634; *See also Oesby v. State*, 142 Md. App. 144, 159-64 (2002) (noting that the "classic" list of recognized exceptions is "ever-growing."). A court's determination of mutual admissibility is a legal conclusion to which we give no deference. *Cortez*, 220 Md. App. at 694.

If the evidence of "other crimes" is deemed mutually admissible, the court may still order a severance if it appears that "the admission of such evidence will cause unfair prejudice to the defendant who is requesting a severance." *State v. Hines*, 450 Md. 352, 369 (2016). This determination requires a balancing of interests in which the court "weighs the likely prejudice against the accused in trying the charges together against

considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses." *Cortez*, 220 Md. App. at 694. On that scale, "judicial economy is a heavy counterweight[.]" *Solomon*, 101 Md. App. at 346. Moreover, "Maryland Courts have repeatedly held that prejudice within the meaning of Rule 4-253 is a term of art and refers only to prejudice resulting to the defendant from the reception of evidence that would have been inadmissible against that defendant had there been no joinder." *Hines*, 450 Md. at 369 (citations and quotations omitted) (emphasis removed). In short, "if the evidence is deemed mutually admissible, then 'any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.'" *Garcia-Perlera*, 197 Md. App. at 548 (quoting *Conyers*, 345 Md. at 554-56). This balancing of interests invokes the court's discretionary power, "and we will only reverse if the trial judge's decision 'was a clear abuse of discretion.'" *Cortez*, 220 Md. App. at 694 (quoting *Conyers*, 345 Md. at 556).

We hold that the evidence of the four robberies was "mutually admissible" under the "identity" exception. *See generally Moore v. State,* 73 Md. App. 36, 44 (1987) ("For [other crimes] evidence even to qualify for admission, it must fall within *one* of the exceptions that the court has recognized … as having independent relevance[.]") (emphasis added). Under the identity exception, evidence may be received if it shows "the defendant's presence at the scene or in the locality of the crime on trial" or if it shows "that a peculiar *modus operandi* used by the defendant on another occasion was used by the perpetrator of the crime on trial." *Faulkner*, 314 Md. at 637-38. The identity exception

also applies if the evidence shows "that the defendant had on another occasion used the same alias or the same confederate as was used by the perpetrator of the present crime" or "that on another occasion the defendant was wearing the clothing worn by or was using certain objects used by the perpetrator of the crime at the time it was committed." *Id.* Nevertheless, when we are deciding whether the identity exception is applicable, "[w]hat matters is that the evidence of the 'other crimes,' however it might be categorized or labeled, enjoyed a special or heightened relevance in helping to establish the identity of [the defendant] as the perpetrator of the crimes on trial." *Oesby*, 142 Md. App. at 163.

In the instant case, the robberies occurred over the same four-week period, and each was committed at a similar time – between 12:41 a.m. and 2:56 a.m. – and at a similar location – a convenience store. Each robbery involved an individual, either Hackett or Licata, going into the store just prior to the robbery while using Mr. Hackett's cellphone. Each time, a corresponding phone call was made between Hackett's phone and appellant's phone, both of which accessed at least one tower near the store where the robbery occurred. On each occasion, the individual, either Hackett or Licata, left the store after a short time, and, immediately thereafter, at least one black male wearing a bandana and matching appellant's build entered the store with a handgun and committed the robbery. In each case, certain items of clothing worn by the suspects matched clothing found pursuant to the execution of search warrants at appellant's and Hackett's residences. In the case of the third and fourth robberies, which were, as noted, quite like the other two robberies, appellant was identified as having been at or near the store around the time the robberies

occurred. In the fourth robbery, in which appellant was seen entering the store prior to the robbery, appellant's shoes and pants matched the shoes and pants worn by one of the robbers, who entered the store shortly after appellant left.

Considering the totality of the circumstances and the myriad of similarities between the four robberies, including the distinct method in which each of the robberies was committed, evidence of each robbery was "mutually admissible," as it enjoyed a special relevance in helping to establish appellant's identity as the perpetrator of the crimes on trial. *Cf. Faulkner*, 314 Md. at 638-40 (holding that evidence related to various robberies was admissible under the identity exception where a right-handed robber, wearing a mask and gloves, entered a Safeway store around the same time on multiple nights, stood on the checkout stands holding a gun and demanded money); *Solomon*, 101 Md. App. at 370-77 (holding that evidence related to three separate car-jackings was admissible under the identity exception where "[t]he three victims … were each unescorted women who had just gotten into an automobile or who were standing beside an automobile with the ignition keys out."). And, although each robbery may have included some distinct circumstances, the multitude of similarities, when considered together, were more than sufficient to establish the evidence's special relevance in establishing appellant's identity. *See, e.g., Faulkner*, 314 Md. at 639 (noting that, in an analysis as to whether the identity exception is applicable, the "evidence should be considered as a whole, instead of as a set of unrelated parts."); *Garcia-Perlera*, 197 Md. App. at 548-49 (holding that evidence of other crimes was admissible under the identity exception and noting that, "[w]hile there are slight

differences between the crimes in this case, the record evidence also reveals overwhelming similarities among them."); *Moore*, 73 Md. App. at 48 ("Although some of the common 'marks' proffered by the State are themselves unremarkable and therefore entitled to little or no weight, others, in combination do tend to show a *modus operandi* that is distinctive.").

Considering the evidence's mutual admissibility, we hold that the trial court did not abuse its discretion in denying appellant's motion to sever. The considerations of judicial economy, namely, the conservation of time and resources in having one trial instead of four, far outweighed the unlikely potential for prejudice. Again, "while the possible prejudice to a defendant from a joint trial is one of the factors to be weighed, 'judicial economy is a heavy counterweight on the joinder/severance scales.'" *Cortez*, 220 Md. App. at 697 (2014) (quoting *Solomon*, 101 Md. App. at 346).

Appellant also argues that he was prejudiced because he was denied "the opportunity to limit his testimony to matters relating to the third and fourth robberies." Relying on *Bussie v. State*, 115 Md. App. 324 (1997), appellant claims that, in order to prove prejudice in the context of severance, a defendant must demonstrate that he had "important testimony" to give regarding one offense and "a strong need to refrain from testifying" regarding the other offense(s). Appellant contends that in his case "it was obvious that [he] had important testimony regarding the last two robberies and a strong need to refrain from testifying regarding the first two robberies – his vehicle was only connected to the third and fourth robberies, and his presence was only established shortly before the fourth robbery." Appellant also claims that he was prejudiced by the joinder

because it allowed the State to question him "about matters relating to the charges with the least evidence, denying him the option of putting the State to its proof on those charges."

We remain unconvinced. Appellant's reliance on *Bussie* is misplaced. In that case, we held that the evidence of other crimes was *not* mutually admissible and then discussed prejudice with respect to a defendant's decision to testify when there has been a *misjoinder* of charges. *Id.* at 338. In so doing, we noted:

> We approach with caution the discussion of prejudice. Our contemplation of prejudice here should not be confused with the prejudice/probative value balancing test required of the trial judge as the final step in both severance and "other crimes" cases. The trial judge, in those final stages, is charged with conducting a balancing test teeming with discretionary leeway and he or she may deny severance despite substantial prejudice to the defendant. In fact, no Maryland appellant court has ever determined that a trial judge has abused that discretion. *See Solomon*, 101 Md. App. at 348 n. 1, 646 A.2d 1064. We, on the other hand, after divining the initial "mutual admissibility" requirement to have been unsatisfied, review to determine if the defendant was prejudiced in any way by that error.

Id.

Here, unlike in *Bussie*, the other crimes evidence was mutually admissible. Thus, our contemplation of prejudice, and our assessment of the court's "discretionary leeway," must be made within that context. With that in mind, the fact that appellant was denied the opportunity to limit his testimony to certain crimes, where evidence of those crimes was mutually admissible, carries little weight. *See Id.* at 343 ("[A]t a properly joined trial, a defendant may not limit the State's cross-examination to a limited number of charges."); *See also Grandison v. State*, 305 Md. 685, 708 (1986) ("We are unable to find any authority for the proposition that a trial court is required to grant a motion for separate trials as a

matter of right to a criminal defendant upon an allegation by that defendant that he wishes to testify on less than all counts charged against him."). At the very least, we cannot say that the court abused its discretion in determining that severance was unwarranted under the circumstances. *See Solomon*, 101 Md. App. at 348 (noting that, even if the potential prejudice from the joinder of multiple offenses outweighed the probative value of the other crimes' evidence, "[j]udicial economy may readily 'trump' [those] concerns.").

SUPPRESSION

Appellant next contends that the trial court erred in refusing to consider his second motion to suppress, which he filed prior to his second trial. Appellant maintains that, because he was granted a new trial following his first appeal, the "slate was wiped clean" and his case returned to the stage of criminal proceedings at which pretrial motions could be filed. Appellant maintains, therefore, that he was "entitled," pursuant to Maryland Rule 4-252, to have his motion heard, unless his claim was precluded. And, appellant argues, his claim was not precluded because, at the suppression hearing prior to his first trial, he never asked the court to suppress evidence seized pursuant to the search warrants, which was the basis of his second motion to suppress. Appellant also argues that, because his challenge to the search warrants was not "fully heard and considered" prior to his first trial, the trial court had no discretion under Rule 4-252 to deny consideration of his motion based on the prior suppression ruling. That is, the court was not bound by the prior suppression ruling because it "had no prior ruling to bind itself to."

Maryland Rule 4-252 states that certain matters, including those involving an unlawful search and seizure, "shall be raised by motion in conformity with this Rule and if not so raised are waived unless the court, for good cause shown, orders otherwise[.]" Md. Rule 4-252(a). The Rule further provides that, ordinarily, "[m]otions filed pursuant to this Rule shall be determined before trial and, to the extent practicable, before the day of trial[.]" Md. Rule 4-252(g)(1). If the motion is to suppress evidence, and the court denies the motion, "the ruling is binding at trial unless the court, on the motion of a defendant and in the exercise of its discretion, grants a supplemental hearing or a hearing *de novo* and rules otherwise." Md. Rule 4-252(h)(2)(C). Moreover, "[w]hen such [a] motion has been fully heard and considered and there is no new evidence *which was unavailable* at the first hearing, the trial judge may exercise his discretion and bind himself by the prior ruling whether the proceeding is the original trial or a new trial." *Logue v. State*, 282 Md. 625, 628 (1978). (emphasis added)

In addition, a trial court, following the granting of a new trial, has the discretion to refuse to consider a suppression issue that could have been raised at a prior suppression hearing. We addressed this issue in *Channer v. State*, 94 Md. App. 356 (1993). There, the defendant, prior to his first trial, filed two written motions pursuant to Maryland Rule 4-252. *Id.* at 361, 365. The first motion challenged the voluntariness of statements he made to the police, and the second motion challenged the validity of a search warrant. *Id.* at 361, 365. At the suppression hearing that followed, the defendant, for reasons not disclosed, elected not to pursue his challenge to the search warrant. *Id.* at 365-66. And, although the

defendant did pursue his challenge to the voluntariness of certain statements, he did not challenge the voluntariness of one particular statement, which he had made to the police in a bathroom around the time of his arrest. *Id.* at 361-63. In the end, the defendant's motion was denied, and trial proceeded. *Id.* Ultimately, a mistrial was declared, and a new trial was ordered. *Id.* at 359. Prior to the second trial, the defendant refiled his motion challenging the search warrant and filed a new motion seeking to suppress the statement he had made to the police in the bathroom. *Id.* 361-63, 365-66. The court refused to consider the motions, and the defendant was later convicted. *Id.*

On appeal, this Court held that the court's refusal to consider the motions was not an abuse of discretion. *Id.* at 363-66. Regarding the challenge to the statement, this Court, citing *Logue v. State, supra*, and Rule 4-252(g)(2), explained that "a judge at a second trial may deem an argument waived where, as here, the defendant could have incorporated the argument into a motion to suppress made prior to his first trial but, for whatever reason, failed to do so." *Id.* at 363-64. Regarding the challenge to the search warrant, this Court explained that "just as a judge presiding over a defendant's second trial may exercise his discretion by refusing to reconsider a motion to suppress that was fully heard before the first trial, the judge need not consider a motion to suppress, or an issue raised therein, that was not timely argued during the motions hearing before the first trial." *Id.* at 366.

Against that backdrop, we hold that the trial court did not err in refusing to consider appellant's second motion to suppress. Like the defendant in *Channer*, appellant could have filed his motion prior to his first trial, but for whatever reason he chose not to. As

such, the court had the discretion to refuse to consider that motion, and we do not consider that discretion to have been abused.

JUDGMENTS OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.