UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2334

September Term, 2014

TEVIN HINES

v.

STATE OF MARYLAND

Meredith,
Reed,
Friedman,

JJ.

Opinion by Meredith, J.

Filed: December 2, 2015

At the conclusion of a five-day jury trial in the Circuit Court for Baltimore City, Tevin Hines, appellant, was convicted of murder in the first degree, attempted murder in the first degree, conspiracy to commit robbery with a deadly weapon, use of a handgun in the commission of a crime of violence, assault in the first degree, robbery with a deadly weapon, and conspiracy to commit robbery with a deadly weapon. The trial court sentenced appellant to life imprisonment with all but thirty-five years suspended. This timely appeal followed.

QUESTIONS PRESENTED

Tevin Hines presents the following questions for our review:

> I. Did the trial court err by denying appellant's motion to sever his case from Dorrien Allen's case for trial?
>
> II. Did the court below err by denying appellant's motion to suppress evidence of the identification made by Brandon Gadsby from a photo array?
>
> III. Did the trial court abuse its discretion by admitting cumulative and unduly prejudicial autopsy photographs?
>
> IV. Is the evidence legally insufficient to sustain appellant's convictions?

Because we answer the first question in the affirmative, we will reverse appellant's convictions, and remand for a new trial.

FACTS AND PROCEDURAL HISTORY

On the morning of January 15, 2013, Brandon Gadsby, twenty years old, and his girlfriend, Michelle Adrian, seventeen, drove in Gadsby's truck from Frederick County to Baltimore City for the express purpose of buying heroin. Gadsby and Adrian entered Baltimore City via Edmondson Avenue and proceeded down several residential streets before two young men waved Gadsby's vehicle over. One man, whom Gadsby later

identified as Dorrien Allen, eighteen years old, wore an orange jacket; and the other man later identified as appellant, also eighteen, wore a black jacket and black beanie cap. Gadsby testified that he stopped his truck on the side of the street and the two men approached the passenger side, where Michelle Adrian was sitting. Gadsby recounted that Allen asked if he wanted "boy or girl," slang terms Gadsby understood to mean "heroin or cocaine." Gadsby said "boy," whereupon appellant told Allen that he would meet him "over there." Following this exchange, Allen entered the truck and sat on the passenger side of the truck's bench seat.

Gadsby testified that appellant walked toward the back of the truck while Allen directed Gadsby to drive to the 3900 block of Mulberry Street, approximately two or three blocks from where Gadsby encountered the two men. Gadsby parked in a lot adjacent to a cemetery. Allen exited the truck and disappeared from view when he entered an alley. According to Gadsby, Allen returned with appellant, but only Allen approached Gadsby's truck. Appellant remained in the alley. Gadsby testified that Allen returned to the passenger side of the truck and returned to the bench seat. Gadsby recounted that he heard appellant say, "not yet, not yet," apparently indicating that they should wait until a nearby garbage truck was out of sight.

Gadsby testified that, after the garbage truck disappeared from view, Dorrien Allen pulled out a handgun. Gadsby described what happened next:

> [BY BRANDON GADSBY]: I – he said, ["]don't fuckin' move["] and I reached for my keys and, to start my truck and they he said, ["]are you trying to die[?"], and that's when fire – before I could even look at him the first shot got fired and shattered the window next to me.

Q. [BY PROSECUTOR]: Okay. At that time did you know that you were shot?

A. No, Sir.

Q. So, after the Defendant shoots, after saying, were you trying to die, what happened then?

A. I handed – I reached out the money and said ["]here["], and I said, ["]take, take anything you want.["] And that's when he took the money outta my hand and –

Q. And that money, what was that money being used to buy?

A. Heroin.

Q. For whom.

A. For me and my girlfriend.

Q. So you guys took out that money together?

A. Yes, sir.

Q. Okay. And how much money was it?

A. It was $120.00.

Q. And what happened after – okay. So you hold up the money. And how do you hold it up? Is it in a bag? Is it –

A. I pull, I – it was underneath my leg. I pulled it out from underneath my leg and handed it out to him with my left hand.

Q. Okay. And so you hand it out to the Defendant. Then what happens?

A. That's when he had grabbed the money out of my hand and stepped out of my truck, or opened the door to my truck.

Q. Okay. And where is your truck positioned now?

A. It's still sitting at the same place facing the cemetery with the houses to my left and houses behind me.

Q. Okay. Excuse me. So, the Defendant steps out of your truck and then what happens?

A. He continued firing.

Q. Well, let's slow it down. He steps out of your truck and then what do you see him do?

A. I – at that time I just heard the second shot and it didn't, it wasn't –

Q. He steps out of your truck. Does he leave the door open or closed?

A. He leaves it open.

Q. Okay. And then what does he do with the gun, if you know?

A. He aims it towards me and my girlfriend.

Q. Okay. He aims it towards you and your girlfriend. And about how far away from the frame of the door of your truck is the end of that pistol?

A. It's right in – it's right inside the frame of my truck.

Q. Just right at the frame?

A. Yes, sir.

Q. Okay. And about how many feet wide is the bench [seat] of your truck?

A. Probably twice this stand right here.

Q. Twice that stand?

A. Yes, sir.

Q. Okay so once the Defendant –

A. Now we're estimating about six and a half, seven feet.

Q: So about seven feet.

A: Yes, sir.

Q: Okay. Now, once the Defendant points the gun, what does Ms. Adrian do?

A: She took cover and –

Q: What do you mean she took cover? What did she do?

A: She went in the fetal position.

Q: Okay. Towards which way? Towards the passenger door or away from the passenger door?

A: By that time I was also in the fetal position, so –

Q: How close was she to you?

A: Right next to me.

Q: And how close are you to your driver's side door at this point?

A: I was right next to it.

Q: And you said that she got in the fetal position and what did you do?

A: I also went in the fetal position.

Q: And then what did you hear, see or feel next?

A: I just heard bang, bang, bang, bang, bang. I couldn't tell you how many shots were fired.

Michelle Adrian died from multiple gunshot wounds. Gadsby, who survived the shooting, testified that the shooter in the orange jacket fled through a hole in the fence bordering the cemetery. Gadsby later identified Allen and appellant in photographic arrays

provided to him by Detective Joshua Fuller of the Baltimore City Police Department Homicide Division.

On January 15, 2013, at approximately 9:30 a.m. — *i.e.*, about one hour before the shooting — Officer Kevin McLean, a patrol officer assigned to the Southwestern District of the Baltimore City Police Department, observed Allen and appellant in front of the Normandy Food Market located at 423 Normandy Avenue. Officer McLean was familiar with Allen and appellant based upon the officer's experience in the neighborhood. He testified that he had encountered Allen approximately fifty or sixty times over seven years, and had known appellant for two years. About twenty minutes after he observed Allen and appellant in front of 423 Normandy Avenue, Officer McLean drove around the corner to a convenience store located at 3939 Edmondson Avenue, which Officer McLean routinely checked upon while on patrol. At that location, he observed Allen, "wearing a bright orange puff jacket and blue jeans," and appellant, "dressed in black," enter the store and exit almost immediately upon seeing Officer McLean in his police cruiser.

At around 10:47 a.m., Office McLean received a dispatcher's call reporting a shooting in the rear of the 3900 Mulberry Street, two blocks from the convenience store located at 3939 Edmondson Avenue. Officer McLean responded to the scene of the shooting, and, upon seeing that Gadsby and Adrian were suffering from gunshot wounds, McLean asked Gadsby for a description of the shooter. Officer McLean testified regarding the description provided by Gadsby:

> A. [BY OFFICER MCLEAN] He told me it was a black male wearing a orange jacket and blue jeans.

Q. [BY PROSECUTOR] And what other description, if any?

A. That, that was, he was dark complected and he had short hair.

Q. Thank you. And what, if anything, did you do based on that information?

A. Being that I had seen an individual known to me as Dorrien Allen in that area approximately 15 minutes earlier, I immediately got on the air and told, gave that information out and told 'em that a possible suspect was Dorrien Allen.

At about 4:45 p.m., on the afternoon of the shooting, Detective Joshua Fuller observed Dorrien Allen walking on the street. The officer detained Allen for questioning. During the recorded interview, the detectives asked Allen what he had done earlier in the day, and Allen responded that he had been home alone until 11:30 a.m. or so. But, during the same interview, when Allen was shown surveillance video recorded at the convenience store that morning, Allen admitted that he was one of the persons shown in the video. The detective's recorded interview of Allen was played for the jury.

Officer McLean later identified Dorrien Allen in a photo array. Officers canvassed the cemetery, where they found an orange jacket. Photographs recovered from Allen's cell phone showed him wearing the orange jacket. DNA samples taken from the orange jacket matched Allen and two other individuals. A black beanie cap which was also found in the cemetery did not lead to a DNA profile; technicians failed to find any genetic material on the cap.

After the homicide detectives learned the identity of appellant, a warrant was issued for his arrest. Allen did not testify at trial. Appellant properly preserved the issues discussed below in pre-trial motions and at trial. Appellant also moved for a mistrial and requested

a jury instruction limiting the admissibility of Allen's recorded statement. Both Allen and appellant were convicted of various offenses relating to the shooting of Gadsby and Adrian.[1] We shall include additional facts as pertinent to the issues on appeal.

I. Motion to Sever Hines's Case from Allen's

Appellant contends that the trial judge erred by denying his motion to sever his case from Dorrien Allen's. Under Maryland law, motions to sever criminal cases are governed by Maryland Rule 4-253, which provides:

> (a) Joint Trial of Defendants. On motion of a party, the court may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses.
>
> * * *
>
> (c) Prejudicial Joinder. If 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.

The Court of Appeals has explained: "[P]rejudice 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**." *State v. Payne*, 440 Md. 680, 718 (2014) (emphasis added) (quoting *Ogonowski v. State*, 87 Md. App. 173, 186–87 (1991)).

[1] Allen's appeal has been addressed in *Dorrien Allen v. State*, No. 2161, September Term, 2014.

Hines asserts that he was prejudiced by having to be tried jointly with Allen because the prosecution introduced Allen's out-of-court statement to homicide detectives. The recorded interview would have been inadmissible hearsay if Hines had been tried separately. In the statement, Allen asserted that he remained home, alone, from around midnight the night before the shooting until around midday on the day of the shooting, when Allen left his home to record a music video at his friend "Mike's" house in the 300 block of Lyndhurst Avenue. In the statement, Allen claimed not to know "Mike's" real name, and he claimed not to recognize Hines when confronted with the fact that the two were shown standing together in surveillance video taken shortly before the shooting. Furthermore, the 300 block of Lyndhurst Street was the location of Hines's residence.

The trial court admitted Allen's statement into evidence, but instructed the jury that the statement was only to be considered as evidence against Dorrien Allen.[2] During the State's direct examination of Detective Fuller, the following portion of Allen's recorded statement was played for the jury:

> Q. [BY DETECTIVE CAREW] Okay. All right. So you're saying that you did not leave your house until 12:00 noon?
>
> A. [BY DORRIEN ALLEN] Yes.
>
> Q. Okay. Where did you go?

[2] The trial judge instructed: "Now, some of the evidence in this case is applicably (sic) only to one of the defendants and does not have any effect on the other person. Specifically I address your attention to the statement made by Mr. Allen. It was only admitted against him and not against Mr. Hines. You must consider such evidence only as it relates to Mr. Allen, as I told you during the trial, each defendant is entitled to has (sic) his case decided separately on the evidence it applies to that person."

A. I went to the studio.

Q. You went right to the studio?

A. Yeah, I had in my mind I was going there, so I was ready to hit.

Q. You went right from 639 Yale Avenue [Dorrien Allen's residence] right to —

A. Lyndhurst.

Q. To Lyndhurst. What address on Lyndhurst?

A. I don't know the address on Lyndhurst, I know it's like the 300 block.

Q. 300 block of Lyndhurst. And who lives there?

A. I know Mike live there and like I know he probably got the rest of the family household, I don't really pay attention.

* * *

Q. All right. So what time did you get to that house, the studio at the 300 block of Lyndhurst?

A. I don't know the time I got to the house, probably, I don't know, it's probably, you know, cuz by the time I was – I was probably getting to his house, I don't know what time it probably was, I don't know, it was probably going on 1:00 something, I don't know.

Q. And who did you see at the house?

A. What you mean who did I see at the house?

Q. When you went to the studio, who did you talk to or–

A. I was talking to Mike.

Q. Mike.

A. Me and Mike was the only one in there at the time, that's why me and him had left out and went to the store and that's how the officer had grabbed me, I was with Mike.

Q. Oh, when the officer grabbed you, you were with Mike?

A. Yes.

Q. What is Mike's real name?

A. I don't know his real name.

Q. All right. So that's all you did for the entire day. You left at noon, you went to Lyndhurst and then you came outside and the officers grabbed you?

A. Yeah, we was going to the store and —

Q. What store were you going to?

A. We was going to walk around to Normandy.

* * *

DETECTIVE CAREW: Who is this gentleman you're with you? (sic)

MR. ALLEN: I don't know him. He just give me some change so I don't even know him.

DETECTIVE CAREW: You just walked to the store together and he gave you money?

(Whereupon, the taped statement was stopped in the courtroom.)

[BY PROSECUTOR]:

Q. And at that part of the video, what are you guys looking at?

A. [BY DETECTIVE FULLER] I'm indicating Mr. Hines on the video.

Q. And before, just like 30 seconds earlier, we're talking about where Mr. Allen is being shown the video and he identifies somebody as himself, who is he identifying?

A. Mr. Allen – you can see his face clearly on the video but Mr. Allen in the video wearing the orange jacket.

Q. That's who he identifies as himself?

A. Correct.

(Whereupon, the taped statement was resumed as follows:)

* * *

Q. [BY DETECTIVE CAREW] So let me ask you a question, all these questions that we've asked you –

A. I'm cold, sir.

Q. [BY DETECTIVE FULLER] (Inaudible).

A. **I don't know nothing else, sir, that's all I told you. And I told you, I was with Mike, we (inaudible) in the studio, that's it, sir. I don't know nobody else that live on Lyndhurst Street.**

(Emphasis added.)

On appeal, appellant contends that the trial court's decision to try appellant and his co-defendant together prejudiced appellant because, had he been tried separately, Allen's statement would have been inadmissible, whereas, at the joint trial of appellant and Allen, Allen's statement was admissible as the statement of a party-opponent. Appellant therefore argues that he was prejudiced by the statement's admission at trial. He contends that "[Allen's statement] together with Detective Fuller's testimony, connected [Hines] to the crime." Detective Carew's assertion to Allen that "Mike" lived at 301 Lyndhurst Avenue,

which detectives knew was Tevin Hines's address, is additional evidence connecting Hines and Allen:

> DETECTIVE CAREW: . . . Can you just tell us where the friend lives that was with you?
>
> MR. ALLEN: I don't know where he lives.
>
> DETECTIVE CAREW: Try 301 Lyndhurst.

The State responds that Hines suffered no prejudice from having the otherwise inadmissible interview of his co-defendant placed before the jury:

> Allen's statement to the police did not implicate Allen or anyone else in the crime. Nor did it mention Hines in any context. Allen told police that he had nothing to do with the crime, but rather, that he had spent the day in question with a friend named "Mike" at a recording studio on the "300 block of Lyndhurst."

As noted above, Rule 4-253(c) provides for the circuit court to order separate trials "[i]f it appears that any party will be prejudiced by the joinder for trial of counts, . . . or defendants . . . ." The Court of Appeals examined the application of the predecessor of Rule 4-253 in *McKnight v. State*, 280 Md. 604 (1977). In *McKnight*, the Court explained, *id*. at 610:

> The reasoning behind the rule permitting a joint trial of crimes where the evidence would be mutually admissible is evident. Where evidence of one crime would be admissible at a separate trial on another charge, a defendant will not suffer any additional prejudice if the two charges are tried together. It is equally clear, however, 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.

The *McKnight* Court concluded 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. The Court rejected the State's argument that "any prejudice resulting from the joint trial of the four robberies was obviated by the cautionary instructions . . . ." *Id*. at 614. Noting that, in other circumstances, the law presumes that a jury will be able to comply with cautionary instructions, the *McKnight* Court said, *id*. at 615:

> [W]e are unwilling to make that assumption in circumstances such as these, where we have said that the prejudicial effect of the evidence heard by the jury outweighs its probative value. In the context of this case, where we have already rejected the "simple and distinct" test, the cautionary instruction simply cannot cure the prejudice.

In *Graves v. State*, 298 Md. 542, 545-46 (1984), the Court of Appeals further emphasized the critical issue of whether evidence would be mutually admissible even if the joined offenses were tried separately, stating:

> The *McKnight* holding took away the discretion of the trial judge presiding at a jury trial to join similar offenses where the evidence as to them was not mutually admissible. As we have indicated, in such circumstances, there was prejudice as a matter of law which compelled separate trials. The rationale underlying the *McKnight* holding was our concern that a jury would be unable to set aside the likely prejudice engendered by the joinder. We even questioned the ability of a jury to disregard evidence which was inadmissible on one of the charges although limiting instructions were given by the court. We recognized that the law frequently permits the jury to hear evidence admitted for a limited purpose, and presumes that the jury will comply with an appropriate instruction. "But," we declared, "we are unwilling to make that assumption in circumstances such as these. . . ." *McKnight*, 280 Md. at 615, 375 A.2d 551.

The Court of Appeals further stated in *Graves*, *id*. at 547:

> The question then is whether a given defendant is in fact prejudiced by the joinder. In order for a judgment to survive in the face of a similar offense joinder with evidence not mutually admissible, we think that the record must be sufficient to show that the defendant was not in fact prejudiced by the joinder. *This would not be feasible as to a jury trial.*

(Emphasis added.)

Writing for this Court in *Solomon v. State*, 101 Md. App. 331, 340 (1994), Judge Moylan observed:

> The first ground-breaking step taken by the *McKnight* decision was to hold that, **in a jury trial at least, severance was absolutely mandated, as a matter of law, when the evidence with respect to the separate charges (*or, presumably, with respect to separate defendants*) would not be mutually admissible. In a jury trial, on this issue no discretion remains**.

(Emphasis added.)

In other words: "**In a jury trial at least, the mutual admissibility of evidence had become the necessary precondition for ordering the joinder for trial of separate defendants** or separate charges." *Id.* at 341 (emphasis added). *See also Morris v. State*, 418 Md. 194, 210 n.9 (2011) ("If the evidence is not mutually admissible and prejudices the defendant (against whom it is inadmissible), then severance is proper normally.").

Here, the State does not contend that Allen's recorded interview would have been admissible at a separate trial of Hines. Rather, the State contends that "Allen's statement to the police did not implicate Allen or anyone else in the crime. Nor did it mention Hines in any context." In the State's view, Allen's recorded statement "in no way 'confounds' Hines's defense. Hines's defense was the same as Allen's — mistaken identity." And, the State contends that, in any event, "any error was harmless."

We are not persuaded beyond a reasonable doubt that the jury's view of Hines's participation would have been unaltered if Hines had been tried separately at a trial at which Allen's recorded interview was not played for the jury. We cannot say beyond a reasonable doubt that this evidence did not influence the jury's verdict. *See Dionas v. State*, 436 Md. 97, 108 (2013); *Dorsey v. State*, 276 Md. 638, 659 (1976). Despite Allen's effort to mislead the detective during the interview as to his whereabouts on the morning of the robbery, and despite Allen's effort to avoid admitting that he had been with Hines on the day of the shooting, we can infer from the fact that the State played the interview for the jury that Allen was unsuccessful in deflecting suspicion. On the contrary, it appears that Allen's statements were, on the whole, inculpatory as to both Allen and Hines. Allen admitted that he was the individual in the video surveillance recording (standing next to an individual who was clearly Hines), and admitted that he had spent time on the day of the shooting at a residence on Lyndhurst Street in the same block where Hines lived. Allen's statements to the police indicated he was trying to cover up his activities on the day of the shooting, and, to the extent the jury concluded Allen was lying to the officers, the lack of credibility also prejudiced Hines, who was Allen's associate and co-defendant.

Although the State now characterizes the interview as "Allen's self-exculpating statement," we deem it more likely that the jury viewed it as one more bit of incriminating evidence that contributed to the jury's finding of guilt. In other words, we conclude that Hines was prejudiced by having to defend himself against this evidence that would not have

been admissible had he been tried separately. We will reverse the judgments, and remand for a new trial.

Because the remaining questions may arise again upon remand, we will address appellant's other three questions.

II. Improperly Suggestive Identification

Hines contends that the trial court erred by admitting evidence of Mr. Gadsby's identification of Tevin Hines in a photographic array. When reviewing such a charge, "[w]e must make an independent constitutional evaluation . . . by reviewing the relevant law and applying it to the unique facts and circumstances of the case." *In re Matthew S.*, 199 Md. App. 436, 447 (2011). In *In re Matthew S.*, Judge Graeff set out the test for evaluating an identification:

> Courts engage in a two-step inquiry in evaluating due process challenges to identification procedures alleged to be unduly suggestive. *Id.* at 252, 991 A.2d 122. In the first step, "'[t]he accused, in his challenge to such evidence, bears the initial burden of showing that the procedure employed to obtain the identification was unduly suggestive.'" *Id.* (quoting *Gatewood* [*v. State*], 158 Md. App. [458], 475 [(2004)]). "[I]f the identification procedure is not unduly suggestive, then our inquiry is at an end." *Id.*

The identification procedure in this case was not unduly suggestive. Mr. Gadsby was shown State's Exhibit 22, which presented photographs of six black men wearing white shirts. Four of the young men wore "V-neck" tee shirts, one wore a tank top undershirt, and Hines wore a white T-shirt with a rounded collar. Hines's counsel argued: "[M]y client, the one we're focused on, is wearing a shirt that no one else is wearing other than they're wearing all white." The circuit court rejected the claim that appellant's photo was so

distinctive that the victim would be more likely to select that photograph. The court explained:

> This is a situation where virtually everything about these people is the same. It is done so that no one stands out and that someone could pick anyone here, literally.
>
> This is as clean an array as could be done. I don't think that the clothing that someone's wearing has any significance in the photographs unless the odd circumstance where the person is wearing the same clothing they were when they committed the crime. Then it might have some suggestion. But the witness never saw the shirt or undershirt that the perpetrator he was identifying was wearing. So I don't believe that anything about these photographs is in any way suggestive, not even with the most subtle of persuasive technique.
>
> I find that the array on its face is clean. I'm satisfied that the procedures were according to the book and that nothing was done to suggest the identification of either of these defendants. So the motion to suppress is denied.

The Supreme Court has explained that, until there is a finding of unnecessary suggestiveness, the Due Process Clause is not even engaged: "[D]ue process concerns arise only when law enforcement officers use an identification procedure that is both suggestive and unnecessary." *State v. Hailes*, 217 Md. App. 212, 268 (2014) (citing *Perry v. New Hampshire*, 565 U.S. 716, 725 (2012)), *aff'd*, 442 Md. 488 (2015).

As Judge Moylan explained in *Hailes*, *supra*, 217 Md. App. at 268:

> An extrajudicial identification that is not impermissibly suggestive will not be suppressed. Any extrajudicial identification that is ruled to be NOT IMPERMISSIBLY SUGGESTIVE will not be excluded. There is no additional inquiry or further analysis that is required. Any residual question as to the reliability of the identification is a matter to be fought out by examination and cross-examination and is ultimately to be resolved by the jury. It is quintessentially an issue of fact and not an issue of law.

Here, there was no impermissibly suggestive identification procedure; therefore, we need not proceed to the second step of analyzing the reliability of Gadsby's identification.

III. The Autopsy Photographs

Hines contends that the circuit court erred by admitting photographs from the autopsy of Michelle Adrian. Specifically, counsel for Hines objected to the photographs' graphic nature, and the fact that they depicted the victim's genitals. In addition, he contends that the photos were needlessly cumulative in light of the testimony of Assistant Medical Examiner Dr. Ling Li. Hines asserts that the prejudicial effect of the photographs substantially outweighed their probative value; *see* Md. Rule of Evidence 5-403.

On appeal, Hines contends: "[T]he jury did not need to see photographs of the victim to determine whether or not Appellant played a role in her death. His defense was mis-identification." Further, he asserts: "It is possible that a juror's reaction to the images of Michelle Adrian, deceased, would be to want to hold someone accountable and return a guilty verdict regardless of the strength of the prosecution's case."

The trial court ruled on the objection as follows:

> [COUNSEL FOR HINES]: I object to a couple [of photographs] that have to do with Ms. Adrian's private areas.
>
> THE COURT: Unfortunately, there are holes next to her private areas.
>
> [COUNSEL FOR HINES]: I know. (Inaudible) in the case, Judge. The doctor said what they said. These folks don't need to see all that. They don't add anything to the State's case. They had all the doctor – we know she's dead and she died of the gunshot wounds. It just, it, really all it does is intentionally, you know, inflame somebody if that really bothers them by seeing things and gets them emotional and it doesn't really need to be in this case at all.

> THE COURT: I don't think there's any potential for inflaming the jury in this situation. I think that there is a chance that they could be disgusted with me or disgusted with the State for presenting Ms. Adrian in this state. **I understand that some of these photographs are personal, but each of the photographs other than the first which is face only, are here because there are holes in them. And the holes about which the doctor has testified are relatively complex. I'm going to deny the motions and allow them to come in.**

(Emphasis added.)

Following the colloquy above, the trial judge addressed the jury:

> THE COURT: Now ladies and gentlemen, those photographs are received in evidence. The autopsy is in evidence. These will be in the jury room with you. **The photographs are of the injuries involved which are quite personal and they dramatize the injuries. It's evidence. I receive it because I believe it's necessary.** To the extent that you wish to look at it, you are free to. You are not required to.

(Emphasis added.)

In *Ayala v. State*, 174 Md. App. 647, 680 (2007), this Court affirmed the trial court's admission of ten photographs of the victim's body that were taken at the medical examiner's office. At trial, the photos were presented to the jury in an enlarged format over a video monitor. Rejecting Ayala's challenge, this Court cited *State v. Broberg*, 342 Md. 544, 552 (1996). Although *Broberg* concerned the admission of photographs of a homicide victim while he was still alive, the application of Md. Rule 5-403, described in *Broberg*, is equally applicable to the photographs at issue here. In *Broberg*, the Court of Appeals said:

> [T]he general rule regarding admission of photographs is that their prejudicial effect must not substantially outweigh their probative value. This balancing of probative value against prejudicial effect is committed to the sound discretion of the trial judge. The trial court's decision will not be disturbed unless "plainly arbitrary," . . . because the trial judge is in the best position to make this assessment.

> Photographs must also be relevant to be admissible. We have found crime scene and autopsy photographs of homicide victims to be relevant to a broad range of issues, including the type of wounds, the attackers intent, and the *modus operandi*. . . . The relevancy determination is also committed to the trial judge's discretion.

Broberg, *supra*, 342 Md. at 552 (citations omitted) (footnotes omitted).

In *Broberg*, the Court observed that "photographs may be relevant and possess probative value even though they often illustrate something that has already been presented in testimony. . . . The rationale for allowing photographs to be used to illustrate verbal testimony is that in some cases 'photographs present more clearly than words what the witnesses were attempting to describe[.]'" *Id.* at 553–54 (quoting *Reid v. State*, 305 Md. 9, 21 (1985)). The Court of Appeals has

> ["]permitted the reception into evidence of photographs depicting the condition of the victim and the location of injuries upon the deceased, . . . the position of the victim's body at the murder site, . . . and the wounds of the victim. . . . On certain occasions, photographs have also been admitted to allow the jury to visualize the atrociousness of the crime — a circumstance of much import where the factfinder must determine the degree of murder.["]

Ayala, *supra*, 174 Md. App. at 680 (quoting *Johnson v. State*, 303 Md. 487, 502 (1985)).

The trial judge did not abuse his discretion by allowing the photographs to be admitted.

IV. Sufficiency of the Evidence

Finally, Hines contends that the State failed to present sufficient evidence to sustain his convictions. In reviewing the sufficiency of the evidence, we ask "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v.*

Virginia, 443 U.S. 307, 319 (1979). The testimony of the surviving victim — Mr. Gadsby — identified Hines as one of the two men who robbed him and Ms. Adrian. The weight of that testimony was for the jury to consider. But, viewed in a light most favorable to the prosecution, the testimony of the eyewitness, together with the other testimony presented, was sufficient to support the convictions.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY MAYOR AND CITY COUNCIL OF BALTIMORE.