Circuit Court for Charles County
Case No. C-08-CR-17-000055

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2483

September Term, 2017

TRAMAINE VONDELL DORSEY

v.

STATE OF MARYLAND

Beachley,
Fader,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, J.

Filed: November 21, 2018

A jury in the Circuit Court for Charles County convicted appellant Tramaine Dorsey of reckless endangerment. A judge in that court sentenced him to a term of five years' imprisonment. In this appeal, Mr. Dorsey argues that the circuit court erred: (1) in allowing him to appear at the second day of his trial wearing the same pants and shirt that he wore on the first day; and (2) in refusing to instruct the jury that a defendant does not have a duty to retreat before using deadly force if retreat is unsafe. We conclude that the court did not err in either respect and so affirm.

FACTUAL BACKGROUND

The Underlying Incident

On June 17, 2017, Mr. Dorsey and another individual, Jaquan Gray, were involved in an altercation at a birthday party hosted by Mr. Gray's aunt, Khadijah Johnson, at her home on Tim's Place in Nanjemoy, Maryland. During the incident, Mr. Gray suffered a stab wound to his abdomen. Mr. Dorsey was arrested and charged with first-degree assault, second-degree assault, and reckless endangerment.

At trial, Mr. Gray testified that at the time of the incident he had been drinking for several hours and was with approximately 15 people, some of whom were friends or family members of his. At some point during the evening he observed Mr. Dorsey yelling at Mr. Gray's cousin, Breanna Anderson, while she was sitting inside a parked car near the home. Mr. Gray then approached Ms. Anderson and told her that she had "to get [Mr. Dorsey] out of here" because he "was making a scene" and "was disrespecting her[]." According to Mr. Gray, Mr. Dorsey then yelled at him and began walking toward him. When he got there, Mr. Dorsey threw a punch, which Mr. Gray dodged. After Mr. Gray "counteracted

with a punch," Mr. Dorsey "swung another punch," which hit Mr. Gray in the stomach. The fight then broke up. When Mr. Gray began walking away, he looked down, saw "yellow stuff hanging from [his] stomach," and collapsed.

Ms. Johnson, the host of the party, testified that she knew Mr. Dorsey as Ms. Anderson's then-boyfriend. She explained that at some point that evening, she and Ms. Anderson were in Ms. Johnson's car getting ready to leave when she observed Mr. Dorsey approach Mr. Gray, who was standing with a group of "five to six people." As Mr. Dorsey neared Mr. Gray, both Ms. Johnson and Ms. Anderson got out of the car and tried to "separate the two." After they started fighting, Ms. Johnson heard someone say, "He has a knife, he has a knife." Once the fight broke up and Mr. Gray began walking away, Ms. Johnson saw him fall to the ground. She did not see anyone else get involved in the fight but did see several people trying to pull Mr. Gray back during it.

Ms. Anderson, Mr. Gray's cousin, testified that at the time of the incident she and Mr. Dorsey were living together in a home that was a "one or two" minute walk from where the fight occurred. On the night of the incident, she was sitting in Ms. Johnson's car when she observed Mr. Dorsey and Mr. Gray involved in a confrontation. She got out of the car and observed the two men have an exchange of words before they "started fighting." Ms. Anderson got in between the two and tried to push Mr. Dorsey away, while Ms. Johnson tried to push Mr. Gray away. After they managed to separate the two men and she and Mr. Dorsey were about to leave, Mr. Gray "said something" and he and Mr. Dorsey "started fighting again." Ms. Anderson intervened again and eventually managed to separate Mr.

Dorsey and Mr. Gray. Ms. Anderson and Mr. Dorsey then "just walked home." Ms. Anderson testified that at no point was there anyone other than Mr. Dorsey between her and her home and that as she and Mr. Dorsey were walking away from the fight, "everybody was like kinda behind [them]."

Several other partygoers also testified to the circumstances of the fight. Ms. Johnson's sister testified that several people tried to break up the fight and that "a lot" of people were pulling Mr. Gray away from the fight. James Yeargins, another relative of Ms. Johnson, testified that other people attempted to pull Mr. Gray back from the fight and that no one else was involved in the fight other than Messrs. Gray and Dorsey. Khamaal Gilbert, a friend of Ms. Johnson, testified that he initially tried to hold Mr. Gray back but that he moved out of the way once Mr. Dorsey and Mr. Gray "started swinging."

Charles County Police Officer David Garrison testified that he reported to 4020 Tim's Place in Charles County on the night of the incident after receiving a report of "a fight with a knife in progress." Upon arriving, Officer Garrison observed "a large crowd forming around a body on the ground." When he approached the crowd he found Mr. Gray, who "had a cut on his stomach" and "blood coming out." Mr. Gray was eventually transported to the hospital, where he was treated for a "two to three-inch laceration into his belly." Approximately two hours after arriving at the scene, Officer Garrison went to a nearby residence where he located and arrested Mr. Dorsey.

Mr. Dorsey did not testify.

Mr. Dorsey's Clothing at Trial

On the second day of trial, defense counsel complained to the court that Mr. Dorsey was "wearing the same clothing he wore yesterday." Although counsel had taken four outfits to the jail the prior Friday, he was only permitted to leave one pair of pants and one shirt. He also complained that officers in holding that morning had refused to allow Mr. Dorsey to change into a new shirt. Counsel argued that having Mr. Dorsey "wear the same outfit three days in a row telegraphs to the jury that he is not in the same position as someone who came in off the street." As a result, he argued, Mr. Dorsey's constitutional rights had been violated. He did not request any particular remedy at that time.

Mr. Dorsey's counsel renewed his objection following the lunch break and again at the end of the trial day. On the last of these occasions, the court informed defense counsel that if Mr. Dorsey were to show up the following morning "wearing a jumpsuit," he would be given a new suit of clothes to wear to court and that if he instead wore the same suit of clothes he had on, he would be given a different tie to wear. Although defense counsel was satisfied with the arrangement for the following day, he reiterated his objection to Mr. Dorsey wearing the same shirt and pants on the first two days. In response, the court observed, "for the record, [Mr. Dorsey] is wearing a different look today. He does not have a tie on, he had a tie on yesterday. He has his shirt unbuttoned. So, it is a different look than he had on yesterday."[1]

[1] A similar colloquy followed the next morning when defense counsel reiterated his objection that Mr. Dorsey "was wearing the same outfit" the first two days of trial and the court observed that "it was the same shirt and pants [the first two days], but with a different look because he wasn't wearing a tie and it wasn't exactly the same."

The Jury Instruction Dispute

Mr. Dorsey submitted as part of his proposed jury instructions a request for an instruction on self-defense stating that a defendant, before using deadly force, does not have a duty to retreat if retreat is unsafe. The court denied that request on the ground that the instruction was not generated by the evidence. Instead, the court gave the following instruction: "In addition, before using deadly force, the defendant is required to make a reasonable effort to retreat. If you find that the defendant did not use deadly force, then the defendant has no duty to retreat."

DISCUSSION

I. THE COURT DID NOT ERR IN FAILING TO PREVENT MR. DORSEY FROM HAVING TO WEAR THE SAME SHIRT AND PANTS ON THE FIRST TWO DAYS OF TRIAL.

Mr. Dorsey first argues that the circuit court erred and abused its discretion in "refus[ing] to permit [him] to change his clothes before the next day of trial" and that, as a result, he was "forced to appear in the same shirt and pants, day after day," which created an impression for the jury that he was "in jail." Mr. Dorsey claims that the court's actions violated his "due process and fair trial right not to be forced to appear for trial in any sort of clothing that made it apparent to the jury that a judge had already determined that he should be separated from the community and held in jail."

The State counters that the circuit court "neither erred nor abused its discretion by allowing Mr. Dorsey to appear before the jury in the same pants and shirt on consecutive days of trial." The State maintains that although a defendant should not stand trial before

a jury while dressed in prison clothes, that did not happen here. Indeed, especially because he wore a tie on the first day of trial but not the second, the record contains no indication that any juror would have even noticed that Mr. Dorsey "was wearing the same shirt and pants, let alone drawn the conclusion from that observation that Dorsey was incarcerated pretrial." Moreover, the court took corrective action so that Mr. Dorsey was wearing different clothes on the third day of trial.

"The general rule, well settled in Maryland, is that 'the conduct of a criminal trial is committed to the sound discretion of the trial judge[.]'" *Wiggins v. State*, 315 Md. 232, 239 (1989) (quoting *Hunt v. State*, 312 Md. 494, 506 (1988)); *see also Choate v. State*, 214 Md. App. 118, 151 (2013) ("The conduct of a criminal trial is committed to the sound discretion of the trial court, and the exercise of that discretion will not be disturbed on appeal absent a clear showing of abuse.") (quoting *Bruce v. State*, 351 Md. 387, 393 (1998)). "That control, however, must safeguard the defendant's constitutional rights." *Kelly v. State*, 392 Md. 511, 543 (2006). In other words, "[e]ven though the trial judge 'runs the court,' the right of an accused to a fair trial . . . is paramount." *Wiggins*, 315 Md. at 239 (quoting *Crawford v. State*, 285 Md. 431, 451 (1979)). "If the exercise of discretion results in the denial of a fair trial to a defendant, the discretion is certainly abused." *Wiggins*, 315 Md. at 240.

In *Estelle v. Williams*, the United States Supreme Court held that a defendant's right to a fair trial is violated if she or he is "compelled to go to trial in prison or jail clothing." 425 U.S. 501, 504-06 (1976); *accord Knott v. State*, 349 Md. 277, 284, 292-93 (1998)

(holding that the defendant was prejudiced by being compelled to attend trial "while garbed in his orange, prison-issued jumpsuit"). The Supreme Court noted that "the constant reminder of the accused's condition implicit in such distinctive, identifiable attire may affect a juror's judgment" and that such attire "is so likely to be a continuing influence throughout the trial that . . . an unacceptable risk is presented of impermissible factors coming into play." *Estelle*, 425 U.S. at 504-05. The Supreme Court further noted that although other similarly prejudicial measures may be permissible under certain circumstances, such as physically restraining a disruptive defendant, "compelling an accused to wear jail clothing furthers no essential state policy." *Id.* at 505.

In contrast, the Supreme Court held in *Holbrook v. Flynn*, 475 U.S. 560 (1986), that the presence of four uniformed state troopers seated behind the defendant in the first row of the spectators' section at trial was not inherently prejudicial. *Id.* at 562, 568-69. The Supreme Court distinguished the circumstances there from other practices, such as those presented in *Estelle*, that it had deemed unconstitutional. *Id.* at 568. The critical distinction between the wearing of a prison jumpsuit and the presence of armed officers seated in the courtroom was "the wider range of inferences that a juror might reasonably draw from the officers' presence." *Id.* at 569. In other words, while "shackling and prison clothes" definitely signal that the defendant is in jail, there are multiple possible conclusions that jurors might draw from the presence of armed officers. *Id.* "Indeed, it is entirely possible that jurors will not infer anything at all from the presence of the guards." *Id.* at 570.

Similarly, in *Williams v. State*, 137 Md. App. 444 (2001), this Court held that the trial court did not err in refusing the defendant's request to have his Department of Corrections' identification bracelet removed during trial. *Id.* at 453. "Although a person in an orange jumpsuit might stand out like a proverbial sore thumb, the same cannot be said when a person wears an institution's identification bracelet." *Id.* at 452. We also noted the absence of any evidence in the record suggesting that wearing the bracelet actually branded him as a prisoner or that it would have even been seen and recognized by the jury for what it was. *Id.*

Against that backdrop, we hold that the circuit court did not err in overruling Mr. Dorsey's objection to having to wear the "same outfit" on consecutive days of trial. To begin with, the court expressly found that Mr. Dorsey's "look" on the second day of trial was "different" from that on the first day because he was no longer wearing a tie and because his shirt was unbuttoned. Moreover, the record does not contain even a hint that any of the jurors would have recognized that Mr. Dorsey was wearing the same shirt and pants on both days or drawn any prejudicial conclusions from that fact. We cannot say that Mr. Dorsey's outfit was so inherently prejudicial that he was denied his constitutional right to a fair trial nor can we say that "an unacceptable risk [wa]s presented of impermissible factors coming into play."[2] *Brown v. State*, 132 Md. App. 250, 268 (2000) (determining that the "mere presence" of over ten police officers in the courtroom was not inherently

[2] Mr. Dorsey argues that "defendants who want to make a favorable impression upon the jury would not appear in court wearing the same wrinkled, soiled clothing, day after day." There is nothing in the record to suggest that Mr. Dorsey's clothing was either wrinkled or soiled on either day.

prejudicial where the record did not include any suggestion that the officers sat together or did anything to show force or solidarity).

Additionally, even if we assume that the jury observed and took note of the fact that Mr. Dorsey was wearing the same shirt and pants on consecutive days, that circumstance, like the presence of the security guards in *Holbrook* and in contrast to the jumpsuits at issue in *Estelle* and *Knott*, is subject to a wide range of possible inferences. In other words, although the jury could potentially have inferred that Mr. Dorsey was wearing the same outfit on both days because he was in jail, it could just as easily have inferred that he only had one nice outfit, he liked the look, he thought he had made a good impression on the first day, or he found it comfortable. In short, reason, principle, and common human experience counsel against the automatic presumption that Mr. Dorsey's outfit conveyed his status as a prisoner. Accordingly, Mr. Dorsey's right to a fair trial was not implicated.

We also reject Mr. Dorsey's claim that the circuit court failed to exercise its discretion. When the matter was first brought to the court's attention at the start of the second day of trial, defense counsel did not ask the court to do anything specific; rather, defense counsel simply "noted for the record" that he was objecting to Mr. Dorsey having to wear the same clothes "three days in a row." Nevertheless, the court followed up on defense counsel's objection by making inquiries in an apparent attempt to obtain more information and potentially resolve the issue. By the end of the day, the court had found a solution that worked for the following day. The court did not fail to exercise its discretion.

II. THE COURT DID NOT ERR IN DECLINING TO INSTRUCT THE JURY THAT A DEFENDANT WHO CANNOT SAFELY RETREAT HAS NO DUTY TO DO SO.

Mr. Dorsey also claims that the circuit court erred by refusing to instruct the jury that a defendant who cannot safely retreat has no duty to do so before using deadly force. Mr. Dorsey claims that the instruction was generated by the evidence that it was dark outside; not much light was coming from the house; the "five or six adults who were present during the confrontation" were friends, relatives or otherwise associated with the victim and not with Mr. Dorsey; Mr. Dorsey had been told to leave the party; the victim and "everybody else" had been drinking alcohol; and although Mr. Dorsey "swung first," the victim was "the first to land a punch" and "quickly got the better of [Mr. Dorsey.]"[3]

The State responds that the circuit court "correctly ruled that there was no evidence that could have supported a finding that retreat was unsafe." We agree.

Maryland Rule 4-325(c) provides that a trial court "may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding." "Rule 4-325(c) has been interpreted consistently as requiring the giving of a requested instruction when the following three-part test has been met: (1) the instruction is a correct statement of law; (2) the instruction is applicable to the facts of the case; and

[3] As noted by the State, Mr. Dorsey provided a statement to police, which was then played for the jury, in which he may have indicated that, at the time of his confrontation with Mr. Gray, he "was worried about being jumped by the group." The State argues that that evidence should not be considered here because Mr. Dorsey did not include a transcript of the statement in the record. We need not reach the merits of the State's argument, however, because Mr. Dorsey does not rely on or even mention that evidence in support of his argument. *See DiPino v. Davis*, 354 Md. 18, 56 (1999) ("[I]f a point germane to the appeal is not adequately raised in a party's brief, the court may, and ordinarily should, decline to address it.").

(3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197-98 (2008). Here, only the second part of the test is at issue.

In deciding whether an instruction is applicable to the facts of a case, a trial court must determine "whether there exists 'that minimum threshold of evidence necessary to establish a *prima facie* case that would allow a jury to rationally conclude that the evidence supports the application of the legal theory desired.'" *Vielot v. State*, 225 Md. App. 492, 506 (2015) (quoting *Bazzle v. State*, 426 Md. 541, 550 (2012)). In other words, "the defendant has the burden of initially producing some evidence on the issue . . . sufficient to give rise to a jury issue." *Dashiell v. State*, 214 Md. App. 684, 696 (2013) (quoting *Dykes v. State*, 319 Md. 206, 216 (1990)). "Some evidence" means evidence from any source, including only from the defendant and even if "overwhelmed by evidence to the contrary," that, if believed, would support the instruction. *Dykes*, 319 Md. at 216-17. Because this preliminary determination is a question of law for the judge, we review the court's decision under a de novo standard of review. *Page v. State*, 222 Md. App. 648, 668 (2015).

We hold that Mr. Dorsey, who did not testify in his own defense, failed to generate "some evidence" establishing a *prima facie* case that would have allowed a jury reasonably to conclude that retreat was unsafe. The evidence at trial was that Mr. Dorsey initiated the physical confrontation with Mr. Gray; the only involvement of any other individuals was in attempting to stop the fight; Mr. Dorsey had the opportunity to end the confrontation but

did not; and after the fight was over, Mr. Dorsey left the scene unmolested. No evidence was presented that anyone other than Mr. Gray was aggressive toward Mr. Dorsey. *See Lambert v. State*, 70 Md. App. 83, 94 (1987) (holding that the defendant was not entitled to a self-defense instruction because, in part, "[t]he evidence [did] not suggest that [the defendant] was under attack or threatened with attack by any members of the crowd at the time he chose to use deadly force on the victim."). Nor did any evidence suggest that Mr. Dorsey had anything but a safe and clear path away from the fight and back to his home at all times. *See Barton v. State*, 46 Md. App. 616, 618 (1980) ("[O]rdinarily, to invoke the defense successfully, the defendant must show that it was not possible to retreat safely, either at all or any farther than he had."). Accordingly, the circuit court did not err in refusing to give Mr. Dorsey's requested instruction.

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