

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2484

September Term, 2014

ANTHONY MICHAEL ROUNDTREE

v.

STATE OF MARYLAND

Meredith,
Woodward,
Nazarian,

JJ.

Opinion by Meredith, J.

Filed: July 6, 2016

* 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.

At the conclusion of a two-day jury trial in the Circuit Court for Baltimore County, Anthony Michael Roundtree, appellant, was convicted of the following offenses arising from two separate robberies of 7-Eleven stores: robbery with a dangerous weapon, robbery, theft, and theft of property with value between \$1,000.00 and \$10,000.00. After receiving evidence that Roundtree had multiple prior convictions, the trial court imposed a sentence of 25 years without the possibility of parole for the first robbery, and a sentence of one year and one day, to be served concurrently, for the theft conviction arising from the second robbery. This timely appeal followed.

QUESTIONS PRESENTED

Anthony Michael Roundtree presents the following questions for our review:

1. Did the circuit court err and abuse its discretion in denying appellant's motion to sever counts?
2. Did the circuit court err at the mandatory sentencing proceeding by admitting documents that were not properly authenticated?

Because we find that the circuit court did not abuse its discretion in denying appellant's motion to sever counts, and properly admitted the documents offered by the State at sentencing, we affirm the judgments of the circuit court.

BACKGROUND

First Robbery

On October 27, 2013, Baltimore County Police Officer Matthew Gelazela responded to the report of an armed robbery at a 7-Eleven Store at 2127 York Road in Timonium. Officer Gelazela watched surveillance video from the store. The video depicted two African American male suspects dressed in dark clothing. One was wearing a poncho over a green

jacket and carrying a long rifle. The other suspect was wearing a distinctive jacket with quilting and a white square logo.

Several cartons of Newport cigarettes, lottery tickets and cash, among other items, were taken from the store and placed into trash bags. The video showed the two suspects exiting the store and then fleeing to the left, in the direction of Michael's Café, which is immediately to the left of the 7-Eleven. Baltimore County Police Detective Daniel Goldsmith testified that video footage from Michael's Café showed appellant getting out of a white Nissan Maxima. The video also showed two men wearing the same clothes as the robbers get out of the white Nissan Maxima. Appellant was seen on the video going to his trunk several times.

Second Robbery

On November 4, 2013, Officer Gelazela responded to the report of an armed robbery at a 7-Eleven store at 9709 Beaver Dam Road in Timonium. The store's clerks had been pepper-sprayed by the robbers. Newport cigarettes, lottery tickets, and cash were stolen, along with other items. The items were placed into trash bags. The video surveillance depicted two African American male suspects wearing bandanas. One was a heavy-set male wearing a poncho and carrying a handgun. The clerks' personal cell phones and some prepaid cell phones for sale in the store were stolen.

Later in the day on November 4, 2013, while investigating the October 27 robbery, Detective Goldsmith searched for the white Nissan Maxima that he had seen in the video from Michael's Café. When he spotted the car in the area where lottery tickets from the

robbery had been cashed, he observed appellant publicly selling Newport cigarettes. Detective Goldsmith believed he observed appellant also sell a phone in a pink box to a woman at a gas station.

Appellant was arrested and his car was searched pursuant to a warrant. A BB rifle, Newport cigarettes, and a jacket similar to the quilted jacket worn by one of the suspects were recovered from appellant's car. A BB handgun, a packaged T-Mobile phone, lottery tickets, and Newport cigarettes were also recovered. Appellant claimed he received the lottery tickets as payment for hacking; "hacking" was described for the jury as operating an unlicensed taxi cab.

By indictment filed in the Circuit Court for Baltimore County, the State charged appellant with eighteen counts of criminal conduct related to three separate robberies of 7-Eleven Stores. On September 9, 2014, the Honorable Robert E. Cahill, Jr. heard defense counsel's motion to sever counts related to each of the three robberies. On September 15, 2014, the court issued a written order denying the motion to sever counts. At the beginning of the jury trial on October 7, 2014, the State nol prossed the counts relating to one of the robberies (Counts 11-14). The jury convicted appellant of counts related to both the October 27 robbery and the November 4 robbery. Additional facts will be included as pertinent to the issues on appeal.

DISCUSSION

I. Motion to Sever

Appellant contends that the trial judge erred by denying his motion to sever for trial counts related to each of the separate robberies. As a preliminary issue, the State argues that appellant failed to preserve this issue for appellate review because appellant moved for severance of offenses at a point in time when he was charged with three different robberies, but did not renew his motion for severance after the State dropped the charges relative to one of the three robberies. We conclude that the arguments in support of separate trials of the counts relative to the two remaining robberies were adequately presented to the trial judge, and the State's dismissal of some of the counts did not materially alter the arguments for or against severance. The issue was adequately preserved, and we shall address the issue on the merits.

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.

In *Conyers v. State*, 345 Md. 525, 553 (1997), the Court of Appeals explained:

[T]he analysis of jury trial joinder issues may be reduced to a test that encompasses two questions: (1) is evidence concerning the offense or defendants mutually admissible; and (2) does the interest in judicial economy outweigh any other arguments favoring severance? If the answer to both questions is yes, then joinder of offenses or defendants is appropriate. In order to resolve question number one, a court must apply the first step of the “other crimes” analysis announced in *State v. Faulkner* [314 Md. 630 (1986)]. If question number one is answered in the negative, then there is no need to address question number two. . . .

Whether evidence of separate crimes is mutually admissible because the separate crimes are relevant “to prove motive, intent, absence of mistake, identity, common scheme or plan,” or any other issue within the exceptions embodied in Maryland Rule 5-404(b) is a legal determination which this Court reviews *de novo*. *Solomon v. State*, 101 Md. App. 331, 343 (1994); *Conyers*, 345 Md. at 553. If evidence of the separate offenses is mutually admissible, then the decision regarding the severance of charges for trial is committed to the discretion of the trial judge. *McKnight v. State*, 280 Md. 604, 608 (1977). If the case is being tried to a jury, severance is “mandated, as a matter of law, when the evidence with respect to the separate charges . . . would not be mutually admissible.” *Solomon, supra*, 101 Md. App. at 340.

We first consider whether evidence of each of the two robberies would have been mutually admissible in separate trials. “Evidence of other crimes 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 the propensity to commit crime or his character as criminal.” *State v. Faulkner*, 314 Md. 630, 634 (1986). Other-crimes evidence may be admitted if it tends to establish “motive, intent, absence of mistake, a common scheme or plan, identity,

opportunity, preparation, knowledge, absence of mistake or accident.” *Id. Accord* Maryland Rule 5-404(b).

Here, appellant argues that the evidence regarding the first robbery would not have been admissible in a separate trial of the counts based on the second robbery. Appellant contends that the evidence against him relative to the first robbery was more incriminating. Appellant points out that, viewed in the light most favorable to the State, the Michael’s Café video showed the two robbers exit his vehicle minutes before they committed the robbery, while he was on the scene. The jury could have drawn the inference that appellant participated as a driver for the two robbers. The BB rifle used in that robbery was found in appellant’s car, as were items of clothing that were similar to items worn by the robbers.

But, in contrast, appellant contends, the only evidence linking him to the second robbery was his possession of recently stolen lottery tickets. Appellant also argues that there were many differences between the two robberies, including: the clerks being pepper-sprayed, the clerks’ personal phones being stolen, the robbers covering their faces with bandanas, and evidence that a pistol-type weapon was used in the second robbery. Appellant asserts that these differences were sufficient to bar mutual admissibility of the two separate robberies.

Appellant argues that possession of lottery tickets stolen from the second robbery was not admissible to prove that he participated in the first robbery. Likewise, evidence that appellant was the driver for the first robbery did not prove that he participated in the second robbery. We find the appellant’s argument unconvincing.

The evidence of each of the robberies would be mutually admissible in separate trials as other-crimes evidence relevant to identity.

[I]f the facts surrounding the two or more crimes on trial show that there is a reasonable probability that the same person committed both crimes due to the concurrence of unusual and distinctive facts relating to the manner in which the crimes were committed, the evidence of one would be admissible in the trial of the other to prove identity.

Drew v. United States, 331 F.2d 85, 90 (D.C. Cir. 1964). See *Faulkner*, *supra*, 314 Md. at 639 (“When considered together, these unremarkable characteristics portrayed a specific *modus operandi*.”). The crimes were sufficiently similar in method as to earmark them as the handiwork or signature of the accused. *Faulkner*, 314 Md. at 638.

The robbers struck 7-11 convenience stores, located in the same vicinity of Baltimore County, late at night, during the two-week period covering the last week of October 2013 and the first week of November 2013. Each time, the robbers brandished a weapon, and took Newport cigarettes and lottery tickets. During both robberies, the suspects placed the stolen goods in black trash bags.

Although there were also several differences between the two robberies, that does not preclude mutual admissibility. See *Moore v. State*, 73 Md. App. 36, 48 (1987) (“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.”). The totality of the circumstances in this case shows that the robberies were sufficiently similar to be admissible under Rule 5-404(b).

Because the evidence from both of the robberies was mutually admissible, the decision regarding severance was committed to the discretion of the trial judge. “[O]nce a determination of mutual admissibility has been made, any judicial economy that may be had will usually suffice to permit joinder unless other non-evidentiary factors weigh against joinder.” *Conyers*, 345 Md. at 556.

The State asserts in its brief: “The omnibus trial avoided the wasted resources occasioned by multiple trials in which the whole of the police investigation, including lengthy testimony from lay witnesses, law enforcement officers and investigating detectives, would have to be retold . . . to a jury.” We agree that, under the circumstances, the trial court did not abuse its discretion in determining that the court’s interest in efficiency outweighed any competing concerns favoring severance.

II. Documents at Sentencing

Appellant’s second claim of error is that the trial court improperly admitted certain certified records during the sentencing hearing. Baltimore County Police Officer Chiffon Hampton, a member of the Repeat Offender Unit, testified that she conducts criminal background checks on persons arrested for violent crimes. Officer Hampton provides documentation to the Office of the State’s Attorney, and to the courts, which identifies defendants as repeat offenders. Through her testimony, the State admitted into evidence, over defense objection, the following exhibits: two certified Baltimore City Court case records purporting to show that appellant was previously convicted of a crime of violence; two certified fingerprint cards from the Department of Public Safety and Correctional Services;

a certified arrest print from the Fairfax County Police Department; and a certified arrest print from the Department of Public Safety and Correctional Services.

Appellant contends that the circuit court erred in admitting these exhibits into evidence because the documents were not properly authenticated. Citing Maryland Rule 5-902, appellant argues that the challenged documents were not self-authenticating, and the State produced no authenticating witness from either the Baltimore City Circuit Court, the Baltimore City Police Department, the Fairfax County Police Department, the Maryland State Archives, or the Department of Public Safety and Correctional Services.¹

¹ Maryland Rule 5-902 (a) entitled, “Self-Authentication,” provides in pertinent part:

(a) Generally. As used in this Rule, “certifies,” “certificate,” or “certification” means, with respect to a domestic record or public document, a written declaration under oath subject to the penalty of perjury and, with respect to a foreign record or public document, a written declaration signed in a foreign country which, if falsely made, would subject the maker to criminal penalty under the laws of that country. The certificate relating to a foreign record or public document must be accompanied by a final certification as to the genuineness of the signature and official position (1) of the individual executing the certificate or (2) of any foreign official who certifies that genuineness of signature and official position of the executing individual or is the last in a chain of certificates that collectively certify the genuineness of signature and official position of the executing individual. A final certificate may be made by a secretary of an embassy or legation, consul general, consul, vice consul, or consular agent of the United States, or a diplomatic or consular official of the foreign country who is assigned or accredited to the United States.

Except as otherwise provided by the statute, extrinsic evidence of authenticity as a condition precedent to admissibility is not required with respect to the following:

(continued...)

But the State responds that copies of public records, when certified by the custodian of records, are admissible pursuant to Maryland Code (1973, 2013 Repl. Vol.), Courts & Judicial Procedures Article (“CJP”), § 10-204.²

¹(...continued)

* * *

(4) *Certified Copies of Public Records.* A copy of an official record or report or entry therein, or of a document authorized by law to be recorded or filed and actually recorded or filed in a public office, including data compilations, certified as correct by the custodian or other person authorized to make the certification, by certificate complying with this Rule *or complying with any applicable statute* or these rules.

(Emphasis added.)

² Section 10-204 provides:

Public records — Admissibility generally.

(a) *Admissibility of copies.* — A copy of a public record, book, paper, or proceedings of any agency of the government of the United States, the District of Columbia, any territory or possession of the United States, or of any state or of any of its political subdivisions or of an agency of any political subdivision shall be received in evidence in any court if certified as a true copy by the custodian of the record, book, paper, or proceedings, and if otherwise admissible.

(b) *Provision of copies.* — Except as otherwise provided by law, a custodian of a public record in the State or other person authorized to make a certification under this section shall, upon request, provide a certified copy of the public record to a party to a judicial proceedings or the party’s attorney.

(c) *Certification.* — A certification under this section shall include:

- (1) The signature and title of the custodian or other person authorized to make the certification;
- (2) The official seal, if any, of the office; and

(continued...)

We agree with the State. Professor Lynn McLain explains that:

The definition of “certified” in Md. Rule 5-902(a) is not meant to preclude certification in a form that meets the requirements of an applicable statute, *e.g.*, Section 10-204. As the Committee Note following Md. Rule 5-902(a) explains, the word “document” is a generic term and includes public records encompassed by Section 10-204. As to such a record, compliance with either the Rule or the Statute will be satisfactory.

6A LYNN MCLAIN, MARYLAND EVIDENCE, STATE AND FEDERAL § 902:3 (3d ed. 2013).

The State’s exhibits were each certified by the respective custodian of records. The trial court did not err in admitting the documents at sentencing.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

²(...continued)

(3) A statement certifying that the copy is a true copy of the public record.

(d) *Fee.* — A custodian or other person authorized to make a certification under this section may charge a reasonable fee for providing a certified copy of a public record in accordance with this section.