Circuit Court for Baltimore City
Case No. 121243006

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1128

September Term, 2023

MIZELL JOSEPH TAYLOR

v.

STATE OF MARYLAND

Graeff,
Tang,
Eyler, Deborah S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Eyler, J.

Filed: November 12, 2024

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Maryland Rule 1-104(a)(2)(B).

Mizell Joseph Taylor, the appellant, and codefendant Charles Baldwin were tried jointly before a jury in the Circuit Court for Baltimore City on charges arising out of two fatal shootings and one non-fatal shooting. Mr. Taylor was found guilty of first-degree assault; use of a firearm in the commission of a felony; wearing, carrying, and transporting a handgun on his person; and lesser-included offenses.[1] The court sentenced him to aggregate terms of imprisonment totaling forty-eight years, the first five years without the possibility of parole. This timely appeal ensued in which Mr. Taylor raises a single question:

> Did the trial court commit reversible error by denying the defense motion for a mistrial where a police officer testified about [Mr. Taylor's] refusal to give a statement?

Because the trial court did not abuse its discretion in denying the mistrial motion, we shall affirm the judgments.

FACTS AND PROCEEDINGS

On November 21, 2020, shortly after 6:30 p.m., Baltimore City Police Officer Christopher Valis responded to a report of a shooting in the 700 block of North Grantley Street. Upon arriving, he saw a woman, Brittany McQueen, who had been shot. A man, Mr. Taylor, was standing next to her. Officer Valis called for a medic. Five minutes later, he received a report of additional shooting victims in the 700 block of Linnard Street, a block away. There he discovered a man and a woman on the ground, unresponsive. He

[1] Mr. Baldwin was acquitted of all counts except reckless endangerment, for which he was sentenced to the maximum five years' imprisonment. Md. Code (2002, 2012 Repl. Vol.), Criminal Law Article, § 3-204(b). He noted an appeal that we have addressed separately. *See Baldwin v. State*, No. 1220, Sept. Term, 2023.

and several other police officers rendered first aid, to no avail. One victim was declared dead at the scene and the other was pronounced dead a short while later at the University of Maryland Shock Trauma Center. The victims were identified as Pedro Chesley and Diamond Davis. Both died of multiple gunshot wounds.

Evidence technicians took photographs and collected various items, including cartridge casings, projectiles, and bullet fragments. From the ballistics evidence, police determined that at least two different weapons had been discharged.[2] In addition, the technicians collected a fanny pack containing cash and items belonging to Ms. Davis, as well as several cell phones.

Later that evening, Sergeant Peter Johncox interviewed Mr. Taylor and Ms. McQueen.[3] Mr. Taylor said "they were in the area to meet with their friend[,]" Mr. Baldwin, who "lived on Grantley Street." After he and Ms. McQueen left Mr. Baldwin's house, they "went down to Linnard Street[,]" where "they were approached and robbed and shot by unknown persons."

Thereafter, Sergeant Johncox obtained surveillance video from a woman who lived nearby on Grantley Street. That video showed "a group of people walking from Grantley towards Linnard right before the shooting happened." Further investigation led the police to suspect that Mr. Taylor and Mr. Baldwin were involved in the deaths of the two shooting victims.

[2] Among the items recovered were .380 and .40-caliber cartridge cases.

[3] Sergeant Johncox was the primary investigator on the case for several months, until he was promoted and transferred.

The State's theory of the case was based primarily upon the testimony of Ms. McQueen and witness Leah Thompson, both of whom were present at the crime scene. At the time of the shootings, Ms. McQueen was Mr. Taylor's girlfriend, and Ms. Thompson was Mr. Baldwin's girlfriend. (By the time of trial, both relationships had ended.) Their accounts were not entirely consistent, but on one point they agreed: the shootings were the culmination of a fight between Ms. McQueen and Ms. Davis.

According to Ms. McQueen, earlier on the day in question, she invited Ms. Davis to subscribe to her OnlyFans channel. Ms. Davis refused and "insulted" and "threatened" her. The two women decided to fight that evening. Ms. McQueen and Mr. Taylor arrived at Grantley Street, where they met Mr. Baldwin, Ms. Thompson, and "some other friends" Ms. McQueen could not name. At that time, Mr. Taylor and Mr. Baldwin said they were going to rob Ms. Davis and Mr. Chesley (Ms. Davis's "[o]n-again-off-again boyfriend") before the fight. When the two groups met on Linnard Street, Mr. Taylor "pointed the gun towards" Mr. Chesley and told him, "take your shit off or I'll fucking shoot you." As Ms. Davis was "about to" swing at Ms. McQueen, Mr. Taylor "shot her in the head."[4] Ms. McQueen said that Mr. Taylor and Mr. Baldwin were "doing the shooting," each wielding a black gun. Ms. McQueen was shot twice. She acknowledged that, when she was interviewed by police on the night of the shootings, she told a "different story" because she was "afraid." When she was reinterviewed by the police, she told them the "real story[.]"

[4] The autopsy indicated otherwise. Ms. Davis sustained five gunshot wounds, but none of them were to her head.

Ms. Thompson said that she, Mr. Baldwin, Ms. McQueen, and Mr. Taylor were supposed to meet on the night of the shootings for a "fight." After they arrived at Linnard Street, there was an "argument" and "then next thing you know, they were shooting," and she "ran." She only recalled seeing Mr. Taylor doing the shooting. The shooting started when a car passed, and in her opinion, shots were being fired from that vehicle.[5]

An indictment was filed in the Circuit Court for Baltimore City, charging Mr. Taylor with: (1) first-degree murder of Pedro Chesley; (2) conspiracy to commit robbery with a dangerous weapon against Mr. Chesley; (3) use of a firearm in the commission of a crime of violence; (4) first-degree murder of Diamond Davis; (5) conspiracy to commit robbery with a dangerous weapon against Ms. Davis; (6) use of a firearm in the commission of a crime of violence; (7) first-degree assault of Brittany McQueen; (8) reckless endangerment of Ms. McQueen; (9) use of a firearm in the commission of a crime of violence; and (10) wearing, carrying, and transporting a handgun on the person.

Mr. Taylor and Mr. Baldwin were tried jointly in October 2022, but that trial ended in a mistrial because of juror misconduct.[6] A second trial against the men took place in June 2023.

[5] According to the pathologist, Stephanie Dean, M.D., at least one of Ms. Davis's wounds indicated stippling, which occurs only when a person is shot at close range. As the prosecutor pointed out during rebuttal closing argument, Ms. Thompson's assertion that the shots were fired from a passing car is exceedingly unlikely.

[6] On the third day of jury deliberations, a juror researched the case on the internet, contrary to the trial court's express instructions.

In the retrial, the State called seven witnesses: Officer Valis; Tatiana Anderson, an evidence technician who responded to the crime scene; Ms. McQueen; Ms. Thompson; Sergeant Johncox; Brent Cooper, a jailhouse informant; and Stephanie Dean, M.D., a pathologist who supervised the autopsies of the deceased victims. Both defendants exercised their right not to testify.

Officer Valis, Ms. McQueen, and Ms. Thompson testified as previously summarized. Ms. Anderson described her response to the crime scene and her collection of forensic evidence. Sergeant Johncox explained the steps he took to investigate the case. Dr. Dean testified about the autopsy results for Mr. Chesley and Ms. Davis. And Mr. Cooper, the jailhouse informant, who had been incarcerated with Mr. Taylor and Mr. Baldwin while they were awaiting trial, testified that the Mr. Taylor told him he had "shot the female in the forehead with a [.]40-caliber and wounded the other girl in the arm[.]"[7] He further testified that Mr. Baldwin "never talked to [him] about it."

The jury acquitted Mr. Taylor of the murder charges. It found him guilty of first-degree assault of Ms. McQueen, one count of use of a firearm in the commission of a crime of violence, and wearing, carrying, and transporting a handgun on his person. The court imposed the maximum sentence: consecutive terms of twenty-five years' imprisonment for first-degree assault, twenty years' imprisonment for use of a firearm in the commission of a crime of violence (the first five years without the possibility of parole),

[7] Mr. Cooper referred to Mr. Taylor as "Bones," and to Mr. Baldwin as "Chucky."

and three years' imprisonment for wearing, carrying, and transporting a handgun on the person. Mr. Taylor noted this timely appeal.

Additional facts are included where pertinent to the discussion.

DISCUSSION

As noted, Sergeant Johncox interviewed Ms. McQueen and Mr. Taylor on the night of the shootings. They presented themselves as victims. On direct examination, the prosecutor asked Sergeant Johncox about his efforts to conduct second interviews of Ms. McQueen and Mr. Taylor. The following colloquy occurred:

> [PROSECUTOR]: Sergeant, after looking for video footage and after speaking with Mr. Taylor, what, if anything, did you do in this case?
>
> [SERGEANT JOHNCOX]: Followed up with the family. I reinterviewed Ms. McQueen. I believe I tried to reinterview Mr. Taylor.
>
> [PROSECUTOR]: **And, Sergeant Johncox, you said tried. If at all, were you successful in those interviews?**
>
> [SERGEANT JOHNCOX]: I was able to talk to Ms. McQueen again, yes. **Mr. Taylor was reluctant to speak to me when I went to talk --**
>
> [MR. BALDWIN'S COUNSEL]: Objection.
>
> [MR. TAYLOR'S COUNSEL]: Objection. May we approach?

(Emphasis added.)

Mr. Taylor's lawyer moved for a mistrial, arguing that Sergeant Johncox's testimony that Mr. Taylor was reluctant to speak to him was "very improper." The prosecutor countered that Mr. Taylor "had said that essentially" he was a "victim," and it was in that context that Sergeant Johncox "tried to reinterview him." The court denied the motion for a mistrial. Mr. Taylor's lawyer did not request any additional curative

measures, such as striking Sergeant Johncox's offending testimony or a curative instruction.

On cross-examination of Sergeant Johncox, Mr. Taylor's lawyer briefly revisited the issue. He asked Sergeant Johncox, "When you said [Mr. Taylor] was reluctant to talk to you, you have nothing written down there?" Sergeant Johncox replied that he could not force anyone "to come down and speak" with him, and that, if Mr. Taylor had "wanted to speak" with the police, he "would have come down" to the police station and "I [i.e., Sergeant Johncox] would have documented it."

On appeal, Mr. Taylor contends the trial court abused its discretion by denying his mistrial motion. He maintains that Sergeant Johncox's testimony was improper, in that it was a comment on his exercising his right to remain silent in response to police questioning; and that that evidence was so unfairly prejudicial as to require the court to grant his motion for a mistrial.

The State counters that the trial court did not err in admitting that testimony by Sergeant Johncox because it concerned Mr. Taylor's silence pre-arrest, not post-arrest. Alternatively, if the court erred in admitting Sergeant Johncox's remark, the remark was not such as to require the grant of a mistrial.

A mistrial is "an extraordinary remedy and should be granted only if necessary to serve the ends of justice." *Klauenberg v. State*, 355 Md. 528, 555 (1999). *See also Molter v. State*, 201 Md. App. 155, 178 (2011) ("[T]he granting of a mistrial is an extraordinary remedy that should only be resorted to under the most compelling of circumstances."). "When inadmissible evidence or improper information has come before the jury, the trial

judge 'must assess its prejudicial impact and assess whether the prejudice can be cured.'" *Walls v. State*, 228 Md. App. 646, 668 (2016) (cleaned up) (quoting *Carter v. State*, 366 Md. 574, 589 (2001)). "If the prejudice cannot be cured, a mistrial must be granted." *Id.* (cleaned up).

We review a trial court's decision whether to deny a motion for mistrial for abuse of discretion. *Bynes v. State*, 237 Md. App. 439, 457 (2018). An abuse of discretion occurs "'where no reasonable person would take the view adopted by the trial court,' or when the court acts 'without reference to any guiding rules or principles.'" *Nash v. State*, 439 Md. 53, 67 (2014) (cleaned up) (quoting *North v. North*, 102 Md. App. 1, 13 (1994) (en banc)). A "'ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling.'" *Id.* (emphasis removed) (quoting *North*, 102 Md. App. at 14). For us to conclude that a trial court abused its discretion, the "decision under consideration has to be well removed from any center mark imagined by" us and "beyond the fringe" of what we deem "minimally acceptable." *North*, 102 Md. App. at 14.

In the case at bar, a threshold question is whether Sergeant Johncox's testimony that "Mr. Taylor was reluctant to speak to me . . . ," was inadmissible. Under Maryland evidence law, "pre-arrest silence in police presence is not admissible as substantive evidence of guilt" because "the evidence is too ambiguous to be probative[.]" *Weitzel v.*

State, 384 Md. 451, 456, 461 (2004).[8] In *Weitzel*, the Maryland Supreme Court observed that "silence is the natural reaction of many people in the presence of law enforcement officers." *Id*. at 460. Therefore, one cannot reasonably draw inferences of fact from a person's pre-arrest failure to speak to the police.

The circumstances here are markedly different than those in *Weitzel*. There, the police were called to the scene where the victim had been pushed down a flight of stairs, sustaining serious injuries. The defendant listened silently while the only other person present told the police that he (the defendant) had pushed the victim down the stairs. As explained, the Supreme Court concluded that that silence was ambiguous. In this case, the police first became involved when Mr. Taylor called 911 and reported that he and Ms. McQueen had been the victims of a robbery. Not until many weeks later had the police gathered sufficient evidence to charge Mr. Taylor with a crime. At the time Sergeant Johncox sought to reinterview Mr. Taylor, it was not clear whether the sergeant viewed Mr. Taylor as a suspect instead of a victim.

In any event, we shall assume for the sake of discussion that Sergeant Johncox's comment was inadmissible under *Weitzel*, because Mr. Taylor's failure to speak was too ambiguous to be relevant.

The following factors are pertinent to whether a mistrial was required when a jury was exposed to inadmissible evidence:

[8] As a matter of federal constitutional law, a defendant's pre-arrest, non-custodial silence is admissible unless the defendant expressly invokes his right to silence. *Salinas v. Texas*, 570 U.S. 178, 183-86 (2013); *id.* at 191-92 (Thomas, J., concurring in the judgment).

> "whether the reference to the inadmissible evidence was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; and whether a great deal of other evidence exists."

Rainville v. State, 328 Md. 398, 408 (1992) (cleaned up) (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)). "[T]hese factors are not exclusive and do not themselves comprise the test." *Kosmas v. State*, 316 Md. 587, 594 (1989). Rather, the test is whether the defendant's right to a fair trial has been violated. *Rainville*, 328 Md. at 408.

We note from the outset that, although Mr. Taylor's counsel knew that his client had not been reinterviewed, he did not object to the question whether Sergeant Johncox was successful in obtaining a reinterview of Mr. Taylor. Nor did he move to strike after Sergeant Johncox gave his easily anticipated answer. Rather, he "objected" and moved for a mistrial. Sergeant Johncox's remark was not admissible because it was irrelevant, i.e., it was not probative. Thus, it was not a remark that was inherently damaging to Mr. Taylor's defense. It simply had no tendency to prove any material fact. Moreover, Sergeant Johncox's remark was made one time - - it was single and isolated. The prosecutor made no mention of it in closing argument. Sergeant Johncox was not a principal witness in the case. The principal witness was Ms. McQueen, and several other witnesses gave testimony that was at least as important to the State's case-in-chief as Sergeant Johncox's testimony. Finally, the approach taken by Mr. Taylor's trial counsel after the remark was made belies the notion that it was so incurably prejudicial as to require the drastic remedy of a mistrial. Not only did Mr. Taylor's lawyer not object to the question that elicited the remark or move

to strike it but he also raised the substance of the remark again by cross-examining Sergeant Johncox about it.

"'[A] defendant is entitled to a fair trial but not a perfect one,' for there are no perfect trials." *Brown v. United States*, 411 U.S. 223, 231-32 (1973) (quoting *Bruton v. United States*, 391 U.S. 123, 135 (1968)). Mr. Taylor received a fair trial. On this record, we conclude that the trial court did not abuse its discretion by denying Mr. Taylor's mistrial motion.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS ASSESSED TO APPELLANT.