

Circuit Court for Baltimore City
Case No. 119296002

UNREPORTED*
IN THE APPELLATE COURT
OF MARYLAND

No. 1251

September Term, 2023

CALVIN MCCREA

v.

STATE OF MARYLAND

Berger,
Nazarian,
Raker, Irma S.
(Senior Judge, Specially Assigned),

Opinion by Raker, J.

Filed: December 13, 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 Rule 1-104(a)(2)(B).

Appellant, Calvin McCrea, was convicted in the Circuit Court for Baltimore City of second-degree murder and related firearms charges. Appellant presents the following three questions for our review:

- “1. Did the trial court err and/or abuse its discretion in joining the two cases?
2. Did the trial court err and/or abuse its discretion by allowing speculative, irrelevant, and unduly prejudicial testimony from a State’s witness?
3. Because the three-year sentence for wearing and carrying a handgun in a vehicle merges with use of a handgun during a violent crime, must it be vacated?”

We find no error and shall affirm.

I.

Appellant was charged in two separate indictments for charges stemming from two incidents in Baltimore City, roughly twelve hours apart. In case 1, appellant was indicted by the Grand Jury for Baltimore City of first-degree murder, use of a firearm in the commission of a crime of violence, possession of a regulated firearm, wear, carry, and transport of a handgun in a vehicle, and second-degree murder for an incident that occurred on July 18, 2019. In case 2, appellant was indicted for first-degree assault and second-degree assault for an incident involving the same person on July 17, 2019. The State moved to consolidate the two cases for trial, which the circuit court granted, over appellant’s objection. At trial, evidence related to the murder, handgun, and assault charges were presented to the jury. At the close of the State’s case, the court granted appellant’s Motion

for Judgment of Acquittal as to all charges related to case 2, the assault charges, but denied the motion as to all charges related to case 1.

The court sentenced appellant to a term of incarceration of forty years for second-degree murder, twenty years for the use of a firearm during the commission of a crime of violence, and consecutive fifteen years for possession of a regulated firearm. The court sentenced appellant to a concurrent 3-year term for wearing, carrying, and transporting a handgun in a vehicle which it merged with the use of a firearm during the commission of a crime of violence.

We glean the following facts from trial. Around 8:45 a.m. on July 18, 2019, Officer Greg Gibson responded to a call for a shooting near 4900 Stafford Street in Baltimore City. When he arrived, he found a female victim, Antone Suggs, lying in the roadway on her back with multiple injuries. After calling for assistance, Officer Gibson attempted to resuscitate her, to no avail. She was rushed to shock trauma, and later declared dead at 9:41 a.m. on July 18, 2019. The autopsy report indicated that the cause of death was homicide, caused by multiple gunshot wounds.

Ms. Suggs was survived by her fourteen-year-old son, Dennis Brown, and two infant children she had with appellant. At the time of Ms. Suggs' murder, she lived in an apartment on Stafford Street with all her children and appellant.

The alleged assault occurred on July 17, 2019, the night before Ms. Suggs' death. That evening, Dennis Brown was in his room when he heard his mother and appellant arguing and fighting in their apartment. When he came out of his room, Dennis saw Ms.

Suggs and appellant on the kitchen floor. He testified that appellant and his mother were “fussing” and “arguing . . . because he had thought she had locked him out.” He continued to testify that “[t]hey were fighting” and confirmed the altercation between his mother and appellant was physical. Appellant left the apartment and returned with a bookbag containing a silver gun with a black handle. Dennis testified that appellant was very close to his mother on the kitchen floor, holding the gun. When asked why no one called the police that night, Dennis testified that “we already knew if we called the police what would happen,” that “[appellant] might kill us.”

The next morning, before leaving to go to his summer job, Dennis saw his mother and appellant. He remembered appellant wearing New Balance sneakers, black shorts, and a gray hat. As he waited for the bus, Dennis saw his mother walking toward the store and he saw appellant’s white Cadillac following his mother. Instead of going to the store, Dennis saw his mother turn back and head down an alley, presumably towards their apartment. Dennis also saw the white Cadillac turn right on Beechfield in the direction of the apartment, but he did not see if the car turned on to Stafford. Dennis could not positively identify appellant in the Cadillac, but assumed it was appellant because it was his car.

Shortly after Dennis lost sight of the Cadillac, he heard three gunshots, but did not see anyone shoot his mother. Dennis tried calling his mother’s phone, and when she did not answer, he returned to their apartment. His grandmother was there, along with the police. Dennis went to the police station and identified appellant by a photograph.

At trial, during direct examination of Dennis, the State inquired about events after he found appellant and his mother on the ground the night before his mother’s death. The testimony follows:

“[STATE]: And where was [appellant] in relation to your mom?

[Mr. Brown]: Um, can you say that again?

[STATE]: Where was [appellant] in, standing or where was [appellant] – what part of the kitchen was [appellant] in? Was he close to your mom? Was he far away from your mom?

[Mr. Brown]: No, they was close. They both was on the ground.

[STATE]: Excuse me.

[Mr. Brown]: I said they was close to each other.

[STATE]: And then what did you say?

[Mr. Brown]: They both was on the ground.

[STATE]: And then – did anyone call the police that night?

[Mr. Brown]: No.

[STATE]: Why not?

[Mr. Brown]: Because we already knew if we called the police what would happen.

[Appellant]: Objection

[The Court]: Overruled

[STATE]: And why you say, when you said what would happen, what do you mean?

[Mr. Brown]: Um, *he might kill us.*

[STATE]: Then what happened after that?

[Mr. Brown]: After what?”

The State presented testimony from two additional witnesses at trial. One identified appellant as the shooter and the other recognized appellant’s Cadillac as a vehicle leaving the scene after the gunshots.

The State presented evidence obtained on July 18, 2019, pursuant to a search warrant from a 2005 Cadillac. In the car, they found a wallet with appellant’s identification in the center console and suspected blood on the driver’s side, front door frame, and back seat. Tatyana Shvartsman, a DNA expert, analyzed the DNA samples, and testified that the swabs from the driver’s side door frame yielded a major source consistent with Ms. Suggs. The swab included a minor source contributor that could neither include nor exclude appellant.

During the investigation, Baltimore City Police identified the cell phone numbers for the victim, Dennis Butler, appellant, and Ms. Carol Butler, appellant’s former girlfriend. After obtaining a search and seizure warrant regarding the phone number associated with appellant’s phone, the lead detective requested the cell phone records from T-Mobile. The State presented expert testimony from Matthew Wilde, FBI special agent, to explain the cellular call data used to approximate appellant’s phone location at various times in relation to the time of the crimes on July 18, 2019. The agent’s analysis revealed that between 6:23 a.m. and 8:46 a.m. the phone was near the Stafford apartment. The final

call, to Ms. Carol Butler, from the Stafford Street area lasted fifteen minutes and occurred at 8:52:21. The cell phone records indicated that after that call, the phone engaged different towers starting in West Baltimore and moving towards Cockeysville.

Ms. Butler knew appellant for twenty-three years and had two children with him. She testified he was a caring father and that although they are no longer together, they are friendly, and she was never afraid of him. Ms. Butler lived in Cockeysville at the time of the events. Appellant stayed with her frequently, and she allowed him to use the white Cadillac registered in her name.

On the morning of July 18, 2019, Ms. Butler received multiple calls from appellant and saw him later that day at her mother’s home in Cockeysville. She stated he seemed normal and that he was “not freaking out.”

The State introduced evidence of several phone calls while appellant was incarcerated, between appellant and Ms. Butler. Between August 8 and 15, 2019, appellant called Ms. Butler seventy-two times. During a call on August 8, appellant told Ms. Butler to sell the Cadillac as soon as possible. He told her to look in the car to see where the police might have swabbed for blood. On August 13, appellant told her to remove the tags when she sold the car.

Detective Andre Parker of the Baltimore City Police Department Homicide Unit identified video evidence he obtained from a motion activated security camera¹ outside the

¹ The video footage from the camera was motion-activated. The camera was directed at the walkway of the building and photographed anyone entering or exiting the front door.

apartments. While the video played for the jury, he indicated that at 5:50 a.m. on July 18, a man in a black and white hat, similar to a hat worn by appellant in a Facebook post from December of 2018, and a gray shirt left the apartments in what appeared to be a white Cadillac. About an hour later, the same man emerged from the driver's side of the white car. He again left the apartments at 8:36 a.m. in the Cadillac. At 8:42 a.m. the camera showed Ms. Suggs and the Cadillac still there. At 8:46 a.m., the white Cadillac is gone, but by 8:51 a.m., the Cadillac is back in view. The Cadillac is gone again by 8:52 a.m. Neither side presented video footage of the murder.

At the close of the State's case, appellant moved for a Judgment of Acquittal on all charges. Initially, the Court did not grant the motion for any of the charges. After appellant exercised his 5th Amendment right not to testify, and appellant rested his case, defense counsel renewed his motion for a Judgment of Acquittal on all charges. The court granted the motion for judgment on all charges in case 2, the assault charges.

As indicated above, the court imposed sentence. This timely appeal followed.

II.

Appellant's defense and argument at trial was that he was not the person who shot Ms. Suggs. He argued throughout that he is not guilty of the murders and that the evidence presented to prove murder and the assault evidence was not mutually admissible and in particular, the murder evidence was not admissible in the assault case. Appellant argues that any evidence relating to appellant holding a gun and that no one called the police

because Dennis stated appellant might kill them was speculative, irrelevant, and prejudicial.

The primary thrust of appellant’s argument in this appeal is that the trial court abused its discretion because the evidence was not *mutually* admissible, and particularly that the murder evidence was inadmissible in the assault case. As to the assault evidence as admissible in the subsequent murder case, without conceding the admissibility, he argues that assuming *arguendo* that the arguing and fighting would have been admissible at the murder trial, the testimony about the gun and fear that appellant might kill them were not admissible and prejudicial.

Focusing on the preceding assault the day before the murder, appellant argues that the murder evidence was irrelevant to the assault charge and offered by the State solely for violent propensity purposes because none of the ordinary “other crimes” exceptions such as intent, identity and motive were in dispute. As to the murder trial, assuming *arguendo* that the assault the day before would have been admissible, the testimony that appellant held something resembling a gun and that no one called the police because, according to Dennis, appellant might kill them, was not admissible.

The State argues that joinder of the offenses in a single trial was proper because the evidence relating to first-degree assault and the evidence related to the murder was mutually admissible in both cases. The State maintains that the evidence relating to first-degree assault was probative of appellant’s motive, intent, and capacity to commit second-degree murder. The State asserts that the evidence is mutually admissible for both crimes

as probative of motive and close connection because the murder on July 18 was a continuation of the assault on the evening of July 17. Additionally, the State argues that the fact that appellant had a gun the night before the morning of the murder is relevant to show appellant possessed the type of weapon used in the murder. Finally, the State argues that the interest of judicial economy outweighed any argument for two separate trials because two separate trials would have required similar testimony from many of the same witnesses and empaneling two separate juries would waste the court's time.

Next, appellant argues that the trial court abused its discretion by allowing Dennis to testify that he and his siblings did not call the police after the argument on July 17, 2019, because they believed appellant might have killed them if they called the police. Appellant argues this testimony is irrelevant and prejudicial. He reasons that any possible probative value of the testimony unfairly prejudiced the jury because it was speculative and simply indicated appellant "might" be violent if the police were called. Appellant further asserts that the admission of the testimony was not harmless beyond a reasonable doubt because the statement influenced the verdict by allowing the jury to make inferences as to who shot Ms. Suggs. Appellant argues there is a reasonable possibility the jury would have reached a different verdict regarding the murder had the testimony not been admitted.

The State argues that Dennis' comments that if he called the police, that appellant might kill the family were relevant to establish appellant's motive and intent as well as to explain the setting and atmosphere of the related incidents. The State asserts that evidence of an acrimonious relationship made it more likely that appellant killed Ms. Suggs and

Dennis’ statement established that Ms. Suggs’ fear was reasonable. Additionally, the State argues that the probative value of the evidence was not outweighed by unfair prejudice and accordingly, the trial court did not abuse its discretion in admitting the evidence. Finally, even if this court finds the statement was irrelevant or that the danger of prejudice outweighed the probative value, the error was harmless because the evidence of guilt was overwhelming, and the evidence could not have contributed to the verdict. The statement from Dennis, according to the State, was part of a narrow line of questioning that did not carry much influence in the scope of the trial, considering the other evidence establishing appellant as the murderer.

Finally, appellant argues that his sentence for wearing, carrying, and transporting a handgun in a vehicle must merge with the sentence for use of a firearm during the commission of a crime of violence because the charges were part of the same act or occurrence. Appellant argues that his actions leading to his convictions were all part of the single transaction of following Ms. Suggs in the car, shooting her, returning to the car, and driving away. As such, under settled law, the 3-year sentence imposed by the court for wearing, carrying, and transporting a handgun in a vehicle should have merged with use of a firearm during the commission of a crime of violence.

The State argues that the sentencing court merged the 3-year sentence for wearing, carrying, and transporting a handgun in a vehicle with use of a handgun during the commission of a crime of violence, for a total sentence of seventy-five years. Thus, there is nothing to vacate because the court merged the two offenses.

III.

We begin with the joinder issue. Joinder of criminal cases is proper when the evidence is mutually admissible in each case, and the court’s interest in judicial efficiency outweighs the risk of undue prejudice. Md. Rule 4-253 I, provides that “[i]f it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court may, on its own initiative or on motion of any party, order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires.”

In a jury trial, a defendant charged with similar, but unrelated offenses, is entitled to a severance if the defendant establishes that the evidence required for each offense is not mutually admissible at separate trials. *See McKnight v. State*, 280 Md. 604, 612 (1977). Following *McKnight*, Maryland jurisprudence follows a two-prong test to determine whether joinder of criminal charges is permitted: (1) whether evidence as to each individual offense would be “mutually admissible” at separate trials concerning the offenses; and (2) whether “the interest in judicial economy outweighs any other arguments favoring severance.” *See, e.g., Conyers v. State*, 345 Md. 525 (2003).

The Supreme Court of Maryland explained the two-part test in *Conyers* as follows:

“In sum, the analysis of jury trial joinder issues may be reduced to a test that encompasses two questions: (1) is evidence concerning the offenses 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 *Faulkner*. If question number one is answered in the negative, then there is no need to address question number two; McKnight mandates severance as a matter of law.”

Id. at 553.

As the *Conyers* Court highlighted, the “mutually admissible” inquiry is driven by “other crimes” evidence analysis. *Id.* While evidence of other crimes is not admissible to prove the character of a person to show action in conformity therewith, such evidence may be admissible to show motive, intent, absence of mistake, identity, opportunity or common scheme or plan. *State v. Faulkner*, 314 Md. 630, 634 (1989). Evidence may be mutually admissible also to show consciousness of guilt or when several offenses are so connected in time or circumstances that one cannot be fully shown without proving the other. *Tichnell v. State*, 287 Md. 695, 711 (1980); *Solomon v. State*, 101 Md. App. 331, 354 (1994).

Here, to satisfy the mutual admissibility requirement, the evidence presented as to the assault on July 17 needs to be admissible at the murder trial commencing July 18. Likewise, the evidence presented as to the murder on July 18, needs to be admissible at a assault trial alleged to have occurred on July 17. The State contends that evidence pertaining to the alleged assault and murder of Ms. Suggs are mutually admissible in separate trials to show motive and intent, based upon the close connection of the events and because the interests of judicial economy outweigh any other concerns. Appellant asserts that even if the evidence presented by the State is admissible in the murder trial, that evidence would not be admissible in a trial for assault and the jury was unfairly prejudiced against appellant because of this admission.

Ordinarily, evidence of other crimes is relevant to establish motive and intent for the charges. Motive is “the catalyst that provides the reason for a person to engage in criminal activity.” *Jackson v. State*, 230 Md. App. 450, 459 (2016). For evidence of motive to be admissible, the conduct must be committed “within such time, or show such relationship to the main charge, as to make connection obvious, that is to say they are so linked in point of time or circumstances as to show intent or motive.” *Id.* (cleaned up) (quoting *Snyder v. State*, 361 Md. 580, 605 (2000)). Although motive and intent are different, proof of motive often helps prove the intent with which a criminal act is committed. *Id.*

Turning first to appellant’s argument that the murder evidence was not admissible in the assault trial, we need not tread into that quagmire because appellant was not found guilty of the assault. The trial judge granted appellant’s motion for judgment of acquittal. No harm, no foul. There is no way the evidence related to the murder adversely impacted the assault charge against appellant.

Turning to the second event, the murder, the assault was admissible in the murder trial. Dennis Brown testified that he came into the kitchen the night before his mother’s murder because she and appellant were “arguing and fighting.” He found appellant on the kitchen floor next to his mother. He testified that appellant left the apartment, presumably to go to his car, and returned with a backpack from which he pulled a silver gun with a white handle and held it very close to his mother. Dennis’ testimony shows that appellant possessed a gun, relevant to linking him to the murder. *See Francois v. State*, 259 Md. App.

513, 530 (2023) (holding that where defendant was not allowed to possess firearms, evidence presented in a murder trial that defendant possessed firearms was relevant and not unfairly prejudicial as other crimes evidence). Dennis’ testimony at least describes a household that lacks harmony, similar to what the Supreme Court found to be sufficient for motive in the *Snyder* case. 361 Md. at 608-09 (holding that “testimony indicating that there was disharmony in the household . . . was probative of a continuing hostility and animosity, on the part of the petitioner, toward the victim and, therefore, of a motive to murder, not simply the propensity to commit murder”).

The State describes appellant’s motive as closely connected to his desire to control Ms. Suggs and her failure to submit to him provided his motivation to murder her on the 18th in a series of events connected by a few hours that explain the narrative of their abusive relationship. The testimony presented by the State, including the testimony by Dennis relating to the argument between Ms. Suggs and appellant the night before Ms. Suggs’ murder, were admissible as relevant at least to understand the nature of their relationship and that appellant had access to a gun.

IV.

We turn next to appellant’s contention that the trial court erred or abused its discretion by admitting certain testimony of Dennis. As to Dennis’ testimony that “he might kill us,” we note that when the State asked the question as to what Dennis meant when he said he knew what would happen if he called the police, appellant’s counsel did

not object, nor did he ask the court to strike the answer. Assuming the issue is preserved for our review without an objection below, any error in admitting the evidence was harmless beyond a reasonable doubt and could not have contributed to the verdict.

Maryland Rule 4-323 provides that “an objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived” A contemporaneous objection to evidence is required and counsel cannot wait to see whether the answer is favorable before deciding whether to object. *Bruce v. State*, 328 Md. 594, 627 (1992). Under certain circumstances, if it is unclear to counsel whether the answer will be inadmissible, counsel may wait to object and may move to strike immediately after the answer is provided in compliance with Rule 4-323(a). *See id.* at 627-28; *Klecka v. State*, 149 Md. 128, 132 (1925) (holding that an objection need not be made before answer if “the inadmissibility was due not to the subject of the question, but to some feature of the answer”). Here, to the objectionable response, there was no contemporaneous objection, and no motion to strike the answer.

In light of the failure to object to the “why” question, or the failure to move to strike the objectionable answer, the issue is not properly preserved for our review. Even if appellant is correct and that the response was inadmissible, and assuming the issue is preserved for our review without an objection below, any error in admitting the evidence was harmless beyond a reasonable doubt and could not have contributed to the verdict.

V.

We turn to the final issue for our review: whether the court failed to merge handgun violations in imposing the sentences. An illegal sentence may be reviewed at any time. Md. Rule 4-345(a); *see Simms v. State*, 240 Md. App. 606, 625 (2019). The rule of lenity allows a court to resolve any ambiguities in a criminal statute that allows for two interpretations of sentencing in favor of the defendant. *Id.* at 626; *see also Paige v. State*, 222 Md. App. 190, 207 (2015) (stating that “[i]f the intent of the legislature to impose separate punishments for multiple convictions arising out of the same conduct or transaction is unclear, then the rule of lenity generally precludes the imposition of separate sentences”). Under the rule of lenity, “when convictions for use of a handgun in the commission of a crime of violence, and wearing, carrying, or transporting a handgun are based upon the same acts, separate sentences for those convictions will not stand.” *Holmes v. State*, 209 Md. App. 427, 456 (2013).

In short, we agree with the State. The court merged the conviction for wearing, carrying, and transporting a handgun in a vehicle with use of a firearm during the commission of a crime of violence. As stated by the court at sentencing, “[t]he Court will impose a sentence of three years on wear, carry, and transport and that will merge for a total sentence of seventy-five years.” The final, total sentence of seventy-five years does not include the 3 years the court could have imposed for the charge of wearing, carrying, and transporting a handgun in a vehicle and the docket reflects the same.

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