Circuit Court for Baltimore City
Case No.: 121124002

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1566

September Term, 2022

ANTHONY PRIESTER, JR.

v.

STATE OF MARYLAND

Beachley,
Shaw,
Killough, Peter K.
(Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: October 16, 2023

*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, Anthony Priester, was tried before a jury in the Circuit Court for Baltimore City and convicted of first-degree murder, attempted second-degree murder, two counts of conspiracy to commit murder, two counts of use of a handgun in a crime of violence, and related handgun offenses. Appellant was sentenced to life plus an additional eighty-five years in prison. He timely filed his notice of appeal and asks this Court the following two questions:

1. Is the evidence sufficient to establish [appellant's] criminal agency?

2. Did the lower court err in failing to declare a mistrial after the lead detective testified, immediately after a successful objection to this testimony, that [appellant] was associated with a certain make and model of vehicle?

We shall affirm the convictions.

FACTUAL BACKGROUND

In the early-morning hours of March 26, 2021, Kanwarpall Singh was working at Bella Roma Pizza ("Bella Roma") in Baltimore City when someone came in "and just started shooting the whole store up." Mr. Singh "didn't really see as much as [he] heard" but saw "somebody coming in, like, all covered up[.]" Mr. Singh and a customer fled to the basement, where Mr. Singh called the police.

Upon arrival, police found two men suffering from gunshot wounds. One victim, Cameron Green, was pronounced dead at the scene, and the other, Shaquille Beckett, was transferred to the University of Maryland Medical Center's Shock Trauma Center, where he was treated and ultimately released.

Police recovered sixty-three bullet casings from the crime scene. The security

camera footage from Bella Roma indicated that there were five masked suspects involved in the shooting. One suspect was shown wearing a black Under Armour jacket with an Under Armour logo on the back hood, sneakers with a "distinct pattern on the back[,]" and holding "a handgun with an extended clip." Additional security camera footage from Baltimore City's "City Watch" video surveillance system indicated that the suspects arrived and left in a gray Honda sedan with "possible damage to the driver's side[.]" The footage indicated that the vehicle was missing the front license plate.

Detectives used a license plate reader to search for the gray Honda. After the license plate reader spotted the vehicle near the intersection of Hanover and Patapsco streets in Baltimore City, detectives went to that intersection to search for it. While there, detectives "observed a white Hyundai pull up in front of [them]" with "temp[orary] Texas tags." Appellant got out of the vehicle and detectives ran the tags to the vehicle.

Detectives thereafter responded to two vehicle rental locations and ultimately, to Caliber Collision, an autobody repair shop in Baltimore City. At Caliber Collision, police located a gray Honda sedan that had damage to the driver's side and was missing the front license plate. Caliber Collision's office manager, as well as the shop's repair order, indicated that appellant was the individual who had dropped off the vehicle. On March 30, 2021, police towed the vehicle to the police crime lab for inspection.

On April 1, 2021, police conducted surveillance on the white Hyundai. At that time, it was parked near the intersection of Moravia Road and Simms Avenue in Baltimore City. After observing appellant and appellant's then-girlfriend, Chasity Zahner, get into the

Hyundai, police began to follow the vehicle. Appellant "tried to elude" police, making a left turn onto Moravia Road, a left turn onto Belair Road, a U-turn on Belair Road, and returning to Moravia Road. Appellant eventually crashed the vehicle and then "attempted to flee" before police placed him and Ms. Zahner under arrest. At the time of his arrest, appellant was wearing a black jacket with the Under Armour logo on the back hood, *i.e.*, "the same seen on the video" from Bella Roma.

Later that morning, a resident of Moravia Road, Joyce Edwards, noticed what she initially believed to be a toy gun on the rain gutter in front of her home. Ms. Edwards kicked the gun, realized that it was "kind of heavy for a toy[,]" picked it up, and threw it on her grass. She called her daughter, who called the police. Police arrived and recovered "a handgun with an extended clip" from Ms. Edwards's yard. That same day, police searched appellant's home, where they found a Honda car key, a bookbag containing "an extended magazine clip[,]" and a pair of Under Armour shoes with a "distinct pattern on the heel of the shoe[,]" like those seen in the "video footage from Bella Roma."

PROCEDURAL BACKGROUND

In May of 2021, appellant was indicted for first-degree murder, attempted first-degree murder, two counts of conspiracy to commit murder, two counts of use of a handgun in a crime of violence, and related handgun offenses. In July of 2022, the matter proceeded to a trial by jury, where the State presented testimony from twenty witnesses, including eight Baltimore City police officers, several crime scene responders, a firearms examiner, Ms. Edwards and Ms. Zahner.

Ms. Zahner testified that while police followed her and appellant in the vicinity of Moravia Road, appellant instructed Ms. Zahner to "throw everything out the window[.]" She testified that appellant then threw a gun out of the car window, and Ms. Zahner threw her purse out of the car window. She also identified a "selfie type picture" she had taken two days before the arrest, as a photo of "[m]e, [appellant], and the gun." The gun pictured had an extended magazine clip, like the gun recovered in Ms. Edwards's yard and seen in the Bella Roma security footage. Further, the jury heard from a firearms examiner, who testified that "17 cartridge cases [recovered from Bella Roma] were fired" with the gun recovered in Ms. Edwards's yard.

Near the end of the trial, appellant moved for a mistrial after the State's final witness, Detective Kimberly Tonch, testified that: "the gray Honda—that there was a gray Honda that Anthony Priester–[.]" Specifically, the transcript reflects the following:[1]

> [THE STATE]: What, if anything, did you gather as a result of your meeting with Southern District intel?

[1] In his brief, appellant asserts that "it appears the witness said more than what the transcript relates[,]" noting that the trial court determined that, "I find that [Detective Tonch] just said that they met with Southern District intel and that Anthony Priester is known to drive a gray Honda." Appellant asks this Court "to accept the lower court's explicit factual finding as the correct relation of the witness' offending testimony." However, he failed to file any such motion to that effect. *See* Md. Rule 8-414(b)(1) (providing that "[a] party seeking correction of the record shall file a motion that specifies the parts of the record or proceedings that are alleged to be omitted or erroneous[,]" and that "[t]he motion shall be accompanied by (A) any stipulation of the parties regarding the alleged error or omission and (B) a proposed order specifying the requested corrections or additions"). Having failed to meet his burden, we decline appellant's request. *Malaska v. State*, 216 Md. App. 492, 524 (2014) (noting that "it was [appellant's] burden to have the record supplemented or corrected."). Nonetheless, even had appellant properly moved to correct the record, our conclusion would remain the same. *See infra*, note 2.

[DETECTIVE TONCH]: That the gray Honda—that there was a gray Honda that Anthony Priester—

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Okay.

[DEFENSE COUNSEL]: Move to strike.

THE COURT: Sustained.

[DEFENSE COUNSEL]: May we approach?

THE COURT: Yes.

[DEFENSE COUNSEL]: Judge, that's hearsay probably multiple levels and I move for a mistrial. That's something the detective knows that she cannot testify to that Anthony Priester drives a gray Honda.

THE COURT: What would you like to say?

[THE STATE]: Your Honor, I think that it can be properly sanitized with a motion to strike and I will move on. Your Honor, I'm trying to figure out what, if anything, else did you do as a result of your meeting with Southern District intel.

THE COURT: Then you can just ask what actions did you do instead of because—I will strike, okay, but declaration of a mistrial is an extraordinary remedy granted only where necessary to serve the interest of justice or where there is manifest necessity to do so. Although there's no clear test to determine whether a manifest necessity exists, it's been held that there must be a high degree before concluding that a mistrial is appropriate.

I find that she just said that they met with Southern District intel and that Anthony Priester is known to drive a gray Honda. So in terms of that, I think the remedy, the best remedy is I sustained your objection and I'm going to tell the jury to ignore and strike all of that testimony. Okay?

[DEFENSE COUNSEL]: Yes, Your Honor.

THE COURT: Now, I don't find that manifest necessity exists and I'm not going to grant that at this time.

> [DEFENSE COUNSEL]: Judge, can we instruct the witness not to go to that area, anymore? Even though the State might not lead them there, the witness appears to want to say things that the State wasn't really asking.
>
> THE COURT: I'm going to allow [the State] to—because I think she is asking these type[s] of questions and the detective is not sure—I don't know how many times she has actually testified.
>
> [DEFENSE COUNSEL]: I understand that, but getting real close to real dangerous hearsay area here.
>
> THE COURT: Okay. Thank you.
>
> [THE STATE]: Thank you, Your Honor.
>
> * * *
>
> THE COURT: So, ladies and gentlemen of the jury, that last information is stricken and please ignore that. Thank you. Next question.

At the close of evidence, appellant moved for a judgment of acquittal, asserting that the State had failed "to prove [appellant] is the person who committed any of the crimes listed in the indictment[.]" The court denied appellant's motion. The jury convicted appellant of first-degree murder of Mr. Green, attempted second-degree murder of Mr. Beckett, two counts of conspiracy to commit murder, two counts of use of a handgun in a crime of violence, and related handgun possession crimes. This appeal followed.

DISCUSSION

Appellant contends that this Court should vacate his convictions for two reasons. First, he asserts that the State's case against him was "entirely circumstantial[,]" and that the "various indirect connections [were] so weak that they [were] insufficient to satisfy the State's burden to show, beyond a reasonable doubt, that [appellant] was involved in these crimes." He supports his argument by pointing to the fact that "his identity as one of the

masked shooters was established only indirectly[,]" and through his association with "non-unique clothing similar to the shooter's; a common vehicle similar to that associated with the crime; and, ultimately, the handgun used in the crime several days after the crime was committed."

Second, appellant asserts that the court erred in denying his request for a mistrial after Detective Tonch testified that appellant was associated with a gray Honda. According to appellant, the court "erred in failing to grant the mistrial—and in merely telling the jury to disregard the assertion—because the prejudice attendant to this statement, in a weak and fully circumstantial case, was grave."

The State responds that the evidence sufficiently supported the convictions, including that "[d]etectives linked [appellant] to the shooting via multiple pieces of evidence including his possession of a handgun used in the crime mere days after it occurred, his association with a vehicle matching the description of the vehicle used to transport the shooters to and from the shooting, and his ownership of a jacket and shoes matching those belonging to one of the shooters." As to the court's denial of appellant's request for a mistrial, the State asserts that the court "acted within its discretion when it struck the hearsay testimony and instructed the jury to ignore it[,]" making the "extreme remedy of a mistrial" unnecessary. We agree with the State on both issues.

I. The evidence sufficiently established appellant's criminal agency.

This Court reviews the sufficiency of the evidence of a criminal conviction for whether, "viewed in the light most favorable to the State as the prevailing party, any

reasonable juror could find the elements of the crime charged beyond a reasonable doubt." *Sequeira v. State*, 250 Md. App. 161, 203 (2021) (citing *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *McClurkin v. State*, 222 Md. App. 461, 486 (2015)). Accordingly, we "will reverse the judgment only if we find that no rational trier of fact could have found the essential elements of the crime." *Winder v. State*, 362 Md. 275, 325 (2001).

Thus, "[w]hen reviewing a sufficiency of the evidence challenge, it is not the function of the appellate court to undertake a review of the record that would amount to a retrial of the case." *Winder*, 362 Md. at 325. Instead, "[w]eighing the credibility of witnesses and resolving any conflicts in the evidence are tasks proper for the fact finder." *State v. Stanley*, 351 Md. 733, 750 (1998). "We give 'due regard to the [fact finder's] finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses.'" *Moye v. State*, 369 Md. 2, 12 (2002) (alteration in original) (quoting *McDonald v. State*, 347 Md. 452, 474 (1997)). "[I]f there are evidentiary facts sufficiently supporting the inference made by the trial court, the appellate court defers to that fact-finder instead of examining the record for additional facts upon which a conflicting inference could have been made[.]" *State v. Smith*, 374 Md. 527, 547 (2003).

This "standard applies to all criminal cases, regardless of whether the conviction rests upon direct evidence, a mixture of direct and circumstantial, or circumstantial evidence alone." *Smith v. State*, 415 Md. 174, 185 (2010) (citing *Smith*, 374 Md. at 534). Indeed, "circumstantial evidence alone is sufficient to sustain a conviction" as long as "the

inferences made from circumstantial evidence . . . rest upon more than mere speculation or conjecture." *Id.* (citing *Bible v. State*, 411 Md. 138, 157 (2009)); *see also Hebron v. State*, 331 Md. 219, 228 (1993) ("A conviction may be sustained on the basis of a single strand of circumstantial evidence or successive links of circumstantial evidence." (citing *Wilson v. State*, 319 Md. 530, 536 (1990))). We have stated that, "[i]t is only when that evidence is also consistent with a reasonable hypothesis of innocence that it is insufficient." *Hebron*, 331 Md. at 228–29. This is consistent with "the settled proposition that a finding of guilt cannot be based on evidence that equally supports an inference of innocence as well as of guilt." *Id*. at 228.

Here, the evidence was sufficient for a reasonable factfinder to conclude that appellant committed the crimes he was convicted of. The jury made its determination after hearing that less than a week after the shooting, appellant tried to flee from police, that appellant threw a gun out of a car window while being chased by police, that that particular gun was used to shoot seventeen bullets at the crime scene, that appellant was identified as the individual who dropped off a Honda matching the description of the suspect vehicle at an autobody shop, that police recovered a Honda key and shoes with the same "distinct pattern" as those worn by the shooter in appellant's home, and that appellant was arrested in a jacket identical to that seen on the shooter in the surveillance video. Although the evidence in this case was largely circumstantial, taken together, it sufficiently supports the jury's determination that appellant was the culpable criminal agent. *See Molina v. State*, 244 Md. App. 67, 85 (2019) (holding that although the evidence was largely circumstantial,

"it was more than sufficient to support the jury's verdicts").

Appellant maintains that the evidence was insufficient to uphold his convictions, pointing to the fact that the State never attempted to test the Honda key on the suspect vehicle, that the jacket brand seen in the security footage and worn by appellant when arrested was manufactured by "a major international retailer which makes clothing which is worn by millions of people worldwide[,]" and that "while the State could connect [appellant] to the weapon used in this offense, it could not establish that connection at the time of the offense." These assertions, while true, do not support appellant's contention that "no rational trier of fact could have found the essential elements of the crime[s]" charged. *Winder*, 362 Md. at 325. The inferences made by the jury rested upon appellant's association with the weapon, clothing and vehicle used by the shooters at the time of the crime. We are unpersuaded that the evidence was insufficient to sustain the convictions.

II. The circuit court did not err in declining appellant's request for a mistrial.

Maryland's appellate courts have consistently held that "a mistrial is considered an extraordinary remedy and should be granted only if necessary to serve the ends of justice." *Carter v. State*, 366 Md. 574, 589 (2001) (quoting *Klauenberg v. State*, 355 Md. 528, 555 (1999)). Accordingly, whether to grant a mistrial is reviewed under an abuse of discretion standard. *State v. Hart*, 449 Md. 246, 263 (2016). Thus, unless there is an abuse of discretion, we will not disturb the trial judge's determination on appeal. *Carter*, 366 Md. at 589.

When faced with a request for a mistrial, "[t]he trial judge must assess the

prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured." *Id*. If the prejudice cannot be cured, the trial court must grant the mistrial request. *Id*. Where the prejudice can be cured, "generally[,] cautionary instructions are deemed to cure most errors[.]" *Id*. at 592. Where "a curative instruction is given, the instruction must be timely, accurate, and effective." *Id*. at 589. If the trial court gives a curative instruction, it is our responsibility to determine whether the "damage in the form of prejudice to the defendant transcended the curative effect of the instruction[.]" *Kosmas v. State*, 316 Md. 587, 594 (1989).

The Supreme Court of Maryland has noted that the trial court "is peculiarly in a superior position to judge the effect of any of the alleged improper remarks." *Simmons v. State*, 436 Md. 202, 212 (2013) (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)). Accordingly, the "key question" for our review "is whether the defendant was so prejudiced by the improper reference that he was deprived of a fair trial." *Parker v. State*, 189 Md. App. 474, 494 (2009) (citing *Kosmas*, 316 Md. at 594). The following factors are instructive to our determination:

> 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 which the entire prosecution depends; the timeliness of the curative instruction; and whether a great deal of other evidence exists.

McIntyre v. State, 168 Md. App. 504, 524–25 (2006).

However, "these factors are not exclusive and do not themselves comprise the test." *Kosmas*, 316 Md. at 594. Instead, "[t]he question is whether the prejudice to the defendant

was so substantial that he was deprived of a fair trial, and the enumerated factors are simply helpful in the resolution of that question." *Id*. at 594–95. "Only when the inadmissible evidence is so prejudicial that it cannot be disregarded by the jury—or as courts and counsel have described such circumstances, when 'the bell cannot be unrung' —will measures short of a mistrial be an inadequate remedy." *Vaise v. State*, 246 Md. App. 188, 240 (2020).

In this case, we conclude that the statement made by Detective Tonch did not deprive appellant of his right to a fair trial. Detective Tonch's statement that appellant was associated with a gray Honda[2] was supported by at least three other pieces of evidence: testimony that appellant had dropped off a gray Honda at Caliber Collision that matched the description of the suspect vehicle; associated paperwork from Caliber Collision identifying appellant as the individual who had dropped off the vehicle; and recovery by the police of a Honda key from appellant's home. Thus, there was no "bell" that could not "be unrung[,]" making measures short of a mistrial inadequate; to the contrary, the theoretical bell—that appellant was associated with a vehicle matching the description of the suspect vehicle—had already been rung thrice by evidence appellant does not challenge on appeal.

[2] Although appellant failed to request correction of the record under Md. Rule 8-414(b)(1), even assuming, *arguendo*, that the transcript reflected that Detective Tonch did in fact testify that appellant "is known to drive a gray Honda[,]" we disagree that any resulting prejudice would have been "so substantial" that it "deprived [appellant] of a fair trial" under the record before us. *Kosmas*, 316 Md. at 594–95.

Application of the relevant factors confirms our conclusion. Detective Tonch's statement was a single, isolated statement. Although the statement was responsive to a question from the State, appellant's counsel acknowledged on the record that Detective Tonch "appears to want to say things that the State wasn't really asking." Further, although Detective Tonch was identified as the lead detective in the case, she was not the "principal witness upon which the entire prosecution depend[ed,]" but one of twenty witnesses called by the State, including seven other Baltimore City police officers, several crime scene responders, a firearms examiner, Ms. Edwards and Ms. Zahner. *McIntyre*, 168 Md. App. at 524–25. It is undisputed that the curative instruction was timely, and a great deal of other corroborative evidence exists, including testimony, security footage, a weapon, clothing, and a vehicle linking appellant to the crimes charged.

Accordingly, the court correctly determined that any prejudice resulting from Detective Tonch's testimony was cured by its curative instruction, and thus the court's denial of appellant's request for a mistrial was not an abuse of discretion.

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