

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 0618

September Term, 2014

RUBEN ARNEZ COLLINS

v.

STATE OF MARYLAND

Krauser, C.J.,
Friedman,
Sharer, J. Frederick
(Retired, Specially Assigned),

JJ.

Opinion by Friedman, J.
Dissenting Opinion by Sharer, J.

Filed: March 16, 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.

We are asked to determine: (1) whether the trial court abused its discretion in conducting voir dire; (2) whether the trial court erred in admitting evidence of a traffic stop that happened almost two weeks after the charged crime; and (3) whether the trial court erred in instructing the jury on flight. Because we conclude that the trial court did not err, we affirm appellant Ruben Collins' conviction.

BACKGROUND

On October 2, 2013, a hooded man entered a convenience store in Delmar, Maryland, threatened the store clerk with a box cutter, demanded money, and fled with more than \$100. Immediately after the robbery, the store clerk saw a silver older model Mazda—the only car in the parking lot—back up and leave, leading him to assume that his assailant was driving the Mazda. Later, on October 21, 2013, the store clerk identified Collins as the hooded man, selecting his photo from a photo array.

On October 15, 2013, almost two weeks after the robbery, Officer Jesse Kissinger of the Salisbury City Police Department pulled over a “goldish silverish” 2002 Mazda Millenia for an unrelated traffic infraction. Collins was in the driver's seat, and Officer Kissinger thought he was acting nervous. Officer Kissinger questioned Collins about the car registration, which did not bear his name, and asked if Collins had a phone number for the car's owner. Collins began rummaging through the car, then hit the gas and sped away. Officer Kissinger and his partner pursued, and Collins was apprehended after crashing into a telephone pole.

Following a jury trial, Collins was convicted of five crimes related to the convenience store robbery: armed robbery; robbery; second degree assault; theft under \$1000; and wear, carry, and transport of a weapon with intent to injure. The trial court sentenced Collins to 20 years imprisonment for armed robbery, merging the remaining offenses.

DISCUSSION

On appeal, Collins contends that the trial court committed three errors: (1) it abused its discretion in conducting voir dire; (2) it erred in admitting evidence of the traffic stop; and (3) it erred in instructing the jury on flight. We address each alleged error in turn.

I. Voir Dire

First, Collins argues that the trial court abused its discretion in its voir dire procedure because the trial court asked follow-up questions in open court rather than inviting the prospective jurors forward to answer at the bench. Collins contends that the trial court's voir dire procedure discouraged the prospective jurors from fully and faithfully responding to questions, violating his right to an impartial jury, guaranteed by the Sixth Amendment and Article 21 of the Maryland Declaration of Rights.¹ The trial court conducted voir dire by first asking a question of the entire venire, and second, if a prospective juror answered

¹ The Sixth Amendment to the United States Constitution provides, in relevant part: "In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed." U.S. Const. amend. VI. Collins makes no independent argument based on Article 21 of the Maryland Declaration of Rights.

yes to the question, asking follow-up questions of that particular juror. Collins takes issue with the trial court’s procedure for asking follow-up questions because the court asked follow-up questions to question six in open court, and Collins argues those follow-up questions should have been asked individually at the bench. The State responds that the trial court acted within its discretion in conducting voir dire.² We conclude that the trial court did not abuse its discretion because Maryland does not require a trial court to conduct individual voir dire at the bench.

The trial court has broad discretion in conducting voir dire. *White v. State*, 374 Md. 232, 241 (2003). “The purpose of voir dire is to assure the selection of an impartial panel of jurors, free from bias or prejudice. However, no formula or precise technical test exists for determining whether a prospective juror is impartial.” *Id.* We review the trial court’s voir dire procedure for abuse of discretion. *Wright v. State*, 411 Md. 503, 507 (2009). A trial court acts within its discretion if “procedures employed have created a reasonable assurance that prejudice would be discovered if present.” *Stewart v. State*, 399 Md. 146,

² The State also argues that Collins’ argument is unpreserved because Collins did not make a timely objection to the court’s voir dire procedure. The State contends that Collins waited until question six to ask that prospective jurors be brought to the bench for follow-up questions. We disagree with the State and conclude that Collins’ argument is preserved for our review. Collins didn’t learn that the trial court would conduct follow-up questions in open court, and not call individual jurors to the bench, until question six because no prospective juror answered yes to the first five questions. At that point, Collins requested that the trial court call the jurors to the bench. When the trial court refused, Collins made the request again. We conclude, therefore, that Collins’ argument is preserved for our review.

159 (2007). “A trial court reaches the limits of its discretion only when the voir dire method employed ... fails to probe juror biases effectively.” *Wright*, 411 Md. at 508.

Maryland does not require that the trial court conduct individual voir dire at the bench, out of the presence of the other jurors. *White*, 374 Md. at 241. “In Maryland, unlike some of our sister jurisdictions, the trial judge may, at his or her discretion, conduct individual voir dire out of the presence of other jurors but is not required to do so.” *Id.*

The trial court used a well-accepted procedure, approved by the Court of Appeals, and we cannot say that the trial court erred, much less abused its discretion, in conducting voir dire in open court.

II. Admissibility of Evidence of the Traffic Stop

Collins’ second argument is that the trial court erred in admitting testimony from two police officers about the traffic stop that occurred almost two weeks after the robbery. Collins contends that the officers’ testimony regarding the traffic stop was “other crimes” evidence, inadmissible pursuant to Maryland Rule 5-404(b). The State responds that Collins’ argument that it is “other crimes” evidence was not preserved for appellate review because Collins did not object to the testimony on that ground. Rather, the State contends that Collins’ objection to the evidence as “highly prejudicial” was made pursuant to Maryland Rule 5-403. We agree with the State and conclude that Collins’ argument is not preserved for our review because he did not object at trial for the same reason that he now asserts.

At trial, Collins’ counsel objected to testimony about Collins fleeing from a traffic stop almost two weeks after the robbery, arguing that it was highly prejudicial. Denying Collins’ counsel’s objection, the trial court ruled that the testimony of Collins’ flight from the traffic stop was admissible:

[STATE’S ATTORNEY]: I kind of need you to rule ...

THE COURT: On what?

[STATE’S ATTORNEY]: Whether or not the [testimony regarding] flight is admissible.

THE COURT: If [Officer Kissinger] is going to testify a couple weeks in the future that he stopped [Collins] and during the course of it the guy ran away, I’m going to let it in, yes.

[COLLINS’ COUNSEL]: Well, I’m objecting, Your Honor. [The store clerk] testified that it was a silver four door Mazda and what we are going to hear is that this was a gold Mazda with a Delaware temporary tag, and [the store clerk] testified that it was possibly a Maryland tag.

THE COURT: All right.

[STATE’S ATTORNEY]: Just for the record –

[COLLINS’ COUNSEL]: I think it’s highly prejudicial.

THE COURT: Overruled.

Officer Kissinger and another police officer then testified about the traffic stop, Collins’ flight, and subsequent apprehension.

When a party objects to the admission of evidence and delineates specific grounds for that objection, he or she “will be bound by those grounds and will ordinarily be deemed to have waived other grounds not mentioned.” *von Lusch v. State*, 279 Md. 255, 263 (1977). “[O]ur scope of review is limited to the basis stated by appellant’s counsel when making a contemporaneous objection.” *Gordon v. State*, 204 Md. App. 327, 344-45 (2012).

Maryland Rules 5-404(b) and 5-403 each provide different grounds for objecting to the admission of evidence. Rule 5-404(b) provides for the exclusion of other crimes evidence to prove character:

Evidence of other crimes, wrongs, or acts including delinquent acts ... is not admissible to prove the character of a person in order to show action in conformity therewith. Such evidence, however, may be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, or absence of mistake or accident.

Md. Rule 5-404(b). Rule 5-403, on the other hand, provides for the exclusion of unfairly prejudicial evidence:

Although relevant, evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence.

Md. Rule 5-403.

On appeal, Collins contends that the officers’ testimony was other crimes evidence that is inadmissible pursuant to Rule 5-404(b). Collins, however, did not invoke Rule 5-404(b) at trial or object to the evidence on the grounds that it was other crimes evidence. Rather, Collins’ objection to the testimony was that it was “highly prejudicial,” which is a

clear invocation of Rule 5-403. Having failed to object to the testimony on the grounds that it was inadmissible other crimes evidence, Collins failed to preserve the issue for our review.

III. Jury Instructions on Flight

Collins' final argument is that the trial court erred in instructing the jury on flight. Collins contends that the instruction was not generated by the evidence. The State responds that the flight instruction was proper because there was some evidence that Collins' flight was related to the robbery and there was no evidence that it was motivated by anything else. We conclude that, because it was not unreasonable to make the necessary inferences that Collins' flight from the traffic stop was related to his consciousness of guilt of the robbery, the trial court did not abuse its discretion in giving the flight instruction.

The trial court instructed the jury with respect to flight:

THE COURT:

A person's flight or conduct analogous to flight after the commission of a crime or after being accused of committing a crime is not enough by itself to establish guilt but it is a fact that you may consider as establishing evidence of guilt. Flight under these circumstances may be motivated by a variety of factors, some of which are fully consistent with innocence. You must first decide whether there is evidence of flight. If you decide there is evidence of flight or conduct analogous to flight, you then must decide whether this flight shows a consciousness of guilt.

Collins' counsel later objected to the instruction, arguing that the traffic stop was unrelated to the robbery case at hand, and the trial court overruled the objection:

[COLLINS' COUNSEL]: Your Honor, I object to the fact that the Court is giving the instruction on consciousness of guilt. The incident here has to do with something that happened on October 2nd. The fleeing and eluding in the car is the subject of a completely different case that he's been charged with. By introducing the evidence that I previously objected to and the jury instruction the State is trying to convict him by showing that he fled from guilt of this case when it could have been any possible reason. I can't really address it because there are other reasons, so I can't address it with the jury and it hamstring me. But if you look at the evidence in this case it is an identification case, and the fact that the identification, in my opinion anyway, is weak given the amount of time that the incident took place and difference in the descriptions or lack of descriptions by [the store clerk]. The State has introduced this other evidence to try to say, well, he must have been running because of what happened in this case when there's no proof of that.

THE COURT: That will be evidence for the jury to consider as to whether or not it's consciousness of guilt. No further objections?

A trial court may give a flight instruction if there are facts from which four inferences can be reasonably drawn:

[1] that the behavior of the defendant suggests flight; [2] that the flight suggests a consciousness of guilt; [3] that the consciousness of guilt is related to the crime charged or a closely related crime; and [4] that the consciousness of guilt of the crime charged suggests actual guilt of the crime charged or a closely related crime.

Thompson v. State, 393 Md. 291, 312 (2006). We review the trial court’s decision whether to give a jury instruction under an abuse of discretion standard. *Id.* at 311.

Collins argues that *Thompson* is also controlling because it is factually analogous to his case. Therefore, we review it closely. In *Thompson*, the Court of Appeals held that the trial court abused its discretion in giving the flight instruction because the facts failed to establish the third inference—that the consciousness of guilt was related to the crime charged. *Id.* at 315-16. Thompson was on trial for shooting a man. *Id.* at 294-95. The State introduced evidence that Thompson, who fit the description of the shooting suspect, had fled from a police officer after the officer identified himself and told Thompson to stop. *Id.* at 294. Thompson, however, asserted that he fled from the officer not because he was the shooter, but because he had eighty-six vials of crack cocaine in his possession. *Id.* at 313-14. The Court of Appeals (Battaglia, J.) held that because the trial court had evidence—that the jury did not and could not have—that supported “the alternate, and equally reasonable, inference that Mr. Thompson fled due to the cocaine in his possession” the trial court’s flight instruction was an abuse of discretion. *Id.* at 314-15. The other possible reason for flight “undermine[d] the confidence by which the inference could be drawn that

Mr. Thompson’s flight was motivated by a consciousness of guilt with respect to the crimes for which he was on trial.” *Id.* at 314.

Collins argues that, like *Thompson*, his flight from the traffic stop does not reasonably give rise to an inference of consciousness of guilt for the robbery that took place almost two weeks earlier. Collins contends that because he told the trial court that his flight was motivated by “other reasons,” the court had before it evidence that supported an alternative and equally reasonable inference from his flight, just as the trial court had in *Thompson*.³

Unlike in *Thompson*, however, Collins did not articulate a reason for his flight that provided the basis for an alternative and equally reasonable inference. At trial, Collins made only vague references to another reason for his flight from the traffic stop. Collins did not articulate what that unspecified “other reason” might be. Rather, Collins’ counsel told the trial court only that Collins could have fled “for any possible reason” and that she couldn’t address those “other reasons.” Collins’ suggestion that there were “other reasons” for his flight does not provide the basis for an alternative and equally reasonable inference.

³ Collins also argues that the flight instruction was not proper because his flight from the traffic stop was two weeks after the robbery, and not immediately following the robbery or being accused of the robbery. In support of his argument, Collins relies on the Maryland Pattern Jury Instructions, which state “A person’s flight immediately ... after the commission of a crime or after being accused of committing a crime ... is a fact that may be considered ... as evidence of guilt.” Md. Crim. Pattern Jury Instructions 3:24. As we explained, however, *Thompson* provides the rule for a proper flight instruction—it is proper when the four inferences can reasonably be drawn from the facts. 393 Md. at 312. Immediacy is certainly helpful in drawing those four inferences, but it is not required by *Thompson*. *Id.*

In fact, every defendant in every circumstance could argue that there were “other reasons,” thus preventing a flight instruction from ever being given. That cannot be the law and it isn’t. Therefore, we conclude that the vague suggestion of “other reasons” does not make it unreasonable to infer that Collins’ flight was motivated by a consciousness of guilt with respect to the robbery. As such, we cannot say that the trial court’s decision to give jury instructions on flight was an abuse of discretion.

Concluding that the trial court did not abuse its discretion in conducting voir dire, that Collins’ argument about the traffic stop evidence is not preserved for our review, and that the trial court did not abuse its discretion in instructing the jury on flight, we affirm.

**JUDGMENT OF THE CIRCUIT COURT
FOR WICOMICO COUNTY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**

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With regard for the majority's well-framed and well-written opinion, I respectfully dissent from Part III - the jury instruction on flight. I believe that *Thompson v. State*, 393 Md. 291 (2006) controls the issue.

Here, as the majority has recognized, Collins' flight was from a traffic stop - two weeks after, and unrelated to, the event that led to the charges in this case.

The trial court instructed, in relevant part, that

A person's flight or conduct analogous to flight after the commission of a crime or after being accused of committing a crime

Collins' flight was from a traffic stop that occurred two weeks after the robbery, with which he had not yet been charged.

Defense counsel suggested to the trial court that Collins had reasons for fleeing from the traffic stop, reasons that he was constrained from discussing with the jury. While his assertions were not precise, it was enough, I believe, to create an "independent basis" to explain the flight.

In my view, the evidence did not justify the flight instruction. I would reverse and order a new trial.