UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2422

September Term, 2014

SENTAYEHU NEGUSSIE

v.

STATE OF MARYLAND

Wright,
Graeff,
Eyler, James R.
(Retired, Specially Assigned),

JJ.

Opinion by Wright, J.

Filed: January 20, 2016

Following a jury trial in the Circuit Court for Prince George's County, Sentayehu Negussie, appellant, was convicted of three counts of first-degree burglary, three counts of taking a credit card belonging to another, three counts of theft of property with a value less than $1,000, and theft scheme. After a motion to reconsider sentencing, the court ultimately sentenced Negussie to a total term of incarceration of 35 years.[1]

Negussie appealed, presenting us with the following question:

> Whether the trial court erred in denying his motion for severance?[2]

Finding no error, we affirm.

FACTUAL BACKGROUND

Negussie's arrest and conviction arose from a series of thefts of unlocked rooms in dormitories at the University of Maryland, College Park, in February 2014. At 8:30 a.m. on February 7th, Logan Grenley, a student at the university and resident of Centreville Hall dormitory, entered the room of Robert Carter two doors down from his own. Upon

[1] The circuit court initially sentenced Negussie to three consecutive 20-year periods of incarceration for the burglary counts and four concurrent 18-month periods of incarceration for the credit card theft and theft scheme convictions—merging the convictions for theft of property less than $1,000. After Negussie filed a motion to reconsider his sentence, the circuit court reduced his first-degree burglary sentences as follows:

- Count 1—20-year period of incarceration
- Count 8—20-year period of incarceration with all but 15 years suspended consecutive to Count 1
- Count 13—20-year period of incarceration suspended consecutive to Count 8.

[2] Negussie originally presented us with a second question related to his sentence but withdrew it prior to our consideration of his appeal.

entering, Grenley observed an unknown black male wearing a University of Maryland polo shirt, whom he assumed to be a maintenance employee. The man said to Grenley, "shh, he's sleeping," referring to Carter, and Grenley left the room for class. Later that day upon attempting to pay for lunch, Carter noticed that approximately $260.00 in cash and a debit card had been removed from his wallet. About an hour later, Carter received a call from his debit card company alerting him to potentially fraudulent purchases made with the card in Washington, D.C.

Five days later, two similar burglaries occurred in the university's Ellicott Hall dormitory.[3] At 8:30 a.m. on February 12, 2014, William Leverage entered his unlocked room on the eighth floor and encountered an unknown black male. When Leverage asked the man to identify himself, the man replied that he was looking for someone named Kevin. After Leverage informed the man that he did not know anyone by that name, the man apologized and left.

Forty-five minutes later, at approximately 9:15 a.m., Hamza Choudery—another resident of Ellicott Hall—awoke to find Negussie in his room. When asked to identify himself, Negussie replied that he was acquainted with Choudery's roommate. When Choudery telephoned his roommate, Karl Van Vonno, to ask whether he knew Negussie, Van Vonno indicated that he did not but that there should have been a $100.00 bill and credit card in his wallet. Upon returning to the room and discovering that the money and credit card were not in Van Vonno's wallet, Choudery told Negussie that "everything

[3] The lead investigator testified that the two dormitories are situated "a couple 100 feet" from each other.

[was] going to be okay" if he returned the items. Negussie returned the money and credit card, and the two exited the room, where they encountered Van Vonno.

Because the university's Emergency Communications Center had received calls about an unknown man attempting to enter rooms in Ellicott Hall, police were present outside the building when Choudery and Van Vonno escorted Negussie to the lobby of the dormitory. Officers apprehended Negussie as he exited the building, recovering $464.00 in cash, a hat belonging to Van Vonno, and a debit card bearing the name of Connor Hogan—a student residing on the sixth floor of the dormitory.[4]

Prior to trial, Negussie's counsel moved to sever the counts, which the circuit court denied after the following colloquy:

> [DEFENSE COUNSEL]: The indictment itself lists three different victims, two different counts of the same charges and several—well, two different days and several different counts of the same charges.
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> The prejudice substantially outweighs the probative value in this matter as well as judicial economy. So for the benefit of Mr. Negussie and for him not to be prejudiced, we would move that those be severed.
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> * * *
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> [THE STATE]: [T]his is a continuing course of conduct over this short period from February 7th through February 12th, and that this is more than just judicial economy. This is about the allegations or the facts that the defendant is accused of committing.

[4] Hogan discovered that his debit card was missing when he was awakened by campus police officers shortly after Negussie's arrest. At trial, he testified that he had slept with an unlocked door during the night.

And to sever the counts, clearly, there's judicial economy because all of the witnesses would be there for each count, but the State is also entitled to a fair hearing.

And this is what the defendant is alleged of doing over this short period of time. And the prejudice does not outweigh the need for the jurors to hear the story.

* * *

[DEFENSE COUNSEL]: Your Honor, it would be one thing if the allegations were that my client went on a crime spree, but the facts that are alleged in the charging document lists two separate days. They're not even in close proximity together.

One of the allegations is that one incident occurred on the 7th. The facts aren't even that similar for—on the two different days for it to be a theft scheme.

So the State's argument that this is a theft scheme, I don't believe holds any weight. My client is going to be substantially prejudiced [by] several different victims coming in here and alleging that he is the one who committed several different burglaries on several different days.

There was no plan or course of conduct that's alleged by the State. It's just separate incidents for allegations of first degree burglary that they've alleged against my client.

And I just believe that it—the prejudice is going to be overwhelming in this matter, to have all of the counts heard on the same days in front of the same jury.

* * *

[THE STATE]: Well . . . there are two separate rooms. Actually, three separate rooms. It's in a dorm at the University of Maryland. And the discovery that was given shows that this defendant, although they can't say it is him, was moving throughout these dorms for the entire period of time. Those dorms are right next to each other.

So the jurors may very well hear evidence that, you know, somebody was seen or that credit cards were missing

> or towels were missing. This is all of the evidence that was given to support the continuing nature.
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> The fact that he was caught on the 12th, and the fact that somebody can identify him on the 7th, and several people on the 12th does not negate this continuing course. That's for the jurors, respectfully, to decide what they think this theft scheme is.
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> * * *
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> THE COURT: Okay. The jury will be instructed as to how to handle different counts at the close of the evidence. I'm going to deny the motion. I think it does look, from what I read previously and just listening today, that it's a continuing course of conduct.

DISCUSSION

Md. Rule 4-253(c) provides: "[i]f it appears that any party will be prejudiced by the joinder for trial of counts, . . . the court may . . . order separate trials of counts . . . or grant any other relief as justice requires." The determination is to be made by use of two questions propounded in *Conyers v. State*, 345 Md. 525, 553 (1997). "If the answer to both questions is yes, then joinder of offenses . . . is appropriate." *Id.*

The first question is whether "evidence concerning the offenses [is] mutually admissible?" *Id.* "To resolve this question, the trial court is to apply the 'other crimes' analysis announced in *State v. Faulkner*, 314 Md. 630 (1989), and its progeny," which includes a non-exclusive list of "substantially relevant 'exceptions' to the general rule excluding other crimes evidence—motive, intent, absence of mistake or accident, identity, or common scheme or plan." *Cortez v. State*, 220 Md. App. 688, 694 (2014) (citations omitted), *cert. denied*, 442 Md. 516 (2015).

The second question is whether "the interest in judicial economy outweigh[s] any other arguments favoring severance?" *Conyers*, 345 Md. at 553. "To resolve this second question, the trial court weighs the likely prejudice against the accused in trying the charges together against considerations of judicial economy and efficiency, including the time and resources of both the court and the witnesses." *Cortez*, 220 Md. App. at 694 (citations omitted). Ordinarily, "once 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 Court of Appeals noted that "[r]ulings on matters of severance or joinder of charges are generally discretionary." *Carter v. State*, 374 Md. 693, 704-05 (2003) (citations omitted). It elaborated:

> This discretion applies unless a defendant charged with similar but unrelated offenses establishes that the evidence as to each individual offense would not be mutually admissible at separate trials. In such a case, the defendant is entitled to severance. Nevertheless, where a defendant's multiple charges are closely related to each other and arise out of incidents that occur within proximately the same time, location, and circumstances, and where the defendant would not be improperly prejudiced by a joinder of the charges, there is no entitlement to severance. In those circumstances, the trial judge has discretion to join or sever the charges, and that decision will be disturbed only if an abuse of discretion is apparent.

Id. (internal quotation marks and citations omitted).

With that background in mind, we turn to the contentions in this appeal. Negussie asserts that the evidence of the thefts was not mutually admissible because the facts do

not suggest that the thefts were part of a single inseparable plan or continuing transaction. He also contends that the risk of prejudice to his defense—"that the jury would cumulate the evidence of the . . . charges, develop a bias or hostility against Mr. Negussie, [or] use the evidence of one of the crimes charged to infer his guilt of others"—"dwarfs" any interest in judicial economy served by joinder of his counts. The State counters that because Negussie was also on trial for theft scheme, each individual theft was an element of that count. Thus, the State reasons, all the thefts and burglaries must necessarily be tried together for that count. Negussie replies that the State's position would permit the prosecutor's charging decision to determine mutual admissibility, thereby "immuniz[ing] the case from principles of joinder and severance."

Md. Code (2002, 2012 Repl. Vol.), § 7-103(f) of the Criminal Law Article provides: "[w]hen theft is committed . . . under one scheme or continuing course of conduct, whether from the same or several sources: (1) the conduct may be considered as one crime; and (2) the value of the property or services may be aggregated in determining whether the theft is a felony or a misdemeanor."

Here, Negussie's alleged scheme encompassed thefts from multiple rooms in two dormitories at the University of Maryland over the course of just two days during one week in February 2014. To prove the theft scheme offense, the State necessarily had to try it along with the other counts. In other words, to prove theft scheme, the State had to establish that the various thefts were indicative of a "continuous course of conduct." Otherwise, judicial resources would be strained, as trial of a theft scheme would necessarily demand multiple trials. Hence, the cases to which Negussie directs our

attention are unconvincing because none address joinder or severance where theft scheme is charged.

Even if we were to read Negussie's argument broadly as an implicit attack upon the sufficiency of the evidence for his theft scheme conviction, the argument would fail. Negussie asserts that there is no evidence to suggest that the thefts were part of a larger plan or that "at the time of the February 7 burglary, [Negussie] had conceived of the idea to commit burglary on February 12." We find *Painter v. State*, 157 Md. App. 1 (2004), instructive. In that case, we found the evidence sufficient for a theft scheme conviction when two thefts occurred at different locations on different days:

> In this case, there was sufficient evidence for the jury to reasonably conclude that appellant's two separate thefts constituted one scheme or course of conduct. [Painter] stole four Holstein calves from the Noffsinger farm during the night or early morning hours. All of the calves were less than two months old. Less than twenty-four hours later, he sold the calves at Belleville Livestock Market auction.
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> One week later, [Painter] stole nine Holstein Heifer calves from the neighboring O'Hara farm. As he did with Noffsinger's calves, [Painter] sold the calves at the Belleville Livestock Market auction the next day. Both thefts involved calves that were essentially the same breed, size, and age. On both occasions, [Painter] hired Yoder to transport the calves from [Painter's] farm to the Belleville market. These separate thefts involved the same subject matter, the same *modus operandi,* the same perpetrator, and the same geographic area. And they occurred within a week of each other. In short, the evidence of "one scheme or continuing course of conduct" was compelling.

Id. at 15.

Here, all thefts "involved the same subject matter"—cash and debit or credit cards—"the same *modus operandi*"—entering unlocked dormitory rooms—"the same perpetrator," "the same geographic area"—nearby dormitories at the University of Maryland—and "they occurred within a week of each other." *Id.* The law does not require more evidence than this, as theft scheme may be proved "directly or by inference." *State v. White*, 348 Md. 179, 188-89 (1997); *see also Kelley v. State*, 402 Md. 745, 757 (2008) ("This is necessarily a fact-intensive matter, and, to the extent that it is influenced by the defendant's intent, one that, in most instances, must be determined on the basis of inference."). To have allowed the severance of separate counts would have rendered the theft scheme crime pointless.

Moreover, because the underlying facts of this case also suggest a common scheme or plan under the other crimes exception to Md. Rule 4-253(c), we need not address Negussie's assertion that a prosecutor could seek a conviction for theft scheme to skirt the joinder and severance rules. Here, where Negussie's theft charges "are closely related to each other and arise out of incidents that occur within proximately the same time, location, and circumstances, and where [he] would not be improperly prejudiced by a joinder of the charges, there is no entitlement to severance." *Carter*, 374 Md. at 705. The circuit court did not abuse its discretion, and therefore, we affirm.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.