UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2578

September Term, 2015

AMOS DELANTE CHANEY

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Nazarian,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: December 28, 2016

On January 7, 2015, Scott Murphy and Jonathan Hradsky reported to the Prince George's County Police that they had been robbed, at gunpoint, by two men. According to Murphy and Hradsky, the robbers stole from them a home theatre system, their cash, wallets, and cell phones. Approximately eight days later, appellant, Amos Delante Chaney, was arrested for the robbery. In an interview with Prince George's Detective Thomas Hannon, Chaney said that he knew nothing about the robbery and did not know exactly where he was on the day the robbery was alleged to have occurred.

As a result of the January 7, 2015 incident, Chaney was charged with two counts of robbery with a dangerous weapon, two counts of robbery, two counts of theft, two counts of first-degree assault, two counts of use of a handgun in a crime of violence, one count of possession of a regulated handgun after having been convicted of a disqualifying crime, and conspiracy to commit armed robbery. After a two-day jury trial in the Circuit Court for Prince George's County, Chaney was convicted of two counts of robbery and two counts of theft. The jury acquitted Chaney of all the remaining counts.

On January 14, 2016, Chaney was sentenced to (fifteen) 15 years' incarceration with all but seven (7) years suspended for each of the robbery convictions, to be served consecutively. The theft convictions were merged for purposes of sentencing.

In this timely appeal, Chaney raises one question: Did the trial court err in not granting appellant's motion for mistrial? We shall answer that question in the negative and affirm all of Chaney's convictions.

I.

BACKGROUND FACTS

Before setting forth the facts in detail, it is useful to note that at trial Chaney testified that at about noon on January 7, 2015, he did have an encounter with Scott Murphy and Jonathan Hradsky in a parking lot next to Mike's Liquors in Oxon Hill, Maryland and, as a result of that encounter, he purchased a cell phone from Mr. Hradsky for $150. Because of that testimony, a significant portion of the State's evidence is not in dispute.

A. Evidence Presented by the State

On January 7, 2015, Scott Murphy and Jonathan Hradsky worked as salesmen for Uptown Audio, selling home theatre systems for cash out of the back of a van. At about noon on January 7, 2015, Murphy and Hradsky drove into the parking lot next to Mike's Liquors where they approached two men, one of whom was Chaney. According to Murphy and Hradsky the men that they approached were interested in purchasing a home theatre system that they had for sale. During negotiations, Mr. Chaney and his companion walked into the liquor store after telling Murphy to wait for them to come out. When Chaney and his companion emerged from the store, they agreed to purchase a home theatre system from them. The two men asked that Murphy and Hradsky follow them to one of their homes so that they could obtain the cash necessary to make the purchase.

Murphy and Hradsky got into their van and followed appellant, who was driving a black Chevrolet Suburban with Virginia license plate no. H5211388 (hereafter "the Suburban"). Appellant drove only a short distance and then parked the Suburban.

Appellant told Murphy and Hradsky to wait while he and his companion went to get the money needed to buy the equipment.

After an interlude, Chaney returned accompanied by another man who the victims had not seen before. Chaney and his companion said that they had the money to buy the home theatre system but they wanted to see what they were buying to make sure that everything was "legitimate" and that nothing was broken. Murphy cut the plastic strips that secured the boxes and opened them for inspection. The victims then saw Chaney's companion, who was about 6'2", holding a gun. The victims were told to take all of the equipment out of the van and put it in the Suburban, which they did. The robbers then took Murphy and Hradsky's wallets and cell phones. Next, the robbers "ransacked" the van and threw away Murphy and Hradsky's shoes and the key to the van. The two robbers then drove off in the Suburban.

The victims retrieved their shoes and the key to the van and drove to a nearby Wells Fargo Bank so that Murphy could cancel his credit card. Once at the bank, the victims spoke to a bank employee; told the employee about the robbery; and called their employer. Hradsky also called his parents and his girlfriend who, in turn, contacted the Prince George's County Police. The victims then went to a police station that was close to the bank. At the police station, the victims gave statements to the police in which they provided details about the robbery. Afterwards, a police officer drove Murphy around the neighborhood to locate the place where the robbery took place. At the scene of the robbery

the police found the plastic straps that had previously secured the boxes in which the home theatre system had been kept.

Later that day, Hradsky contacted his cell phone provider and learned that his phone number was no longer associated with his phone and that his phone now had a different passcode.

The police were able to locate Chaney based on the Suburban's tag number that had been provided to them by the victims. Chaney was arrested about a week after the robbery while driving the Suburban.

Chaney gave a post-arrest statement to Detective Hannon, which was recorded and later introduced into evidence. In the interview, Chaney denied having any discussion about purchasing home theatre equipment on the day of the robbery. Although Chaney admitted that he frequented the area around Mike's Liquor store, he could not say exactly where he was on the day of the robbery nor did he say anything to the police about purchasing a cell phone.

Chaney said in the interview with Detective Hannon that he was employed as a driver by District Executive Limousine Company and that he was authorized by his employer to drive the Suburban. He also said that he was the sole person authorized by his employer to use the Suburban.

The State proved that the Suburban was equipped with a GPS unit, which showed that the Suburban was at the place of the robbery when it occurred. Additionally, a cell phone found on Chaney's person when he was arrested had a GPS application that showed

that appellant's phone was at the scene of the robbery at the time the victim said the robbery occurred.

The State's expert on GPS technology testified that at 7:21 p.m. on the date of the robbery, the subscriber identification module card (hereafter the "SIM card") associated with the cell phone Chaney possessed when arrested was placed in a different cell phone.

During the State's case, the parties stipulated that Amro Fawzy, the owner of District Executive Limousine Company, if called as a witness, would testify that appellant was one of his employees in January 2015; that appellant "was given" the Suburban to drive by Mr. Fawzy; and that appellant was the sole employee authorized to drive the Suburban.

B. The Defense

Chaney testified that at approximately noon on January 7, 2015, he was driving a client in the Suburban owned by his employer when the client asked him to pull into Mike's Carryout, a sandwich shop located next to Mike's Liquors, so that his client could buy lunch. As he was pulling into the parking lot, Murphy and Hradsky approached and began trying to convince him and his client that they should purchase some video equipment that they had for sale that was "off book." Chaney advised that he was not interested, that he did not have the money to buy what they were selling and that he was saving his money so that he could purchase a Note cell phone. Chaney and his client then went into the carryout but when they emerged from that establishment, Murphy tried to sell Chaney a Samsung Galaxy cell phone. Chaney told them that he would come back if he was interested in the

phone. Murphy suggested that he and Hradsky follow Chaney while he drove his client home so that they could continue sales discussions. Chaney agreed and began driving to the client's house, with Murphy and Hradsky following him in their van. During the trip, Chaney's client told Chaney that he did not want the two salesmen knowing where he lived. Accordingly, Chaney stopped the Suburban and let the client out near the client's home.

When Chaney got out of his vehicle, Murphy and Hradsky once again attempted to sell him a home theatre system. Hradsky then asked Chaney if he was still interested in buying a cell phone. Hradsky said that he would sell him his personal cell phone for $250. Eventually Chaney agreed to buy the cell phone for $150. Hradsky removed his SIM card and gave the phone to Chaney.

After the purchase, Chaney drove off in the Suburban. Later that day, he put his SIM card into Hradsky's cell phone. Thereafter, the cell phone worked only briefly and then it sent out a message that it was "not registered." Dissatisfied with his purchase, Chaney attempted to find Hradsky by returning to Mike's Liquor's parking lot but despite making several trips to the liquor store, he was unable to locate Hradsky. Because he could not get the cell phone to work, he threw it away.

Chaney testified that he did not know the name or address of the client whom he had driven to the carryout. Chaney admitted that he did not tell the police about this encounter with the victims when he gave the police a taped statement about eight days after the incident. He also acknowledged that he did not tell the police that he had bought a cell phone from Hradsky.

Additional facts will be set forth as they relate to the argument set forth below.

II.

DISCUSSION

As mentioned, Detective Hannon, about eight days after the crime, interviewed Chaney. That interview was recorded and, without objection, was admitted into evidence. After the jury listened to a portion of the tape recorded interview, Detective Hannon said to Chaney on the tape: "So, the vehicle (referring to the Suburban) is stolen, okay?" At that point defense counsel objected and asked to approach the bench. At the bench conference, defense counsel told the court that she had an agreement with the prosecutor that there would be no mention of a stolen vehicle. In response, the prosecutor said that when appellant was arrested, the police believed that the Suburban had been reported stolen and that was the reason the Suburban was stopped. The prosecutor acknowledged that she had agreed to not mention the stolen car, but said that she had supplied defense counsel with a copy of the video along with her designations of the exact portions of it that the State intended to introduce into evidence. Additionally, the prosecutor said that she had asked defense counsel if she wished to have any of it redacted but received no response. At the bench conference, defense counsel said that she did not think it was necessary to specify any particular redactions because of the agreement that there would be no mention of a stolen car. At that point, the trial judge sent the jurors to the jury room and gave them the following instruction:

> Disregard that last little bit that you heard. There was a break, and then they started up, just forget everything after that break, that little bit that

> just started up again. All right. And you can all adjourn for a few minutes to the jury room.

The prosecutor proposed not playing any more of the videotape; instead she proposed to simply elicit the evidence she wanted admitted through a series of questions to Detective Hannon, without mentioning the "stolen" car. At that point, defense counsel moved for a mistrial, although counsel did not make any specific argument as to why a mistrial was justified.

The trial judge denied the motion saying:

> Well, I'm going to deny the motion for a mistrial. I don't think that what's happened so far justifies a mistrial. I've already told them to disregard it.
>
> I'll be happy to give a further cautionary instruction, if you want that, but I'm not going to grant a mistrial.
>
> . . .
>
> We've had a fair bit of trial already. It was one statement, frankly, when I'm not sure how many people were paying attention to - - to this rather boring interview, but I'm not going to - - and I've instructed them to disregard that one statement.
>
> If you want, I'll give a curative instruction that there's no claim in this case that he's at all involved in a stolen vehicle. Do you want me to do that?

Defense counsel stated that she wanted a curative instruction. The trial judge then immediately gave such an instruction:

> All right. Ladies and gentlemen, right before the break, there was some mention about a stolen vehicle.
>
> The defendant's not at all charged or being accused of participating in any stolen vehicle. So disregard that statement.

The prosecutor then completed her direct examination of Detective Hannon by questioning him as she had proposed during the bench conference. No additional part of the video was played. During cross-examination, defense counsel brought out the fact that Detective Hannon was told by appellant that he (appellant) had had a discussion with his employer about the fact that the tags on the Suburban were expired (in appellant's words "dead"), which made appellant afraid to drive that vehicle.

On appeal, appellant argues that the trial judge abused his discretion in not granting a mistrial because:

> [D]espite an agreement that the subject was not admissible, a video tape of a portion of [a]ppellant's interrogation was played for the jury in which the interrogating officer mentioned that [a]ppellant had been charged with theft of the car which he was driving when he was arrested.

In arguing that a mistrial should have been granted, appellant states in his brief that the jury heard evidence that appellant had been arrested for car theft. In this regard, he argues:

> A salient principle of Maryland law is that generally evidence of a defendant's prior criminal acts may not be introduced into evidence to prove that he is guilty of the offense for which he is on trial. *State v. Faulkner*, 314 Md. 630, 633, 552 A.2d 896 (1989). In *Faulkner*, the Court of Appeals stated:
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> > Generally, "evidence of a defendant's prior criminal acts may not be introduced to prove that he is guilty of the offense for which he is on trial." . . . Evidence of other crimes may . . . predispose [the jury] to a belief in the defendant's guilt, or prejudice their minds against the defendant. . . .
>
> *Id*. at 633 (citation omitted). "Put another way, such eviden[ce] may not be introduced to suggest that because the defendant is a person of criminal

> character, it is more probable that he committed the crime for which he is on trial." *Behrel v. State*, 151 Md. App. 64, 123, 823 A.2d 696 (2003).

The State counters that there was no abuse of discretion on the trial judge's part. According to the State, the argument that appellant was prejudiced by the statement is undermined by the fact that after the mistrial motion was denied, the State and the appellant stipulated that if called, Chaney's former employer, Amro Fawzy, would have testified to the following:

> Mr. Fawzy is the owner of District Executive Limousine Company.
>
> District Limousine Company has a fleet of vehicles, and a Chevrolet Suburban with Virginia license plate[] H5211388 is one of them.
>
> . . .
>
> The defendant, Amos Chaney, was employed by District Executive Limousine Company in January 2015.
>
> The defendant was given the Chevrolet Suburban mentioned above with that license plate to drive by Mr. Fawzy and was the sole authorized driver of the vehicle.

In support of his position that a mistrial should have been granted, appellant relies, almost exclusively, on *Rainville v. State*, 328 Md. 398 (1992). Robert Rainville was charged in the Circuit Court for Worcester County, Maryland with rape of a seven-year-old girl. *Id*. at 398-99. The only evidence against the defendant was the testimony of the seven-year-old victim. During the State's case, the victim's mother testified that Mr. Rainville had been "in jail for what he had done" to her nine-year-old son. *Id*. at 399. The *Rainville* Court held that the curative instruction given in that case could not remedy the prejudice created by the mother's remark that Rainville was in jail for what he had done to

her other child. The Court noted that a prior charge, especially one that is similar to the crime for which the defendant stands trial, "may have a tendency to suggest to the jury that if the defendant did it before he probably did it this time." *Id*. at 407.

In this case, appellant argues that the remark at issue "suggested to the jury that [a]ppellant was a criminal and as such was guilty of the robbery with which he had been charged." According to the appellant, under such circumstances, "no curative instruction, including the one given here, could have ensured that [a]ppellant obtained a fair trial." We reject these arguments.

The prosecutor, in her opening statement, told the jury that the Suburban appellant was driving was owned by District Executive Limousine Company, which, in turn, was owned by Amro Fawzy and that the Suburban was equipped with a GPS. Later in the State's case, as already mentioned, the parties stipulated that if Mr. Fawzy had been called as a witness, he would have testified that he gave the Suburban that was involved in this incident to appellant for his use and that appellant was the sole authorized driver of that vehicle. The prosecutor's admission in opening statement coupled with the stipulation read to the jury, made it extremely unlikely, even if there had been no curative instruction, that the jury would have believed that appellant, at any time, was guilty of either possession of a stolen vehicle or stealing one. But here there was a curative instruction where the jury was told that the remark at issue should be disregarded and that appellant was not charged with having stolen a vehicle or participating in its theft. Additionally, in its instructions to the jury at the conclusion of the evidentiary phase of the case, the trial judge told the jurors

that they should decide the case based solely on the evidence introduced at trial and that the jury should not consider any evidence that the court had asked the jury to disregard.

"A mistrial is an extreme sanction" that is necessary only "when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice." *McIntyre v. State*, 168 Md. App. 504, 524 (2006) (citations and internal quotation marks omitted); *see also Carter v. State*, 366 Md. 574, 589 (2001) ("We have held consistently to the principle that the grant of a mistrial is considered an extraordinary remedy and should be granted only if necessary to serve the ends of justice." (citation and quotation marks omitted)). When a mistrial is sought because inadmissible evidence has been placed before the jury, "[t]he necessity of a mistrial turns on whether the damage in the form of prejudice to the defendant transcended the effect of a curative instruction and deprived appellant of a fair trial." *McIntyre*, 168 Md. App. at 524. "[G]enerally[,] cautionary instructions are deemed to cure most errors, and jurors are presumed to follow the court's instructions[.]" *Carter*, 366 Md. at 592. The central question a trial judge must determine when faced with such a motion for mistrial, is whether the prejudice to the defendant is so substantial as to deprive him of a fair trial. *Kosh v. State*, 382 Md. 218, 226 (2004); *Rainville*, 328 Md. at 408. The decision whether to grant a mistrial lies within the sound discretion of the trial court "who hears the entire case and can weigh the danger of prejudice arising from improper testimony is in the best position to determine if the extraordinary remedy of a mistrial is appropriate" and the trial court's decision will be upheld "unless the defendant was so clearly prejudiced that the denial [of the mistrial] constituted an abuse of

discretion." *Behrel*, 151 Md. App. at 141-42; *see also Walker v. State*, 373 Md. 360, 405 (2003); *Klauenberg v. State*, 355 Md. 528, 555 (1999).

Under the circumstances of this case, it is clear to us that the statement at issue, which the judge told the jurors to disregard, was not so prejudicial that it deprived appellant of a fair trial. *Kosh*, 382 Md. at 226. Accordingly, we hold that the trial judge did not err in denying appellant's motion for a mistrial.

JUDGMENT AFFIRMED; COSTS TO BE PAID BY APPELLANT.