

Circuit Court for Prince George's County
Case No. CT12-1723B

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1518

September Term, 2016

TRAVON DONNELL BENNETT

v.

STATE OF MARYLAND

Woodward, C.J.,
Beachley,
Moylan, Charles E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 2, 2017

*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.

Following a jury trial in the Circuit Court for Prince George’s County, Trevon Donnell Bennett, appellant, was convicted of armed robbery. On appeal, Bennett contends that the trial court erred in denying his motion for a mistrial after one of the State’s witnesses testified about inadmissible “other crimes” evidence. For the reasons that follow, we affirm.

The State presented evidence that Bennett was interviewed by the police for several hours following his arrest. During that interrogation, he admitted taking cigarettes from the victim and stated: “Yeah we got that guy tonight . . . [my co-defendant] used the revolver.” The police initially questioned Bennett in a room at the District III police station. However, they subsequently transported him to an interview room in the Criminal Investigative Division (CID) that had a video and audio recorder. A video of Bennett’s interrogation at the CID was introduced at trial.

Although unknown to the jury, the officers had also interviewed Bennett about an unrelated homicide and robbery the same evening. During the direct examination of Lieutenant Patrick Hampson, the State’s last witness, the following exchange occurred:

PROSECUTOR: After 3:45 did you ever go back into [the room in Division III]?

HAMPSON: Yes.

PROSECUTOR: When?

HAMPSON: Around 4:15, I took Mr. Bennett over to the CID.

PROSECUTOR: Where exactly did you take Mr. Bennett in CID?

HAMPSON: To the interview rooms in the homicide office.

Defense counsel objected to Lieutenant Hampson’s reference to the “homicide office” and requested a mistrial, claiming that the error was “unduly prejudicial and incurable.” The trial court indicated that it would consider the motion overnight and, in the interim, gave the following curative instruction:

Okay. Ladies and gentleman, the detective said they took him to a room in the Homicide Division. The lawyers were up here talking to me. I just wanted to make it clear that there is no allegation that anybody was ever shot. No allegation a gun was ever used in this case. And I just want to say disregard it. Okay? I just want to put that in your mind. You hear it and everything is like – it has nothing to do with this case. That’s just a room that he was taken to, and there’s rooms all around that building. Some have videos and some don’t.

The next day, the court denied appellant’s motion.

In determining whether to grant a mistrial, the “trial judge must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured. If not, a mistrial must be granted.” *Carter v. State*, 366 Md. 574, 589 (2001). When a defendant claims that his right to a fair trial has been infringed by the admission of inadmissible and prejudicial testimony, the trial court may consider a number of factors to determine whether a mistrial is required:

[W]hether 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 whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists[.]

Rainville v. State, 328 Md. 398, 408 (1992) (citation omitted). The decision whether to grant a motion for mistrial rests in the discretion of the trial judge, and this Court’s review

“is limited to whether there has been an abuse of discretion in denying the motion.” *Hill v. State*, 355 Md. 206, 221 (1999) (citation omitted).

Here, Lieutenant Hampson was not the principal witness in the State’s case, his testimony was isolated, defense counsel conceded that the prosecutor did not intend to elicit the remark, and there was substantial other evidence against appellant. Moreover, the mention of appellant being interviewed at the “homicide office” did not explicitly implicate him in any other wrongdoing or reveal that he had been arrested or accused of any other offense. Finally, the trial court clarified to the jury that Bennett had not been accused of shooting anyone and instructed them to disregard the remark. For these reasons, we are persuaded that Lieutenant Hampson’s testimony was not so prejudicial as to inhibit the jury’s ability to impartially decide the case. *See, e.g., State v. Hawkins*, 326 Md. 270, 277-78 (1992) (upholding the trial court’s denial of a motion for mistrial after two police officers referred to the room where they had interrogated the defendant as the “polygraph room” because the reference was “uttered abruptly and impulsively, with no nefarious intent” and “[n]either officer stated that [the defendant] had taken a polygraph”). Consequently, the trial court did not abuse its discretion in denying Bennett’s motion for a mistrial.

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