Circuit Court for Prince George's County
Case No. CT171751X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 228

September Term, 2019

DONTE DAWSON MCKINNON

v.

STATE OF MARYLAND

Berger,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 6, 2020

*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.

Appellant Donte Dawson McKinnon was convicted by a jury in the Circuit Court for Prince George's County of armed robbery and related firearm charges. He presents the following three questions for our review:

> "1. Did the trial court err in admitting DNA evidence when the State failed to link the sample tested by the FBI to the swab taken from McKinnon, there was no chain-of-custody log, and the DNA analyst admitted he was 'assuming that this particular sample was from Donte McKinnon'?
>
> 2. Did the police have reasonable articulable suspicion to stop a car based only on a detective's observation—over the course of one hour—of three handshakes followed by brief conversations in a shopping center parking lot during business hours?
>
> 3. Did the trial court err in denying McKinnon's motion to sever the gun possession counts from the robbery counts when the offenses were separated by two full weeks and the only asserted correlation was that the police discovered evidence of both offenses in the car stop?"

Finding no error, we shall affirm.

I.

Appellant was indicted by the Grand Jury for Prince George's County of armed robbery, robbery, use of a firearm in a felony, first-degree assault, second-degree assault, theft, illegal possession of a regulated firearm, illegal possession of ammunition, carrying and transporting a handgun in a vehicle, and carrying and transporting a handgun upon his person. The jury convicted him of all charges. The court imposed a term of incarceration

of eight years for armed robbery and two years for illegal possession of a regulated firearm, to be served consecutively.[1]

On September 6, 2017 at around 7:15 p.m., a man with distinctive black and yellow shoes entered a Metro PCS mobile phone store in Temple Hills and explained to Melquisedec Lovo, the store clerk, that he wanted to pay a phone bill. He spent some time looking for the number, left the store, and returned several minutes later with a laptop bag. After receiving a short phone call, he pulled out a gun and told Mr. Lovo to put money in the bag. Mr. Lovo observed that the gun was a revolver with a white handle and a black barrel. He put between $1,000 and $2,000 from the register into the bag. After the man left, Mr. Lovo called the police. The video footage from the security camera at the store was not recoverable, but police discovered from a nearby store's security camera footage that someone with the same distinctive black and yellow shoes arrived at and left the scene in a gray Kia Soul around the time of the robbery.

Two weeks later, on September 20, 2017, at approximately 6:00 p.m., Detective Mercedes White was in an unmarked car in the parking lot of a shopping center in Oxon Hill. She was observing the area because of a recent shooting and complaints about drug dealings in the area. She saw a burgundy Chevy Impala enter the lot and, over the next hour, did not observe anyone leave the car to enter one of the stores or leave a store to enter the car. She observed three exchanges involving occupants of the car: (1) someone approached the driver's side of the car, spoke to the driver briefly, and engaged in a "very

[1] For sentencing purposes, the court merged the remaining counts with armed robbery.

tight handshake," while "they[were] very close together"; (2) another person approached the passenger's side of the car and engaged in "the same kind of a transaction" with the person sitting on that side; and (3) one of the car's occupants got out, walked over to a group of people in front of the stores, had a short conversation, and engaged in a similar handshake with someone in the group.

Detective White did not see anything change hands. But based on her "training and knowledge and experience" as a narcotics officer who observed and participated in hand-to-hand drug transactions while undercover, she testified that she believed she had just observed drug transactions. She described these transactions as "usually a close and tight handshake, . . . so that individuals who are not involved i[n] i[t] cannot see the money or the drugs being passed back and forth."

Based on these observations, Detective White arranged for the car to be stopped by a marked patrol car after it left the parking lot. Police stopped the car and removed the four occupants, including appellant, and discovered a loaded handgun—a black revolver with a white handle—under the driver's seat, within reach from the back seat where appellant had been sitting. In the trunk, they found documentation for and a key to a stolen Kia Soul, the type of car that was associated with the robbery of the Metro PCS store. Police arrested appellant and the other occupants of the car. Searching appellant incident to arrest, police found on him the same kind of phone that the armed robber had used at the Metro PCS store. Forensic cell phone plotting put the phone in the vicinity of the robbery when the robbery occurred.

Police processed the gun for DNA, test-fired it, and documented the findings with the gun's serial number of IC 167367. Police also recovered the stolen Kia Soul a block away from appellant's mother's house and processed it for DNA. DNA from the gun and the stolen Kia Soul matched DNA from appellant. Police showed a photo array containing appellant's photo to the Metro PCS store clerk, who noted that appellant looked most like the robber but that he was not certain.

Appellant filed a motion to sever the charges and a motion to suppress the evidence seized by the police. Appellant moved to sever the charges related to the robbery from those related to the gun found in the car. The court denied the motion, explaining as follows:

> "The Court must show in order to have a severance that the evidence as to each offense would not be mutually admissible at separate trials, different evidence and unrelated.
>
> And the Court does find that this evidence would be related in both cases, because of the nature of the gun and the location of the gun as alleged to have been found underneath the driver's seat, close to where . . . the rear passenger, in this case [appellant], would have been sitting.
>
> The Court does find that they are mutually admissible in both trials . . . .
>
> ***
>
> And that there is no other reason to order a severance unless the joinder is prejudicial. The Court does not find that the joining would be prejudicial, because they are intertwined as such that the same facts would be used in both of those cases.
>
> Therefore, the Court is going to deny your motion for severance."

The court denied appellant's motion to suppress the evidence from the car stop near the shopping center, explaining as follows:

> "[T]he Court has to consider . . . whether or not [Detective White] believes, considering the totality of those circumstances, . . . there was a crime that was afoot.
>
> The Court finds that . . . she did have a reasonable articulable suspicion that the occupants were engaged in some type of criminal activity, through her training and experience. She described her training and experience as an officer who has also engaged in hand-to-hand transactions in that same way as she saw them, as she said, shaking hands, it was a hand-to-hand transaction.
>
> And the Court, taking the totality of the circumstances in mind, . . . does find again that reasonable articulable suspicion is less than probable cause and, therefore, it's not based on certainties, but it is based, therefore, on probabilities based on the totality of the circumstances."

At trial, the Prince George's County Police Department officer who processed the recovered stolen Kia Soul testified that he took seventeen swabs from various parts of the car, gave them individual items numbers "J1" to "J17," put the swabs in an envelope, labeled and sealed the envelope, signed over the seal, and submitted the envelope to the "property warehouse," where it would "await request" for analysis.

Another police officer, who took DNA swabs from appellant and two other occupants of the Impala, testified that she took a set of swabs from each suspect's cheeks, gave each set of swabs different items numbers, put each set in a separate DNA envelope, sealed and put evidence tape across the envelopes, and dated and initialed them. Afterwards, she testified that she put them in her van, transported them to the Crime Scene

Investigation Division, and secured them in the "property vault," where they would await transfer to the "property warehouse." There was no testimony as to the specific item numbers assigned to these DNA sets or documentation of the assignment (*i.e.*, a record that particular item numbers were assigned to the samples of a particular suspect); neither the State nor defense counsel asked the officer about these.

FBI forensic examiner Brandon McCollum testified that the FBI received from the police a resolver[2] and sealed[3] DNA sets from the stolen Kia Soul and three different "known profiles" or "persons of interest." He testified that the FBI then transferred the evidence into its own packaging according to its protocol. He continued that once in his possession, he compared these DNA sets against a DNA sample taken from the gun. He testified that "FBI item 51B1, which from [his] record should be reference sample for [appellant]" had labeling on its package that was "consistent with stickers that are generate[d] at the FBI lab." Mr. McCollum's DNA report referenced testing a gun with the serial number of IC 167367 and contained various internal references to both PGPD and FBI items numbers of the DNA sets.

Defense counsel objected repeatedly that Mr. McCollum could not be sure that what he "assumed" were appellant's swabs—presumably because they came to him labeled as

[2] At trial, the State noted that a revolver with a black barrel and a white handle is "very [sic] unique" because most firearms are a black or silver semiautomatic.

[3] Mr. McCollum testified that "if the evidence is not received [by the FBI] in a manner that is suitable to protect the integrity of the evidence, it will be noted once the evidence is received" and that there was no such notation on the evidence when he received it.

such—actually came from appellant: "Objection, Your Honor. Speculation, [this] is a chain of custody issue. [Mr. McCollum] didn't take these swabs." Defense counsel objected to admitting the DNA evidence on similar grounds. The court overruled the objection each time, explaining as follows:

> "I'm going [to] let you argue that all to the jury. . . . I do not find that break in the chain of custody based on the testimony. . . . I'm making that determination . . . that [it] hasn't been tampered with."

Mr. McCollum's testimony continued as follows:

> "[THE STATE]: You didn't just randomly . . . decide this is [appellant's] DNA, correct, or that these were his swabs . . . ?
>
> ***
>
> [W]hen you receive a DNA swab of a known profile, . . . how do you get the name of that known profile?
>
> MR. MCCOLLUM: Generally what will happen is there's incoming information from the individual who either collected that sample or is submitting that sample to the laboratory. But more importantly the actual swab box itself will more [often] than not always have an individual's name on the outside of the package to also correspond with what's being received from the incoming communication from the contributor."

Defense counsel objected again, and a bench conference occurred as follows:

> "[DEFENSE COUNSEL]: Your Honor, again these are swabs that [Mr. McCollum] did not collect. The State has not identified the person who identified the swabs he sent [to] the FBI as being the same swabs. Just like when you're entering drugs, the person has to say this is what I collected[, I] sealed it up, I wrote my initials on the chain of custody log, and there's no beginning to the chain of custody. . . . He didn't say . . . there is item A. There is no way to tell what items were actually labelled and sent to the FBI at all.

> [THE STATE]: No way to tell because it doesn't exist anymore. They took them out of the package that they received it and put it back in other, in their own packaging and sealed it, so it doesn't exist anymore.
>
> [DEFENSE COUNSEL]: [There] . . . still should be a log.
>
> THE COURT: As I read the statute and law, it's not necessary. Therefore you're overruled."'

Mr. McCollum testified that the DNA from the gun and the stolen Kia Soul both matched the DNA belonging to appellant.

Appellant was convicted and sentenced as stated above, and this timely appeal followed.

II.

Before this Court, appellant argues first that the trial court erred in admitting DNA evidence without a show of sufficient chain of custody. In particular, appellant questions whether each piece of evidence collected by the police is the same evidence later received and tested by the FBI. Appellant points out that there was no testimony explicitly about the specific item numbers assigned to the DNA swabs from the suspects or about details of the evidence transportation—"how the samples were 'labeled' or 'delivered.'" In appellant's view, the evidence could have been contaminated or misidentified amongst each other or with evidence from other cases either before it arrived at the FBI or once at the FBI. Appellant argues that this "failure to link the swabs taken by the [police] to the swabs tested by the FBI and introduced at trial requires reversal."

Second, appellant argues that the motions court erred in denying his motion to suppress the evidence the police seized during the car stop. He maintains that the police did not have reasonable articulable suspicion to justify stopping and searching the car because Detective White did not explain why each of the three handshakes she observed was suspicious. Appellant argues that this explanation is required to justify her reasonable suspicion.

Third, appellant argues that the motions court erred in denying his motion to sever the robbery charges from the gun charges related to the car stop because, *inter alia*, "the robbery would not be admissible in a separate gun possession trial as proof of 'constructive possession.'" Appellant contends that the State failed to show (1) that appellant had an "ownership or possessory interest" in the location of the car where the gun was found and (2) how the robbery at the Metro PCS two weeks prior is "relevant to that inquiry" of appellant's constructive possession of the gun in the car. Appellant points out that the clerk at the Metro PCS store did not identify, at the motion hearing or at trial, the gun recovered from the car stop as the one used in the robbery, nor was he asked to identify appellant at trial. Even if mutually admissible, appellant argues that the undue prejudice of introducing the other offense would outweigh its probative value by "confus[ing] the issues and invit[ing] the jury to infer a 'criminal disposition.'"

In response, the State argues that the trial court acted within its discretion in admitting the DNA evidence after finding that it was unlikely to have been tampered with and that any perceived deficiency in the chain of custody is a matter of weight for the jury

and not of admissibility. The State points out that police officers testified to collecting, labeling, sealing, and submitting the DNA swabs to the property warehouse and that Mr. McCollum of the FBI testified to the FBI's receiving them sealed. This is sufficient, argues the State, for a rational factfinder to find that the evidence collected and sent by the police was the same evidence received and analyzed by the testifying FBI examiner.

The State argues that the trial court denied correctly appellant's motion to suppress the evidence from the car stop because there was reasonable articulable suspicion based on the totality of circumstances to justify the stop. Those circumstances include Officer White's training and knowledge of hand-to-hand drug transactions, her observation of the interactions between the people inside and outside the car, her observation that no one from the car went into a store and that no one from a store went into the car, and her knowledge of the area's reputation for drug dealing.

Finally, the State argues that appellant is not entitled to a severance of the charges because the evidence in the robbery and car stop is mutually admissible and there is no undue prejudice in joining the charges. The State argues that the evidence related to the car stop and the distinctive gun discovered in the car is probative of appellant's identity as the robber of the Metro PCS store and that the evidence of the same distinctive gun used in the robbery is relevant to show that the gun in the car belonged to appellant.

III.

We turn first to the issue of the admissibility of the DNA evidence. Generally, we review a trial court's determination regarding the admissibility of evidence for abuse of discretion. *Easter v. State*, 223 Md. App. 65, 74 (2015). A trial court abuses its discretion when "no reasonable person would take the view adopted by the [trial] court" or when the court acts "without reference to any guiding rules or principles." *Id.* at 75 (alteration in original). When the admissibility determination involves a question of law, we review the issue *de novo*. *State v. Simms*, 420 Md. 705, 724–25 (2011).

The proponent of a tangible item of evidence must establish its "chain of custody," *i.e.*, must "account for its handling from the time it was seized until it is offered into evidence." *Jones v. State*, 172 Md. App. 444, 462 (2007). To do so, the proponent must present "key witnesses who were responsible for the safekeeping of the evidence, *i.e.*, those who can negate *a possibility* of tampering . . . and thus preclude *a likelihood* that the thing's condition was changed." *Easter*, 223 Md. App. at 75 (internal quotations and citations omitted) (emphasis added). The State can meet its burden by demonstrating that a sample in question was sealed and labeled when it was collected and was in that condition when it was received by the technician who performed the test. *See Jones v. State*, 172 Md. App. 444 (2007); *see also State v. Comstock*, 494 A.2d 135, 137 (Vt. 1985) (holding that chain of custody is sufficient where mailed evidence arrived at the lab in the same condition as when the officer prepared it, with seal intact, and where there was "no evidence of tampering with, change in, or confusion of the sample during the mailing").

The circumstances need establish only reasonable assurance of the identity of the sample tested. The standard is "reasonable probability," not "beyond a reasonable doubt," and what is sufficient to meet this standard is case-specific. *Jones*, 172 Md. App at 462. A trial judge has the discretion to determine if this standard is met, and once he finds that it is met, any gaps or weaknesses the opposing party may argue goes to the weight of the evidence, not to admission. *See Easter*, 223 Md. App. at 74–75.

In *Armsted v. State*, 342 Md. 38, 64 (1996), the Court of Appeals addressed the admissibility of DNA evidence generally and also with respect to adherence to laboratory protocols. The Court concluded that "the better approach is generally to treat individualized errors in application of the DNA technique as matters of weight, but to permit trial judges discretion to exclude DNA evidence if such errors were made in the course of testing that the evidence would not be helpful to the factfinder." *Id.* Gaps or weaknesses in the chain of custody generally go to the weight of the evidence without requiring exclusion of the evidence as a matter of law. *Easter*, 223 Md. App. at 75.

It appears that in considering chain of custody arguments related to the admissibility of DNA evidence, the overwhelming majority of our sister courts have admitted DNA evidence, leaving questions related to contamination and chain of custody to be explored on cross-examination or through the defense's expert testimony. *See, e.g.*, *State v. Wommack*, 770 So.2d 365, 372 (La. Ct. App. 3d Cir. 2000) (possible contamination where clothing was bagged together and lack of accreditation of FBI lab at the time of testing was properly before the jury); *State v. Moore*, 885 P.2d 457, 470, 474 (Mont. 1994) (objections

as to laboratory's analysis, procedure, and contamination go to weight of the evidence, not admissibility), *abrogated on other grounds by State v. Gollehon*, 906 P.2d 697 (Mont. 1995); *State v. Anderson*, 881 P.2d 29, 48 (N.M. 1994) (controversy over results of testing and statistical calculations goes to weight of the evidence and is left properly to the jury); *People v. Ortiz*, 914 N.Y.S.2d 281, 282 (N.Y. App. Div. 2d Dept 2011) (evidence that DNA on the underpants could have been contaminated goes to the weight of the evidence, not admissibility); *Bean v. State*, 373 P.3d 372, 386 (Wy. 2016) (absent evidence of tampering, allegations or questions regarding the care and custody of evidence go to weight of the evidence, not admissibility).

Appellant seems to be presenting a two-pronged argument: (1) that the evidence could have been contaminated or misidentified amongst each other or with evidence from other cases either before arriving at or at the FBI and (2) that the State did not link the swabs taken by the police to the swabs tested by the FBI. We hold that the trial court did not abuse its discretion in determining that the State met its burden and in admitting the evidence.

The State offered sufficient evidence to establish a reasonable probability that the evidence collected by the police was the same evidence tested by the FBI. The police officers testified that they collected the evidence, put identifying information, sealed, and submitted it to the property warehouse according to police protocol. The FBI forensic examiner testified to the FBI's receipt of the sealed evidence; he testified that "if the evidence is not received [by the FBI] in a manner that is suitable to protect the integrity of

the evidence, it will be noted once the evidence is received" and that there was no such notation on the evidence when he received it. Moreover, the FBI forensic examiner's report contained differentiating references to each item of evidence and the serial number of the gun he tested, which matched the serial number in the test-fire documentation from the police.

The State's chain of custody evidence met the threshold showing of a reasonable probability that the DNA evidence had not changed in condition, so as to be unreliable, from the time of collection to the time of testing and trial. Any argument as to contamination or chain of custody was left properly to the jury to consider.

We turn to appellant's argument on reasonable articulable suspicion. We review denial of a motion to suppress evidence as a mixed question of law and fact. *See Grant v. State*, 449 Md. 1, 14–15 (2016). We review legal questions *de novo*; we review factual findings for clear error, while limiting ourselves to the information contained in the record of the suppression hearing and drawing all reasonable inferences in favor of the State. *Id.*; *Stokes v. State*, 362 Md. 407, 412–13 (2001).

Police may detain a person briefly to investigate when they have reasonable suspicion that an individual has committed, is committing, or is about to commit a crime. *Hicks v. State*, 189 Md. App. 112, 120–21 (2009). Reasonable suspicion is a "common sense, nontechnical conception that considers factual and practical aspects of daily life and how reasonable and prudent people act." *Bost v. State*, 406 Md. 341, 356 (2008). A court looks to the totality of the circumstances to determine whether there was reasonable

suspicion and does not "parse out each individual circumstance for separate consideration." *Hicks*, 189 Md. App. at 121. "[C]ontext matters: actions that may appear innocuous at a certain time or in a certain place may very well serve as a harbinger of criminal activity under different circumstances." *Id.* (internal citation omitted).

In *Hicks*, two police officers observed in a gas station area known for drug transactions a car parked for fifteen minutes, with no indication that the occupants were buying gasoline. *Id.* at 122. One of the officers observed someone exit the car and engage in what he believed, based on his experience, to be a hand-to-hand drug transaction. *Id.* There was no conversation between the two people engaged in the transaction. *Id.* This Court held that the totality of these circumstances supported reasonable suspicion of drug-related activity to justify an investigatory detention of the car's occupants. *Id.* at 122–23.

The case at bar is analogous to *Hicks*. Detective White, an experienced narcotics officer, monitored for over an hour a car parked in a shopping center parking lot that was known for drug sales, with no indication that its occupants were shopping at the center. Three times she saw an occupant of the car engage in a very short conversation with a person outside the car, followed by a hand-to-hand transaction between the two people. The totality of circumstances was sufficient to render Detective White's suspicion reasonable and justify the stop of the car. The trial court did not err in denying appellant's motion to suppress the evidence from the car stop.

Appellant argues that Officer White's lack of explanation as to why the individual three handshakes she observed were suspicious is dispositive because "[o]ne of the key

requirements of reasonable suspicion, for either stop or frisk, is not only that it be present but that it be actually *articulated*." *Graham*, 146 Md. App. 327, 359 (2002) (emphasis added). But the sentence relied upon by appellant is taken out of context. This Court in *Graham* explained further as follows:

> "For a frisk, it is not enough that the abstract facts have been developed that might, objectively, permit some officer somewhere to conclude that the suspect or stopee was armed and dangerous. It is required that the frisking officer actually articulate the factors that lead to his reasonable suspicion that a frisk was necessary for his own protection."

Id. at 359–60. Thus, *Graham* is consistent with the proposition that the officer involved must explain facts or factors that, in the totality of circumstances, led to her reasonable suspicion —(1) that, for a stop, a crime has occurred, is then occurring, or is about to occur or (2) that, for a frisk, the person stopped is armed and dangerous. *Graham* does not stand for the proposition that the officer must explain why an individual factor in isolation was suspicious. Detective White's testimony was sufficient to justify her reasonable suspicion.

We turn to the severance issue. In a jury trial, a defendant charged with similar, but unrelated offenses is entitled to a severance if he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials. Where the evidence in a jury trial is not mutually admissible because of "other crimes" evidence, there is prejudice as a matter of law which compels separate trials. Md. Rule 4-253 governs joinder and severance in criminal trials, providing, in pertinent part, as follows:

> "If it appears that any party will be prejudiced by the joinder for trial of counts, charging documents, or defendants, the court, may, on its own initiative or on motion of any party,

> order separate trials of counts, charging documents, or defendants, or grant any other relief as justice requires."

As to the standard of review of a severance decision by the trial judge in a jury trial, then Chief Judge Alan M. Wilner explained in *Kearney v. State*, 86 Md. App. 247, 253 (1991) as follows:

> "[I]n a jury trial, 'a defendant charged with similar, but unrelated offenses is *entitled* to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials.' Indeed, where the evidence at a joint jury trial is not mutually admissible because of 'other crimes' evidence, *there is prejudice as a matter of law which compels separate trials*."

(Internal citation omitted) (second emphasis added). Building on Judge Wilner's analysis, Judge Charles E. Moylan, Jr., explained in *Wieland v. State*, 101 Md. App. 1 (1994) why our standard of review, at least in the first instance, is *legal error* and not an abuse of discretion. He explained as follows:

> "The nagging incongruity is that we continue to label the reason for appellate reversal on this issue not 'legal error,' which it has now indisputably become, but an 'abuse of discretion,' which it cannot be for there is no longer any discretion to be abused.
>
> All that remained discretionary in a jury trial was the referee's call at the second hurdle that the State must clear before a joint trial of separate charges may proceed. Even when evidence bearing on another charge is *prima facie* admissible, the judge still must weigh the probative value of the evidence against the danger of unfair prejudice. . . . 'Even though the evidence may fall within one or more of the exceptions of the other crimes rule, *the trial judge still possesses discretion* as to whether it should be received.'"

Id. at 11 (internal citations omitted).

At the end of the day, the following rule emerges:

> "Whatever the evaporation of discretion that may be taking place on the periphery of the severance/joinder issue, it is clear that at the core, in a jury trial where evidence on the separate charges is not mutually admissible, there is no discretion left. We are, rather, under the rule of law promulgated in *McKnight v. State*, 280 Md. 604, 612 (1977) . . . 'that a defendant charged with similar but unrelated offenses is entitled to a severance where he establishes that the evidence as to each individual offense would not be mutually admissible at separate trials.'"

Id. at 17.

The inquiry, then, is whether a defendant who is charged with similar but unrelated offenses has shown, on his motion to sever charges, that evidence as to each individual offense would not be mutually admissible at separate trials. *Id.* at 15. If the evidence bearing directly on one charge has some relevance in proving the other charge, the evidence is mutually admissible. *Id.* For trial joinder, nothing more is required save only for the final balancing requirement. *Id.* If the evidence constitutes "other crimes evidence," there is prejudice as a matter of law, compelling separate trials. *Id.*

The trial court did not err in declining to sever the two charges herein. The evidence of the two offenses was mutually admissible. The evidence that appellant used a black revolver with a white handle in the robbery is admissible to show that appellant was in constructive possession of the gun with the same distinctive characteristics that was discovered under the car seat in front of him at the later car stop. Conversely, the evidence of appellant's proximity to the distinctive handgun in the car was relevant to the robbery, as his possession of the gun was probative of his identity as the robber. The trial court did

not abuse its discretion in finding that the probative value of the joinder outweighed any unfair prejudice in this case.

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