Circuit Court for Baltimore City
Case Nos. 122032002, 122032003

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 540, September Term, 2023

CHRISTOPHER BROWN
v.
STATE OF MARYLAND

No. 577, September Term, 2023

DARAN HORTON
v.
STATE OF MARYLAND

Graeff,
Tang,
Eyler, James R.,
(Senior Judge, Specially Assigned),

JJ.

Opinion by Graeff, J.

Filed: August 21, 2025

*This is an unreported opinion. The opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

In a joint trial, a jury in the Circuit Court for Baltimore City convicted appellants, Christopher Brown and Daran Horton, of first-degree murder and related handgun offenses. The court sentenced Brown to life on the murder conviction, and it merged the remaining convictions. It sentenced Horton to 45 years on the murder conviction, plus a three-year term for the conviction of illegal possession of a handgun. The remaining convictions merged.

The appellants noted separate appeals, which this Court consolidated for a decision on appeal. Collectively, appellants present four questions for our review, which we rephrase as:

Brown:

1. Did the circuit court err by granting the State's motion for joinder?

2. Did the circuit court err by precluding Brown from eliciting testimony from a lay witness about step counter data extracted from his cell phone?

Horton:

3. Was the evidence legally sufficient to sustain Horton's convictions?

4. Did the circuit court plainly err by propounding impermissible compound *voir dire* questions?

For the reasons set forth below, we shall affirm the judgments against Horton and reverse the judgments against Brown.

FACTUAL AND PROCEDURAL BACKGROUND

Because Brown challenges the joinder of his case with Horton's case for trial, we present the evidence mutually admissible against both appellants first, followed by the evidence that the court instructed the jury was admissible only against Horton.

I.

Evidence Admitted Against Both Appellants

At approximately 6:20 p.m. on January 14, 2020, Cordelle Bruce was shot 14 times. The shooting occurred outside of an apartment building at 1134 East Belvedere Avenue, near its intersection with The Alameda. The victim was pronounced dead at the scene. He was known to sell marijuana at a shopping center on The Alameda near that location.

Michele Cramer-Macera witnessed the shooting while stopped at a red light in the westbound lane of East Belvedere Avenue at its intersection with The Alameda. She observed three men to her right on the far side of the intersection, saw "sparks," and heard seven gunshots before one of the men collapsed on a grassy area on the north side of East Belvedere Avenue. The other two men, who appeared to be wearing "dark clothing," ran westbound, weaving between cars. She could not see their faces.

A 911 caller who witnessed the shooting also described two men running away from the scene, one wearing a "gray/blue hoody" and the second wearing "all black." According to the caller, both men entered a four-door, dark colored car that drove away.

Detective Frank Jenkins, a member of the Baltimore City Police Department ("BPD"), was the primary investigator. He responded to the scene, where he recovered five shell casings, two cell phones,[1] two sets of keys, and two large bags of suspected marijuana. The shell casings all were Luger 9mm cartridge cases.[2] The casings were not analyzed to determine if they were fired from the same or different firearms.

Detective Jenkins canvassed the area and obtained surveillance footage from multiple locations near the shooting, including a Family Dollar store, City Watch cameras, and buildings located on East Belvedere Avenue. A BPD digital forensics technician compiled the surveillance footage in chronological order to create a 16-minute video depicting the timeline of events from 6:03 p.m. until right after the shooting.

The compilation video was played for the jury during Detective Jenkins 'testimony, and he identified people and locations in the video. As pertinent to the issues on appeal, the video can be divided into two segments: (1) the parking lot footage (first 11 minutes) and (2) the East Belvedere footage (last 5 minutes). The parking lot footage, which includes views from surveillance cameras at Family Dollar as well as City Watch cameras, is in color and well-lit. The East Belvedere footage is from a single camera outside the

[1] Detective Jenkins explained that the BPD was unable to access any data from the victim's phone.

[2] Three of the casings were stamped "R-P," and two were stamped "FC," but Detective Jenkins testified that there is no significant difference between R-P and FC shell casings.

laundry room at an apartment building at 1125 East Belvedere Avenue. It is in black and white and much grainier than the parking lot footage. None of the footage included audio.

The parking lot footage spans the period from 6:03 p.m. to 6:14 p.m. It shows the victim in the parking lot of the shopping center with a man identified as James Lighty. It also shows a man identified as Jamal Pinchback, Brown, Horton, and at least two unidentified men, one of whom engages in a suspected drug purchase from Lighty.

Brown and Horton arrived at the parking lot at 6:07 p.m. in a black Volvo SUV, which was driven by Horton and registered to Horton's mother. They greeted and appeared to engage in friendly interactions with the victim, Lighty, and Pinchback. Video footage shows that Brown and Horton wore identical two-tone hooded sweatshirts, with a white upper section and a grayish blue lower section, and gray knit caps. Brown wore glasses and fur-lined boots. During the video, Horton put on a black hooded jacket over his other jacket. Brown wore a gray, open jacket over his shirt.

At 6:12 p.m., Pinchback left the Alameda shopping center in a dark colored sedan. At 6:13 p.m., the victim began walking across the parking lot toward East Belvedere Avenue. Less than a minute later, Horton and Brown left the parking lot in the Volvo SUV, with Horton driving.

The East Belvedere footage captures part of the 1100 block of that roadway, facing away from The Alameda. The shooting occurred on the same block, but out of the view

captured by the camera.[3] The footage begins at 6:17 p.m. and continues until 6:22 p.m. Just before 6:18 p.m., a person walked past the camera. He was wearing a hooded jacket with the hood up and appeared to be wearing fur-lined boots. Detective Jenkins testified that this was Brown based on "[t]he hat, the boots, the fur over it, the color of the sweater."

At 6:21 p.m., shots were fired, and people started running. At the same time, a dark colored SUV appeared in view on East Belvedere Avenue. It stopped in the roadway. Two people ran towards the vehicle. One person entered the vehicle, and the second person continued running. The SUV drove away.

Three of the men who appeared in the surveillance footage at the shopping center were investigated as suspects in the murder. Two were eliminated as suspects because they left the Alameda shopping center before the murder.[4] The other man was eliminated as a suspect because he appeared in surveillance footage at the Alameda shopping center "before, during and after the shooting."

Brown was interviewed by Detective Jenkins on February 13, 2020, at the police station. A one-minute excerpt of his recorded statement was played at trial. In it, Brown identified himself in a still photograph taken from the parking lot footage.

Brown gave the police permission to search a cell phone he had in his possession. He claimed that the phone belonged to his little brother, but the phone's screen had a selfie

[3] Detective Jenkins testified that he could see a person "writhing from gunshots" in the upper right corner of the video at 6:21:39 p.m. This Court was not able to observe that in the video.

[4] As mentioned, Pinchback drove out of the parking lot approximately two minutes before Horton and Brown departed.

photograph of Brown, and the billing records were in his name. Brown's social media account included a photograph of him and Horton together.

Brown's cell records were consistent with his phone being around the Alameda shopping center and the crime scene between 6:12 p.m. and 6:16 p.m. By 6:30 p.m., the cell records were consistent with Brown's phone having moved southeast of that location, in the vicinity of Herring Run Park. The phone continued to move south toward the vicinity of Clifton Park until 7:02 p.m. Four minutes later, at 7:06 p.m., the phone had moved north and again was pinging off a tower in the vicinity of the Alameda shopping center.

Approximately one week after the murder, Horton sent a text message to Brown telling him: "Imma get the color changed on the car." Brown responded, "I help h," and then, in an apparent correction to a typo, added in a second text, "U." Other evidence established that, at that time, the Volvo was in police custody because it had been damaged after an unknown individual shot at it.

Photographs of Brown and Horton standing together, which were extracted from Horton's phone, also were introduced into evidence.

II.

Evidence Admitted Only Against Horton

The court instructed the jury that the following evidence was being admitted only against Horton and not against Brown.

Horton gave a recorded statement at the BPD Homicide Unit on February 13, 2020, a portion of which was introduced at trial. During his interview, Horton initially denied

being near the scene of the murder, stating that he was "with [his] girl." Upon being confronted with the fact that he was captured on video behind the Exxon station, Horton agreed that his vehicle was depicted in a still shot from the parking lot footage. He continued to maintain that he was "with [his] girl," and he did not know what happened to the victim. He did, however, hear the gunshots. The detective asked Horton where he was when "the shots rang out?" Horton replied that he was "coming up Belvedere." The detective then asked, "so who did you pick up in your vehicle?" Horton replied: "I didn't pick nobody up, sir."

He was then confronted with a still shot from the East Belvedere footage depicting the dark colored SUV that a person ran and jumped into immediately after the shooting. He agreed that one person did jump into his vehicle, but he stated that he did not "really know the dude." He stated that he stopped *because* he saw the person running. The detective countered that the video showed that Horton stopped his vehicle "before the shots rang out." Horton did not deny this, instead stating, "I probably had to do something. . . . I probably was doing something. Sometimes I stop and do that." He suggested that maybe he received a call.

The State admitted into evidence a photograph that Horton posted on Instagram on January 14, 2020, which showed Horton and Brown together. Horton commented on the photo: "We ain't hiding." Brown and Horton both were wearing knit caps similar to those depicted in the parking lot footage.

A recorded jail call between Horton and a third party was played for the jury. In it, Horton asked the third party to tell Brown, who he referred to by his nickname, "Lor c," to get something from "BB house" that was "in the smoke spot under the debris at the bottom." As a result of that call, Detective Jenkins obtained a search warrant for Horton's house. A 9mm magazine was recovered from under debris outside the walkout basement door.

Text messages between Horton and his mother were admitted into evidence. Approximately one hour after the victim was shot, Horton's mother asked him: "Do you know who got hurt?" Horton responded: "No." Four days later, Horton texted his mother that he had been staying in West Virginia.

On January 21, 2020, Horton's mother asked him what happened, and he responded: "[s]ome bs." She told him: "Nobody should know what you're doing. Stop putting stuff on social media. BS does not tell me what happened!" She asked him: "What happened to the [gun emoji]?" Horton responded: "I got it on me" and then stated "[a]t all times." He also directed his mother not to "say [gun emoji,]," suggesting that she instead say "basketball."

Horton told his mother that "somebody think that everyone at the shop killed that guy . . . [o]n Belvedere." His mother told him to pray. On January 25, 2020, his mother wrote: "Exit strategy please!" and Horton responded: "I am." Three days later, Horton told his mother that he had found a "kid that's going say he had ya car."

At the end of January 2020, Horton texted with someone about how he wanted to move to West Virginia and get a house. He stated that he did not "wanna go back to the system." The person responded: "They probably just want to take y'all in for questioning," adding: "Why be on the run for nothing you ain't do?" He responded that "[t]hey want a list of names who drove the car."

III.

Verdict

The jury found Horton guilty of first degree murder, possessing a handgun, and two counts of illegal possession of a firearm. It acquitted him of use of a firearm in the commission of a crime of violence. The jury found Brown guilty of first-degree murder, use of a firearm in the commission of a crime of violence, possessing a handgun, and two counts of illegal possession of a firearm. The jury did not return a verdict against either appellant on the charge of conspiracy to commit murder.

We will include additional facts in our discussion of the issues.

DISCUSSION

I.

Brown

Brown contends that circuit court erred by granting the State's motion for joinder. He asserts that non-mutually admissible evidence was admitted against Horton that "necessarily implicated" him and unfairly prejudiced him, even after redactions. Specifically, he asserts that he was prejudiced by admission of Horton's statement to the

police identifying an image of the car in the blurry surveillance footage of Belvedere Avenue as his car, as well as evidence of texts sent and received by Horton. Although the court told the jury to consider the evidence only against Horton, Brown contends that the limiting instructions could not cure the prejudice. Indeed, he argues that the "fact that such instructions had to be given so many times shows how often mutually inadmissible evidence was "presented to the jury."

The State contends that the court "soundly exercised its discretion by granting the State's motion to join Brown's trial with the trial of his co-defendant, Daran Horton." With respect to Horton's statement regarding his car, the State agrees that it would not have been admissible against Brown if he had been tried without Horton, but it argues that, for two reasons, the admission of the evidence did not prejudice Brown. First, Horton's identification of his vehicle in the East Belvedere footage did not "directly implicate Brown as being involved in the shooting." Second, the State asserts that Brown was implicated as being on East Belvedere Avenue by other evidence. Specifically, the State points to the East Belvedere footage that it contends shows Brown walking down the block before the shooting and then running from the shooting scene and jumping into "a dark four-door vehicle," as well as the 911 caller's description of one of the two men she saw running and the cell site data that placed Brown in the area during and after the murder. With respect to the other non-mutually admissible evidence introduced at trial against Horton, the State contends that, because Brown did not identify that evidence in his written opposition to the motion for joinder or at the pretrial hearing, his contention in this regard is not preserved

for review. In any event, the State asserts that the court's limiting instructions cured any potential prejudice.

Maryland Rule 4-253 governs joinder and severance of offenses and defendants. As pertinent to the issue here, a trial court "may order a joint trial for two or more defendants charged in separate charging documents if they are alleged to have participated in the same act or transaction or in the same series of acts or transactions constituting an offense or offenses." Md. Rule 4-253(a). "If it appears that any party will be prejudiced by the joinder for trial of . . . defendants, [however,] the court may, on its own initiative or on motion of any party, order separate trials of . . . defendants, or grant any other relief as justice requires." Rule 4-253(c). The Maryland appellate courts have made clear that "[p]rejudice within the meaning of Rule 4-253 is a term of art, and refers only to prejudice resulting to the defendant from the reception of evidence that would have been inadmissible against that defendant had there been no joinder." *Galloway v. State*, 371 Md. 379, 394 n.11 (2002) (quoting *Ogonowski v. State*, 87 Md. App. 173, 186-87 (1991)). *Accord State v. Hines*, 450 Md. 352, 369 (2016).

"[A] trial court's decision to sever or join the trials of multiple criminal defendants or multiple counts is ordinarily committed to the sound discretion of the trial judge and is reviewed for abuse of discretion." *Hemming v. State*, 469 Md. 219, 240 (2020). Nevertheless, "[t]he interest in efficiency and 'judicial economy' should not outweigh the interest in ensuring that a defendant is afforded a fair trial." *State v. Zadeh*, 468 Md. 124, 151 (2020). In determining whether severance is proper, the court must consider whether:

> (1) non-mutually admissible evidence will be introduced; (2) the admission of that evidence will unfairly prejudice the defendant requesting severance [or opposing joinder]; and (3) any unfair prejudice that results from admitting the non-mutually admissible evidence can be cured either by severance of the defendants or some other relief such as limiting instructions or redactions.

Id. at 148. In cases where a limiting instruction or other relief does not cure the prejudice, the denial of a motion to sever is an abuse of discretion. *See id.*

A.

Proceedings Below

The State filed a pretrial motion for joinder, which Brown opposed. Brown asserted, among other things, that he would be unfairly prejudiced by the introduction of non-mutually admissible evidence if the cases were joined for trial.

At a hearing on the motion, the State argued that the interest in judicial economy would be served by trying appellants together because the evidence would show that Horton and Brown arrived at the Alameda shopping center together in the Volvo, interacted with the victim together, left the shopping center together, admitted to being present there together, and were charged with conspiracy to murder the victim. It maintained that it had redacted the recorded statements given by appellants so that each only "implicat[ed] himself" and not the other.

The court asked counsel for Brown to identify the evidence alleged to be not mutually admissible. Counsel introduced into evidence copies of both appellants' recorded statements to the police. Counsel argued that Horton's statement identifying the vehicle depicted in a still shot from the East Belvedere footage as the Volvo he was driving that

night implicated Brown because it was the same vehicle that a person ran and jumped into immediately after the shooting. Counsel argued that this was in "complete contradiction" to Brown's statement to the police, in which he admitted being present at the Alameda shopping center with Horton, but denied being on East Belvedere Avenue when the shooting occurred. Defense counsel asserted that, if the cases were joined, the State could not use Horton's statement to prove that the vehicle in the East Belvedere footage was the Volvo SUV.

The court asked the State whether it was planning to "introduce a statement from Horton that's going to implicate Mr. Brown," and the State said no. The State clarified that there were no *Bruton* issues[5] with the portions of the recorded statements it intended to introduce at trial, and all the evidence was mutually admissible. The court asked whether the portion of Horton's statement that the State intended to play at trial conflicted with Brown's statement. The State replied that it would not after it was redacted.

Defense counsel reiterated its position that, if Horton's statement was admitted in a joint trial, it would prejudice Brown. Only Horton's statement connected that vehicle in the parking lot footage to the vehicle in the East Belvedere footage, and given the poor

[5] The State was referring to *Bruton v. United States*, 391 U.S. 123 (1968), which concerned "Sixth Amendment Confrontation Clause rights implicated where two or more defendants are jointly tried and one of the defendants does not testify at trial but gives a statement to police that is later admitted into evidence at trial." *State v. Hines*, 450 Md. 352, 367 n.5 (2016). A Rule 4-253 analysis is independent of *Bruton*, *see id.* (declining to address whether there was a *Bruton* violation because the Court's determination that severance was required under Rule 4-253 was dispositive), and Brown relies solely upon Rule 4-253 in this appeal.

quality of the East Belvedere footage, the jury otherwise would not have been able to identify the vehicle. Admitting that evidence also would conflict with defense counsel's theory of the case, which was that the vehicle in the East Belvedere footage was not the Volvo.

The court granted the motion for joinder. Although it agreed with Brown that the interest in judicial economy did not outweigh the potential for undue prejudice, it concluded, based upon "the representations of counsel today," that all the evidence the State intended to introduce would be mutually admissible.[6]

When Horton's statement to the police was played, the court advised the jury that it could "consider such evidence only as it relates to the [d]efendant against [whom] it was admitted, that's Defendant Horton."[7] In its jury instructions, the court reiterated that "[s]ome evidence was admitted only against one Defendant and not against the other Defendant." It instructed the jurors to "consider such evidence only as it relates to the Defendant against whom it was admitted."

[6] When the motions court ruled on the motion, it noted that it was ruling "[b]ased on the representations of counsel today."

[7] On three other occasions, the court gave a variation of that instruction after evidence was introduced relating to Horton's Instagram post, his text messages, and his jail phone calls. Brown now cites this evidence in support of his argument that the court abused its discretion in granting the motion for a joint trial, arguing that the evidence was not admissible against him and prejudiced him. Brown did not, however, discuss this evidence at the motion hearing below. Accordingly, we agree with the State that this contention is not preserved for this Court's review, *see* Md. Rule 8-131(a) (appellate courts ordinarily "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court"), and we will not address it.

B.

Analysis

As indicated, the State advised the circuit court that it would not introduce evidence that was not mutually admissible against both defendants. On appeal, however, the State, commendably, acknowledges that Horton's statement regarding his car would not have been admissible against Brown if he had been tried separately.[8] Thus, the issue on appeal is whether the admission of the statement caused unfair prejudice to Brown. *See Hines*, 450 Md. at 355 ("[W]here non-mutually admissible evidence was actually admitted during a joint jury trial of codefendants and from the admission of that evidence, the objecting defendant was prejudiced, the trial judge abused his discretion in denying a severance.").

In *Hines*, Tevin Hines and Dorrien Allen were tried jointly for the murder of one victim and attempted murder of a second victim. *Id.* at 355. The victims were robbed and shot as they were trying to buy heroin in Baltimore City. *Id*. at 355-56. The surviving victim described one assailant as wearing distinctive clothing. *Id*. at 356-57. An officer had seen Allen earlier that day in such clothing, with Hines, at a convenience store. *Id*. at 356.

Hines filed a pretrial motion to sever, arguing that the State intended to move into evidence Allen's recorded statement to the police, the statement was not mutually

[8] As to Horton, the statement to the police was admissible hearsay under the exception for a party's own statement. Md. Rule 5-803(a)(1). No hearsay exception, however, applies to Brown.

admissible against him, and he would be unfairly prejudiced by its admission. *Id*. at 357-60. The court ruled that part of Allen's statement was admissible, denied the motion for severance, and agreed to give a limiting instruction advising the jurors that Allen's statement was evidence only against Allen and was not to be considered against Hines. *Id*. at 362.

Allen's statement was redacted to make no reference to Hines. *Id*. at 362-64. In the statement, however, Allen indicated that, on the day of the shootings, he was with his friend "Mike," which was not his real name, who lived in the 300 block of Lyndhurst Avenue. *Id*. at 357, 362-64. When a detective confronted Allen with the existence of a video from the convenience store, showing him with a friend, Allen said that the only person he was with that day was "Mike," but the detective stated that the person in the video was Hines, who lived at 301 Lyndhurst Avenue. *Id*. at 364-65.

In finding reversible error, the Supreme Court stated:

> Even as redacted to omit any express reference to "Tevin Hines," Allen's statement implicated Hines in a damaging way, which resulted in prejudice to Hines. The statements Allen made about "Mike" were played for the jury along with the detectives' statements of disbelief. This, coupled with the detectives' interest in "Mike" and questions about the man in the surveillance video (who was clearly Hines) unequivocally indicated to the jury that the detectives knew "Mike" to be fictional, knew that the man in the video and the man Allen claimed to have spent his morning with was in fact Hines, and were simply trying to get Allen to admit it. The statement further implicated Hines insofar that the jury heard separate testimony that Hines lives at 301 Lyndhurst. In the statement, Allen said "Mike" lives on the 300 block of Lyndhurst and Detective Carew indicated that he knew "Mike" lived at 301 Lyndhurst. Finally, we note that this was all in the context of Allen's statements being lies that were obvious to the detectives and invariably, the jury. . . .[A]dmission of all of the statements about "Mike" and "Mike's" address largely served to point the finger at Hines, the codefendant sitting at

> the defense table, the man shown with Allen in the video, and the only person who could plausibly be "Mike".

Id. at 384-85 (footnotes omitted). The Court stated that it could not

> assume that the jury necessarily followed the limiting instruction when all signs pointed to Hines as being "Mike". Because the evidence implicated Hines in a manner so obvious that there is a risk that the jury would not have followed the limiting instruction and not have considered Allen's statement against Hines, the trial court erred in denying a trial severance.

Id. at 385.

Here, as in *Hines*, we conclude that Horton's recorded statement to the police implicated Brown in a damaging way, resulting in unfair prejudice to Brown. Brown admitted to being present in the parking lot with Horton, Lighty, Pinchback, and the victim prior to the shooting. He appears in the parking lot footage, and he identified himself in it during his statement to the police. In that footage, Brown arrived in a black Volvo SUV driven by Horton and departed in that same SUV, again driven by Horton. The cell site evidence placed Brown's phone in the general vicinity of the Alameda shopping center until 6:16 p.m., which was about two minutes after he and Horton drove out of the parking lot and about four minutes before the shooting occurred. There was no further cell site data until 6:31 p.m., when the phone pinged off a tower further south of the crime scene.

As the State points out, a person walked past the camera in the East Belvedere footage that could be Brown. Detective Jenkins testified that the person was Brown, based primarily upon the boots the person was wearing, and the prosecutor argued the same in her closing. As appellant notes, however, the East Belvedere video, unlike the parking lot footage, is not very clear, and without Horton's admission that the vehicle shown in that

video was his, the jury may not have been able to determine from that video footage the make or model of the dark colored SUV that stopped in the roadway or the person who ran and jumped into that SUV immediately after the shooting.[9] Neither of the eyewitnesses to the shooting and its aftermath could identify the two people they saw running away after the shooting.

Horton's non-mutually admissible statement identified *his* SUV as the vehicle that stopped in the middle of the roadway just before the shooting—the same SUV that an unknown man ran towards and jumped into immediately after the shooting before the vehicle sped off. This identification, coupled with Horton's apparent lies that he did not know the identity of the man who jumped into his vehicle and did not remember why he stopped in the middle of the roadway, implicated Brown as the person running away after the shooting, which permitted the jury to find that he was the shooter.

Although the court gave a limiting instruction, and we generally presume that jurors abide by instructions given by the court, *Newton v. State*, 455 Md. 341, 360 (2017), *cert. denied*, 583 U.S. 1067 (2018), we conclude that, as in *Hines*, it would be very difficult for jurors to erase from their minds Horton's identification of his vehicle in the East Belvedere footage and the implications connecting Brown to the shooting. *See Hines*, 450 Md. at 384 ("it would have been practically impossible for the jurors to dismiss from their minds the statements of [Mr.] Allen when evaluating the evidence against [Mr.] Hines"). Under the

[9] We note that the police believed this vehicle was a blue Honda CRV in the early stages of their investigation.

circumstances of this case, a limiting instruction was insufficient to protect Brown from prejudice.[10] Accordingly, we shall reverse Brown's convictions.[11]

II.

Horton

A.

Sufficiency of the Evidence

Horton contends that the evidence was insufficient to support his convictions. He argues that, at most, the evidence showed that he was near the scene of the shooting, someone running from the scene jumped into his car, and he drove away. He asserts that his mere presence at the scene was insufficient to support his conviction.

The State contends that the "evidence was legally sufficient to show that Horton participated in Bruce's murder as an accomplice." It asserts that the evidence supports the conclusion that Horton "provided aid to Brown, the shooter, by driving him to the scene of the murder, waiting for him to kill Bruce, and then driving Brown away from the scene, which is sufficient to sustain each of Horton's convictions."

[10] The circuit court, in denying Brown's motion for judgment of acquittal, indicated that the State's evidence against Brown, though legally sufficient, was "weak" and "slim." Brown does not contest the sufficiency of the evidence against him on appeal, but we note that we agree with the circuit court's assessment that the evidence was sufficient to submit it to the jury.

[11] Given our decision on the severance issue, and because the same issue may not arise on a retrial, we shall not address Brown's evidentiary issue regarding step counter data extracted from Brown's cell phone.

"The standard of review for legal sufficiency in a criminal case is whether, on the evidence adduced at trial, viewed in the light most favorable to the State as the prevailing party, any reasonable juror could find the elements of the crime charged beyond a reasonable doubt." *Sequeira v. State*, 250 Md. App. 161, 203 (2021). "Circumstantial evidence may support a conviction if the circumstances, taken together, do not require the trier of fact to resort to speculation or conjecture, but circumstantial evidence which merely arouses suspicion or leaves room for conjecture is obviously insufficient." *Smith v. State*, 415 Md. 174, 185 (2010).

A person may be an accomplice and held criminally responsible for crimes committed by another when participating in the "principal offense either as a principal in the first degree (perpetrator), a principal in the second degree (aider and abettor) or as an accessory before the fact (inciter)." *Diggs & Allen v. State*, 213 Md. App. 28, 85 (2013) (quoting *Sheppard v. State*, 312 Md. 118, 123 (1988)), *aff'd*, 440 Md. 643 (2014). A principal in the second degree is not the actual perpetrator but is one who, in some way, participates in the commission of a felony by aiding, commanding, counseling, or encouraging the perpetrator. *State v. Williams*, 397 Md. 172, 194 (2007), *abrogated on other grounds by Price v. State*, 405 Md. 10, 18-23 (2008).

The evidence, viewed in a light most favorable to the State, showed that Horton and Brown arrived together at the shopping center in a car driven by Horton, and they left the shopping center within a minute after the victim walked away. A few minutes later, a man dressed similarly to Brown appeared on the East Belvedere footage walking in the direction

of the shooting scene. Horton admitted that he stopped his vehicle on East Belvedere Avenue on the block where the shooting occurred, and after the shots rang out, a man ran down that road and jumped into his car, after which he drove away. Both eyewitnesses said that the shooter ran down the road and one saw him jump into a getaway car. There was no dispute that a handgun, which is a regulated firearm, Md. Code Ann., Crim. Law ("CR") § 4-203 (2024 Supp.), was used to shoot the victim.

Following the commission of the crime, Horton made plans to flee Baltimore and move to West Virginia, and he sought out a person who would claim to have been in possession of the Volvo on the night of the murder, which a rational trier of fact could conclude showed consciousness of guilt. The evidence permitted a rational juror to find that Horton aided Brown, the shooter, in killing Bruce with a handgun. The evidence was sufficient to support Horton's convictions.

B.

Voir Dire

Horton contends that the circuit court "committed plain error in asking impermissible compound questions during voir dire." The State contends that "this Court should decline to engage in plain error review of Horton's unpreserved complaint regarding compound questions propounded to potential jurors during *voir dire*."

During jury selection, the court asked the following two questions:

> Has any member of the jury panel, or close friend or relative, ever been the victim of a crime, witness to a crime, been arrested for or charged or convicted of a crime other than a minor motor vehicle violation, or had an

> experience with the criminal justice system that might affect your ability to serve as a juror in this case?
>
> Does any member of the panel have any moral, religious, or philosophical views of life that would affect your ability to render a fair and impartial verdict in this case?

As appellant notes, the Supreme Court of Maryland has held that it is error to ask compound questions during voir dire. *Dingle v. State*, 361 Md. 1, 21 (2000). In that case, the circuit court asked the following question:

> Have you or any family member or close personal friend ever been a victim of a crime, and if your answer to that part of the question is yes, would that fact interfere with your ability to be fair and impartial in this case in which the state alleges that the defendants have committed a crime?

Id. at 5. The Supreme Court found this to be error, explaining:

> the procedure followed in this case shifts from the trial judge to the venire responsibility to decide juror bias. Without information bearing on the relevant experiences or associations of the affected individual venire persons who were not required to respond, the court simply does not have the ability, and, therefore, is unable to evaluate whether such persons are capable of conducting themselves impartially. Moreover, the petitioner is deprived of the ability to challenge any of those persons for cause. Rather than advancing the purpose of voir dire, the form of the challenged inquiries in this case distorts and frustrates it.

Id. at 21.

Here, as the State notes, appellant failed to object below to the questions he challenges on appeal. To preserve a "claim involving a trial court's decision about whether to propound a voir dire question, a defendant must object to the court's ruling." *Foster v. State*, 247 Md. App. 642, 647 (2020), *cert. denied*, 475 Md. 687 (2021).

Because this issue is not preserved for review, Horton asks us to exercise our discretion to engage in plain error review of this claim. Plain error review is a doctrine that permits this Court to review, at its discretion, an "unpreserved error." *Winston v. State*, 235 Md. App. 540, 568, *cert. dismissed*, 461 Md. 509 (2018). Plain error review, however, is "reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton*, 455 Md. at 364 (quoting *Robinson v. State*, 410 Md. 91, 111 (2009)). "It is 'rare' for the Court to find plain error." *Id.* (quoting *Yates v. State*, 429 Md. 112, 131 (2012)). *Accord Morris v. State*, 153 Md. App. 480, 507 (2003) (appellate review based on plain error is "a rare, rare phenomenon"), *cert. denied*, 380 Md. 618 (2004).

To be eligible for plain error review, there must be an error that meets three conditions:

> (1) the error must not have been "intentionally relinquished or abandoned, i.e., affirmatively waived"; (2) the error must be "clear or obvious rather than subject to a reasonable dispute"; and (3) the error must have affected the "substantial rights" of the appellant, which means "he must demonstrate that it affected the outcome of the district court proceedings." *State v. Rich*, 415 Md. 567, 578, 3 A.3d 1210 (2010) (cleaned up). Even if these three requirements are met, this Court should exercise its discretion to review the error only if it "seriously affects the fairness, integrity or public reputation of judicial proceedings." *Id.*

Mungo v. State, 258 Md. App. 332, 370, *cert. denied*, 486 Md. 158 (2023).

Under the circumstances here, we decline to exercise our discretion to engage in plain error review of this issue. *See Morris*, 153 Md. App. at 506-07 (noting that the five

words, "[**w**]**e decline to do so**," are "all that need be said, for the exercise of our unfettered discretion in not taking notice of plain error requires neither justification nor explanation").

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AGAINST CHRISTOPHER BROWN REVERSED. COSTS TO BE PAID BY THE MAYOR & CITY COUNCIL OF BALTIMORE.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AGAINST DARAN HORTON AFFIRMED. COSTS TO BE PAID BY HORTON.