Circuit Court for Prince George's County
Case No. CT190794X & CT190516X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

Nos. 0586 & 0587

September Term, 2021

STEVEN TERRELL BRANCH

v.

STATE OF MARYLAND

Berger,
Arthur,
Adkins, Sally D.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Adkins, Sally D., J.

Filed: July 11, 2022

Steven Terrell Branch was charged via two separate indictments for crimes of violence against the same victim, Navita Beal. Mr. Branch was charged in one indictment with assault of Ms. Beal relating to a February 8, 2019 incident and charged in another indictment with various handgun crimes, assault, and attempted murder of Ms. Beal relating to an April 5, 2019 incident. The State filed a motion to join all of the charges in the same trial and the circuit court granted its motion, over Mr. Branch's objection. At the jury trial, evidence related to the February assault, April attempted murder, and a future incident at Ms. Beal's apartment in August 2019 were admitted. Mr. Branch was convicted on all charges.

Mr. Branch appealed his convictions and presents us with the following questions:

1. Did the court abuse its discretion in granting the State's Motion for Joinder of the assault charges relating to the February 2019 incident and the attempted first-degree murder and related handgun charges stemming from the April 2019 incident?

2. Did the court err in allowing evidence that Ms. Beal believed that a threatening incident that occurred after appellant's arrest and incarceration constituted "retaliation" for her pursuing charges in this case where no charges had been filed and no evidence was produced to support this theory?

For the following reasons we affirm Mr. Branch's convictions stemming from the April 5, 2019 incident, vacate his assault convictions relating to the February 8, 2019 incident, and remand for a new trial on the vacated assault charges.

FACTS AND PROCEDURAL HISTORY

Mr. Branch was charged via two separate indictments for charges stemming from two separate incidents in Prince George's County. One indictment charged Mr. Branch

with assault related to a February 8, 2019 incident and the other indictment charged Mr. Branch with attempted murder, assault, and firearm offenses related to an April 5, 2019 incident involving the same victim, Ms. Beal. The State filed a Motion for Joinder of the two cases. The circuit court granted the State's Motion for Joinder, over Mr. Branch's objection, and tried all the charges together at the same trial. At trial, evidence and testimony related to the two incidents, as well as a third incident, were presented.

February 8, 2019 incident

Ms. Beal testified that she had known Mr. Branch for nine years. They had an "on and off" relationship and have two children together. Ms. Beal, however, stated that they were not in a relationship on February 8, 2019. On that date, Ms. Beal testified that Mr. Branch came to her home in Prince George's County. She testified that after the children went to bed, Mr. Branch kissed her, and she slapped him. In response, they began to argue, and she testified that Mr. Branch swung at her with a gun, striking her in the face.

As a result, she testified that she called the police and the officers took a picture of her face, which she later identified in court.

April 5, 2019 incident

After the February 8, 2019 incident, Ms. Beal testified that she and Mr. Branch were in contact "in hopes of going back into a relationship." At the end of March 2019, however, she testified that she decided that she did not want to get back into a relationship with Mr. Branch. She further testified that Mr. Branch believed that she was seeing someone else and that is why she did not want to get back together with him.

Ms. Beal testified that on April 5, 2019 she heard something near her kitchen window and then heard a knock on her bedroom window. Ms. Beal testified that she opened the blinds and curtains to her bedroom window and saw Mr. Branch a few feet away. She testified that he asked if the kids were home and she replied "no." She testified that he then said, "give this to your boyfriend" and shot at her with a black pistol. She testified that the bullet only grazed her hand and shoulder, but she fell to the ground and stayed quiet because she wanted him to think she was dead. The bullet, according to Ms. Beal, went through the bedroom window, through her bed, and through the wall. She testified that she waited and then called the police. She further testified that officers came her apartment, and she went to the hospital to treat her wounds.

August 27, 2019 incident

In addition to testimony and physical evidence related to the February 8, 2019 and April 5, 2019 incidents, there was also testimony relating to another incident at Ms. Beal's apartment—after Mr. Branch was already arrested. During opening statements, defense counsel—in order to further the defense that someone else was responsible for the attempted murder—mentioned that someone was still messing with Ms. Beal after Mr. Branch was incarcerated.

Ms. Beal testified that she filed a police report on August 27, 2019 alleging that someone broke her kitchen window and may have put something in her gas tank. The State questioned Ms. Beal about the August incident on redirect examination.

> [STATE]: With regard to the August 27th, 2019 police report, were you concerned it might be retaliatory because of the court case?

> [DEFENSE]: Objection, Your Honor. May we approach?
>
> [COURT]: Come on up.
>
> (Counsel approached the bench and the following ensued:)
>
> [DEFENSE]: Your Honor, I didn't ask her about the origins or anything like that. I just asked her what happened, the police report, and entered the picture of what her kitchen looks like now, so …
>
> [COURT]: I think she can ask why she did it. Overruled. Just rephrase it.

When asked again on redirect examination about the August 2019 incident, Ms. Beal began to testify about who she thought may have broken her window.

> [MS. BEAL]: I didn't know what – you know, I didn't know what to make of it. I didn't know – because I'm in this case, and then I didn't have – I'd never had nothing like this happen beforehand. Nobody busts my windows or anything. I don't have any type of drama to where I have to worry about: Do I know who to pinpoint?
>
> So I thought that and I still do think that it was some type of – somebody must have did it and –
>
> [DEFENSE]: Objection, Your Honor.
>
> [THE COURT]: Sustained as to any speculation.

Later during the trial, the State called Detective Deshaun Randall of the Prince George's County Police Department to testify. Detective Randall had investigated the case against Mr. Branch and had personally met with Ms. Beal. During direct examination, the State asked Detective Randall about the August 2019 incident.

> [STATE]: Did there come a time when you learned that the victim's residence ended up with a broken window at the end of August [2019]?
>
> [DET. RANDALL]: Yes.
>
> [STATE]: What did you do?

[DET. RANDALL]: I reached out to the leasing office once again, and I attempted to retain footage for it.

[STATE]: Were you able to obtain footage?

[DET. RANDALL]: No ma'am.

[STATE]: Did the victim tell you why she reported the broken window?

[DET. RANDALL]: Yes. She said –

[DEFENSE]: Objection, Your Honor. Hearsay.

[STATE]: Basis the same as at the bench.[1]

[COURT]: Overruled.

[STATE]: What did she tell you?

[DET. RANDALL]: That she believes it was in retaliation.

Trial Results

The jury considered the testimony and evidence presented at trial and found Mr. Branch guilty of attempted first-degree murder, attempted second-degree murder, two counts of first-degree assault, two counts of second-degree assault, use of a firearm in the commission of a felony, use of a firearm in the commission of a violent crime, possession of a regulated firearm, and wearing, carrying, and transporting a gun on his person.

For convictions related to the April 5, 2019 incident, the circuit court sentenced Mr. Branch to life suspending all but 25 years for attempted first-degree murder, 25 years for first-degree assault to be served concurrently, five years for use of a firearm in the

[1] The State had previously argued at a bench conference that Ms. Beal's extrajudicial statements were admissible as prior inconsistent statements.

commission of a crime of violence to be served consecutively, and five years for illegal possession of a firearm to be served concurrently.[2] For convictions related to the February 8, 2019 incident, Mr. Branch was sentenced to 25 years suspending all but seven years and five years of supervised probation upon release for first-degree assault to be served consecutively.[3]

Mr. Branch timely appealed his convictions related to both cases on grounds that they were improperly joined, and that inadmissible evidence was presented to the jury at the joint trial. Both cases were consolidated by this Court on July 13, 2021.

DISCUSSION

Joinder of Charges

If a defendant has been charged in more than one indictment, either party may file a motion for a joint trial of the charges. Md. Rule 4-253(b). "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." Md. Rule 4-253(c). Although joinder of charges had long been regarded as an issue of judicial discretion, the Court of Appeals limited that discretion in *McKnight v. State*, 280 Md. 604 (1977)—the preeminent case on criminal joinder. *See Conyers v. State*, 345 Md. 525, 548 (1997) (citing *Solomon v. State*, 101 Md. App. 331, 340 (1994)).

[2] For sentencing purposes, the convictions for the other firearm counts were merged with the illegal possession count.

[3] For sentencing purposes, the second-degree assault conviction was merged with the first-degree assault conviction.

The *McKnight* court was greatly concerned with the prejudicial effect joinder of charges may have on the defendant. *See McKnight*, 280 Md. at 609.

> First, he may become embarrassed, or confounded in presenting separate defenses. Secondly, the jury may cumulate the evidence of the various crimes charged and find guilt when, if the offenses were considered separately, it would not do so. At the very least, the joinder of multiple charges may produce a latent hostility, which by itself may cause prejudice to the defendant's case. Thirdly, the jury may use the evidence of one of the crimes charged, or a connected group of them, to infer a criminal disposition on the part of the defendant from which he may also be found guilty of other crimes charged.

Id. (internal citations omitted). It was the third form of prejudice the Court had greatest concerns about. *Id.* In order to alleviate prejudice that may result from joinder of multiple criminal charges, the Court instructed trial judges to "balance the likely prejudice caused by the joinder against the important considerations of economy and efficiency in judicial administration. *Id.* at 609–10.

The Court thus established the requirement of "mutual admissibility" for "similar but unrelated offenses" to be tried in the same trial. *Id.* at 612 ("We think 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."). The progeny of cases following *McKnight* utilized a two-prong test to determine whether joinder of criminal charges is permitted: (1) whether evidence as to each individual offense would be "mutually admissible" at separate trials concerning the offenses; and (2) whether "the interest in judicial economy outweighs any other arguments favoring severance." *E.g.*, *Cortez v. State*, 220 Md. App. 688, 694 (2014) (cleaned up) (quoting *Conyers*, 345 Md. at 553).

We turn first to mutual admissibility. The standard of appellate rule pertaining to an evidentiary ruling of the trial judge differs depending on whether the ruling involved a question of law, factual finding, or evaluation of admissibility. *Brooks v. State*, 439 Md. 698, 708 (2014). "Questions of law are reviewed without according the trial judge any special deference; findings of fact are assessed under a clearly erroneous standard; and an assessment of the admissibility of relevant evidence is reviewed under an abuse of discretion standard." *Id.* (internal quotations omitted) (citing *J.L. Matthews, Inc. v. Maryland-Nat'l Cap. Park and Plan. Comm'n*, 368 Md. 71, 92 (2002)).

Mutual admissibility is a conclusion of law and therefore, "we give no deference to a trial court's ruling on appeal." *Cortez*, 220 Md. App. at 694. Mr. Branch asserts that the trial court erred in granting the State's Motion for Joinder because evidence of the alleged February 8, 2019 assault and April 5, 2019 attempted murder are not mutually admissible at separate trials. "To determine the admissibility of evidence, mutual or otherwise, the trial judge must look to the appropriate part of the law of evidence. A determination of mutual admissibility, after all, consists of two determinations of one-directional admissibility." *Solomon*, 101 Md. App. at 341. Therefore, the evidence of the February assault must be admissible at a trial for the April attempted murder and evidence of the April attempted murder must be admissible at a trial for the February assault in order for the charges to be properly joined.

Since evidence of assault and attempted murder constitute "other crimes" evidence—which is generally inadmissible—we must determine whether an exception to this general rule applies. *See Cortez*, 220 Md. App. at 694 (citing *Conyers*, 345 Md. at

553). Other crimes evidence may be admitted "if it is substantially relevant to some contested issue in the case and if it is not offered to prove the defendant's guilt based on propensity to commit crime or his character as a criminal." *State v. Faulkner*, 314 Md. 630, 634 (1989) (citing *Ross v. State*, 276 Md. 664, 669 (1976)). There are many exceptions to this general exclusion. The evidence of other crimes may be admitted to establish motive, intent, absence of mistake, identity, or common scheme or plan. *Faulkner*, 314 Md. at 634 (citing *Ross*, 276 Md. at 669–70). This list is not exhaustive.

In this case, the State asserts that evidence of Mr. Branch's alleged assault and attempted murder of Ms. Beal are mutually admissible in separate trials to show (1) motive and intent, and (2) access to a pistol. We will address each contention in turn.

a. Motive and intent

Motive is "the catalyst that provides the reason for a person to engage in criminal activity." *Jackson v. State*, 230 Md. App. 450, 459 (2016) (quoting *Ayala v. State*, 174 Md. App. 647, 658 (2007)). Admissible motive evidence must involve conduct committed "within such time, or show such relationship to the main charge, as to make connection obvious, that is to say they are so linked in point of time or circumstances as to show intent or motive." *Jackson*, 230 Md. App. at 459 (cleaned up) (quoting *Snyder v. State*, 361 Md. 580, 605 (2000)). Motive and intent are often analyzed together. *Solomon*, 101 Md. App. at 368. "Proving the motive for a crime inevitably helps prove the intent with which a criminal act is committed and *vice versa*." *Id.* (citing *Johnson v. State*, 332 Md. 456, 470–71 (1993)).

The State asserts that evidence of Mr. Branch allegedly shooting Ms. Beal two months after he allegedly hit her in the face with a gun is probative of motive and intent to show that Ms. Beal and Mr. Branch had an abusive relationship and an environment of continued hostility. The State relies on a series of cases that allow admission of past domestic violence evidence. Every case the State cites involves evidence of *past* domestic violence, not future domestic violence. *See, e.g.*, *Snyder*, 361 Md. at 608–09 (permitting admission of evidence of previous physical disputes between the defendant and victim in defendant's trial for murder of victim); *Jones v. State*, 182 Md. 653, 657 (1944) (allowing evidence of husband's "long course of ill treatment" towards his wife in his trial for murder of his wife); *Stevenson v. State*, 222 Md. App. 118, 149–50 (2015) (allowing evidence of husband's past abuse of wife in husband's trial for wife's murder).

The cases the State relies on clearly establish that evidence of Mr. Branch allegedly hitting Ms. Beal with a gun in February 2019 may be admissible in Mr. Branch's trial for a future attempted murder of Ms. Beal. But the State has not established that alleged *future* abuse—the attempted murder on April 5, 2019—would be admissible in a trial for the alleged assault that took place two months prior. This is not to say that future violence can never be indicative or motive or intent for past violence, just not in this case.

In *Solomon*, the defendant was involved in two attempted carjackings and one consummated carjacking that resulted in the murder of one of the victims. 101 Md. App. 331, 333–34. The attempted carjackings and consummated carjacking took place within the same geographic vicinity and all occurred within a twenty-five-minute period. *Id.* This Court found that not only did the previous attempted carjackings provide motive and intent

to consummate the future carjacking, but that the future carjacking provided motive and intent to commit the previous attempted carjackings, as well. *Id.* at 369–370. The previous attempted carjackings removed "[a]ll doubt as to the intent" of why the subsequent assault and carjacking took place—the intent to steal the victim's car as opposed to just a common assault or some form of domestic violence. *Id.* at 369 ("The witnesses were initially not sure that the assault was not some sort of domestic dispute. The assault could conceivably have been sexual in nature. The assault might have been with the intent to rob [the deceased] of her purse or of her jewelry. All doubt as to the intent was removed, however, when that assault was placed in its proper perspective following immediately upon the two attempted carjackings that failed."). Likewise, the court found that the proximity and viciousness of the fatal attack on the third victim "helped to remove any doubt as to the serious criminal purpose of the earlier attack[s][.]" *Id.*

Here, evidence of the April attempted murder is too attenuated from the previous assault to supply proof of adequate motive or intent for the previous assault. In *Solomon*, the fatal carjacking and subsequent attempted carjackings were so close in time and proximity as to provide sufficient motive and intent. That is not the case here. The State does not cite to any case to indicate otherwise. We therefore hold that evidence of the April 5, 2019 attempted murder is not admissible to prove motive or intent for the February 8, 2019 assault.

b. Access to a pistol

The State also asserts that evidence of the separate crimes is admissible to show that Mr. Branch had access to a pistol—the weapon allegedly used in both crimes. The State

is correct that a defendant possessing the means to commit the crime is relevant. *Hayes v. State*, 3 Md. App. 4, 8–9 (1968). "It is always relevant to show that the defendant *before* the date of the crime had in his possession the means for its commission." *Id.* (emphasis added) (citation omitted). The same issue that plagued mutual admissibility for motive and intent plagues mutual admissibility on these grounds—access to a weapon *before* the crime is relevant, but not after.

The State has presented us with no valid exception to the exclusion of "other crimes" evidence that would allow admission of the alleged attempted murder on April 5, 2019 in the trial for the alleged assault on February 8, 2019. Therefore, we need not address whether judicial economy outweighs prejudice to the defendant because severance of the charges is required by law. *See McKnight*, 280 Md. at 612 (holding severance is required as a matter of law when evidence of each individual offense is not mutually admissible at separate trials). Because the evidence of both crimes is not mutually admissible, the circuit erred in granting the State's Motion for Joinder.

Admission of retaliation evidence

Mr. Branch asserts that the court erred in allowing Ms. Beal and Detective Randall to testify about the allegation that the August 27, 2019 incident at Ms. Beal's apartment was retaliation for pursuing assault and attempted murder charges against Mr. Branch. Mr. Branch argues that testimony regarding this retaliation theory is irrelevant, unduly prejudicial, inadmissible bad acts evidence, and impermissible lay opinion testimony.

The State asserts that Mr. Branch did not preserve these arguments as he only objected to entry of Detective Randall's testimony on hearsay grounds. The State relies on

this Court's decision in *Ayala v. State* that concludes "when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." 174 Md. App. at 665 (quoting *Klauenberg v. State*, 355 Md. 528, 541 (1999)).

A general objection is raised when a party objects without stating any grounds for said objection. *See* Md. Rule 4-323(a) ("The grounds for the objection need not be stated unless the court, at the request of a party or on its own initiative, so directs."). "Thus, a party basing an appeal on a "general" objection to admission of certain evidence, may argue *any* ground against its inadmissibility." *DeLeon v. State*, 407 Md. 16, 24–25 (2008) (emphasis in original) (citing *Boyd v. State*, 399 Md. 457, 475–76 (2007)). "An objection loses its status as a general one where a rule requires the ground to be stated, where the trial court requests that the ground be stated, and where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence." *DeLeon*, 407 Md. at 25 (cleaned up) (quoting *Boyd*, 399 Md. at 476)). When grounds for an objection are specified, the objecting party waives all other bases for the current objection. *Ayala*, 174 Md. App. at 665 (quoting *Klauenberg*, 355 Md. at 541).

Mr. Branch, through his counsel, generally objected twice to questions and testimony relating to Ms. Beal's thought that the August 27, 2019 incident was retaliation for her involvement in the criminal charges against Mr. Branch. Defense counsel, however, specifically objected only to hearsay when Detective Randall was testifying regarding the same allegation. Mr. Branch can therefore assert any reason to exclude Ms. Beal's direct testimony about the August incident on appeal but can only raise a hearsay objection on

appeal for Detective Randall's testimony regarding Ms. Beal's extrajudicial statements. *See id.*

Mr. Branch, however, did not renew his hearsay objection on appeal. An argument is waived if not presented in the party's brief on appeal. *Klauenberg*, 355 Md. at 552. Therefore, Mr. Branch has not preserved any objection on appeal regarding Detective Randall's testimony about Ms. Beal's statement that she thought the August 2019 incident was retaliation for her involvement in the case against Mr. Branch.

Therefore, the same retaliation evidence that Ms. Beal testified about (or attempted to testify about) would be admitted through Detective Randall's testimony—because there was no preserved objection. "Objections are waived if, at another point during the trial, evidence on the same point is admitted without objection." *DeLeon*, 407 Md. at 31 (citing *Peisner v. State*, 236 Md. 137, 145–46 (1964)). Since the retaliation evidence came in through Detective Randall's testimony—without a preserved objection—any other objection to admission of the retaliation evidence is also waived.

Remedy

We only consider the remedy for the circuit court improperly joining charges against Mr. Branch stemming from the February 2019 and April 2019 incidents. Mr. Branch asks us to reverse all of his convictions, but we will only reverse his assault convictions stemming from the alleged February 8, 2019 incident.

We shall order a new trial if the circuit court improperly joined multiple charges and evidence of the improperly joined charges would not be admissible at a separate trial. *See Kearney v. State*, 86 Md. App. 247, 254–55 (1991). Mr. Branch properly asserted that the

other crimes evidence of the attempted murder would be inadmissible at his trial for the past assault. Evidence of the past assault—as we previously addressed—would, however, be admissible at a trial for April 5, 2019 attempted murder. If we were to remand for a new trial of the April 2019 attempted murder and related charges, the trial "would be identical in every relevant way to the trial conducted below[.]" *Id.* at 255. Accordingly, we shall vacate Mr. Branch's convictions of first- and second-degree assault stemming from the February 8, 2019 incident and remand for a new trial. We shall, however, affirm Mr. Branch's convictions of attempted murder, assault, and related firearm offenses related to the April 5, 2019 incident.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED IN PART AND REVERSED IN PART; CASE REMANDED FOR A NEW TRIAL CONSISTENT HEREWITH. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY APPELLEE.