Circuit Court for Prince George's County
Case No. CT161033X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 691

September Term, 2018

TAYLOR RYAN STANCIL

v.

STATE OF MARYLAND

Graeff,
Beachley,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Harrell, J.

Filed: June 28, 2019

Appellant, Taylor Ryan Stancil ("Stancil"), was charged in the Circuit Court for Prince George's County with 15 counts relating to an armed robbery and murder. After a joint trial with co-defendant Antonio Burns ("Burns"), a jury found Stancil guilty of felony murder, second-degree murder, and use of a firearm in the commission of a crime of violence. He was sentenced in total to life plus 20 years, with all but 60 years suspended. He appealed timely.

On appeal, Stancil presents the following questions:

1. Did the court below err in denying Appellant's motion to suppress evidence of an out-of-court identification from photographs?
2. Did the trial court err by refusing to admit evidence offered by defense counsel?
3. Did the trial court abuse discretion by denying a motion for mistrial based on the prosecutor's improper closing argument?
4. Is the evidence legally insufficient to sustain appellant's convictions?

For reasons to be explained, we affirm the judgment of the trial court.

FACTUAL AND PROCEDURAL BACKGROUND

The Gun Exchange

This case is based on a gun trade deal gone bad in Prince George's County. Evidence showed that on 26 May 2015, Stancil, his co-defendant Burns, and Malik Johnson-Bey ("Johnson-Bey") arranged to meet John Lopez ("Lopez") to exchange a Glock pistol for what was described as a "nine impact pistol."[1] Lopez arrived at the designated meeting place with another man in tow, Darnell Dickerson ("Dickerson"). Dickerson, upon request, handed the expected 9 mm pistol to Stancil. Stancil put the pistol

[1] Based on other information in the record, it appears that the "nine impact pistol" was a 9 mm pistol.

in his waistband, pulled out a different gun (which was not a Glock), and ordered Lopez and Dickerson not to move.

Dickerson, ignoring Stancil's command, attempted to knock the gun out of Stancil's hand. In response, Stancil fired once at Dickerson. Dickerson, struck by the bullet, dropped to the ground. While down, he reached for another gun he had in his waistband. Stancil fired more shots at Dickerson.[2] As this was transpiring, Burns fired at Lopez, who fell to the ground. Stancil, Burns, and Johnson-Bey searched Dickerson, taking a firearm and cash. The three men then fled. Dickerson died from his wounds.

The police searched Johnson-Bey's home. They recovered a .22 caliber handgun, ammunition, and illegal drugs. As a result of this, and prior to Stancil's and Burns's trial, Johnson-Bey entered into a plea deal with the State. In exchange for his cooperation in the State's case against Stancil and Burns, Johnson-Bey expected to be sentenced to five years in prison.

Suppression Hearing

A suppression hearing was held on 20 November 2017, approximately two months before trial. Stancil sought to suppress evidence of the out-of-court, photo-array identification of him by Lopez.

Prince George's County Police Detective Gregory W. McDonald testified regarding the six photographs used, known as a "double-blind photo array."[3] Detective McDonald

[2] Johnson-Bey testified that he heard four or five shots.

[3] Double-blind photo arrays are used to prevent the administering officer from suggesting inadvertently or making any other insinuations regarding the identity of the

advised Lopez that the group of photographs may or may not contain a person involved in the crime.[4] Further, he informed Lopez that he was not obligated to identify anyone in the photographs as the perpetrator of the crime. Lopez confirmed with Detective McDonald that he understood the instructions before scrutinizing the photographs, one by one.

According to Detective McDonald's testimony at the suppression hearing, Lopez, when shown picture number four, of which Stancil was the subject, stated "shot us." After he finished looking at all of the photographs, Detective McDonald asked Lopez to write his statement and sign his name on the photograph of the person he recognized. The group of photographs used in the "blind photo array," including Lopez's statement and signature on the back of photograph four, was introduced into evidence at the suppression hearing.

Lopez testified in the suppression hearing. He claimed that he did not recall viewing the photographs containing Stancil's photograph, contrary to Detective McDonald's description of the events. Additionally, he claimed that he did not believe that he had signed the photograph.

At the conclusion of the hearing, the court denied the motion to suppress. Explaining why the photo array was not suggestive impermissibly, either in the procedure

suspect. To accomplish this, the administering officer is not involved in the investigation, making him or her "blind" to which photograph, if any, depicts the suspect. *See Smiley v. State*, 442 Md. 168, 111 A.3d 43 (2015) (explaining the mechanics of a double-blind photo array procedure). Detective McDonald did not assemble the group of photographs, he did not know the identity of any of the people in the photographs, and he did not play any part in the investigation leading up to the identification procedure.

[4] Detective Jeffrey Eckridge, who assembled the group of photographs shown to Lopez, testified at the suppression hearing. He stated that he tried to choose from a police database photographs of people of similar race and age.

or in the collection of photographs, the judge stated:

> So what I have to do, I have to look at the photos. I don't know – I cut [defense counsel for Burns] off. I would have allowed in a description if there was to make sure, for instance if the description was the perpetrator, not the details, but the description is relevant as to the composition of the photo array. If the person said a person had a salt and pepper beard. Then only one person had a salt and pepper beard might stick out.
>
> I don't know what the initial description was of the suspects, if any, actually. I'm assuming there was, but I have no idea.
>
> In looking at the photos, what we have is basically six younger African-American males. They look about the same age, or similar age. They depict similar ages. They all have facial hair. They all have hair. There is no, for instance . . . nobody here with dreadlocks, only one person does. There is nothing in the description that makes the hair significant one way or another.
>
> There are no identifying marks. If they said a person had a tattoo on the side of his face and there was only one person. They all look roughly the same. They are the same age, the same race, the same sex. They all have the same background. They are basically face shots. There is no body.
>
> * * *
>
> I do agree with defense counsel that Mr. Stancil is at – I wouldn't call it a profile. There is a little bit more of an angle to the photo. It is more a little like this, as opposed to straight on. I do see this.
>
> The paper, I don't see the paper. Number four and number five look a lot more alike. I don't see it as impermissibly suggestive when I look at it that I would pick one person over the other.
>
> … He looked at number four, said that's the guy who shot us, or he shot us, or whatever the words. Then he still looked at five or six. If it was suggestive he wouldn't have needed to look at the last two.
>
> I don't thing – the term is impermissibly suggestive. I don't see it as impermissibly suggestive. I have never seen any photo spread that had everything exactly the same.

Trial Testimony

Johnson-Bey testified, as a witness for the State, that he knew Stancil for some time from his former neighborhood in Capitol Heights. He knew Burns for the same amount of time. Johnson-Bey met Lopez while he was performing community service ordered by the Department of Juvenile Services. According to his testimony, he and Lopez had purchased guns from each other in the past.

On cross-examination, Johnson-Bey admitted that he made no police report after witnessing Lopez and Dickerson get shot. He acknowledged that he was on probation for a drug offense at the time of the incident and was wearing a GPS monitoring device. Defense counsel elicited further from him that, after the shooting, he had thrown "a bunch" of cell phones down a storm drain. Johnson-Bey admitted also to lying when he was questioned by police officers about the shooting by saying that he did not know what happened. He conceded also that he was charged with attempted first-degree murder regarding the 26 May 2015 occurrence, detained, and entered into a plea agreement while detained. After Johnson-Bey entered into the plea agreement, he was released from the detention center. At the time of Stancil's trial, Johnson-Bey had not yet been sentenced.

Prince George's County Detective Travis Kelly, one of the responding officers, testified for the State. He stated that, upon arriving at the scene of the shooting, he saw a Hispanic man with a gunshot wound and a black man in very grave condition, unable to communicate. Detective Kelly, after questioning the Hispanic man, entered a nearby park, where he located spent shell casings. He determined that Johnson-Bey lived within walking distance of the shooting scene and obtained certified records from the GPS monitor

worn by Johnson-Bey. The records confirmed that Johnson-Bey was in the park at the time of the shooting.

Lopez testified for the defense. He recalled that he was with Dickerson on that day and that there were three other people present. He stated that he did not remember where he was or who shot him, but confirmed that he did not shoot himself. Lopez admitted that he knew Johnson-Bey, but was unsure if he was present at the time of the shooting. He identified State's Exhibits 21 and 22 as statements to the police he was "pretty sure" bore his signature. The statements described how Lopez met up with Johnson-Bey, who had "two brothers" with him. One of the companions of Johnson-Bey, described as "[b]rown skinned, black shirt, green cargo pants, low haircut" shot him in the leg and shot Dickerson. When asked about the photograph array entered into evidence, Lopez said Stancil's photo bore his signature, but he did not sign it.

On cross-examination, Lopez "plead the fifth" when asked if it was a gun transaction that brought he and Johnson-Bey together. Lopez testified also that he did not know Stancil. When asked specifically about Stancil, Lopez stated that he did not recognize him. Lopez stated also that he was not sure if either of the co-defendants were involved in the shooting.

At the conclusion of trial, the jury found Stancil guilty of felony murder, second-degree murder, and use of a firearm in the commission of a crime of violence.

I.

Stancil claims first that the trial court erred in denying his motion to suppress the out-of-court identification of him from the photo array. He maintains that his photograph

was distinguishable visibly from the other photographs in the photo array, which may have influenced Lopez to identify Stancil as the perpetrator of the crime.

We consider only the record from the suppression hearing in reviewing the denial of a motion to suppress. *Carter v. State*, 367 Md. 447, 457, 788 A.2d 646, 651 (2002). We review the evidence in the light most favorable to the prevailing party and will uphold the hearing court's findings unless they are clearly erroneous. *Id*.

The Court of Appeals outlined a two-step test regarding the admissibility of an out-of-court identification:

> The first is whether the identification procedure was impermissibly suggestive. If the answer is "no," the inquiry ends and both the extra-judicial identification and the in-court identification are admissible at trial. If, on the other hand, the procedure was impermissibly suggestive, the second step is triggered, and the court must determine whether, under the totality of the circumstances, the identification was reliable.

Jones v. State, 395 Md. 97, 109, 909 A.2d 650, 657 (2006) (internal citations omitted). The defense bears the burden of showing unnecessary suggestiveness in procedures used by the police. *Aiken v. State*, 101 Md. App. 557, 572, 647 A.2d 1229, 1237 (1994), *cert. denied*, 337 Md. 89, 651 A.2d 854 (1995). Suggestiveness exists, and a photo array is suggestive impermissibly, when its presentation or makeup "indicates which photograph the witness should identify." *Smiley v. State*, 442 Md. 168, 180, 111 A.3d 43, 50 (2015).

Stancil does not challenge as suggestive Detective McDonald's presentation of the photo array. Rather, he claims that "his photograph was distinguishable [visibly] from the others" in three distinct ways: (1) his photograph was the only one "looking at a slight angle;" (2) his photograph was the only one that did not show the subject's neck; and, (3)

his photograph had a different texture/tint to it. The result of these differences, according to Stancil, may have influenced Lopez to single out and choose Stancil's photograph.

Stancil likens his case to *Small v. State*, __ Md. __ (2019) (No. 19, Sept. Term, 2018, filed 24 June 2019). In *Small*, the Court of Appeals affirmed the judgment of the Court of Special Appeals, (*Small v. State*, 235 Md. App. 648, 180 A.3d 163 (2018)), which found a photo array to be impermissibly suggestive because the victim was given clues pointing directly to identifying the perpetrator of the crime from two photo lineups. Small, who was described by the victim as having the letter "M" tattooed on his neck, was the only person in the first photo array with a neck tattoo. *Id*. at 4. The victim viewed the first photo array and did not make a positive identification, but described the tattoo as "pretty much like the same tat I saw[.]" *Small*, __ Md. __ at 32. Police showed the victim a second photo array, and Small was the only individual repeated from the first photo array. *Id*. at 6. The victim made a positive identification of Small after being shown the second photo array. *Id*.

The Court of Appeals, in affirming the Court of Special Appeals, discussed how the composition of the first photo array emphasized Small because he was the only person who had a tattoo visible on his neck. *Id*. at 20. The police detective who assembled the photo array, with Small's tattoo visible clearly, testified "that the tattoo was described in so much detail that it would be leading if [he] put the tattoo in the picture." *Id*. Additionally, the Court discussed how Small was the only person repeated in the second double-blind photo array. *Id*. His distinct neck tattoo was visible again in the second photo array. *Id*. The Court ultimately determined that law enforcement, through the photo arrays, implicitly

suggested that Small was the perpetrator of the crime. *Id.* at 21.

Based on our review of the suppression hearing record, the judge's denial of Stancil's motion to suppress was not clearly erroneous. Slight discrepancies between photographs do not make a photo array impermissibly suggestive. An array "need not be composed of clones." *Smiley*, 442 Md. at 181, 111 A.3d at 50. Unlike in *Small*, the differences asserted here are minor discrepancies in the photographs themselves, as opposed to clues inviting the identification of one individual. Differences in appearance, which are almost inevitable in photo arrays, are grounds for reversal only if they are impermissibly suggestive, effectively "pointing the finger" at one of the subjects of the photos. As the suppression hearing judge observed accurately, all of the people in the photographs "look roughly the same. They are the same age, the same race, the same sex." The slight difference in angle, observed also by the judge, does not seem to us to be suggestive of anything, let alone impermissibly suggestive. Additionally, there was no relevant description of Stancil or any potential suspect regarding any identifying features on his neck. The fact that Stancil's neck was not displayed in the photograph is inconsequential due to the lack of importance of the subject's neck in identifying the shooter. Last, the asserted difference in texture or tint of the picture is minor – this difference was negligible and it is unclear how this would affect the identification of a subject based on this trivial difference.

There is nothing in the suppression hearing record to suggest that the photo array shown to Lopez was suggestive impermissibly, leading to his identification of Stancil as the person who shot him and Dickerson. As such, we need not analyze the second step of

the test outlined by the Court of Appeals in *Jones*.

II.

Stancil asserts that the trial court erred by refusing to admit into evidence a copy of Johnson-Bey's paper indictments. Specifically, defense counsel sought to introduce the indictments as extrinsic evidence of Johnson-Bey's motive to testify falsely.

Ordinarily, a trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *Wheeler v. State*, 459 Md. 555, 187 A.3d 641, 645 (2018). "[A] court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Alexis v. State*, 437 Md. 457, 478, 87 A.3d 1243, 1255 (2014) (internal quotations omitted).

At trial, Stancil sought to admit into evidence three paper indictments against Johnson-Bey. In support of their admission, he looks to Md. Rule 5-616(b)(3), which states: "[e]xtrinsic evidence of bias, prejudice, interest, or other motive to testify falsely may be admitted whether or not the witness has been examined about the impeaching fact and has failed to admit it." The trial judge noted that Johnson-Bey did not "fail to admit" the existence of these indictments. The judge stated: "[defense counsel] went over the whole indictment with Malik Johnson-Bey. [Defense counsel] had him read it and [Burns's counsel] started to read it. I think it comes in already, and he didn't deny any of it." As such, the judge did not allow Stancil to admit redundantly the paper indictments into evidence. Stancil advances that, although Johnson-Bey acknowledged the existence of a plea deal and indictments charging him, the judge erred by not admitting the indictments

because the extent of the deal and the benefit to him had not been revealed at the time of the trial judge's ruling.

The trial court acted within its discretion in excluding Johnson-Bey's indictments. Johnson-Bey's testimony fleshed-out the facts that could show a potential motive to testify falsely.[5] The jury was made aware of the indictments against Johnson-Bey, the possible sentences he could face if convicted, and the possible sentence under the plea agreement. Introducing the indictments into evidence would be cumulative and not assist the jury in assessing Johnson-Bey's credibility. The indictments contain no sentencing information, nor do they offer further details about the plea agreement. The jury was aware, from Johnson-Bey's testimony, of the impeachment information that defense counsel was attempting to demonstrate by introducing the indictments into evidence. We find no error by the trial judge in disallowing defense counsel from introducing the redundant paper indictments against Johnson-Bey.

III.

Stancil's third contention is that the trial court abused its discretion by denying a motion for mistrial based on the prosecutor's alleged improper closing argument. We review the denial of a motion for mistrial under an abuse of discretion standard. *Carter v.*

[5] Some of the facts elicited in Johnson-Bey's testimony included: he was told that he was charged with offenses that, if convicted, carry a penalty of life in prison; he was charged ultimately under two separate indictments, one including charges of possession with intent to distribute and possession of a firearm in connection with a drug trafficking crime and the other including first-degree murder, attempted murder, and conspiracy to commit murder; and, that he testified pursuant to a plea agreement, with the State agreeing to ask for no more than ten years' incarceration.

State, 366 Md. 574, 589, 785 A.2d 348, 356 (2001). An abuse of discretion exists when "the prejudice to the defendant was so substantial that he was deprived of a fair trial." *Kosh v. State*, 382 Md. 218, 226, 854 A.2d 1259, 1264 (2004)

During the State's closing argument, the prosecutor addressed Lopez's pre-trial statements and testimony. The following statement is at issue here:

> [Prosecutor]: Lopez, why did Lopez have no memory? First of all he remembered. Let's not kid ourselves. He remembered. And how do we know he remembered? Because he said, when asked by [defense counsel] were you going to deal guns, he said, I take the Fifth.
>
> Well, if you don't remember what you're doing, what are you pleading the Fifth to? He remembered. What were you doing there? The answer is if you['re] going to be with the script, I don't remember.
>
> But he didn't say, I didn't remember what I was doing there. When prompted, are you going to deal with guns, he said I plead the Fifth. He [k]new bloody well what he was doing.
>
> On January 26, 2018, which was four days ago, an investigator from the defense goes to the jail and meets Mr. Lopez, we can get you in jail, too.

After this soliloquy, counsel for Stancil and Burns moved for mistrial. The judge overruled the motion, but instructed the jury to "disregard the last statement." The prosecutor then stated "we found you in jail[,]" which was met immediately by another objection. The judge sustained the objection and ordered the prosecutor to "move on from there." The prosecutor continued his closing argument:

> And [the defense investigator] wrote out the statement. He didn't hand write it out. They wrote it out for him, this is what he'll say. So then he takes the Fifth. And he remembers what happened, and then shuts up because he remembered what they told him to say, because they wrote it out for him.
>
> * * *
>
> If you can't see them in your mind, how can you look at him and go that's

> definitely not him? Because the investigator went to the detention center and presented him with this, which he signed. Follow the script.
>
> So when he comes to court on the 29th of January or the 30th of January, having spoken to their investigator, presented with the script on the 26th of January, now we know where the memory went.
>
> * * *
>
> Lopez's statements, before he got to anybody, are consistent. Both statements in the same factual scenario. Both statements tell exactly what happened next. And both statements are, for that guy, clear. Again, nobody is saying he knew them at that time, but he clearly knew them then. So to come to court and say, oh, they forged my signature, oh, I don't know how that got there. Part of the script. Stick to the script.

Stancil maintains that, at a minimum, the prosecutor improperly argued facts not in evidence. Lopez, in his testimony, did not state, imply, or suggest that he had been threatened. Although attorneys are afforded "great leeway" in presenting closing arguments to the jury, the trial judge has discretion to determine whether remarks are likely to mislead the jury. *Hill v. State*, 355 Md. 206, 224, 734 A.2d 199, 209 (1999). Because there was no evidence to support the prosecutor's indication that a defense investigator had threatened Lopez, as this argument goes, the statement misled the jury and the judge abused his discretion by not granting Stancil's motion for mistrial.

The State responds that the prosecutor's closing argument was a proper comment on evidence admitted at trial, relating to Lopez's credibility as a witness. The State presented evidence that Lopez made pre-trial statements identifying Burns and Stancil in photo arrays, signing his name to the back of the photographs. Defense Exhibit 7 was a written statement that a defense investigator submitted to Lopez, who was incarcerated, days before trial. The statement said that Burns was not involved "in any way" in shooting

Lopez. Lopez signed the statement and testified that he agreed with it. According to the State, based upon the contradictory statements from Lopez and related evidence admitted at trial, the prosecutor was permitted to argue that Lopez's testimony was colored by the "script" given to him by the defense investigator.

We agree with the State. The prosecutor did not argue facts not in evidence, which would have been improper. Rather, the prosecutor argued why the jury should not believe Lopez's testimony or the statement prepared (or at least delivered) by the defense investigator through evidence admitted at trial. The trial judge did not abuse his discretion in denying Stancil's motion for mistrial.

We acknowledge Stancil's argument that the prosecutor's statements "we can get you in jail, too[,]" and "we found you in jail[]" may seem suggestive of threats made by the defense investigator. Such remarks, however, provide no basis for reversal because they did not deprive Stancil of a fair trial. The judge took prompt curative action, instructing the jury to disregard the comments and instructing the prosecutor to move on. The prosecutor's statements, while perhaps inartful, were ambiguous and did not allege explicitly threats from the defense investigator. Rather, they were part of the overarching theme of the prosecutor's closing argument, that Lopez was not a credible witness. As such, the trial judge did not abuse his discretion in denying Stancil's motion for mistrial.

IV.

Stancil's final contention is that the evidence presented at trial was insufficient to sustain his convictions. The defense moved for judgment of acquittal based on insufficient evidence, pursuant to Md. Rule 4-324(a), at the close of the State's case and at the close of

all evidence. The trial court denied the motions.

The test to determine the sufficiency of evidence presented at trial is "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Taylor v. State*, 346 Md. 452, 457, 697 A.2d 462, 464 (1997). We give deference to "all reasonable inferences the fact-finder draws, regardless of whether [the reviewing court] would have chosen a different reasonable inference." *State v. Suddith*, 379 Md. 425, 430, 842 A.2d 716, 719 (2004).

Specifically, Stancil focuses on the testimony of Johnson-Bey that Stancil was the person who shot Dickerson. He argues that other evidence presented at trial did not corroborate sufficiently the testimony of Johnson-Bey, who was an accomplice to the crime.[6] A person accused of a crime may not be convicted on the uncorroborated testimony of an accomplice. *Brown v. State*, 281 Md. 241, 242, A.2d 1104, 1105 (1977). As this argument goes, the only person who could corroborate Johnson-Bey's testimony was Lopez. Lopez, however, failed to corroborate Johnson-Bey's testimony in his testimony at trial.

The State responds, and we agree, that the evidence was sufficient to sustain

[6] An accomplice "must participate in the commission of a crime knowingly, voluntarily, and with common criminal intent with the principal offender, or must in some way advocate or encourage the commission of the crime." *State v. Raines*, 326 Md. 582, 597, 606 A.2d 265, 272 (1992).

Stancil's convictions.[7] "Slight" corroboration of an accomplice's testimony is required to sustain criminal convictions. *Ayers v. State*, 335 Md. 602, 638, 645 A.2d 22, 39 (1994). Here, Lopez's identification of Stancil served as sufficient corroboration of Johnson-Bey's testimony. Lopez picked Stancil out of a group of photographs and wrote "shot us" on the back of Stancil's photo. Contrary to this extra-judicial identification, Lopez testified that he did not remember who shot him and did not sign the photographs. It was for the jury to determine what weight to give Lopez's testimony in light of his identification. *(Rodney) Brown v. State*, 182 Md. App. 138, 185, 957 A.2d 654, 681 (2008). The jury found apparently Lopez's identification of Stancil's photograph more credible and persuasive than his in-court testimony. As such, the evidence was corroborated sufficiently and is sufficient to sustain Stancil's convictions.

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

[7] The State responds in some length to Stancil's contention that Johnson-Bey was an accomplice, and therefore his testimony must be corroborated. Regardless if Johnson-Bey was an accomplice, Stancil's claim fails nonetheless because Lopez's identification of Stancil corroborated sufficiently Johnson-Bey's testimony.