Circuit Court for Harford County
Case No. 12-K-16-000168

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 988

September Term, 2017

RONALD SCAIFE, JR.,

v.

STATE OF MARYLAND

Berger,
Arthur,
Rodowsky, Lawrence F.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: June 21, 2018

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Appellant Ronald Scaife, Jr., was convicted by a jury, in the Circuit Court for Harford County, of attempted first-degree murder, conspiracy to commit first-degree murder, and use of a firearm in the commission of a felony or crime of violence. The court imposed a sentence of life imprisonment, with all but 30 years suspended, for attempted first-degree murder; a consecutive life sentence, with all but 20 years suspended, for conspiracy to commit first-degree murder; a consecutive 20-year sentence, the first five years without the possibility of parole, for use of a firearm; and five years of supervised probation after his release.

Scaife filed a timely appeal. He presents the following question for review: Did the trial court abuse its discretion when it denied his motion for a mistrial, or did the trial court abuse its discretion when it denied his motion to strike the answer that led to the mistrial motion?

For the following reasons, we shall affirm.

BACKGROUND

Scaife was charged with shooting Tashawn Kearney. Kearney identified Scaife, by the nickname "Solja," as one of his assailants.[1] At trial, however, Kearney recanted and denied that Scaife had shot him. In response, Sheriff's Deputy Roland Gittings testified that Scaife used the nickname "Solja" and that he had "encountered" Scaife a "minimum" of "50 times" in the past. This appeal concerns whether the court should have granted a mistrial or a motion to strike Deputy Gittings's testimony about the

[1] The nickname is spelled "Solja" and "Soulja" throughout the transcripts. Unless quoting from a transcript, we shall use the first spelling, as suggested in Scaife's brief.

number of times that he had encountered Scaife. With this background, we set forth the following details:

On December 30, 2015, at approximately 10:00 p.m., multiple gunshots were fired on Top View Drive in Edgewood. When Harford County Sheriff's Deputy Paul Markowski arrived on the scene shortly thereafter, he found Kearney in the middle of the street, bleeding from gunshot wounds to his stomach and his leg. According to the deputy, Kearney told him that "he didn't want to die" and that "he would tell" the deputy "everything." Kearney named "Solja" and "Reckless" as the persons who shot him.

After medical personnel transported Kearney from the scene, Deputy Markowski spoke with Nakia McKinnon, Kearney's sister. McKinnon, who was present during the entire time when her brother was lying wounded in the street, showed the deputy a Facebook photograph on her cellphone. She said that the photograph was of one of the shooting suspects.

At around 11:30 p.m. on the evening of the shooting, Detectives Norman Turner and Robert Horner spoke to Kearney at the hospital. The detectives also spoke to Kearney the next day, December 31, 2015, at approximately 11:20 a.m. as he recuperated from surgery. Both interviews were audio-recorded and played for the jury.

In the interview on December 30, 2015, the night of the shooting, Kearney said that Reckless, Solja, and others shot at him.

During the second interview, on December 31, 2015, Kearney said that Solja and Reckless were among his assailants.[2] Kearney knew Solja and Reckless, but could not identify the other assailant or assailants. According to Kearney, Solja was wearing black, and Reckless was wearing a reddish shirt. Kearney said that Solja had a black revolver. Solja shot first, but his gun jammed. If the gun had not jammed, Kearney said, he would have been shot in the head. Reckless started shooting after Solja's gun jammed, and Solja got off some shots as well. Kearney started to run for his house, but was hit before he made it inside. A gunshot shattered the glass in the front door to Kearney's house, but he managed to get inside to wrap his wounds. Shortly thereafter, he went back out to knock on a neighbor's door and to meet the police. Kearney did not clearly articulate a rationale for the shooting, but it appears that (in Kearney's view) Solja may have been motivated by "lies" that someone had been telling about Kearney.

At some point during the interview on December 31, 2015, Detective Horner showed Kearney photographs of some suspects. Kearney provided the police with Solja's phone number and with locations where he might be found.

In the interview on December 31, 2015, Kearney also told the detectives that he had spoken with Solja on the telephone earlier on the evening of the shooting and that he had sent messages to Reckless on Facebook. Kearney showed the detectives the

[2] In total, there were at least three and possibly four assailants. The State introduced video footage from a nearby surveillance camera, which showed four men walking up the street toward the crime scene a minute or two before the shooting.

messages that he had sent and received; the detectives photographed the messages and read them into the record of the interview.

Approximately three weeks later, on January 21, 2016, Kearney made an additional recorded statement during an interview with Detective Christopher Maddox and others at the State's Attorney's Office. In that interview the detective asked Kearney about "Scaife." Kearney replied that Scaife's girlfriend was his best friend.[3] He said that he had known Scaife since he was less than five years old. He added that he had talked to "Reckless," a person he had only recently met through Scaife, on the night of the shooting. He said that Reckless's given name was "Deante."

In the statement on January 21, 2016, Kearney said that, on the night of the shooting, he was walking on the street when he saw Scaife and Reckless, along with a group of people, walking towards him. Some of the men, including Reckless, were wearing ski masks, but "Scaife didn't have one on." When Kearney was close enough to talk to the group, Scaife pulled out a gun and pointed it at his face. Kearney heard the gun click three times, but it did not fire. He started to run, heard gunfire, and was shot several times.

Meanwhile, on January 4, 2016, Harford County Sheriff's Deputies Brian Henfey and Roland Gittings went to an apartment building in Aberdeen, to execute an arrest warrant for Scaife and Deonte (not "Deante") Copenhaver, who they believed to be "Reckless." Before entering the apartment, Deputy Henfey looked into a window and

[3] In the interview on December 31, 2015, Kearney had said that Solja's girlfriend was his best friend.

saw two men sitting at a table, handling two small-caliber, semi-automatic handguns. Deputy Henfey testified that the men "were passing two guns back and forth, a black gun and a silver gun, small caliber." Deputy Gittings knew Scaife and Copenhaver from prior encounters and confirmed that they were inside the apartment. Scaife was dressed in black, and Copenhaver was wearing red.

Before the deputies could execute the warrant, Scaife and Copenhaver left the apartment. When they were outside, they saw the police and attempted to flee. A foot pursuit ensued, with Deputy Gittings following Scaife, and Deputy Henfey following Copenhaver. During that pursuit, Deputy Henfey heard a "loud thud," which he suspected was the sound of Copenhaver discarding a gun. After both suspects managed to escape, Deputy Henfey went back to the area where he heard the noise. He recovered a silver, .25 caliber semi-automatic handgun. The handgun was loaded with .25 caliber rounds and was determined to be operable.

Six .25 caliber shell casings, seven .45 caliber shell casings, and one .45 caliber bullet had been recovered near the place where Kearney was shot on Top View Drive. Three .45 caliber bullets and one .25 caliber bullet were recovered from inside Kearney's residence at 973 Top View Drive. The police also found a .25 caliber bullet inside Kearney's clothing when he was treated at the hospital. The State introduced evidence that the .25 caliber casings were from the same manufacturer as the bullets that were found in the handgun that Detective Henfey recovered in Aberdeen. The State also adduced evidence that the .25 caliber casings had been fired from that same handgun.

At trial, Kearney recanted the pretrial statements in which he identified Scaife, a.k.a. "Solja," as one of the men who shot him. Kearney confirmed that he knew Scaife as well as Copenhaver, but denied knowing their nicknames. Kearney claimed that "Solja," was a white man named "Brandon."

Despite his earlier statements, Kearney testified that he did not recall what happened on December 30, 2015, the day on which the shooting occurred. He denied that he had either seen or spoken to Scaife or Copenhaver that day. He also denied that Scaife shot him. He did not think that Copenhaver shot him.

Kearney claimed that he did not recall speaking to any detectives while he was being treated at the hospital, and he denied showing Detective Horner any Facebook messages. He also denied either identifying, or knowing, any of the persons who were depicted in a photograph and a photo array.

Kearney did admit that he met with Detective Maddox at the State's Attorney's Office in January 2016. Nonetheless, he claimed that he lied to the police about the identity of his assailant. He did so, he said, because he was told that the State would reduce a sentence that he was currently serving and postpone a hearing on a violation of probation.

After Kearney testified, the State called Detective Robert Horner, who had interviewed Kearney at the hospital on the night of the shooting and the day after the shooting. Detective Horner testified that on the night of the shooting Kearney identified the shooters as "Reckless and Soulja." On the following day, the detective said, he returned to the hospital and showed Kearney a photograph of Scaife. Kearney confirmed

that this photograph depicted the person he knew as "Soulja." In addition, Kearney identified a photograph of Deonte Copenhaver in a separate group of six photographs.

The State also called Kearney's sister, Nakia McKinnon. McKinnon testified that she was inside her house at 973 Top View Drive when Kearney came running towards the door. At first, McKinnon claimed not to remember who Kearney said had shot him. But when presented with a statement that she had made to the police, McKinnon agreed that Kearney "probably" said that Solja and Reckless had shot him. McKinnon confirmed that she knew "Solja," that Solja had been one of her brother's friends, and that Solja and his girlfriend had come to her house with Kearney. She identified Scaife, in court, as "Solja," but said that she did not know Reckless. McKinnon claimed to have no recollection of identifying Solja as the assailant by showing an officer a picture on Facebook, so the court permitted the State to read a portion of a statement in which she said that she had done so. The court also permitted the State to introduce evidence that McKinnon had identified Scaife in a photo array.

Finally, Detective Maddox confirmed that he interviewed Kearney on January 21, 2016. The detective testified that during the interview Kearney identified Solja and Reckless as his assailants. The detective also testified that Solja's legal name was Ronald Scaife and that Reckless's legal name was Deonte Copenhaver. Finally, the detective identified Scaife as the person he knew as Solja.

DISCUSSION

Scaife contends that the court erred in not granting a mistrial or motion to strike Deputy Gittings's testimony that he had encountered Scaife on a minimum of 50 prior

occasions. The State responds that Scaife did not make a timely objection to the testimony and that, in any event, the court properly denied the motion for a mistrial and the motion to strike. We agree with the State on both counts.

Deputy Gittings testified as follows:

> Q. Are you familiar with this defendant, Ronald Scaife?
>
> A. Yes.
>
> Q. And are you familiar with Dante Copenhaver?
>
> A. Yes.
>
> Q. Are you familiar with any nicknames they may have?
>
> A. Solja.
>
> Q. And who is Solja?
>
> A. Scaife, sitting next to counsel.
>
> Q. And Mr. Copenhaver, familiar with any nicknames?
>
> A. Reckless.
>
> Q. And the number of times you have encountered Mr. Scaife in the past?
>
> A. At minimum fifty.
>
> Q. And the person that you also know to be Solja, you see him here in the courtroom today?
>
> A. Yes.

At that point, defense counsel objected and asked to approach the bench. There, he said that, although it would have been permissible for the State to ask the deputy whether he had previously had contact with Scaife, it was "highly prejudicial" for the jury to hear that the deputy had encountered Scaife 50 times. He asserted that the

prejudicial effect of the testimony exceeded its probative value. On that basis, he moved for a mistrial.

The court responded that the defense did not object to the question that actually elicited the allegedly prejudicial response – the question about the number of times that the deputy had encountered Scaife. Instead, the court observed, the defense objected only after the next question, in which the State simply asked the deputy to identify Scaife.

After defense counsel reiterated the request for a mistrial, the court added that the deputy had said nothing about the circumstances under which he had encountered Scaife. From the mere fact that the deputy had encountered Scaife, the court said, it did not follow that he had encountered Scaife as a suspect. Instead, the court said, the deputy may have encountered Scaife as an informant or as a person who worked in some capacity with the police. For that reason, the court said that it saw no manifest necessity for a mistrial.

Defense counsel responded by reiterating the objection and asking the court to strike the deputy's answer. The court replied that the question currently before it was whether the deputy could identify Scaife and that the objection pertained to a previous question. On that basis, the court overruled the objection and reiterated the denial of the motion for a mistrial. Scaife takes issue with both rulings.

In response, the State contends that Scaife failed to preserve those issues for appellate review, because, the State says, his objections were untimely. We agree that the objection was untimely as to the motion to strike, but disagree that it was untimely as to the motion for a mistrial.

In criminal cases, Maryland Rule 4-323(c) governs the preservation of issues other than evidentiary rulings, such as a ruling on a motion for a mistrial. *See, e.g.*, *Parker v. State*, 189 Md. App. 474, 592 (2009). Rule 4-323(c) provides that, "[f]or purposes of review by the trial court or on appeal of any . . . ruling or order," other than a ruling admitting or excluding evidence, "it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court."

As the trial court pointed out, Scaife did not move for a mistrial immediately after the question that elicited the allegedly prejudicial response or the response itself. Nonetheless, Scaife did inform the court of the ruling he sought at the time the ruling was made, which is all that is required by the rule concerning preservation of objections to non-evidentiary rulings. Therefore Scaife preserved his objection to the denial of his motion for a mistrial.

"'[A] request for a mistrial in a criminal case is addressed to the sound discretion of the trial court[.]'" *Cooley v. State*, 385 Md. 165, 173 (2005) (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974), *abrogated on other grounds recognized by Simpson v. State*, 442 Md. 446 (2015)); *Winston v. State*, 235 Md. App. 540, 570 (2018). "[T]he trial court is peculiarly in a superior position to judge the effect of any of the alleged improper remarks." *Wilhelm v. State*, 272 Md. at 429; *Winston v. State*, 235 Md. App. at 570.

> "The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able . . . to note the reaction of the jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial."

Simmons v. State, 436 Md. 202, 212 (2013) (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)) (ellipsis in *Simmons*); *Winston v. State*, 235 Md. App. at 570.

An appellate court will not reverse a denial of a mistrial motion absent clear abuse of discretion (*see Simmons v. State*, 436 Md. at 212; *Browne v. State*, 215 Md. App. 51, 57 (2013)), and certainly will not reverse simply because it might have ruled differently. *See Nash v. State*, 439 Md. 53, 67 (2014) (citations omitted); *Winston v. State*, 235 Md. at 570. A trial court abuses its discretion when its ruling is "'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'" *King v. State*, 407 Md. 682, 697 (2009) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)); *Winston v. State*, 235 Md. App. at 570. To amount to an abuse of discretion, "'[t]he decision under consideration has to be well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *King v. State*, 407 Md. at 697 (quoting *North v. North*, 102 Md. App. at 14); *Winston v. State*, 235 Md. App. at 570.

In our view, the court did not abuse its broad discretion in denying the motion for a mistrial. First, as the trial court recognized, defense counsel's failure to object as soon as he arguably should have objected was not itself a reason to grant a mistrial. *See Walker v. State*, 21 Md. App. 666, 672 (1974). Second, the court was well within the expansive boundaries of its discretion in concluding that the statement was not so unfairly prejudicial as to require a mistrial.

On its face, Deputy Gittings's statement simply informed the jury that he had "encountered" Scaife on a minimum of 50 prior occasions. The deputy said nothing about the nature of the encounters. Thus, as the court recognized, the statement did not necessarily imply that he had encountered Scaife as a suspect, as opposed to an informant or a person who worked in some capacity with the police. "[T]he testimony just as well could mean that [Scaife] was a witness, a victim, or otherwise peripherally involved in other cases, without having been accused or found guilty of any crime." *Somers v. State*, 156 Md. App. 279, 314 (2004); *see also Morgan v. State*, 134 Md. App. 113, 141-43 (2000) (affirming denial of motion for mistrial where prosecutor had referred to an "earlier trial date" without informing the jury that defendant had been tried for or convicted of the same offense). In short, the court did not abuse its discretion in denying the motion for a mistrial.

Unlike the denial of the motion for a mistrial, the objection to the denial of the motion to strike was, in our view, untimely. *See* Md. Rule 4-323(a) (stating that an "objection is waived" unless it is "made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent"); *see also* Md. Rule 5-103(a)(1) ("[e]rror may not be predicated upon a ruling that admits . . . evidence unless . . . a timely objection or motion to strike appears of record").

"[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered." *Klauenberg v. State*, 355 Md. 528, 545 (1999); *accord Williams v. State*, 216 Md. App. 235, 254 (2014). "'[I]f opposing counsel's question is formed improperly or calls for an inadmissible answer, counsel must object

immediately.'" *Bruce v. State*, 328 Md. 594, 628 (1992) (quoting 5 L. McLain, *Maryland Evidence* § 103.3, at 17 (1987)); *accord Fowlkes v. State*, 117 Md. App. 573, 587 (1997). Although "there is no bright-line rule to determine when an objection should be made" (*Prince v. State*, 216 Md. App. 178, 194 (2014)), the "objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time[.]" *Id.* "'A party cannot be permitted to sit back and allow the opposing party to establish its case, or any part of its case, through unchallenged evidence and then, when it may be too late for the opposing party to recover, to seek to strike the evidence.'" *Id.* (quoting *Perry v. State*, 357 Md. 37, 77 (1999)).

In this case, the cat was out of the bag by the time counsel objected – the deputy had made the allegedly prejudicial statement, and the State had gone on to ask another question. Arguably, defense counsel should have anticipated an objectionable answer to the question that elicited the allegedly prejudicial remark ("And the number of times you have encountered Mr. Scaife in the past?"). *See Somers v. State*, 156 Md. App. at 313-14 (holding that defense did not preserve objection to question of whether trooper was "familiar" with the defendant, because counsel did not object until after trooper responded that he knew defendant's name "from other cases"). But assuming that counsel need not have been so prescient as to anticipate an objectionable answer to that question, he could have objected when he heard the answer itself. *See id.* (concluding that defense had failed to preserve objection to question because of failure to request curative instruction after witness had answered). Because counsel did not object until after the State had gotten out the next question, the objection has been waived.

Even if the objection had not been waived, we would conclude that the court did not abuse its vast discretion (*see, e.g.*, *Oesby v. State*, 142 Md. App. 144, 167-68 (2002)) in denying the motion to strike the deputy's statement and concluding that its probative value was not substantially outweighed by the danger of unfair prejudice. The statement had a fair measure of probative value, because it formed the foundation for the deputy's ability to testify that Scaife's nickname was Solja – an issue that came into dispute when Kearney recanted his pretrial statements. On the other hand, the statement was not unfairly prejudicial, because it did not clearly state or imply that the deputy had previously encountered Scaife as a suspect or a criminal defendant, as opposed to a victim, an informant, a witness, etc.

In summary, we hold that the court did not abuse its discretion in denying the motion for a mistrial; that the objection to the motion to strike Deputy Gittings's testimony is not properly before us, because defense counsel did not make a sufficiently timely objection; but that even if that issue were before us, the circuit court did not abuse its discretion in denying the motion to strike.

JUDGMENTS OF THE CIRCUIT COURT FOR HARFORD COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.