

Circuit Court for Baltimore City
Case Nos. 114176045 to 114176056

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1894

September Term, 2016

THEODORE GRICE

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: February 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.

At around 4:30 a.m. on May 9, 2014, a truck driver found the body of Ramon Wilder lying in the alleyway of a parking lot between St. Agnes Hospital and Rock Hill Avenue in Baltimore City. He had been shot multiple times.

Appellant Theodore “Teddy” Grice was tried jointly with the victim’s half-brother, Brandon Wilder, in connection with the murder.¹ Grice was convicted of carjacking and conspiracy to commit robbery, but acquitted of all other charges, including murder. On appeal, Grice contends that the trial court erred by denying his motions for severance, mistrial, and judgment of acquittal. Finding no error or abuse of discretion, we affirm.

FACTUAL AND PROCEDURAL HISTORY

I. Background

Ramon and Brandon Wilder shared a father and grew up together. In the years leading up to Ramon’s death, however, they had a falling out. Brandon and Ramon were in competition for drug sales, and Ramon pursued women who were or had formerly been Brandon’s intimate partners.

Grice and Brandon, on the other hand, were very close. Their relationship was described as being like that of a father and son. Grice would provide anything Brandon needed and vice versa. The two were described as seeming to be together all day, every day.

¹ For the sake of clarity, we refer to the victim, Ramon Wilder, as “Ramon” and to Brandon Wilder as “Brandon.”

In the days before Ramon's death, Brandon complained that Ramon had taken money from him and was a bad brother. Brandon said that he was going to rob his brother or beat him up for taking drug sales. Grice encouraged Brandon and agreed that Ramon had been a bad brother, stating that if Ramon were his brother, he would do the same.

Labria Paige, who was also charged in connection with Ramon's death, had known Brandon since middle school and been involved in an intimate relationship with him off and on over the years. In May 2014, she was in a relationship with Brandon and had recently given birth to one of his children.

Paige had first met Brandon's half-brother, Ramon, in 2007. According to Paige, Grice never liked Ramon. She described Grice as manipulative, opining that Ramon would still be alive if it were not for Grice.

Breauna Diggs, also charged in connection with Ramon's death, was Grice's girlfriend. Diggs had become an opiate addict following surgery, and she procured her Oxycontin from Grice. She testified that she was high most of the time during the events leading up to and following Ramon's death.

Celeste Price, one of the State's witnesses, knew Grice from the neighborhood and knew that Ramon sold drugs during the day around St. Agnes Hospital. She had been in an intimate relationship with Brandon in 2012, but in May 2014 she was in an intimate relationship with Ramon, which, she said, was not public knowledge.

II. Ramon’s Road Trip to Atlantic City

On Thursday, May 8, 2014, Ramon surprised Price with a trip to Atlantic City for her birthday. While they were en route in a limousine, Ramon received a phone call from Labria Paige, the mother of Brandon’s child. During the conversation, Ramon put Paige on the speaker phone so that Price could hear her. According to Price, Paige said that she wanted to have sex with Ramon and no longer wanted to be with his brother, Brandon. For the remainder of the day, Ramon texted a lot, but Price did not know with whom.

Although they had originally planned to stay the night in Atlantic City, Ramon and Price returned to Baltimore, arriving home at around 2:00 a.m. on the morning of May 9, 2014. Ramon told Price that the limousine driver would drop him off where he had parked his rental vehicle, a black Chevy Silverado pickup truck, so that he could go to his night job.

III. Meanwhile, in Baltimore

At around noon on May 8, Grice had picked up his girlfriend, Breana Diggs, in his silver Cadillac. The two drove to a motel in Halethorpe, where they met Brandon and Paige. Brandon and Paige were fighting because Brandon had found out that Ramon had been at Paige’s house while Brandon was out of town. Grice told Brandon that Ramon had had sex with Paige.

Brandon, Paige, and their five-month-old son left the motel in Paige’s van, following Grice and Diggs to a neighborhood in southwestern Baltimore City, where Grice parked his Cadillac. From there, the group drove around in Paige’s van and used

drugs. While they were driving, Grice told Brandon that Ramon was taking drug sales away from them and that Ramon had shown him disrespect. Grice repeated the theme of disrespect throughout the day.

IV. The Set-Up

At some point during the day on May 8, 2014, Brandon called Ramon from Paige's phone and put the phone to her ear. According to Paige, Brandon wanted her to find out where Ramon was. She explained that throughout the day Brandon, pretending to be her, sent sexually explicit texts to Ramon from her phone. Paige asserted that Brandon wanted her to trick Ramon into thinking that she wanted to have sex with him, to lure him into meeting her. Brandon said that he was going to rob Ramon and that he was upset with Ramon for trying to have sex with his "baby mother" in front of his son. Grice egged Brandon on by emphasizing the amount of disrespect Ramon had been showing him. Paige heard Grice say that he had given Brandon a handgun.

After midnight on Friday, May 9, 2014, Grice parked the van near his Cadillac and got out with Diggs and Brandon, while Paige remained in the van with her infant son. Grice and Brandon had a brief conversation, and Brandon got back in the van. According to Diggs, she and Grice nodded off once they got to the Cadillac. When they woke up, they drove around for a while and then went back to the parking spot, where they got a call from Brandon.

V. The Trap

After dropping off Diggs and Grice, Paige and Brandon drove to a parking lot a few blocks away, near St. Agnes Hospital, where they anticipated a rendezvous with Ramon. Brandon instructed Paige that when Ramon arrived she was to tell him to walk over to her vehicle to see his nephew (Brandon's son). Brandon then exited the van and walked into an alley.

Shortly after Brandon left, Ramon pulled up in his rental car, the black Silverado. Paige signaled to him by flashing her lights, and she could hear Ramon singing as he approached her. Then she heard gunshots and saw Ramon run away. When she tried to drive away, she was stopped by Brandon, who was holding a gun. Paige later discovered that one of the shots struck the van near where her child was seated. Grice covered up the bullet hole with a bumper sticker.

VI. The Aftermath

Brandon took Ramon's truck and told Paige to follow him. Paige tried to call Ramon's phone, but Brandon answered.

Grice, who was parked nearby with Diggs, panicked when his phone rang and said that he hoped "he" wasn't calling on "his" phone. Breanna Diggs later learned that Grice was expressing concern that Brandon was calling him from Ramon's phone.

Grice, Brandon, and Diggs went to Grice's house, where they dropped off Grice's Cadillac. From there, Grice, Brandon, and Diggs drove Ramon's Silverado to a Microtel

hotel near BWI Airport. Grice told Brandon that he hoped Brandon had not been using a “dead person’s” phone to call him.

Grice, Brandon, and Diggs met up with Labria Paige at the Microtel, where she was waiting in her van. From there, Paige and Diggs drove the van, while Grice and Brandon drove Ramon’s truck, to a nearby Red Roof Inn. At the Red Roof Inn, Grice and Brandon searched Ramon’s truck.

The two women walked to a 7-Eleven, and Grice and Brandon joined them there a few minutes later. The four then returned to the Microtel and got a room, and Grice and Brandon said that they would be back on foot after they took Ramon’s truck to an Extended Stay hotel.

At the Microtel, Brandon told Paige that he shot Ramon because Ramon was “too happy” to have sex with her in front of Brandon’s son. Paige told Diggs that she had lured Ramon to meet up with her by texting and calling him.

VII. The Investigation

Detective Frank Miller of the Baltimore City Police Department was the lead investigator. He testified that Ramon’s truck was found at an Extended Stay hotel near BWI Airport. He also testified that he had reviewed surveillance footage from that hotel and saw that at around 5:30 a.m. on May 9, 2014, a vehicle pulled into a parking space and that two men emerged from it. He testified that, when Grice was interviewed, he wore a baseball hat similar to the one worn by one of the persons in the video.

Detective Miller also reviewed surveillance footage from a 7-Eleven near BWI. He thought that the two persons in the video looked like the two persons in the Extended Stay video.

Diggs testified that when the police first interrogated her on May 28, 2014, she denied having any knowledge of Ramon's death; instead, she said that she was at a shop when she found out about the murder. After she was released from the interview, Diggs told Grice that she had not said anything to the police. He rewarded her with an expensive purse.

In subsequent interviews, however, Diggs and Paige each implicated Grice in the murder. Both pleaded guilty, Paige to murder, Diggs to being an accessory after the fact to a murder and to car theft. As a condition of their plea deals, they were required to testify against Grice and Brandon.

VIII. The Legal Proceedings

Before trial, when the State moved to join the cases against Grice and Brandon, the defendants moved to sever the cases. Grice argued, as the basis for his motion, that his defense would almost certainly elicit evidence that would not be admissible against Brandon if Brandon were tried separately. Grice's defense, he said, would be hampered if the court limited his ability to present evidence that might be prejudicial to his co-defendant, Brandon.

According to Grice, the State's theory was that he was the ringleader of the attack on Ramon. To refute that alleged theory, Grice said that he planned to take the stand in

his own defense and to testify about the nature of his relationship with Brandon, about how the relationship had fallen apart, about threats that Brandon had made against him in open court, and about a stabbing that he had suffered, purportedly at Brandon's behest. Grice proffered that he would present testimony about Brandon's motives to order the attack and about other murders allegedly committed by Brandon.

The circuit court denied Grice's motion to sever, but left open the possibility that it might revisit the motion as the case progressed.

Throughout the trial, Grice argued that, to prove that Brandon required no encouragement to murder Ramon, he (Grice) should be allowed to introduce evidence that Brandon attempted to murder someone else three days after the crime for which they were charged and that Brandon ordered a hit on him (Grice) while he was detained in the Baltimore City jail. The court, however, found none of this evidence relevant.

Grice ultimately did not take the stand at trial. He was convicted of conspiracy to commit robbery and carjacking, but acquitted of all other charges, including murder. The court sentenced Grice to a total of 25 years of imprisonment. He noted this timely appeal.

QUESTIONS PRESENTED

Grice presents three questions for review, which we have reordered:

1. Whether the Circuit Court erred by denying Mr. Grice's motion for mistrial?
2. Whether the Circuit Court erred by denying Mr. Grice's motion to sever?
3. Whether the Circuit Court erred by denying Mr. Grice's motion for judgment of acquittal?

In our view, the trial court neither erred nor abused its discretion in denying Grice’s motions for a mistrial or for severance. Additionally, the State presented sufficient evidence for a rational jury to conclude that Grice was guilty beyond a reasonable doubt of the charges for which he was convicted. We affirm.

DISCUSSION

I. Mistrial

Grice contends that the court abused its discretion by twice denying his motions for mistrial, because, he says, he was “denied the opportunity to elicit testimony from Ms. Paige and Detective Miller in cross-examination challenging the State’s theory that he was violent and that he had manipulated co-defendant Brandon Wilder into committing the crime[.]” We see no abuse of discretion.

Grice’s first motion for mistrial followed Labria Paige’s testimony. Grice complains that the trial court abused its discretion by preventing him from cross-examining Paige about an attempted murder that occurred days after Ramon’s murder. The court denied Grice’s motion on relevance grounds, stating “[t]hat Mr. Wilder is charged with other events outside the presence of Mr. Grice, does not, in any way, shape or form, add anything to the argument that Mr. Grice was an encourager as to this crime.”²

² Notably, the court permitted Grice to question Paige about the attempted murder for purposes of impeaching her. When Grice attempted to delve deeper into the details of the attempted murder and to elicit evidence of Brandon’s involvement, the court upheld objections made by both the State and Brandon. The court stated that it would allow

Grice’s second motion for mistrial followed his cross-examination of Detective Miller. The court sustained both Brandon’s and the State’s objections when Grice sought to question Detective Miller regarding his knowledge of Grice being stabbed in jail while awaiting trial.³ The court denied Grice’s motion on relevance grounds. Responding to Grice’s assertion that the evidence would be admissible but for the joint trial with Brandon, the court stated:

[W]e would not be getting into [the issue of who stabbed Grice and why] anyway. We would be dealing with what, if anything, Mr. Grice did in the crime and in the course of the crime, what any other conspirators did in the course of the crime and what any other conspirators did after the crime was over to keep it quiet. That would be our focus no matter who is being tried.

The court was similarly unpersuaded by Grice’s argument that the stabbing was relevant because it was done to keep him quiet. The court stated:

[I]t would be – the Husband’s [sic] and Housewives of West Baltimore is no [sic] going to be the soap opera that is presented here about the relationship of these parties and what they have done and why they do things to each other. We’re going to try and stay focused on the charge of murder and what happened to Ramon Wilder, why it happened and who did it. That’s what this trial is about. It is not about their overall relationship other than what Mr. Wilder wishes to present in evidence or testify to about things that happened associated with this murder. That’s our focus. That’s where we’re going to go.

“A mistrial is no ordinary remedy[.]” *Cooley v. State*, 385 Md. 165, 173 (2005).

Grice to continue to impeach Paige, but would not permit Grice to delve into the details of the attempted murder.

³ Conspicuously absent from Grice’s questioning of Detective Miller regarding the stabbing were any questions or proffer to establish that Detective Miller had a basis of knowledge regarding the jailhouse stabbing.

Rather, it is “an extraordinary act which should only be granted if necessary to serve the ends of justice.” *Id.* (quoting *Jones v. State*, 310 Md. 569, 587 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988)); *accord Winston v. State*, ___ Md. App. ___, ___, 2018 WL 679873, at *13 (Feb. 2, 2018); *Burks v. State*, 96 Md. App. 173, 187 (1993) (stating that a mistrial is “an extreme sanction” to which courts sometimes must resort “when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice”); *Rutherford v. State*, 160 Md. App. 311, 323 (2004); *Webster v. State*, 151 Md. App. 527, 556 (2003). Put another way, “[t]he determining factor as to whether a mistrial is necessary is whether ‘the prejudice to the defendant was so substantial that he [or she] was deprived of a fair trial.’” *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 595 (1989)); *accord Winston v. State*, 2018 WL 679873, at *13.

“[A] request for a mistrial in a criminal case is addressed to the sound discretion of the trial court[.]” *Cooley v. State*, 385 Md. at 173 (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974), *abrogated on other grounds as recognized by Simpson v. State*, 442 Md. 446 (2015)); *Winston v. State*, 2018 WL 679873, at *13. “[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; *accord Winston v. State*, 2018 WL 679873, at *13.

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)); *accord Winston v. State*, 2018 WL 679873, at *13.

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. at 57), and certainly will not reverse simply because it might have ruled differently. *See Nash v. State*, 439 Md. 53, 67 (2014) (citations omitted); *accord Winston v. State*, 2018 WL 679873, at *13. 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)); *accord Winston v. State*, 2018 WL 679873, at *13. 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); *accord Winston v. State*, 2018 WL 679873, at *13.

“Generally speaking, the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is a clear abuse of such discretion.” *Oken v. State*, 327 Md. 628, 669 (1992). Similarly, “[t]he trial court has broad discretion in determining the scope of cross-examination, and we will not disturb the exercise of that discretion in the absence of clear abuse.” *Martin v. State*, 364 Md. 692, 698 (2001). Accordingly, “[t]he trial court . . . may ‘impose

reasonable limits on cross-examination to protect witness safety or to prevent harassment, prejudice, confusion of the issues, or inquiry that is repetitive or marginally relevant’ especially as collateral matters are concerned.” *Churchfield v. State*, 137 Md. App. 668, 683 (2001) (citations omitted).

Grice does not point to any authority supporting his argument that the court abused its discretion in determining that Grice’s stabbing or an attempted murder several days after Ramon’s murder were not relevant. In our view, these were routine, discretionary rulings that did not just fall within the broad scope of the circuit court’s authority, but were inarguably correct. The circuit court did not abuse its discretion in denying a motion for a mistrial in response to its uncontroversial rulings on a pair of evidentiary questions.

II. Severance

Ordinarily, when a criminal defendant moves to sever his trial from that of a co-defendant, he argues that he will suffer unfair prejudice because the State intends to introduce evidence against his co-defendant that would not be admissible against him if he were tried separately. *See State v. Hines*, 450 Md. 352, 369-70 (2016); *Winston v. State*, 2018 WL 679873, at *7. Grice, however, does not take the ordinary approach. Instead of arguing that he suffered unfair prejudice because the State introduced evidence that was admissible only against Brandon, Grice appears to argue that he suffered prejudice because the court prevented him from introducing evidence that would have aided his defense, because it would have prejudiced Brandon.

In specifying the evidence that the court allegedly prevented him from introducing, Grice’s brief refers to his efforts to address what he describes as “the State’s theory that he was violent and that he had manipulated Brandon Wilder into committing the crime.” He refers vaguely to his intention to “rebut that theory by cross-examining Det. Miller and other witnesses about other crimes of violence” that Brandon had allegedly committed.

The short answer to Grice’s contention is that the circuit court did not exclude that evidence on the ground that it would be unfairly prejudicial to Brandon; the court excluded the evidence because it was irrelevant and because the court did not want a trial concerning Ramon’s murder to devolve into a series of confusing and wasteful mini-trials about whether Brandon may have committed other, unrelated acts of violence. In addition, the court could have sustained an objection during the cross-examination of Detective Miller, because the witness had no personal knowledge about what Grice was asking – whether he “was stabbed 28 times,” purportedly at Brandon’s behest, while he was in pretrial detention.

In short, Grice is simply incorrect in his premise that the court prevented him from introducing admissible evidence on the ground that it would have been unfairly prejudicial to his co-defendant, Brandon. For that reason, we reject the conclusion that Grice would draw from that faulty premise – that, the circuit court erred or abused its discretion in denying his motion for a severance.

In what appears to be a separate argument, Grice contends that the charges against Brandon should not have been joined with the charges against him, because, he says, he and Brandon had antagonistic defenses. But setting aside the question of when antagonistic defenses can ever serve as a ground for severance,⁴ the fact is that Grice’s defense at trial was largely consistent with Brandon’s: both defendants relied principally on an attack on the credibility of Paige and Diggs, who had initially denied any involvement in the crimes and had implicated Grice and Brandon only after changing their stories and agreeing to plead guilty. In any event, Grice does not point to a single piece of evidence that he sought to introduce, but that the court excluded on the ground that it was inadmissible because of Brandon’s presence as a co-defendant. Again, the circuit court did not err or abuse its discretion in denying Grice’s motion for a severance.

III. Judgment of Acquittal

As a final contention, Grice challenges the sufficiency of the evidence supporting his convictions. Grice focuses exclusively on the State’s failure to adduce direct testimony that he carjacked and conspired to rob Ramon. In so doing, Grice ignores the jury’s ability to rely on circumstantial evidence to find the elements necessary to convict him on both counts. *McMillian v. State*, 325 Md. 272, 292 (1992) (stating that “[t]he existence of a conspiracy can be established from circumstantial evidence from which an inference of common design may be drawn”); accord *McClurkin v. State*, 222 Md. App. 461, 486 (2015); *Armstead v. State*, 195 Md. App. 599, 646 (2010); see also *Neal v.*

⁴ See generally *Zafiro v. United States*, 506 U.S. 534, 537-39 (1993).

State, 191 Md. App. 297, 314 (2010) (stating that “[t]he same review standard applies to all criminal cases, including those resting upon circumstantial evidence, since, generally, proof of guilt based in whole or in part on circumstantial evidence is no different from proof of guilt based on direct eyewitness accounts”).

Evidence is sufficient if, viewing it “in the light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’” *Riggins v. State*, 223 Md. App. 40, 60 (2015) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)) (emphasis in original). In applying that standard, we defer to the jury’s evaluations of witness credibility, its resolution of evidentiary conflicts, and its discretionary weighing of the evidence, by crediting any inferences the jury reasonably could have drawn. *See State v. Manion*, 442 Md. 419, 431 (2015). Here that standard was met.

Although a rational jury would not have been required to convict Grice of attempted robbery, it was certainly permitted to do so. Viewed in the light most favorable to the State, the evidence showed that Grice and Brandon had discussed robbing Ramon; Grice gave Brandon a gun; Grice was with Brandon when he and Paige made the phone calls that lured Ramon to the site of the robbery (and murder); Grice stationed himself near the scene of the crime just before it occurred; when Brandon called him, just after the robbery and murder, Grice expressed his concern that Brandon was using Ramon’s phone (which Brandon would have had to take from Ramon); and Grice assisted Brandon in searching and disposing of Ramon’s truck after the murder. This

evidence was more than sufficient to prove, circumstantially, that Grice and Brandon had conspired to rob Ramon.

The evidence of Grice’s culpability in a carjacking is more attenuated than his culpability for conspiracy to rob Ramon, but still sufficient to support his conviction. In view of the elaborate efforts to transport Ramon’s Silverado from place, to place, to place after the robbery and murder, the jurors could rationally infer that one goal of the crime was to obtain the unauthorized possession of the vehicle through the use of force or violence, using the gun that Grice had given to Ramon. *See Harris v. State*, 353 Md. 596, 614 (1999) (listing the elements of carjacking). In this regard, we note that Grice and Brandon searched the Silverado after they had unlawfully taken possession of it from Ramon. The search suggests that Grice and Brandon may have planned to carjack the truck as a means of obtaining any valuable items (drugs, money, guns, etc.) that Ramon might have been carrying in it. The evidence therefore was sufficient to prove that Grice was guilty of carjacking.

**JUDGMENTS OF THE CIRCUIT COURT
FOR BALTIMORE CITY AFFIRMED.
COSTS TO BE PAID BY APPELLANT.**