

Circuit Court for Prince George's County
Case No. CT161152A

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 2934

September Term, 2018

CHARLES F. FELUS

v.

STATE OF MARYLAND

Berger,
Friedman,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 26, 2020

*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.

Convicted by a jury in the Circuit Court for Prince George’s County of first degree burglary and related offenses, Charles F. Felus, appellant, presents for our review a single question: Did the court abuse its discretion in denying his motion for mistrial? For the reasons that follow, we shall affirm the judgments of the circuit court.

This case arises from the burglary of the Landover residence of Patricia Latimore, during which a television, pocket books, a jewelry box, and a jar of change were taken. At trial, the State called Jorge Tobar, who testified that at 10:15 a.m. on June 29, 2016, he saw Mr. Felus, who was wearing blue shorts and a white top, in the back yard of Ms. Latimore’s residence. Mr. Tobar was familiar with Mr. Felus, who lived “[t]wo houses after” Mr. Tobar’s residence. After Mr. Tobar called police, he “went out again” and “saw [Mr. Felus] with a television.”

The State also presented testimony from three police officers who were subsequently dispatched to Ms. Latimore’s residence. When the officers arrived, they saw, in the yard of a residence two doors down from Ms. Latimore’s residence, Mr. Felus, who was wearing blue jean shorts and a white tank top, and a man later identified as Elliott Yearwood, who was sitting in a chair with multiple purses next to him. Two of the officers went to Ms. Latimore’s residence and observed a broken window, as well as blood spatter and broken glass. When the officers approached Mr. Felus, he ran inside a residence. When an officer called Mr. Felus back outside, the officer observed blood on Mr. Felus’s arm, shorts, and shirt. Inside a nearby car, the officers discovered a television. During redirect examination of one of the officers, the prosecutor asked the officer how he had

determined Mr. Felus's name. The officer replied, "I have come across Mr. Felus," but was interrupted by an objection by defense counsel, and the court sustained the objection.

The State subsequently called Ms. Latimore, who identified the "purses" discovered next to Mr. Yearwood as hers. The State also called Mr. Yearwood, who testified that his mother lives two doors down from Ms. Latimore's residence. On the morning of the offenses, Mr. Yearwood saw Mr. Felus, whom Mr. Yearwood had known "since [Mr. Yearwood] was a kid," enter and then exit Ms. Latimore's residence. After handing "the goods" to Mr. Yearwood "over the fence," Mr. Felus instructed Mr. Yearwood to put the television in a car owned by Mr. Yearwood's sister, and Mr. Yearwood complied. Mr. Yearwood stated that he "wanted to buy . . . the pocket books, but . . . saw the police coming." Mr. Felus, who "was cut up everywhere," then went into the residence of Mr. Yearwood's mother and "[g]ot on the floor." Mr. Yearwood admitted that he had been arrested and charged with first degree burglary and other offenses, and pleaded guilty to theft of property with a value of less than a thousand dollars.

During the prosecutor's direct examination of Mr. Yearwood, the following colloquy occurred:

[PROSECUTOR:] You were outside the home?

[YEARWOOD:] Yes, sitting in the yard, but he ran when he saw the police.

[PROSECUTOR:] Okay. Into your mother's house?

[YEARWOOD:] That's his M.O., yes.

[DEFENSE COUNSEL]: Objection. Move to strike. I would like to . . . approach and make a motion.

(Counsel approached the bench, and the following ensued.)

[DEFENSE COUNSEL]: I move for a mistrial due to the extremely prejudicial statement just made, that's his M.O.

THE COURT: Say again?

[DEFENSE COUNSEL]: I move for a mistrial. He testified he ran. That's his M.O., *modus operandi*, meaning what people usually do.

THE COURT: I'm going to give a curative instruction. I'm going to deny the motion for a mistrial.

Following the bench conference, the court instructed the jury: "I have sustained the defendant's objection. You are to disregard the last question and answer, entire answer."

Following the close of the evidence, the court instructed the jury:

The following things are not evidence, and you should not give them any weight or consideration. The charging document, inadmissible or stricken evidence, questions and objections of counsel.

* * *

Inadmissible or stricken evidence must not be considered or used by you. You must disregard questions that I did not permit the witness to answer, and you must not speculate as to the possible answers.

If after an answer was given I ruled the answer to be stricken, you must disregard both the question and the answer in your deliberations.

Mr. Felus contends on appeal that in denying the motion for mistrial, the court "depriv[ed] him of his right to a fair and impartial jury trial," because "the jury certainly would have interpreted [Mr. Yearwood's reference to *modus operandi*] as a reference to prior criminal conduct," and the reference "was so unfairly prejudicial that no curative instruction could salvage a fair trial for Mr. Felus, especially given that this was the second

reference to Mr. Felus’s prior experience with law enforcement in this trial.” The State counters that Mr. “Felus’s claim is largely unpreserved,” and alternatively, the “trial court properly exercised its discretion to give a curative instruction in lieu of a mistrial.” (Capitalization and boldface omitted.)

Assuming, *arguendo*, that Mr. Felus’s contention is preserved, we agree with the State that the court properly exercised its discretion. “In determining whether to grant a mistrial, courts should consider

whether the reference . . . was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; and whether a great deal of other evidence exists.”

Jackson v. State, 230 Md. App. 450, 467-68 (2016) (internal citations and brackets omitted). In reviewing whether a trial court abused its discretion in failing to grant a mistrial in response to impermissible testimony, we consider whether “the trial court immediately sustained [an] objection to the question and struck it,” whether the defendant requested a curative instruction, and whether, following “the presentation of evidence,” the court instructed the jury to “give [no] weight or consideration” to “testimony that [the court] struck or told [the jury] to disregard[.]” *Id.* at 468 (quotations omitted).

Here, Mr. Yearwood’s reference to whether Mr. Felus had an “M.O.” was a single, isolated statement. The reference was not solicited by the prosecutor, but was instead an inadvertent and unresponsive statement. Although Mr. Yearwood was an important witness with respect to the events that occurred following the burglary and removal of Ms.

Latimore's property from her residence, the prosecution relied just as heavily upon Mr. Tobar and the officers in showing that Mr. Felus was the individual who burglarized the residence and removed the property, and hence, the entire prosecution did not depend upon Mr. Yearwood and the jury's determination of his credibility. The State presented a great deal of other evidence, including lengthy and detailed testimony by Mr. Tobar and the officers. Immediately after Mr. Yearwood made the challenged reference, the court sustained defense counsel's objection to the reference, and gave a curative instruction despite defense counsel's failure to request one. Finally, following the close of the evidence, the court instructed the jury to give no weight or consideration to testimony that the court struck or told the jury to disregard. We conclude that, in light of these circumstances, the court's instruction was adequate to cure any prejudice that may have resulted from the challenged reference, and hence, the court did not abuse its discretion in denying Mr. Felus's motion for mistrial.

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