Circuit Court for Prince George's County
Case No. CT201164X

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 589

September Term, 2023

JHATAVUS LAMAR MCKNIGHT

v.

STATE OF MARYLAND

Arthur,
Shaw,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: January 29, 2025

* This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On the morning of October 25, 2002, two men robbed and killed David McCoy outside of a bank in Prince George's County. Nearly two decades later, the State prosecuted Jhatavus McKnight for the robbery and murder of Mr. McCoy.

After a trial in the Circuit Court for Prince George's County, the jury found Mr. McKnight guilty of first-degree felony murder, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon. The court sentenced him to life imprisonment with all but 30 years suspended.

Mr. McKnight has appealed, contending that the State's attorneys and one of its witnesses committed misconduct and impaired his right to a fair trial. Because we see no merit in these contentions, the judgments will be affirmed.

FACTUAL AND PROCEDURAL BACKGROUND

On November 12, 2020, the State obtained an indictment in the Circuit Court for Prince George's County charging Jhatavus McKnight with first-degree murder of David McCoy, conspiracy to commit murder, robbery with a dangerous weapon, and conspiracy to commit robbery with a dangerous weapon. The indictment alleged that the offenses occurred more than 18 years earlier, on October 25, 2002.

The circuit court conducted a jury trial in January 2023. The jury heard testimony and received evidence over the course of five days.

Brenda Boyd-Cooper testified that, on October 25, 2002, she was working as a bank teller at Columbia Bank on Central Avenue in Capitol Heights. Ms. Boyd-Cooper recalled that, at around 10:30 that morning, she assisted Mr. McCoy with a bank transaction. Ms. Boyd-Cooper recognized Mr. McCoy as a regular customer who made

business deposits at the bank at least once per week. Ms. Boyd-Cooper testified that Mr. McCoy withdrew $2,200 from a business account before he exited the bank.

Joseph Wisniewski, III, testified that, on the morning of October 25, 2002, he was sitting in his vehicle in the drive-through line at Columbia Bank. Mr. Wisniewski noticed a black Nissan Maxima in the parking lot at the front of the bank. According to Mr. Wisniewski, the car was positioned as if it were "going to pull out to go right on Central Avenue, but the car just sat there" waiting for several minutes. Eventually, Mr. Wisniewski saw the car move toward the front of the bank, out of his view. Moments later, Mr. Wisniewski "heard a pop and then a bang." Next, Mr. Wisniewski saw the car move "very fast" past the drive-through line and drive away "at a high rate of speed." Although Mr. Wisniewski was unable to see the occupants, he noticed that the car had a bent antenna and damage to the door and fender on the passenger side.

Joan Spencer testified she was driving her vehicle on Central Avenue on the morning of October 25, 2002. Ms. Spencer observed a white man with a bag in his hands exit the bank and walk toward a yellow car in the parking lot. Ms. Spencer testified that she saw a different car, occupied by two Black men, park near the yellow car. According to Ms. Spencer, the passenger from the other car approached the white man and "tried to grab the bank bag from him." The white man "resisted" and "pulled the bank bag back." At that point, Ms. Spencer heard one gunshot and saw the white man fall to the ground behind the yellow car. The passenger "grabbed the bag and ran around to the other car[.]" Ms. Spencer heard "a big thump" as the other car backed up behind the yellow car.

William Greene, a crime scene investigator for the Prince George's County Police Department, testified that he arrived at Columbia Bank at around 11:15 a.m. on October 25, 2002. When Mr. Greene arrived, Mr. McCoy's body was lying behind a yellow car that had sustained damage to the driver's side. Near the body, Mr. Greene found a "spent nine millimeter shell casing[,]" "fragments" of "glass" or "plastic" from an unknown car, and a bloody baseball cap with "tire impression[s] going through the brim[.]" Mr. Greene also observed "tire impressions in blood leading out of the parking lot." Mr. Greene testified that it was "obvious" to him that the victim "had been run over" by a car.

Dr. Ling Li, a forensic pathologist, performed an autopsy of Mr. McCoy's body. Dr. Li determined that Mr. McCoy sustained "rapidly fatal" wounds from a bullet that entered his chest below his neck and traveled through his trachea, carotid artery, and part of his lung. Dr. Li determined that Mr. McCoy also suffered abrasions and contusions to his head, face, and neck; several fractured ribs; and internal injuries, including a lacerated spleen. Dr. Li concluded that Mr. McCoy died as the result of his gunshot wounds and "multiple other injuries."

Detective Christopher Smith of the Prince George's County Police Department served as the lead investigator of the killing of Mr. McCoy. Detective Smith testified that he recovered a VHS tape from a surveillance camera located at an ATM machine at the Columbia Bank. According to Detective Smith, this video showed a "dark colored vehicle" leaving the parking lot at the time of the crime. Detective Smith testified that the poor image quality made it impossible to read the license plate or to identify the make or model of the vehicle. Detective Smith further testified that the fragments recovered

from the parking lot had identifying numbers which established that the fragments came from the headlight of a Nissan vehicle.

In an effort to further the investigation, Detective Smith created fliers asking members of the public to call a tip line if they had information about the robbery and killing of Mr. McCoy. More than four years later, in April 2007, an anonymous source called the tip line with information about two suspects. Detective Smith testified that the source claimed to know two men who robbed "a middle aged white man who own[ed] a liquor store." The source told Detective Smith that the shooter was "a guy named Steve" and that the driver was "Jhatavus McKnight." The source stated that "[t]here was a struggle between Steve and the victim[,]" that "a gun went off" during the struggle, and that Jhatavus "ran over the victim" as he was driving away. The source stated that she knew this information because "Jhatavus told her the information himself" "in the beginning of 2003[.]"

Detective Smith testified that the source further stated that the vehicle used in the crime was a black Nissan owned by a woman named "Shelly," who was the mother of one of Steve's children. The source did not know Steve's full name, did not know Shelly's full name, and did not know Shelly's address. Detective Smith met the source in person, and they searched the area where the source thought that Shelly lived, but they were unable to find the car.

At trial, Mia Lee testified that she was the source who reported information about the crime in 2007. Ms. Lee testified that she knew Jhatavus McKnight because he was the best friend of her ex-boyfriend, Brandon McCrae. Ms. Lee testified that she was also

acquainted with "Steve," a cousin of Mr. McKnight. Ms. Lee testified that, as of "late 2002[,]" she lived in an apartment with Mr. McCrae, Mr. McKnight, and Mr. McKnight's girlfriend.

Ms. Lee testified that, sometime "in 2003[,]"[1] she had a conversation with Mr. McKnight while the two of them were alone together one day, drinking alcohol and smoking marijuana. Ms. Lee testified that, during their conversation, Mr. McKnight "became very emotional" and appeared "visibly upset" and "sad." According to Ms. Lee, Mr. McKnight told her that Steve had approached him with a "proposition" to steal money from a store owner who "was going to make a deposit or something." Ms. Lee testified that Mr. McKnight told her that "a gun went off" during a struggle between Steve and the victim, that "they left in a panic[,]" and that Mr. McKnight "ran over" the victim as he was driving away. Ms. Lee testified that she did not share this information with anyone for a long time because she was "scared" of what might happen if she did so. Ms. Lee stated that she eventually called the tip line to report the information because she "just wanted it out [of] [her] head."

Shelly Price testified that, as of late 2002, she was the owner of a black 1998 Nissan Maxima. Ms. Price previously had one child with Levy Steven Moore, who commonly used the name Steve. Ms. Price testified that, although she was no longer in a romantic relationship with Mr. Moore by late 2002, she often allowed Mr. Moore to use her car. Ms. Price confirmed that, as of late 2002, her car had a broken antenna and

[1] Ms. Lee testified that she could not remember exactly when the conversation occurred, or even a particular month or season.

damage to the rear passenger side, even though she herself never had any accidents while driving that car. Ms. Price also recalled that, at some point, she replaced a broken headlight on the car.

Detective Bernard Nelson of the Prince George's County Police Department testified that he began investigating the killing of Mr. McCoy in 2009, as part of his work for the Cold Case unit. Using computer databases, Detective Nelson found information about a "Levy Steven Moore" who "was related to Jhatavus McKnight" and who "had a girlfriend by the name of Shelly." In May 2009, Detective Nelson spoke with the anonymous source, later confirmed to be Ms. Lee. At that time, Ms. Lee positively identified a photo of Mr. Moore as "Steve," the shooter, and positively identified "a single photo of Jhatavus McKnight" as the driver. Around the same time, Detective Nelson located Ms. Price and took photographs of her black 1998 Nissan Maxima, which had a broken antenna and visible damage on the rear passenger side. Detective Nelson determined that the car still had original factory components for the headlight on the driver's side and that the car had a replacement headlight and side marker on the passenger side. Detective Nelson located Mr. McKnight in 2009, but he did not bring any charges at that time.

Detective Nelson testified that, although he performed periodic "computer checks," he was unable to locate Levy Steven Moore until 2018, when he learned that Mr. Moore was incarcerated in North Carolina in connection with an unrelated matter. Mr. Moore agreed to speak with Detective Nelson in August 2018 in an audio-recorded interview. Detective Nelson testified that, after "about seven or eight minutes" of

questioning, Mr. Moore confessed that he shot Mr. McCoy during "a robbery gone bad." Detective Nelson testified that Mr. Moore claimed that his cousin, Mr. McKnight, was the driver of the car used during the robbery.

Detective Nelson testified that, during the interview, Mr. Moore stated that he "obtained information about the victim from a former employee of Tucker's Liquor Store Restaurant," who used the nickname "Shorty." According to Detective Nelson, Mr. Moore stated that Shorty had told him about an opportunity to "make some easy money" by targeting the manager of the liquor store who made "bank drops" several times per week. Detective Nelson testified that Mr. Moore mentioned that "there was one occasion in which [Mr. McKnight] was present while Shorty talked about the victim and the victim's car." Sometime after the interview, Detective Nelson conducted another interview with the man whom Mr. Moore had referred to as "Shorty," a man named James Harper, who formerly worked with the victim.[2]

Levy Steven Moore testified for the State. In his testimony, Mr. Moore explained that he and Mr. McKnight are first cousins who had known each other since early childhood. Mr. Moore testified that, as of October 2002, he spent time with Mr. McKnight "[a]lmost every other day[,]" and that they often worked together doing construction jobs and washing cars.

Mr. Moore testified that, as of October 2002, he was acquainted with a man who worked at Tucker's liquor store. Mr. Moore stated that he did not know this man's real

[2] During that interview, Mr. Harper stated that no one called him "Shorty," but he mentioned that some friends called him "Short Dog."

name and that he only knew the man by the nickname "Shorty." According to Mr. Moore, Shorty stated that, through his job, he knew a white man who sometimes carried money and drove a yellow car. Mr. Moore stated that Shorty provided a description of the white man and the yellow car. Mr. Moore testified that, about "two or three weeks" before the robbery, he had a discussion with Shorty about a plan to rob the man from Tucker's liquor store. Mr. Moore recalled that about "six or seven people[,]" including Mr. McKnight, were present during the discussion. Mr. Moore stated that Mr. McKnight did not actively participate in the discussion, but that Mr. McKnight was simply present when Mr. Moore and Shorty talked about the planned robbery.

Mr. Moore testified that, on the morning of October 25, 2002, he called Mr. McKnight and said that he "needed a driver." Mr. Moore testified that, at his direction, Mr. McKnight drove the car to Tucker's liquor store. Mr. Moore testified that they used a black 1998 Nissan Maxima owned by his former girlfriend, Ms. Price. When Mr. Moore saw the man leave the liquor store in a yellow car, he told Mr. McKnight to follow the yellow car. Mr. Moore testified that they followed the yellow car to a bank and waited outside for the man to leave the bank.

Mr. Moore testified that he approached the man in the parking lot and "asked [the man] for the money." The man "was angry" and "said no." At that point, Mr. Moore pulled out a nine-millimeter handgun that he had been carrying. The man "tried to . . . grab the gun" from Mr. Moore. According to Mr. Moore, the gun "went off" in his hands while the man was "trying to grab the gun" from him. When the man fell to the ground, Mr. Moore picked up the bag of money that the man had been carrying. Mr. Moore

returned to the other car and told Mr. McKnight to drive. Mr. McKnight backed the car out of the parking space and drove away from the bank.[3]

Mr. Moore testified that, after they left the bank, Mr. McKnight drove to the apartment where Mr. McKnight lived with his roommate, Brandon McCrae. Mr. Moore asked Mr. McKnight to drive him to an auto repair shop so that Mr. Moore "could fix the car" by replacing a "light [that] was busted" and removing "some yellow paint" that had scraped off the victim's car. Mr. Moore testified that Mr. McKnight agreed and drove him to the auto repair shop. Mr. Moore testified that, a few days after the robbery, he gave Mr. McKnight some portion of the stolen money. Mr. Moore recalled that, at that time, he did not tell Mr. McKnight that the money came from the robbery and that Mr. McKnight did not ask about the source of the money.

Mr. Moore testified that he moved to North Carolina about one year after the robbery. In August 2018, while Mr. Moore was incarcerated in North Carolina, Mr. Moore agreed to an interview with Detective Nelson. Mr. Moore testified that he admitted his guilt during the interview because he was "trying to . . . clean up a lot of stuff . . . in [his] life at that time" and "wanted to get all that stuff off [of] [his] conscience." After the interview, Mr. Moore was charged in federal court and pleaded guilty to murder resulting from the use, carrying, brandishing, and discharging of a firearm during and in relation to a crime of violence. At the time of his testimony against Mr. McKnight, Mr. Moore faced a maximum sentence of life imprisonment, but he had

[3] Mr. Moore testified that he did not see or hear the car run over the victim as they were driving away.

not yet been sentenced in federal court.

Mr. McKnight testified on his own behalf. Mr. McKnight testified that he did not participate in any robbery or killing and that he was never present during any conversations about planning a robbery or killing. Mr. McKnight stated that, during 2002, he "worked during the week" and spent time with his cousin, Mr. Moore, only about "once or twice a week." Mr. McKnight testified that, in 2002, he "was working . . . daily" from "nine to five . . . Monday through Friday." When asked if he could recall his job title, Mr. McKnight stated: "It was one of my entry level jobs. I was working for the Officer Movers [sic] at that time."[4] Mr. McKnight testified that he "was at work" on the morning of October 25, 2002.

In his testimony, Mr. McKnight stated that he never told Ms. Lee that he had participated in any robbery or killing. Mr. McKnight testified that, although he had lived in an apartment with Mr. McCrae, the lease for that apartment ended "at the end of [2002]" and he "moved back in with [his] mother . . . once the lease was up." Mr. McKnight admitted that he knew Ms. Lee as Mr. McCrae's girlfriend, but he stated that he "never spent time alone" with Ms. Lee, that he "never had any in depth conversations" with her, and that his interactions with her ended when he moved at the end of 2002. Mr. McKnight testified that, in 2003, he was not living in an apartment with Mr. McCrae or Ms. Lee or in any apartment frequented by Ms. Lee.

Mr. McKnight's mother also testified for the defense. She testified that "[i]n

[4] "Officer Movers" is probably a mistranscription of "Office Movers."

2003" her son Jhatavus lived with her at her home in Clinton, Maryland.

After several hours of deliberations over the course of two days, the jury found Mr. McKnight guilty of conspiracy to commit robbery with a dangerous weapon, robbery with a dangerous weapon, and felony murder of David McCoy.[5]

Ten days after the verdict, Mr. McKnight filed a motion for new trial under Md. Rule 4-331(a). The motion was based in part on assertions about the trial proceedings and in part on assertions that the defense had obtained "newly discovered evidence" after the trial. The defense asserted: that the State knowingly used perjured testimony from Detective Nelson about his interview with James Harper, also known as "Shorty"; that the State knowingly failed to produce internal affairs records that the defense might have used to impeach the testimony of Detective Nelson; that the prosecutor made improper burden-shifting comments during closing arguments; that the prosecutor intentionally displayed a photograph that had not been admitted into evidence during closing arguments; and that the State knowingly withheld video evidence recovered from the crime scene.

Opposing the motion for new trial, the State disputed many assertions made in Mr. McKnight's motion. The State asserted that Detective Nelson did not give any false or perjured testimony. The State also asserted that the alleged internal affairs records concerning Detective Nelson do not exist. The State argued that the prosecutor's comments during closing arguments were not improper. The State acknowledged that the

[5] At the close of the State's case, the court granted Mr. McKnight's motion for judgment of acquittal on the charge of conspiracy to commit murder.

prosecutor had inadvertently displayed a photograph that had not been admitted into evidence during closing arguments, but argued that the photograph was not so prejudicial as to justify granting a new trial. Finally, the State admitted that it had failed to produce a copy of the video recording from an ATM machine at Columbia Bank, but argued that the contents of the video were immaterial because the video did not show the crime or the perpetrators.

After a hearing,[6] the circuit court denied Mr. McKnight's motion for new trial. The court issued a comprehensive memorandum opinion setting forth its reasons for denying the motion. The court considered each of the grounds asserted in the motion and concluded that Mr. McKnight "ha[d] not met his burden to show any grounds requiring a new trial in the interest of justice[.]"

On May 5, 2023, the court sentenced Mr. McKnight to life imprisonment, with all but 30 years suspended, for the murder of David McCoy. The court merged the armed robbery count with the felony murder count for sentencing purposes. The court imposed a generally suspended sentence for the conspiracy conviction, concurrent with the sentence for felony murder. The court imposed five years of supervised probation upon Mr. McKnight's release.

After the court imposed its sentences, Mr. McKnight filed a timely notice of appeal.

[6] The record for this appeal does not include a transcript of the hearing on April 18, 2023, at which the court heard arguments concerning the motion for new trial.

DISCUSSION

In this appeal, Mr. McKnight seeks the reversal of the judgments and a remand to the circuit court for a new trial. Mr. McKnight argues that the prosecuting attorneys and one witness, Detective Nelson, committed various forms of "misconduct" throughout the proceedings. Mr. McKnight also argues that the trial court made erroneous rulings and improperly denied his motion for new trial.

In his appellate brief, Mr. McKnight raises six separate challenges.[7] First, Mr. McKnight contends that the trial court erred when it denied his motion for new trial based on his allegation that the State elicited perjured testimony from Detective Nelson. Second, Mr. McKnight contends that the prosecutor violated the trial court's sequestration order by communicating with a witness, Levy Steven Moore, during the trial. Third, Mr. McKnight contends that the trial court improperly limited his counsel's cross-examination of Detective Nelson. Fourth, Mr. McKnight contends that the prosecutor made improper comments during closing arguments, which improperly shifted the burden of proof. Fifth, Mr. McKnight contends that the prosecutor intentionally

[7] As formulated in the appellant's brief, the issues presented are:

> I. Whether the trial court erroneously denied Defendant's Motion for New Trial based on arguments presented involving perjury; Brady violations; newly discovered evidence and prosecutorial misconduct
>
> II. Whether trial court erred in preventing Defendant's cross examination of Detective Nelson as to his interrogation tactics where the credibility of the detective was critical to the State's case
>
> III. Whether prosecutorial misconduct warrants reversal of the subject conviction

displayed a photograph that had not been admitted into evidence during closing arguments. Finally, Mr. McKnight contends that the trial court erred by failing to sanction the State for alleged violations of the State's disclosure obligations.

For the reasons discussed below, we conclude that Mr. McKnight has failed to demonstrate any reversible error or abuse of discretion in the trial court's rulings. Accordingly, we reject each of the challenges to the judgments.

I. Motion for New Trial Based on Allegedly Perjured Testimony

In his first challenge to the judgments, Mr. McKnight argues that the trial court abused its discretion when it denied his motion for new trial based on his allegation of "[w]itness [m]isconduct[.]" Specifically, Mr. McKnight alleges that the State "elicited perjured testimony" from Detective Nelson about his interview with James Harper, also referred to as "Shorty."

On a motion by the defendant filed within 10 days after the verdict in a criminal case, the trial court may order a new trial "in the interest of justice[.]" Md. Rule 4-331(a). The decision of whether to grant a motion for new trial lies within the discretion of the trial court. *Cooley v. State*, 385 Md. 165, 175 (2005). As Mr. McKnight recognizes, appellate review of a ruling on a motion for new trial ordinarily is limited to the issue of whether the trial court abused its discretion. *Campbell v. State*, 373 Md. 637, 665 (2003).

"Trial courts are vested with 'wide latitude in considering a motion for new trial and may consider a number of factors, including credibility, in deciding it[.]'" *Mack v. State*, 166 Md. App. 670, 683 (2006) (quoting *Argyrou v. State*, 349 Md. 587, 599

(1998)). "A trial court's discretion to grant or deny a [motion for] new trial expands and contracts, depending upon the nature of the factors being considered, and its exercise 'depends upon the opportunity the trial judge had to feel the pulse of the trial, and to rely on [the judge's] own impressions in determining questions of fairness and justice.'" *Brewer v. State*, 220 Md. App. 89, 111 (2014) (quoting *Argyrou v. State*, 349 Md. at 600). The trial court's discretion is especially broad when a motion for new trial is based on events that happened "'under the direct eye of the trial judge[,]'" because the trial judge is "'in a unique position to assess the significance'" of those events. *Washington v. State*, 191 Md. App. 48, 123 (2010) (quoting *Jackson v. State*, 164 Md. App. 679, 699 (2005)).

At trial in this case, Mr. Moore testified that, as of October 2002, he was acquainted with an employee of Tucker's liquor store, whom he knew only by the nickname "Shorty." Mr. Moore recalled that, about two or three weeks before the robbery, he had a discussion with Shorty about a plan to rob someone who worked at Tucker's liquor store. Mr. Moore testified that about six or seven people, including Mr. McKnight, were present during this discussion.

In his testimony, Detective Nelson explained that he interviewed Mr. Moore in 2018 while Mr. Moore was incarcerated in North Carolina. Detective Nelson testified that, during that interview, Mr. Moore admitted that he had planned the robbery in discussions with a former employee of Tucker's liquor store, who used the nickname "Shorty." Detective Nelson testified that Mr. Moore mentioned that "there was one occasion in which [Mr. McKnight] was present while Shorty talked about the victim and

the victim's car."

During cross-examination, defense counsel asked Detective Nelson whether he had ever spoken with the man that Mr. Moore referred to as "Shorty." Detective Nelson confirmed that he had spoken with that man. Defense counsel proceeded to ask about statements made by "Shorty":

> [DEFENSE COUNSEL]: This person that you said you spoke with that works or worked with the decedent, what was his name?
>
> [DET. NELSON]: His name is James Harper. His nickname is Shorty.
>
> [DEFENSE COUNSEL]: Shorty.
>
> [DET. NELSON]: That's correct.
>
> [DEFENSE COUNSEL]: And Shorty was very clear with you. He said at no time that he discussed knowing Mr. McCoy or anything about Mr. McCoy was Mr. McKnight present. He was very plain. Isn't that true?
>
> [DET. NELSON]: He was dancing --
>
> [PROSECUTOR]: Objection, Your Honor.
>
> THE COURT: Sustained.

After the court sustained this objection, defense counsel asked two additional questions about statements made by "Shorty." The court sustained the State's objections before Detective Nelson gave any response to those questions.

In Mr. McKnight's motion for new trial, the defense asserted that the State had "knowingly used perjured testimony" from Detective Nelson. The defense asserted that Detective Nelson had "emphatically testified" that Shorty claimed that Mr. McKnight was present during discussions about the robbery victim. Opposing the motion for new

trial, the State asserted that the defense had "mischaracterized" Detective Nelson's testimony. The State asserted that Detective Nelson, in fact, never testified that Shorty claimed that Mr. McKnight was present during those discussions.

Along with the motion for new trial, the defense provided an 88-page transcript of Detective Nelson's interview with James Harper on October 9, 2019. The defense asserted that this transcript established that Mr. Harper "clearly and unambiguously" told Detective Nelson that Mr. McKnight was not present during any discussions about the victim.

During the 2019 interview, Mr. Harper told detectives that he formerly worked as a dishwasher at a restaurant and liquor store called Tucker's. Mr. Harper stated that, around that time, he was acquainted with his neighbor named "Moore," who lived across the street. Mr. Harper stated that he knew Mr. Moore by the nickname "Big Man." Mr. Harper stated that he also knew "Big Man's cousin[.]" Mr. Harper stated that most people referred to Mr. Moore's cousin as "J."

As the interview continued, Detective Nelson claimed that he had already talked to "Moore" and "J" and that "both of them" had identified Mr. Harper as "the person who . . . gave them the idea to rob the manager at Tucker's[.]" Detective Nelson asked Mr. Harper to explain "how did they get the idea" for the robbery and "how did they know what vehicle to watch for[.]"

In response, Mr. Harper claimed that he had once mentioned "Dave," the manager of Tucker's, in a conversation with his brother-in-law. Mr. Harper stated that he told his brother-in-law that, because of a disagreement at work, he wanted to "find out what

[Dave] [was] driving and . . . follow him home and just knock him in his head[.]" Mr. Harper stated that no one else was present during that conversation. Mr. Harper claimed that, afterwards, his brother-in-law "went and told Big Man" about the conversation.

As the questioning continued, Mr. Harper provided additional details about his interactions with "Big Man":

> [DETECTIVE NELSON]: But they talked to you about it. They had to talk to you about it.
>
> [MR. HARPER]: No, no, well okay --
>
> [SECOND DETECTIVE]: Go back --
>
> [MR. HARPER]: -- they asked me -- they asked me, they said, well, you said you want to fuck Dave up. He said it like that. And I was like, yeah --
>
> [SECOND DETECTIVE]: Who's they?
>
> [MR. HARPER]: They -- Big Man and J, J wasn't even around. It was just Big Man. And he said, yeah, well, if you want to do that, you know, so on and so forth. I was like, nah, it's not that -- it's not that big of a deal. I'm just saying I'm pissed off and shit. This is, I talked to my brother-in-law. My brother-in-law go and say something to them. Three days later they say something about it.

Moments later, Detective Nelson continued to express doubt about Mr. Harper's account, insisting: "you gave them the idea about this guy making bank deposits." Mr. Harper restated his version of events, as follows:

> [MR. HARPER]: Come on, man, it's -- it's not -- that was just bullshit. That was just bullshit. That was just things, we was getting high, me and my brother-in-law. He went and told them. I said, man, how you going to go telling them I said I'm going to knock this man in the head. I don't know them like that. I said, I'm going to knock this man --

[DETECTIVE NELSON]: But Big Man came and talked to you, you said three days later --

[MR. HARPER]: No.

[DETECTIVE NELSON]: -- about it.

[MR. HARPER]: No, we were all together three days later over at his yard.

In its opinion denying the motion for new trial, the trial court concluded that the interview transcript contradicted Mr. McKnight's allegation that "it was perjurious when, or if, [Detective Nelson] testified at trial that [Mr. Harper] discussed robbing" the victim "in [Mr. McKnight's] presence[.]" The court acknowledged that, "at one point" in the interview, Mr. Harper said that Mr. McKnight "was not around" during a discussion about the victim. The court stated that, "almost immediately" after that statement, Mr. Harper described a discussion about the victim in which other persons were present in addition to Mr. Moore. The court interpreted Mr. Harper's statements to mean that he "acknowledged" that he had "discussed [the robbery victim] and bank deposits with both [Mr. Moore] and [Mr. McKnight]."

On appeal, Mr. McKnight asserts that the trial court relied on "inaccurate notes" about Detective Nelson's testimony when it denied his motion for new trial. Mr. McKnight tells us that the trial court "disposed of" his motion by "concluding that it could not recall whether Detective Nelson even testified" that Mr. Harper claimed that Mr. McKnight was present during conversations about the robbery victim. According to Mr. McKnight, the trial court "misquoted material trial testimony and rested its decision

on its summary notes and not a trial transcript, as requested by defense counsel."[8]

These assertions are unfounded. The trial court did not rely on its recollection of Detective Nelson's testimony or on any notes summarizing the testimony. When the court denied the motion for new trial, the court made no findings about the actual testimony given by Detective Nelson. Although the State had argued that the defense had "mischaracterized" Detective Nelson's trial testimony, the court simply accepted defense counsel's characterization of the testimony. The court concluded that, even if Detective Nelson had given the testimony attributed to him by the defense, the defense had failed to show that this version of the testimony was false. Mr. McKnight has failed to establish that any "inaccura[cy]" concerning Detective Nelson's testimony may have affected the decision.

As he did in his motion for new trial, Mr. McKnight contends that the State "elicited perjured testimony" from Detective Nelson about his 2019 interview with Mr. Harper. Mr. McKnight argues that, during that interview, a detective "specifically asked" whether Mr. McKnight was present during the discussions planning the robbery and that Mr. Harper stated "unequivocally" that Mr. McKnight was not present. Mr. McKnight argues that, at trial, defense counsel asked Detective Nelson whether Mr. Harper had "clearly explained" that Mr. McKnight was not present during those discussions.

[8] On the date of the hearing on the motion for new trial, the defense filed a motion for a continuance. Defense counsel asserted that the preparation of the trial transcript was "not yet complete" and that the defense needed the transcript to present its arguments. The court denied the motion, stating that the court reporter's office had "no record of any transcript request" at that time.

According to Mr. McKnight, Detective Nelson "wrongfully asserted that Mr. Harper danced around the question, leaving the jury with the impression that [Mr. Harper] did not answer the question[.]" Mr. McKnight argues that, in fact, Mr. Harper "never danced around the question" but "unambiguously said" that Mr. McKnight was not present during those discussions.

In our assessment, the trial court did not err or abuse its discretion in concluding that Mr. McKnight failed to establish that Detective Nelson gave perjured testimony, let alone that the State knowingly used perjured testimony. Generally, perjury means making a false statement, without sincere belief in its truthfulness, under oath, about a material fact. *See O'Sullivan v. State*, 476 Md. 602, 639-40 (2021). A finding of perjury requires proof that the testimony was false and that the witness made the false testimony willfully or deliberately, and not as the result of surprise, confusion, or a genuine mistake. *Id.* at 632 (citing *State v. McGagh*, 472 Md. 168, 204 (2021)). A finding of perjury cannot be based on a witness's response to an "'ambiguous question where the response may be literally and factually correct.'" *Furda v. State*, 421 Md. 332, 344 (2011) (quoting *United States v. Vesaas*, 586 F.2d 101, 104 (8th Cir. 1978)).

Mr. McKnight's theory of perjury depends on a particular interpretation of Detective Nelson's testimony about Mr. Harper's statements. Mr. McKnight asserts that Detective Nelson testified that Mr. Harper "danced around the question" of whether Mr. McKnight was present during discussions about the robbery victim. This description is not entirely correct. Below is the complete question from defense counsel and Detective Nelson's response:

> [DEFENSE COUNSEL]: And Shorty was very clear with you. He said at no time that he discussed knowing Mr. McCoy or anything about Mr. McCoy was Mr. McKnight present. He was very plain. Isn't that true?
>
> [DET. NELSON]: He was dancing --
>
> [PROSECUTOR]: Objection, Your Honor.
>
> THE COURT: Sustained.

In his brief, Mr. McKnight fails to acknowledge that Detective Nelson never testified that Mr. Harper "danced around the question" of whether Mr. McKnight was present during discussions about the robbery victim. Detective Nelson started his answer by saying, "[h]e was dancing . . .[,]" but the prosecutor objected, and the court sustained the objection. Detective Nelson never completed the first sentence of his answer. Mr. McKnight's assumption that, if allowed to finish that sentence, Detective Nelson would have testified that Mr. Harper was "dancing around the question" is based on speculation. There are countless ways in which a witness may have completed that sentence and the rest of the answer, many of which would materially affect the meaning of the testimony. This partial response to defense counsel's question is far too ambiguous to support a finding of perjury. *See Furda v. State*, 421 Md. at 344. Moreover, there is no substantial likelihood that the jury considered Mr. Harper's partial response, because the court instructed the jury not to speculate about a possible answer whenever the court refused to permit a witness to answer a question.[9]

[9] The court later read the pattern jury instruction that informs jurors that they "must not speculate as to the possible answer" when the court prohibits a witness from answering a question.

Yet even if Detective Nelson had testified that Mr. Harper "was dancing around the question" of whether Mr. McKnight was present during discussions about the robbery victim, this answer could not be characterized as a willful falsehood. The interview transcript readily supports a witness's statement that Mr. Harper "was dancing around" that issue.

During the interview, Detective Nelson repeatedly asked Mr. Harper to explain what he had told "them"—by which Detective Nelson meant Mr. Moore (aka, "Big Man") and Mr. McKnight (aka, "J")—about the manager from Tucker's. Mr. Harper stated that he had talked about the manager only once with his brother-in-law and that, three days later, "they asked" him questions about the manager. When asked for clarification about what the word "they" meant, Mr. Harper at first answered "Big Man and J." Mr. Harper immediately changed his answer, stating that "J wasn't even around" and that "[i]t was just Big Man."

A few sentences later, Mr. Harper again used plural pronouns, stating that, "[t]hree days later *they* sa[id] something" to him about the manager. (Emphasis added.) Mr. Harper again stated that his brother-in-law "went and told *them*" about the conversation and recalled asking his brother-in-law why his brother-in-law "told *them*" that he wanted to attack the manager. (Emphasis added.) Moments later, Mr. Harper added, "we were all together three days later over at [Big Man's] backyard." The detectives did not ask for clarification, nor did Mr. Harper provide any, about what he meant by these other references to "they," "them," and "we." In summary, although Mr. Harper at one point said that Mr. McKnight "wasn't even around" and "it was just [Mr. Moore]" present, Mr.

Harper appeared to contradict those statements by repeatedly suggesting that other unnamed persons were present with Mr. Moore.

At trial, the specific question posed to Detective Nelson was whether Mr. Harper was "very clear" or "very plain" on the question of whether Mr. McKnight was present during any discussions about the victim. The interview transcript shows that Mr. Harper was not "clear" or "plain" on that question. Many of Mr. Harper's statements were open to interpretation. Many of his statements can be fairly interpreted to mean that at least one additional person was present during a conversation between Mr. Harper, Mr. Harper's brother-in-law, and Mr. Moore. Otherwise, Mr. Harper had no apparent reason to repeatedly use the words "they" and "them." Moreover, in the context of questioning in which Detective Nelson repeatedly used the words "they" and "them" to mean Mr. Moore and Mr. McKnight as a pair, it is possible that Mr. Harper also used the words "they" and "them" to include Mr. McKnight. Based on the entirety of Mr. Harper's statements, it would not be inaccurate for a witness to testify that Mr. Harper "was dancing around" the question of whether Mr. McKnight was present.

We are unpersuaded that Detective Nelson's first half-sentence of his response to defense counsel's question, expressing an arguably correct characterization of Mr. Harper's evolving statements during a lengthy interview, somehow amounts to perjury. The trial court did not abuse its discretion in denying Mr. McKnight's motion for new trial to the extent that it was based on his accusation that the State knowingly used perjured testimony.

II. Alleged Violation of Sequestration Order

In his second challenge to the judgments, Mr. McKnight contends that the prosecuting attorney "knowingly disobeyed" the trial court's sequestration order.

Maryland Rule 5-615 governs the sequestration of witnesses at a trial. "The general purpose of the sequestration of witnesses" under this Rule is "'to prevent . . . [witnesses] from being taught or prompted by each other's testimony.'" *Tharp v. State*, 362 Md. 77, 95 (2000) (quoting *Bulluck v. State*, 219 Md. 67, 70-71 (1959)). This Rule provides: "[U]pon the request of a party made before testimony begins, the court shall order witnesses excluded so that they cannot hear the testimony of other witnesses." Md. Rule 5-615(a). This Rule prohibits parties and attorneys from circumventing this restriction by discussing other testimony or evidence with a prospective witness. It provides: "A party or an attorney may not disclose to a witness excluded under this Rule the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence." Md. Rule 5-615(d)(1). To enforce a sequestration order, "[t]he court may exclude all or part of the testimony of [a] witness who receives information in violation of this Rule." Md. Rule 5-615(e).

In this case, the defense moved to sequester all witnesses at the beginning of the first day of trial. The court granted the motion, stating that no prospective witnesses would be allowed in the courtroom and that each side was responsible for monitoring its own witnesses.

On the third day of trial, the State offered testimony from Levy Steven Moore, who testified that Mr. McKnight acted as his accomplice in the robbery and shooting on

October 25, 2002. Mr. Moore testified that, during his 2018 interview with Detective Nelson, he admitted his involvement in the robbery and implicated Mr. McKnight as his accomplice because he "wanted to get all that stuff off [his] conscience."

During cross-examination, Mr. Moore admitted that it was Detective Nelson, not Mr. Moore, who first mentioned Jhatavus McKnight during that interview. Mr. Moore also agreed that, during the interview, he was "going along with" Detective Nelson's narrative of the crime because he thought that doing so would "help" or "benefit" him.

During redirect examination, the prosecutor asked Mr. Moore whether he remembered "having a brief conversation" with the prosecutor "yesterday"—i.e., during the second day of the trial. Mr. Moore stated that he remembered the conversation. The prosecutor continued: "And when I asked you how you were feeling what did you say?" Mr. Moore answered: "Okay." The prosecutor continued: "When I asked you why you told the detective what you told him what did you say?" Defense counsel objected on hearsay grounds. At a bench conference, the court observed that Mr. Moore's testimony about his conversation with the prosecutor was not "necessarily hearsay." The court expressed concern that this line of questioning suggested that the prosecutor was a witness to Mr. Moore's prior statements. The prosecutor represented that the State would not be calling the prosecutor as a witness. Based on that assurance, the court overruled the objection.

As the redirect examination continued, the prosecutor asked Mr. Moore a series of questions about their conversation on the previous day. Mr. Moore acknowledged that the prosecutor had asked him about his relationship with Mr. McKnight. Mr. Moore

testified that, in response, he said that the two of them "were close" and that testifying against his cousin was "difficult" for him. The prosecutor asked what Mr. Moore had said when she had "asked why [he] told Detective Nelson" about the crime. The prosecutor stated: "You said you told him because it was the truth." Mr. Moore responded: "Yes." The prosecutor asked: "You said that everything you told Detective Nelson when you met him was the truth?" Mr. Moore again answered: "Yes." Throughout this series of questions, defense counsel repeatedly objected, each time on hearsay grounds, and the court overruled each objection.

On appeal, Mr. McKnight asserts that the prosecutor "intentionally violated" the sequestration order "by speaking with" one of the State's witnesses, Mr. Moore, "after trial was underway[.]" Mr. Moore argues that this alleged violation of the sequestration order "requires reversal of [his] conviction[s]."

For a number of reasons, Mr. McKnight's contention is unpersuasive. As an initial matter, this contention is unpreserved. As Mr. McKnight acknowledges in his brief, the court admitted Mr. Moore's testimony "over [Mr. McKnight's] hearsay objection[.]" When a defendant raises particular grounds for an objection to the admission of evidence, the defendant may not introduce additional grounds for the first time on appeal. *See DeLeon v. State*, 407 Md. 16, 25 (2008) (citing *Boyd v. State*, 399 Md. 457, 476 (2007)). At trial, defense counsel never suggested that the prosecutor's conversation with Mr. Moore violated the sequestration order, nor did defense counsel ask the court to determine the proper remedy for an alleged violation of the sequestration order. The specific objections on the ground of "[h]earsay" were inadequate to preserve

the issue of a potential violation of the sequestration order.[10]

Aside from non-preservation, the more fundamental problem with Mr. McKnight's contention is that the record does not support his accusation that the prosecutor violated the sequestration order. In his testimony, Mr. Moore acknowledged that he had "a brief conversation" with the prosecutor on the second day of trial. During that conversation, the prosecutor asked Mr. Moore "[h]ow [he] w[as] feeling," and he answered, "[o]kay." The prosecutor asked Mr. Moore about his relationship with Mr. McKnight, and he stated that they "were close[,]" and that testifying against Mr. McKnight was "difficult" for him. The prosecutor asked Mr. Moore why he made his prior statements to Detective Nelson. Mr. Moore said that he made those statements to Detective Nelson "because it was the truth" and said that "everything [he] told Detective Nelson . . . was the truth."

Contrary to Mr. McKnight's suggestion, a sequestration order under Rule 5-615 does not prohibit all communication between an attorney and a prospective witness during a trial. Rather, a sequestration order under this Rule prohibits a party or attorney from disclosing to an excluded witness "the nature, substance, or purpose of testimony, exhibits, or other evidence introduced during the witness's absence." Md. Rule 5-615(d)(1).

[10] In his brief, Mr. McKnight also argues that the State violated its discovery obligations under Maryland Rule 4-263 by failing to disclose the "additional interview and statements" of Mr. Moore before he testified. This issue is also unpreserved, because defense counsel objected to the testimony specifically on hearsay grounds and never asked the court to impose sanctions for a purported discovery violation. *See Morton v. State*, 200 Md. App. 529, 540-41 (2011).

The testimony here established that, although the prosecutor spoke with Mr. Moore while he was excluded by the sequestration order, their conversation did not violate that order. None of Mr. Moore's testimony indicated that the prosecutor "disclose[d]" to him "the nature, substance, or purpose of testimony, exhibits, or other evidence" (*id.*) introduced during the trial while he was excluded. The reported conversation did not, for example, concern the testimony or evidence introduced through any of the eight witnesses who preceded him. Nor did Mr. Moore indicate that he "receive[d] information" (Md. Rule 5-615(e)) from the prosecutor in violation of the Rule. In fact, the prosecutor did not disclose anything at all to Mr. Moore during the reported conversation; the prosecutor asked Mr. Moore about his anticipated testimony, and he answered those questions.

In sum, even if Mr. McKnight had objected to Mr. Moore's testimony on the ground that the prosecutor's conversation with Mr. Moore violated the sequestration order, the objection would have been meritless. Nothing in the conversation described by Mr. Moore violated the sequestration order.

Along with his contention that the State violated the sequestration order, Mr. McKnight argues that the trial court permitted Mr. Moore's testimony "in violation of Maryland's accomplice corroboration rule that prohibits a person accused of a crime from being convicted based on uncorroborated [accomplice] testimony." This argument is thoroughly flawed. First, the argument is unpreserved. Any argument that Mr. Moore's testimony violated the accomplice corroboration rule was not preserved by the specific objections on hearsay grounds. *See DeLeon v. State*, 407 Md. at 25. Second, the

accomplice corroboration rule no longer exists under Maryland law. *See State v. Jones*, 466 Md. 142, 171 (2019) (abrogating the accomplice corroboration rule, prospectively, for all criminal trials commencing after date of the Court's mandate). Third, the accomplice testimony from Mr. Moore was adequately corroborated. At trial, Ms. Lee testified that Mr. McKnight confessed to her his participation in the crime. Thus, even if the accomplice corroboration rule still existed at the time of Mr. McKnight's trial, the testimony about Mr. McKnight's confession would have satisfied the corroboration requirement. *See Woods v. State*, 315 Md. 591, 618-19 (1989) (holding that testimony about defendant's confession was sufficient corroboration of accomplice's testimony).

Mr. McKnight has failed to show that the trial court erred or abused its discretion in its rulings about Mr. Moore's testimony.

III. Cross-Examination of Detective Nelson

As the next issue in this appeal, Mr. McKnight contends that the trial court improperly prevented defense counsel from cross-examining Detective Nelson "regarding his interrogation tactics[.]"

As Mr. McKnight acknowledges, "[m]anaging the scope of cross-examination is a matter that falls within the sound discretion of the trial court." *Simmons v. State*, 392 Md. 279, 296 (2006) (citing *Marshall v. State*, 346 Md. 186, 193 (1997)). A trial court abuses its discretion if it "imposes limitations on cross-examination that 'inhibit[ ] the ability of the defendant to receive a fair trial.'" *Gupta v. State*, 227 Md. App. 718, 745 (2016) (quoting *Pantazes v. State*, 376 Md. 661, 681-82 (2003)).

The trial court has the responsibility to "exercise reasonable control over the mode

and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." Md. Rule 5-611(a). The trial court, in its discretion, may exclude relevant evidence "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Md. Rule 5-403. "In controlling the course of examination of a witness, a trial court may make a variety of judgment calls" about "whether particular questions" are repetitive, insufficiently probative, harassing, confusing, or otherwise improper. *Peterson v. State*, 444 Md. 105, 124 (2015).

Under the Confrontation Clause of the Sixth Amendment to the United States Constitution, the defendant in a criminal case has "the right . . . to be confronted with the witnesses against him." To comply with this right of confrontation, trial judges "must allow a defendant a 'threshold level of inquiry' that 'expose[s] to the jury the facts from which jurors . . . c[an] appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson v. State*, 444 Md. at 122 (quoting *Martinez v. State*, 416 Md. 418, 428 (2010)) (further citation and quotation marks omitted). Once that threshold has been met, trial judges have "wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness'[s] safety, or interrogation that is repetitive or only marginally relevant." *Pantazes v. State*, 376 Md. at 680 (citing *Delaware v. Van Arsdall*, 475 U.S.

673, 679 (1986)). The defendant is entitled to "'an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish.'" *Washington v. State*, 180 Md. App. 458, 489-90 (2008) (emphasis in original) (quoting *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985) (per curiam)).

In this appeal, Mr. McKnight contends that the trial court abused its discretion by refusing to permit defense counsel to cross-examine Detective Nelson "regarding his interrogation tactics[,]" in an effort to advance a defense theory that Detective Nelson elicited "a false confession" from Mr. Moore.

Our review of the trial transcript shows that the court permitted defense counsel to engage in a thorough inquiry into the methods that Detective Nelson used during the interrogation of Mr. Moore. Throughout the cross-examination on this subject, the court sustained some objections and overruled others. The court also gave the defense substantial latitude to use the audio recording of the interview to refresh Detective Nelson's recollection about details of the interview. This "extensive cross-examination" of Detective Nelson concerning the interrogation "more than met the 'threshold level of inquiry' required by the Confrontation Clause." *Peterson v. State*, 444 Md. at 154.

Among other things, this cross-examination established: that Detective Nelson tried to "develop a rapport with Mr. Moore" at the beginning of the interview so that Mr. Moore would feel comfortable speaking; that Detective Nelson reminded Mr. Moore that his current sentence of incarceration was set to end in five months; that Detective Nelson tried to convey to Mr. Moore that the police already "kn[e]w a lot about the incident and

about who[was] involved"; that Detective Nelson mentioned that the crime "could have been a robbery gone bad" in an attempt "to make it easier to confess" to the shooting; and that Detective Nelson specifically said that he "already kn[e]w about Jhatavus McKnight," in an attempt to make Mr. Moore "feel more comfortable" about implicating his cousin.

This cross-examination also established that Mr. Moore mentioned details about the robbery that conflicted with other evidence. Mr. Moore claimed that he stole "[f]our to five" thousand dollars and then "changed it to three or four" thousand dollars; Mr. Moore, at one point, claimed that he robbed the victim before the victim entered the bank, but Mr. Moore "corrected" that claim after Detective Nelson "may have told" Mr. Moore that "the victim entered the bank first before the robbery"; and Mr. Moore claimed that he bought a replacement side marker from "Advanced Auto Parts" even though Detective Nelson determined that the side marker came from "Brandywine Auto Parts."

In response to defense counsel's suggestion that Detective Nelson's intention was to "verify" his pre-existing "theory" of what occurred, Detective Nelson stated that his intention was "to get [Mr. Moore's] side of the story" and "to get the truth about what took place." Detective Nelson acknowledged that, at one point, he told Mr. Moore that he did not want to "keep feeding . . . information" to Mr. Moore. Detective Nelson claimed that he "wasn't feeding . . . information" to Mr. Moore, but stated "that's what [he] always tell[s] people[]" when he wants "them to tell [him] something to prove to [him] that they are telling the truth." Defense counsel asked whether Detective Nelson had been "trained to interview people" so that he had "a way of letting [people] know"

when "they are not saying perhaps what's consistent" with other evidence. Detective Nelson responded: "I want people to give me their side of the story. I don't try to steer them one way or the other. I don't want them to tell me falsehoods based on what I believe took place."

Mr. McKnight's brief does not analyze any particular rulings made by the court during the lengthy cross-examination of Detective Nelson, which covers more than 100 pages of the transcript. Mr. McKnight's brief merely cites a one-page excerpt, which includes questions asked during an early part of the cross-examination, as well as an approximately four-page excerpt, which includes questions asked near the end of the cross-examination.

The first excerpt cited by Mr. McKnight does not include any questions about Detective Nelson's interrogation tactics generally or his specific interrogation of Mr. Moore. Rather, the excerpt includes questions about what Detective Nelson did after he located *Mr. McKnight* as a suspect in 2009:

> [DEFENSE COUNSEL]: Did you keep, quote, tabs on Mr. McKnight? Did you follow up with him after he spoke with you?
>
> [DETECTIVE NELSON]: What do you mean by tabs, keeping tabs on him?
>
> [DEFENSE COUNSEL]: What do police do? Don't they watch people? Isn't that what they do?
>
> [PROSECUTOR]: Objection, Your Honor.
>
> THE COURT: Sustained.
>
> [DEFENSE COUNSEL]: I'm just asking . . . what do police do? Do you . . . monitor where someone is going, maybe where they're living. It's not

on a day to day basis. Don't you check in? What do you do?

[PROSECUTOR]: Objection, Your Honor.

THE COURT: Sustained.

[DEFENSE COUNSEL]: What did you do to follow up with Mr. McKnight, if anything at all?

[DETECTIVE NELSON]: I interviewed other people. I tried to find Levy Moore and eventually found him, but it was many years later.

We perceive no abuse of discretion in the decisions to sustain the objections to questions asking "what . . . police do" to monitor a suspect. These vague and compound questions about "what . . . police do" in unspecified contexts were, at best, of marginal relevance to the factual issues in the case. Immediately after the court sustained the objections, defense counsel asked the more appropriate and probative question of what, if anything, Detective Nelson himself did to "follow up" after he initially located Mr. McKnight in 2009. Detective Nelson then answered the question by describing the actions he took during that period. The court's rulings on the first two questions did not impede the defense from eliciting information about what Detective Nelson did to "follow up" with McKnight. In our assessment, this excerpt shows a routine instance of a trial court properly controlling the examination to make it effective for the presentation of evidence.

The other excerpt cited by Mr. McKnight, a four-page excerpt of testimony that occurred near the end of the cross-examination, also includes questions that do not concern Detective Nelson's "interrogation tactics[.]" That excerpt begins with the following exchange:

> [DEFENSE COUNSEL]: You have resources to actually confirm the whereabouts of Mr. McKnight back in 2002 and in 2003, but you chose not to use them. Isn't that right?
>
> [DETECTIVE NELSON]: No, that's not right at all.
>
> [PROSECUTOR]: Objection.
>
> THE COURT: Sustained.

We perceive no abuse of discretion in the trial court's ruling on the objection to the question of whether it was "right" that Detective Nelson had "resources to actually confirm the whereabouts of Mr. McKnight back in 2002 and in 2003, but [he] chose not to use them." The question was repetitive, because Detective Nelson had previously testified about this subject during the cross-examination. Specifically, Detective Nelson had testified that he used Motor Vehicle Administration records to find Mr. McKnight's address as of 2009 and that those records did not include information about "previous addresses he had back in 2002[.]" In any event, Detective Nelson actually answered this particular question, and his answer ("No, that's not right at all") was unfavorable to the defense. Thus, the defense sustained no prejudice from the court's ruling on this objection.

Some of the remaining questions in the excerpt cited by Mr. McKnight relate to the subject of the "interrogation tactics" used by Detective Nelson. During this line of questioning, the court sustained six separate objections to questions or statements by defense counsel. The following exchange occurred:

> [DEFENSE COUNSEL]: Detective, when [you] tell someone that they're about to get out of jail but now they have got a body on them, isn't it your experience that they will typically go along with what you have to say after

that?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Isn't that right?

THE COURT: Sustained.

[DEFENSE COUNSEL]: The way that you interrogate people, the way that you question people sometimes affects what they say. Isn't that right?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

* * *

[DEFENSE COUNSEL]: And you know there are effective ways [of] getting people to change their story and there [are] effective ways of getting people to go along with whatever the narrative is. Right?

[DETECTIVE NELSON]: No. That's not my objective. My objective --

[DEFENSE COUNSEL]: But that was your objective --

[DETECTIVE NELSON]: -- is to get to the truth.

THE COURT: [Counsel], [counsel], please do no[t] interrupt when he is trying to answer your question.

[DEFENSE COUNSEL]: I'm not asking for you[r] objective. That's not what I asked.

[DETECTIVE NELSON]: Yes. Yes, it is what you asked. You asked if it's to get me to change their story and to fit my narrative. No. I want the truth. I want their narrative as far as what took place. Anyone I interview I just want the truth.

[DEFENSE COUNSEL]: And when they tell you something that is inconsistent with what you have objectively -- right? Documentation from Brandywine as opposed to the Advanced Auto Parts, what do you [do] with

that conflicting information?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Well, my question is as someone that's been doing interrogations for decades. Right, that you know that there are methods that they can get people to essentially say what you want them to say?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Would you be a good investigator if you didn't have those skills?

[PROSECUTOR]: Objection.

THE COURT: Sustained.

[DEFENSE COUNSEL]: The reality is is [sic] you know that telling Mr. Moore right out the gate that you think you're getting out [of] jail or at least putting that at the forefront of his mind will affect the way in which he responds to you.

[PROSECUTOR]: Objection.

THE COURT: Sustained.

The common focus of this questioning was whether Detective Nelson knew of methods to cause a person to agree with whatever the detective wants the person to say. Throughout the exchange, defense counsel attempted to address that subject in variety of ways (asking whether people "will typically go along with what [he] ha[s] to say" in certain circumstances, asking whether "the way that [he] question[s] people sometimes affects what they say," asking whether he knew "effective ways of getting people to go

along with whatever the narrative is," asking what he does "when [people] tell [him] something that is inconsistent" with other evidence, asking whether he knew how to "get people to essentially say what [he] want[s] them to say," asking whether he would "be a good investigator" if he did not have "skills" to influence what people say, and stating that he knew that mentioning Mr. Moore's prison sentence would "affect the way in which [Mr. Moore] respond[ed]").

We perceive no abuse of discretion in the trial court's rulings on the objections to these questions and statements. Prior to this line of questioning, defense counsel had already completed a thorough and effective inquiry into what Detective Nelson said to Mr. Moore that might have affected his answers during the 2018 interrogation, as well as the reasons why the detective said those things to Mr. Moore. This prior testimony provided the jury with factual information that it could use to evaluate whether Detective Nelson elicited a false confession from Mr. Moore. The trial court was well within its discretion to conclude that the additional line of questioning—about whether Detective Nelson knew of methods to influence a person's answers—would not advance the jury's inquiry in any material way. The apparent purpose of this line of questioning was not to elicit new information from Detective Nelson about his interrogation of Mr. Moore, but to advocate for conclusions that the jury might draw about the interrogation. This subject may have been appropriate for closing arguments, but it exceeded the limits of proper cross-examination. In fact, the final objection came after a statement that was not a question at all, but simply an assertion by defense counsel that Detective Nelson knew that what he said to Mr. Moore influenced his responses.

Before this line of questioning, Detective Nelson had already denied the suggestion that he had used methods intended to cause Mr. Moore to change his statements to conform to a predetermined narrative. In his earlier testimony, Detective Nelson had stated that his intention was not to "verify" a pre-existing "theory" of what occurred, but "to get [Mr. Moore's] side of the story" and "to get the truth about what took place." Detective Nelson denied the suggestion that his interrogation methods were intended to "steer [people] one way or the other" or to cause them to change their narrative "based on what [he] believe[s] took place." Under the circumstances, defense counsel's line of questioning was more repetitive than probative.

Moreover, the transcript does not suggest that, if the court had overruled the objections, Detective Nelson suddenly would have changed his prior answers on this subject. In fact, within the cited excerpt, Detective Nelson restated his prior testimony on this subject. In response to one of defense counsel's questions, Detective Nelson reiterated that his "objective" was not to cause persons "to change their story and to fit [his] narrative" but to elicit "the truth" and to elicit "their narrative as far as what took place." The record fails to show that Mr. McKnight sustained any prejudice when the court precluded Detective Nelson from testifying about matters fairly covered by his prior testimony.

In his brief, Mr. McKnight argues that the trial court did not conduct an "inquir[y]" into whether the defense had a "reasonable basis" for the questions asked. When a trial court weighs the probative value of evidence, "there is no requirement that the balancing test explicitly be performed on the record[,] . . . 'so long as the record

reflects that discretion was in fact exercised.'" *Walker v. State*, 373 Md. 360, 391 (2003) (quoting *Beales v. State*, 329 Md. 263, 273-74 (1993)). When weighing the probative value of evidence, the "trial court is not required to spell out in words every thought and step of logic in weighing its considerations." *Ridgeway v. State*, 140 Md. App. 49, 69 (2001); *see also Jones v. State*, 178 Md. App. 123, 144 (2008). The record here makes it apparent that the trial court exercised sound discretion in limiting cross-examination only to the extent that defense counsel's questions exceeded the limits of proper inquiry.

In sum, we conclude that the trial court did not abuse its discretion when it sustained objections to certain questions about Detective Nelson's interrogation tactics. The record leaves no doubt that the court permitted Mr. McKnight to conduct more than the required threshold level of inquiry into that subject and permitted defense counsel to expose facts from which the jury could draw conclusions about Detective Nelson's interrogation of Mr. Moore. After the defense had already passed that threshold, the court sustained objections to additional questions which were needlessly repetitive and would not have aided the jury's inquiry. The record gives no indication that, if Detective Nelson had answered those additional questions, his answers would have been different from his other testimony on the subject or otherwise favorable to the defense.

IV. Comments Made During the State's Closing Argument

In this appeal, Mr. McKnight contends that the prosecutor made improper "burden shifting" arguments during the State's rebuttal closing argument. According to Mr. McKnight, "the prosecutor made several statements implying that Mr. McKnight had an obligation to . . . produce evidence of his innocence[.]" Specifically, Mr. McKnight

argues that the prosecutor made improper comments about his failure to produce work records, the lease for an apartment, or other documentation to corroborate his testimony.

The State's case-in-chief depended largely on testimony from two witnesses: Mr. Moore, who testified that Mr. McKnight drove the vehicle used in the robbery on October 25, 2002; and Ms. Lee, who testified that Mr. McKnight confessed his involvement in the robbery to her sometime in 2003. Testifying in his own defense, Mr. McKnight provided an alibi for the crime, as well as the purported confession to Ms. Lee.

In his testimony, Mr. McKnight stated that he "was at work" on the morning of October 25, 2002. Mr. McKnight testified that he "was working . . . daily" from "nine to five . . . Monday through Friday" at an "entry level job[] . . . for the Officer Movers [sic] at that time."[11] Mr. McKnight testified that he did not have any conversation in 2003 with Ms. Lee, the girlfriend of his former roommate, Brandon McCrae. Mr. McKnight stated that the lease for the apartment that he shared with Mr. McCrae ended "at the end of 2002" and that he "moved back in with [his] mother . . . once the lease was up." In his testimony, Mr. McKnight mentioned that he moved to Texas sometime in 2004. Using a W-2 income tax form from 2005 to refresh his recollection, Mr. McKnight recalled his home address in Texas at that time.

During the cross-examination of Mr. McKnight, the prosecutor inquired whether he had documents to support his alibi testimony. The prosecutor asked Mr. McKnight

[11] When asked for his "job title" in 2002, Mr. McKnight's full response was: "I work at -- actually at the Department of Energy. It was one of my entry level jobs. I was working for the Officer Movers [sic] at that time."

whether he knew "the specific address" where he lived in 2002 and whether he still had "the lease for that apartment" or other "documentation for the apartment[.]" Mr. McKnight stated that he did not remember the address and that he did not have the lease or any other documents related to that apartment. The prosecutor asked Mr. McKnight whether he had "documents to show where [he] [was] on October 25th of 2002." Mr. McKnight answered that he did not have any such documents. Mr. McKnight stated that he "recently had a fire" at his home one year earlier and that "most [of] [his] documents" had "burnt up" in the fire.[12] The defense did not object to these questions about whether Mr. McKnight had documentation to corroborate his testimony.

During closing arguments, defense counsel asserted that Mr. McKnight had testified that he was "working for the Department of Energy" in 2002. Defense counsel also mentioned Mr. McKnight's testimony that "the lease" for the apartment that he shared with Mr. McCrae "was up at the end of 2002[,]" and that he lived with his mother for "the entirety" of 2003.

In rebuttal closing argument, the prosecutor asked the jurors to consider whether they had heard "details" about Mr. McKnight's claim that he was at work on the morning of the crime. Defense counsel objected to some of these comments, and the court overruled the objections. This exchange is reproduced below:

> [PROSECUTOR]: Then the other thing is, okay, he said he was at work. With the information that you have been provided is that reasonable? No details. No details as to where you worked October 25th of 2002. No

[12] Mr. McKnight testified that he was able to find his 2005 W-2 form because, unlike his other documents, that document was at his mother's residence.

details as to what your job title was October 25th of 2002.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: What are your job functions October 25th of 2002? No details as to what time you went to work. That was -- that was not in evidence. And I know you all were listening, and I know you all took notes. What time you got to work that day that was not in evidence because he didn't even tell us the address of where he worked. He didn't even tell us where he lived, the address of where he lived on October 25th of 2002. You're claiming you don't live there no more. The year was up.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: The lease is up on an apartment that you can't even tell us the address to? There wasn't no details about that. What time -- where is the job located?

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[PROSECUTOR]: No details. What time did you get there? No details about what time you got there. No details about what time you left. No details about who you were with. Nothing.

Shortly after those comments, the prosecutor referred to Mr. McKnight's testimony about his 2005 W-2 form, which listed a home address in Texas. The prosecutor stated:

[PROSECUTOR]: But you want -- you bring a document, W-2, no information about how much was paid by the way, to show -- to show your address. Not even where you worked, because it not admitted, to show an address[] in Texas from 2005 when you can't tell us the address from 2002.

The defense made no objection to this comment.

On appeal, Mr. McKnight contends that the prosecutor's comments "improperly suggested that [he] had a burden to produce evidence" of his innocence. Mr. McKnight argues that these comments were improper "burden shifting" arguments in violation of his constitutional rights.

In general, "[t]rial courts have broad discretion in determining the propriety of closing arguments." *Winston v. State*, 235 Md. App. 540, 572 (2018) (citing *Shelton v. State*, 207 Md. App. 363, 386 (2012)). In a criminal case, "'[t]he prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Lee v. State*, 405 Md. 148, 163 (2008) (quoting *Degren v. State*, 352 Md. 400, 429 (1999)). "Because the trial judge is in the best position" to evaluate the propriety of closing arguments under the facts of each case, "'[a]n appellate court should not disturb the trial court's judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party.'" *Mitchell v. State*, 408 Md. 368, 380-81 (2009) (quoting *Grandison v. State*, 341 Md. 175, 225 (1995)). To the extent that a defendant contends that the State shifted the burden of proof in violation of the defendant's constitutional rights, the appellate court reviews the contention without deference to the trial court. *Harriston v. State*, 246 Md. App. 367, 372 (2020) (citing *Molina v. State*, 244 Md. App. 67, 174 (2019)).

It is well established that "prosecutors, in closing argument, may not routinely draw the jury's attention to the failure of the defendant to call witnesses, because the argument shifts the burden of proof." *Wise v. State*, 132 Md. App. 127, 148 (2000). Nevertheless, "[c]ommentary on the lack of corroborating witnesses" for a defendant's

testimony generally "is permissible when a defendant elects to testify." *Marshall v. State*, 213 Md. App. 532, 540 (2013). "'[O]nce a defendant has taken the stand in [the defendant's] own defense, the prosecutor is not precluded from impugning the defendant's credibility by commenting on [the defendant's] failure to produce any corroborating evidence.'" *Mines v. State*, 208 Md. App. 280, 300 (2012) (quoting *United States v. Boulerice*, 325 F.3d 75, 86 (1st Cir. 2003)).

In *Simms v. State*, 194 Md. App. 285 (2010), *aff'd*, 420 Md. 705 (2011), this Court explained that prosecutors may comment on a lack of corroborating evidence when a defendant introduces evidence of an alibi. The Court stated:

> "Where a defendant testifies to an alibi and calls no additional witnesses to support it, the prosecution, by commenting on the nonproduction of corroborating alibi witnesses, is merely pointing out the weakness in defendant's case. When, however, the defendant produces no testimony to support an alibi, the prosecutor, by commenting on the nonproduction of alibi witnesses, is not exposing a weakness in defendant's case, but is rather improperly shifting the burden of proof to the defendant."

Id. at 320-21 (quoting with approval *People v. Shannon*, 276 N.W.2d 546, 549 (Mich. Ct. App. 1979)).

In *Pietruszewski v. State*, 245 Md. App. 292, 316-22 (2020), this Court rejected a contention that a prosecutor made improper "burden shifting" arguments about the defendant's evidence of an alibi for a robbery. Two defense witnesses, the defendant's former girlfriend and his father, both testified that the defendant was present with them on the night of the robbery, sleeping in a hotel room where the three of them had been staying. *Id.* at 300. The defendant's father admitted that he "did not bring to court any receipts or records regarding that hotel stay." *Id.*

In closing arguments, "the prosecutor drew the jury's attention to the limited credibility of the two defense witnesses who both had a motive to lie for the defendant and who failed to bring to court any receipts or other records that could have improved the credibility of their testimony[.]" *Pietruszewski v. State*, 245 Md. App. at 320. The prosecutor remarked: "'They provide you with no dates. No details. No hotel records. Nothing.'" *Id.* The trial court overruled the defendant's objection to that remark. *Id.* at 317. The prosecutor further remarked that the two defense witnesses had never contacted the police or the prosecuting attorneys to tell them that the defendant was present at a hotel on the night of the robbery. *Id.* at 317-18.

On appeal, the defendant contended that, "by highlighting for the jury evidence that the defense did not present, the prosecutor made an improper argument which was prohibited by the principle that a criminal defendant is under no obligation to prove his innocence, even when he relies upon an alibi defense." *Pietruszewski v. State*, 245 Md. App. at 321. This Court concluded that the challenged remarks "merely pointed out the weakness in the credibility of [the defendant's] alibi witnesses, including the lack of corroborating evidence that their testimony suggested would have been reasonably available." *Id.* at 322. The Court reasoned: "The prosecutor's references—both to the lack of any documentation and to the witnesses' delay in coming forward with exculpatory information before trial—were directed at the credibility of the testimony that was given by the witnesses." *Id.* The Court concluded that the challenged remarks were "'a proper attempt to discredit the defense witnesses who testified and to discredit [the defendant's] alibi, not a shifting of the burden of proof.'" *Id.*

In the present case, Mr. McKnight elected to testify. Mr. McKnight claimed that he was at work on the morning of the robbery and further claimed that he was not living at an apartment frequented by Ms. Lee at the time of the purported confession. The prosecutor's rebuttal closing argument challenged the credibility of this testimony by calling attention to his failure to provide "details" about "where [he] worked October 25th of 2002[,]" including details about his "job title[,]" his "job functions[,]" "the address of where he worked[,]" "what time [he] went to work" on that date, "what time [he] g[o]t there[,]" "what time [he] left" work, or "who [he] w[as] with." The prosecutor also highlighted his failure to provide "the address of where he lived on October 25th of 2002[,]" or to provide details about his assertion that "[t]he lease [was] up" on that apartment at the end of 2002, even though he had provided a document with information about his address as of 2005.

In our assessment, these comments about Mr. McKnight's failure to provide details about or corroboration for his alibi testimony were "directed at the credibility" of that testimony. *Pietruszewski v. State*, 245 Md. App. at 322. The prosecutor's comments were a proper attempt to discredit Mr. McKnight's alibi testimony and did not alter the State's burden of proof. *Id.* The circuit court did not err or abuse its discretion in overruling the objections to these comments. Nor did the court err or abuse its discretion in denying Mr. McKnight's motion for new trial, to the extent that the motion was based on these comments.

In addition to the challenges above, Mr. McKnight takes issue with the final sentences of the prosecutor's rebuttal closing argument:

> The State has proven our case beyond a reasonable doubt. We've proven it beyond a reasonable doubt, and Mr. McKnight is guilty.
>
> He is guilty of conspiracy to commit armed robbery. He's . . . guilty of armed robbery. He's guilty of felony murder.

Because defense counsel made no objection to these comments, any contention that the court erred or abused its discretion by failing to strike these comments is unpreserved. *See Shelton v. State*, 207 Md. App. 363, 385 (2012); *Warren v. State*, 205 Md. App. 93, 132-33 (2012). In any event, even if Mr. McKnight had objected, these comments were well within the bounds of permissible advocacy. The prosecutor made the comment that "Mr. McKnight is guilty" of the charged offenses in connection with the comment that the State had "proven [its] case beyond a reasonable doubt." In context, this argument did not suggest that Mr. McKnight had any burden of proof. This argument expressly reminded the jury of the State's burden to prove its case beyond a reasonable doubt and urged the jury to find that the State had satisfied this burden. Accordingly, the trial court would not have been required to sustain an objection to the final remarks from the prosecutor's rebuttal closing argument. *See Rheubottom v. State*, 99 Md. App. 335, 340 (1994).

Mr. McKnight has failed to show that the trial court abused its discretion in its rulings concerning the prosecutor's rebuttal closing argument.

V. Display of Photograph During Closing Argument

In his next challenge, Mr. McKnight argues that he is entitled to a new trial because, during closing arguments, the prosecutors displayed to the jury a photograph that was not admitted into evidence.

During the trial, Detective Nelson testified that he began investigating the killing of Mr. McCoy in 2009 as part of his work for the Cold Case unit. Detective Nelson testified that, in May 2009, he spoke with Mia Lee, a confidential source. Detective Nelson testified that he "showed her a six person photo spread" that included a photograph of Levy Steven Moore and that Ms. Lee "immediately identified him" as the man she knew as "Steve," the cousin of Mr. McKnight. Detective Nelson testified that he "showed her a single photo of Jhatavus McKnight" and that she "immediately identified" him as the man she knew by that name. Detective Nelson further testified that he "got in contact with Mr. McKnight" in 2009, but he did not bring any charges at that time.

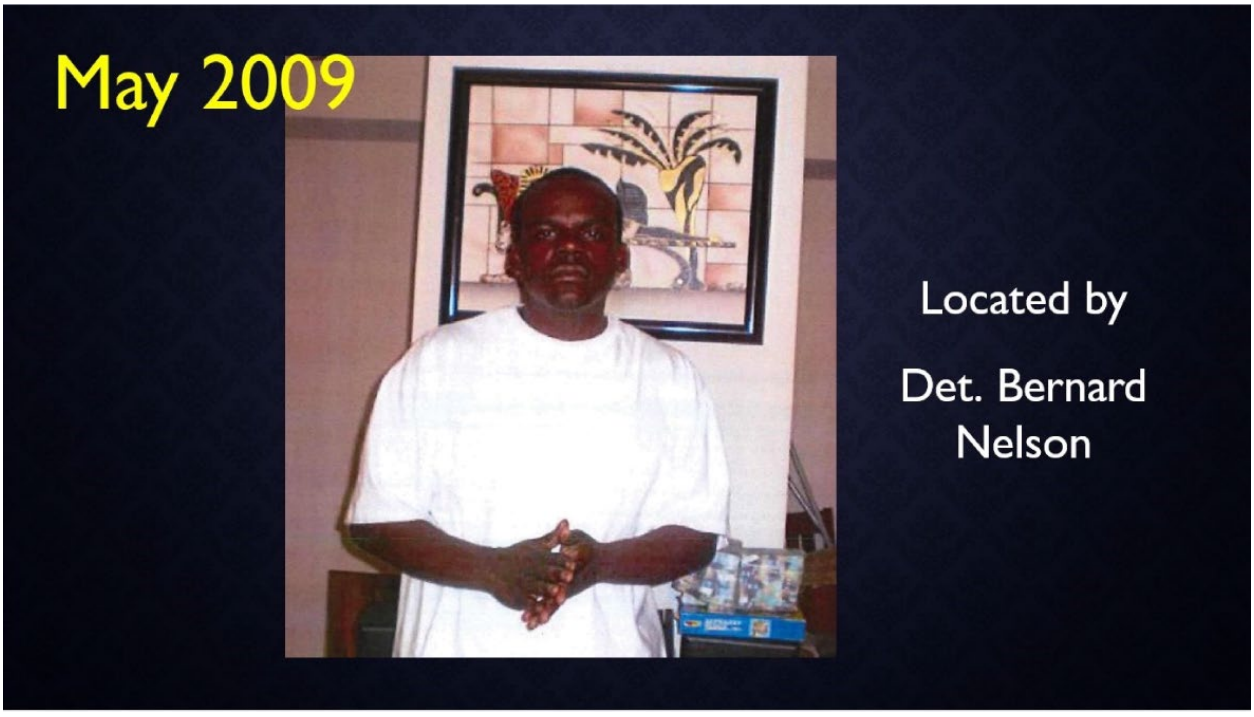
During the State's closing argument, the prosecutor showed the jury a PowerPoint presentation that included images of some exhibits introduced into evidence. In part of the closing argument, the prosecutor summarized the testimony about Detective Nelson's investigation when he first started working on the case in 2009. The prosecutor mentioned that, in May 2009, Detective Nelson used the information provided by Ms. Lee to find Shelly Price and her black Nissan Maxima, which had a broken antenna and damage to the rear passenger side, consistent with the description provided by an eyewitness who was present at the crime scene. After describing that evidence, the prosecutor remarked: "Detective Nelson was right on the money in May of 2009. From May of 2009 all the way . . . ."

At that point, defense counsel objected and asked to approach the bench. Perceiving this objection as an objection to the prosecutor's comments, the court responded: "Overruled. It's argument." Defense counsel explained, however, that the

objection was directed at the PowerPoint presentation accompanying the State's closing arguments. Defense counsel stated: "Your Honor, this matter wasn't put into evidence."

The court told the prosecutor: "Black the screen, please." After the attorneys approached the bench, the prosecutor stated that she "thought" that the image shown on the PowerPoint slide had been admitted into evidence "through the detective." The court responded: "It's not in evidence. Skip that." The court concluded the bench conference and allowed the prosecutor to continue the State's closing argument.

The PowerPoint slide to which the defense objected included a photo of an adult Black man, wearing a white T-shirt, standing with his hands pressed against each other, inside a house or apartment. The slide had the words "May 2009" written on one side and the words "Located by Det. Bernard Nelson" on the other side. A copy of the slide is reproduced below:



When the prosecutor finished her closing argument, the defense moved for a mistrial "based on the State's showing to the jury in its closing in the PowerPoint [presentation] a piece of material that in fact [was] not admitted into evidence[.]" Defense counsel argued that "simply showing to the jury a matter that was not put into evidence" was "presumptively prejudicial to the defense." Defense counsel also asserted that the "image was particularly not flattering" and argued that the State may have selected the image to "draw on [a] general fear" by jurors or "to give the impression" that Mr. McKnight "looks like someone from the streets."

The court denied the motion for a mistrial. The court observed that it was "undisputed that the image was not admitted into evidence." The court stated that it "d[id] not find" that "any portion of the photograph . . . would be inherently indicative of any malfeasance or necessarily an indication of malfeasance on the part of the person purporting to be in the photograph." The court also noted that it had already "instructed the jury that . . . closing arguments are not evidence." The court offered to give an additional instruction to specify "that anything used in the course of closing demonstratively is also not evidence and should not be considered as evidence." Defense counsel declined the offer for an additional curative instruction, stating that the defense did not want to put any "emphasis" on the matter.

In Mr. McKnight's motion for new trial, the defense argued that the prosecutors had engaged in "misconduct" by "intentionally using 'non-evidence'" during closing arguments. The defense asserted that the prosecutor had displayed "a menacing looking photograph of a dark-skinned young black man, standing in what is commonly known as

'jail pose,' with the numbers '2009' superimposed" next to the image.

Opposing the motion for new trial, the State conceded that it "made an error" by including the photograph in its PowerPoint presentation but asserted that this error "was not intentional or malicious." The State asserted that it had intended to introduce the photograph into evidence "but inadvertently neglected" to introduce the exhibit. The State asserted that the photograph "does not depict a 'jail pose' as . . . described by defense counsel, nor does the photo generate a general fear of Black men." Noting that the court had "promptly shielded the photo from the jury," the State argued that the display of the photograph was not a sufficient basis to order a new trial.

Along with its opinion denying the motion for new trial, the trial court provided a copy of the PowerPoint slide in question. The court wrote: "The photograph was displayed for a very brief time before being shielded from the jury during a bench discussion and was not shown again." The court disagreed with the defense's "description of the man depicted in the photograph as 'menacing'" and disagreed with the assertion that "the photograph has the effect of generating 'a general fear of a dark-skinned black man.'" The court stated that it "view[ed] the depiction in the photograph as rather innocuous[.]" The court concluded: "The brief time the slide and photograph were displayed in the State's PowerPoint presentation was unlikely to have misled the jury or prejudiced [Mr. McKnight]."

In this appeal, Mr. McKnight contends that the State's use of a photograph that had not been admitted into evidence was "improper" and amounts to "prosecutorial misconduct and grounds for reversal" of his convictions. Mr. McKnight argues that,

under the circumstances, the trial court was required to declare a mistrial.

"[D]eclaring a mistrial is an extreme remedy not to be ordered lightly." *Nash v. State*, 439 Md. 53, 69 (2014). The declaration of a mistrial is "'an extreme sanction' that is necessary only 'when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.'" *Urbanski v. State*, 256 Md. App. 414, 441 (2022) (quoting *McIntyre v. State*, 168 Md. App. 504, 524 (2006)). When a defendant moves for a mistrial based on the presentation of inadmissible evidence, the trial court "must assess the prejudicial impact of the inadmissible evidence and assess whether the prejudice can be cured" by a jury instruction. *Carter v. State*, 366 Md. 574, 589 (2001). "Generally, inadvertent presentation of inadmissible information may be 'cured by withdrawal of it and an instruction to the jury to disregard it[.]'" *Vaise v. State*, 246 Md. App. 188, 244 (2020) (quoting *Cooley v. State*, 385 Md. 165, 174 (2005)). "Only when the inadmissible evidence is so prejudicial that it cannot be disregarded by the jury . . . will measures short of a mistrial be an inadequate remedy." *Id.* at 240. "'[T]he determining factor as to whether a mistrial is necessary is whether the prejudice to the defendant was so substantial that [the defendant] was deprived of a fair trial.'" *Winston v. State*, 235 Md. App. 540, 569-70 (2018) (quoting *Kosh v. State*, 382 Md. 218, 226 (2004)) (further citation and quotation marks omitted).

Appellate review of the denial of a motion for mistrial is limited to whether the trial court abused its discretion. *Klauenberg v. State*, 355 Md. 528, 555 (1999). Relative to the appellate court, "'[t]he trial court is peculiarly in a superior position to judge the effect of any . . . alleged improper remarks.'" *Winston v. State*, 235 Md. App. at 570

(quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)). The trial judge "'is physically on the scene'" and "'able . . . to note the reaction of the jurors and counsel to inadmissible matters.'" *Simmons v. State*, 436 Md. 202, 212 (2013) (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)). "Because the trial judge 'is ordinarily in a uniquely superior position to gauge the potential for prejudice in a particular case,' the trial judge is afforded broad discretion in determining the appropriateness of granting [a] motion for mistrial." *Miles v. State*, 365 Md. 488, 570 (2001) (quoting *Watters v. State*, 328 Md. 38, 50 (1992)).

Much like the decision of whether to declare a mistrial, the decision of whether to grant a motion for new trial lies within the discretion of the trial court. *Cooley v. State*, 385 Md. at 175. "To reverse a trial court for denial of a motion for a new trial, the appellate court 'must find that the degree of probable prejudice [was] so great that it was an abuse of discretion to deny a new trial.'" *Williams v. State*, 251 Md. App. 523, 573 (2021) (quoting *Williams v. State*, 462 Md. 335, 345 (2019)).

In our assessment, the trial court did not abuse its discretion when it denied Mr. McKnight's motion for mistrial, or his motion for new trial, based on the State's display of a photograph that was not admitted into evidence. In both rulings, the trial court correctly focused on whether the display of the photograph during closing arguments was so prejudicial that the prejudice could be remedied only by ordering a new trial. When the court declined to declare a mistrial, the court stated that the image included nothing to suggest any wrongdoing "on the part of the person purporting to be in the photograph." When the court denied the motion for new trial, the court described the depiction in the

photograph as "rather innocuous" and rejected the defense's "description of the man depicted in the photograph as 'menacing'" and the assertion that the photograph had "the effect of generating 'a general fear of a dark-skinned black man.'" We have independently examined the photograph, and we see no error in the trial court's assessment.

On appeal, Mr. McKnight notes that the PowerPoint slide also included the words "May 2009" on the left side of the slide, extending onto the part of the image. Mr. McKnight argues that, because the slide "g[a]ve the impression that the photo was taken" at that time, the jury might have "infer[red] the accuracy of Detective Nelson's testimony concerning the timeline of his investigation."

We fail to see how the words written on the slide might create any undue prejudice. At trial, there was no dispute that Detective Nelson located Mr. McKnight in 2009. Not only did Detective Nelson testify that he located Mr. McKnight in 2009, but Mr. McKnight himself confirmed that he "spoke to Detective Nelson" "[i]n . . . 2009[.]" To the extent that the PowerPoint slide purported to establish a "timeline" of when Detective Nelson located Mr. McKnight, it was merely cumulative of the undisputed testimony offered by both parties.

When the court denied the motion for mistrial, the court concluded that any potential prejudice was further reduced because the court had instructed the jury that closing arguments are not evidence and should not be considered as evidence. The court offered to give an additional instruction for the jury, but the defense declined the offer. When denying the motion for new trial, the court also explained that "[t]he photograph

was displayed for a very brief time before being shielded from the jury during a bench discussion and was not shown again." The record supports this finding, as it shows that the trial court told the prosecutor to "[b]lack the screen" and to "[s]kip that" slide as soon as defense counsel informed the court that the image had not been admitted into evidence. Under the circumstances, the trial court did not abuse its discretion in concluding that its curative actions were adequate to remedy any potential prejudice resulting from the display of the slide.

In a secondary argument, Mr. McKnight takes issue with the prosecutor's comment that "Detective Nelson was right on the money in May of 2009." He argues that, by making the statement, the prosecutor was expressing a personal opinion and vouching for the credibility of a witness.

This argument is unpersuasive. Defense counsel did not object to the comment on the ground that the prosecutor was engaging in improper vouching for a witness. When defense counsel objected after the prosecutor's comment, defense counsel asked to approach the bench and explained the basis for the objection, stating: "this matter wasn't put into evidence." When a party offers specific grounds for an objection, appellate review is limited to the grounds articulated for the objection. *See Stewart-Bey v. State*, 218 Md. App. 101, 127 (2014) (holding that defendant failed to preserve contention that a comment in prosecutor's opening statement amounted to improper burden shifting when the defendant objected on a different ground). Because defense counsel offered specific grounds for the objection—that the prosecutor was using an image that had not been introduced into evidence—the issue of whether the prosecutor's comment amounted to

improper vouching is unpreserved.

In any event, even if the issue were properly preserved, the prosecutor's remark that "Detective Nelson was right on the money in May of 2009" was not an instance of improper vouching. Although a prosecutor may not "'assert [a] personal belief or personal conviction as to the guilt of the accused, if that belief or conviction is predicated upon anything other than the evidence[,]'" the prosecutor has an "'undisputable right to urge that the evidence convinces [the prosecutor's] mind of the accused's guilt.'" *Rheubottom v. State*, 99 Md. App. 335, 340 (1994) (quoting *Cicero v. State*, 200 Md. 614, 620-21 (1952)).

The prosecutor made the remark in question immediately after describing the evidence of Detective Nelson's investigative efforts in May 2009. The prosecutor had explained that, in May 2009, Detective Nelson found persons consistent with the information provided by the anonymous source and found a vehicle with characteristics matching the car used in the crime. Understood in context, the remark that "Detective Nelson was right on the money in May of 2009" was not an appeal to the prosecutor's personal beliefs. The prosecutor's remark was a fair comment about the evidence. *See Rheubottom v. State*, 99 Md. App. at 340 (holding that trial court did not err in overruling an objection to a "prosecutor's statement that he did not 'buy' [a] defense claim[,]" where the context of the statement made it apparent that "the prosecutor was really saying . . . that, in his view, the evidence did not support the defense theory").

The trial court did not abuse its discretion when it concluded that the brief display of a photograph that had not been admitted into evidence was not so prejudicial as to

require the court to declare a mistrial or to order a new trial.

VI. Alleged Impeachment Materials Concerning Detective Nelson

As the final issue in this appeal, Mr. McKnight contends that the trial court erred by "failing to sanction the State for its refusal" to disclose "impeachment material" concerning Detective Nelson. Mr. McKnight argues that the State "intentionally withheld" information that the defense might have used to impeach the testimony of Detective Nelson.

In his brief, Mr. McKnight refers to portions of the record relating to his pretrial requests for discovery of what the defense called "Anton's Law materials[.]" The term "Anton's Law" is another name for the Maryland Police Accountability Act of 2021. *See* 2021 Md. Laws ch. 62. Among other things, this legislation amended certain provisions of the Maryland Public Information Act (MPIA). Under the MPIA, certain "personnel record[s]" are exempt from public disclosure. Md. Code (2014, 2019 Repl. Vol., 2023 Supp.), § 4-311(a) of the General Provisions Article ("GP"). Before the passage of the Maryland Police Accountability Act, the MPIA prohibited public inspection of records of internal affairs investigations concerning police officers. *See Lomax v. State*, 258 Md. App. 386, 401 n.4 (2023) (citing *Maryland Dep't of State Police v. Dashiell*, 443 Md. 435, 458-59 (2015)). The 2021 legislation amended the MPIA to provide that "a record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record, a hearing record, and records relating to a disciplinary decision, is not a personnel record[]" within the meaning of the statute. GP § 4-311(c)(1). Under current law, a custodian of records is not required to deny public

inspection of the records of an internal affairs investigation. *See* GP § 4-351(a).

In this case, Mr. McKnight filed a motion to compel discovery and a motion for discovery sanctions on January 31, 2022, about one year before the trial. In that motion, the defense asserted that the State had failed to disclose 27 categories of items that, the defense argued, the State was required to disclose under Md. Rule 4-263. Among the items listed, the defense asserted that the State had failed to disclose "Anton's Law materials associated with the cold case unit officers[.]"

On February 28, 2022, the court held a hearing to address Mr. McKnight's discovery motion. After the hearing, the court filed a hearing sheet that included deadlines for some of the State's disclosures. This document made no mention of the request to compel discovery of "Anton's Law materials."

In his appellate brief, Mr. McKnight appears to fault the trial court for "failing to exclude Detective Nelson from testifying" as a "sanction" for the State's alleged discovery failures. To the extent that Mr. McKnight takes issue with the court's refusal to grant his pretrial motion for discovery sanctions, we have no basis to conclude that this ruling was improper.

Under Maryland Rule 8-411(a)(2), an appellant is responsible for ordering transcripts of any portion of any recorded proceeding that is reasonably necessary for determination of the question presented. Unless an appellant produces the necessary transcripts, the appellate court is unable to review the appellant's contention of error. *See Whack v. State*, 94 Md. App. 107, 126-27 (1992). The record for this appeal does not include any transcript of the discovery motion hearing on February 28, 2022.

Consequently, we are unable to determine what arguments the parties may have made, if any, and what findings or rulings the court may have made, if any, regarding the request for discovery of "Anton's Law materials." The record does not support any contention that the circuit court erred or abused its discretion when it declined to grant Mr. McKnight's pretrial motion for discovery sanctions.

After the hearing on Mr. McKnight's discovery motion, defense counsel continued to communicate with the State's Attorney's Office regarding the ongoing discovery disputes. In an email dated June 15, 2022, defense counsel told the State's attorneys that certain materials still had not been produced, including "Anton's Law materials as to all testifying" officers.

On the following day, an attorney from the State's Attorney's Office replied to the email and sent a copy of the reply to Detective Nelson. The attorney stated that the State planned to offer testimony from only two officers, one of whom was Detective Nelson. The attorney stated that he had "asked the appropriate authorities within [his] office and police department" for records relating to those two officers. The attorney stated that "neither [officer] has any Anton's Law materials to provide."

The transcript of the trial in January 2023 includes some discussions about Mr. McKnight's pretrial discovery motion. These discussions focused on the defense's contention that the State had violated its discovery obligations by failing to provide a copy of a video recording from a security camera located on an ATM at the Columbia Bank. We see no indication that, during the trial, the defense asked the court to exclude Detective Nelson from testifying as a sanction for alleged discovery failures. To the

extent that Mr. McKnight may be arguing that the court erred or abused its discretion by permitting Detective Nelson to testify at trial, this issue is not preserved for appellate review. *See Bloodsworth v. State*, 76 Md. App. 23, 41-42 (1988).

Although there is no indication that the defense ever asked the trial court to exclude Detective Nelson as a discovery sanction, the defense eventually asked the court to grant a new trial based on alleged discovery failures. In the motion for new trial, the defense claimed that the State "knowingly withheld[] and purposely suppressed" what the defense called "impeachment evidence" related to Detective Nelson. The defense argued that the State's failure to disclose this evidence violated his rights under *Brady v. Maryland*, 373 U.S. 83, 87 (1963). Generally, under the *Brady* decision, "a criminal defendant who stands trial" has "the right to receive material exculpatory and impeachment evidence in the possession of the State." *Byrd v. State*, 471 Md. 359, 372 (2020).

In the motion for new trial, the defense provided the URL address for an article published in the Washington Post on July 31, 2001. The defense asserted that this article established that Detective Nelson had violated one suspect's constitutional rights during an interrogation and had obtained a false confession from another suspect. The defense asserted that the State had failed to disclose that Detective Nelson "was investigated for" securing a "false confession" in a previous case. The defense also asserted that the State had "failed to disclose the requested internal affairs records and complaints lodged against Detective Nelson" related to his interrogations.

The article in question is titled "Violation Of Rights Conceded Police" [sic].[13] The article describes testimony from "[a] Prince George's County police homicide detective" named "Bernard Nelson, Jr.," in July 2001, at a pretrial hearing in a murder prosecution. The article states that Detective Nelson "ignored repeated requests by a murder suspect to speak to a lawyer and attempted to extract a confession from the man." The article states that Detective Nelson "testified that he never advised [the suspect] of his rights to remain silent and to speak to a lawyer" and that he and another detective "testified that they ignored [the suspect's] repeated requests for a lawyer when they questioned him for 13 hours[.]" The article also states that, "in an unrelated case" one year earlier, Detective Nelson had "obtained a false . . . confession from a teenager who was later exonerated[.]"

Opposing the motion for new trial, the State argued that Mr. McKnight's motion "presuppose[d] the existence of internal affairs records that do not exist[.]" The State observed that the 2001 news article offered by the defense "nowhere mentions any internal affairs investigations or complaints" involving Detective Nelson. The State asserted that Detective Nelson, in fact, never was "the subject of an internal affairs investigation or complaint[s] involving improper interrogation tactics" in other cases. The State explained that a review of records maintained by the State's Attorney's Office confirmed that "there are no internal affairs records" for Detective Nelson "that constitute *Brady* or impeachment material" and, thus, that the State had no records to provide.

[13] Because the Washington Post has a paywall (i.e., because articles are available only to its subscribers), we cannot provide a permalink to the article.

In its opinion denying the motion for new trial, the court concluded that the 2001 news article "does not provide a factual basis" to conclude that the State violated its *Brady* obligations. The court observed that the article "does not state or suggest" that Detective Nelson "was the subject of an internal affairs investigation or complaints involving improper interrogation tactics in 2001 or any time." The court explained that, although the article mentions the conduct of Detective Nelson in two interrogations, "the article does not state or even imply" that he "was investigated for" the conduct in those interrogations. The court further stated: "Internal Affairs records relating to [Detective Nelson] were requested and the responding Assistant State's Attorney, as an officer of the court, said there were none to provide." The court concluded that the defense "provide[d] no support" for its allegations that Detective Nelson "received complaints or was investigated" for the conduct mentioned in the 2001 news article.

On appeal, Mr. McKnight contends that the trial court erred by "failing to sanction the State for its refusal to turn over Brady impeachment material . . . that the State insisted did not exist." Mr. McKnight asserts that "the defense discovered after the conclusion of [his] trial" that, at a hearing in 2001, Detective Nelson was questioned "about obtaining false confessions and violating the constitutional rights of accused persons." According to Mr. McKnight: "These were two ripe areas for robust cross examination to challenge Detective Nelson's credibility[.]" Mr. McKnight argues that this alleged "Brady violation" requires the reversal of his convictions.

In *Brady v. Maryland*, 373 U.S. 83, 87 (1963), the United States Supreme Court held that "the suppression by the prosecution of evidence favorable to an accused upon

request violates due process where the evidence is material either to guilt or to punishment, irrespective of the good faith or bad faith of the prosecution." This category of evidence favorable to the accused "includes not only evidence that is directly exculpatory, but also evidence that can be used to impeach witnesses against the accused." *Ware v. State*, 348 Md. 19, 41 (1997) (citing *Giglio v. United States*, 405 U.S. 150, 154 (1972)). Generally, "when the reliability of a State witness is determinative of the defendant's guilt or innocence, the State's failure to disclose impeachment evidence falls within *Brady*." *State v. Williams*, 392 Md. 194, 204 (2006) (citing *Giglio v. United States*, 405 U.S. at 154). Consistent with the State's obligations under *Brady*, Maryland's discovery rules require the State's Attorney to provide certain materials or information without the necessity of a request, including all material or information "that tends to exculpate the defendant" and all material or information "that tends to impeach a State's witness[.]" Md. Rule 4-263(d)(5)-(6).

An appellate court reviews without deference a trial court's determination of whether the State violated its disclosure obligations under *Brady*. *Canales-Yanez v. State*, 472 Md. 132, 156 (2021) (citing *Ware v. State*, 348 Md. at 48). A defendant alleging that the State committed a *Brady* violation bears the burden of production and persuasion regarding the alleged violation. *Yearby v. State*, 414 Md. 708, 720 (2010). To establish a *Brady* violation, "'[t]he evidence at issue must be favorable to the accused, either because it is exculpatory, or because it is impeaching; that evidence must have been suppressed by the State, either willfully or inadvertently; and prejudice must have ensued.'" *Williams v. State*, 416 Md. 670, 692 (2010) (quoting *Strickler v. Greene*, 527

U.S. 263, 281-82 (1999)). "'[S]trictly speaking, there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict.'" *Williams v. State*, 416 Md. at 692 (quoting *Strickler v. Greene*, 527 U.S. at 281).

It is axiomatic that "'[t]here can be no *Brady* violation where there is no suppression of evidence.'" *Yearby v. State*, 414 Md. at 725-26 (quoting *Diallo v. State*, 413 Md. 678, 706 (2010)) (further citation and quotation marks omitted). "The prosecution cannot be said to have suppressed evidence for *Brady* purposes when the information allegedly suppressed was available to the defendant through reasonable and diligent investigation." *Ware v. State*, 348 Md. at 39. Accordingly, "'*Brady* offers a defendant no relief when the defendant knew or should have known facts permitting [the defendant] to take advantage of the evidence in question or when a reasonable defendant would have found the evidence.'" *Diallo v. State*, 413 Md. at 705 (quoting *Ware v. State*, 348 Md. at 39). In other words, "under *Brady* and its progeny, the defense is not relieved of its 'obligation to investigate the case and prepare for trial.'" *Yearby v. State*, 414 Md. at 723 (quoting *Ware v. State*, 348 Md. at 39).

In the present case, the trial court did not err in concluding that Mr. McKnight failed to establish that the State committed a *Brady* violation. The record contains no support for the allegation that the State suppressed records of internal affairs investigations or complaints concerning Detective Nelson. In response to a request for "Anton's Law materials" for the officers that would testify at trial, a State's attorney represented that his office and police department did not have "any Anton's Law

materials to provide" related to Detective Nelson.[14] By all indications in the record, the attorney's representations were accurate. The record includes no support for Mr. McKnight's allegation that the State possessed any records relating to any administrative or criminal investigation of misconduct on the part of Detective Nelson. More specifically, there is no indication that any such records ever existed.

As the trial court explained in its opinion denying the motion for new trial, the 2001 Washington Post article offered in support of Mr. McKnight's motion does not mention any internal affairs investigations. The article states that Detective Nelson "ignored repeated request by a murder suspect to speak to a lawyer" and "in an unrelated case obtained a false . . . confession from a teenager who was later exonerated[.]" The article does not mention that Detective Nelson was ever the subject of "administrative or criminal investigation of misconduct" (GP § 4-311(c)(1)) in connection with those interrogations.[15] Mr. McKnight has failed to establish that the State suppressed any records of internal affairs investigations or complaints regarding Detective Nelson,

[14] As explained previously, the term "Anton's Law" refers to the legislation that amended the MPIA to provide that "a record relating to an administrative or criminal investigation of misconduct by a police officer, including an internal affairs investigatory record . . . is not a personnel record[]" within the meaning of the MPIA exemption that precludes disclosure of certain personnel records. GP § 4-311(c)(1).

[15] Along with his appellate brief, Mr. McKnight provided an appendix that includes transcripts of the July 2001 hearing discussed in the Washington Post article. These transcripts were not part of the record in the trial court and, therefore, cannot be considered as part of the record on appeal. *See Cochran v. Griffith Energy Serv., Inc.*, 191 Md. App. 625, 662-63 (2010). In any event, these transcripts include no mention of any complaint or investigation of misconduct concerning Detective Nelson. Thus, even if Mr. McKnight had presented these transcripts to the trial court, these transcripts fail to support his allegation that the State suppressed internal affairs records.

because the record fails to establish that any such records ever existed. The State could not have "suppressed" evidence that does not exist.

Nor can the State be said to have "suppressed" the information discussed in a news article published in August 2001. The record shows that the defense had actual knowledge of Detective Nelson's role in the investigation of Mr. McKnight long before trial, as the defense specifically mentioned Detective Nelson in its discovery motion filed nearly one year before trial. At any time before trial, a Washington Post article that discusses "[a] Prince George's County police homicide detective" named "Bernard Nelson, Jr." was readily available. If the defense had undertaken a timely investigation, the defense could have uncovered the information before trial and might have attempted to use that information during its cross-examination. Because the information published in the article "was available to the defendant through reasonable and diligent investigation[,]" it cannot be said that the State somehow suppressed the information. *Yearby v. State*, 414 Md. at 723. Consequently, Mr. McKnight has failed to meet his burden to establish a *Brady* violation.

In the final paragraph of his brief, Mr. McKnight attempts to raise another issue regarding the State's disclosures. Mr. McKnight asserts that the State "never disclosed a copy of or made available to the defense" the video recording from a security camera pointed at part of the Columbia Bank parking lot during the incident. Although Mr. McKnight asserts that the State failed to disclose this video recording, his brief does not discuss any of the circuit court's rulings concerning this item of evidence. His appellate brief merely cites, without any supporting argument, dozens of pages from the trial

transcript in which the court addressed objections to testimony about the video recording. This argument lacks the degree of particularity needed to present an issue for appellate review. *See Darling v. State*, 232 Md. App. 430, 465-66 (2017) (declining to consider an issue raised in a single sentence of appellant's brief without supporting argument).

A review of the trial transcript shows that, on the second day of trial, crime scene investigator William Greene testified that the only video recording recovered from Columbia Bank "did not show the incident" because the camera "was not positioned where it would show the incident[.]" The defense objected to Mr. Greene's testimony, asserting that the State had violated its discovery obligations by failing to disclose a copy of the video recording. During the ensuing discussion, the prosecutor acknowledged that the State had failed to provide a copy of the video for the defense. The prosecutor asserted that the VHS tape was still in the State's possession and available for viewing. The court directed the State to provide the defense with a copy of the video in a format in which the defense would be able to view it.

Later on the same trial day, Detective Smith testified that he recovered a VHS tape from a surveillance camera at an ATM machine at the Columbia Bank. Detective Smith testified that the ATM machine was located "on the corner of the bank" and that the victim's body was lying "down on the other end of the bank" near another entrance to the bank. According to Detective Smith, this video recording showed a "dark colored vehicle" leaving the parking lot at the time of the crime. Detective Smith testified that, even after image enhancement, the quality was not high enough for a person to read the license plate number or to identify the make or model of the vehicle. The court admitted

still images captured from the VHS tape into evidence.[16]

Over the remaining days of the trial, the State's attorneys failed to deliver a copy of the video recording in a format that the defense could view. After the close of all evidence, the court provided a jury instruction based upon Maryland Criminal Pattern Jury Instruction 3:29, which concerns missing witnesses. The court instructed the jury:

> You have heard testimony about a video from the Columbia Bank which was not admitted as evidence in this case. If an item of evidence could have given important information on an issue in this case and if the evidence was peculiarly within the power of the State to produce but was not produced by the State and the absence of that evidence was not sufficiently accounted for or explained, then you may decide that the evidence would have been unfavorable to the State.

When Mr. McKnight moved for a new trial, the defense asserted that the State had "knowingly withheld" the video recording recovered from Columbia Bank. In response, the State asserted that the defense was aware that "the physical tape from Columbia Bank was available for viewing" at the police department, but the defense "made no effort prior to trial to view" the tape.

When the trial court denied the motion for new trial, the court stated that "it was . . . undisputed" that the State had "notified [Mr. McKnight] of his opportunity to review any evidence in the possession of the State which was not produced." The court explained that, after it "ordered the State to provide the video in a format which would be viewable by the defense[,]" the State "was unable to technologically comply with that

[16] Defense counsel acknowledged that, although the State had failed to produce a copy of the VHS tape, the defense had received copies of those still images during discovery.

order as it did not have a way to play or view the VHS video[.]" The court explained that, to address the State's failure, the court "ultimately granted [Mr. McKnight's] request for a missing evidence instruction" based on a pattern instruction. The court concluded that, "in light of the credible testimony that the video did not show the murder[,]" the defense "was not prejudiced" by the State's failure to produce a copy of the video and that "any potential prejudice was cured by the missing evidence instruction to the jury."

Mr. McKnight's brief has failed to demonstrate that the trial court erred or abused its discretion in any of its rulings concerning the video recording from Columbia Bank. Consequently, there is no basis to reverse the judgments based on those rulings.

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