Circuit Court for Dorchester County
Case No.: C-09-CR-21-000220

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1165

September Term, 2022

JAICHOAUN DEQUANDRE WOOLFORD

v.

STATE OF MARYLAND

Graeff,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: November 3, 2023

*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).

Appellant, Jaichoaun Woolford, was tried before a jury in the Circuit Court for Dorchester County and convicted of first-degree murder, second-degree murder, first-degree assault, second-degree assault, carrying a loaded handgun, and using a firearm during a crime of violence. The court sentenced Appellant to life in prison, suspending all but fifty years, for first-degree murder, and a consecutive twenty years, suspending all but thirteen, for use of a firearm during a crime of violence. Appellant timely filed his notice of appeal and asks this Court two questions, which we have slightly rephrased:[1]

I. Did the court err in overruling his objection to the State's closing argument?

II. Did the court err in admitting evidence related to Zakariya Baker?

We shall answer both questions in the negative and affirm the convictions. We discuss.

BACKGROUND

On November 15, 2021, the grand jury for Dorchester County indicted Appellant with nine counts relating to the shooting of two victims: Jihad Brown, who died from his injuries, and Zakariya Baker, who was shot in the arm but survived. With respect to the death of Mr. Brown, the State charged Appellant with first-degree murder, second-degree

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[1] Appellant presents his questions before this Court as follows:

1. Did the trial court err in allowing the State to argue in closing about facts not in evidence and impermissibly vouch for the police investigation?

2. Did the trial court err in admitting evidence related to Zakariya Baker?

murder, first-degree assault, second-degree assault, carrying a loaded handgun, and using a firearm during a crime of violence. As to Mr. Baker, the State charged Appellant with first-degree assault, second-degree assault, and the use of a firearm during a crime of violence. The relevant evidence at trial was as follows.

Midday on November 7, 2021, two men were walking along Greenwood Avenue in Cambridge when a third man, dressed in all black, approached and starting shooting at them. One of the men shot, Jihad Brown, fell to the ground, and the other man, who was dressed in red pants and a black jacket, tripped over Mr. Brown before getting up and running away. The man dressed in all black continued to approach and shoot Mr. Brown. Each of these events was caught on surveillance cameras present along Greenwood Avenue. That footage also shows a woman, later identified as Ka'Naya Bailey, approaching the shooter yelling "Jai" and "stop."

Sergeant McCray testified that he was driving home for lunch that day when he heard what sounded like gunfire. He turned onto Greenwood Avenue and saw "a man with a gun assume a shooting stance," who was "hooded up" and "wearing all black." The shooter ran, and Sergeant McCray and Corporal Newcomb, who was in a patrol car behind Sergeant McCray, began to pursue him.

The officers lost sight of the man several times and began to chase him by foot. During the chase, Corporal Newcomb saw the man "hesitate[]" near a "burgundy car[.]" The chase continued and the man thereafter emerged from "between . . . houses[,]" however, by that point, he was "no longer wearing the hooded shirt or jacket[.]" Corporal Newcomb testified that despite the fact that the man was missing the jacket, he knew that

it was “definitely the same person” because he had the “[s]ame facial hair” and the “same pants.” Corporal Newcomb detained the man, later identified as Appellant, and recovered a black jacket on the ground in the area between houses from which Appellant emerged.

Mr. Brown was transported to shock trauma, where he died. An autopsy identified eight gunshot wounds on Mr. Brown; however, because one was a graze wound and another had an exit wound, only six bullets were recovered during the autopsy. Less than thirty minutes after the shooting, Mr. Baker arrived at a nearby hospital wearing red pants and suffering from a gunshot wound to his left arm.

That afternoon, a handgun was located under the burgundy car, and a deformed projectile, twelve 9-millimeter Luger cartridge casings, and four 40-caliber cartridge casings were recovered from the crime scene.

At trial, a toolmark expert testified that each of the 9-millimeter Luger cartridge casings recovered from the crime scene were fired by the gun recovered from underneath the burgundy car.[2] Further, Ms. Bailey testified that at the time of the shooting, she had dated Mr. Brown for about a month and had known Appellant – to her, “Jai” – for “[a] couple years.” She testified that after hearing gunshots on the day of the shooting, she saw Mr. Brown fall to the ground and his friend “f[a]ll over” before getting up and taking off running. She noted that although “it happened so fast[,]” she had seen the shooter’s face, whom she recognized as Appellant’s, and recalled saying “stop, Jai.”

[2] Each of the 40-caliber cartridge casings were determined to have been shot by a separate firearm, which was not recovered.

The State entered Mr. Baker's medical records and clothes from his emergency visit into evidence. The medical records state that: "P[atient] reports he was with his 'boy' when some guys just started shooting at them. P[atient] reports he started to run and saw his 'boy' drop to the ground with the guys standing over top of him." The clothes included a white short-sleeved shirt, white shoes, and red pants.

At the close of the State's case, Appellant moved for a judgment of acquittal as to the three counts relating to Mr. Baker. In support, he asserted that the image the State submitted of Mr. Baker allegedly at the crime scene was a "distant photograph," that Mr. Baker was not wearing the black jacket seen in the surveillance video at the hospital, and that Mr. Baker did not testify at trial. The court granted Appellant's motion, reasoning that:

> [U]nfortunately Mr. Baker didn't testify in this case so we're stuck with what he told medical personnel, both you and the State, and me, and as I recollect on page 3, it says, I was with my boy and some guys, not guy, some guys. And it's clear in the video that I saw that, at least -- I didn't see, and we've heard testimony that there's casings from a 40 Smith & Wesson over by an office building. But nowhere in any of the video is another shooter present or pictured.
>
> We have no testimony, we just had the firearms expert testify, and nowhere, the only thing she said is the casings came from the same gun. No gun was recovered. There's no video of another shooter that I see. I only saw one shooter the whole time that was within feet of Mr. Baker and Mr. Brown.
>
> And there's testimony from one of the State's witnesses, I believe one of the police officers said there was another shooting [o]n Pine Street that day[.]

Trial proceeded as to the charges relating only to Mr. Brown. During closing argument, defense counsel instructed the jury to look at the evidence, and specifically, "what we don't have." Defense counsel stated: "Follow-up interviews. The testimony, it's

about one o'clock on Sunday, did police officers talk to anybody? The State has to produce that. The State puts that on. Knock on any doors? Zero."

During the State's closing argument, the prosecutor responded as follows:

> [THE STATE:] So, let's talk about what he decided the State lacked. One of the first things that [defense counsel] said was it's the State's job to produce who pulled up in that car and went in that house, right? That's the State's job. Didn't knock on the door, didn't swab that car, I don't give a flying hoot who pulled up in that car. I could care less who pulled up in that car.
>
> What I care about is who walked down that street and murdered Mr. Brown. What I care about is who is standing out on that street firing nine shots, eight of them into the victim. That's what I care about. That's what the officers care about.
>
> So, no, nobody's worried about who pulls up in that car. Yeah, we have a theory that it's the Defendant. But that's not what I have to prove. I don't have to prove who's in that car.
>
> He wants to talk about did you knock on any doors, there's no, there's no -- everything stopped. Just because you didn't hear about it doesn't mean it didn't happen.
>
> [DEFENSE COUNSEL]: Object. Facts not in evidence.
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> THE COURT: Overruled.
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> [THE STATE]: It just means that there was nothing pertinent to bring to the table. I'm not going to waste your time hearing about things that didn't, that weren't successful, weren't helpful, no. But then he wouldn't have anything for his closing if we did that.

The jury convicted Appellant of each of the charges relating to Mr. Brown. This appeal followed.

DISCUSSION

Appellant contends that the court erred in permitting the following portion of the State's closing argument:

> He wants to talk about did you knock on any doors, there's no, there's no -- everything stopped. Just because you didn't hear about it doesn't mean it didn't happen.

Specifically, he asserts that by permitting the State's assertion, the court permitted the prosecutor to "refer[] to aspects of the police investigation that were not revealed at trial[,]" and "vouch[] for the police investigation and the police witnesses."

Further, Appellant maintains that the court erred in admitting evidence relating to Mr. Baker because it "was irrelevant to the prosecution of Mr. Woolford[,]" as well as unfairly prejudicial, because it "gave the jurors the impression that Mr. Baker was wrapped up in the incident even though – as the court subsequently acknowledged – no reasonable person could conclude that he was involved based on the evidence." Finally, Appellant asserts that "[b]ecause the trial court erred in permitting the improper statement in the State's rebuttal and in admitting the evidence related to Mr. Baker, and because the errors were not harmless either separately or collectively, reversal is required."

The State responds that Appellant made a specific objection at trial – that the State's assertion assumed facts not in evidence – and thus, that Appellant's contention that the prosecutor's statement vouched for the police investigation is not preserved for our review. Further, the State contends that the court properly admitted evidence concerning Mr. Baker, and "[t]hat the court ultimately granted the motion for judgment of acquittal does not establish that the challenged evidence was irrelevant and therefore inadmissible at the time it was admitted into evidence." Lastly, the State asserts that "[t]here are an insufficient number of harmless errors to trigger review as to their cumulative effect" because cumulative review requires two findings of error and here, there were none. We agree.

I. Appellant failed to preserve his assertion that the State impermissibly vouched for the police investigation.

This Court has made clear that, at trial, "[i]f a general objection is made, and neither the court nor a rule requires otherwise, it 'is sufficient to preserve all grounds of objection which may exist.'" *State v. Jones*, 138 Md. App. 178, 218 (2001) (quoting *Grier v. State*, 351 Md. 241, 250 (1998)), *aff'd*, 379 Md. 704 (2004). However, "when particular grounds for an objection are volunteered or requested by the court, 'that party will be limited on appeal to a review of those grounds and will be deemed to have waived any ground not stated.'" *Id*. (quoting *Leuschner v. State*, 41 Md. App. 423, 436, *cert. denied*, 444 U.S. 933 (1979)). Indeed, as the Supreme Court of Maryland has noted, "[i]t is well-settled that when specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999).

Here, Appellant did not assert a general objection to the statement he challenges on appeal. Instead, he objected solely on the basis that the prosecutor's statement assumed facts which were not in evidence. Accordingly, Appellant's assertion that the State vouched for the police investigation has not been preserved for our review. *See* Md. Rule 8-131(a) ("Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]").

Assuming, *arguendo*, that Appellant had properly preserved his contention for our review, we see no abuse of discretion under these facts. "Vouching typically occurs when a prosecutor 'place[s] the prestige of the government behind a witness through personal

assurances of the witness's veracity . . . or suggest[s] that information not presented to the jury supports the witness's testimony.'" *Spain v. State*, 386 Md. 145, 153 (2005) (quoting *United States v. Daas*, 198 F.3d 1167, 1178 (9th Cir.1999)); *Walker v. State*, 373 Md. 360, 396 (2003) (noting that the prosecutor may not "make suggestions, insinuations, and assertions of personal knowledge"). Further, as we discuss *infra*, "the exercise of [the trial court's] broad discretion to regulate closing argument will not be overturned 'unless there is a clear abuse of discretion that likely injured a party.'" *Anderson v. State*, 227 Md. App. 584, 590 (2016) (quoting *Ingram v. State*, 427 Md. 717, 726 (2012)).

Appellant does not assert that the State placed the prestige of the government behind a witness or made any insinuations or assertions of personal knowledge as to whether the police did or did not knock on doors. Nor does he challenge the State's assertion that it "did not suggest that it knew that the police had, in fact, knocked on doors, or what the outcome of any door-knocking had been," or that "[i]t argued only that the jury could not draw a negative inference from the absence of such evidence." Thus, even had Appellant properly preserved his contention for our review, we are unpersuaded that the court's decision to permit the State's closing argument amounted to an abuse of discretion that "likely injured" Appellant. *Id.* at 589-90.

II. The court did not err in permitting the State's closing argument.

As "a general rule, attorneys have great leeway in closing arguments." *Ware v. State*, 360 Md. 650, 681 (2000). Indeed, parties "are given wide latitude in the conduct of closing argument, including the right to explain or to attack all the evidence in the case." *Trimble v. State*, 300 Md. 387, 405 (1984). Moreover, "counsel may state and discuss the evidence

and all reasonable and legitimate inferences which may be drawn from the facts in evidence, in addition to argue matters of common knowledge[.]" *Smith v. State*, 388 Md. 468, 488 (2005) (internal quotations marks and citation omitted); *see also Jones v. State*, 217 Md. App. 676, 691 (2014) ("During closing arguments, '[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.'" (quoting *Lee v. State*, 405 Md. 148, 163 (2008))).

"Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument." *Whack v. State*, 433 Md. 728, 742 (2013). Accordingly, "'[t]he permissible scope of closing argument is a matter left to the sound discretion of the trial court.'" *Cagle v. State*, 462 Md. 67, 74 (2018) (quoting *Ware*, 360 Md. at 682). Therefore, "[o]n review, an appellate court should not reverse the trial court unless that court clearly abused the exercise of its discretion and prejudiced the accused." *Degren v. State*, 352 Md. 400, 431 (1999). An abuse of discretion occurs when the decision is "'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable[,]'" such as "'that the ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective.'" *McLennan v. State*, 418 Md. 335, 353-54 (2011) (quoting *Dehn v. Edgecombe*, 384 Md. 606, 628 (2005)) (further quotation marks and citation omitted).

Here, Appellant maintains that the prosecutor's closing argument improperly assumed facts not in evidence, relying upon *Fuentes v. State*, 454 Md. 296, 319 (2017),

Spain, 386 Md. at 156, *Lee v. State*, 405 Md. 148, 168 (2008), and *Lawson v. State*, 389 Md. 570, 599 (2005), none of which support his position. *Fuentes* involved an assertion that the defendant had acknowledged "that he took advantage of" the victim, even though the statement was not part of the evidence introduced at trial. 454 Md. at 319. The Supreme Court of Maryland held that the closing argument was improper, explaining that the "alleged statement was never admitted into evidence, and [the defendant's] responses to the relevant questions concerning its contents were in the negative." *Id*.

Additionally, *Spain*, *Lee*, and *Lawson* all involved a personal attestation made by the prosecutor during closing argument, which was not supported by the record. *See Spain*, 386 Md. at 156 (holding that the prosecutor's statement that a police officer "did not testify falsely because, if he were to do so, he would suffer adverse consequences to his career as a police officer" was improper because the State failed to "introduce evidence from which it could be inferred ineluctably that [the officer] risked his career or any of its benefits if he were to testify falsely"); *Lee*, 405 Md. at 168 (holding that the State's assertion that the witness "was following 'the law of the streets'" was improper where "[t]here was nothing in the record, nor was there any testimony or evidence, . . . as to what constituted . . . 'the law of the streets' in this context"); *Lawson*, 389 Md. at 599 (holding that the State's assertion that the defendant "would, if allowed to roam free, sexually abuse his cousin's eleven-year-old child" was based upon facts not in evidence).

Here, the facts do not involve an incriminating statement made by Appellant or a personal attestation of any facts from the prosecutor. Instead, and in response to defense counsel's challenge that the jury heard of "zero" knocking on doors, the State responded

that: "[j]ust because you didn't hear about it doesn't mean it didn't happen." We cannot say that this statement was outside the bounds of the State's ability to "discuss the evidence" and the "reasonable and legitimate inferences" drawn therefrom. *Smith*, 388 Md. at 488 (quotation marks and citation omitted); *see also Robson v. State*, 257 Md. App. 421, 437 (noting that "[a] non-finding of the affirmative is not a finding of the negative"), *cert. denied*, 483 Md. 520 (2023). The court's decision to permit the State's assertion was not well removed from any center mark imagined by this Court.

III. The court did not err in permitting evidence relating to Mr. Baker.

Generally, "all relevant evidence is admissible." Md. Rule 5-402. The standard for whether evidence is relevant has been described as "a low bar[.]" *State v. Simms*, 420 Md. 705, 727 (2011). Indeed, relevant evidence includes "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. As the Supreme Court of Maryland has noted, "[h]aving 'any tendency' to make 'any fact' more or less probable is a very low bar to meet." *Williams v. State*, 457 Md. 551, 564 (2018) (quoting *Simms*, 420 Md. at 727); *see also Montague v. State*, 471 Md. 657, 695 (2020) (describing the standard under Md. Rule 5-401 as a "low relevance threshold").

Nonetheless, evidence "may be excluded 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. However, evidence will not be excluded "merely because it is prejudicial," because "'[a]ll evidence, by its nature, is prejudicial[.]'" *Woodlin*

v. State, 484 Md. 253, 265 (2023) (quoting *Williams*, 457 Md. at 572). Instead, relevant evidence will be excluded only "when its unfairly prejudicial nature substantially outweighs its probative value." *Id.* (emphasis omitted).

"Evidence may be unfairly prejudicial if it might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which he is being charged." *Odum v. State*, 412 Md. 593, 615 (2010) (quotation marks and citation omitted). Further, it may "tend[] to have some adverse effect . . . beyond tending to prove the fact or issue that justified its admission.'" *State v. Heath*, 464 Md. 445, 464 (2019) (quoting *Hannah v. State*, 420 Md. 339, 347 (2011)). This Court has explained that "[t]he inflammatory nature of the evidence must be such that the 'shock value' on a layperson serving as a juror would prevent the proper evaluation or weight in context of the other evidence." *Urbanski v. State*, 256 Md. App. 414, 434 (2022), *cert. denied*, 483 Md. 448 (2023). It must generate "such a strong emotional response from the jury" that it is "unlikely for the jury to make a rational evaluation of the evidentiary weight." *Id*.

Whether evidence is legally relevant "is a conclusion of law that we review *de novo*." *Montague*, 471 Md. at 673. Further, "[a]fter determining whether the evidence in question is relevant, we consider whether the trial court abused its discretion by admitting relevant evidence which should have been excluded as unfairly prejudicial." *Id*. In so doing, we note that "when weighing evidence, 'a trial court is given significant deference in its determination that probative evidentiary value outweighs any danger of prejudice.'" *CSX Transp., Inc. v. Pitts*, 203 Md. App. 343, 373 (2012) (quoting *S. Mgmt. Corp. v. Mariner*, 144 Md. App. 188, 197 (2002)), *aff'd*, 430 Md. 431 (2013); *see also Portillo*

Funes v. State, 469 Md. 438, 479 (2020) (noting that "[o]nce a relevancy determination is made, courts 'are generally loath to reverse a trial court unless the evidence is plainly inadmissible under a specific rule or principle of law or there is a clear showing of an abuse of discretion'" (quoting *Merzbacher v. State*, 346 Md. 391, 404-05 (1997))).

Here, we disagree that Mr. Baker's clothing and medical records did not have "'any tendency' to make 'any fact' more or less probable" under the facts before us. *Williams*, 457 Md. at 564 (quoting *Simms*, 420 Md. at 727). The State charged Appellant with three counts relating to Mr. Baker: first-degree assault, second-degree assault, and use of a firearm in the commission of a crime of violence. The uncontested evidence and testimony at trial indicated that Mr. Brown had a friend with him when the shooting occurred, that that friend "fell over" before he "got up and took off running[,]" and that there were at least four additional shots (beyond those suffered by Mr. Brown) fired by the firearm located by police. Each of these facts, as noted by the State, left "open the possibility that another person was shot using that same firearm." Thus, the evidence relating to Mr. Baker – including the medical treatment he received for a gunshot wound less than thirty minutes after the shooting occurred, and the clothing he was wearing at that time, including a pair of red pants – met the low bar of being relevant to those charges.

Nor are we persuaded that the judgment of acquittal indicates that the evidence was irrelevant. We have noted that the State must satisfy a "high evidentiary burden" to survive a motion for a judgment of acquittal. *Urbanski*, 256 Md. App. at 422. When faced with a motion for judgment of acquittal, the court considers whether the evidence is "legally sufficient to sustain a conviction[,]" or, if a "rational trier of fact could have found the

essential elements of the crime beyond a reasonable doubt." *Morgan v. State*, 134 Md. App. 113, 126 (2000) (quotation marks and citation omitted).

It follows that the grant of a judgment of acquittal indicates not that the evidence offered was irrelevant, but that the State has failed to meet its burden of proving its case beyond a reasonable doubt. *See In re Neil C.*, 308 Md. 591, 595 (1987) (noting that judgment of acquittal "does not prove his innocence; rather it reflects the State's inability to prove its case beyond a reasonable doubt."); *Darcars Motors of Silver Spring, Inc. v. Borzym*, 379 Md. 249, 268 (2004) (noting that when faced with a motion for acquittal, the court asks "whether a reasonable jury could find guilt beyond a reasonable doubt" (quotation marks and citation omitted)). In sum, merely because the evidence did not conclusively establish Appellant's guilt regarding the charges relating to Mr. Baker does not deem it irrelevant. *Simms*, 420 Md. at 727 (noting that evidence need not "'conclusively establish guilt'" to be relevant (quoting *Thomas v. State*, 397 Md. 557, 577 (2007))).

Finally, the evidence regarding Mr. Baker was not unfairly prejudicial to Appellant. Nothing about Mr. Baker's clothing or medical records was such that it would have elicited "a strong emotional response from the jury" making the jury unlikely "to make a rational evaluation of the evidentiary weight." *Urbanski*, 256 Md. App. at 434. Nor do we see any indication that the evidence influenced the jury to disregard a "lack of evidence" regarding the crime. *Odum*, 412 Md. at 615 (quotation marks and citation omitted). Rather than a "lack of evidence" of the crimes convicted, the evidence introduced against Appellant was overwhelming, including surveillance footage, body camera footage, and witness testimony identifying Appellant as the shooter. Further, Appellant was ultimately acquitted

as to the crimes relating to Mr. Baker, in part because of the discrepancy in Mr. Baker's clothing noted in the evidence he now challenges on appeal. Accordingly, we find no abuse of discretion in the circuit court's decision to admit the evidence relating to Mr. Baker.

Finally, because Appellant has failed to indicate error in the record before us, we disagree that there was a cumulative prejudicial impact of error, and we affirm. *Muhammad v. State*, 177 Md. App. 188, 326 (2007) (noting that there is "no such thing as a cumulative prejudicial impact of non-error").

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