Circuit Court for Montgomery County
Case No. 137696C

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND**

No. 1304

September Term, 2022

JUSTIN ANDREW WILSON

v.

STATE OF MARYLAND

Beachley,
Shaw,
Salmon, James P.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Shaw, J.

Filed: August 22, 2023

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

**At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

Appellant Justin Wilson was found guilty of first-degree murder by a jury in the Circuit Court for Montgomery County. Appellant was sentenced to life imprisonment, all suspended but forty years, with five years of supervised probation. He filed a timely appeal and presents the following questions for our review:

1. Did the trial court err in denying Wilson's motions for judgment of acquittal because the evidence was insufficient to establish premeditation for first-degree murder?

2. Did the trial court commit reversible plain error in permitting the prosecutors to make repeated improper arguments to the jury that deprived Wilson of a fair trial?

For reasons discussed below, we conclude there was no error, and we affirm.

BACKGROUND

On July 23, 2020, at approximately 11:30 AM, Montgomery County Police Officers responded to the home of Egidio Ienzi ("Mr. Ienzi") in Germantown, Maryland and found him bound and bleeding. Officers and first responders immediately began treating Mr. Ienzi who had been stabbed thirteen times. Mr. Ienzi succumbed to his injuries shortly after arriving at the hospital. Appellant was subsequently arrested and charged with his murder.

At trial, the State called Mr. Ienzi's 16-year-old daughter, A.I., who testified she was sleeping at the residence when she awoke to a loud bang and voices shouting downstairs. Upon going downstairs, A.I. saw Appellant holding her father's arms behind his back and he had a serrated knife in his right hand. A.I. ran back to her room, hid in her closet, and called 911. When police arrived, A.I. described the suspect as a white male, tall, with "long curly brownish, maybe blonde, dirty blonde hair[,]" wearing black clothes.

A.I. testified that she did not recognize the fixed blade with little serrations on the back, she did not know her father to carry a knife inside the house, and she did not notice any knives missing from the residence.

Kenneth Peters, a neighbor, testified that he was outside that morning when he noticed an unfamiliar tall male dressed in black walking along the street. Peters saw the male a total of three times walking through the neighborhood on his phone before he noticed Mr. Ienzi's parked vehicle with the wipers and headlights on, the door ajar, and nobody inside the vehicle. Peters then observed the male running from Mr. Ienzi's house. Peters went to Mr. Ienzi's front door which was slightly ajar and found him inside lying on the bathroom floor covered in blood with his hands tied behind him. Peters kneeled down next to Mr. Ienzi to help him but could not render aid due to the amount of blood. He immediately called the police. When Peters heard sirens, he ran to the driveway to flag the police down.

Mr. Ienzi's son, Domenic, testified that on the morning of July 23 he received a call from his mother, and she told him that his father had been stabbed. He then drove to the residence, picked up A.I. and proceeded to the hospital. On the way, A.I. recounted the incident and described the suspect as tall and muscular with long curly hair. Domenic immediately thought of his friend, Appellant, who was 6'4" tall and weighed 250 pounds. Domenic messaged him but he did not receive a response. The next day, Domenic spoke to Kenneth Peters, and showed him a picture of Appellant. Peters told him that he believed that was the person he saw roaming the neighborhood and running away. Domenic also

viewed a neighbor's Ring doorbell video clip that showed Appellant running from the house.

On July 24, 2020, Domenic contacted Detective Frank Springer and Corporal Casey Diaz to inform them about his conversation with Peters and the surveillance video. Domenic told the officers he could identify Appellant as the suspect. Like A.I., Domenic testified that he was not aware of his father possessing a knife like the one used in the incident.

The State called Detective Michael Paul of the Montgomery County Police Department, who testified that, two days later, police executed a search warrant at Appellant's residence where they recovered a black backpack, Appellant's cell phone, and paperwork from Prince George's County Hospital Center showing that Appellant had received treatment for a laceration to his hand on the day of the incident. An arrest warrant was served on Appellant in Fredericksburg, Virginia on July 28, 2020.

A Montgomery County Police forensic specialist testified that on the day of the incident he observed the family room of the Ienzi residence in disarray with the carpet pushed up and blood droplets on the carpet and couch. There was blood in the hallway and on the walls leading toward the bathroom. The bathroom, where Mr. Ienzi was found bound, was covered in blood splatters. No knife was recovered at the scene and there were no signs of forced entry into the home.

According to the testimony of FBI special agent Michael Fowler, historical cellular site evidence established that on July 23, 2020, Appellant's phone was in the vicinity of the Ienzi residence between 11:08 AM and 11:34 AM and later, Appellant's phone was in

the vicinity of Prince George's County Hospital. The certified medical records for Appellant's treatment at the hospital on July 23, 2020 were in accord with the cellular evidence. Appellant's DNA was compared to DNA taken from Mr. Ienzi's vehicle at the scene and it was a match.

Dr. Diana Nointin, a forensic pathologist who performed an autopsy on Mr. Ienzi, also testified. Dr. Nointin observed thirteen puncture stab wounds as well as various cutting wounds. She described stab wounds on the upper left side of the chest, cutting the rib and diaphragm; stab wounds on the right chest which punctured the diaphragm and liver; stab wounds to the back in the left-middle, medial lower, right lower, and left upper portions of the back; and a stab wound to the right arm. Dr. Nointin observed abrasions on Mr. Ienzi's wrists that were consistent with having had a rope tied tightly around his wrists. Dr. Nointin opined that Mr. Ienzi's cause of death was due to multiple sharp force injuries, and the manner of death was homicide.

At the conclusion of the State's case, defense counsel made a motion for judgment of acquittal as to the home invasion count and first-degree murder count. Defense counsel argued there was no evidence of a break-in and that Appellant had been voluntarily admitted into the house. Counsel argued the State failed to prove felony murder, and the evidence was insufficient to support first-degree murder. Specifically, counsel argued that no evidence had been presented that Appellant had an intent to commit a crime inside the house when he entered, and the State failed to present any evidence regarding the length of time the stabbings took place. Lastly, defense counsel argued there was no evidence

presented other than that this was a "frenzied killing." As such, there was no evidence of motive or premeditation.

The State responded stating that the number of stab wounds to Mr. Ienzi established an intent to kill, regardless of whether that intent occurred between the first or thirteenth stab. Additionally, based on the testimony of Mr. Ienzi's children and viewing the evidence in the light most favorable to the State, Appellant armed himself with the knife prior to stabbing Mr. Ienzi, which was further evidence of intent. Lastly, the binding of Mr. Ienzi's wrists, whether after or before the stabbing occurred, showed purposeful conduct to deny Mr. Ienzi from receiving aid or not allowing Mr. Ienzi to defend himself while being stabbed. Taken all together, the State argued they established a prima facie case for first-degree murder.

Following argument, the court held:

> Looking at the elements of burglary, home invasion, and first-degree murder, the Court finds that the State has met its burden with respect to first-degree murder, but the State hasn't met its burden with respect to home invasion. There was no evidence presented in terms of how the defendant got into the home, and there's no evidence that if there was a breaking and entry, it was done with the intent to commit a particular crime of violence inside the dwelling. And so therefore, the motion for judgment of acquittal is granted as to the home invasion, and denied as to the first-degree murder.

Appellant then elected to testify. He stated that on the day of the incident after missing his bus, he decided to skip work and hang out with Domenic. Appellant went to Mr. Ienzi's house, knocked on the front door and Mr. Ienzi answered. Appellant asked for Domenic's current phone number and Mr. Ienzi had him come inside and they walked to the family room area. Once inside, Appellant was accused of robbing Mr. Ienzi's safe of

coins the previous week. The two began loudly arguing, and according to Appellant, Mr. Ienzi reached for a knife on the coffee table and pointed it at him. Appellant attempted to grab the knife and the two fell backwards onto the couch. Appellant's hand was cut. As they both stood up and went backwards towards the kitchen, Appellant disarmed Mr. Ienzi, and started uncontrollably stabbing him with the knife. Appellant stated he "lost it" after being cut and "just stopped thinking." "Nothing" was going through his mind at the time and he "was mad" when he "just started swinging" the knife at Mr. Ienzi.

Appellant testified that Mr. Ienzi "was still trying to come at me, so I needed a reason to – or I needed to wait to escape, so I grabbed a shoelace off the ledge that's by the living room. There was a shoelace, so I wrapped it around his hands real tight, and pushed him into the bathroom. Then I ran." Appellant stated that all the stab wounds happened before he tied up Mr. Ienzi's wrists and pushed him into the bathroom to give himself a chance to run away. Appellant ran out of the front door, holding the knife, until he heard sirens. He then threw the knife into the woods. Appellant testified he did not bring a knife to the residence and had never seen that knife before that day. Appellant then went to the Prince George's County Hospital for treatment to his hand. He told medical personnel there that he cut his hand at work on a circular saw. After receiving medical care, he went to his sister's house for the night. The next morning, Appellant fled to Hagerstown, Maryland and ultimately Martinsburg, Virginia where he cut his hair because he "didn't want to get caught."

Following the close of all evidence, defense counsel renewed his "motion for judgment of acquittal on the first-degree murder, not second-degree murder, for the reasons

that I previously stated." The court denied the motion and instructed the jury on the applicable law. The next day, counsel for both sides gave closing arguments.

In the State's closing argument, the prosecutor argued "[t]his is a first degree murder case[]" because Appellant "was prepared and he was pre-armed, that was the first decision he made that gets you to premeditation." The prosecutor stated, "[t]o be able to have the wherewithal to get an instrument and then tie it around someone, put their arms behind their back, tie it around tightly enough to make an injury on them so they can't escape, that is a very thought-out decision." Discussing the repeated stab wounds and the tied hands of Mr. Ienzi, the prosecutor argued, "this was not some anger rage. This was premeditation in an attempt to kill, deliberation, killing and stabbing a man over and over after he is bound in a bathroom where can't escape. It's first degree murder[.]"

The prosecutor discussed Appellant's testimony, saying, "he combined what he needed to admit because the evidence was irrefutable with a lie to get him out of trouble, the most trouble. Calculating. It was pretty good." The prosecutor added, "he had to adjust to the face of all this evidence and come up with a new story for new listeners and that's you." Additionally, the prosecutor said, "I want to talk about the lies he told you. Because he told you all lies yesterday[,]" and "[h]e is really experienced in lying." "[H]e's lying to you because he had this story planned out," and "you can't rely on his testimony[.]" Lastly, the prosecutor stated, "he's trying his best to tailor to what he knows[,]" and "[h]e is tailoring his statements to meet his needs." Defense counsel did not object to the prosecutor's closing argument.

During defense counsel's closing argument, he addressed the legal standard for the evaluation of evidence, stating why "the State's arguments fall apart on closer examination." Defense counsel argued that Appellant was guilty of voluntary manslaughter and that he did "not have to prove that he acted in hot blooded response to legally adequate provocation." Addressing premeditation, defense counsel stated, "there's just no time for the rage to dissipate[,]" and Appellant was "not in his right mind." Finally, defense counsel argued, "that explosion is not murder, it's manslaughter."

In the State's rebuttal argument, the prosecutor continued to discuss the Appellant's lack of credibility and version of the incident. The prosecutor highlighted the inconsistencies in Appellant's testimony, stating, "they not only demonstrate a lack of credibility, it also demonstrates Justin Wilson's ability to, or desire to try to tailor everything to try to meet his needs to avoid you finding him guilty of first degree murder." "[I]n this scenario we've got the neighborhood gossip taking the stand[,]" therefore, "[y]ou've never believed him before. You have no reason to believe him." Lastly, discussing the moment of the stabbing, the prosecutor stated, "[i]t certainly didn't happen the way that Justin Wilson suggested," "[w]e know that's not true, because first of all Mr. Wilson's credibility is completely destroyed and second of all we know that he brought that knife." Again, defense counsel did not object to the prosecutor's argument.

Following deliberations, the jury found Appellant guilty of first-degree murder. Appellant filed a timely notice of appeal.

We may include additional detail in the following discussion.

STANDARD OF REVIEW

An appellate court reviewing the sufficiency of the evidence to support a conviction will "view the evidence in the light most favorable to the State and assess whether 'any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *State v. Krikstan*, 483 Md. 43, 63 (2023) (quoting *Walker v. State*, 432 Md. 587, 614 (2013). "[W]e do not re-weigh the credibility of witnesses or attempt to resolve any conflicts in the evidence." *Walker*, 432 Md. at 614. "We do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. 174, 183 (2010).

"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) (citing *Ingram v. State*, 427 Md. 717, 726 (2012)). "The failure to object before the trial court generally precludes appellate review, because ordinarily appellate courts will not address claims of error which have not been raised and decided in the trial court." *Martin v. State*, 165 Md. App. 185, 195 (2005) (internal quotations and citation omitted).

"Plain error review is reserved for those errors that are compelling, extraordinary, exceptional or fundamental to assure the defendant of a fair trial." *Newton v. State*, 455 Md. 341, 364 (2017) (cleaned up). "[A]n appellate court should intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind of prejudice which precluded an impartial trial." *James v. State*, 191 Md. App. 233, 246 (2010) (internal quotations and citation omitted). "As

such, we do not disturb the trial judge's judgment in that regard unless there is a clear abuse of discretion that likely injured a party." *Ingram*, 427 Md. at 726.

DISCUSSION

I. The Court did not err in denying the motions for judgment of acquittal.

Appellant argues the court erred in denying the motions for judgment of acquittal because there was insufficient evidence to establish premeditation or motive. Appellant contends that the killing was an act of hot-blooded response and that the State failed to prove beyond a reasonable doubt the absence of heat of passion and sudden provocation.

The State argues the evidence was sufficient and the trial court correctly denied Appellant's motion. The State asserts that Appellant did not present a heat of passion argument below, and therefore, that argument is not preserved for appeal. Regardless, the State argues the motion was properly denied because the sufficiency standard is not concerned with the availability of a mitigating defense, rather the jury is allowed to draw its own inferences, accepting or rejecting the defense theory of the case.

In his brief, Appellant asks this Court to review the denial of his "motions for judgment of acquittal" based on insufficiency of the evidence. We observe that, following the denial of his first motion for judgment of acquittal, Appellant testified. Maryland Rule 4-324(c) provides:

> A defendant who moves for judgment of acquittal at the close of evidence offered by the State may offer evidence in the event the motion is not granted, without having reserved the right to do so and to the same extent as if the motion had not been made. In so doing, the defendant withdraws the motion.

As such, Appellant's initial motion for judgment of acquittal was withdrawn. Our task, therefore, is to review the denial of Appellant's renewed motion for judgment of acquittal, where he urged the court, at the close of all evidence, to grant his motion based on the reasons his counsel previously stated.

As to the State's preservation argument, Maryland Rule 4-324(a), concerning motions for judgment of acquittal, provides, in pertinent part: "The defendant shall state with particularity all reasons why the motion should be granted." Under the Rule, "a defendant is . . . required to argue precisely the ways in which the evidence should be found wanting and the particular elements of the crime as to which the evidence is deficient." *Montgomery v. State*, 206 Md. App. 357, 385 (2012) (internal quotation marks omitted). A criminal defendant "is not entitled to appellate review of reasons stated for the first time on appeal." *Starr v. State*, 405 Md. 293, 302 (2008). A "defendant may not argue in the trial court that the evidence was insufficient for one reason, then urge a different reason for the insufficiency on appeal in challenging the denial of a motion for judgment of acquittal." *Tetso v, State*, 205 Md. App. 334, 384 (2012) (citation omitted).

We observe that Appellant's "hot blooded" argument was not properly preserved. Defense counsel's renewed motion for judgment of acquittal specified that it was regarding first-degree and not second-degree murder. Additionally, Appellant made no statements to the trial judge regarding heat of passion, nor did he argue there was adequate provocation. He did not state with particularity any legal rationale other than lack of premeditation, and thus he did not provide the trial court with the ability to properly consider his argument. At the conclusion of all evidence, he simply asked the court to

consider his motion based on the reasons previously stated, where he described the incident as "a frenzied killing." For these reasons, we decline further review of this issue. We also note that the sufficiency standard is not concerned with a mitigating defense, rather the production of evidence.

In evaluating sufficiency of the evidence claims, this Court assesses "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. McGagh*, 472 Md. 168, 184 (2021). The limited question before us is "not whether the evidence *should have or probably would have* persuaded the majority of fact finders but only whether it *possibly could have* persuaded *any* rational fact finder." *Allen v. State*, 158 Md. App. 194, 249 (2004) (emphasis in original).

When examining a motion for judgment of acquittal, we are not concerned with what the jury actually did with the evidence of any mitigating defenses or what counsel argued, rather the "sufficiency of the evidence itself." *Chisum*, 227 Md. App. at 123. "[T]he availability of other permitted inferences does not in any way negate or compromise the validity and the legal sufficiency of the permitted inference of the intent to kill." *Id*. at 136. "In a jury trial, a motion for a judgment of acquittal at the end of the entire case initiates the examination of the satisfaction of the burden of production. If that burden of production is not satisfied, the trial judge is wrong, as a matter of law, for denying the motion and for allowing the case even to go to the jury." *Chisum*, 227 Md. App. at 130.

As this Court in *Chisum* stated, the test for a judgment of acquittal:

> [I]s whether the State has satisfied its burden of production. The issue of legal sufficiency of the evidence is not concerned with the findings of the fact based on the evidence or the adequacy of the factfindings to support a verdict. It is concerned only, as an earlier pre-deliberative stage, with the objective sufficiency of the evidence itself to permit the factfinding even to take place. The burden of production is not concerned with what a factfinder, judge or jury, does with the evidence. It is concerned, in the abstract, with what any judge, or any jury, anywhere, could have done with the evidence. It is an objective measurement, quantitatively and qualitatively, of the evidence itself. It is a question of supply and not execution.

227 Md. App. at 129-30.

In order for a killing to be "premeditated," "the design to kill must have preceded the killing by an appreciable length of time, that is, time enough to be deliberate." *Wiley v. State*, 328 Md. 126, 133 (1992) (citation omitted). It is "unnecessary that the deliberation or premeditation shall have existed for any particular length of time." *Id*. In addressing this issue, the Supreme Court of Maryland[1] has stated:

> Although it is true that a murder committed solely on impulse – the "immediate offspring of rashness and impetuous temper" – is not one committed with deliberation and premeditation, the law does not require that deliberation and premeditation be the product of clear and rational thought; it may well result from anger or impulse. The test for first degree murder is whether there was the deliberation and premeditation – sufficient time to reflect – not the quality or rationality of the reflection or whether it may have been emotionally based.

Mitchell v. State, 363 Md. 130, 149 (2001).

In *Colvin v. State*, 299 Md. 88, 110 (1984), our Supreme Court discussed the sufficiency of evidence to sustain a conviction for premeditated murder and held that "the

[1] At the November 8, 2022, general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Appeals of Maryland to the Supreme Court of Maryland. The name change took effect on December 14, 2022.

jury was entitled to conclude that the time during which appellant carried the knife from kitchen to the stairway, compounded by the protracted nature of the assault, was sufficient time for him to have chosen, after thought and deliberation, to kill." In *Wiley v. State*, the Court found "there was an abundance of evidence . . . to conclude that the time during which the defendant repeatedly struck the victim was sufficient to support a finding of premeditation and deliberation." *Wiley*, 328 Md. at 134 (citing *Robinson v. State*, 249 Md. 200, 209 (1968); *Kier v. State*, 216 Md. 513, 522-23 (1958)).

In a strikingly similar fact pattern, this Court in *Purnell v. State* was tasked with determining the sufficiency of evidence to sustain a conviction for first-degree murder. 250 Md. App. 703 (2021). The appellant, Purnell, received one wound to the hand, while the decedent suffered twenty-two stab wounds. *Id*. at 708. Purnell argued the evidence at trial failed to demonstrate that the murder was premeditated. *Id*. at 712. Purnell argued the evidence suggested he acted in "imperfect self-defense" by "overzealously defending himself" in response to being cut by the decedent. *Id*. He argued the evidence of intent "may support a conviction for second-degree murder, but certainly not first-degree premeditated murder." *Id*. Ultimately, the Court held that the State presented sufficient evidence to sustain Purnell's conviction for first-degree premeditated murder. *Id*. at 722. In examining the sufficiency of the evidence for premeditation, the Court stated:

> In the case *sub judice*, a rational trier of fact could have found that Appellant had ample opportunity to end his encounter with Decedent based on the stark contrast in injuries to each party. While Appellant would like us to assume that he was in constant fear for his life throughout the encounter – that is not what the evidence reveals. The evidence, when viewed in the light most favorable to the State, shows that Appellant likely disarmed Decedent early in the encounter. This is assuming that it was Decedent who, in fact,

> produced the knife. Under Appellant's version of the incident, Appellant admits that the knife he used to effectuate the killing was taken from Decedent during the encounter. At the very least, the moment when Appellant disarmed Decedent he was no longer under any threat of imminent deadly harm. Moreover, the single wound to Appellant could lead a rational trier of fact to conclude that Appellant disarmed Decedent at the outset of the encounter, rendering Decedent unable to defend himself thereafter. From there, a rational trier of fact could reasonably conclude that the Appellant made a conscious choice to continue his assault and did so by targeting an array of Decedent's vital areas.

Id. at 715-16.

In the case at bar, the State did present sufficient evidence of premeditation, and a rational trier of fact could have found that Appellant had time to reflect prior to stabbing Mr. Ienzi multiple times. The medical examiner's testimony was unrefuted that Mr. Ienzi had thirteen stab wounds, many of which ranged from approximately one-inch to more than five-inches in depth. She also testified that she observed defense wounds and the binding of Mr. Ienzi's hands. The forensics specialist testified that the room where the incident occurred was found to be in substantial disarray with blood found in many different areas. The jury could reasonably have inferred from this testimony alone that the incident took a fair amount of time. A.I. testified that she saw her father with his arms tied behind his back and Appellant with a knife in his hand. Her testimony differed from Appellant who stated that after tying Mr. Ienzi up, he immediately pushed him in the bathroom.

As noted, premeditation can be found based on evidence of time to reflect or deliberate. It may also be established based on the number of blows or stabbings, the intensity of the wounds and the brutality of the murder. Here, a reasonable juror could

have concluded that the incident was a brutal attack where Mr. Ienzi's hands were tied before he was stabbed violently or while he was being stabbed. Appellant testified the injury to his hand "didn't" hurt, but that he went to the hospital, ultimately receiving "seven stitches" and "they didn't find any tendon damage." While the defense counsel speculates there was "no time for the rage to dissipate[,]" the stark contrast in injuries between Appellant's single cut on the hand and Mr. Ienzi's thirteen stab wounds to vital areas could lead a rational trier of fact to conclude that Appellant made a conscious choice to continue stabbing Mr. Ienzi. The jury heard testimony that Appellant had been roaming the neighborhood prior to entering the house which would indicate a time to reflect, and there was also testimony that Mr. Ienzi was not known to have the type of knife used in the attack, which could have created an inference that Appellant brought the knife into the home.

Our deference to reasonable inferences drawn by the factfinder means we resolve conflicting possible inferences in the State's favor, because "we do not second-guess the jury's determination where there are competing rational inferences available." *Smith v. State*, 415 Md. at 183. Additionally, contrary to Appellant's argument, the State did not need to establish motive because "[m]otive is not an element of the crime of murder[.]" *Snyder v. State*, 361 Md. 580, 604 (2000). Because there was an abundance of evidence from which a jury could have found premeditation, we conclude the court did not err in denying Appellant's motion for judgment of acquittal.

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

Appellant argues that this Court should review the trial judge's error in permitting the prosecutors to make repeated improper arguments to the jury during closing argument. Appellant makes several assertions. Appellant asserts the State improperly vouched against Appellant's credibility by characterizing Appellant's testimony and statements as lies and accused Appellant of tailoring testimony based on the evidence presented at trial. Appellant also contends the State impermissibly shifted the burden of proof to Appellant, violated the "Golden Rule" by telling jurors to put themselves in the position of Appellant, and argued facts outside of the evidence. According to Appellant, the cumulative effect of such errors prejudiced him from having a fair trial and plain error should be exercised in the interests of justice. Appellant concedes no objection was lodged during the State's closing argument and contends that we should review the statements for plain error.

The State argues defense counsel failed to object, and therefore the issues are not preserved for appeal. Alternatively, the State argues the now-contested portions of its closing argument were permissible, and points to *Spain v. State*, 386 Md. 145 (2005), which recognizes the wide range of expression and "great leeway" afforded to attorneys during closing argument. The State further argues attorneys are permitted to make assertions based on the evidence and fair and reasonable deductions therefrom during closing arguments. *Id.* Because there was no "clear or obvious" error that substantially affected Appellant's rights, the State contends that this Court should not exercise its discretion to review for plain error. *State v. Rich*, 415 Md. 567, 578 (2010).

Maryland Rule 8-131(a) provides: "Ordinarily, the 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[.]" Generally the failure to do so 'bars the appellant from obtaining review of the claimed error, as a matter of right." *Robinson v. State*, 410 Md. 91, 103 (2009). The exercise of discretion to engage in plain error review is "rare" and is reserved for errors that are "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Savoy v. State*, 420 Md. 232, 243, 255 (2011). "[O]nly instances of truly outraged innocence call for the act of grace of extending gratuitous process." *Jeffries v. State*, 113 Md. App. 322, 326 (1997).

The Supreme Court of Maryland has explained for an error to be eligible for plain error review, it must meet the following conditions:

> "[P]lain-error review" – involves four steps, or prongs. First, there must be an error or defect – some sort of "[d]eviation from a legal rule" – that has not been intentionally relinquished or abandoned, i.e., affirmatively waived, by the appellant. Second, the legal error must be clear or obvious, rather than subject to reasonable dispute. Third, the error must have affected the appellant's substantial rights, which in the ordinary case means he must demonstrate that it "affected the outcome of the district court proceedings." Fourth and finally, if the above three prongs are satisfied, the court of appeals has the discretion to remedy the error – discretion which ought to be exercised only if the error "'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" Meeting all four prongs is difficult, "as it should be."

State v. Rich, 415 Md. 567, 578 (2010) (quoting *Puckett v. United States*, 556 U.S. 129, 135 (2009)) (internal quotations omitted).

We first examine whether there was error. In general, a "closing argument is a robust forensic forum wherein its practitioners are afforded a wide range for expression." *Clarke v. State*, 97 Md. App. 425, 431 (1993) (citation omitted). During closing, an attorney "may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties,

and attack the credibility of witnesses." *Donaldson v. State*, 416 Md. 467, 488 (2010). In *Degren v. State*, the Supreme Court of Maryland discussed the latitude afforded to attorneys during closing argument:

> The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom. In this regard, [g]enerally, . . . the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the [prosecution] produces.
>
> * * *
>
> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined—no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

352 Md. 400, 429-30 (1999) (citations omitted).

In *Spain v. State*, the Court further elaborated on the wide range of expression afforded to attorneys:

> No one likely would quarrel with the notion that assessing the credibility of witnesses during a criminal trial is often a transcendent factor in the factfinder's decision whether to convict or acquit a defendant. During opening and closing arguments, therefore, it is common and permissible generally for the prosecutor and defense counsel to comment on, or attack, the credibility of the witnesses presented.
>
> Part of the analysis of credibility involves determining whether a witness has a motive or incentive not to tell the truth. . . . Attorneys therefore feel compelled frequently to comment on the motives, or absence thereof, that a witness may have for testifying in a particular way, so long as those

> conclusions may be inferred from the evidence introduced and admitted at trial.

386 Md. 145, 154-55 (2005) (citations omitted).

Impermissible vouching is not a permitted practice and "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*, 386 Md. at 153. The prosecution is also "not free to comment upon the defendant's failure to produce evidence to refute the State's evidence because it could amount to an impermissible shift of the burden of proof." *Lawson*, 389 Md. 570, 595 (2005) (internal quotations and citation omitted). A "'golden rule' argument is one in which a litigant asks the jury to place themselves in the shoes of the victim, or in which an attorney appeals to the jury's own interests[.]" *Lee v. State*, 405 Md. 148, 171 (2008) (internal citations omitted). "Courts consistently have deemed improper comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial." *Spain*, 386 Md. at 156 (citing *Hill v. State*, 355 Md. 206, 222 (1999); *Degren v. State*, 352 Md. 400, 433 (1999)).

In the present case, the prosecutor, during closing argument, among other statements, asserted that Appellant's testimony was not truthful and that his testimony was tailored to meet his needs. The comments were directed toward Appellant's lack of credibility. The prosecutor did not offer personal assurances, consistent with improper vouching, or hint at evidence not presented in the case, but rather, argued that the Appellant's testimony was inconsistent and unsupported by evidence.

During rebuttal closing argument, the prosecutor stated, "while the State welcomes the burden that it carries in this case, Justin Wilson still has to meet your proof. Still has to be trusted by you." In so stating, the State was again commenting on Appellant's credibility. The State also acknowledged its burden of proof and discussed the elements required for a first-degree murder conviction.

Appellant asserts the State violated the "golden rule" by telling the jury, "When your anger is over, don't you stand there in horror as to what you've done. You don't start making more calculated decisions[,]" as well as, "The defendant doesn't punch him, I mean, isn't that what you do if you're in a rage and you're trying to get a knife from someone, how about throw a punch." In our view, these statements did not constitute "impermissible golden rule" violations as the prosecutor did not call upon the jurors to put themselves in the position of the victim and did not appeal to the jury's own interests. *Lee*, 405 Md. at 171 (emphasis added).

Lastly, Appellant takes issue with the prosecutor's statement that Appellant "brought that knife[,]" "could easily disarm" Mr. Ienzi, and "we all know that . . . the defendant could take [him] down[.]" In closing argument, a prosecutor is permitted to "draw inferences from the evidence[.]" *Mitchell v. State*, 408 Md. 368, 381, 383-84 (2009). An inference that a younger and much larger man could have overpowered a smaller older man was supported by the evidence. Additionally, Mr. Ienzi's children, A.I. and Domenic, testified Mr. Ienzi never carried a knife, and no knife was missing from the house.

In examining the prosecutor's arguments, we conclude the remarks were not error, and if they were, they were not clear, but rather subject to reasonable debate. The remarks

of the prosecutor did not mislead or influence the jury decision in a manner that unfairly prejudiced Appellant, and the comments did not substantially affect his rights. The court properly instructed the jury that closing arguments by counsel were not evidence. We hold Appellant has failed to satisfy the first three prongs of the required analysis for plain error review. As such, we decline to reach the fourth discretionary prong and hold that this case does not warrant plain error review.

JUDGMENT OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.