

Circuit Court for Prince George's County  
Case No. CT181090C

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1405

September Term, 2023

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DONALD JERMAINE JACKSON

v.

STATE OF MARYLAND

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

JJ.

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Opinion by Sharer, J.

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Filed: December 16, 2024

\*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).

A jury, in the Circuit Court for Prince George’s County, convicted Donald Jackson, appellant, of sexual abuse of a minor.<sup>1</sup> Jackson noted this appeal, presenting seven questions for our review which, for clarity, we have rephrased as:

1. Did the trial court err or abuse its discretion in refusing to grant a mistrial after a police detective testified “that there were several victims?”
2. Did the trial court err or abuse its discretion in allowing a police detective to testify that “most” of his cases were “delayed disclosures?”
3. Did the trial court abuse its discretion in refusing to grant a mistrial after a police detective testified that, upon listening to a recorded conversation between Jackson and the alleged victim, the detective learned “that there was a relationship between the victim and the defendant that started at the age of 15?”
4. Did the trial court err or abuse its discretion in admitting “rape trauma evidence” and in preventing Jackson from establishing an alternative source for the trauma?
5. Did the trial court err in failing to take additional remedial action, beyond sustaining defense counsel’s objection at the bench, after the prosecutor twice asked a defense witness if the witness believed that Jackson might lie?
6. Did the trial court err or abuse its discretion in permitting the State to argue during rebuttal argument that “defense’s closing argument is exactly why victims of child sexual abuse do not come forward” and that the “reason the victims of child sexual abuse do not come forward is because they fear that they will not be believed?”
7. To the extent that this Court deems two or more trial errors to be harmless, should we hold that the cumulative prejudicial impact of those errors warrants reversal?

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<sup>1</sup> The court sentenced Jackson to a term of ten years’ imprisonment, with all but five years suspended.

For reasons to follow, we answer question five in the affirmative and hold that the trial court erred in failing to take additional curative action after the prosecutor twice asked a defense witness if the witness believed that Jackson might lie. Accordingly, we reverse the court’s judgment and remand for a new trial. Because we reverse on that single issue, we need not address Jackson’s other questions.

### **BACKGROUND**

Because we are not called upon to review questions of sufficiency of the evidence, we provide only a brief overview of the case.

In 2013, J.J., then a thirteen-year-old female, became a participant in the Children Having Overcome Program (“CHOP”), a program for teenagers sponsored by the Oxon Hill Assembly of Jesus Christ (the “Church”). Children who participated in the program received supportive services from the Church and lived in the home of one of the Church’s members. In 2015, J.J. began living with Jackson, who was a member of the Church, and Jackson’s wife, who was the daughter of the Church’s leader, Bishop Joshua Wright. Several years later, J.J. left Jackson’s home and began living in Bishop Wright’s home. At about that time, J.J. came forward with allegations that she and Jackson had been involved in a sexual relationship while she was living in Jackson’s home.

Jackson was subsequently arrested and charged with sexual abuse of a minor, in violation of Md. Code Ann., Crim. Law, § 3-602, which proscribes sexual intercourse between a minor and member of the minor’s household.

At trial, J.J. testified that, when she was around fifteen years old and still living with Jackson, she and Jackson began having sexual intercourse. J.J. and Jackson did so several

times while she was living in the Jackson household. J.J. testified that she left Jackson’s home when she was seventeen years old, but when she was eighteen or nineteen years old, she and Jackson reconnected and resumed their sexual relationship, which continued until J.J. was twenty-one. J.J. testified that, in 2018, she decided to disclose her sexual relationship with Jackson because “there were other women unrelated to this particular case that were speaking about their scenario.”<sup>2</sup> J.J. claimed that, in addition to informing the police about her prior sexual relationship with Jackson, she also told Jackson’s wife about the relationship.<sup>3</sup>

Testifying in his own defense, Jackson denied having a sexual relationship with J.J. while she lived in his home. He conceded, however, that he and J.J. eventually did have a sexual relationship, but not until after J.J. had moved out of his house and turned eighteen.

Jackson’s wife, Crystal, also testified for the defense. She recalled that J.J. came to live with her and Jackson when J.J. was “15 or 16” and that J.J. stayed “[l]ess than a year.” Crystal testified that J.J. was “rough around the edges,” that the two of them “bumped heads a little bit[,]” and that J.J. “had an attitude[.]” She recounted that, on at least two occasions, J.J. ran away from the home, and, after the second time, she would not allow

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<sup>2</sup> Apparently there were other CHOP members who came forward with allegations of abuse and encouraged J.J. to do likewise. There was no evidence before the court that the additional allegations involved Jackson.

<sup>3</sup> The State’s additional witnesses were two Prince George’s County Police Department officers with experience in the investigation of allegations of child sexual abuse who testified in considerable detail about their review and investigation of the Jackson case. As their evidence is not implicated in the issue before us, we need not provide a detailed recitation.

her to return because of the “tension.” Crystal testified that, on one occasion after J.J. moved out, J.J. called Crystal and disclosed that she had “made a pass” at Jackson but that “nothing happened.”

The issue before us then arose on the State’s cross-examination of Crystal. The prosecutor asked Crystal if either J.J. or Jackson had told her about their relationship. Crystal denied having received any such information. Shortly thereafter, the following colloquy ensued:

[STATE]:            If your husband said today that – if he were to tell you that there was a relationship between the two of them that was sexual, do you believe that he would be lying?

[DEFENSE]:        Objection.

THE COURT:        Basis, counsel?

[STATE]:            May we confer briefly?

THE COURT:        Okay.

[STATE]:            I can rephrase it.

If the detective told you that your husband had told them that he had told you – hold on a second. I apologize. That’s coming out all wrong. Let’s try this again.

If your husband had told you that he had told a detective that he had had sexual contact with [J.J.] at sometime, would he be lying about that?

[DEFENSE]:        Objection.

THE COURT:        Come on up.

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

[DEFENSE]: Asking one witness to opine on the truthfulness of another person is clearly improper. They can't do that. I mean, it's an improper question. You're not allowed to ask somebody whether somebody else is lying or not.

THE COURT: They have different testimonies. I mean, I agree. I'm going to sustain the objection.

At that point, the bench conference concluded, and the State resumed its examination of Crystal on a different line of questioning. Aside from sustaining defense counsel's objection at the bench, the court did not take any further action, nor did the court announce its ruling to the jury. Defense counsel did not request any additional relief.

## DISCUSSION

### *Parties' Contentions*

Jackson asserts that reversible error occurred when the prosecutor asked Jackson's wife whether she believed that Jackson might lie. Jackson further argues that those types of "were-they-lying" questions are impermissible as a matter of law. Moreover, he argues the questions themselves were prejudicial and that, consequently, the court should have taken additional remedial action beyond merely sustaining defense counsel's objection at the bench.

The State responds that the issue was waived because, after the court sustained defense counsel's objection, Jackson did not request any other relief. The State further contends that, for the same reason, the court did not err. Finally, the State argues that, even if the court did err, such error was harmless because: Crystal never answered the questions;

Jackson testified that he told his wife about the affair with J.J.; and the trial court later instructed the jury that it “must not speculate as to the possible answer.”

### *Analysis*

#### **(1) The “were-they-lying” questions**

“In a criminal case tried before a jury, a fundamental principle is that the credibility of a witness and the weight to be accorded the witness’ testimony are solely within the province of the jury.” *Hunter v. State*, 397 Md. 580, 588 (2007) (quoting *Bohnert v. State*, 312 Md. 266, 277 (1988)). Indeed, the Supreme Court of Maryland “has repeatedly held that in a criminal trial a court may not permit a witness to express an opinion about another person’s credibility.” *Walter v. State*, 239 Md. App. 168, 184 (2018). “Whether a witness on the stand personally believes or disbelieves testimony of a previous witness is irrelevant, and questions to that effect are improper, either on direct or cross-examination.” *Hunter*, 397 Md. at 589 (quotation marks and citations omitted). “Therefore, it is the well established law of this State that issues of credibility and the appropriate weight to give to a witness’s testimony are for the jury and it is impermissible, as a matter of law, for a witness to give an opinion on the credibility of another witness.” *Id.* at 589.

In addition to being impermissible as a matter of law, “were-they-lying” questions can be improperly argumentative. As the Supreme Court of Maryland explained in *Hunter*:

Returning to the present case, [the defendant] was asked five questions that put him in a position of characterizing the testimony of two other witnesses. He was asked five “were-they-lying” questions. These questions were impermissible as a matter of law[.] . . . Moreover, the questions were overly argumentative. They created the risk that the jury might conclude that, in order to acquit [the defendant], it would have to find that the [witnesses] lied. The questions were further unfair because it is

possible that neither the [defendant] nor the [witnesses] deliberately misrepresented the truth. These questions forced [the defendant] to choose between answering in a way that would allow the jury to draw the inference that he was lying or taking the risk of alienating the jury by accusing the [witnesses] of lying. Therefore, the trial court erred in allowing the State to ask [the defendant] “were-they-lying” questions. When prosecutors ask “were-they-lying” questions, especially when they ask them of a defendant, they, almost always, will risk reversal.

*Id.* at 595-96.

Here, the prosecutor asked Jackson’s wife, a defense witness, if she thought Jackson “would be lying” if he told her that he and J.J. had a sexual relationship. The court sustained a defense objection, whereupon the prosecutor, purporting to “rephrase it,” asked Jackson’s wife “would [Jackson] be lying” if he told her that he had told the police that he had sexual contact with J.J. Clearly, both questions were of the “were-they-lying” category and were, therefore, impermissible as a matter of law.

In addition, the questions were improperly argumentative. The questions were impossible to answer in any meaningful way, as they required the witness, Jackson’s wife, to hypothetically assess Jackson’s truthfulness regarding two statements he never actually made. That is, the prosecutor was essentially asking Crystal to surmise as to whether Jackson would lie if he were to make those statements at some point in the future. The questions were also unfair because any answer would have suggested that either Jackson or Crystal, both defense witnesses, had deliberately misrepresented the truth. Had Crystal answered the questions in the affirmative, she would have been insinuating that Jackson was a liar. Conversely, had Crystal answered in the negative, the jury could have inferred that Jackson had told Crystal about the affair, which would have contradicted her earlier



testimony in which she claimed that neither Jackson nor J.J. had told her about their relationship.

As noted, the State does not dispute that the questions were impermissible. Rather, the State contends that there was no error because the trial court sustained defense counsel’s objection and defense counsel did not ask for any further relief. Jackson, on the other hand, insists that the court did not do enough to alleviate the prejudice caused by the prosecutor’s questions. The issue here, then, is whether the court’s handling of the matter was appropriate under the circumstances.

On that point, we find our decision in *Fryson v. State*, 17 Md. App. 320 (1973), to be instructive. In that case, the prosecutor told the jury during rebuttal argument that the defendant “would ‘be put on probation’” if found guilty and that the court had “access to ‘plenty of parole officers, and social workers and things like that.’” *Id.* at 323. The defendant immediately objected, and the court sustained the objection. *Id.* at 323-24. The defendant did not ask for any additional relief, and the court did not take any additional action. *Id.* On appeal, we held that, not only was the prosecutor’s remark “highly prejudicial,” but the court’s failure to act, beyond merely sustaining the defendant’s objection, constituted reversible error. *Id.* at 324-27. We explained:

In the instant case, we think there is a substantial likelihood that the jury was prejudiced by the prosecutorial remarks concerning probation and parole. The argument, as made by the prosecutor, may have led the jury to conclude that although the evidence might be weak, no real harm could be done to the [defendant] because he would be placed on probation and thus receive some form of beneficial supervision.

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Under the circumstances of this case, the sustaining of an objection to the egregious remarks, standing alone, fell short of curing the deleterious effect that the ill-considered comments may have had on the jury. Not only should the objection have been sustained, but the trial judge should have taken immediate remedial action by striking the remarks and admonishing the jury to disregard them. It was not enough for the trial court to simply do all he was requested to do. Trial judges are under an obligation to afford an accused a fair and impartial trial. Even absent an objection to improper jury argument, the judge should exercise his authority to maintain strict control over the trial in order to protect the fair and unprejudicial workings of judicial proceedings.

*Id.* at 326-27 (quotation marks and internal citation omitted).

We find support in *Fryson*; thus, we hold that the trial court erred in failing to take additional remedial action beyond sustaining counsel’s objection at the bench and without further communication to the jury. We conclude that, given the clear impropriety in the prosecutor’s questions and the overly argumentative manner in which they were presented, the court was required to, at the very least, state its ruling on the record so that the jury would be made aware of the prosecutor’s clear transgression.<sup>4</sup> As was the case in *Fryson*, the court’s efforts fell short of curing the deleterious effect that the prosecutor’s questioning may have had on the jury. In fact, the court’s actions in the instant case were even less substantial than the actions we found to be insufficient in *Fryson*, as the objection in that case was sustained within the hearing of the jury. The prosecutor’s actions in the instant

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<sup>4</sup> The trial court’s failure to take any action before the jury distinguishes the instant case from *Morales v. State*, 219 Md. App. 1 (2014), and *Hyman v. State*, 158 Md. App. 618 (2004), two cases on which the State relies. In each of those cases, the trial court remedied the error in the presence of the jury. *E.g.*, *Morales*, 219 Md. App. at 12; *Hyman*, 158 Md. App. at 630.

case were egregious, and those actions likely had a discernible effect on Jackson’s right to a fair and impartial trial. It was not enough for the court to do only what was requested.

**(2) Was the error harmless?**

Having decided that the trial court erred, we now address the State’s argument that the court’s error was harmless.

“Once error is established, the burden is on the State to show that it was harmless beyond a reasonable doubt.” *Hunter*, 397 Md. at 596 (quoting *Denicolis v. State*, 378 Md. 646, 658-59 (2003)). That is, the State must “demonstrate, beyond a reasonable doubt, that the error did not contribute to the verdict[.]” *Id.* (quotation marks and citation omitted). In evaluating whether the State has met that burden with respect to improper comments or arguments by the prosecutor, we look to the weight of the evidence against the defendant, the severity of the prosecutor’s comments or arguments, and the measures taken by the trial court to cure any potential prejudice. *Jones v. State*, 217 Md. App. 676, 694 (2014).

Here, the State contends that the court’s error was harmless because Jackson’s wife never answered the disputed questions and because Jackson admitted that he told his wife about the affair with J.J. The State also notes that the court instructed the jury that it “must not speculate as to the possible answer.” We are not persuaded.

First, it is well-settled that questions alone can impeach and that a factfinder can be influenced solely by how a question is posed to a witness. *Calloway v. State*, 414 Md. 616, 637-38 (2010). Regardless, the questions alone were, as discussed, improper and prejudicial such that a response from Jackson’s wife was unnecessary for their adverse effect to be felt by the jury. *See Elmer v. State*, 353 Md. 1, 13-14 (1999) (holding that a

question that implies an unsupportable factual predicate is improper because “whether the question is answered or not, the jury has been alerted to the fact which the question assumes”).

For that same reason, the prejudicial effect of the prosecutor’s questions was not diminished by Jackson’s purported admission to his wife about the affair. If anything, Jackson’s admission cast an even greater shadow over Crystal’s credibility given that she testified that Jackson never disclosed the affair to her. Because the case against Jackson was essentially a credibility battle between himself and J.J., we are not convinced beyond a reasonable doubt that the court’s error in no way contributed to the verdict.

Finally, we find the State’s reliance on the trial court’s instruction that the jury “must not speculate as to the possible answer,” to be misplaced. The full instruction, which was given as part of the court’s general instructions to the jury, read as follows: “When I did not permit the witness to answer a question, you must not speculate as to the possible answer.” That instruction was given well after the prosecutor posed the two impermissible questions, and the court did nothing to signal to the jury that the instruction was meant to apply to those questions.

Even so, the instruction was likely ineffective given the circumstances under which the improper questions were posed. Because the court did not communicate its ruling to the jury, it cannot be said that the court “did not permit the witness to answer [the] question,” which was an express prerequisite to the court’s instruction that the jury “must not speculate as to the possible answer.” Thus, there is no certainty that the court’s instruction was in reference to the prosecutor’s “were-they-lying” questions. *See Carter v.*

*State*, 366 Md. 574, 589 (2001) (“If a curative instruction is given, the instruction must be timely, accurate, and effective.”). As such, the only relevant remedial measure taken by the court was its sustaining of defense counsel’s objection at the bench which, as we have concluded, was wholly insufficient to cure the clear prejudice inherent in the prosecutor’s improper questioning.

In sum, we hold that the trial court erred in failing to take additional remedial action after the prosecutor posed two “were-they-lying” questions to a defense witness. Given the inherent impropriety of the questions and the resulting prejudice, we also hold that the court’s error was not harmless. Accordingly, we reverse.

**JUDGMENT OF THE CIRCUIT COURT  
FOR PRINCE GEORGE’S COUNTY  
REVERSED; THIS MATTER IS  
RETURNED TO THAT COURT FOR  
FURTHER APPROPRIATE  
PROCEEDINGS. COSTS TO BE PAID BY  
PRINCE GEORGE’S COUNTY.**