Circuit Court for Montgomery County
Case No. C-15-CR-22-000247

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 346

September Term, 2023

TREMAYNE MIDDLETON DORSEY

v.

STATE OF MARYLAND

Beachley,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 28, 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).

Tremayne Dorsey was convicted by a jury in the Circuit Court for Montgomery County of first-degree murder, home invasion, two counts of first-degree assault, and other charges related to the events surrounding the murder of James Beverly, Jr. Mr. Dorsey noted this timely appeal, presenting the following question for our review:

> Did the trial court err by precluding the defense from making a proper argument at closing and by permitting the State to make improper arguments at closing?

We shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

Although Mr. Dorsey focuses on alleged errors that occurred during the attorneys' closing arguments, we shall provide a detailed recitation of the relevant evidence so as to provide context for the appellate arguments. Mr. Dorsey's girlfriend, Danielle Allen, had been living in an apartment with Jamette Beverly and her father, James Beverly, Sr., since February of 2021. Mr. Dorsey visited her at the apartment and frequently spent the night. Jamette and James Sr. both testified that they saw Mr. Dorsey at the apartment at least every other day between April and November 2021. After James Jr. was released from jail in May of 2021, he also frequently stayed at the apartment, although he did not live there.

On November 25, 2021, Thanksgiving Day, Jamette asked Ms. Allen and Mr. Dorsey to vacate the apartment. Ms. Allen and Mr. Dorsey left without taking most of their belongings.

According to Mr. Dorsey, three days later, on November 28, 2021, Ms. Allen went to stay with a relative in Washington, D.C., and Mr. Dorsey visited with his aunt in Colonial

Heights, Virginia (a town south of Richmond). He testified that he did not return to Maryland until he was arrested in late December.

Jamette testified that on the night of November 29, 2021, she informed Ms. Allen that she could pick up her belongings from the apartment. Jamette and her brother James Jr. moved Ms. Allen and Mr. Dorsey's belongings outside and waited for Ms. Allen to arrive to pick them up. At 12:45 a.m. on November 30, 2021, Jamette and James Jr. took their dog for a walk. Upon their return, they noticed that Ms. Allen and Mr. Dorsey's belongings were gone. Mr. Dorsey testified, however, that he did not pick up his belongings that night. Staying at the apartment that night were: Jamette, James Sr., James Jr., James Jr.'s 8-month-old daughter, and Saja Menafee (a close friend of Jamette and James Jr.).

Shortly after 8:30 a.m. on November 30, 2021, Ms. Menafee left the apartment to go to work. A person wearing a mask then grabbed her from behind, put a gun to her back, and told her to return to the apartment. Ms. Menafee knocked on the door, and when no one answered, the masked person tried forcing the door open. At that point, James Jr. opened the door and the masked person shot him in the head, killing him. The shooter and Ms. Menafee entered the apartment and encountered Jamette Beverly. The shooter said to Jamette, "I swear to God Jamie, I'll kill you." Jamette fought with the shooter, pulling his mask down in the struggle, at which point she could see all of the shooter's face. During this struggle, James Beverly, Sr. exited a bedroom. Upon seeing James Sr., the

shooter stated, "you don't want to get involved in this, because I'll kill you too, old man," and James Sr. returned to the bedroom.

Jamette and Ms. Menafee testified that the shooter at one point was asking for a specific backpack. In her statement to police, Jamette said that Ms. Menafee was running around the apartment bringing different backpacks to the shooter, but at trial she testified that she did not remember making that statement. Ms. Menafee did not testify to showing any backpacks to the shooter. Jamette also testified that the family's dog, Foe, "was trying to charge [the shooter], but . . . the whole time he kept changing his voice calm, because Foe recognized him. Like so, Foe wouldn't attack him, he came like it's okay Foe, it's okay Foe, and calming him down." Shortly thereafter, the shooter left, and Jamette and Ms. Menafee called 911.

When police arrived and questioned the witnesses, Jamette, Ms. Menafee, and James Sr. all separately named Tremayne Dorsey as the shooter. Police arrested Mr. Dorsey on December 22, 2021, at his family's home in Colonial Heights, Virginia.

Most of the witnesses had varying degrees of certainty regarding their ability to perceive and remember the shooter. Jamette testified to having glaucoma and keratoconus, a degenerative eye disease resulting in blurry vision. Jamette testified that her vision is "not the same all the time," and she has "good days and bad days," and that on the day of trial, she could not see the details of a person's face if he or she were more than six inches away. Her identification of Mr. Dorsey as the shooter was based primarily on his hair and voice, but she also testified that she saw his face when she pulled his mask down during

their struggle. She also told police that she remembered the way Mr. Dorsey smelled. Jamette was very sure of her identification, both on the day of the shooting and at trial. She told police within a half hour of the shooting that the shooter was Mr. Dorsey: "I promise, and I know his name, Tremayne Dorsey." At trial, she stated, "There's no doubt" that Mr. Dorsey was the shooter, and "I know it was him. He said my name."

James Sr. was 75 years old at the time of the shooting, and has hearing problems. Indeed, at trial, the attorneys needed to type their questions for him. He was not wearing a hearing aid during the shooting. He also testified that his "memory ain't as good as it was," although he had not been diagnosed with anything related to memory problems. His identification of Mr. Dorsey as the shooter was based on his hair and clothing, as well as general familiarity with Mr. Dorsey after having lived with him for several months. Although he told police the day of the shooting that he was not sure if Mr. Dorsey was the shooter, at the time of trial he was confident in his identification.

Because the shooter was behind her, Ms. Menafee did not see the assailant until she was inside the apartment. She testified that she had only met Mr. Dorsey "probably" more than three times. Furthermore, her in-court identification of Mr. Dorsey was difficult. She first stated that he was wearing a black sweater, then that he was wearing a suit with a white shirt, and finally that he was wearing a suit with a blue shirt. Ms. Menafee responded affirmatively to the court's questions about whether the person she was identifying had facial hair and whether he was wearing glasses. Nevertheless, she testified that she

recognized Mr. Dorsey's voice. In addition, she told police within a half hour of the shooting, "Tremayne shot him."

In addition to the witnesses' identification of Mr. Dorsey, the State produced evidence concerning a purple backpack found in the apartment. Inside the backpack were three loaded handguns, additional ammunition, multiple bags of suspected drugs, $377 in cash, a scale, and other drug paraphernalia. Mr. Dorsey testified that the backpack belonged to James Jr. and he (Mr. Dorsey) was not aware of the contents of the backpack. Jamette told police the day of the shooting that the shooter "wanted [her] brother's backpack," but at trial testified that she did not know if the purple backpack belonged to James Jr. James Sr. testified that he did not know if the backpack belonged to James Jr.

The State also introduced evidence taken from a cell phone associated with Mr. Dorsey and Ms. Allen. Mr. Dorsey testified that he lost a cell phone with a phone number ending in 8668 on November 26, 2021, the day after he vacated the apartment. However, the State introduced evidence of text messages and phone calls between the 8668 number and a cell phone belonging to Ms. Allen between November 27, 2021, and November 30, 2021. Furthermore, the State introduced numerous cell phone tower connections recorded on November 30, 2021, indicating that the phone travelled from Washington, D.C. to an area near the location of the shooting, and that the phone was likely turned off at the time of the shooting.

With that background, we turn to the issues raised in this appeal. During closing arguments, defense counsel argued that the backpack belonged to James Jr. and strongly

suggested that James Jr. was involved in drug dealing. Defense counsel argued that the police

> could have looked through James Beverly[, Jr.'s] cell phone for his text messages to see . . . if he had been selling the drugs in the apartment, buying those drugs in the apartment; and more importantly, to see if he had any disputes with the people that he was buying and selling the drugs in the apartment.

Defense counsel further argued that, because Jamette could not see the shooter well, she was "filling in and adding things in order to hold someone accountable for her brother's death." According to defense counsel, James Sr. and Ms. Menefee were "deferring to" Jamette's identification of Mr. Dorsey because she was in contact with the shooter the longest, and the three often spoke to each other about the incident, creating "a feedback loop or echo chamber to reinforce their mistaken identifications." Defense counsel continued:

> [DEFENSE COUNSEL]: And because Jamette has such poor vision, she's using other parts of what she knows to sort of fill in the blanks and sort of add, search for explanations as to why something like this happened. So she looks for the things that happened in her life, where she had to put out Ms. Allen, or ask Ms. Allen and Mr. Dorsey to leave. That's something that was obviously important to her and involved her as a reason (unintelligible).
>
> But it's not clear at all that that had anything to do with James Beverly, Jr. But it also explains some, why the State should have done more, they should have done more with his cell phone because it's quite, it's certainly possible that because of Mr. Beverly[, Jr.'s] activities with the drugs and the guns, that he had other (unintelligible).
>
> [THE STATE]: Objection.

THE COURT: Counsel, stick with the facts. Go ahead.

[DEFENSE COUNSEL]: Her brother doesn't live there. There's no evidence that she knows all about his life, all of his disputes. So she is searching for meaning within her own life to come up with the reason why this would happen to her brother, instead of perhaps looking at his life and the decisions he's made and the people he's been involved with for the (unintelligible).

[THE STATE]: Objection.

THE COURT: Again, your memory of what the facts are and what the testimony was will be what rules, not closing arguments, as I've told you in the instructions.

Defense counsel also discussed the possibility of Antera Lewis, the mother of one of James Jr.'s children, being the shooter because in April 2021, Jamette obtained a protective order against Ms. Lewis after she had threatened to kill Jamette's "whole family."

In rebuttal, the State responded to defense counsel's focus on the contents of the backpack:

[THE STATE]: Who cares whose backpack this is? Either way, it's not great for him. If it's James Beverly[, Jr.'s] backpack, and he knows him, and he lived there, and he knows what's in the backpack or a backpack that James Beverly[, Jr.] has -- he immediately knew whose backpack it was when [defense counsel] showed him -- if he knows what's in it, why is that good for him?

If it was his, if it was something that was left behind when he [was] kicked out, and all of his stuff got put on the street the night before, isn't that even more reason for him to want to get it back? Think about these things. Either way, it's not great for him.

I have heard, around the courthouse, there's this idea that if you don't [have] the facts, you argue the law --

[DEFENSE COUNSEL]: Objection.

[THE STATE]: -- if you don't have the law --

THE COURT: Overruled.

[THE STATE]: -- you argue the facts.

THE COURT: It's argument.

[THE STATE]: And if you don't have either, you sling mud.

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: Why does it matter that James Beverly[, Jr.] had been to jail? Why does it matter that there was a backpack --

[DEFENSE COUNSEL]: Objection.

[THE STATE]: -- which may or may not have been his --

THE COURT: Overruled.

[THE STATE]: -- that was in the house, that had guns or drugs in it? Why are they telling you this? What does it matter? What's it prove or disprove? Nothing. They're just trying to muddy him up. For what reason? Because that discounts his life? Because that, for whatever reason, suggests to you that we shouldn't care about him, that we shouldn't care about the tragedy that this family went through?

It doesn't matter whose backpack that was. What matters is three people told you exactly who did this.

The jury found Mr. Dorsey guilty of first-degree murder, home invasion, two counts of first-degree assault, and other related charges. Appellant then noted this timely appeal.

DISCUSSION

Mr. Dorsey argues that the court erred in "effectively sustain[ing]" the State's objection to defense counsel's closing argument, and in overruling his objection to the State's closing argument. He further argues that "the State cannot now show, beyond a reasonable doubt, that the errors had no effect on the jury's verdict."

"Because 'a trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case,' the exercise of its broad discretion to regulate closing argument will not be overturned 'unless there is a clear abuse of discretion that likely injured a party.'" *Carroll v. State*, 240 Md. App. 629, 663 (2019) (quoting *Anderson v. State*, 227 Md. App. 584, 589–90 (2016)). If the court abused its discretion, "the State bears the burden of proving that an error is harmless and must prove beyond a reasonable doubt that the contested error did not contribute to the verdict." *Jones v. State*, 217 Md. App. 676, 694 (2014) (quoting *Lee v. State*, 405 Md. 148, 174 (2008)).

"[A]ttorneys are afforded great leeway in presenting closing arguments to the jury." *State v. Newton*, 230 Md. App. 241, 254 (2016) (quoting *Pickett v. State*, 222 Md. App. 322, 329 (2015)). However, "there are limitations upon the scope of a proper closing argument." *Id.* "[C]ounsel should not be permitted by the court, over proper objection, to state and comment upon facts not in evidence or to state what he [or she] could have proven." *Id.* (quoting *Pickett*, 222 Md. App. at 330). Closing arguments should be

"confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments [of] opposing counsel." *Id.* (quoting *Lee*, 405 Md. at 163). Additionally, closing argument may not "appeal to the passions or prejudices of the jurors." *White v. State*, 125 Md. App. 684, 702 (1999) (citing *Wilhelm v. State*, 272 Md. 404, 445 (1974) (abrogated on other grounds by *Simpson v. State*, 442 Md. 446 (2015)).

Defense Counsel's Closing Argument

Mr. Dorsey argues that the court abused its discretion by implicitly sustaining the State's objections to defense counsel's argument that, because James Jr. appeared to be involved in drug dealing, someone that he knew through his drug-related activities may have been the murderer. He asserts that defense counsel's argument was based on a reasonable inference from the evidence (the backpack containing guns, drugs, cash, and drug paraphernalia) and common knowledge (that drug-dealing and violence go hand-in-hand).

The State concedes that, "[t]o the extent that claim sought to raise doubt for jurors about possible other suspects, it was arguably an appropriate (if poorly reasoned) hypothesis." However, the State responds that defense counsel was "arguing facts not in evidence" by referencing "people [James Jr. has] been involved with," and relying on multiple layers of assumptions based on the contents of the backpack.

"Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom[.]" *Warren v. State*, 205 Md. App. 93, 132 (2012) (quoting *Mitchell v. State*, 408 Md. 368, 380 (2009)). Counsel "may

also 'argue to the jury—even though evidence of such facts has not been formally introduced—matters of common knowledge or matters of which the court can take judicial notice.'" *Jones*, 217 Md. App. at 691 (quoting *Wilhelm*, 272 Md. at 438,). However, as we stated above, "counsel should not be permitted by the court, over proper objection, to state and comment upon facts not in evidence or to state what he [or she] could have proven." *Newton*, 230 Md. App. at 254 (quoting *Pickett*, 222 Md. App. at 330). Closing arguments should be "confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments [of] opposing counsel." *Id.* (quoting *Lee*, 405 Md. at 163).

Mr. Dorsey places much emphasis on the "intimate connection between narcotics and guns," *Norman v. State*, 452 Md. 373, 397 (2017) (quoting *Burns v. State*, 149 Md. App. 526, 531 (2003)), to argue that it was a reasonable inference that James Jr. may have been killed by someone involved with his drug dealing. We agree with the State that defense counsel's theory that an associate of James Jr.'s in the drug trade killed him was "arguably . . . appropriate," though the actual evidence supporting this theory was sparse. Despite the limited evidence on this point, defense counsel was permitted to articulate his hypothesis to the jury:

> The State and the police ultimately guess it's a bag of guns and drugs, when they get James Beverly[, Jr's] cell phone, which is a treasure trove of information. They could have tested those guns to see if they've been involved in criminal activity, and they could have looked through James Beverly[, Jr.'s] cell phone for his text messages to see, and look through to see if he had been selling the drugs in the apartment, buying those drugs in the apartment; and *more importantly, to see if he had any disputes with the people that he was buying and selling the drugs in the apartment*.

(Emphasis added). Shortly thereafter, defense counsel asserted that the police "should have done more with [James Jr.'s] cell phone" because of James Jr.'s "activities with the drugs and the guns," and suggested that Jamette, in her quest to identify the assailant, should have looked at her brother's life "and the decisions he's made and the people he's been involved with." To be sure, the State objected to both of these latter comments, but the court did not strike the remarks, nor did it instruct the jury not to consider them. Instead, the court responded with "Counsel, stick with the facts," and advised the jury to rely on their own memory of the testimony rather than closing arguments. Both responses were within the court's broad discretion in controlling closing argument, and defense counsel failed to make any specific proffer why it was necessary to allow him to further advance his argument.[1]

We therefore conclude that Mr. Dorsey was not precluded from bringing this argument to the jury and the court did not abuse its discretion by failing to expressly overrule the State's objection.

The State's Closing Argument

Mr. Dorsey next argues that the court abused its discretion by overruling his objections to the State's argument that defense counsel was trying to "sling mud" by arguing that James Jr. was involved in drug dealing. He argues that these comments were

[1] Furthermore, the court's comments did not unfairly prejudice Mr. Dorsey. Although the comments have a slight negative connotation, it was not such that the jury would believe it should disregard not only the argument the State objected to, but also the argument defense counsel made earlier without objection.

improper because they "obviously ran the risk of inflaming the jury's passions[,]" and "may have caused the jury to convict [Mr. Dorsey] based upon sympathy toward the Beverlys and antipathy toward the defense[.]"

The State responds that the prosecutor's rebuttal closing argument was merely a response to defense counsel's improper argument and did not stray outside the bounds of what this Court has determined to be appropriate comment.

"[T]he fundamental limitation upon the remarks of attorneys is that they may not appeal to the passions or prejudices of the jurors." *White*, 125 Md. App. at 702 (citing *Wilhelm*, 272 Md. at 445). Furthermore, "a prosecutor may not impugn the ethics or professionalism of defense counsel in closing argument." *Smith v. State*, 225 Md. App. 516, 529 (2015).

In *Smith v. State*, the prosecution "twice characterized Smith's case as consisting of 'smoke and mirrors.'" *Id.* at 528. Smith did not object to these comments, but urged this Court to review the comments for plain error. *Id.* at 528–29. We concluded that the "closing argument was not improper—the 'smoke and mirrors' comments were clearly directed to defense counsel's argument and did not impute impropriety or unprofessional conduct to defense counsel." *Id.* at 529.

In *Warren v. State*, we stated: "The prosecutor's calling appellant's counsel's arguments 'red herrings' was 'oratorical conceit or flourish' that was well within the wide latitude granted to counsel in summation." 205 Md. App. at 138 (quoting *McFadden v. State*, 197 Md. App. 238, 255 (2011), disapproved on other grounds by *State v.*

Stringfellow, 425 Md. 461 (2012)). Warren also challenged the prosecutor's use of the word "idiot" when discussing defense counsel's arguments. *Id.* The prosecutor commented that defense counsel's argument that no robbery occurred was

> A lot of sound and fury. I'm sure you've heard that phrase before. Well, that's actually from a quote. It's from Shakespeare, from Macbeth, and the full quote is: It is a tale . . . and I'm quoting now . . . it is a tale told by an idiot full of sound and fury signifying nothing. That's what the entire argument by [appellant's counsel] was. Didn't mean a thing. Means nada. Nothing. Not a dag on thing.

Id. at 138–39 (alterations in original). We first noted that Warren's counsel failed to object to the prosecutor's comments, and therefore did not preserve the argument for appeal. *Id.* at 139. Aside from the lack of preservation, we stated: "reading the remark in context, the prosecutor argued that appellant's counsel's contention that no robbery occurred was 'sound and fury.' The prosecutor sought to rebut appellant's counsel's contention that no robbery took place, rather than argue that appellant's counsel was an 'idiot.'" *Id.* at 139. We concluded that, "given the prosecutor's obvious attempt to rebut appellant's counsel's contention that no robbery occurred, we perceive no error warranting reversal." *Id.* at 140.

Conversely, in a footnote in *Carrero-Vasquez v. State*, we noted that the prosecutor's comment in closing argument was improper. 210 Md. App. 504, 510 n.4 (2013). The prosecutor there argued that defense counsel's "job is to sling mud and let's see what sticks. Sort of smoke and mirrors but they have to count on a couple things. That you all aren't that bright and that you're easily confused." *Id.* Beyond citing to *Beads v. State*, 422 Md. 1, 8 (2011), where a similar comment was determined to be improper, the

short footnote provides limited insight into the conclusion that the prosecution's comments were improper.

In *Beads*, the prosecutor stated in closing that "unlike the State, the Defense's specific role in this case is to get their Defendants off. . . . It is their job, and they do it well, to throw up some smoke, to lob a grenade, to confuse." *Id.*. The Supreme Court concluded that "[t]he prosecutor's comments about the role of defense counsel, although inappropriate, are unlikely to have 'misled or influenced the jury to the prejudice of the accused.'" *Id.* at 11 (quoting *Degren v. State*, 352 Md. 400, 431 (1999)). No further explanation was given as to why the comments were inappropriate. *Id.*

It appears that the key difference between the prosecutors' comments in *Carrero-Vasquez*/*Beads* and *Smith*/*Warren* relates to whether the comments were directed toward defense counsel in general (thus challenging the entire concept and viability of a criminal defense) or toward a specific argument made by defense counsel (thus questioning only that argument). To undermine defense counsel's ethics or professional integrity is improper; to undermine defense counsel's argument is not. In this case, the State's comments were directed toward a specific argument made by defense counsel.

Although on appeal Mr. Dorsey challenges both the State's comment that defense counsel was "sling[ing] mud" and the comment that defense counsel was trying to "discount[James Jr.'s] life," he only objected to the first part of the State's argument. The court could not have abused its discretion in allowing argument to be made that was not objected to.

As to the State's first comment, "if you don't [have] the facts, you argue the law . . . if you don't have the law . . . you argue the facts. . . . And if you don't have either, you sling mud[,]" we conclude that this was not outside the realm of appropriate closing argument. These remarks are similar to the "smoke and mirrors" and "red herrings" arguments in *Smith* and *Warren*. We held that those remarks were not improper because they were directed toward defense counsel's arguments. *Smith*, 225 Md. App. at 529; *Warren*, 205 Md. App. at 140. Here, the State's comment about defense counsel "sling[ing] mud" concerned the focus defense counsel placed on the possibility that the assailant targeted James Jr. because James Jr. was involved in drug dealing, and did not suggest that defense counsel was acting unethically or unprofessionally. Furthermore, even if Mr. Dorsey's challenge to the State's "discounting his life" argument were preserved, it was not an improper argument. The State was not challenging defense counsel's ethics or professionalism, but was responding to a specific argument made by defense counsel. We therefore conclude that the court did not abuse its discretion by overruling Mr. Dorsey's objection to the State's rebuttal argument.[2]

[2] In a footnote, Mr. Dorsey asserts that a sarcastic comment made by the State was improper and the court's failure to sustain his objection to it was unfairly prejudicial. The State said, "there was a small experiment with [defense counsel] about how far [Jamette] could see, which I'm sure was really comfortable for her." Aside from arguing that this comment "denigrat[ed] defense counsel," and "risked inflaming the jury's passions," Mr. Dorsey does not explain how this comment went beyond the bounds of appropriate closing argument. We cannot conclude that this isolated comment "inflamed the jury's passions" against defense counsel to such an extent that the jury ignored the strong evidence presented during trial.

CONCLUSION

For the reasons stated, we affirm the judgments of the Circuit Court for Montgomery County.

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