Circuit Court for Wicomico County
Case No.: C-22-CR-20-000439

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 453

September Term, 2022

ALAN M. DONOWAY

v.

STATE OF MARYLAND

Kehoe,
Ripken,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Ripken, J.

Filed: March 6, 2023

* 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.

In March of 2022, a jury in the Circuit Court for Wicomico County convicted Alan Donoway ("Donoway"), appellant, of several offenses related to the illegal possession of a firearm and ammunition.[1] The court ordered an aggregate sentence of 16 years incarceration.[2] Donoway noted this timely appeal. For the reasons to follow, we shall affirm.

ISSUES PRESENTED FOR REVIEW

Donoway presents the following questions for our review:[3]

I. Whether the circuit court erred when it limited the cross-examination of a State's witness.

II. Whether the circuit court erred when it allowed the State to introduce inadmissible bad acts/other crimes evidence.

III. Whether the circuit court erred when it limited Donoway's closing argument.

[1] Specifically, a jury convicted Donoway of the following offenses: (1) possession of a firearm by convicted felon, Md. Code Ann., Public Safety ("PS") § 5-133(c); (2) possession of a firearm by a convicted felon, Criminal Law ("CL") § 5-622; (3) illegal possession of a regulated firearm, PS § 5-133(b); (4) wearing, carrying, or transporting a loaded handgun on one's person, CL § 4-203(a)(1)(v); (5) wearing, carrying, or transporting a loaded handgun in a vehicle, CL § 4-203 (a)(1)(v); and (6) illegal possession of ammunition, PS § 5-133.1.

[2] The court sentenced Donoway to 15 years of incarceration on the first offense, the first five years to be served without parole, and a consecutive one-year term of incarceration on the last offense. Donoway's remaining convictions were either merged or vacated.

[3] Rephrased from:

I. Did the circuit court err by impermissibly limiting the cross-examination of a key State's witness?
II. Did the circuit court err by permitting the State to introduce forbidden bad-acts/other-crimes evidence?
III. Did the circuit court err by impermissibly limiting defense counsel's closing argument?

FACTUAL AND PROCEDURAL BACKGROUND

The State argued at trial that on the afternoon of July 15, 2020, Donoway illegally possessed a handgun and ammunition seized from a car that he was driving. Amanda Whilman ("Whilman") and several police officers from the Wicomico County Sheriff's Office testified for the State. The defense contended that Donoway was not in possession of the gun and ammunition seized from his car. Donoway called no witnesses. The following facts are drawn from the evidence presented at Donoway's trial.

In July of 2020, Whilman lived at the Traveler's Motel in Delmar, Maryland with her two children. Donoway is the father of Whilman's youngest child, who was approximately five years old at the time. On the morning of the incident, Whilman and Donoway were Facetiming[4] when Donoway asked Whilman if there was a woman at the motel named Tamara, stating that the woman had followed him. Whilman replied that the woman was her neighbor at the motel. Donoway then displayed a handgun and told Whilman that he planned to go to the motel and not to let the children outside. While they were Facetiming, Whilman took two screen shots of Donoway with the gun. When the conversation ended, Whilman showed the screenshots of Donoway to the motel manager.

The motel manager contacted the police and sent the screen shots to a Detective with the Wicomico County Sheriff's Office, who requested help from fellow officers in locating Donoway. Approximately an hour later, a Sergeant with the same Sheriff's Office

[4] Facetiming refers to Apple Inc.'s video conferencing feature that allows iPhone and iPad users to communicate via video and audio calls. *See* Facetime, App Store Preview, https://apps.apple.com/us/app/facetime/id1110145091 (last visited Feb. 28, 2023).

initiated a traffic stop of a car in which Donoway was the driver and Kim Grimes, Donoway's wife, was the front seat passenger. When the Sergeant approached the car, he saw Donoway place his hands below the dashboard. Donoway was ordered out of the car and was placed in handcuffs. A subsequent search of the car revealed a loaded Ruger 380 semiautomatic firearm with a magazine on the front passenger side floorboard near the door. The police found a second magazine containing ammunition and a cell phone in the vehicle's glove box. Neither the gun, magazines, ammunition, nor the cell phone were submitted for fingerprint or DNA analysis.

The Detective, who arrived on the scene, testified that Donoway's appearance matched the screen shots sent to him, including facial tattoos, build, and hair. Additionally, the handgun in the screenshots matched the recovered handgun—the recovered handgun and the handgun in the screenshots had the word "Ruger" on it; the magazine and grip of the recovered handgun matched that magazine and grip of the handgun in the screenshots; and the recovered handgun and the handgun in the screenshots both had the trigger guard sawed off.

Based on text and Facebook[5] messages, the police determined that the cell phone recovered from the glove compartment of the car belonged to Donoway. The police downloaded the contents of the cell phone and found an exchange from the week prior on

[5] "Facebook" is a social media networking website. *See Sublet v. State*, 442 Md. 632 (2015).

Facebook Messenger[6] between "Snow Donoway"[7] and another individual. A copy of the exchange was admitted into evidence. In the exchange Donoway wrote: "Either way I just picked up 2 380s wit matchin 30 clips so Ima keep em on me at all times brah[.]" The other individual responded: "I need a strap asap and need to know where craig stays at pls bro I'm a spank him on fb live[.]"

On cross-examination, Whilman testified that she spoke with the prosecutor in the hallway before testifying in court that day. Whilman indicated that during that conversation, she told the prosecutor that she had planned to provide testimony favorable to Donoway so he could be released from jail, but then she changed her mind because she did not want to get in trouble for lying. Whilman further testified that about a month before trial, Donoway instructed her to write a letter to the prosecutor. According to Whilman, Donoway told her what to write and said Grimes would meet with her about the letter.

In the first letter, which Grimes wrote and Whilman signed, Whilman said she had pressed charges against Donoway out of anger, and she did not want to testify against him,

[6] "Facebook Messenger" is a messaging application, which has been described as follows:

> Facebook Messenger is a mobile tool that allows users to instantly send chat messages to friends on Facebook. Facebook users can receive these messages via their computer or any other mobile or electronic device when they are logged onto their Facebook accounts. [] Facebook Messenger operates the same way mobile texting does, as only the persons sending and received the messages can view them and partake in the conversation." *State v. Wickes*, 910 N.W. 2d 554, 559 n.1 (Iowa 2018) (internal citations and quotations omitted); *see also State v. Harwood*, 238 A.3d 661, 664 n.1 (Vt. 2020) ("Facebook Messenger is the messaging application associated with the Facebook social media platform. The format of the messages is analogous to a text message.") (citation omitted).

[7] Whilman testified that Donoway goes by the nickname "Snow."

but the prosecutor was forcing her to do so. Donoway directed Whilman to write a second letter because she "messed up" the first one. In the second letter, which she wrote and signed, Whilman again said she did not want to testify against Donoway, but the prosecutor was forcing her to. She added that the screenshots she took of Donoway with a handgun were "photo-shopped." At trial, Whilman explained that she lied in the letters "[b]ecause I was trying to help my son's father get out of jail, give him another, second chance of being a father." She testified that she wrote the letters because Donoway was "constantly threatening" her to aid in his release from prison, and he told her that there was "no way I could get in trouble[.]" On cross-examination, Whilman admitted that when she was 12 years old, she filed a false police report because her father had forced her to.

The parties stipulated that the recovered handgun was operable, and Donoway was prohibited from possessing a regulated firearm. Additional facts will be included as they become relevant to the issues.

DISCUSSION

I. THE CIRCUIT COURT ACTED WITHIN ITS DISCRETION WHEN IT LIMITED THE CROSS-EXAMINATION OF A STATE'S WITNESS.

Donoway argues that the circuit court erred when it limited his cross-examination of Whilman about her conversation with the prosecutor the morning of trial. Citing *Calloway v. State*, 414 Md. 616 (2010), Donoway asserts that he should have been allowed to inquire "whether the prosecutor told Whilman that she would be in trouble if her testimony did not assist the State. [] And, by extension, the testimony served as a foundation for exploring whether Whilman expected or hoped for leniency from the

State[].” The State responds that the court properly exercised its discretion in sustaining its objection to the defense’s question on cross-examination of Whilman. The State first contends the defense’s question called for impermissible hearsay when defense counsel inquired, “[d]id the [prosecutor] tell you that you would be in trouble. . .” The State also asserts this question “was repetitive of the earlier question and harassing the witness” as Whilman previously answered that when she talked to the prosecutor, they discussed how she could be put in jail for lying.

“The Confrontation Clause of the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights guarantee a criminal defendant the right to confront the witnesses against him.” *Martinez v. State*, 416 Md. 418, 428 (2010) (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986)). These guarantees afford a defendant the right to cross-examine witnesses regarding matters that affect the witnesses’ bias, interests, or motive to testify falsely. *Pantazes v. State*, 376 Md. 661, 680 (2003). This right, however, is “not boundless.” *Id*. On the contrary, a “trial court may impose reasonable limits on cross-examination when necessary for witness safety or to prevent harassment, prejudice, confusion of the issues, and inquiry that is repetitive or only marginally relevant.” *Martinez*, 416 Md. at 428 (citing *Lyba v. State*, 321 Md. 564, 570 (1991)). The extent to which a witness may be cross-examined rests within the sound discretion of the trial court. *Pantazes*, 376 Md. at 681. Discretion is exercised by balancing the probative value of the inquiry against the unfair prejudice, “[o]therwise, the inquiry can reduce itself to a discussion of collateral matters which will obscure the issue and lead to

the [jury's] confusion." *Id*. (internal quotations omitted) (quoting *State v. Cox*, 298 Md.173, 178 (1983)).

Maryland Rule 5-616(a)(4) grants a criminal defendant the right to question a State's witness about facts that imply that "the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely[.]" Cross-examination to challenge a witness's credibility "should be prohibited only if (1) there is no factual foundation for such an inquiry in the presence of the jury, or (2) the probative value of such an inquiry is substantially outweighed by the danger of undue prejudice or confusion." *Calloway*, 414 Md. at 638 (emphasis omitted) (quoting *Leeks v. State*, 110 Md. App. 543, 557 (1996)). Relevant to the first prong is whether there was an evidentiary foundation indicating that the witness expected or hoped for leniency from the State in exchange for testimony. *See Manchame-Guerra v. State*, 457 Md. 300, 319-22 (2018). When evaluating whether there would be substantial prejudice or confusion under the second prong, "the trial court is entitled to consider whether the witness's self interest can be established by other items of evidence." *Calloway*, 414 Md. at 638.

Whilman testified on cross-examination that she spoke with the prosecutor the morning of trial and the following colloquy occurred:

> [DEFENSE COUNSEL]: What did you talk about?
>
> [WITNESS]: Just the fact that I was going to come up here and try to help my son's father become a free man so, and then I figured why do that and I could technically put myself in jail for lying.
>
> [DEFENSE COUNSEL]: Did the State tell you that you would be in trouble if you didn't say --

[THE STATE]: Objection.

[DEFENSE COUNSEL]: -- certain things?

[THE COURT]: Sustained.

We agree with the State that the question sustained was repetitive, as Whilman had just testified that when speaking to the prosecutor they talked about how she could be put in jail for lying. In our view, the jury, using their common sense, would reason that Whilman's understanding of being put in jail for lying meant that the prosecutor informed her that she "would be in trouble" if she lied. Contrary to Donoway's argument, Whilman's bias was probed and elicited. The circuit court permitted Donoway to reach the constitutional "threshold level of inquiry" to expose Whilman's motivation to testify as she did and her conflicted feelings about her testimony. There was nothing more to discover as Donoway failed to put forth any factual foundation to show further bias. Accordingly, Donoway's follow up question was repetitive and harassing because it would have required Whilman to repeat the clear testimony she had already provided.

In *Calloway*, the defendant was charged with child abuse and assault of his infant son. 414 Md. at 621. Prior to trial, Nicholas Watson contacted the State's Attorney's Office and offered to testify about incriminating statements the defendant had made while he and the defendant were cellmates. *Id*. at 619. At the time, Watson was awaiting trial on assault and reckless endangerment charges; facing a violation of probation charge; and was unable to post bail. *Id.* Prior to trial, the State nolle prossed the criminal charges against Watson, who became the key witness against the defendant, and requested that he be released on personal bond. *Id*. At Calloway's trial, the State moved in limine to preclude the defense

from questioning Watson about whether he had any expectation of leniency in exchange for his testimony against Calloway. *Id*. The prosecutor advised the court that it had made no promises or inducements and denied that there was any deal with Watson. *Id.* at 621. The court granted the State's motion in limine. *Id.* at 631.

On appeal, the Supreme Court of Maryland[8] reversed. *Id.* at 620. The Court held that there was both a "solid factual foundation for an inquiry into Watson's self interest, and the circumstantial evidence of [his] self interest was not outweighed [] by the danger of confusion and/or unfair prejudice to the State." *Id*. at 639 (emphasis omitted). The Court stated that whether the State agreed to any deal was immaterial because "the issue is whether Watson had a hope that he would benefit from volunteering to testify against [the defendant.]" *Id*. at 637.

Calloway does not support Donoway's argument because the factual basis underlying the holding in that case is substantially different than the facts before us. In *Calloway*, Watson had faced criminal charges and had been in prison, but his situation dramatically improved just before Calloway's trial. Under those circumstances, the Supreme Court of Maryland held that there was a solid factual foundation for further inquiry into bias by the defense. Here, there was nothing further to elicit from Whilman than the testimony she had already provided. Because Whilman had testified to her bias and there was nothing more to elicit, the circuit court acted within its discretion to curtail

[8] 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.

further questioning.

II. THE COURT DID NOT ERR WHEN IT ADMITTED AN EXHIBIT CONTAINING PRIOR BAD ACTS/OTHER CRIMES EVIDENCE.

Donoway argues that the circuit court erred when it allowed the State to admit into evidence, over objection, State's Exhibit 9, which was a copy of the written exchange on Facebook Messenger between Donoway and the other individual. Donoway asserts that the exchange contained inadmissible bad acts/other crimes evidence because he said he was in possession of *more than one* handgun and it suggested that he associated with someone who wanted "a strap"[9] to "spank" another person. Donoway also argues that the circuit court erred because it failed to articulate its reasons for admitting the evidence. The State responds that Donoway has not preserved his bad acts/other crimes argument for our review. The State further asserts the circuit court did not abuse its discretion in admitting the exhibit for it had special relevance—it was substantially relevant to establishing that Donoway was in possession of a gun only days earlier. Finally, the State argues that the circuit court did not err in failing to articulate its reason for admitting the exhibit.

A. Preservation

When the State moved to admit Exhibit 9 at trial, Donoway objected, and the following colloquy occurred at a bench conference:

> THE COURT: Identify for the record what State's [Exhibit] 9 is.
>
> [THE STATE]: State's 9 is a printout from the Cellebrite phone dump that was created by Sergeant [], that was processed and looked at by this

[9] Although the term "strap" was not explained at trial, on appeal Donoway cites *Bennett v. State*, 252 Md. App. 549, 557 (2021) where a witness described a "strap" as slang for a "gun." The term "spank" was neither explained at trial nor on appeal.

> officer [Detective], and then the, it says it's from Snow Donoway, through the Facebook Messenger is the source, and the body of the message is, "either way I just picked up 2 380s wit matchin 30 clips so Ima keep em on me at all times brah."
>
> THE COURT: What's the objection?
>
> [DEFENSE COUNSEL]: It's from the 9th of July. This incident is from the 15th. And its prejudicial value outweighs its probative value. If the jury looks at this, it's reasonable to conclude, because he's making this comment on the 9th, he must necessarily be in possession of the guns six days later. It's, I think it would be legally a bad act, prior bad act. Even if he had a gun on the 9th, it doesn't mean he has it on the 15th.
>
> THE COURT: So the relevancy is the ownership of the gun – –
>
> [THE STATE]: That was located in the vehicle, because it was a 380, there were two clips located, so its's the basis that it is a similar, it is the same handgun that was located in the vehicle a mere six days later, showing that he was operating ownership over it.

The court overruled the objection and the exhibit was admitted into evidence.

"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[.]" Md. Rule 8-131(a). Maryland Rule 4-323(a) provides: "An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived." "It 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); *see also Gutierrez v. State*, 423 Md. 476, 488 (2011) ("[W]hen an objector sets forth the specific grounds for his objection . . . the objector will be bound by those grounds and will ordinarily be deemed to have waived

other grounds not specified." (quoting *Brecker v. State*, 304 Md. 36, 40 (1985))).

Although an appellant may present an appellate court with a more detailed version of an argument made at trial, the Supreme Court of Maryland has refused to require trial courts "to imagine all reasonable offshoots of the argument actually presented to them before making a ruling on admissibility." *Starr v. State*, 405 Md. 293, 304 (2008) (quoting *Sifrit v. State*, 383 Md. 116, 136 (2004)); *cf. Sifrit*, 383 Md. at 136 (when the defendant's theory of relevance on appeal was different from the theory he presented to the trial court, the Supreme Court of Maryland held that the theory advanced on appeal was not preserved); *Klauenberg*, 355 Md. at 541 (Supreme Court of Maryland held that an objection at trial to testimony limited to relevance did not preserve an appellate argument that the testimony was improper "bad acts evidence"); *Jeffries v. State*, 113 Md. App. 322, 340-42 (appellate argument that evidence was unduly prejudicial and improper other crimes evidence was not preserved where objection below was only that evidence was irrelevant), *cert. denied*, 345 Md. 457 (1997).

Here, Donoway objected to the exhibit on grounds that it implied "he must necessarily be in possession of the guns six days later." He did not object because he had only been charged with illegal possession of *one* handgun, yet the Facebook message suggested that he had *two* guns and he did not object to the other part of the message in Exhibit 9 regarding the other individual wanting a "strap" to "spank" another person. Donoway did object on the grounds that "it would legally be a bad act, prior bad act[,]" as well as noting "its prejudicial value outweighs its probative value." Thus, we conclude

Donoway preserved his argument for our review. *See supra* Md. Rules 8-131(a) and 4-323(a).

B. Merits

Maryland Rule 5-404(b) generally prohibits the admission of evidence of "other crimes, wrongs, or other acts . . . to prove the character of a person in order to show action in the conformity therewith." Bad acts are defined as "an activity or conduct, not necessarily criminal, that tends to impugn or reflect adversely upon one's character, taking into consideration the facts of the underlying lawsuit." *Gutierrez*, 423 Md. at 489 (quoting *Klauenberg*, 355 Md. 528 at 549). Such evidence may be admissible, however, if three conditions are satisfied: (1) the evidence is "substantially relevant" to a contested issue in the case; (2) the defendant's involvement in the prior bad acts must be established by "clear and convincing" evidence; and (3) the evidence may nonetheless be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" *Gutierrez*, 423 Md. at 489-90 (internal citations omitted).

Evidence is "substantially relevant" if it proves "motive, opportunity, intent, preparation, common scheme or plan, knowledge, identity, absence of mistake or accident[.]" Md. Rule 5-404(b). Determination of the first condition is a legal determination that does not involve the exercise of discretion. *State v. Faulkner*, 314 Md. 630, 634 (1989). We review the trial court's determination on the second condition for sufficient "clear and convincing" evidence. *Id*. (citing *Cross v. State*, 282 Md. 468, 478 (1978)). The trial court's determination on the third condition implicates the exercise of the court's discretion. *Id*. at 635.

Here, the Facebook message had special relevance because it showed opportunity, knowledge, and the absence of mistake/accident where six days before his arrest for possession of a handgun and ammunition Donoway admitted to possessing a handgun and ammunition. Donoway's involvement was clear and convincing as it was his own admission. Moreover, the probative value of the evidence outweighed any prejudicial effect for it helped to corroborate Whilman's testimony and screenshots that she took of Donoway displaying a handgun and suggests that Donoway was in possession of the handgun and ammunition found in his car. Although a trial court "should state its reasons" on the record for admitting other crimes evidence, *Streater v. State*, 352 Md. 800, 810 (1999), we have rejected a challenge to a trial court's failure to expressly conduct a balancing test on the record because judges are not required to "spell out" every thought and step of logic for there is a presumption that "judges know and properly apply the law." *Ridgeway v. State*, 140 Md. App. 48, 69 (2001), *aff'd*, 369 Md. 165 (2002). Here, although the court did not expressly conduct a balancing test on the record, the court concluded that State's Exhibit 9 was relevant to the question of the gun's ownership. For all the foregoing reasons, we find no error by the circuit court in admitting State's Exhibit 9.

III. THE CIRCUIT COURT PROPERLY EXERCISED ITS DISCRETION WHEN IT LIMITED DONOWAY'S CLOSING ARGUMENT.

Lastly, Donoway argues that the circuit court erred when it sustained the State's objection to defense counsel's reference in closing argument to the sentencing consequences if the jury returned a guilty verdict. The State responds that the circuit court did not abuse its discretion.

During closing argument, defense counsel made the following remarks and the following colloquy commenced:

> [DEFENSE COUNSEL]: . . . Like, we don't have to agree on everything, and rather than some damaging form of voicing our disagreement, you know, we have, you decide, twelve people, don't know us, know nothing about this case before this morning, and decide whether the State has met its burden beyond a reasonable doubt. *Once you make that decision the impact of that is permanent, right? It's forever to him. It's more forever to Mr. Donoway than it is certainly to anybody else, like, we all go home, right*? It's like, eventually – –
>
> [THE STATE]: Objection, Your Honor.
>
> [DEFENSE COUNSEL]: – – as a lawyer – –
>
> THE COURT: Approach.
>
> (Counsel approached the bench and the following occurred:)
>
> [THE STATE]: He's going into sentencing and the impact and the emotional for the jury – –
>
> [DEFENSE COUNSEL]: I'm not trying to – –
>
> [THE STATE]: – – and putting this on them.
>
> THE COURT: I'm going to sustain it. Let's move on.

(emphasis added).

It is axiomatic that criminal defendants have a constitutional right to present closing argument. *See Spence v. State*, 296 Md. 416, 419 (1983) (recognizing the basic constitutional rights of criminal defendants under the Sixth Amendment of the United States Constitution and Article 21 of the Maryland Declaration of Rights). Although counsel are generally afforded wide latitude in closing argument, *Degren v. State*, 352 Md. 400, 430 (1999), such discretion is not limitless. *Wilhelm v. State*, 272 Md. 404, 413 (1974).

It is improper, among other things, for counsel "to state and comment upon facts not in evidence[.]" *Id.* It is also improper for counsel to "appeal to the prejudices or passions of the jurors, . . . or invite the jurors to abandon the objectivity that their oaths require." *Mitchell v. State*, 408 Md. 368, 381 (2009) (internal citations omitted). Moreover, "[a]s a general rule, a jury should not be told about the consequences of its verdict—the jury should be focused on the issue before it, the guilt or innocence of the defendant, and not with what happens as a result of its decision on that issue." *Mitchell v. State*, 338 Md. 536, 540 (1995). This is because questions of whether a defendant would "walk" or be "retried" would inappropriately "invite the jury to consider punishment," which is outside its purview to decide the case based on the evidence and the law. *Id*. at 542.

Whether counsel's closing argument is improper rests largely within the broad discretion of the trial court because it is in the best position to determine the appropriateness of the closing argument as it relates to the evidence elicited in the case. *Ingram v. State*, 427 Md. 717, 728 (2012). "What exceeds the limits of permissible comment or argument by counsel depends on the facts of each case." *Smith v. State*, 388 Md. 468, 488 (2005).

We are unpersuaded by Donoway's argument that the court, in sustaining the State's objection, impermissibly diluted his counsel's closing argument regarding "the significance of the jury's task." In our view, defense counsel's closing argument was less about the significance of the jury's task than about telling the jury the consequences of their verdict. The court did not limit defense counsel from arguing to the jury that it should not take its task lightly or remark on the significance of the jury's role in our criminal justice system. Rather, defense counsel told the jury that depending on their verdict,

Donoway may or may not go home, which was an impermissible reference to the consequences of reaching a guilty verdict. *See Shoemaker v. State*, 228 Md. 462, 467-74 (1962) (reversing convictions where State made remarks during opening statement about the defendant's parole possibilities because remarks are to be based on the evidence); *cf. Sidbury v. State*, 414 Md. 180, 182 (2010) (holding that the circuit court "did not abuse [its] discretion in responding [to a jury question during deliberations], '[t]hat's not an issue for you to concern yourselves with,' because the consequences of a hung jury are not a proper consideration for the jury[.]" (citing *Mitchell*, 338 Md. at 536)). Accordingly, we find no abuse of discretion by the circuit court in sustaining the State's objection to defense counsel's statement during closing argument.

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