

**UNREPORTED**  
**IN THE COURT OF SPECIAL APPEALS**  
**OF MARYLAND**

No. 857

September Term, 2017

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KEON EDWARD WATSON

v.

STATE OF MARYLAND

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Meredith,  
Leahy,  
Moylan, Charles, E., Jr.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Meredith, J.

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Filed: May 17, 2018

At the conclusion of a jury trial in the Circuit Court for Prince George's County, Keon Edward Watson, appellant, was convicted of second degree assault, unlawful possession of ammunition, possession of a controlled dangerous substance (PCP), and threatening to harm a witness with the intent to retaliate for reporting a crime. After sentencing, Watson noted a timely appeal and presents us with the following two questions for our review:

1. Did the trial court abuse its discretion when it allowed improper and highly prejudicial prosecutorial remarks during the testimony of the State's key witness and during closing argument?
2. Did the trial court abuse its discretion when it admitted evidence of Mr. Watson's prior bad acts that lacked special relevance and were substantially more prejudicial than probative?

Because we perceive no reversible error, we will affirm.

### **Facts and Procedural History**

There was evidence at trial of the following. On October 5, 2016, officers from Prince George's County Police Department responded to a 911 call placed by Samira Jenkins who reported an alleged assault in progress at an apartment located at 4168 Suitland Road in Prince George's County. After police arrived at the scene, Jenkins told the officers that her boyfriend, Watson, had assaulted her and threatened her with a gun after she tried to retrieve money Watson owed her. Watson, however, had left the scene before the police arrived. With the consent of the leaseholder of the apartment, Detective Andre Thompson and other officers searched the apartment in which Jenkins claimed to have been assaulted. Police observed that several pieces of furniture in the living room

and bedroom had been overturned and various objects were strewn across the floor. Police searched the bedroom, where they located numerous rounds of ammunition, a loaded magazine, a pistol grip, a District of Columbia photo identification card which belonged to Watson, and various glass vials containing residue which later tested positive for PCP.

Jenkins agreed to provide statements during a videotaped interview with Detective Thompson and other detectives on the evening of the alleged assault. Jenkins also gave written statements during that interview. Jenkins stated to detectives that she had gone to Watson's place to collect money that Watson owed her for parking tickets. Jenkins said that, after she attempted to go into Watson's "stash," Watson hit her with his fists, choked her, and then drew a gun on her and exclaimed, "I'll blast you, bitch."

Watson was arrested on October 24, 2016. Jenkins and Watson spoke frequently on the phone during the period in which Watson was incarcerated prior to trial; several audio excerpts from these calls were played for the jury at trial. During these calls Watson expressed anger that Jenkins provided information to the police regarding the alleged assault. In the phone conversations, Watson also made threatening remarks to Jenkins:

[WATSON]: [addressing Jenkins], for real though. That shit ain't even funny 'cause I'm going to do some time for what your dumbass.

[JENKINS]: Exactly. I mean, I'm done with you too.

[WATSON]: What?

[JENKINS]: You know what I'm saying, homey? I said I'm done with you too.

[WATSON]: Shorty, you get your ass blown up fucking with a (indiscernible) in this (indiscernible) real life.

[JENKINS]: You said what?

[WATSON]: I said you get your ass blown up.

[JENKINS]: Oh, for real?

[WATSON]: Yeah, don't be blind out there, man.

During the phone calls, Watson also warned Jenkins that he would "crush" her if she did not recant her statements to police: "Yeah, if I do over – if they sending me through this shit I'm -- you going to get crushed though on some real shit. . . . All right. I'm just saying. I'm just saying that's your own murder, so yeah." At one point during a phone conversation, Jenkins asked Watson whether she should be frightened of him, and Watson responded in the affirmative:

[WATSON]: You're going to make me call that play from in here on your ass, some real shit.

[JENKINS]: Oh, yeah?

[WATSON]: Yeah, on some real shit, [Jenkins]. I'm not playing.

[JENKINS]: Oh, should I be scared?

[WATSON]: Yeah.

[JENKINS]: Oh. All right then.

Watson also stated: “You need to tell [the police] that you got me locked up . . . . Real life, ‘cause I come up there when I get out of here and fuck that whole job situation up.”

At trial, when Jenkins was called as a witness for the State, she told a story that was different from the one she originally told the detectives. With regard to the events that transpired on the day of the alleged assault, Jenkins stated:

I was at one of [Watson’s] relative’s houses. I went over there to get some money for a ticket and I seen a girl there. I got mad and I’m like [Watson] won’t open the door, so I’m like why you not opening the door? So I kick the door in. It was a girl in there. I got mad, angry. I started saying some words to the girl. We started fighting, a real bad fight. So I got so mad. I went outside. I’m, like, I’m tired of [Watson] cheating. Why are you cheating? Like I tried to do everything to make him stay with me, put voodoo on him. That didn’t work. Cut his hair out. Do a voodoo doll, stick him in the heart. So I’m, like, I’m tired of this. What can I do next?

**So I called the police and made up a story** like, you know, because I want [Watson] to really understand that I’m in love with you and you need to, like, really realize this. So I’m just getting mad, angry. Okay, I’m like I’m gonna call the cops. So I called the police.

(Emphasis added.)

In reference to the statements made by Jenkins in her 911 call, Jenkins testified: “I told [the 911 operators] some story so [the police] can come out. I don’t even remember what I said.” Jenkins also testified that the comments made by Watson during their phone conversations while Watson was in jail was just sexual banter.

Additional facts relevant to this appeal are discussed in greater detail below.

### Discussion

In his brief, Watson contends that the trial court erred in failing to sustain objections to remarks made by the prosecutor during the redirect examination of Jenkins and during closing argument. Watson also alleges that the trial court abused its discretion when it admitted evidence of Watson's prior bad acts because, according to Watson, this evidence "lacked special relevance and [was] substantially more prejudicial than probative."

#### I. Prosecutor's remarks during redirect examination and closing argument.

During the State's case-in-chief, the prosecutor for the State questioned Jenkins on redirect examination about an allegedly threatening statement Watson made during the calls. The following occurred:

[THE STATE]: What about when we heard earlier you said – when [Watson] said, you make me do some real C shit. And you went, should I be scared. And [Watson] goes, yes. And you go, oh?

[JENKINS]: What about it?

[THE STATE]: Oh, okay. [Watson] was telling you –

[JENKINS]: **What about it? Am I dead or anything? No.**

[THE STATE]: **No, not yet.**

[JENKINS]: Okay.

[DEFENSE COUNSEL]: Objection, Your Honor. Move to strike.

[THE COURT]: Any further questions?

[THE STATE]: No.

[THE COURT]: Are we finished with this witness?

[THE STATE]: Yes, Your Honor.

[THE COURT]: Are we finished with this witness?

[DEFENSE COUNSEL]: Yes, Your Honor.

[THE COURT]: You are free to go.

(Emphasis added.)

The prosecutor made a similar remark during her closing argument:

[THE STATE]: [Jenkins] took time out of her day, two times to go. She said, [Watson's] never threatened her that he has never harmed her in any way, today or yesterday when she is testifying in front of you. I submit to you, I don't know if it's love and that's why [Jenkins] has changed her story or it's fear, because [Watson] told her repeatedly, I'm going to crush you when I get out of here. And telling [Jenkins] she better come testify that this didn't happen. **Why do we care? As you heard [Jenkins] say, I'm not dead. She is not right now.**

[DEFENSE COUNSEL]: Objection.

[THE COURT]: It's argument.

[DEFENSE COUNSEL]: Your Honor, could we approach on that?

[THE COURT]: No. Let's finish up.

[THE STATE]: **The State has to care, Our job and our duty is to protect the citizens of this county.** And while [Jenkins] may come here and say –

[DEFENSE COUNSEL]: Your Honor, I would object to that as well.

[THE COURT]: Yeah, ladies and gentlemen of the jury, just please remember that it's your responsibility to evaluate the evidence against the crimes charge[d] and make a decision in this case and this case only whether the Defendant is guilty or not guilty.

[THE STATE]: The State would represent – I represent the State.

[DEFENSE COUNSEL]: Your Honor, can we approach now?

[THE COURT]: Sure.

(Counsel approach the bench.)

[DEFENSE COUNSEL] I think we are walking a pretty close line to a mistrial. The comment on redirect and now **saying they are the State, basically keepers of peace and saying they are enforcing the laws to keep the public safe** and saying it's the State **that's directly against the golden rule of what the State is not supposed to do in a criminal case.**

[THE STATE]: It's our obligation.

[DEFENSE COUNSEL]: The obligation is to enforce the law.

[THE COURT]: Anything else you want to argue to the jury?

[THE STATE]: No. One moment. I just can't think so –

(Counsel return to counsel table and the following is had in open court.)

[THE STATE]: **Why does the State care when Ms. Jenkins clearly does not. It is our duty to protect people.**

[DEFENSE COUNSEL]: Objection.

And, Your Honor –

[THE COURT]: Just finish up please.

[THE STATE]: Again, whether she is changing her story now for love or fear it is your duty to go back and determine, did a crime occur on that day. . . .

(Emphasis added.)

Watson contends that the State's remarks—that Jenkins was “not [dead] yet”—“twice implied to the jury that Ms. Jenkins was in danger of her life and suggested that it



was the jurors' duty to protect Ms. Jenkins and other citizens of Prince George's County from Mr. Watson." Watson argues that the remarks were improper for two reasons. First, Watson asserts that the remarks improperly suggested that, if not convicted, Watson would likely commit future criminal misconduct, an argument prohibited by the Court of Appeals in *Lawson v. State*, 389 Md. 570 (2011). He argues: "The clear implication [of the State's remarks] was that if the jury did not convict Mr. Watson, he would kill Ms. Jenkins." Watson next contends that the State engaged in a "golden rule" argument when the prosecutor "argued that it was the State's job and duty to 'protect the citizens of this county.'" Watson asserts that "Maryland courts have repeatedly found comments made by the prosecutor to the jury urging them to protect the community improper."

The State, on the other hand, contends that the remarks made by the prosecutor in the present case "are materially different from the kind of comment condemned in *Lawson*, and were not improper as closing argument." In *Lawson*, the State argues, "the [prosecutor's] remark was pure speculation without any factual basis in the evidence at trial." Here, the prosecutor's remarks "were not addressing a danger to some hypothetically unknown future victim. Instead, they concerned the ongoing threat Watson posed to Jenkins, the actual victim in the case." With regard to Watson's "golden rule" argument, the State argues that the prosecutor's remarks did not amount to a golden rule argument: "Although the prosecutor used language of 'protection,' she was not exhorting the jurors, as in a golden rule argument, to use the verdict to protect themselves and their community."

We review a trial court’s allowance of allegedly improper remarks by trial counsel under an abuse of discretion standard. *Whack v. State*, 433 Md. 728, 742 (2013). In *Whack, supra*, 433 Md. at 742, the Court of Appeals recognized that attorneys are granted “a great deal of leeway in making closing arguments.” The Court further explained:

This “liberal freedom” has limits, but “not every ill-considered remark made by counsel . . . is cause for challenge or mistrial.” *Wilhelm v. State*, 272 Md. 404, 415, 326 A.2d 707 (1974). Whether a reversal of a conviction based upon improper closing argument is warranted “depends on the facts in each case.” *Id.* Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument. *Ingram v. State*, 427 Md. 717, 726, 50 A.3d 1127 (2012). **“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.”** *Id.* (citing *Grandison v. State*, 341 Md. 175, 225, 670 A.2d 398 (1995)). **In deciding whether there was an abuse of discretion, we examine whether the jury was actually or likely misled or otherwise “influenced to the prejudice of the accused” by the State’s comments.** *Wilhelm*, 272 Md. at 415–16, 326 A.2d 707 (quoting *Reidy v. State*, 8 Md. App. 169, 172, 259 A.2d 66 (1969)). Only where there has been “prejudice to the defendant” will we reverse a conviction. *Rainville v. State*, 328 Md. 398, 408, 614 A.2d 949 (1992) (quoting *State v. Hawkins*, 326 Md. 270, 276, 604 A.2d 489 (1992)).

*Id.* at 742-43 (emphasis added). *See also Ingram v. State*, 427 Md. 717, 728 (2012) (“The determination of whether a portion of counsel’s argument is improper or prejudicial rests largely within the trial judge’s discretion because he or she is in the best position to determine the propriety of argument in relation to the evidence adduced in the case.”).

a. *Whether the State’s comments run afoul of the Court of Appeals’s decision in Lawson.*

Watson first contends that the prosecutor’s statements that Jenkins was “not yet” dead are similar to the statements made by the prosecutor in *Lawson v. State*, 389 Md.

570 (2005). In *Lawson*, the Court of Appeals reversed defendant Lawson's convictions for sexual offenses against a minor as a result of the cumulative effect of numerous improper arguments made by the prosecutor during closing. One such argument made by the prosecutor during closing suggested that, should Lawson be acquitted, he was likely to commit future sexual crimes against his cousin's minor child, who lived with Lawson's cousin in an apartment paid for by Lawson:

The defense presented its closing argument. It was followed by the State's rebuttal, which included the following statement:

“What does a monster look like? Looks like different things to different people. What does a sexual molester look like? He looks like someone you know. He looks like your uncle, your brother, your sister, your cousin. It's possible. But there is no certain way that someone who molests children looks. But they do ingratiate themselves. They make themselves indispensable. They are friendly, always there to watch.

“Not everyone is like that, but please don't misunderstand me because the important point here is that a child molester looks like anybody else. That's why they are able to do what they do, because they look like all of us, and we trust.

“When I said that they ingratiate themselves, they make themselves indispensable. They make themselves helpful. **The defendant told you, himself, he is paying for an apartment and he is not living there. He is letting an adult female cousin, who just happens to have a little 11-year-old child, live there.**” [Emphasis added.]

*Id.* at 579-80 (emphasis added). The State implied that Lawson would likely commit sexual crimes against the child despite the fact that there was no evidence in the record to that effect. With respect to this suggestion, the Court of Appeals agreed with this Court's

reasoning and held that such “allegation[s] of future criminality . . . are improper because they are based upon facts not in evidence at trial.” *Id.* at 599.

In the present case, Watson argues that the prosecutor’s remark — that Jenkins was “not [dead] yet” — implied that Watson would likely murder Jenkins if acquitted. Watson further asserts: “Like in *Lawson*, it was improper for the prosecutor here to ask the jury to consider Mr. Watson’s potential future criminality when this argument was not only highly inflammatory but also ‘based upon facts not in evidence at trial.’” We disagree. First, the prosecutor’s comments in *Lawson* referred to an entirely hypothetical scenario — that Lawson would likely sexually molest his cousin’s child if acquitted — based on nothing in evidence other than the fact that Lawson’s cousin had testified that Lawson was paying for her rent. *Lawson, supra*, 389 Md. at 580. By contrast, in the present case, the State presented numerous recordings from Jenkins’s and Watson’s phone calls which contained statements by Watson threatening to harm Jenkins because of the reports she had made to the police. Watson was charged with (and subsequently convicted of) “threatening to harm Samira Joy Jenkins, with the intent to influence her testify [sic] falsely, withhold testimony . . . or fail to report the existence of facts related to first-degree assault.” Consequently, the prosecutor’s suggestion that Watson had threatened to harm Jenkins was a permissible inference from statements Watson made during the jail calls, which were properly admitted in evidence. This is quite different from the comments made by the prosecutor in *Lawson, supra*, 389 Md. at 599.

And, even if we did determine the prosecutor's remarks to be improper pursuant to the Court of Appeals's decision *Lawson*, the "not yet" comments would not require reversal in this case. In *Lawson, supra*, 389 Md. at 594-600, the prosecutor's comments regarding Lawson's future criminality, standing in isolation, were not deemed so egregious that they required reversal of Lawson's convictions. In that case, the prosecutor *also* made several other improper arguments throughout her closing argument, including improper 'golden rule' arguments, burden shifting statements, and appeals to the jury's fears and prejudices. *Id.* With respect to the cumulative effect of the statements, the *Lawson* Court stated: "[T]aken alone the statements may not affect [Lawson's] right to a fair and impartial trial, but their cumulative effect leads to a different conclusion." *Id.* at 600.

In the present case, even if we did determine that the prosecutor's "not yet" dead remarks were improper, those remarks clearly did not actually mislead the jury. Nor did the prosecutor unfairly prejudice the accused by drawing the jury's attention to words that came out of Watson's mouth. As quoted earlier, there was evidence that Watson explicitly threatened Jenkins with violent physical harm if she failed to retract her allegations. Watson even went as far as to exclaim: "I'm just saying that's your own murder, so yeah." Consequently, even if the prosecutor's comments were improper, Watson suffered no prejudice as a result. Although the circuit court did not issue a curative instruction with respect to these remarks, the remarks were isolated and "did not pervade the entire trial." *Spain v. State*, 386 Md. 145, 159 (2005).

*b. Alleged “Golden Rule” argument.*

Watson next contends that certain remarks made by the prosecutor in her closing argument amounted to an improper “golden rule” argument. At one point during her closing argument, the prosecutor stated: “The State has to care. Our job and our duty is to protect the citizens of this county.” Later, the prosecutor made a similar comment: “Why does the State care when Ms. Jenkins clearly does not[?] It is our duty to protect people.” These comments, Watson argues, “misled the jury by misrepresenting [the State’s] — and indirectly, the jury’s — function in the trial” because the comments implied to the jury that it was their duty to convict Watson in order to protect the community.

In *Lee v. State*, 405 Md. 148, 171 (2008), the Court of Appeals explained that “[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.” (Internal citations omitted.) The Court further held in *Lee, supra*, 405 Md. at 171-72, that comments by the State which urge the jury to issue a verdict to protect the community, regardless of the evidence presented, are prohibited golden rule arguments:

We have iterated that prosecutors should not implore jurors to consider their own interests in violation of the prohibition against the “golden rule” argument. *See Lawson*, 389 Md. at 597, 886 A.2d at 892. In *Hill*, 355 Md. at 211–12, 734 A.2d at 202, the prosecutor, during opening arguments, told the jury that they were “chosen to send a message to protect [the] community” and to “keep [ ] [the] community safe.” Later, during closing arguments, the prosecutor again requested the jury to send that same message to the community and to the defendant’s “cronies.” We stated that the prosecutor’s statements, which referred “to the need for the jurors to convict petitioner in order to preserve the quality of their own communities,” were “wholly improper and presumptively prejudicial,” *id.* at 216, 219–20, 734 A.2d at 205, 206, and iterated that “appeals to jurors to

convict a defendant in order to preserve the safety or quality of their communities are improper and prejudicial” . . . .

**In asserting that the jurors should consider their own interests and those of their fellow Baltimoreans, and should clean up the streets to protect the safety of their community, the State clearly invoked the prohibited “golden rule” argument. Essentially, the State was calling for the jury to indulge itself in a form of *vigilante justice* rather than engaging in a deliberative process of evaluating the evidence.** Even if the prosecutor’s comments were directed such that the jurors were asked to teach Lee a lesson, and not to send a message to the entire community, these comments **were improper because they asked the jury to view the evidence in this case, not objectively, but consonant with the juror’s personal interests.**

(Footnote omitted). *See also Lawson, supra*, 389 Md. at 579 (holding that the prosecutor’s urging of the jury to “put yourself in the shoes” of the victim was an improper golden rule argument).

In the present case, the prosecutor’s comments did not amount to an improper golden rule argument because the comments did not “ask[] the jurors to decide the case based on their interests and bias, rather than evidence in the case.” *Lee, supra*, 405 Md. at 171 n.9 (internal quotation marks and citation omitted). Although the prosecutor’s comments in the present case allude to *the State’s* role in protecting the community, and sought to explain why the State was prosecuting Watson even though his alleged victim had changed her story, the comments did *not* urge the jury to make a decision based on evidence not in the record. Both of the prosecutor’s comments referred to the *State’s* duty to protect the community by pursuing charges based on the facts and evidence gathered, regardless of Jenkins’s professed indifference at trial as to whether Watson had in fact committed a crime. The State emphasized that it was the jury’s job to render a

verdict based upon the evidence presented at trial, rather than Jenkin's newfound preference that Watson not be convicted of anything: "Again, whether [Jenkins] is changing her story now for love or fear **it is your duty to go back and determine, did a crime occur on that day. . . .**" (Emphasis added.) When viewed in context, the statements did not urge the jury to engage "in a form of *vigilante* justice"; indeed, they urged the opposite. *Lee, supra*, 405 Md. at 171-72.

Consequently, the circuit court did not abuse its discretion in allowing the prosecutor's remarks during redirect and closing.

## **II. Prosecutor's questioning of Jenkins regarding prior protective and peace orders.**

During the State's direct examination of Jenkins, the prosecutor for the State questioned Jenkins regarding the contradictions between Jenkins's written statements following the alleged assault and her testimony at trial:

[THE STATE]: What about when the officer asked you do you think [Watson] was going to hurt you? Was your response there also not true when you said yes?

[JENKINS]: I put that, yes, so he could get in trouble, but none of that is true. There was never a firearm or anything. Me and [Watson] never was fighting. It was me and the girl that was fighting. He did break it up eventually at one point.

[THE STATE]: Let me ask you, have you and [Watson] ever got into a physical fight before?

[JENKINS]: No. He's not that type of person. He, likes, avoid me. If anything, I'm the aggressive one. Like I would cut his hair and stuff like that, but he never put his hand on me. I'm harming him, if anything. I'm cutting his hair to do voodoo dolls and stuff, but he never knows, yes.



[THE STATE]: So [Watson's] never got physical in the past?

[JENKINS]: No. I would ask him why are you cheating or why are you doing this to me? Why don't you love me? You know what I'm saying? Stuff like that. An argument but it never got physical to me. He's like a ladies' man. That's why he's a cheater. I was just jealous that it was another girl in the house.

After Jenkins contradicted her earlier written statements to police, the State sought to show Jenkins a prior protective order against Watson that Jenkins had applied for, wherein she alleged Watson had engaged in abusive behavior towards her:

[THE STATE]: At this juncture, I would like to show her not introduce evidence, but the protective order that she got against him was –

[DEFENSE COUNSEL]: I would object to that, given that . . . it's irrelevant to this case. At this point it would be prior bad acts because the allegation and insinuation I imagine the State is making as [Watson] assaulted her once before, so he could assault her again. So this isn't just to her credibility. It actually goes to prejudice him, as well. Both of those protective orders were denied. They were not in place at the time this incident happened. And they happened over a year beforehand. At this point, I would ask Your Honor to find they're definitely more prejudicial than probative.

[THE STATE]: The State is simply introducing them. There's never been any acts of violence.

[THE COURT]: I think you have to ask [Jenkins] about protective orders. And if she still says no, then you may inquire further.

[DEFENSE COUNSEL]: Your Honor, I would again object.

[THE COURT]: So noted.

The State proceeded to ask Jenkins whether she had ever sought a protective order against Watson, to which Jenkins responded: "I don't believe so, no. There's no need to."

As a result, the State began to utilize the prior protective and peace order applications for impeachment purposes, but defense counsel again objected:

[DEFENSE COUNSEL]: Court's indulgence, Your Honor. I haven't seen these before.

[THE STATE]: I provided them previously.

(Counsel approached the bench)

[DEFENSE COUNSEL]: **I would have no objection to the State asking [Jenkins] about [the orders]. But to admit –**

[THE STATE]: **I'm not asking to admit it.**

[DEFENSE COUNSEL]: **That would be my only concern. The allegation was made in here.**

So just they exist, not the actual statements.

[THE STATE]: Just to clarify, **I'm going to ask her if she made allegations that there was violence before, because she just said no.** But that's all I intend to get into. Not the substance.

(Counsel returned to trial table)

(Emphasis added.)

After the parties were in agreement regarding the scope of the State's intended questioning of Jenkins about the documents, the State continued:

[THE STATE]: I'm going to show you what's been marked for identification purposes as State's Exhibit 4.

[JENKINS]: What's that?

[THE STATE]: Well, I'm going to give you a chance to look at it and tell me if you recognize it.

[JENKINS]: Yes. This is the thing that Detective Thomas kept telling me to get this so it would look good on his behalf. I didn't even want to do this.

He kept saying go get a protective order. But I'm, like, for what? He was like, just go get one. You need one. But I was never in fear or anything. I didn't need this.

[THE STATE]: But this?

[JENKINS]: This is old. This doesn't have anything to do with this.

[THE COURT]: Just answer the question. Do you recognize the document?

[JENKINS]: Yes.

[THE COURT]: Next question, please.

[THE STATE]: You've had the opportunity to look at it now. Is that your handwriting?

[JENKINS]: Yep, this is my handwriting.

[THE STATE]: You wrote that as an application for a protective order, right?

[JENKINS]: Yes, I did. I was mad at the time.

\* \* \*

[THE STATE]: And did you allege back in 2015 that [Watson] had been abusive and violent towards you?

[JENKINS]: Yes. I was mad then, but they never did anything. But he never abused me or anything. I was just upset. As I said, the voodoo didn't work so I was trying to do stuff like this.

[THE STATE]: So that was a lie, too, when you went and filed for a protective order?

[JENKINS]: Yes. This is old, though.

[THE STATE]: Let me show you State's Exhibit Number 5 and ask you also to look at that and see if that's also your handwriting.

[JENKINS]: What is this?

[THE STATE]: Take a look at it and see if you can identify it.

[JENKINS]: This is a peace order.

[THE STATE]: Do you recognize the portion that's the handwriting?

[JENKINS]: Mm-hmm.

[THE STATE]: Is that your handwriting?

[JENKINS]: Yes, it's my handwriting.

\* \* \*

[THE STATE]: So you were not being truthful there [in State's Exhibit Number 5] when you said that [Watson] was violent?

[JENKINS]: He pushed me. Yes. I mean, I pushed him but he pushed me – I pushed him first.

During the State's closing argument, the prosecutor briefly mentioned the protective orders once more:

[THE STATE]: . . . [Jenkins] tells you [that Watson] has never threatened her but then she had two protective orders, peace orders in the past and she pretended like that never happened.

[DEFENSE COUNSEL]: Your Honor, I object to the mischaracterization of evidence. It's only that she filed peace orders, not that they were granted.

[THE STATE]: She took time out of her day, two times to go. . . .

Watson contends that the circuit court abused its discretion when it allowed the State to pursue the above-quoted line of questioning because, according to Watson, the evidence amounted to "prohibited bad acts evidence under Maryland Rule 5-404(b)." The State, on the other hand, contends that Watson waived this argument when defense

counsel agreed that she had “no objection” to the State’s proposed line of questioning. We agree that Watson waived his “bad acts” argument with respect to the State’s questions regarding the protective and peace orders.

Maryland Rule 8-131(a) states: “Ordinarily, the appellate court will not decide any other issue [*i.e.*, other than jurisdiction] unless it plainly appears by the record to have been raised in or decided by the trial court.” In order to preserve an objection to the admission of evidence, a party is required to object “at the time the evidence is offered . . . [o]therwise, the objection is waived.” Maryland Rule 4-323. “[I]t is fundamental that a party opposing the admission of evidence must object at the time that evidence is offered . . . . This also requires the party opposing the admission of evidence to object each time the evidence is offered . . . .” *Klaunberg v. State*, 355 Md. 528, 545 (1999). *See also* Maryland Rule 5-103(a)(1).

Although defense counsel initially objected to the admission in evidence of the protective order and peace order, counsel then expressly waived any other objection after the prosecutor proffered the proposed line of inquiry. During the bench conference, defense counsel specifically stated: “I would have no objection to the State asking [Jenkins] about [the protective order].” The State then reassured defense counsel that it was “not asking to admit [the protective order]” as substantive evidence, to which defense counsel responded: “That would be **my only concern**. The allegation was made in here. So just they exist, not the actual statements.” (Emphasis added.) The State then clarified that it intended “to ask [Jenkins] if she made allegations that there was violence

before, because she just said no. But that's all [the State] intend[s] to get into. Not the substance." Defense counsel did not object to the State's proposed line of questioning. Nor did defense counsel assert any further objection when the State questioned Jenkins regarding the protective and peace orders and her handwriting on the documents. Neither order was offered into evidence, and the State limited its questioning of Jenkins as discussed during the bench conference immediately prior.

And, although defense counsel later objected when the State mentioned the orders in its closing argument, defense counsel explained: "Your Honor, I object to *the mischaracterization of evidence*. It's only that she filed peace orders, not that they were granted." (Emphasis added.) The circuit court did not rule on defense counsel's objection, and defense counsel neither insisted upon a ruling on the objection nor moved to strike that portion of the State's closing argument. The State did not dispute defense counsel's assertion that the state of the record showed only that Jenkins applied for the orders, not that they were granted. But the point the prosecution was trying to make was that Jenkins's testimony regarding any history of violence was inconsistent. To the extent the prosecutor's choice of words was inaccurate, defense counsel could have asked the trial court to clarify the point with a curative instruction, but did not do so. Moreover, our review of the transcript (quoted above) reveals that the prosecutor's remark was a permissible inference from Jenkins's unequivocal statement during redirect that the document she was being shown for impeachment purposes was "a peace order," implying that that order had been granted.

### III. Prosecutor's reference to Watson's prior handling of guns.

Finally, Watson contends that the trial court abused its discretion when it allowed the prosecutor "to play the part of Ms. Jenkins' recorded statement where she referenced a prior incident in which Mr. Watson pointed a gun at her because it was evidence of a prior bad act." He asserts that this evidence improperly suggests that he had a propensity to point guns at Jenkins, and further argues:

[Jenkins's] allegation was not that Mr. Watson merely owned a gun, which itself is not a prior bad act. *See Klauenberg*, 355 Md. at 551. **Instead, Ms. Jenkins alleged that [Watson] pointed a gun at her, which unlike the mere possession in *Klauenberg*, was an allegation of a crime.** This was particularly prejudicial considering the underlying facts of this trial: Ms. Jenkins told police that Mr. Watson held a gun during the assault, and he was subsequently charged with first-degree assault and possession of a firearm.

(Emphasis added.)

Watson acknowledges that the circuit court allowed the State to play the audio recording of Jenkins's statement to detectives as an inconsistent statement, but he argues that the gun statement should have been excluded because it was more prejudicial than probative. Watson, however, fails to cite any specific quotes from Jenkins's statement to police which he alleges were improper; therefore, we are left to guess which portions Watson is referring to with respect to these contentions.

We have not been directed to any reference made by Jenkins to a prior occurrence during which Watson allegedly pointed a gun at her. Although Jenkins makes numerous references to the gun Watson supposedly drew on her during the alleged assault at issue in the present case, we have not been shown that Jenkins alleged Watson pointed a gun at

her during any previous occasion. Jenkins's only reference to guns outside of the context of the present case occurred when she described prior occasions during which she perceived Watson possessing a gun:

[DETECTIVE]: Okay. Have you ever seen [Watson] with a gun before other than today?

[JENKINS]: Yeah.

[DETECTIVE]: Okay. Where – like kind of explain to me the circumstances of –

[JENKINS]: I mean, he carry it all the time.

[DETECTIVE]: All right. Where. On his waist?

[JENKINS]: Uh-huh.

\* \* \*

[DETECTIVE]: Okay. How long has [Watson] been wrapped up in like doing this type of stuff like with the water [(slang for PCP)] and everything? I mean, how long—

[JENKINS]: I'm not for sure.

[DETECTIVE]: How many guns have you seen in his bedroom?

[JENKINS]: I seen several.

[DETECTIVE]: Several. What's several like, three, four?

[JENKINS]: Two

[DETECTIVE]: Two?

[JENKINS]: Uh-huh?

[DETECTIVE]: Are they handguns? Are they like rifles?



[JENKINS]: No, like this and then one was small.

[DETECTIVE]: Like a small handgun?

[JENKINS]: Un-huh. Like that.

[DETECTIVE]: **All right. So does [Watson] talk about guns a lot or like him and his friends like talk about it or is he just kind of – does he just have them, they're just there?**

[JENKINS]: **That's their lifestyle.**

(Emphasis added.)

Although Jenkins's above-quoted statements mention prior instances of Watson *possessing* guns, her statements do not assert that Watson had ever pointed a gun at her on any prior occasion. And, as Watson concedes in his brief, evidence of mere possession of a gun on a prior occasion, absent any other information, does not constitute a prior bad act. *See Klauenberg, supra*, 355 Md. 528, 551 (1999) (“[T]estimony that two guns . . . were found on appellant's premises, without more, does not constitute a prior bad act . . . . There was no indication that these firearms were obtained or possessed illegally.”). Nor does Jenkins's reference to Watson's interest in guns being a “lifestyle” constitute a prior bad act. One's mere interest in guns, without more, is not inherently a bad act as it implies no illegality. Consequently, the trial court did not abuse its discretion in allowing the State to play portions of Jenkins's recorded interview with detectives.

**JUDGMENTS OF THE CIRCUIT  
COURT FOR PRINCE GEORGE'S  
COUNTY AFFIRMED. COSTS TO  
BE PAID BY APPELLANT.**