Circuit Court for Baltimore City
Case No. 117178003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 883

September Term, 2018

ANTONIO BURRS
v.

STATE OF MARYLAND

Kehoe,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: January 15, 2020

Antonio Burrs, appellant, was convicted by a jury in the Circuit Court for Baltimore City on two counts of conspiracy to murder Pierre Montague and Robert Davis. He was sentenced to life imprisonment. In his timely appeal, he presents the following questions for our review:

I. Was the evidence insufficient to sustain the conspiracy convictions?

II. Did the circuit court err in allowing impermissible closing argument by the prosecutor?

For the following reasons, we shall affirm the judgments of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

On March 19, 2017, Mr. Montague was shot in the head, arm, and hand in the parking lot of the Airport Bar & Grill in the St. Helena neighborhood of Baltimore, Maryland. Earlier that day, Mr. Montague and his brother Mr. Davis had engaged in a physical altercation with appellant and Gary Moore. When it started, the fight was between Mr. Davis and appellant. According to Mr. Moore, who testified for the State, Mr. Davis attacked appellant. When Mr. Montague joined the fight and hit appellant,[1] Mr. Moore intervened "to break up the fight" because appellant "was just defending himself" and not "swinging [any] punches." But because Mr. Montague looked angry, Mr. Moore backed away and dropped papers that he was carrying. Mr. Montague then "kicked [appellant] in the face," knocking him unconscious. Mr. Montague then grabbed appellant's and Mr.

[1] Mr. Montague testified that he joined the fight when he saw Mr. Moore running towards Mr. Davis and appellant.

Moore's phones and the papers that Mr. Moore had dropped and, along with Mr. Davis, ran to his car.

After leaving the shopping center, Mr. Montague and Mr. Davis switched vehicles because they "didn't want to get caught" for fighting. They moved the papers dropped by Mr. Moore and the phones to Mr. Montague's wife's vehicle, a blue Hyundai Sonata, and drove around the Dundalk area.

After the fight, Mr. Moore went to a MetroPCS store to have his cell phone shut off so that Mr. Montague could not tamper with it. According to Mr. Moore, appellant went with him to the store and then went home.

Mr. Montague stated that the "two on two" fight had occurred "out of the blue," but Mr. Moore testified that:

> [M]e and [Mr. Davis][2] already had problems. We already had altercations. I saw [Mr. Davis] and [Mr. Montague] more than I seen [appellant] Antonio [Burrs] in the area, so we didn't see eye to eye too much, you know? Tensions was rising in the air and something was bound to happen and –
>
> * * *
>
> I was mad because I felt as though . . . they did a cowardly act . . . . I don't know if he was trying to get back at me or what but I felt as though I, you know, since what he did I had to come back for real.

[2] During Mr. Moore's trial testimony, he referred to Mr. Davis by the nickname "Ghost."

Later that evening, Mr. Moore encountered Judy Hadix,[3] who wanted to buy drugs from him. Mr. Moore did not have any drugs in his possession, but he arranged to have Ms. Hadix call and purchase drugs from Mr. Davis. Mr. Moore then "pick[ed] [Ms. Hadix's] brain to see what [Mr. Davis] was doing." She told him that she planned to meet Mr. Davis at the Airport Bar & Grill. Mr. Moore did not tell Ms. Hadix that he planned to "get" Mr. Davis because if he had "she would have called him back [and] told him, don't come out here." Mr. Moore testified that he walked with Ms. Hadix to the Airport Bar & Grill.

When Mr. Montague and Mr. Davis arrived, they conversed with Ms. Hadix from the vehicle. She ran away when he "began discharging the firearm at the car." After the shooting, the vehicle crashed into a shed or garage wall near the bar. Although trying to "hit" Mr. Davis, Mr. Moore ended up shooting Mr. Montague.

Mr. Moore[4] insisted that he went to the bar with Ms. Hadix alone. And that he was alone when he ran from the scene, after the shooting, to Natasha Godwin's house on Parnell Avenue.[5]

[3] It is sometimes spelled differently in the trial transcripts, but "Hadix" appears to be the correct spelling.

[4] Prior to trial, Moore admitted that he was the shooter and had entered a plea of guilty to first-degree assault and conspiracy to use a handgun. He received a ten-year sentence. It was the prosecution's theory that he acted in concert with appellant and was now trying to protect him.

[5] At trial, on March 29, 2018, Mr. Moore testified:

Mr. Montague testified that he and Mr. Davis drove around Dundalk on the evening of March 19. When Mr. Davis saw a woman that he recognized, Mr. Montague slowed the vehicle down. When he did, he was shot in the head, arm, and hand and blacked out. Mr. Montague did not see who shot him or recall seeing anyone other than the woman. When he woke up and saw Mr. Davis slumped over, Mr. Montague thought Mr. Davis was dead. Mr. Montague exited the vehicle and ran to a gate at the Dundalk Marine Terminal before collapsing. He was taken, by first responders, to the hospital, where he was shown photograph arrays. He identified appellant and Mr. Moore as the individuals with whom he had fought earlier that day.

Charles Sommers, a former partner and co-owner of the Airport Bar & Grill testified that, around 9:00 PM, he heard people in the parking lot and a vestibule leading to the bar. When a woman yelled "[h]ide in here, he won't see you," Mr. Sommers

(…continued)

> [THE STATE]: What did you do after the shooting? Where did you go?
>
> [MR. MOORE]: I went to Parnell Avenue
>
> * * *
>
> [THE STATE]: Okay. And your testimony here today is that you were alone when you ran into that house?
>
> [MR. MOORE]: Yes.
>
> [THE STATE]: You were alone when you ran through the parking lot of the Airport Bar and Grill after the shooting?
>
> [MR. MOORE]: Yes.

opened the door and said "nobody's hiding in here, this isn't a hangout." A male voice responded "yes, sir." Mr. Sommers may have heard the voice of a second male, but he was not entirely sure, and it was too dark for him to describe the individuals outside the bar. After going back inside, Mr. Sommers heard someone say "here he comes" followed by gunshots from two different guns. After the shots, he heard a vehicle crash. Looking outside, he saw that a dark-colored vehicle had crashed into a shed or garage wall. He did not see any people when he looked outside.

Richard Almony testified that, on the evening of March 19, he was on the front porch of his house on Baltimore Avenue, when he saw Ms. Hadix with three men. He described two of the men as 5'10"; one of the two was tall and skinny. The third man, who was "at least 6-[feet tall] and . . . was real thin," exchanged pleasantries with Mr. Almony. After going inside, Mr. Almony heard the sound of gunshots coming from the back of his home. When he ran out the back door, he noticed "smoke . . . coming up from a car that had went through a garage" and he saw two of the men. . ., who were part of the group that he had seen earlier with Ms. Hadix, "running up the alley." They ran into the backyard of a house on Parnell Ave.

Natasha Godwin testified that, on the evening of March 19, appellant and Mr. Moore[6] knocked on the back door of her home at 6253 Parnell Avenue. She had known them for a few months and had hung out with them on a number of occasions. They

[6] During their testimony, some witnesses referred to appellant as "Ton" and Mr. Moore as "B.G." and "Fat G." For clarity, we will substitute "appellant" and "Mr. Moore" when nicknames are used.

asked her if she could drive them up the street. She agreed and dropped them off on Dundalk Avenue.

Detective Bradley Hood was the primary investigator. He responded to the scene around 9:50 PM on March 19. Outside the Airport Bar & Grill, he saw a crashed Hyundai Sonata and multiple .40 caliber casings scattered on the ground. After learning from local residents that suspects might have run into a home at 6523 Parnell Avenue, he went there with Detective Caesar Mohammad. When he arrived there, he found an unoccupied Chrysler with its engine running. Ms. Godwin came outside and indicated that she owned the Chrysler. Police searched the residence, but did not find any suspects.[7]

While canvassing the area, Detective Hood found a residence with a surveillance-camera. The footage from the camera was admitted into evidence, and showed three individuals approaching the parking lot of Airport Bar & Grill at 9:19 PM, and two individuals approaching and then running away from a dark vehicle at 9:21 PM.

According to Detective Hood, a crime-lab technician accompanied him at the scene to document and collect evidence. The evidence recovered from the Hyundai Sonata included a Samsung-Galaxy phone with a phone number ending in "4558." The police did not locate a firearm matching the shell casings recovered at the scene, and the

[7] Detective Hood also testified that Ms. Godwin identified appellant and Mr. Moore in photograph arrays that she was shown.

firearms examiner determined that the casings "recovered at the scene were fired by one firearm and not two[.]"

Detective David Pietryak extracted the data from the recovered phone per Detective Hood's request, but subscriber information for the phone was not requested. During Detective Pietryak's testimony, the State introduced the phone as State's Exhibit 20 and the extraction report produced by Detective Pietrayk as State's Exhibit 21. Mr. Moore identified State's Exhibit 20 as his cell phone that Mr. Montague had taken earlier that day and recalled that his phone number ended in 4558 or 2694. He acknowledged that the extraction report for the phone was related to a call number ending in 4558.

The State, in its closing, argued that the cell phone with the call number ending in 4558 was appellant's and not Mr. Moore's, and defense counsel objected:

> [THE STATE]: Let's look to the other photos [in the phone]. It's Antonio Burrs in his tux. Oh, that's weird that this is on [Mr. Moore]'s phone. Remember, [Mr. Moore] told you it was his phone.
>
> These are all pictures of [appellant]. Oh, another picture of [appellant] and Gary Mr. Moore, another (inaudible 11:41:46) at a different time. These are regular clothes. And it goes on and on. It's full of photos of the two of them together, the two of them together at totally different times, selfies of [appellant] in the phone. This is the [appellant]'s phone.
>
> Why would [Mr.] Moore lie about that? Why would [Mr.] Moore lie about whose phone that is –
>
> [DEFENSE COUNSEL]: Your Honor, may I –
>
> [THE STATE]: – unless he's trying to –

[DEFENSE COUNSEL]: – may we approach?

THE COURT: No. Your objection is overruled. This is argument.

[DEFENSE COUNSEL]: Your Honor, we need to approach.

THE COURT: All right. Come on up. This is something I don't (inaudible 11:42:23).

BENCH CONFERENCE

(Bench Conference begins – 11:42:32 a.m.)

(All Counsel and the Defendant approach the bench where the following ensues:)

THE COURT: What?

[DEFENSE COUNSEL]: You will remember, Your Honor, that I asked if there was subscriber information. The State didn't produce it. You said it wasn't –

THE COURT: There is no subscriber information.

[DEFENSE COUNSEL]: I get that, but, Your Honor, this is Mr. – my client's phone number. Okay. That's not the phone that was dumped.[8] The phone that was dumped is 443-943-4558. That is one of the two cellphone numbers that Mr. Moore owned.

This number, 443-943-4999, is my client's number.

THE COURT: But that's something for you to argue. The –

[8] Based on our review of the record, defense counsel's references to "dumped" or "dump" refer to the data extraction from the phone with the call number ending in 4558.

[DEFENSE COUNSEL]: But the State is representing that that phone –

[THE STATE]: Uh-huh.

[DEFENSE COUNSEL]: – belongs to –

[THE STATE]: That's right.

THE COURT: The State –

[DEFENSE COUNSEL]: – my client.

THE COURT: – is representing –

[DEFENSE COUNSEL]: That's misleading.

THE COURT: – that Mr. Moore lied in saying that that was his phone.

[THE STATE]: Uh-huh.

THE COURT: There's no proof that any of numbers that he gave were actually his numbers. The State is arguing his credibility and you can argue his credibility also with that –

[DEFENSE COUNSEL]: But if the State had done its homework, it would have known that that dump does not go to my client's phone.

THE COURT: The homework in phones never you to who's paying the bill and who actually has phone.

[DEFENSE COUNSEL]: The police got from my client, when they interviewed him, this phone number.

THE COURT: Is the phone number –

[DEFENSE COUNSEL]: It is not the phone number on the –

THE COURT: Well, and how do I know –

[DEFENSE COUNSEL]: – extraction.

THE COURT: – that that was not a calculated decision that he made the night he gave the police the information about his phone?

[DEFENSE COUNSEL]: All the police had to do was check.

THE COURT: Check it – they could've called it? How do they check?

[APPELLANT]: The police got my phone –

[DEFENSE COUNSEL]: Okay. You be quiet. You be quiet.

THE COURT: Okay. Now, this is argument and that is an area of argument that you can present to them. Let's move along.

[THE STATE]: Thank you, Your Honor.

[DEFENSE COUNSEL]: As I indicated, I just believe it's misleading, Your Honor.

THE COURT: I understand.

DISCUSSION

I. Conspiracy

Standard of Review

The standard for determining the sufficiency of evidence in a criminal case is whether "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *State v. Suddith*, 379 Md. 425, 429 (2004) (cleaned up). On appeal, "we review evidence in the light most favorable to the State[.]" *State v. Albrecht*, 336 Md. 475, 478–79 (1994).

Contentions

Appellant contends the evidence was insufficient to sustain the conspiracy convictions "because there was no evidence that [he] made an agreement . . . to try to murder" Mr. Montague and Mr. Davis." The State responds that "there was ample evidence from which the jurors could infer that there was an agreement." That evidence included appellant's close association with Mr. Moore on the date of the shooting, and a mutual motive to shoot the victims a few hours later after the fight.

Analysis

"A criminal conspiracy is 'the combination of two or more persons, who by some concerted action seek to accomplish some unlawful purpose, or some lawful purpose by unlawful means.'" *Savage v. State*, 212 Md. App. 1, 12 (2013) (quoting *Mason v. State*, 302 Md. 434, 444 (1985)). In other words, "[t]he essence of a criminal conspiracy is an unlawful agreement." *Mitchell v. State*, 363 Md. 130, 145 (2001). Their agreement "need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design." *Carroll v. State*, 428 Md. 679, 696–97 (2012) (internal quotation marks and citations omitted). And it need not be explicit:

> It is sufficient if the parties tacitly come to an understanding regarding the unlawful purpose. In fact, the State [is] only required to present facts that would allow the jury to infer that the parties entered into an unlawful agreement. The concurrence of actions by the co-conspirators on a material point is sufficient to allow the jury to presume a concurrence of sentiment and, therefore, the existence of a conspiracy.

Acquah v. State, 113 Md. App. 29, 50 (1996) (internal citations omitted). The crime is complete when the agreement is formed, and no overt acts are necessary to prove a conspiracy." *Carroll*, 428 Md. at 696–97 (internal quotation marks and citations omitted).

A "[c]riminal conspiracy may be proven through circumstantial evidence, from which an inference of a common design may be shown." *Alston v. State*, 177 Md. App. 1, 42 (2007). When addressing the evidence required to establish a conspiracy, we have stated:

> In conspiracy trials, there is frequently no direct testimony, from either a co-conspirator or other witness, as to an express oral contract or an express agreement to carry out a crime. It is a commonplace that we may infer the existence of a conspiracy from circumstantial evidence. If two or more persons act in what appears to be a concerted way to perpetrate a crime, we may, but need not, infer a prior agreement by them to act in such a way. From the concerted nature of the action itself, we may reasonably infer that such a concert of action was jointly intended. Coordinated action is seldom a random occurrence.

Jones v. State, 132 Md. App. 657, 660 (2000); *see also In re Lavar D.*, 189 Md. App. 526, 591 (2009) ("[R]ather, a conspiracy can be inferred from the actions of the accused."), *cert. denied*, 414 Md. 331 (2010).

Here, the jury heard evidence that Mr. Moore and appellant had gotten into a fight with the victims earlier that afternoon, which ended with Mr. Montague kicking appellant in the face and knocking him unconscious. Mr. Moore admitted that he was mad because of how the fight ended and wanted to "get" Mr. Davis.

Pertinent to this appeal, Mr. Moore maintained that he had acted alone, and had had only two interactions with appellant. But the extraction report, from the phone that Mr. Moore claimed was his, had dozens of photos of appellant. The photographs were taken on various occasions and included appellant posing for "selfies" or with his family, and others of him wearing both regular and formal attire. Ms. Godwin testified that she had known appellant and Mr. Moore for several months and had interacted with them "multiples times." She characterized their relationship as "best friends."

Mr. Moore maintained that only Ms. Hadix had walked with him to the Airport Bar & Grill, but surveillance video showed three individuals walking in its parking lot at 9:19 PM and two individuals running from a vehicle at 9:21 PM. Mr. Sommers, the owner of the Airport Bar & Grill testified that, shortly before the shooting, a female yelled, "Hide in here, he won't see you." And shortly after the shouting, he "heard 'Here he comes' and there was a bunch of gunshots." The jury heard Mr. Sommers's 9-1-1 call, in which he said that there were "two different guns" and "maybe two males and a female."

Mr. Almony testified that, immediately after hearing shots, he saw two men run to 6523 Parnell Ave. He identified those two men as two of the men he had seen with Ms.

Hadix shortly before hearing shots. Mr. Moore testified that he ran to Ms. Godwin's house on Parnell Avenue immediately after the shooting. Ms. Godwin testified that appellant and Mr. Moore knocked on the back door of her house on 6523 Parnell Avenue that evening and asked for a ride to Dundalk. Detective Hood testified that after receiving information that the suspects had possibly run into the rear of 6523 Parnell Avenue, he and Officer Mohammad approached the residence and observed a dark-colored Chrysler behind that house with the motor running.

Based on the evidence, a rational jury could reasonably discredit Mr. Moore's statement that he acted alone and infer that Mr. Moore and appellant were together before, during, and after the shooting and had acted in concert. *Carroll*, 428 Md. at 698.

Appellant points to evidence that he contends does not support a finding of an agreement between Mr. Moore and appellant: Mr. Moore testified that appellant was not with him when he shot at the victims; Detective Hood testified that the responding police had debated whether Mr. Almony could see people run into a home on Parnell Avenue from his Baltimore-Avenue house; and Ms. Godwin's testimony only established that appellant may have been present at the scene of the crime. These examples relate to the credibility and the weight of the evidence, and even if the evidence could support a different inference, it is "the jury's role to resolve the conflicts in testimony, to determine the inferences to be drawn from the evidence, and to decide what relative weight to be attributed to the evidence presented." *McClurkin v. State*, 222 Md. App. 461, 488 (2015).

II. Prosecutor's Closing Argument

Standard of Review

"The determination whether counsel's remarks in closing were improper and prejudicial, or simply permissible rhetorical flourish, is within the sound discretion of the trial court to decide." *Sivells v. State*, 196 Md. App. 254, 271 (2010) (quoting *Jones-Harris v. State*, 179 Md. App. 72, 105, *cert denied*, 405 Md. 64 (2008)). Because it "is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument," we extend deference to the judgment of the trial court. *Whack v. State*, 433 Md. 728, 742 (2013). And for that reason, "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.* (internal citations omitted). An abuse of discretion occurs when a trial judge exercises his or her discretion "in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." *Brewer v. State*, 220 Md. App. 89, 111 (2014) (internal citations and quotation marks omitted).

Contentions

Appellant contends that the trial court erred in overruling his objection to the State's closing argument, in which the State claimed the Samsung-Galaxy phone belonged to him and not Mr. Moore. He maintains that such comments qualify as "improper vouching" by the State. The State responds that appellant failed to preserve the issue for appeal because defense counsel only argued that the prosecutor's closing argument was "misleading." But, if the issue is preserved, the State contends that the

trial court properly exercised its discretion in permitting an argument that related to the evidence in the case.

Analysis

1. Preservation

To preserve a challenge to the admissibility of evidence for appellate review, it is necessary to object "at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent[;] [o]therwise, the objection is waived." Md. Rule 4-323. It is not necessary to state the grounds for the objection "unless the court, at the request of a party or on its own initiative, so directs." *Id.* Ordinarily, a "general objection is sufficient to preserve *all grounds* which may exist." *von Lusch v. State*, 279 Md. 255, 263 (1977) (emphasis added). Exceptions include "where a rule requires the ground to be stated, where the trial court requests that the ground be stated, and 'where the objector, although not requested by the court, voluntarily offers specific reasons for objecting to certain evidence.'" *Boyd v. State*, 399 Md. 457, 476 (2007) (quoting *von Lusch*, 279 Md. at 263).

In closing, the prosecutor argued that Mr. Moore lied about owning a phone that she claimed belonged to appellant. Defense counsel promptly objected to the prosecutor's argument as "misleading" because appellant's phone number ended in 4999 and "if the State had done its homework, it would have known that that [the data extraction report] does not go to client's phone." Appellant characterizes the objection as both general and specific. We do not agree.

His objection was specific because defense counsel "voluntarily offer[ed] specific reasons for objecting to certain evidence." *Boyd*, 399 Md. at 476. The thrust of the objection was that the evidence was insufficient to permit the prosecutor to argue that the Samsung-Galaxy phone belonged to appellant. He did not argue, as he does here, that the prosecutor had personal knowledge that the witness was lying. *See Walker v. State*, 373 Md. 360, 403–04 (finding improper vouching when a prosecutor made assertions based on personal knowledge that a witness was lying). He argued that the State had not "done its homework" by not obtaining the subscriber information on the "dumped" phone. But, as we explain below, were we to assume that the vouching argument had been preserved, appellant would fare no better.

2. Improper Vouching

"Vouching typically occurs when a prosecutor 'place[s] the prestige of the government behind a witness through personal assurances of the witness's veracity . . . or suggest[s] that information not presented to the jury supports the witness's testimony.'" *Spain v. State*, 386 Md. 145, 153 (2005) (internal citations omitted). Prosecutorial vouching is improper because it:

> can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury; and the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's judgment rather than its own view of the evidence.

Spain v. State, 386 Md. 145, 153–54 (2005) (quoting *U.S. v. Young*, 470 U.S. 1, 18–19, 105 S. Ct. 1038 (1985).

Both appellant and the State cite *Sivells v. State*, 196 Md. App. 254 (2010) to advance their arguments. In that case, Bryan Sivells was arrested and charged with several drug-related offenses after detectives observed him engage in an apparent drug transaction. 196 Md. App. at 263. At trial, Sivells attacked the detectives' credibility. *Id.* at 271. In its closing rebuttal, the State addressed the attacks by stating that the detectives were risking their pensions and livelihood if they gave false testimony; that they were "honorable men"; and that "they told the truth." *Id.* at 278–79.

On appeal, Sivells argued that the State's comments constituted improper vouching. *Id.* at 278. We agreed and held that the State's arguments violated the rule against vouching. *Id.* at 280. The first comment was improper because "there was no evidence to support the prosecutor's statement that the police would lose their pensions or their livelihood if they 'made things up.'" *Id.* And, "the repeated references to the officers as 'honorable men,' and the ultimate statement that 'they told the truth,' crossed the line" because "the prosecutor was expressing her personal opinion" and her "comments were not tied to the evidence in the case." *Id.*

In *Spain v. State*, the defendant Jesse Spain was arrested for his participation in a drug transaction involving an undercover police officer. 386 Md. at 148–49. The State's only witness at trial was the undercover officer. *Id.* at 149. The defense argued that the officer was mistaken and that Spain was not involved in the drug transaction. *Id.* at 150. In closing argument, the State commented on the officer's credibility, stating that the

officer "did not have a motive to testify falsely." *Id.* at 154. Spain argued that the comment was improper vouching, but the Court of Appeals disagreed:

> The prosecutor's comments about [the officer's] absence of a motive to lie did not implicate any information that was outside the evidence presented at trial. When a prosecutor argues that a particular police officer lacks a motive to testify falsely, such comments do not bear directly on a defendant's guilt or innocence, but are merely an allusion to a lack of evidence presented by the defendant that the officer in this case possessed any motive to lie or devise a story implicating the defendant in criminal conduct. The prosecutor's invitation for the jury to consider whether the officer had a motive to lie did not amount to improper vouching because the comments did not express any personal belief or assurance on the part of the prosecutor as to the credibility of the officer. Nor did such comments, in isolation, explicitly invoke the prestige or office of the State or particular police department or unit involved.

Id. at 155–56 (internal citations omitted).

Here, Mr. Moore testified that he acted alone in the shooting and that appellant was not involved. The prosecutor, in closing, argued that Mr. Moore was lying about appellant's involvement, and more specifically, about the ownership of the Samsung-Galaxy phone:

> [THE STATE]: Let's look to the other photos [in the phone]. It's Antonio Burrs in his tux. Oh, that's weird that this is on [Mr. Moore]'s phone. Remember, [Mr. Moore] told you it was his phone.
>
> These are all pictures of [appellant]. Oh, another picture of [appellant] and Gary Mr. Moore, another (inaudible 11:41:46) at a different time. These are regular clothes. And it goes on and on. It's full of photos of the two of them together, the two of them together at totally different times, selfies of [appellant] in the phone. This is the [appellant]'s phone.
>
> Why would [Mr.] Moore lie about that? *Why would [Mr.] Moore lie about whose phone that is* –

* * *

> [THE STATE]: So along with all the selfies of [appellant] and the two of them together the whole time even though they didn't know each other, *there's also text messages in here and the people that are addressing the person with the phone call him Tony. "Hey, Tony, what's up? Hey, Tony, what are you doing?"*
>
> *So I suggest to you that [Mr.] Moore lied about the phone. This is the cellphone from Antonio Burrs. He's trying to save him. He's trying to take his charge.* For what reason, I don't know. Not a smart decision, but I guess he feels he's already in there, so might as well just (inaudible 11:45:03). He was the whole reason this happened. This is [appellant's] plan, [appellant's] beef, and [Mr. Moore is] just along for the ride.

(Emphasis added).

Appellant contends that this argument, based only on the data extraction report, was improper. He argues that "the State had to do more than point out that the extraction report included photographs of appellant and text messages mentioning the name "Tony." We are not persuaded.

As in *Spain*, the State's comments did not "implicate any information that was outside the evidence presented at trial." 386 Md. at 155. And, unlike in *Sivells*, there was evidence to support the State's comments. Detective Hood testified that the phone was recovered in Mr. Montague's wife's Hyundai Sonata, and Mr. Montague testified that after the altercation, he had taken both Mr. Moore's and appellant's phone and put them in his wife's vehicle. The Samsung-Galaxy phone contained multiple photographs of appellant's "selfies," appellant's family, and appellant wearing formal and regular attire.

The extraction report included text messages addressing the recipient as "Tony" and others identifying the sender as "Tony" or "Tone."[9] Several witnesses testified that

[9] May 22, 2017 Phone Extraction Report of Samsung-Galaxy cell phone with the phone number 443-943-4558.

Outgoing messages:

- 15 – I'm good on that *this Tony*
- 19 – *This tony*
- 25– *Tone*
- 50 – *Tony*

Incoming Messages*:*

- 9 – "I love you *Tony* goodbye"
- 121 – My bad *Tony* I just woke up and realized how much I text u my apologies I was drunk in my feelings but it will not happen again sorry
- 123 – Imma put by pride aside I do miss u like hell and I love you to death yes I regret the way I handle a lot of [expletive] but also can tell u dealing with someone now so imam respect it and move on too eventually but I'm not gonna bother u no more I can tell the love u had for me no longer assist ok *Tony* my last text I see u don't want me texting u
- 128 – *Tony* my love is unlike u I don't want nobody right now but u smg
- 132 – I finally got the point now say more I hope u having fun [expletive] me *Tony* soon all this [expletive] be distance memory.
- 140 – I didn't say u had girl I was dealing with someone so I can stop bothering u *Tony* I don't wanna keep looking stupid *Tony* do u want me stop hitting u?
- 158 – Ok *Tony* im sorry how I handle things with u I just see everything clearly now I must say u really did love me at one point and I [expletive] it all up I'm sorry
- 160 – I'm serious *Tony* this woman made really see how much I did . . .
- 172 – We u enjoy the rest of ur day *Tony* it was nice talking to u I feel better now that I clear the air

(Emphasis added).

appellant's nickname was "Ton" and the jury heard a jailhouse call in which appellant referred to himself as "Tone."[10]

And, during Mr. Moore's testimony, the State questioned the extent of Mr. Moore's relationship with appellant:

> [THE STATE]: Okay. How many times had you hung out with [appellant] before?
>
> [MR. MOORE]: Probably, like, twice.
>
> [THE STATE]: Like, twice?
>
> [MR. MOORE]: Yeah.
>
> [THE STATE]: Would there be any reasons for any photographs of the two of you to be around –
>
> [MR. MOORE]: Just –
>
> [THE STATE]: – in someone's phone perhaps?
>
> [MR. MOORE]: Just to take a picture for real.
>
> [THE STATE]: Okay.
>
> [MR. MOORE]: He just want me to take a picture, you know, like the outfits that we wear. He just be wanting just to memorize – just take a picture.

That the phone was appellant's and that Mr. Moore was lying about owning the phone in an effort to protect appellant was a reasonable inference that could be drawn

[10] Sean Rosenmerkel, an Intelligence Agent for the Department of Public Safety and Correctional Services, testified about a jail call made by appellant on March 26. The jury heard the recorded call in which appellant identifies himself as "Tone" and tells a woman on the other end that Ms. Godwin should say that she was high and that he was upset with someone named "Gary."

from the evidence in this case. In short, the comments were not improper vouching and the trial court did not err in permitting them in closing argument.

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