UNREPORTED

IN THE COURT OF SPECIAL APPEA LS

OF MARYLAND

No. 0983

September Term, 2013

STANLEY BRUNSON

v.

STATE OF MARYLAND

Leahy,
Reed,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

Opinion by Reed, J.

Filed: September 25, 2015

This appeal arises from a fatal shooting in southwest Baltimore City in December 2011. Appellant Stanley Brunson was tried and convicted of first-degree assault and several firearms charges in the Circuit Court for Baltimore City. The circuit court imposed a total sentence of twenty years' imprisonment. Appellant now appeals his convictions and presents three questions for our review, which we have slightly rephrased[1]:

> I. Whether the circuit court erred where it permitted the State to refer to the "code of the street" in its closing argument?
>
> II. Whether the circuit court erred where it permitted the State to make argument regarding the lack of forensic evidence in its closing argument?
>
> III. Whether the evidence was insufficient to sustain appellant's convictions?

We answer questions one and three in the negative. We therefore hold that the evidence was sufficient to sustain his convictions and that there was no error in referring to the "code of the streets". Question two, however, we answer in the affirmative, and find

[1] Appellant originally presented his questions as follows:

> 1. Did the trial court err in allowing the State to argue in closing, both orally and by displaying power-point slides, that the surviving victim was following the "code" of the streets in refusing to identify Brunson as the shooter?
>
> 2. Did the trial court err in permitting the State to argue other facts not in evidence?
>
> 3. Was the evidence insufficient to sustain the convictions?

the court erred by permitting the State to make certain arguments regarding the lack of forensic evidence. We also hold that the circuit court committed harmless error in permitting the State's argument. Accordingly, we affirm the appellant's convictions.

BACKGROUND

On January 20, 2012, appellant was charged in three indictments with several serious felonies arising from a December 19, 2011, shooting incident in southwest Baltimore City.[2] In that incident, Donte Collins, a.k.a. "Black," was fatally injured, while Darnell Edwards, a.k.a. "Big Homey," was shot nine times and survived.

On the day of the incident, although the facts are somewhat unclear, it seems appellant was spending time with Mr. Collins in their neighborhood. Mr. Edwards appeared—whether spontaneously or by invitation—and, at that point, appellant gave chase, shooting at Mr. Edwards. Mr. Edwards was struck nine times but, miraculously, survived.

Unfortunately, in the chaos created by the shooting, Mr. Collins was also struck. He fell in the street, unable to communicate. After appellant returned to the scene, he saw Mr. Collins lying in the street. Distraught, he ran over to his friend's side, exhorting him to "Come on, man. Come on, breathe." The police and emergency medical technicians arrived

[2] In Case No. 112020014, appellant was charged with first-degree murder, wearing, carrying, and transporting a handgun, and use of a firearm in a crime of violence.
In Case No. 112020015, appellant was charged with attempted first-degree murder, first- and second-degree assault, wearing, carrying, and transporting a handgun, and use of a firearm in a crime of violence.
In Case No. 1102020016, appellant was charged with possession of a regulated firearm by a person disqualified by a felony conviction.

shortly thereafter. Realizing the seriousness of the situation, appellant grew nervous and fled. Mr. Collins was transported to the hospital, where he expired an hour after his transport.

The police investigation into the homicide of Mr. Collins ran into several roadblocks because only a few witnesses were willing to provide information regarding the shooting. Kristin Pinkney was the individual who transported Mr. Edwards to the hospital after he was shot. When the detectives contacted her, she related the fact that Eric Cawthorn told her what had transpired. The detectives eventually spoke to Mr. Cawthorn, who was cooperative and provided information tying appellant to the shooting. He also mentioned that he was with his friend, Robert Robinson, at the time. At trial Mr. Cawthorne testified inconsistently with the information that he gave the police during the investigation.

The police reached out to Mr. Robinson via his mother, Tara Robinson. Ms. Robinson permitted the police to speak to her son, who stated that although he saw the appellant shooting, he did not see whom appellant was shooting at. He identified the appellant as the only shooter. Mr. Robinson testified that another man, not the shooter, was talking to the victim, who was lying on the ground. Later Mr. Robinson identified the Appellant in a photo array.

Ms. Robinson also spoke to the police. She told them that she rendered aid to the victim in her capacity as a medical assistant, and that appellant eventually ran up to the victim, out of breath, exhorting him to continue breathing.

The police attempted to speak with Mr. Edwards, but were stonewalled. The prosecution argued that this refusal to speak to the police was a result of Mr. Edwards abiding by the "code of the street."[3]

Appellant was brought to trial on January 16, 2013. The jury rendered its verdict on January 24, 2013. They found appellant not guilty of first-degree murder in the shooting death of Mr. Collins, and not guilty of attempted first-degree murder in the shooting of Mr. Edwards. However, they convicted appellant of first-degree assault of Darnell Edwards; use of a handgun in a crime of violence; wearing, carrying, and transporting a handgun; and possession of a regulated firearm by a person disqualified by a felony conviction. On May 28, 2013, after denial of appellant's motion for a new trial, the circuit court sentenced appellant to a total of twenty years' incarceration—a fifteen-year term for the first-degree assault, and two five-year terms without parole to run concurrently with each other, but consecutive to the assault conviction.

[3] The prosecutor provided the following description of the "code of the street" in her opening argument:

> The code of the street, it's not written down, but everybody knows it. You don't cooperate with law enforcement. If there's a crime, you don't speak to the police, even if you're a victim or you're a witness. You keep that information to yourself. If by some means the police are able to solve the crime without your assistance, you do not go to court; and if by some extraordinary means the prosecutor gets you to court, you recant. You sit here and you confess, "You know, I don't remember it," "I think I may have lied," or "You know what? The person who is accused of shooting me, or the person that I saw doing a murder, well, that's actually my best friend and he would never do something like this."

Appellant timely noted his appeal on June 14, 2013.

STANDARDS OF REVIEW

Prosecutors are afforded wide latitude in making their closing arguments, but that freedom is tempered where the comments made by a prosecutor actually mislead the jury or were likely to mislead or influence the jury to the prejudice of the accused. *See Degren v. State*, 352 Md. 400, 430–31 (1999) (internal citations omitted). The determination of prejudice is dependent on the unique facts of each case, and the trial judge is committed with the sound discretion to determine whether the prosecutor's comments prejudiced the accused or were "simply rhetorical flourish." *See id.* (internal citations omitted). We will not reverse the trial court absent an abuse of that discretion that prejudiced the accused. *Id.* An abuse of discretion occurs where no reasonable person would take the view adopted by the trial court, or where the trial court takes action without reference to any guiding principles, and the ruling runs contrary to fact and logic. *Beyond Sys., Inc. v. Realtime Gaming Holding Co., LLC*, 388 Md. 1, 28 (2005).

When reviewing whether the State has presented sufficient evidence to sustain a conviction, we examine "whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *accord Hobby v. State*, 436 Md. 526, 537–38 (2014). Our purpose in this inquiry

> is not to undertake a review of the record that would amount to, in essence, a retrial of the case. Rather, because the finder of fact has the unique opportunity to view the evidence and to observe first-hand the demeanor and to assess the credibility of witnesses during their live testimony, we do not re-weigh the

> credibility of witnesses or attempt to resolve any conflicts in the evidence. We recognize that the finder of fact has the ability to choose among differing inferences that might possibly be made from a factual situation, and we therefore defer to any possible reasonable inferences the trier of fact could have drawn from the admitted evidence and need not decide whether the trier of fact could have drawn other inferences from the evidence, refused to draw inferences, or whether we would have drawn different inferences from the evidence.

Titus v. State, 423 Md. 548, 557–58 (2011).

DISCUSSION

I. PARTIES' CONTENTIONS

Appellant assigns two points of error with regard to the State's closing argument. First, he contends the references to the "code of the street" throughout the State's closing argument, both orally and in a Powerpoint presentation, were references to facts not in evidence. Allowing the prosecutor to make these references, therefore, was error warranting a mistrial. Second, appellant contends that the prosecutor asserted two additional facts not in evidence. He argues the prosecutor improperly claimed that no latent prints were found on the recovered shells because of the high temperatures generated when a bullet is fired, and also that the contamination of the deceased victim's jacket was the reason no evidence of close-range shooting was available.

Appellant also argues that the evidence was insufficient to sustain his convictions. He contends Mr. Robinson's testimony that appellant was not the man exhorting the victim to "breathe" was "fatally contradicted" by Mr. Robinson's other testimony and by all the other evidence presented that identified appellant as that man. He also argues Mr. Cawthorn's in-court testimony was inconsistent with his prior photo array identification of

appellant. Last, he argues there was a "complete lack of concrete or forensic evidence" that would tie the appellant to the shooting.

The State disagrees with appellant on all three issues raised. First, the State explains the references to the "code of the street" were not prejudicial. Rather, the prosecutor explained the concept and related it to matters within the common knowledge of the jurors, and, moreover, those references to the "code" were meant to explain the evasive or inconsistent testimony of several witnesses at trial. Second, the State also argues the two comments regarding latent print evidence and evidence of close-range firing were fair inferences based on the evidence presented and common knowledge possessed by jurors. Finally, the State contends the evidence was sufficient to convict appellant. It explains appellant cannot question the credibility of witnesses as a matter of sufficiency, because credibility determinations are reserved for the jury. Furthermore, the State counters appellant's argument regarding Mr. Cawthorn's inconsistency with its contention that an out-of-court identification by itself is sufficient to establish criminal agency. The State finally explains that, regardless of appellant's argument that there was a lack of concrete or forensic evidence, as long as a jury believes the testimony of a single eyewitness, the evidence is sufficient to support a conviction.

II. ANALYSIS

A. References to the "code of the streets" in the prosecutor's closing argument were based on common knowledge and evidence in the record

Appellant contends the references to the "code of the streets" weaved into the prosecutor's closing arguments were prejudicial, as they referred to matters outside the

evidence. We disagree. The prosecutor was using her rhetorical toolkit to fashion an argument out of common knowledge and evidence in the record. The concept of the "code of the streets" or "law of the streets" is common knowledge, both in Baltimore City and nationwide. Furthermore, the concept of what the "code of the streets" encompasses was fully supported by testimony in the record.

Prosecutors are afforded "liberal freedom of speech" and may make any comment based in the evidence, or any reasonable inference drawn from that evidence. *See Degren*, 352 Md. at 429–30. To that end,

> arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments to opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined-no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusion.

Wilhelm v. State, 272 Md. 404, 413 (1974). The prosecutor's closing argument in the present case closely resembles the closing argument discussed in *Lee v. State*, 405 Md. 148 (2008), where the "law of the streets" was invoked.

In *Lee*, the Court of Appeals held that the State's closing argument referencing the "law of the streets" during defendant Lee's trial was improper because it may have led the jury to speculate on matters outside the evidence, and was not a proper, "invited response." *Id.* at 168, 170. Lee was on trial for various offenses stemming from a shooting in Baltimore City. *Id.* at 153. Lee and the victim, Richard Cotton, had been involved in an altercation

before Lee shot Cotton. *Id.* At trial, Lee called Cotton as a witness, who testified to an unclear memory of the evening's events and that Lee was not the shooter. *Id.* at 154. In its closing argument, the defense used Cotton's testimony to suggest that there was a possibility Cotton was not lying when he stated Lee was not the shooter. *Id.* at 155–56. The State seized on this argument to assail Cotton's credibility and explain that he was untruthful because of the "law of the streets." *Id.* at 156–59. The State further appealed to the jury to "clean up the streets" and to teach Lee a lesson about not settling disputes with violence. *Id.*

The defense objected to these arguments, but was overruled and, eventually, the jury returned guilty verdicts as to several lesser charges (he was acquitted of the most serious murder charges). *Id.* at 159. He received a sentence totaling twenty years' imprisonment, which was affirmed by this Court. The Court of Appeals, however, reversed our judgment because the comments of the prosecutor during closing argument were sufficiently prejudicial. *Id.* at 160.

Notwithstanding the general latitude afforded to comments made in closing argument, the Court held that the prosecutor's comments in her closing argument were "clearly" improper. *Id.* at 165. The Court analyzed three sets of remarks regarding "the law of the streets." First, the Court determined the invocation of the "law of the streets" as related to Cotton's credibility was improper because there was "nothing in the record, nor was there any testimony or evidence . . . as to what constituted 'the law of the streets.'" *Id.* at 168. This meant that the jury was required to speculate and decide Lee's guilt based on information outside the evidence, given that the information was not "of such general

notoriety as to be [a] matter of common knowledge." *Id*. (internal quotation marks omitted).

Second, the Court also considered the prosecutor's exhortation to the jury to "clean up the streets," in which she emphasized that the citizen members of the jury had the right to be safe and secure in their communities and could assert this right by demonstrating the "law of the streets" would not subvert justice. *Id.* at 170–71. The Court held this was an improper appeal because it invoked the prohibited "golden rule" argument, where a prosecutor essentially asks a jury to view the evidence presented in accord with a juror's personal interests rather than objectively. *Id.* at 172–73. Last, the Court held that the prosecutor's final appeal to the jury to send a "lesson" to the defendant about settling disputes using the "law of the streets" was improper, because it also required the jury to speculate and decide based on information outside the evidence. *Id.* at 173–74. The Court ultimately determined that these three distinct sets of statements created a cumulative prejudicial effect sufficient to deny Lee a fair trial. *Id.* at 179.

The present appeal bears numerous similarities to *Lee*. Both cases involve a shooting in Baltimore City (although, in this case, one of the victims died). Both cases involve charges for murder by handgun and related offenses. Both cases feature prosecutors invoking the "law" or "code of the streets." The difference between the cases is that in the present matter the prosecutor employed a slide-show to explain the "code of the streets" concept.

We determine there was nothing prejudicial about the references to the "code" in the State's closing argument. The key difference between the present case and *Lee* is that

the references to the "code" in the present case were tied to evidence and testimony already admitted into the record. The holding in *Lee* with regard to the invocation of the "law of the streets" and its connection to the credibility of Cotton was couched in the principle that "comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial [are] improper." *Id.* at 166 (internal citations omitted). The prosecution in the present matter made sure to refer consistently to the evidence and testimony throughout its closing argument.

The prosecutor first tied the testimony of Darnell Edwards, the surviving victim, to the "code." In his testimony, Mr. Edwards demonstrated an evasive nature. He refused to testify as to the identities of the individuals who took him to the hospital. He also admitted avoiding the State's attempts to interview him in the case. Notably, he testified that he was in attendance at trial only because the police forced him to come to the courthouse; this was because, in his words he "hate[s] court. I didn't want to be [there]."

The prosecutor then connected the testimony of Eric Cawthorn to the "code." During the investigation into the shooting, Mr. Cawthorn initially identified appellant in a statement to police. Like Mr. Edwards, Mr. Cawthorn became evasive on the stand and even contradicted his prior identification. Mr. Cawthorn explicitly stated that he provided a false statement to the police when he identified the appellant. When asked to provide a reason as to why the statement was false, he claimed it was because he had heard otherwise "from the streets." Critical to the State's closing argument was Mr. Cawthorn's testimony that, during an interview at his home with the prosecutor and the investigating detective, he was physically shaking and crying when told he would have to testify in court.

All references to the "code of the street" were directly tied to evidence in the record—something the prosecution in *Lee* did not do. It certainly is possible that the jury could draw an inference between this evidence and the notion of the "code of the streets," just as it is possible that they could have determined there were other motivations for the testimony. Appellant's argument that *Lee* is applicable to this case fails, however, because the necessary information for the jury to draw upon was presented within the four walls of the courthouse.

Moreover, the idea that, in 2014, the concept of the "code of the street" or "stop snitching" is *not* a matter of such general notoriety as to be a matter of common knowledge is a fallacy. The concurrence in *Lee*—issued six years ago—discussed the problems faced by the police and prosecutors in Baltimore City in obtaining witness cooperation, notably because of the "stop snitching" campaign. *Id.* at 182–83, 182 n.3 (Harrell, J., concurring). This pernicious campaign became so widespread since its popularization in the form of a 2004 DVD,[4] that the U.S. Department of Justice's Office of Community Oriented Policing Services issued a report dedicated to exploring policies for combating the campaign.[5] The pervasiveness of "stop snitching" or "no snitching" is demonstrated by Maryland case law as well. *See Griffin v. State*, 419 Md. 343 (2011) (discussing whether a print-out from a social networking website, in which a user allegedly threatened a State's witness in a murder trial by stating "snitches get stitches," was properly authenticated); *Hammonds v.*

[4] *See* Wikipedia, *Stop Snitchin'*, http://en.wikipedia.org/wiki/Stop_Snitchin' (as of Sept. 11, 2014, 16:50 GMT).

[5] U.S. DEP'T OF JUSTICE, OFFICE OF COMMUNITY ORIENTED POLICING SERVICES, THE STOP SNITCHING PHENOMENON: BREAKING THE CODE OF SILENCE (2009).

State, 436 Md. 22, 47 n.8 (2013) (discussing the "Stop Snitchin'" DVD as part of the legislative history of Maryland's current anti-witness intimidation statute); *Moore v. State*, 194 Md. App. 327, 359 (2010), *rev'd on other grounds*, 422 Md. 516 (2011) (explaining that appellant's assertion that he was not going to be "no snitch" was "a phrase of such notoriety as to be understood as being part of the law of the streets or living by the code," and that "the concept of not snitching is commonly understood as being part of the law of the streets or living by the code." (internal citations and quotation marks omitted)); *Armstead v. State*, 195 Md. App. 599, 607 (2010) (quoting a witness about why he did not speak to the police earlier on in their murder investigation: "It ain't good to snitch, it ain't good to snitch. Snitchers get stitches, that's how I always looked at it."); *Height v. State*, 185 Md. App. 317, 343 (2009), *vacated on other grounds*, 422 Md. 662 (2009) (holding that prosecutor's explanation in opening statement for why a particular witness would be uncooperative—"rule number one on the street is you do not snitch"—did not run afoul of the holding of *Lee*).

The invocation of the "code of the street" by the prosecutor at appellant's trial was not violative of *Lee's* holding. All references to the "code" were tied to evidence previously admitted at trial, and, as discussed *supra*, the concept is "of such general notoriety as to be a matter of common knowledge." We hold that the prosecutor's use of the "code of the street" expression in her closing argument was proper and does not merit reversal.

B. The prosecutor drew inferences unsupported by the admitted evidence, but trial court committed harmless error in overruling appellant's objections

Appellant further argues that two comments made during the prosecutor's closing arguments were unsupported by evidence in the record. We agree that appellant's objections should have been sustained. The trial court erred. We disagree, however, that the error was reversible; the error was not of such magnitude as to influence the outcome of the case.

During the State's closing argument, the prosecutor sought to draw inferences from the testimony of two State's witnesses who testified regarding the investigation. First, relying on the testimony of these witnesses, the prosecutor explained that no latent fingerprints could be recovered from the spent shells found at the scene. She told the jury that, when a round is fired, the extremely high temperatures generated in the firearm's chamber cause the body oils and water comprising a fingerprint to evaporate.

Shortly after making that argument, the prosecutor asserted to the jury that the jacket that belonged to the fatal shooting victim could not be examined for evidence of a close-range shooting because the emergency responders had cut the jacket off the victim and placed it in the street, contaminating it. This action precluded a close examination of the jacket for stippling and soot. Appellant's trial counsel objected to both of these arguments at the time they were made, but was overruled by the trial judge.

These arguments were impermissible because they were inferences not fairly drawn from the evidence in the record. As discussed *supra* in § II-A, prosecutors may exercise "liberal freedom of speech" when they present their closing arguments to a jury. *Spain v.*

State, 386 Md. 145, 152 (2005). They may not, however, state or comment upon facts not in evidence, nor invite the jury to draw inferences from evidence not admitted at trial. *Donati v. State*, 215 Md. App. 686, 731 (2014).

Any inferences that were to be drawn by the jury had to be taken from the evidence were several steps removed from the evidence actually presented. The inferences would be drawn from the testimony of two police investigators. The first, Karl Harris, the Baltimore Police Department's crime scene technician, explained during cross-examination, that he was unable to recover any fingerprints from the shell casings recovered at the scene. The second, Karin Sullivan, a firearms and tool-mark examiner with the Baltimore Police Department, was asked to define a latent fingerprint. She was offered for this purpose because of her prior service in the Department as a mobile crime lab technician. She had not been offered pre-trial as an expert in finger print analysis. Ms. Sullivan defined it as a print consisting of a mix of oil and perspiration that is not readily visible. Subsequently, after qualifying as an expert witness in firearms and handgun identification, Ms. Sullivan explained that when the trigger is pulled, a controlled explosion reaching temperatures of 500 degrees occurs. Ms. Sullivan failed to identify, however, whether the temperatures reached in the chamber were in degrees Fahrenheit or Celsius. We recognize that this is not necessarily a fatal flaw since a temperature of 500 degrees Celsius or Fahrenheit is a very high temperature.

The prosecutor then explained in her closing arguments the relationship between the temperature within the firearm and the fingerprints:

> [Mr. Harris] went through the general area of the crime and that is marked out in State's Exhibit 16, and he talked about how he came around to the general area of the crime scene. He looked around for shell casings, other items. He then began to process that. He recovered the nine shell casings and he also recovered the one bullet that Ms. Sullivan talked about actually today, which we learned from Ms. Sullivan the inside of that semiautomatic handgun heats up to approximately 500 degrees. Fingerprints, as she told us, come from moisture of the finger. So, obviously, if something heats up to 500 degrees, you're not going to recover shell casings – finger prints on shell casings . . . which is essentially what Mr. Harris told us; that even though he did try, there were no finger prints to be recovered.

We think this is not a fair inference to be drawn from the evidence presented, and it was beyond the proper scope of a prosecutor's closing arguments to invite the jury to draw this inference. The evidence presented only discussed the high temperatures in the chamber of the firearm and the composition of a latent fingerprint. At no point throughout the testimony of these witnesses was a connection made between the high temperatures and the fingerprints, or the high temperature and the degradation of the fingerprint. The jury did not receive an explanation about the impact of these high temperatures on a latent fingerprint. The prosecutor attempted to introduce into evidence the rate of recovery of fingerprints on shell casings. This question was objected to, and the court sustained the objection.

First, it was unclear what temperature unit the prosecutor meant. A temperature of 500 degrees Celsius is far more intense than 500 degrees Fahrenheit.[6] Second, the

[6] 500 degrees Celsius is 932 degrees Fahrenheit. *See* Google Unit Converter, https://support.google.com/websearch/answer/3284611?hl=en#unitconverter (last accessed Oct. 9, 2014).

prosecutor did not explain the impact the firing of the gun may have had on the prints on the shell. The jury never received an explanation of how prints are recovered from shell casings, let alone how the temperatures in the chamber impact the prints. What was clear is that no fingerprints were recovered after the shell casings were examined by Mr. Harris and the police department.

Courts in our sister states have discussed the numerous variables that may impact the presence of prints on the casings. *See, e.g.*, *Commonwealth v. Begley*, 780 A.2d 605, 635 (Pa. 2001) (explaining that testimony of latent fingerprints expert, which stated that prints may be affected by smudging, temperature, and nature of the surface of the object, was not prejudicial to defendant-appellant); *State v. Thompson*, 610 S.W.2d 629, 637 (Mo. 1981) (affirming that detective testifying with regard to fingerprints was an expert, and quoting that detective: "There is no set pattern why a fingerprint will disappear or evaporate. There are many variables in fingerprinting, temperature, humidity, the surface itself it's put on. * * * The type of surface it's put on. Paper will absorb it, glass will not absorb moisture. There's a thousand variables involved in fingerprinting." (omission in original)); *People v. Williams*, 568 N.E.2d 388, 397 (Ill. App. Ct. 1991) (recalling the testimony of a prosecution witness on fingerprints: "[A] person could touch an item and not leave any fingerprints depending on the surface touched, the amount of perspiration secreted, temperature and whether gloves were worn."). None of these variables were presented to the jury in evidence in the present case. Given the amount of variables that may affect the recovery of a fingerprint, to ask a juror, without the presentation of expert testimony, to assume that high temperatures will evaporate latent prints would lead to an

impermissible inference. For example, it could be that high temperature combined with a fingerprint or oil or water from the finger could possibly create a permanent image on an item.

We also hold that no fair inference may be drawn regarding the lack of close-range evidence of the shooting. During Mr. Harris' testimony, several photographs of the crime scene were admitted into evidence. One of those photographs was of a black jacket worn by Mr. Collins, the deceased victim. The photograph depicted a jacket lying in the street without any apparent covering protecting it from the elements. Closer examination of the photograph shows the jacket had a very large tear running down the center of its back. The State argued in closing argument that the paramedics created the tear in the jacket when attending to the victim, and then placed the jacket in the street, thereby contaminating evidence. Nowhere in the record, however, was testimony or other evidence presented about the paramedics cutting and removing the jacket from the victim, and placing it in the street. Although a reasonable jury could infer contamination of the jacket from its placement in the street, that inference dissipated once the prosecutor referred to matters not in evidence, *i.e.*, that the paramedics cut, removed, and placed the jacket in the street.

Notwithstanding the trial court's error in allowing the prosecutor to make these statements in closing argument, we determine the error was harmless. The critical analysis in the harmless error determination is whether the trial court's error, when considered along with the totality of the evidence, was significant "in influencing the jury's rendition of the verdict, to the prejudice of the [accused]." *Degren v. State*, 352 Md. 400, 432 (1999) (internal citations omitted). We shall reverse only where the closing remarks "actually

misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Evans v. State*, 333 Md. 660, 679 (1994) (internal citations omitted).

In *Lawson v. State*, 389 Md. 570, 593–600 (2005), the Court of Appeals considered the cumulative effect of four improper statements in the prosecutor's closing argument. The prosecutor had used a "golden rule" argument, insinuated that the burden was upon the petitioner to prove that the child was lying, appealed to the jury's prejudice and fear, and finally alluded to the fact that petitioner's conviction might prevent harm to another specific child in the future. This Court had considered the statements on an individual basis, and determined that, though erroneously permitted, they were not harmful. *Id.* at 599–600. The Court of Appeals reversed the judgment of this Court because it thought that, when taken together, the statements had a cumulatively prejudicial effect. *Id.* at 600.

Taking into consideration the *Lawson* court's approach to the harmless error analysis, we hold that the two statements were not harmful, either individually or cumulatively. Each statement was an improper extrapolation purportedly based on evidence in the record. Nevertheless, those two statements were short, fleeting remarks that could be swallowed up by the remainder of the properly admitted evidence of the appellant's guilt.

Moreover, their cumulative effect was harmless as well, especially compared to the highly prejudicial statements in *Lawson*. *See id.* at 593–94 (holding prosecutor's statements, which entailed a Golden Rule argument, an argument the accused bore the burden of proving a witness was lying, an appeal to the jury's prejudices and fears, and an argument regarding the accused's potential future criminality if he were not convicted,

were altogether prejudicial). Here, only two statements were made, and they were purely restricted to, albeit improper, arguments regarding the evidence of the shooting. The statements never once referred to appellant's character and history, nor did they attempt to inflame the jury. The statements were clinical analyses of evidence that the trial court erroneously permitted over objection, but without causing so much harm as to impair appellant's right to a fair trial.

We hold that the prosecutor's contested comments fell outside the bounds of proper closing argument, but appellant was not prejudiced by them. The trial court's error was, therefore, harmless.

C. The evidence was sufficient to sustain appellant's convictions

Appellant contends the evidence sustaining his convictions was insufficient because the only evidence he was the shooter was the testimony of Robert Robinson and Eric Cawthorn. Appellant claims that Mr. Robinson could not provide an accurate identification, and Mr. Cawthorn recanted his prior identification on the stand. In addition, he argues there was a complete lack of concrete or forensic evidence linking him to the shooting. Accordingly, for all these reasons, the evidence was insufficient to prove his guilt beyond a reasonable doubt. We disagree and shall explain.

Darnell Edwards, the surviving victim in this matter, testified on direct and cross examination that appellant was at the scene of the shooting. Later in the trial, Mr. Robinson testified that, on the day of the shooting, he was returning from the Chocolate City corner store and heard gunshots. When asked who the shooter was, Mr. Robinson made an in-court identification of appellant and further testified he saw appellant shooting the gun. He

also stated that he had spoken with the investigating detective and identified appellant in a photo array.

Ms. Tara Robinson, Mr. Robinson's mother, also testified for the State. She testified that she had heard the shooting, and that after her son came running into the house, she went outside to survey the scene. She further stated that it was then that she saw an individual on the ground and another man standing over him, highly upset and saying "Come on, man, breathe." When asked to identify the man standing over the individual on the ground, she made an in-court identification of appellant. She further stated that she identified appellant in a photo array that was presented to her by the police. On cross-examination, Ms. Robinson reiterated her identification of appellant from the scene and the photo array, and also stated her son was standing beside her when they witnessed appellant exhorting the fatal victim to "breathe."

When Mr. Cawthorn testified, he recanted the prior identification of appellant he had made to the police, stating he had heard otherwise "from the streets." When presented with the photo array he signed, however, he confirmed that he had picked out the appellant and written on the back of the array that appellant was the individual "doing the shooting on Brighton and Rosedale."

Appellant also complains of a lack of forensic evidence. The admitted evidence of the crime scene, however, included several shell casings, a projectile, and the photos of the crime scene (the crime scene photographs included photographs of the nine shell casings and the projectile).

Where a declarant is unable to identify the accused at trial, the extrajudicial identification of the accused will nevertheless be sufficient evidence of criminal agency necessary to sustain a conviction. *Nance v. State*, 331 Md. 549, 561 (1993). Notwithstanding the recantations of prior identifications in trial, the testifying eyewitnesses had made prior identifications placing appellant at the scene or identifying him as the shooter. We determine that this is more than sufficient evidence to sustain appellant's conviction.

This case heavily relied on circumstantial evidence given the fact that multiple witnesses chose to abide by "the code of the streets" and recanted their testimony. Nevertheless, we have held that it is axiomatic that "no greater degree of certainty is required when the evidence is circumstantial than when it is direct, for in either case the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused." *Martin v. State*, 218 Md. App. 1, 35 (2014). Furthermore, we do not give credence to appellant's arguments regarding the credibility of Messrs. Robinson and Cawthorn. We have clearly stated in the past that "it is not the function of the appellate court to determine the credibility of witnesses or the weight of the evidence." *Owens v. State*, 170 Md. App. 35, 101–02 (2006) (internal citations omitted). "Rather, it is the jury's task to resolve any conflicts in the evidence and *assess the credibility of witnesses*." *Id.* at 102 (emphasis added).

Viewing the evidence in the light most favorable to the State, we are persuaded there was more than sufficient evidence to link appellant to the shooting and death of Mr. Collins. Several eyewitnesses placed him at the scene and saw him shooting. Crime scene photos

and other forensic evidence provided additional information for the jury. We think the evidence and inferences therefrom could allow a rational jury to find appellant guilty beyond a reasonable doubt.

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.