Circuit Court for Baltimore City
Case No. 116224011

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 989

September Term, 2017

JAMAL SIMMS

v.

STATE OF MARYLAND

Leahy,
Reed,
Raker, Irma S.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: July 10, 2018

Jamal Simms, appellant, was convicted in the Circuit Court for Baltimore City of first-degree rape, three counts of first-degree sexual offense, third-degree sexual offense, second-degree assault, first-degree burglary, carrying a dangerous weapon openly with the intent to injure, and theft between $1,000 and $10,000. He presents the following questions for our review:

> "1. Did the trial court err in allowing the prosecutor to make improper and prejudicial comments at closing argument?
>
> 2. Did the trial court improperly limit defense counsel's cross-examination of a state witness?"

We shall hold that the first issue was not preserved for our review and that the trial court exercised its discretion properly regarding the cross-examination. Accordingly, we shall affirm.

I.

The Grand Jury for the Circuit Court for Baltimore City indicted appellant with twenty offenses as follows: first-degree rape, second-degree rape, three counts of first-degree sexual offense, three counts of second-degree sexual offense, third-degree sexual offense, fourth-degree sexual offense, first-degree assault, second-degree assault, reckless endangerment, first-degree burglary, third-degree burglary, fourth-degree burglary, carrying a dangerous weapon openly with the intent to injure, theft between $1,000 and $10,000, theft of a motor vehicle, and unauthorized use of a motor vehicle. The trial court granted appellant's motion for a judgment of acquittal on the charges of first-degree assault, reckless endangerment, and authorized use of a motor vehicle.

The jury convicted appellant of first-degree rape, three counts of first-degree sexual offense, third-degree sexual offense, second-degree assault, first-degree burglary, carrying a dangerous weapon openly with the intent to injure, and theft between $1,000 and $10,000. The court imposed a term of incarceration of life imprisonment as follows: life for first-degree rape, concurrent life for each of the three counts of first-degree sexual offense, and concurrent one year for theft.

The following facts emerged at trial. Between 2 and 3 a.m. on July 15, 2016, Ms. S. woke up in her apartment to a masked man forcing her to have sex with him. At around 5 a.m., Ms. S. escaped to a neighbor's house barefoot wearing nothing but a nightshirt, where she called the police. Although she never saw her attacker's face, she testified that she believed him to be appellant, a friend of her ex-boyfriend Juan Grant, for two reasons. First, the assailant wore the same shorts that she saw appellant wear when he came to her apartment between 4 and 5 p.m. the day before to inform her that Mr. Grant had been arrested and would be in jail for the night. Second, the assailant had a strong, distinctive body odor that she recognized from the time appellant and Mr. Grant stayed with her shortly before the attack and that she had previously complained about. Mr. Grant also testified that appellant had a distinctive body odor, which "everyone" talked about. When police responded to her call, Ms. S. reported the rape, identified appellant as her assailant, and reported further that her car, which she had parked in front of her apartment, was now missing. The police took her to the hospital where she received a forensic exam.

The forensic exam indicated petechiae (minor bruising) on Ms. S.'s soft palate, tears on the underside of her lip, abrasions in her mouth, abrasions and tenderness on her vagina,

and redness on her cervix. The forensic nurse testified that Ms. S. had told her that her last consensual sexual activity had occurred at 5 a.m. on July 14, 2016, and that Ms. S.'s injuries were consistent with forcible sexual encounters but could also be consistent with other causes. Initially, the DNA analysis of swabs taken from Ms. S.'s thigh, mouth, and vagina showed only her DNA. Later, an amplification testing specific for male DNA, known as YSTR testing, on the swab from her vagina showed male DNA that was 1,842 times more likely to belong to appellant—an African American—or his paternal relative than to a randomly selected individual in the African American population. Mr. Grant's DNA did not match.

The next day, Ms. S. informed the released Mr. Grant about the rape over the phone, and Mr. Grant confronted appellant[1] at appellant's mother's house. Ms. S. arrived at the house shortly afterwards, accused appellant, and got into an argument with appellant's sisters. Mr. Grant testified that he tried to push the parties away from each other. Police recovered Ms. S.'s car near appellant's sister's house.

The State remarked in its closing argument as follows:

> "*Now, so, what evidence do we have that [appellant] raped [Ms. S.]? You have [Ms. S.'s] testimony. Well, she sat in this seat and she told you what happened to her and at times, it was hard and at times, she had to collect herself to get through it. It was not fun, but she did it.* And she told you that a man came in with his face covered and a hat over. And she couldn't see his face and at no point did he uncover his face and he lift it up to smoke a cigarette or to drink the water, but she knew it was [appellant] by his smell. That has been a consistent theme through the witnesses and her testimony, his smell.

[1] After police contacted appellant, he came into the police station voluntarily for questioning on July 18th, 2016.

Ladies and gentlemen, if she were concocting a story to get him for some reason that we don't know, she'da seen his face, but no, his smell. She told you that she fled her first opportunity and you heard the 911 calls around five o'clock in the morning. You heard a man say there's a woman banging on the door saying she was raped. I think she's afraid to go home. I'm calling 911 for her. He didn't let her in and he didn't tell us who he was, but he told you, the 911 operator that she needed help. He didn't know who it was. He didn't know [Ms. S.] But there was a woman banging on doors, a woman who fled her apartment in a nightshirt and no shoes.

She then banged on another door and was given a phone and was able to call 911 herself and you heard that call, her again trying to control herself and control her emotions while she's crying and telling the 911 operator what just happened to her, that this man forced his penis in her vagina, licked her vagina and forced fellatio two times to the point where she was gagging, and she was gagging 'cause he smelled so bad and she was gagging and throwing up.

And then, she was taken to Mercy Hospital where she received a safe exam. *And you women are gonna understand this 'cause this is also not a fun process getting your feet put up in the stirrups, having someone take pictures of your vaginal area, having someone taking a Q-tip and swabbing inside you and around you.* But she did that. She went through that exam and that exam brought us more evidence that [appellant] did exactly what she said he did . . .

And I'm gonna check my notes 'cause I don't wanna miss anything. And think about the descriptions of what she described happened, the face covered, the gagging, the smoking the cigarette, the going to get the water. I mean, let's be clear, ladies and gentlemen, you can't make this up. Her details were very unique to the situation that happened to her.

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Even [appellant] tells you [Ms. S.] has no motive to lie here. What does she get from this? Juan wouldn't be mad if she cheated on him. She even told you, they both said that they really weren't in a relationship. They were friends with benefits. Okay? He was staying there. They had an intimate relationship. He is a long, old friend.

> And she told you details from that night that are embarrassing because he pulled handcuffs out of her night stand and cuffed her with them. She told you that. However you wanna, ya know, but she was honest and she has no motive here. She and Juan aren't still together. She didn't really know [appellant]. His only reason for this is, well, you know how women are, you know how they be. *Women just, 'cause you know how they are, don't put their feet up in the stirrups for the hell of it. They don't let somebody swab and take pictures of their vaginas for the hell of it. It's not what women do and it's insulting.*"

In its rebuttal closing argument, the State addressed the lack of DNA evidence in Ms. S.'s mouth as follows:

> "One thing doesn't add up. [Appellant's] story didn't add up. Well, let's do the math. Let's do the math one more time. Should we accept someone (indiscernible at 1:56:25 p.m.) her underwear's ripped off? He can't get his penis in her vagina, so he licks her to try and make it wet. His DNA's found there, first piece of math, one.
>
> Forces fellatio twice. Why do we not have his DNA in her mouth? He wore a condom on the first time. She told you he didn't ejaculate the second time. You're not gonna find his DNA in her mouth.
>
> But there were no injuries? Yes, there were injuries. Let's look at the safe exam. And you'll have this back here. When you look at the diagram of her mouth, you will note that the nurse noted abrasions and petechia. She said petechia could be caused by strangulation and other causes.
>
> [Defense counsel] asked if it could be caused by medication. She said yes. On follow up, I asked if she had any information about [Ms. S.] in the history, if she was on any medication. The answer was no. So yes, there's injury, consistent with somebody covering their mouth, forcing a penis in your mouth. One plus one, we're at two.
>
> He says she should have—that it was consistent also with consensual sex. Let's be clear, ladies and gentlemen. A woman's body is made to accept a penis into the vagina. You're—sometimes you're gonna have injuries, sometimes you're not. Those exams are just something that help us, but they're dispositive. That's why the nurse couldn't tell you.

> This is a puzzle as well as a math problem. Okay? We're putting the whole thing together. We don't look at just one part.
>
> Just like when you're buying a house, you don't just look at one part. You don't just look at the carpet. You don't just look at the curtains. You look at the foundation. Is the foundation solid or are there any cracks? You may not like the curtains, but you'll still buy a house that you don't like the curtains, but you're not gonna buy a house where the foundation is cracked. This foundation is solid."

The State closed its rebuttal closing argument as follows:

> "Does [Ms. S.] have a bias or a prejudice? We haven't heard one. The only bias or prejudice that [appellant] has given us is that she's a woman and you know how women be. Was her testimony consistent? Yes. And you have lots of places to look at that. Safe exam. You'll be able to review what she told the safe nurse. 911 call, you can review the 911 call, as well as her testimony.
>
> Ladies and gentleman, this isn't a joke. This isn't a game. This isn't trite phrases. This is very serious. At 2:30 in the morning, [appellant] entered [Ms. S.'s] apartment and changed her life forever. He took away the power to control her own body. He forced his penis in her vagina. He licked her vagina. He forced his penis in her mouth twice.
>
> He broke and entered that apartment with no permission. We don't know which, whether it was the window or the door, but we know he got in there and he had no business to be there, and that her car was found parked in the block of his sister's home. He was wearing the same shorts he wore when he dropped by that day, from Juan and [Ms. S.'s] testimony. And he even told you that she loved that apartment, she loved that house and she did him an act of kindness and he repaid that act of kindness by violating her and changing her life and making her a victim.
>
> But today and yesterday [on] that stand, she was not a victim, ladies and gentlemen. She was a survivor. *She came to you as a survivor telling you what he did to him, to her. And now it is time to give her justice*. The State has proven its case beyond a reasonable doubt and I ask that you find him guilty of all counts. Thank you."

During cross-examination of Mr. Grant, defense counsel inquired into the reason behind his arrest and detention on July 14 and 15, 2016, questioning him as follows:

> "[DEFENSE COUNSEL]: On the day when you were stopped by police on the 14th of last July—
>
> [MR. GRANT]: Mm-hmm.
>
> [DEFENSE COUNSEL]: —[Appellant] was there with you; right?
>
> [MR. GRANT]: Yes.
>
> [DEFENSE COUNSEL]: And you gave him your phones; right?
>
> [MR. GRANT]: Yes.
>
> [DEFENSE COUNSEL]: And you earnestly petitioned [Ms. S.] to let him stay at the house; correct?
>
> [MR. GRANT]: Yes.
>
> [DEFENSE COUNSEL]: Because he was a good friend.
>
> [MR. GRANT]: Yeah, I thought.
>
> [DEFENSE COUNSEL]: And you knew him since you were both very young; correct?
>
> [MR. GRANT]: Yes.
>
> [DEFENSE COUNSEL]: And when you were taken in by police last July for questioning—
>
> [MR. GRANT]: Yes.
>
> [DEFENSE COUNSEL]: —were you arrested or were you taken in for questioning?
> [MR. GRANT]: I was arrested and taken in for questioning.

> [DEFENSE COUNSEL]: And they were [questioning] you about a murder—
>
> [THE STATE]: Objection."

After excusing the jury for a brief recess, the court discussed the objection as follows:

> "THE COURT: Okay. First, [defense counsel], you were just about to ask Mr. Grant if he had been questioned about a murder.
>
> [DEFENSE COUNSEL]: Your Honor, if I remember correctly, in Mr. Grant's own statement and he gave probably the longest statement to the police, if anyone, connected to this case. I think he mentioned himself using the street term about a body and I would also proffer that I am aware of a case and the name is escaping me right at this moment, I've used it often, it begins with a 'B,', it's like a six letter name, and the case stands for the proposition that the scope of impeachment for a non-defendant witness is quite a bit broader than the actual impeachable which is intended for the prophylactic profession of the defendant. *And I intend to get into this area only because Mr. Grant seems to be trying to portray himself as a noble savior, you know, and a stopper of fights and distancing himself from [appellant]*. I think that is a legitimate inquiry whether [appellant] was actually sticking with Mr. Grant through thick and thin during that time.
>
> THE COURT: So, [defense counsel], you're offering it for impeachment under what Rule?
>
> [DEFENSE COUNSEL]: I guess under 5-607. I'm saying impeachment just as a sort of back up but I just think that factually, *a good deal of testimony has come out already about Mr. Grant having been locked up at this crucial time as though it provides some kind of a sub-text for [appellant] to go in and commit an act on his supposed girlfriend or ex-girlfriend. I think it's legitimate to know the circumstances of what took him off the street for that crucial period*.
> THE COURT: How is—obviously the fact that he was in jail is relevant, but how was what he was in jail for, relevant?

Clearly, in my—well, from what I've seen so far, it appears to me that you're trying to impeach him; right?

[DEFENSE COUNSEL]: Yeah, I mean, that's fair to say but I think it's also knocking out relevance to the overall picture in this case.

THE COURT: Relevance I would think will be the fact that he was locked up but not necessarily what he was in jail for, unless it's to impeach. [The State], what if anything do you want to tell me regarding the impeachment?

[THE STATE]: Your Honor, in reference to Mr. Grant, he was released the next day, he was never charged with a homicide that I'm aware of, um, I don't believe that it's relevant to his testimony here in reference to the interactions that he saw what he was told and what he observed.

THE COURT: I'm on board with you as far as the fact that he was locked up for—

[THE STATE]: Correct. He's locked up, that's a fact, nobody is hiding that fact. He was released the next day. He's testified that he has a, you know, a conviction for possession with intent to distribute from 2006, um; however, just because you are questioned by the police on a homicide, he could have been a witness, he could have [been] the suspect, you know, we have no information on that.

[DEFENSE COUNSEL]: Your Honor, I would say the fact that he was arrested for questioning, suggests that the police had reason to believe there was more serious involvement than his just being able to contribute information of an independent witness. Ordinarily, those persons would be invited down to 600 East Fayette or the Homicide Division from a friendly, get to know you session.

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[THE STATE]: For the record, looking at a print out of his record that was printed out on August 18, 2016, he was arrested on July 14th for—on a case that was *nolle prossed* of attempted

CDS distribution and CDS possession, that's what he was arrested for, and the case was subsequently *nolle prossed*.

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[THE STATE]: He was not arrested on a homicide.

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THE COURT: So [defense counsel], he was never charged with a murder, was he, to your knowledge?

[DEFENSE COUNSEL]: Not to my knowledge.

THE COURT: And [the State], your indication showed that he was actually charged with a possession with intent?

[THE STATE]: Your Honor, looking at the print out of his record, it shows him being arrested on July 14th, I've shown this to [defense counsel], of attempted CDS distribution which is a term of art in Baltimore City, and CDS possession.

[DEFENSE COUNSEL]: In light of that, Your Honor, I would be inclined to simply withdraw the question actually.

THE COURT: Okay. Because I was looking at 5-608(b) which does say impeachment by examination regarding witnesses [sic] own prior conduct not resulting in convictions. Upon objection, the Court may permit the inquiry only if the questioner outside the hearing of the jury, establishes a reasonable factual basis for asserting that the conduct of the witness occurred. So you don't actually have any reasonable factual basis—

[DEFENSE COUNSEL]: No, and that's why I am proposing to withdraw."

The cross-examination continued and broached the subject of Mr. Grant's arrest again as follows:

"[DEFENSE COUNSEL]: On July 15th, is it my understanding that you were held overnight by the police?

[MR. GRANT]: Yes.

[DEFENSE COUNSEL]: And were you at Central Booking?

[MR. GRANT]: Yes.

[DEFENSE COUNSEL]: And were you released on Saturday about noon?

[MR. GRANT]: Yes, about noon to 1:00, anywhere between that time.

[DEFENSE COUNSEL]: And the day before you were locked up about mid-afternoon?

[MR. GRANT]: About—I know the sun was shining real bright so I say about 2:00, 3:00 in the afternoon, yes.

[DEFENSE COUNSEL]: Did you go—when the police took you, did you go directly to Central Booking or did you go to the station?

[MR. GRANT]: I went to the—I went to Homicide.

[DEFENSE COUNSEL]: So you did have—

[THE STATE]: Objection.

THE COURT: Sustained."

The State and defense counsel approached the bench, and the following colloquy occurred:

"[DEFENSE COUNSEL]: It's a little difficult, I'm trying to piece this together but I think what happened here and the Court might not, you know, allow me to go this direction, but I hear it very often from my clients that they get arrested and they get taken down to Homicide or some station for a little de-briefing, they say give us a gun or something, when they have reason to think that the person is in the game or knows something. So I suspect that if that's what happened here,

under the guise of what appears in JIS record of an arrest for a narcotics felony, he was actually thought to be a person of interest or at least, you know, might be able to contribute some information about a homicide. I would ask the Court to regard that as legitimate since it's getting into—it probably is going to be subject to the same analysis as before, but he has confirmed that—what I suspected, was that it wasn't simply a narcotics arrest but there was a little bit more to it.

THE COURT: So if you're not using it for purposes of impeachment, what's the relevance?

[DEFENSE COUNSEL]: I'll suggest what I did before, that it was a matter of—it seemed to be a matter of speculation amongst the person on the other side of the case that [appellant] believed Mr. Grant would be locked up for a longer period and that he was somehow using that to take advantage of [Ms. S.] If he were in fact going to possibly be detained either as a witness or be charged, you know, with a more serious crime that would in fact have been the case.

THE COURT: You've already gotten twice, number one, that he went to Homicide and you had asked him before of whether he was questioned about a murder. I don't think that we can unring that bell but I don't know that it's relevant—I don't know that it's applicable under 5-608 because I don't believe that while you may have some belief that he was brought to Homicide under a different—because of the speculation you're making, I don't believe that you have a reasonable factual basis for asserting the conduct actually occurred under 5-608(b). So I don't think that—unless you do and I'm not aware of it.

[DEFENSE COUNSEL]: Well, the trouble here is I didn't actually know that [the State] was going to put Mr. Grant on this morning, otherwise I would have fished out that case that I made reference to earlier which again, provides some authority for there being a far wider latitude of impeachment against persons who are not themselves defendants, basically witnesses who are not themselves in jeopardy.

THE COURT: I agree that there is wider latitude and I am somewhat familiar with the case even though I can't think of the name of it right now either, but I agree that there is more

> latitude but that doesn't mean that the Rules of Evidence don't apply and under 5-608(b), I don't think you've established a reasonable factual basis for asserting the conduct occurred. Therefore, regarding whether or not—whether or not it's the State's theory that the witness thought he was going to be locked up—or that your client thought he was going to be locked up for longer, I really didn't get that. But I don't believe that it's relevant under that. I do believe that you've already elicited what you're kind of looking to but you're not—I'm not letting you go any further."

The jury returned guilty verdicts as noted and the court imposed sentence. This timely appeal followed.

II.

Before this Court, appellant argues that the trial court erred in allowing the State to make three allegedly improper remarks in its closing arguments. He recognizes that defense counsel failed to object in the trial court, but argues that the cumulative effect was prejudicial and constitutes plain error. First, he argues that the State violated the "golden rule" by asking jurors to put themselves in the shoes of Ms. S. when the State asked them to imagine the discomfort that she endured during her safe exam at the hospital. Second, he argues that the State appealed to the passions of the jurors when it characterized Ms. S. as a "survivor" and stated that "now it is time to give her justice." Third, he argues that the State argued facts not admitted in evidence and mischaracterized the evidence when it attributed the lack of appellant's DNA in Ms. S.'s mouth to appellant's wearing a condom the first time and not ejaculating the second time. Relying on *Lawson v. State*, 398 Md. 570 (2005), which found that the cumulative effect of the State's remarks during its closing

arguments was prejudicial even though the effect of each on its own was not, appellant argues that the State's three remarks taken together were prejudicial in the present case, where "the State's case relied heavily on the credibility of the victim" and on the question of consent.

Appellant further argues that the court improperly limited defense counsel's cross-examination of Mr. Grant regarding the reason for his arrest and detention on July 14 and 15, 2016. Appellant contends that defense counsel should have been allowed to impeach Mr. Grant's credibility after Mr. Grant testified that he tried to stop the fight between Ms. S. and appellant's sisters and presented himself as a "noble savior" and "stopper of fights."[2] Appellant contends this based on Maryland Rule 5-608(b),[3] which provides for the impeachment of a witness regarding the witness's prior conduct not resulting in a conviction, and the wider latitude permitted for impeaching non-defendants. Additionally, appellant claims that it was "legitimate to know what took [Mr. Grant] off the street for that crucial period [of Ms. S.'s assault]."

The State argues that appellant's arguments about the propriety of closing argument remarks were not preserved for our review and do not merit this Court's discretionary review for plain error either singly or in combination. First, the State contends that it merely appealed to the experience and common sense of the jurors when it asked them to

[2] Appellant argues that Mr. Grant presented himself as a "noble savior" and "stopper of fights." Only defense counsel, however, described Mr. Grant as such. Mr. Grant testified merely that he tried to push the fighting parties away from each other.

[3] At trial, defense counsel explained that he offered the impeachment under Maryland Rule 5-607, which the court later correctly identified as Rule 5-608(b).

imagine Ms. S.'s exam, which was "not a fun process," and to infer that she would not have undergone this process had she not been sexually assaulted. Second, viewing its closing arguments as a whole, the State points out that it asked the jurors to find appellant guilty based on the evidence after discussing the evidence at length and concluding that it had "proven its case beyond a reasonable doubt." Third, the State claims that in rebutting defense counsel's closing argument, it properly drew reasonable inferences from the evidence to present a plausible theory as to why appellant's DNA was not detected in Ms. S.'s mouth. Finally, there was no cumulative plain error because each of the remarks in this case was proper.

The State further argues that the court properly exercised its discretion in limiting the scope of defense counsel's cross-examination of Mr. Grant for two reasons. First, the reason behind Mr. Grant's arrest and detention was not admissible to impeach him under Rule 5-608(b) because defense counsel failed to establish a reasonable factual basis for asserting that Mr. Grant was arrested in connection to a homicide or, for that matter, any conduct probative of his character for truthfulness. Second, the reason for Mr. Grant's arrest was not relevant to show his potential bias or motive to lie regarding whether appellant was guilty of sexually assaulting Ms. S. or whether Mr. Grant tried to break up the fight between Ms. S. and appellant's sisters.

III.

We address first the State's three allegedly improper statements in its closing arguments, which appellant concedes were not preserved and asks us to review as plain error. For the reasons set forth below, we decline to review for plain error.

Rule 8-131(a) restricts appellate review generally to matters that "plainly appear[] by the record to have been raised in or decided by the trial court." In assessing whether we should note, and perhaps correct, an unpreserved issue, "[t]he touchstone remains our discretion." *Williams v. State*, 34 Md. App. 206, 211 (1976). "[E]ven the likelihood of reversible error is no more than a trigger for the exercise of discretion and not a necessarily dispositive factor." *Morris v. State*, 153 Md. App. 480, 513 (2003). It is only "the extraordinary error and not the routine error that will cause us to exercise the extraordinary prerogative [of reviewing plain error]." *Martin v. State*, 165 Md. App. 189, 195 (2005) (quoting *Williams*, 34 Md. App. at 212). "Plain error is error that vitally affects a defendant's right to a fair and impartial trial." *Hammersla v. State*, 184 Md. App. 295, 306 (2009), *cert. denied*, 409 Md. 49 (2009). Appellate review under the plain error doctrine "1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon." *Id.*

In deciding whether to utilize the plain error doctrine, we ask whether the complained-of conduct in the case was so compelling as to warrant reversal by considering four prongs: (1) the error must not have been "intentionally relinquished or abandoned;" (2) the error must be clear or obvious, not subject to reasonable dispute; (3) the error must affect appellant's substantial rights, which means he must demonstrate that it affected the outcome of the court proceeding; and (4) the appellate court has discretion to remedy the

error, but this ought to be exercised only if the error affects the fairness, integrity, or public reputation of judicial proceedings. *Newton v. State*, 455 Md. 341, 364 (2017) (quoting *State v. Rich*, 415 Md. 567, 578 (2010)).

We decline to review for plain error the three unpreserved remarks in the State's closing arguments, as we hold that they were individually proper.[4] We afford a "liberal freedom of speech" to closing arguments: "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 indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Lee v. State*, 405 Md. 148, 163 (2008) (quoting *Degren v. State*, 352 Md. 400, 429–30 (1999)).

Regarding the State's first two remarks, excerpted *supra*, it is not "clear or obvious" when examined in their contexts that they asked the jurors to divert their focus in judging appellant away from the evidence presented and onto their personal interests or sympathy. In its initial closing argument, the State called upon the female jurors to draw on their own experiences with pelvic exams, which are "not a fun process." Instead of asking the female jurors to decide the case on the basis of their personal interests rather than evidence, this remark merely asked them, consistent with the court's instruction, to consider the evidence in light of their own experiences. Next, in the conclusion of its rebuttal closing argument, the State directed the jurors, immediately after stating that Ms. S. was a "survivor" and that "now it is time to give her justice," to the evidence that it presented by stating that it "ha[d]

[4] Finding no error in each remark, we decline to address appellant's argument about the cumulative effect doctrine.

proven its case beyond a reasonable doubt." As the State had discussed its evidence at length in arguing that it met its burden of proof, the State asked the jurors to find appellant guilty based on its evidence, as opposed to passions.

Regarding the State's third contested remark, the error is again not "clear or obvious," because the remark was a fair and direct rebuttal to defense counsel's argument that if Ms. S. told the truth, her mouth swab would have to contain some of appellant's DNA. The State's response—that appellant wore a condom the first time and did not wear one but also did not ejaculate in her mouth the second time, leaving no DNA in Ms. S.'s mouth—fell within the permissible bounds of closing argument, which may include "all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range." *Smith v. State*, 388 Md. 468, 487 (2005) (quoting *Wilhelm v. State*, 272 Md. 404, 412 (1974)).

We hold that each of the State's three remarks was proper, find no error, and thereby decline to review for plain error.

IV.

We turn to appellant's preserved claim that the trial court erred in limiting the scope of defense counsel's cross-examination of Mr. Grant regarding the reason for his arrest and detention. We conclude that the trial court did not err.

We review limitations on cross-examination under an abuse of discretion standard. *Myer v. State*, 403 Md. 463, 476 (2008). Managing the scope of cross-examination falls within the sound discretion of the trial court. *See, e.g.*, *Marshall v. State*, 346 Md. 186,

193 (1997). A trial judge abuses her discretion by "exercis[ing] discretion in an arbitrary or capricious manner or . . . act[ing] beyond the letter or reason of the law." *Cooley v. State*, 385 Md. 165, 175 (2005) (quoting *Jenkins v. State*, 375 Md. 284, 295–96 (2003)). To apply this standard, we will not second-guess any reasonable ruling on the admission of evidence, even if it could have gone the other way. *Peterson v. State*, 196 Md. App. 563, 585 (2010). Moreover, a trial court does not abuse its discretion when it excludes cross-examination that is irrelevant. *See* Rule 5-402 (irrelevant evidence is inadmissible). Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Rule 5-401.

The trial court did not abuse its discretion, as the proposed topic of the cross-examination—the exact reason for Mr. Grant's arrest and detention during Ms. S.'s assault—was both not admissible to impeach Mr. Grant under Rule 5-608(b) and not relevant to show that he was biased or had a motive to lie about anything related to appellant's guilt.

Defense counsel failed to establish a factual basis for asking what police asked Mr. Grant about, which is required by Rule 5-608(b), which allows impeachment of a witness with the witness's prior conduct not resulting in a conviction as follows:

> "The court may permit any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness. Upon objection, however, the court may permit the inquiry only if the questioner, outside the hearing of the jury, establishes *a reasonable factual basis for asserting*

> *that the conduct of the witness occurred*. The conduct may not be proved by extrinsic evidence."

(emphasis added). As discussed at the bench conference, Mr. Grant had been arrested on drug charges, which were later *nolle prossed*, and had never been charged with murder. Defense counsel could not proffer the subject matter of Mr. Grant's questioning by police. As defense counsel noted while admittedly "trying to piece this together," Mr. Grant may have been questioned because he knew something about a crime in which he had no involvement.

Even if this cross-examination was admissible, allowing it still falls within the discretion of the trial court: "The most salient legal characteristic of Rule 5-608(b) is that the permissibility of the use of prior bad conduct [as impeachment] is a decision entrusted to the wide discretion of the trial judge." *Molter v. State*, 201 Md. App. 155, 173 (2011). We hold that the exact reason behind Mr. Grant's arrest and detention during Ms. S.'s assault was not relevant to anything related to appellant's guilt. It was also not relevant to the inquiry that defense counsel seemed interested in, namely whether Mr. Grant told the truth about trying to break off a fight between Ms. S. and appellant's sisters. (This inquiry itself, furthermore, is not relevant to any inquiry about appellant's guilt.)

We thereby conclude that the trial court exercised its discretion properly in limiting defense counsel's cross-examination of Mr. Grant.

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