Circuit Court for Prince George's County
Case No. CT151074X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1117

September Term, 2019

HENRY UMANA

v.

STATE OF MARYLAND

Fader, C.J.,
Graeff,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Fader, C.J.

Filed: October 20, 2020

A jury sitting in the Circuit Court for Prince George's County convicted the appellant, Henry Umana, of a continuing course of sexual abuse of C.T. C.T. testified that the abuse began when he was in kindergarten and occurred at various times over the course of several years, eventually escalating to rape. On appeal, Mr. Umana contends that the trial court erred when it denied his motion for mistrial, which he based on the cumulative effect of the prosecutor's improper statements during rebuttal closing argument. We discern no abuse of discretion by the trial court and, therefore, will affirm.

BACKGROUND

Factual Background[1]

In 1998, when C.T. was three years old, he moved in with his grandmother; his five-year-old half-brother, R.G. (with whom he shares a mother); Aunt Maria; and Aunt Lucy. Mr. Umana, who is R.G.'s father, left the picture shortly after R.G. was born, but returned around the time C.T. was five years old. Shortly thereafter, R.G. and C.T. began visiting Mr. Umana every other weekend.

Mr. Umana started to molest C.T. not long after the visits started. At the beginning, Mr. Umana asked C.T. to fondle him. During one incident, Mr. Umana encouraged C.T. to perform oral sex on him in exchange for a visit to Chuck E. Cheese. Mr. Umana instructed C.T. that he should never tell anyone, and C.T. complied. "It was our secret and I just listened," C.T. testified. "I didn't really know exactly what was going on."

[1] Our recitation of the facts is based on the evidence presented at trial, "including all reasonable inferences to be drawn therefrom," "view[ed] . . . in the light most favorable to the State." *Fuentes v. State*, 454 Md. 296, 307 (2017).

For two years, while R.G. was away, C.T. did not see Mr. Umana. When C.T. was in third grade, R.G. returned, the visits to Mr. Umana resumed, and so did the abuse. In fact, C.T. testified, the abuse "started escalating." While Mr. Umana's family was at church, Mr. Umana would force C.T. to undress in front of a mirror, bend over a bed, and Mr. Umana would ejaculate on him. The same routine progressed to anal penetration when C.T. was in "late elementary" school, sometime before age 11. C.T. estimated that Mr. Umana raped him 85 times.

When C.T. was in eighth grade, he began to understand "more and more that . . . what [he] was going through wasn't normal" or "right," and he made the affirmative decision to stop seeing Mr. Umana. As a result, C.T. spent less time with R.G. Both R.G. and Aunt Maria questioned C.T.'s sudden withdrawal, but C.T. did not disclose the abuse at that time.

Roughly two years after the abuse ended, C.T. went to a birthday party for R.G. at Aunt Maria's home, apparently not knowing in advance that Mr. Umana would also attend. C.T. became upset watching his side of the family seem to welcome Mr. Umana while "on the inside [C.T.] was basically just screaming." A short while later, C.T. disclosed the abuse to R.G. Eventually, R.G. told Aunt Maria about the abuse. Aunt Maria then confronted C.T., told his grandmother and mother (who was then living in Nicaragua), and then took C.T. to the police. Within two weeks, C.T. met with a social worker and gave the police an official statement.

The Trials

The State indicted Mr. Umana on three counts: Sex Abuse of a Minor—Continuing Course of Conduct, in violation of Criminal Law § 3-315 (Count I); Sex Abuse of a Minor, in violation of Criminal Law § 3-602(b) (Count II); and Sex Offense in the Second Degree, in violation of Criminal Law § 3-306 (Count III). It took three trials to resolve all of the charges. In the first trial, the jury acquitted Mr. Umana of Counts II and III, but hung on Count I. The court declared a mistrial. The jury in the second trial also hung on Count I, leading to another mistrial.

In the third trial, the jury convicted Mr. Umana of Count I. As in the first two trials, C.T. was the State's primary witness. While testifying, C.T. sometimes forgot dates or gave accounts that contradicted to some extent his prior testimony and statements. In addition to asking a number of questions to clarify and confirm exactly what C.T. remembered, the prosecutor called several witnesses to corroborate various aspects of C.T.'s testimony. For example, R.G. testified that he had noticed that when he and C.T. showered at Mr. Umana's house as children, C.T. would jockey not to use Mr. Umana's bathroom, where C.T. had testified that much of the abuse had occurred. R.G. also testified that he noticed C.T. acting strangely at the birthday party when C.T. saw Mr. Umana for the first time in two years. And both R.G. and Aunt Maria testified that they noticed that C.T. started refusing to visit Mr. Umana in middle school, and that C.T. would not explain why.

Mr. Umana denied that he had ever engaged in sexual conduct with C.T. He sought to undermine C.T.'s credibility by confronting him with inconsistencies between his trial testimony and his prior testimony and statements, in which C.T. had recounted incidents of abuse that were less egregious and less frequent than what he described at the third trial. C.T. agreed with defense counsel that he had made a number of conflicting statements in the past, and said that his memory was "hazy," especially with "specific dates."

Mr. Umana also confronted Aunt Maria about inconsistencies between her current and prior testimony. For example, although Aunt Maria testified that she did not expect Mr. Umana to bathe C.T., defense counsel confronted her with prior testimony in which she had said that she had in fact expected him to do so. Aunt Maria responded that her memory had changed.

The State attempted to rehabilitate each of its witnesses. On redirect, the prosecutor asked C.T. to clarify the timeline of his abuse and pointed out other statements he had made that were consistent with his allegations at trial. The prosecutor did the same with Aunt Maria.

Initial Closing Arguments

In her initial closing argument, the prosecutor reconstructed the State's case based on the testimony of its witnesses, clarified the timeline, addressed the consistency of C.T.'s testimony with his prior statements, and argued that Mr. Umana had "plenty of opportunity" to engage in the conduct alleged without anyone else observing it. The

prosecutor described C.T. as anguished and brave in revealing Mr. Umana's acts and appealed to the jury to "not check out your common sense" when considering the evidence.

Defense counsel structured his closing argument around a list of "[t]wenty-five reasonable doubts" he asked the jury to consider, several of which are particularly pertinent to this appeal. The first "reasonable doubt" was that "[C.T.] chose to go back to the [] house for six years, week after week, month after month, especially [in] the seventh and eighth grade." Defense counsel questioned whether C.T. would really have kept returning to see R.G. and Mr. Umana, without reporting what happened, if the abuse and rape he alleged had actually occurred. Later in his closing argument, defense counsel likened the sexual abuse C.T. described to being burned by a hot stove:

> The example we like to use is, if a seventh or eighth grader puts their hand near the stove, starts to get hot, and go right down like this, it's like this. Oh, my God. And then two weekends later the same stove, I'm going to volunteer to put my hand here? That no makes sense.

Defense counsel also emphasized inconsistencies between C.T.'s prior statements and his trial testimony and, separately, asked the jury whether C.T.'s testimony could be trusted, pointedly telling the jury that "[t]he State did not call a single person to vouch for [C.T.'s] honesty."

Defense counsel questioned whether Mr. Umana would have had the needed privacy to commit the alleged acts without being seen. Counsel argued that, in addition to the constant presence of people in the house and the ease of sound traveling, people could have seen into Mr. Umana's bedroom, where C.T. testified that some of the conduct had

occurred, because "[o]ne of the windows goes straight out to the backyard and daylight, and the other window goes straight on to [sic] the driveway in daylight."

In a portion of the closing in which defense counsel pondered C.T.'s motive to lie, he stated the following:

> Now the one thing that I just can't wrap my brain around as much as I think about this case, and[,] I admit[,] 51, getting well past middle age, I just cannot wrap my brain around an incredibly smart, well put together young man, when he was born here and speaks English as his first language, that says I came out to my brother. I just can't get my brain around that.

Counsel did not explain what it was about that comment that troubled him.

The Rebuttal Closing Argument

In rebuttal closing, the prosecutor responded to several of these points. Those responses are at the center of this appeal. First, in addressing C.T.'s prior inconsistent statements the prosecutor stated:

> When [C.T.] was being cross-examined, Defense counsel was just reading from something. Who knows what. Saying, isn't it true – this one right here, this one, number three, where he says, isn't it true that you told Maria that rape happened only for one year when you were ten years old?
>
> [C.T.]'s like, oh, okay, yeah. [C.T.] doesn't ask him, like, oh, show me the proof that I ever said that. Never. He doesn't question anything he's reading off of. In fact, right here where he says number four, where he says [C.T.] told the social worker that the rape ended. Do you remember? You know why this came out? [C.T.] got caught is why it came out. Because he said, oh, you told the social worker that it ended in fifth grade, and he's like, oh, yeah, I did.
>
> And when [on] redirect I played it, and that's not what he said. He's a child who goes along with whatever authority says. He's not somebody who's going to question authority.

> He sees [defense counsel] as an attorney and he feels like he's an authority figure. If he's saying it, it must be true. He doesn't remember what he said to these people. He doesn't.
>
> . . .
>
> Don't check your common sense out there. Attorneys are very good and skilled at manipulating words. That's what we get paid for, right? But don't check out your common sense.
>
> . . .
>
> He asked, oh, all these questions about, didn't you say this to [Officer] Mendez? Did you say this? Where is the proof? Maria was like, I don't know if I said it, and Defense is very, very tricky, very slick. He was like, oh, you see here, you see this little thing, blah, blah, blah, where you said it, and she's like, yeah, yeah, that's what I said.
>
> Then I redirected. I asked her. Did you write this? Do you even know if this is true from the video? Oh, no. See, Maria is better at questioning authority, because she was like, show me the proof, but she doesn't know if that proof is true or not.
>
> And then remember, Defense asked . . . . Here. That she assumed he was going to be showering, and then I pointed out in that transcript there was errors and that could have been an error.

Second, shortly after these comments, the prosecutor argued:

> See, the Defense has been learning. Maybe he was learning from watching everybody testify, but when he got up there and I questioned him, he was like, oh, I don't know, I don't know. And then I had to show him a transcript, show him exactly where he said it.
>
> He was smart to ask that and make sure that that was what he said, and that I wasn't putting words in his mouth.

Third, the prosecutor then described as "quite offensive" defense counsel's comparison of C.T.'s sexual abuse to a child who "puts his hand in a fire" and would know not to do it again.

Fourth, responding expressly to defense counsel's comment that the State had not called any witnesses to "vouch for C.T.'s honesty," the prosecutor stated:

> But I think the fact that [R.G.] never confronted his father [Mr. Umana], vouches for the victim's honesty. [R.G.] didn't feel the need to have to ask [Mr. Umana] any questions. He knows his brother. He knows his brother better than any of us here and he had no reason to confront him.
>
> He also had no reason to get up here and lie to you, because if he was going to lie to you he could have said, oh, I saw something. He doesn't. He gets up here and he tells you, I didn't notice anything. He does remember about the shower. He doesn't exaggerate anything. He doesn't even, you know, in any way say, oh, I think I saw something once. No.

Fifth, the prosecutor made the following comments regarding the evidence that Mr. Umana helped bathe C.T.:

> And speaking of showers, who the hell bathes a kid when they're older? Jessie, who was his girlfriend at the time says that she would find that disturbing if [Mr. Umana] bathed [C.T.] when he was older. Why would you even bathe a child that's not even yours, especially since he said that [R.G.] was eight when he first started coming . . . . So why are you bathing a kid that is seven, eight years old? That's disturbing.

Sixth, responding to the defense's assertions that C.T. had an incentive to lie, the prosecutor asked what motivation C.T. could possibly have to do so. The prosecutor then stated that defense counsel had insinuated that C.T. was gay and was "hoping" that the jury was homophobic and would hold that against C.T. After questioning the reliability of the testimony introduced about Mr. Umana's lack of sexual interest in men and boys, the prosecutor concluded that "[i]t's ridiculous to even ponder whether [C.T.] is gay or not. Who cares? He was a little boy. You don't get to sexually abuse little boys."

Defense counsel did not make a contemporaneous objection to any of the prosecutor's comments. The only objection he made during rebuttal closing argument came when the prosecutor referenced an exhibit that had not been admitted into evidence. The prosecutor stated: "Defense discussed about the windows and you're going to see – you're going to see Defense's Exhibit 6, the picture of the room." As the prosecutor began to display the picture to the jury, defense counsel asked to approach, and the following occurred at the bench:

> [DEFENSE COUNSEL]: I know she didn't do it intentionally, but it's not in evidence.
>
> THE COURT: What's not in evidence? State's Exhibit No. 6?
>
> [PROSECUTOR]: No, it's Defense – I thought he showed them the picture.
>
> [DEFENSE COUNSEL]: It's not. I know you didn't do it intentionally.
>
> THE COURT: Wait a minute. I don't have it. It wasn't admitted. It was marked, but never admitted.

Counsel then returned to their trial tables and the prosecutor resumed her argument, making no further mention of the photograph.

The Motion for Mistrial

At the conclusion of the prosecutor's rebuttal argument, defense counsel asked to approach and said he "would make a very, very quick Motion for a Mistrial before the jury leaves." Defense counsel contended that the prosecutor had made several improper statements, and that the cumulative effect of the statements required a mistrial. He first argued that the prosecutor had improperly questioned why there was no "proof" that C.T.

had made the prior statements to which he had admitted during cross-examination. Defense counsel argued that the defendant had no burden of proof at all, "especially when it's already admitted by the witness on the witness stand." As part of the same argument, defense counsel objected to the prosecutor's comments that he was "very slick and tricky" in questioning C.T. about the prior statements, arguing that this improperly called into question statements that C.T. had admitted making. Defense counsel later made a similar point in taking issue with the prosecutor's statement (as defense counsel characterized it) that "[a]ttorneys are good at manipulating words, that's what we get paid for." Counsel argued that that statement "goes into the whole disparaging of opposing counsel" and "switch[es] the burden of proof, especially on the narrow issue that we talked about, about me having to prove-up the statement that's already been proven."

Defense counsel also contended that it was improper for the prosecutor to have insinuated that he (defense counsel) had said that the jury was homophobic:

> [DEFENSE COUNSEL]: And then next, the insinuation of what I said, that you are homophobic. Okay? There's lots of insinuations that can be made that are either certainly risky or not politically correct or just stupid, okay? But that – there's no reasonable basis for anything that I've said, and –
>
> THE COURT: I'm going to –
>
> [DEFENSE COUNSEL]: – that you the jury are homophobic.
>
> THE COURT: Well –
>
> [DEFENSE COUNSEL]: That's what she insinuated, that you the jury are homophobic.
>
> I'll just move on.

THE COURT: I'm going to disagree with you on that one, but go ahead.

In addition to these statements, defense counsel also raised the prosecutor's error in showing the jury the photo of the bedroom "for about a second and a half," which defense counsel again acknowledged "was completely inadvertent."[2] Counsel argued that "the cumulative effect of all of those things" required a mistrial.[3]

The court agreed with defense counsel's concern regarding the prosecutor's comments about the absence of proof of the State's witnesses' prior inconsistent statements, and so stated that it would "absolutely remind the jurors that you absolutely have no burden, and that they should disregard anything the State said in reference to your giving any proof." Defense counsel, while not abandoning his request for a mistrial, then asked if the court would "go a little bit further than that . . . and say the Defense has no burden of proof in general, but also with respect to the very specific points made by the prosecutor of proving-up a statement, a previous statement of a witness, which the witness admitted." The court agreed and asked defense counsel to "dictate" the precise language he wanted in the supplemental instruction, which defense counsel did. Concluding that the new jury instruction would "cure[] the issue," the court denied the motion for mistrial based on cumulative effect. The court then instructed the jury as follows:

> Ladies and gentlemen, I just wanted to remind you, that in any criminal case and specifically in this case, the Defense never has a burden of proof,

[2] In later ruling on the motion, the court expressed uncertainty regarding whether the jury saw the photograph at all, but seemed to accept defense counsel's representation that it had been shown for "maybe a second and a half."

[3] Defense counsel identified one other basis for his motion at trial that Mr. Umana does not repeat on appeal. As a result, we do not consider it.

> and specifically with respect to proving former statements witnesses have admitted during cross-examination, they have absolutely no burden of proof to prove anything.

The jury convicted Mr. Umana of a continuing course of conduct of sexual assault. This appeal followed.

DISCUSSION

"[T]he grant of a mistrial is considered an extraordinary remedy and should be granted only 'if necessary to serve the ends of justice.'" *Carter v. State*, 366 Md. 574, 589 (2001) (quoting *Klauenberg v. State*, 355 Md. 528, 555 (1999)). "[A] mistrial is 'an extreme sanction that sometimes must be resorted to when such overwhelming prejudice has occurred that no other remedy will suffice to cure the prejudice.'" *Jordan v. State*, 246 Md. App. 561, 598 (2020) (quoting *Choate v. State*, 214 Md. App. 118, 133 (2013)). "Generally, appellate courts review the denial of a motion for a mistrial under the abuse of discretion standard[.]" *Reynolds v. State*, 461 Md. 159, 175 (2018), *cert. denied*, 139 S. Ct. 844 (2019) (quoting *Dillard v. State*, 415 Md. 445, 454 (2010)). This is because "[t]he trial judge is in the best position" to assess the motion. *Wilson v. State*, 148 Md. App. 601, 666 (2002). The trial judge has a front row seat to observe "impressions made by the witnesses" and "reactions of the jurors," a "thumb on the pulse of the trial . . . that no cold record can communicate." *Bynes v. State*, 237 Md. App. 439, 456-57 (2018). An abuse of discretion occurs only when the trial court's decision "is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally

acceptable." *Nash v. State*, 439 Md. 53, 67 (2014) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

Prosecutors are afforded a "wide latitude" in their closing arguments. *Degren v. State*, 352 Md. 400, 430 (1999). They are "allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Id*. at 429-30 (quoting *Jones v. State*, 310 Md. 569, 580 (1987), *vacated on other grounds by Jones v. Maryland*, 486 U.S. 1050 (1988)). Prosecutors may use closing arguments as an "opportunity to creatively mesh the diverse facets of trial, meld the evidence presented with plausible theories, and expose the deficiencies in [the] opponent's argument." *Lee v. State*, 405 Md. 148, 162 (2008). "While arguments of counsel are confined to the issues in the cases on trial, . . . [the prosecutor] may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. [The prosecutor] may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Spain v. State*, 386 Md. 145, 153 (2005) (quoting *Dregen*, 352 Md. at 429-30).

Because a trial court stands in the best position to assess the propriety of closing arguments, its decisions should not be overturned absent "a clear abuse of discretion that likely injured a party." *Anderson v. State*, 227 Md. App. 584, 590 (2016) (quoting *Ingram v. State*, 427 Md. 717, 726 (2012)). "Determining whether a prosecutor has crossed the line separating 'oratorical conceit' from prosecutorial misconduct . . . is a matter left to the sound discretion of the trial court." *Hunt v. State*, 321 Md. 387, 435 (1990). A conviction

warrants a reversal, however, when "the prosecutor's remarks actually misled . . . or were likely to have misled the jury to the defendant's prejudice." *Wise v. State*, 132 Md. App. 127, 142 (2000).

On appeal, Mr. Umana takes issue with several different statements and one action that the prosecutor took during rebuttal closing argument. He acknowledges, however, that he did not object to four of those statements at trial. We will first consider the preserved categories of statements/conduct, then address the unpreserved statements, and finally turn to an assessment of whether the trial court erred in denying a mistrial based on the cumulative effect of the prosecutor's improper statements/conduct. Ultimately, we conclude that the trial court did not abuse its discretion and, therefore, will affirm.

I. THE PRESERVED ISSUES

A. The Prosecutor's Comments Shifting the Burden of Proof Regarding the Content of Admitted Prior Inconsistent Statements Were Improper.

Both at trial and in his appellate brief, Mr. Umana addressed together interrelated comments the prosecutor made in her rebuttal closing argument to the effect that: (1) C.T. and his Aunt Maria should have demanded proof of the content of prior statements before admitting that they had made them; and (2) defense counsel was "tricky" and "slick" and had manipulated the words of those witnesses' prior statements.

C.T.'s credibility was a central focus of the defense case. In questioning C.T., defense counsel asked whether he had made a number of specific prior statements that were seemingly inconsistent with his trial testimony regarding the severity and duration of the alleged sexual abuse, and C.T. agreed that he had. In her rebuttal closing argument, the

prosecutor cast C.T. as a compliant witness who had agreed that he had made those statements only because he saw defense counsel as an authority figure, not because he had actually made them. In doing so, the prosecutor twice pointed out that C.T. had not demanded "proof" of the alleged statements before agreeing he had made them, and she accused defense counsel of being "tricky" and "slick," and of "manipulating words" in posing those questions. As Mr. Umana's trial counsel argued, together, the comments seemed intended to cast doubt on whether C.T. and Aunt Maria had actually made the prior inconsistent statements to which they had admitted.

The State argues that there was no burden shifting and characterizes the prosecutor's statements as an "oratorical flourish." We agree with the trial court that these statements were improper. The prohibition on burden shifting derives from a defendant's rights under the Fifth Amendment to the United States Constitution and Article 22 of the Maryland Declaration of Rights. *See Molina v. State*, 244 Md. App. 67, 174 (2019). A prosecutor may not comment on a "defendant's failure to produce evidence to refute the State's evidence" because it "might well amount to an impermissible reference to the defendant's failure to take the stand." *Id*. (quoting *Eley v. State*, 288 Md. 548, 556 n.2 (1980)). While this is a purely testimonial right, "[c]alling attention to the fact that a defendant failed to present evidence sails dangerously close to the wind." *Johnson v. State*, 229 Md. App. 159, 181 (2016) (quoting *Wise*, 132 Md. App. at 142-43) (emphasis in *Johnson* removed).

This is not a traditional case of burden shifting, but it was improper nonetheless. Even though Mr. Umana had obtained admissions from the State's witnesses regarding the

content of prior statements, the prosecutor's comments implied that (1) Mr. Umana needed to do more to prove the content of the prior statements, and (2) defense counsel had misrepresented the content of those prior statements. The first implication was incorrect and the second was, at best, unproven. As the court correctly instructed the jury, the defendant did not have a burden of proof at all. Moreover, a witness's admission to the content of a prior inconsistent statement *is* proof. Indeed, Rule 5-613(b) provides that "extrinsic evidence of a prior inconsistent statement by a witness is not admissible . . . until," among other things, "the witness has failed to admit having made the statement." Here, because the witnesses admitted having made the prior statements at issue, extrinsic evidence was not even appropriate, much less required. The prosecutor's implication that more was required of Mr. Umana to prove the content of the prior inconsistent statements was wrong and, therefore, improper.

As we have noted, however, an improper remark during closing argument does not automatically entitle a defendant to the exceptional remedy of a mistrial. *See Carter*, 366 Md. at 591 ("[M]ere occurrence of improper remarks does not by itself require a mistrial[.]"). Here, the trial court agreed that the prosecutor's argument was improper but determined that it did not require a mistrial. As an alternative remedy, the court offered to issue a supplemental instruction to the jury regarding the burden of proof. Although defense counsel did not abandon his request for a mistrial, he asked the court to issue an instruction that would "go a little bit further than" a basic restatement of the instruction on burden of proof, to specifically address the prosecutor's comments about prior inconsistent

statements. The court not only agreed to do so, but invited defense counsel to dictate the language of the instruction, which the court then gave to the jury. That curative instruction will play a significant role in our analysis below regarding the cumulative effect of the improper remarks.[4]

B. The Prosecutor Improperly Displayed to the Jury a Photograph that Was Not Admitted into Evidence.

Mr. Umana also grounded his motion for mistrial on the prosecutor's display during rebuttal closing argument of a photograph that had not been admitted into evidence. Defense Exhibit 6 was a photograph of Mr. Umana's basement bedroom taken at a high, wide angle, and showing two small, high-mounted windows, one of which was partially blocked from the outside, and both of which had curtains. Defense counsel objected promptly as the prosecutor began to show the photograph to the jury. During the ensuing bench conference, the trial judge stated that she had not even seen the photograph, which defense counsel estimated had been shown to the jury "for about a second and a half." Defense counsel acknowledged that the disclosure had been inadvertent. Once the court confirmed that the photograph had not been admitted into evidence, the bench conference ended and the prosecutor resumed her argument without making any further reference to the photograph.

[4] On appeal, Mr. Umana raises for the first time an additional complaint about the prosecutor's statement that "attorneys are very good and skilled at manipulating words. That's what we get paid for, right?" Mr. Umana now contends that this statement was based on evidence that was outside the record (namely, that lawyers get paid to manipulate words). Because Mr. Umana failed to raise this objection at trial, and because we have already determined the comment to have been improper, we decline to consider this alternative argument here.

Mr. Umana argues that the display of the image was prejudicial because it undercut defense counsel's characterization at closing that the bedroom—which C.T. alleged was the location of some of the abuse—was easy to see into from the outside. Defense counsel had argued that "[o]ne of the windows goes straight out to the backyard and daylight, and the other window goes straight on to the driveway in daylight." Mr. Umana notes that although State witnesses who had described the room mentioned that there were curtains in the windows, none of them provided as much detail as the photo did. He compares this to *Jones v. State*, in which a prosecutor wrongly displayed a photo of evidence that undercut the defendant's testimony in a manner unsupported by any other proof at trial. 217 Md. App. 676 (2014).

The trial court responded appropriately to Mr. Umana's contemporaneous objection to the prosecutor's use of the photograph, which the prosecutor apparently did not realize was not in evidence and which was shown to the jury, if at all, only fleetingly. The court entertained the objection at a bench conference; confirmed that the photograph was not admitted into evidence; and sustained the objection, albeit implicitly.[5] Although the prosecutor's conduct in showing the unadmitted photograph to the jury even briefly was improper, Mr. Umana did not request a curative instruction either at the time he made his contemporaneous objection or later when he moved for a mistrial.

[5] Although the court never used the word "sustained," all parties appear to have understood that the court's confirmation that the exhibit had not been admitted into evidence meant that it could not be displayed to the jury or mentioned during closing arguments. In any event, the prosecutor returned from the bench conference and promptly resumed her argument on a different topic.

C. The Prosecutor's Remark that Defense Counsel Was "Hoping" that the Jury Was Homophobic Was Improper.

The last of Mr. Umana's preserved claims is that the prosecutor improperly appealed to the jury's biases in telling them that defense counsel was "hoping" that they were homophobic in the following passage:

> Why would [C.T.] make this up? What does he gain by making this all up? What is his motive to do this? What, the insinuation that the Defense wants to make is that he's gay, because that's what he's trying to say. He's trying to think, oh, that maybe you guys are homophobic, and you're going to think, oh, my God, is [C.T.] gay? Really?
>
> That's what he's hoping, and all these people who were paraded, and he's like, oh, did you ever see him flirt with a little boy? If you were flirting with little boys, would you do that in front of your friends? Like, who does that? You're going to do that in front of your boys? In front of your girlfriends? Does that even make sense?
>
> It's ridiculous to even ponder whether [C.T.] is gay or not. Who cares? He was a little boy. You don't get to sexually abuse little boys.

Mr. Umana argues on appeal that it was inappropriate for the State to insinuate that defense counsel was calling the jury homophobic because the prosecutor's comments implied that Mr. Umana was "cast[ing] aspersions on homosexuals." In doing so, he relies on cases in which this Court and the Court of Appeals found comments by prosecutors that were "apt to instigate prejudice against the accused" to be improper. *See Contee v. State*, 223 Md. 575, 584 (1960); *Killie v. State*, 14 Md. App. 465, 471 (1972).

The State responds that the prosecutor's comments were fair because defense counsel had made Mr. Umana's sexual orientation a core theme of his defense; had presented several witnesses to testify that Mr. Umana was not gay; had argued in closing that Mr. Umana's lack of sexual interest in men and boys supported his innocence

("[Mr. Umana] had zero sexual interest in boys or men. This is huge."); and had even apologized to the jurors for making an argument he recognized they might find offensive.[6] The State also points out that defense counsel had implied that C.T. was gay.

There is no question that Mr. Umana injected sexual orientation into the trial in more ways than one. He called multiple witnesses to testify that he was not gay and argued in closing that the jury should accept his heterosexuality as a defense. In apologizing for making that argument, defense counsel seemed to recognize that some members of the jury might have found it offensive, but still stated repeatedly that Mr. Umana's heterosexuality "means something."

Even more significant, in our view, are defense counsel's unfounded and irrelevant insinuations about C.T.'s sexual orientation. In his closing argument, defense counsel stated: "I just cannot wrap my brain around an incredibly smart, well put together young man, when he was born here and speaks English as his first language, that says I came out to my brother." That comment referred back to a colloquy during the cross-examination of C.T., which began with defense counsel reading a statement in which C.T. had written: "I came out to [R.G.] first after his birthday party in December." The following then transpired:

[6] After emphasizing the lack of any evidence of Mr. Umana being sexually interested in men or boys, defense counsel stated:

> You know, if you recoil at what I'm saying, I apologize, but it means something, okay? It may not be conclusive, but it means something and I apologize if I offend anybody by that, but it just means something. It means something. The State did not rebut this. The State did not rebut this in any way. It's their burden. Not ours.

[C.T.]: I did say that.

[DEFENSE COUNSEL]: – period; right? That's the sentence you wrote?

[C.T.]: Yes, sir.

[DEFENSE COUNSEL]: "I came out to [R.G.] first after his birthday party in December."

Okay. Now, I'm going to come back to that in a second.

You graduated from [] High School; right?

[C.T.]: Correct.

[DEFENSE COUNSEL]: You took honors classes – excuse me – college classes at [the high school]; right?

[C.T.]: A couple.

[DEFENSE COUNSEL]: And you had good grades; right?

[C.T.]: So-so.

[DEFENSE COUNSEL]: You had good grades all the way up to junior year, didn't you? You've said that before; right?

[C.T.]: Yeah. Junior year was a generally rough year.

C.T. also agreed with defense counsel that he never got into trouble in school and was not "a troublemaker," that he had been in ceramics club and a musical group in high school, and that he may eventually go to college. Defense counsel then turned back to the sentence he had previously highlighted:

[DEFENSE COUNSEL]: So when you said "I came out to [R.G.] first after his birthday party in December," why did you use that phrase "I came out to Ricardo first"?

[C.T.]: I mean, I was just simply telling him that his father had raped me.

[DEFENSE COUNSEL]: That's it?

[C.T.]: That's it.

[DEFENSE COUNSEL]: Okay. English is your first language; right?

[C.T.]: Yes, sir.

Defense counsel then moved on to a different topic.

Although C.T. testified that he had used the phrase "came out" as a reference only to disclosing the abuse, the implication of defense counsel's well-orchestrated questions was that C.T. actually—or perhaps additionally—"came out" to R.G. about his sexual orientation. Having left that implication hanging during C.T.'s cross-examination, defense counsel returned to the same point in his closing argument, again questioning why "an incredibly smart, well put together young man" who was born in this country "and speaks English as his first language" would say, "I came out to my brother." Defense counsel provided no further explanation.[7]

In light of the implication left by defense counsel's questions and argument, the prosecutor was correct in stating that defense counsel had insinuated that C.T. was gay. *See Calloway v. State*, 141 Md. App. 114, 120 (2001) (holding that the prosecutor's comments about race in closing argument were not improper because "the issue of race was raised during the trial which opened the door to comments on closing"). The prosecutor's strong exception to that insinuation—"It's ridiculous to even ponder whether

[7] Defense counsel had also emphasized C.T.'s use of the phrase "came out" in his opening statement, stating:

> And what he says in the written statement is – the very last line of the written statement is, he says, I came out to my brother [R.G.] about the abuse. I came out to my brother [R.G.] about the abuse.

[C.T.] is gay or not. Who cares? He was a little boy. You don't get to sexually abuse little boys."—was also a fair response to the implication that C.T.'s sexual orientation might be relevant to Mr. Umana's defense.

In one respect, however, the prosecutor went too far. That occurred when the prosecutor stated that defense counsel was "hoping" that the jury was homophobic. In essence, the statement was an invitation to the jurors to consider something other than the evidence in the case and the law: each juror's own feelings about sexual orientation and, perhaps, desire not to be labeled by that offensive term. "Homophobia" is a strongly derogatory term, defined by *Merriam-Webster* as an "irrational fear of, aversion to, or discrimination against homosexuality or homosexuals." "Homophobia," *Merriam-Webster's Collegiate Dictionary* 596 (11th ed. 2014); *see also* "Homophobia," *New Oxford American Dictionary* 833 (3d ed. 2010) (defining "homophobia" as "an extreme and irrational aversion to homosexuality and homosexual people"). Casting defense counsel's argument as relying on a hope that the jurors were homophobic was an appeal to emotion. Personalized appeals to emotion—here, focusing on how jurors might want, or not want, to see themselves rather than how they see the evidence—are improper.[8] *Cf. Francis v.*

[8] In his brief, Mr. Umana suggests that the prosecutor's comments here were akin to statements by prosecutors in cases that referenced the defendants' sexual orientation in the hope that doing so would inflame the prejudices of the juries against them. *See Killie*, 14 Md. App. at 471; *Cardin v. State*, 73 Md. App. 200, 227 (1987) (it is "prejudicial for the State to refer to the defendant's homosexuality . . . where appellant's sexual preferences [are] totally irrelevant and likely to prejudice the jury"). Here, however, it was the defense that made Mr. Umana's sexual orientation an issue. The prosecutor did not comment on it other than to point out that his sexual orientation was irrelevant. The prosecutor even more forcefully pointed out the irrelevancy of the victim's sexual orientation. *Killie*, *Cardin*, and similar cases are inapposite.

State, 208 Md. App. 1, 12-13 (2012) (prosecutor's statements "possibly appeal[ing] to the jury's interests as city residents" were improper).

II. THE UNPRESERVED ISSUES

Mr. Umana acknowledges that he did not preserve his objection to the four other prosecutorial statements that he now contends, for the first time on appeal, were improper. Ordinarily, this Court "will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). Although he acknowledges that rule, Mr. Umana nonetheless contends that we can consider his unpreserved objections under *Lawson v. State*, 389 Md. 570, 604 (2005). In *Lawson*, the Court of Appeals held that when an appellate court reviews any contention for plain error, it should consider all claims of error, preserved and unpreserved, for their cumulative effect. *See id*. at 604-05. The Court explained that "[o]nce error is determined during a 'plain error' review, prejudice can only be determined by a consideration of the error in the context of the entire case including the cumulative effect of all errors." *Id.* Mr. Umana now asks us, in effect, to extend *Lawson* beyond the plain error context, thereby effectively eliminating the preservation requirement for specific objections anytime a defendant asks the trial court to consider the "cumulative effect" of all errors.

We decline to extend *Lawson* beyond the plain error context in which it was decided. Invoking the phrase "cumulative effect" in connection with specific objections does not give a trial court fair notice of other objections that could be raised but are not. *See Jordan v. State*, 246 Md. App. 561, 586-87 (2020) ("The preservation requirement is intended to

prevent the trial court from being sandbagged by unseen error. The appellate court will not entertain a hidden error as the basis for a reversal."). Failing to raise those other objections denies the trial court the opportunity to consider and address any objections that are not raised and to implement any appropriate remedial measures. *See Lawson*, 389 Md. at 609-10 (Harrell, J., concurring) ("Objections alert the trial judge and permit him or her to consider the legal propriety of the particular question, piece of documentary evidence, or argument and, if appropriate, whether a curative measure may be fashioned to overcome or substantially ameliorate the possible prejudice of a legal misstep."); *Hogan v. State*, 240 Md. App. 470, 511-12, *cert. denied*, 464 Md. 596 (2019) ("Cases dealing with the preservation requirement . . . make it incontrovertibly clear that a primary function of the timely objection requirement is to permit the trial judge to correct an obvious error while the jury is still in the box before a verdict has been rendered."). It also denies reviewing courts the benefit of the trial court's considered judgment and assessment of whether any of the unpreserved errors, individually or cumulatively, prejudiced the defendant. That is particularly important because it is the trial court that has "its finger on the pulse of the trial" and is best positioned to determine the likely effect of any improper comments. *Washington v. State*, 191 Md. App. 48, 103 (2010) ("The judge is physically on the scene, able to observe matters not usually reflected in a cold record. The judge is able to ascertain the demeanor of the witnesses and to note the reaction of the jurors and counsel to inadmissible matters." (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992))). In the absence of plain error, we see no reason to depart from ordinary preservation requirements.

Here, Mr. Umana neither asked us to find plain error nor purported to apply a plain error analysis to any of his unpreserved challenges. Even if he had, we would find no basis to exercise plain error review here. We therefore conclude that the objections Mr. Umana raises for the first time on appeal have not been preserved for our review.[9]

[9] Even if Mr. Umana had preserved challenges to the four statements he raises for the first time on appeal, we would conclude that none of those statements were improper:

- First, Mr. Umana asserts that it was improper for the prosecutor to tell the jury that Mr. Umana "was learning from watching everybody testify." Mr. Umana likens the prosecutor's comment to statements made in other cases in which courts have found it improper for prosecutors to suggest that a defendant's constitutionally protected right to be present in the courtroom permitted the defendant to fabricate testimony to match the narrative of other witnesses. *See, e.g.*, *Commonwealth v. Person*, 508 N.E.2d 88, 92 (Mass. 1987) (holding that it was improper for the prosecutor to suggest that the defendant had been able to tailor his testimony to match that of other witnesses). Here, however, the prosecutor asserted merely that Mr. Umana, in contrast to C.T., "was smart to ask [for confirmation] and make sure that that was what he said, and that I wasn't putting words in his mouth." The prosecutor never suggested that Mr. Umana had used his presence in the courtroom while other witnesses were testifying to fabricate his testimony.
- Second, Mr. Umana contends that the State improperly vouched for the veracity of the testimony of C.T. and R.G. A prosecutor improperly vouches for the credibility of a witness when "a prosecutor ma[kes] assertions, based on personal knowledge, that a witness was lying . . . 'or suggest[s] that information not presented to the jury supports the witness's testimony.'" *Spain v. State*, 386 Md. 145, 153 (2005) (quoting *U.S. v. Daas*, 198 F.3d 1167, 1179 (9th Cir. 1999)). However, "[t]he rule against vouching does not preclude a prosecutor from addressing the credibility of witnesses." *Sivells v. State*, 196 Md. App. 254, 278 (2010). Here, the prosecutor did not vouch for the credibility of the State's witnesses. Instead, she argued that evidence presented to the jury about R.G.'s conduct supported C.T.'s testimony and that R.G.'s testimony was credible because he did not claim to have witnessed the abuse or "exaggerate anything." The prosecutor's argument thus relied on the evidence presented, not any secret knowledge or a plea for the jury to trust her.
- Third, Mr. Umana raises two instances of the prosecutor expressing personal opinions that he contends were improper and prejudicial. First, the prosecutor

III. CUMULATIVE EFFECT

Having identified the improper statements and conduct at issue, we now turn to whether the trial court erred in declining to grant a mistrial based on the cumulative effect of the errors. In that analysis, we are guided by the standard of review generally applicable to error premised on such remarks:

> A reviewing court will not reverse a conviction due to a prosecutor's improper comment or comments unless there has been an abuse of discretion by the trial judge of a character likely to have injured the complaining party. We must determine, upon our own independent review of the record, whether we are able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict. A prosecutor's improper comments influenced the verdict, and therefore require reversal, if it appears that the . . . remarks actually misled the jury or were likely to have misled or influenced the jury to the defendant's prejudice. . . .
>
> To determine whether improper comments influenced the verdict, we look to the facts of the case at hand. In particular, we consider the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused. Instead of considering each improper statement independently . . . we look at the cumulative effect of all errors on the ability of a jury to render a fair and impartial verdict in the context of the case.

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characterized as "quite offensive" defense counsel's argument comparing a child who had suffered repeated sexual abuse to one "that puts his hand in a fire." Second, the prosecutor characterized as "disturbing" Mr. Umana's admitted conduct in helping to bathe a child who was seven or eight years old. In light of the leeway afforded to counsel in closing argument, we agree with the State that these remarks were not improper. The first remark responded directly to defense counsel's own closing argument that was itself based on an opinion regarding behavior that was not founded on any record evidence. The second remark, which was made in the context of discussing testimony, questioned the legitimacy of Mr. Umana's explanation of his conduct. At worst, both remarks constituted permissible oratorical flourishes.

Donaldson v. State, 416 Md. 467, 496-97 (2010) (internal citations and quotation marks omitted).

A. The Severity of the Remarks

Severity involves two separate considerations: (1) "whether there was one isolated comment, as opposed to multiple improper comments"; and (2) "whether the comments related to an issue that was central to a determination of the case or a peripheral issue." *Jones v. State*, 217 Md. App. 676, 695-96 (2014) (quoting *Sivells*, 196 Md. App. at 290). A comment is more severe where the prosecutor makes multiple remarks or the same remark multiple times and where the remark relates to an integral issue. *See Donaldson*, 416 Md. at 498 (holding that the prosecutor's vouching remarks were severe because "[he] made two separate sets of improper remarks that played an important role in both the closing and rebuttal arguments").

1. Shifting of the Burden of Proof and Related Comments Denigrating Defense Counsel

The prosecutor's remarks about the burden of proof and denigrating defense counsel in connection with prior inconsistent statements of the State's witnesses were significant in light of the centrality of C.T.'s credibility to the case, the importance the defense placed on the prior inconsistent statements, and the multiple remarks at issue. Notably, however, the extent of the severity is partially attributable to defense counsel's strategic decision not to object when the first remarks were made. Had defense counsel objected initially, the court could have sustained the objection, directed the jury to disregard the improper comment, and precluded any further statements. That the court ultimately agreed that the

remarks were improper and issued a curative instruction strongly suggests that the court likely would have done just that.[10]

2. Exhibition of Defense Exhibit No. 6

The prosecutor's brief display of the picture of Mr. Umana's bedroom—for "about a second and a half"—was not severe. The transcript reflects that if the members of the jury saw the photograph at all, it was only for a fleeting moment. Perhaps because the admittedly erroneous but inadvertent display of the photograph was promptly objected to by defense counsel and appropriately handled by the court, the record is bereft of any suggestion that it caused prejudice to Mr. Umana.

3. Remark that Defense Counsel Was Hoping that the Jury Was Homophobic

The prosecutor's remark that defense counsel was hoping that the jury was homophobic was not severe. The remark was a single, isolated statement and it did not relate to an issue that was central to the case. Indeed, the entire point of the prosecutor's remark was that any commentary on C.T.'s sexual orientation was irrelevant. We could not agree more with that point. Moreover, it was the defense, not the State, that had introduced sexual orientation as an issue in the case, both directly with respect to

[10] Mr. Umana's failure to make a contemporaneous objection may not present a preservation problem for his argument, *see Curry v. State*, 54 Md. App. 250, 256 (1983) (permitting appeal on objections tactically made at end of closing, rather than immediately following putative error, because immediate objection "might have underscored the prosecutor's comments and . . . ran the risk of the court's overruling the objections, thus emphasizing to the jury the 'correctness' of the comments"), but it does affect our analysis of both the severity of the comments and the measures the court took to cure any potential prejudice.

Mr. Umana's sexual orientation and implicitly with respect to C.T.'s. And the prosecutor's primary response to defense counsel's insinuations about C.T.'s sexual orientation—that it was irrelevant because "[y]ou don't get to sexually abuse young boys"—was powerful. In that context, if the prosecutor's single, isolated improper comment had any marginal effect on the jury, it could not have been more than negligible.

B. The Measures Taken to Cure any Potential Prejudice

1. Shifting of the Burden of Proof and Related Comments Denigrating Defense Counsel

The most significant factor in our analysis of the effect of the prosecutor's improper remarks regarding burden shifting is the trial court's efforts to cure the potential prejudice with its supplemental instruction to the jury. Before closing arguments, the trial court had already given the following pertinent instructions to the jury:

> The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This means that the State has the burden of proving beyond a reasonable doubt each and every element of the crimes charged.
>
> . . .
>
> This burden remains on the State throughout the trial. The Defendant is not required to prove his innocence, however, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty, nor is the State required to negate every conceivable circumstance of innocence.
>
> . . .
>
> Opening statements and closing arguments of lawyers are not evidence. They are intended only to help you to understand the evidence and to apply the law. Therefore, if your memory of the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

See Donaldson, 416 Md. at 499 (recognizing that "general jury instructions have a curative effect, as 'Maryland courts long have subscribed to the presumption that juries are able to follow the instructions given to them by the trial judge, particularly where the record reveals no overt act on the jury's part to the contrary'" (quoting *Spain*, 386 Md. at 160)).

After rebuttal closing argument, the trial court offered to give a supplemental instruction to the jury addressing the burden of proof and permitted defense counsel to dictate its content. The resulting instruction thus specifically addressed "proving former statements witnesses have admitted during cross-examination." The court also gave the instruction as soon as the issue was raised. In light of that supplemental instruction, the absence of a contemporaneous objection that would have called for any earlier court intervention, and affording proper deference to the trial court's on-the-ground, in-the-moment judgment, we find no abuse of discretion in the trial court's determination that this curative instruction was sufficient to rectify the potential prejudice of the improper remarks. *See Jordan*, 246 Md. App. at 598.

2. Exhibition of Defense Exhibit No. 6

As discussed, the trial court responded appropriately to Mr. Umana's contemporaneous objection to the prosecutor's attempt to use the unadmitted photograph of Mr. Umana's bedroom by entertaining the objection at a bench conference, confirming that the photograph was not admitted into evidence, and sustaining the objection (albeit implicitly). No further action was requested at the time, nor did defense counsel later suggest that any further action would have been appropriate, short of a mistrial.

3. Remark that Defense Counsel Was Hoping that the Jury Was Homophobic

The circuit court did not take any measures to cure any potential prejudice from the prosecutor's improper remark that defense counsel was "hoping" that the jury was homophobic. As we have noted, Mr. Umana did not make a contemporaneous objection to that remark. When defense counsel later addressed the remark in arguing for a mistrial, he mischaracterized it in a slight, but nonetheless significant, way, asserting that the prosecutor had insinuated that defense counsel had called the jury homophobic, rather than stating that he was hoping that the jury was homophobic. Perhaps because he had waited until after the prosecutor had concluded her argument to raise the point, rather than making a contemporaneous objection, defense counsel failed to identify the real problem with the prosecutor's remark. In any event, when the trial court disagreed, defense counsel quickly moved on. Defense counsel never requested a curative instruction or suggested any cure short of a mistrial. Under the circumstances—the lack of a contemporaneous objection, the mischaracterization of the remark, the absence of a request for any other remedial measure, the minor role of the comment in context, and the role of the defense in injecting sexual orientation into the proceeding—it is hardly surprising that the court failed to take any remedial measures.

C. The Weight of the Evidence Against the Accused

The State's case against Mr. Umana was not overwhelming. We disagree with Mr. Umana's contention that this was purely a "he said, he said" case, because the State presented additional evidence that corroborated C.T.'s testimony. Nonetheless, because

no one else witnessed the abuse and it was not reported contemporaneously, the State's evidence relied largely on C.T.'s testimony and, therefore, his credibility, which was not beyond question. Notably in that regard, two prior juries were unable to reach unanimous verdicts on the one charge at issue in this case. However, as we address next, on balance, this does not tip the scale in Mr. Umana's favor because of the absence of substantial prejudice resulting from the improper remarks and conduct.

D. The Court Did Not Abuse Its Discretion in Denying a Mistrial.

Considering the cumulative effect of all three sets of improper comments and conduct, we conclude that the circuit court did not abuse its discretion in denying Mr. Umana's motion for mistrial. First, although the prosecutor's remarks regarding the burden of proof and related comments denigrating defense counsel were somewhat severe, we discern no abuse of discretion in the trial court's determination that the curative instruction it provided was sufficient to address any resulting prejudice. Second, the record does not support Mr. Umana's contention that the prosecutor's fleeting presentation of the unadmitted defense exhibit, if the jury saw it at all, may have caused him prejudice. Third, in context, the prosecutor's comment that defense counsel was hoping that the jury was homophobic was not severe and did not prejudice Mr. Umana's defense. Thus, even accounting for the less-than-overwhelming weight of the evidence against Mr. Umana, we conclude that the cumulative effect of the prosecutor's improper remarks and conduct did not prejudice Mr. Umana and, therefore, that the trial court did not abuse its discretion in denying his motion for a mistrial.

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