Circuit Court for Baltimore City
Case No. 116270006

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1351

September Term, 2017

TYRONE SAVAGE

v.

STATE OF MARYLAND

Wright,
Berger,
Alpert, Paul E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Alpert, J.

Filed: August 9, 2018

A jury, in the Circuit Court for Baltimore City, convicted Tyrone Savage, appellant, of attempted armed robbery, attempted robbery, first-degree assault, second-degree assault, theft, use of firearm in the commission of a crime of violence, possession of a handgun, and possession of a handgun by a disqualified person. Savage was sentenced to a term of 20 years' imprisonment, with all but 10 years suspended, for the conviction of attempted armed robbery; a consecutive term of 20 years' imprisonment, with all but 10 years suspended, for the conviction of use of a handgun in a crime of violence; a concurrent term of three years' imprisonment, all suspended, for the conviction of possession of a handgun; and, a concurrent term of 15 years' imprisonment for the conviction of possession of a handgun by a disqualified person. The remaining convictions were merged for sentencing purposes into the conviction for attempted armed robbery. In this appeal, Savage presents two questions for our review, which we have rephrased and renumbered as follows[1]:

1. Did the circuit court err in refusing to allow defense counsel to impeach a State's witness with that witness's prior testimony?

[1] Savage presented the questions as:

1. Did the trial court abuse its discretion when it refused to allow defense counsel to impeach Mr. Toles with a prior inconsistent statement, and did the court err when it permitted the State to introduce inadmissible hearsay?

2. Did the trial court abuse its discretion when it permitted the State to provide an inaccurate transcript to the jury when it played jail calls purportedly made by Mr. Savage and when it thereafter permitted the State to display portions of the transcript to the jury during closing argument?

2. Did the circuit court err in permitting the State to introduce a witness's out-of-court statements?

3. Did the circuit court err in allowing the jury to view transcripts of the recordings of two telephone calls, and did the court err in permitting the State to show portions of those same transcripts to the jury during closing argument?

For reasons to follow, we answer all questions in the negative and affirm the judgments of the circuit court.

BACKGROUND

On August 31, 2016, Lorenzo Toles was walking down Gay Street in Baltimore City when an individual, later identified as Savage, walked past him. Mr. Toles then looked behind him and noticed that Savage "had come back" and was walking in Mr. Toles's direction. When Mr. Toles stopped to cross the street, Savage told him to "kick it out." After Mr. Toles told Savage, "I don't have nothing," Savage "started pulling out [a] gun." Mr. Toles then "started inching [his] way out into the traffic hoping that somebody was going to help him," at which time Savage "booked the other way."

Mr. Toles called the police, and, shortly thereafter, two police cars arrived on the scene. Upon making contact with the officers, Mr. Toles provided them with a description of Savage's clothing and the direction that he had fled. One of the officers then headed in that direction while the other officer remained with Mr. Toles. As Mr. Toles was explaining to the officer "everything that happened," the officer received a report over his radio that "they had someone" and that they were "bringing him back for [Mr. Toles] to look at." Not long after, a police car drove down the street and stopped

near where Mr. Toles was standing. Mr. Toles approached the police vehicle and, upon looking in the vehicle's rear window, noticed an individual, later identified as Savage, sitting in the vehicle's backseat. Mr. Toles then identified Savage as the person who had attempted to rob him. Savage was arrested and charged.

Prior to trial, Savage moved to exclude Mr. Toles's "show-up" identification of Savage as the man that had tried to rob him. At the hearing on that motion, Mr. Toles testified to the circumstances of the attempted robbery. In so doing, Mr. Toles provided the following testimony:

[DEFENSE]: Um, so I want to take you back to an incident that occurred on August 31st of 2016; do you remember that night?

[WITNESS]: Perfect.

* * *

[DEFENSE]: Okay. And, um, did there come a time that something unusual happened?

[WITNESS]: Yes.

[DEFENSE]: Okay. What happened?

[WITNESS]: I was approached by your defendant.

* * *

[DEFENSE]: Okay. And how were you approached?

[WITNESS]: I was approached with him coming towards me with a handgun.

[DEFENSE]: And when you say, um, "coming toward you," was it rapidly? Slowly?

[WITNESS]: I would say pretty much rapidly.

[DEFENSE]: Okay. And were there other people around?

[WITNESS]: Yes.

[DEFENSE]: Okay. How many other people?

[WITNESS]: Like a whole car length.

[DEFENSE]: I'm sorry?

[WITNESS]: Traffic was out.

[DEFENSE]: Okay. So there's traffic, were there other – you were on the sidewalk; is that right?

[WITNESS]: Yes.

[DEFENSE]: Were there other people on the sidewalk?

[WITNESS]: No.

[DEFENSE]: Okay. Okay. And then, what happened after you were approached?

[WITNESS]: The defendant came to me, pat my pockets down and said "kick it out, you know what it is." And showed me a handgun and pulled it out.

At trial, Mr. Toles again testified to the circumstances of the attempted robbery. In so doing, Mr. Toles provided the following as part of his direct testimony:

[STATE]: When the incident occurred you said that the defendant approached you – had passed you, was behind you, and then demanded your property and pointed a gun at you, and you said that there was traffic on the street; is that correct?

[WITNESS]: Yes.

[STATE]: Are you talking about car traffic?

[WITNESS]: Yes.

[STATE]: And was there anyone else with the defendant or in the immediate area?

[WITNESS]: Yes, he had two other people with him, little kids, like little kids. I'd say around, I'm not – I don't know exactly what ages they were, but they looked…a lot younger than he is.

[STATE]: A lot younger than him?

[WITNESS]: Yeah.

[STATE]: Okay. And you said they were with him, what makes you think – why do you say that?

[WITNESS]: Because they were jumping up and down saying "yeah, yeah, yeah, kick it out, kick it out." Like it was a game. It was like a game to them.

[STATE]: When the defendant left after the incident, if you know, did one or the other of these two other little kids that you're describing, did they go in the same direction – or different direction, or do you know?

[WITNESS]: All of them went in the same direction that I know of, because once I started running I didn't really pay much attention to see which way which one went where.

On cross-examination, defense counsel questioned Mr. Toles about his testimony regarding the "two other young people" that Mr. Toles claimed were with Savage during the attempted robbery. Defense counsel then asked whether Mr. Toles recalled testifying in an earlier proceeding, and the State objected. The court then called for a bench conference, at which the following colloquy ensued:

[STATE]: The issue in the prior proceeding is not relevant at all to – to other people, it was strictly about identification and whether –

THE COURT: It was – it was a Motion to Suppress his identification of this defendant.

[DEFENSE]: He – he testified that there was no one else on the sidewalk with him. There was no one else on the sidewalk.

THE COURT: I don't have the transcript. I – I don't – he testified there was no one else on the sidewalk with him, I would take that if I hear it –

[STATE]: Right.

THE COURT: – to mean he was referring to himself. There was no one else on the sidewalk with him. So without the – without the transcript, you know, it is just a fishing expedition. The purpose of that hearing was the Motion to Suppress his identification.

[DEFENSE]: I understand that. It's just that he did make statements regarding this situation and he indicated there was no one else around. He made no mention of the other two people.

[STATE]: Well, and – and in that motion, the State might have followed up had that been the purpose or at all at issue in that motion.

THE COURT: Yeah, it wasn't – it wasn't –

[STATE]: – but since it was not –

THE COURT: – an issue that would have been relevant to the identification of Mr. Savage, which was the subject of the hearing as to whether or not he was unduly influenced by anyone else.

And the, again, if he made – if he did, in fact, make the statement that no one was on the sidewalk with him "with him" means who? That's the problem. The whole context in which can be identified. So go on to your next question.

Later, Baltimore City Police Officer Eric Reedy, who was one of the officers that responded to the scene following the attempted robbery, testified that he spoke with Mr. Toles at the scene. On cross-examination, defense counsel asked Officer Reedy about the statement of probable cause that the officer had authored regarding the incident:

[DEFENSE]: Okay. And, um, so is – is – it's correct that in your report you described [Savage] as a black male, five eight, a hundred and 60 pounds, born 8/12/84?

[WITNESS]: Yes.

[DEFENSE]: Is that right? Okay. And that you described him as having black hair and black eyes?

[WITNESS]: Yes.

[DEFENSE]: Okay.

[WITNESS]: Brown.

[DEFENSE]: Now, and nowhere in your report did you, um, describe, um, any additional suspects in this case; is that right?

[WITNESS]: No.

[DEFENSE]: Okay. So you didn't write anything about any younger males?

[WITNESS]: No.

[DEFENSE]: You didn't write anything about any co-conspirators in the case?

[WITNESS]: No.

[DEFENSE]: You didn't write anything about, um, anyone else saying "kick it out" or helping Mr. Savage supposedly rob Mr. Toles?

[WITNESS]: No.

On redirect examination, the State asked Officer Reedy about a recorded interview that Mr. Toles gave at the police station following the attempted robbery. The State then presented Officer Reedy with a transcript of the interview to "refresh his recollection" and asked whether he recalled certain statements Mr. Toles made during the recorded interview. After defense counsel objected, the court called for a bench conference, at which the following colloquy ensued:

THE COURT: What's – what was the entire question you wanted to ask?

[STATE]: The question was going to be, I was going to use this, again, to refresh his recollection as to whether Mr. Toles had ever said that there were – that the defendant had – there were two other young kids during this event. And Mr. Toles –

THE COURT: Okay.

[STATE]: – did say that.

THE COURT: I mean, you can use anything to refresh someone's recollection.

[DEFENSE]: Well, I object.

THE COURT: Including matchbooks, balloons, piece of cake.

[DEFENSE]: – to the – I object to –

THE COURT: Knife and fork.

[DEFENSE]: I object on hearsay grounds is all.

THE COURT: Well, you elicited testimony in this regard so, there was no objection to the hearsay ground then and this would [refresh] his recollection as to something else.

At the conclusion of the bench conference, the State again presented Officer Reedy with the transcript of Mr. Toles's interview and asked whether it refreshed his recollection "as to what Mr. Toles said during that statement about whether there were other people with Mr. Savage during the event when Mr. Savage pointed a gun at Mr. Toles." After Officer Reedy indicated that his recollection had been refreshed, the State asked whether Mr. Toles "made any statement of that sort." Officer Reedy responded that Mr. Toles "stated that there were two other individuals" and that they appeared to be "young males, like ten to 13."

Later, the State introduced recordings of two phone calls that Savage made from jail following his arrest. Prior to doing so, the State indicated that it intended to distribute transcripts of the recordings to the jury prior to playing the recordings. Defense counsel objected:

> [DEFENSE]: The defense would object. Um, there are – there's a great deal of, you know, sort of swallowed words, um, some slang is used, um, you know, people talking over each other. I think there's a number of indecipherable moments that should be noted as indeciph [sic] – indecipherable, rather – well, first of all, we object to use of the transcript. We believe that the calls stand on their own, and the jury should listen to them and decide for themselves what they say.
>
> THE COURT: Well, that's exactly what I'll tell them, that they can use, ordinarily a transcript as an aid, and that the transcript is not an exhibit and they will not have in the jury room. It's what they hear and what they understand to be the evidence that they should consider.
>
> But you're suggesting that there are – I mean, looking at just the typed transcript which I have –

[DEFENSE]: Yes.

THE COURT: – there does not appear to be inaudibles. I think what you're saying, when it's played there are some portions that may not be as clear –

[DEFENSE]: Or –

THE COURT: – is that correct?

[DEFENSE]: That aren't as clear and that I think, you know, the State, whoever transcribes for the State has filled in, has, you know, made a judgment as to what those inaudibles or, you know, garbles or swallowed words are. And, um –

THE COURT: Well that, you – you're styling them as garbled or swallowed words, but it's what the jury hears. If the jury doesn't hear this, they can't consider it.

[STATE]: And the State –

THE COURT: A [sic] certainly you're in a position the [sic] argue, you know, we all heard the same transcript played back, or the same record played back, and ladies and gentlemen, you know, I mean I don't' have to put words in your mouth, but you certainly would know how to make the argument given your level of experience, expertise, and talent.

[STATE]: The State does not intend to offer the transcripts into evidence.

THE COURT: Well, they – they can't come in any way.

[STATE]: And could not – and could not. And does not intend to do so.

[DEFENSE]: Thank you, Your Honor. That's all I have.

The transcripts were eventually distributed to the jury members prior to the playing of the recordings. At that time, the court instructed the jury:

> Ladies and gentlemen, the State is going to hand out a transcript, which they wish you to use as an aid in understanding what you're about to hear.
>
> There are two very important things you have to understand about this transcript. One is that what you hear is the evidence in this case, not the transcript. So if what you hear is different or you believe it's different than what is typed on this page, it's what you hear that is the evidence.
>
> The second thing is this transcript is only going to be used for this single purpose in the playing of this tape. It will not be available – it will not be received into evidence, and you will not have it for use later. It is solely to assist you in listening to this recording.

Later, prior to the State's closing argument, defense counsel informed the court that the State intended "to display blowups of the transcript that was used as an aid during…the playing of the jail calls" and that defense counsel would be "objecting." The State responded that its plan was to remind the jury of the contents of the recording using a poster-sized display of the transcript and then "put it down so that they're not continuing to stare at it." The court agreed, and Savage was ultimately convicted.

DISCUSSION

I.

Savage first argues that the circuit court erred in refusing to allow defense counsel to impeach Mr. Toles's trial testimony with testimony he provided during Savage's pretrial motion to suppress. Specifically, Savage maintains that Mr. Toles's pretrial testimony "that no one was on the sidewalk" during the robbery was inconsistent with his trial testimony "that two young people were jumping up and down shouting 'kick it out'" during the robbery. Savage avers that, pursuant to "the plain language" of Maryland Rule 5-616, he should have been permitted to confront Mr. Toles with that inconsistent

statement during cross-examination. Savage also avers that the circuit court, in denying defense counsel's request, abused its discretion by relying on "the lack of a transcript" and the court's own interpretation of the meaning of Mr. Toles's testimony, as those factors "had no bearing on whether defense counsel was permitted to ask Mr. Toles about his prior testimony in the first place."

The State counters that Mr. Toles's pretrial testimony "that there were no other people on the sidewalk" was not inconsistent with his trial testimony regarding "the two young people" because the two pieces of testimony referred to different events. The State contends that Mr. Toles's pretrial testimony described the circumstances leading up to the attempted robbery whereas Mr. Toles's trial testimony described the circumstances during the attempted robbery. The State maintains, therefore, that the circuit court did not err in refusing to allow defense counsel to confront Mr. Toles with an "inconsistent" statement, as Mr. Toles's pretrial testimony was not, in fact, inconsistent with his trial testimony. The State also maintains that the court's interpretation of Mr. Toles's pretrial statement and its remarks regarding the lack of a transcript did not, under the circumstances, constitute reversible error.

Maryland Rule 5-616 states that a party may attack the credibility of a witness through questions aimed at showing "that the witness has made statements that are inconsistent with the witness's present testimony[.]" Md. Rule 5-616(a)(1); *See also Gonzalez v. State*, 388 Md. 63, 70 (2005) (noting that the Rule regarding prior inconsistent statements "includes statements made by the witness in the form of testimony at a prior judicial proceeding"). "A prior statement by a witness that is

inconsistent with the witness's testimony in court generally is admissible to impeach the credibility of the witness." *Yates v. State*, 202 Md. App. 700, 707 (2011).

That said, the right to impeach a witness is not without limits, and trial courts "have wide latitude to establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness's safety, or interrogation that is repetitive or only marginally relevant." *Fields v. State*, 168 Md. App. 22, 41 (2006) (citations and quotations omitted). Trial judges are also authorized, pursuant to Maryland Rule 5-611(a), to "exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment." In the end, "'the scope of examination of witnesses at trial is a matter left largely to the discretion of the trial judge and no error will be recognized unless there is a clear abuse of discretion.'" *Tetso v. State*, 205 Md. App. 334, 401 (2012) (quoting *Oken v. State*, 327 Md. 628, 669 (1992)). "The appropriate test to determine abuse of discretion in limiting cross-examination is whether under the particular circumstances of the case, the limitation inhibited the ability of the defendant to receive a fair trial." *Fields*, 168 Md. App. at 40 (quoting *Martin v. State*, 364 Md. 692, 698 (2001)).

Here, we hold that the circuit court did not err in limiting Savage's cross-examination of Mr. Toles. As the State correctly notes, the court did not refuse to admit Mr. Toles's pretrial testimony because there was no transcript; rather, the court merely noted that, without the transcript, it could not determine exactly what Mr. Toles had said

or the context within which it was stated. Thus the court, in considering the merits of Savage's claim, had to rely exclusively on defense counsel's proffer that Mr. Toles "testified that there was no one else on the sidewalk with him." Based on that proffer, the court found that the statement, and in particular the phrase "with him," was too ambiguous to be admissible as a prior inconsistent statement. In short, the circumstances under which Mr. Toles's pretrial testimony was offered do not support Savage's conclusion that the court's rationale for its decision "had no bearing" on whether Savage was permitted to impeach Mr. Toles with that testimony. *See Holmes v. State*, 236 Md. App. 636, 662 (2018) (noting that a court may make an admissibility determination on the basis of proffered evidence). To the contrary, the court's interpretation and application of defense counsel's proffer was of paramount import, given that the "party seeking the admission of impeachment evidence is obligated to establish the relevance of the evidence," *Fields*, 168 Md. App. at 44, and given that we "accord deference to the fact-finding of the trial court unless the findings are clearly erroneous," *Seal v. State*, 447 Md. 64, 70 (2016), which they were not. At the very least, we cannot say that the court abused its discretion.

Even when we consider Mr. Toles's actual pretrial testimony, we remain convinced that the circuit court was within its discretion in refusing to admit that testimony as a prior inconsistent statement. During the relevant portion of Mr. Toles's pretrial testimony, defense counsel asked Mr. Toles about the circumstances leading up to the attempted robbery, including "how" Savage had approached him and whether there were "other people around." Mr. Toles responded that Savage approached him "rapidly"

and that, at the time, "traffic was out." Defense counsel then asked whether there were "other people **on the sidewalk**," to which Mr. Toles responded, "No." During the relevant portion of Mr. Toles's trial testimony, the State similarly asked whether, at the time of the incident, "there was traffic on the street," to which Mr. Toles responded, "Yes." The State then asked whether there was "anyone else **with the defendant or in the immediate area**," to which Mr. Toles responded that Savage "had two other people with him" and that "they were jumping up and down saying 'yeah, yeah, yeah, kick it out, kick it out." Although Mr. Toles's pretrial testimony is not identical to his trial testimony, we cannot say that it was so inconsistent that the court's refusal to admit that testimony constituted an abuse of discretion or inhibited Savage's ability to receive a fair trial.

II.

Savage next argues that the circuit court erred in permitting the State, during its redirect examination of Officer Reedy, to question the officer about statements that were made by Mr. Toles following the incident. Specifically, Savage argues that court erred in allowing Officer Reedy to testify that Mr. Toles told him "that there were two other individuals" present during the attempted robbery. Savage maintains that that statement constituted inadmissible hearsay. Savage also maintains that there was no basis for the State to refresh Officer Reedy's recollection because "defense counsel did not elicit any testimony from Officer Reedy regarding Mr. Toles' recorded statement." The State

counters that the statements were admissible to rehabilitate Mr. Toles's credibility, which defense counsel attacked during her cross-examination of Officer Reedy.[2]

"'Generally, statements made out of court that are offered for their truth are inadmissible as hearsay, absent circumstances bringing the statements within a recognized exception to the hearsay rule.'" *Thomas v. State*, 429 Md. 85, 96 (2012) (citations omitted). One exception to the hearsay rule can be found in Maryland Rule 5-616(c)(2), which provides, in pertinent part, that "[a] witness whose credibility has been attacked may be rehabilitated by…evidence of the witness's prior statements that are consistent with the witness's present testimony, when their having been made detracts from the impeachment[.]" That rule serves as an exception to the hearsay rule because the "witness's prior consistent statements are admissible, not as substantive evidence, but for nonhearsay purposes to rehabilitate the witness's credibility." *Thomas*, 429 Md. at 97. In order for that rule to be applicable, however, "'the defendant's opening statement and/or cross-examination of a State's witness [must have] opened the door to evidence that is relevant (and now admissible) for the purpose of rehabilitation.'" *Anderson v. State*, 420 Md. 554, 567 (2011) (citations omitted) (emphasis removed). In short, "there are three prerequisites to admission of a prior statement as rehabilitation: (1) the witness'

[2] The State also argues that Savage failed to adequately preserve the issue for review because he "objected prematurely" and then "failed to object when the State actually elicited [Mr.] Toles' prior statements." We disagree, as the State proffered the nature of the testimony following the objection, at which time defense counsel renewed her objection "on hearsay grounds." *See* Md. Rule 4-323(a) ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent.").

credibility must have been attacked; (2) the prior statement is consistent with the trial testimony; and (3) the prior statement detracts from the impeachment." *Hajireen v. State*, 203 Md. App. 537, 555 (2012). "[I]n deciding whether a hearsay exception is applicable, we review the trial judge's ruling for legal error[.]" *Thomas*, 429 Md. at 98.

Here, we hold that the circuit court did not err in allowing Officer Reedy to testify that Mr. Toles told him that "there were two other individuals" present during the attempted robbery. During her cross-examination of Officer Reedy, defense counsel asked the officer about his report, and in particular whether he wrote "anything about any younger males" or "anything about anyone else saying 'kick it out' or helping Mr. Savage supposedly rob Mr. Toles." Given that that testimony came after Mr. Toles's testimony, and given defense counsel's prior attempt to impeach Mr. Toles with his pretrial testimony regarding the "two other young people," it is clear that defense counsel asked Officer Reedy about his report in order to impeach Mr. Toles's credibility. In response, the State elicited from Officer Reedy Mr. Toles's prior statement, which was consistent with Mr. Toles's trial testimony and detracted from the impeachment. Accordingly, the prior statement was admissible.

III.

Savage last argues that the circuit court abused its discretion in permitting the State to provide the jury with an "inaccurate transcript" of the recordings of two jail calls that were introduced into evidence and played for the jury. Savage maintains that, because defense counsel informed the court that "there were a number of indecipherable or inaudible moments during the calls," the court was "put on notice that the transcripts

were not an accurate reflection of what actually was said" and thus "abused its discretion when it permitted the jury to use the State's transcript as an aid." Savage also argues that the court erred in permitting the State to display portions of those transcripts during closing argument despite the fact that the transcripts were "not accurate" and had not been admitted into evidence. Relying exclusively on this Court's opinions in *Marshall v. State*, 174 Md. App. 572 (2007) and *Green v. State*, 231 Md. App. 53 (2016), *rev'd on other grounds*, 456 Md. 97 (2017), Savage maintains that transcripts may be used as an aid by the jury only when they are shown to be accurate and that the State may use said transcripts during closing argument only when they are shown to be accurate and admitted into evidence. According to Savage, because those factors were missing, the court erred in permitting the State to use the transcripts during the evidentiary portion of trial and closing argument.

Savage is mistaken. To begin with, even if we accept Savage's claim that there needed to be some affirmative showing of accuracy before the transcripts could be viewed by the jury, his argument that the transcripts were inaccurate is not preserved for our review. When defense counsel first objected to the State's use of the transcripts, she indicated that the transcript contained "swallowed words" and "a number of indecipherable moments" that "aren't as clear" and that the State had "filled in" and "made a judgment as to what those inaudibles or…garbles or swallowed words [were]." From that, it appears that defense counsel's sole rationale in objecting to the use of the transcripts was that the State had provided its own interpretation as to what was said during portions of the recording that defense counsel thought were either inaudible or

garbled. At no time did defense counsel state that those interpretations, or any other portion of the transcripts, were inaccurate. Because that issue was not raised below, it is not preserved for our review. Md. Rule 8-131(a). And because Savage's entire appellate argument rests on his contention that the transcripts were inaccurate, that argument must fail.

Moreover, Savage has failed to include in the record a copy of the transcript that was provided to the jury at trial. Therefore, we are unable to discern whether Savage's claim regarding the transcripts' accuracy has any validity.

Assuming, *arguendo*, that Savage's argument regarding the accuracy of the transcripts was preserved and could be evaluated, his reliance on our opinions in *Marshall* and *Green* is misplaced, and his overall contention that the trial court erred in permitting the jury to view the transcripts is without merit. In *Marshall*, the defendant, during the evidentiary portion of his murder trial, moved to prevent the State from submitting to the jury a transcript of an audio recording that was to be played for the jury. *Marshall*, 174 Md. App. at 575-76. The defendant argued that the transcript should be excluded "on inaccuracy grounds" because it was the most recent of several transcripts and contained "a number of changes" by the transcriber after it had been "enhanced" by police technicians. *Id*. Although the trial court ultimately denied the defendant's request and allowed the transcript to be shown to the jury, the court instructed the jury that the recording, not the transcript, was the evidence, that the transcript was merely an aid, and that if there were any discrepancies between what the jurors heard and what they read, the

transcript should be disregarded. *Id.* at 576-77. Following his conviction, the defendant noted an appeal, arguing that the transcript should have been excluded. *Id.* at 575-76.

On appeal, this Court held that the defendant was not "entitled to exclusion of the transcripts" and that the trial court did not err or abuse its discretion in overruling the defendant's objection. *Id.* at 578, 580. In so holding, this Court cited with approval the following language from *U.S. v. Font-Ramirez*, 944 F.2d 42 (1st Cir. 1991):

> The objectivity of the transcriber of a tape obviously bears on the decision whether or not to admit a transcript into evidence. The tape recording and not the transcript is evidence in the case. The transcript should, therefore, mirror the tape and should not be an amalgam of the recording and the hearsay testimony of persons present at the conversation. Where inaccuracies in the transcript combine with possible bias in the transcription process, a transcript may be excluded from evidence. The touchstone, however, is the accuracy of the transcript. Because [the appellant] did not offer an alternative transcript and did not point out any specific inaccuracies in the government's transcript, the [court] was within its discretion in allowing its use.

Marshall, 174 Md. App. at 579 (quoting *Font-Ramirez*, 944 F.2d at 48) (internal citations omitted). We further noted that:

> If defense counsel has not taken the opportunity to prepare his or her own transcripts, claims about the deficiencies of the transcripts prepared by the government are less likely to receive a sympathetic response.
>
> * * *
>
> Courts have consistently rejected defendants' complaints that allowing the jury to read a transcript placed unwarranted emphasis on the recorded evidence, programmed the jurors to respond favorable to the government's position, or acted as cumulative evidence. Use of a projector to display the transcript is permissible. Where a transcript has been shown to have been accurate and the jury has been given a cautionary instruction that the attorney's arguments were not evidence, no error has been found when a prosecutor read from a transcript during closing argument.

Id. at 579 (citations omitted).

Similarly, in *Green v. State*, this Court held that the trial court was within its discretion in permitting the State, during closing argument, to play portions of a recorded telephone conversation that had been previously played for the jury but had not been admitted into evidence. *Green*, 231 Md. App. at 74. In so doing, we noted that comments during closing argument are "afforded a wide range" and that "the evidence may be examined, collated, sifted and treated [by counsel] in his own way." *Id.* at 77 (citations omitted). We further noted that, although the physical recordings had not been admitted as exhibits, the words contained within the recording had already been submitted to the jury (by way of the audio playback during the evidentiary portion of trial). *Id.* at 80. We explained that such a demonstration was not dissimilar from reading portions of the trial transcript to the jury during closing argument, a practice that was "consistent with Maryland law." *Id.* at 79-80.

Applying this Court's reasoning in *Marshall* and *Green* to the facts of the instant case, we cannot say that the circuit court abused its discretion in permitting the State to distribute transcripts of the recording to the jury, nor can we say that the court erred in permitting the State to display portions of those same transcripts during closing argument. Savage, in arguing that the transcripts were inaccurate because the transcriber made some "interpretations," failed to point out any specific inaccuracies in the State's transcript or provide the trial court with an alternate transcript. Moreover, the court, prior to showing the transcripts to the jury, instructed that the transcripts were not evidence, that they were only to be used as an aid in understanding the audio recording, and that

any perceived discrepancies between the audio recording and the transcripts should be resolved in favor of what the jurors hear. Finally, although the transcripts were not admitted into evidence, the jurors were exposed to the contents of the transcripts during the evidentiary portion of the trial. We cannot say, therefore, that it was improper for the State, during closing argument, to remind the jurors of the contents of the audio recording by way of the transcripts, to which the jurors had already been exposed and which had not been specifically excluded. At the very least, we cannot say that the court abused its discretion in either instance. *See Johnson v. State*, 228 Md. App. 391, 433 (2016) (noting that an abuse of discretion occurs where "the judge exercises [his or her discretion] in an arbitrary or capricious manner or when he or she acts beyond the letter or reason of the law." (citations omitted).

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