

Circuit Court for Baltimore City
Case No. 116140020

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1714

September Term, 2017

DAMON STANSBURY

v.

STATE OF MARYLAND

Nazarian,
Arthur,
Shaw Geter,

JJ.

Opinion by Nazarian, J.

Filed: July 2, 2019

* This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Damon Stansbury was convicted in the Circuit Court for Baltimore City of second-degree murder, use of a firearm, and illegal possession of a firearm stemming from a shooting that occurred around 8 p.m. on April 22, 2016, in the 3400 block of Reisterstown Road. Mr. Stansbury and the victim, Nathan Walker, Jr., both were struck by multiple bullets. Mr. Stansbury was taken to a hospital and survived, but Mr. Walker died.

Mr. Stansbury was tried first in March 2017. At the first trial, Kevin Bryant, an eyewitness, testified that he saw the shooting from the front porch of his house, but he couldn't identify the shooters or tell who initiated it. The State attempted to refresh Mr. Bryant's recollection with a transcript of an interview he had with Detective Jones the day after the shooting because—in that interview—Mr. Bryant provided more detail as to where he saw the shooters come from, who shot first, and how it ended. Mr. Bryant testified he couldn't read the transcript because he didn't have his glasses. When pressed, he said that he told Detective Jones that he “didn't know” who shot first, so he “just took a guess.” The court then allowed the State to play, as a prior inconsistent statement, a video of Mr. Bryant's interview with police.

Mr. Stansbury's first trial resulted in a hung jury, and the case was tried again five weeks later. The second time around, though, police officers were unable to locate Mr. Bryant, and at the State's request, the court found Mr. Bryant unavailable. At the second trial, then, the State was allowed, under Maryland Rule 5-804, to substitute recordings of Mr. Bryant's testimony from the first trial and his interview with Detective Jones for his live trial testimony. Both juries heard and saw the same testimony—the only

difference was that Mr. Bryant delivered his in-court testimony in person at the first trial. Then, during closing argument, the State emphasized statements Mr. Bryant made to Detective Jones, implying that his inconsistent testimony at the first trial and absence from the retrial were induced by fear.

The jury found Mr. Stansbury guilty of second-degree murder, use of a handgun in the commission of a crime of violence, and illegal possession of a regulated firearm. On appeal, Mr. Stansbury contends that the circuit court erred in admitting Mr. Bryant's out-of-court statements to police. He also challenges that the trial court abused its discretion in allowing the State to "improperly vouch" for Mr. Bryant's credibility in its closing argument. We affirm.

I. BACKGROUND

Mr. Walker's body was found by police in a pool of blood. During their investigation, police discovered another pool of blood on the same block. They also uncovered a .44-caliber revolver containing four cartridge cases and twenty fired nine-millimeter cartridge cases.

Shortly after arriving on the scene, Detective Jonathan Jones learned that Mr. Stansbury was being treated for gunshot wounds at a nearby hospital. Crime lab results confirmed that one of the bullets recovered from Mr. Stansbury's body matched the .44 caliber revolver found at the scene, and that Mr. Stansbury's DNA matched the second pool of blood.

At Mr. Stansbury's second trial (the subject of this appeal), the State moved to admit

the prior testimony and previous statements of Mr. Bryant, the only eyewitness to the shooting. The State argued that Mr. Bryant was unavailable, that efforts by law enforcement to find him and serve him with a subpoena had failed, and therefore that his testimony from the first trial should be admissible pursuant to Maryland Rules 5-801(a)(5)¹ and 5-804(b)(1).²

The court agreed with the State and found Mr. Bryant unavailable. The court then allowed the State to play the jury a video of Mr. Bryant’s testimony and the video of his statement to Detective Jones that had been played, as a prior inconsistent statement, during the first trial.

A. Mr. Bryant’s Testimony At The First Trial

On March 10, 2017, Mr. Bryant took the stand as a witness for the State in Mr. Stansbury’s first trial. When asked to discuss the events of April 22, 2016 around 8 p.m., the following dialogue ensued:

[MR. BRYANT]: Like I told [Detective Jones], it was just me, my cousin sitting out there and some guys got to shooting and I grabbed them and carried them in the house and that was it. I don’t know what anybody was wearing or looked like. That’s all I seen.

¹ “‘Unavailability as a witness’ includes situations in which the declarant: . . . is absent from the hearing and the proponent of the statement has been unable to procure the declarant’s attendance . . . by process or other reasonable means.” Md. Rule 5-804(a)(5).

² If the declarant is determined to be unavailable as a witness, the hearsay rule does not apply to “[t]estimony given as a witness in any action or proceeding or in a deposition taken in compliance with law in the course of any action or proceeding, if the party against whom the testimony is now offered, or, in a civil action or proceeding, a predecessor in interest, had an opportunity and similar motive to develop the testimony by direct, cross, or redirect examination.” Md. Rule 5-804(b)(1).

[THE STATE]: [Y]ou're on your porch on Reisterstown, correct?

[MR. BRYANT]: Yeah.

[THE STATE]: Near Park Circle. What did you see?

[MR. BRYANT]: One guy coming this way up the street. The other guy coming this way up the street and we were sitting there. Next thing I know they just got to shooting at each other and I grabbed my cousins and I tried to snatch them in the house and that was about it and they came. I was telling them because my cousin was out there and [Detective Jones] asked me did I know what anybody looked like and I said nope I don't know what anybody looked like. I just grabbed my people and got them in the house.

[THE STATE]: You testified that one was coming from the side of Park Circle. Where was the other person coming from?

[MR. BRYANT]: From up the top of the street.

[THE STATE]: The top of the street?

[MR. BRYANT]: Yeah.

[THE STATE]: Who shot first?

[MR. BRYANT]: I don't know.

[THE STATE]: Do you remember what you told the police back on April 23rd of 2016 one day after this happened.

[MR. BRYANT]: No.

The State approached Mr. Bryant with a transcript of his conversation with Detective Jones and asked him to read it to himself. Mr. Bryant testified that he recognized the document as a transcription of his conversation with Detective Jones on April 23, 2016, but he also said he could not read it because he didn't have his glasses. After further questioning, the trial court granted the State's motion to play the video recording of Mr. Bryant's interview with Detective Jones outside the presence of the jury to refresh his

memory. But Mr. Bryant refused to watch, so the court admitted the video and allowed the State to play it for the jury.

B. Mr. Bryant's Statements To Detective Jones

Mr. Bryant first spoke to Detective Jones the night of the shooting, then they spoke again, in more detail, the day after. Detective Jones recorded his second conversation with Mr. Bryant.

In the videotaped interview, Mr. Bryant told Detective Jones that he was on his porch on the evening of April 22, 2016 when someone started shooting “down the street” from Hillsdale in the direction of Park Circle. Then, he said, a second person coming from Park Circle “returned fire”:

DETECTIVE JONES: So, the guy that was coming away from Park Circle like towards --

MR. BRYANT: (Indiscernible) --

DETECTIVE JONES: -- towards Hillsdale --

MR. BRYANT: No. The guy coming from Hillsdale, he shot first.

DETECTIVE JONES: The guy coming from Hillsdale shot first?

MR. BRYANT: Yeah.

DETECTIVE JONES: The guy coming from Park Circle returned fire?

MR. BRYANT: Right, right, right.

The conversation continued with Detective Jones asking Mr. Bryant to describe what happened next:

DETECTIVE JONES: Okay. Then what happened?

MR. BRYANT: Well, he just got -- (indiscernible) and when the one fell, he didn't (indiscernible) dropped --

DETECTIVE JONES: Oh, which one fell? The one that's coming from Park Circle?

MR. BRYANT: Yeah. The one coming from Park Circle, he fell first.

DETECTIVE JONES: Okay.

MR. BRYANT: But the other dude, he -- and then he fell like right there by my house and there -- that's where he dropped the gun at right there.

And then he staggered down the street and the other guy, he (indiscernible) this time, it was like a -- I don't know, it was a van or SUV right around the corner and they was there.

DETECTIVE JONES: Uh-huh.

MR. BRYANT: Right there, right around --

DETECTIVE JONES: Do you remember what color it was?

MR. BRYANT: No.

DETECTIVE JONES: Was it light? Was it dark?

MR. BRYANT: Whew --

DETECTIVE JONES: Was it white?

MR. BRYANT: It was like a (indiscernible).

DETECTIVE JONES: Light. Okay.

MR. BRYANT: Light.

DETECTIVE JONES: Okay.

MR. BRYANT: And it had like -- like three guys --

DETECTIVE JONES: Uh-huh.

MR. BRYANT: -- come around there from -- from right there. And -- and two of them grabbed the dude that was in the hospital (indiscernible) there.

DETECTIVE JONES: Uh-huh.

MR. BRYANT: And carried him back. And the other dude had all white man he just walked down the street man just choo, choo, choo, choo (indiscernible).

DETECTIVE JONES: Shot the guy that was coming from Park Circle?

MR. BRYANT: Yeah. He ran down there (indiscernible) off then he took off running, run, run. He got in the van and everybody got in the truck and they was gone.

DETECTIVE JONES: Okay.

MR. BRYANT: Because then everybody came ran up.

At this point in the interview, Detective Jones stopped to review and confirm the order of events:

DETECTIVE JONES: All right. So, I want to make sure I got a recap.

Guy coming from Hillsdale --

MR. BRYANT: Uh-huh.

DETECTIVE JONES: -- starts shooting first.

MR. BRYANT: Right.

DETECTIVE JONES: At the guy that's walking up --

MR. BRYANT: Uh-huh.

DETECTIVE JONES: -- from -- from Park Circle?

MR. BRYANT: Right, right, right, right. Uh-huh.

DETECTIVE JONES: The guy from Park Circle gets shot.

MR. BRYANT: Uh-huh.

DETECTIVE JONES: He returns fire --

MR. BRYANT: Right.

DETECTIVE JONES: -- to the guy from Hillsdale?

MR. BRYANT: Uh-huh, yeah.

DETECTIVE JONES: After he returns fire, one of the guys from Hillsdale -- the -- the guy that was shooting first from Hillsdale, his associates start --

MR. BRYANT: They probably shot each other a couple time, man.

DETECTIVE JONES: Okay.

MR. BRYANT: When they -- when they down, that's when -- that's when his buddies came.

DETECTIVE JONES: Okay. So, when --

MR. BRYANT: He went down -- he went down right in the middle of the street that (indiscernible) you know, the one (indiscernible) -- the one that died here --

DETECTIVE JONES: Uh-huh.

MR. BRYANT: -- the other one didn't -- the other ones took (indiscernible) in the street and they -- they came and got him. They came -- that's when they came and --

DETECTIVE JONES: The one that died was at the bottom of Hillsdale --

MR. BRYANT: Right.

DETECTIVE JONES: I mean, the bottom of Reisterstown --

MR. BRYANT: Yeah.

DETECTIVE JONES: -- closer to Park Circle --

MR. BRYANT: Uh-huh.

DETECTIVE JONES: The one that started the shooting dropped by Hillsdale?

MR. BRYANT: Yeah, somewhere up there.

DETECTIVE JONES: Okay.

MR. BRYANT: And they came and got him, you know, his buddies -- three guys came up -- because I didn't even know if -- that was it.

DETECTIVE JONES: Uh-huh.

MR. BRYANT: And I was watching these guys -- where (indiscernible) come from and -- and I seen them grab the dude (indiscernible) in all white, he went down (indiscernible) --

Detective Jones prompted Mr. Bryant to describe the appearance of the man in all white, and Mr. Bryant described him as tall, “[p]robably about six foot something.” Then Mr. Bryant told Detective Jones that the man in all white “finishe[d] off” the second shooter

before driving off toward Park Heights with the first shooter in the van.

C. State’s Closing Argument

In its closing argument, the State highlighted parts of Mr. Bryant’s statement to Detective Jones. Over defense counsel’s objections, the State sought to explain Mr. Bryant’s reluctance to testify as coming from fear of retaliation:

[THE STATE]: Remember, at the beginning of the video, Detective Jones is filling out paperwork. And, trust me, don’t believe what I say. Go back and look at it yourself. I implore you; please watch this evidence again and get back into it visually. Nothing I sa[y] right now is evidence. So, I want you to hold me to that standard, check my work. Go back and watch it.

At the beginning of the statement, Detective Jones is filling out an information sheet. It’s a standard practice. He’s just trying to get basic biographical information. He asks Mr. Bryant his name and Mr. Bryant hesitates. And why does he hesitate? Because he’s at a precipice right now. He’s about to decide whether or not to become part of a murder investigation, and being a citizen of Baltimore City, he knows --

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: Again, use your common sense. You all watch the news ever? Because he’s on a precipice and he knows he’s about to become a witness in a murder investigation in Baltimore City; and he hesitates; and as a seasoned homicide detective; a police officer of 17 years, 10 years in Homicide, Detective Jones sees that apprehension and he says, “Look, I promise you, I will not let anything happen to you. I put it on the shield.” And we learned what that meant. It turns out they were in the same fraternity. Mr. Bryant graduated college. This is no dummy. This is an educated man. He went to College Park, and in the conversation that he had with Detective Jones, they learned they were in the same fraternity. He put it on the shield. He was not going to let anything happen to him, and once he received that assurance, that allowed Mr. Bryant to feel comfortable enough to tell him what he saw and what he said.

[THE STATE]: Let's talk about Kevin Bryant. Kevin Bryant's testimony came to you by way of two videos, one being a video of his prior testimony from an earlier proceeding. It also came to you by way of his taped statement given a day after the event, as we've already discussed. You might be struggling with "Well, how can I reconcile those two things?" because you saw what he did when he came to court, right? "Oh, I can't see and I can't read this" and "I just guessed. I was guessing," but then you couple that with or you compare that to the taped statement where he was jovial, forthcoming with evidence, sitting there with Detective Jones and his partner and trying to suss out what happened that night. Cooperating, right? So, you might think to yourself, "Well, why wouldn't somebody who is cooperative one day after an event in the privacy of a police interrogation room all of a sudden" -- not all of a sudden -- "a year later do a complete 180 and change both what he says, how he says, whether he even wants to say it in court?" Well, you know why.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[THE STATE]: Again, this is all common sense, common experience. His Honor instructed you that you're not leaving your common experience and your logic out that door. You're going to need it. Especially in this case, you're going to need it. So, back in the prior proceeding about a year after the event, Mr. Bryant was in a courtroom similar to this one and he's testifying not too far --

[DEFENSE COUNSEL]: Objection.

THE COURT: Overruled.

[THE STATE]: -- and that might tell you why he wasn't so excited about testifying and maybe --

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Again, overruled.

[THE STATE]: -- and why maybe he really didn't want to go through with what he said before. He recanted. This is the problem with a recanting witness. Somebody says something on one occasion, but, then, when it comes to trial, all of a

sudden they have amnesia. All of a sudden, they can't even be found for court. And what would make someone do that? You think, if you're a witness in a case, you want to come forward and help the State, don't you? Oh, but wait. This is a murder case in Baltimore City.

[DEFENSE COUNSEL]: Objection, Your Honor.

[THE STATE]: So, again, there's no line. There wasn't a line lining up outside of [Detective Jones'] office, first, for witnesses and there's not a line outside this courtroom for people that want to testify. That explains, I submit to you, that explains the difference and what I'm arguing to you is what really happened, what Mr. Bryant really saw was what he told you on that tape and what he told Detective Jones on that tape. So, let's go to that tape.

The prosecutor also read to the jury parts of an unofficial transcript of Mr. Bryant's interview with Detective Jones, and reminded the jury to re-watch the tape because his reading of the transcript was not evidence.

The jury found Mr. Stansbury guilty of second-degree murder, use of a handgun in the commission of a crime of violence, and possession of a regulated firearm after being previously convicted of a disqualifying crime. He was sentenced to a total of 45 years, and he filed a timely appeal.

II. DISCUSSION

Mr. Stansbury argues on appeal that the trial court erred in admitting Mr. Bryant's out-of-court statements without first finding them inconsistent with his trial testimony. He also contends that the State vouched impermissibly for Mr. Bryant's credibility in its closing argument.³

³ Mr. Stansbury listed the following Questions Presented in his brief:

A. The Circuit Court Did Not Err In Admitting Mr. Bryant’s Out-Of-Court Statement.

Although Mr. Bryant didn’t appear at the second trial in person, his testimony figured prominently in the State’s case. As we discuss in connection with Mr. Stansbury’s objections to the State’s closing, Mr. Bryant was the only eyewitness who talked with police about the shooting, and he was a reluctant witness at that. He did appear at Mr. Stansbury’s first trial, but the State couldn’t locate him for the second, and the court found him unavailable. Then, as it had in the first trial, the State asked, and the court agreed, to play a video of Mr. Stansbury’s interview with police as a prior inconsistent statement.

Mr. Stansbury argues *first* that the circuit court erred in admitting Mr. Bryant’s out-of-court statements to Detective Jones on the grounds that they contain hearsay and that the court never made a finding that the statement was inconsistent with Mr. Bryant’s in-court testimony. The State disputes that a finding of inconsistency was necessary in the first place, disputes that Mr. Stansbury preserved a hearsay objection, and disputes that the interview contained hearsay.

We look first, then, at the court’s evaluation of Mr. Bryant’s statement as it

1. Did the trial court err in permitting the State to introduce a witness’s out-of-court statement, which included hearsay within hearsay, under Maryland Rule 5-802.1(a) without determining it was inconsistent with the in court testimony?

2. Did the trial court err in allowing the State, in closing argument, to improperly vouch for the credibility of its primary witness, including by arguing that the jury should credit his out-of-court statements more than his testimony under oath because he was frightened of the defendant?

considered whether to allow the State to play it:

THE COURT: Well, as far as the statement [Mr. Bryant] made to the police under Nance, et cetera, is that -- your suggestion is that I need to review the testimony that's being offered by the State -- well, proffered testimony of the State before I make any assessment --

[DEFENSE COUNSEL]: As to whether or not the police statement itself comes in to the jury. That's what I would argue, Your Honor; that while Judge Shar made a determination -- I think we actually, both defense counsels at the time, didn't object at that point to a Nance-Hardy and that testimony -- the police statement coming in. So, there was no ruling by Judge Shar at that point, because there was no objection. We would be objecting now. So, I think Your Honor would have to make a separate determination.

THE COURT: This is something -- you all know my background in Federal Rules of Evidence, which largely mirror these, "these" being the State's evidence. Is there a requirement, to your knowledge, under any line of cases that says I have to review it prior to; that I can't accept a proffer?

[DEFENSE COUNSEL]: Not to my knowledge, Your Honor. I think this is a relatively novel aspect of hearsay within hearsay and being proffered. It's not something that comes up regularly.

[THE STATE]: . . . It's not particularly novel. This happens all the time where Nance-Hardy statements admitted into trials and then it's a mistrial. It probably happens once a week in this courthouse. If there was pertinent case law, counsel would have it. So, it's not novel. This happens all the time and I don't think there's any controlling law saying that Your Honor now has to make an independent, separate determination. The Nance-Hardy statement came in as part of his prior testimony, as a whole.

At this point, the court found Mr. Bryant unavailable⁴ under Rule 5-804, then

⁴ Mr. Stansbury expresses some skepticism in his brief that Mr. Bryant in fact was

addressed how the former testimony should come in:

THE COURT: The next question is, during the course of Mr. Bryant's testimony in front of Judge Shar roughly five weeks ago, there was exhibited evidence of a prior statement that he had made to police regarding -- I shouldn't say "identification" because he doesn't identify the individuals that were in this podoju [sic] by name, but only by a figure from one direction does one thing, a figure who is in another direction did another thing, and did that at a time more closely related to the incident and that statement was videotaped by the Baltimore Police Department and admitted, as everybody has alluded to, under the Nance-Hardy doctrine of admissibility for such statements.

The issue then becomes do I allow this jury to see only the video that was played back in Judge Shar's presence in the earlier jury trial, or would I allow it to be played, that is, the CD or DVD of that testimony, be played independently.

THE COURT: I will allow the playing before the jury of the CD not just in the context of the prior—I should say "DVD"—not just in the context of the prior testimony in front of Judge Shar as was originally entertained by the -- as it originally entertained the jurors in that case, but also allow the jurors to see firsthand the CD/DVD of that interview.

We review *de novo* whether evidence is hearsay. *Harris v. Housing Authority of Balt. City*, 227 Md. App. 617, 643 (2016). Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). Generally, hearsay evidence is inadmissible. Md. Rule 5-802. And on its face, Mr. Bryant's former testimony undoubtedly qualifies as hearsay. We need to decide, then, whether Mr. Bryant's out-of-court statement to

unavailable, but does not challenge this finding.

Detective Jones qualifies as a prior inconsistent statement under Maryland Rule 5-802.1(a).⁵

The State argues that Mr. Bryant’s interview with Detective Jones was a prior inconsistent statement. But Mr. Stansbury contends that because the trial court never made a preliminary finding that Mr. Bryant’s lack of memory amounted to inconsistency under Rule 5-802.1, that exception cannot apply. *See Corbett v. State*, 130 Md. App. 408, 426–27 (2000) (trial court “erred in permitting [the witness’s] statement to come into evidence as a prior inconsistent statement without first making a finding on that preliminary, predicate issue.”). Moreover, Mr. Stansbury maintains that Mr. Bryant’s statements were consistent, that his unwavering “honest inability to recall the specific details of the shooting” didn’t conflict with the substance of his interview with police. The State responds that the court was not required to make an “on-the-recording finding” of inconsistency, but in any event that inconsistency arose from the “cold record,” when Mr. Bryant described for Detective Jones which of the shooters shot first and how the first and third shooter left the scene, then testified in court that he didn’t know who shot first and that he never saw any of the shooters leave. Citing *McClain v. State*, 425 Md. 238, 404 (2012), the State argues that although the trial court did not make an *explicit* preliminary

⁵ Rule 5-802.1(a) defines an exception to the hearsay rule for “[a] statement that is inconsistent with the declarant’s testimony, if the statement was (1) given under oath subject to the penalty of perjury at a trial, hearing, or other proceeding or in a deposition; (2) reduced to writing and was signed by the declarant; or (3) recorded in substantially verbatim fashion by stenographic or electronic means contemporaneously with the making of the statement”

finding of inconsistency, it made an *implicit* finding that Mr. Bryant’s statements to police were inconsistent with his prior testimony. And Mr. Stansbury replies that the trial court “failed, even implicitly, to make the required credibility determination” that is required for the prior inconsistency hearsay exception to apply.

We agree that a court must find a prior inconsistent statement inconsistent before admitting it, but we disagree that there is no such finding here. Mr. Bryant’s statement to police had been found inconsistent and admitted as a prior inconsistent statement at Mr. Stansbury’s first trial, and Mr. Stansbury doesn’t argue otherwise here. Nor did Mr. Stansbury ask the second trial judge to revisit the ruling until the State was about to press “play” to start the video, and argued only that the recording was not testimony. Preservation aside, *McClain* stands for the proposition that a court can make an inconsistency finding implicitly. *McClain* itself interpolated the finding differently—the record revealed that the court had inquired about whether the witness testified “‘inconsistently or incorrectly’ when compared with her prior statement,” then found expressly that the hearsay evidence “was admitted under Rule 5-802.1,” 425 Md. at 252—whereas here, the circuit court effectively adopted the previous trial court’s ruling. But that makes sense in context, where the parties fought primarily about whether Mr. Bryant was in fact unavailable, and then how to reproduce for the second jury the testimony and statement that the State had presented to the first. The court inquired about the consistency of Mr. Bryant’s out-of-court statements in the context of asking whether Mr. Stansbury had a similar motive to develop Mr. Bryant’s testimony at the first trial:

THE COURT: At trial, Mr. Bryant says, “I don’t know nothing,” or the equivalent thereto; is that correct?

THE STATE: Pretty much.

THE COURT: I’m sorry, [defense counsel].

DEFENSE COUNSEL: I would disagree. I mean, he says that he was guessing, which he says in his statement to the police. He says three different times, “I guess so,” repeatedly in his statement to the police. The police say, “x,y,z.” He says, “Yeah, that’s right.” There’s a lot of guessing, and he testifies that he was with his cousin and his friends and testifies that, you know, maybe he heard that from one of them has to when he’s getting impeached as to his statement to the police. So, I don’t think he’s really that far off from his statement. He says, you know, “People were out there shooting.” He doesn’t say he didn’t see anything. He says two guys, one in the street and one at the other end of the street, were shooting at each other. He just says that he doesn’t remember -- or was guessing as to who fired first, which I don’t think is unreasonable. In his statement to the police, he says after the first shot, he ducked; he did what anybody would do.

THE COURT: But now I understand why you wouldn’t bring in impeachables against him -- impeachable convictions -- because you would want the jury to adopt his most current version of what he said; that is, like “I ducked,” or “I’m really not sure what I saw.” So, like his recent iteration or narrative is more beneficial and, thus, there would be no reason for you to impeach him at that time.

THE STATE: And that’s what counsel argued at trial. It was a tactical decision not to bring up the impeachables.

THE COURT: Right

THE STATE: So, if we can just get back to the issue.

THE COURT: Sure.

THE STATE: Counsel is arguing the merits of the Nance-Hardy, whether it should come in. I want to focus, as we should right now, in my opinion, on the dissimilar nature that counsel argues in his opportunity or motive to cross examine.

THE COURT: Well, that’s why I brought that up. That’s why I interjected at that point, because I knew where -- I thought I

perceived where you were going with it and [defense counsel's] suggestion was that "Now we have different motives, I would have done a different strategy" --

When Mr. Stansbury objected to the statement right before the State played it, the court overruled the objection and stated that "there's nothing in what I've heard so far to change my ruling as to the admissibility of the prior testimony." In context, we read the second trial court as following the findings made by the first, and then reproducing as faithfully as possible the combination of in-court testimony and out-of-court statements the first jury had seen and heard, and we find no error in the court's decision to proceed in that fashion.

B. The Circuit Court Did Not Abuse Its Discretion When It Permitted The State's Closing Argument.

Second, Mr. Stansbury argues that he was denied a fair trial because the State vouched improperly for Mr. Bryant's credibility "by implying that [he] intimidated Mr. Bryant into testifying as he did at the trial." Mr. Stansbury's argument relies heavily on his assertion that the State failed to introduce any evidence to support its underlying claim that Mr. Bryant feared for his safety. The State contends that everything said about Mr. Bryant in closing was supported directly by Detective Jones' testimony at trial or was consistent with the jury's common knowledge. We agree with the State.

We review the trial court's "determination and scope of closing argument" for abuse of discretion. *Donati v. State*, 215 Md. App. 686, 731 (2014). We will not interfere with the trial court's judgment unless the "ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced

objective.” *Ingram v. State*, 427 Md. 717, 726–27 (2012) (quoting *McLennan v. State*, 418 Md. 335, 354 (2011)).

Generally, trial courts afford counsel a great deal of latitude in closing argument, so long as the content is “warranted by the evidence or inferences reasonably drawn therefrom.” *Lawson v. State*, 389 Md. 570, 591 (2005) (quoting *Degren v. State*, 352 Md. 400 (1999)). Counsel may “attack the credibility of witnesses” or “indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.” *Winston v. State*, 235 Md. App. 540, 573 (2018) (quoting *Wilhelm v. State*, 272 Md. 404, 413 (1974)). Prosecutors overstep these bounds when they vouch for the credibility of a witness. *See e.g., Donaldson v. State*, 416 Md. 467, 492 (2010). (“Vouching typically occurs when a prosecutor places the prestige of the government behind a witness through personal assurances of the witness’s veracity . . . or suggests that information not presented to the jury supports the witness’s testimony.” *Id.* at 489–90 (quoting *Spain v. State*, 386 Md. 145, 152–53 (2005) (internal quotations omitted)). But “[e]ven when a prosecutor’s remark is improper, it will typically merit reversal only where it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.” *Winston*, 235 Md. at 573 (cleaned up).

Mr. Stansbury analogizes his case with *Lee v. State* where, during its closing argument, the State implored the jury to disbelieve the victim’s testimony about who shot him. 405 Md. 148, 155–57 (2008). Defense counsel objected, but the trial court allowed the State to argue that the victim was “following ‘the law of the streets’” when he lied about

his shooter’s true identity. *Id.* at 156. The Court of Appeals held that the State’s comments “exceeded the permissible scope of closing argument” because there was no testimony or other evidence about what constituted “the law of the streets,” which effectively forced the jury to speculate and rely on information outside of the evidence. *Id.* at 168–70.

Here, unlike in *Lee*, the jury heard testimony that supported the scope of the State’s closing argument and established that Mr. Bryant had feared for his own safety. Detective Jones testified that among the many people who lived in the neighborhood where the shooting took place, no one except for Mr. Bryant was willing to talk with him about what he saw. He said that it was “not uncommon” for there to be few, if any, witnesses to come forward in his homicide investigations. He also testified that before the interview, he met Mr. Bryant at an undisclosed location and when he sensed Mr. Bryant was getting apprehensive, he reassured him: “I put it on the shield”—meaning “[y]ou’re going to be protected. I’m going to make sure that nothing happens to you.” In context, the State’s closing argument—suggesting that Mr. Bryant recanted his original statement to police because he was afraid—was grounded in reasonable inferences drawn from Detective Jones’s testimony and the State did not vouch impermissibly for Mr. Bryant’s credibility.

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