UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0065

September Term, 2015

DARRELL M. GWALTNEY

v.

STATE OF MARYLAND

Krauser, C.J.,
Berger,
Reed,

JJ.

Opinion by Krauser, C.J.

Filed: February 4, 2016

*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.

Convicted by a jury, in the Circuit Court for Baltimore City, of wearing, carrying, and transporting a handgun on his person; of wearing, carrying, and transporting a handgun in a vehicle; and of possession of a regulated firearm by a person with a disqualifying conviction, Darrell M. Gwaltney, appellant, presents a single question for our review. Stripped of argumentation, it is simply: Did the trial court abuse its discretion in sustaining the prosecutor's objection to defense counsel's closing argument? For the reasons that follow, we affirm.

BACKGROUND

On January 2, 2013, at approximately 1:30 a.m., Officer Ceasar Mohamed of the Baltimore City Police Department stopped a car for a non-functioning taillight. The driver of that vehicle, Brittany Basillo, was subsequently unable to provide the officer with her license or registration, whereupon the officer entered Basillo's name and birth date into his "mobile PocketCop." [1] When that device disclosed that Basillo's license was suspended, the officer instructed Basillo to turn off the vehicle and hand over the keys.

At that time, Basillo's vehicle also contained two male passengers: appellant and Andre Mixon. Appellant was sitting in the front passenger seat, and Mixon was sitting in the back seat of the vehicle. After obtaining appellant's name and date of birth, Officer Mohamed learned that there was an outstanding warrant for appellant's arrest. He therefore asked appellant to step out of the vehicle. When appellant did so, the officer observed that

[1] Officer Mohamed explained that a mobile PocketCop is a system that enables police to use a phone to obtain information concerning an individual's license and registration status.

he was holding a black object that appeared to be a handgun in his "dip area."[2] When the officer tried to pull appellant's hands out of his "dip area," he resisted and the two men "began tussling."

When Officer Todd Edick, moments later, arrived at the scene as "back up," he advised appellant that if he continued to resist arrest, he would be tased. When appellant, nonetheless, continued to resist, Officer Edick attempted to deploy the taser, but "it didn't function." In the meantime, appellant removed a handgun from his waist and tossed it into the backseat of the vehicle. Eventually, the officers were able to handcuff appellant, recover the gun from underneath a t-shirt in back seat of the car, and arrested all three occupants of that vehicle.

Officer Edick confirmed, at trial, that when appellant stepped out of the car, he immediately "hunched over" and "grabbed for his waist." During the struggle with Officer Mohamed, Officer Edick heard Officer Mohamed say, "I see a gun." Officer Edick then observed appellant's arm "come from the waistband and an object fly through into the car which landed in the backseat area." Mixon then, according to the officer, "lean[ed] down towards it and then [sat] right back up quickly." After appellant was placed in handcuffs, the officers looked for what appellant had thrown and, in Officer Edick's words, "observed a - - a gun that had been covered up by the rear passenger by a - - a shirt."

After his arrest, appellant called the police department's Internal Affairs Division ("IAD") from jail on a recorded line to register a complaint against Officer Mohamed for

[2] Officer Mohamed did not offer an explanation of where the "dip area" was, but later testified that Gwaltney removed a gun from his waist.

allegedly "beating on" him after he was placed in handcuffs. During that call, which was recorded, appellant denied that he had a gun on him but admitted that there was a gun in the car.

DISCUSSION

During closing argument, defense counsel averred that appellant's fellow passenger in Basillo's car, Andre Mixon, was a drug dealer and that the gun belonged to him:

> [DEFENSE COUNSEL]: . . . the gun and the magazine are found in the backseat where Mr. Mixon is. And remember, Mr. Mixon was arrested with guns and money. Excuse me, strike that. With money and drugs. I don't think it's a far - - I submit to you that **it wouldn't be a far reach for someone who's selling drugs and has money on them to have a handgun.**

(Emphasis supplied.)

The State objected to that comment, and the court sustained the objection, giving rise to appellant's claim that it was error for the court to so limit defense counsel's argument because the inference that she had asked the jury to draw – that those who sell drugs often possess guns – was supported by the evidence.

Counsel is generally given "wide range" in closing argument. *Wilhelm v. State*, 272 Md. 404, 412 (1974). Indeed, both the defense and prosecution are free to "state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence." *Id.* But the latitude given to counsel, during closing argument, is not without limits. "Courts consistently have deemed improper comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial." *Spain v. State*, 386 Md. 145, 156 (2005). They have done so to "prevent counsel from suggesting evidence which was not presented at trial thereby providing

additional grounds for finding a defendant innocent or guilty." *Eley v. State*, 288 Md. 548, 552 (1980). Moreover, "[t]he determination of whether a portion of counsel's argument is improper . . . rests largely within the trial judge's discretion because he or she is in the best position to determine the propriety of argument in relation to the evidence adduced in the case." *Ingram v. State*, 427 Md. 717, 728 (2012) (citation omitted).

There was no abuse of discretion by the circuit court here. Contrary to appellant's argument, there is no factual support in the record for defense counsel's statement that Mixon was selling drugs. In fact, the only evidence connecting Mixon with drugs was that an unspecified quantity of drugs was found in the paddy wagon that had transported him, that he had been previously "arrested for drugs," and that he had in his possession an unspecified amount of money on him at the time of his arrest. This evidence was insufficient to support defense counsel's categorical assertion that Mixon was in the business of selling drugs and, therefore, the jury could assume the gun that was found was his. The court, therefore, did not abuse its discretion in sustaining the State's objection to that comment.

But, even if there had been evidence that Mixon was in the business of selling drugs, appellant would not be entitled to the relief he seeks. "An appellate court generally will not reverse the trial court "unless that court clearly abused the exercise of its discretion and prejudiced the accused." *Sivells v. State*, 196 Md. App. 254, 271 (2010), *cert. dismissed*, 421 Md. 659 (2011) (citation and internal quotation marks omitted). Given that appellant was observed to have actual possession of the gun, that he later admitted to IAD that there was a gun in the car, and that defense counsel's closing argument was not otherwise

limited, appellant suffered no prejudice even if the court was incorrect in its ruling. *See Ingram*, 427 Md. at 734-35 (holding that any rhetorically assumed abuse of discretion in limiting closing argument is rendered harmless by latitude otherwise allowed, as well as substantial evidence of the defendant's guilt.)

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