UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1678

September Term, 2014

JAJUAN MARTIN

v.

STATE OF MARYLAND

Eyler, Deborah S.,
Arthur,
Salmon, James P.
(Retired, Specially Assigned),

JJ.

Opinion by Salmon, J.

Filed: January 12, 2016

Following a multi-day jury trial in the Circuit Court for Baltimore City, Jajuan Martin (hereinafter "Martin") was convicted of second-degree murder, wearing and carrying a handgun, use of a handgun in the commission of a crime of violence, and possession of a regulated firearm.[1] Martin was sentenced to thirty years' imprisonment for second-degree murder, a consecutive twenty years for use of a handgun, and a consecutive fifteen years, the first five years to be served without the possibility of parole, for possession of a regulated firearm.[2] In his timely appeal, Martin raises three questions, which he phrases as follows:

> 1. Did the trial court abuse its discretion when it overruled defense counsel's objections and permitted the prosecutor to mislead the jury about the DNA evidence through exhibits, examination of the expert and closing argument?
>
> 2. Did the trial court abuse its discretion when it refused to permit defense counsel to impeach . . . [a] jailhouse informant with extrinsic evidence?
>
> 3. Did the trial court impose an illegal sentence for possession of a regulated firearm?

We conclude that the circuit court improperly sentenced appellant in regard to the charge of possession of a regulated firearm, and we shall therefore vacate his sentence for that offense and remand this case for a new sentencing hearing. Discerning no other error or abuse of discretion, we shall otherwise affirm the judgments of the circuit court.

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[1]Appellant was acquitted of first-degree murder.

[2]Appellant's conviction for wearing, carrying, or transporting a handgun was merged for the purposes of sentencing.

I.

Around 3:00 in the afternoon on October 10, 2011, Kevin Pierre (hereinafter "Pierre") was shot three times. The shooting occurred in the 200 block of North Belnord Avenue, in Baltimore City. Pierre was grazed by two of the bullets, but died as a result of the third.

The shooting came to the attention of the Baltimore City Police Department when an anonymous caller dialed 911 and told the dispatcher that she had just witnessed a shooting and that she had seen the shooter jump into a navy blue Malibu bearing Maryland tag number 5FDG04. Around 5:45 that same evening, that car was located approximately five miles from the scene of the shooting. The vehicle was dusted for fingerprints and swabbed for DNA evidence. Martin's fingerprints were found on the exterior rear driver side quarter panel, the exterior rear driver side door, and the exterior passenger side door of the car. In addition, a fingerprint of Martin's was also found on a cell phone recovered from the scene of the shooting. The results of DNA tests were inconclusive.

Three witnesses made statements to the police indicating that Martin, who was also known by the nickname "Longhead," was present at the time Pierre was killed.[3] Daniello Davis, who was on North Belnord Avenue at the time of the shooting, told the police that Martin was present with his friend "Shawn" when an altercation broke out between two

[3]Two of the three witnesses wholly or partially recanted at trial their original statements and identifications implicating Martin. Their earlier statements to the police were admitted as prior inconsistent statements. In their statements to the police, the witnesses indicated that they feared that if they testified against appellant they would be in danger.

women. Davis hid under a car when people started shouting that someone had a gun. Though she heard the gunshots, Davis did not see who shot Pierre.

The victim's girlfriend, Tashira Skinner, told police that she saw Martin intervene in a fight between Shawn and Pierre. Ms. Skinner testified that before she ran away, she saw Martin pull out a gun that looked like a .45, and fire a shot into the air. Ms. Skinner heard additional shots as she ran back to her car and drove away. Four shell casings were recovered from the scene of the shooting. All had been fired by the same .45 caliber handgun.

On October 11, 2011, Martin was arrested on charges not related to Pierre's murder. In his statement to the police, he denied any involvement in the shooting of Pierre, claiming that he was at his sister's house at the time the shooting occurred.

Paul Braun was housed in the same cell with Martin at the Baltimore City detention center between October 12 and October 22, 2011. Braun testified that Martin bragged about a shooting that occurred on October 10, 2011. According to Braun, Martin said that he and his friend, Shaw or Deshawn, went into Baltimore City to fight someone. Martin shot the victim while the victim was fighting Shawn/Deshawn, and shot the victim again when the victim ran away. Martin also said that his friends "were all proud of him" and that "he didn't think he had it in him." Braun wrote about Martin's confession in a letter he gave to his attorney. Braun asked his attorney to forward the letter to the Baltimore City State's Attorney's Office. In that letter, Braun inquired about the possibility of obtaining a deal in

regard to charges that were pending against him. Braun testified, however, that he did not receive a deal either for providing the police with the information contained in the letter or for testifying against appellant at trial.

II.
FIRST QUESTION PRESENTED

Martin contends that the lower court abused its discretion by allowing the prosecutor to "engage[] in a series of objectionable tactics that had the effect of misleading the jury about the DNA evidence" in this case. Specifically, Martin complains that "the prosecutor introduced into evidence an allele table that [the prosecutor] had altered in such a way to suggest that [] Martin's DNA profile and the DNA profiles from the swabs from the car [used by Pierre's killer] matched." Martin also claims that "the prosecutor asked the expert questions that suggested the same thing," and that the prosecutor's comments in closing argument "implied that the jury should ignore the expert's conclusions and reach its own with respect to the DNA results."

A. The Highlighted Allele Table

The State's DNA expert testified that she analyzed swabs taken from the interior and exterior front passenger door handle of the vehicle used by the shooter, as well as DNA samples from Martin and several other individuals. The DNA Analysis report was admitted into evidence as State's Exhibit 33. Both the DNA Analysis Report and the expert's testimony made clear that Sample 8 (the swab from the interior front passenger door handle)

was an indeterminate mixture of at least four individuals, that Sample 9 (the swab from the exterior front passenger door handle) was a partial indeterminate mixture of at least two individuals, and that no definitive conclusion could be reached as to who may or may not have contributed to either Sample 8 or Sample 9.[4]

The expert testified about the process of identifying DNA evidence by looking at alleles, which she described as the number of repetitions of sequences at particular locations on the DNA. She then identified State's Exhibit 34 as the allele table generated for this case. When the State asked to move that exhibit into evidence, defense counsel said that he had no objection, and the court admitted it.

Some information on Exhibit 34 had been highlighted in yellow; specifically, the alleles from Martin's swab (Sample 1), and the corresponding allele numbers attributed to the swabs from the interior and exterior front passenger door handles (Samples 8 and 9). It is undisputed that this highlighting appeared on the copy of the Exhibit 34 and was shown to defense counsel before he agreed to its admission.

[4] When questioned about Sample 8, the expert explained that:

> . . . indeterminate means a couple of things. It means that there's the potential that there's genetic material that I can't see in the profile that's dropped out, that's missing, that was too low to be detected. And it also means that the profile could be too complex. And in this particular instance its both. There's at least four individuals. It appears that there's data that I don't see because it's too low so I can't make any determination about who may or may not have contributed to the sample.

Once Exhibit 34 was admitted into evidence, the court granted the State permission to publish it to the jury, by projecting it onto a screen while asking the expert questions about the exhibit. The prosecutor questioned the witness about the exhibit "up on the screen," for a period of time comprising almost three transcript pages, before defense counsel approached the bench and stated:

> [DEFENSE COUNSEL]: And I just realized that they have highlighted both my client's alleles and then they've gone and done that in 7 and 8 which ones of his are there. But, remember, what they have disclosed to the defense is that there is no definitive conclusion. As a result, she is not allowed, I would suggest to the Court, to mislead the jury by trying to make a comparison of what alleles are in his sample and what are in the ones, 8 and 9 - we haven't gotten to 9 yet - of his are in there because their expert has already said that no definitive conclusion can be reached. So when she does that, I would suggest it misleads the jury and contradicts her own expert.
>
> [THE COURT]: Ms. [Prosecutor].
>
> [THE STATE]: I don't think that's what I'm doing. And first of all, I – they were also highlighted in the copies that I just showed to you and the copy that has been admitted into evidence.
>
> [THE COURT]: So the copy that was shown to [defense counsel] -
>
> [THE STATE]: If I can go get it -
>
> [THE COURT]: Just listen to me. Is highlighted as well as the copy that's being published. Is that what you're saying.
>
> [THE STATE]: Yes.

The prosecutor next said that she was attempting to explain to the jury why the expert could not draw a conclusion regarding the samples that contained appellant's DNA. Defense

counsel interjected that "to put this also in context, the State's Attorney and I went round and round during the previous trial because she kept trying to get this witness to say that my client couldn't be excluded, which was not allowed[.]" The court responded, "Well, which is why I would have thought . . . you would have said something[.]" Defense counsel explained that he didn't think of it, to which the court responded, "You didn't think of it. You were given the document. You didn't have any objection to it coming in. And so now what am I supposed to do, take the evidence out of evidence?"

Defense counsel suggested that a clean copy be entered into evidence in place of the highlighted copy. The court said: "I don't know how you missed that, [defense counsel]. I really don't. I'll be honest with you. I don't know how you miss it because it's there and it's not like she just highlighted it just now. It's there. It's been on there," and that "when it was given to you if it was different from what was in discovery, that's when you holler to me because it's different from in discovery. And so now I can't undo what has now been done."

The court ruled that it would have the State provide an unhighlighted copy of the exhibit, and "[t]he jury can have both of them. You get to cross-examine this woman based on either one of them, the unhighlighted copy or the highlighted copy. You get to - I can't undo evidence that has been accepted. I can't go back and now say this is just substitute evidence. This is all I can do at this point. So that's my instruction." An unhighlighted copy of the allele table was entered into evidence as State's Exhibit 34A.

Defense counsel further requested that, failing the total substitution of a clean copy of the exhibit, the court disallow any line of questioning involving any similarity between appellant's alleles and the alleles in Samples 8 and 9. The court indicated that it would rule on any such objection as the situation arose.

In this appeal, Martin contends that the trial court abused its discretion by allowing the State to admit the highlighted allele table into evidence and publish it to the jury. Because defense counsel specifically said prior to the exhibit being admitted that she had no objection to the admission of State's Exhibit 34, this contention has not been properly preserved for appellate review. *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. Otherwise, the objection is waived.").

Martin suggests that the tardiness of his counsel's objection to the admission of the highlighted exhibit should be excused. In support of this contention, Martin quotes *Mitchell v. Slye*, 137 Md. 89 (1920), wherein the Court of Appeals, in a will contest case, considered an objection to a prosecutor's question that was not raised until after the witness had already responded. The *Mitchell* Court opined:

> The rule requiring objections to testimony to be made promptly is for the purpose of facilitating rather than retarding the administration of justice, and should receive a reasonable interpretation, and even when the objection comes after a question has been answered, if it appears that the delay was inadvertent and unintentional, and what, under all the circumstances was reasonable

> diligence, was exercised, or that no sufficient opportunity had been given to make it sooner, the objection will be considered to have been taken in time.

Id. at 100.

The rule enunciated in *Mitchell* is here inapposite. In the instant case, defense counsel first stated that she had "no objection" to the admission of the exhibit and thereby affirmatively agreed to the admission of the exhibit and thereafter failed to object when the State displayed the exhibit on a screen within full view of the jury. Nor did defense counsel thereafter object when the expert witness was asked numerous questions about what the information included in the exhibit meant. As the trial judge noted, to withdraw the exhibit at that point in the trial would be prejudicial to the State because it might "look[ ] like the State has done something that is incorrect" by offering the exhibit in support of its case. In sum, defense counsel's delay in objecting to the exhibit was substantial and the actions of defense counsel can not be said to have met the "reasonable diligence" standard. Consequently, we hold that defense counsel's failure to raise a timely objection to the admission of the highlighted allele table cannot be excused.

B. Prosecutor's Questioning of the Expert Witness

In the midst of the State's direct examination of the expert witness, the prosecutor brought out the fact that in the expert's opinion, the results of testing Sample 8 were indeterminate because at least four people had contributed to the DNA sample. The following then transpired:

> [THE STATE]: Okay. Now D-8 also appears to contain some of Mr. Martin's - -
>
> [DEFENSE COUNSEL]: Objection, Your Honor.
>
> [THE COURT]: Let her finish the sentence. Do not answer.
>
> [THE STATE]: Some of the alleles that are present in column 1, correct?

Defense counsel objected again and the following then transpired at a bench conference:

> [DEFENSE COUNSEL]: This is misleading the jury, Your Honor. The report is clearly that it's inconclusive. She's doing exactly what I explained to the Court I figured out she was doing earlier. It's taking a report that even her expert says conclusive [*sic*] and trying to, in the face of the opinion of her expert that it's conclusive [*sic*], trying to mislead the jury that - that this is his.

In the colloquy with the court that followed, defense counsel agreed that "[t]he numbers that are the same, certainly [the jury is] going to be able to look at [the exhibit] and notice that on their own." However, defense counsel argued that "[i]t gives it a different type of emphasis to a jury when you have an expert witness testifying to something and this is misleading the jury."

The prosecutor explained that she was not trying to mislead the jury, but was instead trying to present the evidence fairly and explain why the results were inconclusive, because she doesn't "know how sophisticated this jury is. I don't know what kind of science background . . . ." The prosecutor also noted that, no matter how the question is posed, the DNA expert would testify consistently with the "approved" language used in the exhibit. Defense counsel then said that "allowing this line of questioning is basically allowing her to

present information . . . to the jury that maybe it isn't ambiguous[.]" The court ruled as follows:

> Unless she changes her mind. Unless this - unless this expert that we put her in changes her mind as to whether or not it is inconclusive, that's all I'm worried about. You all can ask -that's the same as if, you know, the - what do you call them, the medical examiner had said something different about – if he had said the cause of death was – . . . the cause of death was multiple gunshot wounds and the State kept asking him about poison that was found in this person's system. The State can ask all the questions they want about how much poison was found, can't [*sic*] poison was fatal . . . but as long as he doesn't change his mind about what the cause of death is, you all can ask questions.
>
> And so I'm not going to – I disagree with the fact that the State is misleading the jury because it's on the piece of paper. It's there. The numbers are there. The jury can see the numbers. The question, as I have heard it so far, is – from what I hear is not objectionable.
>
> I'm going to overrule it.

The State then proceeded to question the witness as follows:

> [THE STATE]: Ms. Morrow, some of the alleles that are present in Sample 1 also appear to [be] present in Sample 8. Is that correct?
>
> [THE WITNESS]: There are some similar alleles.
>
> [THE STATE]: The numbers are the same?
>
> [THE WITNESS]: Right.
>
> [DEFENSE COUNSEL]: Your Honor, for the record, could I make a continuing objection?
>
> [THE COURT]: Yes, sir.
>
> [DEFENSE COUNSEL]: Thank you.

[THE COURT]: Overruled.

[THE STATE]: Can you explain why that doesn't mean that Mr. Martin's DNA was necessarily there?

[THE WITNESS]: Right. And that goes back to the profile being an indeterminate profile. There's too many contributors to the sample and there's too much potential for drop out. That's what those little dashes at the end mean. That means that there might be genetic information that's missing that I can't see.

So I – really I can't make any determinations. So whether there's a similarity or not I can neither include nor exclude anyone.

[THE STATE]: And how about Sample 9, what was the results of your testing in Sample 9?

* * *

[THE WITNESS]: This sample, the exterior front passenger door handle, is a partial indeterminate mixture of at least two individuals.

[THE STATE]: And, again, for Sample 9, are some of the alleles in Mr. Martin's profile also present in the profile that you generated from Sample 9?

[THE WITNESS]: Some of the same numbers do appear.

[THE STATE]: And could you make any determination about whether Mr. Martin was included or excluded or neither?

[THE WITNESS]: I can't make any determination about Mr. Martin or anyone else.

On cross-examination, the witness again reiterated that no definitive conclusion could be reached as to who contributed to Samples 8 or 9, and that there could potentially be any number of contributors to Samples 8 and 9.

Martin contends in this appeal that the prosecutor

> misled the jury by questioning the expert about the similarities between [appellant's] profile and the profile in the relevant samples . . . [t]he questions again served to highlight – this time verbally – the fact that many of the numbers representing [appellant's] alleles also appeared in Samples 8 and 9 from the car.

Appellant acknowledges that the questions were proper in and of themselves, but contends that "in the context of the altered allele table, they became impermissibly misleading."

Generally, "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 clear abuse of such discretion." *Oken v. State*, 327 Md. 628, 669 (1992), *cert. denied*, 507 U.S. 931 (1993). In this case, the trial court did not abuse its discretion in allowing the prosecutor to explore the information contained in the exhibit.

Throughout the examination, the prosecutor appropriately asked the witness about the information on the highlighted allele table. The expert, in turn, repeatedly testified that the results of the DNA testing as to Samples 8 and 9 were inconclusive and that appellant could not be either identified or excluded as a possible contributor to those samples.

We are not persuaded that any of the prosecutor's questions were unfairly suggestive or prejudicial simply because the prosecutor and the expert witness referred to the highlighted exhibit during the questioning.

C. Prosecutor's Rebuttal Argument

During closing argument, defense counsel argued as follows:

[DEFENSE COUNSEL]: And (indiscernible) spreadsheet's part of the evidence that you have received and one of them is highlighted. And the highlighted portions are my client's numbers representing his alleles or his DNA profiling. And what is also highlighted is, I believe, is Samples 8 and 9 which are (indiscernible) the DNA. And there are highlighted the numbers representing alleles which also happen to be in my client's profile.

Ladies and gentlemen, it doesn't work that way. We had an expert sit in that chair over there and tell us that the results from the DNA are inconclusive[.]

During rebuttal the State argued as follows:

[THE STATE]: That is correct. [Appellant] has no obligation to do that [bring in witnesses in his defense] and the obligation is on the State to prove it beyond a reasonable doubt and the State has done that in this case. We've done that through scientific evidence, through testimonial evidence. We have brought in the Defendant's own statement.

As far as the DNA is concerned, the DNA isn't conclusive and the highlights that are on that were just meant as an aid to the jury so that you can go and you can see the profile of it. The numbers that match the profile are consistent with the numbers that are in 8 and 9.

But yes, as the scientist said, it is too -

[DEFENSE COUNSEL]: I'm going to object to that, Your Honor.

[THE COURT]: Overruled.

[THE STATE]: It is too big of a sample or there's too much of a mixture to really determine one way or another whether it is the Defendant or whether it is not the Defendant.

Appellant argues that the prosecutor misled the jury in her rebuttal argument by stating "[t]he numbers that match the profile are consistent with the numbers that are in 8 and 9." Appellant contends that the prosecutor's comment made it "patently clear that the prosecutor wanted the jury to ignore the expert's conclusion" that the DNA evidence was inconclusive. We disagree. It is impossible to believe that the prosecutor "wanted the jury to ignore the expert's conclusion," when, immediately after defense counsel objected, the prosecutor reminded the jury, accurately, that the expert had said that she [the expert] couldn't say one way or another whether Martin's DNA was in Sample 8 or 9.

Moreover, as the Court of Appeals has explained, during closing arguments "'[t]he prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Whack v. State*, 433 Md. 728,742 (2013) (quoting *Spain v. State*, 386 Md. 145,152 (2005)). Generally, the trial court is in the best position to determine whether counsel has stepped outside the bounds of propriety during closing argument, and the trial court's judgment in that regard is only overturned for a "clear abuse of discretion that likely injured a party." *Whack*, 433 Md. at 742.

We discern nothing improper or misleading in the prosecutor's rebuttal closing argument. Appellant's contentions ignore the context of the prosecutor's statements, which were made in response to defense counsel's own closing argument. Moreover, the prosecutor did not misstate or overstate the importance of the DNA evidence or otherwise suggest that

the evidence inculpated appellant in Pierre's murder. *Compare Whack v. State*, 433 Md. at 748 (finding prejudicial error in prosecutor's closing argument which included remarks that were "highly improper" because they "misrepresented complicated scientific evidence" by "wrongly assert[ing] that [Whack's] DNA was definitely on the armrest when the evidence demonstrated only that it might be present"). In this case, the jury was properly, and repeatedly, informed that no conclusions could be reached regarding whether Martin was a contributor to the DNA samples or not. We conclude that the trial court did not, therefore, abuse its discretion by overruling defense counsel's objection to the prosecutor's rebuttal closing argument.

In his brief, appellant also complains that the prosecutor "discussed the DNA evidence in the same breath that she talked about meeting her burden of proof through scientific evidence." Preliminarily, we note that defense counsel raised no objection to the prosecutor's comment regarding scientific evidence. Because this argument was not raised in the trial court, it was not properly preserved for appellate review. Aside from the issue of preservation, it should be recalled that the State did have "scientific evidence" that linked appellant to the commission of the crime: fingerprint evidence. Thus, the prosecutor's assertion that the State had proven its case through "scientific evidence" was not improper.

II. Limitations on Cross-Examination of a Witness for the State

During his cross-examination of Paul Braun, defense counsel inquired as to whether Braun had acted as a State's witness prior to the subject case, to which Braun answered in

the negative. Upon further inquiry, Braun testified more specifically that he did not testify in cases against Larry Owens, Timothy Campbell, or Paul Spriggs, and that he did not provide the State with any information in those cases.

Defense counsel then sought to offer into evidence true test copies from the files of four other cases that indicated that in those cases a "Paul Braun" had been listed as a witness. The prosecutor stated that she had no information about any prior occasion when Braun was a witness for the State before, and that "I can subpoena a ton of people for a ton of cases that have nothing to do with whether I actually tell them that I've subpoenaed them or put them in JAS [*sic*][5] or doing anything of that nature." The court agreed that "[j]ust because he's listed as a witness doesn't mean that he was . . . a witness." The court stated that it would allow defense counsel to make a threshold inquiry about past addresses to see if it was even the same Paul Braun, but that "I don't know whatever else you're going to try to do to get the extrinsic evidence in. We'll see."

Defense counsel then asked whether Braun was summonsed to come to court in the cases of Campbell, Owens, or Spriggs, and Braun responded that he had never heard of them. Defense counsel then sought to inquire about Braun's last address, but the court stated,

> Let's say it's the same [address] . . . [W]hy would I let it in because all you're showing is that a name of this person with that address was listed on a piece of paper meaning in the computer as a witness. It does not show that he knows the person, which is what you asked him. It does not show that he was a - that

[5] The prosecutor was apparently referring to the Judicial Information System ("JIS").

> he testified or that he was a witness in the case. It does not show that he provided information to the State. So what does it - it's collateral.

Defense counsel responded that "it would show that he has a pattern of at least participating enough to be summoned to court ." The court stated, "You don't know that . . . [a]nd that does not tell us that, that he has a pattern of anything." The court ruled:

> I believe that even if - and I'm ruling actually that even if this witness were to give you the name of the street that he was living in . . . it does not go to prove that there was a pattern of anything. It does not go to show that this person offered - was a witness. It does not - because he has to have knowledge that he is. It doesn't have to go - it does not go to whether or not he offered the State any information in these cases. So I'm not going to allow the extrinsic evidence. And that's my ruling.

Appellant contends that the trial court abused its discretion by ruling that defense counsel could not impeach Braun with extrinsic evidence indicating that he may have been listed as a potential witness in prior, unrelated criminal trials. He asserts that the trial court should have allowed the extrinsic evidence, which, he claims, impeached Braun because "[i]t is highly unlikely that a person listed as a witness in a criminal case would not have 'heard of' the defendant[,]" and thus, the trier of fact could have reasonably concluded that Braun was lying.

A trial court is granted considerable discretion to determine the scope of direct and cross-examination. *Oken*, 327 Md. at 669; *see also Smallwood v. State*, 320 Md. 300, 307 (1990) ("[t]he right to cross-examine is not without limits;" "'trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such

cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant'") (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 678 (1986)). The discretion vested in a trial judge is particularly broad when determining whether to permit impeachment by the admission of extrinsic evidence on a collateral matter under Rule 5-616(b)(2). *Pantazes v. State*, 376 Md. 661, 691-93 (2003); *Armstead v. State*, 195 Md. App. 599, 634-38 (2010).

Maryland Rule 5-616(a)(2) provides, insofar as here relevant, that "[t]he credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at: (2) Proving that the facts are not as testified to by the witness[.]" In turn, Md. Rule 5-616(b)(2) provides, with regard to extrinsic evidence other than prior inconsistent statements, that "[o]ther extrinsic evidence contradicting a witness's testimony ordinarily may be admitted only on non-collateral matters. In the court's discretion, however, extrinsic evidence may be admitted on collateral matters." Evidence is extrinsic "when it is 'proved through another witness, or by an exhibit not acknowledged or authenticated by the witness sought to be contradicted. . . .'" *Anderson v. State*, 220 Md. App. 509, 519 (2014), quoting Lynn McLain, 6 Maryland Evidence, State and Federal §607:3, at 553 (3d ed. 2013)(footnote omitted).

Preliminarily, based on this record, it does not appear that the extrinsic evidence defense counsel sought to admit would have constituted impeachment evidence. As the trial

court noted, the fact that Braun may have been listed in JIS as a potential witness in unrelated criminal cases does not mean that he was acquainted with the name of the defendants in those cases, or that he knew the people by their given names. Nor does the fact that he was listed as a potential witness indicate that he provided information to the police that was relevant in the other cases. Thus, the evidence proffered by defense counsel was not relevant to prove that Braun was lying when he testified that he was not involved in the other cases and did not know the persons that defense counsel identified. Thus, it was not proper impeachment evidence. We conclude, therefore, that the trial court did not abuse its discretion by preventing defense counsel from continuing his inquiries regarding Braun's possible participation as a witness in other criminal cases.

There are, to be sure, a few cases in Maryland where an appellate court has abused its discretion by excluding extrinsic evidence of a collateral matter that "form[ed] the linchpin of the witness's testimony." *See Anderson*, 220 Md. App. at 526 (quoting Alan D. Hornstein, *The New Maryland Rules of Evidence: Survey*, *Analysis and Critique*, 54 Md. L.Rev. 1032, 1056 (1995)) (explaining, for example, that where a witness testifies that "she remembers a particular event because it was coincident with some other event," extrinsic evidence of the non-existence of the other event "would tend to call into question the witness's testimony on the principal matters."). The extrinsic evidence offered by defense counsel in this case certainly was not so vital that its exclusion constituted an abuse of discretion by the trial court.

III.
SENTENCE IMPOSED FOR UNLAWFUL POSSESSION OF A FIREARM

Appellant's final contention is that the circuit court erred by imposing an illegal sentence for his conviction of unlawful possession of a firearm. Appellant is correct.

Appellant was charged with violating Md. Code (2003, 2011 Repl. Vol.) §5-133(b)(1) of the Public Safety Article (P.S.), which prohibits a person from possessing a regulated firearm if that person has previously been convicted of a disqualifying offense (in appellant's case the prior offense was attempted robbery). Following appellant's trial, the circuit court sentenced appellant to serve a period of incarceration of fifteen years, the first five years to be served without the possibility of parole for use of a handgun in the commission of a crime.

In *Jones v. State*, 420 Md. 437 (2011), the Court of Appeals held that the penalty provision for P.S. §5-133(b)(1), is found in P.S. §5-143, which provides: "[a] person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 5 years or a fine not exceeding $10,000 or both." *Id*. at 449-50. Here, it is apparent that the circuit court sentenced appellant in accordance with P.S. §5-133(c)(2), which applies in cases where an individual possesses a firearm after having previously been convicted of a crime of violence. P.S. §5-133(c)(2) permits the imposition of a sentence not exceeding 15 years, but "not less than 5 years, no part of which may be suspended." But since appellant was charged with violating P.S. §5-133(b)(1) it was illegal for him to be sentenced as if he had been convicted under P.S. §5-133(c)(2). That illegal sentence meant

that appellant received ten more years incarceration than allowed for a conviction under P.S. §5-133.

We shall vacate the sentence imposed for appellant's conviction for unlawful possession of a firearm and remand this case for a new sentencing hearing as to that charge. *See Jones*, 420 Md. at 460 (holding that remand for a new sentencing hearing is necessary in such cases).

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND REVERSED IN PART. APPELLANT'S SENTENCE FOR UNLAWFUL POSSESSION OF A FIREARM VACATED AND CASE REMANDED TO THE CIRCUIT COURT FOR A NEW SENTENCING PROCEEDING AS TO THAT CHARGE; JUDGMENT OTHERWISE AFFIRMED. COSTS TO BE PAID TWO-THIRDS BY APPELLANT AND ONE-THIRD BY THE MAYOR AND CITY COUNCIL OF BALTIMORE.