UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2426

September Term, 2014

CHRISTOPHER M. WEGMAN

v.

STATE OF MARYLAND

Krauser, C.J.,
Friedman,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 16, 2016

On April 12, 2014, a jury in the Circuit Court for Washington County convicted appellant Christopher Wegman of driving or attempting to drive a car under the influence of alcohol, failure to return and remain at the scene of an accident, resisting arrest, second degree assault, and related offenses. Appellant presents three questions for our review, which we have rephrased:[1]

> 1. Was the evidence sufficient to convict appellant of resisting arrest?
>
> 2. Did the trial court lack the jurisdiction to convict appellant of resisting arrest?
>
> 3. Did the trial court abuse its discretion in permitting the State's closing argument?

We answer these questions in the negative and, accordingly, shall affirm.

I.

The State charged appellant by criminal information in the Circuit Court for Washington County with second degree assault, disturbing the peace, resisting arrest, failure to obey a reasonable and lawful order of a law enforcement officer, driving or attempting to

[1] The questions presented are as follows:

> "1. Was the evidence insufficient to convict [appellant] of resisting arrest?
> 2. Did the trial court lack jurisdiction to try, convict, and sentence [appellant] of resisting arrest at 17303 Evergreen Drive?
> 3. Did the trial court err in permitting the prosecutor to make an improper closing statement?"

drive a motor vehicle while under the influence of alcohol, failure to control vehicle speed on a highway to avoid collision, driving a vehicle on a highway with suspended registration, failure to return and remain at the scene of an accident, and failure to give insurance policy information. On October 27, 2014, appellant proceeded to trial before a jury in the Circuit Court for Washington County and was convicted of all counts. The following evidence was presented at trial.

The incident began around 11:15 p.m. on April 11, 2014. At that time, Michael Kirby was watching TV inside his house, located at 17408 Virginia Avenue. All of a sudden, Mr. Kirby heard a loud noise and walked outside to find that a car had crashed into his house. The State's theory at trial was that appellant got out of the car and told Mr. Kirby that he was all right, before running off to get his roommate. Soon after, appellant returned with his roommate and attempted to move his car from Mr. Kirby's house. Mr. Kirby reached into the car and tried to turn it off to prevent appellant from leaving. Appellant lunged at Mr. Kirby and they "wrestled around for a little bit." Mr. Kirby then held appellant down while appellant bit his thumb. Mr. Kirby let appellant go when he saw the police arriving, and appellant ran off.

Deputy Damien Broussard responded to Mr. Kirby's call. When he arrived, he found a "car sitting up against a house" with several individuals standing around the car. As he approached the car, one of the individuals ran off, and the other individuals pointed to him

and said, "There he goes. That's him." Deputy Broussard identified appellant in court as the man running away from the scene of the accident.

While the officers were investigating the car accident on Virginia Avenue, the police received another call for a disorderly subject knocking on doors on the nearby street of Evergreen Drive. Deputy Timothy Atwell responded to Evergreen Drive, and found appellant banging on the door of one of the houses. Appellant started to walk away quickly, but stopped when Deputy Atwell called out to him. Based on an MVA photograph of the car owner, Deputy Atwell identified appellant as the suspect from the car accident. Appellant was noticeably injured, had trouble keeping his balance, and had a strong odor of alcohol. Deputy Atwell told appellant to put his hands behind his back and he attempted to handcuff appellant. Appellant began yelling and screaming and asked Deputy Atwell why he was being arrested. Deputy Atwell explained that it was for the nearby car accident and altercation. Deputy Atwell struggled to put the handcuffs on appellant as he "arched his back and stepped back into" Deputy Atwell, indicating to Deputy Atwell that appellant was resisting arrest. Deputy Atwell called for backup units to help get appellant under control. With the help of another officer, he placed appellant into his police cruiser.

Deputy Atwell then took appellant back to the scene of the accident, where both Mr. Kirby and Deputy Broussard identified appellant as the driver of the car and as the person who had run off. When EMTs at the scene tried to check his injuries, appellant was

"uncooperative," "belligerent," and "screaming a lot of profanity." Deputy Atwell transported appellant to the Sheriff's Department, and then to the hospital.

At the close of the State's case, the defense moved for judgment of acquittal, arguing that appellant should be acquitted on the resisting arrest charge, because Deputy Atwell testified that appellant "had been in just investigative detention and not under arrest." The State argued that "he was in investigative detention to take him back to the scene . . . but he was and for all intents and purposes and the Fourth Amendment under arrest . . . when he resisted lawful arrest." The Court denied the motion, stating as follows:

> "[A] law enforcement officer, Deputy Atwell, was attempting to arrest the defendant. Whether it was, ah, an arrest that was going to result in him being immediately freed or whether it was an arrest that resulted in him being charged with an offense, I think the equivalent is the same. Ah, he was being asked to stop. He . . . he refused to put his arms behind his back. Ah, he, ah, arched his back. And the Deputy was attempting to arrest him. The Deputy had reasonable grounds to believe that the defendant had committed a number of offenses at that point, including second degree assault and/or driving under the influence of alcohol. And the defendant refused to submit to an arrest and resisted the arrest by force.
>
> I believe in a light most favorable to the State, the State has made out its elements for resisting arrest."

The court denied the motion.

Appellant testified in his own defense. He testified that he was at home drinking heavily with a friend named Cameron Osborne. Osborne asked if he could borrow

appellant's car to go buy some cigarettes. Appellant agreed. Shortly thereafter, Osborne returned to the house, frantic, saying "I'm sorry. Your car lost control and it's in one of your neighbor's yards." Appellant left the house to find his car, which he saw resting against the side of a house. He got into the car to see if it would move, which it would not. He testified that while he was in the car, Mr. Kirby pulled him out of the car. The two struggled and appellant bit Mr. Kirby's thumb while Mr. Kirby was holding appellant by his face. Mr. Kirby released appellant, and appellant "immediately was kind of scared at that point because I had just been more or less assaulted, you know, and held down against my will, that I took off and ran." He returned home to find the door locked. Appellant began banging on the door calling for Osborne to open the door. As appellant was banging on his door, Detective Atwell "pulled into the neighbor's driveway and asked me to come here." Appellant met the officer halfway down the driveway. The officer then "immediately grabbed me, slammed me against the squad car and put handcuffs on me." Appellant admitted he was belligerent and did not want to be arrested. He said he was "angry because I'm sitting here . . . I'm . . . I'm being arrested. I'm not being told what I'm being arrested for. I'm just being detained. And I'm confused because at that point I was trying to process all the information."

Appellant's roommate Oscar Evans testified. Mr. Evans testified that he was appellant's roommate, and that he was home watching television on the first floor of the house during the evening of April 11, 2014. He testified that he saw Cameron Osborne walk

down a set of stairs and out the front door. Some time later Mr. Evans heard someone come back into the house, slamming the door open and running up the stairs. Mr. Evans went up the stairs to the second floor of the house to investigate the commotion. He heard Osborne yelling "about a car in the yard or something . . . ." Appellant then left the house on foot. Mr. Evans went to his third floor bedroom to collect his truck keys and put on shoes. He then drove his truck toward the scene of the accident, picking up appellant along the way. Mr. Evans could tell that appellant was intoxicated by his slurred speech, that he was stumbling while walking, and that he had the smell of alcohol on his breath. Mr. Evans drove himself and appellant to "someone's yard, up off of Virginia Avenue right at the end of the street," because that is where Osborne said that appellant's car was. As Mr. Evans drove up to the house at 17408 Virginia Avenue, appellant jumped out of the truck and ran to the car that had hit the house. After Mr. Evans parked his truck and was walking toward the car, he saw the reverse lights turn on, but the car did not move. Mr. Evans then saw Mr. Kirby grab appellant, pull him out of the car, push him to the ground, and restrain him. As Mr. Evans approached, he called for Mr. Kirby to get off of appellant, which he did. As Mr. Kirby released appellant, appellant ran away. Mr. Evans testified that although he did not know for sure who drove the car into the house, he was certain it was not appellant because appellant was in the house after Mr. Evans saw Osborne leave the house, and appellant was in the house when Osborne returned and described the accident.

John Cauffman, who lived across the street from 17408 Virginia Avenue on April 11, 2014, also testified. Mr. Cauffman was sitting in his living room when he heard a bang. He went outside to see a car crashed into the corner of the house across the street. When Mr. Cauffman crossed the street to investigate further, he saw that someone was in the car trying to back the car away from the house but that the car would not move. When Mr. Cauffman approached, the driver got out of the car and ran away across a yard between the neighboring houses. Mr. Cauffman and another man gave chase, but quickly gave up. Mr. Cauffman returned to the scene of the accident. Soon thereafter, an individual, who Mr. Cauffman suspected was the driver who had just fled, appeared from around the far corner of the house as if he had run in a circle and returned. The man fell face-first to the ground, got up, got in the car and attempted to drive it away. Mr. Cauffman could not identify the person who was initially in the car and ran away, nor could he confirm that the first person was the same person who then appeared and tried to drive the car because Mr. Cauffman was not wearing his glasses at the time and it was dark out. Mr. Cauffman did not identify appellant as the person he saw at the scene.

The jury apparently did not accept appellant's version of events and convicted appellant on all counts. The court sentenced appellant to a term of incarceration of 90 days, all but 14 days suspended, with 3 years of probation.

This timely appeal followed.

II.

Appellant argues that the evidence was insufficient to sustain the conviction of resisting arrest because the State failed to prove the required element that appellant was under arrest when he resisted. He argues that during the course of the trial, the State conflated an investigatory stop with an arrest, which are two different circumstances under the law, and the State did not prove that appellant was under arrest and not just subject to an investigatory stop when he resisted the deputy sheriff.

Appellant argues that the trial court lacked subject matter jurisdiction to convict him of resisting arrest because the charging document listed the incident as having occurred at 17408 Virginia Avenue, when appellant was tried, convicted and sentenced for resisting arrest outside of 17303 Evergreen Drive. Appellant contends that the State presented evidence that might have supported his being convicted of resisting arrest in two separate incidents, one at 17408 Virginia Avenue and another at 17303 Evergreen Drive, but that the State only argued on facts that he resisted arrest at 17303 Evergreen Drive, thus he was convicted of a crime of which he was not charged.

Appellant argues that the trial court erred in permitting the prosecutor to make an improper closing argument by vouching for the credibility of a witness. He objects to the following portion of the State's rebuttal closing argument:

> "[Deputy] Tim Atwell is not going to go and use the hospital to get tests that he wasn't able to get consent to. That's an awful

> thing to accuse a police officer of. I'm going to get my evidence one way or the other. Do you really believe that Deputy Atwell said that? Do you . . . that . . . that to me is a slam against a very good police officer who did his job that night, who listened to protocol, who didn't realize he would have to take him. . . . *I'm the senior trial attorney in this County. If my officers* start fingerprinting cars to see if we have fingerprints of registered owners . . . ."

Appellant argues that various aspects of this portion of the State's argument were meant to improperly bolster Deputy Atwell's credibility, which requires reversal.

The State argues that the evidence was legally sufficient to convict appellant of resisting arrest. Specifically, the State argues that by resisting an investigative detention, appellant committed a second-degree assault on the sheriff's deputy, which authorized the deputies to arrest appellant. The State contends that a rational juror could conclude beyond a reasonable doubt that the deputy sheriff initially undertook to arrest appellant.

The State argues that the charging document effectively alleged resisting arrest and therefor conferred subject matter jurisdiction upon the trial court.

As to appellant's argument regarding the prosecutor's closing argument, the State argues that the trial court exercised its discretion appropriately in regulating the prosecutor's rebuttal argument. The State argues that the prosecutor did not place her prestige behind the officer witnesses through personal assurances of veracity but was explaining why the State might not conduct forensic testing to obtain not-probative evidence—including searching for appellant's fingerprints from the interior of his own car—in order to preserve county

resources. The State contends that even if the remarks did overstep the bounds of legitimate advocacy, that the prosecutor's comments did not mislead or influence the jury to the degree that the convictions should be overturned.

III.

Following a jury trial, we review the sufficiency of the evidence by asking, whether after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Grimm v. State*, 447 Md. 482, 494-95 (2016). In determining whether the evidence is sufficient to support a conviction, we defer to any possible reasonable inferences the trier of fact could have drawn from the evidence. *Id.* at 495. We view the evidence in the light most favorable to the prosecution. We give due regard to the jury's finding of facts, its resolution of conflicting evidence, and, significantly, its opportunity to observe and assess the credibility of witnesses. *Moye v. State*, 369 Md. 2, 12 (2002). We do not re-weigh the evidence but rather we determine whether the jury's verdict was supported by evidence, either direct or circumstantial, by which any rational trier of fact could find the defendant guilty beyond a reasonable doubt. *Id.* at 12-13.

Defining an arrest, we said in *Williams v. State*, 212 Md. App. 396 (2013), that "an arrest is the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest . . . ." *Id.* at 418 (quoting *Elliott v. State*, 417 Md. 413, 428 (2010)). The intention of the arresting officer and the understanding of the person arrested are determinative—there must always be an intent on the part of one to arrest the other and the other must be conscious of restraint. *See Bouldin v. State*, 276 Md. 511, 516 (1976).

To satisfy the first element of resisting arrest, a law enforcement officer must "arrest[] or attempt[] to arrest the defendant." The Court of Appeals has said:

> "It is generally recognized that an arrest is the taking, seizing, or detaining of the person of another (1) by touching or putting hands on him; (2) or by any act that indicates an intention to take him into custody and that subjects him to the actual control and will of the person making the arrest; or (3) by the consent of the person to be arrested. 5 Am.Jur.2d Arrests 1 (1962). It is said that four elements must ordinarily coalesce to constitute a legal arrest: (1) an intent to arrest; (2) under a real or pretended authority; (3) accompanied by a seizure or detention of the person; and (4) which is understood by the person arrested."

Bouldin, 276 Md. at 515-16.

Resisting arrest is now a statutory crime in Maryland.[2] Md. Code (2012 Repl. Vol.), § 9-408(b)(1) of the Criminal Law Article. It was a common-law offense until 2004 when the General Assembly codified it. *See Nicolas v. State*, 426 Md. 385, 404 (2012); 2004 Md. Laws chs. 118 & 119, at 546-49. The statute, in pertinent part, codified the common law and provides that "[a] person many not intentionally resist a lawful arrest." *See also Rich v. State*, 205 Md. App. 227 (2012).

In order to convict a defendant of resisting arrest, in addition to the *mens rea* element, the State must prove the following elements:

> (1) that a law enforcement officer arrested or attempted to arrest the defendant;
> (2) that the officer had probable cause to believe that the defendant had committed a crime, *i.e.*, that the arrest was lawful; and
> (3) that the defendant refused to submit to the arrest and resists the arrest by force.

[2]The General Assembly enacted Maryland's resisting arrest statute in 2004. The statute reads, in pertinent part, as follows:

> "(b) Prohibited. — A person may not intentionally:
> (1) resist a lawful arrest; or
> (2) interfere with an individual who the person has reason to know is a police officer who is making or attempting to make a lawful arrest or detention of another person.
> (c) Penalty. — A person who violates this section is guilty of a misdemeanor and is subject to imprisonment not exceeding 3 years or a fine not exceeding $5,000 or both."

Md. Code (2012 Repl. Vol.), § 9-408 of the Criminal Law Article.

See Rich, 205 Md. App. at 240, 250-60. The first element—arrest or attempted arrest of appellant—is the key issue in the instant case. Appellant argues that when Deputy Atwell apprehended him, it was an investigative detention, not an arrest; therefore, he could not be guilty of resisting arrest.

There is a short answer and a long answer[3] to appellant's argument as to whether Deputy Atwell arrested appellant, or made an investigative detention. The short answer is that it matters not one whit whether the stop and detention was a *Terry* investigative stop or a full blown arrest because, as we shall explain, whether appellant was arrested or simply detained, the trier of fact found that he did refuse to submit to Deputy Atwell's lawful commands and resisted by force. While, in Maryland, a person may use reasonable force to resist an unlawful arrest, *Barnhard v. State*, 325 Md. 602, 614 (1992), a person has no right to resist an investigative *Terry* stop, whether the stop was lawful or not.[4] *Barnhard v. State*,

[3]Because we find that appellant had no right to resist Deputy Atwell's attempt to place him in custody, we will not engage in the longer, alternative discussion analyzing whether appellant was arrested or merely "detained." Suffice it to say, the alternative longer answer is that Deputy Atwell had placed appellant under arrest, that the arrest was lawful, supported by probable cause, and that appellant had no right to resist a lawful arrest. Deputy Atwell placed handcuffs on appellant, he placed him in the police cruiser and he was clearly not free to leave. Deputy Atwell testified that appellant "indicated that he was resisting my control and arrest over him," and appellant kept asking the deputy why was he being arrested.

[4]There is no question, and indeed no argument, that Deputy Atwell had at least reasonable, articulable suspicion to detain appellant. Before approaching appellant, Deputy Atwell had identified appellant as the owner of the crashed vehicle based upon appellant's MVA photograph. Appellant was bloodied, had a laceration above his eye, had bloodshot (continued...)

86 Md. App. 518, 527-28 (1991), *aff'd*, 325 Md. 602 (1992) (holding that a person did not have the right to resist an unlawful *Terry* stop); *Hicks v. State*, 189 Md. App. 112, 125 (2009). In other words, if an officer stops a person but the stop is not lawful under *Terry v. Ohio*, 392 U.S. 1 (1968), a person has no right to resist. We explained the policy reason underlying this rule in *State v. Blackman*, 94 Md. App. 284 (1992), addressing an unlawful frisk. There the court stated as follows:

> "Close questions as to whether an officer possesses articulable suspicion must be resolved in the courtroom and not fought out on the streets. Albeit uttered in the different context of not permitting a 'claim of right' to be asserted as a defense to robbery, the words of Judge Rodowsky in *Jupiter v. State*, 328 Md. 635, 616 A.2d 412 (1992), well express our disdain for permitting self-help by way of force and violence, 'There are strong public policy reasons why self-help, involving the use of force against a person, should not be condoned.'"

Id. at 306-07.

Inasmuch as appellant had no right to use any force to resist Deputy Atwell, whether he was detained or arrested, appellant's use of force by "arching his back and stepping back into" the officer constituted a second degree assault upon the officer justifying the officer to arrest him. *See Riggins v. State*, 223 Md. App. 40, 64-65 (2015).

[4](...continued)
eyes and smell of alcohol when Deputy Atwell came upon him. Deputy Atwell had at least a reasonable articulable suspicion, and in fact probable cause, to believe that appellant was the person responsible for the car accident and the assault upon the homeowner.

Before attempting to arrest him, Deputy Atwell initially identified appellant as the owner of the car involved in the accident based on his MVA photo. This information, combined with the fact that appellant was "bloodied," had a "laceration" above his eye, had "bloodshot" eyes, and smelled of alcohol, was sufficient for Deputy Atwell to reasonably believe appellant was the person responsible for the car accident and assault on the homeowner. Thus probable cause existed to initiate a lawful arrest of appellant. *Ipso facto*, Deputy Atwell's stop, if it was investigative only as appellant suggests, was supported by reasonable, articulable suspicion and was a lawful *Terry* stop. Lawful or unlawful, appellant had no right to resist.

The final element of resisting arrest is that the appellant resisted the officer's arrest by force. *See DeGrange v. State*, 221 Md. App. 415, 421 (2015). At trial, Deputy Atwell testified as follows:

> " He had to struggle to put handcuffs on [appellant]. He did not want to put his second hand behind his back. *He arched his back and stepped back into me. Ah, that to me indicated that he was resisting my control and arrest over him*. I instructed him several times to discontinue doing so. Ah, it . . . it accelerated at that point and I called for other units that had to come help me get him under control." (Emphasis added).

Deputy Atwell's testimony shows that appellant both "refused to submit to the arrest and resisted the arrest by force." *DeGrange*, 221 Md. App. at 421. Appellant refused to allow his second hand to be cuffed by the deputy and arched his back to avoid being handcuffed.

He resisted his arrest vigorously enough that Deputy Atwell had to call for other units to assist with the arrest. We hold that the evidence was sufficient to support the conviction for resisting arrest.

IV.

We turn to appellant's argument that the trial court lacked jurisdiction to try appellant based upon an event that occurred at 17303 Evergreen Drive. The statement of charges alleged that appellant resisted arrest at 17408 Virginia Avenue, the location of the car accident; however, the testimony at trial indicated that appellant resisted arrest at 17303 Evergreen Drive, the location of his encounter with Deputy Atwell. Appellant argues that, because of this variance between the trial proof and the charging document, the trial court lacked jurisdiction to try and convict him of resisting arrest at 17303 Evergreen Drive. On appeal, he claims that he was denied notice and due process.

We have addressed the importance of charging documents. *Ayre v. State*, 291 Md. 155 (1981); *Seidman v. State*, 230 Md. 305 (1962); *see also*, Md. Const. Decl. of Rts. art. 21. A primary purpose of a charging document is to fulfill the constitutional requirement contained in Article 21 of the Maryland Declaration of Rights that each person charged with a crime must be informed of the accusation against him. More particularly, the purposes served by the constitutional requirement include (1) putting the accused on notice of the

crime called upon to defend by characterizing and describing the crime and conduct; (2) protecting the accused from a future prosecution for the same offense; (3) enabling the accused to prepare for his trial; (4) providing a basis for the court to consider the legal sufficiency of the charging document; and (5) informing the court of the specific crime charged so that, if required, sentence may be pronounced properly. *Williams v. State*, 302 Md. 787, 791 (1985). We have emphasized that every criminal charge must, first, characterize the crime; and, second, it must provide such description of the criminal act alleged to have been committed as will inform the accused of the specific conduct with which he is charged, thereby enabling the accused to defend against the accusation and avoid a second prosecution for the same criminal offense. *Id.* at 790-91 (citations and footnote omitted). "'[I]t is elementary that a defendant may not be found guilty of a crime of which he was not charged in the indictment.'" *Johnson v. State*, 427 Md. 356, 375 (2012) (quoting *Turner v. State*, 242 Md. 408, 414 (1966)). "[W]here no cognizable crime is charged, the court lacks fundamental subject matter jurisdiction to render a judgment of conviction, *i.e.*, it is powerless in such circumstances to inquire into the facts, to apply the law, and to declare the punishment for an offense." *Williams*, 302 Md. at 792.

Under Maryland Rule 4-252(a), a motion alleging a defect in the charging document "other than its failure to show jurisdiction in the court or its failure to charge an offense" must be filed within a designated time period prior to trial or the defect is waived. An

accused may raise at any time the failure of a charging document to show jurisdiction in the court or to charge an offense. A jurisdictional claim, *i.e.*, that a charging document fails to charge or characterize an offense, may be raised for the first time on appeal. *Williams*, 302 Md. at 792.

The State asserts that "appellant made no motion to quash the indictment . . . therefore, his argument concerning it on appeal is limited to the contention that the indictment failed to show jurisdiction of the court or to charge an offense." *Phenious v. State*, 11 Md. App. 385, 390 (1971). Therefore, the issue is whether the mistake in the charging document was substantial enough to be a jurisdictional defect. The rule which seems to be recognized generally draws a line of demarcation between an indictment or information which fails completely to state an offense and one which alleges all the elements of the offense intended to be charged and apprises the accused of the nature and cause of the accusation against him, even though it is defective in its allegations or is so inartificially drawn that it would have been open to attack in the trial court. *Putnam v. State*, 234 Md. 537, 541 (1964). Even if "it does so in an inexact or defective manner," a charging document that "imports the presence of" the required elements of a crime sufficiently charges the crime. *Id.* at 544. If the criminal information sufficiently characterizes the crime charged, it is not defective for lack of jurisdiction. *Williams*, 302 Md. at 793.

In the instant case, the charging document sets out an address different from the one of the State's proof for the location of the arrest. The charging document stated that appellant "on or about 4/11/14 at 17408 Virginia Avenue did intentionally resist a lawful arrest." Virginia Avenue was the location of the car accident, not the location of the arrest. The location of an arrest is not an element of resisting arrest. *See DeGrange*, 221 Md. App. at 421. Although the charging document varied from the State's proof, it nonetheless alleged all the elements of resisting arrest and apprised appellant of the nature of the crime with which he was charged. *Putnam*, 234 Md. at 541. The charging document characterized the crime charged; therefore, it was not defective for lack of jurisdiction.

V.

Finally, we address appellant's argument that the trial court erred in permitting the prosecutor to make an improper closing argument. Before this Court, appellant argues that the State vouched improperly for Deputy Atwell by "(1) inviting the jury to draw inferences from facts not in evidence and (2) insinuating that [Deputy] Atwell was entitled to more credence than other witnesses solely because of his status as a police officer."

Defense counsel objected, arguing that the prosecutor was improperly vouching for Deputy Atwell. The trial court overruled the objection, stating that the prosecutor was "allowed to argue what the inferences are based on the evidence and this is one of them."

The prosecutor continued with her rebuttal, stressing the fact that a car owner's fingerprints would be all over their car, and asking "are you going to waste the time of a crime lab to fingerprint a vehicle to see if the owner and operator's fingerprint's are in it? That's ludicrous and that's infuriating to me that we would waste resources like that."

Appellant contends that the statement "[t]hat the prosecutor was the 'senior trial attorney' is a fact not in evidence that was offered to the jury to bolster Atwell's credibility as a 'good' officer who did not shirk his duty when he failed to try to lift fingerprints out of the vehicle."

As the State points out, this rebuttal argument was made in response to defense counsel's closing argument. During her closing, defense counsel attacked the State for not using its resources more thoroughly in the instant case, stating as follows:

> "You know how I said just a moment ago, 'This is the State's one chance,' right. *The State has the entire State of Maryland behind it.* A single test, please. A single brick. A single fingerprint. A bit of blood. Some DNA. Something off the mirror. Something off of the steering wheel. Something other than well I mean they said it. They said it had to be him. This was their time to bring you a case. (Bang) They didn't."

It appears that defense counsel argued to the jury that the State should have used the many resources available to it to run tests on the car from the accident.

The prosecutor's response on rebuttal constituted improper vouching as defined in *Spain v. State*, 386 Md. 145 (2005). Vouching improperly by a prosecutor typically comes

in two forms: (1) referring to facts not in evidence that supports the witness's testimony, including arguing that a police officer may be deemed more credible simply because he or she is a police officer; or (2) when a prosecutor places the prestige of the government behind a witness through personal assurances of the witness's veracity. *See Donaldson v. State*, 416 Md. 467, 489-92 (2010).

Appellant was correct in objecting to the prosecutor's statements about her position as a senior trial attorney. Saying "that *to me* is a slam against the officer" is not based upon evidence and is not proper argument. The prosecutor is not the judge of the facts. Whether Deputy Atwell is a "very good police officer" is not a fact in evidence. And the police officers are not "her" officers, a statement vouching for the officers. Further, counsel's position as a senior trial attorney was not in evidence, has no relevance to the argument propounded, and was improper. The trial court erred in allowing counsel to vouch for the deputy's veracity. Nonetheless, we conclude that the statements were harmless beyond a reasonable doubt. The remaining portion of the prosecutor's rebuttal argument was a direct response to the questions defense counsel raised during her closing.

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