Circuit Court for Prince George's County
Criminal Trial No. CT16-1183X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2326

September Term, 2017

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RICARDO JOSE MENA REYNOSO

v.

STATE OF MARYLAND

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Meredith,
Shaw Geter,
Thieme, Raymond G., Jr.
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Thieme, J.

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Filed: December 9, 2019

A jury in the Circuit Court for Prince George's County convicted Ricardo Jose Mena Reynoso, Reynoso, of second degree rape, robbery, and second degree assault. For the rape conviction, Reynoso was sentenced to fourteen years, with all but eleven years suspended; for the robbery conviction, he was sentenced to a concurrent five years; the assault conviction was merged for sentencing purposes.

Reynoso, who was seventeen years old at the time he committed these offenses, raises the following issues for our review:

1. Did the trial court err in denying Appellant's motion to remand his case to the jurisdiction of the juvenile court?

2. Did the trial court err in allowing the State to make improper and prejudicial comments at closing argument?

For the reasons explained below, we conclude there was no error and affirm the convictions.

## BACKGROUND

The State's prosecution theory was that on September 12, 2016, Reynoso and two others robbed fifteen-year-old B.S.[1] in the woods outside a Hyattsville high school, after which Reynoso raped her. At trial, D.T. and his girlfriend, G.S., both testified that they lured B.S. into the woods so they could steal her phone. The State presented evidence that after Reynoso joined in the robbery, he stayed behind in the woods with B.S. and forcibly raped her.

[1] Because the victim is a minor, we shall refer to her by her initials. Because Reynoso's accomplices were minors as well, and their participation in these events was adjudicated in the juvenile system, we shall also refer to them by their initials.

On direct, B.S. testified that on that day, she and her friend G.S. planned to meet at their school, then leave to smoke marijuana together. The two girls walked from the school into the adjacent woods, where there was a clearing with chairs. A group of three guys arrived, wearing masks. One put a knife to her friend's neck and led her away. The other two searched through B.S.'s backpack, taking her cell phone and five dollars. One of the two assailants then left.

When B.S. asked the remaining robber, who was wearing a Halloween mask, if she could leave, he said he would "do whatever he want[ed] and let her go." During an ensuing struggle, he pulled her off the chair where she was sitting, causing her to hit her head and back. After he forcibly removed her pants, he penetrated her vagina while restraining her. During the sexual assault, B.S. yelled and screamed, but he then covered her mouth with his hand. She feared for her life if she did not comply and was too scared to run. At some point, the assailant took off his mask, and B.S. recognized Reynoso from middle school but did not know his name.

As Reynoso escorted B.S. out of the woods, past a group of students, she did not say anything because she thought they were his friends and that he would stop her from saying anything. Reynoso said he would find her at school so that they could "have sex again" later.

Once B.S. got near school, she ran to a group of friends and told them that G.S. had been abducted. Although she did not call police about the rape because she was "too scared," she went straight home and told her parents.

Her father took her to the hospital, where she was examined by a sexual assault forensic examiner nurse. The nurse documented, *inter alia*, "physical trauma" to B.S.'s back, consistent with her report that Reynoso pulled her off the chair during their struggle.

When police interviewed B.S. at the hospital, she initially told them she was kidnapped from school and did not tell them she left to smoke marijuana, because she did not want to get into trouble with her dad. She eventually told police what actually happened. On September 25, while B.S. was with her father, she recognized appellant on the street and notified police.

G.S. confirmed that she and B.S. planned to skip school that day. At the same time, she made plans to rob B.S. with D.T., her boyfriend, with the help of Di.[2], an acquaintance from D.T.'s skating days. In turn, Di. brought Reynoso with him.

When G.S. left school with B.S. that day, she steered B.S. to a prearranged spot in the woods, where they were assaulted by the three robbers, two wearing bandanas and one wearing a mask. Although G.S. expected all the assailants to be armed with small knives, she did not see a knife on Reynoso. As planned, G.S. was dragged away at knifepoint. When Di. joined them a few minutes later, B.S. was left alone with Reynoso.

D.T. testified that B.S. was his former girlfriend and that he planned the armed robbery to get her phone. His current girlfriend, G.S., along with Di. and his friend Reynoso were involved in the conspiracy. The three males met near the high school, went

[2] Because Di.'s last name is not in the record before us, we shall use an abbreviation for his first name.

into the woods, changed clothes, and covered their faces. Reynoso was wearing a flesh-colored Halloween mask. Di. gave Reynoso a knife. After demanding both girls take out their belongings, D.T. grabbed G.S. and dragged her away to a prearranged meeting point, where Di. joined them a few minutes later.

We shall add facts in our discussion of the issues raised by Reynoso.

## DISCUSSON

### I. Reverse Waiver Challenge

Reynoso contends that the motion court erred in denying his "reverse waiver" motion to transfer jurisdiction to the juvenile court. In Reynoso's view, although there was agreement on all of the relevant factors, the "court improperly weighed" the nature of the offense. For reasons that follow, we disagree.

#### Standards Governing Jurisdiction Over Juveniles and Reverse Waiver

In most cases, a circuit court sitting as a juvenile court has exclusive original jurisdiction over a child between fourteen and eighteen years old, who is alleged to have committed an act that would be a criminal offense if committed by an adult. *See* Md. Code (1974, 2013 Repl. Vol., 2019 Supp.), § 1-501 of the Courts & Judicial Proceedings Article ("CJP"); CJP § 3-8A-03(a). Criminal charges over which a juvenile court "does not have jurisdiction" include those in which "a child at least 14 years old [is] alleged to have done an act which, if committed by an adult, would be a crime punishable by life imprisonment," and in which "[a] child at least 16 years old [is] alleged to have committed . . . . [s]econd degree rape" and "[r]obbery[.]" *See* CJP § 3-8A-03(d)(1)-(4). Such exemption from the

juvenile court's jurisdiction extends to "all other charges against the child arising out of the same incident[.]" *See* CJP § 3-8A-03(d).

Nevertheless, the jurisdiction of the circuit court in these cases may be transferred to the juvenile court via a "reverse waiver," a procedure governed by Maryland Code (2001, 2008 Repl. Vol., 2019 Supp.), § 4-202 of the Criminal Procedure Article ("CP"). *See King v. State*, 36 Md. App. 124, 128 (1977). CP § 4-202(b) provides that a circuit court, when "exercising criminal jurisdiction in a case involving a child," has discretionary authority to transfer the case

> to the juvenile court before trial or before a plea is entered under Maryland Rule 4-242 if:
>
> (1) the accused child was at least 14 but not 18 years of age when the alleged crime was committed;
>
> (2) the alleged crime is excluded from the jurisdiction of the juvenile court under § 3-8A-03(d)(1), (4), or (5) of the Courts Article; and
>
> (3) the court determines by a preponderance of the evidence that a transfer of its jurisdiction is in the interest of the child or society.

Under subsection § 4-202(d), when "determining whether to transfer jurisdiction" to juvenile court, the circuit court "shall consider" the following five factors:

> (1) the age of the child;
>
> (2) the mental and physical condition of the child;
>
> (3) the amenability of the child to treatment in an institution, facility, or program available to delinquent children;
>
> (4) the nature of the alleged crime; and
>
> (5) the public safety.

"The burden is on the juvenile to demonstrate that under these five factors, transfer to the juvenile system is in the best interest of the juvenile or society." *Whaley v. State*, 186 Md. App. 429, 444 (2009). *See generally Gaines v. State*, 201 Md. App. 1, 9-11 (2011) (reviewing standards for waiver from juvenile court and for reverse waiver from circuit court). "Not all the factors need be given equal weight, nor do all the factors need be decided against the child in order for a waiver to be granted." *In re Bobby C.*, 48 Md. App. 249, 251 (1981).

This Court reviews a reverse waiver determination for legal error in the application of these standards and for abuse of discretion in evaluating the statutory factors. *See Whaley*, 186 Md. App. at 444.

> "Abuse of discretion . . . has been said to occur 'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.' It has also been said to exist when the ruling under consideration 'appears to have been made on untenable grounds,' when the ruling is 'clearly against the logic and effect of facts and inferences before the court,' when the ruling is 'clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result,' when the ruling is 'violative of fact and logic,' or when it constitutes an 'untenable judicial act that defies reason and works an injustice.'"

*Alexis v. State*, 437 Md. 457, 478 (2014) (quoting *North v. North*, 102 Md. App. 1, 13-14 (1994)). "Under such standard, we do not reverse 'simply because the appellate court would not have made the same ruling.'" *Devincentz v. State*, 460 Md. 518, 550 (2018) (quoting *North*, 102 Md. App. at 14). "Rather, the trial court's decision must be 'well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable.'" *Id*. (quoting *North*, 102 Md. App. at 14).

*See also Gaines*, 201 Md. App. at 21 (applying *North* standard for abuse of discretion in reviewing denial of reverse waiver).

**Reverse Waiver Hearing Record**

Under CP § 4-202(d), the circuit court had jurisdiction over Reynoso because he was charged with first and second degree rape, armed robbery, and related offenses.

To support his reverse waiver motion, Reynoso called an expert witness who recommended that Reynoso be tried in the juvenile system. Dr. Kiu Eubanks Smith, a clinical psychologist, evaluated Reynoso over three and a half hours. She pointed out that, at age 17, Reynoso would be eligible for services until his 21st birthday. His level of social anxiety was elevated, reflecting his slight stature at "5'2", 130 pounds." His emotional vocabulary was limited, but he had no previous contacts with DJS and "very strong family ties" and support. Reynoso "express[ed] a sense of moral reasoning and compassion" and regretted being "out there." In Dr. Smith's view, Reynoso would do better in a "rehabilitative" setting "within the department," where "there would be psychological counseling, group therapy, behavior modifications" that would "address the needs with conflict resolution." He would be amenable to counseling and other treatments made available through DJS. Although the psychologist acknowledged that the "very serious" nature of the offense weighed against transfer, she characterized his risk to public safety as "mild to moderate without intervention."

On cross-examination, however, Dr. Smith admitted that she had not performed a psychosexual evaluation. As a result, she only considered that he had no history of sexual trauma and that he is heterosexual and "sexually active," with "a girlfriend" and "a child."

In a written report, the Department of Juvenile Services ("DJS") evaluated the first three statutory factors – Reynoso's age, mental and physical condition, and amenability to treatment – and concluded that each weighed in favor of transferring his case to the juvenile court. Nevertheless, the DJS concluded that the other two factors – the nature of the offenses and public safety – weighed against the transfer. Collectively, the DJS recommended that the case be transferred to juvenile court.

The State opposed a reverse waiver, proffering that Reynoso and two accomplices, wearing Halloween masks and brandishing a knife or knives, robbed the 15-year-old victim in a secluded wooded area. When his accomplices fled with the victim's phone and backpack, leaving her alone with Reynoso, he forcibly removed her pants and underwear, then raped her, as she struggled against him.

The prosecutor acknowledged that the involvement of Reynoso's accomplices, who also were seventeen years old, had been adjudicated in the juvenile court, but distinguished Reynoso's conduct because "[t]his is the only case we have that he has the rape as well as the robbery" charge. Moreover, the State argued, "we don't even have all of the information necessary in regards to amenability to treatment." "[B]ased on that serious nature of the offense" and "the fact that there is no psychosexual evaluation to determine whether or not he has a tendency to recommit," "this case should remain in circuit court."

The motion court took the transfer request under advisement, then denied it at a hearing held the following week. The court recognized the evidence that Reynoso's age, physical and mental condition, and amenability to treatment weigh in favor of a transfer, then addressed how those considerations balanced with the remaining factors:

> Now, the nature of the offense and his participation, and the public safety, in my opinion, sort of goes hand in hand. They always go hand in hand. It's only on those two that the Department believes that he should remain in the adult system. Because the nature of the offense is – I understand he's a youth and he's only 17-and-a-half, but the victim in this case is only a child. She was only 15, minding her own business outside school at 1 o'clock in the afternoon, sitting somewhere near Bladensburg High or something with a girlfriend. . . .
>
> This is not a crime, necessarily – I think your expert said this was not necessarily of sexual gratification, but it is a crime of violence, for sure. It's a very violent act to do that to a poor young girl just sitting at 1 o'clock in the afternoon. And in a lot of respects, when you heard the facts as recited by the State, it was totally unnecessary, because they were after a cell phone. They had gotten the cell phone. They had taken the other young lady into the woods, and [Reynoso] was just sitting there. I don't know why he remained behind. And he just, if it is true as alleged, took advantage of a situation and decided that he would rape her. Now, who sits and decides that? I have no idea or why. But it is something that the Court was thinking about very heavily, which is why I didn't make my decision that day, because the report was leaning towards waiving [him] back; and then I kept thinking about the nature of the crime and what the State said and what happened and about your client, to be honest with you. He really doesn't go to school. He doesn't do much, but he also has a 4-month-old child already. So, obviously, he thinks that he can be a father . . . and that's totally an adult act, in my opinion. . . .
>
> So I was weighing all those factors and thinking about them. When I thought about it and thought about the impact on him as well as the impact on the young lady, I came to the conclusion that at this time I will not waive him back to juvenile court.

**Reynoso's Challenge**

Reynoso argues that the motion court erred by giving undue weight to the nature of the offense, when it stated that this factor "always go[es] hand in hand" with public safety. Citing *Johnson v. State*, 17 Md. App. 705 (1973), Reynoso maintains that the court's emphasis on the nature of the offense so undermined the public safety factor as to negate it as "mere surplusage."

The State counters that the motion court "properly considered the public safety and nature of the offense factors" and that "Johnson is factually inapt," for the same reasons this Court rejected a similar argument in *Gaines v. State*, 201 Md. App. 1, (2009).

In *Johnson*, 17 Md. App. at 709-10, this Court reversed a decision by a juvenile court to waive its jurisdiction over charges against a sixteen-year-old girl with no prior record, who borrowed her boyfriend's car, lost control of it, and struck three children, one of whom died. The juvenile court, explaining that "[i]t is a very difficult step for me to take because we have a young lady who has had a very credible record for herself," decided to waive jurisdiction "essentially on the very grievous nature of the offense; the fact that there was this very tragic killing[.]" *Id*. at 711. This Court held that the juvenile court abused its discretion because "the hearing judge was unduly influenced by the nature of the offense[.]" *Id.* at 712. "The mere statement that the five legislative factors were considered . . . does not divest this Court of its right to determine whether those factors were actually considered and properly weighed in relation to each other and relative to the legislative purpose[.]" *Id*. Based on the record in that case, we concluded that "there

exist[ed] no justification for a waiver [of] jurisdiction" from the juvenile to the adult court system. *Id*. at 713.

We do not read the motion court's bench ruling as a decision to disregard the public safety factor. When viewed in context, the challenged statement merely reflects the court's recognition that the nature of the offense and the public safety are related considerations that go "hand-in-hand" when, as in this case, the juvenile presents a significant risk to the public given his violent behavior. Here, the hearing record established that Reynoso was charged with "very violent" offenses – first degree rape and armed robbery – against a fifteen-year-old "child," committed near a school during the school day, and that, in contrast to his accomplices in the robbery that was committed to retrieve compromising photos on B.S.'s phone, the ensuing rape committed by Reynoso was "totally unnecessary" given that "[t]hey had gotten [her] cell phone" already.

We agree with the State that *Johnson* is materially distinguishable on both the facts and the law. In contrast to Ms. Johnson, who was a remorseful honor student, Reynoso did not express remorse, had earned only two and a half high school credits, and was expelled from an alternative school for fighting. More importantly, in contrast to the manslaughter by motor vehicle charges against Johnson, which fell within the juvenile court's original jurisdiction, the rape and armed robbery charges against Reynoso fell within the circuit court's original jurisdiction. This reflects that Reynoso's behavior was more culpable. In contrast to the accidental loss of control over a vehicle by an inexperienced sixteen-year-

old in *Johnson*, here, Reynoso planned and executed an armed robbery that was designed to frighten the victim into submission, then took advantage of her fear to rape her.

The motion court explained that such "very violent" and "totally unnecessary" conduct not only harmed the victim but also presented a continuing danger to the public. As this Court observed in *Gaines*, 201 Md. App. at 20-21, a comparable case involving denial of a waiver on charges of first degree assault and armed robbery,

> [t]he crime charged in *Johnson*, manslaughter by automobile, albeit a very serious offense, pales in comparison to the crimes charged here . . . . Indeed, although the consequences of manslaughter are greater than those of the crimes charged in the instant case, manslaughter may, as in *Johnson*, involve less culpability than the crimes with which appellant was charged, as the mental state required for manslaughter is recklessness or gross negligence, whereas the crimes alleged in the instant case involve intentional wrongdoing.
>
> Not only is the degree of culpability alleged in the instant case far greater than that alleged in *Johnson*, the threat to public safety posed by appellant exceeds that posed by the juvenile in *Johnson*. The court, in weighing the threat to public safety, here, could properly weigh the possibility that a person who participates in a brazen daytime armed holdup is likely to engage in such activity in the future, if given the opportunity, whereas someone who commits manslaughter by automobile may be deemed less likely to repeat such behavior, at least under the circumstances in *Johnson*, where drugs and alcohol were not factors in what appeared to be a simple, but tragic, accident, resulting from a momentary loss of control over a vehicle.

Here, as in *Gaines*, the motion court weighed "the possibility that a person who participates in a brazen daytime armed holdup" would commit such "very violent" and "unnecessary" conduct again, more heavily than the reckless but unintentional conduct by Johnson. *See id.* at 21. Because "[n]ot all factors need be given equal weight[,]" *In re Bobby C.*, 48 Md. App. at 252, and this record supports the motion court's decision to give

the nature of this offense and the public safety heavier weight in the reverse waiver calculus, we are satisfied that the motion court did not err or abuse its discretion in doing so.

## II. Closing Argument Challenge

In his alternative assignment of error, Reynoso contends that the trial court abused its discretion in overruling the following defense objection during the State's rebuttal closing argument:

> [PROSECUTOR]: [Reynoso] looked for [B.S.] on Instagram. He knows how [to] get to her. He looked for her on Instagram. And when the detective asked him why, to tell her not to go to the police, he says, "Uh-huh." **Don't be fooled, because when you've got nothing, you try to distract.**
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: Don't be fooled when you go in there. You heard everything. You got all of your instructions back there, every single one of them. They're not given to you for no reason. They're given to you so that you can read it, and you can follow them. Everything is described in here (indicating). Do not leave your common sense behind, and find him guilty.

(Emphasis added.)

In Reynoso's view, the highlighted remark by the prosecutor deprived him of a fair trial. Citing *Reidy v. State*, 8 Md. App. 169 (1969), and extra-jurisdictional cases, Reynoso argues that the challenged remark prejudicially denigrated defense counsel. The State answers that the challenged statement "was fair argument under Maryland law" and, in any event, "harmless to the trial result."

This Court recently summarized the legal standards and precedent governing appellate review of closing argument:

> "A trial court is in the best position to evaluate the propriety of a closing argument[.]" *Ingram v. State*, 427 Md. 717, 726 (2012) (citing *Mitchell v. State*, 408 Md. 368, 380-81 (2009)). Therefore, we shall not disturb the ruling at trial "unless there has been an abuse of discretion likely to have injured the complaining party." *Grandison v. State*, 341 Md. 175, 243 (1995) (citing *Henry v. State*, 324 Md. 204, 231 (1991). Trial courts have broad discretion in determining the propriety of closing arguments. *See Shelton v. State*, 207 Md. App. 363, 386 (2012).
>
> "[A]ttorneys are afforded great leeway in presenting closing arguments[.]" *Degren v. State*, 352 Md. 400, 429 (1999). "The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Id*. at 429-30. "Generally, counsel has the right to make any comment or argument that is warranted by the evidence proved or inferences therefrom; the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is [the] accused's counsel to comment on the nature of the evidence and the character of witnesses which the (prosecution) produces." *Wilhelm v. State*, 272 Md. [404, 412 (1974) ]; *accord Degren v. State*, 352 Md. at 430.
>
> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments [of] opposing counsel, generally speaking, liberal freedom of speech should be allowed. There are no hard-and-fast limitations within which the argument of earnest counsel must be confined—no well-defined bounds beyond which the eloquence of an advocate shall not soar. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

*Wilhelm v. State*, 272 Md. at 413; *accord Degren v. State*, 352 Md. at 430.

> Even 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." *Lawson v. State*, 389 Md. 570, 592 (2005) (quoting *Spain v. State*, 386 Md. 145, 158-59 (2005)).

*Winston v. State*, 235 Md. App. 540, 572-73, *cert. denied sub nom. Mayhew v. State*, 458 Md. 593 (2018).

In applying these standards, this Court has cautioned that "a prosecutor may not impugn the ethics or professionalism of defense counsel in closing argument. When prosecutors cross the line, and defense counsel objects, trial courts should do something about it." *Smith v. State*, 225 Md. App. 516, 529 (2015). In *Reidy*, 8 Md. App. at 172-79, we reversed a capital conviction based on the State's closing argument that the defendant's self-defense theory was "a fiction manufactured by defense counsel," reasoning that those remarks improperly suggested that defense counsel had suborned perjury or fabricated the defense:

> Where, as in the present case, the prosecutor's remarks had such a clear potential of prejudicing appellant's right to a fair trial, and objection was immediately made thereto on the ground that they were "absolutely improper and out of order," we think the situation thus created was one screaming out for the forceful interdiction of the trial judge and, at the least, a directive to the prosecutor to apologize to defense counsel for the remark–this being all that defense counsel had requested be done. But even without the apology sought by the appellant, it is not unlikely that the jury would have considered the prosecutor's remarks, standing alone, as the practical equivalent of an argument that the claim of self-defense was so far-fetched that it was utterly devoid of any merit. Had not the trial judge, therefore, in referring to the prosecutor's remarks, instructed the jury that "it is no improper remark," a different case may well have been presented than that now before us. But the trial judge's statement, viewed in the light of his refusal to order the prosecutor to apologize to defense counsel, necessarily reinforced and gave significant substance to the prosecutor's argument, with the result likely created in the mind of the jury that the trial judge, like the prosecutor, thought appellant's claim of self-defense was a "fiction manufactured by defense counsel"—a conclusion which was considerably strengthened when the

> prosecutor, without rebuke or correction from the court, interrupted defense counsel's closing summation to the jury to state that his remarks were not only not improper, but the court had ruled that they were indeed proper.

*Id.* at 178.

In *Beads v. State*, 422 Md. 1, 9-11 (2011), the Court of Appeals applied these same principles when disapproving the following closing argument by the State:

> You're now going to hear from the Defense attorneys, both of whom are fine attorneys. I caution you, that unlike the State, the Defense's specific role in this case is to get their Defendants off. . . .
>
> It is their job, and they do it well, to throw up some smoke, to lob a grenade, to confuse.

*Id.* at 8. Nevertheless, the Court held that "[t]he prosecutor's comments about the role of defense counsel, although inappropriate, are unlikely to have 'misled or influenced the jury to the prejudice of the accused.'" *Id*. at 11.

In *Carrero-Vasquez v. State*, 210 Md. App. 504, 510 n.4 (2013), we disapproved the following closing argument similarly attacking defense counsel:

> [Defense counsel] are criminal defense attorneys and it is their job to try to get their clients off. They're pretty good at it.
>
> Their job is to sling mud and let's see what sticks. Sort of smoke and mirrors but they have to count on a couple of things. That you all aren't that bright and that you're easily confused.

Although there was no appellate challenge to this argument, we felt "compelled by precedent to observe that the prosecutor's rebuttal began with an improper attack on the integrity of defense counsel[.]" *Id.*

Even though a prosecutor may not "impugn the ethics or professionalism of defense counsel in closing argument[,]" *Smith*, 225 Md. App. at 529, the State is permitted to

respond to a defense argument by characterizing the quality of the argument itself. For example, we have held that closing argument that defense counsel was "blowing smoke" to divert the jury's attention" was fair argument responding to defense challenges to the State's evidence. *See Purvey v. State*, 129 Md. App. 1, 25 (1999). Similarly, we concluded that prosecutors did not cross the line of propriety by characterizing a defense argument as "a tale told by an idiot full of sound and fury signifying nothing[,]" *Warren v. State*, 205 Md. App. 93, 138-40 (2012), or an attempt by defense counsel to "plant seeds of doubt" whereas the prosecutor's job was to "find justice[.]" *Williams v. State*, 50 Md. App. 255, 264 (1981). In an analogous challenge to argument characterizing a defendant's sentencing allocution as "worthless" "trash" "written by God knows who," the Court of Appeals held that, "unlike *Reidy*, the prosecutor was not suggesting that Hunt committed perjury and that his counsel suborned perjury. Instead, he was commenting on the use of a prepared script and the fact that Hunt might have had assistance in its preparation." *Hunt v. State*, 321 Md. 387, 436-37 (1990).

Here, as in *Purvey*, *Warren*, *Williams*, and *Hunt*, the prosecutor's attempt "to suggest disbelief" of the "accused's defense" fell within the broad framework of fair argument. Defense counsel, after acknowledging in closing argument that "[t]he State tells a really compelling story[,]" then stated: "Only if it were true." Defense counsel also argued that witnesses called by the State had lied and were not credible. In rebuttal, it was fair comment for the prosecutor to respond by impugning the quality of that defense argument, asserting that it was an attempt to distract the jury because Reynoso had

"nothing" to answer the State's evidence. Under these circumstances, the trial court did not err or abuse its discretion in overruling the defense objection.

**JUDGMENTS OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY REYNOSO.**