Circuit Court for Baltimore City
Case No. 119149010

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2509

September Term, 2019

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HAKIM KNIGHT

v.

STATE OF MARYLAND

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Graeff,
Gould,
Sharer, J., Frederick
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Sharer, J.

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Filed: July 16, 2021

Following a jury trial in the Circuit Court for Baltimore City, Hakim Knight, appellant, was convicted of four firearm-related offenses: possession of a regulated firearm after a disqualifying conviction (underage possession of a firearm); possession of ammunition while prohibited to possess a firearm; wearing, carrying, or transporting a handgun on the person; and wearing, carrying, or transporting a handgun on the person within 100 yards of a place of public assembly.[1]

Appellant presents two questions for our review:

1. Did the trial court err by allowing the State to elicit improper lay opinion testimony?

2. Did the trial court err by allowing the prosecutor to make impermissible closing arguments?

We hold that the challenged testimony was erroneously admitted as lay opinion testimony. Nonetheless, we find the admission to have been harmless beyond a reasonable doubt and, finding no error otherwise, shall otherwise affirm appellant's convictions.

We have reviewed the record in full. Because appellant does not directly challenge the sufficiency of the evidence, "[i]t is unnecessary to recite the underlying facts in any but a summary fashion because for the most part 'they [otherwise] do not bear on the issues we are asked to consider.'" *See Teixeira v. State*, 213 Md. App. 664, 666 (2013) (quoting *Fitzpatrick v. Robinson*, 723 F.3d 624, 628 (6th Cir.2013)).

[1] Including concurrent sentences, appellant was sentenced to 15 years of actual incarceration.

## BACKGROUND

While on patrol in the Cherry Hill neighborhood on May 10, 2019, a team of Baltimore City Police Department detectives[2] saw three men huddled together between two houses. As their patrol car approached the men, two walked toward the car, but the third — appellant — walked in the opposite direction. Det. James Deasel observed that, as appellant turned, he "grabbed his front waist band area" leading Det. Deasel to believe that appellant might be armed.

Appellant began to run and was pursued by Det. Christina Braun who eventually caught and detained him. Most of the chase and the capture of appellant were audio and visually recorded on the officers' body-worn cameras and were reproduced and published to the jury at trial. A search of a dumpster located in the area in which Det. Braun had pursued appellant disclosed a handgun. Forensic testing of DNA swabs from that firearm revealed a "major male DNA profile" which, when compared with appellant's known DNA sample, was a match. The forensic expert witness opined, therefore, that appellant was the source of the DNA profile.

## DISCUSSION

### Standard of Review

We review the two issues appellant raises in this appeal under similar standards. With respect to the admissibility of evidence,

[2] Throughout the record and the appellate briefs, references to officers James Deasel and Christina Braun vary between "detective" and "officer," for simplicity and consistency, we shall refer to both as detectives. Their rank has no bearing on our analysis.

> "'[i]t is frequently stated that the issue of whether a particular item of evidence should be admitted or excluded is committed to the considerable and sound discretion of the trial court….'" *State v. Simms*, 420 Md. 705, 724 (2011) (quoting *Ruffin Hotel Corp. of Md., Inc. v. Gasper*, 418 Md. 594, 619 (2011)). Furthermore, "'[b]road discretion is vested in the trial court with regard to expert testimony, and that discretion will not be disturbed on appeal absent an error of law or fact, a serious mistake, or clear abuse of discretion.'" *Johnson & Higgins of Penn., Inc. v. Hale Shipping Corp.*, [121 Md. App. 426, 444 (1998)]….

*Gross v. State*, 229 Md. App. 24, 32 (2016).

Similarly, we will "review a trial court's allowance of allegedly improper remarks by a prosecutor [during closing arguments] under an abuse of discretion standard." *Pietruszewski v. State*, 245 Md. App. 292, 318, *cert. denied*, 471 Md. 127 (2020). "What exceeds the limits of permissible comment or argument by counsel depends on the facts of each case, and we shall not disturb a trial court's judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party." *Mines v. State*, 208 Md. App. 280, 304 (2012) (internal citations omitted).

**1. Lay Opinion Testimony**

At trial, Det. Deasel testified, over objection, that when he saw appellant walk away holding "[h]is front waistband area" he thought "[t]hat he was possibly armed." There was no eyewitness testimony that appellant was in possession of a weapon; hence, Det. Deasel's testimony was the crux of the State's case as to his possession of the firearm.

Appellant asserts that the court abused its discretion in permitting Det. Deasel to offer expert testimony, although he was not offered by the State, or qualified by the court, as an expert. The State responds that Det. Deasel's testimony about his observations of

appellant and his conclusion about possible possession of a weapon was properly admitted as lay opinion.

In describing his first observation of appellant, Det. Deasel told the jury that, as appellant turned to walk away from the officers, he started holding "[h]is front waistband area." Det. Deasel also explained to the jury, in response to questions concerning to his training with respect to armed persons, that he "**had an academy class for characteristics of an armed person**[,]" which is "**training specific to individuals carrying firearms illegally**." (Emphasis added). When asked if he knew "the characteristics of an armed person[,]" Det. Deasel responded that the things to look for are "[s]ecurity checks, blading the body away, as well as bulges, weighted objects, weighted pockets of clothing." Without objection, Det. Deasel testified that, as a police officer, he had experience in arresting people for possession of a handgun. Finally, when asked what he thought when he saw appellant "walking away" and "holding his front waist[,]" Det. Deasel stated, "[t]hat [appellant] was possibly armed."

Appellant argues that the collective effect of Det. Deasel's testimony was the erroneous admission of lay opinion.[3]

[3] Appellant also appears to suggest that the State had failed to comply with the discovery requirements for disclosure of expert witnesses pursuant to Rule 4-263(d)(8). To the contrary, the record reflects that the State's initial disclosures form, served on appellant's trial counsel and filed with the court on September 5, 2019, identifies Baltimore Police Officers Braun and Deasel, among others, as the State's witnesses with a footnote stating, "any disclosed witness affiliated with law enforcement – *e.g.*, police officers, firearms examiners, latent-print examiners, chemists, etc. – may be called as expert witnesses in their respective fields." Additionally, under the section of the disclosures form dedicated to expert witnesses and their reports, there was a box checked next to the subsection provided for "*Law enforcement experts*," to the effect:

The admissibility of lay opinion is governed by Maryland Rule 5-701,[4] opinion testimony by lay witnesses, which provides:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those to opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

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> The State gives notice to Defendant of its intent to call all of the police officers, firearms examiners, latent-print examiners, forensic scientists, and chemists … disclosed as witnesses in this case to testify as experts in their respective fields. Any police officers called as witnesses will testify as … ***experts in the detection and characteristics of armed persons***….

(Emphasis added).

Consistent with the notice provided in the initial disclosures, Det. Deasel's Statement of Probable Cause from the preliminary charging documents also contained statements concerning the observations and beliefs that were based on experience. Namely, those statements included: "THESE DETECTIVES KNOW FROM PREVIOUS ARRESTS THE WAISTBAND AREA IS A COMMON AREA UTILIZED BY INDIVIDUALS TO CONCEAL HANDGUNS…. THESE DETECTIVES BELIEVED [APPELLANT] WAS POSSIBLY ARMED WITH A HANDGUN IN HIS WAISTBAND DUE TO [APPELLANT] DISPLAYING CHARACTERISTICS OF AN ARMED INDIVIDUAL." (Capitalization in original). Accordingly, there were no discovery violations that would have prevented the State from offering Det. Deasel as an expert witness in relation to characteristics of armed persons had it chosen to do so. The record does not offer any reason for the State not to have done so.

[4] Whereas, the admissibility of expert testimony is governed by Rule 5-702, which provides:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

Rule 5-701 was interpreted and applied under a similar context by the Court of Appeals in *Ragland v. State*, 385 Md. 706 (2005). Therein, the Court held that "Rules 5-701 and 5-702 prohibit the admission as 'lay opinion' of testimony based upon specialized knowledge, skill, experience, training or education." *Id*. at 725 (footnote omitted). In *Ragland*, the Court quoted with approval the holding of the Supreme Court of Colorado in its application of a nearly identical local law governing admission of lay opinion testimony to the testimony of police officers, providing that: "where an officer's testimony is based 'not only on [his] perceptions and observations of the crime scene but also on [his] specialized training or education, [he] must be properly qualified as an expert before offering testimony that amounts to expert testimony.'" *Id*. (quoting *People v. Stewart*, 55 P.3d 107, 124 (Colo. 2002)). From that, appellant argues:

> Like the officers in *Ragland* who had training and experience in drug-crime investigations and who applied that experience to form an opinion about their observations, [Det.] Deasel had taken a police-academy class on the body language of "individuals carrying firearms illegally," and when he saw [appellant's] body language, he used this training and experience to form the opinion that [appellant] was potentially armed….

The State applies a different interpretation to the effect of Det. Deasel's testimony, suggesting that:

> The only testimony relevant to Detective Deasel's opinion about whether [appellant] was armed was that [appellant] was holding "[h]is front waistband area[,]" Detective Deasel had taken an academy class that taught him characteristics of an armed person included "[s]ecurity checks, blading the body away, as well as bulges, weighted objects, [and] weighted pockets of clothing[,]" and that when [appellant] walked away holding his waistband it led Detective Deasel to believe he was "possibly armed."

The State further opines that the class taken by Det. Deasel at the police academy was "not enough to render his opinion that [appellant] was 'possibly armed' expert testimony." That assertion by the State is mere speculation, for the record is devoid of any evidence about "the class" taken by Det. Deasel.

Although the court sustained defense objections to several questions asked of Det. Deasel by the prosecutor, we assume because he had not been offered as an expert, defense objections to several other questions were overruled. In those instances, however, Det. Deasel answered that he "had an academy class for characteristics of an armed person[,]" which was "training specific to individuals carrying firearms illegally." We conclude that Det. Deasel's opinion that appellant was "possibly armed" was based on his observations that were honed by his specialized training and education and, on this record, was inadmissible lay opinion.

As Judge Moylan recently recognized when summarizing *Ragland's* clarification of opinion testimony in *Mack v. State*, 244 Md. App. 549, 563 (2020):

> Two types of opinion rendering[] … necessarily contemplate the satisfying of two modes of qualification. To qualify, via personal perception, to render a lay opinion does not exempt one from having to qualify, via "knowledge, skill, experience, training or education," in order to render an expert opinion. Two very different missions require two very different sets of skills. The "witness" may be in the singular but the types of opinion to be rendered and, hence, the qualifying requirements are in the plural….

Indeed, we find that the opinion called not for a recounting of simple observation of events but for a skilled and subtle interpretation of those events based on specialized training. *See e.g.*, *Mack*, 244 Md. App. at 575–76 (explaining that "[w]ithout the opinions of the officers, there would not have been even a prima facie case of such participation.

Based upon their training and special knowledge, however, the officers were able to opine that Ragland's otherwise ambiguous behavior actually constituted the drug transaction itself.").

**Harmless Error**

An error at trial, if established, is then reviewed for its impact, if any, on the verdict rendered. *See Nottingham v. State*, 227 Md. App. 592, 610 (2016). We have explained:

> An evidentiary or procedural error in a trial is bound, in some fashion, to affect the delicately balanced, decisional process. … It is the impact of the erroneous ruling upon the defendant's trial and the effect it has upon the decisional process [that] is of primary concern[.]

*Wallace-Bey v. State*, 234 Md. App. 501, 545–46 (2017) (quoting *Hunter v. State*, 397 Md. 580, 596 (2007)). "To be sure, … not every error committed during a trial is reversible error." *Moore v. State*, 412 Md. 635, 666 (2010) (citation omitted). As such, "[i]n cases of established error, that error will be deemed harmless if a reviewing court, upon its own independent review of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Wilder v. State*, 191 Md. App. 319, 369 (2010) (citations omitted). In so doing, "we are not to find facts or weigh evidence[,] [but] [i]nstead, 'what evidence to believe, what weight to be given it, and what facts flow from that evidence are for the jury … to determine.'" *Bellamy v. State*, 403 Md. 308, 332 (2008) (quoting *Dykes v. State*, 319 Md. 206, 224 (1990)). In other words, "'[t]o say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record.'" *Id*. at 332 (quoting *United States v. O'Keefe*, 128 F.3d 885, 894 (5th Cir. 1997)).

Appellant, anticipating a harmless error assertion by the State, argues that the error was not harmless because "[t]he State's case against [him] was entirely circumstantial." We give no weight to that argument by appellant because it is an elementary principle of the law of evidence that, as trial courts routinely instruct jurors, and as was done in this case:

> The law makes no distinction between the weight to be given to either direct or circumstantial evidence. No greater degree of certainty is required of circumstantial evidence than of direct evidence.

Maryland Criminal Pattern Jury Instructions 3:01, at 279 (2d ed. 2020). "A conviction may rest on circumstantial evidence alone." *Wilson v. State*, 319 Md. 530, 536 (1990) (citing *Veney v. State*, 251 Md. 182, 201 (1968)). Or, put another way, "[c]ircumstantial evidence is proof of a chain of facts that point to a particular conclusion, a conclusion based on reason, experience, collective wisdom and common sense." Joseph F. Murphy, Jr. & Erin C. Murphy, *Maryland Evidence Handbook* § 408, at 171 (5th ed. 2020).

Appellant advances his circumstantial evidence argument, saying that "[Det.] Deasel's opinion that [appellant] was 'possibly armed,' because he grabbed his waistband, was crucial to the State's case[,]" and thus, its admission was not harmless. Additionally, appellant contends that, "although [his] DNA was found on the gun, under the circumstances of this case that evidence was not very persuasive." Appellant posits a theory that his DNA was found on the gun through DNA transfer from either the arresting officers touching him and then the gun, from the gun's contact with the contents of the dumpster where it was located because his family lived in that housing complex and he had

frequented it for that reason, or from his DNA sample being placed in the same evidence bag as the gun and bullets.

Equally as unpersuasive as appellant's circumstantial evidence arguments are his challenges to the persuasiveness of the DNA evidence admitted at trial. Christy Silbaugh, a forensic scientist with the Baltimore City Police Department crime lab, testified, without objection, as an expert in DNA analysis. She testified that the results of her comparison of appellant's DNA sample to the swabs of the gun revealed that appellant was "the source of the major male DNA profile[,]" and that there was also "an indeterminate DNA profile of at least one individual[,]" a "minor contributor." In her discussion of the weight of the DNA profile match, she explained:

> This is called a source ID, which means it met a certain threshold, and the threshold is based on statistical information that we've gathered from doing population studies on how frequently certain genetic profiles show in that population. We then take that in comparison to the profile that's developed from the evidence, and then we do statistics.
>
> So the statistic for this, specifically, is based on the estimated world population. It's approximately seven-and-a-half billion, and this match was greater than our source ID, which states that it is greater than 1 in 7.49 trillion that it is [appellant].

Silbaugh also discussed DNA transfer, the ability of DNA to adhere to gloves, and how it can be transferred from "a slight touch." She clarified that:

> Each time you transfer, potentially less and less DNA is going to be transferred. It's sticking to that surface, it's sticking to my hand, it's going to stick to the next surface. If I then touch the door on my way out, there will be even less DNA transferred there.

When asked to classify the results of her findings, Silbaugh explained that: "In regards to the profiles that were developed, the major profile that matches [appellant] is a much

stronger profile. It's in greater abundance than the indeterminate and minor profile." However, she later qualified her answer: "Quantitatively, I don't have an amount that I can point to, but just repetitive transfer is going to lessen the amount transferred, is the only thing that I can testify to."

With respect to the DNA sample taken from appellant, Detective Mark Spila, of the Baltimore City Police Department's gun violence enforcement division, testified that he followed protocol in collecting the DNA sample from appellant. He explained the process that he followed:

> whenever you open up the envelope from the crime lab, they have rubber gloves in there, evidence tape, two cotton swabs. Basically, you take those cotton swabs and you swab the inside of their right and left cheek … for a DNA sample. I put those back in the container that each of them came in, put it in a property envelope, sealed it in front of the defendant.
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> * * *
>
> And then submitted that to evidence control and requested that the samples that had to be taken were compared to the DNA, if any, recovered from the handgun in the investigation.

Det. Spila elaborated on the process, explaining that the swabs are like Q-tips that come out of paper wrappers, "[s]o you pull them directly out of that sealed paper wrapper, do that sample, put them right back in that paper wrapper, and then they go directly in the property envelope that's signed and sealed." He also clarified that just the swabs were in the envelope when it was put into evidence control.

Additionally, Darcy Machado, a crime lab assistant with the Baltimore City Police Department's forensic biology unit, testified that she was responsible for swabbing the gun for DNA and testing it for the presence of fingerprints. She also explained her procedure

for receiving and processing the evidence. Specifically, Machado stated that once she receives evidence, she does "an inventory of what's in the packaging[,]" which in this case "was the revolver and the cartridges[.]" After swabbing and testing the evidence, she testified that she "repackage[s] the evidence as it was received, with my initials, and date, and a seal."

Despite appellant's contentions as to the lack of persuasiveness of the DNA evidence, there was ample evidence for the jury to consider that supported a reasonable inference that appellant's DNA was not on the gun from an intermediary transfer resulting from either contact with the trash in the dumpster, the conduct of the arresting officers, or from comingling evidence in the evidence bag. Furthermore, there is no evidence in the record concerning the dumpster or its contents relative to the gun's location or in relation to where appellant's relatives reside. Nor is there any evidence to support comingling or mishandling of the DNA evidence.

The State disagrees with appellant's characterization of the evidence, but asserts, *arguendo*, that any errors by the trial court were harmless. For support, the State argues:

> Here, when [appellant] saw the police, he ran in the opposite direction while holding his waistband. He ran around the corner near a dumpster and was briefly out of the officers' sight. When the police looked in[to] the dumpster, they found an operable firearm. The only major DNA profile found on the gun belonged to [appellant]. Regardless of what Detective Deasel thought or did not think when [appellant] took off running, that testimony was unimportant when compared to "everything else … the jury considered."

We agree and conclude that the trial court's error in permitting inadmissible lay opinion testimony was harmless beyond a reasonable doubt.

**2. Closing Arguments**

Appellant contends that the court erred in allowing "the prosecutor [to make] two impermissible arguments based on facts that were not in evidence." He asserts that the two impermissible arguments were (1) in relation to his DNA being found to be "all over the gun" and (2) that it was "misrepresented to the jury that people do not run from the police because they are scared …."

The following occurred during the prosecutor's closing argument:

> [PROSECUTOR]: In addition to the DNA, [appellant's] DNA being all over the gun, why was he running? And what was he running from? I mean, it -- people don't run because they're scared of the police.

To this statement, defense counsel made a non-specific objection, which was overruled by the court.

> [PROSECUTOR]: They don't do it. That's an excuse people give, but no, you don't run like that when you're scared of the police.

Defense counsel again objected, again without specificity. The court remained silent, implicitly overruling the objection, while the prosecutor continued:

> [PROSECUTOR]: You run like that when you have something that you don't want to get caught with.

Defense counsel again interposed a non-specific objection, which the court overruled, adding: "It's argument." No request for leave of the court was made to further explicate the objections. Nor, was relief sought, either by curative instruction or mistrial.

We have often said that considerable latitude is permitted in closing argument. *Ware v. State*, 360 Md. 650, 681–82 (2000); *Jones v. State*, 217 Md. App. 676, 691 (2014).

A prosecutor "'is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom.'" *Lee v. State*, 405 Md. 148, 163 (2008) (quoting *Degren v. State*, 352 Md. 400, 429–30 (1999)). Nevertheless, there are limitations. *Degren*, 352 Md. at 430. As we said in *Reidy v. State*, 8 Md. App. 169, 172 (1969), "[i]t is fundamental to a fair trial that the prosecutor should make no remarks calculated to unfairly prejudice the jury against the defendant." (Citations omitted). In closing argument, counsel may not be permitted, over objection, "'to state and comment upon facts not in evidence or to state what he could have proven." *Eley v. State*, 288 Md. 548, 551 (1980) (quotation marks and citation omitted). Indeed, "[t]he rule is designed also to prevent counsel from suggesting evidence which was not presented at trial thereby providing additional grounds for finding a defendant innocent or guilty." *Id*. at 552.

**"all over the gun"**

Appellant's assertion that the State's comment about his DNA being "all over the gun" was a fact that was not in evidence, is an inaccurate characterization of the evidence. Darcy Machado, the crime lab assistant who testified about swabbing the gun for DNA, explained that she swabs guns for DNA residue "in any of the textured areas or anywhere that it looked like it may have been handled." While the prosecutor held the gun for her, she indicated for the jury the places on the gun where she would swab.[5] Machado indicated

[5] Despite having been asked by the prosecutor to "show … precisely where on this firearm you swabbed[,]" Machado responded in general terms of where the gun "would" be swabbed. In response to an objection to that testimony, she qualified her answer, agreeing that the areas discussed were where she had in fact swabbed the gun.

for the jury roughly nine places on the gun, but only specifically articulated for the record, "in the textured areas of the handle" and "the sides of the trigger." In both closing and rebuttal arguments the prosecutor accurately recounted testimony as to the swabbing locations.

**"people don't run because they're scared of the police"**

Appellant contends that "the prosecutor made an impermissible argument based on facts that were not in evidence and were, in actuality, false: that people never run from the police because of fear." He argues that from those comments, the prosecutor "engaged in a form of vouching, and improperly prejudiced [him] …."

Further, appellant explains that "the prosecutor vouched for his own credibility" in

> expressing his view on this matter — as an experienced prosecutor who had presumably tried many cases involving people who ran from the police — he put the imprimatur of the government behind his arguments and created a risk that the jury would be induced to trust the government's judgment rather than its own view of the evidence.

Absent the general terms of the prosecutor's comments, the evidence presented would support the reasonable inference that the reason for appellant running away from the officers was not out of fear of the police; rather, out of fear of being caught while in possession of the weapon. This inference is supported by the fact that the two individuals initially seen with appellant and walking with him towards the police car, continued their course, while appellant alone turned to walk away from the direction of the police then began to run.

We recognized in *Mines v. State*, *supra*, that:

> As to summation, it is, as a general rule, within the range of legitimate argument for counsel to state and discuss the evidence and all reasonable and legitimate inferences which may be drawn from the facts in evidence; and such comment or argument is afforded a wide range. Counsel is free to use the testimony most favorable to his side of the argument to the jury, and the evidence may be examined, collated, sifted and treated in his own way…. 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 accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces.

208 Md. App. at 303–04 (quoting *Wilhelm v. State*, 272 Md. 404, 412 (1974)).

Appellant also argues that the court failed to remediate the prosecutor's alleged improper remarks. Of course, as we have noted, trial counsel asked for no remediation. The Court of Appeals has said that "[r]eversal is only required 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." *Degren*, 352 Md. at 431 (quotation marks and citation omitted).

We cannot conclude that the prosecutor's comments inappropriately prejudiced appellant's right to a fair trial.

**Finally – an observation**

It has not gone unnoticed that appellate counsel has attempted to bolster the latter argument with references to reported abuses and misconduct by officers of the Baltimore City Police Department in other instances. Indeed, counsel has dedicated several pages of appellant's brief to newspaper and other media reports, as well as reports of governmental agencies, of police misconduct, particularly against Black citizens. None of that is

supported by the record of this case and, in our view, is an inappropriate intrusion into the appellate process. Indeed, Maryland Rule 8-504(4) suggests that an appellate brief shall contain "[a] clear concise statement of the facts material to a determination of the questions presented[.]" In that regard, we recall the advice that "[a]dvocates win most of their points by clarity and straightforwardness — not[] … by demonstrating sincerity or outrage[.]" Stephen V. Armstrong and Timothy P. Terrell, *Thinking Like a Writer: A Lawyer's Guide to Effective Writing and Editing*, at 10-6 (Clark Boardman Callaghan 1992).

**JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED; COSTS ASSESSED TO APPELLANT.**