Circuit Court for Baltimore City
Case No. 119164015

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2574

September Term, 2019

HARDAWAY WYNNE

v.

STATE OF MARYLAND

Berger,
Leahy,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Berger, J.

Filed: April 5, 2021

Hardaway Wynne, appellant, was arrested and charged, in the Circuit Court for Baltimore City, with various offenses related to a shooting. At the start of trial, Mr. Wynne filed a motion to suppress a statement he made to the police following the shooting. That motion was denied. A jury ultimately convicted Mr. Wynne of first-degree assault, use of a firearm in the commission of a crime of violence, and reckless endangerment. Mr. Wynne was later sentenced to a term of five years' imprisonment for the conviction of first-degree assault and a concurrent term of five years' imprisonment for the firearm conviction. The conviction for reckless endangerment was merged for sentencing purposes.

In this appeal, Mr. Wynne presents four questions for our review:

1. Did the trial court err in denying the motion to suppress?

2. Did the trial court err in limiting defense counsel's cross-examination of the victim?

3. Did the trial court err in allowing a police officer to give lay opinion testimony regarding the type of ammunition used in the shooting?

4. Did the trial court err in sustaining the State's objection to a portion of defense counsel's closing argument?

For reasons to follow, we hold that the trial court did not err or abuse its discretion in its rulings. Accordingly, we affirm the judgments of the circuit court.

BACKGROUND

On May 10, 2019, Mr. Wynne was in his garage with a female friend, Bonita Day. At some point, Mr. Wynne and Ms. Day got into an altercation, and Ms. Day pushed Mr. Wynne, causing him to fall over. Mr. Wynne got up, went to the back of the garage, and

retrieved a shotgun. Mr. Wynne returned and pointed the shotgun at Ms. Day's head. He eventually lowered the shotgun and fired, striking Ms. Day in the legs. Ms. Day was later taken to the hospital for treatment. While Ms. Day was being treated, the police arrived and spoke with Mr. Wynne, who was waiting outside the hospital's emergency room. During that conversation, Mr. Wynne made several statements regarding the shooting. Mr. Wynne was later arrested and charged.

Suppression Hearing

At the start of trial, Mr. Wynne moved to suppress the statements he made to the police at the hospital following the shooting. He argued that he had not been advised of his *Miranda*[1] rights before the statements were made. The State countered that advising Mr. Wynne of his *Miranda* rights was unnecessary because he was not in custody.

Baltimore City Police Officer Troy Anthony testified that, on May 10, 2019, he responded to the University of Maryland Hospital in Baltimore after getting a call for a "walk-in shooting victim." Upon arriving at the hospital, Officer Anthony encountered a woman with "wounds to her lower leg." At some point, hospital security personnel informed Officer Anthony that there was an individual waiting outside of the emergency room who "was part of the incident." Officer Anthony later identified that individual as Mr. Wynne. Officer Anthony testified that he went out and spoke with Mr. Wynne "to figure out what was going on." As he did, Officer Anthony activated his body-worn camera, which recorded his subsequent conversation with Mr. Wynne. In that recording,

[1] *Miranda v. Arizona*, 384 U.S. 436 (1966).

which was played for the court, Mr. Wynne stated that he and Ms. Day had gotten into a fight and that, during the fight, he had brandished a shotgun. When Officer Anthony asked Mr. Wynne how Ms. Day ended up in the hospital, Mr. Wynne responded that "the gun went off accidently" and that he "did not intend to shoot her." Officer Anthony then told Mr. Wynne to "come with us" because the officer had "to see this weapon."

Officer Anthony testified that Mr. Wynne was not under arrest, was not placed in handcuffs, and was not advised of his *Miranda* rights prior to his making the statements. Officer Anthony stated that, when he learned of Mr. Wynne's presence, he "came out and started talking" to Mr. Wynne to "figure out what's going on." Officer Anthony testified that he did not tell Mr. Wynne that he was not free to leave. Officer Anthony added that Mr. Wynne was "under investigation."

In the end, the trial court denied Mr. Wynne's motion to suppress. The court found that Mr. Wynne was not in custody at the time the statements were made.

Trial

At trial, Officer Anthony testified to the events at the hospital following the shooting. During that testimony, the State played the recording of Officer Anthony's conversation with Mr. Wynne that was the subject of the motion to suppress.

Ms. Day testified as well, stating that, on the day of the shooting, she met Mr. Wynne at his garage, where they drank alcohol and smoked crack. Ms. Day testified that Mr. Wynne became agitated when she told him she was going to leave. When Ms. Day tried to leave, Mr. Wynne grabbed her and threw her across a nearby table. Ms. Day then

retrieved her phone and tried to call 911, but Mr. Wynne slapped the phone out of her hand. Ms. Day then pushed Mr. Wynne, and he fell over. After getting up, Mr. Wynne went to the back of the garage and retrieved a shotgun, which he brought back and pointed at Ms. Day's head. Mr. Wynne then threatened to "blow" Ms. Day's "head off." Ms. Day asked Mr. Wynne to lower the shotgun, which he did. Shortly thereafter, the "gun went off," striking Ms. Day in her lower extremities. Ms. Day then telephoned her daughter for help. Ms. Day was eventually picked up by her son-in-law, who took her to the hospital for treatment.

Detective Keith Savadel of the Baltimore City Police Department testified that he investigated the shooting. Detective Savadel testified that the results of his investigation, which included an examination of Ms. Day's wounds and the crime scene, were consistent with Ms. Day's story that Mr. Wynne fired one shotgun blast at her legs.

Mr. Wynne was ultimately convicted. Additional facts will be supplied below when necessary to our determination of the issues in this appeal.

DISCUSSION

I.

Mr. Wynne first contends that the trial court erred in denying his motion to suppress. Specifically, he argues that the court erred in ruling that he was not in custody at the time the statements were made. He contends that the circumstances surrounding his conversation with Officer Anthony were such that "a reasonable person in his position would not have felt free to leave the officer in the hospital waiting room and go about his

business." In support, he notes that Officer Anthony was at the hospital in response to a shooting; that Officer Anthony considered him a suspect in the shooting; that Officer Anthony did not tell him whether he was or was not free to leave; and that Officer Anthony wanted to take him to his garage to retrieve the shotgun.

The State contends that the court did not err in denying Mr. Wynne's motion to suppress. The State maintains that there is nothing in the record to suggest that Mr. Wynne was in custody.

"Our review of a circuit court's denial of a motion to suppress evidence is limited to the record developed at the suppression hearing." *Pacheco v. State*, 465 Md. 311, 319 (2019) (citations and quotations omitted). "[W]e view the evidence presented at the [suppression] hearing, along with any reasonable inferences drawable therefrom, in a light most favorable to the prevailing party." *Davis v. State*, 426 Md. 211, 219 (2012). Moreover, "[w]e extend great deference to the findings of the hearing court with respect to first-level findings of fact and the credibility of witnesses unless it is shown that the court's findings are clearly erroneous." *Daniels v. State*, 172 Md. App. 75, 87 (2006). "We give no deference, however, to the question of whether, based on the facts, the trial court's decision was in accordance with the law." *Seal v. State*, 447 Md. 64, 70 (2016). In short, "[w]e accept the trial court's factual findings unless they are clearly erroneous, but we review *de novo* the court's application of the law to its findings of fact." *Pacheco*, 465 Md. at 319 (citations and quotations omitted).

In *Miranda v. Arizona*, 384 U.S. 436 (1966), the United States Supreme Court held that the police must "advise criminal suspects of their rights under the Fifth and Fourteenth Amendments before commencing custodial interrogation." *Lee v. State*, 418 Md. 136, 149 (2011) (citations and quotations omitted). "These well-known *Miranda* warnings require an individual to be informed that 'he has a right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney one will be appointed for him prior to any questioning if he so desires.'" *Reynolds v. State*, 461 Md. 159, 178 (2018) (quoting *Miranda*, 384 U.S. at 479). "If the warnings are not given or the police officers fail to respect the person's proper invocation of their rights, 'the prosecution may not use statements, whether exculpatory or inculpatory, stemming from the custodial interrogation of the defendant.'" *Vargas-Salguero v. State*, 237 Md. App. 317, 336 (2018) (citing *Miranda,* 384 U.S. at 474).

That said, "*Miranda's* safeguards were intended to provide protection against the inherent coerciveness of *custodial* interrogation." *Marr v. State*, 134 Md. App. 152, 173 (2000) (emphasis added). "Thus, the first issue in any *Miranda* violation case is 'whether the questioned party was in custody.'" *Craig v. State*, 148 Md. App. 670, 686 (2002) (internal citations omitted). "In analyzing whether an individual is in custody for *Miranda* purposes, we ask, under the 'totality of the circumstances' of the particular interrogation, 'would a reasonable person have felt he or she was not at liberty to terminate the interrogation and leave.'" *Thomas v. State*, 429 Md. 246, 259 (2012) (internal citations

omitted). The "totality of the circumstances" test involves looking at the circumstances of the interrogation while focusing on the following non-exhaustive list of relevant factors:

> when and where [the interview] occurred, how long it lasted, how many police were present, what the officers and the defendant said and did, the presence of actual physical restraint on the defendant or things equivalent to actual restrain such as drawn weapons or a guard stationed at the door, and whether the defendant was being questioned as a suspect or as a witness. Facts pertaining to events before the interrogation are also relevant, especially how the defendant got to the place of questioning whether he came completely on his own, in response to a police request or escorted by police officers. Finally, what happened after the interrogation whether the defendant left freely, was detained or arrested may assist the court in determining whether the defendant, as a reasonable person, would have felt free to break off the questioning.

Id. at 260-61 (internal citations omitted).

"Although the circumstances of each case must certainly influence a determination of whether a suspect is 'in custody' for purposes of receiving *Miranda* protection, the ultimate inquiry is simply whether there is a 'formal arrest or restraint on freedom of movement' of the degree associated with a formal arrest." *Smith v. State*, 186 Md. App. 498, 529 (2009) (quoting *California v. Beheler,* 463 U.S. 1121, 1125 (1983)) (emphasis removed). "[T]he burden of showing the applicability of the *Miranda* requirements, *i.e.*, that there was custody and interrogation, is on the defendant." *Paige v. State*, 226 Md. App. 93, 107 (2015) (citations and quotations omitted).

We hold that Mr. Wynne failed to meet his burden of showing that he was in custody when the statements at issue were made to Officer Anthony. There is virtually nothing in

the record of the suppression hearing to suggest that Mr. Wynne was under formal arrest or restrained to a degree associated with a formal arrest. Not only did Mr. Wynne go to the hospital voluntarily, but his subsequent conversation with Officer Anthony was relatively brief, occurred in public, and involved only one officer. Moreover, Officer Anthony did not say or do anything that would have reasonably conveyed to Mr. Wynne that he was in custody or was not free to leave prior to his making the statements. Officer Anthony did not draw his weapon or otherwise act to restrain Mr. Wynne's movement, nor did he tell Mr. Wynne that he was not free to leave. It is of no significance that Officer Anthony may have considered Mr. Wynne a "person of interest." *See Argueta v. State*, 136 Md. App. 273, 283 (2001) ("The custody requirement of *Miranda* does not depend on the subjective intent of the law enforcement officer[.]") (citations and quotations omitted). Thus, the trial court did not err in denying Mr. Wynne's motion to suppress.

II.

Mr. Wynne's next claim of error concerns the trial testimony of Ms. Day. During cross-examination, defense counsel asked Ms. Day about a recorded statement she gave to the police at the hospital following the shooting. Specifically, defense counsel asked Ms. Day if, during that recorded statement, the police asked her if she was taking psychiatric medication. After the State objected, defense counsel asked for a bench conference. At that bench conference, the trial court asked defense counsel to explain the purpose of his question regarding Ms. Day's medication. Defense counsel responded by noting that, according to Ms. Day's medical records from her stay at the hospital following the

shooting,[2] Ms. Day had been asked whether she had taken her prescribed medications, and she had answered that "she often gets confused." Defense counsel then argued that he wanted to impeach Ms. Day with his question about her medication because "the side effects of not taking [the medication] can be confusion." The following colloquy ensued:

> THE COURT: No. I think she says she often can be confused. Now, if you want to ask her, I assume, about that, maybe. I just don't know what that –
>
> [DEFENSE]: Not about the medication?
>
> THE COURT: What? I'm sorry. You're saying that she doesn't – she's somehow saying that if she doesn't take the medication, she gets confused, is that what you're saying, or just she often gets – confused whether she took –
>
> [DEFENSE]: Maybe she could explain that. I mean, the police say, "Do you take medication?
>
> She says, "I take Ritalin for my bipolar."
>
> And then they say, "But you're not taking it now?"
>
> And she says, "No."

The State then interjected, arguing that, if defense counsel wished to imply some correlation between Ms. Day's medication and her mental state, defense counsel would need to call an expert witness. The following discussion ensued:

> THE COURT: Well, but I got to admit, if she, herself, says that "I get confused if I don't take my medication," – I'd admit it. But I don't know if we have that here.
>
> [DEFENSE]: Okay. Well, then I'll just ask her about that.

[2] Ms. Day's medical records were admitted into evidence during her direct examination.

THE COURT: Well, ask her about what?

[DEFENSE]: "Patient said she often gets confused." Well, she –
THE COURT: Just as a general composition?

[DEFENSE]: Well, (indiscernible).

[STATE]: But "often gets confused" is not the same as "I got confused on this day."

THE COURT: All right. That's fine. You want to ask her about that, I allow it.

At that point, the bench conference concluded, and the following occurred in open court:

THE COURT: So I'm going to sustain that objection. You have a new question, [counsel]?

[DEFENSE]: The – you agree when you were in the hospital that doctors are asking a bunch of questions, right?

[WITNESS]: Yes.

[DEFENSE]: They're trying to treat you, right?

[WITNESS]: Yes.

[DEFENSE]: You agree that you said to the doctors at one point that you "often get confused."

[WITNESS]: Yes, because –

THE COURT: Okay. Thank you. Next question.

[DEFENSE]: You have difficulty remembering things, right?

[WITNESS]: At times.

Mr. Wynne now argues that the trial court erred in restricting defense counsel's cross-examination of Ms. Day. Mr. Wynne asserts that defense counsel "was trying to establish that Ms. Day was confused regarding the incident because she was not taking her prescribed medication that day and that confusion was a side effect that she experienced when she did not take her medication." Mr. Wynne argues that the court's refusal to permit defense counsel to pursue that line of inquiry was an abuse of discretion and violated his constitutional right of confrontation.

The State contends that Mr. Wynne's claim was waived because he failed to explain to the trial court why the excluded testimony was admissible. The State argues, in the alternative, that the trial court did not err because the court allowed defense counsel to ask Ms. Day whether she was confused, which was the crux of the inquiry he now claims was erroneously excluded. The State also contends that, because Ms. Day admitted that she tended to get confused, any error the court may have made in restricting defense counsel's cross-examination was harmless.

We disagree with the State's preservation argument. It is clear from the record that defense counsel wanted to question Ms. Day about her medication in order to imply that her failure to take the medication around the time of the shooting caused her to be confused. The record is equally clear that the trial court understood defense counsel's theory of admissibility and ruled accordingly. Thus, the issue was preserved. We now turn to the merits of Mr. Wynne's claim.

"A criminal defendant's right to cross-examine a prosecution witness is guaranteed by the Confrontation Clause of the Sixth Amendment, made applicable to the States through the Fourteenth Amendment, and Article 21 of the Maryland Declaration of Rights." *Holmes v. State*, 236 Md. App. 636, 671 (2018). Also rooted in the Confrontation Clause is a defendant's right to face his accusers, and that includes "the right to attack that accuser's credibility in court by means of cross-examination[.]" *Churchfield v. State*, 137 Md. App. 668, 682-83 (2001) (citations and quotations omitted). "To comply with the Confrontation Clause, a trial court must allow a defendant a 'threshold level of inquiry' that 'exposes to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witnesses.'" *Peterson v. State*, 444 Md. 105, 122 (2015) (citations omitted). "An undue restriction of the fundamental right of cross-examination may violate a defendant's right to confrontation." *Pantazes v. State*, 376 Md. 661, 681 (2003).

"Nevertheless, a defendant's constitutional right to cross-examine witnesses is not boundless," and "[t]he Confrontation Clause does not prevent a trial judge from imposing limits on cross-examination." *Id.* at 680. "'[T]rial courts retain wide latitude in determining what evidence is material and relevant, and to that end, may limit, in their discretion, the extent to which a witness may be cross-examined for the purpose of showing bias.'" *Parker v. State*, 185 Md. App. 399, 426 (2009) (quoting *Merzbacher v. State*, 346 Md. 391, 413 (1997)). "Moreover, trial judges are entitled to impose reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice,

confusion of the issues or interrogation that is only marginally relevant." *Id.* (citations and quotations omitted); *See also* Md. Rule 5-611(a) ("The court shall exercise reasonable control over the mode and order of interrogating witnesses and presenting evidence so as to (1) make the interrogation and presentation effective for the ascertainment of the truth, (2) avoid needless consumption of time, and (3) protect witnesses from harassment or undue embarrassment.").

Against that backdrop, we hold that the trial court did not err in limiting defense counsel's cross-examination of Ms. Day. Although the court did not permit defense counsel to ask Ms. Day about her medication, the court did allow defense counsel to ask whether she "had difficulty remembering things," which Ms. Day answered in the affirmative. From that, the jury could reasonably infer that Ms. Day may have been confused on the day of the shooting, which was essentially the same factual inference that defense counsel was hoping to create with his question about Ms. Day's medication. Thus, the court allowed Mr. Wynne a "threshold level of inquiry" that exposed the jury to facts from which it could appropriately draw inferences relating to Ms. Day's reliability.

Moreover, the trial court's limitation on defense counsel's cross-examination was reasonable. There was no evidence presented at trial that Ms. Day's failure to take her medication caused "side effects." Even if such side effects could be presumed, there was no evidence that "confusion" was one of those side effects or that Ms. Day was even qualified to answer such a question. Permitting such an inquiry would have likely led to confusion for the jury and undue embarrassment for Ms. Day. And, given that Ms. Day

admitted that she had difficulty remembering things, defense counsel's inquiry into the effects of Ms. Day's medication was, at best, marginally relevant. The court, therefore, did not abuse its discretion in refusing defense counsel's request to inquire into Ms. Day's medication.

III.

Mr. Wynne's next claim of error concerns the testimony of the lead investigator, Detective Keith Savadel. As noted, Detective Savadel testified regarding his investigation into the shooting. During that testimony, the State showed Detective Savadel various pictures that had been taken during the investigation. One of those pictures depicted a spent shotgun shell casing in Mr. Wynne's garage:

> [STATE]: And why was this object significant? What are [we] looking at?
>
> [WITNESS]: It's a spent shotgun shell which, you know, corroborates the fact that she was shot –
>
> * * *
>
> [STATE]: … [W]hat does a "spent shot" mean?
>
> [WITNESS]: It's been used. It's not a full bullet. You can't use it again. The buckshot in the bullet is gone. It's just a spent shell. It weighs, like, nothing almost.

The State then showed Detective Savadel several more photographs, all of which depicted Ms. Day at the hospital following the shooting:

> [STATE]: … What are we looking at here?

> [WITNESS]: This is Ms. Day at the hospital. And you could see, you know, injuries consistent with a shotgun loaded with buckshot.
>
> [STATE]: Next photograph, please, State's Exhibit 6B. What are we looking at here?
>
> [WITNESS]: Just a close up of her wounds from a shotgun.
>
> [STATE]: And State's Exhibit 6C?
>
> [WITNESS]: Just more of those.
>
> [STATE]: And 6D?
>
> [WITNESS]: Same thing.
>
> [STATE]: Are – what do you observe about the wounds as far as their location?
>
> [WITNESS]: Consistent with her story that the gun was pointed at her legs. He fired one round. That's how buckshot shoots. It – the closer you are –

At that point, defense counsel objected and requested a bench conference. The trial court granted the request, and the following colloquy ensued:

> [DEFENSE]: Obviously, we don't think it's buckshot, but I think what he's going into now requires expertise and –
>
> [STATE]: I'd be happy to –
>
> [DEFENSE]: Well –
>
> [STATE]: – qualify him as an –
>
> [DEFENSE]: Well –
>
> [STATE]: – expert in firearms, but, I mean –
>
> [DEFENSE]: Well, Your Honor –

> THE COURT: I think you know how (indiscernible). You can just keep going.

The State then resumed its examination of Detective Savadel:

> [STATE]: I'm sorry, Detective, you were saying? Please continue your thought.
>
> THE COURT: Sure. Those wounds were consistent with a shotgun blast or being shot by a shotgun.
>
> [WITNESS]: Correct.
>
> THE COURT: All right. Next question.

Mr. Wynne now claims that the trial court erred in overruling defense counsel's objection to Detective Savadel's testimony "regarding the ammunition involved in this case." Mr. Wynne notes that two of the charged crimes, attempted second-degree murder and first-degree assault, required, respectively, a specific intent to murder or cause serious physical injury. He maintains that one of his defenses to those crimes was that the ammunition he used to shoot Ms. Day was birdshot, not buckshot. He argues that this distinction was important because his use of birdshot, which is less harmful than buckshot, permitted the inference that he did not have the specific intent to murder or cause serious physical injury. He contends that the court abused its discretion in allowing Detective Savadel, a non-expert witness, to give expert testimony that Ms. Day's injuries were caused by buckshot.

The State argues, and we agree, that Mr. Wynne's argument is not preserved for our review. Maryland Rule 4-323(a) provides that an objection to the admission of evidence is waived unless the objection is "made at the time the evidence is offered or as soon

thereafter as the grounds for objection become apparent." Although there is no bright-line rule as to the timeliness of an objection, "the objection must come quickly enough to allow the trial court to prevent mistakes or cure them in real time[.]" *Prince v. State*, 216 Md. App. 178, 193-94 (2014).

Here, at the time when Mr. Wynne lodged his objection to Detective Savadel's testimony, the detective had already testified, twice, that the ammunition used in the shooting was buckshot. At no point did Mr. Wynne object to that testimony. It was not until Detective Savadel's third mention of buckshot that Mr. Wynne objected. By that time, not only had Detective Savadel twice testified that the ammunition was buckshot, but the State had asked several intervening questions about other exhibits. Mr. Wynne's objection was not sufficiently contemporaneous to satisfy Rule 4-323(a) and was therefore not preserved for our review.

Even if preserved, Mr. Wynne's argument is without merit. To be sure, when Mr. Wynne first objected, Detective Savadel appeared to be on the cusp of giving an opinion on "how buckshot shoots." But at the bench conference that followed, defense counsel did not indicate that he was objecting to Detective Savadel's characterization of the ammunition as buckshot. Rather, defense counsel stated that he was objecting to what Detective Savadel was "going into now." Although the court did not appear to issue a definitive ruling on the objection, the court nevertheless did not permit Detective Savadel to continue opining as to the nature of buckshot. Immediately after the bench conference, Detective Savadel testified only that Ms. Day's "wounds were consistent with a shotgun

blast or being shot by a shotgun." Following that testimony, the court stated, "Next question," and the State moved on to other matters. Thus, Mr. Wynne's claim that the court allowed Detective Savadel to give expert testimony on the type of ammunition used in the shooting is not supported by the record.

Regardless, we fail to see what, if anything, the trial court did wrong in ruling on Mr. Wynne's objection. As discussed, Detective Savadel did not mention "buckshot" following defense counsel's objection, only that Ms. Day's wounds were consistent with a shotgun blast. Moreover, the court's act of encouraging the State to move on to other matters following that testimony effectively prevented Detective Savadel from further opining as to "how buckshot shoots." The court's actions were therefore consistent with defense counsel's stated purpose of objecting – to prevent Detective Savadel from "going into" the nature of buckshot.

IV.

Mr. Wynne's final claim of error concerns defense counsel's closing argument. As noted, Mr. Wynne claimed at trial that he used birdshot and not buckshot to shoot Ms. Day and that, consequently, he did not have the requisite intent to commit some of the charged crimes. Defense counsel raised the issue during closing argument, arguing at length that the evidence showed that Mr. Wynne had used birdshot and not buckshot. During that argument, defense counsel made the following statements:

> [DEFENSE]: And for those of you who don't understand the distinction, I would urge you to consult to your other jurors if you have an understanding. But the idea here basically is that

> buckshot is generated for bucks, hence the name, large game. Birdshot, small pellets.
>
> [STATE]: Objection, Your Honor.
>
> THE COURT: I'll sustain that.

Mr. Wynne now claims that the trial court erred in sustaining the State's objection. He asserts that defense counsel's argument was proper because it was "a statement of fact fairly deducible from the evidence and the very names of the types of ammunition."

The State claims that the trial court did not err because defense counsel's argument was not supported by the evidence. The State also notes that defense counsel was given ample opportunity to argue his theory that the ammunition was birdshot and not buckshot.

Generally, counsel is afforded wide latitude in presenting closing argument to the jury. *Anderson v. State*, 227 Md. App. 584, 589 (2016). Nevertheless, the scope of permissible argument is not boundless, as "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[.]" *Lawson v. State*, 389 Md. 570, 591 (2005) (citations and quotations omitted). "Counsel is not permitted to state and comment upon facts not in evidence, and comments that invite the jury to draw inferences from information that was not admitted at trial are improper." *Donati v. State*, 215 Md. App. 686, 731 (2014) (internal citations and quotations omitted).

"The determination and scope of closing argument is within the sound discretion of the trial court." *Id*. We defer to the judgment of the trial court because it "is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced

in a case." *Ingram v. State*, 427 Md. 717, 726 (2012). "As such, we do not disturb the trial judge's judgement in that regard unless there is a clear abuse of discretion that likely injured a party." *Id.* "The abuse of discretion standard requires trial judges to use their discretion soundly, and we do not consider that discretion to be abused unless the judge exercises it in an arbitrary or capricious manner or…acts beyond the letter or reason of the law." *Brewer v. State*, 220 Md. App. 89, 111 (2014) (citing *Washington v. State*, 424 Md. 632, 667-68 (2012)).

We hold that the trial court did not abuse its discretion in sustaining the State's objection to defense counsel's argument that "buckshot is generated for bucks, hence the name, large game." We could not find any evidence adduced at trial to support such a statement, nor could we find any evidence from which such an inference could be made. Moreover, the court afforded defense counsel wide latitude in arguing Mr. Wynne's theory regarding his use of birdshot as opposed to buckshot. Based on the record before us, the court's decision was neither arbitrary nor capricious or beyond the letter or reason of the law. For these reasons, we affirm the judgments of the Circuit Court for Baltimore City.

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