Circuit Court for Baltimore County
Case No. 03-K-14-001586

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2584

September Term, 2019

STATE OF MARYLAND

v.

GRANT AGBARA LEWIS

Reed,
Friedman,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: February 10, 2021

In 2014, a jury sitting in the Circuit Court for Baltimore County found appellee, Grant Agbara Lewis, guilty of first-degree murder and conspiracy to commit first-degree murder. The court sentenced Lewis to life imprisonment for the murder and a concurrent term of five years' imprisonment for the conspiracy. On direct appeal, we affirmed, as did the Court of Appeals. *Lewis v. State*, 229 Md. App. 86 (2016), *aff'd*, 452 Md. 663 (2017).

Lewis then filed a postconviction petition, alleging, among other things, that defense counsel had been ineffective on the following grounds: *first*, for failing to request a "witness promised benefit" jury instruction; *second*, for failing to request jury instructions on second-degree felony murder and involuntary manslaughter; and *third*, for failing to object to the prosecutor's comments, during closing argument, concerning accomplice liability.[1] Following a hearing, the circuit court granted the petition and awarded Lewis a new trial.

The State filed an application for leave to appeal. We granted the application and transferred the case to the regular appellate docket. The State now raises the following questions for our consideration:

> I. Did the postconviction court err in finding that Lewis received ineffective assistance of [defense] counsel because counsel did not request a "witness promised benefit" instruction?

[1] Lewis, acting as an unrepresented litigant, filed a petition, which was later supplemented by two additional petitions, prepared with the assistance of counsel. In all, he presented fifteen claims to the postconviction court. The postconviction court granted relief as to three of those claims and denied the others as either lacking merit or "moot." The order granting transfer to our regular appellate docket limited the issues before us to just those raised in the State's application. *See, e.g.*, *Moultrie v. State*, 240 Md. App. 408, 416-19 (2019) (holding that this Court may place "conditions or substantive limitations on our grant of an application for leave to appeal") (citation and quotation omitted). As a result, those are the only issues before us.

II. Did the postconviction court err in finding that Lewis received ineffective assistance of [defense] counsel because counsel did not request an instruction on second-degree felony murder or involuntary manslaughter?

III. Did the postconviction court err in finding that Lewis received ineffective assistance of [defense] counsel because counsel did not object to, or seek a curative instruction about, the prosecutor's closing argument on accomplice liability?

Because we conclude that the postconviction court erred in granting Lewis' petition, we shall vacate its order, thereby reinstating his convictions.

BACKGROUND

We rely on our reported decision in Lewis' direct appeal for factual background concerning the underlying crimes:

> On the evening of April 20, 2000, Baltimore County police responded to a 911 call from 2008 Codd Avenue in Dundalk, Maryland. They found Steven Cooke holding the dead body of his girlfriend, [Heidi] Bernadzikowski. Police learned that Mr. Cooke had obtained a $700,000 insurance policy on Ms. Bernadzikowski's life approximately two months before her death. Mr. Cooke was the primary beneficiary on the policy. Several witnesses testified that Ms. Bernadzikowski had planned to leave Mr. Cooke.
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> Much of the State's evidence at trial came from [Alexander Charles] Bennett.[2] Mr. Bennett set up an online advertisement for "professional and discreet cleaning services." Mr. Cooke contacted him via email. Mr. Bennett, [Lewis], and Mr. Cooke planned a murder-for-hire whereby Mr. Bennett and [Lewis] agreed to murder Ms. Bernadzikowski, in exchange for $60,000

[2] Bennett was charged initially with the murder, and Lewis was considered a material witness. Just prior to the commencement of Bennett's trial, he reached a plea agreement with the State and implicated Lewis in the conspiracy to murder Ms. Bernadzikowski. In exchange for testifying truthfully against Lewis, Bennett was allowed to plead guilty to murder in the first degree and received a sentence of life imprisonment, with all but 30 years suspended. *State v. Bennett*, Case No. 03-K-12-002639.

from the proceeds of the life insurance policy. [Lewis] and Mr. Bennett discussed ways to kill Ms. Bernadzikowski without it being detected, including breaking her neck to make her death look like an accident.

After reaching agreement with Mr. Cooke, [Lewis] bought Mr. Bennett a plane ticket from Colorado to Baltimore, and Natalie Ott, a friend, drove both of them to the airport the day Mr. Bennett left. [Lewis] gave Mr. Bennett a map to the home where Mr. Cooke and Ms. Bernadzikowski were living. After he arrived in the Baltimore area in March 2000, Mr. Bennett began watching the victim, communicating his observations to [Lewis] who was in Colorado. Eventually, [Lewis] put Mr. Bennett in contact with Mr. Cooke. Messrs. Bennett and Cooke met twice: once at the residence of Mr. Cooke and Ms. Bernadzikowski, and another time at a bus stop. At the residence, Mr. Cooke showed Mr. Bennett around the house and made clear that he wanted the murder to look like an accident for purposes of the potential insurance claim. Mr. Bennett told Mr. Cooke that he was going to contact [Lewis] to coordinate completion of the crime. Later, at the bus stop, Mr. Bennett told Mr. Cooke that his "boss," referring to [Lewis], was getting "angry" and wanted to move forward with the crime so that they could get paid.

On the day planned for the murder, Mr. Bennett called [Lewis]. [Lewis] told Mr. Bennett that Mr. Cooke was going to drop Ms. Bernadzikowski off at their residence in twenty minutes. Mr. Bennett was to go to the residence, where a key to the door would be waiting, and then call [Lewis] and inform him whether the crime had occurred as planned.

Mr. Bennett went to the residence, found the key, gained entry, and waited by the front door. He watched through a window as Mr. Cooke and Ms. Bernadzikowski arrived. While Mr. Cooke remained behind, Ms. Bernadzikowski exited the vehicle and entered the residence. At that point, Mr. Bennett grabbed her from behind, put his hand over her mouth, and attempted to break her neck. When that did not work, he wrapped his hands around her throat and choked her until she was unconscious. He put her down and went to find a knife. Returning with a knife, and being unsure whether she was dead, Mr. Bennett cut her throat. During the struggle, Ms. Bernadzikowski scratched Mr. Bennett's face and lip.

After the murder, Mr. Bennett … [called Lewis and informed him that] the crime did not go entirely as planned, but that it was done. … Mr. Bennett and [Lewis] were never paid any of the insurance proceeds.

> Other witnesses corroborated portions of Mr. Bennett's testimony. Ms. Ott knew both [Lewis] and Mr. Bennett. In the spring of 2000, she drove both men to the airport, and was told that Mr. Bennett was going to Baltimore to "make a lot of money." Rebecca Love, the mother of two of [Lewis]'s children, testified that [Lewis] told her that he sent Mr. Bennett to kill a woman who lived out-of-state because she owed him money. Ms. Love knew that Mr. Bennett and [Lewis] were "extremely close friends," and that they "[d]id everything together."
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> In 2000, DNA testing of samples taken from under the victim's fingernails did not result in an identification of the murderer. In 2011, DNA testing of additional samples, with improved technology, resulted in the identification of Mr. Bennett. Detective Gary Childs testified that, in approximately January 2012, after Mr. Bennett's DNA was found under the victim's fingernails, he conducted a search with the Maryland State Police and discovered the record of Mr. Bennett's stop by the [Maryland Transportation Authority] Police in March 2000.[3] The investigators then decided to interview Mr. Bennett in Colorado.
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> In January 2012, during the course of their interview with Mr. Bennett, [Lewis]'s name surfaced as a possible alibi witness. The police then interviewed [Lewis], also in Colorado, solely as a witness in connection with Mr. Bennett's case. Following these interviews, the State's Attorney charged Mr. Bennett with the murder and took steps to compel [Lewis] to come to Baltimore County to testify as a material witness in the case against Bennett.
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> As part of his plea agreement with the State, Mr. Bennett agreed to plead guilty and to testify truthfully about his role in the murder of Ms. Bernadzikowski. Mr. Bennett provided details of [Lewis]'s role in the murder. Based on this new information, police determined that [Lewis] was not simply a witness, but a suspect.

Lewis, 229 Md. App. at 92-95.

In 2014, an indictment was returned, by the Grand Jury for Baltimore County, charging Lewis with first-degree murder and conspiracy to commit murder. The matter

[3] Bennett had been found walking along a highway and was detained briefly by an MTA police officer. After he had been identified through the DNA match, a Baltimore County police detective discovered that there was a database entry of Bennett's 2000 encounter with the MTA.

proceeded to a jury trial. At that trial, Lewis testified on his own behalf, claiming that the entire scheme was an effort to deceive Cooke into believing that Bennett would murder Ms. Bernadzikowski (and, accordingly, paying them a deposit beforehand) but that Bennett would not actually commit the murder. We summarized Lewis' testimony as follows:

> After [Lewis] and Mr. Bennett watched a movie about assassins-for-hire, Mr. Bennett set up an online advertisement for "professional and discreet cleaning services." The idea was to gain employment from the ad, get paid, and then leave before actually committing any further crime. [Lewis] testified that the scheme "was basically a con."
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> After the ad was posted, Mr. Cooke contacted [Lewis] via email. The initial agreement with Mr. Cooke called for a complete payment of $40,000 with $20,000 to be paid as a deposit. Pursuant to the plan between [Lewis] and Mr. Bennett, Mr. Bennett was to travel to Baltimore, collect the deposit, return to Colorado, and then inform the authorities about Mr. Cooke. [Lewis] maintained there was never any intent to actually commit murder.
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> [Lewis] agreed that he purchased a ticket for Mr. Bennett to go to Baltimore. He also confirmed that Mr. Cooke sent him documentation and information about the victim, Ms. Bernadzikowski. Mr. Bennett then traveled to Baltimore and made contact with Mr. Cooke. [Lewis] testified that, at some point before the murder, he told Mr. Bennett to come home because the plan was not working. He also stated that Mr. Cooke contacted him before the murder to try and cancel the contract. Nevertheless, Mr. Bennett went ahead with the murder, informing [Lewis] only after he, Mr. Bennett, returned to Colorado. [Lewis] testified that he did not believe Mr. Bennett would actually complete the crime.

Id. at 95-96 (footnote omitted).

The jury found Lewis guilty of both charges, and the court imposed concurrent sentences of life imprisonment for first-degree murder and five years' imprisonment for conspiracy. After failing to overturn that result on direct appeal, Lewis filed a postconviction petition, which ultimately was granted in part and is the subject of this appeal. The postconviction court made the following rulings:

I. DEFENSE COUNSEL'S FAILURE TO REQUEST A "WITNESS PROMISED BENEFIT" JURY INSTRUCTION

The postconviction court observed that the State's principal witness at Lewis' trial, Bennett, had testified about his cooperation agreement with the State and concluded that a "witness promised benefit" jury instruction, based upon Maryland State Bar Association, *Maryland Pattern Criminal Jury Instruction* ("MPJI-Cr") 3:13 (MD. STATE BAR ASS'N, 2d ed. 2012), would have been given upon request. During the postconviction hearing, defense counsel acknowledged that, had either the court or the prosecutor suggested giving that instruction, he would have "said yes" because "it's a proper instruction." Opining that, in his view, "after a while the instructions go on," he did not "think [the jury] pay that close attention [to them]," defense counsel conceded that he did not "consciously" think about requesting the instruction but that, in any event, he made essentially the same argument to the jury. Focusing upon that concession by defense counsel, that he had not "consciously" thought about requesting the instruction, the postconviction court concluded that he had performed deficiently in failing to request the instruction.

As for prejudice, the postconviction court declared that merely because defense counsel had "argued in closing that Bennett's testimony should not be believed did not mitigate the error of the missing instruction, since jurors were instructed that arguments of counsel are not evidence." The postconviction court further found it "noteworthy" that the jury had "had difficulty reaching a unanimous verdict" as evidenced by notes it had sent to the court, "expressing their inability to come to an agreement on a verdict for all charges." The postconviction court therefore concluded that prejudice was established.

II. DEFENSE COUNSEL'S FAILURE TO REQUEST JURY INSTRUCTIONS ON "IMPLICATED LESSER OFFENSES"

The postconviction court ruled that because Bennett, the State's star witness, "agreed that the murder occurred as a result of a plot to steal money from individuals soliciting murders for hire," and Lewis testified that he and Bennett acted together to place the advertisement for "professional and discreet cleaning services" and sought to deceive the person responding out of his initial deposit, an instruction on second-degree felony murder, based upon felony theft, would have been warranted, "had [defense] counsel requested it." The postconviction court further ruled that the "scam" constituted an unlawful act sufficient to support a jury instruction on involuntary manslaughter, based upon an unlawful act, "had [defense] counsel requested one."

Then, relying upon *Keeble v. United States*, 412 U.S. 205 (1973) and *Hook v. State*, 315 Md. 25 (1989), the postconviction court determined that defense counsel acted deficiently in failing to request instructions on the lesser offenses. As for the notion that defense counsel had made a strategic decision in so doing, the postconviction court interpreted defense counsel's testimony, during the postconviction hearing, that he "wasn't going to consider" asking for such an instruction and that "it was not even in [his] plan," as proof that defense counsel "essentially conceded his lack of consideration of the option to request the instructions … to avoid the all-or-nothing scenario."

Regarding prejudice, the postconviction court cited what it characterized as "the jury's notes to the trial court indicating its conflict and hesitancy in agreeing on a verdict" and concluded that prejudice was established.

III. DEFENSE COUNSEL'S FAILURE TO OBJECT OR REQUEST A CURATIVE INSTRUCTION WHEN THE PROSECUTOR "MISCHARACTERIZ[ED]" THE LAW OF ACCOMPLICE LIABILITY

During closing argument at Lewis' trial, the prosecutor addressed the jury about accomplice liability, the theory underlying its case against him:

> Accomplice liability. This is an incredibly important concept for you folks to understand and it is my job to explain it to you. The judge read the Defendant may be guilty of murder as an accomplice even though he didn't personally commit each of the acts. In fact, the judge explained to you not all conspirators need to even be there. They don't have to be present. As long as you aided, counseled, commanded, encouraged. All this really means is a criminal teamwork. Accomplice liability is a fancy word for accomplice teamwork. For example, if I decide to go out and commit a bank robbery. I don't have a driver's license, I don't have a car. So I do the bank robbery. I'm successful. I run down the street and I got my bag of money. I'm waiting at the bus stop. Is that good plan? Absolutely not. So I decide you know what, I'm going to enlist a driver. I will get my colleague … to be the driver. He doesn't go in the bank. He doesn't know if I robbed a white teller, black teller, female teller, [male] teller. Has no idea. We get the bag of money, jump in the car and we get caught a block away. What is he guilty of, driving? No. Armed robbery. Everyone who is involved in a crime is equally liable. And there is a good reason for that. When you are committing inherently dangerous felonies, the legislature in Annapolis, as in all 50 states, said if you are going to commit an inherently dangerous felony, and you get a division of labor, get people to help you out, make it more likely that you succeed, everybody is guilty. All conspirators are guilty of the murder, not just the knife wielder.
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> Another way I like to explain this and maybe some of you are football fans, maybe that is cliché, but a couple years ago the Ravens won the Superbowl, right? Who got Superbowl rings, just the couple of people who scored? No, the entire team. The whole team won. Everyone involved is on the hook for the murder. The presence isn't even necessary. The fact that Grant Lewis didn't even leave Colorado should pay you no mind.
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> The judge explained this to you and she explained the law to you. And it is binding upon you. If he conspired, if he assisted, putting the post in the advertisement, him getting the plane ticket, him driving Bennett there, the communication between the parties, he is just as guilty as if he wielded the knife.

The postconviction court contrasted the prosecutor's closing argument with the pattern jury instruction on accomplice liability, which, among other things, requires that the defendant act "with the intent to make the crime happen." MPJI-Cr 6:00. The postconviction court concluded that the prosecutor's argument effectively "relieved [the State] of the burden of proving *mens rea*" and that, because defense counsel neither objected nor requested a curative instruction, he acted deficiently. As for defense counsel's assertions, during the postconviction hearing, that he did not believe that an objection to that argument would have been sustained nor that, had an objection been made and overruled, an appellate court would have reversed, the postconviction court declared that "[c]ounsel simply failed to recognize the error the State was making" and that defense counsel "was 'not thinking about appellate review.'"

As for prejudice, the postconviction court, though acknowledging that the trial court had correctly instructed the jury, in accordance with MPJI-Cr 6:00, concluded nonetheless that it was "reasonable to infer from the circumstances that the instruction's limited reference to the necessary intent left the jury in a position to be misguided by the State's erroneous assertions of the law" and that, therefore, prejudice was established.

DISCUSSION

We review a postconviction court's factual findings for clear error. *Newton v. State*, 455 Md. 341, 351 (2017). As for its legal conclusions, however, including mixed questions of law and fact (such as whether counsel was ineffective), we perform our own independent

appraisal, "re-weighing the facts in light of the law to determine whether a constitutional violation has occurred." *Id.* at 351-52 (cleaned up).

The Sixth Amendment to the United States Constitution guarantees the right to the effective assistance of counsel.[4] *State v. Thaniel*, 238 Md. App. 343, 360 (2018) (citing *Strickland v. Washington*, 466 U.S. 668, 685-86 (1984)). A claimed violation of that right, premised upon alleged ineffective assistance of counsel, comprises two elements: deficient performance and prejudice. *Id.* It is the petitioner's burden to prove both elements. *Id.* at 361.

Deficient performance means that counsel's performance "was objectively unreasonable 'under prevailing professional norms.'" *Id.* at 360 (quoting *Strickland*, 466 U.S. at 688). We assess "the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct." *Strickland*, 466 U.S. at 690. Our "scrutiny of counsel's performance must be highly deferential" and "begins with a 'strong presumption' that counsel 'rendered adequate assistance and made all significant decisions in the exercise of reasonable professional judgment.'" *Thaniel*, 238 Md. App. at 360 (quoting *Strickland*, 466 U.S. at 689-90). Once the petitioner identifies "the acts or omissions of counsel that are alleged not to have been the result of reasonable professional judgment," our task is to "determine whether, in light of all the circumstances, the

[4] Article 21 of the Maryland Declaration of Rights also guarantees the right to counsel. Lewis has not advanced any arguments to suggest that he is entitled to different or broader protection under Article 21 than he would be under the Sixth Amendment.

identified acts or omissions were outside the wide range of professionally competent assistance." *Strickland*, 466 U.S. at 690.

Prejudice is defined as "a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Id.* at 694. A "reasonable probability" means "a probability sufficient to undermine confidence in the outcome," *id.*, or, in other words, "that counsel's errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable." *Id.* at 687. Although a petitioner need not prove, by a preponderance of the evidence, that but for counsel's deficient performance, the outcome of his trial would have been different, he must show more than that counsel's "errors had some conceivable effect on the outcome of the proceeding." *Id.* at 693-94.

ANALYSIS

I. JURY INSTRUCTION ON "WITNESS PROMISED BENEFIT"

The State contends that the postconviction court erred in finding that defense counsel had been ineffective because he did not request a "witness promised benefit" jury instruction. The State points out that the trial court instructed the jury concerning the credibility of witnesses, in accordance with MPJI-Cr 3:10, and that it provided the jury with a written copy of all the instructions. Moreover, the State points out, the benefit Bennett received—a substantially reduced sentence, life imprisonment with all but 30 years suspended instead of life without the possibility of parole—was covered extensively during Lewis' trial, and defense counsel argued forcefully during closing argument that Bennett should not be believed, relying upon the "credibility of witnesses" instruction.

In *Preston v. State*, we held that a "witness promised benefit" instruction is not mandatory upon request, so long as the trial court gives the "general instructions on the credibility of witnesses," because the latter "ordinarily fairly cover the credibility concerns with witnesses who received a benefit." 218 Md. App. 60, 73-74 (2014), *aff'd*, 444 Md. 67 (2015).[5] In the instant case, the trial court gave the "general instruction" pursuant to MPJI-Cr 3:10. Because that instruction fairly covered the credibility concerns at issue in this case, defense counsel did not perform deficiently in failing to request the more particularized "witness promised benefit" instruction.

Moreover, given that there was repeated emphasis throughout the trial, from opening statement to closing argument, regarding the benefit Bennett received from his plea agreement and its potential to influence his testimony, we conclude that Lewis failed to prove that he suffered any prejudice. The postconviction court erred in concluding to the contrary.

II. JURY INSTRUCTION ON "IMPLICATED LESSER OFFENSES"

The State contends that the postconviction court erred in finding that defense counsel had been ineffective because he did not request an instruction on second-degree

[5] In affirming the judgment in *Preston*, the Court of Appeals held that the purported benefit at issue (protective housing for a State's witness) was not of the type that fell within the "witness promised benefit" instruction, and it therefore did not address our conclusion that the general credibility of witnesses instruction ordinarily fairly covers the issues addressed by the "witness promised benefit" instruction. 444 Md. at 104. Under these circumstances, we conclude that our holding in *Preston* is binding. *Cf. West v. State*, 369 Md. 150, 157 (2002) (holding that a reported opinion of this Court, where the Court of Appeals reverses or vacates the judgment "in its entirety" on another ground, "is not a precedent for purposes of *stare decisis*"). But even were we to assume that our *Preston* decision is merely persuasive authority, we see no reason to depart from it.

felony murder or involuntary manslaughter, choosing instead to pursue an "all-or-nothing" strategy. The State insists that Lewis failed to show either deficient performance or prejudice. As for deficient performance, the State contends that, even if defense counsel had requested jury instructions on second-degree felony murder and involuntary manslaughter, the trial court would have denied the request because those instructions were not generated by the evidence; and it further contends that defense counsel's "all-or-nothing" strategy was objectively reasonable and is entitled to deference. As for prejudice, the State contends that Lewis was not deprived of a fundamentally fair trial.

We need not consider whether a request for instructions on second-degree felony murder and involuntary manslaughter would have been granted, because it is clear that defense counsel's decision to pursue an "all-or-nothing" strategy was objectively reasonable and therefore not deficient performance. In *Hagans v. State*, the Court of Appeals considered whether a defendant could be convicted of an uncharged lesser included offense, which led it to address the related question whether a "trial court should, [on its own initiative], give a jury instruction on an uncharged lesser included offense." 316 Md. 429, 454 (1989). The Court of Appeals held that such a decision should be left to the parties and held that it was up to the defendant whether to seek a "compromise" verdict, by means of a lesser included offense instruction, or to pursue an "all or nothing" strategy. *Id*. That is precisely what happened here.

We assess "the reasonableness of counsel's challenged conduct on the facts of the particular case, viewed as of the time of counsel's conduct," *Strickland*, 466 U.S. at 690, while bearing in mind "that counsel is strongly presumed to have rendered adequate

assistance and made all significant decisions in the exercise of reasonable professional judgment." *Id.* At the time defense counsel decided on an "all-or-nothing" strategy, he knew that Lewis was not a principal in the first degree (and in fact was not even in Maryland at the time of the murder); that an "all-or-nothing" strategy was fully consistent with Lewis' statements to police and expected testimony; and that there was no evidence that Lewis ever received any money from Cooke. Under these circumstances, we disagree with the postconviction court that defense counsel's strategy was unreasonable.

Moreover, the postconviction court gave little significance to defense counsel's testimony at the postconviction hearing, that he "didn't want to argue" that Lewis was "guilty of manslaughter or second degree murder," because such an argument would dilute his case by weakening his contention throughout trial that Lewis had no part whatsoever in causing the victim's death. Merely because defense counsel testified that requesting jury instructions on lesser offenses was not something he was "going to consider" and "was not even in [his] plan" does not mean, as the postconviction court found, that his testimony "reflected a complete failure to consider the option of requesting jury instructions on lesser offenses." We hold that defense counsel did not perform deficiently in pursuing an "all-or-nothing" strategy.

III. CURATIVE INSTRUCTION ON ACCOMPLICE LIABILITY

The State also contends that the postconviction court erred in finding that defense counsel had been ineffective in failing to object to, or request a curative instruction for, the prosecutor's closing argument regarding accomplice liability. According to the State, the prosecutor did not misrepresent the law of accomplice liability; defense counsel did not

perform deficiently in failing either to object or request a curative instruction; and Lewis did not, in any event, prove prejudice.

We begin by noting that the prosecutor did not make any affirmative misrepresentation of the law of accomplice liability. At most, the prosecutor merely implied rather than stated the element of *mens rea*. More importantly, it is undisputed that the trial court correctly instructed the jury as to the law of accomplice liability and, furthermore, correctly instructed the jury that "opening statements and closing arguments of the lawyers are not evidence" but are "intended only to help you understand the evidence and to apply the law." Moreover, defense counsel, in closing argument, after the prosecutor's purportedly inaccurate statements, expressly (and correctly) told the jury that, to convict Lewis as an accomplice, "the State must prove the murder occurred, which they did, and the Defendant with the intent to make the crime happen knowingly aided, counseled, commanded[,] or encouraged the commission of the crime."

Given the settled law that, in closing argument, counsel is afforded "wide latitude to engage in rhetorical flourishes and to invite the jury to draw inferences," *Ingram v. State*, 427 Md. 717, 727 (2012), and that the "permissible scope of closing argument is a matter left to the sound discretion of the trial court," *Hunt v. State*, 321 Md. 387, 435 (1990), we agree with defense counsel's assertion that an objection to the prosecutor's remarks would have been futile because it likely would not have been sustained. Moreover, defense counsel's own closing argument, in response to the prosecutor, reminding the jury of the State's burden to prove the *mens rea* of his client, cured any possible misunderstanding that may have been caused by the prosecutor's remarks about the law of accomplice

liability. We hold that defense counsel did not perform deficiently in declining to challenge the prosecutor's characterization of accomplice liability. And, in any event, even were we to assume, for the sake of argument, that defense counsel performed deficiently in this regard, no prejudice resulted, given that the trial court correctly instructed the jury about accomplice liability.

Lewis failed to demonstrate that his defense counsel performed deficiently. Moreover, even if he did, he failed to show that he was prejudiced by any failures of counsel. As such, we reinstate the judgment against him, but we will remand the case to the postconviction court for it to consider only the twelve additional postconviction claims it did not substantively resolve.[6]

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE COUNTY VACATED. CASE REMANDED TO THAT COURT FOR FURTHER PROCEEDINGS CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLEE.

[6] In its Statement of Reasons and Order, the postconviction court identified the additional twelve claims but, as to their merits, merely denied them as either "moot or lacking merit" without further explanation and without delineating which were denied as without merit and which were denied as moot. On remand, the post-conviction court should conduct any proceedings it deems appropriate and then resolve the twelve claims in a statement of reasons and order pursuant to Rule 4-407 (requiring the postconviction court to resolve each issue separately, detailing the federal and state rights involved, the court's ruling with respect to each, and the reasons for that ruling).