Circuit Court for Prince George's County
Case No. CT18-0108X

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 158

September Term, 2019

THURMAN RUFUS WATSON

v.

STATE OF MARYLAND

Meredith,
Nazarian,
Wells,

JJ.

Opinion by Wells, J.

Filed: March 24, 2020

The State alleged that Thurmond Watson held himself out to the public as a physician who could provide his patients with, among other things, weight loss treatments. One such "patient," A.A.,[1] alleged that Watson sexually assaulted her during a supposed medical examination in his home-office. After a four-day trial in the Circuit Court for Prince George's County, a jury convicted Watson of second-degree sexual offense, practicing medicine without a license, and misrepresentation as practitioner of medicine. The court sentenced Watson to 20 years' incarceration and suspended all but eight years. The court also ordered him to register as a sex offender.

Watson appeals his convictions and raises six allegations of error which we have re-phrased for clarity:[2]

1. Did the circuit court err in denying Watson's motion to suppress evidence seized during the execution of an administrative search warrant?

2. Did the circuit court err in failing to dismiss the indictment due to the State's alleged violation of Watson's attorney-client privilege?

3. Did the circuit court err in excluding Watson's medical expert from testifying?

[1] For her privacy, we identify the victim by her initials as a married woman at the time of trial. In its brief, the State used the initials "A.B.," reflecting A.A.'s maiden name.

[2] Watson's verbatim questions are:

1. The trial judge erred by denying appellant's motion to suppress evidence that was beyond the scope of an administrative search warrant for his home, where the Board of Physicians investigator photographed devices that [the investigator] admitted were not 'medical equipment' and were not found within appellant's 'office space' as well as a mailing envelope that did not constitute a 'professional and/or occupational credential,' as particularized in the warrant.

(continued)

4. Did the circuit court err in permitting the State to read into evidence the victim's written account of the assault as a past recollection recorded?

5. Did the circuit court err in admitting into evidence, over Watson's objection, a photograph of an envelope addressed to "Dr. Watson?"

6. Did the circuit court err in allowing the State to make a "golden rule" argument during its closing?

For the reasons stated below, we perceive no reversable error and affirm the convictions.

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2. The trial judge erred in denying the defense's motion to dismiss indictment based on the state's violation of the attorney-client privilege, where the judge: (A) wrongly placed the burden on appellant to prove that he was prejudiced by the violation; (B) declined to review 31 attorney-client emails from which the state allegedly derived information about appellant's defense; and (C) refused to issue a subpoena for Dr. Carla Harwell, who disclosed to the state the contents of attorney-client emails that were accessed without appellant's authorization.

3. The trial judge erred in precluding the defense's medical expert from testifying on the ground that the defense did not furnish to the state certain records concerning her treatment of appellant.

4. The trial judge erred in admitting the complaining witness's written statement as a past recollection recorded, where the witness's testimony did not reflect that her present recollection could not be refreshed and her prior statement concerned almost entirely matters about which she did not indicate a lack of a present recollection.

5. The trial judge erred by admitting in evidence a mail package that identified appellant as a doctor even though the prosecutor conceded that the sender mistakenly listed appellant as "Dr." and that appellant did not hold himself out as a physician to the sender.

6. The prosecutor's closing argument improperly appealed to the jury's sympathy and empathy for the complaining witness and her family.

(continued)

BACKGROUND

At trial, A.A., an enlisted member of the United States Army, testified that she was introduced to Thurmond Watson by his daughter, Brooke Watson. A.A., Brooke, and Watson were all members of a nation-wide marketing and sales organization. A.A. testified that this close-knit organization treated its members "like family." A.A. said that she trusted Watson because he was known throughout the organization as "Doctor" and seemed to know everyone.

One day, A.A. received a mass email from Watson in which he promoted naturopathic weight loss strategies.[3] Curious and wanting to try these treatments, A.A. made an appointment to see him. A.A. testified that she was under the impression she would be doing a "magnetic treatment, a saliva exam, and a BMI exam"[4] with Watson at his home office, located in Oxon Hill.

A.A. testified that on the day of the appointment that after waiting in a reception area, filling out a questionnaire, and spending ten minutes upside down on a machine, Watson asked her to change into a hospital gown. Watson next put A.A. on a machine that, she testified, shook her for ten minutes. Afterward, he instructed A.A. to lie on a massage

[3] Naturopathy may be defined as, "a system of treatment of disease that avoids drugs and surgery and emphasizes the use of natural agents (such as air, water, and herbs) and physical means (such as tissue manipulation and electrotherapy)." https://cutt.ly/btkyyhe.

[4] Body Mass Index (BMI) is a person's weight in kilograms divided by the square of height in meters. A high BMI can be an indicator of high body fatness. BMI can be used to screen for weight categories that may lead to health problems, but it is not diagnostic of the body fatness or health of an individual. https://cutt.ly/wtkyiZR.

table and covered her eyes with a sleep mask. As A.A. lay face down on the table, she testified,

> I was lying on the bed of the massage thing and it was like – it was like he was putting his crotch in my head. I didn't see the machine, but the machine felt like it had three things, and it was going in my skin with some stink oil.

Watson asked A.A. to turn over so she was lying face up. The next thing that A.A. recalled was that Watson moved a vibrating device over the surface of her body. At some point, according to A.A., he pushed the machine partially into her vagina. Although she was in distress and tried to sit up, A.A. said that Watson put his left elbow (or hand) on her stomach to prevented her from moving. A.A. also noted that Watson was sweating profusely and "stank." Toward the end of the encounter, A.A. testified that Watson wiped something off the right side of her body. She did not know what Watson wiped away because her eyes were covered. A.A. speculated that it was semen, although she admitted that she did not know if Watson had ejaculated or whether it was sweat that hit her body.

When she left Watson's office, A.A. recounted that she was confused and crying. At that time, she received a phone call from the father of one of her children and told him that something upsetting had just happened. On cross-examination she admitted that she might not have told him that Watson sexually assaulted her. But she added that it is possible that she told him more details later. Nonetheless, A.A. testified that a few hours after the encounter, she confided her unease about what had happened to her Army co-workers, one of whom was an "assault response coordinator," and another of whom was a victim advocate. They encouraged A.A. to report the incident to the civilian police. She

did. Ultimately, A.A. went to Mercy hospital in Baltimore for a forensic medical examination and, later, gave the Prince George's County police a written statement of what transpired in Watson's office. The police opened a criminal investigation.

A few months after A.A.'s encounter, in a different case, the Maryland State Board of Physicians ("the Board") opened an investigation against Watson for allegedly practicing medicine without a license. In that case, an oncologist complained to the Board that a patient, T.L., had stopped life-saving cancer treatments because of Watson's intervention.[5] According to Nancy Louthan, a Board investigator, the oncologist called Watson and engaged in a "heated" conversation with him regarding the medical care of T.L.. Suspecting that Watson was not a licensed physician, the oncologist reported Watson to the Board. The Board then launched an investigation and determined that although Watson claimed he was a physician, he held no license to practice medicine in Maryland or anywhere else.

The Office of the Maryland Attorney General subsequently prosecuted Watson for the sexual assault on A.A., and for practicing medicine without a license. A jury heard the evidence and found Watson guilty of second-degree sexual offense against A.A., practicing medicine without a license, and misrepresentation as practitioner of medicine. The court

[5] Again, because of the sensitive nature of the case, we refer to this person only by her initials. T.L. later died from breast cancer.

sentenced Watson to an aggregate sentence of 20 years but suspended all but eight years' incarceration and ordered him to register as a sex offender.

Additional facts will be discussed as necessary.

DISCUSSION

I. The Motion to Suppress the Fruits of an Administrative Search Warrant

Watson argues that the circuit court erred in denying his motion to suppress tangible evidence the Board's investigators seized from his home-office during the execution of an administrative search warrant. The challenged evidence consists of three items: a photograph of a vibrator, (State's trial exhibit 5), a photograph of a "big box of vibrators, massage tools, and magneton," (State's trial exhibit 6), and a photograph of an envelope addressed to "Dr. Watson," (State's trial exhibit 15).[6] Watson argues that in taking these photographs the investigators exceeded the administrative search warrant's scope.

The State argues, preliminarily, that Watson waived any objection to State's exhibits 5 and 6 by stipulating to their admission at trial. According to the State, at trial, Watson's counsel stated that, "The only thing I have issues with is State's 15 [the mailing label addressed to "Dr. Watson"]." Consequently, any challenge to State's exhibits 5 and 6 have been waived. Regardless, the State asserts that all three photographs fell within the scope of the warrant.

[6] We note that some exhibits had different motions exhibit numbers. For ease of reference to the exhibits in the record we refer here only to their trial exhibit numbers.

"In reviewing the ruling on a motion to suppress evidence, we consider only the evidence contained in the record of the suppression hearing." *Garcia-Perlera v. State*, 197 Md. App. 534, 552 (2011) (*quoting Bost v. State*, 406 Md. 341, 349 (2008); *Rush v. State*, 403 Md. 68, 82-83 (2008)). "In making our ruling, we 'review the evidence and the inferences that may be reasonably drawn in the light most favorable to the prevailing party' in this case, the State – but we 'do not engage in *de novo* factfinding.'" *Id*. (*quoting Bost*, 406 Md. at 349; *Haley v. State*, 398 Md. 106, 131 (2007)). "Instead, we "extend great deference to the findings of the motions court as to first-level findings of fact and as to the credibility, unless those findings are clearly erroneous."'" *Id*. (*quoting Padilla v. State*, 180 Md. App. 210, 218 (2008); *Brown v. State*, 397 Md. 89, 98 (2007)). "However, 'we make our own independent appraisal as to whether a constitutional right has been violated by reviewing the law and applying it to the facts of the case.'" *Id*. (*quoting Padilla*, 180 Md. App at 218; *See also Crosby v. State*, 408 Md. 490, 504 (2009); *State v. Williams*, 401 Md. 676, 678 (2007)).

The Fourth Amendment to the United States Constitution commands that, "[n]o warrants shall issue, but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized." U.S. Constitution, amend. IV. The Fourteenth Amendment makes the Fourth Amendment's warrant restrictions applicable to the states. *Garcia-Perlera*, 197 Md. App. at 552-53 (*citing Waters v. State*, 320 Md. 52, 56-57 (1990); *Mapp v. Ohio*, 367 U.S. 643,

655 (1961); *see also* Article 26 of the Maryland Declaration of Rights; *Frey v. State*, 3 Md. App. 38, 46 (1968)).

The State's waiver argument rests on Watson's stipulated entry of State's exhibits 5 and 6 at trial, rather than the motions hearing. In determining whether the court committed error in denying Watson's motion to suppress is binding at trial and is reviewable on appeal, we examine the motions court's ruling, instead of what transpired at trial. Here, Watson properly moved to suppress the three photographs at issue at a suppression hearing, therefore we will consider his claims. *Garcia-Perlera*, 197 Md. App. at 522.

The intent of the scope requirement found in the Fourth Amendment is to assist law enforcement officials by ensuring they only seize the items that are identified in the warrant, including administrative warrants such as the one here, and exclude items that are not the subject of the warrant. *Id*. at 553 (*citing Andresen v. Maryland*, 427 U.S. 463, 480 (1976) (internal citations omitted). In *Feaster v. State*, 157 Md. App. 202 (2012) we discussed the "twin problems" found in the Fourth Amendment itself, namely, (1) the State's intrusion and (2) the scope of warrant. Judge Moylan explained:

> The first two requirements—1) that the warrant be based "upon probable cause" and 2) that the probable cause be "supported by oath or affirmation"—are part of the justification for the initial intrusion. The third requirement—"particularly describing the place to be searched and the persons or things to be seized"—then circumscribes the scope of what may be done pursuant to that warrant, even granting that it was properly issued. **The purpose of the particularity clause and of scope limitations generally is to make certain that even a search that begins reasonably does not degenerate into a fishing expedition or a general "rummaging about."**

Id. at 227-28 (emphasis added).

Here, the search warrant, in pertinent part, stated:

> YOU ARE HEREBY COMMANDED, through your agents, Nancy Louthan and Dana Mullen, with necessary and proper assistance from a law enforcement officer, in the day, during business hours, to enter the aforementioned premises, within 30 days, to:
>
> A. Photograph any office space, examination room and medical equipment.
> B. Seize patient record (sic) for [T. L.].
> C. Seize list (sic) of any and all patients.
> D. Seize any and all patient logs.
> E. Seize any and all patient medical records.
> F. Seize any and all lists of employees.
> G. Photograph any and all medical products for sale, including but not limited to, magnets and supplements.
> H. Photograph any and all professional and/or occupational credentials.

The warrant described the premises to be search as:

> 2308 Norlinda Ave., Oxon Hill, Maryland 20745. The house is owned by Thurman R. Watson. The house is a two-story frame house with a carport.

A judge signed the warrant on August 22, 2015. On September 1, 2015 Louthan and an associate, Dana Mullen, executed the warrant at Watson's home-office.

At the motions hearing, Watson's counsel argued that the photographs, marked in the record as State's exhibits 5, 6, and 15, exceeded the scope of the warrant. The State argued, regarding exhibits 5 and 6, that the investigators took the photographs because the items depicted could be medical devices as they were located with other items of a clearly medical nature. Significantly, the items were located in or near the rooms where A.A. alleged she was assaulted. State's exhibit 15, the mailing label addressed to "Dr. Watson,"

the State argued, was evidence relevant to prove the other charges in the complaint, namely, that Watson held himself out to the public as a medical doctor.

After hearing testimony from Louthan and considering counsels' arguments, as to State's exhibits 5 and 6, the court said:

> The point is, if this is the room where the table is, she's testified, this is the same room with the table. And you have these two devices that are on top of this with other medicine and other doctor treating-type things. It's not gauze, and alcohol, and – meaning rubbing alcohol, I guess it looks like, or something of that nature, and it looks like some pill bottles, and some other creams –
>
> ***
>
> -- and wraps, and things of that nature.
>
> ***
>
> These are mixed in within it. I would think that if they saw something else laying some place else, then it's similar in nature to it.

Watson's counsel and the court then engaged in a lengthy colloquy as to whether the photograph of the vibrator and the photograph of the other vibrators and magnetons were "medical devices" within the scope of the search warrant.

The court concluded that even if the vibrators might not be "medical devices" in the strictest sense, they were located in the room where A.A. said the sexual assault occurred. And because these items were located there and might be evidence of the sexual assault, the court concluded that the photographs should not be suppressed.

> Where these alleged vibrators, or whatever they are, is on the medical – is on the table with the rest of the medicines and everything else. And because of

> that, I think that [the photo of the vibrator] will be within the scope of the warrant because these things were located there, in that same room.
>
> So I would say that [the photo of the vibrator] would be within the scope of the warrant to be covered under medical equipment, because he is not a doctor. So these things are on the medical table, and then they see the same type of device in this other drawer. I think its within the search warrant realm of what it was asking for, so I'm going to admit [the photo of the vibrator].

As for State's exhibit 15, the mailing label addressed to "Dr. Watson," the State argued that Watson was on the mailing list for a supply company and was, apparently, known to them as a physician. The State reasoned, that if Watson was not holding himself out as a physician, there was nothing to indicate he never corrected the mistake. In fact, the State noted that there were other invoices that showed that others knew Watson as "doctor," providing additional proof of the State's claim.

In reply, Watson argued that simply because someone thought he was a doctor that did not mean he was actively deceiving people into thinking that he was. Furthermore, Watson argued that the mailing label did not qualify as "a credential" within the meaning of command clause of the search warrant.

After considering these arguments, the motions court ruled that the mailing label was admissible. The court reasoned that with the other items found in the home-office, such as framed certificates, it could be considered a "credential" within the broad meaning of the command clause of the warrant.[7]

[7] Watson specifically assigns error to the court's admission of this document. We also will address it in section V of this opinion.

We conclude that with regard to State's exhibits 5 and 6, the vibrators and magnetons that were found in or near the "examination room" in Watson's home-office, these items were "medical equipment" because Watson offered naturopathic treatments using precisely the items photographed: magnets and vibrators. More importantly, even though she did not see them, these devices seem to be consistent with the type of devices A.A. said Watson used during their encounter. While State's exhibit 5, a photograph of a box of vibrators, was found in a bedroom, we determine that the warrant's scope included that part of the house because the evidence suggested Watson was using that area of the house for his naturopathic treatments. Further, we do not disagree with the motions court when it reasoned that Louthon saw that the items depicted in State's exhibits 5 and 6 appeared with other "medical" items such as gauze, rubbing alcohol, and what appeared to be pills, which might be found in any legitimate medical doctor's office. For these reasons, we determine that the trial court did not abuse its discretion in admitting the photographs of these items.

With regard to the mailing label addressed to "Dr. Watson," we reserve discussion of this exhibit for Section V of this opinion. At this juncture, because we are discussing the scope of the warrant, we will say that the investigators properly photographed the label as it clearly demonstrated that someone considered Watson to be a physician. The item could therefore be considered evidence of his credentials. Photographing a piece of evidence that could infer Watson's alleged deception was within the scope of the warrant.

As Watson also raises a separate claim of evidentiary relevance, we will address that issue later in this opinion.

II. An Alleged Breach of the Attorney-Client Privilege

Watson's allegation of a violation of the attorney-client privilege arises in the context of three cases. In June 2018, the time of the trial involving A.A., Watson was also facing criminal charges involving his former client, T.L., who died of breast cancer. Additionally, Watson was embroiled in an acrimonious divorce with his wife. Watson's allegation that the State breached the attorney-privilege touches on these three cases.

According to a proffer from Watson's attorney at the motions hearing, at some point in June 2018 Watson could not access his email account because he could not remember the password. Watson asked his daughter, Brooke, to send him a code so that he could access his email. Brooke gave Watson the access code and she also read Watson's email. According to Watson's counsel, Brooke did so because she was not happy with her father over the breakup of his marriage with Brooke's mother, Brenda Watson. According to counsel, Brooke looked at her father's email to make sure he was treating her mother fairly. Brooke then "cut and pasted" parts of email that she felt were inappropriate, including parts of correspondence from Watson to trial counsel, and forwarded them to her aunt, Dr. Carla Harwell of Columbus, Ohio. Harwell is Brenda Watson's sister.

According to the State's proffer, Harwell, herself a physician, had long taken issue with Watson and his work as a naturopath. Harwell's professional disagreements with Watson were exacerbated because of her sister's divorce. After communicating with

Brooke and obtaining the email, Harwell forwarded them to Richard Wolf, an investigator with the Criminal Division of the Maryland Attorney General's Office. Later, Wolf wrote a memorandum in which he related how Harwell obtained the emails, and noted Watson's apparent admission that he may have "crossed the line" with T.L. With regard to A.A., Wolf's memorandum stated:

> Harwell also related Watson referring to "A.A.," stating he had "only weighed her," and utilized common methods. He also said [A.A.] placed her hand on his knee at a meeting in Baltimore, adding [A.A.] was also "flirty" and kissed him.

During the conversation with Wolf, Harwell also told him that "some of the emails referred to, or were with, unnamed attorney or attorneys (sic)." According to the State, Wolf then immediately ended the conversation.

At the request of the Assistant Attorney General who was prosecuting A.A.'s case, Wolf met with Brooke to determine what she might know about Watson's naturopathy practice. At the meeting, Brooke turned over to Wolf copies of the email she sent to Harwell. According to the State's proffer, Wolf did not review the email or ask Brooke about them. Instead, Wolf sealed the email in an envelope and both he and Brooke signed over the seal. The State disclosed the existence of the emails to the defense on August 7, 2018 and gave the sealed envelope to the court on August 30th. Watson then moved to dismiss the indictment and to disqualify the prosecutor. Watson also requested the court issue a certification to an Ohio court to summons Harwell to come to Maryland to testify.

At the motions hearing, all of the information just discussed was related to the court. Brooke and Wolf were called as witnesses but invoked their Fifth Amendment privileges against self-incrimination and declined to testify. Then, without objection from either counsel, *in camera*, the court unsealed the envelope that Wolf created and reviewed its contents. The court declined to review the several dozen emails between Watson and his counsel. The court only reviewed the "cut and paste" excerpts from which Brooke created the email she sent to Harwell and compared them to Wolf's memorandum.

After its *in camera* review, the court reported that the only similarity between Brooke's email and Wolf's memorandum that had any relevance to A.A.'s case was the similarity between Watson's use of the word "flirtatious" in an email to counsel and Wolf's use of the word "flirty" in his memorandum.[8] Ultimately, the court found that any information the State learned would not prejudice Watson as to the ultimate determination of guilt because none of the witnesses who knew about the emails would be testifying at trial and the information in the emails, aside from Watson calling her "flirtatious," did not bear on A.A. and were, therefore, irrelevant. As a result, the court denied both the motion to dismiss and the motion to disqualify the prosecutor. The court also declined to certify a summons to compel Harwell to appear, finding that Harwell would likely invoke her Fifth Amendment privilege if summonsed to testify.

[8] The court also found the references Watson made about T.L. were similar in Wolf's memorandum.

We review denials of motions to dismiss for an abuse of discretion. *State v. Lee*, 178 Md. App. 478, 484 (2008). Likewise, we review denial of requests to disqualify counsel for abuse of discretion. *Gatewood v. State*, 388 Md. 526, 540 (2005) (question of whether to disqualify prosecutor (and their entire office) or dismiss indictment "is left to the sound discretion of the trial judge who is upon the scene and able to sense the nuances of that before him.") (quoting *Lykins v State*, 288 Md. 71, 85 (1980)).

Watson avers that with the pilfered emails, the State obtained his trial strategy. As a result, Watson's trial counsel demanded the court dismiss the indictment or, alternately, disqualify the prosecutor. On the other hand, the State claimed no breach of the attorney-client privilege occurred. It asserts that even if its agents learned some information from Watson's emails, for example that he and A.A. were both part of the same marketing group, these were insignificant and well-known facts compared against the evidence adduced at trial to prove that he sexually assaulted A.A. Furthermore, to allay any adverse effects from the possible disclosure of privileged information, the State declined to call any of the witnesses, Brooke, Harwell, or Wolf, who knew about the emails. In the State's opinion, even if the State learned something privileged, the jury never heard it, therefore, Watson suffered no prejudice.

The attorney-client privilege is "based upon the public policy that an individual in a free society should be encouraged to consult with his attorney whose function is to counsel and advise him and he should be free from apprehension of compelled disclosures by his legal advisor." *100 Harborview Drive Condominium Council of Unit Owners v.*

Clark, 224 Md. App. 13, 55 (2015) (citations omitted). Further, we have consistently stated that the attorney-client privilege "is a rule of evidence which prohibits the disclosure of the substance of a communication made in confidence by a client to his attorney for the purpose of obtaining legal advice." *Catler v. Arent Fox, LLP*, 212 Md. App. 685, 702 (2013); *Blair v. State*, 130 Md. App. 571, 605 (2000). The Court of Appeals, adopting Professor Wigmore's definition, articulates the eight parts of the attorney-client privilege as:

> 1) Where legal advice of [any] kind is sought (2) from a professional legal adviser in his capacity as such, (3) the communications relating to that purpose, (4) made in confidence (5) by the client, (6) are at his insistence permanently protected (7) from disclosure by himself or by the legal adviser, (8) except the protection [may] be waived.

Peterson v. State, 444 Md. 105, 159 (2015) (citing *Greenberg v. State*, 421 Md. 396, 409 (2011)).

If the privilege is raised, the court's task is to determine under the circumstances presented whether the privilege, in fact, exists as a matter of law, and if so, whether any communications are privileged. *100 Harborview Drive*, 224 Md. App. at 55. The party asserting the privilege bears the burden of proving its application to the facts of the case. *Id*. "Although the court makes a legal determination about the existence of a protective privilege, ... [it] makes a factual determination with respect to satisfaction of the burden." *Catler*, 212 Md. App. at 702–03, (citation omitted), *reconsideration denied* (Sept. 3, 2013), *cert. denied sub nom. Blumberg v. Fox*, 435 Md. 502 (2013). If the person asserting the privilege has met their initial burden, then that "person may not be compelled to testify in violation of the attorney-client privilege," and this prohibition extends to bar the compelled

production of privileged documents. See, e.g., *Ashcraft & Gerel v. Shaw*, 126 Md. App. 325, 350–51 (1999).

Preliminarily, the State posits that Watson waived the client privilege by sharing his email account with Brooke. We dismiss this claim as it is clear from the factual proffers from Watson's trial counsel and the prosecutor that Watson did not make available his email account to Brooke. We find *Elkton Care Center Associates Ltd. Partnership. v. Quality Care Management, Inc*., 145 Md. App 532 (2002), which the State favorably cites, to be inapposite to these facts. There, the question was whether appellant, the owner of a nursing home, inadvertently disclosed attorney-client communications to appellee, the management company of the facility, during litigation over the latter's alleged breach of contract. *Id*. at 535-37. In discovery, counsel for the nursing home turned over a box of documents that contained a memorandum from its counsel that bore the legend: "ATTORNEY CLIENT PRIVILEGE…PREPARED IN ANTICIPATION OF LITIGATION." *Id*. at 537. The memorandum concerned what action the nursing home should take in the event of a wrongful termination lawsuit like the one pending. *Id.*

In what we saw as a case of first impression, we considered whether the privilege may be lost by inadvertence. After reviewing various authorities and precedent from other jurisdictions we concluded that a "sensible" "middle" test between a "strict" and "lenient" or "no waiver" analysis was appropriate. *Id*. at 545. We delineated five factors for a court to review to determine if waiver of the privilege occurred by inadvertence:

> (1) the reasonableness of the precautions taken to prevent inadvertent disclosure in view of the extent of the document production; (2) the number of inadvertent disclosures; (3) the extent of the disclosure; (4) any delay and measures taken to rectify the disclosure; and (5) whether the overriding interests of justice would or would not be served by relieving a party of its error.

Id. We concluded that because the nursing home there inadvertently included the memorandum in a box of documents it sent to opposing counsel and opposing counsel had the memorandum tabbed and submitted to the nursing home to be copied, the latter had ample opportunity to assert the privilege, but did not. *Id*. at 547-48. Further, we held that the nursing home did not take timely action to rectify the disclosure. *Id*. All factors strongly favored waiver. *Id*.

Here, Watson did not mistakenly give Brooke his email, but only asked her for a means to access his email account. He did not tacitly permit her to review his email. Unlike the inadvertent disclosure in *Elkton Care*, Brooke's actions involved a calculated trespass, rather than happenstance or inadvertence. Indeed, Watson prosecuted his daughter in the District Court for surreptitiously accessing his email account. While the outcome of that case is unknown, it underscores that Watson saw his daughter's transgression as a deliberate act against him. Moreover, unlike the attorneys in *Elkton Care*, Watson's counsel immediately notified the court that he feared that the privilege had been breached once he learned that the email was in the hands of the Attorney General's investigator. For these reasons, we conclude that Watson did not inadvertently waive his attorney-client privilege.

We now consider the merits of Watson's claim. After counsels' proffers and argument, the court found that the State had in its possession communications that likely implicated the privilege. The court then conducted an *in camera* review of Watson's email and compared them to the memorandum that the prosecutor's investigator drafted after reviewing the same email. The court found only one relative match: a derivation of the word "flirt" in Watson's correspondence and Wolf's memo. However, the court found that one similarity "was not corroborated by anything." Consequently, the court determined that Watson had not met his burden of demonstrating that the State breached the privilege. *Catler*, 212 Md. App. at 702–03. Further, the court noted that the parties were all family members who were in regular communication with each other, rather than parties with distinctly adverse interests. We agree with this analysis and conclude that the use of a derivation of "flirt" does not constitute proof of a breach of the attorney-client privilege. Consequently, we determine the court properly exercised its discretion when it declined to dismiss the indictment or remove the prosecutor.

Likewise, we concur with the circuit court's decision not to summons Harwell to Maryland from Ohio. Recall that Watson filed criminal charges against Brooke for obtaining his email. At the time of trial, that case was still pending. At the hearing, Watson called Brooke and Wolf as witnesses. At the court's direction, Brooke and Wolf consulted with attorneys from the Office of the Public Defender before they testified. Afterwards, both asserted their rights against self-incrimination and declined to testify.

In declining to issue a certification for a summons the court noted that since Brooke and Wolf invoked the Fifth Amendment's protection against self-incrimination, Harwell was likely to do the same thing.

> THE COURT: [T]he reason I am saying that I would not is…[t]here is a possibility if [Harwell's] going to come, she's going to do the same thing, invoke the Fifth Amendment. I'm not going to waste resources and have her come here just to do that because based on what I've read…she could be facing criminal prosecution as well.

We conclude that the judge's decision, under the circumstances, was not "removed from [the] center mark" nor "beyond the fringe of what [we] deem[] minimally acceptable" to constitute an abuse of discretion. *North v. North*, 102 Md. App. 1, 14 (1994). Consequently, we hold that the circuit court did not err in declining to certify a summons for Harwell.

III. The Motion to Exclude Watson's Medical Expert

The State anticipated A.A. would testify that immediately after Watson sexually assaulted her, and as she still lay blindfolded on an examination table, A.A. felt something wet on her arm. She speculated it was semen, though she did not know for certain, as Watson immediately wiped her arm with a towel. To rebut A.A.'s testimony, Watson wanted to call Dr. Cynthia Crawford-Green, his cardiologist, to testify that Watson suffered from erectile disfunction and could not ejaculate.

At a hearing convened before trial, Watson provided the court with uncertified documents from Dr. Crawford-Green that showed that Watson treated with her for heart problems from 2002 to 2018. One report from Dr. Crawford-Green noted that Watson's

testosterone level was below normal. And as a result of a procedure she used to treat Watson for prostate cancer in 2004, he lacked the ability to ejaculate.

The State moved to exclude Dr. Crawford-Green's testimony arguing that Watson failed to comply with Maryland Rule 4-263(e)(2), regarding the defense's obligation to disclose expert testimony it intends to use at trial.[9] Furthermore, the State argued, the reports of Dr. Crawford-Green, a cardiologist with whom Watson who treated sporadically, were not probative of whether Watson suffered from erectile dysfunction in 2015, the time of the alleged sexual assault on A.A.

Watson countered that his urologist, Dr. Andrew Chang, was not available to testify. He argued that Dr. Crawford-Green was available and could testify. More importantly,

[9] The Rule, in pertinent part, states:

> (e) Disclosure by Defense. Without the necessity of a request, the defense shall provide to the State's Attorney:
>
> (2) Reports or Statements of Experts. As to each defense witness the defense intends to call to testify as an expert witness:
>
> (A) the expert's name and address, the subject matter on which the expert is expected to testify, the substance of the findings and the opinions to which the expert is expected to testify, and a summary of the grounds for each opinion;
>
> (B) the opportunity to inspect and copy all written reports or statements made in connection with the action by the expert, including the results of any physical or mental examination, scientific test, experiment, or comparison; and
>
> (C) the substance of any oral report and conclusion by the expert.

Watson argued that Maryland Rule 4-263(e)(2) was not triggered because Dr. Crawford-Green "did not prepare a written report or statement 'in connection with the action.'" On these bases, Watson asserts the court erred in excluding her testimony.

The court found that Watson did not make a timely disclosure to the State under Maryland Rule 4-263(e)(2). Additionally, the court found that as Watson was being treated by a urologist, if permitted to testify, Dr. Crawford-Green would only be relying on the urologist's treatment records in forming her opinion that Watson suffered from erectile dysfunction. The court decided that Dr. Crawford-Green could not offer an opinion on a subject in which she was not an expert.

> THE COURT: Then it would make sense if the urologist would be the expert, not the cardiologist. If he's regularly seeing a urologist is what it sounds like, I don't know how she's going to be qualified as an expert. And even if she was to be qualified as an expert in cardiology, she's relied on records from these other doctors who are urologists which you don't have copies here.

After further debate, the court held off a final decision until the first day of trial to see if Watson's counsel could provide the medical records. Ultimately, the court denied Watson's request to call Dr. Crawford-Green.

"We review sanctions imposed for discovery violations for abuse of discretion." *Bellard v. State*, 229 Md. App. 312, 340 (2016) (*citing Rosenberg v. State*, 129 Md. App. 221, 259 (1999)). "It is within the discretion of the trial court to impose sanctions if [Maryland Rule 4-263] is violated." *Thomas v. State*, 397 Md. 557, 570 (2007) (*citing Thompson v. State*, 395 Md. 240, 258 (2006)). Rule 4-263(n) says:

> If at any time during the proceedings the court finds that a party has failed to comply with this Rule or an order issued pursuant to this Rule, the court may order that party to permit the discovery of the matters not previously disclosed, strike the testimony to which the undisclosed matter relates, grant a reasonable continuance, prohibit the party from introducing in evidence the matter not disclosed, grant a mistrial, or enter any other order appropriate under the circumstances. The failure of a party to comply with a discovery obligation in this Rule does not automatically disqualify a witness from testifying. If a motion is filed to disqualify the witness's testimony, disqualification is within the discretion of the court.

"The Rule, on its face, does not require the court to take any action; it merely authorizes the court to act. Therefore, the presiding judge has the discretion to select an appropriate sanction," including in this case, where a motion to disqualify a witness' testimony was filed, "but also has the discretion to decide whether any sanction is at all necessary." *Thomas*, 397 Md. at 570 (*citing Evans v. State*, 304 Md. 487, 500 (1985)).

> In exercising its discretion regarding sanctions for discovery violations, a trial court should consider: (1) the reasons why the disclosure was not made; (2) the existence and amount of any prejudice to the opposing party; (3) the feasibility of curing any prejudice with a continuance; and (4) any other relevant circumstances.

Id. 397 Md. at 570-71 (*citing Taliaferro v. State*, 295 Md. 376, 390 (1983); *United States v. Hastings*, 126 F.3d 310, 317 (4th Cir. 1997)).

Here, Watson filed a "Notice of Expert Witness" on September 28, 2018, 31 days before trial. He said that Dr. Crawford-Green intended to testify "as an expert in the field of Cardiology and Internal Medicine." The notice mentioned that Dr. Crawford-Green would testify, generally, about the diagnosis and treatment of Watson's other medical conditions. Further, Dr. Crawford-Green's testimony would show "that due to various

factors, the Defendant suffers from variety of medical conditions which have adversely impacted his normal bodily function," namely erectile dysfunction.

We conclude that the circuit court properly granted the State's motion to exclude the testimony because Watson did not comply with the requirements of Rule 4-263(e)(2). Additionally, the court properly recognized that (1) Dr. Crawford-Green did not have the credentials to opine about Watson's supposed inability to ejaculate and (2) her testimony was irrelevant as she could not testify about Watson's supposed erectile dysfunction at the critical time period: January 2015, when A.A. alleged Watson sexually assaulted her. We conclude the court properly excluded the testimony.

Finally, we undertake a harmless error analysis. We do so because even if the court erred in not admitting the expert's testimony, we can declare our belief beyond a reasonable doubt the error did not affect the verdict. *Dorsey v. State*, 276 Md. 638, 659 (1976). Here, the *actus reus* was that Watson allegedly sexually assaulted A. A. with a vibrator. Whether Watson could ejaculate or not was irrelevant to whether the act occurred. Dr. Crawford-Green's testimony, even if permitted, would not have been probative of the alleged crime. Here the error, if any, was harmless beyond a reasonable doubt. *Conyers v. State*, 354 Md. 132, 160 (1999).

IV. The Admissibility of A.A.'s Written Statement

The State called A.A. as its first trial witness. By the end of the first day, A.A. had testified about how she met Watson, how she learned about the weight loss treatments he

offered, that she made an appointment for a consultation with him, and that he sexually assaulted her with a vibrator during that meeting.

On the second day of testimony, the State asked A.A. specific questions about how the assault occurred. The State then asked A.A. if, after reporting the incident, she gave a written statement to the authorities.

> [PROSECUTOR]: Prior to using the machine on the lower part if your body, do you recall his hands touching any other part of your body?
>
> [A.A.]: No. I just felt the machine going up on my body.
>
> [PROSECUTOR]: Shortly after the assault on January 19, 2015, what, if anything, did you do to record what happened to you?
>
> [A.A.]: I went to the Army's SARC official, Ms. Teri Jones, who as Ms. Jones at the time. I also went to two precincts.
>
> [PROSECUTOR]: And when I say 'what did you do to record the incident,' I'm asking you did you have occasion to write down what happened to you?
>
> [A. A.]: I did write down what happened to me.
>
> [PROSECUTOR]: Do you recall when you wrote something down portraying what happened to you?
>
> [A. A.]: Probably a day after.
>
> [PROSECUTOR]: And the day after the attack on your body, were the memories of what happened fresh?
>
> [A. A.]: Yes, sir.
>
> [PROSECUTOR]: And did you have a chance to reduce what happened to you in writing at that time?
>
> [A. A.]: Yes, sir.
>
> [PROSECUTOR]: And what you wrote, was it accurate what happened?
>
> [A. A.]: Yes, sir.
>
> [PROSECUTOR]: Did you write on January 19, 2015, "I went to a doctor's visit. Prior to attending the doctor's visit, I was texted the detox ingredients.

> The doctor told me that I would be given a saliva test, weight taken, BMI and one other test. I can't remember the last one." Does that sound familiar?
>
> [A. A.]: Yes, sir.
>
> [PROSECUTOR]: You went on to write, "my appointment was scheduled for 1 or 1:30 that afternoon."
>
> [DEFENSE COUNSEL]: Judge, I object.

At the bench, the State said that the statement was a past recollection recorded. Watson argued that the statement was a prior consistent statement and the prosecutor was wrong to try and bolster A.A.'s testimony by reading it to the jury.

After further discussion, the judge consulted the Maryland Rules and determined that Rule 5-802.1(e) applied.[10] The following colloquy then occurred:

> THE COURT: This isn't that she can't remember.
>
> [PROSECUTOR]: When I asked the prior question before I got into this, she said I'm not sure.
>
> THE COURT: Oh okay, She did. All right. [Defense counsel], anything else you want to add?
>
> [DEFENSE COUNSEL]: I would think if she's not sure, then she can refresh her recollection by reading it and [the prosecutor] can ask questions about her. What she needs to.

[10] Maryland Rule 5-802.1(e), states:

The following statements previously made by a witness who testifies at the trial or hearing and who is subject to cross-examination concerning the statement are not excluded by the hearsay rule: (e) A statement that is in the form of a memorandum or record concerning a matter about which the witness once had knowledge but now has insufficient recollection to enable the witness to testify fully and accurately, if the statement was made or adopted by the witness when the matter was fresh in the witness's memory and reflects that knowledge correctly. If admitted, the statement may be read into evidence but the memorandum or record may not itself be received as an exhibit unless offered by an adverse party.

> THE COURT It says, 'if admitted, the statement may be read into evidence, but the memorandum or record may not itself be received as an exhibit unless offered by an adverse party.'
>
> ***
>
> THE COURT: Correct. He can't show it to the jury, but he can admit it and he can read from it.
>
> [PROSECUTOR]: We just have to note that this does not go back.
>
> THE COURT: Right. This is what number?
>
> [PROSECUTOR]: This is 4.
>
> [DEFENSE COUNSEL]: Okay. I guess my objection is overruled?
>
> THE COURT: According to 5-802.1(e). And she did not say she did not recall. So are you – refresh me. Are you moving to admit Exhibit Number 4?
>
> [PROSECUTOR]: Yes. State's 4 into evidence.
>
> THE COURT: Do you have any objection to 4 being admitted for this purpose, or for the purpose that you've already noted?
>
> [DEFENSE COUNSEL]: For the purpose I already noted. It's a statement that's not subject to being an exhibit at this point in time. In light of what he's trying to do, my opinion is he's trying to put doubts and information of prior consistent statement. I'm not exactly sure what he's intending to do, but the Court has my objection.
>
> THE COURT: Okay. I'm going to overrule the objection and allow him to do so. I will make an announcement to the jury that the document is admitted for purposes of your reading from it only, but it will not be given back to the jury.

The prosecutor then read all of A.A.'s recorded statement to the jury.

Watson contends that A.A.'s memory only faltered on the "narrow" issue of what other parts of her body Watson might have touched during the assault.

> [PROSECUTOR]: Prior to using the machine on the lower part if your body, do you recall his hands touching any other part of your body?
>
> [A.A.]: No. I just felt the machine going up on my body.

In his brief, Watson acknowledges that the prosecutor was trying to get A.A. to elaborate on the details of the assault she provided in the written statement to the authorities. Watson argues, however, that the prosecutor did not attempt to first try to refresh A.A.'s recollection, but, instead, read her entire statement which "contained numerous allegations about which A.A. never suggested a lack of present recollection."

The State posits that this claim of error is not preserved for two reasons. First, in the State's view, Watson's trial counsel did not argue that only a portion of the statement should be read aloud. As the trial court never had a chance to address that issue, the State claims Watson has waived any assertion of error on appeal. The second basis on which the State argues waiver is that at trial Watson did not object to similar testimony from A.A.'s co-workers who testified about what A.A. told them about the assault. Simply put, the State's argument is that because A.A. made a prompt complaint of sexual assault to her co-workers, Watson cannot claim error after the jury heard virtually an identical statement from A.A. Finally, if addressed, the State asserts that the prosecutor satisfied the requirements of Rule 5-802.1(e) before the court allowed the prosecutor to read A.A.'s statement to the jury.

Before this Court, both sides agree that the circuit court's determination of whether A.A.'s written statement was hearsay and if any exceptions justified its admission, are reviewed without deference to the trial court. *Bernadyn v. State*, 390 Md. 1, 8 (2005). Any factual findings that the court made, however, are reviewed for clear error. A finding of a

trial court is not clearly erroneous if there is competent or material evidence in the record to support the court's conclusion. *Gordon v. State*, 431 Md. 527, 538 (2013); Md. Rule 8-131(c).

Based on our reading of the trial transcript, we conclude that Watson lodged a timely objection the moment the prosecutor began to read A.A.'s statement. And, even if Watson did not object to the testimony of A.A.'s co-workers, he objected to the contents of A.A.'s statement before those witnesses testified. Watson's claim of error is preserved, so we will address it.

Here, A.A.'s recollection of the entirety of what transpired between her and Watson failed. Even though her recollection was on a relatively "narrow" issue as Watson points out, that is enough to satisfy the requirements of Rule 5-802.1(e). In *Sanders v State*, 66 Md. App. 590, 59 (1986), we held that to invoke Rule 5-802.1(e), a witness need only demonstrate "some impairment" of her present recollection. Accord *Williams v. State*, 131 Md. App. 1, 21 (2000). The record demonstrates that A.A.'s memory of what happened almost three years prior faltered. She could not recall whether Watson touched the upper part of her body or not. Even though her recollection of this issue was mildly impaired, that was enough to satisfy the requirements of the Rule. The court properly allowed the State to read the statement. Further, as we review the statement, A.A.'s trial testimony and the statement were similar, if not identical. On this basis, we perceive no error.

V. Mail Addressed to "Dr. Watson"

Watson challenges the relevance of State's exhibit 15, the mailing label of a package that was addressed to "Dr. Watson," and photographed during the execution of the administrative search warrant discussed in Section I of this opinion. Watson alleges that the court erred in admitting the mailing label because it was not relevant. The State asserts the trial court was correct to admit the exhibit because it shows Watson held himself out to the public as a physician. The court properly admitted the exhibit, according to the State, because then the jury could infer that Watson violated Maryland Code (1957, 2014 Repl. Vol.), Health and Occupations Code § 14-602 which prohibits one from misrepresenting to the public that one is a licensed physician.

A challenge to the admission of evidence on a ground of relevance is reviewed using an abuse of discretion standard. *Brooks v. State*, 439 Md. 698, 708 (2014). Relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5–401. "[T]he relevancy determination is not made in isolation. Instead, the test of relevance is whether, in conjunction with all other relevant evidence, the evidence tends to make the proposition asserted more or less probable." *Dontai v. State*, 215 Md. App. 686, 736 (2014) (quoting *Snyder v. State*, 361 Md. 580, 592 (2000).

In *State v. Simms*, 420 Md. 705 (2011), the Court of Appeals advised us to review a trial court's decision to admit or exclude evidence for abuse of discretion. *Id*. at 724. We conduct an independent analysis of whether evidence is, in fact, relevant, however.

> It 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," and that the "abuse of discretion" standard of review is applicable to "the trial court's determination of relevancy." Maryland Rule 5–402, however, makes it clear that the trial court does not have discretion to admit irrelevant evidence.... [T]he "de novo" standard of review is applicable to the trial judge's conclusion of law that the evidence at issue is or is not "of consequence to the determination of the action."

Id. at 724–25

Of the two opposing arguments advanced regarding the relevance of this mailing label, we agree with the State. For the reasons discussed in Section I of this opinion, Louthan, the Board's investigator, properly photographed the mailing label when executing the administrative search warrant at Watson's home-office. The warrant permitted Louthan to "[p]hotograph any and all professional and/or occupational credentials." The court ruled that the label qualified as a credential, since it could be inferred that the sender, a medical supply company, believed Watson was a physician. The document was probative of whether Watson was mispresenting himself as a physician. The jury was free to believe that inference or not. The court properly admitted it as relevant evidence.

VI. The State's "Golden Rule" Argument During Closing

In its initial closing argument, the prosecutor told the jury:

> [PROSECTOR]: Counsel is going to get up here and focus on what she did, what she didn't do. That's not the way to look at this…. It is not a crime to be a victim. It is not a crime to make mistakes, to execute poor judgment. It is not a crime to trust people. Do not focus on her. Focus on what he did to her. If you want to focus on her, and keep in mind she's someone's daughter.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [PROSECUTOR]: She's someone's mother. She is now someone's wife. This man broke her…She is not the same person. You heard the testimony. She's broken. She's not on trial.

Watson alleges the trial court erred when it overruled his objection to the State's comments. He argues that in so doing, the prosecutor "improperly appealed to the jury's sympathy and empathy for [A.A.] and her family." Watson claims this was a direct appeal for the jurors to put themselves in A.A.'s shoes. In Watson's opinion this was an impermissible "golden rule" argument, that encouraged the jurors to relinquish their neutrality and decide the case on based on emotion. The State argues the prosecutor did not ask the jurors to put themselves in A.A.'s position; the prosecutor was merely commenting on the evidence. The State asserts Watson's "golden rule" claim of error is unfounded.

"Generally, attorneys are afforded 'great leeway in closing arguments.'" *Small v. State*, 235 Md. App. 648, 697 (2018) (*quoting Ware v. State*, 360 Md. 650, 681 (2000)). Although great latitude is given during opening and closing arguments, counsel is not allowed to "appeal to passion or prejudice [ ] which 'may so poison the minds of jurors that an accused may be deprived of a fair trial.'" *Eley v. State*, 288 Md. 548, 552 (1980). Furthermore, the Court of Appeals has held that any argument in which an advocate urges

the jurors to decide the issues based not on the evidence but to identify solely with the alleged victim of a crime, is improper. For example, in *Lawson v. State*, 389 Md. 570 (2005), the State was prosecuting the appellant for a child sexual assault, the prosecutor in that case asked the jurors to imagine themselves to be the abused child's mother. The appellant argued on appeal that the remarks were so inflammatory that they warranted reversal. This Court and the Court of Appeals recognized that when "a jury is asked to place themselves in the shoes of the victim, the attorney improperly appeals to their prejudices and asks them to abandon their neutral fact-finding role." *Id*. at 594 (quoting *Lawson v. State*, 160 Md. App. 602-27 (2005), *rev'd.*, *Lawson v. State*, 389 Md. 570 (2005)).

But even when a prosecutor has made an inappropriate remark during summation, a reversal is not automatically warranted. In *Reidy v. State*, 8 Md. App. 169 (1969), Chief Judge Robert C. Murphy (then Chief Judge of the Court of Special Appeals) explained:

> [T]he fact that a remark made by the prosecutor in argument to the jury was improper does not necessarily compel that the conviction be set aside. 'The Maryland Rule is that unless it appears that the jury were actually misled or were likely to have been misled or influenced to the prejudice of the accused by the remarks of the State's Attorney, reversal of the conviction on this ground would not be justified.

Id. at 172 (citations omitted).

The Court of Appeals' jurisprudence on the State's use of inflammatory remarks during closing argument developed from an examination of precedent in other jurisdictions, including the federal courts, and has coalesced to into a three-factor test. When reviewing a trial judge's decision to overrule an objection to a prosecutor's remarks

during closing argument we consider: (1) the severity of the remarks, (2) the measures taken to cure any potential prejudice, and (3) the weight of the evidence against the accused. *Spain v. State*, 386 Md. 145, 158–59 (2005); *Henry v. State*, 324 Md. 204, 232 (1991)(stating that "[i]n determining whether reversible error occurred, an appellate court must take into account '1) the closeness of the case, 2) the centrality of the issue affected by the error, and 3) the steps taken to mitigate the effects of the error.'").

With regard to the comment to which Watson objected, it seems to us that the prosecutor was not making an improper "golden rule" argument, but rather, commenting on the evidence. The prosecutor did not ask the jurors to "step into the shoes" of A.A. so much as remind them that A.A. was the victim here. This was a reasonable response to Watson's portrayal of her as a combat soldier who would have fought back if she had truly been assaulted as she claimed.

We concede that the prosecutor's comments had emotional overtones. But we observe that after the initial objection, Watson's counsel did not pose another objection to the prosecutor's "mother and wife" comments. We need not address those comments absent an objection preserving them for review. Md. Rule 8-131(a); Md. Rule 4–323(a). Nonetheless, we reiterate that overt appeals to the jury's passions or prejudices are to be avoided. *Lee v. State*, 405 Md. 148, 167 (2008). The court did not abuse its discretion in overruling Watson's one objection to the prosecutor's comment.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

The correction notice(s) for this opinion(s) can be found here:

https://mdcourts.gov/sites/default/files/import/appellate/correctionnotices/cosa/unreported/0158s19cn.pdf