Circuit Court for Baltimore City
Case No. 123248017

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 227

September Term, 2024

KORI BENNETT

v.

STATE OF MARYLAND

Nazarian,
Albright,
Kenney, James A., III
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: June 24, 2026

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On August 5, 2023, Kori Bennett, Appellant, was found unconscious next to a vehicle with a handgun next to his person. Mr. Bennett was convicted by a jury of possession of a firearm after a prior crime of violence and unlawful possession of ammunition. He was sentenced to fifteen years' incarceration. On appeal, Mr. Bennett raises two questions for our review,[1] which we rephrase as follows:

I. Did the circuit court abuse its discretion in denying Mr. Bennett's request to recall a police officer for the purpose of bringing in extrinsic impeachment evidence?

II. Did the circuit court commit plain error by allowing the State to make improper remarks during closing argument?

For the reasons that follow, we answer the first question "no," decline to engage in plain error review as to the second question, and affirm the judgments of the circuit court.

BACKGROUND

The Incident

Just after 2 a.m. on August 5, 2023, Baltimore City emergency responders received a call reporting an unconscious male on the side of the road on the 2400 Block of Baker Street in Baltimore City. Paramedics and police were dispatched to the scene. When the paramedic, Captain Jordan Woutila, arrived on the scene, he saw Mr. Bennett lying on his back in the street, unconscious, and "assumed he was shot." Next to Mr.

[1] Mr. Bennett presents his questions as:

I. Did the circuit court err in denying Appellant the opportunity to recall Officer White for purposes of impeachment?

II. Did the circuit court plainly err in allowing the prosecutor to make numerous improper remarks during closing argument?

Bennett, Captain Woutila saw a handgun lying on the ground. To render the scene safe, Captain Woutila picked up the firearm and removed the magazine.

Baltimore Police Officer David White arrived on the scene next. As he drove by the scene, he saw Mr. Bennett lying on his back in the street. As soon as Officer White parked his vehicle and stepped out, he saw Captain Woutila walking towards him with the handgun. Officer White asked Captain Woutila to put the handgun down on the street so he could retrieve it. As the responders went back to Mr. Bennett's side, he eventually came to, at which point it became clear that he had not been shot but instead had passed out due to intoxication. After determining that Mr. Bennett did not have a permit to carry a handgun, he was placed under arrest at the scene.

Mr. Bennett was later indicted for possession of a firearm after a prior crime of violence; possession of a firearm by a prohibited person; wearing, carrying, or transporting a handgun; wearing, carrying, or transporting a loaded handgun; and unlawful possession of ammunition.

Mr. Bennett's Trial

Mr. Bennett was tried before a jury in the Circuit Court for Baltimore City on January 9–10, 2024. The State called two witnesses: the responding paramedic, Captain Woutila, and responding police officer, Officer White. During Officer White's testimony, the State played a portion of his body-worn camera footage from his time at the scene. The footage briefly showed Mr. Bennett lying unconscious in the road, as well as Captain

Woutila walking towards Officer White with a gun in his hand that Captain Woutila stated had been found on the scene.

While Captain Woutila was on the stand, he stated that when he arrived on the scene, he found Mr. Bennett "laying on his right side leaning to his right. His left hand was out on the pavement and the actual, the pistol grip was laying across his two fingers." On cross examination, defense counsel attempted to clarify which of Mr. Bennett's hands the gun had allegedly been in contact with:

[THE DEFENSE]:	So the gun was actually making contact with his left hand --
[CAPTAIN WOUTILA]:	Correct.
[THE DEFENSE]:	-- somehow, correct?
[CAPTAIN WOUTILA]:	Correct. It was, the butt of the gun was like that.
[THE DEFENSE]:	Okay. And you're sure about that?
[CAPTAIN WOUTILA]:	A hundred percent.
[THE DEFENSE]	Excuse me. Did you tell the police officer that it was near his open right hand?
[CAPTAIN WOUTILA]:	I don't remember what I exactly said, but I always interpret the hand as the palm and it was over his fingers. So he's inches away from the palm of his hand.
[THE DEFENSE]	So the gun, would it have been under the car?
[CAPTAIN WOUTILA]:	No.
[THE DEFENSE]:	How is it not under the car?
[CAPTAIN WOUTILA]:	Because his, his left hand was not under the car.
. . .	
[THE DEFENSE]:	Well, why in your report[,] sir[,] did you write that it was near his, near his right hand?
[CAPTAIN WOUTILA]:	Did I write near his right hand? . . . That's a typo.

The defense then brought in Captain Woutila's incident report—which stated that Mr. Bennett was found "unresponsive with a handgun inches away from his right hand"—to impeach Captain Woutila with the prior inconsistent statement. In response to the inconsistency in his report, Captain Woutila testified to the following:

> [THE DEFENSE]: Does this, does this change your, your memory of what you saw that night?
>
> [CAPTAIN WOUTILA]: No.
>
> . . .
>
> [THE DEFENSE]: But in this report it says, this, this gun was inches . . . you wrote inches away from his right hand in the street. That's what you wrote some, you know, within 24 hours of this occurring.
>
> [CAPTAIN WOUTILA]: Yes, sir.
>
> [THE DEFENSE]: So was it, was this, was this report correct? It was near his right hand.
>
> [CAPTAIN WOUTILA]: It was by his left hand, sir.
>
> . . .
>
> [THE DEFENSE]: Do you recall, do you recall talking to a police officer or not?
>
> [CAPTAIN WOUTILA]: Yes, sir. I remember walking up to him.
>
> [THE DEFENSE]: Okay.
>
> [CAPTAIN WOUTILA]: As he was walking in, I grabbed the weapon and I walked towards him and we met in the street.
>
> [THE DEFENSE]: And would you agree, sir that you told him that it was near his right hand?
>
> [CAPTAIN WOUTILA]: I don't remember what I said on [Officer White's] body camera.

After Captain Woutila's testimony, the State rested its case. At that point, the defense requested to re-call Officer White in order to elicit testimony regarding statements Captain Woutila had made to him at the scene. Officer White's incident report

corroborated Captain Woutila's report and stated that Captain Woutila told Officer White that he found the gun near Mr. Bennett's right hand. The following argument occurred:

[THE DEFENSE]:	[I]n Officer White's report it reads, it's similar to the paramedic's report, the written report. That when the officer, when the paramedic got there, the gun was lying on the ground next to Mr. Bennett's open right hand.
THE COURT:	Wait a minute. That's which report?
THE DEFENDANT:	The officer's.
[THE DEFENSE]:	That is in the statement of probable cause.
THE COURT:	Okay. All right. Is he still here? Did you subpoena him?
[THE DEFENSE]:	I didn't. He was out there. If he's not there, I'm not going to push it. I mean --
[THE STATE]:	He's here because the gun is still here. But you already asked him.
[THE DEFENSE]:	I didn't ask Officer White about that, about anything that the paramedic told him.
THE COURT:	About anything the paramedic told him.
[THE STATE]:	Told him.
[THE DEFENSE]:	Well, I didn't ask him about that.
THE COURT:	Right.
[THE STATE]:	You can't.
THE COURT:	You couldn't.
[THE DEFENSE]:	The State said, the State said I asked him about that. I didn't ask him about that. Here's what, do you know the proffer?
THE COURT:	Go ahead.
[THE DEFENSE]:	As I said, every report we got in this case says that, says that the gun was . . . near his right hand. . . . There's two reports that say that. So that's why I was taken aback --
THE COURT:	Well, isn't the officer writing down what the

paramedic told him?

[THE DEFENSE]: Yes.

THE COURT: And you've already asked the paramedic. So in asking the officer, it would be hearsay. And you've already asked the paramedic and gotten in the paramedic's report.

[THE DEFENSE]: Well, yes.

THE COURT: So what you're going to ask him is what the paramedic told him about where the gun was located. That would be hearsay.

[THE STATE]: Mm-hmm.

[THE DEFENSE]: What I was going to, what I was going to ask him was about what the paramedic told him at the time that led the officer to write in his report that it was by the right hand. So I suggest it's impeachment.

THE COURT: I understand.

[THE STATE]: That's backdoor and hearsay.

THE COURT: But you've already impeached the paramedic with what he said and with what he told the officer and with what was in his report. So and trying to ask the officer about it, I don't think that that is proper impeachment. I think that's eliciting hearsay.

After the defense rested its case without presenting any evidence, the court provided relevant instructions to the jury. Regarding the standard of proof, the court instructed the jury,

> The State has the burden of proving the guilt of the Defendant beyond a reasonable doubt. This means that the State has the burden of proving beyond a reasonable doubt each and every element of the crimes charged. The elements of a crime are the component parts of the crime about which I will instruct you shortly. This burden remains on the State throughout the trial. The Defendant is not required to prove his innocence. However, the State is not required to prove guilt beyond all possible doubt or to a mathematical certainty nor is the State required to negate every conceivable

> circumstance of innocence.
>
> A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the Defendant's guilt to that extent for each and every element of a crime charged, then reasonable doubt exists and the Defendant must be found not guilty of that crime.

During closing argument, in an attempt to rebut Mr. Bennett's intoxication defense, the State drew the jury's attention to Mr. Bennett's consumption of alcohol prior to the incident. The State argued,

> Well, the State is alleging in the indictment, the charging language that Mr. Bennett possessed that gun on August 5, 2023. So in the exact moment that they pull up on the scene and he is unconscious, laying on the ground and the gun is right, let's say right next to his hand, let's say not touching, right next to his hand, right? At that point, um -- Court's indulgence. At that point is where these arguments will come into play, right? He was drunk. How could he possibly have possessed something if he didn't even know where he was, what he was doing? *But what's important is, there was a time earlier that day that Mr. Bennett made the choice to drink. Mr. Bennett made the choice to get into a car. Mr. Bennett made a choice to do all of those things with a gun on his person. And so even if you find, even if you believe that he was so intoxicated in that moment that he couldn't have possibly known that he was possessing a gun in that moment, you sure know he possessed a gun an hour ago, two hours ago, whenever it was that he had the mental capacity and the sobriety to know what he was doing.* Drinking is not an excuse for crime. It's not. It's not an excuse for knowing you're not allowed to walk around with a handgun and doing it anyway.

(Emphasis added).

In its rebuttal closing, the State also responded to the defense's impeachment of Captain Woutila by arguing,

> [L]et's talk about reasonable doubt. . . . [O]ne of the ways that defense attorneys will try to create reasonable doubt is try to draw your attention to every possible inconsistency, right? Like, you're going to throw everything at the wall and see what sticks. Maybe something will stick with one of

> you. *Maybe one of you will think[,] oh[,] this discrepancy, I can see that it doesn't really matter, but yeah[,] I'm going to think that or I'm going to find that[,] you know, this witness wasn't credible and therefore I have reasonable doubt. That's not how reasonable doubt works. Reasonable doubt is not that you doubt whether this paramedic has a perfect memory.* You have to have reasonable doubt about whether he possessed a gun. This is not a character contest where we're looking to see if he's a great witness, if he's perfect. It's not about him. It's about Mr. Bennett. It's about whether Mr. Bennett has a gun that day. It's about whether you heard evidence whether it's from the stand or from the exhibits that were put into evidence sufficient for you to conclude that he was in possession of the gun.

(Emphasis added).

The jury ultimately convicted Mr. Bennett of possession of a firearm after a prior crime of violence and unlawful possession of ammunition.[2] The court sentenced Mr. Bennett to fifteen years of incarceration.[3]

DISCUSSION

I. Officer White's Testimony Regarding Captain Woutila's Prior Inconsistent Statement

On appeal, Mr. Bennett first contends that the circuit court erred in denying him the ability to re-call Officer White for the purpose of admitting extrinsic evidence to impeach Captain Woutila. Mr. Bennett contests the circuit court's characterization of the proffered testimony as hearsay, and instead argues that he laid a proper foundation, as required under Maryland Rule 5-613, to properly admit extrinsic impeachment evidence.

[2] Mr. Bennett was acquitted of wearing, carrying, or transporting a handgun and wearing, carrying, or transporting a loaded handgun. The possession of a firearm by a prohibited person charge was not submitted to the jury by the State.

[3] Mr. Bennett was sentenced to fifteen years for possession of a firearm after a disqualifying conviction, the first five of which are to be served without parole, and one year for unlawful possession of ammunition, to run concurrently.

Finally, Mr. Bennett contends that the court's refusal to allow him to re-call Officer White was not harmless error because the relevant inconsistency in Captain Woutila's testimony was "crucial" to the case.

While the State agrees that Officer White's testimony satisfied the requirements of admission under Rule 5-613, it argues that the court nevertheless properly precluded his testimony under the general relevance doctrine because his testimony would have been redundant and posed a risk of the jury using his testimony for a non-impeachment purpose. In the alternative, the State argues that, even if the court erred, any error was harmless because Captain Woutila had already been impeached with his own statement, making additional extrinsic impeachment cumulative.

Hearsay is "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Md. Rule 5-801(c). "[W]hether an out-of-court statement is hearsay depends upon the purpose for which the statement is offered at trial," such that "a statement that is offered for a purpose other than to prove its truth is not hearsay at all." *Hardison v. State*, 118 Md. App. 225, 234 (1997). Applying this principle to a witness's prior inconsistent statement,

> . . . [i]f a witness's prior inconsistent statement is offered for the purpose of impeachment, it is not being offered as substantive evidence. The objective in using a prior inconsistent statement for impeachment is to attack the declarant's credibility by demonstrating that his testimonial version of events is inconsistent with a version of events that he related prior to trial. *When used as a technique to undercut a witness's credibility, the statement is offered to prove its existence, not its truth, and is not hearsay.*

Id. at 235 (emphasis added).

Here, the admissibility of the proffered testimony by Officer White should not

have hinged on whether it was (or was not) hearsay. Mr. Bennett's counsel made clear that the intent was to use Officer White's testimony regarding Captain Woutila's statement for impeachment purposes only, not as substantive evidence. Because Captain Woutila's statement was not being admitted for its truth, it was "not hearsay at all." *See Hardison*, 118 Md. App. at 234.

However, just because extrinsic evidence of a witness's prior inconsistent statement brought in for purposes of impeachment is not hearsay does not render it automatically admissible. Generally, we review a trial court's rulings on the admissibility of evidence for abuse of discretion. *Newman v. State*, 236 Md. App. 533, 556 (2018). This includes the court's decision not to allow a defendant to bring in extrinsic impeachment evidence. *Berry v. State*, 244 Md. App. 234, 251 (2019). "A court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what the court deems minimally acceptable." *Wheeler v. State*, 459 Md. 555, 560 (2018) (cleaned up).

Maryland Rule 5-613 governs the admission of extrinsic evidence of prior inconsistent statements. Under this rule, extrinsic evidence of a witness's prior inconsistent oral statement is admissible only if the following foundation is laid:

> 1. The content of the statement and the circumstances under which it was made, including the person(s) to whom it was made, must be disclosed to the witness who is being impeached before the end of that witness's examination. Rule 5-613(a)(1), (b)(1).
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> . . .
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> 2. The witness to be impeached must be given an opportunity to explain or deny the allegedly inconsistent statement. Rule 5-613(a)(2), (b)(1).

> . . .
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> 3. The witness must have "failed to admit having made the statement." Rule 5-613(b)(1).
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> . . .
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> 4. The statement must concern "a non-collateral matter"—in other words, the content of the statement must not be "collateral" to the issues at trial. Rule 5-613(b)(2).

Brooks v. State, 439 Md. 698, 717 (2014).

Here, we agree with both Mr. Bennett and the State that Officer White's testimony would have met the four *Brooks* requirements. In the midst of Captain Woutila's testimony regarding which of Mr. Bennett's hands he saw the gun in, the following colloquy occurred:

[THE DEFENSE]:	Do you recall, do you recall talking to a police officer or not?
[CAPTAIN WOUTILA]:	Yes, sir. I remember walking up to him.
[THE DEFENSE]:	Okay.
[CAPTAIN WOUTILA]:	As he was walking in, I grabbed the weapon and I walked towards him and we met in the street.
[THE DEFENSE]:	And would you agree, sir[,] that you told him that it was near his right hand?
[CAPTAIN WOUTILA]:	I don't remember what I said on [Officer White's] body camera.

By these questions, Captain Woutila was thus made aware of the content of the relevant prior statement and that the statement was made to Officer White, as well as given an opportunity to explain the statement. In responding, "I don't remember what I said[,]" Captain Woutila failed to admit making the statement. Further, the statement was non-collateral because Captain Woutila's testimony regarding where and how Mr. Bennett

held the gun was material to finding that he possessed the gun. Therefore, Officer White's testimony regarding the statement made by Captain Woutila on the scene was admissible as extrinsic impeachment evidence under Rule 5-613.

But, even if the circuit court abused its discretion in not allowing Mr. Bennett to bring in testimony that was admissible under Rule 5-613, we find that any error was harmless. Although Captain Woutila apparently did not have a body-worn camera, Officer White's body camera footage clearly shows that Captain Woutila found a gun on the scene. To the extent that any facts at issue were heavily reliant on Captain Woutila's credibility, Officer White's testimony about which hand Captain Woutila told him the gun was in would have been cumulative of the defense's prior impeachment of Captain Woutila. Specifically, the defense had already impeached Captain Woutila with his own incident report, which included the same prior inconsistent statement that the defense intended to elicit from Officer White by re-calling him. In short, the jury was already aware of the inconsistencies in Captain Woutila's testimony. Having conducted an independent review of the record, we conclude, beyond a reasonable doubt, that any error in precluding re-call testimony from Officer White "in no way influenced the verdict." *Dorsey v. State*, 276 Md. 638, 659 (1976). Thus, any error was harmless.

II. The State's Remarks in Closing Argument

Mr. Bennett next challenges the propriety of several remarks made by the State in closing argument as improper. Mr. Bennett acknowledges that because defense counsel made no objections to the remarks at trial, these arguments are unpreserved. However, he

contends that the trial court plainly erred in allowing the State to (1) reference facts not in evidence and (2) misstate the reasonable doubt standard in closing argument. In Mr. Bennett's view, "the cumulative impact of the improper prosecutorial comments" warrants plain error review despite the lack of preservation. The State does not address whether each comment was erroneous, instead arguing that the contested comments do not rise to a level warranting plain error review. We agree with the State.

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule § 8-131(a). However, "[a]n appellate court possesses plenary discretion to notice plain error material to the rights of a defendant, even if the matter was not raised in the trial court." *Steward v. State*, 218 Md. App. 550, 565 (2014) (cleaned up). In order for this court to exercise its discretion to engage in plain error review, "(1) there must be error (that the defendant did not affirmatively waive); (2) the error must be 'clear and obvious,' i.e., not subject to reasonable dispute; and (3) the error must be material, meaning that it affected the outcome of the trial." *Id.* at 566.

"Even if an appellant is able to satisfy the threshold burden of proving a plain and material error, the court need not recognize the error" and will only exercise its discretion to engage in plain error review when it is "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Id.* (cleaned up). Because of the difficulty of demonstrating facts that are sufficiently compelling to invoke plain error review, it remains "a rare, rare, phenomenon." *Id.* (cleaned up).

Mr. Bennett's first challenge is to the State's remarks regarding facts that were not in evidence. In its closing argument, in response to Mr. Bennett's intoxication theory of defense, the State argued,

> [T]here was a time earlier that day that Mr. Bennett made the choice to drink. Mr. Bennett made the choice to get into a car. Mr. Bennett made a choice to do all of those things with a gun on his person. And so even if you find, even if you believe that he was so intoxicated in that moment that he couldn't have possibly known that he was possessing a gun in that moment, you sure know he possessed a gun an hour ago, two hours ago, whenever it was that he had the mental capacity and the sobriety to know what he was doing.

Mr. Bennett contends that "there was absolutely no evidence introduced during the trial about what Mr. Bennett was doing one or two hours before" the witnesses arrived on the scene and "certainly no evidence that Mr. Bennett chose to drink first and then get into a car and 'do all of those things with a gun on his person.'"

Mr. Bennett next contends that the State misstated the reasonable doubt standard. In response to the defense's impeachment of Captain Woutila, the State argued in rebuttal closing,

> Maybe one of you will think[,] oh[,] this discrepancy, I can see that it doesn't really matter, but yeah[,] I'm going to think that or I'm going to find that[,] you know, this witness wasn't credible and therefore I have reasonable doubt. That's not how reasonable doubt works. Reasonable doubt is not that you doubt whether this paramedic has a perfect memory.

In making this argument, Mr. Bennett relies primarily upon *Carrero-Vasquez v. State*, 210 Md. App. 504 (2013), a case where the primary issue on appeal concerned the following remarks made during the State's closing argument:

> The State does have a very high burden and my burden is to convince each and every one of you beyond a reasonable doubt. I am not required to prove guilty beyond all possible doubt or to a mathematical certainty. I am not

> required to negate every conceivable circumstance of innocence. My burden is high. I understand that. **Reasonable doubt. Trust your gut. If your gut says I think he's guilty, that's reasonable.**

See id. at 510. In that case, where the remarks were made over defense objection, this court held that the remarks were improper because they misstated the reasonable doubt standard, and the error was not harmless. *Id.* at 510–15.

We decline to engage in plain error review of the comments Mr. Bennett now contends are improper. We disagree with Mr. Bennett that any of the prosecutor's remarks amount to plain error under the factors laid out in *Steward*, 218 Md. App. at 565, nor that the cumulative effect of the remarks was so compelling, extraordinary, or exceptional to lead us to invoke plain error review.

With regards to the State's reference to facts not in evidence, it is true that there was no evidence introduced that specifically showed when or what Mr. Bennett drank, whether he drove under the influence, or whether he had a gun on his person. However, the evidence did show that Mr. Bennett was found unconscious on the street, under the influence of alcohol, with half of his body hanging out of an open vehicle and a handgun in his hand. There were sufficient facts in the record regarding Mr. Bennett's state of intoxication in close proximity to a vehicle and a firearm such that any error with the State's remarks were not material to the jury's interpretation of the case. No plain error review is warranted.

While we agree with Mr. Bennett that witness credibility is in fact a proper consideration in the jury's determination of reasonable doubt, we find the State's remarks

here less severe than those in *Carrero-Vasquez*. Because this issue is unpreserved, less egregious than the error in *Carrero-Vasquez*, and the jury was otherwise properly instructed by the court on the correct reasonable doubt standard, we decline to use our discretion to engage in plain error review on this issue. We therefore affirm the judgments of the circuit court.

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