

Circuit Court for Baltimore City
Case No. 122039006

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 0430

September Term, 2024

TRAVON SHAW

v.

STATE OF MARYLAND

Reed,
Shaw,
Eyler, James R.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Shaw, J.

Filed: June 26, 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).

Appellant Travon Shaw was convicted in the Circuit Court for Baltimore City of first-degree murder, use of a firearm in the commission of a felony, conspiracy to commit murder, wear/carry/transport a loaded handgun on person, transport a loaded handgun in a vehicle, and possession of a regulated firearm. The court sentenced him to life without parole. Appellant noted this timely appeal and presents four questions for our review, which have been reordered¹:

1. Did the administrative judge abuse her discretion in postponing the trial beyond the *Hicks* deadline without good cause?
2. Did the trial court abuse its discretion in refusing to remove a juror who encountered Appellant in the hallway during a court recess, handcuffed and shackled and surrounded by guards, and in denying his motion for new trial on that basis?
3. Did the trial court abuse its discretion in propounding jury instruction on accomplice liability?
4. Did the administrative judge abuse its discretion in overruling Appellant's objections to the prosecutor's disparaging remarks about defense counsel during rebuttal closing argument?

¹ Appellant's original order of questions:

1. Did the trial court abuse its discretion in refusing to remove a juror who encountered Appellant in the hallway during a court recess, handcuffed and shackled and surrounded by guards, and in denying his motion for new trial on that basis?
2. Did the trial court abuse its discretion in propounding jury instruction on accomplice liability?
3. Did the trial court abuse its discretion in overruling Appellant's objections to the prosecutor's disparaging remarks about defense during rebuttal closing argument?
4. Did the administrative judge abuse her discretion in postponing the trial beyond the *Hicks* deadline without good cause?

We hold the circuit court did not err nor abuse its discretion, and we affirm the judgments.

BACKGROUND

Appellant was indicted in the Circuit Court for Baltimore City in connection with the December 16, 2021, murder of Justin Johnson. He was charged with first degree murder, use of a firearm in the commission of a felony, conspiracy to commit murder, wear/carry/transport a loaded handgun on person, transport a loaded handgun in a vehicle, and possession of a regulated firearm. Appellant elected a jury trial and requested to be tried prior to the Hicks deadline of October 2, 2022. At a hearing on July 22, 2022, the State requested a postponement because the assigned prosecutor was unable to try the case before the deadline. She had been assigned to other trials, and between August 24, 2022, and September 21, 2022, she planned to get married and take a related vacation.

The State requested February 20, 2023, as a new trial date. Appellant’s counsel objected to the request and asked the court “not find good cause.” Counsel explained that the defense did not want to set the case “past Hicks,” and that the prosecutor was “taking personal time off . . . for almost a month within Hicks.” The Court responded:

COURT: The issue is I cannot interfere with her vacation no more than I can interfere with your vacation. So for you to say that I think is just unfair. Everybody has been working very hard. It’s very difficult to get these murders in before Hicks. Everybody knows that, so you can advise your client of Hicks’ rights please.

The Court found that there was good cause for postponement and scheduled the trial to begin on February 21, 2023. The trial was later postponed again, and it commenced on September 29, 2023.

The State called Deputy Chief Medical Examiner, Dr. John Stash, as its first witness. Dr. Stash testified that Justin Johnson died because of multiple gunshot wounds. He observed gunshot wounds on the right and left side of Mr. Johnson’s back and stated that there was no evidence of the close firing of a weapon.

Megan Descalzi, a Baltimore Police Department Crime Laboratory Technician, testified that she responded to the incident location and took photographs of the vehicle that the victim was found in. She observed bullet defects on the front windshield of the vehicle and in the rear passenger door window. She recovered two “cartridge cases right next to the rear passenger tire of that vehicle,” and a third cartridge case from the front interior of the vehicle. The shell casings tested negative for fingerprints. At the conclusion of her testimony, the court took a recess.

Prior to resuming trial proceedings, the Court was notified that Juror 10 left the jury room to go to the restroom. Following a short discussion with both Counsels, the Court, in the presence of Appellant, queried the juror:

JUROR: I’m sorry, your Honor.

THE COURT: Okay. Could you please state your seat number, ma’am?

JUROR: Ten.

THE COURT: Ten. Okay. So, it’s my understanding that you left the jury room and when you left the jury room, did you see Mr. Shaw?

JUROR: No, ma’am.

THE COURT: You didn’t see him?

JUROR: No.

THE COURT: You know Mr. Shaw is the Defendant?

JUROR: Yes. I did not see him.

THE COURT: Did you see anyone?

JUROR: I saw the Sheriff.

THE COURT: You saw the sheriff?

JUROR: Uh-huh. The guy over there. (Indicating.) I opened the door, you know.

THE COURT: So, what happened? Tell us what happened.

JUROR: (Indiscernible- 11:18:12)

THE COURT: Well, you know you're not supposed to leave the jury room unless you have permission. Unless, unless - -

JUROR: No, when you called for a recess.

COURT: Yes. We had a recess and you were supposed to go to the jury room. Okay, so you went to the jury room and then what happened?

CLERK: I went to the restroom

COURT: Okay, you know there's - - you opened the door to come to the restroom?

JUROR: Yeah. I already went into the restroom, and then I came out. I see, you know, him. (Indicating.) The sheriff.

THE COURT: Oh, this sheriff? (Indicating.)

JUROR: Yeah, and he told me to -- you know, so I went back in, cause I kind of see something like, maybe the guy. You know, not really see him, but I kind of see that something is going on, so I went back in to the restroom.

THE COURT: You could see—

JUROR: And he told me to come back out. Him. (Indicating.)

THE COURT: You could kind - - the deputy there? (Indicating.)

JUROR: Uh-huh

THE COURT: You could kind of see something was going on, so you went back in?

JUROR: Yes, I saw him, so I went back in.

THE COURT: I see.

JUROR: So then I waited 'til he told me to come out.

THE COURT: I see.

JUROR: I'm sorry.

THE COURT: It's okay. Okay. So who else did you see, besides the sheriff?

JUROR: Is the rest of them, you know, when I came out. (Indicating.)

THE COURT: The sheriffs?

JUROR: You know, the officers.

THE COURT: Okay. Did you see either of the attorneys?

JUROR: No, I did not notice it. All I see is the Deputy and the rest of the officers.

THE COURT: I see. Okay. Can you just go - - Do you have any specific questions you'd like to ask?

[DEFENSE COUNSEL]: No.

THE COURT: Okay. Could you go over to the side for a minute, please. Thank you.

THE COURT: So, she said she didn't even seen your client. Deputy Preisy (phonetically) - - you're the one - - what happened? Can you come up to the - - (The deputy approached the bench.)

DEPUTY: For one, I was really surprised that anyone was in the bathroom, because we already had deputies already out there.

THE COURT: Wait, What?

THE DEPUTY: We already had deputies in the hallway.

THE COURT: No, no, what happened with respect to her?

THE DEPUTY: In respect to her, I'm saying, I don't know how she even got into the bathroom, so she must have went through the jury room, straight through out the back door, because we had deputies in the hallway. When I turned around, I saw the door open. She looked at me and ducked back in.

[THE STATE]: Which door, I'm sorry. Which door?

THE DEPUTY: The bathroom door. The public --

THE COURT: The public bathroom.

THE DEPUTY: -- the public bathroom door, yes.

THE COURT: She looked at you and ducked back in?

THE DEPUTY: Yes. But everybody was there, everybody.

THE COURT: Well, she said that she saw you, but she didn't see anyone else.

THE DEPUTY: Well, she did duck back in quickly[.]

THE COURT: Uh-huh.

THE DEPUTY: - - but it was - - everything was right there.

THE COURT: Okay, well - -

THE DEPUTY: So that's why I had a feeling that she had saw him.

THE COURT: And then you told her to stay in the hall --

THE DEPUTY: Stay out, I didn't want her to mess up the rest for the jury.

THE COURT: Okay.

[DEFENSE COUNSEL]: Let me just clarify. When you say "everybody was there," you mean all the correctional officers?

THE DEPUTY: Sir, yes, sir.

[DEFENSE COUNSEL]: And Mr. - -

THE DEPUTY: So, the deputies, the correctional officers - -

[DEFENSE COUNSEL]: And Mr. Shaw?

THE DEPUTY: Yes, Mr. Shaw.

[DEFENSE COUNSEL]: And he was shackled?

THE DEPUTY: Yes.

[DEFENSE COUNSEL]: -- his hand and that's when - -

THE DEPUTY: He was on his way into -- on his way into the elevator, as she was coming out. When she saw me, she did duck back, but it was my ---

THE COURT: But the elevator is not -- I mean, it's not across from the bathroom door?

THE DEPUTY: It's directly across from the bathroom door.

[THE STATE]: It's the side elevator, it's in the side hall.

THE COURT: How does the door open?

THE DEPUTY: She pulled it open like this. (Indicating.)

THE COURT: I know, but does it open like this? (Indicating.)

THE DEPUTY: No, no. It opens in, towards inside the bathroom, not out.

THE COURT: Inside the bathroom?

THE DEPUTY: Yes.

THE COURT: And where were you?

THE DEPUTY: I was standing in front of it.

THE COURT: Right, so she said she opened the door and she saw you and -
-

THE DEPUTY: She said she saw me.

THE COURT: - - she ducked back in.

THE DEPUTY: I agree with that, because I'm standing right in front of her.

THE COURT: Okay.

[DEFENSE COUNSEL]: Well, was it your impression that she had seen Mr. Johnson?

THE DEPUTY: Sir, yes, sir.

THE COURT: Well, that - - well what was it based on, your impression? Just because he was out there?

THE DEPUTY: Well, it was her impression and her body actions. The way she looked at me and she tipped back in and, you know, put her head down, like she was ashamed and then she tipped back into the, back into the bathroom.

THE COURT: All right. Okay. Thank you.

THE DEPUTY: Okay.

[DEFENSE COUNSEL]: Would you say it would have been hard for her to miss him?

THE COURT: That's - - objection. That's speculation.

[DEFENSE COUNSEL]: Okay.

THE COURT: Look, the lady said she didn't see him. I have no reason to doubt her, so I'm going to overrule your objection. She's not going to be replaced on the jury.

[DEFENSE COUNSEL]: You saw her; right?

APPELLANT: I saw her.

[DEFENSE COUNSEL]: Was it your impression that she saw you?

APPELLANT: Absolutely, because the way she jumped back into the bathroom.

THE COURT: She saw the deputy, she said, that's why she --

APPELLANT: I saw her. (Indiscernible – 11:23:05) and I asked two deputies, "isn't that one of the jurors," I asked (Indiscernible - - 12:23:09) that's why.

THE COURT: Okay. Well, --

[DEFENSE COUNSEL]: So, I maintain my objection.

THE COURT: Understood. Ma'am come back up, please. (The juror approached the bench.)

JUROR: Sorry.

THE COURT: Okay. Don't' discuss our conversation with anyone.

JUROR: Uh-uh

THE COURT: We're going to bring the jury back out and continue with the trial. So, don't worry, everything is fine.

JUROR: Okay. So sorry.

THE COURT: Okay. Thank you.

THE CLERK: I'm going to take you back into - -

THE COURT: No, you're not. You're going to leave her in there and go get the other jurors.

THE CLERK: Okay.

THE COURT: Thank you.

[THE STATE]: Your Honor, can we go on the record. I understand your Honor's ruling, can we revisit some sort of case law on this issue? Is there any case law on this issue that is relevant to Your Honor's decision? If not, we can wait till the end, but I understand not replacing her right now.

THE COURT: There's plenty of case law on this issue. But, I don't even think we get to an issue - -

[THE STATE]: I understand.

THE COURT: ---because she said she did not see anything. If she did, then the case law would be relevant.

[THE STATE]: Right. That is what she said, to be clear.

THE COURT: So what am I - - if I get into that, then it's like I don't believe what she said. I do believe what she said.

[THE STATE]: Right. Okay.

THE COURT: And it makes sense. She said she saw the sheriff and she ducked back in.

[THE STATE]: And I assume quick.

THE COURT: Yeah, he --

[THE STATE]: From what you said.

THE COURT: Yes.

[THE STATE]: Okay.

THE COURT: So, I mean, if your client is about to get on the elevator, he should be facing the elevator. I don't see how he's going to see someone behind him.

[DEFENSE COUNSEL]: Since he was walking out like this (Indicating) and she was coming out the door like this. (Indicating)

APPELLANT: (Indiscernible – 11:24:54)- we was waiting for the elevator, it hadn't arrived - -

COURT: You're waiting for the elevator, so weren't you standing facing the elevator?

APPELLANT: I was actually facing the - -

THE COURT: The bathroom door, you're turned around?

APPELLANT: I was standing this way, (Indicating), so I could see the elevator doors to my left and the bathroom door to my right. Bathroom door come open, being aware of my surroundings, I looked at her.

THE COURT: Okay.

APPELLANT: She said she seen --- thought she didn't see.

THE COURT: Just because - - maybe you - - she could have seen you, but she said she didn't see you. All right. Thank you.

Appellant requested the court grant his motion for a new trial, arguing prejudice. The court denied the motion, finding that there was no basis.

The State then called its next witness, Sergeant Shannon Cavey, who testified that on December 16, 2021, she received a communication from the Homicide Unit that "they were looking for Elliot Knox and a possible vehicle that he was operating." Her team set up surveillance and observed Elliot Knox in a 2012 Hyundai Genesis vehicle. They arrested Mr. Knox and transported him to the Homicide Unit. His vehicle was taken to the police department.

Crime Technician Amelia Faelyn processed the vehicle for prints and took photographs. She stated that there were two orange earplugs on the front driver's side and two orange earplugs on the front passenger's side. An Android phone, a smartwatch, and a manilla envelope containing a SIM card were retrieved from inside the vehicle. Technician Faelyn was able to develop latent prints, and she submitted thirty lift cards for analysis.

Technician Danesha Northan processed the Lincoln Town car where Justin Johnson was found. She recovered a projectile from the rubber window seal of the driver's door. In addition, she also developed three latent prints from the vehicle and submitted them to the latent print processing unit.

Daniel Lamont, an expert in the field of firearms identification, examination, and comparison, examined two firearms recovered from two book bags found in a bedroom in Mr. Knox's home during the execution of a search warrant: (1) a Glock 22 .40 caliber semi-automatic pistol, and (2) a EXTAR EXP-556 semi-automatic pistol. Mr. Lamont examined casings recovered from the crime scene and identified them as two .40 caliber cartridge cases and one .223 Remington cartridge casing. He explained that the EXTAR EXP-556 semi-automatic pistol fires "a caliber of .223 Remington," and that the Glock model 22 fires a ".40 caliber round." Based on his examination, he concluded that the .40 caliber cartridge cases bore marks consistent with being fired with the Glock handgun and the .223 Remington casings bore marks consistent with the test-fires from the EXTAR pistol.

Special Agent Michael Fowler testified as an expert in the field of cellular record analysis. He reviewed and analyzed cell phone records for two phone numbers associated with Elliot Knox and one number associated with the Appellant. Fowler testified that "looking at the 3:00 am time period that we've been focusing on, along Lucia Avenue, you see the activity of the red and blue phone, all consistent with that immediate area of Lucia Avenue, during that time period of 3:24 am."

DNA Analyst Michael Lawson testified, regarding the EXTAR gun:

The swabs yielded a DNA profile consistent with a mixture of at least two contributors... Elliot Knox and Travon Shaw match inferred genotypes. . .

So in each one of those populations, it is more likely that Elliot Knox donated DNA to the gun, than a random person donated DNA to the handgun. The same is true of Travon Shaw.

With respect to the Glock handgun, Lawson testified that “the swabs yielded an indeterminate DNA profile, consistent with at least one contributor.” In other words, “there was some DNA, but simply not enough to make a comparison.” As for the earplug swab retrieved from the “upper door tray of interior front passenger side,” Lawson testified that “based on the statistics, Travon Shaw would be the major contributor on that item.” With respect to the other three earplugs, Lawson stated, “the mixture for all three of them were indeterminate of at least three or four contributors, too complex to make a decision.”

Natalie Ann Hogan di Leonardo, an expert in latent print analysis, testified that there were three lift parts submitted, and she determined that they were suitable prints. She testified that the two latent prints taken from the exterior of the front passenger side doorframe of Johnson’s vehicle “came from Travon Shaw.”

Recorded jail calls between Appellant and his father were admitted into evidence and played for the jury. The defense presented no witnesses.

During discussions with the court regarding jury instructions, the State requested an accomplice liability instruction. The prosecutor argued that evidence had been presented that there were two shooters. He argued that the jury could find that Mr. Shaw was present, a part of a conspiracy, but not necessarily one of the shooters. He explained that Knox’s and Shaw’s DNA was on one gun, but there was no conclusive DNA on the second gun

that was used. He argued that the State should not be limited to one theory of the case. Appellant objected, the court overruled the objection and instructed the jury on accomplice liability.

The parties proceeded to deliver their closing arguments. During Appellant's closing, his attorney argued, in part, that Special Agent Fowler's testimony was not reliable. He focused on some of the cell phone records which appeared to be blank or missing information.

During the State's rebuttal closing argument, the prosecutor addressed defense counsel's argument:

STATE: Counsel spent a lot of time about the cell phone records, et cetera and saying that the stuff is not in here. These aren't blank pages, folks. Agent Fowler testified why some of them looked blank, it's how it prints. It's how it prints. See how some of them just have a few entries. It's how it prints. See who some of them just have few entries. It's because it prints—like imagine landscape, not portrait. I mean listen to what he just said. He tried to mislead you about there's no evidence here. It's 90 out of 112, you have to print the whole document out or it looks misleading. We printed out- it's how it shows up. This is all the evidence. See how some of them are like that, but some of them have all the fields. It's just how it prints, folks. He's trying to mislead you.

It's despicable.

Appellant's counsel objected and the court overruled the objection. Closing argument continued, and the prosecutor made the following remark:

STATE: So, basically everything counsel – look, he's doing his job. It's fine, it's fine. He's doing his job. He's trying to poke holes. The problem is, all the holes he attempts to poke were nothing. And that last analogy, about footprints leaving flower [sic], that's patronizing and despicable. That's not what this is.

Following jury's deliberations, Appellant was convicted on all charges.

STANDARD OF REVIEW

A trial court’s decision to grant a postponement request is analyzed under the abuse of discretion standard and requires a showing of actual prejudice. *State v. Frazier*, 298 Md. 422, 452 (1984). “Abuse of discretion [exists] where no reasonable person would take the view adopted by the [trial] court **or** when the court acts without reference to [] guiding rules or principles.” *State v. Robertson*, 463 Md. 342, 364 (2019) (quoting *Alexis v. State*, 437 Md. 457, 478 (2014)).

A decision to grant a mistrial lies within the sound discretion of the trial judge and will not be disturbed unless there has been an abuse of discretion. *Carter v. State*, 366 Md. 574, 589 (2001). “[T]he grant of a mistrial is considered an extraordinary remedy and should be granted only ‘if necessary to serve the ends of justice.’” *Id.* (quoting *Klaunenberg v. State*, 355 Md. 528, 555 (1999)).

Whether a prosecutor’s comments during closing argument were prejudicial lies within the sound discretion of the trial court. *Degren v. State*, 352 Md. 400, 431 (1999). On review, the appellate court determines whether the trial court “clearly abused the exercise of its discretion and prejudiced the accused.” *Id.*

“We review the trial court’s overall determination that a jury instruction is not warranted ‘for an abuse of discretion,’” *Jefferson v. State*, 268 Md. App. 354, 370 (2026) (quoting *Danshin v. State*, 491 Md. 520, 532 (2025)), but our “determination of whether the evidence is sufficient to generate the desired instruction is a question of law and thus is reviewed de novo.” *Hollins v. State*, 489 Md. 296, 309 (2024) (citing *Bazzle v. State*, 426 Md. 541, 550 (2012)) (internal citation omitted).

DISCUSSION

I. The Administrative Judge did not abuse her discretion in finding good cause to postpone Appellant’s case beyond the Hicks date.

Maryland Rule 4-271(a)(1) and its statutory counterpart, Md. Code Ann., Crim. Proc. § 6-103(a)(2) require that a defendant be brought to trial “not later than 180 days” after the earlier of the appearance of counsel or the first appearance of the defendant before the circuit court. Md. Code Ann., Crim. Proc. § 6-103(b)(1) states that changes to the trial date may be made only by “the county administrative judge or a designee of the judge” for “good cause shown.” The Maryland Supreme Court has interpreted “good cause” to include the unavailability of a judge, prosecutor, or general court congestion in a particular jurisdiction. *Tunnell v. State*, 466 Md. 565, 587 (2020). Such determinations may be challenged on two grounds: (1) there was not good cause for postponing the trial; and (2) there was not good cause for the extent of the delay. *Rosenbach v. State*, 314 Md. 473, 479 (1989). “The critical determination for appellate review is the postponement that extends the trial date beyond the Hicks date.” *Tunnell*, 466 Md. at 589.

Appellant argues that the administrative judge abused her discretion in postponing the trial beyond the *Hicks* deadline without good cause. Specifically, Appellant argues that the case was assigned to a prosecutor who, from the very beginning, was unavailable to try the case within the 180-day timeframe. Appellant asserts that the prosecutor’s marital plans and vacation plans did not constitute good cause. Appellant argues that even assuming the postponement was supported by good cause, rescheduling it five months (142

days) past the *Hicks* deadline was not. The State argues that the court did not abuse its discretion.

In *State v. Toney*, 315 Md. 122 (1989), the Maryland Supreme Court considered whether the prosecutor’s unavailability due to trial scheduling conflicts was good cause for a postponement. In that case, Mr. Toney first appeared before the circuit court on August 13, 1986; on that date, the 180-day clock began to run. *Id.* at 124. Mr. Toney was rearraigned on September 3, 1986, and trial was scheduled for November 12, 1986. *Id.* Because no courtroom was available on that date, the case was postponed until November 21, 1986. On that date, the parties appeared before the designated administrative judge and over Mr. Toney’s objection, the State requested a postponement for reasons related to the late receipt of certain evidence. *Id.* The judge found good cause for the postponement and rescheduled trial for December 22, 1986. *Id.* at 125.

On that date, the parties appeared before the same judge, and the State requested that the case be postponed because he was scheduled to begin trial on January 5, 1987, in a series of four unrelated murder cases. *Id.* The prosecutor explained that because of the holiday interruptions, the numerous motions to be heard in the unrelated case, and the fact that the defense intended to call ten witnesses, a trial could not be completed prior to the start of the prosecutor’s trial in January. *Id.* Mr. Toney objected to the postponement, and the judge ordered that trial would begin that afternoon. *Id.* Because no judge was available to try the case, the court found there was good case for a postponement. *Id.* After observing that the prosecutor would be trying a series of four murder cases beginning January 5, the judge ordered that the Mr. Toney’s case be set for trial, “no later than the first week of

February and that there would be no further postponements.” *Id.* Mr. Toney was subsequently tried and convicted. *Id.* at 127. He noted an appeal, and this court reversed his conviction, finding that the circuit court had abused its discretion in determining that there was good cause. *Id.* at 128.

The Maryland Supreme Court granted the State’s certiorari petition and ultimately held that the administrative judge’s decision was not an abuse of discretion. *Id.* at 138. The Court explained that the delay in the case was not “the result of a chronic and recurring problem but rather could be viewed as the result of an isolated instance.” *Id.* at 135. The Court pointed out that the scheduling conflicts the prosecutor “was experiencing were relatively unusual and were caused by a series of murder trials which had lasted well beyond any reasonable estimate.” *Id.* The Court found that “the State’s interest in maintaining prosecutorial continuity is a significant interest which in some instances may qualify as good cause for a postponement.” *Id.*

In the present case, we note that the basis for the postponement request was a scheduling conflict. As counsel for Appellant acknowledged, the prosecutor had no availability to try the case before February 2023 because she had many trials set between July 25th and through December and January. Like in *Toney*, there is nothing in the record here that suggested a habitual or chronic problem in scheduling. Instead, the prosecutor had been assigned other trials which had been previously scheduled by the court, and the prosecutor was also unavailable on certain dates because she planned to get married and to take a related vacation. Based on these circumstances, we hold that the court properly found good cause to postpone the case beyond the Hicks deadline. As in *Toney*, there was

no recurring problem, and the State’s interest in attorney continuity was sufficient to warrant the court’s actions.

Appellant next contends that even if there was good cause to support the postponement of the trial, there was no good cause for the extent of a delay of 142 days past the *Hicks* deadline. Appellant argues that the delay was inordinate because it “far exceeded those deemed acceptable in Maryland reported cases.”

In analyzing the extent of delay, our review requires us to individually examine the circumstances of the case before us, rather than to make an assessment based solely on the number of days the case was delayed. Here, we found that the delay was not caused by actions of the prosecutor to avoid trial but rather because of scheduling issues. The extent of the delay was also not excessive in light of the circumstances of the case, which included the prosecutor’s trial schedule and the court’s calendaring issues. As we see it, the administrative judge did not abuse her discretion in finding good cause for the postponement, and the delay was not inordinate.

II. The court did not err in declining Appellant’s motion to grant a new trial.

“The right to a fair trial is guaranteed by the Sixth Amendment to the United States Constitution, as incorporated against the States by the Fourteenth Amendment.” *Smith v. State*, 481 Md. 368, 392 (2022) (citing *Duncan v. Louisiana*, 391 U.S. 145, 148-49 (1968)). A fair trial requires that the jurors “be without bias or prejudice for or against the defendant and that their minds be free to hear and impartially consider the evidence and render a fair verdict thereon.” *Id.* A trial’s fairness can be compromised when a jury is informed or observes that a defendant is incarcerated. *Bruce v. State*, 318 Md. 706, 718 (1990); *Knott*

v. State, 349 Md. 227, 286-87 (1998). To determine whether security measures violated fairness and due process, a defendant must first establish that the security measures were observed or observable by jurors or prospective jurors. *Wagner v. State*, 213 Md. App. 419, 480 (2013). If a defendant makes this threshold showing, the defendant must then establish that an “unacceptable risk is presented of impermissible factors coming into play.” *Bruce*, 318 Md. at 718.

Appellant argues that the court erred in declining to strike an empaneled juror after the juror inadvertently saw Appellant shackled. Appellant argues that he was prejudiced by the juror’s observation of him in custody. The State argues that the juror did not see Appellant shackled.

We observe, from the transcript of the proceeding, that when asked, the juror expressly stated, “All I see is the Deputy and the rest of the officers.” While the Deputy stated otherwise, when questioned he stated, “Well. She did duck back in quickly.” When Appellant was asked by his attorney, “Was it your impression that she saw you?” Appellant answered, “Absolutely, because the way she jumped back into the bathroom.” After further discussion and questioning, the judge stated, “Just because – maybe you – she could have seen you, but she said she didn’t see you.” The judge denied the motion, and the trial was resumed.

In our view, the court did not abuse its discretion. The juror denied seeing Appellant, and the Deputy and Appellant could not definitively state that she did see him. The court made a factual finding that she believed the juror and based on the record, we hold that her factual finding was not erroneous. As previously explained, a due process challenge

requires a two-step analysis: first that the measures were observed, and second that prejudice occurred. Because Appellant has failed to establish that the juror saw him in the hallway, we decline further review.

II. The court did not abuse its discretion in propounding a jury instruction on accomplice liability.

Maryland Rule 4-325 (c) provides that a trial court “may, and at the request of any party, shall, instruct the jury as to the applicable law and the extent to which the jury as to the applicable law and to the extent to which the instructions are binding.” The Rule requires “the giving of a requested instruction when the following three-part test has been met: (1) the instruction is a correct statement of the law; (2) the instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in the jury instructions given.” *Dickey v. State*, 404 Md. 187, 197-98 (2008). Evidence is considered legally sufficient to generate a requested instruction if there is “some evidence” to support the proponent’s theory. *Bazzle v. State*, 426 Md. 541, 551 (2012). The “some evidence” threshold is a low, “minimum” sufficiency determination. *Id.*

Here, the State presented evidence that Appellant was likely shot by multiple shooters while sitting in the front driver’s seat of his car and that another individual, Elliot Knox, participated in the shooting. The bullets came from different angles, including the rear of the car and the passenger side. The two .40 caliber cartridge casings and one .223 Remington cartridge recovered from the scene were connected with two firearms found during a search of Elliot Knox’s home. Further, the cell phone location data revealed that Appellant and Mr. Knox were in proximity to each other at around 3:00 am, which

coincided with the time of the shooting. Based on this record, we hold that there was sufficient evidence to support an accomplice liability jury instruction.

III. The court did not abuse its discretion in overruling Appellant’s objections to the prosecutor’s remarks during closing argument.

Attorneys are afforded “great leeway in closing arguments.” *Small v. State*, 235 Md. App. 648, 697 (2018). There are limits, however, and a prosecutor may not “impugn the ethics or professionalism of defense counsel in closing argument.” *Smith v. State*, 225 Md. App. 516, 529 (2015). The State may, however, characterize, and respond to defense counsel’s efforts to undermine the credibility of its evidence. *See Warren v. State*, 205 Md. App. 93, 138-140 (2012). “A prosecutor’s improper comments . . . require reversal, if it appears that the remarks actually misled the jury or were likely to have misled or influenced the jury to the defendant’s prejudice.” *Donaldson v. State*, 416 Md. 467, 496-97 (2010) (internal citation omitted).

Appellant argues that he was deprived a fair trial as a result of the prosecutor’s disparaging remarks about defense counsel made during rebuttal closing argument. Appellant contends the prosecutor crossed the line in characterizing counsel’s effort to mislead the jury as “despicable” and “patronizing.” The State argues that the remarks were directed to defense counsel’s arguments, and the remarks did not imply that defense counsel committed ethical violations. The State argues that, even if the prosecutor’s use of the word “despicable” were improper, they would not merit reversal because they did not mislead the jury or influence the jury to the prejudice of the accused.

In *Smith v. State*, 225 Md. App. 516 (2015), our Court considered whether the prosecutor impermissibly imputed impropriety or unprofessional conduct to defense counsel during rebuttal closing argument, when the prosecutor twice characterized appellant’s case as consisting of “smoke and mirrors.” *Id.* at 528. The appellant contended that these statements constituted “repeated improper and prejudicial statements denigrating defense counsel and his role at trial.” *Id.* This Court held that the State’s closing argument was not improper, and that “the ‘smoke and mirrors’ comments were clearly directed to defense counsel’s argument and did not impute impropriety or unprofessional conduct to defense counsel.” *Id.*

In *Warren v. State*, 205 Md. App. 93 (2012), we considered whether a prosecutor’s remarks during closing arguments were improper. In that case, the appellant’s counsel sought to undermine the credibility of the State’s evidence, arguing, “I can’t believe beyond a reasonable doubt that they were robbed, but rather none of us should because they’re not telling the truth, the whole truth.” *Id.* at 111-112. The State, then, in rebuttal, characterized the defense counsel’s argument as a “tale told by an idiot full of sound and fury signifying nothing.” *Id.* at 112. The appellant argued that the use of the term “‘idiot’ denigrated the role of defense counsel and was inappropriate.” *Id.* at 139. This Court held that “given the prosecutor’s obvious attempt to rebut appellant’s counsel’s contention that no robbery occurred, it perceived no error warranting reversal.” *Id.* at 140. We, further, added that “the prosecutor’s remarks, whether taken individually or as a whole, were not so improper that they tainted the results of the trial.” *Id.*

Here, defense counsel initially attacked the credibility of the State’s forensic investigator, Special Agent Michael Fowler, arguing that his analysis of the cell-phone location data was a “trash opinion”, “a garbage opinion”, and characterized it as “rubbish.” In response, the prosecutor characterized the line of argument as “despicable,” emphasized the seriousness of the case, and described Agent Fowler’s efforts as “good detective work”:

Counsel spent a lot of time about the cell phone records, et cetera and saying that the stuff is in here. These aren’t blank pages, folk. Agent Fowler testified why some of them looked blank, it’s how it prints. It’s how it prints. See how some of them just have a few entries. It’s because it prints—like imagine landscape, not portrait. I mean, listen to what he just said. He tried to mislead you about there’s no evidence here. It’s 90 out of 112, you have to print the who document out or it looks misleading. We printed out- it’s how it shows up. This is all the evidence. See how some of them are like that, but some of them have all the fields. It’s just how it prints, folks. He’s trying to mislead you. It’s despicable.

The statements by the prosecutor were directed at defense counsel’s attacks on Agent Fowler’s credibility, not defense counsel’s ethics. In our view, the prosecutor’s rebuttal closing was within the broad range of permissible argument and did not impute impropriety to defense counsel. The court did not abuse its discretion to overruling the objection.

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