Circuit Court for Montgomery County
Case No. 134249C

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 572

September Term, 2019

ALEX CRUZ-MENDOZA

v.

STATE OF MARYLAND

Meredith*,
Friedman,
Kenney, James A., III
(Senior Judge, Specially Assigned),

JJ.

Opinion by Kenney, J.

Filed: September 15, 2020

*Meredith, Timothy E., now retired, participated in the hearing of this case while an active member of this Court; after being recalled pursuant to the Constitution, Article IV, Section 3A, he also participated in the decision and the preparation of this opinion.

A jury for the Circuit Court for Montgomery County convicted appellant, Alex Cruz-Mendoza, of second-degree arson, malicious burning with intent to defraud, conspiracy to commit second-degree arson, and making a false statement. He was sentenced to eighty-eight days of incarceration and two years of probation. On appeal he asks four questions,[1] which we have slightly rephrased:

I. Did the trial court err in its remedy for the State's untimely discovery disclosure?

II. To the extent preserved, did the trial court err when it limited the scope of appellant's cross-examination of a key State's witness about his "immigration-friendly" plea agreement?

III. Did the trial court err when it allowed the State to cross-examine appellant on his need for a translator to testify?

IV. Did the trial court err in allowing the State's rebuttal arguments?

For reasons that follow, we affirm the judgment of the circuit court.

FACTUAL AND PROCEDURAL BACKGROUND

The Setting of the Fire

[1] Appellant's original questions were:

I. Did the circuit court err in denying defense counsel's motion for mistrial and/or request to preclude a key State's witness from testifying?
II. Did the circuit court err in limiting the cross-examination of a key State's witness?
III. Did the circuit court err in permitting the State to suggest that appellant was only pretending to need the assistance of a court interpreter when he testified?
IV. Did the circuit court err in allowing improper rebuttal argument?

Appellant bought a 2013 Toyota Highlander at an auction in Pittsburgh, Pennsylvania. Because it had a salvaged title and needed repairs, he had trouble selling it. Sometime in February of 2018, appellant told Jorge Lezama Tello that he wanted to make the Highlander "disappear" and Tello agreed to help him do so. They met on March 8, 2018, to discuss how it was to be done.

Tello testified that they planned to burn the vehicle. To carry that out, they separately drove to a gas station where Tello filled a Gatorade bottle with gasoline and bought a lighter. They then drove to Tello's home and switched vehicles. Tello, driving the Highlander, and appellant, driving Tello's Nissan Sentra, drove to a location in the vicinity of Brown's Bridge where the Highlander was to be set on fire. After driving across the bridge, appellant turned around and went back to the other side. Tello parked the Highlander, sprayed gas in the back seat from the Gatorade bottle, set the car on fire, and then crossed the bridge to where appellant was waiting.

In the process, Tello's hair, eyebrows, and some of his clothes were burned and he lost the keys to the Highlander. After going home to change, Tello and appellant went out; first to a bar, Unplugged, and then to a restaurant, La Tasca. They went their separate ways around 3 a.m.

Appellant testified that the plan was "to take the car next to the bridge and then throw it into the water," and that burning the truck was never discussed. According to him, they did not stop at a gas station, but instead drove straight to Brown's Bridge. Tello had "told [appellant] that he was going to park the [Highlander] next to the boat

ramp," and that appellant was "to cross the bridge and wait for him on the other side." Appellant "wait[ed] for [Tello] on the other side of the bridge, when all of a sudden [Tello] came running towards [him], sat next to [him] and [Tello] smelled like burning." Tello told him that "he couldn't get the car into the water because there was some sort of gate or door that was locked." Instead, he set the vehicle on fire using paint remover he found in the Highlander. Afterwards, they went out together drinking.

Appellant acknowledged calling his insurance company, GEICO, the next day to report the car "missing or stolen" and telling its investigator that he paid $9,000 for the vehicle, $900 to have it towed from Pittsburgh, and $6,000 in repairs.

The Investigation

Around 10:30 p.m. on March 8, 2018, a woman reported a vehicle on fire by Brown's Bridge. Lieutenant Joseph Hyunga was among the first to respond. He saw a car completely ablaze, and because of "flare ups" of fire in the passenger side compartment, he thought flammable liquids were involved. Toyota keys and two lighters were found near the vehicle.

When the fire was extinguished, what remained of the vehicle was brought to the "Abandoned Vehicle Section" to be viewed in the daylight. There, Dan Mandeville of Fire & Explosives Investigation United concluded that the fire likely originated in the passenger-side compartment and that its cause was "incendiary."

Giselle Fredricks of the Maryland State Police Forensics Division tested two cans recovered at the scene of the fire and concluded that neither showed signs of containing a

flammable liquid but that could be the result of how the fire was suppressed. Lieutenant Christopher Moe went to the area from where the vehicle had allegedly been stolen but did not find any evidence. He also reviewed surveillance footage from Unplugged and did not see appellant.

John Catagan, GEICO's investigator, reviewed the insurance claim filed by appellant, talked to him on the phone, and later interviewed him in person. Appellant told Mr. Catagan that he had left the vehicle at Unplugged after a night of drinking and first noticed it was missing in the morning when his wife dropped him off to pick it up. On April 12, 2018, appellant was deposed by GEICO. During the deposition, appellant used a Spanish translator. He repeated much of what he had told Mr. Catagan during the earlier in-person interview. The two previous times that appellant had spoken to Mr. Catagan, he had spoken in English without the use of a translator.

On May 23, 2018, three police officers were present when Tello was interviewed about the burned vehicle. One served as the interpreter; Officer Tucker Kelly recorded the interview on his body camera but he did not participate in the interview. One of the officers took notes. Early in the interview, Tello's recounting of events on the night the Highlander was burned did not incriminate him or appellant. But, after being told by police that they knew he was "just a little involved," and would have "many problems" if he did not tell them the truth, Tello recounted the events as stated generally in his testimony. This version of what happened, however, was not recorded by the body-camera footage because it was turned off. Officer Kelly could not remember why the

body camera was turned off or whether either of the other officers in the room had told him to turn it off. But while Tello's second account was not captured by the body-camera footage, it was memorialized in the notes of the interview.[2]

In exchange for his cooperation in the case, Tello received a sentence of less than 365 days, with no executed incarceration.

Trial was held January 22 through January 25, 2019. Additional facts will be added in the discussion of the questions.

DISCUSSION

I.

The Discovery Violation

On the first day of trial, appellant's counsel learned the State would be using body-camera footage of Tello's May 23, 2018 interview. The footage had been previously requested in discovery on August 16, 2018, but, because it had been incorrectly tagged, the prosecution told the court that it did not know of its existence until Officer Kelly mentioned it on January 16, 2019. Based on the belated disclosure, appellant asked the trial court to either grant a mistrial or preclude Tello from testifying. Recognizing that the late disclosure was a discovery violation, but finding that it was not willful and that appellant had the handwritten notes of the interview, the court declined to impose the requested sanctions. Instead, it allowed appellant to view the video either

[2] The notes were written on three pages of lined notebook paper. Mr. Tello's first account of events was contained in the first page and one half of the second page. A line in the middle of the second page separates his second account from the first.

during the lunch recess or overnight. Appellant's counsel chose to view it that evening after opening statements had been given.

Standard of Review

Md. Rule 4-263(n)[3] provides a number of possible sanctions for discovery violations including ordering discovery of the undisclosed materials, striking testimony related to the undisclosed materials, granting a mistrial, or other appropriate remedies. But it does not require the trial court to take any particular action or to act at all; "it merely authorizes the court to act." *Thomas v. State*, 397 Md. 557, 570 (2007).

We review discovery sanctions for abuse of discretion. *Bellard v. State*, 229 Md. App. 312, 340 (2017) (citing *Rosenberg v. State*, 129 Md. App. 221, 259 (1999)). If a trial court's ruling is reasonable, we will not disturb the ruling on appeal even if we would have made a different decision. *Fontaine v. State*, 134 Md. App. 275, 288 (2000). It is "an abuse of discretion 'where no reasonable person would take the view adopted by

[3] Md. Rule 4-263(n) provides:

> **Sanctions.** 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 [trial] court.'" *Peterson v. State*, 196 Md. App. 563, 584 (2010) (quoting *Metheny v. State*, 359 Md. 576, 604 (2000)).

Contentions

Appellant contends that his convictions should be reversed because the trial court did not bar Tello from testifying or grant a mistrial for the State's failure to disclose the body-camera footage of the officers' interview with Tello until the first day of trial. He acknowledges receiving the notes taken during the interview, but he argues that there were key differences between the two pieces of evidence including hearing the officers tell Tello he would have "many problems" if he did not "tell the truth." He asserts that earlier access to the video could have changed the defense strategy and counsel's opening statement.

The State concedes a discovery violation, but contends that the requested remedies were too severe because the violation was not deliberate and the notes apprised appellant of what was in the video. It argues that defense counsel had the opportunity during the lunch break to review the video before his opening statement but chose instead to watch the video that evening. In addition, the State asserts that appellant did not identify exactly how his trial strategy would have changed had he seen the video before trial and that his closing argument essentially mirrored the opening statement. Therefore, in its view, earlier access to the video would not have changed the defense strategy.

Analysis

"The purpose of discovery is to avoid surprise at trial and to give the defendant sufficient time to prepare a defense." *Hutchinson v. State*, 406 Md. 219, 227 (2008). "[A] defendant is prejudiced only when he is unduly surprised and lacks adequate opportunity to prepare a defense, or when the violation substantially influences the jury." *Thomas*, 397 Md. at 574.

When considering an appropriate sanction for a discovery violation, 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.

Raynor v. State, 201 Md. App. 209, 228 (2011) (citing *Thomas*, 397 Md. at 570–71).

A mistrial is a possible discovery sanction outlined in Rule 4-263(n), but it "is an extraordinary act which should only be granted if necessary to serve the ends of justice." *Raynor*, 201 Md. App. at 228 (quoting *Barrios v. State*, 118 Md. App. 384, 396–97 (1997)). And the Rule "does not automatically disqualify a witness from testifying." Md. Rule 4-263(n). A trial court should impose "the least severe sanction that is consistent with the purpose of the discovery rules." *Thomas*, 397 Md. at 571.

In this case, the trial court recognized that there was a discovery violation but found "that it was not a willful violation" and that there was "no demonstration of any prejudice to the [appellant]" because the information contained in the video had been "in essence, revealed to the [appellant] prior to [trial]." The trial court determined that allowing defense counsel to inspect the video prior to opening statements would be

sufficient, but when given the opportunity to "view the evidence over the luncheon recess" before opening statements, counsel chose not to do so.

The notes and the video of the interview with Tello both reveal that Tello did not implicate himself or appellant in his first account of events, but that he did so in the later account. What the video added was the opportunity to observe the pressure extended by the officers on Tello before his story changed. As reflected in both the opening statement and closing argument, the defense strategy was to "concede 90 to 95 percent" of the State's case by acknowledging the false insurance claim and trying to get rid of the vehicle.[4] The focus of the defense was on the arson-related offenses and Tello's credibility. To the extent that an earlier viewing of the video could enhance the cross-examination of Tello, Tello did not testify until the next day.

[4] In opening, defense counsel stated:

> You're going to find that 95 percent of what she just said is very true. That's not denied. You're going to find out that defendant did indeed try to make a false insurance claim. You're going to find that defendant did indeed make a false statement to a police officer. You're going to find out that defendant wanted and accepted the help of his friend to get rid of his car.

In closing, defense counsel argued:

> When I first spoke to you Tuesday morning I told you at the end of this trial we'd concede 90 to 95 percent of what the State's going to tell you. Mr. – has said, candidly, he did make false statements to the police. He did try to commit fraud against the insurance company. He admits that to you. He had a salvaged title, paid too much money for it, couldn't get rid of it. (unintelligible), Car will go bye-bye, and I'll get paid by Geico. We concede that.

Appellant has failed to persuade us that having the video earlier would have materially changed the trial strategy. In short, we perceive no abuse of discretion.

II.

Limiting Cross-Examination of Tello

During his testimony Tello acknowledged that as a result of his plea agreement, his sentence would be under 365 days and that he would serve no jail time. He also testified that he had nine outstanding "serious traffic offenses" and in response to whether it was true that he would "say anything in this court[] . . . to avoid going to jail" he answered "Yes."

When asked during cross-examination whether he had received "about the 364 days' sentence binding cap," and whether it was "what we call an immigration-friendly sentence," the court sustained the State's objection. The trial court later instructed the jury that Tello's testimony should be considered "with caution because [it] may have been influenced by a desire to gain leniency and/or freedom by testifying against the defendant."

Standard of Review

The scope of cross-examination is a mixed question of law and fact. *Peterson v. State*, 444 Md. 105, 124 (2015). When the trial judge makes a judgment call of whether a particular question is "repetitive, probative, harassing, [or] confusing" we review for abuse of discretion. *Id.* However, when the trial court limits questioning based on its

"understanding of the legal rules," we review without deference. *Kazadi v. State*, 467 Md. 1, 49 (2020) (quoting *Peterson*, 444 Md. at 124).

Contentions

Appellant contends that the trial court violated his right under the Sixth Amendment,[5] Article 21 of the Maryland Declaration of Rights,[6] and Md. Rule 5-616(a)(4)[7]when it prevented him from cross-examining Tello about the immigration

[5] The Sixth Amendment of the U.S. Constitution provides that "in all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S Const. amend. VI.

[6] Article 21 of the Maryland Declaration of Rights states that "in all criminal prosecutions, every man [and woman] hath a right . . . to be confronted with the witnesses against him . . . [and] to examine the witnesses for and against him on oath[.]" Md. Decl. of Rts. art. 21.

[7] Rule 5-616 states:

> (a) Impeachment by inquiry of the witness. The credibility of a witness may be attacked through questions asked of the witness, including questions that are directed at:
>
> (1) Proving under Rule 5-613 that the witness has made statements that are inconsistent with the witness's present testimony;
>
> (2) Proving that the facts are not as testified to by the witness;
>
> (3) Proving that an opinion expressed by the witness is not held by the witness or is otherwise not worthy of belief;
>
> (4) Proving that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely;
>
> (5) Proving lack of personal knowledge or weaknesses in the capacity of the witness to perceive, remember, or communicate; or
>
> (6) Proving the character of the witness for untruthfulness by (i) establishing prior bad acts as permitted under Rule 5-608 (b) or (ii) establishing prior convictions as permitted under Rule 5-609.

aspects of his plea agreement for the purpose of showing bias or a motive to testify falsely.

The State responds that this issue was not properly preserved for our review because he did not proffer what he expected to elicit from the witness. In addition, it contends that the right to confront witnesses is subject to reasonable regulation by the trial court, and that the right to cross-examine a witness regarding immigration status under Rule 5-616(a)(4) is limited under *Kazadi*, 467 Md. at 52 (2020).[8] It argues that, in the absence of other evidence such as any *quid pro quo* in an immigration case, a witness's immigration status is ordinarily not proper for cross-examination. The State also contends that, if any error did occur, it was harmless because the jury was aware of Tello's plea agreement as well as the multiple outstanding charges against him.

Analysis

Preservation

Before addressing the merits of appellant's contention, we must consider whether it has been adequately preserved for our review. *See Abeokuto v. State*, 391 Md. 289, 327 (2006). Preservation requires the record to reflect that "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered" and that the party was prejudiced. Md. Rule 5-103(a)(2). Here, the court sustained the State's objection when appellant asked the "immigration-friendly" question. Appellant did not proffer what he was trying to elicit,

[8] The trial at issue took place in January of 2019; *Kazadi* was decided in January of 2020.

and nothing in the record expressly indicates that Tello had a reason to need an "immigration-friendly sentence." *See Grandison v. State*, 341 Md. 175, 207–8 (1995).

We understand appellant to be arguing that the circumstances and terms of the plea agreement were a sufficient foundation for the immigration inquiry and that was no substantial danger of undue prejudice or confusion. He asserts that we can take judicial notice under Md. Rule 5-201(f)[9] that "a sentence under 365 days can help avoid adverse immigration consequences."[10] For the purposes of this opinion, we will assume, without deciding, that the issue was properly preserved.

Analysis

A criminal defendant's right to confront the prosecution's witness is protected both under the Confrontation Clause of the U.S. Constitution and Article 21 of the Maryland Declaration of Rights.[11] *Peterson*, 444 Md. at 122. It includes the right to

[9] Md. Rule 5-201(f) provides that "[j]udicial notice may be taken at any stage of the proceeding."

[10] In support of this contention, he cites Capital Area Immigrant's Rights Coalition, Primer Series, "The Immigrant Definition of "Sentence," (Aug. 28, 2015), https://www.caircoalition.org/sites/default/files/Primer%20-%20Sentence.pdf.

[11] The Court of Appeals has explained:

> Both the Sixth Amendment to the United States Constitution and Article 21 of the Maryland Declaration of Rights provide a criminal defendant in a Maryland court with the right to confront witnesses who testify against the defendant. *Cox v. State*, 421 Md. 630, 642 (2011). In past cases, we have read the two rights *in pari materia*, or as generally providing the same protection to defendants.

cross-examine witnesses about "their biases, interests, or motives to testify." *Martinez v. State*, 416 Md. 418, 428 (2010). And Md. Rule 5-616(a)(4) expressly allows a witness's credibility to be challenged by questions directed at proving "that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely." The cross-examination of a witness is not unrestricted, but the exercise of the discretion limiting it must not prohibit a defendant from "expos[ing] to the jury the facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating to the reliability of the witness." *Martinez*, 416 Md. at 428 (quoting *Davis v. Alaska*, 415 U.S. 308 (1947).

To the extent that appellant is arguing that he was not allowed to confront Tello on all his potential biases, the Confrontation Clause does not guarantee "cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *Delaware v. Fensterer*, 474 U.S. 15, 20 (1985). For example, questions permitted by Md. Rule 5-616(a)(4) must have a factual foundation and their probative value substantially outweigh "the danger of undue prejudice or confusion." *Peterson*, 444 Md. at 136 (citing *Calloway v. State*, 414 Md. 616 (2010)). And, "[w]hen assessing the possibility of prejudice or confusion, 'the trial court is entitled to consider whether the witness's self

(…continued)
Derr v. State, 434 Md. 88, 103 (2013). Appellant has not advanced any reason why we should consider Article 21 of the Maryland Declaration of Rights as providing different or broader protection than the Sixth Amendment to the U.S. Constitution.

interest can be established by other items of evidence.'" *Id.* at 136 (quoting *Martinez*, 416 Md. at 430).

In this case, appellant did not advance a factual foundation for questions regarding an "immigration-friendly" sentence. Although appellant argues that a sentence of less than one year can *sometimes* be beneficial in an immigration proceeding, there is nothing to suggest that Tello is in need of an immigration-friendly sentence or was receiving "any *quid pro quo* or leniency in any immigration matter." *Kazadi*, 467 Md. at 54.

We are persuaded that the "constitutionally required threshold level of inquiry" was met here. *Smallwood v. State*, 320 Md. 300, 307 (1990) (quoting *Brown v. State*, 74 Md. App. 414, 419 (1988)). The jury was made aware of the plea agreement between the State and Tello and his possible bias and motive to testify as he did. From that, the jury could draw its own conclusions on whether or not to trust Tello's testimony. In sum, we perceive neither error nor an abuse of discretion. And had we done so, the extent of the permitted cross-examination and the court's instruction persuades us that the imposed restriction was harmless beyond a reasonable doubt.

III.

Cross-examination of Appellant

Before testifying, appellant requested a court interpreter to assist him in his testimony. Up to that point in the trial, appellant had not used an interpreter, and, prior to trial, he had spoken in both English and Spanish when talking to the GEICO investigator. The court explained to the jury:

> Okay, let me advise the ladies and gentlemen of the jury. The defendant will be the next witness in this case. . . . [B]ut I wanted to advise all of you with the consent of the parties in this case, with the consent of the attorneys, that the defendant has participated in the hearing of the trial throughout without the assistance of an interpreter because he felt comfortable understanding and following the proceedings and he doesn't have any concerns about that. But for purposes of his testimony, he just wanted to have the extra assistance of the interpreter in case he just wanted to make it easier for you to understand, okay?

During cross-examination the court overruled two objections from appellant regarding appellant's understanding of English:

> [STATE]: *So you received written work in English, is that correct?*
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled. You may answer.
>
> [APPELLANT]: Yes.
>
> [STATE]: And you speak to clients in English, is that correct?
>
> [APPELLANT]: Yes.
>
> [STATE]: And you speak Spanish as well?
>
> [APPELLANT]: Yes.
>
> [STATE]: So when you made your 9-1-1 call on March 4 to report this car missing and then stolen, you spoke in English. Am I correct?
>
> [APPELLANT]: That's right.
>
> [STATE]: *And did you not say to anyone on that phone call I don't understand, I need an interpreter, I don't speak English.*
>
> [DEFENSE COUNSEL]: Objection, relevance.
>
> THE COURT: Overruled, you may answer.

> [APPELLANT]: That is true, and for this reason I'm trying to learn. And I don't want to talk in Spanish when the other party is talking in English.

(emphasis added).

Standard of Review

The admission of evidence is ordinarily left to the discretion of the trial court. *Ruffin Hotel Corp. of Md. v. Gasper*, 418 Md. 594, 619 (2011). But the court does "not have the discretion to admit irrelevant evidence." *State v. Simms*, 420 Md. 705, 724–25 (2011). For that reason, the first question to be asked in the admissibility calculus is whether evidence is legally relevant. *Id.* at 725. That is a question of law that we review *de novo*. *Id.* If the evidence is relevant, we review whether its prejudicial effects outweigh its probative value for abuse of discretion. *Parker v. State*, 408 Md. 428, 437 (2009).

Contentions

Appellant contends that the trial court erred or abused its discretion by allowing the State to question him about his need for an interpreter while testifying. He argues that the questions were not relevant because the trial court had already informed the jury that he had understood everything in the trial up to that point but was using a translator just to make sure he was absolutely understood. And even if the questions were "marginally" or "slightly relevant," any relevancy was outweighed by their prejudice. In his view, allowing the prosecutor to ask him about his need for a translator, "suggested to the jury that [appellant's] request for an interpreter was only a stunt," and served to undermine his credibility, which was particularly important in this case.

The State contends that the relevancy bar is low and that it was important to establish that appellant understood and spoke English well enough to understand the statements that he had made in the 911 call, his call to GEICO reporting the vehicle stolen, and in his conversations with Lieutenant Moe and the GEICO investigator.

Analysis

Relevant evidence is any evidence that has a "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. But, the probative value of even relevant evidence must outweigh any unfair prejudice. *See* Md. Rule 5-403. Evidence is unfairly prejudicial if it influences the jury to disregard the evidence, or the lack thereof. *Odum v. State*, 412 Md. 593, 615 (2010). "[W]hether a particular piece of evidence is unfairly prejudicial" is determined "by balancing the inflammatory character of the evidence against the utility the evidence will provide to the jurors' evaluation of the issues in the case." *Smith v. State*, 218 Md. App. 689, 705 (2014).

To be sure, evidence related to appellant's ability to speak and understand English was relevant to the false claims charges. On the other hand, appellant essentially conceded those claims. In addition, the trial court, with the consent of the parties, advised the jury that appellant had understood the trial proceedings up to that point, but was more comfortable testifying with the aid of an interpreter. And his having an interpreter when he testified was consistent with him not using a translator in the

interview with the GEICO investigator, but having one present during the GEICO deposition.

The central issue in this case was appellant's role in setting the Highlander on fire and hinged on the respective credibility of Tello and appellant. Although the relevance may have been marginal, we are not persuaded that the prosecutor's questions were unfairly prejudicial. To the extent that they may have undermined appellant's credibility in the eyes of the jury, appellant's admission to making false claims on multiple occasions undermined his credibility far more than any perception that his use of the translator was a stunt. In short, we perceive neither error nor an abuse of discretion.

IV. Closing Arguments

During the State's closing, appellant objected to the following in the State's rebuttal argument:

> [STATE]: I want to talk to you about accomplice liability because it's important to understand how to apply it to this case; Mr. Tello lit this car on fire, there's no doubt. The question is the defendant's participation in this crime. What did he do to participate? Understanding why we're going to hold somebody who participates at the same level as the man who lights the match, basically, and this is why. Our community-
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.
>
> [STATE]: --does not want people to commit any crimes, and what we surely don't want is more than one person coming together to commit a crime. That is because one person committing a crime might not be successful, and they may not choose to do it. But when you bring more than one person together the likelihood the crime will succeed is much higher, and what the law says is we're going to hold every single person who participates equally responsible because we don't want

you to agree with another person to commit his crime. And that's why accomplice liability is important in this case.

Standard of Review

A trial court's rulings on closing arguments are reviewed for an abuse of discretion because the trial court is "in the best position to evaluate the propriety of a closing argument." *Ingram v. State*, 427 Md. 717, 726, 728 (2012).

Contentions

Appellant contends that his convictions should be reversed because the State advanced a "Golden Rule" argument by stating "[o]ur community does not want people to commit any crimes and what we surely don't want is more than one person coming together to commit a crime." This argument, in his view, unfairly inflamed the passions of the jury by pitting appellant against the "community."

The State responds that the statement was not a "Golden Rule" argument because it did not encourage the jury to abandon its neutral fact-finding role and decide the case based on emotion or self-interest. In the State's view, it directed the jury to the evidence by explaining why the community punishes accomplice liability. Moreover, according to the State, this isolated remark would not warrant reversal because there was already overwhelming proof of appellant's guilt.

Analysis

Closing arguments allow counsel to "sharpen and clarify the issues for resolution by the trier of fact in a criminal case." *Lee v. State*, 405 Md. 148, 161–62 (2008) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)). To that end, counsel is given

"wide latitude in the presentation of closing arguments" because this is the only time counsel is allowed to point out inferences that they want the jury to draw from the evidence. *Id.* at 162. Although there are no "hard and fast limitations" on closing arguments, an argument by the State that serves to inflame the jury and encourage a conviction of the defendant on something other than the evidence in the case is not permitted. *See Wilhelm v. State*, 272 Md. 404, 413 (1974).

A "Golden Rule" argument is an argument that encourages the jury to put themselves in the shoes of the victim or appeals to the jury's own interest in the outcome of the case. *Hill v. State*, 355 Md. 206, 214-15 (1999); *see also Lawson v. State*, 389 Md. 570, 594 (2005). No magic words automatically identify an argument as a "Golden Rule" argument; the trial court must consider how the words are used and the inferences that the jury might draw from them. *See Beads v. State*, 422 Md. 1 (2011). The mention of community in a closing argument does not necessarily make it a "Golden Rule" argument.

In this case, the prosecutor was explaining accomplice liability to the jury, and more specifically, that, even though appellant did not personally set the Highlander on fire, he was the one who drove Tello away from the fire. Rather than diverting the jury away from the evidence, the prosecutor directed the jury to the evidence of appellant's role in the offense.

We are not persuaded that reference to community in the context of that argument would encourage the jury to consider its own interest and reject the evidence or to convict

appellant of something other than the evidence in the case. In short, overruling appellant's objection was not an abuse of discretion.

JUDGMENTS OF THE CIRCUIT COURT FOR MONTGOMERY COUNTY AFFIRMED; COSTS TO BE PAID BY APPELLANT.