UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0967

September Term, 2014

---

ERIC J. BROWN

v.

STATE OF MARYLAND

---

*Zarnoch,
Leahy,
Rodowsky, Lawrence F.
(Retired, Specially Assigned),

JJ.

---

Opinion by Zarnoch, J.

---

Filed: November 12, 2015

* Zarnoch, Robert A., J., participated in the conference of this case while an active member of this Court; he participated in the adoption of this opinion as a retired, specially assigned member of this Court.

On December 16, 2011, while Eric Brown, appellant, was displaying a revolver, the gun discharged and killed a teenager in an apartment building in Prince George's County. Brown was charged with second-degree depraved heart murder, use of a handgun in the commission of a crime of violence, carrying a handgun, and illegal possession of a regulated firearm.

Following a trial held March 18 through 21, 2014 in the Circuit Court for Prince George's County, a jury returned verdicts of guilty for all crimes tried. The court sentenced Brown to 30 years imprisonment for second-degree murder, a consecutive 20 years for use of a handgun in the commission of a crime of violence, a concurrent 15 years for possession of a regulated firearm by a disqualified person, and a concurrent 15 years for possession of a regulated firearm by a person with a felony conviction.[1] Brown filed his notice of appeal on June 25, 2014, and presents two questions for our review:

I. "Whether the trial court improperly curtailed defense counsel's cross-examination of two witnesses?"

II. "Whether the prosecutor's improper closing argument informing the jury that, in considering the charge of depraved heart murder, Mr. Brown's intent 'doesn't matter' requires reversal?"

For the following reasons, we affirm the judgments of the circuit court.

[1] The conviction of carrying a handgun was merged with the conviction for use of a handgun in the commission of a crime of violence for sentencing purposes.

## BACKGROUND

Brown does not contest the sufficiency of the evidence. Accordingly, we recite a summary of the facts that gave rise to this prosecution and provide context for the resolution of issues raised in this appeal. *See Martin v. State*, 165 Md. App. 189, 193 (2005) (citing *Whitney v. State,* 158 Md. App. 519, 524 (2004)).

Kevin Marrow, Brown's cousin, testified to the following at trial. On December 16, 2011, Brown met Marrow and went to Marrow's apartment in Mount Ranier. On their way there, they bought and took ecstasy, and later at Marrow's home, drank tequila. Marrow's mother and girlfriend were home.

Later, Marrow left to buy marijuana from a group of boys (including the victim) who were standing outside of his building. Brown followed Marrow out into the hallway, and Marrow thought that Brown was leaving the building. The group of boys had relocated inside the apartment building, and Marrow, disappointed with the quality of the marijuana, returned to the group to get his money back. He then went to talk to his neighbor inside of his neighbor's apartment. After speaking with his neighbor for several minutes, Marrow heard a gunshot. He rushed out into a hallway filled with smoke, presumably from the discharge of the firearm, and saw the victim on the floor with his friends around him. The boys yelled that Marrow's cousin (Brown) fired the shot.

Marrow asked Brown what happened, and Brown responded, "I think I shot somebody." The two ran back into the apartment, where Brown unintentionally grabbed Marrow's coat, and left through a window with his backpack.

The police arrived and interviewed those at the scene. Marrow testified that, when he talked to the police, he told them that his name was Kevin Marlow, a false name. He also stated that he lied about being with Brown that day to protect his cousin, and recounted that he did not hear Brown mention having a gun or selling a gun. He also did not see Brown with a gun that day. On cross-examination, Marrow denied that he gave a false name to police because there was a warrant for his arrest in the District of Columbia. However, when defense counsel sought to question Marrow about whether he gave a false name to Metro Police in relation to a drug possession case, the prosecutor objected, and the court sustained the objection.

Kent Tucker was a friend of the victim and part of the group of boys hanging around the apartment building on the night of the incident. Tucker testified that he and his friends were in the hallway, Brown came out of an apartment and attempted to sell them a gun. However, none of the boys responded to Brown. According to Tucker, Brown left and returned a couple of minutes later; he heard Brown say, "This is what one looks like." Although Tucker did not observe Brown pointing a gun at anyone, he did view the handle of a revolver and saw a bright light when the gun discharged. The flash and noise disoriented Tucker, and he did not see where Brown went following the shooting. Tucker looked over to see his friend, the victim, drop to the ground and saw blood coming of his mouth. The victim was taken to the hospital, where that night he died from a single gunshot wound.

On cross-examination, Tucker denied that anyone in his group had sold Mr. Marrow marijuana. Over the prosecutor's objection, defense counsel asked whether Tucker and his friends called themselves the Fat Boys. Tucker denied the allegation. Defense counsel then attempted to ask whether they called themselves the Fat Boys because they "smoke marijuana dipped with PCP?" The prosecutor objected, and the court sustained the objection.

Officer Robert Caplan responded to the scene and testified that he saw the victim on the floor and smelled gunpowder in the air. According to Officer Caplan, one boy said, "They shot my boy. He was showing him how the gun worked and it went off." Scott McVeigh, a firearm and tool mark examiner, testified that he examined the bullet taken from the victim's body. He determined that the bullet appeared to have been fired from a revolver, either a .357 Magnum or a .38 Special. According to cell site information and the testimony of an expert in cell tower mapping, Brown's cell phone was in or near the apartment building at the time of the shooting.

Police also collected and testified to the analysis of articles of clothing worn by Brown and Marrow on the day of the incident. Because more than one person's DNA was present in the sample, the DNA test results were inconclusive for the collar of the jacket that Marrow gave to the police. DNA tests on the earphones concluded that they contained a mixture of Brown's DNA and additional DNA from an unknown contributor. Tests on the victim's jacket revealed no evidence of Brown's DNA. Brown's DNA also was not found on the victim's fingernails or on the swabs of his hand.

The jury returned guilty verdicts on March 21, 2014. Brown was sentenced on May 30, 2014, and filed a timely notice of appeal on June 25, 2014.

## DISCUSSION

### I. Restriction on Cross-Examination

During the cross-examination of Kevin Marrow, defense counsel desired to impeach his credibility by showing that he had given different names to police on two separate occasions because he had a warrant for his arrest in the District of Columbia. The following exchange took place:

| | |
|---|---|
| [DEFENSE COUNSEL]: | Well, for instance, sir, you were shown State's Exhibit Number 4 [a statement given to police on the night of the incident] and your name on top of the form is not Kevin Marrow, is it? |
| [MARROW]: | No, sir. |
| [DEFENSE COUNSEL]: | It's Kevin Marlow, correct? |
| [MARROW]: | Correct. |
| [DEFENSE COUNSEL]: | And that's the name that you gave the police on December the 17th, correct? |
| [MARROW]: | Correct. |
| [DEFENSE COUNSEL]: | So you lied to the police about your name, correct? |
| [MARROW]: | Correct. |
| [DEFENSE COUNSEL]: | Just like you've lied to the police in the District of Columbia about your name, correct? |
| [PROSECUTOR]: | Objection. |
| THE COURT: | Basis? |

[PROSECUTOR]: Relevance.

THE COURT: Sustained.

[DEFENSE COUNSEL]: Well, sir, you are the same Kevin Marlow that has an open warrant in the District of Columbia, correct, for a possession case?

[PROSECUTOR]: Objection.

THE COURT: Basis?

[PROSECUTOR]: Relevance.

THE COURT: Sustained. Disregard the question and the answer.

[DEFENSE COUNSEL]: Your Honor, may we approach?

THE COURT: You may.

Both counsel and Brown approached the bench, and the following discussion ensued:

[DEFENSE COUNSEL]: Your Honor, this is - has an open case and had an open case during the pendency of the case. He met with the - on numerous occasions, and at no point the State make arrangements for himself. It goes to his bias in favor - in order to create favor against the prosecuting office. And he's already admitted that he's lied to one authority about his name, law enforcement from Prince George's County.

THE COURT: It's relevant to the case. It's on the statement that was used to refresh his recollection, so I allowed it, but it's not a conviction of anything else in the absence of that.

[DEFENSE COUNSEL]: A conviction is a conviction. Pending case, Your Honor. I'm allowed to impeach him for --

THE COURT: Not in Maryland.

[DEFENSE COUNSEL]: Your Honor, I think the fact that he's given many names to many different law enforcement officials goes to his credibility. He's trying to hide his identity from law enforcement or to get out of trouble.

[PROSECUTOR]: I'd object. This is the first time I've ever heard of that pending warrant in the District of Columbia. And if it was a pending warrant, it's my understanding that – [Defense Counsel] is representing it's for some sort of possession drug counts. I'm not aware of Mr. Marrow changing his name for anything other than his initial statement to police in order to protect his own cousin.

THE COURT: I don't know what his motives were nor are they really material to me as to why he used other names. The fact that he used another name is relevant insofar as to the evidence that's been adduced in the case so far as it pertains to his statement in terms of that's where this -

[DEFENSE COUNSEL]: The fact that the State wasn't aware of this warrant is of no --

THE COURT: I agree with that, but it's not relevant otherwise is the basis for my ruling. It's collateral.

[DEFENSE COUNSEL]: Your Honor, on the night this happened, he gave a false name to --

THE COURT: To whom?

[DEFENSE COUNSEL]: -- to law enforcement.

THE COURT: Okay. I mean I'm assuming that you're going to flesh that out. If that is the case, I mean we already know that the name that was provided on the statement is different from the name that he's testifying in court is his name. That is . . . established right now.

[DEFENSE COUNSEL]: All right.

[Proceedings resumed.]

[DEFENSE COUNSEL]: When you met with law enforcement in connection with this case on December 17th, 2011, you gave a false name, correct?

[MARROW]: Correct.

[DEFENSE COUNSEL]: And you gave that false name because you know that there was a warrant for your arrest, correct?

[MARROW]: Wrong.

Defense counsel's cross-examination of Marrow then moved on to a different line of questioning. With respect to Kent Tucker's testimony, the following colloquy ensued:

[DEFENSE COUNSEL]: And together you guys call yourself the Fat Boys, correct?

[PROSECUTOR]: Objection.

THE COURT: Basis?

[PROSECUTOR]: Relevance.

[DEFENSE COUNSEL]: Your Honor, goes to bias.

THE COURT: Overruled.

[DEFENSE COUNSEL]: You say according to you, you've never heard that term before.

[TUCKER]: No.

[DEFENSE COUNSEL]: You never heard the term-you call yoursel[ves] the Fat Boys because you guys smoke marijuana dipped with PCP?

[PROSECUTOR]: Objection, Your Honor.

THE COURT: Sustained. Disregard the question and any answer that may have been elicited to that question.

Brown now argues that the court improperly restricted cross-examination of two prosecution witnesses and that his questioning should have been allowed under Maryland Rule 5-608 to elucidate the witnesses' respective character for untruthfulness. The State retorts that Brown did not satisfy the requirements of Maryland Rule 5-608, and that even if the court did err, any error was harmless beyond a reasonable doubt.

The Sixth Amendment to the United States Constitution, applicable to the State of Maryland through the Fourteenth Amendment, establishes that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him." U.S. CONST. amend. VI.[2] The Confrontation Clause

> (1) insures that the witness will give his statements under oath—thus impressing him with the seriousness of the matter and guarding against the lie by the possibility of a penalty for perjury; (2) forces the witness to submit to cross-examination, the 'greatest legal engine ever invented for the discovery of truth'; [and] (3) permits the jury that is to decide the defendant's fate to observe the demeanor of the witness in making his statement, thus aiding the jury in assessing his credibility.

*California v. Green*, 399 U.S. 149, 158 (1970) (Footnote omitted). Together, these "elements of confrontation" serve to safeguard "that evidence admitted against an accused is reliable and subject to the rigorous adversarial testing that is the norm of

[2] Article 21 of the Maryland Declaration of Rights—providing that "in all criminal prosecutions, every man hath a right . . . to be confronted with the witnesses against him . . . [and] to examine the witnesses for and against him on oath"—is analyzed *in pari materia* with the Sixth Amendment right to confrontation. *Cooper v. State*, 434 Md. 209, 232 (2013) (Citations omitted), *cert. denied*, 134 S. Ct. 2723 (2014).

Anglo-American criminal proceedings." *Maryland v. Craig*, 497 U.S. 836, 846 (1990) (Citations omitted).

Central to the right of confrontation is the opportunity to cross-examine witnesses. *Pantazes v. State*, 376 Md. 661, 680 (2003). "[T]he defendant's right to cross-examine witnesses includes the right to impeach credibility, to establish bias, interest or expose a motive to testify falsely." *Id.* (Citations omitted). "The right to cross-examination, however, is not without limits." *Marshall v. State*, 346 Md. 186, 193 (1997) (citing *Delaware v. Van Arsdall,* 475 U.S. 673, 679 (1986); *Smallwood v. State*, 320 Md. 300, 307 (1990)).

The trial court may "establish reasonable limits on cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness'[s] safety, or interrogation that is repetitive or only marginally relevant." *Pantazes*, 376 Md. at 680 (citing *Van Arsdall,* 475 U.S. at 679; *Merzbacher v. State*, 346 Md. 391, 413 (1997)). As the Supreme Court stated in *United States v. Scheffer*, a "defendant's right to present relevant evidence is not unlimited, but rather is subject to reasonable restrictions. A defendant's interest in presenting such evidence may thus 'bow to accommodate other legitimate interests in the criminal trial process.'" 523 U.S. 303, 308 (1998) (Citations omitted) (quoting *Rock v. Arkansas*, 483 U.S. 44, 55 (1987)); *accord Pantazes*, 376 Md. at 680-81.

The Court of Appeals, in *State v. Cox,* 298 Md. 173 (1983), described the common law rules regarding impeachment of a witness by resort to his or her prior bad acts, now

codified in Maryland Rule 5-608(b). The Court stated that, although "mere accusations of crime or misconduct may not be used to impeach," under the common law, cross-examination of a witness was allowed regarding "prior bad acts which are relevant to an assessment of the witness' credibility." *Id.* at 179.

Maryland Rule 5-608(b) provides:

> The court may permit any witness to be examined regarding the witness's own prior conduct that did not result in a conviction but that the court finds probative of a character trait of untruthfulness. Upon objection, however, the court may permit the inquiry only if the questioner, outside the hearing of the jury, establishes a reasonable factual basis for asserting that the conduct of the witness occurred. The conduct may not be proved by extrinsic evidence.

In *Pantazes v. State*, the Court reiterated that "upon objection, however, the proponent of the inquiry must establish a 'reasonable factual basis' that the alleged conduct occurred." 376 Md. 661, 683 (2003). The Court clarified that the questioning party is bound by the witness's response and explained that "[t]his limitation is a safeguard intended to avoid dangers such as undue consumption of trial time, confusion of the issues, and unfair surprise." *Id.* (citing J.W. Strong, *McCormick on Evidence,* § 41, at 155-56 (5th ed. 1999 & 2003 Supp.); 3A J.H. Wigmore, *Evidence,* § 979, at 826-27 (Chadbourn rev. 1970)).

> Even evidence that falls within the guidelines of 5-608(b) may be excluded pursuant to Rule 5-403 "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence."

*Id.* (citing 6 L. McLain, *Maryland Evidence,* § 608.1, at 477 (2d ed. 2001 & 2002 Supp.)).

An appellate court reviews evidentiary decisions regarding Rule 5-608(b) for abuse of discretion. Thus, we will overturn a trial court's ruling that restricted witness impeachment by prior conduct "only if the court exercise[d] discretion in an arbitrary or capricious manner or . . . act[ed] beyond the letter or reason of the law." *Thomas v. State*, 422 Md. 67, 73 (2011) (quoting *King v. State*, 407 Md. 682, 696 (2009)) (Internal quotation marks omitted).

In the present case, Brown's trial counsel sought to question witnesses, pursuant to Rule 5-608(b), on issues that only marginally bore on their credibility.[3] Counsel posed and the court allowed questioning of Marrow regarding the false name he gave to police on the night of the incident. However, the fact that Marrow had a pending drug charge in the District of Columbia had little relevance to the proceedings against Brown, and the court did not abuse its discretion in restricting questions on that subject. Once the prosecutor objected and stated that he was not aware of any other instance where Marrow had given a false name, Brown was obligated to "establish[] a reasonable factual basis for

[3] Brown did not argue to the trial court and does not argue now that the impeaching questions should have been allowed under Maryland Rule 5-616, which provides that the credibility of a witness may be attacked through questions directed at proving that the facts are not as testified to by the witness and through questions directed at showing that the witness is biased, prejudiced, interested in the outcome of the proceeding, or has a motive to testify falsely. Md. Rule 5-616(a)(2), (4). Thus, we do not address the possible quid-pro-quo between Marrow and the State that Brown alludes to in one sentence in his appellate brief.

asserting that the conduct of the witness occurred," pursuant to Rule 5-608(b), which he failed to do.

Further, we note that after the bench conference, defense counsel was able to ask the substance of the question without objection by the prosecutor, albeit without referencing either the drug charge or a second instance of Marrow giving a false name. In that exchange referring to the night of the shooting, defense counsel asked: "And you gave that false name because you know that there was a warrant for your arrest, correct?" to which Marrow responded, "Wrong." Pursuant to Rule 5-608(b), counsel had to accept Marrow's answer and could not introduce extrinsic evidence to the contrary. For these reasons, we hold that the court did not abuse its discretion in limiting cross-examination of Marrow under Rule 5-608(b).

We reach the same conclusion with regard to the limitations that the trial court placed on the cross-examination of Tucker. The trial court allowed defense counsel to ask Tucker whether he and his friends called themselves the "Fat Boys" over the prosecution's objection. Defense counsel then asked Tucker, "You never heard the term-you call yoursel[ves] the Fat Boys because you guys smoke marijuana dipped with PCP?" The court sustained the prosecutor's objection to the question.

However, even if Tucker had "smoke[d] marijuana dipped with PCP," as alleged by counsel's question, any answer to that question would not be probative of a character trait of untruthfulness, as required by Rule 5-608(b). Thus, we hold that the court did not abuse its discretion in restricting cross-examination on issues concerning Tucker's drug

use. For the above reasons, we hold that the trial court was within its discretion to limit the cross-examination at issue here.

## II. Improper Closing Argument

During closing argument, the prosecutor made several references to the level of intent that the jury needed to find in order to convict Brown for second-degree depraved heart murder, or, alternatively, involuntary manslaughter. The prosecutor argued:

> The top count here is murder. Now, the very first question on your verdict sheet that you're going to have, it's this thing called a second degree depraved heart murder. And what this says is that you are guilty of a second degree murder if you killed another person while acting with extreme disregard for human life. And in order to convict somebody of this, you have to find that the defendant, Mr. Brown, caused [the victim]'s death; that his conduct, Mr. Brown's conduct, created a very high risk - degree of risk to the life of [the victim]; and that Mr. Brown, conscious of such risk, acted with extreme disregard for the life-endangering consequence.
>
> Now, you're probably going to be saying there's no evidence of intent. You know what intent means? Intent means Mr. Brown, did he intend to shoot [the victim]? Did you hear any evidence of him intending to shoot [the victim], because I didn't?
>
> I'm not saying that he had something against [the victim], that they had some sort of beef, he had some sort of grudge, or [the victim] did anything against him. I'm not saying that. I'm saying that - and by the way, when I read that, did anyone hear the word intent? No. Intent is not in there. It doesn't matter. What this says is that he acted so recklessly that he basically had extreme disregard for [the victim]'s life.
>
> And how did he do that? I'll tell you how. First of all, he's a disqualified person. He's not allowed to even have a gun, but he had guns. And he takes an Ecstasy pill, drinks some tequila, then goes and tries to sell some guns to some 16-year-olds.
>
> And it's not just any guns he's trying to sell, he's trying to sell loaded guns. And when he's trying to sell these loaded guns to them, he's taking

> the gun out and pointing it at them. And in this case, isn't it obvious? He takes it out and he shoots [the victim] right in the heart.

The prosecutor then stated the requirements for convicting Brown under a theory of involuntary manslaughter:

> Now, the second count, which is basically a lesser homicide count, is involuntary manslaughter. And it's very similar to the depraved heart, and that is that Mr. Brown acted in a grossly negligent manner, and that grossly negligent manner or contact caused the death of [the victim].
>
> Now, what does grossly negligent mean? You're going to have this. It's Mr. Brown, while aware of the risk, acted in a manner that created a high risk to or showed a reckless disregard for human life. Sort of a lesser standard. And I would say that's probably -- that might be the answer to this case if he hadn't chosen to get high and get drunk and then try to sell a gun.
>
> Notice that in both of those, did I ever say the word intent? It doesn't matter. It doesn't matter.

Defense counsel did not object to the statements regarding intent in the prosecutor's closing argument. The court instructed the jury on the relevant charges as follows:

> The defendant is charged with the crime of murder. This charge includes second degree murder and involuntary manslaughter.
>
> In this case, second degree murder is the killing of another person while acting with an extreme disregard for human life. In order to convict the defendant of second degree murder, the State must prove, one, that the defendant caused the death of [the victim]; two, that the defendant's conduct created a very high degree of risk to the life of [the victim]; and, three, that the defendant, conscious of such risk, acted with extreme disregard of the life and endangering consequence.
>
> The defendant is charged with the crime of involuntary manslaughter. In order to convict the defendant of involuntary manslaughter, the State must prove, one, that the defendant acted in a grossly negligent manner and, two, that this grossly negligent conduct caused the death of [the victim].

> Grossly negligent means that the defendant, while aware of the risk, acted in a manner that created a high risk to and showed a reckless disregard for human life. If the defendant was unaware of the risk due to self-induced intoxication, that unawareness is not a defense.

Brown now asks this Court to exercise plain error review and reverse his convictions. Brown construes the prosecutor's closing argument as instructing the jury that it could convict Brown of depraved-heart murder even if it found "no evidence of intent" and contends that this misstatement of the law infringed his fundamental right to a fair trial. The State argues that the prosecutor did not misstate the law because the prosecutor's statements can be properly construed as telling the jury that it did not need to find that Brown had a *specific intent* to kill the victim. Alternatively, the State argues, even if the closing arguments constituted error, it is not an egregious error warranting plain error review.

"Plain error is 'error which vitally affects a defendant's right to a fair and impartial trial.'" *Diggs v. State*, 409 Md. 260, 286 (2009) (quoting *State v. Daughton*, 321 Md. 206, 211 (1990)). Appellate discretion to overlook non-preservation is plenary, *Morris v. State*, 153 Md. App. 480, 512 (2003), and Maryland courts have "characterized instances when an appellate court should take cognizance of unobjected to error as compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *State v. Hutchinson*, 287 Md. 198, 203 (1980); *see also Martin v. State*, 165 Md. App. 189, 195-96 (2005) ("[A]n appellate court should 'intervene in those circumstances only when the error complained of was so material to the rights of the accused as to amount to the kind

of prejudice which precluded an impartial trial.'" (quoting *Richmond v. State,* 330 Md. 223, 236 (1993))).

"[A]ppellate review under the plain error doctrine '1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon.'" *Hammersla v. State,* 184 Md. App. 295, 306 (quoting *Morris,* 153 Md. App. at 507), *cert. denied,* 409 Md. 49 (2009). This extremely high standard serves to incentivize parties to object at the trial level, giving the circuit court, "ordinarily in the best position to determine the relevant facts and adjudicate the dispute," the opportunity to resolve the issue at that time. *Puckett v. United States*, 556 U.S. 129, 134 (2009).

In *State v. Rich*, the Court of Appeals adopted the Supreme Court's four-factor analysis for plain-error review: (1) there must be an error that has "not been intentionally relinquished or abandoned, i.e., affirmatively waived"; (2) "the legal error must be clear or obvious, rather than subject to reasonable dispute"; (3) "the error must have affected the appellant's substantial rights"; and (4) "if the above three prongs are satisfied, the [appellate court] has the discretion to remedy the error—discretion which ought to be exercised only if the error 'seriously affect[s] the fairness, integrity or public reputation of judicial proceedings.'" 415 Md. 567, 578-79 (2010) (Internal citations omitted) (quoting *Puckett*, 566 U.S. at 135). "Meeting all four prongs is difficult, 'as it should be.'" *Puckett*, 566 U.S. at 135 (quoting *United States v. Dominguez Benitez*, 542 U.S. 74, 83 n.9 (2004)). We may consider the prongs in any order, and failing to satisfy a single prong ends the plain error inquiry.

Relevant to the alleged error in this case, the prosecutor and defense counsel "are customarily given wide latitude in closing argument." *Hairston v. State*, 68 Md. App. 230, 240 (citing *Samson v. State*, 27 Md. App. 326, 336 (1975)), *cert. denied*, 307 Md. 597 (1986). "There are no hard-and-fast limitations within which the argument of earnest counsel must be confined—no well-defined bounds beyond which the eloquence of an advocate shall not soar[;]" accordingly counsel "may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses" and "indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Degren v. State*, 352 Md. 400, 430 (1999) (quoting *Wilhelm,* 272 Md. at 412-13). Further, "[n]ot every improper remark, however, necessarily mandates reversal, and [w]hat exceeds the limits of permissible comment depends on the facts in each case." *Degren*, 352 Md. at 430-31 (Citations and quotation marks omitted).

In the present case, Brown contends that the closing argument encouraged the jury to convict without any intent requirement. The prosecutor's own words belie this argument: "you have to find that the defendant['s] . . . conduct created a very high risk - degree of risk to the life of [the victim]; and that Mr. Brown, conscious of such risk, acted with extreme disregard for the life-endangering consequence." We cannot say that the prosecutor's closing argument "exceeds the limits of permissible comment." *Degren*, 352 Md. at 430-31. Additionally, under the plain error analysis here, we are even further limited to determining whether "[t]he unobjected-to, improper argument . . . rise[s] to the level of the deprivation of a fair trial." *Rubin v. State*, 325 Md. 552, 588 (1992). When

viewed in the context of the entire case, we cannot conclude that the statements regarding intent, even if in error, rose to the level of a deprivation of a fair trial. Thus, we will not review Brown's unpreserved claims for plain error.

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