Circuit Court for Charles County
Case No. 08-K-17-000497

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1139

September Term, 2018

MIGUEL ANGEL SANTANA

v.

STATE OF MARYLAND

Graeff,
Friedman,
Eyler, James R.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Friedman, J.

Filed: February 19, 2020

*This is an unreported opinion and therefore may not be cited either as precedent or as persuasive authority in any paper, brief, motion, or other document filed in this Court or any other Maryland court. Md. Rule 1-104.

A jury in the Circuit Court for Charles County convicted Miguel Santana of one count of first-degree murder; four counts of attempted first-degree murder; five counts of use of a firearm in the commission of a crime of violence; nine counts of reckless endangerment; and one count of unlawful possession of a regulated firearm with a disqualifying conviction. The court sentenced him to an aggregate sentence of life plus 105 years.

Before us now, Santana appeals his convictions, arguing: (1) that the trial court erred by not finding a discovery violation under *Brady v. Maryland*, 373 U.S. 83 (1963), and Maryland Rule 4-263; (2) that the circuit court erred by denying his request for a *Franks*[1] hearing; (3) that the trial court erred by admitting and excluding certain evidence at trial; (4) that the trial court erred by admitting the expert testimony of a firearms examiner; (5) that the trial court erred by allowing improper closing argument; and (6) that Santana was denied his right to a public trial. We hold that the State committed a discovery violation, but that no prejudice ensued; that Santana was not entitled to a *Franks* hearing; that the trial court did not err or abuse its discretion by admitting and excluding evidence; that Santana waived his argument relative to the firearms examination opinion; that the prosecutor's closing argument was not improper; and that the brief limitation on access to the courtroom did not infringe upon Santana's right to a public trial. We, therefore, affirm.

[1] *Franks v. Delaware*, 438 U.S. 154 (1978).

BACKGROUND

On the evening of March 23, 2016, Santana, who was the front-seat passenger in a car driven by Rashaad Brawner, fired multiple shots into a crowd of people outside of a house in Waldorf. Thomas "Tyson" Tibbs, who lived at that house, was shot and killed. Kemo Key was shot but survived.

The crux of the State's case was Brawner's testimony identifying Santana as the shooter.[2] Quasean Reeves, an eyewitness, also testified that Santana was the shooter and other eyewitnesses described a shooter who had a similar dreadlock hairstyle and was wearing a fur-lined hooded jacket that matched one found in Santana's closet and was depicted in his social media activity.

Evidence also linked Santana to a black Glock with an extended magazine that was determined to be the murder weapon. That gun was found under a bush in Washington, D.C. ten months after the shooting. Firearms analysis of shell casings recovered from the scene of the shooting determined that the casings were fired from that gun. The serial number on the murder weapon matched the serial number on a gun that was depicted in a photograph recovered from Brawner's iCloud account. The photograph was taken in Santana's kitchen the day before the shooting. Brawner testified that the gun belonged to Santana.

[2] Brawner entered into an agreement with the State to plead guilty to manslaughter in exchange for testifying truthfully at Santana's trial. Brawner's sentencing was deferred until after Santana's trial, but the State agreed to recommend a sentence of ten years, suspend all but five years.

DISCUSSION

I.

On July 26, 2018, the parties appeared for sentencing and defense counsel made an oral motion to postpone based upon newly discovered evidence pertaining to Officer Jack Austin, who, at the time of the shooting, was a detective in the homicide unit of the Charles County Sheriff's Office and the lead investigator in this case. Defense counsel asserted that she had recently learned that Officer Austin was arrested 9 months after the shooting after he was found inebriated in an unmarked police vehicle on a bicycle path, having driven off the road. He was criminally charged and ultimately received probation before judgment. His probation ended in April 2018, after Santana's jury trial concluded. The Charles County Sheriff's Office conducted an internal investigation and demoted Officer Austin from detective to officer.[3]

The State opposed the motion to postpone sentencing, asserting that it was aware of Officer Austin's criminal record and demotion but had made a "legal decision" that the information was not exculpatory and would not be admissible to impeach Officer Austin. The information was, therefore, not discoverable under Rule 4-263(d)(5),(6).

[3] The fact of Officer Austin's demotion was apparent at trial. During the State's *voir dire* examination of Officer Austin relative to his expertise in historical cell cite analysis, he testified that he was currently assigned to the patrol division, but previously had worked in various units, most recently as a detective in the homicide unit for three and a half years. Defense counsel did not ask Officer Austin about his demotion in her *voir dire* or during cross-examination, but during her closing argument, she referred to him as "Detective Austin, now Officer Austin."

After argument, the trial court ruled that "there was no discovery violation" because the criminal charges filed against Officer Austin and his probationary status had no "bearing on truthfulness or dishonesty in any way."

On appeal, Santana contends the trial court erred in this ruling because the State was obligated to disclose any potential impeachable information, not just evidence it deems admissible. Santana maintains that the evidence that Officer Austin was criminally charged and later given probation before judgment could have been used to impeach his credibility or to show bias or self-interest and would have entitled him to inspect Officer Austin's internal affairs files.

Though the State's constitutional obligations pursuant to *Brady* and its discovery obligations under the Maryland Rules are "fundamentally distinct," both obligate disclosure to the defense of evidence that would exculpate a defendant or impeach a State's witness. *Yearby v. State*, 414 Md. 708, 720, 720 n.8 (2010) (noting that Rule 4-263 "required the State to disclose *Brady* material without a defense request"); *see Strickler v. Greene*, 527 U.S. 263, 281-82 (1999) (noting that *Brady* material includes information that is "favorable to the accused, either because it is exculpatory, or because it is impeaching"). Specifically, Rule 4-263(d) obligates the State to disclose, without the necessity of a request, "[a]ll material or information in any form, *whether or not admissible*, that tends to impeach a State's witness" or exculpate a defendant. Md. Rule 4-263(d)(5),(6) (emphasis added). The arrest and filing of criminal charges against the lead detective on a murder case (and his subsequent demotion) is information that "tends

to impeach" that witness, and the prosecution was obligated to disclose that information as soon as it was known to them. It is the role of the court, not the State, to make a "legal decision" on admissibility. The State, therefore, violated its obligations under both *Brady* and the Maryland Rules.

A failure to comply with *Brady* obligations warrants a new trial, only if the information suppressed would have been helpful to the defense, *Adams v. State*, 165 Md. App. 352, 363 (2005), and was material, meaning that "there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *Ware v. State*, 348 Md. 19, 46 (1997) (cleaned up). A "reasonable probability" means a "substantial possibility that … the result of the trial would have been any different." *Wilson v. State*, 363 Md. 333, 347 n.3 (2001) (cleaned up). Similarly, the State's violation of its discovery obligations under Rule 4-263 is subject to a traditional harmless error analysis. *Johnson v. State*, 360 Md. 250, 269 (2000). Thus, this Court must be satisfied that "there is no reasonable possibility" that the failure to disclose the evidence to the defense "may have contributed to the rendition of the guilty verdict." *Dionas v. State*, 436 Md. 97, 108 (2013) (cleaned up). Under either standard, we conclude that Santana was not prejudiced by the State's failure to disclose the pending charges against Officer Austin or his probationary status at the time of Santana's jury trial and, consequently, reversal of his convictions is not warranted. We explain.

In the first instance, Santana could not have impeached Officer Austin with evidence that he had been arrested and charged with a DUI and received probation before

judgment because he was not convicted of a crime and a DUI is not an impeachable offense. *See* Md. Rule 5-609(a) ("[E]vidence that the witness has been convicted of a crime shall be admitted if elicited from the witness or established by public record during examination of the witness, but only if (1) the crime was an infamous crime or other crime relevant to the witness's credibility[.]"); *Brown v. State*, 76 Md. App. 630, 639 (1988) ("Drunk driving convictions are not within the categories of those convictions that are admissible for the purpose of impeaching the credibility of a witness."). The fact that Officer Austin remained on probation at the time of the trial was also not a proper basis for impeachment because his probationary status relative to an unrelated DUI case did not bear on the credibility of his testimony about the murder investigation.[4]

We likewise reject Santana's assertion that had the State disclosed the information, he would have been entitled to inspect Officer Austin's internal affairs records, potentially leading to other admissible impeachment evidence. In *Fields v. State*, the case relied upon by Santana, defense counsel made a "detailed proffer" that he expected the

[4] *Davis v. Alaska*, 415 U.S. 308 (1974), is not to the contrary. There, the Supreme Court held that a defendant should have been permitted to cross-examine a key prosecution witness about his probationary status arising from a juvenile delinquency proceeding. *Id*. at 315. The witness had been on probation when he was questioned by the police about the defendant's involvement in the crime and thus, the Court reasoned, could have been pressured to provide a false identification of the defendant. *Id*. at 311. The Supreme Court noted that a witness to a crime who is on probation may be coerced to testify favorably for the State or be self-interested in offering testimony because of his or her probationary status. *Id*. at 317-18. Officer Austin, in contrast, testified in the State's case because he was the lead investigator. His probationary status in a completely unrelated criminal matter had no bearing upon the credibility of his investigation and was not relevant to show bias or self-interest.

internal affairs files of the two officers involved in the criminal investigation to reveal that they had been found guilty of overtime theft. 432 Md. 650, 669 (2013). Given that overtime theft goes directly to credibility, the Court of Appeals held that the defendant had met his burden of showing a "need to inspect" the otherwise confidential records. *Id.* at 671. The Court of Appeals further held that the circuit court had erred by quashing subpoenas for those records without, at a minimum, conducting an *in camera* review of the full files and that the trial court had erred by granting a motion *in limine* to preclude impeachment of the officers premised upon the fact of the internal investigation. *Id.* at 664-65, 669. Here, as the trial court reasoned, the facts of Officer Austin's DUI arrest did not bear on his credibility and Santana could not have meet his threshold burden of showing a need to inspect the internal affairs file.

Finally, even if Santana had been permitted to impeach Officer Austin with the fact of the criminal charges, we hold that there was not a reasonable probability that the outcome of the trial would have been different. Santana was identified as the shooter by Brawner and another eyewitness and was directly linked to the murder weapon. Officer Austin was the lead investigator on the case but was not a crucial factual witness. That Office Austin was arrested for DUI nine months after the shooting was, in our view, unlikely to sway the jurors to disbelieve him, much less to disregard the strong evidence of Santana's guilt.

II.

Santana argues that the trial court erred by denying his pretrial motion for a *Franks* hearing. In *Franks v. Delaware*, the U.S. Supreme Court established "a formal threshold procedure [that must be met] before a defendant will be permitted to stray beyond the 'four corners' of a warrant application[.]" *Fitzgerald v. State*, 153 Md. App. 601, 643 (2003) (describing *Franks v. Delaware*, 438 U.S. 154, 155-56 (1978)). While recognizing that there is "a presumption of validity with respect to the affidavit supporting [a] search warrant," the Court held that if a defendant can show "that a false statement knowingly and intentionally, or with reckless disregard for the truth, was included by the affiant in the warrant affidavit, *and if the allegedly false statement is necessary to the finding of probable cause*, the Fourth Amendment requires that a hearing be held at the defendant's request." *Franks*, 438 U.S. at 155-56, 171.

In July 2016, after Brawner identified Santana as the shooter, Officer Austin applied for a search warrant for Santana's home. In the fourth paragraph of the affidavit, Officer Austin averred that Brawner had "identified the front seat passenger of his vehicle at the time of [the shooting] to be his friend 'Miguel,' who he has known for approximately two years" and said that Miguel Santana was the shooter. In the next paragraph, Officer Austin recounted information about pending criminal charges against Santana involving a shooting on December 17, 2014 at Santana's house.[5] On that date, it

[5] In March 2017, Santana was tried and acquitted of all charges arising from that shooting.

was alleged that Santana and a friend were involved in an altercation and Santana shot at, but did not hit, the friend. Officer Austin omitted that the "friend" involved in the pending case was Brawner.

In Santana's view, this omission was calculated to hide the fact that Brawner had a motive to lie about Santana and necessitated a so-called "taint hearing." The motions court disagreed, reasoning that even if Officer Austin knowingly and intentionally omitted the information, the inclusion of the omitted information would not have altered the finding of probable cause. We agree.

The fact that Santana had been accused of shooting at Brawner in the past did not alter the fact that Brawner identified Santana as the passenger in his car on March 23, 2016 and the person who shot Tibbs and Key. That identification, coupled with other eyewitness descriptions of the shooter detailed in the affidavit, and descriptions of Santana's social media activity showing his appearance to be consistent with those descriptions, supported the issuance of the search warrant, and the inclusion of the omitted information would not have altered that result. Thus, Santana was not entitled to a *Franks* hearing.

III.

Santana takes issue with three evidentiary rulings made by the trial court. We address each contention in turn.

A. Admission of Exhibit 97B

At trial, Exhibit 97B was a photograph associated with Brawner's iPhone. Brawner had deleted the photograph from his iPhone after the shooting (and before his arrest) but, it remained on his iCloud storage account and the metadata associated with the photograph showed that it was taken the day before the shooting. The photograph depicts four guns, in very close proximity to each other, all sitting on an electric stovetop. The gun in the upper leftmost position was identified as the murder weapon.

The State moved to admit the photograph during Brawner's testimony. Defense counsel objected noting that despite the fact that the photograph depicted the murder weapon, it also depicted three other guns in Santana's house. Defense counsel argued that the three other guns amounted to inadmissible propensity evidence and was prejudicial to Santana. Defense counsel suggested the use of a cropped and reoriented version of the photograph, which was zoomed in on the serial number of the murder weapon. The State responded that the zoomed out photograph was relevant as direct evidence tying Santana to the crimes charged and that the close-up photograph was insufficient because it did not show the whole stovetop, which matched other photographs taken in Santana's kitchen and corroborated Brawner's testimony about the location where the photograph was taken. The trial court overruled Santana's objection and granted defense counsel a continuing objection to the exhibit.

On appeal, Santana contends that the photograph was irrelevant "[a]s presented" and, if relevant, its probative value was outweighed by "its tremendous prejudicial effect." We disagree.

Evidence is relevant if it has "any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Md. Rule 5-401. The determination of relevancy is a legal issue that we review *de novo*. *Smith v. State*, 218 Md. App. 689, 704 (2014). Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice[.]" Md. Rule 5-403. "This inquiry is left to the sound discretion of the trial judge and will be reversed only upon a clear showing of abuse of discretion." *Malik v. State*, 152 Md. App. 305, 324 (2003).

Exhibit 97B was highly relevant. The photo, taken one day before the shooting, depicts the murder weapon on a black electric stovetop with a white oven—which was shown by other evidence to be in Santana's kitchen. Further, the court did not abuse its broad discretion in balancing the probative value against the prejudice to Santana under Rule 5-403. This case is unlike *Smith*, where this Court held that evidence that the defendant in a murder case had eight guns in his apartment, all of which were unrelated to the shooting, was "minimally relevant, at best, and highly prejudicial, and should have been excluded[.]" 218 Md. App. at 703-705. Here, in contrast, one of the guns pictured in Santana's kitchen was the murder weapon. To be sure, the presence of three other guns

was prejudicial, but that prejudice did not outweigh the significant probative value of that evidence.

B. Exclusion of photographs of Antonio Owens

Santana contends that the trial court erred by excluding from evidence a photograph of Antonio Owens. The defense's theory at trial was that Brawner had wrongly accused Santana to protect Owens, who is Brawner's best friend and Santana's brother-in-law.[6]

During cross-examination of Officer Austin, Santana sought to introduce into evidence two booking photographs of Owens taken on September 1, 2016 and April 28, 2017, which he asserted showed that Owens had dreadlocks—consistent with the descriptions of the passenger in Brawner's car.[7] The State objected that the photographs were not relevant, arguing that photographs of Owens, taken more than five months and more than a year after the shooting, respectively, were not relevant to show his hairstyle on March 23, 2016. The trial court agreed, ruling that the photographs were irrelevant

[6] Evidence supporting this theory included that Brawner misidentified Owens's last name during his interview with the police; that an eyewitness who testified against Santana told police a few days after the murder that the word on the street was that the shooter was "Ant"; and that Brawner's mother told police that the only person she knows that her son hung out with was Owens. Additionally, Brawner had a contact in his phone under the name "Ant" which he acknowledged was associated with Owens, and at some time on the day of the shooting he texted "Ant": "On my way."

[7] In his brief, Santana states that these were "the same photos Officer Austin showed to Brawner's mother" when Brawner was arrested. This seems impossible because Brawner was arrested on March 28, 2016, before either of the photographs were taken.

and inadmissible. The trial judge made clear that she would revisit the relevancy determination if Santana produced a witness who could testify that in March 2016 Owens had the same hairstyle depicted.

The trial court did not err by excluding the photographs of Owens. The only proffered relevance of the photographs was Owens's dreadlock hairstyle, which, as the trial court reasoned, could have changed significantly within a year and a half after the shooting. Without testimony establishing Owens's appearance at the time of the shooting, the photographs did not have "any tendency" to make it "more probable or less probable" that Owens matched the description of the shooter given by eyewitnesses.

C. Admission of Santana's driver's license

A police officer testified that during the search of the master bedroom at Santana's house, he recovered a driver's license and another identification card bearing Santana's name and the address of the house. Defense counsel objected to admission of the license because he asserted that it was inadmissible hearsay offered to prove that Santana lived at that address.[8] The trial court ruled that the license was admissible.

We hold that the license was admissible for a non-hearsay purpose: as circumstantial evidence that Santana kept his belongings at the house, which was the

[8] In *Bernadyn v. State*, the Court of Appeals held that it was error for the trial court to admit a medical bill addressed to a defendant as proof that he lived at the address on the bill. 390 Md. 1, 23 (2005). For the reasons described above, we need not reach whether *Bernadyn* applies to these facts.

same place where police recovered a fur-lined jacket matching the description of the one worn by the shooter. On this basis alone, the trial court did not err by admitting it.

IV.

Santana contends the trial court erred by admitting the expert testimony of Gregory Klees, the State's firearms analyst, because it was unsupported by a sufficient factual basis under Rule 5-702. Specifically, relying on three studies from 2008, 2009, and 2016, Santana attacks the reliability of firearms toolmark analysis. We conclude that this issue is waived.

Klees is a forensic firearms and toolmark examiner at the Bureau of Alcohol, Tobacco, Firearms, and Explosives. During *voir dire*, he opined that he could microscopically compare the markings on ammunition test-fired from a gun to shell casings or bullets recovered from a crime scene or autopsy to "determine if they originated from a particular firearm." Preliminarily, he analyzes "class characteristics" associated with a particular manufacturer, make, and model, and, secondarily, he analyzes the ammunition for "finer markings … called individual characteristics" unique to the manufacturing process and the use of the firearm over time.

During defense counsel's *voir dire*, Klees acknowledged that "the standard for declaring that there is a match between the test-fire casings and the casings on the scene is variable," *i.e.*, there is no set number of points of similarity that must be found. Klees was also questioned about a 2016 study published by the President's Council of Advisors

on Science and Technology that found that firearms examiners have a false positive rate of between 1 in 66 and 1 in 46.

At the conclusion of *voir dire*, the court asked defense counsel if she objected to Klees being accepted as an expert in the field of firearms examination. She replied that she agreed that Klees was qualified pursuant to factor (1) of Rule 5-702 but would "challenge … the factual basis" of his opinions pursuant to factor (3) of Rule 5-702.[9] When the court asked defense counsel to make her factual basis argument, she stated that she would make her objection and argument "contemporaneous to the opinion being rendered" and that she would then argue that his opinion should not be accepted.

On direct examination, Klees opined, based upon his microscopic analysis, that that two shell casings recovered from the scene of the shooting had been fired from the Glock later recovered in Washington D.C. and was linked to Santana through images on Brawner's cell phone and his testimony. Klees further opined that a bullet recovered from Tibbs's body during the autopsy and two bullets recovered from the scene of the shooting

[9] Rule 5-702 states in its entirety:

> Expert testimony may be admitted, in the form of an opinion or otherwise, if the court determines that the testimony will assist the trier of fact to understand the evidence or to determine a fact in issue. In making that determination, the court shall determine (1) whether the witness is qualified as an expert by knowledge, skill, experience, training, or education, (2) the appropriateness of the expert testimony on the particular subject, and (3) whether a sufficient factual basis exists to support the expert testimony.

were .45 caliber and had been fired from a Glock barrel, but he could not offer an opinion as to whether the bullets were fired from Santana's Glock. Defense counsel did not object at the time that Klees offered these opinions and did not make any argument that the opinions should not be accepted by the trial court because they were not based upon a reliable methodology. Having failed to make any contemporaneous objection to the admission of Klees's opinions, this issue is waived for appellate review.[10] *See* Md. Rule 4-323 ("An objection to the admission of evidence shall be made at the time the evidence is offered or as soon thereafter as the grounds for objection become apparent. Otherwise, the objection is waived.").

V.

Santana contends the trial court erred by permitting the prosecutor to "make remarks that implied that defense counsel had acted unethically or improperly." The challenged remarks concerned the testimony of Thaddeus Wills, Tibbs's uncle and an eyewitness to the shooting. When Officer Austin interviewed Wills the day after the shooting, he provided descriptions of the passenger and the driver of Brawner's car. The interview was recorded and parts of it were played for the jury.

During cross-examination, defense counsel asked Wills if, at any time after that initial interview, the police returned to speak to him about the shooting. He replied, "Not

[10] At the time that the State introduced into evidence photographs taken by Klees under a microscope showing the shell casings from the scene and the shell casings that he test-fired from the Glock, defense counsel noted that she did not object to the admission of those exhibits, "subject to the 5-702 challenge." She did not, however, make any objection when Klees offered the opinions that Santana seeks to challenge on appeal.

that I recall." Defense counsel continued to press him on this point, asking if Officer Austin "c[a]me back and present[ed] [him] with any photographs or anything of that nature, in order to make an identification in this case?" Wills replied, "I remember him showing me some pictures and asking me, did this guy … he showed me, it was like three or four different people on there, and he was like, 'Do any of these guys fit the description?' And I pointed the one person out." He could not recall when he made the photo identification, but believed it was at some point in 2016.

On redirect examination, Wills testified that he told Officer Austin during their initial meeting that he could identify the passenger if he saw him again. When the prosecutor asked him to describe the passenger, however, Wills said that there wasn't much light inside the car and all he could see was a "dark figure."

Officer Austin testified that he recalled that Wills said he would be unable to identify the passenger. Officer Austin further testified that he did not show Wills "any photographs of any suspects[.]"

During her closing, defense counsel argued with respect to Wills:

> And then he said that they came around and they showed him some pictures. And that yes, he pointed someone out. Where is that picture? I don't have it. Where is that picture? I submit to you that if that picture was of Miguel Santana, you would know about it. And it wasn't.
>
> But Officer Austin said, "I never did that."
>
> *** * ***
>
> I'm pretty sure [Wills is] going to remember that. I'm pretty sure he's going to remember them showing him a couple of

> photographs. I'm pretty sure he's going to remember pointing to somebody and saying, "That's the guy who killed my nephew." And you notice, the State didn't ask him … the State didn't ask him that.

(Ellipses in original).

The prosecutor responded to that line of argument in his rebuttal closing argument, cataloging changes in Wills's story and arguing that he had difficulty "remembering all the details of what happened." He then argued:

> Does this sound like a person who we should be putting photographs in front of? Is there a risk that showing this person photos is going to be suggested to him? He's going to feel like he has to pick a picture out?
>
> And by the way, he never told Detective Austin he could identify the guy. That is nowhere in his recorded interview, and Detective Austin told you, "He never told me he would recognize the guy if he saw him again.["]
>
> *And then [defense counsel] wants to act like he was shown pictures. If you remember, the first time that gets brought up is when she is cross-examining the man, and then she put some words into his mouth. "Somebody came and showed you some pictures, right?"*
>
> *And Mr. Wills gets led by the nose down the primrose path to say, "Yeah ... um ... yeah, somebody came and showed me some pictures and I picked the dude out."*
>
> [DEFENSE COUNSEL]: Objection.
>
> [THE COURT]: (Inaudible.)
>
> [PROSECUTOR]: There is an objection, your Honor.

> [THE COURT]: And, carry on.[11]

(Ellipses in original; emphasis added).

The State asserts that this issue is unpreserved because the court never ruled upon the objection. Given that the court made an inaudible response to the objection and then directed the parties to carry on, we assume that the court overruled defense counsel's objection to the comment made by the prosecutor.

Nevertheless, attorneys are "afforded great leeway in presenting closing arguments to the jury[,]" and, when an attorney strays outside those bounds, "reversal is only required [if] it appears that the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Degren v. State*, 352 Md. 400, 429, 432 (1999). The prosecutor's remarks that defense counsel "put some words into [Wills's] mouth" and led him "down the primrose path" were perhaps

[11] After the court directed the parties to carry on, the prosecutor continued his argument as follows:

> [PROSECUTOR]: Sure. So, he says that happened. Detective Austin is called, the only one we've heard that has interacted with the man, aside from Detective … from Officer Burgess, who locked him up on the scene.
>
> He didn't show him any pictures. That never happened. *That's an idea planted in his head during cross-examination.* And now [defense counsel] wants to make a big deal that somehow, "Oh my god, there are these photos out there. He identified a guy."

(Ellipses in original; emphasis added). Defense counsel did not object to this line of argument. Consequently, the propriety of these remarks is not before us for review.

ill-considered but were clearly intended as a comment upon the malleability of Wills's memory, not upon defense counsel's character or ethics. To the extent that the remarks may have strayed outside the limits of permissible argument, they were not of the kind or type to have misled the jurors or prejudice Santana.

VI.

Santana contends he was denied his right to a public trial because, on the sixth day of trial, which continued past 6 p.m., his wife and his mother were denied admission to the courthouse after it was closed to the public at 4:30 p.m. Defense counsel raised this issue with the trial judge around 6 p.m., after making her closing argument, but before the prosecutor made his rebuttal closing argument, stating "I understand that they are not permitting a member of my client's family to enter the courtroom." She later clarified that she received a text message at 5:54 p.m. from one of Santana's family members stating, "They are not letting me in."

The trial judge brought the matter to the attention of the sheriff, who advised that the policy had "always been … when the courthouse closes at 4:30, there is no entrance [after] 4:30 because we go down to a skeleton crew. And if you're in, you're in, and if you're out, you don't come back in." The sheriff advised that two people had been denied entry, a woman who arrived for the first time after 4:30 p.m. and a woman who had been present earlier but left and returned after 4:30 p.m. Following this discussion, Santana's family members were permitted entrance for the remainder of the proceedings that day.

The right to a public trial is guaranteed by the Sixth Amendment, but "not every [courtroom] closure is of constitutional dimension." *Watters v. State*, 328 Md. 38, 46 (1992). Factors relevant to assessing if a closure meets that threshold include the length of the closure; the significance of the proceedings that took place during the closure; and the scope of the closure. *Kelly v. State*, 195 Md. App. 403, 421-22 (2010). Here, two members of Santana's family were denied entry to the courthouse for approximately 15 minutes during closing arguments and, after the court was made aware of the issue, they were permitted entrance until the trial recessed that day. This was not a closure of constitutional dimensions and reversal is not required. *See, e.g.*, *Wilson v. State*, 148 Md. App. 601, 626-27 (2002) (holding that a short and limited closure of the courtroom to some members of the public during the rendering of the verdict did not violate the defendant's Sixth Amendment right to an open and public trial).

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY AFFIRMED. COSTS TO PAID BY APPELLANT.