Circuit Court for Frederick County
Case No. 10-K-15-055996

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1267

September Term, 2016

HESTINA LAKEISHA HARRIS

v.

STATE OF MARYLAND

Meredith,
Leahy,
Sharer, J. Frederick
(Senior Judge, Specially Assigned),

JJ.

Opinion by Meredith, J.

Filed: April 5, 2019

Hestina Lakeisha Harris, appellant, was convicted, by a jury sitting in the Circuit Court for Frederick County, of murdering her grandmother, with whom she lived. At the time the grandmother was discovered lying wounded in the front yard of her home, Harris was the only other adult family member in the house. Harris denied stabbing her grandmother, and told police that she had seen a tall masked man, dressed in black, flee from inside the house. But Harris gave numerous interviews to the police, and inconsistencies in her descriptions of the incident, as well as blood splatter evidence observed in the house and on Harris's clothing, caused police to target Harris as their only suspect, and she was charged with, and convicted of, first-degree murder.

On appeal, Harris combines several questions as follows:

> Did the court err in allowing the State to (a) question the lead detective and appellant's family members about whether, after appellant's arrest, the family members initiated contact with the police, provided additional suspects, or told the detective that he had the wrong person; (b) question the lead detective regarding whether family members of murder victims generally initiate contact with him; and (c) elicit testimony that appellant's mother said that the victim had forgiven appellant, where the prosecutor used this inadmissible evidence repeatedly in closing argument to ask the jury to overlook the absence of any evidence of motive and find appellant guilty because "implicitly [appellant's] family has acknowledged her guilt"?

We conclude that only two of these questions were preserved: (1) Whether the trial court erred in overruling defense counsel's objection when the lead detective was asked by the prosecutor: "Have any of [Harris's] family members at any time requested you further your investigation?" (2) Whether the trial court erred in overruling defense counsel's objection when the lead detective was asked by the prosecutor: "Is it common in your experience for families of murder victims to initiate contact with you regarding murder

investigations[?]" We conclude that it was error for the trial court to permit the questions to be asked, and the error was not harmless. Consequently, we shall reverse the conviction and remand the case for a new trial.

FACTS

The State contended that the evidence proved that Harris stabbed her grandmother, Lillie Morris, over 20 times on the afternoon of December 22, 2014, while the two of them and Harris's four-month-old infant were alone in the grandmother's house. Although the grandmother managed to exit the house, she collapsed in the front yard, where she died. Evidence presented at trial included the following.

Around 2:10 p.m., on December 22, 2014, Lillie Morris's husband left home to go to work, leaving at home Lillie Morris (Harris's grandmother), their 19-year-old granddaughter (Harris), and Harris's four-month-old daughter. When the grandfather left, the grandmother was in the kitchen, the infant was in her bouncy seat in the living room, and Harris was upstairs. (Harris's mother and older brother also resided in that household, but neither of them was at home at that point in time.)

Around 2:30 p.m., Kim Strite drove past the Morris's house and saw an elderly woman, later identified as Lillie, lying on her stomach in the front yard, struggling to get up. A 12-inch knife was stuck in the ground near the grandmother, who was bleeding profusely from 20 stab wounds. Harris came out of the house soon after Strite arrived on the scene. Strite's description of her encounter with the grandmother and Harris called into question whether Harris had displayed an appropriate level of surprise and concern about

her grandmother's injuries. At some point, Harris called 911, and, by the time emergency personnel arrived and placed the grandmother in an ambulance, the grandmother was dead.

As the police continued to secure the scene and gather information, Harris was placed in a police cruiser that was equipped with audio and video recording equipment, and she told two Maryland State Troopers this version of what had happened, stating:

> I was in the bathroom and I left my daughter downstairs and I know I heard the front door open. I assumed my grandmother (unclear) mail like she always does at two, around 2:30 (unclear), and I didn't hear anything. She never screamed or anything. I ran downstairs and I seen all this blood everywhere. So I told the lady outside to call 911 and I ran back through the house to see if anybody else was there and I grabbed my daughter and I had to get the house phone because apparently her phone wasn't working so I had to call 911. And I know that when I came downstairs after I went in the house I seen the man in the kitchen. He was wearing all black, he was kind of muscular, six feet tall, and he must have ran out my back door[.]

As part of the initial investigation, a police officer with a tracking canine responded to the scene. The canine picked up a scent off the bloody knife and began to track the scent. The scent was followed part way up the mountain that was directly behind the grandmother's house, but, due to rain and darkness, the search was abandoned.

No shoeprints were found in the house. Nothing appeared to have been stolen; the victim's purse was found undisturbed in the dining room, as were envelopes of money that were found in the china closets in the kitchen and dining room. The victim had also been wearing jewelry, none of which was taken. Blood splatters were found in numerous locations in the house and on Harris's clothing.

The lead detective on the case, Sergeant Dubas, testified at trial regarding his interaction with Harris's family. He testified without objection that, when he had contacted

Harris's family members about arranging to take DNA swabs from them, it was not an easy process, and it took several weeks to make those arrangements. The questions Harris challenges on appeal were posed during the State's direct examination of Sergeant Dubas, during the State's case in chief, as follows:

> [THE STATE]: Since the date of the Defendant's arrest has any other member of the Morris family initiated contact with you regarding the investigation?
>
> [SERGEANT DUBAS]: No.
>
> [THE STATE]: ***Have any of those family members at any time requested you further your investigation?***
>
> [DEFENSE ATTORNEY]: ***Objection. Relevance.***
>
> THE COURT: ***Overruled.***
>
> THE WITNESS: ***No.***
>
> [THE STATE]: ***Is it common in your experience for families of victims to initiate contact with you regarding murder investigations –***
>
> [DEFENSE COUNSEL]: ***Objection.***
>
> THE COURT: ***Overruled.***
>
> THE WITNESS: ***Yes. Generally the, they burn my phone up. It, it's just constant calls from family, friends, relatives.***

(Emphasis added.)

During cross-examination of two family members called as character witnesses during the defendant's case, the State elicited testimony from the witnesses about their failure to initiate contact with the police. Although Harris contends this evidence was also

improper, no objection was asserted, and we consider Harris's argument not preserved as to this testimony.[1]

During closing arguments, the prosecutor made a reference to the lack of contact Harris's family had initiated with the police investigators, stating:

> You heard from the officers and family that no one has called to say you have the wrong person. No one has called to ask them to look for more suspects.

[1] During the cross-examination of Brandon Bowens, Harris's brother, the following exchange occurred:

> [THE STATE]: [Y]ou never told [Sergeant Dubas] that he had the wrong person, correct?
> [THE WITNESS]: No, I did not.
> [THE STATE]: Okay. And you never asked him to investigate anybody else, did you?
> [THE WITNESS]: No, I did not.
> [THE STATE]: And in fact since December 24th, 2014 you've never called the police and asked them to find another suspect, have you, sir?
> [THE WITNESS]: No, I was not made aware of any others.
> [THE STATE]: And you, you didn't have any to give, did you?
> [THE WITNESS]: No, I did not.

During cross-examination of Melissa Morris, Harris's mother, the following exchange occurred:

> [THE STATE]: [When you gave Sergeant Dubas a cheek swab in June] you didn't tell Sergeant Dubas to investigate anybody else, correct?
> [THE WITNESS]: It never crossed my mind due to the fact I've been in so much distraught about what had happened, I, it ain't even cross my mind about it. I had to worry about trying to do everything I needed to do to help my daughter.
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> * * *
>
> [THE STATE]: And since December 24th you haven't called the police, correct?
> [THE WITNESS]: No.

> [Sergeant Dubas] testified to that. There's no outrage, there's no demand to law enforcement, they're not blowing up [Sergeant] Dubas's phone as he testified. No reward funds. But there is forgiveness from them.
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> * * *
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> What we do know is that her family believes that she has it in her to do this because **they're not looking for anyone else. They never have.**

(Emphasis added.)

Although Harris argues on appeal that this was an objectionable argument, no objection was lodged at trial when the prosecutor made the argument.

DISCUSSION

Harris argues that the trial court committed reversible error when it admitted portions of three witnesses' testimony. She argues that the trial court erred in: 1) allowing the lead detective, as well as Harris's mother and brother, to testify that, after Harris's arrest, family members did not initiate contact with the police, provide additional suspects, or tell the detective that he had the wrong person; 2) allowing the lead detective to testify whether family members of murder victims generally initiate contact with him; and 3) allowing Harris's mother to testify that, when she spoke to Harris by telephone after her arrest, the mother told Harris that her deceased grandmother had "forgiven" her.[2]

[2] Harris's mother testified that she and Harris spoke via telephone shortly after Harris was arrested. On cross-examination, Harris's mother testified, without objection, that, during their telephone conversation, she told Harris that "your grandma has already forgiven you," and "[g]randma forgave you before she went to eternal rest." Harris has not preserved her challenge to the admission of that testimony due to the concessions of defense counsel regarding the foundation for the prosecutor's questions.

(continued)

The State argues that Harris objected only to the detective's testimony, and therefore, she has preserved for our review only her arguments addressing the detective's testimony. The State contends that the trial court did not err in overruling the objections to Sergeant Dubas's testimony, but, even if the testimony was admitted in error, the error was harmless. We agree with the State that the only objections preserved related to the testimony of Sergeant Dubas, but we disagree with the State's contentions that the testimony was properly admitted and, at most, a harmless error.

As noted above, the trial court overruled defense counsel's objections to two questions posed to Sergeant Dubas. To reiterate, the first question was: "Have any of [Harris's] family members at any time requested you further your investigation?" After Harris's objection based on relevance was overruled, the sergeant responded: "No." The second question was: "Is it common in your experience for families of victims to initiate contact with you regarding murder investigations[?]" After Harris's general objection was overruled, the sergeant responded: "Yes. Generally the, they burn my phone up. It, it's

When the prosecutor first asked Harris's mother, on cross-examination, if she had told Harris that her grandmother had forgiven her, defense counsel objected, and the court sustained the objection because of a lack of foundation. The State then elicited from Harris's mother an admission that she could not remember what she had said to her daughter. During a break, the State procured a recording of the telephone conversation, and the State and defense counsel agreed to have the recording played for the witness outside the presence of the jury, after which she could be questioned by the State in front of the jury about the recording. Defense counsel expressly agreed that this was "an acceptable way to proceed[.]" After Harris's mother heard the recording, she testified before the jury, and defense counsel did not assert an objection to the mother's testimony about Harris's grandmother's forgiveness. Although the basis for admitting the testimony is not immediately apparent, the issue was not preserved for our review, and we decline to address the substance of Harris's argument.

just constant calls from family, friends, relatives." Harris argues that the testimony was irrelevant and highly prejudicial, and its admission was not harmless error. We agree.

Maryland Rule 5-402 provides: "Except as otherwise provided by constitutions, statutes, or these rules, or by decisional law . . . , all relevant evidence is admissible. Evidence that is not relevant is not admissible." Maryland Rule 5-401 defines "relevant evidence" as evidence having "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." Even evidence that *is* relevant may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury . . . ." Maryland Rule 5-403. Whether evidence is "unfairly" prejudicial is not judged by whether the evidence hurts one's case, but by whether it "might influence the jury to disregard the evidence or lack of evidence regarding the particular crime with which [the defendant] is being charged." *Burris v. State*, 435 Md. 370, 392 (2013) (quotation marks and citation omitted) (brackets in *Burris*)).

The applicable standard of appellate review was described as follows in *State v. Simms*, 420 Md. 705 (2011). "Trial judges generally have wide discretion when weighing the relevancy of evidence." *Id.* at 724 (quotation marks and citation omitted). An abuse of discretion occurs when the "ruling is clearly untenable, unfairly depriving a litigant of a substantial right and denying a just result, when the ruling is violative of fact and logic, or when it constitutes an untenable judicial act that defies reason and works an injustice." *Alexis v. State*, 437 Md. 457, 478 (2014) (quotation marks and citation omitted). Although "trial judges are vested with discretion in weighing relevancy in light of unfairness or

efficiency considerations, trial judges do not have discretion to admit irrelevant evidence." *Simms*, 420 Md. at 724 (citation omitted). *See* Rule 5-402 ("Evidence that is not relevant is not admissible."). Accordingly, "we must consider first, whether the evidence is legally relevant, and, if relevant, then whether the evidence is inadmissible because its probative value is outweighed by the danger of unfair prejudice, or other countervailing concerns as outlined in Maryland Rule 5-403." *Simms*, 420 Md. at 725 (citation omitted).

Harris relies heavily upon *Snyder v. State*, 361 Md. 580 (2000). Although *Snyder* is not directly on point, we find it instructive. Snyder's wife was murdered and her body was found lying on the side of the road across the street from their home in February 1986. *Id.* at 586-87. Seven years later, Snyder was charged with, and convicted of, his wife's murder. *Id*. at 587. His first conviction was reversed by this Court on grounds unrelated to the issues in this appeal. At Snyder's second trial, the trial court admitted testimony, over objection, from an investigating officer that, in the months and years after the murder of Snyder's wife, Snyder had made no inquiry into the progress of the police investigation. *Id.* at 588. In the State's closing argument, the prosecutor urged the jury to find that this lack of inquiry was evidence of consciousness of guilt. *Id*. at 588-89.

Snyder appealed, arguing that the officer's testimony was inadmissible to prove consciousness of guilt because the failure to inquire is too "ambiguous and is subject to so many interpretations[.]" *Id*. at 590. Snyder argued that, because "the lack of inquiry cannot be probative of consciousness of guilt[,]" the testimony was irrelevant. *Id*. The Court of Appeals agreed and reversed the conviction. After reviewing the law on relevance, consciousness of guilt, and pre-arrest silence, the Court of Appeals concluded that Snyder's

silence was "too ambiguous and equivocal" to support an inference of consciousness of guilt. *Id*. at 596. The Court explained:

> **At best, the admission of the evidence invites the jury to speculate. The jury is asked to presume that the petitioner's failure to inquire is probative of the absence of a loving relationship between the petitioner and his wife and then to speculate as to the connection between the petitioner's relationship with his wife and his wife's murder, assuming in the process, that the petitioner's failure to inquire is indicative of a guilty conscience.** These assumptions and speculations lack probative value where, as in this case, the State has presented no testimony or evidence, from the investigating authorities or any other source, either as to the general response of family members during a murder investigation or of any specific responses or types of inquiries made by members of the Snyder family in this particular case. Moreover, the State presented no evidence that the petitioner was requested by the authorities to inquire regularly and certainly, it produced no evidence that the petitioner voluntarily stated that he would regularly inquire. Thus, there is no evidentiary basis for the conclusion that the jury drew.
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> * * *
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> **Even if, as the State urges, the failure to inquire about the police investigation has some probative value, we are nevertheless convinced that the trial court abused its discretion in admitting the evidence in this case**. As we have seen, there is a strong policy in favor of the admission of logically relevant evidence so long as the proffered evidence satisfies the requirements of Md. Rule 5-403, *i.e.*, its probative value is not substantially outweighed by the danger of unfair prejudice. Once evidence is determined to be relevant, the question is what inferences, together with all of the other relevant evidence, can the jury draw from the evidence. **Any probative value evidence of failure to inquire has is slight compared to the substantial danger that it will result in unfair prejudice.** *See Bedford v. State*, [. . .] 317 Md. 659, 566 A.2d 111 [(1989)]. *See also* 10 *Moore's Federal Practice* § 403. 02[3] (2d ed.1979) (pointing out, "[i]f the relevance of the proffered evidence is suspect or slight but would be prejudicial then any justification of its admission is slight or non-existent").

Id. at 596, 599–600 (emphasis added).

In the present case, although the State did offer evidence from Sergeant Dubas "as to the general response of family members during a murder investigation," *id*., we are nevertheless persuaded that the trial court erred in overruling defense counsel's objections to the questions posed to Sergeant Dubas about lack of contact from Harris's family. The mere fact that Harris's family members did not request that Sergeant Dubas conduct further investigation, without further evidence as to why, was too ambiguous to support a rational inference that the lack of contact was caused by the family members' unstated belief that Harris was guilty. In *Snyder*, the Court held that evidence that the spouse who was the suspect did not contact the police was not relevant to show consciousness of his own guilt. Here, evidence that family members of the suspect did not contact the police was even more attenuated and less probative of Harris's consciousness of guilt. Because it was offered to show that family members suspected Harris was guilty, the evidence was not relevant.

The State acknowledges that the evidence elicited in *Snyder* was, under the circumstances of that case, "'too ambiguous and equivocal to support' the chain of inferences necessary to show consciousness of guilt," but the State asserts that Sergeant Dubas's testimony about his experience in dealing with family members of victims in other cases made the evidence about Harris's family admissible in this case. We disagree. As stated above, because the Court of Appeals in *Snyder* found evidence that Snyder failed to contact the police was too ambiguous and speculative to suggest that he killed his wife, we consider evidence that Harris's family failed to initiate contact with the police to be even more ambiguous. It would require even greater speculation for the jury to infer that the

family members even have an opinion as to their relative's guilt, let alone for the jury to guess whether any family member's opinion is based upon legally relevant evidence.

The State also argues that, in contrast to *Snyder*, the detective's testimony here was offered to rebut anticipated character evidence about Harris. This argument lacks merit. There had been no character evidence introduced at the time Sergeant Dubas testified. But, in any event, the mere fact that Harris's family members did not initiate contact with Sergeant Dubas does not refute or contradict the character evidence later introduced by way of family members' testimony that Harris was not a violent person.

The State also asserts that the holding in *Snyder* was heavily influenced by "the general prohibition on using evidence of pre-arrest silence to show consciousness of guilt." Although the *Snyder* Court did discuss the law relative to pre-arrest silence and observe that one reason evidence of pre-arrest silence is inadmissible is because of "its inherently low probative value and its high potential for unfair prejudice," *id*. at 595, the Court clearly considered the fact that a defendant failed to inquire about the status of an investigation to have even less evidentiary value. *Id*. at 594 ("if consciousness of guilt cannot be inferred from pre-arrest silence, then it would appear that, clearly, it may not be inferred from a failure to inquire"). The Court of Appeals rejected the State's claim in *Snyder* that evidence of the defendant's failure to inquire about the investigation should be admissible:

> If, as a general proposition, evidence of a defendant's failure to inquire about the progress of a police investigation were probative of a consciousness of guilt, any reaction or failure to react to the death of a loved one by a family member or friend could be construed to be probative of guilt. Therefore, the fact that a defendant failed to inquire about the police investigation, as in this case, *see State v. Marshall*, 123 N.J. 1, 586 A.2d 85, 143–46 (1991) (inquiring too little led to conviction), or inquired too often,

> *see Smithart v. State*, 946 P.2d 1264, 1275 (Alaska App.1997) (inquiring too much equaled suspicion, which led to conviction), would suffice to support a jury verdict. So too, would evidence that the defendant inquired or grieved in a way that the State deemed out of the norm, irrespective of the significant ambiguity of the conduct. This would place a potential defendant in the perennial unenviable position of being caught between a rock and a hard place.
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> * * *
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> . . . Any probative value evidence of failure to inquire has is slight compared to the substantial danger that it will result in unfair prejudice.

Id. at 598-99, 599-600.

The *Snyder* Court concluded: "At best, the admission of the evidence [about the defendant's failure to inquire about the investigation] invites the jury to speculate." *Id*. at 596. Similarly, the testimony by Sergeant Dubas also improperly invited the jury to speculate. In essence, the detective was allowed to imply by his testimony that he believed that Harris's family members must believe that she is guilty. The examination may as well have been this slightly paraphrased, hypothetical version:

> STATE: Sergeant, do you know anyone else who thinks the defendant in this case is guilty of the murder?
>
> DETECTIVE: Yes, I do.
>
> STATE: Could you tell us who any of those people might be?
>
> DETECTIVE: Well, there are a lot of folks who think this the defendant is guilty, but I think that her family members must think she is guilty.
>
> STATE: Is that opinion based upon your ten years' experience investigating homicides.
>
> DETECTIVE: It is.

> STATE: Could you tell us what, if anything, the defendant's family members have said to you that leads you to conclude that they must believe that she is guilty of the murder?
>
> DETECTIVE: Well, actually, they haven't said anything to me. And that's why I believe they must believe that the defendant is guilty.
>
> STATE: Please explain.
>
> DETECTIVE: Well, in my experience, when I am investigating a murder, family members of the victim burn up my phone. I get constant calls from family members asking me to further my investigation. In this case, the family members of the victim are the same as the family members of the defendant. And, since this defendant's family members did not call me, they *must* think she is guilty. And, if *they* think she must be guilty, well, they are the people who know her best; so, she must be guilty.
>
> STATE: Thank you, Sergeant.

This hypothetical testimony is only slightly modified from the testimony that the State was permitted, over objection, to elicit from Sergeant Dubas in Harris's case. One odious aspect of the testimony is that the officer's implied opinion (that Harris's family members believe she is guilty) was based not on anything said by the family members, let alone based on any concrete evidence provided by the family members. Instead, Sergeant Dubas was permitted to imply that the defendant must be guilty because her family members must believe that she is guilty because they have not been hounding him to do a better job of investigating the murder. Even if the family members had made affirmative statements to the detective expressing a belief in the defendant's guilt, such hearsay would have been speculative and inadmissible because none of the family members was alleged to have witnessed any part of the crime. For the officer to be permitted to imply that the family members harbored an unexpressed belief in the defendant's guilt, and base that

opinion upon the silence of the family members, is two steps further down the path of speculation, and even less probative as relevant evidence.

Although Maryland cases have permitted evidence of a defendant's own conduct to serve as circumstantial evidence of consciousness of guilt, *see, e.g., Decker v. State*, 408 Md. 631, 640 (2009) (evidence of flight from courthouse), we have been directed to no case that has permitted family members of a defendant to express a bald opinion, unsupported by any admissible evidence, as to the guilt or innocence of the accused. Here, the trial court permitted the detective to effectively communicate his opinion that it was the family members' opinion, unsupported by any specific evidence, that Harris was guilty. That speculation was not relevant and not admissible.

The State argues in the alternative that, even if the testimony was admitted in error, the error was harmless. We disagree.

In Maryland, analysis of a claim of harmless error, applicable to preserved claims of error during criminal trials, is governed by the standard first adopted by the Court of Appeals in *Dorsey v. State*, 276 Md. 638 (1976), and reiterated in *State v. Hart*, 449 Md. 246, 262-63 (2016), as follows:

> ["]We conclude that when an appellant, in a criminal case, establishes error, unless a reviewing court, upon its own independent view of the record, is able to declare a belief, beyond a reasonable doubt, that the error in no way influenced the verdict, such error cannot be deemed 'harmless' and a reversal is mandated. Such reviewing court must thus be satisfied that there is no reasonable possibility that the evidence complained of — whether erroneously admitted or excluded — may have contributed to the rendition of the guilty verdict.["]

449 Md. at 262-63 (quoting *Dorsey*, 276 Md. at 659). Maryland appellate courts have "steadfastly maintained" that the State has the burden to prove harmlessness. *State v. Yancey*, 442 Md. 616, 628 (2015). And in *Porter v. State*, 455 Md. 220, 234 (2017), the Court of Appeals reiterated: "[R]eversal is required unless we find that the error was harmless. We have explained that an error is harmless only if it did not play **any role** in the jury's verdict." (Citation and internal quotation marks omitted; bold emphasis added in *Porter*.)

In our assessment of whether an error is harmless, we are not tasked with merely determining whether there was ample other evidence that could have supported the jury's verdict. The Court of Appeals explained in *Dionas v. State*, 436 Md. 97, 109-10, 116-17:

> In a criminal jury trial, the jury is the trier of fact. For this reason, it is responsible for weighing the evidence and rendering the final verdict. Therefore, any factor that relates to the jury's perspective of the case necessarily is a significant factor in the harmless error analysis. Thus, harmless error factors must be considered with a focus on the effect of erroneously admitted, or excluded, evidence on the jury. . . .
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> * * *
>
> We also conclude that the Court of Special Appeals erred by weighing the strength of the State's case from its own independent perspective, rather than from the perspective of the jury, as our precedents require.
>
> As noted, the Court of Special Appeals relied primarily on the strength of the State's evidence against the petitioner to conclude that the trial court's error was harmless. It reasoned, moreover, that Mr. White's testimony was cumulative, as it was corroborated by two other witnesses who identified the petitioner as the shooter, and that Mr. White's testimony was further corroborated by Mr. White's two prior extra-judicial identifications of the petitioner as the shooter shortly after the shooting, well before Mr. White's VOP proceedings. Accordingly, the intermediate appellate court concluded that, "[g]iven the strong evidence against [the petitioner], and the limited

> impact that the cross-examination likely would have had, we hold that the court's restriction of cross-examination, although error, was harmless."
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> By analyzing harmless error in this way, the Court of the Special Appeals, in effect, substituted its fact-finding for the jury's; it was stating that, if it were hearing the evidence, sitting in place of the jury, it would have believed the State's witnesses and would have convicted the petitioner, regardless of Mr. White's testimony or the proffered cross-examination relating to his credibility. That conclusion, that the proffered cross-examination likely would have had limited impact, given the strength of the State's case, was an assumption that could have only been made upon the evidence it would have credited. Were we to adopt this construction of the *Dorsey* test, harmless error would be determined on an "otherwise sufficient" basis: if the evidence is sufficient without the improper evidence, if the jury could have convicted without it, harm could not have resulted.
>
> An "otherwise sufficient" test, however, is a misapplication of the harmless error test. "Simply stating that the court failed to see how the outcome would be different is not the same as the court determining that the error did not influence the verdict." "To say that an error did not contribute to the verdict is, rather, to find that error unimportant in relation to everything else the jury considered on the issue in question, as revealed by the record."

(Citations omitted.)

Here, the State's case was largely circumstantial. Although there was scientific evidence implicating Harris and suggesting that the crime could not have occurred in the way Harris explained, there was no eyewitness who could testify that Harris committed the crime. Moreover, the State emphasized the erroneously-admitted and highly prejudicial evidence during closing argument. During closing, the State referred to the detective's testimony, stating:

> You heard from the officers and family that no one has called to say you have the wrong person. No one has called to ask them to look for more suspects. He testified to that. There's no outrage, there's no demand to law enforcement, they're not blowing up Tony Dubas's phone as he testified.
>
> * * *

> What we do know is that her family believes that she has it in her to do this because they're not looking for anyone else. They never have.

Because the jury may have concluded, based upon Sergeant Dubas's testimony, that Harris's family members all believe she is guilty — which is what the prosecutor urged the jury to infer — we cannot "declare a belief, beyond a reasonable doubt, that the error [in admitting that testimony] in no way influenced the verdict[.]" *Dorsey*, 276 Md. at 659. Accordingly, we are compelled to reverse Harris's conviction, and remand for a new trial.

JUDGMENT REVERSED. CASE REMANDED FOR A NEW TRIAL. COSTS TO BE PAID BY FREDERICK COUNTY.