Circuit Court for Baltimore County
Case No. C-03-CR-20-002074

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 1789

September Term, 2021

BRANDON DESHANE SAUNDERS

v.

STATE OF MARYLAND

Graeff,
Zic,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: January 6, 2023

*At the November 8, 2022 general election, the voters of Maryland ratified a constitutional amendment changing the name of the Court of Special Appeals of Maryland to the Appellate Court of Maryland. The name change took effect on December 14, 2022.

A jury, in the Circuit Court for Baltimore County, convicted Brandon Saunders, appellant, of first-degree rape, second-degree rape, first-degree assault, second-degree assault, and theft. The court sentenced Saunders to a total term of 40 years' imprisonment. In this appeal, Saunders presents six questions for our review. For clarity, we have rephrased those questions as:

1. Did the trial court err in preventing Saunders from cross-examining the victim about her prior conviction for second-degree escape?

2. Did the trial court err in preventing Saunders from cross-examining the victim about a criminal case that had been placed on the "stet" docket?

3. Did the trial court err in preventing Saunders from recross-examining the victim?

4. Is reversal required based on the "cumulative effect" of the trial court's alleged errors in limiting Saunders's cross-examination and recross-examination of the victim?

5. Did the trial court err in overruling Saunders's objection to the admission of a video that he claimed was not disclosed by the State during discovery?

6. Did the trial court err in allowing the prosecutor to argue that Saunders was a "predator" who "hunts" and "trolls" the neighborhood?

For reasons to follow, we affirm the judgments of the circuit court.

BACKGROUND

The instant charges arose from an encounter between Saunders and a woman, A.S., that occurred in July 2019. At trial, A.S. testified to the following facts. At approximately 10:00 p.m. on July 27, 2019, A.S. went with a friend to "Greenmount and 25th" to obtain drugs. A.S. admitted that she used drugs regularly and that her primary drugs of choice

were amphetamines and heroin. A.S. also admitted that she made money from "prostituting" and that she had performed oral sex in exchange for money on the night in question.

After "getting high" and "making money" prostituting herself, A.S. walked to a local convenience store to purchase cigarettes. Upon exiting the store, A.S. noticed a man, later identified as Saunders, who was "trying to get [her] attention." Saunders, who was sitting in the driver's seat of a parked vehicle, was "yelling out" to A.S. and "insisting on giving [her] a ride[.]" A.S. testified that she "was trying to ignore" Saunders but that "he was persistent[.]" A.S. agreed to the ride and got into the passenger seat of Saunders's vehicle, and Saunders drove away. A.S. told Saunders to take her to "Belair and Frankford," which is where her father lived, and Saunders agreed. At the time, A.S. was carrying a purse that contained her cell phone, wallet, and ID. A.S. stated that she was "not sure what else" was in her purse.

During the ensuing drive, A.S. told Saunders a good deal about her personal life, including that she had children, that she was an addict, and that she was "struggling." At some point, A.S. noticed that Saunders had driven past her father's house and that "something changed within the car[.]" Around that time, Saunders punched A.S. in the face, causing her nose to bleed. Saunders then grabbed A.S.'s purse, threw it into the backseat, and stated that she was "not going to be needing that no more" and that she "was going to die tonight." Saunders stated that A.S. "fit his profile perfect[ly]" because there were "three things he couldn't stand[:] prostitute, a woman on drugs[,] and a woman without her children." Saunders added that he "already had [A.S.'s] grave dug."

Saunders then drove to the parking lot at Loch Raven High School, where he parked. Upon arriving at the parking lot, Saunders grabbed and choked A.S. Saunders also stated that A.S. "was going to die that night" and that "he wasn't going to kill [her] right away" but "was going to toy with [her] for a while." Eventually, Saunders got out of the vehicle, walked around to the passenger side, and pulled A.S. out. Saunders then forced A.S. to place her hands on the hood of the car, at which point he put on a condom and had vaginal intercourse with A.S. against her will. Saunders made A.S. record the attack on his cell phone. Sometime later, Saunders forced A.S. to lie on the ground on her stomach, and he stood on her back and kicked her. Saunders then told A.S. that he was going to "bust all [her] teeth out with a crow bar[.]" When Saunders went to the trunk of his car, A.S. ran. At the time, A.S. was barefoot and her bra was ripped. A.S. ran up a hill and through some woods to a nearby highway, where she flagged down a passing motorist, who called 911.

Saunders was eventually arrested and taken to the police station, where he gave a recorded statement, which was played for the jury. In that statement, Saunders admitted to giving A.S. a ride on the night in question. Saunders stated that he was working as a "hack" to earn extra money. Saunders stated that, after he picked A.S. up and drove away, A.S. informed him that she did not have any money. A.S. then stated that she was a prostitute. Saunders claimed that he could tell that A.S. "used drugs." Saunders eventually drove to Loch Raven High School, where he and A.S. had consensual sex on the hood of his car. Saunders stated that, while he and A.S. were having sex, "things went left" and A.S. "got crazy." Saunders claimed that A.S. slapped him and scratched his arms and that he slapped

A.S. to defend himself. Saunders stated that he eventually got in his car and drove away, leaving A.S. in the parking lot.

Several other witnesses testified as well. Maryland State Police Corporal Edward Wilson testified that he responded to the scene following the 911 call and made contact with A.S. Corporal Wilson's encounter with A.S. was captured by his body camera and played for the jury. In that recording, A.S. can be heard stating that she had just been raped.

Evelyn Kim, an expert in forensic nursing and sexual assault forensic examination, testified that she examined A.S. several hours after A.S. had reported the attack. Ms. Kim testified that A.S. reported the following facts: that she had been strangled and sexually assaulted on the hood of a car; that she was punched in the face; that her attacker stated that he was going to kill her; that she had been kicked and stomped on; and that she ran away after her attacker had stated that he was going to knock her teeth out with a crow bar. Ms. Kim testified that A.S. had numerous physical injuries, which included myriad bruises, abrasions, lacerations, and scratches on A.S.'s head, face, neck, torso, arms, legs, feet, and genital area. Ms. Kim testified that many of A.S.'s physical injuries were consistent with her account of the incident.

Baltimore County Police Detective Scott Kilpatrick testified that he investigated A.S.'s report of the attack. As part of his investigation, Detective Kilpatrick reviewed security footage from the convenience store where Saunders and A.S. first met, security footage from Loch Raven High School, and footage from speed cameras located near the scene. According to Detective Kilpatrick, one of the videos showed Saunders's car arriving and parking in the school's parking lot. At some point, Saunders and A.S. exit the car and

move to the hood. They eventually reenter the car, and the car moves to another part of the lot, causing it to be partially obscured. A few minutes later, the car leaves the lot.

The jury ultimately convicted Saunders of first-degree rape, second-degree rape, first-degree assault, second-degree assault, kidnapping, and theft. The jury acquitted Saunders of first-degree and second-degree attempted murder. This timely appeal followed. Additional facts will be supplied below.

DISCUSSION

I.

Saunders's first claim of error concerns an issue that arose in relation to his cross-examination of A.S. At the beginning of the first day of trial, defense counsel informed the trial court that the State had just that morning provided the defense with a copy of A.S.'s criminal record. Defense counsel argued that the State's late disclosure constituted a discovery violation and that the court should sanction the State by disallowing A.S.'s testimony. The State argued that no discovery violation had occurred because A.S.'s criminal record did not contain any "impeachable convictions." Defense counsel responded that A.S.'s criminal record included a conviction for escape in the second degree, which defense counsel claimed was an impeachable offense because it went "directly towards her truthfulness and trustworthiness." After the court asked defense counsel if he knew of any pertinent caselaw on the matter, defense counsel stated that he would "look again," and the court responded that it would do "research too." The court then stated:

> Okay. I'm not persuaded that second degree escape is an impeachable offense. And if that were the case then I think the remedy would be to allow the Defense to impeach the victim based on that, a second degree escape, not to prevent the victim from testifying all together.
>
> At this point, however, I would find that it's not admissible because it's not an impeachable offense.
>
> Now, depending on how the victim testifies on direct examination, if that door is open then we're in a different posture and I would certainly reconsider the Defense request to allow for her impeachment with that conviction.

Later that day, just prior to A.S. testifying, the State informed the trial court that defense counsel had submitted a case, *Gorman v. State*, 67 Md. App. 398 (1986), that defense counsel believed supported his position. The State argued that *Gorman* was inapposite because, when that case was decided, second-degree escape was a statutory felony. The State noted that the current statute, under which A.S. had been convicted, listed second-degree escape as a misdemeanor.

Defense counsel responded that, although second-degree escape was currently a misdemeanor, the crime nevertheless involved "someone's truthfulness or their trustworthiness." The court ultimately ruled that defense counsel could not impeach A.S. with her conviction for second-degree escape:

> Okay. As to the balancing of the nature of the offense, before this *Gorman* case was brought to my attention when I ruled previously, I engaged in a balancing test and found that escape was not a crime of moral turpitude.
>
> Having seen the *Gorman* case which appears to find that by virtue of the fact that the escape in this case was a felony, based on the history of the common law, it was therefore admissible to impeach testimony.
>
> This escape is not a felony, it's a misdemeanor and I haven't changed my view with regard to whether or not it is a crime of moral turpitude in the

> sense that other offenses like perjury, forgery, theft and those types of offenses are.
>
> And so my ruling is not changed.

Parties' Contentions

Saunders now claims that the trial court erred in preventing him from impeaching A.S. with her conviction for second-degree escape. He argues that the court failed to conduct the proper analysis when it determined that second-degree escape was not a crime of "moral turpitude." He asserts that the admissibility of a prior conviction for impeachment purposes does not turn on whether it is a crime of moral turpitude; rather, the proper question is whether the crime is relevant to the witness's credibility. He further argues that, even if the court did engage in the proper analysis, it nevertheless erred in finding that A.S.'s conviction for second-degree escape was inadmissible for impeachment purposes. He asserts that the crime was relevant to A.S.'s credibility because, "to carry out an escape, someone must necessarily act furtively to conceal themselves and thereby avoid detection."

The State argues that second-degree escape is not an impeachable offense because the crime "does not require the perpetrator to utter a single falsehood or employ any form of deception."[1] The State also argues that the trial court, despite its reference to "moral

[1] The State contends that Saunders's claim regarding the propriety of the trial court's analysis is partly unpreserved because he did not object again when the court made its final ruling. We disagree. Saunders's position on the matter was fully presented to the court prior to the court's ruling. Any additional objection would have been fruitless.

turpitude," engaged in the appropriate analysis and did not abuse its discretion in ruling on the matter.[2]

Analysis

Impeachment by evidence of conviction of a crime is governed by Maryland Rule 5-609, which provides, in pertinent part:

> For the purpose of attacking the credibility of a witness, evidence 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 and (2) the court determines that the probative value of admitting this evidence outweighs the danger of unfair prejudice to the witness or the objecting party.

Md. Rule 5-609(a).

In assessing whether a conviction is admissible pursuant to Rule 5-609, a court must first "determine whether the crime is an 'infamous crime or other crime relevant to the witness'[s] credibility.'" *Rosales v. State*, 463 Md. 552, 571 (2019) (quoting Md. Rule 5-609). "If a crime does not fall within one of the two categories, then it is inadmissible and the analysis ends." *Id.* (citations and quotation marks omitted).

"Infamous crimes include treason, common law felonies, and other crimes classified as *crimen falsi*." *Thurman v. State*, 211 Md. App. 455, 463 (2013) (quotation marks and emphasis omitted) (quoting *King v. State*, 407 Md. 682, 698-99 (2009)). *Crimen falsi* are "crimes that have an element of deceitfulness, untruthfulness, or falsification …, such as

[2] The State claims that, even if the trial court erred, any error was harmless. Because we find no error, we need not address that claim.

perjury, false statement, criminal fraud, embezzlement, or false pretense." *Rosales*, 463 Md. at 571-72.

It is undisputed that the crime at issue here, second-degree escape, is not an infamous crime, nor can it be classified as *crimen falsi*. Thus, for A.S.'s conviction to be admissible, second-degree escape must be considered "relevant to the witness's credibility[.]" Md. Rule 5-609(a). "This threshold question of whether or not a crime bears upon credibility is a matter of law." *Thurman*, 211 Md. App. at 463 (quotation marks and emphasis omitted) (quoting *King*, 407 Md. at 698-99).

"To fall into the category of other crimes relevant to credibility, the crime itself, by its elements, must clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief." *Rosales*, 463 Md. at 572 (citations and quotation marks omitted). Crimes that tend to show that a perpetrator is unworthy of belief are those in which "the perpetrator lives a life of secrecy and engages in dissembling in the course of [the crime], being prepared to say whatever is required by the demands of the moment, whether the truth or a lie." *Id.* (citations and quotation marks omitted).

Several cases from this Court and the Supreme Court of Maryland[3] are instructive in determining whether a conviction bears on a witness's credibility. In *State v. Giddens*, 335 Md. 205 (1994), for instance, the Supreme Court of Maryland held that a conviction for distribution of cocaine could be used for impeachment purposes. *Id.* at 220. The Court reasoned that, because individuals who distribute cocaine generally engage in ongoing,

[3] Prior to December 14, 2022, the Supreme Court of Maryland was known as the Maryland Court of Appeals. For clarity, we shall refer to the Court by its current name.

surreptitious behavior to avoid detection and arrest, those same individuals would likely "be willing to lie under oath." *Id.* at 217-18. The Court also noted that the crime had "a well understood meaning within the community" and permitted "the fact finder to assess what, if any, impact such conviction has upon a witness's veracity." *Id.* at 219.

In *Rosales v. State*, *supra*, the Supreme Court of Maryland held that a conviction for committing a violent crime in aid of racketeering (a "VICAR offense") was admissible for impeachment purposes. *Rosales*, 463 Md. at 556-57. The Court noted that, to convict a defendant of a VICAR offense, the State must show that the defendant committed the violent crime with the purpose of either receiving a benefit from or joining, increasing, or maintaining his standing in a racketeering enterprise. *Id.* at 577. The Court reasoned that a VICAR offense was distinct from an ordinary act of violence, the latter of which is generally inadmissible, because of the added requirement that the act of violence be committed as part of a racketeering enterprise. *Id.* at 578. The Court explained that "[t]he association with others in the enterprise in a concerted effort to advance or cover up racketeering activity, not the predicate offense, [is what] makes VICAR crimes inherently deceitful." *Id.* at 579. The Court noted that "this conduct requires secrecy and tears at the fabric of society." *Id.*

In *Correll v. State*, 215 Md. App. 483 (2013), by contrast, this Court held that a conviction for failing to register as a sex offender was inadmissible for impeachment purposes because it did not bear on the witness's credibility. *Id.* at 504-07. We explained that, although the crime required the perpetrator to "knowingly" fail to register as a sex offender, the crime did not include an intent to deceive. *Id.* at 505-07. We reasoned that

the elements of the crime did not "clearly identify conduct showing that the convicted person is unworthy of belief" because the offender could commit the crime "for reasons that are not deceptive." *Id.* at 506-07.

In *Jones v. State*, 217 Md. App. 676 (2014), we held that a conviction for attempted second-degree murder was inadmissible for impeachment purposes because it had little or no bearing on a witness's honesty or veracity. *Id.* at 707-09. We explained that acts of violence generally say little about whether the offender is likely to be dishonest. *Id.*

In *Thurman v. State*, *supra*, we held that a conviction for fleeing a law enforcement officer was inadmissible for impeachment purposes. *Thurman*, 211 Md. App. at 466. We reasoned that "[a]lthough there may be some instances when the flight from a police officer is motivated by a desire to avoid the consequences of dishonesty, deception is not an element of the crime[.]" *Id.* We concluded, therefore, that "it cannot be said, as a generalization, that persons convicted of that offense are likely to lie under oath." *Id.*

Turning back to the instant case, we hold that a conviction for second-degree escape is not an impeachable offense. The elements of the crime, which are set forth in § 9-405 of the Criminal Law Article ("Crim. Law") of the Maryland Code, are as follows:

> (a)(1) A person who has been lawfully arrested may not knowingly depart from custody without the authorization of a law enforcement or judicial officer.
>
> (2) A person may not knowingly fail to obey a court order to report to a place of confinement.
>
> (3) A person may not escape from:

> (i) except as otherwise punishable under § 9-404(b) of this subtitle, a detention center for juveniles or a facility for juveniles listed in § 9-226(b) of the Human Services Article;
>
> (ii) a place identified in a home detention order or agreement;
>
> (iii) a place identified in a juvenile community detention order; or
>
> (iv) a privately operated, hardware secure facility for juveniles committed to the Department of Juvenile Services.
>
> * * *
>
> (b)(2) A person may not knowingly:
>
> > (i) violate any restriction on movement imposed under the terms of a temporary release, pretrial commitment, custodial confinement, or home detention order or agreement;
> >
> > (ii) fail to return to a place of confinement under the terms of a temporary release, pretrial commitment, custodial confinement, or home detention order or agreement; or
> >
> > (iii) remove, block, deactivate, or otherwise tamper with a monitoring device required to be worn or carried by the person to track the person's location, including an ankle or wrist bracelet, global position satellite offender tracking technology, or comparable equipment or system.

Crim. Law § 9-405.

In reviewing those elements, we see nothing that would "clearly identify the prior conduct of the witness that tends to show that he is unworthy of belief." *Rosales*, 463 Md. at 572 (citations and quotation marks omitted). The crime does not involve ongoing, surreptitious behavior, nor does its commission evince that the offender "lives a life of secrecy" or "engages in dissembling in the course of [the crime], being prepared to say whatever is required by the demands of the moment, whether the truth or a lie." *Id.*

(citations and quotation marks omitted). Knowingly departing from custody or failing to report to a place of confinement, like failing to register as a sex offender, does not require any intent to deceive. While the crime may, in some instances, involve some level of dishonesty or deception, there may be instances in which the crime is committed for reasons that are not deceptive. The crime, by its elements, does not require furtive or secretive behavior. Moreover, unlike the crime of cocaine distribution, second-degree escape is not well understood within the community, and thus a fact-finder would likely have difficulty assessing what, if any, impact such a conviction would have upon a witness's veracity.

For those reasons, we cannot say that someone convicted of second-degree escape is likely to lie under oath. As such, the trial court did not err in excluding A.S.'s conviction as being irrelevant to her credibility. That the court referenced "moral turpitude" in reaching that decision is irrelevant. The conviction was inadmissible as a matter of law.

II.

Saunders's next claim of error also concerns an issue regarding his cross-examination of A.S. That issue occurred during the following exchange in which defense counsel asked A.S. about certain accommodations she received from the State prior to testifying:

> [DEFENSE]: And, in fact, you were actually put up in a hotel by the State's Attorney's Office last night; isn't that correct?
>
> [WITNESS]: Yes.
>
> * * *

[DEFENSE]: Did they do anything else for you?

[WITNESS]: As far as, I don't know what you mean.

[DEFENSE]: Did they buy you dinner last night?

[WITNESS]: Yeah, they did.

[DEFENSE]: Did they buy your breakfast this morning?

[WITNESS]: Yeah.

[DEFENSE]: Did they buy you lunch today?

[WITNESS]: Yes.

[DEFENSE]: You recently had a case placed on the stet docket. Did they –

[STATE]: Objection.

THE COURT: Sustained.

[DEFENSE]: Have you ever had any other benefits from the State's Attorney's Office?

[WITNESS]: They provided transportation for me to meet with them.

(Emphasis added.)

Parties' Contentions

Saunders now claims that the trial court erred in sustaining the State's objection. He argues that he should have been permitted to ask A.S. about the case she had placed on the stet docket because the inquiry was probative of A.S.'s bias or motive to testify falsely.

The State contends that Saunders's claim is unpreserved because he did not provide a proffer as to the substance and relevance of the anticipated testimony. The State argues further that, even if preserved, any error the trial court may have made was harmless

because there was no evidence that A.S.'s case had been placed on the stet docket in anticipation of her testimony.

Analysis

We agree with the State that Saunders's claim is unpreserved. Maryland Rule 5-103 provides, in pertinent part, that a party may not predicate error upon a ruling that excludes evidence unless the party is prejudiced by the ruling and "the substance of the evidence was made known to the court by offer on the record or was apparent from the context within which the evidence was offered." Md. Rule 5-103(a)(2). "'Ordinarily, a formal proffer of the contents and relevancy of the excluded evidence must be made in order to preserve for review the propriety of the trial court's decision to exclude the subject evidence.'" *Ndunguru v. State*, 233 Md. App. 630, 637 (2017) (quoting *Merzbacher v. State*, 346 Md. 391, 416 (1997)).

Here, the "question" at issue was: "You recently had a case placed on the stet docket. Did they --". Before defense counsel could even finish the question, and well before A.S. could answer, the State objected. At that point, Saunders had an obligation to inform the trial court as to the content of the question and the nature and relevancy of A.S.'s answer. Absent such a proffer, Saunders's appellate claim cannot be considered preserved.

Saunders argues that his claim was preserved because the "question" at issue was asked while he was engaged in a line of questioning about various benefits A.S. had received from the State prior to testifying. Saunders contends that his "line of questions clearly generated the issue" and that it was "obvious that [he] sought to show that A.S. was motivated to testify in support of the State in exchange for certain concessions."

We are not persuaded by Saunders's argument. To be sure, a formal proffer is not an absolute requirement for preservation where "the tenor of the questions and the replies they were designed to elicit is clear[.]" *Devincentz v. State*, 460 Md. 518, 535 (2018) (citations, quotation marks, and emphasis omitted). The problem here is that, while the question Saunders intended to ask may be obvious to him, it is by no means obvious to us. The fact of the matter is that defense counsel could have asked myriad questions regarding A.S.'s stetted case, some of which may have been relevant and some of which may have been irrelevant. Based on the record before us, we have no way of knowing what the question was going to be, much less how A.S. would have answered and, importantly, how that answer would have been relevant to show bias. Even if we assume that Saunders was going to ask a question similar to his previous ones, such as whether A.S. expected any benefits in the cases that had been placed on the stet docket, A.S. could have answered in any number of ways. Without some proffer as to what the question was going to be, how A.S. may have answered, and how that answer was relevant, we are left only to speculate. *See Merzbacher*, 346 Md. at 416.

III.

Saunders's next claim of error concerns an issue that arose following the State's redirect examination of A.S. During that redirect, the State and A.S. had the following exchange:

> [STATE]: Did you have drugs on you when you entered [Mr. Saunders's] car?
>
> [WITNESS]: I did.

[STATE]: And what type of drugs did you have on you?

[WITNESS]: Heroin.

[STATE]: And where was the heroin?

[WITNESS]: In my bra.

[STATE]: And how do you normally ingest heroin?

[WITNESS]: IV.

[STATE]: Is that how you always ingest it?

[WITNESS]: I used to snort.

[STATE]: Did you snort on this particular day?

[WITNESS]: No.

Following the State's redirect examination of A.S., defense counsel asked the trial court if he could recross-examine A.S. about "what had been brought up during redirect." The court denied the request.

Parties' Contentions

Saunders now claims that the trial court erred in not allowing him to recross-examine A.S. He asserts that the State's redirect examination uncovered "new matter," namely, "that A.S. had heroin with her when she entered [his] car and that she had snorted heroin in the past." Saunders argues that the court's refusal to allow him to recross-examine A.S. about that "new matter" constituted an abuse of discretion.

The State contends that the trial court properly exercised its discretion in denying Saunders's request to recross-examine A.S. The State avers that A.S.'s use and possession of heroin had been fully disclosed during her direct and cross-examination and that,

consequently, those subjects did not amount to "new matter." The State avers further that, even if the court erred in limiting Saunders's recross-examination, any error was harmless because A.S.'s testimony on redirect about her use and possession of heroin supported the defense's theory of the case, which was that A.S. had used drugs while in Saunders's vehicle and subsequently ran into the woods in a "drug-induced frenzy."

Analysis

Maryland Rule 5-611 grants trial courts broad discretion in controlling the order and method of the questioning of witnesses and in limiting the scope of cross-examination. Although the Rule does not expressly address recross-examination, we have previously concluded that a court generally has the same broad discretion over recross-examination. *Thurman*, *supra*, 211 Md. App. at 467-70. In *Thurman*, we held that a blanket prohibition on recross-examination constituted an abuse of discretion. *Id.* at 472. In so doing, we suggested that it may be "an abuse of that discretion for the [trial] court to prohibit re-cross if new matter has been brought out on redirect examination." *Id.* at 471.

It is unclear from the record whether the trial court's denial of Saunders's request to recross-examine A.S. was based on a blanket prohibition against recross or was a discretionary decision based on the circumstances. Regardless, we need not settle that ambiguity because we are convinced that any error the court may have committed was harmless. *See id.* at 472-73 (applying a harmless error standard of review to trial court's blanket prohibition against recross-examination). An error is harmless when "the reviewing court is convinced, beyond a reasonable doubt, that the error in no way influenced the jury's verdict." *Gross v. State*, 481 Md. 233, 237 (2022).

During her direct examination, A.S. testified that she had been a drug user for well over a decade, that her drug of choice was heroin, that she had gone to Greenmount and 25th on the night of the attack to obtain drugs, and that she had used drugs just before getting into Saunders's vehicle. On cross-examination, Saunders questioned A.S. extensively about her drug use prior to and on the day of the attack. During that examination, A.S. admitted that she used drugs "daily" in the weeks leading up to the attack, that her drug of choice was heroin, and that she continued to use drugs, including heroin, fairly regularly following the attack. Thus, by the time A.S. testified on redirect, Saunders had more than enough ammunition to argue that A.S. likely possessed and subsequently used drugs after getting into his car on the night of the attack. We fail to see how A.S.'s admissions on redirect (that she had snorted heroin in the past and had possessed heroin on the night of the attack) added to or altered the landscape of her prior testimony regarding her drug use. More to the point, we are at a loss as to what Saunders had hoped to glean by recross-examining about those admissions.

Saunders contends that the trial court's decision was not harmless because "A.S.'s drug use in the car was a significant point of departure between [his] account of the interaction and A.S.'s allegations." Saunders asserts that the "drugs that A.S. snorted in the car were critical for explaining [his] version of events because A.S.'s snorting of drugs was the reason she began to act erratically, and the reason that the encounter turned south, and he left her in the parking lot." Saunders also claims that A.S.'s admission during redirect to having heroin in her possession while in Saunders's car contradicted her direct testimony in which, according to Saunders, A.S. stated that she only had a purse, cell

phone, and wallet when she entered the car. Saunders asserts that his inability to recross-examine A.S. on that contradiction deprived him of a chance to impeach A.S.'s credibility.

We are not persuaded by any of Saunders's claims. First, A.S.'s testimony on redirect supported Saunders's version of events. By admitting that she had heroin in her possession and had previously snorted heroin, A.S. lent credence to Saunders's claim that his encounter with A.S. had "turned south" after she "snorted drugs" in his car. In short, the point was made without recross-examination.

As to Saunders's claim that a recross-examination would have impeached A.S.'s credibility, we find no support in the record for that claim. A.S. never testified that the "only" items in her possession when she entered Saunders's vehicle were her purse, cell phone, and wallet. Rather, A.S. testified that, when she got in the vehicle, she had a cell phone and a purse, which contained her wallet and ID. When asked if she had anything else in her purse, A.S. responded that she was "not sure what else" was in there. A.S.'s subsequent admission on redirect that she possessed heroin did not contradict her previous testimony.

Nevertheless, even if A.S.'s direct testimony could be interpreted as suggesting that she did not have heroin in her possession, thereby opening the door to impeachment, A.S. ultimately impeached herself by later admitting on redirect that she did have heroin in her possession. Further examination on recross would have been unnecessary, given that the impeachment had already occurred.

IV.

Saunders next argues that the "cumulative effect" of the trial court's aforementioned errors requires reversal. That argument is without merit. "Cumulative error" applies only to situations in which an appellate court has found two or more errors. *Jordan v. State*, 246 Md. App. 561, 602-05, *cert. denied*, 471 Md. 120 (2020). Here, as discussed, we have found only one potential error, and we have determined that that error was harmless. Where there is nothing to "cumulate," there can be no cumulative error. *Id.*

V.

Mr. Saunders's next claim of error concerns an issue that arose during the testimony of Detective Kilpatrick. As noted, Detective Kilpatrick investigated the incident and, in so doing, reviewed footage taken from speed cameras located near the scene. That footage was played for the jury during Detective Kilpatrick's direct testimony, and Detective Kilpatrick was asked questions about the footage:

> [STATE]: Okay. So did there come a time when you had an opportunity to look at this video that you were possibly looking for the victim?
>
> [WITNESS]: Yes.
>
> [STATE]: Okay. Can you explain, when I start playing the video again, of what you were looking at?
>
> * * *
>
> [WITNESS]: So it's extremely difficult to see it on this graininess. But if you watch this dot, it's the only way I can really reference it for you, you'll see – it just happened.
>
> This light – so if you're watching the video other than a vehicle, this light never changes, never alters in any way. **Actually if this were**

> **brightened, you'd actually see the shadow of a person going all the way across** –

(Emphasis added.)

At that point, defense counsel objected, and the trial court convened a bench conference. The following colloquy ensued:

> [DEFENSE]: That, what was done wasn't given to me in any respect. We have the officer taking part in –
>
> THE COURT: When you say what was done, what are you referring to?
>
> [DEFENSE]: Altering the video, editing the video in some way –
>
> THE COURT: (inaudible)
>
> [DEFENSE]: He just said. If you lighten this then you can see something run across.
>
> THE COURT: The video that we're watching has not been edited?
>
> [DEFENSE]: Yes, he just said.
>
> THE COURT: No, no. It hasn't been edited. That's not what he said. He said you could lighten it and you could see something.
>
> [DEFENSE]: Right. So that's my objection.
>
> * * *
>
> THE COURT: Let me ask the State, has this been edited in some way?
>
> [STATE]: No, it has not.
>
> [DEFENSE]: But he's making reference to an edited video which was not disclosed to me.
>
> THE COURT: No. I'm just telling you I didn't interpret his question. I'll give the State an opportunity to make it clearer. But my understanding

of what he said was that if you were to lighten this up you would see such and such.

[DEFENSE]: Okay. So then taking that, if you were to do it and he testifies that that is something that he has done, that he has edited or altered the video in some way to make it stronger in some capacity for the State and he's now testifying to something that was not disclosed to me.

THE COURT: All right. Well, it's anticipated (inaudible)

Did you want to add anything?

[STATE]: No.

THE COURT: The objection is overruled.

The State then resumed its examination of Detective Kilpatrick:

[STATE]: So, Detective, you were looking at this video and you were looking at the dot; correct?

[WITNESS]: Correct.

[STATE]: The light. Okay.

And so when you were looking at the light, does there come a time where that light ultimately changes?

[WITNESS]: Correct.

[STATE]: Okay. And what time does that happen?

[WITNESS]: About 30 seconds before the car pulls out.

[STATE]: So I'm going to hit play. Do you know what time that is and what time we're at now? So we are at 4:53:11.

[WITNESS]: I believe it was 4:53:20 something you'll see the dot change.

[STATE]: Yes. Fine.

[WITNESS]: It just happened.

[STATE]: Okay. And once that happened, then … what time do you see the car leave?

[WITNESS]: I believe it was about 30 seconds later. I don't know the exact time.

* * *

[STATE]: And do these videos accurately depict the clips from the speed camera at Cromwell Bridge Road on that night?

[WITNESS]: They do.

[STATE]: Okay. And have they been edited or done in any way other than clipped for those purposes of making them shorter?

[WITNESS]: No.

Parties' Contentions

Saunders now claims that the trial court erred in finding that the State had not committed a discovery violation regarding the speed camera footage. He claims that the State only disclosed the original speed camera footage. He asserts that the State did not disclose the fact that Detective Kilpatrick brightened the video, the brightened video itself, or Detective Kilpatrick's finding that the brightened video purportedly showed the shadow of a person running.

The State counters that Saunders's claims are not supported by the record because Detective Kilpatrick never testified that he brightened or in any way enhanced the speed camera footage. To the contrary, the State notes, Detective Kilpatrick testified that the video played for the jury was not edited.

We agree with the State's assessment of the record and find no error on the part of the trial court. When the speed camera footage was shown to the jury, Detective Kilpatrick testified that "if" the video were brightened, the viewer could "see the shadow of a person going all the way across[.]" Defense counsel objected on the grounds that no "altered" or "edited" video had been disclosed by the State. The court disagreed with defense counsel's assessment of Detective Kilpatrick's testimony, noting that the officer had merely testified that "[i]f you lighten this then you can see something run across." After defense counsel insisted that the video had been edited, the State confirmed that it had not. The court then stated that it would give the State the opportunity to "make it clearer." Defense counsel responded that, if Detective Kilpatrick were to testify that he had "edited or altered the video in some way to make it stronger in some capacity for the State[,]" then the officer would be "testifying to something that was not disclosed to me." When the prosecutor resumed her examination of Detective Kilpatrick, she asked the officer if the speed camera footage had "been edited or done in any way other than clipped for those purposes of making them shorter[.]" Detective Kilpatrick responded in the negative.

From that, we see no evidence to support Saunders's claim regarding the existence of a "brightened" or otherwise altered video that should have been disclosed by the State. The record makes plain that there existed only one video, which was disclosed by the State and played for the jury. As such, we cannot say that the trial court erred in finding no discovery violation. To the extent that Saunders is raising arguments beyond the State's failure to disclose the allegedly altered video, those arguments were not raised in the trial court and are therefore not preserved. Md. Rule 8-131(a).

Assuming, *arguendo*, that a "brightened" video had been created and could have been disclosed, the State was under no obligation to disclose that video or Detective Kilpatrick's anticipated testimony regarding the video. Maryland Rule 4-263 states, in pertinent part, that the State is required to disclose exculpatory information and the substance of an expert witness's findings. Md. Rule 4-263(d). The Rule also requires the State to allow the defense the opportunity to inspect any recordings the State intends to use at trial. *Id.* "[T]rial judges have no power beyond that conferred by Rule 4-263 to order discovery of tangible evidence or documents in the State's possession." *Cole v. State*, 378 Md. 42, 57 (2003).

Here, the brightened video was inculpatory, not exculpatory, because it supported the State's theory that A.S. had fled the scene prior to Saunders driving away. Moreover, the original video, not the brightened video, was played at trial, and there is no indication that the State intended to use any brightened video at trial. Finally, because Detective Kilpatrick was not accepted as an expert witness, the State was not required to disclose the substance of his testimony. Md. Rule 4-263(d)(3) (requiring that the State disclose a lay witness's *written* statements). Saunders's reliance on *Cole v. State*, *supra*, *Williams v. State*, 364 Md. 160 (2001), and *Johnson v. State*, 360 Md. 250 (2000), is therefore misplaced, as each of those cases dealt with a mandatory disclosure under Rule 4-263. *See, e.g.*, *Cole*, 378 Md. at 57-60 (expert witness); *Williams*, 360 Md. at 169-78 (pretrial identification); *Johnson*, 360 Md. at 266-69 (defendant's recorded statement).

VI.

Saunders's final argument concerns statements made by the prosecutor during closing argument. Those statements came as the prosecutor was discussing Saunders's version of events and the video footage from the convenience store where he picked A.S. up:

> [STATE]: [Saunders] lied. The evidence does not support his statement, it supports [A.S.'s] statement. The reason you believe her is because every single piece of evidence supports it. **The Defendant is a predator.**
>
> [DEFENSE]: Objection.
>
> THE COURT: Overruled.
>
> [STATE]: **He hunts.** He knew exactly what he was getting. He told you she was an addict. She looks like an addict. My mother was an addict, she's an addict. **He trolls** Greenmount and 25th, it's a known place for prostitution and **he trolls there.**
>
> [DEFENSE]: Objection.
>
> THE COURT: Overruled.
>
> [STATE]: -- looking for an addict. You see him drive in. You see him park right by the door. There she is. Timing. It's about the time she's at that door is about the time he pulled in. He sees her on that parking lot. He sees her and he pulls in and he parks right beside the door.

(Emphasis added.)

Parties' Contentions

Saunders now claims that the trial court erred in permitting the prosecutor to refer to him as "a predator" who "hunts" and "trolls" the area. Saunders asserts that the prosecutor's "animalistic references" were improper and akin to the comments at issue in

Walker v. State, 121 Md. App. 364 (1998), a case in which we held that the State's references to the defendant as "an animal" and "a pervert" were improper. Saunders also asserts that the prosecutor, in remarking that he "hunts" and "trolls," improperly implied that Saunders repeatedly commits sexual assault and that he was a bad person.

The State argues that the disputed comments were not improper because the prosecutor, in referring to Saunders as a predator who hunts and trolls, was describing Saunders's behavior on the night of the attack based on the evidence presented. The State argues further that the prosecutor's choice of language did not necessarily liken Saunders to an animal, nor did it insinuate that Saunders had committed other sexual assaults. Lastly, the State insists that, even if the trial court erred in overruling Saunders's objections, any error was harmless.

Analysis

"Closing arguments are an important aspect of trial, as they give counsel an opportunity to creatively mesh the diverse facets of trial, meld the evidence presented with plausible theories, and expose the deficiencies in his or her opponent's argument." *Donaldson v. State*, 416 Md. 467, 487 (2010) (citation and quotation marks omitted). Closing arguments provide counsel with an opportunity "to sharpen and clarify the issues for resolution by the trier of fact in a criminal case and present their respective versions of the case as a whole." *Whack v. State,* 433 Md. 728, 742 (2013) (citations and quotation marks omitted). "The very premise of our adversary system of criminal justice is that partisan advocacy on both sides of a case will best promote the ultimate objective that the guilty be convicted and the innocent go free." *Id.* (citations and quotation marks omitted).

Generally speaking, "arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel[.]" *State v. Gutierrez*, 446 Md. 221, 242 (2016) (citations and quotation marks omitted). "It is also improper for counsel to appeal to the prejudices or passions of the jurors, or invite the jurors to abandon the objectivity that their oaths require." *Donaldson*, 416 Md. at 489 (citation and quotation marks omitted).

That said, "we grant attorneys, including prosecutors, a great deal of leeway in making closing arguments." *Whack*, 433 Md. at 742. Our appellate courts have long held that the parameters within which a prosecutor must confine him or herself during closing argument are vast:

> The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom. In this regard, generally, … the prosecuting attorney is as free to comment legitimately and to speak fully, although harshly, on the accused's action and conduct if the evidence supports his comments, as is accused's counsel to comment on the nature of the evidence and the character of witnesses which the prosecution produces.
>
> While arguments of counsel are required to be confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments of opposing counsel, generally speaking, liberal freedom of speech should be allowed. 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. He may discuss the facts proved or admitted in the pleadings, assess the conduct of the parties, and attack the credibility of witnesses. He may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions.

Gutierrez, 446 Md. at 242 (citation and quotation marks omitted).

"We review a trial court's allowance of allegedly improper remarks by a prosecutor under an abuse of discretion standard." *Pietruszewski v. State*, 245 Md. App. 292, 318, *cert. denied*, 471 Md. 127 (2020). We defer to the judgment of the trial court, as it "is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case." *Ingram v. State*, 427 Md. 717, 726 (2012). "Therefore, we shall not disturb the ruling at trial 'unless there has been an abuse of discretion likely to have injured the complaining party.'" *Pietruszewski*, 245 Md. App. at 319 (quoting *Grandison v. State*, 341 Md. 175, 243 (1995)). "A trial court abuses its discretion when its ruling either does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective." *Ingram*, 427 Md. at 726-27 (citation and quotation marks omitted).

Finally, if counsel does exceed the bounds of permissible argument, reversal is required "only 'where 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.'" *Pickett v. State*, 222 Md. App. 322, 330 (2015) (quoting *Spain v. State*, 386 Md. 145, 158 (2005)). "When assessing whether reversible error occurs when improper statements are made during closing argument, a reviewing court may consider several factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused." *State v. Newton*, 230 Md. App. 241, 255 (2016) (quotation marks omitted) (quoting *Spain*, 386 Md. at 159).

In *Walker v. State*, *supra*, the prosecutor, during closing argument, referred to the defendant, who was on trial for sexually abusing two children, as "an animal" and "a

pervert" and asked the jurors if they could hear "the silent screams" of the two victims. *Walker*, 121 Md. App. at 374. On appeal, we determined that those comments were improper. *Id.* at 379-82. We explained that "[t]he right to a fair trial and the search for the truth … should not be hampered or obfuscated by extreme appeals to passion calculated to inflame the jury." *Id.* at 380. We noted that the term "pervert" had "come to be synonymous with that which is utterly debased and odious[,]" while the term "animal" was "inappropriate" and its use "counterproductive should the jury view the State as engaging in a personal contest with the defendant." *Id.* at 380-81. We concluded that those references were "beneath the dignity of the prosecutor's office[,]" and we noted "that the better practice would be to characterize a defendant's actions, rather than to engage in name calling." *Id.* at 382.

Turning back to the instant case, we hold that the trial court did not err in overruling Saunders's objections to the disputed comments. Although the prosecutor's comments, particularly his statement that Saunders was "a predator," may have come close to the edge, when we consider the context in which the comments were made, we cannot say that the prosecutor exceeded the boundaries of permissible argument. The State's theory of the case was that Saunders had targeted A.S. in part because she was "an addict" and was in "a known place for prostitution." In pursuing that theory during closing argument, the prosecutor made the disputed comments while discussing the evidence, namely, the video evidence from the convenience store where A.S. first got into Saunders's vehicle. In that video, which was played for the jury, Saunders's vehicle can be seen arriving at the convenience store around the time that A.S. exited the store after purchasing cigarettes.

According to A.S.'s testimony, Saunders then "yell[ed] out" and "insist[ed] on giving [her] a ride," which A.S. accepted, in part because Saunders "was persistent." A.S. testified that Saunders, under the guise of giving her a ride to her father's house, then drove her to a remote location, where he beat and raped her. A.S. also testified that, during the ride, Saunders stated that A.S. was "going to die tonight" and that she "fit his profile."

From that evidence, a reasonable inference could be made that Saunders went to the convenience store with the intention of finding a particular victim and that he chose A.S. because she "fit his profile." The prosecutor's description of Saunders as "a predator" who "hunts" and "trolls," while inflammatory, was a permissible comment on Saunders's actions and was not, as was the case in *Walker*, mere "name calling." *Id.* at 382. Although the prosecutor's use of "animalistic epithets" may have been improper in a different context, we are not convinced that it was inappropriate here. We do not construe the prosecutor's comments as being a personal attack on Saunders, nor do we construe them as insinuating that Saunders had committed other sexual assaults. Rather, we interpret the prosecutor's statements as being a legitimate, albeit harsh, commentary on Saunders's actions on the night of the attack, as established by the evidence adduced at trial. As such, we cannot say that the trial court abused its discretion in allowing the comments.

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