Circuit Court for Baltimore City
Case No. 123055014

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 2358

September Term, 2023

ALONZO J. SMITH

v.

STATE OF MARYLAND

Shaw,
Albright,
Kehoe, Christopher B.,
(Senior Judge, Specially Assigned)

JJ.

Opinion by Albright, J.

Filed: December 22, 2025

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

Alonzo J. Smith, Appellant, was tried by a jury in the Circuit Court for Baltimore City on charges arising out of a carjacking that occurred on February 5, 2023. The jury found Mr. Smith guilty of carjacking, robbery, and other related crimes. The court sentenced Mr. Smith to twenty years' imprisonment for carjacking and fifteen years, to run concurrently, for robbery. The other convictions were merged for sentencing purposes. On appeal, Mr. Smith raises five issues for our review, which we consolidate and rephrase as follows[1]:

I. Did the trial court err in refusing to instruct the jury regarding missing witnesses?

II. Did the trial court err in allowing the State to make improper comments in closing argument?

III. Did the trial court err in failing to ascertain whether Mr. Smith's waiver of his right to testify was voluntary?

For the following reasons, we answer these questions "no," and affirm the judgments of the circuit court.

[1] The questions presented by Mr. Smith were:

1. Did the trial court err in refusing to give a missing witness instruction?
2. Did the trial court err in permitting the State to argue facts not in evidence and appeal to the passions of the jury?
3. Did the trial court commit plain error in permitting the State's vouching arguments in closing?
4. Does the cumulative effect of the State's arguing facts not in evidence, appealing to the passions of the jury, and vouching remarks warrant reversal?
5. Did the trial court err in accepting Mr. Smith's waiver of his testimonial rights without finding that the waiver was voluntarily made?

BACKGROUND

I. The Carjacking and Robbery

On February 5, 2023, Amir Malik, a married father of three, was driving around Baltimore City, working as a GrubHub delivery driver. Around 7 p.m. he arrived in the Little Italy area of the city to pick up an order. As soon as Mr. Malik stepped out of his car, two men approached him and said, "give me the f***ing keys." Mr. Malik attempted to get away, but the men began to punch him in the face and the back of his head. Screaming for help, he fell onto the ground, where the men continued to kick and punch him. The men took Mr. Malik's cell phone and car key before driving away in his vehicle, leaving Mr. Malik unconscious.

Several witnesses came to Mr. Malik's aid, including Skylar Johnston, who had witnessed the incident from the window of an upstairs apartment. Mr. Johnston and other bystanders helped Mr. Malik up off the street and onto a bench while they waited for the police. After hearing a loud noise, Mr. Johnston saw two masked men driving away in Mr. Malik's car and proceeded to take a picture of the vehicle as it drove away. After Officers Hann and Peña arrived, they asked Mr. Malik for a description of the perpetrators, to which he replied, "I did not get a good look at him." Mr. Johnston, as well as a second eyewitness who did not testify at trial, similarly were not able to articulate a description for the officers.

A third eyewitness may (or may not) have photographed the suspects. At trial, defense counsel attempted to bring in evidence about a third eyewitness, but no clear testimony emerged. When asked about whether "there was in fact the third eyewitness

who came forward and photographed the suspects," Officer Hann responded, "I don't recall a third witness. I just recall the two that I saw, so, if you say so, then I'll take your word for it."

While Officers Hann and Peña remained on the scene to interview witnesses, other officers were able to track the location of the stolen vehicle using an AirTag in the car connected to Mr. Malik's smart watch. The search eventually led them to the vehicle abandoned on the road, with an individual walking quickly away: Mr. Smith. Officers stopped Mr. Smith, and, after checking his identification, placed him under arrest for an unrelated incident. Upon a search incident to arrest, the officers found Mr. Smith in possession of a bag belonging to Mr. Malik and containing credit cards that belonged to Mr. Malik and his wife. The officers waited on the street with Mr. Smith while Mr. Malik and Mr. Johnston, who had themselves been placed in a police car, were driven past Mr. Smith to determine whether they could identify him. When asked if Mr. Smith was the man who had attacked him, Mr. Malik replied "as far as I can tell." Mr. Johnston did positively identify Mr. Smith. Mr. Smith was then arrested in connection with the carjacking and robbery.

Mr. Smith was later indicted for carjacking, conspiracy to commit carjacking, conspiracy to commit carjacking, robbery, conspiracy to commit robbery, assault in the first degree, assault in the second degree, conspiracy to commit assault in the first degree, conspiracy to commit assault in the second degree, theft of a motor vehicle, conspiracy to

commit motor vehicle theft, unauthorized removal of property, theft of between $25,000 and $100,000, and conspiracy to commit theft of between $25,000 and $100,000.

II. Mr. Smith Elects Not to Testify

At Mr. Smith's jury trial, after the close of the State's case, the court asked defense counsel if they would like to "advise [their] client regarding his right to testify[.]" Defense counsel then indicated that Mr. Smith did not wish to testify; at that point, the court engaged Mr. Smith in the following colloquy regarding his waiver of his right to testify.

> [THE COURT]: Alright, so just so that the record's clear, Mr. Smith's indicated that he does not wish to testify. . . . So, Mr. Smith, you've had a full opportunity to consider this decision?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: And you talked to your lawyer about it?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: Okay and how old are you sir?
>
> [MR. SMITH]: 29.
>
> THE COURT: Highest level of education?
>
> [MR. SMITH]: 12.
>
> [THE COURT]: You can read, write, and understand English?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: And as you mentioned yesterday, you do take some medication, did you take it this morning?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: And you're thinking clearly today?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: Okay, so you understand you could testify if you want to?
>
> [MR. SMITH]: Yes.

> [THE COURT]: But you decided that you want to exercise your right to remain silent with the understanding that I will instruct the jurors that they can't hold it that against you?
>
> [MR. SMITH]: Yes.
>
> [THE COURT]: Okay, the court finds that there's been knowing, intelligent waiver of his right to . . . exercise his right to remain silent.

The defense introduced no evidence.

III. The Court Declines to Give a Missing Witness Instruction

After the close of evidence, the defense requested that a pattern "Missing Witness Instruction"[2] be read to the jury. The State responded with confusion, stating, "I'm not sure which witness is counsel talking about." The court expressed confusion as well, before defense counsel clarified that "this has to do with the eyewitness who [was] interviewed by the police at the scene of the crime."

The State still had "zero clue" as to which witness the defense was referring and stated that the police record did not identify any such individual by "name, address, or contact." The defense contended that the witness's identity and contact information were "peculiarly within the possession of the State" because the police, "actors of the State,"

[2] The Defense requested Maryland Criminal Pattern Jury Instruction ("MPJI-CR") 3:29, which states:

> You have heard testimony about (witness's name), who was not called as a witness in this case. If a witness could have given important testimony on an issue in this case and if the witness was peculiarly within the power of the [State] [defendant] to produce, but was not called as a witness by the [State] [defendant] and the absence of that witness was not sufficiently accounted for or explained, then you may decide that the testimony of that witness would have been unfavorable to the [State] [defendant].

Maryland State Bar Ass'n, MPJI-Cr 3:29 (2d ed. 2012) (Missing Witness).

either did not obtain the witness's information or failed to provide it to the State. The defense also pointed to identity being a key issue in this case, making the missing witness instruction crucial, because this witness had allegedly shown the officers a photo of the perpetrator for identification purposes.

The court also took issue with the lack of an available name to insert into the instruction, stating that "this missing witness instruction contemplates me inserting a name in the first sentence." The court ultimately refused to give the instruction, finding that "I can't subpoena someone they don't know. I can't call someone if they don't know their identi[t]y." Instead, the court noted the defense objection to its decision not to give the instruction and suggested that the defense instead argue its theory in closing.

IV. Closing Arguments and Verdict

In his closing argument, defense counsel attacked both the quality of the police's investigation as well as the adequacy of Mr. Malik's identification. He urged the jury to pay attention to the "lack of police work that happened during this incident," before arguing,

> But when shown [Mr. Malik's] statement on body worn camera during cross examination he admitted that he told police officers that he didn't get good look at his attackers, and that he could not give a description at the time when the incident is freshest in his memory. He could not give a description. [Mr. Malik's attorney] poses to you that he doesn't know how to answer that question. . . . [I]t doesn't have to be in great detail[.] . . . It doesn't need to be extraordinary. It doesn't need to be pinpoint, but something. He didn't even describe to the officers at the time that the perpetrator[s] were black. He couldn't give a good description. He couldn't give any description to the police officers. You heard from Officer Hann who confirmed to you that Mr. Malik could not give them a description.
>
> . . .

> **The victim cannot describe the suspects because he didn't get look at them.**

(Emphasis added.)

In rebuttal closing, the State attempted to refute the questions raised by defense counsel with regards to the police work and the identification. The State first argued,

> The first thing [defense counsel] said: "lack of police work." ["]The police didn't do its job.["] I'm amazed and astonished by that statement that the police in this case didn't do its job. **If the police had not done its job[] and there was [a] lack of police work, I would not be prosecuting the defendant in this case.**
>
> . . .
>
> . . . **Does that establish guilt beyond a reasonable doubt? What more could I have presented to you? My officers did their job that evening. I did my job yesterday and I did this morning.**

(Emphasis added.) In response to Mr. Smith's casting of doubt upon the sufficiency of Mr. Malik's identification, the State argued:

> Imagine that person is beaten down, robbed, he's worrying about whether his teeth are missing and you're trying to tell the person stop everything right now, stop worrying about your teeth, stop worrying about you were just unconscious couple of minutes ago. Now just tell me what exactly he was wearing. You know – That's not what you're thinking! Is that rational? You're lucky to be alive at the time. **He has three kids. He has a wife. That's what he's thinking about.**

(Emphasis added.)

On October 26, 2023, the jury convicted Mr. Smith of carjacking, robbery, assault in the second degree, theft of a motor vehicle, unauthorized removal of property (motor

vehicle), and theft of between $25,000 and $100,000.[3] Later, the court sentenced Mr. Smith to twenty years imprisonment for carjacking and fifteen years, to run concurrently, for robbery. The other convictions were merged for sentencing purposes. This appeal followed.

DISCUSSION

I. Waiver of Testimonial Rights

Mr. Smith contends that the trial court erred in accepting the waiver of his right to testify without finding that the waiver was made voluntarily. He argues that the series of questions that the trial court asked of him was not sufficient to ensure voluntariness, therefore requiring reversal.

"The Fifth, Sixth, and Fourteenth Amendments to the United States Constitution guarantee the accused in a criminal case the right to testify on his own behalf." *Tilghman v. State*, 117 Md. App. 542, 553 (1997) (citing *Rock v. Arkansas*, 483 U.S. 44, 52 (1987)). "Because the right to testify is essential to due process in a fair adversary system, it may only be waived knowingly and intelligently, pursuant to the waiver standards established for fundamental constitutional rights in *Johnson v. Zerbst*, 304 U.S. 458 (1938)." *Gregory v. State*, 189 Md. App. 20, 32 (2009).

"The decision whether or not to testify is a significant one and *must be made with a basic appreciation of what the choice entails*. If a defendant elects to remain silent, he

[3] Mr. Smith was acquitted of conspiracy to commit carjacking, conspiracy to commit robbery, assault in the first degree, conspiracy to commit assault in the second degree, conspiracy to commit theft of a motor vehicle, and conspiracy to commit theft of between $25,000 and $100,000.

or she waives the constitutional right to testify on his or her own behalf." *Id.* at 33 (quoting *Morales v. State*, 325 Md. 330, 335–36 (1992)) (emphasis added). Unlike the waiver of other fundamental trial rights, there is no requirement under the Maryland Rules that the waiver of the right to testify be obtained in any particular form, that it be placed on the record, or that it be done in open court. *Tilghman*, 117 Md. App. at 555 n.5.

Moreover, when a defendant is represented by counsel, there exists a rebuttable presumption that counsel has advised him of the full extent of his right to remain silent or to testify. *Gregory*, 189 Md. App. at 33. This is so because,

> even though the right to testify is personal to the defendant, and must be waived by the defendant personally, the trial court may assume that counsel has advised the defendant about that right and the correlative right to remain silent and, if the defendant does not testify, that the defendant has effectively waived the right to do so.

Savoy v. State, 218 Md. App. 130, 148–49 (2014). "[T]rial judges have no affirmative duty to inform represented defendants of their right to testify *except* where it becomes clear to the trial court that the defendant does not understand the significance of his election not to testify or the inferences to be drawn therefrom." *Id.* at 150 (cleaned up).

We agree with the State that, because Mr. Smith was represented by counsel, there existed a rebuttable presumption that his waiver was made voluntarily, and the record contains no evidence to the contrary. As in *Tilghman*, because Mr. Smith was represented by counsel, the trial court was entitled to assume that counsel had fully and appropriately advised Mr. Smith of his right to testify, as well as to assume that because Mr. Smith did not testify, he had effectively waived his right to do so. This assumption is only improper

where there is evidence indicating that the defendant did not understand his testimonial rights or their implications. *See Savoy*, 218 Md. App. at 150. Mr. Smith points to no such evidence in the record, and we similarly find none. Therefore, the fact that Mr. Smith was represented by counsel is sufficient to support a finding of a voluntary waiver of his testimonial rights. There was no error by the trial court.

II. Missing Witness Instruction

Mr. Smith argues that the court abused its discretion in refusing to give a missing witness instruction to the jury. Mr. Smith contends that there was another eyewitness to the incident who was not called to testify at trial and was "peculiarly available" to the State. Although no such witness provided a name, address, or contact information to the police on the scene, Mr. Smith argues that not only did this witness exist, but that the law enforcement investigating the case had the sole power to follow up and determine the witness's identity. Mr. Smith contends that this witness's testimony with regards to the identity of the perpetrator would have been relevant to this case where identification was a critical issue. Lastly, Mr. Smith takes issue with the court's rationale that the instruction "contemplates [the court] inserting a name in the first sentence" of the instruction, relying on a Comment to the Pattern Jury Instruction to assert that the court could have inserted a name *or class of available persons*.

We review a trial court's decision whether to grant a jury instruction for abuse of discretion. *Thompson v. State*, 393 Md. 291, 311 (2006). A trial court must give a requested jury instruction where "(1) the instruction is a correct statement of law; (2) the

instruction is applicable to the facts of the case; and (3) the content of the instruction was not fairly covered elsewhere in instructions actually given." *Dickey v. State*, 404 Md. 187, 197–98 (2008); *see also* Md. Rule 4–325(c) ("The court may, and at the request of any party shall, instruct the jury as to the applicable law and the extent to which the instructions are binding. The court may give its instructions orally or, with the consent of the parties, in writing instead of orally. The court need not grant a requested instruction if the matter is fairly covered by instructions actually given."). "[W]hile the trial court has discretion, we will reverse the decision if we find that the defendant's rights were not adequately protected." *Cost v. State*, 417 Md. 360, 369 (2010).

In the specific context of a missing witness or evidence instruction, such an instruction applies where "(1) there is a witness, (2) who is peculiarly available to one side and not the other, (3) whose testimony is important and non-cumulative and will elucidate the transaction, and (4) who is not called to testify." *Woodland v. State*, 62 Md. App. 503, 510 (1985). "[W]here there was no showing that the defendant had exhausted the avenues available to produce the witness," or where the Defendant has the "exact same tools as the State had to produce a civilian witness[,]" the witness is not peculiarly available to the State. *Pinkney v. State*, 200 Md. App. 563, 580 (2011), *aff'd*, 427 Md. 77 (2012) (cleaned up).

Pinkney is instructive in determining whether a witness is peculiarly available to the State as opposed to the defense. 200 Md. App. at 576–80. In *Pinkney*, two police officers witnessed Mr. Pinkney hit a woman in the face on the street; the officers later

testified as eyewitnesses in Mr. Pinkney's second-degree assault trial. *Id.* at 566. The defense requested a missing witness instruction when the victim was not called to testify, arguing that the victim was peculiarly within the State's power to produce for trial. *Id.* at 576. The trial court refused to give the instruction. *Id.* at 576–77. On appeal, this court found that there no indication that the witness was peculiarly available to the State because the victim's name and address appeared in documents provided to the defense in discovery, and because there was nothing in the record indicating any attempt by the defense to produce the witness. *Id.* at 580. Because both parties had access to the same information and tools to call the witness, it was within the court's discretion to refuse to give a missing witness instruction. *Id.*

We agree with the State that the witness the defense contends was "missing" was not peculiarly available to the State. As in *Pinkney*, both the State and Mr. Smith had the same information and tools available to produce the witness. Here, the police did not actually obtain a name, address, or contact information with which to reach the witness. Thus, the State and the defense had equal access, or lack of access, to the available information—in other words, the "missing witness" was equally available or unavailable to both sides.

Mr. Smith's contention that "law enforcement alone had the power to determine the witness's identity" is unsupported by our case law. As in *Pinkney*, the record here shows no indication of any effort by the defense to produce the witness for trial. Given that Mr. Smith had the "exact same tools as the State had to produce a civilian witness[,]"

see Pinkney, 200 Md. App. at 580 (cleaned up), the witness in question was not peculiarly in the control of the State. Accordingly, because the second factor of the *Woodland* test is not met, we discern no abuse of discretion in declining to give a missing witness instruction.[4]

Nor are we convinced by Mr. Smith's contention that the court's taking issue with the need to insert a witness's name into the pattern jury instruction was merely a "distraction." In making this argument, Mr. Smith relies upon a comment to the pattern instruction that states,

> Assuming that one party intends to request a missing witness instruction, the better practice is for that party to advise the court, out of the presence of the jury, at the close of the opposing party's case, of the intent to make such a request. The requesting party should **provide the names or classes of available persons not called as witnesses** and the reasons for concluding that they are peculiarly within the control of the other party. This procedure affords the party accused of nonproduction with an opportunity either to call the witness(es) or to explain satisfactorily the reason for not calling such witness(es) to testify. *See Christensen v. State*, 274 Md. 133, 135 n.1 (1975).

Comment to MPJI-Cr 3:29 (emphasis added).

But Mr. Smith fails to consider the context of this comment, which prescribes that a party may refer to a name **or class of available persons** to support his request to the court for a missing witness instruction—not that the instruction should be read to the jury with reference to a class of persons rather than an individual. Requesting a missing

[4] Two of the other three *Woodland* factors support the same result: (1) it is not clear that there was a third eyewitness; (3) it is not clear what the possible third eyewitness would have testified to. The fourth factor, that the "missing witness" did not testify, would be an obvious "yes" if indeed there was a third eyewitness. Here, it is not clear that there was a third eyewitness.

witness instruction in this fashion allows "the party accused of nonproduction" (here, the State) to either call the witness(es) or "explain satisfactorily the reason for not calling such witness(es) to testify." Comment to MPJI-Cr 3:29. This procedure was properly followed here. The State explained the reason for not calling the unidentified witness—that they were unsure which individual the defense was referring to and that no third witness had provided information to the police—and the court found the explanation to be satisfactory such that a missing witness instruction was not warranted. The court's refusal to give the instruction and its accompanying rationale did not violate the logic found in the Comment. There was no abuse of discretion.

III. Closing Argument

A. Arguing Facts Not in Evidence and Appealing to the Passions of the Jury

Mr. Smith argues that the trial court erred in allowing the State to argue facts not in evidence and appeal to the passions of the jury in rebuttal closing. Specifically, Mr. Smith objects to the State's explanation for why Mr. Malik was not able to provide a description of his attacker to the police: "He has three kids. He has a wife. That's what he's thinking about." Mr. Smith argues that such commentary was erroneous because "there was no evidence presented at trial to support the State's argument that Mr. Malik was unable to identify the assailants due to Mr. Malik being preoccupied with thoughts of his family."

"A trial court 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). As such, "[t]he decision of the trial court will not be disturbed unless there was a clear

abuse of discretion that prejudiced the accused." *Small v. State*, 235 Md. App. 648, 697–98 (2018) *aff'd*, 464 Md. 68 (2019)). A trial court abuses its discretion when the challenged ruling is "well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Devincentz v. State*, 460 Md. 518, 550 (2018) (cleaned up).

Attorneys, including prosecutors, are generally afforded "great leeway" when presenting closing arguments to the jury. *Spain v. State*, 386 Md. 145, 152 (2005) (quoting *Degren v. State*, 352 Md. 400, 430 (1999)). Indeed, attorneys "may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions." *Id.* In short, "liberal freedom of speech" is permissible in closing arguments. *Id*. However, limitations to this leeway do exist. The court will find improper any comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial. *Lee v. State*, 405 Md. 148, 166 (2008). Counsel is permitted to argue and discuss "all reasonable and legitimate inferences which may be drawn from the facts in evidence," and "matters of common knowledge." *Smith v. State*, 388 Md. 468, 488 (2005) (cleaned up). What exceeds the limits of permissible comment or argument by counsel depends on the facts of each case. *See Degren*, 352 Md. at 432.

To support his argument, Mr. Smith analogizes to *Lee*, a case in which the prosecutor commented in closing argument that a witness had a motive to falsify his testimony because he was following "the law of the streets." 405 Md. at 168. The Supreme Court held that these comments were improper because there was nothing in the

record indicating what the "law of the streets" meant or how it was relevant to the case, leading the jury to "speculate what was contemplated by the phrase, which is not of such general notoriety as to be matter of common knowledge." *Id.* (cleaned up).

Here, the comments made by the State in closing argument—that Mr. Malik was distracted by thoughts of his wife and children while police attempted to obtain a description of the suspects from him—constituted reasonable inferences that could have been drawn from facts that were indeed in evidence. This case differs from *Lee*, where the comment at issue had absolutely no basis in the evidence such that the jury was required to speculate as to its meaning and relevance to the case. Instead, here, the evidence presented at trial showed that Mr. Malik was married with three children, that he lost consciousness during the attack, and that he struggled to respond to the officer's request for a description of the perpetrator because he "was just beaten," all of which could lead a reasonable juror to infer that Mr. Malik's mind was preoccupied at the time he was speaking to the police. The comment made by the State simply presented a rational inference that the jury could have reached on its own from the record of evidence, and as such there was no error in allowing it.

B. Vouching

Mr. Smith contends that the State's comments in rebuttal that the police "did their job" constituted improper vouching for the credibility of the officers' testimony. Mr. Smith further argues that this error requires reversal because the vouching was severe, the court made no attempt to cure the error, and there was limited evidence as to the identity

of the perpetrator such that the comment went to the heart of the case. Although Mr. Smith acknowledges that no objection was made to these comments at trial, he urges us to engage in plain error review.

"Ordinarily, an appellate court will not decide any other issue unless it plainly appears by the record to have been raised in or decided by the trial court." Md. Rule § 8-131(a). However, an appellate court possesses "plenary discretion to notice plain error material to the rights of a defendant, even if the matter was not raised in the trial court." *Steward v. State*, 218 Md. App. 550, 565 (2014) (cleaned up). In order for this court to exercise its discretion to engage in plain error review, "(1) there must be error (that the defendant did not affirmatively waive); (2) the error must be 'clear and obvious,' i.e., not subject to reasonable dispute; and (3) the error must be material, meaning that it affected the outcome of the trial." *Id.* at 566.

"Even if an appellant is able to satisfy the threshold burden of proving a plain and material error, the court need not recognize the error" and will only exercise its discretion to engage in plain error review when it is "compelling, extraordinary, exceptional or fundamental to assure the defendant a fair trial." *Steward*, 218 Md. App. at 566 (cleaned up). Because of the difficulty of demonstrating facts that are sufficiently compelling to invoke plain error review, it remains "a rare, rare, phenomenon." *Id.* (cleaned up).

We decline to engage in plain error review of the comments Mr. Smith now contends are improper vouching. Moreover, we are not convinced that the State's

comments amount to plain error under the factors laid out in *Steward*, 218 Md. App. at 565, and if there was error, it was not material to the outcome of the case.

Here, there was more than sufficient evidence upon which a jury could find guilt, including compelling evidence that did not require the jury to find that the police officers were credible or had done a good job investigating. For example, both the victim and an eyewitness identified Mr. Smith as the perpetrator, and Mr. Smith was found shortly after the carjacking with Mr. Malik's belongings on his person after being stopped directly across the street from Mr. Malik's stolen vehicle. Even if it was erroneous to allow the State to make such comments about the police investigation, the comments did not affect the fundamental fairness of the trial. The above evidence remained unaffected by any tainting of the jury's perception of the police investigation. Therefore, we decline to use our discretion to engage in plain error review.

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