Circuit Court for Baltimore City
Case No. 118176003

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 2885

September Term, 2018

ARTEZ WILLIAMS

v.

STATE OF MARYLAND

Fader, C.J.,
Wright,
Beachley,

JJ.

Opinion by Fader, C.J.

Filed: November 6, 2019

A jury in the Circuit Court for Baltimore City convicted Artez Williams of several firearms and drug offenses arising from a traffic stop. Mr. Williams contends that the circuit court erred by (1) not excusing or, alternatively, conducting voir dire of a juror who passed a note to the court that expressed concern for a witness; and (2) allowing the State to make improper remarks during rebuttal argument. We conclude that, under the circumstances, the court did not abuse its discretion in its handling of the juror's note. We also conclude that the prosecutor's remarks were not improper. We will therefore affirm.

BACKGROUND

On May 29, 2018, during a traffic stop of a car being driven by Mr. Williams, Officer Daisha Simms smelled marijuana. After obtaining backup, Officer Simms searched the car; Mr. Williams; and his passenger, Gabriella Smoot. Officer Simms found marijuana in the center console and inside a bag on the back seat. She also searched a bag recovered from the front passenger area, inside which she found some clothing, paperwork, Ms. Smoot's student-identification card, and a handgun. Ms. Smoot denied that the bag belonged to her. The officers arrested both Mr. Williams and Ms. Smoot.

Testimony of Ms. Smoot

At trial, Ms. Smoot, a key witness for the State, was reluctant to answer questions and, as reflected in comments of the court and attorneys, was visibly uncomfortable. When asked what happened on the day in question, Ms. Smoot broke down crying, causing the court to excuse the jury. During the ensuing bench conference, the court observed that Ms. Smoot was "shaking like a leaf," and attempted to calm and encourage her. At that

time, the State told the court that "Ms. Smoot got word from some girl that there's a price on her head."

As the jury was exiting the courtroom for this break, Juror No. 5 passed a note to the courtroom deputy. During the conference, the court told the parties that it had received the note, but said that it would not address it "until [they] need[ed] to address it." We discuss the note further below.

When the jury returned, Ms. Smoot testified that the bag containing the handgun belonged to her, but that the gun belonged to Mr. Williams and that he had placed it in her bag and later offered her money to "take the charge." Before defense counsel began his cross examination, the court again attempted to calm and encourage Ms. Smoot.

Juror No. 5's Note

After Ms. Smoot finished testifying and the jury retired for the day, the court broached the note, which reads: "Are they going to protect this girl[?]" Defense counsel requested that the court excuse Juror No. 5 or, alternatively, instruct him "that there's been no evidence that she's in any danger." By agreement of both parties, however, the court held the issue under advisement.

The next morning, the State requested that the court respond to the note by admonishing the juror. Defense counsel again requested that the court excuse Juror No. 5 or, in the alternative: (1) voir dire him "to determine why he wrote that note" and whether he had shared his concern with any other jurors; and (2) "give a curative instruction" to the jury that "there ha[d] been no evidence presented in th[e] trial that Ms. Smoot [was] in any

danger."[1] The court declined to give the curative instruction. By that time, the jury had heard Ms. Smoot testify that she had been offered money to "take the charge," and the court stated that it would leave to the jury whether that constituted a threat or intimidation. The court also declined to voir dire Juror No. 5, but instead gave him the following admonishment:

> Listen to me very carefully, sir. The note reads, "Are they going to protect this girl?" Without any response from you, the Court's response is that this is not a matter within the jury's province, it's not a matter for the jury or any jury member to be concerned with or even discussed. Thank you.

The court then sent Juror No. 5 back to the jury room.

The State's Rebuttal Argument

During his rebuttal argument, the prosecutor's statement that "[Mr. Williams] tried to intimidate [Ms. Smoot] and influence her not to come here and to say what happened" drew an objection from defense counsel. The court sustained the objection, directed the jury "to disregard the comment involving intimidation," and told the jury that "there'[d] been absolutely no evidence . . . [or] testimony presented that the witness was intimidated."

The State then continued:

> But you know what there certainly was? A whole lot of evidence of a young woman who was terrified. And you ask yourself why. Why? Because she lives in Baltimore City, and so do all of us. And we all know what Baltimore is infamous for, this culture, don't snitch, don't tell. And so now she's put in a position of having to come in here—yeah, of course, it's upsetting to her and it's scary and it's terrifying, but she told the truth.

[1] At a pretrial motions hearing, the State told the court that a man associated with Mr. Williams had come to Ms. Smoot's home in the middle of the night and attempted to convince her not to testify. Immediately before trial, the court granted Mr. Williams's motion in limine to preclude the jury from hearing any evidence regarding or suggesting third-party intimidation or attempted bribery of Ms. Smoot.

Defense counsel again objected, but this time the court overruled the objection.

Mr. Williams's Motion for a New Trial

The jury convicted Mr. Williams of multiple counts concerning both the marijuana and unlawful possession of the handgun. Approximately one month later, at the disposition hearing, the court heard Mr. Williams's motion for a new trial. As relevant to the issues on appeal, Mr. Williams argued that the court should have (1) excused Juror No. 5 in response to the note and (2) sustained Mr. Williams's objection to the State's comment during its rebuttal argument.

The court denied the motion. Regarding Juror No. 5, the court's recollection of events differed from what the transcript reveals. Specifically, the court recollected that it had "voir dired [Juror No. 5] here in open court," and that the juror "indicated that he had not discussed the content of that note with anyone, . . . agreed not to discuss it with anyone," and "indicated that his inquiry would not affect his ability to be fair and impartial in this matter."[2] The court also noted that "it was in the back of the [c]ourt's mind" that there remained only one alternate juror at the time it declined to excuse Juror No. 5.

Regarding the State's rebuttal comments, the court stated that the comments "could mean anything. It does not imply . . . that the witness was afraid of the defendant."

[2] Likewise, the State also recalled incorrectly that "the [c]ourt . . . voir dired the juror" and that Juror No. 5 had stated that "he could set aside th[e] concern [in his note] and be fair."

DISCUSSION

We review a trial court's handling of allegations of jury bias or misconduct under the "abuse of discretion" standard. *Nash v. State*, 439 Md. 53, 66-69 (2014). An abuse of discretion exists "'where no reasonable person would take the view adopted by the [trial] court,' or when the court acts 'without reference to any guiding rules or principles.' . . . [or] when the ruling is "clearly against the logic and effect of facts and inferences before the court.'" *Alexis v. State*, 437 Md. 457, 478 (2014) (internal citations omitted) (quoting *North v. North*, 102 Md. App. 1, 13 (1994)). "[A] ruling reviewed under an abuse of discretion standard will not be reversed simply because the appellate court would not have made the same ruling." *Alexis*, 437 Md. at 478 (emphasis removed) (quoting *North*, 102 Md. App. at 14). Instead, "[a] court's decision is an abuse of discretion when it is well removed from any center mark imagined by the reviewing court and beyond the fringe of what that court deems minimally acceptable." *Alexis*, 437 Md. at 478 (quoting *Gray v. State*, 388 Md. 366, 383 (2005)) (internal quotation marks omitted).

The "abuse of discretion" standard "is not an immutable and invariable criterion in all of its myriad applications." *Nash*, 439 Md. at 68 (quoting *Alexis*, 437 Md. at 478). "Rather, the standard represents a flexible model whose range is dependent on the type of discretionary decision a trial judge is called upon to make and the relevant circumstances of the case." *Nash*, 439 Md. at 68. Where the trial court exercised discretion to "handl[e] the progress of a trial, . . . the range of discretion is very broad and the exercise of discretion

will rarely be reversed." *Alexis*, 457 Md. at 479 (quoting *Canterbury Riding Condo. v. Chesapeake Investors, Inc.*, 66 Md. App. 635, 648 (1986)).

"The determination whether counsel's 'remarks in closing were improper and prejudicial, or simply a permissible rhetorical flourish, is within the sound discretion of the trial court to decide.'" *Sivells v. State*, 196 Md. App. 254, 271 (2010) (quoting *Jones-Harris v. State*, 179 Md. App. 72, 105 (2008)). We "generally will not reverse the trial court 'unless that court clearly abused the exercise of its discretion and prejudiced the accused.'" *Sivells*, 196 Md. App. at 271 (quoting *Degren v. State*, 352 Md. 400, 431 (1999)).

I. THE CIRCUIT COURT DID NOT ABUSE ITS DISCRETION IN DECLINING TO VOIR DIRE JUROR NO. 5.

The United States Constitution and Maryland Declaration of Rights ensure "that a defendant's fate will be determined by an impartial fact finder who depends solely on the evidence and argument introduced in open court." *Summers v. State*, 152 Md. App. 362, 375 (2003) (quoting *Allen v. State*, 89 Md. App. 25, 42 (1991)). "[T]he trial court has an obligation to resolve questions of impropriety or threats to the integrity of the jury trial." *Dillard v. State*, 415 Md. 445, 454 (2010). "Where a colorable claim of jury taint surfaces before jury deliberations occur, . . . [t]he judge should investigate the allegation promptly, addressing whether the taint-producing event occurred, and if so, assessing the magnitude and extent of any prejudice caused." *Id.* at 461 (quoting *United States v. Tejeda*, 481 F.3d 44, 52 (1st Cir. 2007)). At the same time, the "trial judge is in the best position to evaluate whether or not a defendant's right to an impartial jury has been compromised." *Dillard*,

415 Md. at 454 (quoting *Allen*, 89 Md. App. at 42-43). The trial judge thus enjoys discretion in handling most situations involving potential juror misconduct. *See Nash*, 439 Md. at 66-69.

In two circumstances, however, the trial judge has a nondiscretionary obligation to conduct voir dire before deciding how to handle an allegation of jury misconduct. "The first circumstance occurs when a juror's actions constitute misconduct sufficient to raise a presumption of prejudice that must be rebutted" before the trial judge may rule. *Id.* at 69 (citing *Jenkins v. State*, 375 Md. 284, 327-30 (2003); *Wardlaw v. State*, 185 Md. App. 440, 453-54 (2009)). "The second, ancillary circumstance occurs when a material and relevant fact regarding a juror's conduct is unknown or obscure and must be resolved before a trial judge has 'sufficient information to determine whether the presumption of prejudice attached to the [conduct] . . . .'" *Nash*, 439 Md. at 69 (quoting *Dillard*, 415 Md. at 457).

Mr. Williams contends that the facts of this case fit within the second category and, therefore, that the trial court was obligated to voir dire Juror No. 5 before deciding not to excuse him. The State responds that no investigation was needed here, because circumstances that unfolded in the courtroom fully explain the juror's conduct and, therefore, the trial court had discretion, which it properly exercised in declining to conduct voir dire. Although cloaked in the language of the second category, Mr. Williams's argument really falls closer to a third—an asserted need to obtain an "assurance of impartiality from the jurors"—that the Court of Appeals has expressly refused to recognize. *Nash*, 439 Md. at 90. We therefore hold that the trial judge had discretion in responding

to the juror's note. For reasons discussed below, we also hold that the court did not abuse that discretion.

A. The Allegations Regarding Juror No. 5 Did Not Create a Presumption of Prejudice.

The first category of circumstances that mandate voir dire involve "a juror's actions [that] constitute misconduct sufficient to raise a presumption of prejudice that must be rebutted before a mistrial motion may be denied." *Id.* at 69. This arises "where excessive or egregious jury misconduct or improper conduct by a third party occurs." *Jenkins*, 375 Md. at 315. In *Jenkins*, post-trial discovery revealed that "during trial a juror had 'non-incidental, intentional and personal' contact with a State's witness, in direct violation of the court's instructions."[3] *Johnson v. State*, 423 Md. 137, 149-50 (2011) (quoting *Jenkins*, 375 Md. at 319). In light of the "'strong possibility of prejudice to the defendant'"—which the Court deemed the State "unable to rebut"—"Jenkins was entitled to a new trial." *Johnson*, 423 Md. at 150 (brackets omitted) (quoting *Jenkins*, 423 Md. at 329). This Court has identified misconduct sufficient to create a presumption of prejudice in situations including: (1) a juror conducting outside internet research and reporting the results to the rest of the jury, *Wardlaw*, 185 Md. App. at 452-53; (2) a juror asking her attorney spouse about the admissibility of hearsay evidence, *Eades v. State*, 75 Md. App. 411, 423-25

[3] In *Jenkins*, the relevant circumstances did not become known until post-trial discovery, which led to a motion for new trial. 375 Md. at 287. In *Nash*, the Court of Appeals nonetheless relied on the circumstances in *Jenkins* in defining what degree of juror misconduct creates a presumption of prejudice that requires voir dire before the court may rule on a motion for mistrial. *Nash*, 439 Md. at 70-72.

(1988); and (3) an alternate juror relaying a co-defendant's inculpatory statements to a sitting juror, *Allen*, 89 Md. App. at 46-48.

In *Nash*, by contrast, the presumption of prejudice did not apply. There, the jury foreman passed a note to the trial court during deliberations stating that another juror had said that she would change her "not guilty" vote to "guilty" to avoid having to return after an approaching holiday weekend. *Nash*, 439 Md. at 57. The court denied defense counsel's motion for a mistrial without conducting voir dire. *Id.* at 59. The Court of Appeals concluded that the presumption of prejudice did not apply, for two reasons. First, the note indicated only "the possibility of future misconduct," which gave the court "the ability to prevent prejudice from occurring." *Id.* at 77. Second, the conduct "did not fit within the type of 'limited' circumstance in which the presumption applies": "A statement made by a single juror, which did not concern the evidence or any of the witnesses, does not have the same likelihood of poisoning the well of deliberations as the type of juror contact with witnesses, parties to the case, or third parties that took place in [other cases in which courts had found a presumption of prejudice]."[4] *Id.* at 78-79.

[4] Other situations in which Maryland's appellate courts have held that alleged juror misconduct did not raise the presumption of prejudice include: (1) when a juror note stated, "We have one juror who does not trust the police no matter the circumstance," *Butler v. State*, 392 Md. 169, 174-79, 189-90 (2006); (2) when an electronic courthouse bulletin board that showed the defendant had multiple criminal cases pending against him, but it was unlikely that the jury saw it, *Bruce v. State*, 351 Md. 387, 393, 396 (1998); and (3) when a juror note stated, "[W]e have already looked it up," a few minutes after the jurors had sent a note asking for a dictionary, *Colkley v. State*, 204 Md. App. 593, 622-25 (2012), *rev'd on other grounds sub nom. Fields v. State*, 432 Md. 650 (2013).

Mr. Williams does not contend that the circumstances here give rise to a presumption of prejudice, and we agree that they do not. There was no evidence that Juror No. 5 interacted improperly with any witness, attorney, party, juror, or third party; nor was there any evidence that he conducted outside research; nor did the note allege or imply misconduct by any third party. Instead, the note's contents appeared to be explained by Ms. Smoot's appearance and demeanor in court.

B. The Court Had Sufficient Information upon Which to Exercise Its Discretion, Thus Obviating the Need for Voir Dire.

Mr. Williams grounds his contention that voir dire was mandated here in *Nash*'s second category, which encompasses situations in which the court "lacks sufficient information regarding the juror's conduct from which to determine (1) whether a presumption of prejudice attaches, or, (2) whether a mistrial motion should be denied." *Nash*, 439 Md. at 84. Three recent Court of Appeals cases define the contours of this category.

First, in *Dillard v. State*, two jurors on lunch break encountered two police officers who had recently testified for the State. 415 Md. at 451. One or both jurors patted one of the officers on the back and said, "Good job." *Id.* The officers reported the incident to the prosecutor, who reported it to the court. *Id.* The trial court denied Mr. Dillard's mistrial motion without questioning the jurors. *Id.* at 452. This Court affirmed the conviction, but the Court of Appeals reversed, finding the scant record problematic: "[W]e cannot determine from the record before us whether the contact between the jurors and Detective Smith was sufficiently egregious to create a presumption of prejudice to Dillard." *Id.* at

457. The Court continued: "Without a voir dire examination of the jurors . . . , the trial judge did not have sufficient information to determine whether the presumption of prejudice attached to the contact or to rule on Dillard's motion for a mistrial." *Id.* Thus, the Court held, "the trial judge's failure to clarify the factual scenario raised by the contact between the jurors and Detective Smith constituted an abuse of discretion." *Id.*

Second, in *Johnson v. State*, the trial judge had received a note (1) stating that a juror had used his own battery to turn on a cell phone in evidence and (2) asking what to do with the information the jury learned from the phone. 423 Md. at 144. Without questioning the jurors, the trial court denied Mr. Johnson's mistrial motion. *Id.* at 145-46. The court did, however, admonish the jury for violating earlier instructions and issued curative instructions. *Id.* On review, the Court of Appeals did not resolve whether the "juror misconduct . . . [was] presumed prejudicial," because it held that the trial court "acted precipitously in denying the requested mistrial, and thereby abused its discretion." *Id.* at 151. The Court held that because the alleged misconduct involved the jury acquiring "information . . . of central importance to what the jury ultimately had to decide," the trial judge should have conducted voir dire to determine "the degree to which the extrinsic and highly prejudicial information [affected] some or all of the jurors." *Id.* at 153-54. As in *Dillard*, the Court held that the trial court abused its discretion by not conducting voir dire "before . . . exercis[ing] its discretion to deny the requested mistrial." *Id.* (emphasis omitted).

Third, in *Nash*, the Court determined that sua sponte voir dire was not required in response to the note indicating that one juror might change his or her vote to end

deliberations before the holiday weekend. 439 Md. at 85. The Court distinguished *Dillard* and *Johnson* based largely on the type of information that was unknown. In *Nash*, "the only unresolved factual issues appear[ed] to be the identity of the Subject Juror, whether she said what the Note reported, and the number of other jurors who heard the Subject Juror's statement, if any." *Id.* at 84. That, the Court concluded, did not require voir dire. Unlike in *Dillard*, which presented "alarming factual issues arising from juror-witness conduct that went unresolved," *id.* at 85, and *Johnson*, where the statement in the note "concern[ed] the introduction into deliberations of extrinsic 'information . . . of central importance to what the jury ultimately had to decide,'" *id.* (quoting *Johnson*, 423 Md. at 153), the juror's statement at issue in *Nash* neither concerned interactions outside the courtroom nor "add[ed] to or otherwise affect[ed] the universe of evidence upon which the jury as a whole was to base its deliberation," *Nash*, 439 Md. at 85. As a result, "the trial judge had sufficient facts upon which to base her ruling on the mistrial motion." *Id.*

The circumstances here are much closer to those in *Nash* than to those in *Dillard* or *Johnson*. Indeed, in some ways, the circumstances here favor the State more than those in *Nash*. Here, unlike in *Nash*, the juror's identity and the circumstances giving rise to the note were both known to the court. Neither the note itself nor any other surrounding circumstance suggested that the juror had improperly communicated with anyone, or that he had improperly accessed any extrinsic information. The only unknown was what specifically was going on inside the juror's mind in response to the testimony he had heard. Under the guidance of *Nash*, *Dillard*, and *Johnson*, this was not a situation that *obligated*

the court to conduct a factual investigation before determining how to handle Mr. Williams's request.

C. The Interest in Ensuring a Fair and Impartial Jury Does Not Mandate Voir Dire.

Although Mr. Williams couches his argument in terms of a need to obtain "sufficient information regarding the juror's conduct," *see Nash*, 439 Md. at 84, the circumstances here instead fall within a third category of circumstances in which voir dire is permissible—and often helpful and advisable—but not mandatory. In *Nash*, the appellant asked the Court to hold that voir dire may be required to "obtain assurance from the jurors that they could render a fair and impartial verdict" "in light of the alleged misconduct." *Id.* at 66, 70. There, after receiving the note indicating that one juror might be willing to switch his or her vote to avoid further deliberation, the court denied a motion for mistrial without conducting voir dire. *Id.* at 62-63. Instead, the court provided a curative instruction, released the jurors, and brought them back after the holiday weekend. *Id.* An hour after they returned the following Tuesday, they convicted. *Id.* at 63.

The Court held that voir dire for the purpose of ensuring the fairness and impartiality of the jury is not mandatory. The Court observed that in the two categories of circumstances it had previously recognized as mandating sua sponte voir dire, that was the only way to ensure a fair and impartial verdict—in the first category, because voir dire is needed to rebut the presumption of prejudice, and in the second, because voir dire is needed to obtain missing, necessary facts about events extrinsic to the courtroom proceedings. *Nash*, 439 Md. at 86. Where a concern arises about the fairness and impartiality of a juror

that does not fall within those categories, however, there generally is "more than one avenue available to the trial judge" to address it. *Id.* In such circumstances, the Court determined, it is appropriate to give the trial court discretion in choosing the proper approach. *Id.*

Here, Mr. Williams contends that the trial court should have conducted voir dire to determine why Juror No. 5 expressed concern about Ms. Smoot's safety and whether he had made up his mind prematurely about her veracity or Mr. Williams's guilt. In other words, Mr. Williams wanted the court to confirm that Juror No. 5 could remain fair and impartial. As a result, to the extent Mr. Williams asks us to hold that voir dire was mandatory here, he effectively asks us to revisit *Nash*. That we cannot do.

The one notable distinction Mr. Williams raises between this case and *Nash* is that Mr. Williams, unlike Mr. Nash, expressly requested that the court conduct voir dire. Mr. Williams suggests that difference is enough to mandate voir dire here even absent a presumption of prejudice or a need for factual investigation. We disagree. As noted, the Court of Appeals explained that it has required sua sponte voir dire in the circumstances recognized in *Nash* because, in those circumstances, the court has no other way to ensure a fair and impartial trial. But absent those circumstances, the Court has recognized that a trial court retains "more than one avenue" to address allegations of misconduct. *Nash*, 439 Md. at 86. It is thus the availability of different avenues that gives rise to a circuit court's discretion. And a defendant's request for voir dire does not alter in any way the avenues that are available to the court to address potential misconduct. As a result, although the existence of such a request is something we will consider in determining whether the circuit

court abused its discretion, the mere act of making the request does not remove the determination from the court's discretion. It is to the court's exercise of that discretion that we now turn.

D. The Trial Court Did Not Abuse Its Discretion in Declining to Voir Dire Juror No. 5.

Where the trial court has discretion to determine how to respond to an allegation of juror misconduct, a reviewing court should not "weigh merely whether one option is better than the other. Nor is it to determine whether the trial judge's chosen course was the one we would have taken in his or her position." *Id.* at 86-87. The appellate court's role is only "to determine whether the route the trial judge traveled 'does not logically follow from the findings upon which it supposedly rests or has no reasonable relationship to its announced objective,' and, thus, constituted an abuse of discretion." *Id.* at 87 (quoting *Alexis*, 437 Md. at 477-78). The significant discretion allowed the trial court recognizes "the trial judge's unique role and distinct advantage in evaluating questions of prejudice to a criminal defendant," which comes from the trial judge's ability to "ascertain the demeanor of witnesses and to note the reaction of jurors and counsel to inadmissible matters. That is to say, the judge has his finger on the pulse of the trial." *Nash*, 439 Md. at 87 (quoting *State v. Hawkins*, 326 Md. 270, 278 (1992)). "That observation," the Court notably observed, "applies equally to the trial judge's ability to ascertain the demeanor of jurors with regard to allegations of juror misconduct." *Nash*, 439 Md. at 87.

We return once again to *Nash*, in which the Court of Appeals upheld the verdicts because it "c[ould]not say . . . that it was grossly unreasonable for the trial judge to respond

to the Note" as it did. *Id.* at 88. Likewise, here, we cannot say that the trial court's decision to admonish the juror who wrote the note was "so irrational" as to constitute an abuse of discretion under *Nash*. *See id.* at 90. The note did not hint at either any improper contact with anyone or any outside research. Instead, it reflected concern for a witness, which the court viewed in the context of the testimony Ms. Smoot had given and, likely much more importantly, Ms. Smoot's demeanor during that testimony.

Mr. Williams contends that the concern articulated in the note may have suggested the possibility that Juror No. 5 had reached a premature, preliminary conclusion as to Ms. Smoot's veracity. Assessing a witness's veracity is, of course, an important job of jurors, *see, e.g.*, *Grimm v. State*, 447 Md. 482, 505-06 (2016) (citations omitted), though it is premature and, for that reason, improper to do so before deliberations begin, *see Dillard*, 415 Md. at 458. Nonetheless, as Judge Adkins has observed, it "would be naïve to suppose that jurors suspend all judgment about the witnesses and other evidence presented to them until the time of formal deliberations." *Dillard*, 415 Md. at 470-71 (Adkins, J., dissenting) (citing myriad studies demonstrating that jurors continually evaluate and re-evaluate information received during trial). Here, the trial court had several options to address the note, including excusing the juror, voir dire, a curative instruction, or admonishment. It chose admonishment. Notwithstanding Mr. Williams's request for voir dire, we must afford deference to the trial judge who was there to see Ms. Smoot's testimony, to gauge the reactions of all of the jurors to it, and to gauge the reaction of Juror No. 5 to her admonishment. Considering all of the circumstances, and especially the trial judge's much better gauge of the "pulse of the trial," we cannot say that her decision fell outside "the

realm of rationality at the time that she made it." *Nash*, 439 Md. at 87, 90. Voir dire may have been helpful—indeed, even preferable in hindsight[5]—but, under the framework set forth in *Nash*, we cannot say it was an abuse of discretion not to conduct it.

II. THE TRIAL COURT DID NOT COMMIT REVERSIBLE ERROR BY ALLOWING THE STATE'S REMARKS IN REBUTTAL ARGUMENT.

Mr. Williams argues that during the State's rebuttal argument, the prosecutor remarked improperly on Baltimore City's "infamous . . . don't snitch, don't tell" culture and vouched improperly for Ms. Smoot's veracity. Mr. Williams further contends that the court's error in allowing the State's improper argument was not harmless. The State argues that neither of the statements were improper and any error was harmless. We agree with the State.

To place the relevant comments in context, immediately before the prosecutor made them, the following exchange occurred:

> [PROSECUTOR]: He tried to intimidate her and influence her not to come here and to say what happened—
>
> [DEFENSE COUNSEL]: Objection.
>
> [PROSECUTOR]: —he couldn't talk his way out of it. He couldn't charm his way—
>
> THE COURT: Stop. Stop.

[5] On the subject of judicial hindsight, Mr. Williams observes correctly that in denying his motion for new trial a month after his conviction, the court misremembered how it handled this issue. Specifically, the court incorrectly recalled that it had conducted voir dire of Juror No. 5. Because Mr. Williams has challenged the court's decision not to conduct voir dire of the juror, and not its denial of his motion for new trial, the court's later mistaken recollection is not relevant to our decision. Our focus is on what was before the court at the time it decided how to handle the allegations of misconduct, not on what transpired later. *Nash*, 439 Md. at 89.

The court sustained defense counsel's objection and gave the following curative instruction to the jury: "Ladies and gentlemen, you're to disregard the comment involving intimidation; there's been absolutely no evidence here to indicate or no testimony presented that the witness was intimidated."

The prosecutor continued:

> But you know what there certainly was? A whole lot of evidence of a young woman who was terrified. And you ask yourself why. Why? Because she lives in Baltimore City, and so do all of us. And we all know what Baltimore is infamous for, this culture, don't snitch, don't tell. And so now she's put in a position of having to come in here—yeah, of course, it's upsetting to her and it's scary and it's terrifying, but she told the truth.
>
> [DEFENSE COUNSEL]: Objection.
>
> THE COURT: Overruled.

The prosecutor's comments about Baltimore's "infamous . . . don't snitch, don't tell" culture, and his statement that Ms. Smoot "told the truth," are the subjects of Mr. Williams's allegations of error.[6]

[6] In a footnote in its brief, the State contends that Mr. Williams did not preserve his objection to the "don't snitch" culture remark, because he did not promptly object to it. While "[t]he requirement of a contemporaneous objection is a necessary and salutary one, designed to assure both fairness and efficiency in the conduct of trials," *Perry v. State*, 357 Md. 37, 77 (1999), "there is no bright-line rule to determine when an objection should be made," *Prince v. State*, 216 Md. App. 178, 194 (2014). Here, we consider Mr. Williams's objection to have been sufficiently contemporaneous with the prosecutor's comment to have preserved his objection.

A. The Prosecutor's Reference to Baltimore City's "Infamous . . . Don't Snitch, Don't Tell" Culture Was Not Improper.

Our courts "have given attorneys wide latitude in the presentation of closing arguments, because '[s]ummation provides counsel with 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 opponents argument.'" *Lee v. State*, 405 Md. 148, 162 (2008) (quoting *Henry v. State*, 324 Md. 204, 230 (1991)). A prosecutor making closing argument "is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom." *Lee*, 405 Md. at 163 (quoting *Degren v. State*, 352 Md. 400, 429 (1999)). The Court of Appeals has explained:

> 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.

Lee, 405 Md. at 163 (quoting *Degren*, 352 Md. at 429-30).

A prosecutor's freedom of speech in closing argument is not, however, absolute. "Notwithstanding the wide latitude afforded prosecutors in closing arguments, a defendant's right to a fair trial must be protected." *Lee*, 405 Md. at 164. "Generally, . . . comments made during closing argument that invite the jury to draw inferences from information that was not admitted at trial [are] improper." *Id.* at 166. An exception exists, however, for inferences that are drawn from facts "of such general notoriety as to be matter

of common knowledge." *Id.* at 167 (quoting *Wilhelm v. State*, 272 Md. 404, 445 (1974), *abrogated on other grounds as recognized in Simpson v. State*, 442 Md. 446, 458 n.5 (2015)). Matters of "common knowledge" are those "which every informed individual possesses." *Wilhelm*, 272 Md. at 439. In *Wilhelm*, the Court of Appeals concluded that a prosecutor's reference to the number of murders in Baltimore City was a matter of sufficient notoriety to be of common knowledge. *Id.* at 440, 445.

Mr. Williams contends that the prosecutor's comment about Baltimore City's "infamous . . . don't snitch, don't tell" culture was improper closing argument because the State did not introduce evidence of any such culture at trial. *See Jones v. State*, 217 Md. App. 676, 692 (2014) ("In delivering closing arguments, a prosecutor may not 'comment upon facts not in evidence or . . . state what he or she would have proven." (quoting *Donaldson v. State*, 416 Md. 467, 489 (2010))). The State agrees that there was no such evidence presented, but contends that the referenced culture is of sufficient "general notoriety as to be . . . of common knowledge." The State points us first to "a widely distributed Baltimore-based homemade 2004 'stop snitching' video, threatening violence against those who provided law enforcement with information."[7]

[7] *See* U.S. Dep't of Justice, Off. of Cmty. Oriented Policing Servs., *The Stop Snitching Phenomenon: Breaking the Code of Silence* 10 (Feb. 2009), *available at* https://www.policeforum.org/assets/docs/Free_Online_Documents/Crime/the%20stop%20snitching%20phenomenon%20-%20breaking%20the%20code%20of%20silence%202009.pdf (last visited Oct. 14, 2019) ("The problem [of 'stop snitching'] . . . gained notoriety in 2004 with the release of the *Stop Snitchin'* DVD that was produced in Baltimore and distributed widely on the internet . . . . [I]t was the release of the Baltimore DVD that is thought to have spawned t-shirts, hats, and rap CDs with stop snitching messages that threaten violence against those who provide information to the police about crimes.").

The State also refers us to case law. In *Moore v. State*, for example, this Court described the phrase "no snitch," as used by the defendant in a police interview, as "a phrase of such notoriety 'as to be a matter of common knowledge.' The concept of not snitching is commonly understood as being part of the law of the streets or 'living by the code.'" 194 Md. App. 327, 360 (2010) (citing *Lee*, 405 Md. at 168), *rev'd on other grounds*, 422 Md. 516 (2011). And in *Height v. State*, this Court found appropriate a prosecutor's comments during opening statement about a witness who was expected to be "difficult," because he "follows the law of the street," of which "[r]ule number one . . . is you do not snitch." 185 Md. App. 317, 336 (emphasis removed), *vacated on other grounds*, 422 Md. 662 (2009); *see also Hammonds v. State*, 436 Md. 22, 47 n.8 (2013) (noting that prior to the enactment of Maryland's current anti-witness intimidation statute, the State's Attorney for Baltimore City "distributed [the *Stop Snitchin'* DVD] to Maryland legislators as proof of the serious problem of witness intimidation and retaliation in Baltimore City"); *Griffin v. State*, 419 Md. 343, 347-65 (2011) (discussing whether a print-out from a social networking website, in which a user allegedly threatened a State's witness in a murder trial by stating "snitches get stitches," was properly authenticated); *Armstead v. State*, 195 Md. App. 599, 607 (2010) (quoting a witness about why he did not speak to the police earlier on in their murder investigation: "It ain't good to snitch, it ain't good to snitch. Snitchers get stitches, that's how I always looked at it.").

Additionally, even a brief internet search reveals numerous references to "what has become the cultural norm of the 'stop snitching' mentality." Juliana Kim, *Baltimore Women Called to Testify in Recent Cases Say Their Fears Were Largely Ignored*, Balt. Sun

(Sept. 4, 2019, 5:00 AM), https://www.baltimoresun.com/news/crime/bs-md-ci-cr-witness-intimidation-20190903-3gjbgkqe6fd7dcxosshna7mhtu-story.html (last visited Oct. 29, 2019).[8]

[8] *See also* Talia Richman, *Attorneys Spar Over Witness' Credibility in Trial for Death of 7-Year-Old Taylor Hayes*, Balt. Sun (Aug. 2, 2019, 5:55 PM), https://www.baltimoresun.com/news/crime/bs-md-ci-cr-taylor-hayes-trial-malik-edison-20190802-o3kkm3n22bcfzdagewtgcmsnja-story.html (last visited Oct. 29, 2019) (discussing Baltimore City leaders "decr[ying] the city's 'no snitching' culture" following shooting of a 7-year-old girl); Baltimore Sun Editorial Board, *Erasing Baltimore's Stop Snitching Culture*, Balt. Sun (May 10, 2019, 6:00 AM), https://www.baltimoresun.com/opinion/editorial/bs-ed-0510-stop-snitching-20190508-story.html (last visited Oct. 29, 2019) (following observation that residents refused to open their doors for Mayor and Police Commissioner pleading for cooperation in investigating of shooting involving children with: "Baltimore's stop snitching culture rears its ugly head again."); *Id.* ("[Baltimore C]ity's insidious stop snitching culture has got to end if Baltimore is ever to come to grips with its crime problem."); David McFadden, *No Arrests Day After Chaotic Shooting Attack in Baltimore*, Seattle Times (Apr. 29, 2019, 3:28 PM), https://www.seattletimes.com/nation-world/nation/no-arrests-day-after-chaotic-shooting-attack-in-baltimore/ (last visited Oct. 29, 2019) ("[W]ith no arrests . . . , police investigators might again be struggling to overcome Baltimore's strong anti-informant culture that chronically makes eyewitnesses to shootings and other crimes too afraid or simply unwilling to come forward."); *Id.* ("Witness intimidation has long plagued Baltimore's criminal justice system. Some point to appalling cases where witnesses were killed . . . . And many locals well remember a popular street DVD called 'Stop Snitching' that featured drug dealers warning residents they could 'get a hole in their head' for cooperating with authorities."); Reader Response, *The Baltimore Police Send Bad Message with 'Lockup' Tip Line*, Balt. Sun (Feb. 12, 2019, 12:35 PM), https://www.baltimoresun.com/opinion/readers-respond/bs-ed-rr-anonymous-tipline-lockup-baltimore-police-letter-20190212-story.html (last visited Oct. 29, 2019) (stating that an "'us versus them' culture of unconstitutional policing . . . has contributed to a lack of trust and the 'no snitch' mentality among residents of the communities experiencing high crime and most in need of responsive police services"); Justin Fenton, *Baltimore Police and Prosecutors Struggle with Witness Cooperation*, Balt. Sun (Aug. 8, 2015, 5:57 PM), https://www.baltimoresun.com/news/investigations/bs-md-ci-witness-intimidation-20150808-story.html (last visited Oct. 29, 2019) ("In Baltimore, the real problem is that every witness is automatically intimidated by the culture of the city, even in the absence of an overt threat." (internal quotation marks omitted)); Reader Response, *Anti-Snitching Mentality Is Alarming*, Balt. Sun (May 14, 2013, 9:00 AM), https://www.baltimoresun.com/opinion/readers-respond/bs-ed-guns-letter-20130514-

Mr. Williams disagrees that the stop snitching culture is common knowledge, relying primarily on the Court of Appeals's decision in *Lee v. State*. There, the Court determined that a prosecutor's reference to "the law of the streets" was improper because "th[at] phrase . . . is not 'of such general notoriety as to be matter of common knowledge.'" 405 Md. at 168 (quoting *Wilhelm*, 272 Md. at 445). Because "[t]he prosecutor's comments left the jurors to speculate what was contemplated by the phrase, . . . leading to juror speculation and decision, perhaps, on information outside of the evidence," the Court held that the prosecutor's use of the term "'the law of the streets' . . . constituted an improper appeal." *Lee*, 405 Md. at 168.

We agree with the State that Baltimore's "don't snitch, don't tell" culture is of sufficient notoriety to qualify as a matter of common knowledge. Unlike the ambiguous phrase "law of the streets," the meaning of an anti-snitching culture—one that strongly dissuades people from cooperating with the police—is much more certain and well known. The small sampling of sources cited above demonstrates that the culture is a well-known affliction that is pervasive in, though not unique to, Baltimore City.

story.html (last visited Oct. 29, 2019) ("The 'stop snitching' mantra [] is debilitating to the integrity of our inner cities."); Gary Gately, *Baltimore Struggles to Battle Witness Intimidation*, Boston Globe (Feb. 12, 2005), http://archive.boston.com/news/nation/articles/2005/02/12/baltimore_struggles_to_battle_witness_intimidation/ (last visited Oct. 29, 2019) ("Every day in courtrooms across Baltimore, prosecutors encounter another witness or victim too afraid to come to court, too afraid to testify . . . . And justice is silenced by an insidious culture. This terrorism must end."); Jennifer Ludden, *All Things Considered: Baltimore Officials Battle Witness Intimidation*, Nat'l Pub. Radio (Jan. 15, 2005, 12:00 AM), https://www.npr.org/templates/story/story.php?storyId=4284844 (last visited Oct. 29, 2019) (news program featuring story on Baltimore homicide detective force's attempts to track down no-show witnesses and end intimidation).

We caution that the fact that something is of common knowledge does not mean it can be raised without limitation or for an improper purpose. Here, however, there is no indication that the reference to Baltimore's "don't snitch, don't tell" culture was made to inflame the jury, to suggest to the jury that it should disregard evidence presented or draw on facts not appropriately before it, to suggest to the jury that it had some responsibility to "clean up the streets," *cf. Lee*, 405 Md. at 170-74, or for another impermissible purpose. Furthermore, as explained further below, the reference also was not employed in a context that would suggest that Mr. Williams himself had intimidated Ms. Smoot. Instead, it was used to explain the evident fear of a witness testifying on the stand. Under the circumstances, the court did not err in declining to sustain Mr. Williams's objection to the comment.

B. The Prosecutor Did Not Improperly Vouch for Ms. Smoot.

A prosecutor is not permitted in closing argument to vouch for the credibility of a witness. "Vouching typically occurs when a prosecutor 'place[s] the prestige of the government behind a witness through personal assurances of the witness's veracity . . . or suggest[s] that information not presented to the jury supports the witness's testimony.'" *Spain v. State*, 386 Md. 145, 153 (2005) (quoting *United States v. Daas*, 198 F.3d 1167, 1178 (9th Cir. 1999)). Vouching poses two dangers: (1) it "can convey the impression that evidence not presented to the jury, but known to the prosecutor, supports the charges against the defendant and can thus jeopardize the defendant's right to be tried solely on the basis of the evidence presented to the jury"; and (2) "the prosecutor's opinion carries with it the imprimatur of the Government and may induce the jury to trust the Government's

judgment rather than its own view of the evidence." *Sivells*, 196 Md. App. at 278 (quoting *United States v. Young*, 470 U.S. 1, 18-19 (1985)).

Notably, however, "[t]he rule against vouching does not preclude a prosecutor from addressing the credibility of witnesses in its closing argument." *Sivells*, 196 Md. App. at 278. Indeed, witness credibility is often a critical issue for the jury to consider.[9] *Id.* Thus, "where a prosecutor argues that a witness is being truthful based on the testimony given at trial, and does not assure the jury that the credibility of the witness is based on his own personal knowledge, the prosecutor is engaging in proper argument and is not vouching." *Sivells*, 196 Md. App. at 278 (quoting *Spain*, 386 Md. at 155). The Court of Appeals has recognized that because motive for testifying is an integral part of witness credibility, counsel "feel[s] compelled frequently to comment on the motives, or absence thereof, that a witness may have for testifying in a particular way, so long as those conclusions may be inferred from the evidence introduced and admitted at trial." *Donaldson*, 416 Md. at 492 (quoting *Spain*, 386 Md. at 155).

Thus, for example, the Court of Appeals has held that a prosecutor did not engage in improper vouching by asking a jury to consider the motives of police officer witnesses, but crossed the line by suggesting that the officers told the truth because they would risk

[9] The trial judge instructed the members of the jury, among other things, that they: (1) "must consider the evidence in this case," including "testimony from the witness stand"; (2) "should consider [the evidence] in light of [their] own experiences" and "common sense"; (3) should not consider opening or closing arguments as evidence; and (4) were "the sole judge of whether a witness should be believed," and in making that judgment "should consider such factors as the witness's behavior on the stand and manner of testifying, [and] . . . whether the witness has a motive not to tell the truth . . . ."

their careers if they were found to have lied on the stand, where no evidence of that had been presented. *Spain*, 386 Md. at 151-56.

Here, Mr. Williams argues that the prosecutor "improperly vouched" for Ms. Smoot when he stated in rebuttal that Ms. Smoot "told the truth." But the prosecutor did not make this comment in isolation. During the State's initial closing, the prosecutor had remarked on Ms. Smoot's credibility and truthfulness, basing his argument on her demeanor on the stand and the substance of her testimony:

> Consider her testimony here on the stand. She was terrified. She's crying. She couldn't even look at him. Ask yourself, is that somebody who is coming in here and lying or is that somebody who's telling you the truth? She says this gun is not hers. These drugs are not hers. If she was going to lie, how easy would it be, you come in here, you just say, That's not my gun, that's not my drugs. You don't come in here and break down on the stand in absolute terror. That is the reaction of somebody who is telling you the truth.

Defense counsel then countered in his own closing, asserting that a change in Ms. Smoot's story between arrest and trial, a change in demeanor between those events, and an incentive to pin the blame on Mr. Williams were all reasons to question Ms. Smoot's credibility. Defense counsel also suggested that "Ms. Smoot had been squeezed by the prosecution."

It was in the context of those arguments that the prosecutor returned to the subject in rebuttal. Notably, even on rebuttal, the statement that Ms. Smoot "told the truth" was grounded in comments about her demeanor on the stand, particularly how "terrified" she was. The prosecutor's comments neither suggested the prosecutor knew something the jury did not nor "place[d] the prestige of the government behind" Ms. Smoot. *Spain*, 386 Md. at 153. Instead, the prosecutor argued that Ms. Smoot's credibility could be "inferred

from the evidence introduced and admitted at trial." *See Donaldson*, 416 Md. at 492; *Spain*, 386 Md. at 155.[10] That is not vouching.

C. Even if the Prosecutor's Remarks Were Improper, the Court's Error in Allowing Them Was Harmless.

Even if the prosecutor's remarks were improper, the court's error in not sustaining Mr. Williams's objection to them was harmless beyond a reasonable doubt. Whether an improper remark requires reversal "depends upon the facts in each case." *Lee*, 405 Md. at 164. "A reviewing court will not reverse a conviction due to a prosecutor's improper comment or comments 'unless there has been an abuse of discretion by the trial judge of a character likely to have injured the complaining party.'" *Donaldson*, 416 Md. at 496 (quoting *Henry*, 324 Md. at 231); *see also Lawson v. State*, 389 Md. 570, 581 (2005) ("[R]eversal is only required 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." (quoting *Spain*, 386 Md. at 158)). It is the State's burden to "prove beyond a reasonable doubt that the contested error did not contribute to the verdict." *Lee*, 405 Md. at 174. On "our own independent review of the record," we must be "able to declare a

[10] Mr. Williams contends that the prosecutor's rebuttal comments argued improperly that Ms. Smoot's credibility could be inferred from Baltimore City's "infamous . . . don't snitch, don't tell" culture. In doing so, Mr. Williams's argument skips an important logical step. The prosecutor did not argue that the jury could infer Ms. Smoot's credibility from the culture itself. Instead, the prosecutor argued that the culture explained Ms. Smoot's demeanor on the stand—why she was "terrified" to testify—and that the jury could infer her credibility from that demeanor. It was then up to the jury to determine whether it agreed that her demeanor was consistent with that of a witness who was telling the truth.

belief, beyond a reasonable doubt, that the error in no way influenced the verdict." *Donaldson*, 416 Md. at 496 (quoting *Lee*, 405 Md. at 164).

To determine whether improper statements constitute harmless error, we consider the following factors: "[(1)] the severity of the remarks, [(2)] the measures taken to cure any potential prejudice, and [(3)] the weight of the evidence against the accused." *Donaldson*, 416 Md. at 497 (quoting *Lee*, 405 Md. at 165). In considering these factors, "we look at 'the cumulative effect of all errors on the ability of a jury to render a fair and impartial verdict in the context of the case.'" *Donaldson*, 416 Md. at 497 (quoting *Lawson*, 389 Md. at 604-05).

1. Severity

Severity involves two separate considerations: (1) "whether there was one isolated comment, as opposed to multiple improper comments," and (2) "whether the comments related to an issue that was central to a determination of the case or a peripheral issue." *Jones*, 217 Md. App. at 695-96 (quoting *Sivells*, 196 Md. App. at 290). A comment is more severe where the prosecutor makes multiple remarks or the same remark multiple times and where the remark relates to an integral issue. *See Donaldson*, 416 Md. at 498 (holding that the prosecutor's vouching remarks were severe because "[he] made two separate sets of improper remarks that played an important role in both the closing and rebuttal arguments").

Here, the prosecutor's comments were not severe. They constituted a single remark made in rebuttal.[11] Although the prosecutor made the remark in support of an argument regarding Ms. Smoot's credibility, *see Sivells*, 196 Md. App. at 290-91, which was certainly a central issue in the case, it was generally in line with the prosecutor's comments during his initial closing argument, to which Mr. Williams made no objection, that Ms. Smoot's demeanor on the stand suggested that she was credible. The remark itself did not play an important role in the prosecutor's closing argument.

2. Measures Taken to Cure Potential Prejudice

The second factor we consider is "whether or not the trial court took any appropriate action . . . such as informing the jury that the remark was improper, striking the remark and admonishing the jury to disregard it." *Jones*, 217 Md. App. at 697 (quoting *Wilhelm*, 272 Md. at 423-24). "[T]o be sufficiently curative, the judge must instruct *contemporaneously and specifically* to address the issue such that the jury understands that the remarks are improper and are not evidence to be considered in reaching a verdict." *Jones*, 217 Md. App. at 697 (emphasis in *Jones*) (quoting *Lee*, 405 Md. at 177-78). Here, of course, the

[11] Mr. Williams argues that we should view the remark in the context of both the remarks immediately preceding it and a comment the prosecutor made at the end of Ms. Smoot's testimony that it was "obvious" that she was scared. We agree that the comment should be viewed in the context of the remarks immediately preceding it, although, as explained below, we come to a different conclusion regarding the effect of doing so. Regarding the comment at the conclusion of Ms. Smoot's testimony, (1) we do not agree that two isolated comments in two different parts of a trial provide evidence of a pattern, and (2) the transcript demonstrates that it was, indeed, obvious that Ms. Smoot was scared.

court did not take any such action in response to the specific remark at issue, as the court denied the objection.

As noted, however, we view the remarks in the context of what came immediately before them, including the court sustaining an objection to the prosecutor's argument that Mr. Williams had attempted to "intimidate and influence" Ms. Smoot not to testify. The court then instructed the jury to disregard that comment because "there's been absolutely no evidence here to indicate or no testimony presented that the witness was intimidated." This instruction thus tempered any inference of intimidation that otherwise might have been associated with the prosecutor's subsequent remark.

3. The Weight of the Evidence

The final factor we consider is the weight of the evidence. "The stronger the case otherwise, the less likely that an improper closing argument remark causes prejudice, and vice-versa." *Jones*, 217 Md. App. at 694. "[An] important and significant factor where prejudicial remarks might have been made is whether or not the judgment of conviction was substantially swayed by the error, or where the evidence of the defendant's guilt was overwhelming." *Wilhelm*, 272 Md. at 427 (internal quotation marks omitted).

Mr. Williams contends that the evidence against him "was 'less than substantial,' which further weighs against a finding of harmlessness." (quoting *Lee*, 405 Md. at 176). The State disagrees, arguing that in addition to Ms. Smoot's testimony, the State presented

body camera footage of the scene that allowed the jurors to observe the demeanor of both Mr. Williams and Ms. Smoot when they were stopped.

Mr. Williams is correct that Ms. Smoot's testimony was critical to the State's case against him, at least on the handgun charges. We nonetheless agree with the State that the jury's consideration of the evidence was not "substantially swayed" by the remarks at issue. *See Wilhelm*, 272 Md. at 427. The prosecutor's remarks concerned an issue that the State had already placed front and center, both through Ms. Smoot's testimony and through not-objected-to remarks during the State's initial closing argument. The jury was well aware of her evident fear. The only thing the State's remarks added was the express suggestion that her fear may have been the result of a culture against snitching. To the extent that explanation suggested that Ms. Smoot's fear resulted from a generalized cultural phenomenon, it may even have benefitted Mr. Williams, because the jury might otherwise have speculated that her fear resulted from something specific he had done. The combination of the prosecutor's comments and the immediately preceding instruction from the court (that there had been no evidence of intimidation of Ms. Smoot) suggested a more innocent explanation, at least as far as Mr. Williams was concerned.

Regardless, we are convinced based on our review of the record that the prosecutor's remark did not add to the weight of what was already before the jury or make conviction

any more likely. We conclude that any error in admitting it was harmless beyond a reasonable doubt.[12]

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

[12] In arguing to the contrary, Mr. Williams claims the support of *Lee*. There, however, the trial court's errors were far more pervasive and severe, as the prosecution repeatedly made "improper comments alluding to facts not in evidence, appeal[ed] to the passions and prejudices of the jury[,] and invoke[ed] the prohibited 'golden rule' argument." 405 Md. at 179. The prosecutor's sheer persistence and the trial court's erroneously overruling a plethora of objections increased the prejudicial effect. *Id.* at 178-79. That contrasts sharply with the remark at issue here.