UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1124

September Term, 2013

LLOYD TAYLOR

v.

STATE OF MARYLAND

Berger,
Arthur,
Kenney, James A., III
(Retired, Specially Assigned),

JJ.

Opinion by Arthur, J.

Filed: November 7, 2014

A jury in the Circuit Court for Baltimore City convicted appellant Lloyd Taylor of possession with intent to distribute heroin, possession of marijuana, possession of drug paraphernalia, and resisting arrest. On July 29, 2013, the circuit court imposed a sentence of eight years of imprisonment for possession with intent to distribute heroin; one year of imprisonment, to be served concurrently with the heroin distribution count, for marijuana possession; one year of imprisonment, to be served consecutively with the heroin distribution count, for resisting arrest; and a $100 fine, which was suspended in its entirety, for the paraphernalia conviction.

QUESTIONS PRESENTED

Taylor raises five issues on appeal, which we restate and reorder as follows:[1]

1. Did the circuit court abuse its discretion when it declined to ask six of Moore's proposed voir dire questions?

2. Did the circuit court abuse its discretion when it denied Moore's request for a mistrial and his related motion to strike a detective's

---

[1] Taylor phrased the questions in the following manner:

1. The trial court abused its discretion in not giving certain voir dire questions proposed by the defense;

2. The trial court abused its discretion in denying the appellant's request for a mistrial and in denying a related motion to strike;

3. The trial court erred in permitting improper rebuttal argument by the state that shifted its burden;

4. The trial court abused its discretion in permitting improper lay opinion testimony;

5. The trial court erred in permitting inadmissible hearsay.

statement, on cross-examination, about text messages that the court had previously excluded?

3. Did the circuit court abuse its discretion by admitting a detective's lay opinion testimony that Moore appeared to be suspicious that he was being observed?

4. Did the circuit court erroneously admit hearsay evidence when it permitted a detective to testify that a third party signed a form consenting to a search of her apartment?

5. Did the circuit court abuse its discretion when it permitted the State to rebut defense counsel's statements at closing argument regarding the State's failure to have one detective corroborate the testimony of another?

For the reasons that we discuss below, we shall affirm the circuit court's decisions with regard to all five issues presented.

THE FACTS

At Taylor's trial, Detective Calvin Moss testified that he began conducting undercover surveillance of the 5700 block of Denwood Avenue at about 11:30 a.m. on the morning of August 13, 2012. Detective Moss and his colleague, Detective Keith Teidemann, watched from a vehicle with "heavily tinted" windows. They paid particular attention to the house at 5731 Denwood Avenue.

At around 12:15 p.m., Moss watched Taylor leave that house. Taylor wore a black Chicago Bulls cap, a black t-shirt, and black shorts. Moss recalled that Taylor walked toward nearby Lorelly Avenue, that he was holding a blue bag in his right hand, and that he placed the bag in the pocket of his shorts.

The two detectives then drove to the 4800 block of Lorelly Avenue, which they believed was Taylor's destination. Moss knew that Stephanie Ramser[2] lived at 4806 Lorelly Avenue and that she was engaged in a romantic relationship with Taylor. Moss testified that when he and Teidemann arrived at Lorelly Avenue, they saw a gray Ford Focus, with Taylor in the passenger seat and Ramser in the driver's seat. Ramser and Taylor drove away and then, soon thereafter, returned to 4806 Lorelly, got out of the car, and entered the building.

Approximately ten minutes later, at about 2:00 p.m., Taylor left the building wearing the same attire he had worn earlier, including the Chicago Bulls cap. Taylor approached a black Toyota Camry, in which two men were sitting. Moss testified that, following a brief conversation between the parties, one of the men in the Camry handed currency to Taylor, who in turn removed a blue bag from his shorts, removed gel caps from the bag, and handed the gel caps to the passenger.

As discussed in greater detail below in Section III, Taylor then began to walk back toward the building at 4806 Lorelly. As he did so, he stopped to glare in the direction of the detectives' vehicle, with its tinted windows. The Camry then left the scene.

At trial, Moss testified that, thereafter, Taylor and Ramser again left the building and drove off in the Focus. Taylor was no longer wearing the Chicago Bulls cap.

---

[2] The transcript alternately spells this last name as "Ramser," "Ramshore," and "Ramsier." The Court accepts the spelling of "Ramser," to which both parties have agreed.

The detectives pursued Taylor and Ramser until they were stopped on Moravia Road by another officer, whom Moss had called for that purpose. Moss testified that as he approached the stopped vehicle, he saw Taylor place small objects into his mouth. Taylor gagged and then, at Moss's instruction, spit out a clear plastic bag, which contained a green plant material that Moss believed to be marijuana.

At that point, Moss removed Taylor from the car and placed him under arrest. Taylor refused Moss's instruction that he put his hands behind his back so that the detectives could place him in handcuffs. Instead, Taylor attempted to "pull away" from the detectives in an attempt to flee. Moss testified that the detectives had to restrain Taylor, who continued to resist until a transport vehicle arrived to drive him to the police station. Moss recovered a cell phone and $348 in U.S. currency from Taylor's person, but did not locate the blue plastic bag that he and Teidemann had seen earlier in the day.

At trial, the State also called Detective Teidemann, who testified that he assisted in the subsequent search of Ms. Ramser's apartment. In the course of that search, Teidemann saw, in plain view on a bedroom night stand, a Chicago Bulls cap. Teidemann lifted the cap, under which he discovered a blue plastic bag that contained 53 gel caps, as well as two razor blades on which there was an unidentified residue. Teidemann secured these objects as evidence.

The circuit court accepted Monique Pitts, a chemist for the Baltimore City Police Department, as an expert in controlled dangerous substances. As part of her testimony, Ms.

Pitts identified four items that were submitted to her office and a corresponding "chain of custody" form. She identified the items as a clear plastic bag with a green plant-like material, a blue plastic bag, 53 gel caps, and two razor blades with residue on them. Ms. Pitts testified that, according to her expert analysis, the clear bag contained marijuana; the residue on the razor blades tested positive for cocaine; and the gel caps, with a gross weight of 18.77 grams, contained heroin.

The jury found Taylor guilty on all counts: possession of marijuana, possession with intent to distribute heroin, possession of drug paraphernalia, and resisting arrest. We shall introduce additional facts as they become relevant in the course of addressing the issues that Taylor has raised in this appeal.

DISCUSSION

I. The Circuit Court Did Not Abuse Its Discretion in Refusing to Read Six of Taylor's Requested Voir Dire Questions

Taylor first challenges the circuit court's decision not to read six of Taylor's requested voir dire questions. Taylor asserts that the court abused its discretion when it declined to ask five of the questions because they concerned specific causes for juror disqualification. Taylor also asserts that, in refusing to ask a sixth question, the court (1) failed to exercise its discretion by electing to read a "catch-all" question instead; and, alternatively (2) abused its discretion because his requested question "would have aided in the intelligent exercising of peremptory challenges."

In response, the State argues that Taylor has failed to preserve either voir dire challenge and that, in any event, the court was within its discretion to refuse to ask the six questions Taylor requested of it. We address these issues in turn, and, for the reasons that follow, shall affirm the judgments.

A. Factual Background

After ruling on the State's proposed voir dire questions, the circuit court addressed Taylor's 22 requested questions. The court ruled that it would ask five of his questions (plus additional subparts), that it would ask at least five more (plus additional subparts) in a different form, but that it would not ask Taylor's questions 3, 5(a), 6, 7, 13, 15, 16, 17, 18, and 19.[3]

---

[3] At voir dire the circuit court elected to ask the jury these questions:

(1) whether anyone in the venire knows anything about the case;

(2) whether anyone knows Mr. Taylor, defense counsel or the prosecutor;

(3) whether anyone knows the various persons who could be called as witnesses or mentioned in witness testimony;

(4) whether anyone has such strong feelings about illegal drugs that they would not be able to be fair and impartial;

(5) whether anyone is a member of or has immediate family who are members of law enforcement or related professions;

(6) in a four-part question, (a) whether Mr. Taylor's race would affect anyone's ability to be fair, (b) whether anyone has been a victim of a serious crime or has family who have been victims of a serious crime, (c) whether

(continued...)

Taylor challenges the circuit court's refusal to ask questions 15 through 19, which addressed general principles of law and were worded as follows:

> (15) Is there any member of the panel that [sic] believes merely because a person is indicted by the Grand Jury or charged by Criminal Information, that this raises a presumption of guilt on the part of that individual?
>
> (16) The fact that the accused has been arrested and/or charged by indictment/criminal information is not evidence and must not enter into your deliberation on his guilt or innocence. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?
>
> (17) The accused in every criminal case is presumed innocent unless you are satisfied beyond a reasonable doubt of the accused's guilt solely from the evidence presented in this case, the presumption of innocence requires you to find the accused not guilty. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?
>
> (18) In every criminal case, the burden of proving the guilt of the accused rests solely and entirely on the State. The accused has no burden and does not have to prove his innocence. Is there any member of the jury panel who is unable or unwilling to uphold and abide by this rule of law?
>
> (19) Every person accused of a crime has an absolute constitutional right to remain silent and not testify. You may not consider his silence in any way in determining whether he is guilty or not guilty. Is there any

---

[3] (...continued)
anyone has been convicted of a crime or has family who have been convicted of a crime, and (d) whether anyone has pending criminal charges against them; and

(7) a "catch-all" question addressing jurors' ability to be fair and impartial.

> member of the [venire] who is unable or unwilling to uphold and abide by this rule of law?

In addition, Taylor's proposed questions included question 13, which was phrased as follows: "Has any member of the jury panel ever served on a Grand or Petit Jury?"

When the circuit court declined to ask these six questions, declined to ask several others requested by Taylor, and decided to ask several others in modified forms, defense counsel addressed the court's decision only as to question 13. The following colloquy occurred:

> DEFENSE: Your Honor, just one more question. Did the Court say in the affirmative or the negative as to Number 13?
>
> COURT: Number 13. I will not give 13.
>
> DEFENSE: Your Honor, I would just like to be heard on that issue.
>
> COURT: Okay.
>
> DEFENSE: I think that prior jury service is an important piece of information in querying the [venire] panel in voir dire, because of the circumstances. And I would argue that—
>
> COURT: Because of what circumstances? What do you mean?
>
> DEFENSE: That many people – the pool of potential jurors causes many people to be called very frequently. And it is – I would argue to the Court that there are many positive responses as far as prior jury service is concerned. And that I think that prior jury service is illuminative of fitness to serve as a juror based on any positive or negative experiences—
>
> COURT: Well, I am going to ask—

DEFENSE: —that could affect their ability to be fair and impartial in this case.

COURT: I am going to ask them if they've had any negative experiences that would affect their ability.[4] But I'm not going to ask them if they've ever served. I'll note your exception for not giving 11 [sic]. Anything else, [defense counsel]? Now remember, [defense counsel], since you've noted an exception to not giving it, you need to make sure that the Clerk gets a copy of your voir dire, so that the appellate court has some idea of what question 11 [sic] was.[5]

DEFENSE: Very well.

COURT: Okay. Anything else?

DEFENSE: No, Your Honor.

Aside from the foregoing exchange concerning question 13, at no point did defense counsel take exception to or otherwise specifically address the court's decisions to modify or refuse to ask Taylor's proposed questions.

---

[4] The circuit court eventually opted to read the following "catch-all" question to the jury pool at the end of voir dire:

> Is there any reason whatsoever that might affect your ability to render a fair and impartial verdict in this case, including, but not limited to, any actual hardship in serving two days, any religious reason, any moral reason, any physical reason, any philosophical reason, or any personal experience you may have had with the criminal justice system?

[5] The court reporter added these last two "[sic]" notations, as the circuit court clearly had been discussing voir dire question 13, and not question 11.

After the court had begun the voir dire process and had excused the jury panel for lunch recess, defense counsel again addressed the court's ruling with respect to Taylor's proposed questions:

> DEFENSE: . . . . I just wanted to note my exceptions based on the previous arguments that I made regarding the jury questions that were propounded in voir dire.
>
> COURT: Well, you can't do that. You can—. I mean, you're incorporating your earlier arguments?
>
> DEFENSE: Yes, Your Honor.
>
> COURT: That's fine. As long as the Clerk has a copy of your voir dire.
>
> DEFENSE: Very well. I just wanted to make sure I'm preserving.
>
> COURT: You're preserving, as long as she's got a copy of your voir dire.
>
> DEFENSE: I will. I'm going to go—
>
> COURT: Because you have not – you just submitted a courtesy copy to the Court, not—
>
> DEFENSE: That's correct. I did.
>
> COURT: —not a formal copy for the Clerk.

The court later returned from recess to complete the voir dire process and select the jury from the venire. Defense counsel stated no further objections or exceptions to the court's rulings on the proposed voir dire questions.

B. Questions 15 through 19

Taylor's proposed questions 15 through 19 address bedrock principles of criminal law – the presumption of innocence, for example, and the State's burden to prove guilt beyond a reasonable doubt – that trial courts, like the court in this case, regularly read as part of jury instructions during the course of criminal trials. *See Maryland Criminal Pattern Jury Instructions* 2:02, 3:17.

Taylor challenges the court's decision to refuse to read these five questions, arguing that each one concerned "specific grounds for which [a juror] may be struck for cause[,]" and that "a defendant has the right to a voir dire question aimed at identifying a disqualifying bias or preconception." The State in turn asserts that under Maryland law trial courts retain discretion whether to ask questions that address only general principles of law, and that by refusing these five questions the circuit court soundly exercised that discretion. We need not reach the merits of this issue, however, as Taylor has not properly preserved the issue and has thus waived it for the purposes of appellate review.

Maryland Rule 8-131(a) states, in pertinent part: "Ordinarily, the appellate court will not decide any [] issue unless it plainly appears by the record to have been raised in or decided by the trial court[.]" Fairness and the orderly administration of justice are advanced by requiring counsel to bring its client's position to the lower court's attention at trial so that it can pass upon, and possibly correct, any errors in the proceedings. *Robinson v. State*, 410 Md. 91, 103 (2009). Rule 8-131(a) therefore requires an appellant who contests a court's

ruling on appeal to have made a timely objection at trial. Failure to do so bars that appellant, as a matter of right, from obtaining review of the claimed error. *Id.*

Rule 4-323(c) governs the manner of objections during jury selection. *See*, *e.g.*, *Marquardt v. State*, 164 Md. App. 95, 142 (2005). In pertinent part, Rule 4-323(c) provides that:

> For purposes of review . . . on appeal . . . , it is sufficient that a party, at the time the ruling or order is made or sought, makes known to the court the action that the party desires the court to take or the objection to the action of the court. The grounds for the objection need not be stated unless these rules expressly provide otherwise or the court so directs.

"It is sufficient to preserve an objection during the *voir dire* stage of trial simply by making known to the circuit court 'what [is] wanted done.'" *Marquardt*, 164 Md. App. at 143 (quoting *Baker v. State*, 157 Md. App. 600, 610 (2004)). For example, in *Marquardt*, the defendant preserved his objection by telling "the circuit court that he objected to his proposed questions 11, 12, 14, and 15 not being asked." *Id.* On the other hand, when a defendant does not specifically object to the court's decision not to read a question, he or she cannot "complain about the court's refusal to ask the exact question he requested." *Gilmer v. State*, 161 Md. App. 21, 33, *vacated on other grounds*, 389 Md. 656 (2005).

Here, Taylor has failed to preserve his challenge. As part of the second colloquy (after voir dire had commenced), counsel answered in the affirmative when the circuit court asked him whether he was "incorporating [his] earlier arguments[.]" As Taylor concedes in his reply brief, these "earlier arguments" included only Taylor's objection on the record to

the circuit court's refusal to read proposed question 13 (concerning prior jury service). When the court asked defense counsel, at this initial challenge, whether there was anything else, counsel answered, "No, Your Honor."

Mindful of his attorney's statement, Taylor now insists that, at the time of his initial exception to question 13, he never affirmatively waived his exception to the five questions that the court did not specifically address. Taylor then strains to argue that when defense counsel later stated (after voir dire had begun) his "exceptions" based on "arguments" previously made concerning proposed voir dire questions, he implicitly incorporated the other challenges because counsel's use of the plural tense "comports more with a desire to also take exception to the rulings concerning questions #15 through #19."

It may be that, through these later remarks, defense counsel covertly intended to object to the court's rulings on questions 15 through 19. Yet, by employing such general language, counsel kept his wishes secret and thus failed in his burden to inform the circuit court of what the defendant wanted to be done. *Marquardt*, 164 Md. App. at 143. The circuit court, for good reason, appears to have understood counsel's vague statements to constitute only a reiteration of the lone objection that he had previously made. It was not the court's obligation to mine counsel's motives for other, more specific, grounds for exception. Nor, for that matter, do we expect the court to have possessed the additional power to divine whether counsel now objected to *all* of the refused or modified jury questions, or instead, as Taylor purports to have intended, only to five specific questions among them. Accordingly,

Taylor "cannot complain about the court's refusal to ask the exact question he requested." *Gilmer*, 161 Md. App. at 33.[6]

Nonetheless, even if Taylor had preserved his challenge to the court's decision not to ask questions 15 through 19, we would affirm.

Maryland courts have regularly held that "[t]here are two categories of specific causes for [juror] disqualification: (1) a statute disqualifies a prospective juror; or (2) a 'collateral matter [is] reasonably liable to have undue influence over' a prospective juror." *Pearson v. State*, 437 Md. 350, 357 (2014) (quoting *Washington v. State*, 425 Md. 306, 313 (2012)). The latter category consists of "biases directly related to the crime, the witnesses, or the defendant[.]" *Washington*, 425 Md. at 313.

While the accepted factual bases for finding such bias are varied, Maryland appellate courts have long held that a trial court is within its discretion to refuse to ask potential jurors about whether they would give the defendant the benefit of the presumption of innocence and about the State's burden of proof, as it was "inappropriate to instruct on the law at the [voir dire] stage of the case, or to question the jury as to whether or not they would be disposed to follow or apply stated rules of law." *Twining v. State*, 234 Md. 97, 100 (1964). This Court

---

[6] We are unpersuaded by Taylor's alternative argument that when the circuit court declined to ask questions 15 through 19, it triggered that part of Md. Rule 8-131(a) that allows preservation where an issue has been raised in "*or decided by a trial court.*" (Emphasis added.) The circuit court's sole decision was to decline, in its discretion, to ask questions proposed to it. It never once raised or passed upon the precise argument Taylor now raises on appeal: that the court wrongly denied Taylor his "right to a voir dire question aimed at identifying a disqualifying bias or preconception."

has since reaffirmed the *Twining* rule on a number of occasions. *See, e.g.*, *Marquardt*, 164 Md. App. at 144 ("[T]his Court has not, nor could it, retreat from *Twining*"); *Baker*, 157 Md. App. at 615-18 (holding that questions relating only to defendant's right not to testify and burden of proof need not be asked unless court exercises discretion to do so and rejecting the suggestion that *Twining* is "now outmoded").

C. Question 13

Taylor separately argues that the circuit court failed to exercise its discretion and, in the alternative, abused its discretion, by refusing to read proposed question 13, which asked whether any members of the jury pool had ever served on a "Grand or Petit Jury[.]" Taylor has failed to preserve this issue as well.

As noted above, when the circuit court ruled on Taylor's proposed voir dire questions, defense counsel specifically set aside time to take exception to the ruling on question 13. In doing so, defense counsel articulated the precise basis for his exception, stating, "I think that prior jury service is illuminative of fitness to serve as a juror based on any positive or negative experiences . . . that could affect their ability to be fair and impartial in this case." The court took note of this exception on the record. On appeal, however, Taylor does not cite the reason proffered at the time of the circuit court's ruling, but instead relies on the separate theory that asking the question of the jury pool would "aid counsel in the intelligent exercising of peremptory challenges."

As previously stated, Maryland appellate courts generally will not decide any issue unless it "plainly appears by the record to have been raised in or decided by the trial court[.]" Md. Rule 8-131(a). "[W]hen specific grounds are given at trial for an objection, the party objecting will be held to those grounds and ordinarily waives any grounds not specified that are later raised on appeal." *Klauenberg v. State*, 355 Md. 528, 541 (1999); *see also State v. Bell*, 334 Md. 178, 191 (1994); *State v. Funkhouser*, 140 Md. App. 696, 717-20 (2001).

Here, defense counsel voiced specific exception to the ruling on Question 13. Yet, at no time did he raise the precise issue he now advances, and thus at no time did the trial court have an adequate opportunity to pass upon or decide that issue, or to correct any errors it may have made *on that basis*. We thus hold that the issue has been waived.

But even if the issue had not been waived, we would reject Taylor's contention. Maryland is among the minority of states where trial judges are required to read voir dire questions only if they are proposed for the "limited" purpose of addressing "specific cause[s] for disqualification[,]" and not for the additional purpose of allowing attorneys to conduct the "intelligent exercise of peremptory challenge." *See Pearson*, 437 Md. at 356-57. Taylor admonishes this Court, at length, to join the many other jurisdictions that eschew the rule of limited voir dire. Yet, his argument for doing so has not only been made before, but it has

been rejected by the Court of Appeals as recently as this year. *See id*. Taylor's argument is best addressed to those in charge of changing the rules.[7]

II. The Trial Court Did Not Abuse Its Discretion When It Denied the Request For a Mistrial and the Related Motion to Strike Partial Testimony

Taylor next argues that the trial court abused its discretion when it denied his motion for a mistrial and his related motion to strike, which were based on a detective's statements regarding text messages on Taylor's cell phone. We disagree.

After Taylor's arrest, Detective Teidemann conducted a consent search of Ms. Ramser's apartment. During that search, Teidemann saw, in plain view, a Chicago Bulls cap that looked similar to the one Taylor had previously been wearing. From under the cap, Teidemann retrieved the blue bag that Taylor had been carrying. Inside the bag were 53 gel caps of heroin as well as razor blades with cocaine residue on them.

Before trial, Taylor filed a motion *in limine* to exclude any evidence relating to the seized cell phone. At a hearing on the motion, the following colloquy occurred:

> DEFENSE: I would just proffer to the Court that in the only recorded documentation of this offense, that there are allegations made regarding a cell phone that was seized from Mr. Taylor that allegedly had certain text messages on it.

---

[7] Fielding a similar entreaty in *Pearson*, the Court of Appeals commented that, "without the benefit of study regarding the possible ramifications," it would be "imprudent" to address whether to discontinue Maryland's longstanding practice of allowing only limited voir dire. *Id.* at 357 n.1 ("To gather more information on [] whether to maintain limited voir dire, we would refer the issue to the Standing Committee on Rules of Practice and Procedure for its consideration and recommendation"). The Committee's recommendation is now before the Court of Appeals.

COURT: Are you going to introduce any text messages, [prosecutor]?

STATE: I hadn't really thought about it, Your Honor.

COURT: Well, it's a little late now. So, probably the answer is no. You weren't.

STATE: No. I wasn't going to.

COURT: Okay. So that I'll grant by agreement of the parties. Are you moving to introduce—. And that's the only purpose. I mean, the cell phone itself comes in but no reference to text messages.

Later, at trial, the State called Detective Moss as a witness. On cross-examination, defense counsel asked Moss why he had not seized the Chicago Bulls cap that Taylor had been wearing. Moss replied, "Bulls hats are not illegal" and, further, that there was no issue as to Taylor's identity.

The following questioning ensued:

DEFENSE: Is it illegal to possess a cell phone?

MOSS: No, not at all. The cell phone—

DEFENSE: Thank you. Thank you.

COURT: I'm sorry, you can't interrupt, [defense counsel]. You may proceed.

MOSS: The cell phone was relevant and is considered evidence due to the fact that there were text messages concerning the quality of the boy and girl, which are —

DEFENSE: Objection, Your Honor. Move to strike. May we approach?

At the bench, defense counsel moved for a mistrial, which the trial court denied. Defense counsel then reiterated his motion to strike, to which the court replied, "Denied. You asked the question, you get the answer." When defense counsel asserted, "That was an unresponsive answer[,]" the court replied, "Precise questions lead to precise answers." The bench conference concluded, and defense counsel resumed his cross-examination of Detective Moss.

Taylor now challenges the court's decision to deny both his motion to strike and his motion for a mistrial. The State argues that these decisions were well within the trial court's ample discretion. We discuss each issue in turn and shall affirm the trial court's decisions.

B. Motion For Mistrial

"A mistrial is no ordinary remedy[.]" *Cooley v. State*, 385 Md. 165, 173 (2005). Rather, "'the declaration of a mistrial is an extraordinary act which should only be granted if necessary to serve the ends of justice.'" *Id.* (quoting *Jones v. State*, 310 Md. 569, 587 (1987), *vacated on other grounds*, 486 U.S. 1050 (1988)); *accord Wagner v. State*, 213 Md. App. 419, 462 (2013); *Molter v. State*, 201 Md. App. 155, 178 (2011). "The determining factor as to whether a mistrial is necessary is whether 'the prejudice to the defendant was so substantial that he [or she] was deprived of a fair trial.'" *Kosh v. State*, 382 Md. 218, 226 (2004) (quoting *Kosmas v. State*, 316 Md. 587, 595 (1989)). "'[A] request for a mistrial in a criminal case is addressed to the sound discretion of the trial court,'" *Cooley*, 385 Md. at

173 (quoting *Wilhelm v. State*, 272 Md. 404, 429 (1974)), and is reviewable on appeal only for abuse of discretion. *Id.*

In *Rainville v. State*, 328 Md. 398 (1992), the Court of Appeals identified several factors that are relevant to a trial court's evaluation of whether a mistrial is required:

> [W]hether the reference to [the inadmissible evidence] was repeated or whether it was a single, isolated statement; whether the reference was solicited by counsel, or was an inadvertent and unresponsive statement; whether the witness making the reference is the principal witness upon whom the entire prosecution depends; whether credibility is a crucial issue; [and] whether a great deal of other evidence exists . . . .

Id. at 408 (quoting *Guesfeird v. State*, 300 Md. 653, 659 (1984)).

The *Rainville* Court cautioned, however, that "'these factors are not exclusive and do not themselves comprise the test.'" *Rainville*, 328 Md. at 408 (quoting *Kosmas*, 316 Md. at 594).

In *Rainville*, the State had prosecuted the defendant for rape and child sexual abuse, and at trial the child's mother volunteered that Rainville was "'in jail for what he had done to Michael [the victim's nine-year-old brother].'" *Id.* at 401. The State did not argue that the mother's testimony was admissible (*id.* at 406), and the Court acknowledged that the testimony had "great potential for prejudicing the jury" (*id.* at 407) because it might "'have a tendency to suggest to the jury that if the defendant did it before he probably did it this time.'" *Id.* (quoting *Prout v. State*, 311 Md. 348, 364 (1988)). In addition, the Court emphasized that Rainville was a "difficult" case, *id.* at 409, in that the State had relied almost entirely on the internally-contradictory testimony of the seven-year-old victim, which was

supported only by the mother's inadmissible blurt. *Id.* at 409-10. In these circumstances, where the mother's statement "almost certainly had a substantial and irreversible impact upon the jurors," *id.* at 410, which even a curative instruction could not prevent, *id.* at 411, the Court of Appeals held that circuit court erred in denying a motion for a mistrial. *Id.*

This case is not like *Rainville*. The detective did not even complete his sentence ("there were text messages concerning the quality of the boy and girl, which are") before defense counsel cut him off and initiated a bench conference. Furthermore, while judicial opinions establish that heroin is sometimes called "boy" and that cocaine is sometimes called "girl" (*see*, *e.g.*, *Spease v. State*, 21 Md. App. 269, 277 (1974), *aff'd*, 275 Md. 88 (1975)), neither the detective nor any other witness explained the slang meanings of those terms. For that reason, the jury had no basis in the evidence for inferring that the aborted reference to a text message had anything to do with illegal drugs. Accordingly, we are left with a fleeting and fragmentary statement that had little or no discernible effect on the proceedings.

Nor was this a "difficult" case. The detectives chronicled their detailed, eyewitness observations of Taylor's actions before, during, and after the suspected drug transaction. From the vantage point of a nearby vehicle, the detectives watched as Taylor walked toward Lorelly Avenue with a blue bag in his hand. Soon thereafter, they witnessed Taylor leave the building at 4806 Lorrelly Avenue, approach a parked black Toyota Camry, retrieve a number of gel caps from a blue bag, hand a number of these gel caps to one of the passengers, and take cash in exchange. Later, after the detectives stopped the Ford Focus in which Taylor

was traveling, the detectives saw Taylor trying to stuff a bag of green plant-like material, which was later identified as marijuana, into his mouth. Finally, upon a consent-search of Ms. Ramser's apartment, the detectives picked up a Chicago Bulls cap, which was identical to the cap Taylor had worn earlier, and found a blue bag that contained 53 gel caps, which in turn contained a powder that was later identified as heroin. *Accord Washington v. State*, 191 Md. App. 48, 104 (2010) (holding that court did not abuse discretion in denying motion for mistrial where witness's "isolated" and unsolicited blurt was not highly prejudicial and State had other corroborating evidence of defendant's guilt).

Because of the substantial quantum of evidence the State introduced, and because the objectionable testimony at issue was isolated and fleeting, we find no abuse of discretion in the court's decision to deny Taylor's motion for a mistrial.

B. Motion to Strike

In the alternative, Taylor argues that the circuit court should "at least" have granted his motion to strike Detective Moss's statement about the text messages. In support of his motion, he posits several grounds, only one of which he preserved by raising it before the circuit court – the statement's putative unresponsiveness.[8] We disagree both that the statement was unresponsive and that the circuit court abused its discretion in denying the motion to strike.

[8] Taylor also asserts that the statement contained inadmissible hearsay and that its prejudicial effect outweighed its probative value under Md. Rule 5-403. We decline to consider those grounds. *See* Md. Rule 8-131(a).

In arguing that the statement was unresponsive, Taylor asserts that his counsel's question ("Is it illegal to possess a cell phone?") called only for a "yes" or "no" answer. The question, however, must be read in the context of the immediately preceding question and answer – in which Moss explained that he did not seize the Bulls cap because "Bulls hats are not illegal." Read in that context, it is clear that, in asking the rather obviously rhetorical and argumentative question about whether cell phones are illegal, defense counsel was implicitly asking Moss to explain why the detective had seized the cell phone, but had not seized the Bulls cap (which too is not illegal). In rejecting Taylor's contention that the detective's explanation was unresponsive, the trial court accurately interpreted the question to permit, or even require, an explanation that might prevent a simple yes or no answer from being incomplete or misleading.

A witness is not prohibited from explaining an answer even if the question purports to require only a yes or no answer. Here, Taylor posed an argumentative question that elicited an explanatory response. The court did not err in rejecting Taylor's assertion that the testimony was unresponsive.[9]

---

[9] Even if the court abused its discretion – which it did not – we would conclude that the error was harmless beyond a reasonable doubt. *Dorsey v. State*, 276 Md. 638, 659 (1976). The detective's statement was fleeting, fragmentary, and unexplained (and thus incomprehensible to anyone without knowledge of slang terms for illegal drugs). On the other hand, as detailed at pp. 21-22 of this opinion, the proof of Taylor's guilt was abundant. *See Prince v. State*, 216 Md. App. 178, 196, *cert. denied*, 438 Md. 741 (2014) (finding no reversible error, despite erroneous admission of expert testimony, where "[t]he State introduced abundant evidence" of defendant's guilt).

III. The Circuit Court Did Not Abuse Its Discretion in Permitting Detective Moss's Lay Opinion Testimony

Taylor next argues that the circuit court abused its discretion when it admitted Detective Moss's testimony that he believed that Taylor acted as though he was "alarmed" and "suspicious" when he "glared" at the detectives' vehicle, which had heavily-tinted windows, after he had just completed an open-air drug transaction. Taylor characterizes Moss's statement as an impermissible lay opinion as to Taylor's state of mind – testimony not rationally based on Moss's perception and "personal knowledge." We hold that the circuit court was within its discretion to admit the testimony and that any error was, in any case, harmless beyond a reasonable doubt.

To recapitulate, Detective Moss testified that, as he and his colleague watched from outside Ms. Ramser's apartment building in their undercover vehicle with tinted windows, they witnessed Taylor emerge from that building, approach the passenger side of the parked Toyota Camry, engage in a brief conversation with the passengers, and then hand over a number of gel caps in exchange for cash. Detective Moss's testimony continued as follows:

> STATE: Once you observed the exchange between the Defendant and the other individual, what if anything did the Defendant do at that point?
>
> MOSS: He turned – well, he returned the blue bag to his shorts pocket and turned and began walking back into the apartment building at 4806 Lorelei [sic]. And as he did so, his attention lingered on our vehicle and began to glare at our vehicle.
>
> STATE: And what if anything did you thing [sic] was occurring?
>
> DEFENSE: Objection.

COURT: Overruled.

[Defense asked to approach the bench, and the court denied the request]

MOSS: I believe that Mr. Taylor was alarmed at seeing a heavily tinted vehicle sitting and that made him suspicious.

DEFENSE: Objection.

COURT: Denied.

On appeal, Taylor contends that the remark about Taylor's being "alarmed" and "suspicious" constituted impermissible lay opinion testimony that spoke to Taylor's state of mind and, thus, was not "rationally based" on Moss's "personal knowledge."

Rule 5-701 dictates when a court may admit lay opinion testimony:

> If the witness is not testifying as an expert, the witness's testimony in the form of opinions or inferences is limited to those opinions or inferences which are (1) rationally based on the perception of the witness and (2) helpful to a clear understanding of the witness's testimony or the determination of a fact in issue.

Accord Wyatt v. Johnson, 103 Md. App. 250, 268 (1995) (lay witnesses may express opinions only if they are both "rationally based" on the witness's perception and helpful to the trier of fact).

The Rule excludes uninformed speculation and conjecture as to facts outside a witness's personal knowledge. *See, e.g., Wyatt*, 103 Md. App. at 268 (lay witness lacked sufficient knowledge to rationally conclude that defendant driver intended to flee after colliding with her vehicle on roadway); *Robinson v. State*, 47 Md. App. 558, 571-73 (1981)

(improper to ask lay witness to speculate as to her attorney's purpose in giving her particular legal advice).

A lay witness, however, may offer her opinion as to certain objective facts, such as speed, height, and age, of which the witness can be said to have sufficient personal knowledge and experience. *See Mulligan v. Pruitt*, 244 Md. 338, 343-44 (1966) (testimony permitted as to length of skid marks, regardless of witness's failure to provide a precise measurement); *see also Beahm v. Shortall*, 279 Md. 321, 339-40 (1977) (brief observation sufficient to qualify witness to testify as to automobile's estimated speed, short duration of observation going only to weight of evidence). In addition, courts regularly permit lay witnesses to offer opinions as to physical conditions, such as sobriety or inebriation, *see Warren v. State*, 164 Md. App. 153, 168-69 (2005) (police officers' lay opinion testimony that defendant was drunk was properly admitted); and whether a person is ill or in pain, *see Brown*, 19 Md. App. at 568-69 (mother entitled to testify that after child was struck by car, child was in great pain during hospital stay). "Such testimony has generally been admitted where a description of all the transient physical conditions – tone of voice and facial expression, for example – cannot adequately convey what the witness observed." *Wyatt*, 103 Md. App. at 268. The admissibility of lay opinion testimony that satisfies these criteria is vested in the sound discretion of the trial court. *Bell v. State*, 114 Md. App. 480, 508 (1997) (citing *Tedesco v. Tedesco*, 111 Md. App. 648, 666 (1996)).

In rulings that are particularly germane to the case before us, courts also permit lay opinions that speak to another person's emotional state, including observable changes in mood and whether the person appears to be calm or agitated. For example, in *Jones v. State*, 132 Md. App. 657 (2000), a police officer, in response to a question from the trial judge, stated: "'I observed the defendant appeared, what I would characterize as nervous. He was looking about. He was looking out at the other persons that had walked away from the crowd – or had walked away from the corner, rather.'" *Id.* at 680. The circuit court overruled defense counsel's objection to the response, and, on appeal, this Court affirmed. *Id.* at 680-81; *see also Smith v. State*, 423 Md. 573, 589 (2011) (permissible for arresting officer to testify to "collective fact" that person "appeared to be depressed, stressed about the situation" after being pulled over for DUI).

Here, too, Detective Moss provided lay opinion testimony about Taylor's observable emotional state. Moreover, that opinion was rationally based on Moss's personal knowledge – specifically, his observation that Taylor glared at the detectives' vehicle, with its heavily-tinted windows, immediately after he had completed a drug sale.

The prosecutor asked Moss what he believed was "going on" after he witnessed Taylor fix his "glare" on the detectives' tinted vehicle. Moss replied that he believed that "Mr. Taylor was alarmed at seeing a heavily tinted vehicle sitting[,] and that made him suspicious." A fair reading of these remarks is that Moss offered an informed opinion that was grounded in his personal knowledge of Taylor, having observed the details of Taylor's

behavior during the drug deal and, directly afterward, when he glared at the detectives' vehicle.

Detective Moss's inferences as to Taylor's emotional state were rationally derived from the obvious factual circumstances giving rise to Taylor's reaction: Taylor had just conducted an illegal drug deal in plain sight of a vehicle into which Taylor could not see because its windows were tinted to prevent it. We see little difference between such lay opinion testimony and the kind of permissible testimony wherein the defendant appears to to be nervous. *See Jones*, 132 Md. App. at 680-81.

Taylor argues that the officer exceeded the permissible bounds of lay opinion testimony because he testified not only about his observations (that Taylor seemed to "alarmed" or "suspicious"), but also about why he thought Taylor was alarmed or suspicious (*i.e.*, that he was reacting to the sight of the detectives' vehicle, with its heavily tinted windows). Even if the court abused its discretion in allowing the detective to go that additional distance, we would conclude that the error was harmless beyond a reasonable doubt: the abundant evidence of Taylor's guilt is not overcome by a single reference to the detective's impression of Taylor's state of mind after Taylor realized that he might have been observed while completing an open-air drug transaction. *See supra* note 9.

IV. The Circuit Court Did Not Erroneously Permit a Detective to Testify that a Third Party Presented Him with a Signed Form Consenting to a Search

Taylor next argues that the circuit court erred when it permitted Detective Moss to testify that Ms. Ramser presented Teidemann with a signed "consent-to-search" form. Taylor

contends that the signed form constituted inadmissible hearsay, and that the circuit court erred as a matter of law in admitting it at trial. We disagree, and, for the following reasons, shall affirm.

During direct examination of Detective Moss, the prosecutor asked about the circumstances surrounding the search of Ms. Ramser's home, where the blue bag of heroin gel caps and cocaine paraphernalia was later found. The direct examination proceeded as follows:

STATE: Did she [Ramser] let you into the apartment?

DEFENSE: Objection.

COURT: Overruled.

MOSS: Yes, she did.

. . . .

STATE: And once inside the location, what if anything did you do?

MOSS: I spoke with her and advised her on video that I wanted to do a consent search in her apartment and recover property that I believe Mr. Taylor had left there.

STATE: And then did you actually conduct a search of the location?

MOSS: She signed a consent form.

DEFENSE: Objection.

COURT: Overruled.

. . . .

MOSS: She signed a consent form and as I stood by her, Detective Teidemann recovered the blue bag from underneath the Bulls cap in her bedroom.

Taylor argues that the two statements containing the phrase "She signed a consent form" constituted inadmissible hearsay and that their admission requires reversal. We disagree.

Under Maryland Rule 5-801(c), hearsay is defined as "a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." Hearsay must be excluded unless it qualifies under a recognized hearsay exception. Md. Rule 5-802. In general, "[w]hether evidence is hearsay is an issue of law reviewed *de novo*." *Bernadyn v. State*, 390 Md. 1, 8 (2005); *see also Stoddard v. State*, 389 Md. 681, 688 (2005) ("the [trial] judge has no discretion to admit hearsay unless it falls within a constitutional, statutory, or rule exception"). If, however, the statement is being offered to prove a fact other than the truth of the matter asserted, the rule against hearsay does not apply. Joseph F. Murphy Jr., *Maryland Evidence Handbook* § 702, at 305-06 (4th ed. 2010).

On its face, the statement that "she signed a consent form" is simply a factual assertion, made by a witness with personal knowledge of Ms. Ramser's conduct, about what Ms. Ramser did; it is not hearsay at all. The detective's statement can be characterized as containing hearsay only if the act of signing the form is viewed, aggressively, as an implicit assertion, by Ms. Ramser, that she consented to the search. In other words, the statement can be characterized as containing hearsay only if the statement "she signed a consent form" is somehow deemed to contain Ms. Ramser's implicit assertion that "I consent to the search."

In our view, the detective's testimony did not amount to hearsay, because the State did not offer it for the truth of the matters asserted (*i.e.*, to prove that Ms. Ramser actually consented). Rather, the State offered the testimony for the non-hearsay purpose of establishing what the detective did before conducting the search (*i.e.*, he got the resident to sign a form) or why he proceeded to conduct the search (*i.e.*, because the resident signed the form). The hearsay rule simply did not apply.

In any event, if the act of signing the form has any representational qualities at all, it was a type of "verbal act" that is offered as proof of a "legally operative fact," and not for the truth of the matters asserted therein. *See generally* 6A Lynn McLain, *Maryland Evidence State &Federal* § 801:9 (3d ed. 2013) (citing offers and acceptances as examples of verbal acts that do not constitute hearsay); *see also* Fed. R. Evid. 801 advisory committee's note (describing verbal acts as any statements whose significance lies solely in the fact that they were made). Just as the signing of a contract proves that the signatory gave his or her assent to the terms of the deal, the signing of the consent form proved that Ms. Ramser gave her assent to the search. But just as the hearsay rule has no applicability to the proof of whether someone signed a contract, nor does the rule have any applicability to the proof of whether someone signed a consent form.

In either case, we hold that the circuit court did not err in admitting the detective's factual statement that Ms. Ramser "signed a consent form."

V. The Circuit Court Did Not Abuse Its Discretion in Permitting the State to Rebut Defense Counsel's Statements at Closing Arguments

Taylor concludes his appeal by arguing that the circuit court erred when it permitted the prosecutor to rebut defense counsel's statements in closing argument, in which the defense questioned the State's failure to have to one of the detectives corroborate numerous aspects of the other detective's testimony. We find no error.

At trial, Detective Moss testified that on August 13, 2012, he and Detective Teidemann covertly observed Taylor's activities, before and during the drug transaction, from their vehicle with heavily tinted windows. Moss further testified that both detectives were involved in the stop of the Ford Focus in which Taylor was traveling at the time of his arrest. Moss also testified that both detectives were involved in the search of Ms. Ramser's apartment and in the retrieval of the bag of heroin gel caps and the razor blades from underneath the Chicago Bulls cap.

Perhaps in recognition of the brevity of life, Detective Teidemann's testimony did not replow the same ground that the State had already covered in Moss's testimony. Instead, Teidemann's testimony focused on the search of Ramser's apartment, as it was he who first found the Bulls cap and the incriminating evidence underneath it; who submitted this evidence, as well as the bag of marijuana that Taylor had spat out; and who established the chain of custody of the drugs and drug paraphernalia.

In closing arguments, defense counsel argued that the State had not asked Detective Teidemann to corroborate Detective Moss's testimony about Taylor's actions leading up to his arrest and, thus, that the jury should discount that testimony:

> And who else was in that vehicle? Detective Teidemann. Did you hear him testify that he made these same observations? He's sitting in the same car. He's looking at the same things. Did he testify to those observations under oath? The only thing I heard from him was he goes into 4806 Laura Lee [sic] and finds the drugs. Can he back his partner's statements up? Did he? That's corroboration . . . . Whether it's credible or not is another question. But at least now we would have two people telling you the same story.

Then, in rebuttal-closing argument, the prosecutor addressed defense counsel's argument:

> STATE: Detective Teidemann. Well, Detective Teidemann was with him [Detective Moss] the whole time during the investigation and saw the same things he did. Why didn't he corroborate what Detective Moss said? Well, there's direct examination from the State and then there's cross-examination from the Defense Attorney. Did the Defense Attorney ask him any questions?
>
> DEFENSE: Objection.
>
> COURT: Overruled.
>
> STATE: I submit to you that if there was something that he could have gotten out, he would have tried.
>
> DEFENSE: Objection.
>
> COURT: Overruled.

"Closing argument is a robust forensic forum wherein its practitioners are afforded a wide range for expression." *Wilson v. State*, 148 Md. App. 601, 654 (2002) (quoting

Clarke v. State, 97 Md. App. 425, 431 (1992)) (internal quotation marks omitted); *accord Miller v. State*, 151 Md. App. 235, 250-51, *cert. denied*, 377 Md. 113 (2003). "Generally, counsel are free to discuss the evidence and all reasonable and legitimate inferences that may be drawn from the evidence." *Clarke*, 97 Md. App. at 431 (citing *Wilhelm*, 272 Md. at 412). Very few convictions would stand if every remark by counsel in the heat of argument was ground for reversal. *Miller*, 151 Md. App. at 251.

This robust forum is not, however, without boundaries. *See Degren v. State*, 352 Md. 400, 430 (1999). Trial judges retain wide discretion as to whether to limit the scope of remarks at closing arguments. *See Wise v. State*, 132 Md. App. 127, 142 (2000). Nonetheless, reversal is required only if a prosecutor's improper comment actually misled the jury or was likely to have influenced the jury to the prejudice of defendant. *Brewer v. State*, ___ Md. App. ___, No. 1325, Sept. Term, 2013 (Ct. of Spec. App. Oct. 29, 2014), slip op. at 21; *Degren*, 352 Md. at 431. "The 'determination of whether the prosecutor's comments were prejudicial or simply rhetorical flourish lies within the sound discretion of the trial court.'" *Brewer*, slip op. at 21 (quoting *Degren*, 352 Md. at 431). "'An appellate court should not disturb the trial court's judgment absent a clear abuse of discretion by the trial court of a character likely to have injured the complaining party.'" *Mitchell v. State*, 408 Md. 368, 381 (2009) (quoting *Grandison v. State*, 341 Md. 175, 225 (1995)).

On appeal, Taylor contends that by not sustaining defense counsel's objection to the State's statement, the circuit court erred and "denigrated Mr. Taylor's right to a fair trial by impermissibly shifting the burden of proof." We find no reversible error.

In a strikingly similar case, defense counsel contended in closing arguments that the State had failed to meet its burden of proof because it did not call a number of potential witnesses (including witnesses whom the State had said it would call). *Mitchell*, 408 Md. at 375-77. In rebuttal, the prosecutor argued:

> "If [defense counsel] thought that them being here would have shown that something we presented was so contradictory to something about them, he could have brought them in as well. The defense has subpoena power just like the State does. You can't say why didn't the State present a witness, when they had an equal opportunity to present it to you, and then try to say, well, it wasn't presented. They had an equal right to present it if they thought it would contradict something we presented."

Id. at 379.

Mitchell contended on appeal that the prosecutor's rebuttal remarks, calling attention to the defendant's failure to exercise the subpoena power, improperly shifted the burden of proof and thus denied him his right to a fair trial. *Id.* at 379-80. The Court of Appeals rejected that argument.

In reaching its decision, the Court stated that by implying that the State had prevented the jurors from hearing testimony that they were entitled to hear, defense counsel had "opened the door" for the prosecutor to mention the defense's power to subpoena the witnesses. *Mitchell*, 408 Md. at 388-89.

The Court thus held that "a response by the prosecutor calling attention to Mitchell's subpoena power was fair comment," as well as "a tailored response to defense counsel's assertion that all the potential witnesses should have been brought into the courtroom given what defense counsel identified as a weakness in the State's case." *Id.* at 389. The Court emphasized that the prosecutor's "narrow and isolated, justified response to defense counsel's 'opening the door[]'" did not impermissibly shift the burden of proof to Mitchell. *Id.* at 392.

With this framework in mind, we hold that by commenting on the State's decision not to call Detective Teidemann to corroborate every aspect of Detective Moss's testimony, defense counsel opened the door to the prosecutor's comment concerning the defendant's failure to question Detective Teidemann on cross-examination. We further hold that the circuit court did not abuse its discretion in allowing the prosecutor to make that comment in rebuttal.

Although *Mitchell* concerned the defendant's failure to subpoena missing witnesses rather than the defendant's failure to pose specific questions to a witness who actually testified at trial, the prosecutor's argument in this case mirrors the argument that the Court of Appeals upheld in *Mitchell*. For example, in *Mitchell*, the prosecutor stated, "They had an equal right to present it if they thought it would contradict something we presented," while in this case the prosecutor stated, "Well, there's direct examination from the State and then there's cross-examination from the Defense Attorney. Did the Defense Attorney ask him any

questions?" Similarly, in *Mitchell*, the prosecutor stated, ""If [defense counsel] thought that them being here would have shown that something we presented was so contradictory to something about them, he could have brought them as well," while in this case the prosecutor stated, "I submit to you that if there was something that he could have gotten out, he would have tried." In short, in light of the comments that the Court upheld in *Mitchell*, Taylor has no cogent argument as to why the comments in this case were impermissible.[10]

Here, as in *Mitchell*, the State was responding to an insinuation that it had prevented the jury from hearing important evidence. As in *Mitchell*, the State had the limited right to respond to that insinuation by pointing out that the defendant, too, could have brought the same evidence before the jury. The circuit court, accordingly, did not abuse its discretion in refusing to strike the prosecutor's argument.

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

[10] Taylor sidesteps *Mitchell* and instead relies on cases that predate Mitchell. The short response to Taylor's position is that *Mitchell* clarified and broadened the preexisting law by recognizing that if the defense argues that the State prevented the jury from hearing important evidence, it may open the door to the prosecutor's comment concerning the defendant's ability to adduce the same evidence.