IN THE COURT OF APPEALS OF MARYLAND

No. 64

September Term, 1994

ANTHONY GRANDISON

v.

STATE OF MARYLAND

Murphy, CJ.
Eldridge
Rodowsky
Karwacki
Bell
Raker
Bloom, Theodore G. (Specially Assigned)

JJ.

Opinion by Karwacki, J.
Bell, Raker and Bloom, J.J.,
Dissent

Filed: December 27, 1995

Anthony Grandison, the appellant, hired Vernon Lee Evans, Jr. to kill David Scott Piechowicz and his wife, Cheryl, who were scheduled to testify against Grandison in a narcotics case pending in the United States District Court for the District of Maryland. Evans was to receive $9,000.00 from Grandison for committing the murders. On April 28, 1983, Evans went to the Warren House motel in Baltimore County where Mr. and Mrs. Piechowicz worked and shot and killed David Scott Piechowicz and Susan Kennedy. Susan Kennedy, Cheryl Piechowicz's sister, was killed because Evans apparently mistook her for Cheryl.

Grandison was charged in the Circuit Court for Baltimore County with two first degree murders, conspiracy to commit the murders, and use of a handgun in the commission of crimes of violence in the deaths of David Scott Piechowicz and Susan Kennedy. After being notified of the State's intent to seek the death penalty, Grandison had the trial of the case removed to Somerset County, pursuant to Maryland Const. Art. IV, § 8(b). While Grandison was awaiting trial on the state charges, he was convicted in the federal court on both narcotics charges and witness tampering charges brought against him in connection with the murders.[1]KEYBOARD()al to present the defense that he wanted to put before the jury.

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[1] Grandison's federal convictions were affirmed on appeal. *United States v. Grandison*, 783 F.2d 1152, 1155-57 (4th Cir. 1986), *cert. denied*, 479 U.S. 845, 107 S. Ct. 160, 93 L. Ed. 2d 99 (1986) (affirming the narcotics convictions); *United States v. Grandison*, 780 F.2d 425, 428-29 (4th Cir. 1984), *vacated and remanded*, 479 U.S. 1076, 107 S. Ct. 1269, 94 L. Ed. 2d 130 (1987), *reinstating prior affirmance on remand*, 885 F.2d 143 (4th Cir. 1989) (affirming the witness tampering conviction

We have said that "the defendant [in a criminal case] ordinarily has the ultimate decision when the issue at hand involves a choice that will inevitably have important personal consequences for him . . . ." *Treece v. State*, 313 Md. 665, 674, 547 A.2d 1054, 1058-59 (1988). Assuming, *arguendo*, that the choice of factual defenses in a criminal prosecution is a decision resting ultimately with the criminal defendant, we still must conclude that Grandison did not have a meritorious reason for discharging his counsel and, therefore, that the trial court's actions in this case did not violate Grandison's right to counsel. This conclusion is compelled first, because Grandison's then current counsel never expressly refused to present the defense that Grandison wanted and second, because the two defenses were not irreconcilably conflicting.[2] 387, 97 S. Ct. 1232, 51 L. Ed. 2d 424 (1977), *Carnley v. Cochran*, 369 U.S. 506, 82 S. Ct. 884, 8 L. Ed. 2d 70 (1962), and *Johnson v. Zerbst*, 304 U.S. 458, 58 S. Ct. 1019, 82 L. Ed. 1461 (1938), Grandison asserts that a waiver of counsel cannot be inferred from silence or ambiguous statements. He argues that when he refused to choose between retaining current counsel and representing himself, the trial court was required to have him proceed to trial with counsel, and could not simply infer a waiver of counsel from Grandison's refusal to make such a choice.

[2] The trial court found that the two defenses were not in serious conflict and, therefore, Grandison had no meritorious reason for discharging counsel.

Grandison points to our decision in *State v. Renshaw*, 276 Md. 259, 268, 347 A.2d 219, 226 (1975) in which we said:

> "[W]here the accused fails to waive his right to counsel by making an unequivocal choice, but merely insists on a different lawyer, effective legal representation must be required by the court."

He then recognizes, however, that *Renshaw* has been "narrowed, and perhaps even abandoned" by the subsequent promulgation of Md. Rule 4-215(e),[3]son's capital resentencing proceeding, the State called Cheryl Piechowicz as a victim impact witness to give live testimony concerning the effect the deaths of her husband and sister had on her and on several other members of her family. On direct examination she testified, in pertinent part:

> "People think because it's been 11 years that we have accepted it or things have gotten better. And it can be 20 years or 30 years or 50 years and we will never, never accept it, and that it doesn't get better.
>
> * * *
>
> "I guess I mainly want people to think that it does not get better, it doesn't go away and you don't accept this. There is no accepting this. It doesn't get better. Other people forget about it but we don't. Their lives are greatly missed."

On cross-examination, Grandison wanted to contest these statements by showing that Ms. Piechowicz had adjusted well to the tragedy, had remarried eighteen months after the murders, and had

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[3] Md. Rule 4-215(e) was promulgated in 1984. Until a 1986 amendment, however, it was designated as Rule 4-215(d). *See Fowlkes*, 311 Md. at 590 & n.1, 536 A.2d at 1151 & n.1.

children with her new husband. In addition, Grandison wanted the jury to hear about a civil action that had been brought by Ms. Piechowicz in a federal court against the United States government. He contends that because the success of that suit depended upon her establishing that he was responsible for the murders, Ms. Piechowicz had a significant financial motive for testifying against him. The trial court refused to allow any questions concerning the suit or Ms. Piechowicz's new family. Grandison claims that this denied him the right to effective cross-examination, as guaranteed by the Sixth and Fourteenth Amendments to the United States Constitution and Article 21 of the Maryland Declaration of Rights. Assuming, *arguendo*, that this issue was preserved, we disagree with Grandison's contention.

The right of a defendant to cross-examine witnesses against him extends to the sentencing phase of a capital trial and applies to victim impact witnesses as well as factual witnesses. In capital cases "[w]ide latitude must be given a cross-examiner in exploring a witness' bias or motivation in testifying." *Bruce v. State*, 318 Md. 706, 727, 569 A.2d 1254, 1265 (1990) (*Bruce I*). The right to cross-examine is not, however, limitless. Discovery of irrelevant information is not a proper object of cross-examination. *See*, *e.g.*, *Lyba v. State*, 321 Md. 564, 570, 583 A.2d 1033, 1036 (1991) (quoting *Smallwood v. State*, 320 Md. 300, 307, 577 A.2d 356, 359 (1990) (quoting *Delaware v. Van Arsdall*, 475 U.S. 673, 679, 106

S. Ct. 1431, 1435, 89 L. Ed. 2d 674, 683 (1986))); *Apple v. State*, 190 Md. 661, 665, 59 A.2d 509, 511 (1948). Evidence is relevant or probative if it tends to prove the proposition for which it is offered. The more attenuated the connection between the evidence and the proposition, the less the probative value of the evidence. *See, e.g., Johnson v. State*, 332 Md. 456, 474, 632 A.2d 152, 160 (1993) and cases cited therein. The determination of relevance is reserved for the discretion of the trial judge; we will not disturb the trial judge's ruling unless he has abused that discretion. *Johnson v. State,* 303 Md. 487, 527, 495 A.2d 1, 21 (1985); *State v. Cox*, 298 Md. 173, 179-80, 468 A.2d 319, 322 (1983).

Grandison's questions relating to Ms. Piechowicz's remarriage and additional children[4]independently. ~~is Court has long approved the proposition that we will not find reversible error on appeal when objectionable testimony is admitted if the essential contents of that objectionable testimony have already been established and presented to the jury *without objection* through the prior testimony of other witnesses. *Jones v. State*, 310 Md. 569, 589, 530 A.2d 743, 753 (1987), *vacated on other grounds*, 486 U.S. 1050, 108 S. Ct. 2815, 100 L. Ed. 2d 916, *on remand*, 314 Md. 111, 549 A.2d 17 (1988)~~

[4] Grandison was actually able to elicit from Ms. Piechowicz that she had additional children, but he was not able to establish that they had been born after the murders.

(sentence vacated on other grounds); *Grandison v. State*, 305 Md. 685, 738-739, 506 A.2d 580, 607 (1986), *cert. denied*, 479 U.S. 873, 107 S. Ct. 38, 93 L. Ed. 2d 174 (1986); *Robeson v. State*, 285 Md. 498, 507, 403 A.2d 1221, 1225 (1979), *cert. denied*, 444 U.S. 1021, 100 S. Ct. 680, 62 L. Ed. 2d 654 (1980); *Linkins v. State*, 202 Md. 212, 224, 96 A.2d 246, 252 (1953); *see also Peisner v. State*, 236 Md. 137, 144, 202 A.2d 585, 589 (1964), *cert. denied*, 379 U.S 1001, 85 S. Ct. 721, 13 L. Ed. 2d 702 (1965). Grandison's participation as the architect of the murders was communicated directly or through implication to the jury several times during the trial, rendering Agent Foley's testimony not unfairly prejudicial.

First, the trial judge informed jurors, during his preliminary instructions to them before any evidence had been presented in the case, that Grandison had been convicted of two counts of first degree murder. As the evidence was quite clear that Grandison had been in jail at the time of the shooting, any rational jury would have inferred that Grandison himself did not fire the murder weapon, and that his conviction for first-degree murder rested instead on his involvement in a plan to murder Scott Piechowicz and Susan Kennedy.

Second, Cheryl Piechowicz described in her testimony the threatening attitude of Janet Moore when Moore approached her prior to her testimony at the suppression hearing on March 14, 1983 in the federal narcotics case against Grandison. Piechowicz further

testified that Moore's threatening conduct was immediately reported to the federal authorities, including the presiding judge, at that suppression hearing. Piechowicz' testimony was an obvious referral to the "prior incident at a suppression hearing wherein threats were made against one of the witnesses" to which Agent Foley later testified. Grandison did not object to Mrs. Piechowicz' testimony.

Furthermore, the testimony of Captain James Drewery of the Baltimore City Jail, to which, again, no objection was posed by Grandison, established that the investigative team of FBI agents, Baltimore County police and Baltimore City police headed by Agent Foley interviewed Drewery the day after the murders about the persons visiting Grandison at the jail shortly before the murders; in addition, Janet Moore and Charlene Sparrow testified, without objection from Grandison, that the same investigative team interviewed them soon after the murders about their relationships with Grandison and his known associate Vernon Evans. It was obvious from the testimony of Drewery, Moore and Sparrow that Grandison was targeted at the outset by the investigators as the engineer of the murder scheme.

Agent Foley's opinion as to Grandison's involvement, while perhaps erroneously admitted over objection, contained no more information than did the valid preliminary instructions made by the judge to the jury; prior testimony of other witnesses, admitted without objection, also asserted or implied the same opinion as to Grandison's role. Thus, Foley's testimony was not unfairly

prejudicial to the defendant and at worst constituted harmless error.

Grandison also argues that the admission of Agent Foley's testimony that he believed Sparrow had been telling the truth was reversible error because no trial court may "permit to go to the jury a statement, belief, or opinion of another person to the effect that a witness is telling the truth or lying." *Bohnert v. State*, 312 Md. 266, 277, 539 A.2d 657, 662 (1988). Furthermore, Grandison urges, admission of Agent Foley's opinion was particularly damaging, because it allowed the State to use the views of a respected F.B.I. agent to bolster the testimony of an immunized informant who, at the time of her observations, was a teenage drug addict. However, when Agent Foley testified regarding Sparrow's truthfulness, Grandison did not raise these objections. Instead, he objected on the ground that the question that elicited the testimony was leading. It is well established that appellate review of an evidentiary ruling, when a specific objection was made, is limited to the ground assigned at the time of the objection. *E.g.*, *Colvin-El v. State*, 332 Md. 144, 169, 630 A.2d 725, 737 (1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 2725, 129 L. Ed. 2d 849 (1994). Therefore, as the specific ground for objection asserted here on appeal is not the same as that raised at trial, we will not review the ruling.

B.

Finally, Grandison contends that allowing Janet Moore's testimony constituted reversible error. This contention clearly is not preserved for our review. To preserve an issue on appeal as to admissibility of evidence, objection must be made at trial to the question eliciting an alleged objectionable answer. *E.g., Rose v. State*, 240 Md. 65, 69, 212 A.2d 742, 744 (1965). In this case, no objection was made to the prosecutor's questions or to Moore's responses.

VIII

Md. Code (1957, 1992 Repl. Vol., 1994 Cum. Supp.), Art. 27, § 412(b) provides that a person convicted of first degree murder must be sentenced to life imprisonment unless the State notifies the person in writing at least 30 days prior to trial (1) that it intends to seek a sentence of death, and (2) of the aggravating circumstances upon which it intends to rely. Grandison was charged with and convicted of two separate first degree murders. The notice given to Grandison by the State did not specify for which of these crimes it was seeking the death penalty, and the notice only indicated that the State would seek *a* death sentence. Grandison moved to dismiss the death notice and the trial court denied his motion.

Grandison contends that Art. 27, § 412(b) was violated because he was never put on notice of whether he was facing the death penalty for the killing of Scott Piechowicz or the killing of Susan

Kennedy or both; therefore, he asserts that the death sentences must be vacated and sentences of life imprisonment imposed. We reject that argument.

First, Md. Code (1957, 1992 Repl. Vol., 1994 Cum. Supp.), Art. 27, § 412(b) does not expressly require separate notice of each death sentence sought:

> "The sentence shall be imprisonment for life unless . . . the State notified the person in writing at least 30 days prior to trial that it intended to seek *a* sentence of death . . . ." (Emphasis added).

Second, the purpose served by the notice requirement—to allow the defendant the opportunity to marshal his defenses in aid of showing why imposition of the death penalty would be inappropriate in his case—is satisfied by the notice given in this case. The absence of language in the notice to the effect that *two* sentences of death would be sought did not render the notice inadequate.

Finally, and in any event, Grandison admitted twice that he had notice that the prosecution intended to seek separate sentences of death for the two murders. On August 27, 1993, over eight months before Grandison's resentencing proceeding began, at a pretrial hearing on his motion to discharge counsel, when asked by the court whether he understood that the prosecution was seeking the death penalty for *both* the murders, Grandison replied, "Sure I understand that, Your Honor." On May 11, 1994, at a hearing on

Grandison's request to discharge counsel the following colloquy transpired:

> "[The court]: How many [death penalties] are you faced with as of right this moment?
>
> "[Grandison:] Two.
>
> "[The court:] Two. And for the murders of which two individuals?
>
> "[Grandison:] [David] Scott Piechowicz and Susan Kennedy."

The notice from the State to Grandison in this case was sufficient, but even if it had been defective, Grandison clearly was aware that he faced the possibility of a death sentence in both murders. Due process was not offended under these circumstances, and the trial court properly denied the motion to dismiss the death notice.

IX

During the State's closing argument and rebuttal, prosecutors made the following remarks:

> "You have heard from witness after witness in this case. You swore an oath. Each of those witnesses swore an oath and testified here. Each of those witnesses was subject to cross examination. All but one, all but one.
>
> "And you can consider the fact that he was not under oath, that he was not subject to cross examination when he made his statement. All the other witnesses were. But not him. That is another reason what he says deserves no weight.
>
> * * *

> "He's in jail. That's another reason you know that it was for money, a contract to kill. Ladies and gentlemen, it was obvious by [sic] the police authorities, Kevin Foley told you from the get-go that the prime subject [sic] was Anthony Grandison, and the investigation ultimately made it clear that that was correct.
>
> * * *
>
> "Of course he had plenty of money. He was a drug dealer. That is what he did.
>
> * * *
>
> "To do less than the death penalty in this case devalues the lives of [David] Scott Piechowicz and Susan Kennedy. To do less than the death penalty in this case diminishes all of us, all of us who uphold the laws of this state, all of us law abiding citizens who believe in system of justice. It devalues all of us as citizens, it devalues our rights and it devalues the criminal justice system to do less than the death penalty.
>
> "Don't let evil triumph in this courtroom. Don't let Anthony Grandison con you."

Grandison contends that these statements had no purpose other than to inflame the jurors and convince them to return a death sentence on grounds which had nothing to do with the admissible evidence. He admits that "the individual prejudicial remarks made in closing might not require reversal[,]" but he asserts that cumulatively "they are so damaging that the conviction cannot stand[,]" and he is entitled to a new sentencing hearing. We disagree.

First, this claim clearly is not preserved for our review. As previously discussed, to preserve a claim of trial error for purposes of appellate review, an objection to the claimed error

must have been made at trial. Md. Rule 8-131(a). Grandison made not one objection during the prosecution's entire closing argument. Consequently, the propriety of the prosecution's closing argument is not an issue properly before the court. *See Apple v. State*, 190 Md. 661, 666-67, 59 A.2d 509, 511-12 (1948); *Stevenson v. State*, 94 Md. App. 715, 730, 619 A.2d 155, 162 (1993).

Even if the issue had been preserved, Grandison still would not be entitled to a new sentencing proceeding. The regulation of argument rests within the sound discretion of the trial court. *E.g.*, *Booth v. State*, 327 Md. 142, 193, 608 A.2d 162, 187, *cert. denied*, ___ U.S. ___, 113 S. Ct. 500, 121 L. Ed. 2d 437 (1992) (*Booth IV*). Although the scope of what may be said in closing argument is not without limitation,

> "counsel is afforded wide latitude in presenting closing summation to the jury. The prosecutor is allowed liberal freedom of speech and may make any comment that is warranted by the evidence or inferences reasonably drawn therefrom."

Oken v. State, 327 Md. 628, 676, 612 A.2d 258, 281 (1992), *cert. denied*, ___ U.S. ___, 113 S. Ct. 1312, 122 L. Ed. 2d 700 (1993) (quoting *Jones v. State*, 310 Md. 569, 580, 530 A.2d 743, 748 (1987)). Accordingly, counsel

> "[is] free to comment legitimately and to speak fully, although harshly, on the accused's actions and conduct if the evidence supports his comments . . . [and] may indulge in oratorical conceit or flourish and in illustrations and metaphorical allusions."

Wilhelm v. State, 272 Md. 404, 412-13, 326 A.2d 707, 714 (1974).

Whether any impropriety occurred in the closing argument rests largely within the control and discretion of the presiding judge. *Evans v. State*, 333 Md. 660, 678, 637 A.2d 117, 126 (1994) (*Evans III*). When a portion of the closing argument is examined in a death penalty case, it must be reviewed in the context of the entire argument and the court's instructions on the law. 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. *Booth IV*, 327 Md. at 193, 608 A.2d at 187; *Henry v. State*, 324 Md. 204, 230 n.5, 596 A.2d 1024, 1037 n.5, *cert. denied*, 503 U.S. 972, 112 S. Ct. 1590, 118 L. Ed. 2d 307 (1992); *Hunt*, 321 Md. at 435, 583 A.2d at 241. No such abuse occurred in the instant case.

A.

The reference to Grandison having money

During its rebuttal argument, the prosecution, in response to Grandison's argument that he did not have money to hire Evans to kill the victims, reminded the jury that a large quantity of drugs had been found in the Warren House motel room rented by Grandison prior to his arrest on the federal narcotics charges. The prosecution then concluded that Grandison must have had money because he was a drug dealer. Contrary to Grandison's assertions, our characterization in *Grandison II* of the admissibility of

evidence relating to the then pending drug charges did not constitute a bar to how Grandison's involvement with drugs could be treated in closing argument at the instant resentencing proceeding. Here, the prosecution simply argued an inference reasonably drawn from the evidence as permitted by, *e.g.*, *Oken*, 327 Md. at 676, 612 A.2d at 281. No impropriety occurred here by allowing these remarks.

B.

prime subject" comments

Grandison argues that by making these comments, the prosecution told the jury that it could infer the existence of the aggravating circumstance from the fact that the police had targeted Grandison in the slayings. We find it clear from the nature of the comments at issue that the prosecution did no such thing.

All the prosecution said was what the evidence showed, namely, that although Evans actually killed the victims, he did so at the direction of Grandison. The police suspected Grandison from the beginning, and the investigation ultimately yielded evidence that supported their suspicions. The trial court did not abuse its discretion in allowing these remarks.

C.

The arguments against a life sentence

Grandison contends that the prosecution's arguments against a life sentence amounted to an improper argument that a death

sentence must be imposed to comport with community standards. We disagree.

Read in context, it is clear that the prosecution was not arguing that the death penalty should be imposed based on some general principle. Rather, the prosecution was arguing that the nature of *these particular crimes* warranted more than life imprisonment and that imposition of the death penalty in this case would be an expression of the jury's outrage at Grandison's particularly offensive criminal conduct. The Supreme Court has opined:

> "In part, capital punishment is an expression of society's moral outrage at particularly offensive conduct. This function may be unappealing to many, but it is essential in an ordered society that asks its citizens to rely on legal processes rather than self-help to vindicate their wrongs."

Gregg v. Georgia, 428 U.S. 153, 183, 96 S. Ct. 2909, 2930, 49 L. Ed. 2d 859, 880 (1976) (footnote omitted); *see Colvin-El*, 332 Md. at 176-77, 630 A.2d at 741. There was no error.

D.

The "con" remarks

Grandison argues that the remarks made to the jury exhorting them not to be "conned" by Grandison, coupled with the remark that Grandison had "conned" the victims, was designed to inflame the jury by personalizing the crimes. We disagree.

It is entirely improper for a prosecutor to make remarks calculated to inflame the jury, *e.g.*, *Hunt*, 321 Md. at 435, 583 A.2d at 241, but we conclude that the comments challenged here were not inflammatory. These remarks were simply an assessment of Grandison's demeanor, and was the type of comment we held not improper in *Oken*, where the prosecutor had told the jury that looks could be deceiving and the defendant's demeanor concealed the monster within. *Oken*, 327 Md. at 674-77, 612 A.2d at 280-82. The challenged remarks in this case pale in comparison to those we found permissible in *Oken*.

E.

The allocution comments

Grandison argues that the comments by the prosecution as to the weight Grandison's allocution should be given were wholly improper and smacked of the same type of argument condemned by this Court in *Hunt*. We disagree.

In *Hunt*, the prosecution referred to Hunt's allocution as "worthless," and stated that it was "trash" and had been written by "God knows who." *Hunt*, 321 Md. at 434-36, 583 A.2d at 241-42. We explained that, although the prosecution was not free to tell the jury it *could not* consider the defendant's allocution, the prosecutor's comments were merely a strong suggestion to the jury that it *should not* consider the defendant's allocution. *Id.* at 436, 583 A.2d. at 241-42. Similarly, the prosecution's remarks

here were not tantamount to telling the jury that it *could not* consider Grandison's allocution; they simply suggested to the jury that it *should not* consider Grandison's allocution because he was not under oath or subject to cross-examination. It is permissible for the prosecution to distinguish between testimony and allocution and to urge rejection of the latter based on the absence of an oath and cross-examination. *Booth v. State*, 306 Md. 172, 199, 507 A.2d 1098, 1112 (1986) (*Booth II*). Finally, the judge instructed the jury that Grandison's allocution was evidence and, as such, could be given whatever weight the jury chose to attribute it. No error was committed in allowing these remarks.

F.

The cumulative effect

Grandison argues that the cumulative effect of all of the challenged remarks entitles him to a new sentencing proceeding. We disagree.

In *Gilliam v. State*, 331 Md. 651, 629 A.2d 685 (1993), *cert. denied*, ___ U.S. ___, 114 S. Ct. 891, 127 L. Ed. 2d 84 (1994), in rejecting a "cumulative effect" argument in the context of an ineffective assistance of counsel claim, we stated that "[t]his is not a case where the cumulative effect of numerous interrelated errors in aggregate amount to inadequate representation. This is more a case of the mathematical law that twenty times nothing is

still nothing." *Gilliam*, 331 Md. at 686, 629 A.2d at 703. In the case *sub judice*, we hold that five times nothing is still nothing.

X

Grandison next argues that under "Wharton's Rule," or the "concert of action rule" (i.e., an individual cannot be prosecuted for both a substantive offense and conspiracy to commit that offense where an agreement between two or more persons is a necessary element of the substantive crime), in a case of murder for hire, the hirer cannot be prosecuted for both murder and conspiracy. We reject that notion.

In *Grandison II*, we rejected Grandison's claim that his murder and conspiracy convictions should be merged. *Grandison II*, 305 Md. at 759, 506 A.2d at 617. His present argument is essentially the same. "Murder for hire" is not a crime unto itself. In the context of a capital sentencing proceeding, it is merely a factor which makes the crime of first degree murder eligible for the death penalty. At the guilt/innocence phase of his trial, Grandison was convicted of two first degree murders and conspiracy to commit those murders—not two murders for hire. As we explained in *Grandison II*, these two offenses are distinct because a necessary element of murder is the completion of the crime. *Id.* The concert of action rule is not applicable here. The trial court properly denied Grandison's motion to dismiss based on this issue.

XI

Grandison requested that the trial court bifurcate the sentencing proceedings so that the jury would have to decide whether the aggravating circumstance was proven before hearing evidence on mitigation and argument on balancing. The trial court denied Grandison's motion. Grandison argues that it was reversible error to allow the jury to consider victim impact evidence while determining whether the aggravating circumstance existed. We do not agree.

In *Hunt*, *supra*, we rejected the idea of bifurcation of capital sentencing proceedings. *Hunt*, 321 Md. at 447-48, 583 A.2d at 247. *Hunt* was decided before the Supreme Court's decision in *Payne v. Tennessee*, 501 U.S. 808, 111 S. Ct. 2597, 115 L. Ed. 2d 720 (1991) which authorized the use of victim impact evidence in capital cases. Grandison contends that because *Hunt* predated *Payne*, we were not concerned in *Hunt* with assuring that the jury give victim impact evidence proper consideration. Grandison now urges us to hold that, since the Supreme Court's decision in *Payne*, the better policy is for trial courts to bifurcate capital sentencing proceedings whenever the State intends to use victim impact evidence. Grandison, however, ignores several of our decisions since *Payne*. In *Wiggins v. State*, 324 Md. 551, 577-78, 597 A.2d 1359, 1371-72 (1991), *cert. denied*, 503 U.S. 1007, 112 S. Ct. 1765, 118 L. Ed. 2d 427 (1992), we observed that Md. Rule 4-343(e), which

prescribes the form for jury deliberation of sentence in a capital case, does not require a bifurcated sentencing proceeding. In *Booth IV*, 327 Md. at 160-61, 608 A.2d at 170-71, we held that Md. Rule 4-343, and the sentencing form it incorporates, are binding, and make clear that capital sentencing issues are to be resolved in a single proceeding, leaving *no discretion* with the trial court to permit a bifurcated proceeding. To hold otherwise would convert what is already a bifurcated proceeding[5]plead guilty to concurrent time without cutting any kind of a deal.

"But consider Janet Moore and Rodney Kelly's role in this whole matter. They were used by the Defendant. They enabled him to do this. Neither one of them could possibly be subjected to the death penalty because, as you know, from the findings and sentencing determination sheet that only the trigger man or the person in the Defendant's position could actually be subjected to the death penalty. It says so in that first section. That is the first determination that you have to make. So they could not have gotten the death penalty."

Grandison raised no objection during the prosecutor's rebuttal argument or at any other time before the jury retired to deliberate. Only after the jury retired did Grandison note any objection to the prosecutor's rebuttal, and at that time he only

[5] A capital case already consists of the guilt/innocence phase and the separate sentencing proceeding.

argued that the prosecutor improperly argued that Kelly and Moore were not death-eligible.

Grandison, however, now contends that

> "[t]he prosecutor[']s remarks in the case *sub judice* were not only inappropriate during its final summation, but it was meant outrightly and intentionally to misstate the evidence and to mislead the jury as to the sentences Rodney Kelly received in the federal and state courts, as well as the facts and circumstances surrounding the plea agreement between themselves and Kelly and Moore."

As Grandison only objected to the reference by the State that Kelly and Moore were not death-eligible, he failed to preserve any other objections for review. *See State v. Hutchinson*, 287 Md. 198, 202, 411 A.2d 1035, 1037 (1980); *see also Oken*, 327 Md. at 675, 612 A.2d at 281 (an objection to closing argument is timely if made at the conclusion of argument while the trial court has "a reasonable opportunity to correct the situation.").

Even if Grandison's belated objection to the prosecutor's characterization of Kelly and Moore as death-ineligible was preserved, it still fails on its merits. The general standards for determining whether the trial court's failure to take action with respect to the challenged argument of counsel constituted reversible error are well-settled. The regulation of argument rests within the sound discretion of the trial court. *Booth IV, supra,* 327 Md. at 193, 608 A.2d at 187. An appellate court should not interfere with the trial court's judgment unless there has been

an abuse of discretion of a character likely to have injured the complaining party. *Henry v. State*, 324 Md. 204, 231, 596 A.2d 1024, 1038, *cert. denied*, 503 U.S. 972, 112 S. Ct. 1590, 118 L. Ed. 2d 307 (1992). In determining whether an argument of counsel amounted to an unconstitutional restriction of the defendant's right to consideration of non-statutory mitigating evidence, the relevant question is "`whether there is a reasonable likelihood that the jury has applied the challenged [remarks] in a way that prevents the consideration of constitutionally relevant evidence.'" *Johnson v. Texas*, ___ U.S. ___, ___, 113 S. Ct. 2658, 2669, 125 L. Ed. 2d 290, 306 (1993) (quoting *Boyde v. California*, 494 U.S. 370, 380, 110 S. Ct. 1190, 1198, 108 L. Ed. 2d 316, 329 (1990)). "`Reversal is only required where it appears that the remarks of the prosecutor actually misled the jury or were likely to have mislead or influenced the jury to the prejudice of the accused.'" *Oken*, 327 Md. at 676, 612 A.2d at 281 (quoting *Jones v. State*, 310 Md. 569, 580, 530 A.2d 743, 748 (1987).

The evidence in this case as well as in the first sentencing proceeding was overwhelming that it was Grandison, not Kelly and Moore, who hired Evans to kill the Piechowiczes. *See Grandison II*, 305 Md. at 767, 506 A.2d at 621. The trial court properly exercised its discretion in rejecting Grandison's objection.

XXII

In addition to the prosecutor's rebuttal closing argument, Grandison identifies one other respect in which he argues his efforts to have the jury consider a mitigating factor were improperly restricted. The trial court refused to admit a transcript of the December 19, 1983 proceeding wherein Kelly and Moore pled guilty before Judge John F. Fader II in the state court prosecutions for the murders. Grandison contends that the court should have also admitted copies of an indictment and certified docket entry relating to an armed robbery for which Kelly was indicted on April 11, 1983. Grandison states that these exhibits were relevant to show as a mitigating factor that one of Grandison's co-conspirators received a sentence of less than death and that a death sentence in his case, therefore, would be inappropriate. In both *Eddings v. Oklahoma*, 455 U.S. 104, 113-14, 102 S. Ct. 869, 876-77, 71 L. Ed. 2d 1, 10-11 (1982) and *Lockett v. Ohio*, 438 U.S. 586, 604, 98 S. Ct. 2954, 2964-65, 57 L. Ed. 2d 973, 990 (1978), the Supreme Court held that a sentencer may not be precluded from considering, and may not refuse to consider, as a mitigating factor, any relevant aspect of the defendant's character or record and any of the circumstances of the offense that the defendant proffers as a basis for a sentence less than death.

We note first that the trial court never resolved the question of whether the transcript of the December 19, 1983 guilty plea hearing should be excluded, because Grandison never formally

~~offered the exhibit into evidence. When the transcript issue initially arose, it was brought up in conjunction with the docket entries and indictment, and the court at that time reserved its ruling. Later in the day, Grandison had the docket entries and indictment marked and argued for their admission. The transcript was not marked until later, and at that time it was only used to refresh the recollection of Janet Moore. Grandison never offered the transcript into evidence. As he never sought a ruling from the court regarding the transcript's admissibility, his claim regarding the transcript is not preserved for our review. Md. Rule 8-131(a) (providing that appellate review is ordinarily unavailable as to an issue not "raised in or decided by the trial court").~~

~~Moreover, even if the claim was preserved, the docket entries and indictment which Grandison sought to have entered into evidence contained information regarding an unrelated armed robbery charge for which Kelly was indicted and later released on his own recognizance as part of his plea agreement for the murder charges. Any favorable treatment Kelly received in this unrelated case was not relevant mitigating evidence under *Eddings* and *Lockett*, because it did not concern Grandison's character or background or circumstances of his offense. *See Franklin v. Lynaugh*, 487 U.S. 164, 174, 108 S. Ct. 2320, 2327, 101 L. Ed. 2d 155, 166 (1988). (No constitutional right to have possible "residual doubts" of a guilt-phase jury considered by a sentencing jury as a mitigating~~

factor). The trial court committed no error in declining to admit the docket entries and indictment.

XXIII

Grandison next submits that the evidence was insufficient to establish the "murder for hire" aggravating circumstance. Grandison contends that there was no evidence independent of that offered by the alleged accomplices to the crime which tended to establish that he engaged another person to commit the killings for money.

The applicable standard of review is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *See Booth IV*, 327 Md. at 183, 608 A.2d at 182. Evidence produced at the resentencing hearing was sufficient to create the following picture of the events leading up to the murders.

Grandison's federal narcotics case was scheduled for trial the first week in May of 1983. Grandison wrote a letter to Janet Moore on March 14, 1983, which referred to the Piechowiczes and contained a statement that Grandison might get "Shorty" to "take care of something to be on the safe side."

On April 26, 1983, Janet Moore received a telephone call from Grandison in which he asked her to bring Vernon Evans, whose nickname was "Shorty," to see him. Moore drove Evans and Charlene

Sparrow to the Baltimore City jail. Once there, Moore filled out a visitor's card, signing her name and Evans's name. The jail visitation card bore the names of "Janet Grandison and Vernon Evans," but Moore stated that when she visited Grandison at the jail, she sometimes used the name "Janet Grandison." After signing the visitation card, Moore went to the restroom. When she returned she overheard Grandison tell Evans that he had to go to court on Monday and that he needed "that taken care of." Grandison then told Moore to take Evans to see Rodney Kelly. Moore complied, taking Evans to Theresa Purdie's home, where they waited for Kelly. Purdie testified that Moore, Evans, and Kelly came to her house that day.

Purdie received a telephone call that day from Grandison and participated in a conversation with Evans, Kelly, and Moore. Moore testified that, during this conversation, Grandison told her to take Evans to the Warren House motel. Moore again complied, and Sparrow registered for a room, later registering for an extra day. On April 28, 1983, Moore arranged a three-way telephone conversation with Grandison and Kelly. She also later connected Grandison with Evans, who was at the Warren House motel. During those conversations, Moore overheard Grandison tell Evans that Kelly would supply Evans with a car.

Later that same day, Moore received a call from Evans while she was on the telephone with Grandison. Evans told Moore to ask Grandison whether the gun was "automatic or did it click."

Grandison replied that the gun was an automatic. Sparrow testified that Evans said he was going to be paid $9,000 for the killings. Sparrow also learned from Kelly that Grandison had said Evans could have anything he wanted.

Assuming, without deciding, that corroboration of the testimony of accomplices is necessary for legally sufficient evidence of the aggravating factor, no more than slight corroboration would be demanded. We addressed this same issue in *Grandison II*, 305 Md. at 767-69, 506 A.2d at 621-22:

> "Certainly the record is replete with statements from co-conspirators, to each other as well as to third persons, the import of which leads elucidatively to the conclusion that Grandison hired Evans to kill the Piechowiczes. Grandison argues, however, that there was no corroboration of Charlene Sparrow's testimony. We think he is wrong. There was testimony from others, not co-conspirators, which did corroborate parts of her testimony. For example, the Baltimore City Jail security officer Drewery testified that Janet Moore and Evans visited Grandison on April 26, 1982 as testified to by Sparrow; Theresa Purdie testified about seeing Kelly, Moore, Sparrow and Evans at her residence at which time Grandison phoned Evans; she also testified that Rodney Kelly and Grandison were friends. Finally, Calvin Harper testified that Kelly showed him a machine pistol which he later saw Kelly give to Evans. He also testified that Kelly had told Mike Queen to get $500.00 from his house, an amount testified to as being given to Evans.
>
> "It is settled that not much in the way of corroboration of the testimony of a co-conspirator is required. *See Brown v. State*, 281 Md. 241, 378 A.2d 1104 (1977), where Chief Judge Murphy said, for the Court, in part:

> "`Not much in the way of evidence corroborative of the accomplice's testimony has been required by our cases. We have, however, consistently held the view that while the corroborative evidence need not be sufficient in itself to convict, it must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself. *See Wright v. State*, 219 Md. 643, 150 A.2d 733 (1959). If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced. *McDowell v. State*, 231 Md. 205, 189 A.2d 611 (1963). . . . '
>
> "In the instant case we believe the testimony of Charlene Sparrow was adequately corroborated and sufficient to identify Grandison with the perpetrators of the crime."

That analysis is equally applicable in Grandison's present appeal. At a minimum, that portion of Sparrow's testimony concerning the jail visitation was corroborated by the visitation card. Under *McDowell*, *supra*, the trier of fact may then credit the remainder of Sparrow's testimony regardless of corroboration. Considering this evidence, there can be no doubt that it was sufficient to support an inference by the jury that Grandison engaged Evans to commit the murders and that the murders were committed for remuneration or the promise thereof.

XXIV

Through the prosecution's direct examination of Agent Foley, the State established that Grandison was the person whom the police suspected of being involved in the Warren House murders. On cross-examination, Grandison asked Foley if it was true that the police had immediately suspected him of having some connection with the killings. The prosecution, on redirect, asked why Grandison became the target of the investigation "from the get go."[6] statute effecting a change in procedure only, and not in substantive rights, ordinarily applies to all actions whether accrued, pending or future, unless a contrary intention is expressed[.]" *Mason v. State*, 309 Md. 215, 219-20, 522 A.2d 1344, 1346 (1987) (interpreting reduction of peremptory challenges from 20 to 10). The change in the sentencing form was merely procedural and thus was applicable retroactively to Grandison's resentencing proceeding. Resentencing Grandison in no way violated double jeopardy principles, and the trial court properly denied Grandison's motion to prohibit the State from seeking the death penalty at that proceeding.

JUDGMENT AFFIRMED.

[6] *See also* parts VII and IX, *supra*, addressing Agent Foley's comments and the prosecution's reference to those comments in its closing argument, respectively.