

Circuit Court for Montgomery County
Criminal Case No. 130439

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 1061

September Term, 2018

MARVIN EUGENE WRIGHT

v.

STATE OF MARYLAND

Berger,
Arthur,
Moylan, Charles, E., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: June 5, 2019

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Following a jury trial in the Circuit Court for Montgomery County, Marvin Wright, appellant was convicted of first-degree sexual offense, second-degree sexual offense, and sexual abuse of a minor. His sole claim on appeal is that the trial court erred in allowing the prosecutor to make an improper argument during closing. Because the prosecutor's argument was unlikely to have misled or influenced the jury to the prejudice of Mr. Wright, we shall affirm.

During closing, defense counsel argued that the forensic evidence was insufficient to corroborate the victim's claim that Mr. Wright had sexually assaulted him and, therefore, that the State had failed to meet its burden of proof. The following then occurred during the State's rebuttal:

[PROSECUTOR]: There is no doubt that [Mr. Wright] did what [the victim] said he did. [Defense counsel's] job is to confuse you, it to provide you like a magician smoke in mirrors --

[DEFENSE COUNSEL]: Objection.

THE COURT: This is argument. Go ahead.

[PROSECUTOR]: -- should take you away from the facts. Don't be confused by that. Don't be distracted by the smoke in mirrors.

Mr. Wright contends that the prosecutor's comments were improper because they "tended to inflame the passions of the jury by directly disparaging defense counsel's integrity." The State counters that the prosecutor's comments were a fair argument in response to defense counsel's closing and that the comments addressed the merits of defense counsel's argument, not the integrity or ethics of defense counsel.

However, we need not resolve this issue because, even if we assume that the prosecutor’s argument was improper, reversal is not required. It is well-settled that not every improper remark made by the State during closing argument results in a new trial. *See Wilhelm v. State*, 272 Md. 404, 431 (1974). (“[T]he mere occurrence of improper remarks does not by itself constitute reversible error”). Instead, reversal is only mandated if it appears that the improper argument “actually misled the jury or were likely to have misled or influenced the jury to the defendant’s prejudice[.]” *Donaldson v. State*, 416 Md. 467, 496-97 (2010) (citation omitted). In determining whether an allegedly improper statement in closing argument constitutes reversible error, we consider the following factors: (1) the severity and pervasiveness of the remarks; (2) the measures taken to cure any potential prejudice; and (3) the weight of the evidence against the accused. *Id.* at 497 (citation omitted).

Here, the prosecutor’s comment was isolated and did not pervade the trial. And although the trial judge overruled defense counsel’s objection, it noted that the prosecutor’s statement was “argument” and later instructed the jurors that closing arguments were not evidence. Moreover, the State had a strong case against Mr. Wright. In addition to the testimony of the 14 year-old victim, the State introduced evidence that: the victim had suffered “acute injuries” to his rectum that were consistent with forced anal penetration; a swab taken from the victim’s perirectal area tested positive for spermatozoa and blood; a swab taken from the victim’s underwear tested positive for spermatozoa that was consistent with a mixture of two individuals; neither Mr. Wright nor the victim could be excluded as contributors to the mixture profile; and the chance of a random person being included as a

possible contributor to the mixture profile was approximately 1 in 6,000. Mr. Wright was also interviewed by the police and, although he denied sexually assaulting the victim, he admitted wiping the victim’s bottom after he used the restroom, washing the victim’s penis while the victim showered, and helping the victim clean himself up after he masturbated. Consequently, even if improper, the prosecutor’s comment was unlikely to have misled or influenced the jury and therefore, does not warrant reversal. *See Beads v. State*, 422 Md. 1, 8-11 (2011) (holding that the “prosecutor’s comments about the role of defense counsel, although inappropriate, [were] unlikely to have misled or influenced the jury to the prejudice of the accused” (internal quotation marks omitted)).

**JUDGMENTS OF THE CIRCUIT COURT
FOR MONTGOMERY COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**