

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 1759

September Term, 2015

---

MALISSA NICOLE MILLER

v.

STATE OF MARYLAND

---

Krauser, C. J.,  
Nazarian,  
Moylan, Charles E., Jr.  
(Retired, Specially Assigned),

JJ.

---

PER CURIAM

---

Filed: July 22, 2016

\*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.

Convicted by a jury, in the Circuit Court for Cecil County, of second-degree child abuse, Malissa Nicole Miller, appellant, noted this appeal, presenting one question for our review: “Did the trial court err in allowing improper [closing] argument.” Because we find that the issue was not preserved for appellate review, we shall affirm.

Defense counsel objected during the State’s rebuttal closing argument, when the prosecutor discussed Miller’s demeanor while her nine year-old son, “K.,” was on the stand, and suggested to the jury that Miller was coaching K.’s testimony by “mouthing words to him[.]” The objection prompted the court to give a curative instruction:

[PROSECUTOR]: [K.] was scared to death when he came in this courtroom. I think that was visible. I think you can see it. I even asked him on the stand, Are you afraid to be here? And he said, Yes. Of course he’s afraid. He is sitting right in front of his mother whom he’s going to testify against. What a challenge for a nine-year old child to do that. And it didn’t help that his mom sat there and waving and blowing kisses and even mouthing words to tell him what to testify to. That didn’t help.

[DEFENSE COUNSEL]: Objection.

THE COURT: Ladies and gentlemen, again, this is the time where you need to use your own collective memory.

[PROSECUTOR]: I’m going to ask you to look at what his body language showed us and what her body language has shown during this trial. Why would you need to coach a child on the stand? Aren’t we asking the child to tell the truth? We all have the same goal. Why would anybody need to tell that child what to say, mouthing words to him?

[DEFENSE COUNSEL]: A continuing objection, Your Honor.

Preliminarily, we disagree with Miller that the court overruled the objection. Although the court did not expressly sustain defense counsel’s first objection, it did so implicitly by giving a limiting instruction. We agree with the State that if the court had

overruled the objection, it would have been unnecessary to instruct the jury following the remarks.

After the court gave a curative instruction, defense counsel did not request any other instruction, for example, an instruction that the jury could not consider Miller’s courtroom demeanor, an argument she makes for the first time on appeal. Nor did defense counsel move to strike the prosecutor’s comments or request a mistrial. Accordingly, Miller’s contention that the prosecutor’s closing argument was improper is waived. As we have previously observed, “[w]here an objection to opening or closing argument is *sustained* . . . there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made.” *Hairston v. State*, 68 Md. App. 230, 236, *cert. denied*, 307 Md. 597 (1986) (citations omitted) (emphasis in original).

Furthermore, the court did not rule on defense counsel’s subsequent proposal for a continuing objection, and defense counsel did not request a ruling. “An attorney’s ‘offer’ of a continuing objection is without any effect unless the proposed continuing objection is expressly granted by the trial judge, and even then the objection is effective to preserve an issue for appeal ‘only as to questions clearly within its scope.’” *Kang v. State*, 163 Md. App. 22, 44 (2005), *aff’d*, 393 Md. 97 (2006) (citation omitted). Because the record does not establish that a continuing objection was granted, there was no further objection preserved for our review.

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