Circuit Court for Prince George's County
Case No.: C-16-CR-22-000541

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 2472

September Term, 2023

DAMIEN LEONARDO WHITE

v.

STATE OF MARYLAND

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2025

*This is a per curiam opinion. Under Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

A jury in the Circuit Court for Prince George's County convicted Damien Leonardo White, appellant, of second-degree assault and a related firearm offense. On appeal, White contends that the trial court erred in allowing the State to make improper prejudicial statements to the jury during its closing argument. White identifies three statements that, in his view, argued facts not in evidence or mischaracterized the testimony of the witnesses. He argues that these misstatements warrant reversal. We disagree.

Trial courts have broad discretion in regulating closing argument, and their rulings in this context will not be reversed "unless th[e] court clearly abused the exercise of its discretion[.]" *Degren v. State*, 352 Md. 400, 431 (1999). "The first step in our analysis is to determine whether the prosecutor's statements, standing alone, were improper." *Sivells v. State*, 196 Md. App. 254, 277 (2010). White's primary defense at trial was voluntary intoxication. The first remark by the State that White identifies concerned the effects of the various controlled substances White was taking at the time of the incident:

> [STATE]: He testified that he was taking Xan, and he was taking Perc, but he also testified that he was chill, it made him chilled out, but somehow this day he was very violent and aggressive, but didn't remember, right? So voluntary intoxication—[1]

During trial, White testified that on the day of the incident, he had taken Xanax and Percocet together. According to White, when he takes Xanax, he is forgetful, angry, and aggressive. When he takes Percocet, he is "chilling . . . cool." When he takes both drugs together, however, he is just "high," a state he specifically distinguished from his demeanor

[1] White objected at this point but was overruled.

when taking only Xanax. During closing argument, White argued that because of the Xanax, he had no memory of the assault. The State's remark was an attempt to point out this argument contradicted White's earlier testimony that his state of mind when taking Xanax and Percocet together—as he testified he had done on the day of the incident—was different than his state of mind when taking only Xanax. The remark was an accurate characterization of the evidence, and the court did not abuse its discretion in allowing it.

The second remark by the State that White identifies concerned White's history with the victim:

> [STATE]: We heard there was a fight over the keys. Didn't we hear from [the victim's mother] that prior to, in their previous times dating, that she had caught them in a fight, they were tussling with each other and he had her keys, right? This is not—this is not just a one off. [The victim] said they had their ups and downs, obviously they'd been physical before.

At this point, White objected, and the court sustained the objection. White also requested a curative instruction and a mistrial, which the court denied. The jury had been instructed previously that it could not consider statements to which the court had sustained objections. We presume jurors follow instructions. *See State v. Wallace*, 247 Md. App. 349, 375 (2020). And in any event, the State's remark here was accurate; the victim's mother had testified that she had previously seen White and the victim fighting. Thus, White was not entitled to a further curative instruction or a mistrial.

The final remark by the State that White identifies concerned the victim's testimony on whether White was under the influence on the day of the incident:

> [STATE]: You even heard [the victim] say, she said, he wasn't—he didn't appear to be high on anything. I think her

> exact words were—just briefly, let me find that for you all. I think it was—just briefly, a lot of pages flipping, I know, a lot of paper. She said, no, he wasn't under the influence of anything. He wasn't under the influence of anything, she testified to that. I think it's interesting—[2]

On appeal, the State concedes that this was a mischaracterization of the victim's testimony. She did not testify that White "wasn't under the influence of anything," rather she testified that she did not have any opinion as to whether White was under the influence of anything. We agree with the State, however, that the court's error in allowing this misstatement was harmless.

White's main defense at trial was that he was voluntarily intoxicated such that he could not form the specific intent required to convict him of other offenses with which he was charged—namely, second-degree attempted murder, first-degree assault, second-degree assault (intent to frighten), and robbery. During closing argument, however, White conceded—twice—that he was guilty of second-degree assault (battery). And in the end, the jury convicted White of only the general intent offenses of second-degree assault (battery) and use of a firearm in commission of a crime of violence; offenses for which voluntary intoxication is not a defense. *See Newman v. State*, 236 Md. App. 533, 567 (2018). Consequently, White was not prejudiced by the court's error in allowing the State's improper closing remark. *See Spain v. State*, 386 Md. 145, 158 (2005).

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.

[2] White objected at this point but was overruled.