UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 0153

September Term, 2016

RYAN WATTS

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: January 6, 2017

Convicted of second degree assault following a bench trial, in the Circuit Court for Washington County, Ryan Watts, appellant, filed this appeal raising a single issue: whether the trial court convicted him using an incorrect legal standard? For the reasons that follow, we affirm.

During his closing argument, Watts, who testified at trial, asserted that the trial court should disregard an out-of-court statement that he had allegedly made because it had not been corroborated by other evidence. During the State's rebuttal argument the following exchange then occurred:

> PROSECUTOR: You know, [appellant] is emphasizing that a defendant's statement has to be corroborated and nothing was corroborated except for one punch. So, that's what you've got to rely on. Nothing else was corroborated. Don't rely on it unless it was corroborated. Well, in that light, Your Honor, everything the defendant testified to today has not been corroborated. They put on a case. There were plenty of inmates there[.]
>
> DEFENSE COUNSEL: Your Honor, I would object at this point because that's . . . I believe the State is shifting the burden by its argument. The State . . . the State has the burden of proof beyond a reasonable doubt.
>
> PROSECUTOR: Well, no it goes to . . .
>
> THE COURT: Overruled.
>
> PROSECUTOR: It goes to credibility of your client and it goes to what evidence . . . the weight to give the evidence. And I'm . . .
>
> THE COURT: Overruled.

Based on this exchange, Watts now contends: (1) the prosecutor incorrectly claimed that his in-court testimony had to be disregarded, as a matter of law, unless it was

corroborated and (2) by overruling his objection, the trial judge was "implying that he agreed with the prosecutor's erroneous characterization of the law."

We presume that "the trial judge knows the law and applies it properly." *Thorton v. State*, 397 Md. 704, 736 (2007). This presumption in favor of a trial judge is rebuttable only with "proof of clear error by the judge, such as misstating or misapplying the law." *Mobuary v. State*, 435 Md. 417, 440 (2013).

Here, nothing in the record demonstrates that the trial court believed Watts' trial testimony had to be corroborated or that it applied such a rule in deciding Watts' case. As an initial matter, we do not believe that the prosecutor was arguing that the *corpus delicti* rule applied to Watts' in-court exculpatory testimony. Instead, the prosecutor was arguing that the lack of evidence corroborating Watts' testimony could be considered in evaluating his credibility.

Moreover, in ruling on appellant's objection, the trial court was only asked to determine whether the prosecutor's argument regarding corroboration improperly shifted the burden of proof to Watts. Because Watts testified, the prosecutor could challenge his credibility without improperly shifting the burden of proof. *See Mines v. State*, 208 Md. App. 280 (2012) (holding that the prosecutor's statements, during cross-examination and closing argument, challenging the defendant's credibility based on his failure to call witnesses to corroborate his alibi defense did not violate the defendant's Fifth Amendment rights and did not improperly shift the burden of proof to the defendant). The trial court's decision to overrule appellant's objection on those grounds was, therefore, not error and did not reflect an acceptance of an incorrect legal standard. Consequently, appellant has

not rebutted the presumption that the trial court correctly applied the law in finding him guilty.

JUDGMENT OF THE CIRCUIT COURT FOR WASHINGTON COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.