Circuit Court for Prince George's County
Case No.: CT191112X

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 747

September Term, 2023

KEITH TAVON LANHAM

v.

STATE OF MARYLAND

Nazarian,
Reed,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned)
JJ.

PER CURIAM

Filed: November 7, 2024

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

In the early morning hours of September 16, 2019, a fight broke out between Keith Tavon Lanham, appellant, and several other patrons of B&G Tavern in Prince George's County. After Sergeant Christopher Gehlhausen, a Prince George's County Police officer working as a security guard, saw Mr. Lanham pinning a man against a wall, Sergeant Gehlhausen attempted to grab Mr. Lanham. Mr. Lanham, mistakenly believing that the sergeant was with the other men involved in the altercation, proceeded to hit and kick Sergeant Gehlhausen, including while the sergeant was laying on the floor.

Mr. Lanham was charged with attempted second-degree murder, first degree assault, second degree assault, assault of a law enforcement officer, and reckless endangerment. The matter proceeded to a two-day trial, where the State dismissed the attempted murder charge, and the jury found Mr. Lanham not guilty of all remaining charges, except the reckless endangerment charge. Mr. Lanham noted the instant appeal.

On appeal, the only challenge Mr. Lanham raises relates to the following statement made by the prosecutor during closing argument:

> [THE STATE:] So, I'm not going to take a long time, but there are some things that I want -- the prior facts, which is you [sic] guys to think about. The defense is never going to stand up here and congratulate me on what a great case I've shown. Their job is to misdirect you. Their job is to misdirect you and be like, well you know what –
>
> [DEFENSE COUNSEL:] Objection.
>
> THE COURT: It's overruled. You can move on, please[.]

In particular, he asserts that because the remark was directed not at defense counsel's argument but specifically at defense counsel, that it was improper, citing to *Smith v. State*, 225 Md. App. 516, 528 (2015), *cert denied*, 447 Md. 300 (2016). In response, the State

concedes that the comment was improper, but maintains that the isolated remark did not outweigh the evidence supporting Mr. Lanham's reckless endangerment conviction. We too, are unpersuaded that the error affected the verdict, and accordingly, shall affirm.

As the Maryland Supreme Court has made clear, "[n]ot every improper comment by the prosecutor requires reversal, as error in closing argument is subject to harmless error review." *Fuentes v. State*, 454 Md. 296, 321 (2017). Instead, "the State bears the burden of proving that an error is harmless and must prove beyond a reasonable doubt that the contested error did not contribute to the verdict." *Id*. (quoting *Lee v. State*, 405 Md. 148, 174 (2008)). Finally, "to determine 'whether overruling defense objections to improper statements during closing argument constitutes reversible, or harmless, error,' we focus our attention on three factors: first, 'the weight of the evidence against the accused[;]' second, 'the severity of the remarks, cumulatively[;]' and third, 'the measures taken to cure any potential prejudice.'" *Id*. (quoting *Simpson v. State*, 442 Md 446, 457 (2015)).

In determining the severity of the remarks, "we consider whether there was one isolated comment, as opposed to multiple improper comments, and whether the comments related to an issue that was central to a determination of the case or a peripheral issue." *Sivells v. State*, 196 Md. App. 254, 290 (2010). Furthermore, "reversal is required only when it appears that the prosecutor's remarks actually misled the jury or were likely to have misled or influenced the jury to the defendant's prejudice[.]" *Hill v. State*, 355 Md. 206, 224 (1999).

Here, we agree that the prosecutor's comment was improper under our opinion in *Smith*, and thus, that the trial court erred in overruling defense counsel's objection.

Nonetheless, we find that the error was harmless. Assessing the factors re-stated in *Fuentes*, we note that the court denied defense counsel's objection, and thus, there were not measures taken to cure any potential prejudice. However, the remaining two factors weigh significantly against a finding of reversible error.

Indeed, the evidence supporting Mr. Lanham's conviction of reckless endangerment was substantial. A conviction for reckless endangerment, in pertinent part, involves recklessly engaging "in conduct that creates a substantial risk of death or serious physical injury to another[.]" Md. Code Ann., Crim. Law § 3-204(a)(1). At trial, the State admitted surveillance footage from B&G Tavern, which, as described by the court, shows Mr. Lanham:

> [K]icking the victim in the head multiple times and stomping on him while he's on the ground and defenseless.
>
> And so, there is nothing happening by the victim. The victim has not reached for anything while he's on the ground. He is laying on the ground, not moving when the Defendant goes and kicks him in the head multiple times and stomps on him.

Further, during Mr. Lanham's cross-examination, he admitted that he "punched" Sergeant Gelhausen, that he "kicked [Sergeant Gelhausen] when he was laying on the floor[,]" and that he then "stood over him and kicked him in the head again." Based upon these facts, the evidence supported the jury's finding that Mr. Lanham engaged in conduct that created a substantial risk of, at minimum, serious physical injury to Sergeant Gelhausen.

Nor can we say that the isolated statement was of a "severity" indicating reversible error. Indeed, rather than "multiple improper comments", here, "there [i]s one isolated

comment" challenged on appeal. *Sivells*, 196 Md. App. at 290. Further, the remark generally characterized the role of defense counsel at trial, a characterization hardly "central to a determination of the case[.]" *Id*. Accordingly, although the comment was improper, we are unpersuaded that it "actually misled the jury or w[as] likely to have misled or influenced the jury to the defendant's prejudice[.]" *Hill*, 355 Md. at 224. Based upon the facts and record before us, the trial court's failure to correct the improper remark was harmless.

JUDGMENT OF THE CIRCUIT COURT FOR PRINCE GEORGE'S COUNTY AFFIRMED. COSTS TO BE PAID ONE-HALF BY APPELLANT AND ONE-HALF BY THE STATE.