

Circuit Court for Baltimore City
Case No.: 122265006

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1174

September Term, 2023

VIDAL RODRIGUEZ

v.

STATE OF MARYLAND

Beachley,
Albright,
Woodward, Patrick L.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: October 8, 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.

A jury in the Circuit Court for Baltimore City convicted Vidal Rodriguez, appellant, of second-degree assault against his daughter. Rodriguez’s wife, Elizabeth Roberts, witnessed the altercation and testified at trial. On cross-examination, Rodriguez’s attorney questioned Roberts about her relationship with Rodriguez:

[DEFENSE]: Since this incident, you have filed for divorce from Mr. Rodriguez, is that correct?

[ROBERTS]: Yes.

[DEFENSE]: Okay. How old is the child you have together?

[ROBERTS]: 13

[DEFENSE]: 13. Is that 13 now or 13 at the time of the incident?

[ROBERTS]: She’s 13 right now.

[DEFENSE]: Thank you, Your Honor. I have no further questions.

Later, during closing arguments, Rodriguez’s attorney brought up Roberts and Rodriguez’s relationship again:

Now, Ms. Roberts, Elizabeth Roberts, you heard testimony that they had been -- that she and my client had been together for some time, and they have a child together. They were married. However, at the time of October 2021, they had been separated for some time. Mr. Rodriguez was sleeping on the couch. She was sleeping downstairs. They weren’t getting along, and she testified, and we heard testimony that she filed for divorce, and combined with that divorce must be the custody of their minor child.

At that point, the State objected to “the arguments about the divorce proceedings and whether that has any relevancy to the custody proceedings[,]” contending “[t]hat’s not relevant to whether [Rodriguez] committed assault in this case.” Although Rodriguez contended that the argument was relevant to bias, the trial court nevertheless sustained the

objection and instructed the jury to “disregard counsel’s last remark regarding any divorce proceedings.”¹ The sole issue Rodriguez raises on appeal is whether the trial court erred in restricting defense counsel’s closing argument.

Generally, “attorneys have great leeway during closing arguments.” *Ware v. State*, 360 Md. 650, 681 (2000). They may “comment on the evidence” and “state all reasonable inferences” reasonably drawn therefrom. *Id.* at 682. Though wide, however, this latitude is not limitless. It does not extend, for example, to discussing facts not in evidence. *Lee v. State*, 193 Md. App. 45, 77 (2010). We review a trial court’s circumscription of closing argument for an abuse of discretion. *Id.*

Here, counsel’s comment on Roberts and Rodriguez’s divorce proceedings may have been proper, but the comment regarding a custody dispute was not. Although Roberts testified on cross-examination that she had filed for divorce, neither she, nor any other witness testified about a custody dispute. And despite Rodriguez’s argument that “the defense was well within its rights to question whether [the divorce and custody] proceedings would cause [] Roberts to harbor a bias against” him, attorneys “must remain within the bounds of the evidence presented at trial and refrain from appealing to the jury’s passions and prejudices,” *James v. State*, 191 Md. App. 233, 258–59 (2010) (cleaned up). By commenting on divorce *and* custody proceedings—when there was evidence of only

¹ The trial court based its ruling, in part, on a belief that it had “already stricken a question about the divorce during the course of” trial. On appeal, the parties agree the court was mistaken; it had struck the question immediately preceding Rodriguez’s question about the divorce proceedings. Even so, “[a]n appellate court will generally affirm when the trial court reaches the right result for the wrong reason.” *Gerald v. State*, 137 Md. App. 295, 305 (2001).

divorce proceedings—counsel’s argument “went one step farther” than the evidence. *Lee*, Md. App. at 77. It was, therefore, improper, and the trial court did not abuse its discretion in directing the jury not to consider the argument.

**JUDGMENT OF THE CIRCUIT
COURT FOR BALTIMORE CITY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**