

Circuit Court for Baltimore City
Case No. 122290006

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1229

September Term, 2023

JOHN TITOW

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: October 4, 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.

Convicted by a jury in the Circuit Court for Baltimore City of illegal possession of a regulated firearm, illegal possession of ammunition, and wearing, carrying, or transporting a loaded handgun, John Titow, appellant, presents for our review a single issue: whether the court “abused its discretion in permitting the prosecutor to state and comment upon facts not in evidence during rebuttal closing argument.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called Baltimore City Police Lieutenant Christopher Warren, who testified that on January 15, 2022, he “responded to the 2600 block of St. Benedict Street” for a shooting. Arriving at the location, Lt. Warren observed Baltimore City Police Officer James Sisco “rendering aid to” Mr. Titow. The State played for the jury a video recording made by Officer Sisco’s “body camera.” The recording showed that when Officer Sisco first made contact with Mr. Titow, he was lying on the sidewalk and bleeding from his left leg, and his right hand was either holding or placed on top of a handgun. Officer Sisco ordered Mr. Titow to “[l]et go of the gun,” and he complied. When the officer asked Mr. Titow “[w]hat happened to” him, he replied that he had been shot by his neighbor. The State also played for the jury a video recording made by Lt. Warren’s body camera. The recording showed Officer Sisco picking the handgun up and handing it to the lieutenant, who subsequently placed the handgun in Officer Sisco’s vehicle. Lt. Warren confirmed that “when the gun was recovered, . . . it was loaded.”

The State also called Baltimore City Police Detective Najiyah Mustafa, who testified that following the shooting, he believed that a man named Donte Owens “might have shot” Mr. Titow, and charged Mr. Owens. Detective Mustafa testified that “Mr.

Owens and Mr. Titow . . . have this ongoing neighbor beef.” The detective “tr[ie]d to find” the “firearm that shot Mr. Titow,” but was unsuccessful. Detective Mustafa “received a search warrant” to search Mr. Owens’s minivan and house, but “did not recover any firearms.” The parties stipulated that Mr. Titow “was prohibited by law from possessing a regulated firearm and ammunition due to prior disqualifying convictions,” and that the “handgun recovered . . . meets the definition of a regulated firearm” and was operable.

Following the close of the State’s case, Mr. Titow testified that Mr. Owens is one of his neighbors, has “animosity” toward Mr. Titow, and “drives a burgundy minivan.” On the date of the shooting, Mr. Titow “was heading to a friend[’s] house,” when Mr. Owens “pull[ed] up and fire[d] a handgun at” Mr. Titow, striking him in his leg. Mr. Titow “heard several shots, three shots to be exact.” Mr. Titow “tried to make [his] way home,” but Mr. Owens “got out of [his] minivan and started coming at” Mr. Titow. Mr. Titow “fell down” and “started . . . going in and out of conscious[ness],” and Mr. Owens “came over to” him and started “talking to somebody else.” Mr. Titow then “heard the church yelling [that] the police are on their way.” The “[n]ext thing” Mr. Titow “remember[ed] was the police officer over top of” him, after which he was “rushed to Shock Trauma.” Mr. Titow testified that he did not “[a]t any point on the evening of” the shooting “have a gun,” that he had never seen the handgun prior to the date of the shooting, and that the handgun “looked like . . . the style of gun that Mr. Owens had.”

During cross-examination, Mr. Titow testified that “when the shots came,” he was “right behind St. Benedict’s Church in the 2600 block.” The State subsequently played for the jury a video recording that Mr. Titow testified could have been made by “one of the

church[’s] cameras.” Mr. Titow agreed that the recording was “a fair and accurate depiction of [him] walking down the street after [he was] shot.” The recording showed Mr. Titow holding an object in his right hand. When the prosecutor asked Mr. Titow whether the recording showed “a gun shaped object in [his] hand,” Mr. Titow replied: “It doesn’t – I had a wrench in my hand, I didn’t have a gun in my hand.”

Mr. Titow contends that the court “abused its discretion in permitting the prosecutor to state and comment upon facts not in evidence during rebuttal closing argument.” Following the close of the evidence, defense counsel argued, in pertinent part:

The real evidence presented to you by the State does not show beyond a reasonable doubt that that gun was possessed by Mr. Titow, that he had it. They’re asking you to ignore all the strange and suspicious things surrounding this case, all the grey area.

* * *

They didn’t find a gun at even the house or in the minivan. If only there was some unaccounted gun that we had in our midst. Perhaps they couldn’t find a gun because it was still on the scene. A gun which only had five rounds left in the magazine, meaning it had been discharged.

During rebuttal argument, the following colloquy occurred:

[PROSECUTOR:] The only thing in his hand is a loaded firearm. And defense says, oh, well, there are five rounds in the magazine, but Mr. Titow said that three rounds were fired, and that gun only carries seven bullets.

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Overruled.

[PROSECUTOR]: So it couldn’t have been that gun, if there were three shots fired.

Mr. Titow contends that because “[t]here was no evidence admitted during the trial regarding the maximum number of bullets the gun could hold,” the prosecutor was “allow[ed] to argue a fact not in evidence,” and Mr. Titow “was prejudiced by the State’s use of the fact . . . to discredit him.” We disagree. Assuming, without deciding, that the prosecutor’s remark was improper, the Supreme Court of Maryland has stated that “the mere occurrence of improper remarks does not by itself constitute reversible error.” *Wilhelm v. State*, 272 Md. 404, 431 (1974). A “prosecutor’s improper comments . . . require reversal” only “if it appears that the . . . remarks actually misled the jury or were likely to have misled or influenced the jury to the defendant’s prejudice,” and “[t]o determine whether improper comments influenced the verdict,” a reviewing court “consider[s] the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused.” *Donaldson v. State*, 416 Md. 467, 496-97 (2010) (internal citations and quotations omitted). Here, the challenged remark was a single, isolated comment within a rebuttal argument comprising approximately four pages of transcript. Also, the court twice instructed the jury that “closing arguments of the lawyers are not evidence.” Finally, the State produced evidence, specifically the recordings made by Officer Sisco’s body camera and “one of the church[’s] cameras,” from which the jury could conclude that Mr. Titow had worn, carried, or transported the handgun. We conclude that under these circumstances, the remark did not actually mislead, and was not

likely to have misled or influenced, the jury to Mr. Titow's prejudice, and hence, any error by the court in allowing the remark was harmless.

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