Circuit Court for Prince George's County
Case No. CAL20-15660

UNREPORTED*

IN THE APPELLATE COURT

OF MARYLAND

No. 1293

September Term, 2022

CLAUDIA CERON

v.

RICHARD KAMARA

Beachley,
Shaw,
Meredith, Timothy E.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Beachley, J.

Filed: February 8, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

On December 23, 2018, Claudia Ceron ("appellant") was involved in a motor vehicle accident with Richard Kamara ("appellee") at an intersection in Montgomery County. Appellee stipulated to liability, leaving damages as the only remaining issue for trial. After a three-day trial in the Circuit Court for Prince George's County, the jury awarded appellant $243,000 in damages. Appellant noted this timely appeal, and presents the following question for our review: "Did the trial court err in permitting [appellee's] counsel to introduce new evidence during closing argument?"

Although we shall assume that the court erred in overruling appellant's objection, we hold that appellant failed to demonstrate that the alleged error prejudicially influenced the jury. Accordingly, we affirm.

FACTS AND PROCEEDINGS

At trial, appellant argued that she suffered a litany of short-term and long-term injuries as a result of the accident. In particular, appellant asserted that she suffered significant spinal complications relating to a herniated disk that required extensive treatment and surgery. Appellant relied on two medical experts to support her claim: Dr. Richard Meyer, an orthopedic surgeon, and Dr. Sayed Kalantar, an orthopedic spinal surgeon. To compensate for her injuries, appellant requested $717,484.58 in economic damages, and between $480,000 and $2,200,000 in non-economic damages.

Appellee does not contest that appellant was injured as a result of the December 23, 2018 motor vehicle accident. Instead, appellee disputes the extent of appellant's injuries and posits that the disk complications suffered by appellant are the result of a pre-existing,

degenerative condition. To support his assertion, appellee called two medical experts: Dr. Majid Khan, a radiologist who reviewed appellant's MRIs; and Dr. Bradley Moatz, an orthopedic spinal surgeon who personally examined appellant. Appellee requested the jury to award $75,887.55 to appellant.

During the trial, the jury heard extensive testimony from all four medical experts. Dr. Meyer testified that appellant sought his care shortly after the accident and that he "directed most of [her] treatment." As part of his initial evaluation, Dr. Meyer reviewed x-rays taken from the day of the accident and found "no evidence that there was progressive degenerative changes leading to" appellant's injuries. Dr. Kalantar, who performed spinal surgery on appellant, testified that, based on his reviews of appellant's MRIs, there was no evidence of significant preexisting degenerative change. Both Dr. Meyer and Dr. Kalantar causally related appellant's herniated disk to the accident.

In response, appellee called Dr. Khan for the purpose of reviewing appellant's MRIs. Dr. Khan testified that appellant had a condition known as "congenital stenosis" before the accident, which is an abnormally narrow spinal canal that makes her more susceptible to injuries such as herniated disks. Dr. Khan made clear that appellee did not ask him to "render an opinion in this case as to [the cause of appellant's] herniated disk," but candidly agreed during cross-examination that appellant's preexisting condition could make her "more susceptible to an injury such as a herniated disk caused by a car accident." Dr. Moatz, in contrast, attributed appellant's herniated disk to a preexisting, degenerative condition, and concluded that the accident only caused "an injury consistent with that of a

cervical or lumbar strain, soft tissue injury[.]" Dr. Moatz testified that appellant's surgery and corollary spinal complications were unrelated to the accident.

During closing arguments, appellant's counsel argued that Dr. Khan and Dr. Moatz's testimony was inconsistent because Dr. Khan acknowledged that the accident could have exacerbated appellant's spinal issues while Dr. Moatz opined that her herniated disk and related injuries resulted from her preexisting condition and were unrelated to the accident. Appellant's counsel noted that her experts agreed as to the cause and extent of her injuries and encouraged the jury to speculate as to why appellee did not ask Dr. Khan for an opinion as to the cause of the herniated disk. Furthermore, appellant's counsel attacked Dr. Moatz as a financially motivated, biased evaluator, telling the jury that "money talks" and referring to him as a "hired gun." Appellant's counsel further speculated about the relationship between Dr. Moatz and defense counsel generally, telling the jury that the doctor was initially told "not [to] prepare a written report until you talk to us[,]" because, if the report were unfavorable, "[n]o report gets written."

In response, appellee's counsel claimed that Dr. Khan and Dr. Moatz's testimony was consistent. Appellee's counsel then made the following remarks which are central to this appeal:

[APPELLEE'S COUNSEL]:	First, we heard from [Dr.] Khan, and I did ask Dr. Khan to fully review the MRI record. And I can tell you why I did that. I did that because I've not used . . . Dr. Moatz . . . once before.
[APPELLANT'S COUNSEL]:	Objection. She's telling the jury something that's not in evidence.

THE COURT:	Approach the bench. Are you going to withdraw it?
[APPELLEE'S COUNSEL]:	He brought up in his closing of why Dr. Khan wasn't asked for an opinion on the accident. I'm addressing that.

As reflected in the transcript, appellant's counsel objected, arguing that appellee's reasons for retaining Dr. Moatz were not in evidence. The objection was overruled, and no other curative measures were taken by the trial court.

After the objection, appellee's counsel further stated that she asked for Dr. Khan's opinion because she initially did not "think Dr. Moatz was accurate." During rebuttal argument, appellant's counsel highlighted that appellee's "[c]ounsel has said that she didn't trust Dr. Moatz['s] opinion and for good reason. You shouldn't trust Dr. Moatz['s] opinion either. . . . Why do you think that is? Because he's a hired gun."

The jury ultimately awarded appellant $243,000 in damages. Appellant noted this timely appeal.

STANDARD OF REVIEW

"Because 'a trial court is in the best position to evaluate the propriety of a closing argument as it relates to the evidence adduced in a case,' the exercise of its broad discretion to regulate closing argument will not be overturned 'unless there is a clear abuse of discretion that likely injured a party.'" *Carroll v. State*, 240 Md. App. 629, 663 (2019) (quoting *Ingram v. State*, 427 Md. 717, 726 (2012)).

DISCUSSION

Appellant argues that the court erred in "allowing [appellee's] counsel to make improper remarks during closing arguments." Appellant asserts that appellee's counsel improperly commented on facts not in evidence when she told the jury why she sought Dr. Khan's opinion. Appellant relies on *Spain v. State*, which held that reviewing courts may consider "the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence." 386 Md. 145, 159 (2005). Appellant posits that counsel's remarks were "severe" because they went to "the very heart of the case." Appellant notes that the court took no curative measures after the statement and argues that she was prejudiced by the court's refusal to act. Appellant claims that the comment "served to bolster the testimony of a beleaguered Dr. Moatz," and hypothesized that the discrepancy between the damages she requested and the damages she received was evidence of the comment's prejudicial impact.

Appellee counters that the trial court did not abuse its discretion because the comment "did not constitute new evidence, but instead amounted to a rebuttal argument[.]" In appellee's view, the remark was permissible because it was a "fair response" to closing arguments made by opposing counsel. *State v. Newton*, 230 Md. App. 241, 257 (2016). Appellee also relies on *Spain*, but contends that, even if the remark was improper, the comment was not prejudicial because it was "isolated" and "did not contain any relevant, new information that went to the substance of the case[.]" Appellee concludes that the

remarks here "were of such minor significance" that the jury could not have been influenced to appellant's prejudice.

The purpose of closing arguments is to:

> sharpen and clarify the issues for resolution by the trier of fact . . . . For it is only after all the evidence is in that counsel for the parties are in a position to present their respective versions of the case as a whole. Only then can they argue the inferences to be drawn from all the testimony, and point out the weaknesses of their adversaries' positions.

Lee v. State, 405 Md. 148, 161–62 (2008) (quoting *Herring v. New York*, 422 U.S. 853, 862 (1975)). To effectuate this goal, we recognize that "attorneys are afforded great leeway in presenting closing arguments to the jury." *Newton*, 230 Md. App. at 254 (quoting *Pickett v. State*, 222 Md. App. 322, 329 (2015)). Despite this leeway, "there are limitations upon the scope of a proper closing argument." *Id.* "[C]ounsel should not be permitted by the court, over proper objection, to state and comment upon facts not in evidence or to state what he [or she] could have proven." *Id.* (quoting *Pickett*, 222 Md. App. at 330). Closing arguments should be "confined to the issues in the cases on trial, the evidence and fair and reasonable deductions therefrom, and to arguments to opposing counsel." *Id.* (quoting *Lee*, 405 Md. at 163).

We first address appellee's argument that the objectionable remarks were made as an appropriate rebuttal to appellant's speculation about why Dr. Khan was not asked to render an opinion on causation. Appellee refers us to *State v. Newton*, where we denied a post-conviction ineffective assistance of counsel claim when defense counsel failed to object to a prosecutor's explanation that witnesses did not come forward in the case due to

a "fear for retaliation." *Id*. at 257. There, we found that the "failure to object was [not] 'outside of the wide range of professionally competent assistance'" because it was a "fair response to defense counsel's criticism" during closing arguments "regarding the State's lack of witnesses[.]" *Id*. (quoting *Strickland v. Washington*, 466 U.S. 668, 690 (1984)).

Although this case presents a close call, we will assume that counsel's stated reasons for retaining Dr. Khan did not qualify as a "fair response" to appellant's counsel's closing argument. Nevertheless, even if we assume that appellee's counsel's comments were improper, we conclude that appellant has failed to demonstrate prejudice sufficient to constitute reversible error.

"When statements made during closing argument stray beyond the outer realm of the latitude afforded [to counsel], we must inquire into the extent of any prejudice suffered by" the opposing party. *Spain*, 386 Md. at 158 (2005). "[R]eversal is only required where it appears that the remarks of [counsel] actually misled the jury or were likely to have misled or influenced the jury to the prejudice" of the opposing party. *Id.* (quoting *Degren v. State*, 352 Md. 400, 431 (1999)). To evaluate prejudice, we evaluate factors such as the "severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence." *Id.* at 159.

In assessing the severity of the remark, we ask "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." *Jones v. State*, 217 Md. App. 676, 695–96 (2014) (quoting *Sivells v. State*, 196 Md. App.

254, 290 (2014). Appellant concedes that the objectionable comment was isolated, but argues that it was severe because it was related to the central issue at trial, the cause of appellant's injuries. Appellee, in contrast, argues that this matter is similar to *Spain*, where a post-conviction appeal relating to a prosecutor's inappropriate remark was denied, in part, because the comment was "isolated," 386 Md. at 159, and unlike *Donaldson v. State*, where a conviction was overturned because several inappropriate comments "played an important role" in closing, 416 Md. 467, 498 (2010).

We agree with appellee that the comment was isolated when the closing arguments are viewed in their entirety. Counsel's explanation why she sought Dr. Khan's opinion was brief and did not pervade the defense's closing argument. Furthermore, although the comment spoke tangentially to a central issue in the case, we do not share appellant's assessment in its severity. Appellee's counsel told the jury that she asked "Dr. Khan to fully review the MRI record . . . because I've not used . . . Dr. Moatz before." Appellee's counsel further stated that she sought Dr. Khan's opinion because she did not "think Dr. Moatz was accurate." We have difficulty seeing prejudice in light of Dr. Khan's concession that he was not asked to opine about causation of appellant's injuries, which was the central issue at trial. Moreover, on cross-examination, appellant's counsel skillfully elicited Dr. Khan's agreement that appellant's condition could make her "more susceptible to an injury such as a herniated disk caused by a car accident." Not only did this testimony implicitly contradict Dr. Moatz's opinion, but it supported appellant's

rebuttal argument that the jury "shouldn't trust Dr. Moatz['s] opinion either."[1] In short, the objectionable comments were isolated and arguably supported appellant's case.

As to the next factor—the measures taken to cure any potential prejudice—the parties agree that no curative measures were taken by the court. We note, however, that the court reminded the jury twice through jury instructions that closing arguments of the attorneys do not constitute evidence.[2] Although we recognize that general jury instructions have limited efficacy to cure subsequent improper arguments, the instructions given by the court unequivocally state that closing arguments are not evidence. In addition, we see no indication in the record that the court endorsed appellee's allegedly improper comment.

Finally, we consider the weight of the evidence to evaluate the potential prejudice to appellant. The record reveals that the jury heard extensive testimony from four medical

[1] Appellee's counsel also stated, "I got a second opinion [from Dr. Khan] and luckily for me [it] matched." We note that appellant did not interpose an objection to this remark. In any event, the jury heard the extensive medical testimony, and it was within its province to determine whether Dr. Khan's opinion "matched" that of Dr. Moatz.

[2] The court instructed the jury as follows:

> Opening statements and arguments of the lawyers, are not evidence in this case. So if your memory of any of the testimony is different from any statement that I might make during the course of these instructions or that Counsel might make in argument, you must rely on your own memory.
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> . . . .
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> Opening statements and closing arguments of the lawyers are not evidence. They're intended only to help you to understand the evidence and to apply the law. Therefore, if your memory [of] the evidence differs from anything the lawyers or I may say, you must rely on your own memory of the evidence.

experts over the course of two days. We are unconvinced that the allegedly improper comment undermined the jury's ability to assess the medical experts' credibility. Appellant's counsel used both his closing and rebuttal arguments to highlight alleged discrepancies between the testimony of Dr. Khan and Dr. Moatz and attacked Dr. Moatz's credibility due to his potential financial incentive to provide testimony favorable to appellee. We fail to see how appellee's counsel's reason for consulting Dr. Khan affected the jury's ability to evaluate the totality of the evidence, particularly where Dr. Khan's testimony was confined to his opinions as to the MRIs on direct examination and actually benefitted appellant on cross examination. We are likewise unpersuaded by appellant's argument that the amount awarded in damages is indicative that the jury was improperly influenced.

In summary, we conclude that appellant has failed to demonstrate that the allegedly improper remarks during closing argument were sufficiently prejudicial so as to constitute reversible error. *See Crane v. Dunn*, 382 Md. 83, 91 (2004) ("It is the policy of this Court not to reverse for harmless error and the burden is on the appellant in all cases to show prejudice as well as error." (quoting *Rippon v. Mercantile Safe Deposit Co.*, 213 Md. 215, 222 (1957))).

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