Circuit Court for Frederick County
Case No. C-10-CR-22-000433

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1668

September Term, 2023

JOSE R. R.

v.

STATE OF MARYLAND

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

JJ.

PER CURIAM

Filed: October 31, 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 Frederick County of two counts of sexual abuse of a minor, Jose R. R., appellant, presents for our review a single issue: whether the court erred in "permitting the State and its witnesses . . . to refer to the complainants as 'victims.'" For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called A., who at the time was seventeen years old. A. testified that she and her family previously shared a residence with appellant and his family. When A. was "living at that house," she was "playing with [her] sisters and [other] kids," when appellant "took [her] to the bathroom," "took his pants down," "took his private part out," and "started telling [A.] to open [her] mouth." Appellant then started rubbing his penis against A.'s neck. Appellant "kept on asking where [A.'s] mouth was," "got frustrated," "put his pants back on," and "walked out." A. felt "like [she] was around" seven years old when the incident occurred, "but it happened [when she was] in elementary school."

The State also called A.'s sister B., who at the time of trial was sixteen years old. B. testified that "one day," she was in the kitchen eating cereal when appellant "came up from behind" her, "grabbed [her] arm," and "took [her] downstairs." Appellant "laid [B.] on the bed," "pulled [her] pants down," and "put his pants down." Appellant then "took his private part and put it . . . on top of [B.'s] private part." B. specified that appellant placed his penis on top of B.'s vagina. Appellant then "signaliz[ed]" B. "not to say . . . he did this," and "got out of the room." B. testified that the incident "happened when [she] was either in pre-K or kindergarten."

Appellant contends that the court erred in "permitting the State and its witnesses, over defense counsel's objection, to refer to the complainants as 'victims.'" Prior to selection of the jury, the court asked the parties if they had "any motions *in limine*." (Italics added.) Defense counsel stated: "[T]here should be no use of the word [']victim['] within the proceedings because technically there is no victim until after – ." The court interrupted defense counsel and stated: "That's been brought up before and I think the courts have allowed it, but your motion's noted."

Appellant challenges the following instances during which "the witnesses for the State . . . and the State itself (in its questioning of the witnesses) expressly or implicitly referred to [A. and B.] as victims:"

- Frederick Police Detective Rebecca Skelly testified that at the time of trial, she was assigned to the "Criminal Investigations Division, Major Crimes Unit, Special Victims team."

- Detective Skelly testified that a "controlled call is when I have a victim or someone close to the victim place . . . a phone call to the suspect."

- The prosecutor asked Detective Skelly: "[D]id you see the text message that was sent from the defendant's phone to the victim's phone on those records?"

- The prosecutor asked Detective Skelly: "[D]o you know the purpose of the initial CPS contact with any child sexual abuse victim prior to the forensic interview?"

- Megan McGowan, a Child Protective Services investigator for the Frederick County Department of Social Services, testified: "When a case is received of alleged child sexual abuse, we have 24 hours to make initial face-to-face contact with the alleged victim or victims. So my first step in this case would have been to make contact with the two victims."

- Frederick Police Detective David DeWees testified: "[A cellular] device . . . was shared between the victim and the victim's mother. That device was provided to

me by Det. Skelly. And that was a consent search where we searched it via consent from the mother or the victim."

- The prosecutor asked Detective DeWees: "Regarding the victim's mother's phone, were you requested to extract any specific type of data?"

- The prosecutor asked Detective DeWees: "[W]ere you able to locate any text messages from the defendant to the victim's mother's phone number?"

- The prosecutor asked Detective DeWees: "Were you able to see any phone calls from the victim's mother's phone to the defendant's phone?"

Appellant also challenges the following remarks made by the prosecutor during closing and rebuttal argument:

- "This case happened over ten years ago. Victims didn't disclose until recently."

- "They didn't amplify the victims' accusations. They corroborated them. They provided evidence proving that what the victims have told you today or on Tuesday is true."

- "The victim's testimony and the corroboration of what they've told you occurred. They're weighted exactly the same."

- "She told you she liked to work with victims. She wants to make sure a victim is kept safe."

- "We all know that child sexual abuse victims don't always disclose."

- "You have their statements, you have their testimony, you have the defendant's statements on the controlled call, and the text message in his interview, and you have corroboration of what the victims told you."

Appellant contends that because "the State's case against [him] was circumstantial and . . . defense counsel," in argument, "disputed whether anyone – [a]ppellant or otherwise – committed crimes against" A. and B., the "court abused its discretion in denying defense counsel's request." The State counters that appellant's contention "is not preserved for

plenary appellate review because [defense] counsel did not seek a continuing objection, nor did he object contemporaneously to any particular use of the word 'victim.'" Alternatively, the State contends that the court "permissibly exercised its discretion to allow the prosecutor and State witnesses to refer to the complainants as 'victims.'"

We agree with the State that appellant's contention is not preserved for our review. The Supreme Court of Maryland has long held that "[g]enerally, where a party makes a motion *in limine* to exclude irrelevant or otherwise inadmissible evidence, and that evidence is subsequently admitted, the party who made the motion ordinarily must object at the time the evidence is actually offered to preserve its objection for appellate review." *U.S. Gypsum v. Baltimore*, 336 Md. 145, 174 (1994) (internal citation, quotations, and brackets omitted). Here, defense counsel did not lodge any objection at the time of the challenged questions, testimony, or argument. Hence, the challenges are not preserved for our review.

Even if appellant's contention was preserved for our review, we would reject the contention. Assuming, without deciding, that the court erred in allowing the use of the term "victim," A. and B. gave extensive and detailed testimony regarding the acts of sexual abuse that appellant committed upon them. We further note that in one of the prosecutor's questions, and three of the responses of the State's witnesses, the term "victim" was explicitly used to refer not to A. and B., but to victims of sexual abuse or other crimes in general. Finally, we note that the court explicitly instructed the jury that "the arguments of lawyers are not evidence," and "jurors are presumed to follow the court's instructions[.]" *Carter v. State*, 366 Md. 574, 592 (2001) (citation omitted). In light of these circumstances,

we conclude that appellant was not prejudiced by the use, by the prosecutor or a witness, of the term "victim."

JUDGMENTS OF THE CIRCUIT COURT FOR FREDERICK COUNTY AFFIRMED. COSTS TO BE PAID BY APPELLANT.