

Circuit Court for Baltimore City
Case No. 122073001

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 1738

September Term, 2023

MICHAEL ROBERTSON

v.

STATE OF MARYLAND

Leahy,
Zic,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: March 7, 2025

*This is a per curiam opinion. Under 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 one count of first degree murder and one count of first degree murder of a viable fetus, Michael Robertson, appellant, presents for our review a single issue: whether the court erred “in permitting the prosecutor’s misleading rebuttal comments.” For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State produced evidence that on the evening of May 3, 2017, Akia Eggleston, who was approximately eight months pregnant, disappeared. Prior to that date, Ms. Eggleston was in a romantic relationship with Mr. Robertson, who was believed to be the father of the fetus. Mr. Robertson was simultaneously in a romantic relationship with Hali Pomeroy. The State’s theory was that after Ms. Eggleston and Mr. Robertson argued about his relationship with Ms. Pomeroy, he killed Ms. Eggleston, placed her body in a nearby dumpster, and placed a dresser and other possessions on top of her body. In support of its theory, the State produced evidence that:

- Mr. Robertson falsely told Ms. Eggleston that he had arranged for them to view an apartment that they could share.
- Before Ms. Eggleston’s final communication, which was a text message to her aunt, Ms. Eggleston had spoken with Mr. Robertson by phone and arranged for him to be transported to her residence.
- During an interview with police, Mr. Robertson stated that he and Ms. Eggleston did not “go look at the place because she wanted to know what [he] was going to do, who [he] wanted to be with.” Ms. Eggleston then stated: “[E]ither be with me or be with her, but you can’t have both of us.” Mr. Robertson told police that he “chose Hali.”
- Although Mr. Robertson told police that he had spent the night of May 3, 2017, at Ms. Eggleston’s residence, cellular phone towers recorded his cell phone traveling through downtown Baltimore, at the home of his brother, and traveling back to Ms. Eggleston’s residence during that time.

- Before Ms. Eggleston was reported to be missing, Mr. Robertson changed his phone number. On May 7, 2017, Mr. Robertson failed to appear at a baby shower that Ms. Eggleston had organized. At the time of the shower, a cellular phone tower located Mr. Robertson’s cell phone at a hotel in Linthicum.
- On October 14, 2017, Mr. Robertson used his cell phone to conduct internet searches, and view websites, on the subjects of “where does Baltimore City trash go when picked up,” “Baltimore City landfill,” “Baltimore City waste to energy facility,” “Baltimore City dumpster pickup,” “Baltimore City Department of Public Works NW sanitation yard Baltimore, MD,” and “when is trash pickup in my area.”

The State also called Stephen Foster, who testified that he had been “[c]lose friends” with Ms. Eggleston, and was the godfather of her daughter from a previous relationship. During Ms. Eggleston’s pregnancy, she communicated with Mr. Foster “[j]ust about every [] day,” and “was very active” on “social media outlets” such as Facebook and Instagram. Ms. Eggleston also spent “months” planning the baby shower, for which Mr. Foster “was going to pick her up and take her.” On May 5, 2017, Mr. Foster went to Ms. Eggleston’s residence “to see if she was okay,” because Mr. Foster had not received “any communication” from her since May 3, 2017. As Mr. Foster “went in by the stairwell leading towards [Ms. Eggleston’s] room[,] there was a hole in the wall . . . like a corner of furniture went into the wall.” When Mr. Foster entered Ms. Eggleston’s room, he “noticed [that] the dresser . . . and . . . TV” were “missing,” and “the only thing[s] that [were] left [were] her bed, the bed frame,” and “a tote.” The day after the baby shower, Mr. Foster and “a couple of [Ms. Eggleston’s] cousins” returned to her residence, and discovered, in the bushes in front of the residence, her debit card.

Mr. Robertson contends that the court erred in “permitting the prosecutor[.]” to make “misleading rebuttal comments.” During closing argument, defense counsel cited Mr.

Foster’s phone number as “[xxx-xxx]-1040,” and contended that records related to Ms. Eggleston’s phone show that Mr. Foster did “not call her” from April 30 to May 4, 2017. During rebuttal argument, the following colloquy occurred:

[PROSECUTOR:] Stephen Foster. Stephen Foster testified he generally talked to her on Facebook. So he wasn’t always calling her. Not to mention, the argument made no sense anyways, but the point is he – Stephen Foster would talk to her on Facebook a lot. He testified to that. Also, counsel was referencing his phone number, [xxx-xxx]-1040. I ask you to check your notes on Stephen Foster’s testimony. I’m not sure that came into evidence. It might have. It might not have. You are the judges on what came into evidence. If you have Stephen Foster’s number, then obviously it came into evidence and you can consider counsel’s argument. I think you should reject it anyway because it doesn’t make any sense. Stephen Foster did not kill Akia. Stephen Foster cared about her. He took care of her. Okay. He wasn’t a leech like the defendant was to Akia. He actually took care of her. But if you go back in your notes on Stephen Foster’s testimony and you find that you don’t have his phone number there, that means it didn’t come into evidence and you cannot, you cannot consider anything that counsel said because –

[DEFENSE COUNSEL]: I’d objection [sic], Your Honor.

[PROSECUTOR]: – he’s arguing facts that are not in evidence.

THE COURT: Overruled.

Mr. Robertson contends that the “prosecutor’s comments were misleading,” because they “misled jurors to believe they must assign greater deliberative weight to their notes than their memories,” and “to believe if defense counsel said something not in their notes, they cannot consider anything he said in closing.” We note that the prosecutor explicitly recognized that if the jury had Mr. Foster’s number, “obviously it came into evidence and [they could] consider [defense] counsel’s argument.” Nevertheless, assuming, without deciding, that the prosecutor’s remark was improper, the Supreme Court

of Maryland has recognized that “the mere occurrence of improper remarks does not by itself constitute reversible error.” *Wilhelm v. State*, 272 Md. 404, 431 (1974) (internal citation omitted). 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 over six pages of transcript. The court instructed the jury prior to trial that “notes . . . may help [them] remember the evidence and/or the testimony,” but not to “let note-taking interfere with [their] ability to see, hear, watch[,] and listen to the witnesses.” The court also twice instructed the jury that “closing arguments of lawyers are not evidence.” Finally, the evidence produced by the State that Mr. Robertson murdered Ms. Eggleston was considerable, if not overwhelming. 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. Robertson’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.**