Circuit Court for Baltimore County
Case No. C-03-CR-22-000175

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND

No. 1784

September Term, 2023

TAVONE R. J.

v.

STATE OF MARYLAND

Beachley,
Albright,
Wright, Alexander, Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: February 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 County of sexual abuse of a minor and three counts of second degree rape, Tavone R. J., appellant, presents for our review a single issue: whether the court "err[ed] in allowing the prosecutor to make improper and prejudicial statements regarding the credibility of a witness at closing argument." For the reasons that follow, we shall affirm the judgments of the circuit court.

At trial, the State called A., who at the time of appellant's September 2023 trial was eighteen years old. A. testified that she previously lived in an apartment with her mother, that appellant had been her mother's boyfriend, and that appellant had raped A. The "first time something happened" was in approximately May 2018. Appellant entered A.'s room, "sat on [her] bed," "grabbed [her] leg," and kissed her on her lips. On a subsequent occasion, A. fell asleep in her living room, but was "woken up by" appellant, who "touched" A. with "his hands," "stood over [] top of" her, "forced [her] legs open," and "put his penis inside [A.'s] vagina." Appellant subsequently "went to go get a towel" and "[w]iped himself off."

A. testified that she subsequently had "[i]ntercourse" with appellant "multiple times." A. testified that the intercourse happened "probably like four times" per week, and "maybe like around 40" times per year. The intercourse would happen in "[e]ither . . . the living room," A.'s mother's room, or A.'s room. On one of the occasions that occurred in A.'s mother's room, appellant "pulled [A.] into [the] room, . . . hurr[ied] up and tr[ied] to pull his pants down, and . . . pulled [A.'s] hair." Appellant then "undressed himself, . . . tried to put his penis in [A.'s] mouth," "pulled [her] up on the bed," "pull[ed her] clothes off," and "began to put his penis in [A.'s] vagina." Appellant had "his penis inside [A.'s]

vagina" for approximately fifteen minutes, after which he "went to grab [a] towel that was already on the door," wiped his sperm off of his penis, "wiped the bed . . . and . . . the floor," and "threw [the towel] on the floor."

A. testified that appellant "told [her] sometimes to go take a shower." A. recalled an occasion that occurred "when [she] was a virgin:"

> [W]hen [appellant] stuck his penis inside of me, I was bleeding. Then he tried to, like – he noticed when he was trying to lick me down there, and then he got off me, then he went to go get a towel and wiped his mouth off, then he went into the bathroom, and then he told me[:] "You must have your period or something. You go shower."

A. testified that the incident occurred "maybe a month, month and a half" after appellant first kissed her. A. testified that on one of the occasions that occurred in her room, A.'s mother was in the shower, appellant and A. were "laying on [her] bed," and appellant "was putting his fingers in" A.'s vagina. Approximately five minutes later, A.'s mother exited the shower and "walked past" A.'s room. A.'s mother "was like, what are you doing?" Appellant "hurried up and [made] an excuse," after which "they both left the room."

A. testified that a "few weeks" after "the last time it happened," she sent to her mother "text messages" in which A. stated "what was happening." A. testified that appellant "wasn't already supposed to be there," and her mother "called the police the next morning." A. stated that when she "texted [her] mom," appellant "was in the house, . . . in her room or something." A. testified: "I thought she had, like, some sort of – like, if he came back he was trespassing and that it would go away, but she brought him back at the apartment. So I told her so that he wouldn't come back." When asked why A. thought that appellant "was trespassing," A. testified: "Because my mom told me and my sister if he

ever try to come over here to don't let him in. If he tried to knock on the door or if he was around the building, to tell her. Then she had, like, one of those things that you sign." A. testified that "[t]wo weeks" later, her mother brought appellant "back to the house."

When A. was asked why she did not "tell anybody before," she testified that "[p]eople don't really believe," "[p]eople don't really believe girls in this," and she thought that "[n]othing" would happen. A. testified that appellant has tattoos of names on his chest, another tattoo on his elbow, "a lot of pubic hair," and "abs." A. recalled "speaking with [a] social worker" and "giving her a description of the tattoos." A. further testified that she was fourteen years old when she "told [her] mom what was happening."

The State subsequently entered into evidence text messages sent from A. to her mother on March 10, 2020. The messages stated:

> Mom I have something to tell you and I wanted to tell you when we were in my room talking but I am scared that you think I am lying and I want to tell yo
>
> u because you keep bringing him over here
>
> And I want to tell you to your face but I can't
>
> So I am going to text it to you
>
> Tayvone raped me repeatedly every single day when you left for work
>
> I just don't want you to think I am lying
>
> I hope you believe me

Appellant contends that the court "erred in allowing the prosecutor to improperly comment on the credibility of a witness." During the prosecutor's closing argument, the following colloquy occurred:

> [PROSECUTOR:] You're gonna see from the text messages, even after she did tell her mom, her mom was still trying to spend time with [appellant], still trying to have a relationship with him. So, of course, [A.] didn't think she'd be believed. Again, going to her motive to lie. What did [A.] get out of this? She gets nothing out of making this all up if it didn't happen to her. She is telling the truth today, and she was telling the truth on March 10th, and she was telling the truth when she talked to the social worker, and she was telling the truth when you heard her on the stand.
>
> If this was all a lie, why is she still here doing that? She gets nothing out of making this up, absolutely nothing. Frankly, I mean, she told her mom, and her mom still was probably gonna let him back in the house, she was still hanging out with him. So this wasn't her get out of jail free card –
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> [DEFENSE COUNSEL]: Objection.
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> THE COURT: I'll overrule that.

Appellant contends that the "prosecutor impermissibly commented on the credibility of [A.], repeatedly vouching for her credibility and encouraging the jury to believe that testimony because of his personal assessment of her credibility." We first note that the only remark to which defense counsel specifically objected was the remark that "this wasn't her get out of jail free card." If appellant is challenging the entirety of the above remarks by the prosecutor, that challenge is not preserved for our review. We further note that it is not clear from the remark whether the prosecutor was referring to A. or A.'s mother, or what the prosecutor meant by his use of the phrase "get out of jail free card." Whether the prosecutor was commenting on the credibility of A. or of her mother, the Supreme Court of Maryland has long held that "it is common and permissible generally for the prosecutor . . . to comment on . . . the credibility of the witnesses presented." *Spain v. State*, 386 Md. 145, 154 (2005). The Court has also stated that "[v]ouching typically occurs when a prosecutor places the prestige of the government behind a witness through personal

assurances of the witness's veracity . . . or suggests that information not presented to the jury supports the witness's testimony." *Id.* at 153 (internal citation, quotations, and brackets omitted). Here, we do not see any indication in the prosecutor's remark that he was attempting to place the prestige of the government behind either A. or her mother through a personal assurance of their veracity, and hence, the remark was not improper.

Even if we assumed, *arguendo*, that the prosecutor's remark was improper, appellant would not prevail. 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 closing argument comprising approximately twenty pages of transcript. Also, the court twice instructed the jury that "closing arguments of the lawyers are not evidence." Finally, the prosecutor elicited from A. extensive and detailed testimony from which the jury could conclude that appellant had repeatedly raped and otherwise sexually abused her. We conclude that under these circumstances, the remark did not actually mislead, and was not likely to have misled or

influenced, the jury to appellant's prejudice, and hence, any error by the court in allowing the remark was harmless.

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