

UNREPORTED
IN THE COURT OF SPECIAL APPEALS
OF MARYLAND

No. 884

September Term, 2016

CHRISTOPHER ANTWONE HOLLOWAY

v.

STATE OF MARYLAND

Woodward, C.J.,
Kehoe,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: July 31, 2017

*This is an unreported opinion, and it may not be cited in any paper, brief, motion, or other document filed in this Court or any other Maryland Court as either precedent within the rule of stare decisis or as persuasive authority. Md. Rule 1-104.

Christopher Antwone Holloway, appellant, was convicted of false imprisonment, first-degree burglary, robbery, second-degree assault, and theft. On appeal, Holloway asserts that his convictions must be reversed because, as he claims, the prosecutor engaged in “improper and prejudicial closing argument.” Because this claim was not preserved for appellate review, and in any event lacks merit, we shall affirm.

Holloway was charged with offenses stemming from a home invasion and robbery. Yesenia Aguilar, the victim, was in the home at the time of the robbery, and was called as a witness for the State. In the State’s closing argument, the prosecutor suggested that the victim’s testimony proved that Holloway had committed two varieties of second-degree assault; intent to frighten and consummated battery. Defense counsel objected when the prosecutor began to express her belief that the victim’s “survival mode” was “powerful”:

[PROSECUTOR]: So, in this case, the State would argue that both [types of second-degree assault] occurred. [The victim] was in her house and she has been bound by her wrists, her ankles, and at one point attempted to be gagged when he wrapped that gray sweatshirt around her mouth. And she calls 911.

(Sounds were heard from a computer.)

[PROSECUTOR]: Help me. Can someone come quick?

You can hear later and you have heard before she was crying. This woman was terrified of this unknown man in her home.

She told you that she immediately - - well, she told you that he came in and [she] repeatedly said, what are you doing here? Why are you here? What do you want? What do you want?

She is panicked but at this point in survival mode. And sometimes I think, you know, these survival modes of a mother is [sic] the most powerful - -

[DEFENSE COUNSEL]: Objection, Your Honor.

THE COURT: Once again you're free to comment on the facts and the law
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[DEFENSE COUNSEL]: Your Honor, it is --

THE COURT: -- not your recollection or opinions. The jury will be the
[j]udge of the facts. I will instruct you on the law.

Defense counsel objected a second time during the prosecutor's closing argument, when the prosecutor suggested an explanation for why the victim called her husband, rather than 911, when she encountered an unknown man in her home:

[PROSECUTOR]: Again [the victim] told you that she called her husband about 15 times, calling, hanging up, calling, hanging up. Every now and then she was speaking. Come home. Come home. It was like she never does this. It's very strange. What is going on.

Almost everyone that I have talked to about this to a T has said, you know, why don't [sic] you call your husband first and not 911, but I think once you meet [the victim's husband] you understand why somebody might call him first. He is a protector.

[DEFENSE COUNSEL]: Your Honor, if we may approach the bench?

(Counsel and the defendant approached the bench, and the following ensued.)

[DEFENSE COUNSEL]: My objection has to do with the State vouching for witness credibility with things like she is a mother and mothers know and things such as like now everyone I have spoken to about the case has said. That's --

THE COURT: Conversations. Your comments?

[PROSECUTOR]: I just meant, like, people in the office.

THE COURT: But you can't talk about the office. I'm going to sustain the objection. Let's not vouch for anybody. You're trying to comment on the law. You're free to comment on the facts. The conclusions are up to them.

The issue raised on appeal was not preserved for appellate review because in both instances, the court sustained defense counsel’s objection, after which nothing further was requested. *See Lamb v. State*, 141 Md. App. 610, 644 (2001) (“[w]here an objection to opening or closing argument is *sustained*, . . . there is nothing for this Court to review unless a request for specific relief, such as a motion for a mistrial, to strike, or for further cautionary instruction is made.”) (citation omitted) (emphasis in original).

In any event, the prosecutor’s comments did not, as Holloway claims, amount to improper vouching for the victim’s credibility. “‘Prosecutorial vouching’ endangers a defendant’s right to a fair trial and generally occurs where the State ‘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.’” *Johnson v. State*, 452 Md. 702, 705 n.4 (2017) (citations omitted) (emphasis added). We agree with the State that “nothing about the prosecutor’s comments suggested that [the victim] was particularly worthy of belief.”

It is unclear what point the prosecutor was trying to make regarding the victim’s “powerful” “survival mode” because she did not finish her thought, but based on the context, it does not appear to be a personal opinion that the victim’s testimony was truthful, nor did it suggest the existence of facts not in evidence that bolstered the victim’s credibility. And suggesting a reason why the victim called her husband instead of 911 had nothing to do with her credibility as a witness. *See Spain v. State*, 386 Md. 145, 155 (2005) (stating that a prosecutor is not vouching where he or she “does not assure the jury [of] the

credibility of the witness [] based on his [or her] own personal knowledge[.]” (citation omitted)).

**JUDGMENTS OF THE CIRCUIT COURT
FOR PRINCE GEORGE’S COUNTY
AFFIRMED. COSTS TO BE PAID BY
APPELLANT.**