

UNREPORTED  
IN THE COURT OF SPECIAL APPEALS  
OF MARYLAND

No. 0578

September Term, 2014

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EUGENE HANKERSON

v.

STATE OF MARYLAND

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Meredith,  
Berger,  
Eyler, James R.  
(Retired, Specially Assigned),

JJ.

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Opinion by Eyler, James R., J.

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Filed: June 26, 2015

\*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.

Eugene Hankerson, appellant, was convicted by a jury in the Circuit Court for Harford County of armed robbery, two counts of first degree assault, two counts of use of a firearm in the commission of a felony, possession of a firearm with a felony conviction, theft valued under \$1,000, and attempt by a driver to elude a uniformed police officer by failing to stop. The sole question on appeal is whether the court erred in overruling defense counsel's objections to comments by the prosecutor in rebuttal closing argument. Perceiving no reversible error, we shall affirm.

### **Background**

Christopher Griffin testified that, on April 19, 2013, he and Dan Patel were working at a liquor store when a customer came in, pointed a "normal black handgun" at them, and demanded money. Mr. Patel gave him money out of the register. Mr. Griffin stated that the customer was wearing a black blanket or burka over his head.

Eugene Lorenzo testified that he owns a business located at the same intersection as the liquor store. On April 19, 2013, he looked out the window of his store and saw someone covered in black get into a vehicle and "burning out" of the parking lot. He noticed something about the "fire department" on his license plate and stated that the first two letters were "FL." He described the vehicle as a small white SUV, possibly an Explorer. He also noticed that the driver discarded a piece of black material when he got into the vehicle. A video recording of the event was admitted into evidence.

Corey Yonce testified that, at the same time, he was driving through the intersection in question and observed a white Ford SUV pull out of the liquor store parking lot. He had

to swerve to avoid being hit. He followed the vehicle, obtained the license tag number, and called his parents to give it to them.

Members of the Harford County Sheriff's Department testified with respect to their response to the scene of the robbery. Other members of the Sheriff's Department testified that they spotted and pursued the vehicle matching the description and license tag number that had been given to them. The vehicle being pursued collided with another vehicle. Appellant was the driver of the vehicle.

Currency was recovered from the vehicle, but no gun. A "burka-like costume" was recovered from the liquor store parking lot.

Appellant did not testify.

At the close of evidence, the court instructed the jury with respect to the presumption of innocence and the reasonable doubt standard. The instructions were substantially the same as the pattern jury instructions, and the instructions given are not challenged on appeal.

The charges against appellant included possession and use of a firearm. In closing argument, with respect to proving possession and use, the prosecutor argued:

If it looked like a firearm and was being displayed as if it were a firearm, and the victim obviously believed it looked like a firearm, and you think the video shows it looks like it's a firearm, then it's a firearm. It's your decision to arrive at that, but I think the facts are plain. You don't have to make it more complicated than what it is. If your common sense and life experience makes you say if, from what you saw on that video and what the people described looked and sounded like a handgun, as the victim said it looked like a nine-millimeter handgun, then it must have been.

In response, defense counsel argued that the State had not proved the existence of a gun, explaining that if a fact did not fit, then the jury had a reasonable doubt. Defense counsel further argued that an object that looked like a gun is not “good enough,” observing that the argument that it was sufficient if it looked like a gun was not in the court’s instructions.

In rebuttal, the following transpired:

[The Prosecutor]: . . . First, let me cover what he said about reasonable doubt, it’s very important to note in the instructions that the State is not required to prove a case beyond all doubt. We’re not required to eliminate every doubt. We’re not required to prove a case beyond unreasonable doubt. Only a doubt that’s reasonable to where it would prevent you from making an important decision in your own life.

Now, when you make important decisions in your own life, whether it be buying a car, getting a loan, business dealings where you’re signing a contract, you don’t really have 100 percent conviction as to, you know, should you make this decision in your life, but you reach a point where you feel you can make that decision without any reservations. That’s how the instructions say it. So just keep that in mind.

It’s really a common sense approach on how to evaluate the evidence that has been presented. Please, please use your life experience and common sense in deciding, number one, what facts were proven and, number two, what facts can you say existed because another fact was proven. That’s what we call inferences. As an example, an inference is fact A was proven and based upon knowing fact A was proven, you can say that fact B must also be true. Inference. We use that every day in our lives. You may not think of it that way, but when you sit down and think about it, we make so many decisions in our lives that way.

Also, we do not need to prove—

[Defense Counsel]: Your honor, I object and ask to approach.

[Defense Counsel at the Bench]: I do apologize for the interruption but I thought it was necessary. I think [the prosecutor] is minimizing the burden of proof. They can make inferences, but his last comment, which escapes me—

The Court: What was your objection?

[Defense Counsel]: Well, he's equating this with decisions they make in their daily lives. This is a different situation. This is a case where the State has to prove this beyond a reasonable doubt. That's the standard. He's asking them to look at it in a way that they would find satisfactory if they were making a decision in their daily lives. So I think he has minimized the State's burden of proof and I would ask Your Honor to sustain my objection and remind the jurors and instruct them the State has to prove all the elements of the charges beyond a reasonable doubt.

The Court: [Prosecutor]

[The Prosecutor]: I was just referencing the portions of the jury instructions on reasonable doubt where it says you make the same level—convinced to the same level as you would in important decisions in your daily business lives. That's right in the instructions and I was making reference to that.

[Defense Counsel]: I think it is “some of the more important decisions of your lives.”

The Court: Do you have anything further?

[Defense Counsel]: No.

The Court: The jury instructions clearly spell out for the jury what reasonable doubt is and explain reasonable doubt. I

don't find any error in any of the comments [the prosecutor] said to the jury in terms of his explanation of reasonable doubt. The jury has been instructed to follow the instructions. So your objection is overruled.

[The Prosecutor at trial table]: I think where I left off was we don't need to prove every conceivable fact, we just need to convince you beyond a reasonable doubt. So look at that instruction. It makes reference to how you make important decisions in your own life.

[Defense Counsel]: Again I object.

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[Defense Counsel at the Bench]: His argument was fine until he said "in your own life." The instruction is "willing to act upon such belief without reservation in an important matter in your own business or personal affairs."

[The Prosecutor]: That's what I said.

[Defense Counsel]: No, you left out the "important matter." So I understand, but the distinction is important to the defendant.

The Court: Okay. The jury has been instructed by me. They will have instructions. I don't find anything [the prosecutor] has stated is an error or misstatement of the law. Overruled.

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[The Prosecutor]: Where did I leave off? Read the instructions, what it says about reasonable doubt, about how you make important decisions in your every day lives in your important business decisions. You use the same type of decision making process.

### Discussion

Appellant argues that the prosecutor's characterization of the reasonable doubt instruction was improper and prejudicial because the prosecutor equated it with the certainty of every day decisions rather than decisions as to important matters which do not take place on a daily basis. Appellant further argues that the error was not harmless because the reasonable doubt standard is critical to a fair trial, no gun was recovered from appellant's vehicle, several one dollar bills were recovered when the evidence was that no one-dollar bills were taken, and the court took no curative action.

Attorneys are given "great leeway" in presenting closing arguments to a jury. *Degren v. State*, 352 Md. 400, 429 (1999). A prosecutor is permitted to comment on the evidence and inferences that may be drawn. *Id.* Moreover, improper remarks do not necessarily mandate reversal. *Id.* at 430. Reversal is required when remarks mislead a jury or were likely to mislead or prejudicially influence a jury. *Id.* at 431. We review the trial court's ruling on objections to determine if it abused its discretion. *Id.*

We are satisfied that the prosecutor's comments, read in context, did not mischaracterize the court's instructions. Prior to the first objection, the prosecutor was referring to inferences to be drawn from evidence. When referencing the standard of proof, it is clear that the prosecutor was referring to decisions regarding important matters in

business or personal affairs. The last paragraph quoted above incorporated the instructions.

The trial court did not abuse its discretion.

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