Circuit Court for Charles County
Case No. C-08-CR-22-000700

UNREPORTED

IN THE APPELLATE COURT

OF MARYLAND*

No. 397

September Term, 2023

TIMOTHY DANIEL COLLINS, JR.

v.

STATE OF MARYLAND

Arthur,
Reed,
Zarnoch, Robert A.
(Senior Judge, Specially Assigned),

JJ.

Opinion by Zarnoch, J.

Filed: September 27, 2024

*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

A jury in the Circuit Court for Charles County found the appellant, Timothy Collins, Jr., guilty of driving while impaired by alcohol and failing to display a license to a uniformed police officer on demand. Appellant presents two questions for our review, which we have rephrased and renumbered[1] as follows:

1. Did the trial court err when it overruled defense counsel's objection to the prosecutor's closing argument?

2. Did the trial court abuse its discretion when it denied defense counsel's motion to strike Juror 43 for cause?

For the reasons to follow, we shall answer the first question in the affirmative and reverse the judgments of the circuit court. As a result, we do not reach the second question presented on appeal.

BACKGROUND

Officer Karl Newman testified that Appellant failed to stop at a stop sign as Appellant drove onto Route 301 and that Appellant crossed the lines dividing the roadway. Officer Newman conducted a traffic stop, observed that Appellant had slurred speech, and smelled the odor of an alcoholic beverage emanating from the driver's side of Appellant's truck. Appellant told Officer Newman that he had consumed "a couple beers[.]"

[1] Appellant phrased the questions presented as follows:

1. Did the trial court abuse its discretion when it denied defense counsel's motion to strike Juror 43 for cause?

2. Did the trial court err and/or abuse its discretion when it overruled defense counsel's objection to the prosecutor's closing argument?

Officer Newman asked Appellant to complete standardized field sobriety tests and Appellant refused. When Appellant stepped out of the vehicle, Officer Newman observed six empty Budweiser cans behind the driver's seat. Appellant was arrested, advised of his DR-15 advice of rights, and refused to consent to a breath test.

Before closing arguments, the court read the pattern jury instruction for reasonable doubt to the jury:

> A reasonable doubt is a doubt founded upon reason. Proof beyond a reasonable doubt requires such proof as would convince you of the truth of a fact to the extent that you would be willing to act upon such belief without reservation in an important matter in your own business or personal affairs. If you are not satisfied of the defendant's guilt to that extent for each and every element of a crime charged, then reasonable doubt exists and the defendant must be found not guilty.

In summation, defense counsel analogized Officer Newman to a doctor recommending surgery. Defense counsel argued that Officer Newman's investigation was cursory, and thus the officer's testimony did not prove Appellant's guilt beyond a reasonable doubt:

> So, I like to think of reasonable doubt with an (inaudible). So say for instance you sprain your ankle and you go, "Oh, I really want to have a doctor look this out. I don't know what this could look like, I want somebody to check into it."
>
> You go to the doctor's office, you check in, you write your name down, and you go back into the examination room, and you meet with Dr. Newman. And Dr. Newman, without really asking you any questions, without taking a good look at your ankle, just says, "Hey, you need surgery, and you need it right now. It is life threatening, but you need it."
>
> Do you take Dr. Newman's word for it? Dr. Newman hasn't even looked at you properly, hasn't answered the questions that you have, hasn't addressed your concerns. Do you just take his word for it?

> Well of course you wouldn't. You would look for a second opinion. You would confirm, you would verify what you heard from Dr. Newman.
>
> In the State's case, that is the exact position that [Appellant] is in today. And when you are looking at the evidence in its totality, you will see that the State's case just doesn't hold up, it just doesn't prove what they think it does.

The State responded by presenting a different hypothetical involving the decision to take an Uber when there is evidence that the driver is intoxicated:

> So, you were asked, if you were to go to Dr. Newman, would you get a second opinion? Let me ask you this? Let's say you order an Uber and you are standing out on a curb, waiting for your Uber driver to show up.
>
> And as you are standing there, you see your Uber driver coming around the corner and fail to stop. You see your Uber driver drift off to the shoulder. You then see your Uber driver drift off into the other lane.
>
> You see your Uber driver pull and it [sic] stops in front of you. You go to open the door and what do you see? Ten beer cans. You smell alcohol on your Uber driver.
>
> Lo and behold, luckily for you, you have a tool, a tool that will let you know whether or not your Uber driver is intoxicated, if that is not enough for you. Do you believe your Uber driver is intoxicated?

Defense counsel objected, and the court overruled the objection.

The State then argued that the reasonable doubt standard is satisfied if Appellant's conduct would have prevented jurors from entering an Uber driven by Appellant:

> So, do you believe, do you have any doubt, do you have a doubt in your mind that you should get in that vehicle?
>
> And you have the choice of getting in with that Uber driver, but if seeing the beer cans is not enough for you, smelling the odor of alcohol is not enough for you, watching him run a stop sign is not enough for you, watching your Uber driver drift in the lane is not enough for you, fortunately for you, you have a tool.

> And you have the ability to ask your Uber driver, "I want to take a test before I get in this car to see whether or not you are impaired."
>
> And your Uber driver says, "No, I am not going to do it."
>
> You have every right to infer, having inference [sic] as to, "Why wouldn't my Uber driver do the test? Why wouldn't he do it?"
>
> We are coming to a conclusion. We are not jumping to a conclusion, but we are looking at all the facts. The stop sign, lane change, inability to stay in their own lane, drifting back and forth, beer cans, odor of alcohol, refusal to blow. At that point in time, there is a conclusion.
>
> *Reasonable doubt would convince you of the truth of a fact to the extent that you would be willing to act upon such beliefs without reservations in an important matter in your own business or personal affairs. Do you get in that Uber driver's car?*

(Emphasis added.)

Appellant's counsel objected again, and the trial court overruled the objection, ruling that the argument was proper. The prosecutor reiterated his analogy involving the reasonable doubt standard and the decision to enter an Uber:

> So, ladies and gentlemen of the jury, what conclusion have you come to when you see your Uber driver behaving in the way that you saw? The conclusion you come to is that the driver is under the influence or impaired by alcohol.
>
> *And if you have come to that conclusion with your Uber driver, the reasonable doubt in this case is the same.*
>
> *If you don't believe that your Uber driver is under the influence or intoxicated, then you can get in the vehicle and go on your merry way.*
>
> *But if you have come to the conclusion that that Uber driver, failing to stop, swerving on the lanes, multiple beer cans, odor of alcohol, refusing to take your test to prove, to show, that there is any level of influence in his system, then you are beyond a reasonable doubt that Mr. Collins was driving under the influence or driving while impaired, at 2:00 a.m. on that morning.* Thank you.

(Emphasis added.)

DISCUSSION

Appellant argues that this Court should reverse because the prosecutor's closing argument was improper. The State agrees, conceding that this Court should reverse because the prosecutor's analogy misstated the law as to reasonable doubt. We agree with both parties.

Parties have great latitude in their presentation of closing arguments. *Ingram v. State*, 427 Md. 717, 727 (2012). Regulation of closing argument is within the sound discretion of the trial court. *Degren v. State*, 352 Md. 400, 431 (1999). The exercise of that discretion should not be disturbed "unless there is a clear abuse of discretion that likely injured a party." *Ingram*, 427 Md. at 726.

"In commenting on the State's burden of proof, counsel's closing argument must not undermine the judicially approved pattern definition of reasonable doubt." *Anderson v. State*, 227 Md. App. 584, 590 (2016). Indeed, allowing counsel to "embellish the trial court's instructions is fraught with the danger that the trial judge's binding instructions will be manipulated by counsel, resulting in the jury applying law different than that given by the trial court." *White v. State*, 66 Md. App. 100, 118 (1986). For example, in *Carrero-Vasquez v. State*, 210 Md. App. 504, 510 (2013), the prosecutor, in rebuttal closing argument, told the jurors they should convict the defendant if their "gut says I think he's guilty[.]" (Emphasis omitted.) We held that the remark was improper because it "plainly reduces proof 'beyond a reasonable doubt' to a 'gut' feeling." *Id*. at 511.

Similarly, the prosecutor here analogized the reasonable doubt standard to the decision to forgo an Uber ride with a driver like Appellant. That analogy minimized the reasonable doubt standard because the decision to take an Uber is not a sufficiently "important matter in [one's] own business or personal affairs." *See* Maryland Pattern Jury Instructions - Criminal § 2:02. Indeed, people cancel Uber rides for a myriad of reasons, including trivial reasons. As the State aptly recognizes, although "getting into a car with a possibly impaired driver is [a] risky choice, . . . declining the ride requires no certainty whatsoever that the driver is impaired[,]" and "[a] reasonable juror may decline the ride on belief that the driver *might* be impaired." Of course, the reasonable doubt standard requires more certainty. As a result, the prosecutor's closing argument was improper, and the court erred in overruling Appellant's objection.[2]

Next, we determine whether the improper remarks amounted to reversible error. Reversal is required when "the remarks of the prosecutor actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused." *Lawson v. State*, 389 Md. 570, 592 (2005) (internal quotation marks omitted) (quoting *Spain v. State*, 386 Md. 145, 158 (2005)). "When assessing whether reversible error occurs when improper statements are made during closing argument, a reviewing court may consider several

[2] The State recognizes that Appellant's counsel did not object to the prosecutor's improper final comments during the rebuttal closing argument. Appropriately, the State does not argue that Appellant's argument is unpreserved, given the trial court's prior ruling. *See Johnson v. State*, 325 Md. 511, 514-15 (1992) (holding that "[b]y overruling the objection, the judge demonstrated that he was permitting the prosecutor to continue along the same line[,] [i]t was apparent that his ruling on further objection would be unfavorable to the defense[, and p]ersistent objections would only spotlight for the jury the remarks of the prosecutor").

factors, including the severity of the remarks, the measures taken to cure any potential prejudice, and the weight of the evidence against the accused." *Warren v. State*, 205 Md. App. 93, 133 (2012) (quoting *Spain*, 386 Md. at 159).

Although there was substantial evidence of Appellant's guilt, the prosecutor's improper argument minimized the reasonable doubt standard. That misstatement is a "particularly serious error that should be corrected as soon as possible by the trial court." *Rheubottom v. State*, 99 Md. App. 335, 345 (1994). The prosecutor's argument implied that the jury could convict Appellant if the jury was merely concerned that Appellant was inebriated (as the jury's hypothetical Uber driver). On appeal, State concedes that the prosecutor's improper comments were prejudicial for several reasons: the defense attorney did not concede guilt on the driving while impaired charge, the prosecutor misstated the reasonable doubt standard, and the prosecutor's improper comments occurred just before the jury retired to deliberate. *See Carrero-Vasquez*, 210 Md. App. at 512 (holding that the timing of the prosecutor's improper comment "magnified its impact on the jury, as it was made at the conclusion of the State's rebuttal and was, quite literally, the last explanation the jury heard as to the weight and nature of the State's evidentiary burden"). Lastly, the trial court gave no curative instruction following the prosecutor's improper comments.

For all these reasons, the court erred in permitting the prosecutor's improper closing argument.[3] Because the stricken juror issue is unlikely to recur at a new trial, we see no need to address it.

JUDGMENTS OF THE CIRCUIT COURT FOR CHARLES COUNTY REVERSED. CASE REMANDED FOR FURTHER PROCEEDINGS. COSTS TO BE PAID BY CHARLES COUNTY.

[3] The State concedes that the misstatement of the burden of proof warrants reversal for both of Appellants' convictions: driving while impaired by alcohol and failing to display a license. We agree.