

Circuit Court for Prince George's County
Case No.: CT220758X

UNREPORTED
IN THE APPELLATE COURT
OF MARYLAND

No. 2106

September Term, 2022

RANDALL ERIC HOPKINS

v.

STATE OF MARYLAND

Graeff,
Berger,
Harrell, Glenn T., Jr.
(Senior Judge, Specially Assigned),

JJ.

PER CURIAM

Filed: December 1, 2023

*This is a per curiam opinion. Consistent with Rule 1-104, the opinion is not precedent within the rule of stare decisis, nor may it be cited as persuasive authority.

A jury in the Circuit Court for Prince George’s County convicted Randall Eric Hopkins, appellant, of possession of a regulated firearm, possession of ammunition, and possession of cocaine. On appeal, Hopkins contends that the trial court erred in allowing the State to make improper prejudicial statements to the jury during its closing argument. The State agrees. So do we.

“The first step in our analysis is to determine whether the prosecutor’s statements, standing alone, were improper.” *Sivells v. State*, 196 Md. App. 254, 277 (2010). Hopkins and the State agree that the prosecutor made at least three impermissible remarks in their closing argument,¹ but we need discuss only one: the prosecutor’s comments on the reasonable doubt standard:

[STATE]: Beyond a reasonable doubt means that if you are sitting here right now thinking yeah, I am pretty convinced this is what happened, you have to return a verdict of guilty.

[DEFENSE]: Objection.

[STATE]: You don’t have to be –

THE COURT: Overruled.

[STATE]: - you don’t have to be 100 percent convinced. Reasonable doubt isn’t the State closes every single possible door of doubt. Is it enough of a

¹ On top of the comments about the reasonable doubt standard, Hopkins and the State agree that the prosecutor improperly argued facts not in evidence and engaged in an improper burden-switching argument. Hopkins contends the prosecutor also made an impermissible “golden rule” argument and denigrated defense counsel, but the State disagrees. Although we think the questions of whether the prosecutor improperly argued facts not in evidence or engaged in an improper burden-shifting argument are closer calls than the parties make them out to be, we need not discuss them further because the prosecutor’s improper comments on the standard of proof, alone, were prejudicial enough to warrant reversal. For the same reason, we need not resolve their dispute on the other comments.

reasonable doubt where you don't think this is what happened? But if you come back and think yeah, he probably did it, I am firmly convinced he did it, I am not 100 percent convinced but I am firmly convinced this is what happened, you have to return a verdict of guilty. That is the standard that is applied everywhere. That is the legal standard by which beyond a reasonable doubt means.

These comments seek to reduce proof “beyond a reasonable doubt” to “pretty convinced” that Hopkins “probably did it[.]” They were “clearly improper for the simple reason that [they] misstate[] the law as to reasonable doubt, an evidentiary standard that is the cornerstone of a fair criminal trial.” *Carrero-Vasquez v. State*, 210 Md. App. 504, 511 (2013). *See also Anderson v. State*, 227 Md. App. 584, 590-91 (2016) (holding that “counsel may not use closing argument to inject variances that encourage the jury to apply a standard of proof different from the approved pattern instruction on reasonable doubt”).

Hopkins and the State also agree that these comments were not harmless. Again, so do we. An error is harmless only if we can declare beyond a reasonable doubt that the error “did not contribute to the verdict.” *Lee v. State*, 405 Md. 148, 174 (2008). In the context of improper comments during closing argument, reversal is proper when the remarks have “actually misled the jury or were likely to have misled or influenced the jury to the prejudice of the accused.” *Spain v. State*, 386 Md. 145, 158 (2005) (cleaned up). We consider three factors: “first, the severity of the remarks;” second, any curative measures taken by the trial court; and third, “the weight of the evidence against the accused.” *Carrero-Vasquez*, 210 Md. App. at 511-12 (cleaned up).

Here, these factors justify reversal. To be sure, the State’s evidence was strong: the only disputed issue was whether Hopkins knew about the gun and ammunition. But the

trial court took no curative measures with respect to the prosecutor’s mischaracterization of the reasonable doubt standard. Further, the impermissible comments went to the standard of proof: “the cornerstone of a fair criminal trial.” *Id.* at 511. Considering the egregiousness of the prosecutor’s impermissible comments, we cannot conclude that the court’s error in allowing them was harmless beyond a reasonable doubt.²

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

² Also pending before the Court is Hopkins’s “Unopposed Motion for Summary Reversal and to Expedite Issuance of the Mandate.” Given our resolution of the issues here, the motion is denied as moot.