**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

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| MICHAEL W. WILLIAMS, | § | |
| | § | No. 490, 2013 |
| Defendant Below, | § | |
| Appellant, | § | |
| | § | Court Below: Superior Court |
| v. | § | of the State of Delaware, |
| | § | in and for Sussex County |
| STATE OF DELAWARE, | § | |
| | § | Cr. I.D. No. 1203004885 |
| Plaintiff Below, | § | |
| Appellee. | § | |

Submitted: April 30, 2014
Decided: June 17, 2014

Before **BERGER, JACOBS** and **RIDGELY**, Justices.

**O R D E R**

This 17th day of June 2014, upon consideration of the parties' briefs and the record on appeal, it appears to the Court that:

(1) Michael W. Williams appeals from his convictions, following a jury trial, of two counts of first degree reckless endangering and related charges. Williams argues that: (a) the prosecutor improperly vouched for the strength of the State's case; and (b) the trial court committed reversible error by providing an incorrect supplemental jury instruction. We find no merit to these arguments and affirm.

(2) On March 6, 2012, Delaware State Police Corporal Michael Dill saw the vehicle Williams was driving run a stop sign. Dill attempted a traffic stop by activating his emergency lights. Williams did not stop. Instead, he continued driving, and a 23-mile chase ensued. Dill testified that Williams drove erratically, passed many vehicles on both the left and right, and failed to stop at two additional stop signs.

(3) The police used spike strips three times in an attempt to stop Williams. In one attempt, the police placed spike strips on Route 404. Two probation officers happened to be driving in the area, and joined the effort to stop Williams. They stopped oncoming traffic about 100 yards from the spike strips, and one probation officer got out of the vehicle. Williams steered around the spike strips and narrowly avoided a collision with the two probation officers. Dill testified that Williams was driving over 89 miles per hour on Route 404.

(4) Williams first claims that the prosecutor improperly vouched for the strength of the State's case by emphasizing parts of Dill's testimony and by discussing facts not in evidence. Because Williams did not raise this issue at trial, this Court reviews for plain error.[1] Under that standard, we review the record *de novo* to determine whether prosecutorial misconduct occurred.[2] If the Court finds no misconduct, the analysis ends.[3] "If, however, the trial prosecutor did engage in

[1] *Torres v. State*, 979 A.2d 1087, 1093–94 (Del. 2009).
[2] *Id.* at 1094.
[3] *Ibid.*

misconduct we move to the second step in the plain error analysis by applying the familiar *Wainwright* standard."[4] In this case, we need not reach the second step because there was no misconduct.

(5) "Conceptually, improper vouching occurs when the prosecutor implies personal superior knowledge, beyond that logically inferred from the evidence at trial."[5] This can occur where the prosecutor provides an official endorsement of a witness, or where the prosecutor "vouches for the State's case."[6] In short, the prosecutor must "avoid improper suggestions, insinuations, and assertions of personal knowledge in order to ensure that guilt is decided only on the basis of sufficient evidence."[7] But "[t]he prosecutor is allowed to argue all legitimate inferences of the defendant's guilt that follow from the evidence."[8]

(6) Williams takes issue with the following statement made by the prosecutor on rebuttal:

> Corporal Dill testified that the defendant passed countless vehicles. He was passing vehicles on the left; he was passing vehicles on the right. We are here today for six of those charges, not for every single time he passed a vehicle on the right, just for six of the charges. Corporal Dill did testify that Route 13 was very busy that afternoon. And he did testify that the defendant passed multiple vehicles unsafely on the left and he also passed vehicles on the right and the shoulder. Corporal Dill didn't testify that the defendant hit another car or hit a tree or hit someone on the road. But Corporal Dill did testify that

[4] *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).
[5] *Burns v. State*, 76 A.3d 780, 789–90 (Del. 2013) (citations omitted).
[6] *Kirkley v. State*, 41 A.3d 372, 377 (Del. 2012).
[7] *Ibid.*
[8] *Burns*, 76 A.3d at 789 (citations omitted).

> there were multiple cars that pulled over out of the way as they saw the defendant approaching. They pulled over to save themselves from being hit.[9]

Williams notes that Dill did not interview all of the drivers he passed to ask them why they pulled off the road. For that reason, Williams argues that the prosecutor's statement that "[t]hey pulled over to save themselves from being hit" was improper because it was based on facts not in evidence and, therefore, implied that the prosecutor had superior personal knowledge about the case. Further, Williams contends that the prosecutor improperly vouched for the strength of the State's case by stating that Williams was only charged with six unsafe passing charges even though he "passed countless vehicles." According to Williams, this improperly suggested to the jury that the State only brought charges when it knew Williams was guilty.

(7) The prosecutor's comments, when viewed in context, either stated a fact, or were directly tied to and based on a logical inference from the evidence. First, the prosecutor's statement that many cars "pulled over to save themselves from being hit" was supported by Dill's testimony describing Williams passing many cars throughout the chase. The prosecutor made the logical inference that vehicles pulled over due to safety concerns upon seeing an approaching high-speed chase. Second, the prosecutor did not improperly vouch for the State's case when she

[9] Appellant's Appendix at A-172–73.

stated that Williams had only been charged with six unsafe passing offenses. That statement does not imply that Williams must be guilty. At most, it implies that Williams could have been charged with many more unsafe passing offenses. In sum, the prosecutor did not make improper statements to the jury.

(8) Williams also claims that the Superior Court erred when it failed to correct an oral, supplemental jury instruction regarding the difference between reckless endangering first and second degree. "As a general rule, a defendant is not entitled to a particular instruction, but he does have the unqualified right to a correct statement of the substance of law."[10] Further, "[a] trial court's jury instructions are not a ground for reversal if they are reasonably informative and not misleading when judged by common practices and standards of verbal communication."[11]

(9) "A person is guilty of reckless endangering in the first degree when the person recklessly engages in conduct which creates a substantial risk of death to another person."[12] Reckless endangering in the second degree is an identical crime, except that the risk referred to is one of "physical injury" as opposed to "death."[13] "A person acts recklessly with respect to an element of an offense when

[10] *Flamer v. State*, 490 A.2d 104, 128 (Del. 1984).
[11] *Burrell v. State*, 953 A.2d 957, 963 (Del. 2008).
[12] 11 *Del. C.* § 604.
[13] *Id.* § 603.

the person is aware of and consciously disregards a substantial and unjustifiable risk that the element exists or will result from the conduct."[14]

(10) Prior to closing arguments, the trial court instructed the jury on reckless endangering first degree:

> In order to find the defendant guilty of reckless endangering in the first degree, you must find that all of the following elements have been met and proven beyond a reasonable doubt: One, the defendant engaged in conduct which created a substantial risk of death to another person . . . . And two, the defendant acted recklessly; that is, the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that the death of another person would result from his conduct.[15]

The trial court provided a similar instruction for reckless endangering second degree, and the jury received a written copy of those instructions.

(11) During deliberations, the jury requested clarification on the difference between reckless endangering first and second degree. The trial court provided the following oral clarification:

> Reckless endangering in the first degree and reckless endangering in the second degree have a common element . . . . The common element is that the defendant acted recklessly; that is, the defendant was aware of and consciously disregarded a substantial and unjustifiable risk that, in reckless endangering, first, the death of another person *would* result from his conduct. In reckless endangering, second, the substantial and unjustifiable risk would be that physical injury *would* occur to another person as a result of the conduct.
>
> . . . .

[14] *Id.* § 231(e).
[15] Appellant's Appendix at A-134.

> The State's allegation is that . . . the manner in which the defendant operated that motor vehicle; engaged in that conduct created a substantial and unjustifiable risk—reckless endangering in the first degree—that death *may have happened* to the persons in the information . . . or, if not death, substantial risk of physical injury.
> . . . .
> I don't know how much I've moved the ball because I, basically, have referred to the instruction. But that is the difference between the two. The state of mind—the recklessness—is the same for Count 1 and 2. What *potentially could happen* out of that conduct, whether it's the risk that somebody *would* get killed is one; or the risk that somebody *wouldn't* get killed but *could* be injured is reckless endangering in the second degree.[16]

(12)Williams argues that the substitution of the words "may have happened" or "potentially could happen" for the words "would result" in the trial court's oral clarification was erroneous. Williams contends that this substitution lowered the State's burden and undermined the jury's ability to perform its duty. A fair reading of the entire supplemental instruction belies this argument. The trial court's use of slightly different words in explaining the difference between first and second degree reckless endangering did not misstate the law.

NOW, THEREFORE, IT IS ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Carolyn Berger
Justice

[16] Appellant's Appendix at 178–79 (emphasis added).