

IN THE SUPREME COURT OF THE STATE OF DELAWARE

CURTIS WELLS,	§	
	§	No. 66, 2003
Defendant Below,	§	
Appellant,	§	Court Below: Superior Court of
	§	the State of Delaware in and for
v.	§	Sussex County
	§	
STATE OF DELAWARE	§	
	§	
Plaintiff Below,	§	Cr. I.D. No. 0112009733A
Appellee.	§	

Submitted: September 3, 2003
Decided: September 16, 2003

Before **VEASEY**, Chief Justice, **HOLLAND** and **JACOBS**, Justices.

ORDER

This 16th day of September, 2003, upon consideration of the briefs of the parties, it appears to the Court that:

(1) Defendant-appellant Curtis Wells (“Wells”) has appealed from his convictions of first-degree robbery in violation of 11 *Del. C.* § 832; possession of a firearm during the commission of a felony in violation of 11 *Del. C.* § 1447A; first and second degree burglary in violation of 11 *Del. C.* § 826 and § 825; two counts of conspiracy in the second degree in violation of 11 *Del. C.* § 512; aggravated menacing in violation of 11 *Del. C.* § 602(b); and wearing a disguise during the commission of a felony in violation of 11 *Del. C.* § 1239. Wells was sentenced to twenty-three (23)

years imprisonment at Level 5 supervision, with the balance suspended for declining levels of supervision after serving eight (8) years at Level 5.

(2) Wells advances two grounds for reversal. The first is that the trial court abused its discretion by prohibiting defense counsel, during his opening statement, from using a chart that depicted various burdens of proof.¹ Wells' second claim is that the trial court erred in allowing the State to explain accomplice liability to the jury, during the State's closing argument, by use of an analogy.

(3) We review the ruling of the trial court on the first issue for abuse of discretion.² Under that standard, this Court will disturb a discretionary ruling of the trial court "only when the ruling is based upon unreasonable or capricious grounds."³

(4) A judge must ensure that the instructions given to jurors are reasonably informative, not misleading, and correct statements of the law.⁴ Limiting the use of an exhibit that is likely to confuse or mislead the jury about the burden of proof falls within the discretion of the trial judge. In the

¹ Defense counsel sought to use a typewritten chart that depicted "mountain steps going up" (*see* Trial Transcript at A-45) and that listed various burdens of proof, including a description of the standard of proof in a criminal case as "proof so convincing that you would rely on it without hesitation in the most important of your own affairs." The state's objection to the chart was sustained on the basis of irrelevance and the potential to confuse the jury, because the chart listed evidentiary standards of proof that were irrelevant in a criminal trial, and the above-quoted standard for "guilty" was inconsistent with the instructions given by the Court.

² *Bridges v. State*, 706 A.2d 489 (Del. 1998).

³ *Zimmerman v. State*, 628 A.2d 62 (Del. 1993), *citing Chavin v. Cope*, 243 A.2d 694, 699 (Del. 1968).

⁴ *Chance v. State*, 685 A.2d 351 (Del. 1996); *Claudio v. State*, 585 A.2d 1278 (Del. 1991).

case *sub judice*, the presentation of irrelevant burdens of proof, and of language inconsistent with the court's instruction on burden of proof, could be reasonably anticipated to confuse the jury. Preventing confusion about the applicable law and the applicable standard of proof is an important role of the trial judge.⁵ We find no abuse of discretion in the trial court having excluded the use of the chart.

(5) The second argument advanced by Wells on this appeal is that the trial court erred by allowing the prosecutor, in his closing argument, to use an analogy to explain accomplice liability to the jury. Specifically, the prosecutor used an analogy that supposed (hypothetically) that Wells, Biasi and Knestant robbed a bank, with Knestant being the get-away driver. The prosecutor then stated that if Wells or Biasi committed murder during such a robbery, Knestant could be charged with murder. Immediately following the prosecution's closing argument, the trial court gave a curative instruction that clarified and limited the hypothetical situation described by the prosecution, and emphasized that there had been no bank robbery or murder in this case.

⁵ See, e.g. *Thompson by Thompson v. Papastavros Assoc. Med. Imaging, L.L.C.*, 729 A.2d 874 (Del.Super. Ct. 1998); *Johnson v. State*, 604 A.2d 417 (Del. 1991).

(6) This Court's review of the appropriateness of a prosecutor's closing argument is plenary.⁶ In considering whether improper prosecutorial remarks require the reversal of a conviction, this Court considers four factors, namely: (a) the centrality of the issue affected by the alleged error; (b) the closeness of the case; (c) the steps taken to mitigate the effects of the alleged error; and (d) whether there is a pattern of repeated misconduct despite this Court's oft-repeated admonitions against such practices.⁷

(7) All four of those factors favor affirmance. The prosecutor's statements concerned an issue that was only marginally related to the central issue in the case. The case was not close, because the physical and testimonial evidence of Defendant's guilt was abundant. Steps were taken to mitigate the effects of the alleged error, in that the Court gave an immediate curative instruction. Finally, this Court does not perceive a pattern of prosecutors using inappropriate analogies in their closing arguments. Accordingly, we conclude that the statements of the prosecutor in her summation do not amount to reversible error.

⁶ *Hughes v. State*, 437 A.2d 559 (Del. 1981).

⁷ *Chapman v. State*, 821 A.2d 867 (Del. 2003).

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice