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RECENT DEVELOPMENT

RUFFIN V. STATE: TRIAL JUDGES IN CRIMINAL TRIALS MUST STRICTLY FOLLOW THE MARYLAND CRIMINAL PATTERN JURY INSTRUCTIONS ON THE PRESUMPTION OF INNOCENCE AND REASONABLE DOUBT OR RISK COMMITTING REVERSIBLE ERROR.

By: Daniel Wechsler

The Court of Appeals of Maryland held that trial judges in criminal trials must strictly follow the Maryland Criminal Pattern Jury Instruction 2:02 on the presumption of innocence and reasonable doubt or risk committing reversible error. *Ruffin v. State*, 394 Md. 355, 906 A.2d 360 (2006). Because the judge altered the pattern instructions, the Court reversed the conviction and remanded the case for a new trial. *Id.*

Petitioner, James Allen Ruffin (“Ruffin”) was convicted of robbery with a deadly weapon and use of a handgun during the commission of a felony by a jury in the Circuit Court for Baltimore City. At trial, the judge provided the jury with the Maryland Criminal Pattern Jury Instruction 2:02 (“MPJI-CR 2:02”), which describes how a jury should determine guilt or innocence based on the concepts of presumption of innocence and proof beyond a reasonable doubt.

The judge, however, modified MPJI-CR 2:02 in three different places. First, the judge instructed the jury that the presumption of innocence remains “until” it is overcome, rather than “unless” it is overcome. Second, the judge added, “It’s not a fanciful doubt, a whimsical doubt or a capricious doubt,” to explain what the term “reasonable doubt” means. Third, the judge omitted the last sentence of the instruction, which reads, “However, if you are not satisfied of the defendant’s guilt to that extent, then reasonable doubt exists and the defendant must be found not guilty.”

Ruffin appealed to the Court of Special Appeals of Maryland, which affirmed the lower court’s conviction, stating that the instruction had properly conveyed the State’s burden of proof. The Court of Appeals of Maryland granted certiorari on the sole issue of

whether the jury instructions given by the circuit court judge infringed upon Ruffin's constitutional right to due process.

The Court began its analysis by highlighting the importance of the reasonable doubt standard. *Id.* at 364, 906 A.2d at 365. Included in both the Fourteenth Amendment to the United States Constitution and Article 24 of the Maryland Declaration of Rights, the Court deemed the reasonable doubt standard to be an indispensable aspect in every criminal proceeding. *Id.* Specifically citing *Wills v. State*, the Court made clear that a judge's failure to provide instructions concerning the reasonable doubt standard is never harmless error. *Ruffin*, 394 Md. at 364, 906 A.2d at 366 (citing *Wills v. State*, 329 Md. 370, 376, 620 A.2d 295, 298 (1993)).

In *Wills*, the use of a patterned jury instruction was endorsed, but not required. *Ruffin*, 394 Md. at 365, 906 A.2d at 366-67. However, the concurring opinion in *Wills* attempted to make it a requirement that judges closely adhere to MPJI-Cr 2:02. *Ruffin*, 394 Md. at 365, 906 A.2d at 367. Additionally, the Court pointed out that other practitioners and judges in Maryland, and other jurisdictions have been highly supportive of using a standard instruction rather than a judge's personal explanation of the concepts of reasonable doubt and presumption of innocence. *Id.* 394 Md. at 366, 906 A.2d at 367.

The Court looked to other jurisdictions for guidance, including *State v. Portillo*, an Arizona Supreme Court case. *Ruffin*, 394 Md. at 366, 906 A.2d at 368. In that case, it was held that a jury must be given a patterned instruction. *Id.* at 367-68, 906 A.2d at 368 (citing *State v. Portillo*, 898 P.2d 970 (1995)). The Arizona court remarked that the concept of reasonable doubt is so important to the determination of a criminal trial that it should not be left to chance. *Ruffin*, 394 Md. at 368, 906 A.2d at 368 (citing *Portillo*, 898 P.2d at 973).

The Court of Special Appeals of Maryland in *Himple v. State*, advanced a similar argument, stating that a standard instruction is essential to prevent a judge's temptation to embellish. *Ruffin*, 394 Md. at 370, 906 A.2d at 370 (citing *Himple v. State*, 101 Md. App. 579, 647 A.2d 1240 (1994)). As explained in *Himple*, many judges are tempted to alter the instructions because they believe the concepts are not clear and require further explanation. *Ruffin*, 394 Md. at 378, 906 A.2d at 370.

In conclusion, the Court decided to follow the same approach for jury instructions as it did with the *Allen* charge in *Kelly v. State*, 270

Md. 139, 310 A.2d 538 (1973) and its progeny. *Ruffin*, 394 Md. at 372, 906 A.2d at 370. The Court previously held in *Burnette v. State*, that the instructions for an *Allen* charge must “closely adhere to ABA standards.” *Ruffin*, 394 Md. at 372, 906 A.2d at 371 (citing *Burnette v. State*, 280 Md. 88, 371 A.2d 663 (1977)). The Court reasoned that if the *Allen* charge, which is only used in limited circumstances, requires “close adherence” to a specific set of instructions, so too should the reasonable doubt standard, which is used in every criminal case. *Ruffin*, 394 Md. at 373, 906 A.2d at 371.

Conversely, the dissent made clear that prior case law in Maryland has never required “close adherence” to a standardized instruction. *Id.* at 373-74, 906 A.2d at 372. The dissent also noted that the Supreme Court of the United States has ruled that there is no constitutional requirement for a specific set of jury instructions to be used. *Id.* at 374, 906 A.2d at 372.

The dissent examined each of *Ruffin*’s three claims. *Id.* at 375-77, 906 A.2d at 372-74. First, the omission of the last sentence cannot constitute error because it is a logical conclusion rather than an additional piece of information; therefore, not adding anything to the meaning of reasonable doubt. *Id.* at 375, 906 A.2d at 372-73. Second, the substitution of “until” for “unless” has already been allowed under previous Maryland case law, and changing one word should not constitute error when the rest of the instruction was “nearly identical” to MPJI-Cr 2:02. *Id.* at 376, 906 A.2d at 373. Third, the additional sentence added by the judge, regardless of whether or not the use of which was in error, “still clearly and properly conveyed the principles underlying reasonable doubt to the jury.” *Id.*

The Court is concerned with uniformity in order to ensure equal justice for all defendants. While on its face the instructions given to the jury in this case do not appear to deviate substantially from MPJI-Cr 2:02, it would be a subjective determination as to whether these changes did in fact mislead individual jurors. Therefore, it is logical to require “close adherence” to the jury instructions in every case to ensure due process for every defendant. In light of this ruling, future Maryland cases will likely be required to define “close adherence.”