2019 IL App (5th) 160063-U

NO. 5-16-0063

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	St. Clair County.
	)	
v.	)	No. 13-CF-1612
	)	
MARLON COLEMAN,	)	Honorable
	)	Robert B. Haida,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Cates and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The trial judge did not err by stating to the pool of potential jurors, regarding the concept of proof beyond a reasonable doubt, that, *inter alia*, "It's not beyond any doubt, but it's within the human realm beyond a reasonable doubt," because the trial judge's statements did not amount to a prohibited definition of reasonable doubt, when viewed within the context of the rest of the trial judge's contemporaneous statements.

¶ 2 The defendant, Marlon Coleman, appeals his convictions and sentences following a trial by jury in the circuit court of St. Clair County. For the following reasons, we affirm.

¶ 3 FACTS

¶ 4 The facts necessary to our disposition of this appeal follow. The defendant was convicted, following a jury trial in the circuit court of St. Clair County, of nine counts of predatory criminal sexual assault of a child, one count of aggravated criminal sexual abuse, and one count of indecent solicitation of a child. He was sentenced to 140 years in the Illinois Department of Corrections, to be followed by 3 years to life of mandatory supervised release. In this direct appeal, he raises only one issue: whether the trial judge's statement, with regard to the concept of proof beyond a reasonable doubt, that "[i]t's not beyond any doubt, but it's within the human realm beyond a reasonable doubt," constituted reversible error.

¶ 5 The statement in question was made during *voir dire* of the entire pool of potential jurors, as the trial judge admonished the potential jurors as to the general principle of law that before a defendant may be convicted, the State must prove the defendant guilty beyond a reasonable doubt. The statement was in response to a question from a potential juror, who stated, "You didn't give a definition of reasonable doubt," then asked, "Could you give a definition of reasonable?" The trial judge responded:

> "Well, I can't give you a—you won't get a definition of reasonable doubt in the course of this trial. That is a—it's—the Supreme Court has indicated that we do not define it, and it's up to each individual juror and the body of 12 jurors to determine that. So I can't define it for you. I'm sorry. But given—I mean I can say this. It's not beyond all doubt, and it's more than probable cause, more—in other words, more likely than not. So does that—"

The potential juror responded, "Yes." The trial judge then continued:

> "Okay. If some of you have been involved in civil jury trials—I will be asking you about that in more detail in a little bit. But that's a probable cause or more likely than not standard in a civil case. In a criminal case it's a much higher burden, beyond a reasonable doubt. It's not beyond any doubt, but it's within the human realm beyond a reasonable doubt. It's the best I can do. I'm sorry. Given that explanation, do you think you can—you understand it better?"

The potential juror again responded, "Yes." Following the defendant's conviction of the counts listed above, and his sentencing, this timely appeal was filed.

¶ 6 ANALYSIS

¶ 7 On appeal, the sole issue raised by the defendant is his contention that it was error for the trial judge to state, "It's not beyond any doubt, but it's within the human realm beyond a reasonable doubt." According to the defendant, this statement amounted to a prohibited definition of reasonable doubt, which "invited" the jury to convict the defendant "even if they were not certain the State had proved each element beyond a reasonable doubt." The defendant acknowledges that an instruction to the jury that defines reasonable doubt will be found to violate a defendant's due process rights only if there is a reasonable likelihood that the jurors understood the instruction to allow conviction upon proof less than beyond a reasonable doubt. See, *e.g.*, *People v. Downs*, 2015 IL 117934, ¶ 18. The defendant also acknowledges that it is not error for a trial judge to tell jurors they must define reasonable doubt for themselves. See, *e.g.*, *id*. ¶ 24. However, he contends that in this case, the judge went beyond telling the jurors they must

define reasonable doubt for themselves, and instead subsequently defined it for them "by comparing the criminal and civil standards, by stating it was not beyond 'all' doubt or 'any' doubt, and most importantly, by explaining reasonable doubt is 'within the human realm.' " He posits that the use of the term "human realm" invoked the fact that humans are fallible, and make errors, and that therefore the trial judge's use of the term "created a reasonable likelihood that the jury understood those instructions as allowing a conviction under a lesser standard of proof than proof beyond a reasonable doubt." He also takes issue with the trial judge's statements that reasonable doubt is not beyond "all" or "any" doubt," instead of qualifying those statements by adding beyond "all reasonable" or "any reasonable" doubt to his statements.

¶ 8 We first note that we believe the defendant's argument takes the trial judge's statements out of their overall context when it presumes that the statements reasonably could have been interpreted by potential jurors as a *definition* of reasonable doubt. To the contrary, the statements—which, as described above, came after the trial judge *repeatedly* told the jury they would *not* be given a definition of reasonable doubt—were more akin to an explanation for *why* they would not receive such a definition. We note that Illinois courts have repeatedly held that the term "reasonable doubt" is self-defining (see, *e.g.*, *id.* ¶ 19), a point which is consistent with the trial judge's statements, each of which either explained what "reasonable doubt" is *not*, or restated the term in a manner that is consistent both with the general principle that "reasonable doubt" is self-defining, and with his clear statement that he would not define the term for the jury. Support for our conclusion is found, *inter alia*, in the fact that the trial judge finished his statements by

saying, "Given that *explanation*, do you think you can—you understand it better?" (emphasis added), rather than by saying "Given that *definition*, do you think you can—you understand it better?" Under such circumstances, no reasonable potential juror could have concluded that the trial judge had just defined "reasonable doubt" for the potential jury.

¶ 9 We next note that this is not a case like *United States v. Hernandez*, 176 F.3d 719, 731 (3d Cir. 1999), wherein the trial judge declined to define "reasonable doubt," but then immediately thereafter specifically directed the jurors as to what they should consider when formulating their own definitions of reasonable doubt: "what you in your own heart and your own soul and your own spirit and your own judgment determine is proof beyond a reasonable doubt." Not surprisingly, the federal appellate court in *Hernandez* found the trial judge's directions troubling, concluding they allowed "each juror to judge the evidence by a visceral standard unique to that juror rather than an objective heightened standard of proof applicable to each juror" and allowed "jurors to convict based upon their individual 'gut feeling.' " *Id*. The court continued, noting that "although a juror must subjectively believe that a defendant has been proven guilty, that subjective belief must be based upon a reasoned, objective evaluation of the evidence, and a proper understanding of the quantum of proof necessary to establish guilt to a 'near certitude.' " *Id*. at 732. As a result, any "instruction which allows a juror to convict because of his or her subjective feelings about the defendant's guilt, without more, is clearly inadequate." *Id*. In this case, no such direction was given to the potential jurors.

¶ 10 Moreover, the foregoing notwithstanding, we agree with the State that the idea that merely hearing the term "human realm" somehow would invoke for the potential jury members the concept that humans are fallible and capable of error, and that the potential jury members could therefore justify to themselves any error they made in holding the State to a lower standard than that required by the law, is far too attenuated and speculative—the defendant's attempts to cobble together such an argument notwithstanding—to support a finding that the trial judge's mere use of the term "human realm" created a reasonable likelihood that the jurors thereafter believed they could convict the defendant upon proof less than beyond a reasonable doubt. See, *e.g.*, *People v. Downs*, 2015 IL 117934, ¶ 18. In fact, we conclude there is no *reasonable likelihood* that any potential juror would come to such a conclusion based upon the trial judge's actual statements, viewed in totality. See *People v. Thomas*, 2014 IL App (2d) 121203, ¶ 47 ("absent any concrete demonstration of error or confusion, jurors should be trusted to apply the beyond a reasonable doubt standard appropriately"). We also agree with the State that this court's decisions in *People v. Johnson*, 2013 IL App (1st) 111317, and *People v. Carroll*, 278 Ill. App. 3d 464 (1996), further support our conclusion that there was no error in this case. Accordingly, we affirm the defendant's convictions and sentences.

¶ 11 Affirmed.