UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 1396

September Term, 2015

WILLIAM STOKES

v.

STATE OF MARYLAND

Krauser, C.J.,
Leahy,
Raker, Irma S.
(Retired, Specially Assigned),

JJ.

Opinion by Raker, J.

Filed: August 3, 2016

A jury in the Circuit Court for Baltimore City convicted appellant William Stokes of attempted second degree murder, first degree assault, robbery with a deadly weapon, and conspiracy to commit robbery.[1] Appellant presents the following issues for our review:

> 1. Was the evidence insufficient to sustain the convictions for armed robbery and conspiracy to commit robbery?
>
> 2. Was the lower court's reasonable doubt instruction plainly erroneous?

We conclude that the evidence was sufficient to support the judgments of convictions beyond a reasonable doubt. We will not exercise our discretion to consider appellant's second issue as plain error. Hence, we shall affirm.

I.

At 7:41 a.m. on August 31, 2013, Baltimore City police and paramedics responded to a report of an injured person, Marshall Dorsey, in the third floor hallway of an apartment building on North Charles Street. Mr. Dorsey suffered severe blunt force head trauma; his skull had been fractured with such force that portions of it had to be replaced with plates, and part of one ear was missing. He was unable to talk to police until later in his recovery.

[1]Appellant was acquitted of attempted murder in the first degree, carrying a deadly weapon openly with intent to injure, and conspiracies to commit attempted first degree murder, first degree assault, second degree assault, robbery with a deadly weapon, and carrying a deadly weapon openly with intent to injure.

Investigators followed a trail of blood into Apartment 28. Although no one was present, they found blood on the walls, couch, and cleaning products, as well as "a bucket of water" that "looked like someone was . . . trying to clean up blood from the floor." A warrant search yielded DNA and blood samples that were later matched to Mr. Dorsey.[2]

In the days following the attack, the tenant of Apartment 28, Jean Campbell, did not return or contact family members. Campbell was "known from the neighborhood" to be a prostitute and drug user. A police detective phoned Campbell repeatedly, but the one time she answered and identified herself, she hung up as soon as he asked about the incident.

Police obtained surveillance camera footage recorded in the hours preceding the 911 call, showing Campbell, Mr. Dorsey, and a third man, later identified as appellant, "going in and out" of the apartment building multiple times, beginning at 3:17 a.m. The video also shows Campbell disposing of a sheet in a trash can at 6:41 a.m. Three minutes later, she and appellant left the apartment building together. About an hour later, police found Mr. Dorsey in the third floor hallway.

On September 9, 2013, a police officer located Campbell and transported her to a police station. She told Detective William Nickles that one man had hit another man in the head with a hammer while in her apartment but that she did not know the name of either

[2]At trial, DNA expert Thomas Herbert testified that the couch and towel tested positive for Mr. Dorsey's DNA; swabs from the living room floor contained the DNA of both Mr. Dorsey and Campbell. Appellant's DNA was not found at the crime scene.

man. On September 26, 2013, Detective Nickles interviewed Campbell a second time and showed her a single photo of appellant. Campbell, who was "locked up" for other reasons, identified appellant as Mr. Dorsey's assailant. Appellant was arrested on October 2, 2013.

Mr. Dorsey had a lengthy recovery and rehabilitation. He initially identified Campbell as one of the assailants, while maintaining from the outset that it was a man who hit him with the hammer. He eventually identified appellant from a still frame of the surveillance camera footage, naming him as the armed assailant.

At trial, Campbell, who was also charged in the attack on Mr. Dorsey, testified pursuant to a plea deal. Under that agreement, she was to plead guilty to first degree assault and if she testified against appellant, the State would reduce its recommendation for the unsuspended portion of her sentence from twelve years to seven years of incarceration.

Campbell testified at trial and explained that she met Mr. Dorsey on August 31, 2013, when he was "getting high with another lady" in the hallway of her apartment building. He offered her drugs, she accepted, then agreed to "turn a trick with him" in the hallway, for $40. After that exchange, Campbell and Mr. Dorsey went into her apartment, where she and appellant "had been up for like four days getting high off of crack."

Campbell recounted the attack on Mr. Dorsey as follows:

> "CAMPBELL: Well, me and Mr. Dorsey went to my apartment. We straight undressed to do another deal for drugs and Mr. William [Stokes] was in there also and we was getting high before I started having sex with him. Then we sent Mr. William

out to buy more drugs two times and like the second time when Mr. William came back he asked me did Mr. Dorsey have any more money on him and I was like I don't know and then Mr. William said to me do I have a red shirt and he walked towards the closet as me and Mr. Dorsey was taking drugs and he grabbed a hammer out of the closet and he started beating Mr. Dorsey in the head with the hammer.

[PROSECUTOR]: And what did you do when this happened?

CAMPBELL: I was standing in the corner. I was scared. . . .

[PROSECUTOR]: And so tell me what happened when Mr. Stokes started hitting Mr. Dorsey in the head? What was Mr. Dorsey's reaction?

CAMPBELL: He was like I'm BGF. I'm BGF like telling him to stop. He BGF. Like that's some type of gang or something that he was in asking him to stop hitting him but he didn't stop hitting him. . . .

[PROSECUTOR]: All right. And do you know how many times he was being hit in the head with that hammer?

CAMPBELL: He was hit several times. I don't know exactly how many times.

[PROSECUTOR]: Where was Mr. Dorsey when he was hit?

CAMPBELL: He was on my living room couch. . . . .

[PROSECUTOR]: And did blood get on the couch?

CAMPBELL: Yes.

[PROSECUTOR]: And what happened? I mean, so he hits him in the head with the hammer. You're hiding to the side and what else happens?

CAMPBELL: And then when he noticed me coming down off the drugs, he was like Jean don't panic on me, I'm just trying to knock him unconscious. I'm not trying to kill him. And then he dropped the hammer and then that's when I started calming down and I grabbed the sheet and got the blood up off of the floor by the front door.

[PROSECUTOR]: Okay. So you told Mr. Stokes that he had to get the victim out of your apartment?

CAMPBELL: Yeah, I was scared I was going to lose my apartment. . . .

[PROSECUTOR]: And what did he do with him?

CAMPBELL: He put him in the hallway. That was the closest spot that I could think of him getting help because I didn't have a telephone in my apartment.

[PROSECUTOR]: And you didn't call or knock on any neighbor's door and say help this man; is that right?

CAMPBELL: No, I was scared because I was with Mr. William [Stokes] and I ain't know what would happen. That was my first time ever being with him with an attitude like that.

[PROSECUTOR]: Okay. And so you have him dragged out into the hallway and then what happened?

CAMPBELL: And then I took the sheet and wiped the blood up off of the floor and took it downstairs and put it in a trash can and came back upstairs and locked my front door and then we left. . . .

[PROSECUTOR]: . . . Did Mr. Stokes do anything to Mr. Dorsey besides hit him in the head with the hammer?

CAMPBELL: He checked his pockets. . . . For money.

[PROSECUTOR]: Did he take any money from him?

CAMPBELL: Yes.

[PROSECUTOR]: Do you know how much it was?

CAMPBELL: No.

[PROSECUTOR]: Did you all spend the money?

CAMPBELL: Yes.

[PROSECUTOR]: What did you all spend it on?

CAMPBELL: We bought more crack and heroin and beer and cigarettes.

[PROSECUTOR]: So after he was left in the hallway for dead you all then took the money and spent it on drugs?

CAMPBELL: Yes."

According to Campbell, she then stayed with appellant "for a couple of days," during which they "started working at the car wash together." When police questioned her the first time, nine days after the attack, she was "still spending time with" appellant.

Campbell identified herself, Mr. Dorsey, and appellant in the surveillance video. In doing so, she recalled that she and Mr. Dorsey left the apartment building on one occasion to buy drugs, before twice sending appellant out for drugs.

Mr. Dorsey testified at trial. Although he suffered brain trauma, "forgot about a lot," and "lost some of memories" as a result of the attack, "some of them came back stronger." In addition to losing parts of his skull and ear, he had struggled to recover "proper speech."

According to Mr. Dorsey, he was smoking only marijuana on the night of the attack. When he and Jean Campbell entered her apartment, she gave appellant the money she had just received from Mr. Dorsey and sent him to go get drugs. When appellant returned to the apartment, Campbell was performing oral sex on Mr. Dorsey as he stood on the couch. Appellant became angry "because he thought she was getting more [of the crack] than he was. . . ." Approaching from behind, appellant struck Mr. Dorsey in the back of his head with a hammer. On direct examination, Mr. Dorsey testified as follows:

> "It seemed like when I turn around the hammer had hit me right in the back . . . with the hammer and at that time I turned around and come towards him fighting, getting ready to fight him, he started hitting me in the front of the head with the hammer and then I was leaking blood so much. I took and fell off, you know what I mean, collapsed. When I collapsed, he stood over top behind Jean hollering is he dead yet. . . .
>
> Stokes asked Jean was I dead yet and she said naw. She said I don't know. You check him. . . .
> He said no you check him. So she started checking—started performing oral sex on me and thought I was going to, you know, move, flex or something like that and . . . I could hear everything. I kept still and then I reached in my—on my belt and took my little knife out and went behind Jean and pushed her down and went behind Jean and tried to stab him with a knife. . . .

> And then I went out the door to the apartment and Jean was trying to hold me back. So I elbowed her, with my elbow and hit her in her mouth and then ran out the apartment building because they was too busy arguing and carrying on."

Mr. Dorsey then "collapsed out in the hallway."

When asked, "did anyone try to take anything from you?" Mr. Dorsey answered as follows:

> "Yes, when I was unconscious, I started stashing my money. So they started searching. Then I fell out and then they started searching my pockets and my shoes looking for my money and stuff like that while I was, you know, unconscious."

According to Mr. Dorsey, appellant and Campbell took $350, along with his wallet, ID, and iPod.

On cross-examination, Mr. Dorsey insisted that Campbell did not strike him with the hammer and "was only taking orders from William Stokes." He added that when appellant "started swinging" at him, he "tried to take the hammer and hit him, fighting him back," but "[Campbell] had helped him by trying to hold one of my hands."

The jury acquitted appellant of attempted murder in the first degree, carrying a deadly weapon openly with intent to injure, and the conspiracy charges of conspiracy to commit attempted first degree murder, first degree assault, second degree assault, robbery with a deadly weapon, and carrying a deadly weapon openly with intent to injure. The jury convicted appellant of attempted second degree murder, first degree assault, robbery with

a deadly weapon, and conspiracy to commit robbery. The court sentenced appellant on the attempted murder charge to a term of incarceration of 25 years without the possibility of parole, for the armed robbery, 20 years to be served consecutively, and on the conspiracy to commit armed robbery, 10 years to be served concurrently.

This timely appeal followed.

II.

Before this Court, appellant presents two arguments: that the evidence was insufficient to support his convictions of armed robbery and conspiracy to commit armed robbery and that the trial court's instruction on reasonable doubt, although there was no objection to the instruction below, was plainly erroneous and reversible error.

Appellant's sufficiency of the evidence argument as to both convictions rests upon his premise that although Campbell's testimony implicated appellant in both offenses, that she was an accomplice and as such, her testimony required independent corroboration. He dismisses the testimony of the victim, Mr. Dorsey, as outlandish, that he was using drugs at the time of the incident and that he was unconscious at the time appellant and Campbell were allegedly going through his pockets.

Appellant's reasonable doubt instruction appeal rests upon a plain error argument. There was no objection lodged below to the reasonable doubt instruction. He argues that

because the trial court did not adhere strictly to the MSBA Maryland Pattern Jury Instruction 2:02, and eliminated two concepts, that reversal is required. He points out that the court did not tell the jury that it was required to find each element of the crime beyond a reasonable doubt, and that the court reminded the jury that "a reasonable doubt is a doubt founded upon reason."

The State maintains that the evidence was sufficient to support appellant's convictions of armed robbery and conspiracy to commit robbery. The State relies on the surveillance video from the apartment building and the testimony of the victim, Mr. Dorsey, as evidence sufficient to support the conviction. As to the reasonable doubt jury instruction, the State argues that there was no error, much less plain error, in the instruction. It is the State's position that "each and every element" language is not critical or necessary language, nor was the part that "reasonable doubt is a doubt founded upon reason" error. In short, the State urges this Court to reject a plain error analysis.

III.

We address first appellant's contention that the evidence was insufficient to sustain the convictions for armed robbery and conspiracy to commit robbery because (1) there was no evidence to corroborate the incriminating testimony of his accomplice, Jean Campbell;

and (2) there was no evidence of an agreement between appellant and Campbell before the robbery. We do not agree.

The standard of review, on the merits, for the sufficiency of the evidence is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *State v. Suddith*, 379 Md. 425, 429 (2004). We give deference to the trier of fact's resolution of conflicting evidence, findings of fact and its opportunity to observe and assess the credibility of the witnesses. *See Suddith*, 379 Md. at 430.

We address the robbery offense first. Appellant concedes that Campbell testified that appellant asked her if Mr. Dorsey had money, then retrieved a hammer, hit him in the head, and took his money, which they used to buy drugs. Moreover, appellant recognizes that Campbell's testimony, if corroborated, is sufficient to establish all the elements of robbery with a dangerous weapon. *See Teixera v. State*, 213 Md. App. 664, 681 (2013); Md. Code (2002, 2012 Repl Vol.), § 3-403(a)(1) of the Criminal Law Article; MPJI-Cr. 4:28-4:28.1.

It is black letter law in Maryland that a defendant may not be convicted on the uncorroborated testimony of an accomplice and that testimony must be corroborated by some independent evidence. *In re Anthony W.*, 388 Md. 251, 263-64 (2005). In *Brown v. State*,

281 Md. 241, 243-244 (1977) (quoting *Luery v. State*, 116 Md. 284 (1911)),we explained the reason behind the rule, as follows:

> "[T]he evidence of an accomplice is universally received with caution and weighed and scrutinized with great care . . . . When such a one has as a motive the prospect of freedom, a milder sentence or the favor of the officers who have him in charge, an innocent one may undoubtedly be made to suffer, if great caution is not used. Hence, it would seem to be safer to require some corroboration."

Not much in the way of evidence is required to corroborate the testimony of an accomplice. *Brown*, 281 Md. at 244. Only slight corroboration is required. *Turner v. State*, 294 Md. 640, 642 (1982). Chief Judge Murphy, in *Brown*, explained the quantum of evidence necessary to corroborate an accomplice, stating as follows:

> "Not much in the way of evidence corroborative of the accomplice's testimony has been required by our cases. We have, however, consistently held the view that while the corroborative evidence need not be sufficient in itself to convict, it must relate to material facts tending either (1) to identify the accused with the perpetrators of the crime or (2) to show the participation of the accused in the crime itself. If with some degree of cogency the corroborative evidence tends to establish either of these matters, the trier of fact may credit the accomplice's testimony even with respect to matters as to which no corroboration was adduced. That corroboration need not extend to every detail and indeed may even be circumstantial is also settled by our cases."

Brown, 281 Md. at 244. (Internal citations omitted). The corroborating evidence should either identify the defendant with the perpetrators of the crime or show the participation of the defendant in the crime itself. *Turner*, 294 Md. at 643.

The record establishes that Campbell's testimony was corroborated sufficiently. The victim, Mr. Dorsey, and the surveillance video corroborate her testimony. Mr. Dorsey confirmed that appellant struck him with the hammer before stealing his cash and other valuables. Mr. Dorsey testified that appellant and Campbell discussed whether Mr. Dorsey had any more money before attacking him and taking his money. The surveillance video, played for the jury, identified appellant with the perpetrators of the crime. The video showed Campbell and Mr. Dorsey together as they entered, left and reentered the building between 3:17 a.m. and 4:17 a.m.; that Mr. Dorsey left the building at 5:06 a.m., reentered at 5:50 a.m. and then leaving again at 6:12 a.m., returning at 6:26 a.m. The video shows Campbell disposing of the sheet at 6:41 a.m., and Campbell and appellant leaving the building together at 6:44 a.m. All these clips corroborated Campbell's testimony. In addition, Mr. Dorsey testified that appellant and Campbell went through his pockets and shoes looking for money. Appellant does not dispute that Mr. Dorsey's testimony, if believed by the jury, provides sufficient corroboration of Campbell's accomplice testimony. Instead, he argues that the State cannot rely on Mr. Dorsey's testimony as corroboration because it "was incredible." In support, appellant asserts that Mr. Dorsey, "by his own

admission, was using drugs at the time of the incident, was unconscious at the time Mr. Stokes and Ms. Campbell allegedly went through his pockets, and had suffered memory loss." Citing Mr. Dorsey's testimony that "Ms. Campbell performed oral sex on him to see if he was alive, and that he ran out of the apartment building after the attack," appellant argues that such "outlandish" claims "undermined any corroborative value to his testimony."

We reject appellant's claim that Mr. Dorsey's testimony was so far-fetched that, as a matter of law, it cannot be believed. It was up to the jury to assess Mr. Dorsey's credibility and to resolve conflicts in the evidence. *See McClurkin v. State*, 222 Md. App. 461, 486, *cert. denied*, 443 Md. 736 (2015), and *cert. denied*, 136 S. Ct. 564, 193 L.Ed.2d 449 (2015). Appellant's list of deficiencies in Mr. Dorsey's testimony does not persuade us otherwise. Mr. Dorsey testified that he left Campbell's apartment, not the apartment building. Moreover, the jury was entitled to credit Mr. Dorsey's testimony that he only smoked marijuana and/or to conclude that his account of the assault and robbery was accurate, notwithstanding his drug use and head trauma. Although admitting some memory loss, he testified that during his recovery, he "started remembering a lot of things" so that he "can say what happened that night." On direct examination, Mr. Dorsey testified that while he feigned unconsciousness, he heard appellant and Campbell discuss whether he had any money and whether he was dead. In addition, he was aware of Campbell trying to determine whether he was still alive by attempting to arouse him, and of appellant and Campbell taking

money out of his pocket. On cross-examination, he clarified his testimony that he was "unconscious," explaining that he only "lost consciousness outside . . . . in the hallway, once out, never inside."

Because there was ample evidence corroborating Campbell's accomplice testimony, we hold that the evidence was sufficient to convict appellant of robbery with a deadly weapon.

IV.

Appellant contends next that the evidence is insufficient to establish the agreement element of conspiracy to commit robbery, because there was "no evidence" that appellant and Campbell "were acting pursuant to a plan formed before" they went through Mr. Dorsey's pockets. The agreement to commit the crime "must have been formed *prior* to the commission of the criminal act." *Rhodes v. State*, 56 Md. App. 601, 612 (1983). The record again refutes appellant's contention.

Conspiracy, in Maryland, is a common law crime. *Curtin v. State*, 393 Md. 593, 597 n.6 (2006). The agreement is the essence of a conspiracy. *State v. Johnson*, 367 Md. 418, 424 (2002). Conspiracy is an agreement between two or more people to achieve some unlawful purpose or to employ unlawful means in achieving a lawful purpose. *Alston v. State*, 414 Md. 92, 113 (2010) (quoting *Johnson*, 367 Md. at 424). In *State v. Payne*, 440

Md. 680 (2014), the Court of Appeals discussed the nature of the crime of conspiracy, stating as follows:

> "The essence of a criminal conspiracy is an unlawful agreement. The agreement need not be formal or spoken, provided there is a meeting of the minds reflecting a unity of purpose and design. In Maryland, the crime is complete when the unlawful agreement is reached, and no overt act in furtherance of the agreement need be shown. *Townes v. State*, 314 Md. 71, 75, 548 A.2d 832, 834 (1988). *See Mason v. State*, 302 Md. 434, 444, 488 A.2d 955, 960 (1985) (stating that the 'agreement is the crime, and the crime is complete without any overt act'); *Monoker v. State*, 321 Md. 214, 221, 582 A.2d 525, 528 (1990) ('The gist of conspiracy is the unlawful agreement. . . . The crime is complete when the unlawful agreement is made')."

Payne, 440 Md. at 713. In *Mitchell v. State*, 363 Md. 130, 145-46 (2001), the Court of Appeals reiterated that a conspiracy may be shown by circumstantial evidence. Even though a common design may be inferred, the requirement that there must be a meeting of the minds—a unity of purpose and design—means that the parties to a conspiracy, at the very least, must (1) have given sufficient thought to the matter, however briefly or even impulsively, to be able mentally to appreciate or articulate the object of the conspiracy—the objective to be achieved or the act to be committed, and (2) whether informed by words or by gesture, understand that another person also has achieved that conceptualization and agrees to cooperate in the achievement of that objective or the commission of that act. *Id.*

Circumstantial evidence of a tacit agreement may be sufficient to convict. *See Acquah v. State*, 113 Md. App. 29, 50 (1996). "The concurrence of actions by the co-

conspirators on a material point is sufficient to allow the jury to presume a concurrence of sentiment and, therefore, the existence of a conspiracy." *Id.*

In this case, there was ample evidence of concurrence of action between appellant and Campbell from which the jury could infer the existence of a conspiracy. Mr. Dorsey testified that, just prior to the assault, appellant asked Campbell whether Mr. Dorsey had any more money and that after appellant struck him with the hammer, appellant and Campbell discussed whether he was dead yet. Mr. Dorsey further testified that, after the assault, Campbell tried to help appellant by holding one of Mr. Dorsey's hands and she tried to prevent him from leaving the apartment. Campbell cleaned up the blood with a towel, disposed of the sheet and importantly, left with appellant to spend the money they took from Mr. Dorsey. From this evidence, the jury was entitled to infer that appellant and Campbell agreed to rob Mr. Dorsey. Accordingly, we hold that the evidence is sufficient to support appellant's conviction for conspiracy to rob Mr. Dorsey.

V.

Admitting that he failed to object to the reasonable doubt instruction, appellant asks this Court to review the instruction for plain error. Maryland Rule 4-325(e) requires a contemporaneous objection to preserve error for appellate review, stating as follows:

> "No party may assign as error the . . . failure to give an instruction unless the party objects on the record promptly after

> the court instructs the jury, stating distinctly the matter to which the party objects and the grounds of the objection. . . . An appellate court . . . may however take cognizance of any plain error in the instructions, material to the rights of the defendant, despite a failure to object."

Plain error review "is reserved for those errors that are 'compelling, extraordinary, exceptional or fundamental to assure the defendant of [a] fair trial.'" *Robinson v. State*, 410 Md. 91, 111 (2009) (quoting *Rubin v. State*, 325 Md. 552, 588 (1992)). It involves four prongs: (1) the error must not have been "intentionally relinquished or abandoned"; (2) the error must be clear or obvious, not subject to reasonable dispute; (3) the error affected appellant's substantial rights, which means he must demonstrate that it affected the outcome of the court proceeding; (4) the appellate court has discretion to remedy the error, but this ought to be exercised only if the error affects the fairness, integrity, or public reputation of judicial proceedings. *State v. Rich*, 415 Md. 567, 578 (2010). As Judge Charles E. Moylan, Jr., said it best:

> "Because defense reliance on the so-called 'plain error' exemption from the preservation requirement continues doggedly to exhibit such pandemic proportions, however, it behooves us periodically to reassert why appellate invocation of the 'plain error doctrine' 1) always has been, 2) still is, and 3) will continue to be a rare, rare phenomenon."

Morris v. State, 153 Md. App. 480, 507 (2003).

Applying this test, we decline to address appellant's argument as plain error. We are not persuaded that plain error relief is warranted. As a threshold matter, appellant

affirmatively waived the alleged errors. After completing instructions, the trial court, at the bench, offered both counsel an opportunity to except to the instructions. Defense counsel told the court, "No, Your Honor," then asked whether the pattern instruction on credibility had been given. After the court assured her that it had given that instruction, defense counsel stated: "Okay. Nothing. . . . No exceptions." Had counsel made his exception known to the court, the trial court could have addressed the matter. Granting plain error relief in these circumstances would undermine the preservation rule, the purpose of which is to allow the trial court to avoid or correct instructional error. *See Robinson v. State*, 410 Md. 91, 104 (2009); *DeLeon v. State*, 407 Md. 16, 26 (2008).

Even if appellant had not affirmatively waived his complaints, he falls short of the requirements for plain error relief because neither of the challenged portions of the instruction constituted clear error that affected the jury's verdict and compromised "the fairness, integrity or public reputation of judicial proceedings." *Rich*, 415 Md. at 578 (quoting *United States v. Olano*, 507 U.S. 725, 725 (1993)). As a basic matter, we are not persuaded that the court erred in omitting the "each and every element" language from the pattern instruction. That phrase was added in 2013. *See* MPJI-Cr. 2:02, Comment (2d ed. 2012, 2013 Supp.). When the Court of Appeals first held in 2006 that trial courts must closely adhere to the approved pattern instruction on the presumption of innocence and reasonable doubt, the pattern instruction did not include this phrase. *See Ruffin v. State*, 394

Md. 355, 357 (2006); MPJI-Cr. 2.02, Comment. Since then, the Court has held that the pattern instruction without the "each and every element" language conveyed that concept adequately enough to satisfy constitutional standards. *See Carroll v. State*, 428 Md. 679, 690 (2012); MPJI-Cr. 2.02, Comment. While we think it the better approach for trial courts to adhere closely to the MSBA pattern instruction on reasonable doubt, the court's omission of the "each and every element" language is not error.

The trial court's inclusion of the "doubt founded upon reason" language was not error. The language does not favor the State over the defendant. It is a neutral statement of law.

JUDGMENTS OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED. COSTS TO BE PAID BY APPELLANT.