

Russell M Adams
CLERK SUPERIOR COURT

IN THE SUPERIOR COURT OF GLYNN COUNTY

STATE OF GEORGIA

STATE OF GEORGIA

*

V.

*

Indictment:

*

CR 2000433

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GREG MCMICHAEL

*

TRAVIS MCMICHAEL

*

WILLIAM R. BRYAN

*

4.56 MOTION TO PROHIBIT IMPROPER ARGUMENT BY COUNSEL
REGARDING QUANTIFYING THE BEYOND A REASONABLE DOUBT
STANDARD OF PROOF

COMES NOW, the State of Georgia, by and through the undersigned District Attorney Pro Tempore, and files this motion in limine to prohibit the Defense from attempting to quantify the beyond a reasonable doubt standard of proof. In support of this Motion, the State shows as follows.

(1)

The Defense may attempt to argue that, the State, in order to prove its case beyond a reasonable doubt, must meet a certain mathematical threshold or percentage of proof. The Defense may even use charts to illustrate various percentages, or levels, in an attempt to raise the standard of proof to something not founded in the law.

(2)

The Georgia Supreme Court confronted a similar issue in *Debelbot v. State*, 308 Ga. 165 (2020), where the State argued the following in its closing argument: “The Judge will charge you on reasonable doubt. Just keep in mind, and he will

charge you, reasonable doubt does not mean beyond all doubt. It does not mean to a mathematical certainty. Which means we don't have to prove that ninety percent. You don't have to be ninety percent sure. You don't have to be eighty percent sure. You don't have to be fifty-one percent sure. It does not mean to a mathematical certainty.” Id. at 167. The court held that the State’s argument quantifying proof beyond a reasonable doubt was “obviously wrong.” Id. Due in part to the defense attorney’s failure to object to the State’s characterization of the standard of proof, the court reversed the defendant’s conviction. Id. at 170. The court then cautioned the Bar as follows: “Although our opinion focuses on the prosecuting attorney's misstatement that proof beyond a reasonable doubt does not require evidence establishing even a 51 percent certainty of guilt, we also disapprove the statements that a jury need not be 90 percent or 80 percent certain of guilt to find beyond a reasonable doubt that a defendant is guilty. *We admonish lawyers not to confuse jurors by attempting to quantify a standard of proof that is not susceptible of quantification.*” Id. at 169, n.9 (emphasis added).

(3)

The State does not intend to attempt to quantify the standard of proof in this case and asks this Court to prohibit the Defense from doing so, and from using any visual presentation or chart that may attempt to quantify it.

Given the foregoing, the State respectfully requests a pretrial ruling granting this Motion.

This the 30th day of June, 2021.

/S/ Linda J. Dunikoski

Linda J. Dunikoski

State Bar # 233887

Senior Assistant District Attorney

District Attorney Pro Tempore

Cobb Judicial Circuit

/S/ Larissa Ollivierre

Larissa Ollivierre

State Bar # 743602

Assistant District Attorney

District Attorney Pro Tempore

Cobb Judicial Circuit

/S/ Paul Camarillo

Paul Camarillo

State Bar # 215044

Senior Assistant District Attorney

District Attorney Pro Tempore

Cobb Judicial Circuit

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served opposing counsel with a true and correct copy of the above 4.56 MOTION TO PROHIBIT IMPROPER ARGUMENT BY COUNSEL REGARDING QUANTIFYING THE BEYOND A REASONABLE DOUBT STANDARD OF PROOF via the Odyssey E-File System to:

Mr. Robert G. Rubin
Mr. Jason Sheffield
Peters Rubin Sheffield & Hodges, PA
2786 North Decatur Road, Suite 245
Decatur, GA 30033
robertrubin@justiceingeorgia.com
jasonsheffieldattorney@gmail.com
(404) 296-5300

Laura and Frank Hogue
Hogue & Hogue LLP
341 Third Street
PO Box 1795
Macon, GA 31202-1795
(478) 750-8040
laura@hogueandhogue.com
frank@hogueandhogue.com

Mr. Kevin Robert Gough
Ms. Jessica Burton
Kevin Gough Firm LLC
PO Box 898
Brunswick, GA 31521
kevingough.firm@gmail.com
jessica@justice.law
(912) 242-5114

This the 30th day of June, 2021.

/S/ Linda J. Dunikoski
Linda J. Dunikoski
Senior Assistant District Attorney
State Bar # 233887
District Attorney Pro Tempore
Cobb Judicial Circuit
70 Haynes Street, Marietta, GA 30090
Tel. (770) 528-3080
Linda.Dunikoski@CobbCounty.org