

**United States Court of Appeals
FOR THE EIGHTH CIRCUIT**

No. 00-3440

United States of America,

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Plaintiff-Appellee,

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v.

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Appeal from the United States

District Court for the

Eastern District of Missouri

*

Vernell Butcher

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[UNPUBLISHED]

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Defendant-Appellant.

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Submitted: April 10, 2001

Filed: July 5, 2001

Before LOKEN, Circuit Judge, and GOLDBERG¹ and BOGUE,² Judges.³

PER CURIAM.

¹The Honorable Richard W. Goldberg, Judge for the United States Court of International Trade, sitting by designation.

²The Honorable Andrew W. Bogue, United States District Judge for the District of South Dakota, sitting by designation.

³Pursuant to 28 U.S.C. § 46(b), the Chief Judge certified the existence of a judicial emergency necessitating the designation of a panel consisting of fewer than two members of the Court of Appeals.

Appellant, Vernell Butcher, was convicted by a jury on June 13, 2000, of being a felon in possession of a firearm. See 18 U.S.C. § 922(g)(1) (1994). Butcher received a 300-month sentence and a five-year supervised release term.

Butcher appeals the decision of the district court⁴ to deny his motion for a mistrial based on the allegedly improper remarks made by the government prosecutor during closing argument. Additionally, Butcher claims that the district court's use of the Eighth Circuit's Reasonable Doubt Jury Instruction impermissibly lowered the government's burden of proof. We affirm the decision of the district court.

After a careful examination of the record, this Court finds that the trial court did not commit error by denying Butcher's motion for a mistrial, see United States v. Wadlington, 233 F.3d 1067, 1077 (8th Cir. 2000) (In assessing the prejudicial impact of potential prosecutorial misconduct, the Court considers (1) the cumulative effect of the misconduct, (2) the strength of the properly admitted evidence, and (3) the curative actions taken by the district court), or by giving the jury the Eighth Circuit's Reasonable Doubt Jury Instruction. See United States v. Harris, 794 F.2d 84, 85 (8th Cir. 1992)(Eighth Circuit's explicit approval of Reasonable Doubt Jury Instruction). Under Eighth Circuit Rule 47B, no further commentary is warranted.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.

⁴ The Honorable Donald J. Stohr, District Judge, United States District Court for the Eastern District of Missouri.