

No. 1-09-0513

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(3)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	05 CR 6270
	)	
ALAN McCRAY,	)	Honorable
	)	Charles P. Burns,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE NEVILLE delivered the judgment of the court.  
Presiding Justice Steele and Justice Murphy concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* Although both of the State's witnesses had motives to implicate the defendant, and one of the witnesses retracted the testimony around which the State built its case, sufficient evidence supported the conviction. The prosecutor's remark that the court would not define "reasonable doubt," and the remark that the witnesses lived by a code that forbade telling police about who committed crimes, did not deprive the defendant of a fair trial.
- ¶ 2 A jury found Alan McCray guilty of murder. On appeal, McCray argues that the evidence did not prove him guilty, and that prosecutorial comments deprived him of a fair

trial. We find that the grand jury testimony of one witness, corroborated by testimony that McCray confessed his involvement in the crime to a neighbor, provided sufficient evidence to sustain the conviction, despite the witnesses' motives to lie, and the testimony of one witness that the grand jury transcript did not accurately reflect his testimony. We find no plain error in the prosecutor's comment that the court would not define "reasonable doubt," and in the comment that the witnesses did not go to police with information they knew about the murder because of a code by which they refuse to snitch on their neighbors. Therefore, we affirm the trial court's judgment.

¶ 3

#### BACKGROUND

¶ 4

On October 8, 2003, shortly after midnight, Nigel Lake was sitting with his friends in his car in front of his home when Jerry Dean, while under the influence of alcohol, plowed his van into the car. Lake watched Dean make a u-turn and drive off. Dean did not go far. He stopped his van in front of McCray's home and started banging on McCray's door. Dean said he needed to use the bathroom. McCray refused to let Dean enter. Dean urinated on the side of McCray's house.

¶ 5

Around 1 p.m. that afternoon, police found Dean in his van, dead from a gunshot wound to the head, less than a mile from McCray's home and Lake's home. A videotape from a security camera showing an area near the van showed a man running with a limp not long after midnight on October 8.

¶ 6

In February 2005, detectives found guns in Antwan Anderson's home. They brought Anderson to the police station to question him about Dean's murder. Later police questioned

Lake about the murder. Lake testified before a grand jury about what happened on October 8, 2003. The grand jury charged McCray with murdering Dean by personally discharging a firearm.

¶ 7 At trial, the prosecution presented a purported transcript of Lake's grand jury testimony. The attorney who presented Lake to the grand jury swore that the transcript accurately reported Lake's testimony. According to the transcript, Lake told the grand jury that after Dean tried to get into McCray's house, McCray drove over to Lake's home in his Cadillac to talk to Lake. McCray complained about all the noise Dean had made, and the effect of the noise on McCray's two children and his girlfriend. Lake took a ride with McCray and they smoked marijuana. When they returned, they saw Dean's van, still in front of McCray's home. McCray stopped briefly at his mother's house nearby, and then Lake watched as McCray walked up to Dean's van. Dean opened the van's door, and then Lake saw a flash that he thought might have come from a gunshot. The van pulled out and Lake followed in McCray's Cadillac. After driving a few blocks, Lake stopped on the street while the van entered a wooded area. Lake thought he heard two muffled gunshots. McCray ran up and got back into the Cadillac. McCray said to Lake, "I killed that mother fucker." According to the purported transcript, Lake also told the grand jury that the man shown running on the videotape appeared to be McCray. McCray had suffered a gunshot wound that made him limp. The prosecution also presented a handwritten statement that Lake signed that effectively told the same story as the purported transcript of Lake's grand jury testimony.

¶ 8 Lake, at trial, denied that the transcript accurately recorded his testimony before the grand jury. According to Lake's testimony at trial, after he saw Dean yelling outside McCray's home on October 8, 2003, he did not see McCray again that evening. According to Lake, McCray owned a Cadillac, but on October 8 it did not work. Lake also denied that he told police any of the statements made in the handwritten statement he signed. Lake testified that the police would not let him leave the police station until he signed the statement someone else wrote out.

¶ 9 Anderson testified that he knew McCray from the neighborhood, and they had known each other for about ten years. On October 8, 2003, McCray came over and said he had shot Dean. McCray gave an account of the incident that matched the account from the purported transcript of Lake's grand jury testimony. According to Anderson, McCray explained that when he returned home and saw Dean's van in front of McCray's house, McCray went to his mother's house to get a gun. Anderson said he did not contact the police to tell them about the confession because "it wasn't [his] business." He told them about it in February 2005 only after police kept him in custody for three days. Anderson said the videotape from October 8, 2003, showed McCray running from the van around the time of Dean's death. Although McCray could not see the running man's face, he recognized the man as McCray because of his limp. On cross-examination Anderson admitted that he had not seen McCray run after he suffered his injury. Prosecutors did not charge Anderson with any gun-related offense despite the discovery of guns in his home and his lack of a firearm owner's identification card.

¶ 10 McCray testified that he did not get very upset when Dean raised a ruckus and urinated on the side of his house. McCray, like Lake, said McCray's Cadillac was inoperable on October 8, 2003. McCray went out with a friend for a while after the encounter with Dean, and then he went back home to sleep. He heard about Dean's death a few days later. McCray said the man on the videotape did not run like McCray.

¶ 11 In closing argument, the prosecutor said,

"It's for you to decide whether the evidence is proved beyond a reasonable doubt. And you're not going to get an instruction telling you what beyond a reasonable doubt is because there isn't one. It's for you to collectively decide what that means.

\* \* \*

\*\*\* There's a code for how people operate on the streets, where the defendant, and Nigel Lake, and Jerry Dean and [Antwan] Anderson run. \*\*\*

The code that pervades on the street where these gentlemen run is you don't snitch."

¶ 12 The court overruled defense counsel's objection. The prosecutor concluded, "Anderson certainly wasn't going to violate that code and come into the police station the very day after Jerry Dean's body was found to snitch." Again the court overruled defense counsel's objection.

¶ 13 After three hours of deliberations, the jurors sent the judge a note informing him that

the jurors' vote split nine to three. The court sequestered the jury for the night. The jurors deliberated for several hours the following morning before arriving at their verdict. They found McCray guilty of first-degree murder, but they found that the prosecution failed to prove that McCray personally discharged a firearm in the course of the murder.

¶ 14 In his motion for a new trial, McCray did not object to the prosecutor's closing arguments. The trial court denied the motion and sentenced McCray to 42 years in prison. McCray now appeals.

¶ 15 ANALYSIS

¶ 16 McCray raises two arguments in this appeal. First, he contends that the prosecution did not prove him guilty beyond a reasonable doubt, and second he argues that the prosecutor's closing argument deprived him of a fair trial.

¶ 17 Sufficiency of the Evidence

¶ 18 When a defendant challenges the sufficiency of the evidence, we must consider all of the evidence in the light most favorable to the prosecution. *People v. Young*, 128 Ill. 2d 1, 49 (1989). We will not reverse a conviction for insufficient evidence if any rational trier of fact could find that the prosecution proved all of the elements of the crime beyond a reasonable doubt. *Young*, 128 Ill. 2d at 49.

¶ 19 The prosecution's case against McCray rested on three pieces of evidence: (1) the purported transcript of Lake's testimony to the grand jury; (2) Anderson's testimony to McCray's confession; and (3) the videotape, recorded on the night of the murder, that showed a blurry image of a man with a limp running from the area in which police found

Dean's van and Dean's body. McCray argues that none of these pieces credibly shows that he killed Dean.

¶ 20 McCray points out that Lake had a strong motive to try to implicate McCray in the murder. The prosecution presented evidence that placed Lake at the scene of the murder at the time of the murder, and Lake admitted that a short time before the murder Dean ran his van into Lake's car. Lake invoked the fifth amendment to the United States Constitution as grounds not to respond to a number of the prosecutor's questions, thereby acknowledging that his answers might prove that he was responsible for the crimes. He answered the questions only after the State gave him qualified immunity for his answers. He then swore that the transcript presented at trial misrepresented the testimony he gave before the grand jury. According to Lake, he did not see McCray near the site where police found Dean's body, and he never said that he saw McCray. Lake swore he did not see McCray approach Dean's van and shoot, and he never said he saw McCray shoot. Lake's motive to lie and his contradiction of the out-of-court statements, both undercut the credibility of the out-of-court statements to some extent. See *People v. Smith*, 185 Ill. 2d 532, 544-45 (1999).

¶ 21 Anderson also had a motive to lie, as police found guns in his home, and might have had a basis for charging him with a gun-related offense. Police held him in custody for three days before he signed the statement about McCray's confession. McCray contends that no rational trier of fact could believe Anderson's testimony that McCray, a mere acquaintance from his neighborhood, casually confessed the murder to Anderson after assiduously erasing all physical evidence that could tie McCray to the murder. Police admitted they found no

gun and no useful fingerprints on Dean's van. And, according to McCray, the videotape does not help the prosecution because the jurors could not tell whether the tape showed McCray near the murder scene. The jurors needed to rely on the dubious testimony of Lake and Anderson that they could identify McCray on the tape by the way he limped as he ran.

¶ 22 We defer to the jury's assessment of the credibility of the witnesses, and we will not reverse a conviction for insufficient evidence unless the evidence is so unreasonable, improbable or unsatisfactory that it leaves a reasonable doubt of the defendant's guilt. *Smith*, 185 Ill. 2d at 542. Here, Anderson's testimony corroborates the transcript of Lake's testimony to the grand jury, and the videotape provides some further support for the jury's finding. We cannot say that every rational trier of fact would reject as incredible both Anderson's testimony and the transcript of Lake's out-of-court testimony. Therefore, considering all the evidence in the light most favorable to the prosecution, we find the evidence sufficient to sustain the conviction.

¶ 23 Closing Argument

¶ 24 Next, McCray argues that two of the prosecutor's statements in closing argument deprived him of a fair trial. First, the prosecutor informed the jurors that the court would not define "reasonable doubt," and the jurors would need to interpret the phrase for themselves. Second, the prosecutor argued that Anderson and Lake lived by a code that forbade snitching. McCray admits that he did not raise these issues in his posttrial motion, so we review the issues only for plain error. *People v. Thompson*, 238 Ill. 2d 598, 611 (2010).

¶ 25 Under Illinois law, neither the court nor counsel should attempt to define reasonable

doubt for the jury. *People v. Speight*, 153 Ill. 2d 365, 374 (1992). "Because there is no better definition of reasonable doubt than the words themselves, the concept of reasonable doubt needs no explanation." *People v. Garcia*, 103 Ill. App. 3d 779, 784 (1981). The prosecutor here did not attempt to define reasonable doubt. We do not see the prosecutor's comments here as similar to the court's definition of reasonable doubt in *United States v. Hernandez*, 176 F.3d 719, 729 (3d Cir. 1999), where the court told the jurors that proof beyond a reasonable doubt is "what you in your own heart and your own soul and your own spirit and your own judgment determine," and "what you feel inside." The district court in *Hernandez* invited jurors to rely on a gut feeling about the defendant's guilt, while the prosecutor here correctly informed the jurors that the court would not define reasonable doubt for them and they would need to interpret the term for themselves. We find no plain error in this correct statement of the law.

¶ 26 Finally, McCray argues that the prosecutor effectively testified when he said that Anderson and Lake lived by a code of not snitching. We find this case similar to *State v. Ancona*, 854 A.2d 718 (Ct. 2004). In *Ancona*, the prosecutor commented that witnesses abided by a code of silence that forbade snitching on the defendant. *Ancona*, 854 A. 2d at 738-39. The Supreme Court of Connecticut found that the prosecutor improperly explained the witnesses' conduct "in terms of a purported sociological phenomenon for which there was no evidentiary support." *Ancona*, 854 A. 2d at 739. Although the court found the comment improper, it held that it did not deprive the defendant of a fair trial, and therefore the court affirmed the conviction of the defendant. *Ancona*, 854 A. 2d at 749.

¶ 27 Here, some evidence may justify the prosecutor's remark that a code of conduct forbade snitching. Anderson explained that he did not report McCray's confession to police because it was none of his business. The jurors could infer from this testimony that Anderson felt no duty or obligation to report to police significant evidence in his possession of a major crime, even if such a report might help to control crime in Anderson's neighborhood. It seems a small step to infer that Anderson disapproved of helping police solve crimes committed by people he knew because such help would count as snitching. But even if the trial court erred by overruling defense counsel's objection to the remark, we find that the remark did not seriously mislead the jury or deprive McCray of a fair trial. See *Ancona*, 854 A. 2d at 745. Accordingly, we hold that the trial court here did not commit plain error when it overruled defense counsel's objections to remarks that Anderson and Lake abided by a code that forbade snitching.

¶ 28 CONCLUSION

¶ 29 Anderson's testimony at trial and the transcript of Lake's testimony to the grand jury provide sufficient evidence to support the murder conviction here. The trial court did not commit plain error when it permitted the prosecutor to say that the court would not define "reasonable doubt" and that the witnesses lived by a code of not snitching. Accordingly, we affirm the trial court's judgment.

¶ 30 Affirmed.