

2013 IL App (1st) 113021-U

THIRD DIVISION  
July 17, 2013

Nos. 11-3021 and 12-0689  
(consolidated)

**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(e)(1).

---

IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

---

In re BRANDON J., A MINOR	)	Appeal from the
(THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
	)	Cook County.
Petitioner-Appellee,	)	
v.	)	No. 11 JD 1552
BRANDON J., a minor,	)	Honorable
	)	Lori M. Wolfson,
Respondent-Appellant).	)	Judge Presiding.

---

JUSTICE HYMAN delivered the judgment of the court.  
Presiding Justice Neville and Justice Mason concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* The trial court's finding that respondent was delinquent based on his commission of robbery affirmed over his challenge to statements made during the State's closing argument.
- ¶ 2 Respondent Brandon J. was found delinquent following a jury trial, based on his commission of robbery and committed as a violent juvenile offender to the Illinois Department of Juvenile Justice until the age of 21. On appeal, respondent contends that he was denied a fair trial based on the State's rebuttal closing argument, which allegedly defined reasonable doubt to the jury in a way that improperly reduced the State's burden of proof. We affirm.

1-11-3021 and 1-12-0689 cons.

¶ 3

### Background

¶ 4 At trial, Daehee C., who was a 17-year-old student at Mather High School, testified that a little after 4 p.m. on April 14, 2011, he was near Lincoln and Sacramento Avenues, Chicago, his MP3 player on while riding his bike home from school when two African-American individuals called him. Daehee recognized one of the individuals as Brandon, who was in Daehee's Spanish class. Daehee continued riding his bike and then was knocked off of it by the unknown offender. Both offenders surrounded Daehee and demanded that he give them everything. Daehee replied negatively, the offenders restrained and punched Daehee several times in the face, and took his MP3 player and cell phone. Both offenders ran and Daehee chased after them to no avail.

¶ 5 Daehee returned to where the incident took place, and two high school students and a third person told him that they witnessed what occurred. The students said they knew "Cookie," which was Brandon's nickname. Daehee called the police with a phone he borrowed from one of the students. The police arrived and told Daehee to write a report detailing the incident and give it to a school administrator the following morning. The next day, Daehee told the dean of the school about the incident, and stated that one of the offenders was nicknamed "Cookie," and was in his Spanish class. The dean knew who "Cookie" was and told Daehee his real name. The dean showed Daehee a class list, and Daehee picked Brandon as one of the individuals who robbed him.

¶ 6 Emir K., a student who attended the same high school as Daehee and Brandon, testified that he and his friend Jose D. were walking on Lincoln Avenue toward Sacramento Avenue at about 4:30 p.m. when he saw three people, two African-Americans and one Asian, running and screaming. The only person he recognized was Brandon, who he knew from school. He later learned the name of the victim. Emir heard Daehee screaming "give it back," and saw the three of them throwing punches at each other. Emir continued walking and saw Daehee's book bag

1-11-3021 and 1-12-0689 cons.

and bike. Emir, Jose, and a third person waited with Daehee's belongings until he returned about five minutes later. Daehee borrowed Emil's phone and called the police.

¶ 7 Kenneth Lecomte, who was the dean of students at Mather High School, testified that on April 15, 2011, Daehee came to his office, gave him a piece of paper containing an explanation of the events the day before, and told Lecomte that he was attacked, beaten, and robbed of his iPod and money. Daehee indicated that Cookie, who Lecomte knew to be Brandon, was one of the individuals who attacked him, and that Cookie was in his Spanish class. Lecomte showed Daehee photos of the students in his Spanish class, and Daehee identified Brandon as one of the attackers. After looking through a yearbook, Daehee identified Emil and Jose as witnesses to the attack. Lecomte then notified the police, who removed Brandon from school.

¶ 8 Debra P. testified on behalf of Brandon that Brandon was like a brother to her and that on April 14 she saw him after school around 2:45 p.m. They walked to a nearby park with several friends, and Brandon played basketball there for about 90 minutes. Between 4:30 and 5 p.m., the group, which included Brandon, went to a second park. Brittany W. testified similarly.

¶ 9 In rebuttal, the State called Jose who testified that at about 4:30 p.m. he was with Emil on his way home when he saw three people, including Daehee and Brandon. According to Jose, Brandon was running down Lincoln Avenue.

¶ 10 During closing argument, defense counsel argued that the State failed to prove Brandon guilty beyond a reasonable doubt. In particular, counsel stated that due to the lack of physical evidence and conflicting eyewitness accounts of the incident, the only way a jury could find Brandon guilty is if it based the finding on no more than sympathy for the victim. In rebuttal, the prosecutor argued, "And reasonable doubt. What is reasonable doubt? If you believe that [Brandon] committed this crime that you heard about over the course of yesterday and today in this courtroom, then you are obligated under the law to find him guilty." Defense counsel

1-11-3021 and 1-12-0689 cons.

objected to the State defining reasonable doubt. In overruling that objection, the trial court stated that it did not believe that the prosecutor's comments regarding reasonable doubt amounted to a definition, and that it would instruct the jury as to the law and "I know that you will follow the law as I give it to you." The prosecutor concluded its argument by stating, "Reasonable doubt, if you believe that [respondent] did it, then respondent is guilty. I ask that you return a guilty verdict in this case."

¶ 11 Following closing arguments, the trial court instructed the jury as to the law, and stated that neither opening statements nor closing arguments are evidence. The jury found Brandon guilty of robbery, and, before the dispositional hearing, Brandon filed a notice of appeal on Brandon's behalf on September 20, 2011 (No. 1-11-3021). On October 6, 2011, Brandon was committed to the Illinois Department of Juvenile Justice until he turned 21 years old. We granted leave to file a late notice of appeal on March 19, 2012 (No. 1-12-0689).

¶ 12 Analysis of Claim of Prosecutorial Misconduct

¶ 13 Brandon contends that the prosecutor's rebuttal argument denied him a fair trial in that it improperly defined reasonable doubt to the jury in a way that reduced the State's burden of proof. He further maintains that the trial court compounded this error by overruling his objection to the prosecutor's comments, and telling the jury that the court would instruct them on the law even though there is no reasonable doubt instruction. Thus, according to Brandon, there could be no instruction to cure the prejudice from the prosecutor's improper comments.

¶ 14 We note that counsel for Brandon preserved this issue for appellate review by objecting to the prosecutor's comments during closing argument. See *In re W.C.*, 167 Ill. 2d 307, 326-27 (1995) (stating that no posttrial motion was required in juvenile proceedings to preserve issue for appellate review).

1-11-3021 and 1-12-0689 cons.

¶ 15 A prosecutor has wide latitude regarding the content of closing and rebuttal arguments, and may comment on evidence and any fair and reasonable inferences the evidence may yield. *People v. Runge*, 234 Ill. 2d 68, 142 (2009). When reviewing claims of prosecutorial misconduct during closing argument, we consider the entire closing argument of both parties to place the comments in context. *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010). While a prosecutor's remarks may sometimes exceed the bound of proper comment, the verdict must not be disturbed unless the remarks resulted in substantial prejudice to the defendant, such that absent those remarks, the verdict would have been different. *People v. Byron*, 164 Ill. 2d 279, 295 (1995). Thus, comments constitute reversible error only when they engender substantial prejudice against the defendant such that it is impossible to say whether or not a verdict of guilt resulted from those remarks. *People v. Nieves*, 193 Ill. 2d 513, 533 (2000).

¶ 16 We briefly note that due to a conflict between two supreme court cases, it is unclear whether we review this issue *de novo* or for an abuse of discretion. Compare *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) with *People v. Blue*, 189 Ill. 2d 99, 128 (2000). We, however, need not determine which is the proper standard of review because the result is the same under either one. *People v. Woods*, 2011 IL App (1st) 091959, ¶ 38; *People v. Raymond*, 404 Ill. App. 3d 1028, 1060 (2010); *People v. Phillips*, 392 Ill. App. 3d 243, 274-75 (2009).

¶ 17 Brandon maintains the following comments by the prosecutor during the rebuttal to defense counsel's closing argument minimized the reasonable doubt standard and reduced the State's burden of proof: "What is reasonable doubt? If you believe that [Brandon] committed this crime that you heard about over the course of yesterday and today in this courtroom, then you are obligated under the law to find him guilty." We observe that counsel objected to this comment, and was overruled. The court specifically stated that it did not believe that the prosecutor's comments constituted a definition, and that it would instruct the jurors on the law. The

1-11-3021 and 1-12-0689 cons.

prosecutor then argued, "Reasonable doubt, if you believe that [respondent] did it, then the [respondent] is guilty. I ask that you return a guilty verdict in this case."

¶ 18 We reject Brandon's contention that the State's rebuttal argument minimized the reasonable doubt standard and reduced the State's burden of proof. An attempt to define the reasonable doubt standard is reversible error only if it causes "substantial prejudice" to the defendant. *People v. Speight*, 153 Ill. 2d 365, 374 (1992). Substantial prejudice exists when a prosecutor: (1) suggests that the State has no burden of proof, or attempts to shift that burden to the defendant; (2) reduces the State's burden of proof to a pro forma or minor detail; or (3) gives an involved instruction on reasonable doubt to the jury. *Id.* Here, the prosecutor's comments did not suggest that the State had no burden of proof, nor did he attempt to shift the burden to respondent or reduce the State's burden of proof to a minor or *pro forma* detail. See *People v. Howell*, 358 Ill. App. 3d 512, 524 (2005). Instead, the prosecutor responded to defense counsel's multiple assertions that reasonable doubt remained because the State's witnesses were not credible. For example, Brandon's counsel argued that, "[the State] want[s] you to convict [respondent], beyond a reasonable doubt, based on evidence, eyewitness evidence that's conflicting. There's no fingerprints. There's no evidence that was taken. There's no hard evidence, besides this conflicting eyewitness evidence that the State has produced. \*\*\* The only way that you can come back with any kind of verdict besides [not guilty] is if you allow sympathy or prejudice to be a part of your decision \*\*\*." Therefore, considering the closing arguments in their entirety, the State's rebuttal argument that Brandon could be found guilty beyond a reasonable doubt if the jury believed he committed the robbery was a response to Brandon's counsel's assertions that the evidence was so insufficient that any guilty verdict would have to be based on nothing more than sympathy or prejudice.

1-11-3021 and 1-12-0689 cons.

¶ 19 Moreover, even assuming *arguendo* that the prosecutor's comments were improper, Brandon's claim would fail because the alleged error was harmless because there was ample evidence of Brandon's guilt. *People v. Chavez*, 265 Ill. App. 3d 451, 460 (1995)(new trial will not be granted based on prosecutor's improper comments during closing argument unless "so prejudicial as to materially contribute to a defendant's conviction," citing, *People v. Collins*, 127 Ill. App. 3d 236, 241 (1984)). Daehee identified Brandon, who was in his Spanish class, as one of the individuals who attacked and robbed him. Lecomte, the dean of students, confirmed that Daehee relayed the events in question to him the day after the attack, and identified Brandon as one of his assailants. Emil was an eyewitness at the scene who heard Daehee screaming "give it back," and saw Daehee, Brandon, and a third individual throwing punches at each other. Jose, who was with Emil, was also an eyewitness and placed Brandon at the scene. In contrast, the evidence presented by Brandon's friends that he was not at the scene of the crime was simply rejected by the jury.

¶ 20 Furthermore, we reject Brandon's argument that the trial court's failure to sustain his counsel's objection to the prosecutor's statement regarding reasonable doubt compounded the error. Brandon specifically maintains that because there is no reasonable doubt instruction, there could be no instruction to cure the prejudice from the prosecutor's alleged improper comments. But, that is not the law, and the trial court properly instructed the jury that closing arguments are not evidence. After the State rested its case, the trial court admonished the jury that, "[w]hat the lawyers say during argument is not evidence, and should not be considered by you as evidence." Following closing arguments, the judge reiterated that, "[n]either opening statements, nor closing arguments are evidence; and any statement or argument made by the attorneys, which is not based on the evidence, should be disregarded." Therefore, even assuming that the prosecutor erred during closing arguments, the trial court took the correct measure to cure any misstatement

1-11-3021 and 1-12-0689 cons.

by instructing the jury that closing arguments are not evidence. See *People v. Garcia*, 231 Ill. App. 3d 460, 469 (1992) (jury instruction regarding fact that arguments are not evidence tends to cure any prejudice from improper remarks).

¶ 21 For the foregoing reasons, we affirm the judgment of the juvenile court.

¶ 22 Affirmed.