2015 IL App (1st) 133188-U

THIRD DIVISION
August 19, 2015

No. 1-13-3188

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County, Illinois.
	)	
v.	)	No. 12 CR 2574
	)	
CHRISTIAN TELTEU,	)	Honorable
	)	William G. Lacy,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MASON delivered the judgment of the court.
Presiding Justice Pucinski and Justice Lavin concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's conviction for knowingly carrying on or about his person an uncased, loaded and immediately accessible firearm is vacated based on *People v. Aguilar*, 2013 IL 112116, declaring that offense unconstitutional. Defendant's sentence is invalid under *People v. Mosley*, 2105 IL 115872, which declared the relevant sentencing subsection void. Defendant's conviction for carrying a firearm without a valid FOID card affirmed despite defendant's claim that prosecutor's comments during closing argument and rebuttal deprived defendant of a fair trial. Given that defendant has served his sentence, no re-sentencing is necessary. Mittimus ordered corrected to accurately reflect the charges defendant was found guilty of by the jury.

¶ 2 Following a jury trial, Christian Telteu was convicted of two forms of aggravated unlawful use of a weapon, one of which was declared unconstitutional in *People v. Aguilar*, 2013 IL 112116, ¶ 22. We must, therefore, vacate that conviction. We affirm Telteu's remaining AUUW conviction for failing to possess a valid firearm owner's identification (FOID) card against his claims that the prosecutor's closing and rebuttal arguments were improper, prejudicial and denied him a fair trial. Although the sentence imposed on the unconstitutional form of AUUW is void under *People v. Mosley*, 2015 IL 115872, ¶ 55, we need not remand this case for resentencing given that Telteu has served the entirety of his sentence, but we direct that his mittimus be corrected to reflect the correct subsection of the AUUW statute under which he was convicted.

¶ 3 BACKGROUND

¶ 4 An incident occurring during the early morning hours of January 1, 2012, lead to Telteu's arrest and he was charged with four counts of AUUW in that he knowingly: (1) carried on or about his person an uncased, loaded and immediately accessible firearm on a public street (720 ILCS 5/24-1.6(a)(2), (3)(A) (West 2012)); (2) carried a firearm without a currently valid FOID card on a public street (720 ILCS 5/24-1.6(a)(2), (3)(C) (West 2012)); (3) carried on or about his person an uncased, loaded and immediately accessible firearm while outside his own land, abode or fixed place of business (720 ILCS 5/24-1.6(a)(1), (3)(A) (West 2012)); and (4) carried a firearm without a currently valid FOID card while outside his own land, abode or fixed place of business (720 ILCS 5/24-1.6(a)(1), (3)(C) (West 2012)). The State proceeded to trial on the first two counts, and the following evidence was adduced at his jury trial.

¶ 5 New Year's Eve of 2011 was Martin Jahn's second day working part-time security at 260 Sport's Bar and Grill at 260 West 26th street in Chicago, Illinois. Jahn was responsible for

checking patrons' identification and making sure there were no problems in the bar. While working his shift, Jahn and his fellow security guard escorted an individual outside who he believed to be intoxicated and who had thrown a drink at another patron. The man then stood outside with two of his friends and made verbal threats toward the bar and the security guards. The security guards told the men to leave and informed them that the police had been called.

¶ 6 When Jahn was still outside, he saw three cooks from the bar in the parking lot across the street and then he saw the same three men throwing rocks at the cooks. Jahn saw that one of the cooks had been knocked to the ground, another was also being knocked to the ground and an individual, whom he identified as Telteu, then stood over that cook's head, pulled out a gun, racked the gun's slide back and pointed the gun at the cook's head. Jahn yelled "gun," told Telteu to drop the gun and saw Telteu toss the gun off to the side landing underneath the back bumper of a car. Jahn instructed Telteu to get down on his knees, and he initially complied, but then got up and ran away. Jahn saw Telteu about 10 or 15 minutes later in the backseat of a police vehicle for a show-up, and identified Telteu as the man who had the gun earlier.

¶ 7 Gustavo Rubalcaba and Hector Munoz worked as cooks at the bar. At about 1:10 a.m. on January 1, 2012, they left work together to go to their respective homes and walked toward Munoz's vehicle that was parked in a lot across the street from the bar. As they were walking, men started yelling and throwing rocks at them. Rubalcaba then saw a man, whom he identified as Telteu, point a gun at Munoz. Rubalcaba tried to distract Telteu so he would not shoot Munoz by running behind a car, but Telteu hit him between the eyes with the back part of the gun causing him to fall. Telteu left where Rubalcaba was and walked toward Munoz. Rubalcaba heard the gun get "charged back." According to Munoz, Telteu pointed a gun at him until a security guard arrived at the parking lot. Both Rubalcaba and Munoz escaped and ran away from

the parking lot. Rubalcaba and Munoz later saw Telteu that same night in a police vehicle and they identified him as the man they saw with the gun.

¶ 8 Chicago police officer Spiegle was on duty on January 1, 2012, and at approximately 1:45 a.m., he responded to a "10-1" call–an emergency request for assistance by another officer who was in imminent danger. Officer Spiegle saw a man, whom he identified as Telteu, matching the description of the man he was looking for walking a few blocks away from the bar. Telteu caught Officer Spiegle's attention because it was 2 a.m. and he was not wearing a jacket over his t-shirt even though it was cold outside, and Telteu had a large rip in his pants. Officer Spiegle approached Telteu, who acted evasive, but was cooperative. Officer Spiegle patted-down Telteu because he saw a bulge in Telteu's right pants pocket, and he found cannabis, but no weapon. After the pat-down, Officer Spiegle placed Telteu in the police vehicle for a show-up and drove to the bar. The witnesses identified Telteu and he was arrested. Telteu's vehicle–a 1999 Ford Expedition–was recovered in the parking lot.

¶ 9 Chicago police officer Michael Ray was on duty on January 1, 2012, and recovered an uncased, loaded weapon underneath the back of a vehicle in the parking lot.

¶ 10 The State entered into evidence two exhibits revealing that: (1) the vehicle recovered in the parking lot was registered to Vanessa Rodriguez and Telteu and (2) no FOID card was issued to Telteu. After the trial court denied Telteu's motion for a directed finding, the defense called its witnesses.

¶ 11 Vanessa Rodriguez testified that she and Telteu have been together for 11 years, are engaged and have a son together. According to Rodriguez, she has never known Telteu to have a gun. Rodriguez spent New Year's Eve with Telteu at a small get together at her grandmother's house. Rodriguez, Telteu, her sister Jasmine Lopez and a friend Hector Pedroza left her

grandmother's house around 12:45 a.m. to give Telteu a ride to meet his friend at the bar. Rodriguez drove their Expedition and dropped Telteu off in the parking lot across the street from the bar. Rodriguez parked the vehicle toward the front of the parking lot while she waited for Telteu and saw him talking to his friend, but she did not see him point a gun at anybody nor did she see people chasing others or throwing rocks. Rodriquez did see approximately 15 men in the parking lot and there was a lot of commotion. Rodriguez then saw police officers arrive and there was "shouting, screaming, yelling, everybody scattered." Rodriguez no longer saw Telteu and she left too, but the police stopped the vehicle. The police searched the vehicle and found marijuana, which belonged to Telteu. On the day she testified, Rodriguez arrived at court with Telteu and, prior to her testimony, she and Telteu discussed the events of January 1, 2012, and her testimony.

¶ 12 Rodriguez's sister Jasmine Lopez has known Telteu for about 10 years. Lopez testified that she has never known Telteu to have a gun. Lopez, Rodriguez and Telteu left their grandmother's house to drop Telteu off in the parking lot. While sitting in the front passenger seat of the vehicle parked in the parking lot, Lopez saw people swarm into a small group. Lopez saw Telteu walk to the front of the parking lot, but she could not account for what he was doing after he left the vehicle.

¶ 13 Telteu testified that he spent New Years' Eve with Rodriguez and others at her grandmother's house. Telteu wanted Rodriguez to drive him to the bar to meet his friend so he could purchase some marijuana.

¶ 14 According to Telteu, approximately seven or eight people started arguing and "boxing it out" while other people just watched. Telteu saw the police arrive and he and an unidentified friend decided to leave walking right past where the men were fighting. Telteu explained that

they left the parking lot because when the police arrived, they were smoking marijuana and he was pretty high.

¶ 15 Rodriguez then called Telteu to tell him that the police stopped her in front of the bar. Telteu accidently dropped some marijuana when he got out of the vehicle and thought that was why the police stopped Rodriguez. Telteu turned around and started walking toward the bar, but his friend kept walking in the other direction. A police officer stopped Telteu while he was walking back to the bar, and he was arrested after the police officer found cannabis in his pocket. The police officer placed Telteu in the police vehicle and drove him back to the bar for a show-up. Telteu admitted to the police officer that he owned the cannabis found in the vehicle. Rodriguez, Lopez and Pedroza were arrested, but were not charged. Telteu testified that he did not own a gun, no one handed him a gun on January 1 and he did not point a gun at Rubalcaba or Munoz. Telteu admitted that he talked about the case with Rodriguez.

¶ 16 The defense rested and the parties gave closing arguments. During closing arguments, the State commented on the credibility of the State's witnesses and the evidence in the case. The State concluded its closing argument by asking the jury to "tell the defendant that he can't go around our city streets, like some gun-toting maniac, without proper credentials." During Telteu's closing argument, the defense stated that Rodriguez testified credibly, and stated that Telteu did not own a gun. Regarding Telteu, the defense stated that:

> "he was the guy on the street, coming back to look out for Vanessa. He was looking out for his wife. I use that term kind of loosely. They have been together so long, to him Vanessa is his wife, his family. He's not letting her go down for his mess-up. It's not a gun screw-up. It's a cannabis screw-up. Marijuana."

The defense concluded its closing argument by stating that "we had good testimony."

¶ 17 In rebuttal, the prosecutor remarked about Telteu's "believability," and stated that "[h]e wasn't leaving marijuana. He wasn't leaving that. He was leaving the violence that happened in that parking lot." The prosecutor made the following remarks regarding the nature of the case and the State's witnesses' identification of Telteu:

> "Folks, this isn't just a gun possession case, okay? This isn't about somebody that's illegally possessing a gun. This is about violence. This case is replete with violence.
>
> When the police came and picked up the evidence in this case, the gun, when they interviewed witnesses, Hector and Gustavo, Martin Jahn, when they recovered his car from that parking lot, when they recovered that evidence from the crime scene, you should all be very happy that that's the only evidence they took from that lot that New Year's morning. They're lucky that they weren't trucking two bodies out of that lot. It's not a simple gun possession case. This was violence.
>
> ***
>
> And you heard when [the State's witnesses] came to court, and apparently now, after the fact, after they're not here, when they were on this witness stand, counsel suggests that they're confused. They're not really sure it was him. Martin Jahn, they're not really sure.
>
> Well, you know what? None of that really came out when they were testifying, not really sure. They told you unequivocally that this is the guy with the gun. This is the guy that they saw in that parking lot, and that's the guy that the police brought back."

The prosecutor also stated the following regarding the credibility of both the defense's witnesses and its own witnesses:

"And I think you can even see it when he testified before you. The defendant telling you and you heard when I was asking him questions, putting his own little spin on things. He doesn't even deny that he was there. He doesn't deny that he was at a New Year's Eve party with his fiancé, his child that he has with her. He doesn't deny that they didn't drink anything – really?

***

That doesn't make any sense. Folks, those witnesses, bless their hearts, Jasmine, his fiancé, rental witnesses. They come in here. They don't know anything about what he was doing. They'll tell you they don't see him with a gun or anything like that. But they're devoted to him. And can you blame them? No. So what? Their testimony is nothing. Throw it in the garbage can.

And you know what? If he thought anything about them, maybe he wouldn't have walked away down the street. Apparently, he manned up to the drugs in that car. That's what he wanted to tell you. He manned up for that. But not about some gun. Not about this. No.

***

Well, you know what? Don't leave behind your common sense, Folks. You're applying the law in your deliberations. Don't leave behind the testimony of the security guard that night, Martin Jahn. Don't leave behind the testimony of Gustavo and Hector, who I would submit to you was compelling. People that don't want to be here and want nothing to do with this. Don't leave that behind."

¶ 18 After deliberations, the jury found Telteu guilty of knowingly carrying a firearm that was uncased, loaded, and immediately accessible and carrying a firearm without a currently valid

FOID card. Telteu filed a motion for judgment notwithstanding the verdict and, in the alternative, a new trial asserting in part that the prosecutor made improper remarks during closing and rebuttal closing arguments and the State failed to prove every element of the offenses. The trial court denied the motion and sentenced Telteu to 18 months' incarceration, including one year of mandatory supervised release. In sentencing Telteu, the trial court merged the no FOID card AUUW conviction into the other AUUW conviction. Telteu's oral motion to reconsider the sentence was denied, and Telteu now appeals.

¶ 19 ANALYSIS

¶ 20 A. AUUW Convictions

¶ 21 On appeal, Telteu claims, and the State concedes, that Telteu's AUUW conviction for knowingly carrying an uncased, loaded, and immediately accessible weapon should be vacated based on the supreme court's decision in *People v. Aguilar*, 2013 IL 112116. The supreme court held that the same statute at issue here prohibiting an individual from knowingly carrying an uncased, loaded and immediately accessible firearm while outside his own land, abode or fixed place of business (720 ILCS 5/24-1.6(a)(1), (a)(3)(A), (d) (West 2008)) was an unconstitutional ban against an individual's right to keep and bear arms under the second amendment and declared that AUUW offense void. *Id.* ¶ 22. We agree with the parties and vacate Telteu's AUUW conviction for knowingly carrying an uncased, loaded and immediately accessible firearm while outside his own land, abode or fixed place of business.

¶ 22 Telteu similarly claims that his sentence is now invalid because he was sentenced on the unconstitutional AUUW conviction under section 24-1.6(d)(2) (720 ILCS 5/24-1.6(d)(2) (West 2012)), which classifies the offense as a class 4 felony subject to a mandatory imprisonment term

of not less than one year and not more than three years.[1] Telteu relies on *People v. Mosley*, 2015 IL 115872, asserting that the supreme court held the same sentencing subsection–(d)(2)–was invalid because it incorporated the unconstitutional AUUW offense (set forth in subsection (a)(3)(A)). *Id.* ¶ 52. The State disagrees arguing that Telteu's conviction and sentence for knowingly carrying a firearm without a currently valid FOID card (720 ILCS 5/24-1.6(a)(1), (a)(3)(C) (West 2012)) are severable from the unconstitutional AUUW conviction.

¶ 23 In sentencing Telteu, the trial court merged the no FOID card AUUW count into the now unconstitutional AUUW count and sentenced him to 18 months' incarceration including one year of mandatory supervised release. In *Mosley*, the supreme court held that the sentencing subsection (d)(2) of the AUUW statute was invalid because "it requires a conviction based upon an unconstitutional and unenforceable statutory section." *Mosley*, 2015 IL 115872, ¶ 55. But the supreme court also recognized that the unconstitutional subsection (a)(3)(A) was severable from the rest of the statute. *Id.* ¶ 57. In fact, the *Mosley* court explicitly held that the no FOID card AUUW offense was constitutional and severable from the unconstitutional offense. *Id.* ¶ 61. The *Mosley* court remanded the cause for resentencing on the AUUW offenses based on defendant's age–under 21. *Id.* ¶ 57.

¶ 24 Here, Telteu's AUUW conviction for the no FOID card charge remains valid because he was convicted of a constitutionally valid offense separate from the now void and unconstitutional AUUW conviction. Because the trial court merged the no FOID count for sentencing purposes with the unconstitutional count and sentenced Telteu under subsection (d)(2), which likewise has now been held invalid by *Mosley*, his sentence is invalid. *Id.* ¶ 55. But Telteu acknowledges that

[1] Telteu states on appeal that he has been released from prison and his term of mandatory supervised release was scheduled to be completed on April 28, 2015.

remanding the cause for a re-sentencing hearing is not warranted because Telteu has fully served his sentence, and we agree.

¶ 25 B. Closing Arguments

¶ 26 Notwithstanding the completion of his sentence, Telteu seeks reversal of his conviction based on the prosecutor's comments during closing argument and rebuttal. Specifically, Telteu claims the prosecutor: (1) inferred that Telteu's testimony was untruthful; (2) disparaged the defense witnesses' testimony by calling the witnesses "rental witnesses" who were "devoted" to Telteu; (3) described Rodriquez's and Lopez's testimony as "nothing" and that the jury should "throw it in the garbage can;" (4) vouched for the State's witnesses' credibility; and (5) inflamed the passions of the jury by characterizing the case as one about violence. Telteu asserts the effect of the improper comments was further compounded because most of them were made during the State's rebuttal precluding a response by the defense. Even if the errors were not prejudicial on an individual basis, Telteu claims that the cumulative effect of the prosecutor's misconduct denied him a fair and impartial trial.

¶ 27 Telteu asserts he raised this claim in his posttrial motion for a new trial, but concedes that he did not contemporaneously object to the statements. He argues that his claim is reviewable under the plain error doctrine, which permits a reviewing court to consider unpreserved claims of error in limited circumstances: where the evidence was closely balanced or a clear error occurred that was so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). But, the first step of a plain-error analysis requires determining whether any error occurred at all. *Id.*

¶ 28 It is well established that a prosecutor has wide latitude in making a closing argument and may comment on the evidence and any fair, reasonable inferences from the evidence, but may

not make assumptions or argue facts not supported by the record. *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). Challenged statements must be viewed in their context and the closing argument must be viewed in its entirety. *Id.* Remarks are deemed proper when provoked or invited by the defense counsel's closing argument. *Id*. The State may also challenge a defendant's credibility or the credibility of his theory or defense provided evidence exists supporting the challenge. *Id*. at 207.

¶ 29 Both parties recognize that the standard of review relating to allegations of improper comments made during closing and rebuttal closing arguments is unclear following the supreme court's decisions in *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), applying a *de novo* standard of review, and *People v. Blue*, 189 Ill. 2d 99, 128 (2000), applying an abuse of discretion standard. We need not resolve the issue because under either standard, we reach the same conclusion. *People v. Thompson*, 2013 IL App (1st) 113105, ¶ 78.

¶ 30 1. Comments allegedly directed against the defense

¶ 31 Telteu asserts that the prosecutor's remarks suggested he was a liar putting a spin on the evidence and implied that his defense had been fabricated. Because the prosecution and defense witnesses recounted diametrically opposed and factually irreconcilable versions of the events of January 1, 2012, the jury was necessarily called on to assess witness credibility. Under these circumstances, arguments regarding witness credibility–or lack thereof–are necessarily fair game. *People v. Kirchner*, 194 Ill. 2d 502, 549 (2000); *People v. Hickey*, 178 Ill. 2d 256, 291 (1997); *People v. Ramey*, 151 Ill. 2d 498, 534 (1992); *People v. Tiller*, 94 Ill. 2d 303, 319 (1986); *People v. Williams*, 2015 IL App (1st) 122745, ¶ 12. This is not to say that the prosecutor has unbridled latitude in arguing credibility, but Telteu's suggestion that the topic is off limits is without merit.

¶ 32 Here, it was proper for the prosecutor to comment on Telteu's credibility and there was nothing improper about the prosecutor inferring that he put "a spin on things." *People v. Hudson*, 157 Ill. 2d 401, 444 (1993); *People v. Williams*, 2015 IL App (1st) 122745, ¶ 12. Likewise, the prosecutor's remarks calling Telteu's witnesses "rental witnesses" who are "devoted" to Telteu addressed the witnesses' credibility, which again was an appropriate subject for argument. When read in context, the prosecutor was obviously alluding to the relationship that the witnesses had to Telteu–that Rodriguez was his "wife" and Lopez was his "sister-in-law." Contrary to Telteu's assertion, the prosecutor was not blatantly implying that Rodriguez and Lopez had committed perjury or lied; rather, he properly argued that the jury should give little weight to their testimony given their close and longstanding relationship to him. Similarly, the prosecutor's use of the words "rental witnesses" when read in context was not a reflection on defense counsel's integrity nor did it create an inference that defense counsel purposely offered testimony known to be fabricated. Consequently, the prosecutor's comments regarding the defense's witnesses' credibility were proper.

¶ 33 2. Comments vouching for the credibility of prosecution witnesses

¶ 34 Telteu claims that the prosecutor improperly vouched for the credibility of the State's witnesses by portraying the victim-witnesses as "hard-working" men who were simply trying to go home to their families after work, and that Jahn and Munoz testified credibly. Telteu also claims that the prosecutor improperly interjected his personal opinion when he referred to the testimony of the victims as "compelling." We disagree.

¶ 35 As stated above, witness credibility is a proper subject for the prosecutor to address during closing arguments where the comments are based on the record or reasonable inferences drawn therefrom. But a prosecutor may not personally vouch for or express a personal opinion

about a witness' credibility. *People v. Sims*, 403 Ill. App. 3d 9, 20 (2010); *People v. Johnson*, 254 Ill. App. 3d 74, 82 (1993). Here, the prosecutor's comment that Rubalcaba and Munoz were hard-working men who wanted to get home to their families was not a personal opinion about the witnesses' credibility, but a proper comment based on the evidence in the record–both men testified that they were on their way home after finishing their work shift.

¶ 36 Likewise, the prosecutor's comment urging the jury not to "leave behind the testimony of Gustavo and Hector, who I would submit to you was compelling" was not an improper opinion or personal assessment regarding the witnesses' credibility. Telteu relies on *People v. Roach*, 213 Ill. App. 3d 119, 124 (1991), a case in which the prosecutor "clearly and repeatedly stated his personal feelings about the witnesses' credibility." In contrast, Telteu points to one isolated comment, which was not an expression of the prosecutor's personal belief that the victims were telling the truth. Moreover, a prosecutor's remarks are improper where he "*explicitly* state[s] that he is asserting his personal beliefs, stating for example, 'this is my personal view.' " (Emphasis in original.) *People v. Pope*, 284 Ill. App. 3d 695, 707 (1996). Here, the prosecutor's use of the words "I submit" did not explicitly convey to the jury that he was expressing a personal opinion regarding the witnesses' credibility. See *id*. (no improper bolstering occurs if the prosecutor's comments require the jury to infer that the prosecutor was expressing a personal opinion); *People v. Brown*, 253 Ill. App. 3d 165, 176 (1993) (noting that a prosecutor's use of the words "I think" or "I believe" does not amount to an error every time those words are used). Consequently, the prosecutor's comments were not an improper bolstering of or vouching for the witnesses' credibility.

¶ 37 3. Comments inflaming the passions of the jury

¶ 38 Telteu further claims that the prosecutor's comments characterizing the case as one about violence rather than merely a gun possession case, and describing him as a "gun-toting maniac" inflamed the jury's passions and unfairly prejudiced him. Telteu asserts the prosecutor also engaged in prohibited "us-versus-them" and "send a message" arguments that encouraged the jury to make a decision based on their emotions, and not as a neutral fact-finder. The record belies these assertions.

¶ 39 Defense counsel acknowledged that on the night of the incident, the scene in the parking lot was chaotic and involved "all kinds of trouble" in which he claimed Telteu was not involved. Thus, the prosecutor's reference to the "violence" involved in the incident was not error and could not have prejudiced Telteu. Likewise, the prosecutor's argument that this was "not a simple gun possession case," but, rather, "this is about violence," was a fair comment on the evidence as multiple witnesses testified to rocks being thrown at the victims, Telteu striking one of the victims with the gun and pointing the gun at the other victim.

¶ 40 Similarly, the prosecutor's opening argument asking the jury to "tell the defendant that he can't go around our city streets, like some gun-toting maniac, without proper credentials" was not a prohibited "us-versus-them" or "send a message" argument. Specifically, Telteu claims that the prosecutor's reference to "our" city streets improperly merged the prosecutor's position with that of the jury's.

¶ 41 A prosecutor may not forge an "us-versus-them" mentality during closing argument that "is inconsistent with the criminal trial principle that a jury fulfills a nonpartisian role, under the presumption that a defendant is innocent until proven guilty." *People v. Wheeler*, 226 Ill. 2d at 129. Nothing in the prosecutor's reference to "our city streets" created an improper alignment

between the State and the jury compromising the jury's nonpartisan role or compelling the jury to side with the State to ensure its own safety. *Id.*; compare *People v. Deramus*, 2014 IL App (1st) 130995, ¶¶ 57, 59 (finding the prosecutor's statement to the jury that "what defendant did was wrong, but most importantly, it's what he's doing to us" improperly aligned the jury with the prosecution and against defendant); with *People v. Desantiago*, 365 Ill. App. 3d 855, 865 (2006) (prosecutor's comment that "We're not going to stand for this *** Let [defendant] know that our community is not going to stand for that" was not an improper "us-versus-them" argument).

¶ 42 Likewise, the prosecutor's comments were not a prohibited "send a message" remark. A prosecutor may properly remark about the evil effects of the crime and urge the fearless administration of justice. *Deramus*, 2014 IL App (1st) 130995, ¶ 55 (quoting *People v. Nicholas*, 218 Ill. 2d 104, 121-22 (2005)). But a prosecutor may not focus on the broad problems of crime in society or engage in " 'an extended and general denunciation of society's ills.' " *Id.* (quoting *People v. Johnson*, 208 Ill. 2d 53, 77, 79 (2003)). Moreover, a prosecutor may not make comments strictly to " 'inflame the passions or develop the prejudices of the jury without throwing any light upon the issues.' " *Wheeler*, 226 Ill. 2d at 129 (quoting *People v. Halteman*, 10 Ill. 2d 74, 84 (1956)). Here, the prosecutor did not engage in an extended discourse denouncing society's ills influencing the jury to "send a message" through its verdict. The prosecutor's comments had a direct bearing on the evidence in the case because Telteu was on city streets possessing a weapon without a valid FOID card. Nothing in the prosecutor's comments invited the jury to deliberate based on passion and outrage rather than reason.

¶ 43 In reviewing Telteu's allegations of improper remarks during closing argument and rebuttal, we must determine whether the prosecutor's comments resulted in substantial prejudice against him rendering it difficult to determine whether the guilty verdict was the product of the

improper remarks. *Wheeler*, 226 Ill. 2d at 123. A new trial should be granted where the jury would have reached a contrary verdict had the improper comments not been made or where this court cannot determine whether the prosecutor's improper remarks contributed to the defendant's conviction. *Id.*

¶ 44 Based on the overwhelming evidence against Telteu, the prosecutor's remarks–which we believe were proper–could not have had any effect on the outcome of the trial. As stated above, viewing each of the contested comments in context of the entire closing arguments and affording wide latitude to the prosecutor, none of the prosecutor's remarks were improper and the remarks were a fair comment on the evidence and responsive to defense counsel's arguments. Consequently, no error resulted from the prosecutor's remarks. Moreover, the alleged remarks were not only proper and not prejudicial when viewed in isolation, but also when viewed collectively. *People v. Jackson*, 391 Ill. App. 3d 11, 45 (2009). Having concluded that there was no error, there can be no plain error.

¶ 45 C. Mittimus

¶ 46 Finally, Telteu contends, and the State agrees, that the mittimus should be corrected to accurately reflect his conviction under subsection (a)(1) rather than subsection (a)(2) of the AUUW statute because the jury was not instructed on the proposition that Telteu knowingly carried a firearm on a public street as required by subsection (a)(2).

¶ 47 Under Illinois Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999) and this court's ability to correct a mittimus without remand (*People v. Hill*, 408 Ill. App. 3d 23, 31 (2011)), we order the clerk of the circuit court to correct the mittimus to reflect Telteu's actual convictions under subsection (a)(1) instead of subsection (a)(2). We affirm the judgment of the circuit court in all other respects.

¶ 48 CONCLUSION

¶ 49 Telteu's conviction for AUUW based on knowingly carrying an uncased, loaded and immediately accessible firearm is vacated based on *Aguilar*'s holding finding unconstitutional the statute defining that offense. Telteu's sentence imposed under subsection (d)(2) of the AUUW statute was rendered invalid by *Mosley*, but re-sentencing is not warranted because he has served his full sentence. No error resulted from the prosecutor's comments during closing argument and rebuttal addressing the witnesses' credibility and the evidence in the record. We therefore affirm Telteu's conviction and direct that his mittimus be corrected.

¶ 50 Vacated in part; affirmed in part; mittimus corrected.