2015 IL App (4th) 140247-U

NO. 4-14-0247

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 18, 2015
Carla Bender
4th District Appellate
Court, IL

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from |
| Plaintiff-Appellee, | ) | Circuit Court of |
| v. | ) | Edgar County |
| CHRISTOPHER YOUNG, | ) | No. 12CF200 |
| Defendant-Appellant. | ) | |
| | ) | Honorable |
| | ) | Steven L. Garst, |
| | ) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Knecht and Turner concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, concluding (1) although the prosecutor improperly shifted the burden of proof to defendant during closing argument, the error did not warrant reversal; (2) the prosecutor's comments accusing defense counsel of fabricating the theory of defense were erroneous but did not require reversal; (3) the prosecutor did not erroneously inflame the passions of the jury; and (4) testimony regarding the victim's demeanor and the officer's investigatory steps was not error.

¶ 2 In December 2012, the State charged defendant, Christopher Young, with one count of aggravated battery, a Class 3 felony (720 ILCS 5/12-3.05(c) (West 2012)), and one count of criminal damage to property, a Class 4 felony (720 ILCS 5/21-1(a)(1) (West 2012)). In January 2014, a jury found defendant guilty of aggravated battery. The trial court subsequently sentenced defendant to 18 months' probation.

¶ 3 Defendant appeals, arguing the cumulative effect of the prosecutor's errors amounts to plain error and warrants reversal and remand for a new trial. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2012, the State charged defendant by information with one count of aggravated battery, a Class 3 felony (count I) (720 ILCS 5/12-3.05(c) (West 2012)), and one count of criminal damage to property, a Class 4 felony (count II) (720 ILCS 5/21-1(a)(1) (West 2012)). Prior to jury selection, the State nol-prossed count II of the information.

¶ 6 A. Jury Trial

¶ 7 In January 2014, the matter proceeded to a jury trial. The jurors heard the following testimony.

¶ 8 1. *Timothy Skinner*

¶ 9 Timothy Skinner testified, on December 5, 2012, he went to Pool's True Value hardware store. Defendant was in line at the hardware store behind Skinner, who was buying six gallons of paint. Skinner stated the double doors to the store opened into a foyer or vestibule, which then led to the parking lot. According to Skinner, he could not carry all the paint to his truck in one trip. As he was returning from his truck to get the rest of his paint, Skinner was in the vestibule and saw defendant walking toward the door. Skinner testified he "grabbed the left door and opened it up, and [defendant] come [*sic*] through the door and shouldered me with his right shoulder." Defendant had to move approximately two feet out of his path to make contact with Skinner.

¶ 10 After the men ran into each other, Skinner testified defendant "said who in the hell I thought I was, getting in his way and running into him. And that's when I apologized, said, 'Sir, all I did was open the door for you.' " According to Skinner, defendant took a swing at him and knocked his glasses to the floor. Skinner stated, "I think he pushed me, too, once in there. He pushed me and then swung at me a couple of times." Skinner testified he backed away from

defendant's attempts to hit him, ran into a brick wall in the vestibule area, and fell down. On cross-examination, Skinner testified he shouted for help after he fell down because defendant was standing over him, fists clenched, and Skinner thought he was going to "pounce" on him. Skinner rose and went to his truck, but returned to the foyer to get his glasses so he could leave. Defendant advanced upon Skinner again, preventing him from reaching his glasses, and the cashier intervened and got between the men. The cashier ushered defendant out of the store and Skinner retrieved his glasses, which "were bent completely out of shape, and the lenses were scratched up where they slid across the concrete floor."

¶ 11 Following the altercation, Skinner finished loading up the paint he purchased and waited for his assistant, who had been at the back of the store. He then contacted the police. Skinner could not think of any actions on his part that would have provoked defendant into striking him or shoving him.

¶ 12 2. *Kayla Petty*

¶ 13 Kayla Petty, a cashier at Pool's True Value, testified defendant was a regular customer at the hardware store. When she first started at True Value, defendant asked Petty if he could take the scrap metal out by the Dumpsters and told her he had permission. Petty's boss disciplined her for allowing defendant to take the scrap metal because the store had a policy regarding disposing of scrap metal. On December 5, 2012, defendant approached Petty at the cashier's station and asked if he could take the scrap metal. Petty told him he could not take it, and defendant claimed to be part of the company the store uses to dispose of the metal. Petty knew this to be untrue and told defendant he could talk to the owner later but he could not take the metal. According to Petty, defendant seemed agitated and upset by her response.

¶ 14 Petty watched as defendant left the store. According to Petty, Skinner, returning for the rest of his paint, opened the door "to walk in and realized there was someone else coming out. So he stepped aside to hold the door open for [defendant]." As Petty watched, defendant veered off his path and "nudged" Skinner, knocking Skinner off balance. Petty testified defendant shoved Skinner up against the windows in the foyer and Petty went into the foyer to intervene. Skinner had his hands up and Petty thought he said "What?" or "What's the problem?" or "What's going on?" According to Petty, she had to yell at defendant to get him to step back. Skinner stood behind Petty and defendant moved toward Petty, as if he were trying to get to Skinner. Petty stated she told defendant to leave and defendant said he was going to call the police. Petty repeatedly told defendant to leave before he eventually walked out the door, got into his truck, and sped off. In Petty's opinion, defendant was the aggressor because he pushed Skinner with his shoulder and backed Skinner up to the windows in the foyer. Petty believed the altercation could have been avoided.

¶ 15 After defendant left, Petty and a coworker tried to calm Skinner. Petty testified, "[Skinner] was very shaken up. He was very upset. He asked why [defendant] would come at him like that. And I felt horrible, because I felt like it was my fault, that I made [defendant] angry and then he did that to that man." Petty estimated only a few minutes elapsed between the time defendant asked about the scrap metal and the time defendant left. Finally, Petty stated Skinner was initially pleasant and talkative, but "after the incident had happened and during it, he looked very shocked and confused and afraid."

¶ 16 3. *Adam Rhoads*

¶ 17 Edgar County deputy sheriff Adam Rhoads testified on December 5, 2012, he responded to a 9-1-1 call at Pool's True Value hardware store. Rhoads first spoke with Petty and

then took Skinner's statement in the parking lot. With respect to Skinner, the prosecutor elicited the following testimony:

> "Q. [STATE'S ATTORNEY:] You indicated that you when you spoke with Mr. Skinner in the parking lot—can you describe to the jury his demeanor or appearance to you when you were speaking to him in the parking lot?
>
> A. [RHOADS:] Yes. Mr. Skinner was visibly shaken. He was scared. It seemed he was a little disoriented at the time. I believe he was in some form of shock.
>
> Q. Now, have you dealt with other victims of physical confrontations in the years you've been a deputy?
>
> A. Yes, I have.
>
> Q. And was his demeanor consistent with a victim's presentation immediately after a confrontation?
>
> A. Yes."

Rhoads testified Petty was calmer than Skinner but "definitely surprised, in somewhat of shock, excited." According to Rhoads, Petty was familiar with defendant because he was a regular customer, and she provided Rhoads with defendant's name. When asked how he checked for defendant's address, Rhoads responded, "We had it on file at the sheriff's office."

¶ 18 Rhoads went to defendant's residence to interview him. Defendant told Rhoads Skinner initiated the altercation. Defendant also told Rhoads he pushed Skinner twice. According to Rhoads, defendant stated Skinner struck him with his shoulder and defendant never mentioned any issues regarding a cell phone. Rhoads arrested defendant and placed him in the

back of Rhoads's patrol car to transport him to the county jail. Rhoads testified he was not questioning or interviewing defendant while in the patrol car, but defendant was angry and agitated and made several freely given statements. According to Rhoads, defendant stated "he did what he did because it was his right as a man. He also indicated that if the situation were to arise again, he would act the exact same way or take the exact same measures. *** He also represented that if he had access to a weapon, he would have used a weapon." Rhoads testified defendant used pepper spray as an example of a weapon he would have used.

¶ 19 On cross-examination, Rhoads testified the dispatcher received several 9-1-1 calls regarding the altercation, some made by defendant. Rhoads further testified both Skinner and Petty provided written statements and Rhoads did not ask defendant to provide a written statement.

¶ 20 4. *Young*

¶ 21 On his own behalf, defendant testified he went to Pool's True Value to ask the owner about taking the scrap metal because the owner had previously given defendant motors and other scrap. Defendant stated he went to the cashier's station and asked to speak to the owner, and Petty responded in a demanding voice, "What do you want with him?" Defendant told Petty the owner had given him scrap in the past and he wanted permission before he took more. Defendant testified Petty told him he could not have the scrap because it was going to a company. According to defendant, he made a comment about the whole country being like a company and Petty retorted, "Well, you're not going to get it [(the scrap metal)]. And if you don't like it, you don't have to come back."

¶ 22 Defendant testified he exited the store using the door on the right and stated, "as I was opening my door, [Skinner] came in and he hit my hand, like, three times and it knocked my

$600 phone all over the floor, and it went in four pieces." According to defendant, Skinner continued to advance upon him, so defendant detained Skinner by the collar. Defendant further testified he felt Skinner jerk to his right, as if to hit defendant, so defendant shoved Skinner to the ground. He denied hitting Skinner with his fists. Defendant was picking up his phone when Petty came out into the foyer and yelled at him to leave. Skinner then went out to his vehicle and came back into the foyer, at which point defendant left. On cross-examination, defendant testified he was a former Golden Gloves boxer.

¶ 23 5. *Closing Arguments*

¶ 24 At the outset of closing argument, the State informed the jurors they were to determine the credibility of the witnesses and how much weight to give the testimony in "measur[ing] out reasonable doubt." The prosecutor summarized Skinner's and Petty's testimony and argued neither had a motivation or reason to make up a false story identifying defendant as the initial aggressor. The prosecutor further argued, "the defendant doesn't want to get convicted. That's a motivation to make up, fabricate, lie, misremember, misrecall. We can call it really strong. We can make up a nice word for it. But there's a motivation there to come up with some sequence of events that would explain his right or justification to strike, push, shove an admittedly smaller, older, more frail individual." The State summarized defendant's testimony and pointed out none of the other witnesses testified defendant had a phone in his hands or a phone was in pieces on the ground after the altercation.

¶ 25 The prosecutor again reminded the jury the State had the burden of proving beyond a reasonable doubt defendant intentionally, without legal justification, made physical contact of an insulting or provoking nature with Skinner. As to the self-defense element, the prosecutor asked, "What's the justification? The only thing we heard was the defendant's

testimony about getting attacked and breaking the phone." The State argued this version of events made no sense without some evidence of a confrontation or prior history between the two men. The State further argued Petty's testimony that defendant was angry and agitated because she denied him leave to take the scrap metal, coupled with her and Skinner's testimony defendant initiated the altercation, was sufficient to overcome the self-defense claim. Finally, the State finished, "Now, [defense counsel] gets up and he'll start looking for reasonable doubt: 'This is wrong. That's inconsistent. They said this.' But that's the reasonable doubt time now—scratch away at the [S]tate's case."

¶ 26 Defense counsel argued Skinner had a motivation to lie to avoid charges for battery for his role in the altercation. Counsel also argued Petty had a motivation to lie because she was angry with defendant for getting her in trouble the first time he asked to take scrap metal. Counsel told the jurors they had to decide whether defendant's version of events provided justification for his actions. He went on to say,

> "And if you decide that is justification, then the [S]tate cannot prevail, because they have to show that the actions of [defendant] in touching Mr. Skinner were not justified. ***
>
> And again, unfortunately, we're kind of in a position where we have to prove that. And we're not really supposed to have to prove anything. But what we have to prove to you is that there was an action that [defendant] took, in response to something that he believed was a threat to him or his property."

¶ 27 In rebuttal, the prosecutor argued defense counsel "scratched away" at the State's case, looking for reasonable doubt. Regarding counsel's suggestion Skinner was motivated to lie

to avoid battery charges, the prosecutor argued there was "[n]o evidence he's got a battery coming or is under charge for a battery or has any deal with the [S]tate about a battery. But [defense counsel]'s scratching. Think about that. He's making it up, much like his client made up the story that was plausible to him but maybe kind of not really tethered to reality." The prosecutor also made the following statements:

> "He's telling the story he wants you to hear, not the story that I told through two witnesses, Petty and Skinner, who were there, saw it, lived it, and went through it; who have no connection to each other—no connection, no matter how speculative you want to get; no motive to make up the story, to basically insert themselves into this criminal process to try and get [defendant].
>
> That's the defendant scratching, looking for reasonable doubt. He tried. I don't think it is believable. I don't think it's credible. And I don't think they met their burden of proving he had a realistic concern about a threat to his property—enough so to be able to push, shove, hit Mr. Skinner—nor a threat to himself, in order to justify pushing, shoving, hitting Mr. Skinner. I think those were after the fact—got to come up with a believable story, got to get out of this.
>
> Now, ultimately, you're going to send a message with a verdict. What kind of community do we live in? Do we live where the strong bully the weak, where the loud and the angry take advantage of the meek? Those are the rules of the jungle.

Do we have a community where one has a right to run an errand; go to the hardware store; pick up the stuff he needs to pick up; not be accosted, assaulted, or battered by somebody?

Your verdict's going to send a message. It's going to reinforce the basic rules of a civilized society that we learn in kindergarten. I'm sure we've all had it said many, many times by your parents, teachers: Keep your hands to yourself. Don't touch other people.

They're simply rules to follow, and we're all supposed to do it. Guess who didn't? And the reason he didn't was because he was mad. He didn't get what he wanted. And the first person that came across his path when he was leaving paid the price for that, pure and simple.

That's the story I want to tell. *** And I think that's what I showed beyond a reasonable doubt—a reasonable doubt, not all doubt. You're allowed to have some, but not—again, a reasonable doubt is my burden."

¶ 28 6. *Verdict*

¶ 29 Following closing arguments, the trial court gave the jury the following instructions regarding the burden of proof, self-defense, and aggravated battery:

"The [S]tate has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on

the [S]tate throughout the case. The defendant is not required to prove his innocence."

"A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to defend himself against the imminent use of unlawful force."

"A person is justified in the use of force when and to the extent that he reasonably believes that such conduct is necessary to prevent another's wrongful interference with personal property lawfully in his possession."

"To sustain the charge of aggravated battery, the [S]tate must prove the following propositions: First proposition, that the defendant intentionally, without legal justification, made physical contact of an insulting or provoking nature; and, second proposition, that the defendant did so while on or about a public place of accommodation."

(See Illinois Pattern Jury Instructions, Criminal, Nos. 2.03, 24-25.06, 24-25.08, 11.15 (4th ed. 2012)).

¶ 30 During deliberation, the jury sent the trial court a message, which read, "We would like to see or hear the testimony of [defendant] concerning his physical contact with Mr. Skinner." The parties agreed the court should send back a note instructing the jurors to rely upon their memory. Thereafter, the jury returned a verdict finding defendant guilty of aggravated battery.

¶ 31 B. Sentencing

¶ 32 In March 2014, the matter proceeded to a sentencing hearing. Defense counsel orally moved for a judgment notwithstanding the verdict, which the trial court denied. Following the sentencing hearing, the trial court sentenced defendant to 18 months' probation, 26 days in county jail (with credit for 13 days served), and 4 consecutive weekends in county jail.

¶ 33 This appeal followed.

¶ 34 II. ANALYSIS

¶ 35 Defendant appeals, arguing the cumulative effect of the prosecutor's errors amounts to plain error that warrants reversal and remand for a new trial. Specifically, defendant argues the prosecutor impermissibly (1) shifted the burden of proof by misstating the law during closing argument; (2) told the jurors defendant and his trial counsel fabricated his theory of self-defense; (3) inflamed the passions of the jurors by asking them to send a message with their verdict; and (4) elicited improper and prejudicial testimony from Officer Rhoads.

¶ 36 The State asserts defendant forfeited these arguments by failing to object at trial or preserve the claims in a posttrial motion. Defendant asks this court to review his claims under the plain-error doctrine.

> "[T]he plain-error doctrine allows a reviewing court to consider unpreserved error when (1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial

process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565, 870 N.E.2d 403, 410-11 (2007).

"To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *People v. Hillier*, 237 Ill. 2d 539, 545, 931 N.E.2d 1184, 1187 (2010). Accordingly, we turn first to whether clear or obvious error occurred, warranting plain-error review.

¶ 37 A. Prosecutorial Misconduct in Closing Argument

¶ 38 Defendant claims a pattern of prosecutorial misconduct during the course of closing argument deprived him of a fair trial where the prosecutor (1) shifted the burden of proof by misstating the law; (2) told the jurors defendant and his trial counsel fabricated his theory of self-defense; and (3) inflamed the passions of the jurors by asking them to send a message with their verdict.

¶ 39 During closing argument, prosecutors have wide latitude to comment on all relevant evidence and make any fair and reasonable inferences from that evidence. *People v. Nicholas*, 218 Ill. 2d 104, 121, 842 N.E.2d 674, 685 (2005). A closing argument must be viewed in its entirety and any improper remarks must be viewed contextually. *People v. Blue*, 189 Ill. 2d 99, 128, 724 N.E.2d 920, 935 (2000). To warrant reversal, improper remarks during closing argument must constitute a material factor in a defendant's conviction. *People v. Wheeler*, 226 Ill. 2d 92, 123, 871 N.E.2d 728, 745 (2007). "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Id.*

¶ 40 1. *Misstatement Regarding the Burden of Proof*

¶ 41 In closing argument, defense counsel discussed defendant's version of events and argued his testimony that Skinner initiated the altercation showed defendant's actions were justified. Counsel went on to state, "[W]e're not really supposed to have to prove anything. But what we have to prove to you is that there was an action that [defendant] took, in response to something that he believed was a threat to him or his property." In rebuttal, the State responded to defendant's claim he acted in response to a threat to his property. The State asserted, "I don't think it is believable. I don't think it's credible. And I don't think they met their burden of proving he had a realistic concern about a threat to his property—enough so to be able to push, shove, hit Mr. Skinner—nor a threat to himself, in order to justify pushing, shoving, hitting Mr. Skinner."

¶ 42 The State's comment clearly misstates the law—justified use of force requires a *reasonable belief* such conduct is necessary, not a realistic concern. Moreover, the statement shifts the burden of proof to the defendant. A defendant need only show some evidence of self-defense and, once a defendant has done so, the burden is on the State to prove beyond a reasonable doubt the defendant did not act in self-defense. See, *e.g.*, *People v. Lee*, 213 Ill. 2d 218, 224, 821 N.E.2d 307, 311 (2004). The State argues the prosecutor was merely responding to defense counsel's statement about having to prove defendant's actions were justified. We disagree. Even if the comment merely "responded" to defense counsel's misstatement of the law, the State is not entitled to shift the burden of proof in its response. "[A] defendant in a criminal case can never 'open the door' to shift the burden of proof." *People v. Beasley*, 384 Ill. App. 3d 1039, 1048, 893 N.E.2d 1032, 1040 (2008). Thus, this statement was improper.

¶ 43 Although we find the State's comment improper, the comment must be viewed in context. *Blue*, 189 Ill. 2d at 128, 724 N.E.2d at 935. In closing, the prosecutor explicitly told the

jury "the [S]tate has to prove, as I said in the beginning—and the judge will read to you when we're done—that the defendant intentionally, without legal justification, made physical contact of an insulting or provoking nature with Mr. Skinner." The prosecutor repeatedly emphasized the burden of proof rested with the State. *People v. Legore*, 2013 IL App (2d) 111038, ¶ 59, 996 N.E.2d 148 (although the State improperly shifted the burden of proof to the defendant, reversal was not required where the State repeatedly stated it had the burden of proof and the court properly instructed the jury regarding the burden of proof). Following the comment that defendant did not prove his justification, the State, just one page later in the transcript, again emphasized its burden was to prove defendant's guilt beyond a reasonable doubt. *Id.* Moreover, the trial court properly instructed the jury the burden of proof rested with the State. *Id.* Under the facts of this case, we cannot say the one occasion the State improperly shifted the burden constituted a material factor in defendant's conviction. In light of the multiple times the jury was properly informed of and instructed on the burden of proof, the jury could not have reached a different verdict in the absence of the improper remarks. See *Wheeler*, 226 Ill. 2d at 123, 871 N.E.2d at 745.

¶ 44 2. *Fabrication of Defense*

¶ 45 Defendant also contends the prosecutor improperly accused defense counsel and defendant of fabricating a theory of defense. "Unless predicated on evidence that defense counsel behaved unethically, it is improper for a prosecutor to accuse defense counsel of attempting to create reasonable doubt by confusion, misrepresentation, or deception." *People v. Johnson*, 208 Ill. 2d 53, 82, 803 N.E.2d 405, 422 (2003). Here, the prosecutor warned the jury defense counsel was going to try to poke holes in the State's case by "scratching away" at it. Defendant claims the prosecutor defined "scratching" as the defense's attempt to deceptively

create reasonable doubt by fabricating facts. We disagree. The "scratching" the State commented on was defense counsel's attempt to find reasonable doubt by questioning the motives of the State's witnesses, highlighting inconsistencies in Skinner's and Petty's testimony, and impeaching Skinner's credibility by referencing his prior criminal conviction. Nothing in the record suggests the State, by using the word scratching, was accusing defense counsel of lying or trying to deceive the jurors.

¶ 46 To support his argument characterizing the State's use of "scratching" as the equivalent of accusing defense counsel of putting up a "smoke screen," defendant relies on *People v. Kidd*, 147 Ill. 2d 510, 591 N.E.2d 431 (1992). We find his reliance unpersuasive. In *Kidd*, the State was permitted to repeatedly, over objection, utilize a smoke screen metaphor to assert defense counsel was, through his efforts, creating a smoke screen to (1) fill the courtroom, (2) strangle the truth, and, (3) cause the jury to get lost. *Id.* at 544, 591 N.E.2d at 448. The prosecutor suggested defense counsel's arguments were akin to the smoke that had filled the apartment, strangled the children, caused the children to get lost, and ultimately led to their death. *Id.* It is not difficult to envision the impact of these statements on a jury called upon to decide an arson case where 10 children died. *Id.* In this case, the State's use of the word scratching, unlike the smoke screen analogy in *Kidd*, did not suggest defense counsel was lying or trying to deceive the jurors. Rather, the State pointed out defense's closing argument focused on the inconsistencies in the testimony and the credibility of the witnesses. See *People v. Watson*, 342 Ill. App. 3d 1089, 1094, 796 N.E.2d 1087, 1092 (2003).

¶ 47 Defendant also points to the following statement made by the prosecutor during rebuttal: "But [defense counsel]'s scratching. Think about that. He's making it up, much like his client made up the story that was plausible to him but maybe kind of not really tethered to

reality." The State asserts defendant's contention is without merit because the prosecutor's statement was based on some evidence. The State's argument is not supported by the record. Counsel for defendant argued his client's theory of the case. Nothing in the record suggests counsel for defendant knew his client's version to be untrue. Here, the prosecutor unequivocally called into question the veracity of defense counsel, suggesting he was dishonest and should not be believed by the jury. When we consider the State's closing remarks as a whole, we find this statement constitutes improper and impermissible commentary on the integrity of defense counsel. *People v. Glasper*, 234 Ill. 2d 173, 208, 917 N.E.2d 401, 422 (2009). Even so, we are mindful this comment is not to be considered in isolation. Given the remark occurred once and the jury was instructed that closing arguments are not evidence, we are of the opinion this remark did not constitute a material factor in defendant's conviction. Further, we cannot say the jury could have reached a contrary verdict in the absence of this improper remark.

¶ 48 Defendant also complains that the State argued defendant made up his version of events before trial. "While it would be improper for a prosecutor to suggest that a defense counsel had procured fraudulent testimony" (*People v. Desantiago*, 365 Ill. App. 3d 855, 867-68, 850 N.E.2d 866, 877 (2006)), we conclude the State properly argued defendant fabricated his story before trial. The State may properly challenge the credibility of a defendant's theory of defense when evidence exists to support that challenge. *Glasper*, 234 Ill. 2d at 207, 917 N.E.2d at 421. Defendant's version of events differed significantly from the other witnesses who observed the confrontation. The jury was called upon to make credibility assessments and determine what it believed to be the facts in the case. The prosecutor was entitled to challenge defendant's truthfulness and suggest, in light of evidence contrary to defendant's version, that

defendant was not believable. Thus, we find this to be a proper line of argument on the part of the prosecutor.

¶ 49 3. *Inflaming the Passions of the Jury*

¶ 50 Finally, defendant argues the State improperly inflamed the passions and prejudices of the jury by asking it to "send a message" with its verdict and by creating an "us-versus-them" mentality. Arguments made in closing must serve some purpose other than inflaming the emotions of the jurors. *Wheeler*, 226 Ill. 2d at 129-30, 871 N.E.2d at 748. "[I]t is improper for a prosecutor to utilize closing argument to forge an 'us-versus-them' mentality that is inconsistent with the criminal trial principle that a jury fulfills a nonpartisan role, under the presumption that a defendant is innocent until proven guilty." *Id.* at 129, 871 N.E.2d at 748. Prosecutors may properly comment on the ill-effects of crime, but may not engage in "an extended and general denunciation of society's ills" and ask the jury to "send a message" with its verdict. Such argument "seeks to incite the jury to act out of undifferentiated passion and outrage, rather than reason and deliberation." *Johnson*, 208 Ill. 2d at 79, 803 N.E.2d at 420 (2003).

¶ 51 During rebuttal, the prosecutor told the jury the verdict would "send a message" and would "reinforce the basic rules of a civilized society that we learn in kindergarten." The prosecutor also made broad statements such as, "What kind of community do we live in? Do we live where the strong bully the weak, where the loud and angry take advantage of the meek? *** Do we have a community where one has a right to run an errand; go to the hardware store; pick up the stuff he needs to pick up; not be accosted, assaulted, or battered by somebody?" Defendant contends these comments created an "us-versus-them" mentality and urged the jury to protect the larger community.

¶ 52 As discussed above, comments made during closing argument must be viewed in context. *Blue*, 189 Ill. 2d at 128, 724 N.E.2d at 935. From the record, it appears defendant was significantly larger than Skinner and defendant testified he was a former Golden Gloves boxer. Presumably, this prompted the State's strong-versus-weak theme. Moreover, the State's "hypothetical" question as to whether the community was one in which someone could safely run an errand without fear of being accosted was *exactly the situation in which Skinner found himself*. Given that context, the prosecutor's statements did not urge the jury to protect society at large. Moreover, defendant conveniently omits the prosecutor's statement that defendant did not follow the "basic rules of a civilized society" because he was angry and took his anger out on the first person he saw—Skinner. When viewed in the context of the facts of the case, these comments were proper.

¶ 53 We find unpersuasive defendant's reliance on *People v. Liner*, 356 Ill. App. 3d 284, 826 N.E.2d 1274 (2005). While the court reversed the defendant's conviction in *Liner*, the record in that case was replete with errors. The court summarized those errors as follows:

> "[T]he prosecutor elicited extraneous weapon evidence, asked the defendant an irrelevant question that attempted to show only that the defendant was a bad person, and elicited irrelevant testimony that [victim] suffered ills since the robbery. *** The defendant's credibility was at issue, and the prosecutor improperly impeached the defendant with evidence that the defendant sold illegal drugs. [Citation.] Additionally, the jury's deliberation was likely colored by the inflammatory nature of the prosecutor's closing argument, particularly insofar as it evoked sympathy for the victim based on

her age and urged the jury to convict the defendant to protect other children in the county." *Id.* at 298, 826 N.E.2d at 1287.

Moreover, the improper comments made during closing argument were *far* more egregious than those at issue in the case at hand. In *Liner*, the prosecutor engaged in antics such as writing "guilty" with an arrow pointing at defendant on a dry-erase board and expressly told the jury a guilty verdict would keep little girls throughout the county safe from "a guy like [the defendant.]" *Id.* at 296-97, 826 N.E.2d at 1286-87. Here, although the prosecutor's comments were somewhat broad, the prosecutor did not argue to the jury a guilty verdict would keep the members of the county safe from "guys like defendant." We find no error in these comments.

¶ 54 B. Officer Rhoads' Testimony

¶ 55 Defendant next contends Officer Rhoads improperly testified as to Skinner's credibility when he described Skinner's demeanor following the altercation. "A witness is not permitted to comment on the veracity of another witness' credibility." *People v. Munoz*, 398 Ill. App. 3d 455, 487, 923 N.E.2d 898, 924 (2010). This is so because credibility questions are for the jury to resolve. *People v. Becker*, 239 Ill. 2d 215, 236, 940 N.E.2d 1131, 1143 (2010).

¶ 56 Rhoads stated, "Mr. Skinner was visibly shaken. He was scared. It seemed he was a little disoriented at the time. I believe in some form of shock." The State then asked Rhoads if Skinner's demeanor was consistent with a victim's presentation immediately after a confrontation, to which Rhoads responded affirmatively. Rhoads' testimony hardly commented on the veracity of Skinner's credibility. Rhoads did not testify as to whether he thought Skinner was truthful or honest. Rather, he testified as to his own personal observations of Skinner's demeanor following the incident. That testimony was admissible. See *People v. Hubbard*, 264 Ill. App. 3d 188, 194, 636 N.E.2d 1095, 1100-01 (1994). Moreover, the testimony did not regard

an ultimate issue of fact, usurping the province of the jury. *Munoz*, 398 Ill. App. 3d at 488-89, 923 N.E.2d at 926.

¶ 57 Finally, defendant contends Rhoads' testimony the sheriff's office had defendant's address on file was prejudicial. We disagree. "[A] police officer may recount the steps taken in the investigation of a crime, and *** he may describe the events leading up to a defendant's arrest, where such testimony is necessary and important to fully explain the State's case to the trier of fact." *Id.* at 487, 923 N.E.2d at 925. Defendant was no longer at the hardware store when Rhoads responded to the 9-1-1 calls. Rhoads obtained defendant's name from Petty. His testimony about looking up defendant's address was a necessary link to his testimony regarding arresting defendant at his home. Defendant contends he presumably gave his home address to the 9-1-1 dispatcher, and therefore no link was needed. We disagree. Had Rhoads testified he got the name from Petty and then jumped immediately to arriving at defendant's house to question him, the jurors might well have been confused. The testimony was proper and did not unduly prejudice defendant.

¶ 58 C. Plain Error

¶ 59 "[W]here errors are not individually considered sufficiently egregious for an appellate court to grant the defendant a new trial, but the errors, nevertheless, create a pervasive pattern of unfair prejudice to the defendant's case, a new trial may be granted on the ground of cumulative error." *People v. Howell*, 358 Ill. App. 3d 512, 526, 831 N.E.2d 681, 694 (2005). We have rejected defendant's claims of error with respect to the State's assertion defendant fabricated his story. We also found no error in the State's characterization of defense counsel's efforts on defendant's behalf as scratching. Further, we determined the State did not improperly inflame the passions of the jury and properly elicited testimony from Rhoads. In contrast, we

found the State improperly shifted the burden of proof during closing argument and, without support in the record, questioned the integrity of defense counsel. While we do not condone these errors, we find them insufficient to warrant reversal and remand under the plain-error doctrine.

¶ 60 First, the evidence is not so closely balanced the error alone threatened to tip the scales of justice against defendant. *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010). The State presented two credible witnesses who both consistently testified defendant initiated the altercation and the only aberrant evidence came from defendant's recounting of the events. See *People v. Barney*, 363 Ill. App. 3d 590, 598, 844 N.E.2d 80, 87 (2006). We also find, under the circumstances of this case, the errors do not require remedy in order to preserve the integrity of the judicial process. Given defendant is entitled to a fair trial, not a perfect one, we find under the facts of this case the two errors which did occur are insufficient to constitute a pervasive pattern of unfair prejudice to defendant's case. *People v. Hall*, 194 Ill. 2d 305, 350, 743 N.E.2d 521, 547 (2000).

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 63 Affirmed.