

No. 1-11-3462

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

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 10 CR 3495
)	
CHRISTOPHER JONES,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE EPSTEIN delivered the judgment of the court.
Justices Fitzgerald Smith and Pucinski concurred in the judgment.

ORDER

- ¶ 1 *Held:* Prosecutor's attempt to define reasonable doubt during rebuttal closing argument was improper, but not reversible error; mittimus corrected to reflect conviction for aggravated battery with a firearm; judgment affirmed and mittimus corrected.
- ¶ 2 Following a jury trial, defendant Christopher Jones was convicted of aggravated battery with a firearm and sentenced to 13 years in prison. On appeal, defendant argues he was denied a fair trial because the prosecutor minimized the State's burden of proof when he attempted to define reasonable doubt during rebuttal closing argument. In addition, defendant contends, and

the State agrees, that the mittimus should be corrected to reflect defendant's conviction for aggravated battery with a firearm, rather than attempted first degree murder. We affirm.

¶ 3 At trial, the State proceeded on two charges, attempted first degree murder and aggravated battery with a firearm. The evidence revealed that defendant shot Charles Miller, who lived next door to defendant's girlfriend, on December 5, 2009. The incident occurred in the backyard of an apartment building located at 11434 South Indiana in Chicago. Defendant claimed at trial that he shot Miller in self-defense.

¶ 4 Charles Miller testified that on December 5, 2009, he was living with his mother and girlfriend, Myeesha Walker, at 11434 South Indiana. He worked as a "fence," selling and fixing broken tools, at Swap-O-Rama, a thrift market where used items are sold. A little before 1 p.m. on December 5, as he was returning from depositing a heater at the trash area near his apartment building, defendant appeared, pointed a gun at Miller, and asked, "You messing with my girl?" Defendant hit Miller on the lip with the gun, causing Miller to bleed, and told Miller to lie on the ground and then get up. Defendant walked Miller towards his apartment, staying about three feet behind him. When defendant said, "What you got? What you got?," Miller darted up the stairs to the building, prompting defendant to shoot Miller five times with what Miller thought was a revolver. Miller ran into his apartment, locked his doors, told Myeesha, "I'm shot. The guy next door shot me," and then fainted. Following the shooting, in which Miller was ultimately hit four times, Miller stayed in the hospital for a month and a half and had 27 surgeries. At trial, Miller still had two bullets in his body, one in his back and one under his buttocks. Miller displayed entry and exit wounds on his body, as well as permanent scars. Miller was shot on his arm, his back, his leg, and through his stomach.

¶ 5 Miller denied that, prior to this incident, he had confrontations or arguments with defendant or defendant's girlfriend, or that he had taken anything from defendant's girlfriend. In

addition, Miller admitted that had seen defendant in the hallways of the apartment building, but claimed he had not spoken to defendant. Miller also denied that he had any type of weapon at his home, or that he was carrying a weapon during the incident on December 5.

¶ 6 Myeesha Walker testified that on December 5, she lived with Miller and his mother. That day, after Miller went outside to take a heater to the trash area, Myeesha heard four or five gunshots and ran towards the door, where she saw Miller, who said "that dude next door had just shot him." When she looked into the backyard, she saw a Maxima driving away. Myeesha had previously seen defendant coming in and out of the apartment building, but did not know him. Additionally, she had seen defendant's girlfriend driving the Maxima on previous occasions. Myeesha also testified that she had never seen Miller with a gun, had never seen a gun inside their home, and had not seen Miller with any weapons on December 5. She denied that Miller sold other people's personal belongings at the Swap-O-Rama. Myeesha was aware that on December 1, 2009, the apartment next door to hers had been burglarized.

¶ 7 Samantha Watson testified that around December 1, 2009, she was living at 11434 South Indiana with her four children. Defendant, with whom Samantha had a dating relationship, was the father of one of the children and would visit Samantha at her apartment. On December 1, her apartment was burglarized, and as a result, the door was damaged and three televisions, a radio system, and a computer were stolen. Defendant and Samantha had a subsequent conversation with her landlord, who indicated that the offender had to have been someone in the building. Previously, Samantha had seen Miller smoking in the hallway, but he had left upon her request.

¶ 8 After the burglary, Samantha became afraid, and she began to move out of the apartment. On December 5, Samantha drove a van to assist with her move, and defendant drove Samantha's Maxima. While in a store around 1 p.m., she received a phone call from her landlord, who indicated there had been an incident at the apartment. Fifteen minutes later, Samantha received a

call from defendant, who told her that she needed to come to the apartment and also said, "I laid a n*** down." Samantha denied that defendant had told her that he and Miller fought in the backyard or that Miller had produced a gun.

¶ 9 Buford Hart, a paramedic, testified that he responded to the scene at 11434 South Indiana, where he encountered Miller at the bottom of the building's stairs. Hart located two gunshot wounds on Miller's body, one on his hip and one on his arm. Hart cut off as much of Miller's clothing as possible so he could treat areas he saw that were bleeding, but did not remove enough clothing to expose Miller to the elements.

¶ 10 Detective Dougherty testified that when he went to 11434 South Indiana to investigate the scene, he was not able to recover any weapons or ballistic evidence, including discharge casings or bullets. No one from the Chicago Police Department found any evidence of weapons at the scene. Detective Dougherty admitted that when he spoke with Miller on December 22, Miller did not state that defendant made him lie down, ordered him to stand up, or that defendant walked Miller up the stairs towards his apartment.

¶ 11 On January 28, 2010, defendant was placed in custody after he was seen leaving a residence in Dolton, Illinois.

¶ 12 Defendant testified that on December 1, 2009, after Samantha informed him that her apartment had been burglarized, defendant went to her apartment, where the two were joined by the police and the landlord. The door had been knocked off its hinges, and the apartment was "[torn] up," with clothes and "everything thrown everywhere." Defendant did not feel that Samantha was safe in the apartment, and based on what he saw, defendant believed Miller was responsible for the break-in. Defendant had seen Miller "hanging by people's doors, hanging inside, smoking weed, him and a couple other guys, hanging in the back of the house."

Defendant advised Samantha to stay with her mother in Calumet City, and the decision was made that Samantha would move out of the apartment.

¶ 13 On December 5, defendant stayed at Samantha's apartment while she moved. At one point, when defendant left the apartment to go to the car, he saw Miller coming out of the apartment next door. After Miller approached defendant, and defendant asked Miller why he broke into Samantha's apartment, Miller asked if defendant and Samantha had told the police that Miller was responsible for the break-in. Defendant replied that other people in the building had indicated that Miller had stolen their belongings, and Miller "got real mad" and began swearing, shouting, and calling defendant and Samantha snitches. Miller came within a foot of defendant and pointed his hand at defendant's head. As both men yelled at each other, Miller kept one hand in his pocket and hit the side of defendant's face with the other hand, causing defendant to fall back a little and sustain a bruise. Defendant then punched Miller in the face, and not knowing what Miller had in his pocket, defendant grabbed Miller's wrist. In the midst of their struggle, Miller pulled out a gun, and the two men fought for it, with defendant "fighting for his life." Defendant grabbed the gun from Miller's hand and fell back, hitting the ground. As Miller charged at defendant, defendant fired two shots at him, and Miller turned around and ran up the stairs to the building. Meanwhile, defendant entered the car and drove off, explaining that he did not stay at the scene because he was scared and "wasn't thinking right." After he left the scene, defendant placed the gun in a dumpster, rather than take it to the police, because "[he] wasn't thinking correctly" and "[his] thoughts were cloudy." Defendant thought "[he] was going to die back there." Defendant admitted that when he had the gun, he was in control of the situation. However, defendant did not know what Miller was going to do and did not know if Miller had another gun.

¶ 14 Prior to closing arguments, the trial judge admonished the jury that:

"What the attorneys say during the arguments or as I told you before many times during this [trial] is not evidence and should not be considered by you as evidence. The argument should be confined to the evidence and the reasonable inferences that you might draw from the evidence.

After you have heard all the arguments, I will instruct you on the law***"

¶ 15 In closing, the State argued that defendant "decided to take the law into his own hands" and get back the property he thought Miller had taken, a decision he came to "without any shred of evidence." Defendant approached Miller, hit him, guided him towards Miller's apartment, and when Miller began to run, defendant shot him five times in the back, with four bullets hitting him. One bullet went through and through, one was lodged in defendant's back, one was lodged below his buttocks, and one went through his back and out of his stomach. Myeesha testified credibly that upon seeing Miller, he said "the dude next door just shot [him]." The State noted that a person is entitled to use force that may cause death or great bodily harm only if that person reasonably believes that such force is necessary to prevent imminent death or great bodily harm to himself. Here, however, defendant testified he was in control of the situation and pointed a gun at an unarmed man. The evidence did not show that defendant shot Miller head-on. The State urged the members of the jury to use their own experience to determine whether defendant was justified in the use of force.

¶ 16 Defense counsel argued that Miller's version of the incident was not accurate. Defense counsel contended the evidence showed that Miller had something to do with the burglary of Samantha's apartment. Defense counsel also noted that the State did not present medical

testimony that confirmed that Miller was shot four times, and no bullets were found at the scene. Defense counsel contended that Samantha's testimony was not credible and that defendant's actions constituted "classic self-defense." Defense counsel also stated, "We don't have to prove a thing. The State, and they will accept this burden, has to prove the defendant guilty beyond a reasonable doubt***" Defense counsel stated there were both "big things" and "thousands and thousands of little things" that had gone unanswered about the State's case.

¶ 17 In rebuttal, the State argued:

"Counsel talks about our burden to prove defendant guilty beyond a reasonable doubt. We embrace that burden. We welcome that burden.***

You talk about the ability to protect oneself. Well***you don't shoot an unarmed man in the back. And this is what happened here.

Now***from the defendant's own words on that stand, I asked him, you were in control. What did he say? Yes, sir, I was in control of the situation. Once he's in control of that situation, once he has that gun, he is in control. There's no fright. He's not scared. He is in control of that gun. He shot the victim, not once, not twice, but four times.

And how do we know that? The victim got off the stand, and I had him remove his shirt. And I had him point to the injuries where the bullets went***It was four areas.

In the words of the defendant, he had the gun. Are we to believe that [somehow] these bullets, by firing forward, suddenly went around and hit the victim in the back? That's not reasonable. Talk about reasonable doubt. Here's an example of reasonable doubt. It's what a reasonable person would believe."

The trial court sustained defendant's objection to this statement and told the State to "[m]ove on." The State continued:

"It's not reasonable. If someone tells you that human beings cannot fly in an airplane, that's not reasonable. If someone tells the earth is flat, that's not reasonable. It's what the reasonable person would believe. As I indicated, we welcome the burden.

This is not a case to prove who did it, right? We know who did it. The defendant did it.***

He decided to go over there and take it into his own hands, deliver his own justice and he shot Charles Miller in the back.

How can one be afraid of an individual as you're shooting this individual in the back?***

He shot the victim in his own words. Now, are we to believe that it's self-defense? This is not self-defense. This is [attempted] murder. This is vigilante justice. This is trying to kill a man that you believe did something wrong to you and that's what it is, trying to kill him.

When you apply the law that my partner went over, when you apply the law to the facts, it becomes clear. He tried to kill the victim, from his own words and from the victim's words. The victim is not on trial for burglary.***

And at the end of State's case-in-chief, we are going to ask you to find the defendant guilty of the charges. Thank you."

The trial judge then provided instructions to the jury, including the following:

"The law that applies in this case is stated in these instructions and it is your duty to follow all of them. You must not single out certain instructions and disregard others.

Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence.

Neither 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.

The defendant is presumed to be innocent of the charges against him. This presumption remains with him throughout every stage of the trial and during your deliberations on the verdict and is

not overcome unless from all the evidence in this case you are convinced beyond a reasonable doubt that he is guilty.

The State has the burden of proving the guilt of the defendant beyond a reasonable doubt, and this burden remains on the State throughout the case. The defendant is not required to prove his innocence."

¶ 18 During deliberations, the jury asked three questions: 1) whether it mattered whether the verdict forms were signed in blue or black ink, to which the response was that it did not, 2) whether the jury could see the hospital medical assessment of the victim upon arrival, "specifically the numbers and location (entry/exit) of the gunshots," to which the response was that the jury had received all the evidence and should continue to deliberate, and 3) whether the jury could review Myeesha's testimony regarding the day of the shooting, and in response, a transcript of her testimony was provided.

¶ 19 The jury found defendant not guilty of attempted first degree murder and guilty of aggravated battery with a firearm. The trial court denied defendant's motion for a new trial, which argued, in part, that defendant was denied a fair trial when the State attempted to explain the meaning of reasonable doubt during closing arguments, and although the trial court sustained defendant's corresponding objection, "the [j]ury was still pointed to the term and its application." Defendant was sentenced to 13 years in prison.

¶ 20 On appeal, defendant argues he was denied a fair trial because during the State's rebuttal argument, the prosecutor minimized the State's burden of proof when he attempted to define reasonable doubt, instructing the jury that "it's what a reasonable person would believe." The prosecutor continued this explanation even after the trial court had sustained an objection to this statement. Further, the prosecutor minimized the State's burden by defining what is "reasonable"

as something that can be scientifically proven. According to defendant, because the evidence was closely balanced, defendant was prejudiced by the prosecutor's comments.

¶ 21 We begin by noting that the parties disagree on the standard of review for determining whether a prosecutor's closing argument warrants reversal. Defendant contends this issue is reviewed *de novo*. *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007). In contrast, the State claims that the trial court's determination of a prosecutor's remarks will not be reversed unless there is a clear abuse of discretion. *People v. Hudson*, 157 Ill. 2d 401, 441 (1993). Our appellate courts are divided regarding the applicable standard of review. *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010). However, because our result would be the same under either standard, we do not need to resolve the issue of the appropriate standard of review at this time. *Id.*

¶ 22 A prosecutor has wide latitude in making a closing argument and may comment on the evidence and any fair, reasonable inferences it yields. *People v. Burney*, 2011 IL App (4th) 100343, ¶ 65. When reviewing claims of prosecutorial misconduct in a closing argument, a reviewing court considers the entire closing arguments of both the prosecutor and the defense attorney, in order to place the remarks in context. *Maldonado*, 402 Ill. App. 3d at 422. It is well-established that the concept of reasonable doubt needs no definition and that it is improper for the court or counsel to attempt to define reasonable doubt to the jury. *People v. Thomas*, 191 Ill. App. 3d 187, 197 (1989). However, the prosecutor and defense counsel may discuss reasonable doubt, present their views of the evidence, and suggest whether the evidence supports reasonable doubt. *Burney*, 2011 IL App (4th) 100343 at ¶ 67. Furthermore, even improper comments do not constitute reversible error unless they result in substantial prejudice. *People v. Evans*, 199 Ill. App. 3d 330, 339 (1990) (quoting *People v. Collins*, 106 Ill. 2d 237, 276 (1985)). Substantial prejudice occurs if the improper comments constituted a material factor in the defendant's conviction. *Maldonado*, 402 Ill. App. 3d at 422.

¶ 23 Here, the prosecutor's attempt to define reasonable doubt clearly was improper. In the context of arguing that defendant's version of the events, in which Miller was shot in the front, should not be believed, the prosecutor said such a theory was "not reasonable. Talk about reasonable doubt. Here's an example of reasonable doubt. It's what a reasonable person would believe." After the trial judge sustained defendant's objection and instructed the prosecutor to move on, the prosecutor continued:

"It's not reasonable. If someone tells you that human beings cannot fly in an airplane, that's not reasonable. If someone tells you the earth is flat, that's not reasonable. It's what the reasonable person would believe. As I indicated, we welcome the burden."

These comments equated reasonable doubt with "what the reasonable person would believe," and so distorted the definition of reasonable doubt. Counsel should not attempt to define or elaborate upon the meaning of reasonable doubt. *People v. Gray*, 80 Ill. App. 3d 213, 219 (1979).

¶ 24 To be sure, it is proper for a prosecutor to state that reasonable doubt is not "beyond all doubt or any doubt" or not "some mythical, unattainable standard (*People v. Laugharn*, 297 Ill. App. 3d 807, 810 (1998); *People v. Carroll*, 278 Ill. App. 3d 464, 466 (1996)), or that the State's burden "is met everyday in every courtroom" (*People v. Ward*, 371 Ill. App. 3d 382, 419 (2007)). Here, however, the prosecutor went beyond merely discussing reasonable doubt, and gave an independent definition of the term and then made comparisons to other statements that would seem outlandish. The prosecutor's statements were thus closer to the comments found improper in *People v. Howell*, 358 Ill. App. 3d 512, 518 (2005) ("It says beyond a reasonable doubt that that's why you're here because you are reasonable people. You have the ability to

weigh the evidence and determine what you think is reasonable and what you don't believe.***"), *People v. Wielgos*, 220 Ill. App. 3d 812, 820 (1991) ("I have a doubt that China exists***I have never been there. I don't speak Chinese. But it's not a reasonable doubt because you all know there is a China on the other side of the world"), *Thomas*, 191 Ill. App. 3d at 196-97 (comment including, "What that means***is that any doubt which you have which would defeat the State's theory I submit must be reasonable. It's got to fit together, it's got to make sense in light of all the other evidence in the case," at least bordered on impropriety), *People v. Wilson*, 123 Ill. App. 3d 798, 801 (1984) ("Now, I have a doubt that China exists. I mean I have never seen the country and I have never been there. But is that a reasonable one? Especially in light of the fact that everything I have heard or read about China, is that a reasonable doubt? Not at all"), and *Gray*, 80 Ill. App. 3d at 219 ("A doubt which would be based on supposition, on speculation, or conjecture, is not a reasonable doubt. You would have to have a reasonable doubt."). The prosecutor's comments here provided a definition of reasonable doubt and elaborated on its meaning using examples, which was improper.

¶ 25 However, we conclude that reversal is not warranted under the circumstances because defendant did not suffer substantial prejudice from the improper comments. Substantial prejudice means the verdict would have been different absent the improper argument. *People v. Quiroz*, 257 Ill. App. 3d 576, 585 (1993). Here, Miller, the victim, testified that defendant approached him with a gun, forced him to lie on the ground and then walk up the stairs, and then shot him four times. Miller displayed his multiple wounds to the jury. Myeesha testified that just after Miller was shot, he entered the apartment and informed Myeesha that "the dude next door had just shot him." Samantha testified that defendant informed her he had just "laid a n*** down." In contrast, defendant claimed Miller burglarized Samantha's apartment, and during defendant and Miller's confrontation about the burglary, the two men fought, defendant grabbed

a gun away from Miller, and in fear for his life, defendant shot an unarmed Miller in the front of his body. Defendant admitted that at the time he shot Miller, he was in control of the situation, and defendant's account of the shooting was inconsistent with Miller's display of his injuries. In light of the evidence, the prosecutor's comments cannot be found to have contributed to the verdict. *Thomas*, 191 Ill. App. 3d at 197.

¶ 26 Further, the jury was properly instructed on how to interpret closing arguments and on the burden of proof. Prior to the beginning of closing arguments and while giving jury instructions, the trial judge admonished the jury that closing arguments were not evidence. In addition, the trial judge informed the jury that the State must prove defendant guilty beyond a reasonable doubt and that defendant was presumed innocent. The trial judge also sustained defense counsel's only objection to the prosecutor's definition of reasonable doubt, and did not compound the prosecutor's error by giving an improper instruction. Relative to the entire closing argument, including the State's rebuttal, the prosecutor's improper comments were brief. Under these circumstances, we find that no substantial prejudice was caused by the prosecutor's improper comments. See *People v. Speight*, 153 Ill. 2d 365, 374-75 (1992) (no prejudice where the jury was properly instructed on reasonable doubt and the trial judge admonished the jury to disregard the prosecutor's improper statement); *Wielgos*, 220 Ill. App. 3d at 821 (no reversible error where the trial court promptly sustained defense counsel's objection and an appropriate instruction on reasonable doubt was given to the jury); *Gray*, 80 Ill. App. 3d at 219 (no reversible error where the comments were not involved or likely to mislead the jury, and the trial court did not compound the error by giving an improper instruction).

¶ 27 Although the prosecutor attempted to define reasonable doubt after the trial court had sustained defense counsel's objection, this situation is not akin to *People v. Weinstein*, 35 Ill. 2d 467 (1966). There, five or six times during closing argument, all without objection by the

defense, as well as after an objection was sustained, the prosecutor stated that the defendant had the burden of presenting evidence that created a reasonable doubt of his guilt. *Weinstein*, 35 Ill. 2d at 469. The court found that the prosecutor's persistence in improper argument "[eliminated] the salutary effect of the court's ruling in sustaining objections to the argument." *Id.* at 471.

Here, the prosecutor defined reasonable doubt twice and the trial court sustained an objection after the first instance. Further, the prosecutor's comments did not cause substantial prejudice to defendant. Under these circumstances, we find that the prosecutor's improper comments did not cause substantial prejudice to defendant, and no reversible error occurred.

¶ 28 Defendant next contends, and the State agrees, that his mittimus should be corrected to reflect his conviction for aggravated battery with a firearm. Defendant's current mittimus incorrectly reflects a conviction for attempted first degree murder. Accordingly, pursuant to Supreme Court Rule 615 (Ill. S. Ct. R. 615(b)(1) (eff. Aug. 27, 1999)), we correct the mittimus to reflect defendant's conviction for aggravated battery with a firearm. See *People v. Blakney*, 375 Ill. App. 3d 554, 560 (2007).

¶ 29 For the foregoing reasons, we affirm defendant's conviction and order the mittimus corrected.

¶ 30 Affirmed; mittimus corrected.