

No. 1-12-1795

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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. 11 CR 13763
DONELL PEACHES,)	
)	Honorable
Defendant-Appellant.)	William H. Hooks,
)	Judge Presiding.

PRESIDING JUSTICE ROCHFORD delivered the judgment of the court.
Justices Hall and Lampkin concurred in the judgment.

ORDER

Held: We affirmed defendant's conviction of possession of a controlled substance with intent to deliver and delivery of a controlled substance, holding that the State's comments during closing argument did not constitute reversible error.

¶ 1 A jury convicted defendant, Donell Peaches, of possession of a controlled substance with intent to deliver, and delivery of a controlled substance. The trial court sentenced defendant to two concurrent terms of five years' imprisonment. On appeal, defendant contends the State denied him a fair and impartial trial by making various improper remarks during closing argument. We affirm.

¶ 2 At trial, the testimony of the State's witnesses, Officers David Bridges, Martin Hegarty, James Grubisic, and Raymond Rau of the Organized Crime Division, established that on the

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morning of August 9, 2011, they were working together in an effort to conduct a drug "buy bust" in the area of Washington Boulevard and Pulaski Road in Chicago. The officers selected this location because it was an area known for high narcotics sales. For purposes of the "bust," Officer Bridges was the undercover "buy" officer, meaning he would make the purchase; Officer Grubisic served as a "surveillance" officer "to keep [an] eye on Officer Bridges"; and Officers Hegarty and Rau were "enforcement" officers who would arrest defendant after the narcotics purchase was made.

¶ 3 At approximately 7:30 a.m., Officer Bridges observed defendant standing on the north side of Washington Boulevard. Officer Bridges, who was in "civilian dress," drove up to defendant in an unmarked car and asked for three "blows," a street term for \$10 bags of heroin. Defendant handed Officer Bridges three clear Ziploc bags sealed with blue tape that contained small tinfoil packets. Officer Bridges gave defendant a \$20 bill and a \$10 bill, both of which were Chicago Police Department "1505" funds, with pre-recorded serial numbers. After making the exchange, defendant walked away from the car, and Officer Bridges left the area. Officer Bridges then radioed his enforcement officers and provided a description of defendant as a "male black" wearing a beige hat, black shirt, black pants, and black shoes. These events were observed by Officer Grubisic, who was in an unmarked vehicle about a half-block away from defendant's original position. Officer Grubisic continued to watch defendant after Officer Bridges left the area, keeping defendant in his constant view.

¶ 4 About 10 or 15 minutes after receiving Officer Bridges' call, Officers Hegarty and Rau, along with another enforcement officer, Officer O'Brien, drove up to defendant, who met the description, and detained him. They then radioed Officer Bridges, and requested he come to them to make an identification. Officer Bridges drove by and identified defendant as the

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individual who had sold him the narcotics. Once Officer Bridges made the identification, Officer Hegarty handcuffed defendant and performed a quick custodial search, during which he recovered a \$20 bill and a \$10 bill from defendant's right front pants pocket. Officer Hegarty recognized the serial numbers on the bills as the pre-recorded "1505" funds Officer Bridges had obtained earlier. Defendant was transported to the police station, where Officer Rau performed a more thorough search of his person and discovered six additional individual packets of suspect heroin in defendant's sock, packaged in Ziploc bags the same way as those purchased by Officer Bridges.

¶ 5 The three Ziploc bags, which Officer Bridges purchased from defendant, were inventoried under inventory number 12387768; the six Ziplock bags recovered from defendant's sock by Officer Rau were inventoried under inventory number 12387770.

¶ 6 Following the officers' testimony, the parties entered into a stipulation that if called to testify, Gregory Brate, a forensic chemist from the Illinois State Police Crime Lab, would testify he received two specific inventories in a heat-sealed condition from the Chicago Police Department, inventory number 12387770 containing six clear Ziploc bags with blue tape and inventory number 12387768 containing three clear Ziploc bags with blue tape; that he performed tests on the inventoried items; and that his expert opinion within a reasonable degree of scientific certainty was that the six bags in inventory number 12387770 were positive for the presence of heroin in the amount of 1.5 grams; and that the one bag he tested from the set of three bags in inventory number 12387768 also tested positive for heroin in the amount of 0.2 grams. Mr. Brate would further testify that a proper chain of custody was maintained at all times.

¶ 7 After the State rested, defendant testified on his own behalf, stating that on August 9, 2011, he was headed to the unemployment office. On the way, between 9 and 9:15 a.m., he

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stopped by the bus stop to talk to a man he knew by the name of "Big Youngen." Big Youngen asked defendant to go to the store to pick up approximately \$22 worth of items, including liquor, cigarettes and cups, then he handed defendant \$30 and told him he could keep the change. When defendant went to the store, though, it was closed. Defendant went back toward Big Youngen to give him back his money.

¶ 8 When he got to Pulaski Road and Washington Boulevard, defendant was approached by one plainclothes officer on foot accompanied by a handcuffed individual, who defendant recognized as Big Youngen. The officer asked defendant if he was "here to cop," meaning to buy drugs, and then told him to put his hands on the wall. Realizing the man was a police officer, defendant put his hands on the bars of scaffolding that were near him.

¶ 9 At that point, defendant saw there were other police officers in a vehicle that was parked behind a big van. Three officers got out of that vehicle, approached defendant, and started talking to the other officer already on the scene. One of the officers then ordered defendant to turn around, and he took the money out of defendant's hand. Defendant testified that the officer then went back to the other three officers, "and they [were] over there talking, and he starts smiling, and he made fun, and then said, 'One of you guys is going to jail.'" Defendant was then told to empty his pockets, and to turn over the contents to Big Youngen, who the officers unhandcuffed.

¶ 10 Defendant was subsequently handcuffed, taken to the police station, and searched.

¶ 11 Defendant testified he did not have any drugs on him that day, nor did he sell narcotics to anyone. He also repeatedly stated that the four police officers who served as the State's witnesses were not telling the truth when they testified. Defendant also testified he had been arrested around 9:30 or 9:45 a.m., not around 7:50 a.m. as the police officers had testified.

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Defendant explained that he could not possibly have been arrested at 7:50 a.m. because, at that time, he was home with his wife tending to her bedridden sister.

¶ 12 Following all the evidence and closing arguments, the jury found defendant guilty of possession of a controlled substance with intent to deliver, and delivery of a controlled substance. The trial court sentenced defendant to two concurrent terms of five years' imprisonment. Defendant appeals.

¶ 13 Defendant contends the State made improper remarks during closing argument which deprived him of a fair trial. Defendant waived review by failing to object to the comments at trial. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Defendant asks this court to review the State's comments for plain error.

¶ 14 The plain-error doctrine "bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error ***." *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005). The plain-error doctrine is applied where:

"(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 (2007).

In either circumstance, the burden of persuasion remains with the defendant. *Herron*, 215 Ill. 2d at 182.

¶ 15 With respect to the first prong of the plain-error doctrine, defendant has failed to show that the evidence in this case was closely balanced where: (1) Officer Bridges testified that he

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drove up to defendant, asked for three blows, and that defendant sold him three Ziploc bags of suspected heroin in exchange for a \$20 bill and a \$10 bill that were "1505" funds with pre-recorded serial numbers; (2) Officer Grubisic testified that he observed defendant approach Officer Bridges' car for a couple of seconds and then walk away, after which Officer Bridges radioed that his interaction with defendant was a "positive transaction" and gave a description of defendant; (3) Officer Rau testified that Officer Bridges radioed that he "had made a positive purchase of heroin from the 4000 block of Washington" and gave a description of defendant as a "[m]ale black wearing a tan hat, black shirt, and black pants," after which Officer Rau, Officer Hegarty, and Officer O'Brien went to the 100 block of North Pulaski 10 or 15 minutes later and saw defendant, who met the description; (4) Officer Rau testified they detained defendant and radioed Officer Bridges, who drove by and identified defendant as the person who sold him the bags of suspected heroin; (5) Officer Hegarty testified he then performed a custodial search of defendant and recovered a \$20 bill and a \$10 bill from defendant's right front pants pocket, which he recognized as the "1505" funds Officer Bridges had obtained earlier; (6) Officer Rau testified that defendant was taken to the police station, where six additional Ziploc bags of suspected heroin were recovered from defendant's sock; and (7) the parties stipulated to the forensic chemist's testimony that Ziplock bags recovered from defendant at the scene and at the police station contained a substance that tested positive for heroin. Given all this evidence against defendant, we cannot say he has met his burden of showing that the case was closely balanced.

¶ 16 Defendant argues, though, that the case *was* closely balanced because it amounted to a credibility contest between the officers and the defendant. In support, defendant cites *People v. Naylor*, 229 Ill. 2d 584 (2008), in which our supreme court held that the case before it was

closely balanced where two officers testified to one version, and the defendant testified to another version, regarding a drug raid in a residential housing complex. *Id.* at 606-08. In finding that the case was a closely balanced credibility contest, the supreme court noted that two officers had testified against defendant but that, "[f]or whatever reason," the State failed to call the officer who recovered the prerecorded currency from defendant. *Id.* at 607. In contrast, the present case involved *four* officers who testified consistently with each other and against defendant, including the officer who recovered the prerecorded currency from defendant. We find that on these facts, the present case was not closely balanced.

¶ 17 Having determined defendant failed to establish the first prong of the plain-error doctrine, we next consider whether defendant established the second prong: that the allegedly improper prosecutorial comments were so serious as to affect the fairness of his trial and challenge the integrity of the judicial process.

¶ 18 As to the second prong, we note that "[e]rror under the second prong of plain-error analysis has been equated with structural error." *People v. Cosmano*, 2011 IL App (1st) 101196,

¶ 78. "Structural errors have been recognized in only a limited class of cases including: a complete denial of counsel; trial before a biased judge; racial discrimination in the selection of a grand jury; denial of self-representation at trial; denial of a public trial; and a defective reasonable doubt instruction." *Id.* However, "[e]rror in closing argument does not fall into the type of error recognized as structural." *Id.* Thus, we conclude that defendant has not demonstrated plain error under the second prong of the plain-error doctrine with respect to the prosecutor's comments.

¶ 19 Even choosing to address the issue on the merits, we find no reversible error.

¶ 20 Prosecutors have great latitude in making their closing arguments, and such arguments are proper if they are based on the record or are reasonable inferences drawn therefrom. *People v. Moya*, 175 Ill. App. 3d 22, 24 (1988). The entire record, particularly the full argument of both sides, must be considered to assess the propriety of prosecutorial argument. *People v. Williams*, 313 Ill. App. 3d 849, 863 (2000). "Where the complained-of remarks are within a prosecutor's rebuttal argument, they will not be held improper if they appear to have been provoked or invited by defense counsel's argument." *Id.* Prosecutorial comments constitute reversible error only if they engender "substantial prejudice." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Substantial prejudice occurs when "the improper remarks constituted a material factor in a defendant's conviction." *Id.*

¶ 21 In *Wheeler*, our supreme court reviewed the issue of allegedly improper prosecutorial statements during closing arguments *de novo*. *Id.* at 121. In *People v. Blue*, 189 Ill. 2d 99 (2000), which was cited by *Wheeler*, our supreme court applied an abuse of discretion standard. *Id.* at 128. We need not resolve this conflict in the standard of review, as we find no reversible error in this case under either standard.

¶ 22 Defendant first contends the prosecutor made remarks improperly bolstering the credibility of the testifying police officers. A prosecutor may not argue that a witness is more credible because he is a police officer. *People v. Gorosteata*, 374 Ill. App. 3d 203, 219 (2007). However, the credibility of a witness is a proper subject for closing argument if it is based on the evidence or inferences drawn therefrom. *Id.* at 223.

¶ 23 The prosecutor here stated:

"Occupational hazards. No matter what profession, we all *** have them. If you are a professional football player like J. Cutler, it might be that you could fracture your thumb

in the middle of the season. *If you are a police officer, you risk getting injured in the line of duty.* If you're a drug dealer like the defendant, one of the many risks you take is that you may sell drugs to an undercover cop." (Emphasis added.)

¶ 24 Defendant contends that the italicized portion of the comment improperly bolstered the credibility of the police officers, and defendant cites in support *People v. Williams*, 289 Ill. App. 3d 24 (1997). In *Williams*, the prosecutor there stated in rebuttal closing arguments:

"The question is, the only question is who is telling the truth. Who do you believe? Do you believe two dedicated Chicago Police Officers who put their lives on the line for us every night or do we believe Robert Williams here on his own behalf testifying on his own behalf, twice convicted felon?" *Id.* at 34.

¶ 25 The appellate court held that it is "improper for the State to attempt to bolster the credibility of its police officer witnesses by commenting that these officers risk their lives every day for people like the jurors."¹ *Id.* at 36.

¶ 26 In contrast to *Williams*, though, where the prosecutor explicitly tied the witnesses' credibility to their status as police officers who put their lives on the line for the jurors every night, the prosecutor in the present case made no reference to witness credibility when stating that a police officer risks getting injured in the line of duty. The prosecutor's comment here was an illustrative example used to show that defendant was engaged in the "occupation" of selling narcotics and that he accepted the occupational risk that he might sell drugs to an undercover officer, in the same way other persons choose other occupations and accept occupational risks, such as a person who becomes a police officer and risks getting injured in the line of duty. As

¹ The *Williams* court, ultimately, found no reversible error, though, because the prosecutor's comment was invited by the defense counsel's closing argument making police credibility the central issue in the case. *Id.* at 36.

the prosecutor made no explicit link between the officers' risk of injury and their credibility, we cannot say that the one-sentence remark resulted in substantial prejudice to the defendant and constituted a material factor in his conviction such that we should reverse and remand for a new trial.

¶ 27 Defendant next contends that the prosecutor improperly attempted to enhance her witnesses' credibility by the following comment:

"The evidence was clear and convincing. It was completely unimpeached. You heard from four officers with almost 80 years of experience combined to tell you [that] on August 9, 2011, 7:37 in the morning, they had a plan that was formulated. Officer Bridges went out there to make a controlled purchase. He gave the defendant \$30 of 1505 fund[s] in exchange for three blows, three bags of heroin. The defendant was arrested moments later. The money was recovered from his front right pocket. And at the station another search was done of the defendant and more drugs were recovered from his sock."

¶ 28 Defendant here likens the prosecutor's comment with those made in *People v. Ford*, 113 Ill. App. 3d 659 (1983). In *Ford*, the prosecutor stated during closing argument:

"On the one hand you have got Donna Kurlinkus who, in addition to being a Warren County Deputy, is a person of [impeccable] credentials versus an individual, Paula Ford, who by her own testimony to you people in her own community didn't trust. You have Donna Kurlinkus who is a member of the Multi-County Drug Enforcement Group, MEG, with eight years of integrity serving in this community versus the Defendant, Paula Ford, who, again, in the words of her attorney, was a member of the drug scene.

You have the agent, Donna Kurlinkus, a sworn police officer working on assignment to the Multi-County Drug Enforcement Group.

Why would Donna Kurlinkus, a sworn Warren County Deputy, pull a charade like this and lie and perjure herself for a lousy 15 gram purchase of marijuana?" *Id.* at 661-62.

¶ 29 The *Ford* court held that the "manner in which the prosecutor made repeated references to Kurlinkus' status as a police officer and a sworn deputy was an improper attempt to enhance the credibility of his witness. Although a prosecutor may comment on the credibility of witnesses, the remarks in this case exceeded the boundaries of proper argument." *Id.* at 662.

¶ 30 Unlike in *Ford*, in which the prosecutor there repeatedly and explicitly tied the witness' credibility to her status as a sworn deputy and member of the Multi-County Drug Enforcement Group with "eight years of integrity" who would not "lie and perjure herself," the prosecutor's comment here made no such explicit link between the witnesses' credibility and their status as police officers. Rather, the prosecutor here correctly commented that four experienced officers formulated a plan to make a controlled purchase of narcotics. Pursuant to that plan, Officer Bridges gave defendant \$30 in "1505" funds in exchange for three bags of heroin, after which defendant was arrested and the "1505" funds were recovered from his right front pocket and more drugs were recovered from his sock. We find no error, where the prosecutor's comment was based on the evidence admitted at trial and did not reference the officers' credibility.

¶ 31 We recognize that the prosecutor here misstated the amount of the officers' years of experience, stating that they had a combined 80 years of experience, when in fact they had a combined 62 years of experience. In so stating, the prosecutor indicated that the officers had a combined 18 years of additional experience than they actually possessed; had the prosecutor

explicitly tied the officers' credibility to these 18 years of (non-existent) experience, this case would be more like *Ford* and the State would run the risk of reversal, especially given that the prosecutor made a second inaccurate comment elsewhere during closing arguments (which we discuss later in this order). However, as discussed, the prosecutor here made no such explicit link between the officers' years of experience as police officers and their credibility; moreover, later in her rebuttal closing argument, the prosecutor corrected her initial misstatement and accurately set forth the officers' years of experience. Accordingly, even if defendant had preserved the issue for review by objecting at trial and raising it in his posttrial motion, we cannot say that the prosecutor's misstatement regarding the officers' years of experience resulted in substantial prejudice to defendant and constituted a material factor in his conviction such that we should reverse defendant's conviction and remand for a new trial in this case. In so finding, we reiterate that a future closing argument explicitly linking police officers' experience to their credibility (and certainly an argument overstating the officers' years of experience when discussing their credibility) may lead to reversible error and must be avoided.

¶ 32 Next, defendant contends the State improperly attempted to enhance its witnesses' credibility by the following remarks made during rebuttal closing argument:

"According to [defendant], this is some big conspiracy. According to him, the police have the wrong guy. You have an officer with 13 years of experience. You have an officer with 15 years of experience. An officer with 17 and a half years of experience. Another one with 17 years of experience. And they are going to pin a single drug deal on a man they have never met before for 1.5 grams of heroin. Get real. Counsel is talking about a story that the State has. The only story you heard, the only tall tale you heard was from the defendant when he took the stand.

And this whole big conspiracy, all these officers surrounding him and Big Youngen all these officers happen to be not the ones that testified here.

Defendant must be the unluckiest man alive. Wrong place; wrong time. Officer[s] who don't even know him pin a drug deal on him. He gets taken into custody with 1505 funds that he didn't get from a police officer. He is the [unluckiest] man around."

¶ 33 These comments by the prosecutor were made in rebuttal closing argument, in response to defense counsel's remarks during his closing argument that the officers "lied" and were "not telling the truth" and that Officer Bridges' testimony about buying heroin from defendant was "curious" and "odd" and that the officers' testimony that they recovered drugs from defendant's socks "doesn't make any sense," and "[t]hat's not what happened here." Defense counsel further argued that Officer Bridges "might have done a drug deal that day," but that "[h]e's not really sure who the drug dealer was with," and that defendant was "not the person that was selling drugs that day."

¶ 34 The prosecutor's comments in rebuttal that the experienced officers here did not engage in any type of conspiracy to pin the drug deal on defendant, and that the evidence indicated it was defendant who had testified falsely and not the officers, was a proper response to defense counsel's arguments and did not constitute reversible error. See *People v. Willis*, 2013 IL App (1st) 110233, ¶ 110 ("[T]he prosecution may fairly comment on defense counsel's characterizations of the evidence and may respond in rebuttal to statements of defense counsel that noticeably invite a response.").

¶ 35 Defendant argues, though, that the prosecutor's comments in rebuttal were not allowable under the invited response doctrine and cites in support *Gorosteata*. The *Gorosteata* court held that the invited response doctrine allows a party who is provoked by his opponent's improper argument "to right the scale by fighting fire with fire," *i.e.*, by making an argument in response that would not have been allowable had it been made in the first instance. *Gorosteata*, 374 Ill. App. 3d at 221. The *Gorosteata* court held that where " 'the improper argument is not, in fact, a retaliatory argument, but instead, is the first improper argument made, reversal is warranted.' " *Id.* at 222 (quoting 88 C.J.S. Trial § 297, at 335 (2001)). Defendant here argues that the prosecutor's rebuttal argument was not a proper retaliatory argument, but was improper as it touched on the officers' credibility and therefore reversal is warranted. We disagree. Clearly, the prosecutor's argument here was retaliatory, as it was made in response to defense counsel's closing argument attacking the credibility of the officers who testified against defendant and contending that the officers had lied about purchasing drugs from defendant and finding other drugs in his sock and that the wrong person had been arrested. In direct response to defense counsel's argument, the prosecutor properly discussed the evidence at trial, including the evidence regarding the officers' years of experience and their recovery of the "1505" funds from defendant, to rebut defense counsel's claim that the officers had lied and/or arrested the wrong person. The prosecutor's rebuttal argument did not constitute error. See *e.g.*, *Williams*, 289 Ill. App. 3d at 36 (holding that the prosecutor's comments during rebuttal closing argument regarding the officers' credibility were invited by defense counsel's closing argument making police credibility the central issue in the case).

¶ 36 Defendant next argues that the prosecutor misstated the evidence when she made the following comments:

"When Officer Bridges pulled up, he pulled his car over. He told the defendant 'blows,' the street term for heroin. The defendant walks. [A] very quick transaction. The officer said[:] give me three. And the defendant then handed him three bags of heroin. These three bags of heroin. Three individually wrapped, covered in blue tape, bags of heroin. The blue tape represents the brand. So the customer knows what they are getting. He wanted the blue tape.

The six bags that matched identically to the other three. They have the blue tape, the defendant's brand, wrapped on the outside so that everybody knows this is the heroin that they wanted to buy.

That tape is very important. Officer Bridges told you the significance of that tape. It's a brand. There are many people out there selling heroin and everybody wants to make sure they know what they are getting. So the officer told you that people go out and look for their brand. And this was the blue tape. So they go to the corner of Washington and Pulaski. They know they're going to get the blue tape, and that's the good stuff. That's the brand. And that's how we know the items in his pocket, the six items of heroin were packaged for street sell, and the defendant intended to sell it.

And you know why [the officers] went to [Washington and Pulaski]? Because it's a high narcotic area. Because it's an area where people sit on the *corner* and sell drugs with blue tape." (Emphasis in the original.)

¶ 37 Defendant contends on appeal that this argument was improper because there was no evidence presented at trial to support the prosecutor's argument that the blue tape was defendant's brand, nor that customers specifically venture to the corner of Washington and Pulaski to get bags with blue tape, nor that the bags with blue tape are the "good stuff." Defendant also contends that the prosecutor's argument improperly implied that the isolated event of August 9, 2011, in which he was arrested for selling bags of heroin with blue tape on the corner of Washington Boulevard and Pulaski Road, was merely another in a long line of incidents.

¶ 38 The prosecutor committed no error where the remarks were properly based on the evidence at trial and on the reasonable inferences drawn therefrom. Specifically, Officer Bridges testified as follows:

"Q. And the narcotics that were given to you by Officer Rau, how were those packaged?

A. Also for distribution, small Ziploc bags, each containing tinfoil packets with blue tape.

Q. What is the significance of the blue tape?

A. It distinguishes from different sections who the drugs are being sold for. It is like a brand.

Q. And the narcotics that you bought from the defendant, as well as the narcotics that were given to you by Officer Rau, did they contain the same blue tape or brand?

A. That is correct."

¶ 39 Thus, Officer Bridges specifically testified that the bags of heroin sold by defendant to Officer Bridges, and the other bags of heroin later recovered from defendant's sock, all contained

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the blue tape signifying the seller of the drug (*i.e.*, defendant) and distinguishing it from other (presumably lesser quality) heroin sold by other dealers. Officer Bridges specifically referenced the blue tape as identifying the bags of drugs as defendant's "brand." Thus, the prosecutor's comments during closing argument regarding the blue-taped bags of heroin being defendant's brand that people wanted to buy because it contained the "good stuff" was based on Officer Bridges' testimony and/or reasonable inferences drawn therefrom and was not error.

¶ 40 The prosecutor's comment regarding the amount of drug trafficking regularly performed at the corner of Washington Boulevard and Pulaski Road was also supported by the evidence. Specifically, Officer Bridges testified:

"Q. The area of Washington and Pulaski, what brought you or what made you and your team decide to go to that location to do this purchase?

A. Numerous narcotics sales.

Q. And when you initially saw the defendant in that area, was he standing on the street, or was he standing on the sidewalk?

A. Sidewalk.

Q. Now, going back to the narcotics that you recovered-that were given to you by the defendant, you explained the packaging a little bit. What is that packaging consistent with?

A. Distribution.

Q. When you say distribution, what do you mean by that?

A. Sales.

Q. And why is that?

A. Individual packets. If it is for maybe personal use, it may be in a larger quantity in one bag or two bags. If it is cut up into individual baggies, small Ziploc bags or tinfoil packets, that is for distribution.

Q. And the narcotics that were given to you by Officer Rau, how were those packaged?

A. Also for distribution, small Ziploc bags, each containing tinfoil packets with blue tape."

¶ 41 The prosecutor's comment during closing argument that customers regularly venture to the corner of Washington and Pulaski to purchase defendant's brand of blue-taped bags of heroin was supported by Officer Bridges' testimony that the area was a high narcotics area and that defendant was packaging his blue bags of heroin for sale. Accordingly, the comment was not error.

¶ 42 Defendant next argues that the prosecutor misstated the evidence when she made the following comment:

"Do you remember yesterday when [defendant] took the stand. And he told you initially that he was there waiting at the bus stop because he was going to go to the unemployment agency to get money. Besides the fact he had just listed a ton of job[s] he had already done or does do, I am not sure. But he was waiting at the bus stop to go to the unemployment. Then it was he had saw Big Youngen, and Big Youngen had given him money to go to the store. And he was coming back to give Big Youngen the money. Then it was he didn't have to give Big Youngen the money because he was going to keep it because he had done good deeds."

¶ 43 Defendant contends the prosecutor's comment gave the misleading impression that defendant had continually changed his story while on the stand.

¶ 44 Review of defendant's testimony indicates that the prosecutor's comment was *not* an entirely accurate recitation thereof. Defendant testified that on the morning of his arrest, he was standing at the bus stop because he was on his way to the unemployment office to pick up some checks. Defendant subsequently testified that Big Youngen had sent him to a store with \$30 to purchase some liquor, cigarettes, and cups, and that on the morning of his arrest defendant was waiting to return the money to Big Youngen. Still later, defendant testified that Big Youngen told him he could keep the change after purchasing the liquor, cigarettes, and cups, because Big Youngen was appreciative of a "good deed" defendant had recently performed at a block party. The prosecutor questioned defendant regarding the seeming contradiction between his initial testimony that he was waiting to return the money to Big Youngen, and his later testimony that Big Youngen told defendant he could keep the money. Defendant explained that Big Youngen told him he could keep the change after making the purchase, but that the store was closed and no purchase was made, and therefore defendant felt like he should return all the money to Big Youngen.

¶ 45 The prosecutor's argument correctly tracked defendant's testimony up to, *but not including*, defendant's explanation that he was returning the money to Big Youngen because the store was closed and he had been unable to make the requested purchase. Thus, the prosecutor's argument was misleading in that it left out defendant's explanation for why he was returning the money to Big Youngen even though Big Youngen had told him the money was his to keep. However, we cannot say that this isolated error by the prosecutor during her closing argument

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substantially prejudiced defendant such that it constituted a material factor in his conviction. Accordingly, no reversible error occurred.

¶ 46 Next, defendant contends the prosecutor improperly aroused the jury's passions, and argued facts not in evidence, by making the following remark:

"Please don't think for a moment that this is a victimless crime that we can turn our backs on. Because there are victims to this crime. They are the people who live on the streets of Pulaski and Washington. The people who get up every day and go to work, get their kids to school, while this defendant has set up shop on their corner. They are leaving to go to work at 7:30 in the morning, and the defendant is out there conducting open air drug market on their block. Those are the victims in this case. The victims are the families of the users. Honestly the list goes on and on. This is not a situation where you should turn your backs and look the other way.

The overwhelming evidence in this case requires you to do the only thing supported by the evidence. Put a closed sign on this defendant. Put him out of business. Find him guilty of delivery of [a] controlled substance and possession of a controlled substance with intent to deliver."

¶ 47 The prosecutor's remark was not in error. *People v. Harris*, 129 Ill. 2d 123 (1989), is instructive. In *Harris*, the defendant there claimed that several comments made by the prosecutors in closing arguments were so prejudicial as to deprive him of a fair trial. *Id.* at 159. In the first set of challenged comments, "the prosecutors argued that the jurors enjoyed 'a unique opportunity *** to do something about crime.' Whereas in daily life 'We listen to it on the news, in the newspaper ***. Everybody hears about crime. Nobody does anything about it. You have a unique opportunity to actually do something about crime on your streets.' Embellishing upon

this theme, the prosecutor concluded, 'You are the only ones that sit between this man, this ticking bomb, and that door.' " *Id.*

¶ 48 The supreme court held:

"The remarks in this series were apparently intended to persuade the jurors to convict because by convicting they would prevent both crime in general, and further crime by this defendant. As such, they were proper. It is entirely proper for the prosecutor to dwell upon the evil results of crime and to urge the fearless administration of the law." *Id.*

¶ 49 Similarly, in the present case, the prosecutor's remark was intended to persuade the jurors not to turn their backs on the many victims of drug dealers such as defendant, but to convict defendant so as to prevent him from peddling more heroin. As in *Harris*, it was entirely proper for the prosecutor to dwell on the evil results of defendant's crime and to urge the fearless administration of the law. We find no error here.

¶ 50 Next, defendant contends he was denied a fair and impartial trial due to "the cumulative effect of the State's repeated prosecutorial misconduct." We disagree. "Where errors claimed on appeal which are not individually considered sufficiently egregious to entitle the defendant to a new trial nevertheless create a pervasive pattern of unfair prejudice to defendant's case, a new trial may be granted on the ground of cumulative error." *People v. Mendez*, 318 Ill. App. 3d 1145, 1154 (2001). In the present case, the prosecutorial remarks complained of by defendant were not erroneous and/or were not sufficiently prejudicial, either individually or cumulatively, to deny him a fair trial.

¶ 51 Moreover, while defendant cites to *People v. Blue*, 189 Ill. 2d 99 (2000), and *People v. Johnson*, 208 Ill. 2d 53 (2003), in support of his contention that he is entitled to a new trial, we

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find each case to be distinguishable. While in each case our supreme court found that a defendant was entitled to a new trial in light of cumulative error, and regardless of the strength of the State's evidence, this was only because each case revealed a "pervasive pattern of unfair prejudice." *Blue*, 189 Ill. 2d at 139; *Johnson*, 208 Ill. 2d at 84. Here, we have concluded that defendant waived review of his claims of prosecutorial error during closing arguments; even if they had not been waived, we have found most of defendant's claims of error are unfounded, and that the rest were not prejudicial. Accordingly, *Blue* and *Johnson* are inapposite.

¶ 52 For the foregoing reasons, we affirm the circuit court.

¶ 53 Affirmed.