FIFTH DIVISION
AUGUST 9, 2013

No. 1-11-1222

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF	)	Appeal from the
	)	Circuit Court of
	)	Cook County.
ANTONIO J., a Minor,	)	
	)	
(People of the State of Illinois,	)	No. JD 3780
Petitioner-Appellee ,	)	
	)	
v.	)	
	)	
ANTONIO J.,	)	
	)	Honorable
Respondent-Appellant).	)	Carl Anthony Walker,
	)	Judge Presiding.

JUSTICE TAYLOR delivered the judgment of the court.
Presiding Justice McBride and Justice Howse concurred in the judgment.

ORDER

¶1 *Held:* Comments made during the prosecutor's rebuttal closing argument were not improper. The trial court's judgment is affirmed.

¶2 Following an adjudicatory hearing by a jury pursuant to 705 ILCS 405/5-820 (West 2010), respondent Antonio J., a minor, was found delinquent of the offence of attempted aggravated vehicular hijacking and sentenced to the Juvenile Department of Justice until his 21st birthday. On appeal, defendant contends that the prosecutor's

improper remarks during rebuttal closing argument deprived him of a fair trial. For the reasons discussed below, we affirm.

¶3BACKGROUND

¶4 The State filed a petition for adjudication of wardship alleging that respondent committed aggravated vehicular hijacking in connection with events that took place on August 25, 2010, when defendant was 15 years old.

¶5 On August 25, 2010, Antonio J. and a co-offender allegedly attempted to hijack a vehicle at a gas station occupied by Antrese Payne. Respondent was arrested shortly after fleeing the scene. Payne and another eyewitness identified respondent. The attempt was also captured on surveillance video, and the respondent gave a detailed confession to an Assistant State's Attorney. Respondent was prosecuted as a Violent Juvenile Offender pursuant to 705 ILCS 405/5-820 (West 2010), and was found guilty following an adjudicatory hearing by a jury. He was subsequently sentenced to the Juvenile Department of Justice until his 21st birthday.

¶6 At the hearing on January 21 and 24, 2011, Payne testified that she and her friend Jamie Maple, the other eyewitness, pulled into a gas station. Maple went inside to buy gas and Payne remained in the car, seated in the front passenger seat. After paying for gas, Maple spoke to a family member in another vehicle. While waiting, Payne saw two boys approaching her car. One boy, later identified as the respondent, approached the driver's side and the other boy approached her passenger door and pointed a gun in her face. Payne attempted to grab the gun from the boy, the gun accidentally discharged onto the hood of her car, and the boys fled the scene.

¶7 Maple saw the two boys running away, and Maple and Payne followed them in the car. A police officer started chasing after the boys as well, and respondent was apprehended. Payne identified respondent to the police as the boy who attempted to get in the driver's side of her car. This testimony was followed up with the evidence of the surveillance video and the testimony of the arresting officer, Officer Haynie.

¶8 The interrogating officer, Detective Dowling, testified that immediately after respondent was read his *Miranda* rights, respondent stated that he was not the one who shot at "the lady." Respondent then confessed to what his role was as driver of the attempted vehicular hijacking. The officer testified that he was unable to further detain the respondent because he could only hold a minor for 24 hours, so the respondent was returned to his home.

¶9 Detective Dowling testified that respondent was re-arrested on August 27, 2010 after Detective Dowling was able to get a more detailed account from Payne and Maple. Assistant State's Attorney Jennifer Hamelly testified that she met with respondent and his mother. She was aware of respondent's previous confession and respondent was re-read his *Miranda* rights. Hamelly typed out the statement respondent told her. Respondent's mother read the statement aloud to him because he was unable to read it. He did not have any corrections to the statement. He and his mother then signed the statement.

¶10 In closing arguments, defense counsel made a number of arguments, including that the time stamp of the video surveillance contradicted Payne's testimony, and that the video surveillance implied that Maple might have been under the influence at the time of

the incident. The prosecution's rebuttal argument included the following statements that respondent has raised on appeal.[1]

¶11 Statement one:

"PROSECUTOR: That is the most ridiculous argument, ladies and gentlemen. The most ridiculous argument."

DEFENSE: Objection.

THE COURT: It's – –

PROSECUTOR: We have a mountain – –

THE COURT: The objection is overruled."

¶12 Statement two:

"PROSECUTOR "Now, they want to confuse you with, oh, well did he put the gas in the first and then wipe down the rim, or did he open up the trunk and then go to the passenger side? That is nonsense. That's ridiculous. They don't have the facts on their side and they don't have the law on their side. So when you can't argue the law and you can't argue the facts, you just argue. You argue, blah, blah, blah. And that's what you heard, ladies and gentlemen. There's no.."

DEFENSE: Objection.

THE COURT: The objection is overruled."

¶13 Statement three:

"PROSECUTOR: "They get in that door, it's a different story. They got away. But Officer Haynie, you're just going to call him a liar, and there's no

[1] Respondent included other statements made by the prosecution on appeal, but they were not objected to at trial, thus not preserved for appeal.

evidence of that? He works in Englewood every day. He puts his life on the line. He chases - he goes, he rides to the sound of gunshots.

DEFENSE: Objection, Judge.

PROSECUTOR: It doesn't matter who Jamie is. He may – –

DEFENSE: Objection to the form.

THE COURT: The objection is overruled."

¶14 After closing arguments, rebuttal closing argument, and following jury instructions, the jury found respondent delinquent of attempted aggravated vehicular hijacking. Defense counsel filed a motion for a new trial, arguing that the State denied respondent a fair trial by repeatedly referring to the defense argument as ridiculous and by inviting the jury to regard Officer Haynie and Assistant State Attorney Hamelly as more credible because of their positions. The State argued the prosecutor's remarks were invited by defense counsel's argument or, alternately, harmless error. The trial court denied the motion without stating the basis of its ruling. Respondent was sentenced to the Juvenile Department of Justice until his 21st birthday. This appeal follows.

¶15ANALYSIS

¶16 The issue presented on appeal is whether comments made during the prosecutor's rebuttal closing argument were improper, and if so, whether they deprived respondent of a fair trial.

¶17 The standard of review for closing remarks is an unsettled issue, as it is not clear whether this issue is reviewed *de novo* or for abuse of discretion. *People v. Raymond*, 404 Ill. App. 3d 1028, 1059 (2010); *People v. Phillips,* 392 Ill. App. 3d 243, 274–75 (2009); *People v. Johnson,* 385 Ill. App. 3d 585, 603, (2008). Our supreme court held in

People v. Wheeler, 226 Ill. 2d 92, 121 (2007), that, "[w]hether statements made by a prosecutor at closing argument were so egregious that they warrant a new trial is a legal issue this court reviews *de novo*." However, the supreme court in *Wheeler* approved of *People v. Blue,* 189 Ill. 2d 99, 128 (2000) (applying an abuse of discretion standard). In *Raymond,* this court declined to resolve the issue of the appropriate standard of review because its holding would be the same under either standard. *Raymond*, 404 Ill. App. 3d at 1060. The same is true in this case.

¶18 Defendant argues that the State made eleven improper remarks during its rebuttal closing argument. To preserve claimed improper statements for review, a timely objection must be made. *People v. Jones*, 240 Ill. App. 3d 231, 219 (1992). However, it is true that posttrial motions are not required to preserve claimed errors in delinquency proceedings. *In re M.S.*, 232 Ill. 2d 408, 430 (2009). In reviewing the record, defendant only properly preserved objections to three statements. The defendant's reliance on *People ex rel. Klaeren v. Village of Lisle*, 202 Ill. 2d 164, 178-79 (2002), and *People v. Garza*, 180 Ill. App. 3d 820, 824 (1989), for the proposition that objections are not necessary when it is apparent that an objection would be futile is misplaced. *Klaeren* held that objections were not necessary at a municipal board hearing when the mayor said that "he would not consider any procedural objections raised by the public" during preliminary statements. *Klaeren*, 202 Ill. 2d at 178-79. *Garza* held that objections were not necessary by the defense during prosecution's statements because the defense preemptively brought a motion *in limine* before the court. *Garza*, 180 Ill. App. 3d at 824. The facts of these cases are irrelevant to the instant case. Thus we find defense counsel was still required to object to preserve statements for review.

¶19 A State's closing argument will lead to reversal only if the prosecutor's remarks created "substantial prejudice." *Wheeler,* 226 Ill. 2d at 123; *People v. Johnson,* 208 Ill. 2d 53, 64 (2003). Substantial prejudice occurs "if the improper remarks constituted a material factor in a defendant's conviction." *Wheeler,* 226 Ill. 2d at 123. When reviewing claims of prosecutorial misconduct in closing arguments, a reviewing court must consider the entire closing arguments of both sides, in order to place the remarks in context. *Id.* at 122; *People v. Walker,* 259 Ill. App. 3d 98, 104 (1993). A prosecutor has wide latitude during closing argument. *Wheeler,* 226 Ill. 2d at 123; *Blue,* 189 Ill. 2d at 127; *People v. Cisewski*, 118 Ill. 2d 163, 175 (1987).

¶20 The three surviving statements fall into two categories. The defendant claims that the prosecutor committed misconduct because he repeatedly belittled defense counsel and he unfairly bolstered the credibility of the State's witnesses.

¶21 Respondent claims the first two statements made by prosecution on appeal belittle defense counsel. We do not find this to be the case. Similar remarks were made in *People v. Robinson*, 391 Ill. App. 3d 822, 840 (2009). In *Robinson*, the prosecution made remarks during closing argument such as "a ridiculous statement" and "so ridiculous nobody could ever believe that." *Id.* The court found the statements were not improper because though a prosecutor cannot claim defense counsel is deliberately lying, he can challenge the credibility and persuasiveness of the defense's theory. *Id.* Numerous cases have upheld the use of the word "ridiculous" in closing arguments. *See, e.g.*, *People v. Zoph*, 381 Ill. App. 3d 435, 454 (2008); *People v. Maldonado*, 240 Ill. App. 3d 470, 483-84 (1992); *People v. Dent*, 230 Ill. App. 3d 238, 245-46 (1992). These statements at issue are confined to commenting on the defense theory and are not directed towards

counsel personally; thus, they are not improper. *See People v. Baugh*, 358 Ill. App. 3d 718, 743 (2005) (finding no prosecutorial error where prosecutor referred to defendant's testimony and defense theory as "a joke" but did not personally attack defense counsel or question his integrity).

¶22 Finally, we consider statement three, which the defense claims unfairly bolstered the credibility of the State's witnesses. The defense relies on *People v. Ford*, 113 Ill. App. 3d 659, 662 (1983), in which the prosecution during its initial closing arguments said, "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?" The court found this and several similar statements made during the argument to have "exceeded the boundaries of proper argument." *Id.* However, the instant case is distinguishable because unlike the case cited by the defendant, the remarks in this case were from the prosecution's rebuttal argument and they were invited by the following statement by the defense's closing argument: "The doubt is an officer who can't tell the same story. Who embellishes and exaggerates when he gets before you." Statements "will not be held improper if they were provoked or invited by the defense counsel's argument." *People v. Glasper,* 234 Ill. 2d 173, 204 (2009); *see also People v. Kliner*, 185 Ill. 2d 81, 154, (1998) (finding that a "prosecutor may respond to comments by defense counsel which clearly invite a response"), *People v. Land*, 2011 IL App (1st) 101048, ¶ 159 (finding no error in prosecution's rebuttal closing argument because remarks were invited by defense closing argument bringing up defendant's use of profanity upon arrest). A prosecutor may comment on the "evil results of crime and the benefits of a fearless administration of

the law." *People v. Jackson*, 84 Ill. 2d. 350, 360 (1981). The State's effort to restore Officer Hayne's image as trustworthy was not unwarranted and was not improper.

¶23 We find that none of the three statements preserved for review were improper, and thus respondent was not deprived of a fair trial.

¶24CONCLUSION

¶25 For the foregoing reasons, the judgment of the circuit court is affirmed.

¶26 Affirmed.