

No. 1-12-2369

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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. 02 CR 31134
)	
PIERRE MONTANEZ,)	Honorable
)	Joseph M. Claps,
Defendant-Appellant.)	Judge Presiding.

JUSTICE LAMPKIN delivered the judgment of the court.
Presiding Justice Hoffman and Justice Hall concurred in the judgment.

O R D E R

- ¶ 1 **Held:** Affirmed convictions of two counts of first degree murder, aggravated kidnapping, and aggravated vehicular hijacking over defendant's contention that the State engaged in prosecutorial misconduct during closing arguments.
- ¶ 2 Following a jury trial, defendant Pierre Montanez was found guilty of two counts of first degree murder, aggravated kidnapping, and aggravated vehicular hijacking. He was sentenced to life imprisonment for the two murders, consecutive to respective terms of 27 and 20 years' imprisonment. On appeal, he contends that he was deprived of his constitutional right to a fair

and impartial trial where the State committed prosecutorial misconduct during closing arguments.

¶ 3 Defendant and codefendant, Jose Luera, were arrested for, *inter alia*, the murders of the victims, Alejandra Ramirez and Roberto Villalobos, on August 28, 2002. Codefendant Luera's appeal is pending before this court in Appeal No. 1-11-2995.

¶ 4 At trial, Anais Ortiz acknowledged that she was currently in prison awaiting trial on a charge of armed robbery. She testified that on August 27, 2002, she was at codefendant Luera's home with defendant and Claudia Negrette smoking marijuana and drinking alcohol. She knew codefendant through their gang affiliation. At 11:30 p.m. they were all picked up by Villalobos, who was driving a Chevy Caprice with Ramirez in the front passenger seat. Villalobos dropped off Ortiz and Negrette near 83rd Street and Kolin Avenue in Chicago. Defendant and codefendant remained in the car with the two victims. Ortiz did not notice anything unusual happen between the victims and defendants. When shown a photograph of Villalobos' car, Ortiz noted that it had burn marks which were not present on it when she was in the car.

¶ 5 John McDonnell testified that near midnight on August 28, 2002, he arrived at his home at 7952 South Kolin Avenue. While he was standing on his front porch, he noticed a four-door car parked across the street, and saw Villalobos exit through the back window. Villalobos' pants were down, and he was trying to hold them up while asking for help. Villalobos backed away from the car, and McDonnell saw codefendant Luera exit the same window and punch Villalobos, who staggered back and fell to the ground. When Villalobos stood up, codefendant hit him again, knocking him down. McDonnell walked towards the men but did not get involved

at first because he thought it was a "little fight" between the two men. Codefendant then got on top of the victim and continued punching him. McDonnell walked up to them and told codefendant to get off of Villalobos. Codefendant ignored him and continued to hit Villalobos while McDonnell asked him again to get off Villalobos. Codefendant hit Villalobos 40 times, and as McDonnell approached to remove codefendant from Villalobos, he noticed a light coming from the car the men exited. McDonnell hesitated because he was not sure if there were more people in the car, and codefendant continued punching Villalobos. When both men eventually stood up, McDonnell noticed that they were covered in blood. Villalobos hid behind McDonnell, grabbed both of his elbows, and asked him to help him. McDonnell and Villalobos backed up into his driveway and codefendant followed them. McDonnell told him to leave, and codefendant then showed him a knife.

¶ 6 McDonnell testified that he ran behind his house, and retrieved a two-by four. When he returned, he saw the car take off with the inside light on, and the front passenger door open, which was closed as the car drove away. Villalobos was on the ground in his driveway and had been stabbed multiple times. McDonnell called the police, and when he met with them the following day, he identified codefendant in a photo array.

¶ 7 Jason Samhan testified that shortly after midnight on the day in question, he was driving on 79th Street, and as he approached the intersection of 79th Street and Tripp Avenue, he had a green light. As he was about to pass through the intersection, a vehicle "blew" the red light, almost hitting his car, and requiring him to maneuver his car to avoid a collision. When he looked at the car, which was a Chevy Caprice, with temporary plates, he noticed a woman's head

hanging out the back window with a male's arm around her neck, choking her. The woman was screaming and trying to fight back. He also noticed blood on the driver's side rear door. Samhan called police.

¶ 8 George Hoyt testified that on August 28, 2012, he was working at a gas station at 67th Place and Pulaski Road in Chicago. At 1:45 a.m., defendant came into the station and picked up two one-gallon cans of gasoline. Defendant told him that he needed the gasoline for his van because his girlfriend ran out of gas while he was at work. He told Hoyt that his van was at 67th Place and Lawndale Avenue, which was three blocks from the gas station. Hoyt told defendant it would be a lot cheaper if he bought one can, filled up his car, and drove his car to the gas station to get more gas. Defendant still bought two cans of gasoline, then left. Hoyt testified that he noticed scratches on defendant's neck and face. Later that day, police arrived and asked if someone came in and bought anything unusual. He told them about defendant's purchase, and gave them the receipt from that purchase. Hoyt later identified defendant as the person who purchased the two canisters of gas in a photo array and lineup.

¶ 9 Officer Joseph William Dunigan, Jr. testified that there were pools of blood by the victim Villalobos in the driveway at 7952 South Kolin Avenue, and in the street, and he took samples of the blood. He then went to 3710 West 69th Street where he observed a four-door Chevy which had fire damage, and smelled strongly of gasoline. The deceased and bloody body of Ramirez was in the backseat of the car. The car also had blood all over it. Officer Dunigan collected blood samples from the car. After processing the scene, the officer placed bags over Ramirez' hands so that any evidence on her hands would not be lost.

¶ 10 Illinois State Police forensic DNA analyst Amy Rehnstrom testified that she received known DNA samples from Ramirez, codefendant, defendant and Villalobos. She also received unknown samples of bodily fluids recovered from the crime scenes as well as swabs from Ramirez' fingernails. She compared the DNA samples from the crime scene to the standards provided by each individual to determine who could have contributed to the samples from the crime scene and who definitely could not have contributed to them.

¶ 11 Rehnstrom testified that swabs from the interior of the car originated from codefendant, Ramirez, and Villalobos, but none of them originated from defendant. She, however, could not exclude defendant, Ramirez, or Villalobos from contributing to the DNA found in the right-hand fingernail clippings from Ramirez, but could exclude codefendant. Rehnstrom explained that she cannot say that the DNA found in the fingernail clippings matched the people she could not exclude, but that it was consistent with them and they cannot be excluded. She also testified that her DNA analysis for Ramirez' left-hand fingernail clippings could not exclude defendant, assuming Ramirez was a contributor. Rehnstrom explained that she did a statistical analysis on the left-hand swab of Ramirez, and determined that, assuming the other person contributing to the DNA was Ramirez, "approximately one in 10 quadrillion black, one in 18 quadrillion white, or 1 in 2.5 quadrillion Hispanic unrelated individuals cannot be excluded as the other contributor." She explained that means, "you would have to add approximately six more zeros to the population of the earth to find one other person who can't be excluded from the DNA profile other than the defendant." Rehnstrom further testified that she did not know what bodily substance was underneath Ramirez' fingernails but that it was a mixture of DNA.

¶ 12 Chicago police officer Robert Lenihan testified that he investigated the double homicide. He interviewed McDonnell who identified codefendant Luera in a photo array. He interviewed Hoyt at the gas station, and Hoyt identified defendant in a photo array as the person who purchased gas from him at 1:48 a.m. on August 28, 2002.

¶ 13 On November 16, 2002, defendant came to the police station accompanied by two attorneys. Officer Lenihan told him he was investigating the murders of Villalobos and Ramirez. Defendant told him he had never seen Ramirez before, but had seen Villalobos while driving around the neighborhood. Defendant told him he had been in a car with Villalobos and codefendant before but not at night. The officer asked to see defendant's arms, and observed a burn scar on one of his arms. Photographs taken of defendant also showed a burn scar on one of his legs. Defendant told him he burned his arm and leg on the 4th of July. One of his attorneys then produced a note from Dr. E. Cabrera which stated that defendant was treated for burns. Officer Lenihan then told defendant that they knew he was at the scene of the two murders, and had purchased gasoline to burn the car which Ramirez was found in. Defendant's attorneys then requested to speak to defendant outside the officer's presence. The officer left the room. When he returned, defendant told him he knew he was on camera at the gas station, and purchased two cans of gasoline in the morning of August 28, 2002. He explained that he was in the car with Nick Buogos, and ran out of gas on 67th Place. Officer Lenihan conducted lineups including defendant, and Ortiz and Hoyt separately identified defendant.

¶ 14 The parties stipulated that Dr. Ernest Cabrera would testify that he did not treat defendant in July 2002 for burns and has never treated him at any time for any reason. Dr. Cabrera would

testify that the letter defendant provided from his office, Highland Medical Center, was a form letter used by the medical center, and that blank, unsigned copies of this form were kept in each of the examination rooms. The doctor would testify that he did not sign the letter that defendant produced, and that he was the only doctor named Cabrera at the Highland Medical Center.

¶ 15 The parties stipulated that Detective James Winston would testify that he investigated the car fire at 3710 West 69th Street, and upon his arrival there, he observed a Chevy Caprice with extensive fire damage. He collected debris from inside the vehicle. The parties further stipulated that forensic chemist William Tyrrell would testify that he tested the recovered debris from the car and determined that it contained gasoline.

¶ 16 Dr. James Filkins testified that he was a forensic pathologist. Dr. Filkins testified that he did not perform the autopsies of the victims, but reviewed the reports and photographs. Dr. Filkins opined that Villalobos died of multiple stab and incised wounds. Ramirez also had 14 stab wounds, burn injuries, and evidence of strangulation. Dr. Filkins opined that the primary cause of death for Ramirez was multiple stab wounds, and strangulation was a "significant contributing factor." The doctor also testified that most of the burn injuries appeared to be postmortem.

¶ 17 At the close of evidence, the court advised the jury that closing arguments are not evidence. Following closing arguments, the court advised the jury that the evidence it should consider consists only of the testimony of the witnesses, the exhibits and the stipulations. The court again advised that closing arguments are not evidence, and that any statement or argument made by the attorneys which is not based on the evidence, should be disregarded.

¶ 18 Defendant filed a motion for a new trial raising prosecutorial misconduct during closing and rebuttal arguments, and identifying specific statements by the State. The court denied the motion.

¶ 19 On appeal, defendant contends that he was deprived of his constitutional right to a fair and impartial trial where the State engaged in prosecutorial misconduct during closing arguments. In particular, he contends that the State misstated the evidence and asserted that there was evidence to establish his motive and that his fingerprints were on Ramirez' neck even though no such evidence was presented at trial.

¶ 20 A prosecutor is accorded wide latitude in closing and rebuttal arguments, and may comment on evidence and any fair and reasonable inferences the evidence may yield. *People v. Runge*, 234 Ill. 2d 68, 142 (2009). When reviewing claims of prosecutorial misconduct during closing argument, we consider the entire closing argument of both parties to place the comments in context. *People v. Maldonado*, 402 Ill. App. 3d 411, 422 (2010). We briefly note that due to a conflict between two supreme court cases, it is unclear whether we review this issue *de novo* or for an abuse of discretion. *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007); *People v. Blue*, 189 Ill. 2d 99, 128 (2000). We, however, need not determine which is the proper standard of review because the result here is the same under either one. *People v. Woods*, 2011 Ill. App. (1st) 091959, ¶38; *People v. Raymond*, 404 Ill. App. 3d 1028, 1060 (2010); *People v. Phillips*, 392 Ill. App. 3d 243, 274-75 (2009).

¶ 21 Defendant maintains that the State engaged in prosecutorial misconduct in closing argument. In particular, he objects to the following statement by the State:

"Remember what John McDonnell said. That car was driving and the front passenger door was open. That was from [Ramirez] opening it trying to get out. He stopped her. Why. Because she's now a witness. She could come in and say what happened in that car."

Defense counsel objected, was overruled, and the State then further argued that, "[s]he could come in and testify against him. She's a witness. She's got to go."

¶ 22 Defendant maintains that these comments were an "inaccurate recounting" of the evidence because there was no evidence of motive for Ramirez' murder where the State presented no evidence as to why she was killed. We find these comments permissible as a reasonable inference drawn from the evidence presented at trial, even if it reflects negatively on defendant. *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). The evidence at trial showed that, shortly before the murders, Ramirez was in the car with defendant, codefendant and Villalobos, after having dropped off Ortiz and Negrette. Shortly thereafter, McDonnell saw codefendant attacking Villalobos, who was fatally stabbed. Samhan then saw Ramirez being strangled in the car that codefendant and defendant had been in, and that Villalobos had just fled from. The reasonable inference drawn from this evidence is that Ramirez was in the car when Villalobos was attacked and murdered, and was then murdered based on what she witnessed. *People v. Saxon*, 374 Ill. App. 3d 409, 418 (2007).

¶ 23 Defendant also complains of the State's rebuttal argument that "defendant's fingernail prints and fingerprints are all over [Ramirez'] neck. Evidence that he was strangling her." This statement was properly made based on the evidence presented at trial. *People v. Wages*, 261 Ill.

App. 3d 576, 585 (1994). Dr. Filkins' testimony established that the victim died as a result of strangulation and being stabbed multiple times. The evidence further showed that the victim was seen fighting against her offender as she was being strangled and there were scratch marks all over defendant's face and neck, all of which lead to the reasonable inference that defendant was responsible for strangling her. *Runge*, 234 Ill. 2d at 142. Furthermore, defendant's DNA could not be excluded from the DNA found under the victim's fingernails and the odds of another person not being excluded from that DNA were astronomical. In addition, there was strong evidence that defendant burned the vehicle Ramirez was in where he was seen taking two cans of gasoline from a gas station around the time of the murders, despite being told it would be more economical to take one can if his car had run out of gas a few blocks from the station, he had burn marks on his body, and his letter from a treating physician regarding the burns was falsified. This evidence supports the reasonable inference that defendant strangled the victim, and thus, his fingerprints were all over her neck. *Nicholas*, 218 Ill. 2d at 121. The State's rebuttal argument was, therefore, proper. *Wages*, 261 Ill. App. 3d at 585.

¶ 24 Moreover, the State's rebuttal argument was a proper response to defendant's closing argument in which he argued that if he had been in a fight in the car, his blood and fingerprints would have been found, especially if he had been scratched on the face and neck. *People v. Campbell*, 332 Ill. App. 3d 721, 727 (2002). This argument called for the State's response that defendant's fingernail prints were all over the victim's neck, *i.e.*, evidence that he strangled her (*Campbell*, 332 Ill. App. 3d at 727), and was supported by the trial evidence as explained above (*Wages*, 261 Ill. App. 3d at 585). Under these circumstances, we find that the State's comments

did not prejudice defendant or deprive him of a fair trial. *People v. Gonzalez*, 212 Ill. App. 3d 839, 844 (1991). Moreover, the court repeatedly admonished the jury that closing arguments are not evidence, thereby curing any error. *People v. Willis*, 409 Ill. App. 3d 804, 814 (2011).

¶ 25 In light of the forgoing, we affirm the judgment of the circuit court of Cook County.

¶ 26 Affirmed.