2014 IL App (2d) 121165-U
No. 2-12-1165
Order filed June 30, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. DARRYN JOHNSON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 11-CF-556 Honorable John T. Phillips, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hutchinson and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Prosecutor's closing argument comments denied defendant a fair trial, where they: (1) bolstered the detectives' testimony; (2) shifted the burden of proof to defendant; and (3) misstated the facts. Reversed and remanded.

¶ 2 Following a jury trial, defendant, Darryn B. Johnson, was convicted of burglary (720 ILCS 5/19-1(a) (West 2010)) and attempt residential burglary (720 ILCS 5/8-4(a) (West 2010)). The trial court denied defendant's posttrial motion and sentenced him to 24 months' intensive probation. On appeal, defendant argues that he was denied a fair trial where, during closing arguments, the State: (1) told the jury, without evidence, that the detectives risked their careers

by lying; (2) shifted the burden of proof to defendant by faulting him for failing to offer evidence; and (3) told the jury to disbelieve defendant based on an admission he allegedly never made. For the following reasons, we reverse and remand for a new trial.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with burglary and attempt residential burglary. The State's theory of the case was that defendant and two accomplices used a pry bar to gain entry into an apartment building to attempt to obtain guns from Gino Baker's apartment. After they heard someone coming, they abandoned their plan and left the apartment building. Later that morning, defendant returned to visit Baker, his mother's boyfriend, but, after encountering the apartment manager, he decided to leave. Defendant's theory of the case was that he, alone, visited the apartment building once that day. He claimed that he visited Baker to retrieve money and to discuss Baker's relationship with defendant's mother. Baker let defendant, who was unaccompanied, into the apartment building. After meeting with Baker, defendant, while leaving the apartment, briefly conversed with the apartment manager.

¶ 5 The apartment building at 821 West Greenwood Avenue, in Waukegan, is located on the southeast corner of West Greenwood Avenue and North Jackson Street. West Johns Manville Place borders the building to the south, and another residential building borders it to the east. The main entrance is on the north side of the apartment building along West Greenwood. The rear entrance is located on the south side of the apartment building along West Johns Manville. Gino Baker's parking spot was on the west side of the apartment building along North Jackson.

¶ 6 A. Apartment Manager Joshua Hecker

¶ 7 Joshua Hecker, apartment manager at 821 West Greenwood, testified that, on December 1, 2010, at around 10:45 a.m., he let into the apartment building an Orkin exterminator. At the

time, Hecker did not notice any issues with the main entrance, though he did not thoroughly examine it.

¶ 8 As Hecker led the exterminator through the building, Hecker saw defendant, whom he did not recognize, coming through an open doorway and stopped him. After Hecker identified himself as the apartment manager, defendant stated that he was visiting his mother's boyfriend, Gino Baker. According to Hecker, defendant appeared "to be very nervous and anxious to get out of the building." After the conversation, Hecker followed defendant out the rear entrance and watched defendant walk southbound on North Jackson.

¶ 9 After Hecker went back inside, he noticed a dark-colored Jeep parked in front of the main entrance. Hecker had a clear view and watched the Jeep make a U-turn and turn down Jackson Street (the same direction as defendant). However, Hecker never saw defendant get into the Jeep. Due to the recent encounter in the hallway, Hecker copied down the license plate number of the Jeep. The Jeep headed in the same direction as defendant.

¶ 10 To verify defendant's story, Hecker knocked on Baker's door. He waited "less than 30 seconds," and no one answered. While waiting for an answer, he conversed with the exterminator, but did not notice anything unusual about Baker's door. After the exterminator left, Hecker did not see Baker's blue pickup truck.

¶ 11 Later that day, at around 5 p.m., Hecker was called to Baker's apartment and observed "the trim directly next to [Baker's] dead bolt lock had been dented in" and he could "clearly see the dead bolt mechanism itself going into the doorjamb." Again, Hecker did not notice any issues with Baker's door earlier in the day.

¶ 12 In addition to the damage on Baker's door, Hecker observed that the apartment's main entrance doorframe had been split and that there were paint chips on the ground outside the door.

During, Hecker's encounter with defendant, Hecker had not observed anything in defendant's hands or any paint chips on his coat. Hecker was unsure when the doors were damaged. However, Hecker gave Detective Brian Hawbaker the Jeep's license plate number.

¶ 13 On or around December 14, 2010, Hecker identified defendant from a six-person photo array.

¶ 14 B. Resident Gino Baker

¶ 15 Gino Baker testified that, on December 1, 2010, around 11 a.m., he let in defendant through the main entrance of 821 West Greenwood and into his apartment. At the time, Baker and defendant's mother were dating. Baker worked at Lowe's Home Improvement, selling paint. He had a shift at Lowe's on December 1, 2010, which he believed started around 11 a.m. When Baker left for work that day, he did not notice any damage to his door, but he admitted that there could have been damage. The only car Baker owned was a Ford pickup truck. Baker testified that, on this day, he did not own any guns or show defendant any guns. In August 2011, Baker purchased a .22 bolt-action rifle.

¶ 16 Later that night, after 5 p.m., Baker returned home from work and noticed that somebody had apparently attempted to enter into his apartment unit. In an attempt to gain access to the apartment, the metal molding on the door had been wedged. Hecker arrived, and the police were called.

¶ 17 On redirect examination, Baker admitted that he may have told Waukegan police officer Kelly Gordon that he saw defendant earlier that day at defendant's mother's house, and not Baker's apartment.

¶ 18 C. Detective Andrew Valko

¶ 19 Waukegan police detective Andrew Valko testified that, on December 16, 2010, at around 8 p.m., he and Detective Brian Hawbaker interrogated defendant at the Lake County Sheriff's office. Defendant was a suspect in an attempted burglary incident. Valko was there to witness the interrogation. Valko testified that defendant agreed to speak with the detectives, but would not sign anything. Valko testified that Hawbaker sought defendant's consent to videotape the interview, but defendant refused. Hawbaker asked all of the questions and Mirandized defendant.

¶ 20 According to Valko, defendant stated that, on December 1, 2010, he went to Baker's apartment to visit his mother. "Doughboy" and "Slick" accompanied him. The three men wanted guns, and, based on previous visits, they knew that Baker had guns. They needed guns for protection because Doughboy and Slick had been in a large fight at the Sundance Saloon in Waukegan, where one of them was injured. The men drove to Baker's apartment in a Jeep driven by Anisha Earl. According to Valko, defendant originally stated that he entered the apartment through the open rear entrance and did not know how Doughboy and Slick entered the building. However, after Hawbaker challenged defendant's story, defendant stated that he used a pry bar to open the main entrance of the apartment building.

¶ 21 Once inside, defendant passed the pry bar to Doughboy, and Doughboy and Slick went upstairs. Defendant stayed downstairs and acted as a lookout. When Doughboy and Slick returned, they told defendant that they heard someone coming and were unable to enter Baker's apartment. Afterwards, the group got back into Earl's Jeep, and Earl dropped off Doughboy and Slick in North Chicago. Defendant and Earl then went back to Baker's apartment. According to Valko, defendant told the detectives that he gained entry to the building while the exterminator was coming out or going into the building. Once inside, Hecker stopped defendant and asked

him where he was going. Defendant told Hecker he was going to see Baker, but, after the encounter, defendant decided to leave because he did not want any problems.

¶ 22 Valko believed that Hawbaker followed up with defendant to obtain Doughboy and Slick's full names.

¶ 23 D. Detective Brian Hawbaker

¶ 24 Waukegan police detective Brian Hawbaker testified that he presented a photo array to Hecker, who identified defendant as the person in the apartment building on December 1, 2010.

¶ 25 Hawbaker testified that on December 16, 2010, at around 8 p.m., Valko joined him in an interview room after defendant voluntarily agreed to speak with them. Hawbaker Mirandized defendant. Hawbaker denied seeking defendant's consent to record the interview. Defendant admitted to visiting Baker with Doughboy and Slick on December 1, 2010. Defendant told Hawbaker they were going to break into Baker's apartment to take Baker's guns. Hawbaker testified that defendant knew Baker owned guns because Baker showed the guns to defendant on a prior visit. Doughboy and Slick needed the guns for protection.

¶ 26 Hawbaker further testified that defendant stated that Earl drove his group to the apartment building and that defendant entered the building through the unlocked rear entrance. However, after Hawbaker told defendant that the main entrance was damaged, defendant admitted that he used a pry bar to gain entry through the main entrance. After gaining entry, defendant gave the pry bar to Doughboy for use on Baker's apartment door. Defendant did not follow Doughboy and Slick to Baker's apartment, but kept watch. After they heard someone coming, Doughboy and Slick abandoned their plan to break into Baker's apartment. Earl drove Doughboy and Slick to North Chicago and then drove defendant back to Baker's apartment. Defendant told Hawbaker that, on this second visit, he entered the building with the

exterminator. Upon reentering, defendant encountered Hecker. After Hecker stopped to question defendant, defendant decided to leave the apartment building because defendant did not want any trouble.

¶ 27 Defendant refused to provide a written statement or sign anything. Hawbaker tried to locate Doughboy, Slick, and Earl, but defendant did not provide addresses, phone numbers, or Doughboy's and Slick's full names. Hawbaker located two addresses for Earl but failed to make contact with her. On February 22, 2011, Hawbaker obtained an arrest warrant for defendant. The State rested.

¶ 28 E. Defendant

¶ 29 Defendant testified that, on December 1, 2010, at around 11 a.m., he went to Baker's apartment. Baker had called him to pick up money to purchase marijuana for Baker. Earl drove defendant to the apartment. No one named Doughboy or Slick accompanied them. Defendant testified that, when he arrived at the apartment building, he did not see Baker's truck in the parking spot along North Jackson. Baker let in defendant through the main entrance. Defendant stated that he never saw any guns in the apartment and that Baker never told him of any guns. Defendant testified that they discussed Baker's relationship with defendant's mother.

¶ 30 When defendant left the apartment, he ran into Hecker and the exterminator. Hecker stopped defendant. Hecker told defendant that he was the apartment manager, and Hecker asked who defendant was visiting. Defendant told Hecker that he was visiting Baker. According to defendant, the conversation was short. Afterwards, defendant left the apartment building through the rear entrance and started walking southbound on North Jackson.

¶ 31 About two weeks later, defendant spoke to Hawbaker and Valko. He denied being Mirandized. Defendant gave Hawbaker Earl's address and telephone number. Defendant denied

telling Hawbaker about: knowing Doughboy or Slick, a fight involving Doughboy and Slick, being a lookout, having a pry bar, and going to Baker's apartment to steal guns. Defendant also denied that he refused to sign any documents for the detectives.

¶ 32 F. Closing Arguments

¶ 33 During its closing argument, the State addressed the detectives' credibility:

> "[The State]: Would the officers plant a story and risk ten years of their livelihood–
>
> [Defendant]: Objection.
>
> THE COURT: Overruled.
>
> [The State]: To do that. One of dozens and dozens and dozens of property crimes they investigate. The defense attorney made a big deal saying [Hecker] is a Kenosha police officer and [Hecker's wife] works for the county. Would they do that for the president of the United States risk the[ir] livelihood–
>
> [Defendant]: Objection.
>
> THE COURT: Overruled."

¶ 34 During rebuttal, the prosecutor stated: "Yes police officers have lied in the United States and Kazakhstan and other places, but is Brian Hawbaker lying? Is Andy Valko lying? Does that make sense[?]" He added: "At the end of the the [*sic*] day [defendant] is saying they are lying. Are they? Would they lie in that way? This is their livelihood. This is how they make a living. They know they are going to have to testify and stand up to it."

¶ 35 The prosecutor also told the jury:

> "Is Brian Hawbaker lying? Is Andy Valko lying? You heard them come in and they took the stand. They swore to tell the truth. They answered questions. It's

> for [ ] you [to] determine were they lying, *were they impeached with something they said on a previous date that was different from what they said? No.* Were they contradicting each other? No. Were they identical in exactly memorized way this [*sic*] how they said it? No. They each offered the nuance and the content of what happened." (Emphasis added.)

¶ 36 Finally, the State argued during closing that Baker could not have been at his apartment when defendant arrived because defendant "testified that he didn't see that truck there either. How in the world would [Baker] have been there. He needed to go to work. [Baker] told you. He drives himself to work [and] he only had a truck. Defendant admitted the truck wasn't there, the truck wasn't there."

¶ 37 G. Verdict and Posttrial Proceedings

¶ 38 The jury found defendant guilty of burglary and attempt residential burglary. The trial court subsequently denied defendant's posttrial motion and sentenced defendant to 24 months' intensive probation. This timely appeal followed.

¶ 39 II. ANALYSIS

¶ 40 On appeal, defendant argues that he was denied a fair trial due to the State's improper comments during closing arguments. Defendant specifically argues that, during closing arguments, the State: (1) improperly bolstered the detectives' testimony by arguing that lying would jeopardize the detectives' careers; (2) shifted the burden of proof; and (3) misstated facts.

¶ 41 We first note that defendant acknowledges that he failed to offer an objection at trial for all of these issues and that he failed to raise his claims in his posttrial motion. To preserve an issue for review, a defendant must offer an objection at trial and raise the issue in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Thus, these issues are forfeited. See

People v. Herron, 215 Ill. 2d 167, 187 (2005). However, the plain-error doctrine permits this court "to consider unpreserved error when either (1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *Id*. Defendant contends that we may review his claims under the first prong. Under the first prong, "the defendant must prove 'prejudicial error.' That is, the defendant must show both that there was plain error and that the evidence was so closely balanced that the error alone severely threatened to tip the scales of justice against him [or her]." *Id*. Once defendant proves "that there was an error and that the evidence was closely balanced, the error is considered prejudicial." *People v. Vesey*, 2011 IL App (3d) 090570, ¶ 18. The State can respond by "arguing that the evidence was not closely balanced, but, rather, strongly weighted against the defendant." *Herron*, 215 Ill. 2d at 187. "Improper argument is especially serious where the evidence of the defendant's guilt is not overwhelming." *People v. Roman*, 323 Ill. App. 3d 988, 1001 (2001). "When there is error in a close case, we choose to err on the side of fairness, so as not to convict an innocent person." *Herron*, 215 Ill. 2d at 193. In determining whether the evidence was closely balanced, we must make a "commonsense assessment" evaluating the totality of the evidence. *People v. White*, 2011 IL 109689, ¶ 139.

¶ 42 The first step in determining whether the plain-error doctrine applies "is to determine whether there has been reversible error." *People v. Patterson*, 217 Ill. 2d 407, 444 (2005). "Absent reversible error *** there can be no plain error." *People v. Williams*, 193 Ill. 2d 306, 349 (2000). "In plain-error review, the burden of persuasion rests with the defendant." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

¶ 43 A. The Detectives Risked Their Jobs by Lying

¶ 44 Defendant argues first that the State improperly bolstered the detectives' credibility during closing statements by asserting that, as detectives, they risked their careers by lying. The State agrees and concedes error.

¶ 45 Prosecutors are afforded "wide latitude" in their closing arguments. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). Closing arguments "must be viewed in their entirety, and the challenged remarks must be viewed in context." *Id*. at 122. In reviewing comments made at closing arguments, this court asks whether or not the "comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *Id*. at 123.

¶ 46 The parties disagree about the appropriate standard of review. Appellate courts have also been divided regarding the appropriate standard of review. *People v. Johnson*, 385 Ill. App. 3d 585, 603 (2008). Defendant contends that whether the statements made by the prosecutor during closing arguments "were so egregious that they warrant a new trial is a legal issue this court reviews *de novo*." *Wheeler*, 226 Ill. 2d at 121. However, the State contends that, "because the trial court is in the best position to evaluate any prejudicial effect of remarks in closing argument," reviewing courts should apply the abuse-of-discretion standard. *People v. Robinson*, 291 Ill. App. 3d 822, 840 (2009). We decline to resolve this issue since, under either standard, we reach the same conclusion.

¶ 47 In *People v. Adams*, 2012 IL 111168, ¶ 16, during closing argument, the prosecutor made the following statements to the jury:

> "What also doesn't make sense is that [Sergeant] Boers would plant these drugs on the defendant. We are talking about 0.8 grams of cocaine. If you believe what the defendant is saying, then you also have to believe that [Sergeant]

> Boers is risking his credibility, his job, and his freedom over 0.8 grams of cocaine.
>
> And not only is [Sergeant] Boers doing that, but [Deputy] Schumacher is doing that as well. He's also risking his life–his job and his freedom and his reputation over 0.8 grams of cocaine."

The *Adams* prosecutor also argued during rebuttal that "believing defendant required the jury to believe that 'these officers are risking their jobs for this, over 0.8 grams of cocaine.' " *Id.* It is "improper for a prosecutor to argue assumptions or facts not based upon evidence in the case." *Id.* at ¶ 17.

¶ 48 Our supreme court held that the prosecutor's comments were "impermissible speculation, as no evidence was introduced at trial from which it could be inferred that the testifying officers would risk their careers if they testified falsely" and violated the principle that "a prosecutor may not argue that a witness is more credible because of his status as a police officer." *Id.* at ¶ 20.

¶ 49 In this case, during closing argument, the prosecutor asked the jury:

> "Would the officers plant a story and risk ten years of their livelihood *** to do that[?] One of dozens and dozens and dozens of property crimes they investigate. The defense attorney made a big deal saying [Hecker] is a Kenosha police officer and [Hecker's wife] works for the county. Would they do that for the president of the United States risk the[ir] livelihood[?]"

Then, during rebuttal, the prosecutor stated: "Yes police officers have lied in the United States and Kazakhstan and other places, but is Brian Hawbaker lying? Is Andy Valko lying? Does that make sense[?]" The prosecutor added: "At the the [*sic*] end of the day he is saying they are

lying. Are they? Would they lie in that way? This is their livelihood. This is how they make a living. They know they are going to have to testify and stand up to it."

¶ 50 The prosecutor commented that the detectives risked their livelihood by lying about defendant's confession; however, evidence was never introduced to support this assertion. In addition, as in *Adams*, the prosecutor repeatedly referred to the detectives' status as police officers to bolster their credibility. The prosecutor should avoid statements that, to demonstrate an incapability of lying, refer to the detectives' profession. *People v. Gorosteata*, 374 Ill. App. 3d 203, 220 (2007). Accordingly, we conclude that the prosecutor's statements were impermissible.

¶ 51 Having determined that the trial court committed reversible error, we must next consider whether the evidence was so closely balanced that the improper remarks alone severely threatened to tip the scales of justice against defendant (first prong). The State argues that the evidence was not closely balanced, but, rather, that the evidence against defendant was overwhelming. Error does not seriously affect the "fairness" or "integrity" of judicial proceedings if the State presented "overwhelming evidence of guilt." *Herron*, 215 Ill. 2d at 182.

¶ 52 Here, the evidence rested upon witness credibility and, although it was sufficient to sustain defendant's conviction (as he apparently concedes), it was not overwhelming. The detectives' testimony was the only evidence establishing that defendant attempted to burglarize Baker's apartment. However, defendant denied all allegations. See *People v. Naylor*, 229 Ill. 2d 584, 608 (2008) (holding that evidence was closely balanced where the "evidence boiled down to the testimony of *** two police officers against that of the defendant"). Further, no additional evidence was introduced to contradict or corroborate either version of events, such as fingerprints or other physical evidence, video surveillance, or eyewitness testimony.

Defendant's explanation of the events is not inherently incredible. His testimony, which Baker corroborated, establishes logical reasons for his presence at the apartment building.

¶ 53 During trial, both detectives testified that defendant confessed to breaking into the apartment building and to acting as Doughboy and Slick's lookout. However, defendant testified that he never confessed to the burglary or to even knowing Doughboy or Slick. The detectives testified that the three men were there to retrieve guns from Baker's apartment, but, contrary to the detectives' testimony, Baker testified that, at the time of the burglary, he did not own any guns (and defendant claimed that he was unaware of any guns at Baker's apartment). Defendant testified that he was at Baker's apartment building around 11 a.m. to retrieve money and to discuss Baker's relationship with defendant's mother, which the State's witness, Baker, corroborated. The detectives' testified that, after the burglary failed, defendant returned to the apartment building a few hours later and encountered Hecker in the hallway. Defendant claimed he visited the apartment only once that day and that, after visiting with Baker, he encountered Hecker in the hallway. Hecker identified defendant from a photo array; however, Hawbaker only asked that Hecker, who did not witness anyone break into the building, identify the man he saw the morning of the burglary (which is consistent with defendant's testimony).

¶ 54 The circumstances of the interview were also disputed. The detectives testified that Hawbaker Mirandized defendant; however, defendant testified that he was not Mirandized. Valko testified that Hawbaker sought consent to videotape the interrogation; however, Hawbaker denied seeking consent and defendant testified that videotaping was never mentioned. The detectives testified that defendant refused to write or sign anything to affirm his statements, but defendant testified that he was never asked to sign any documents.

¶ 55 Based on the foregoing, we conclude that the evidence was closely balanced. The State did not present overwhelming evidence of defendant's guilt to overcome the improper remarks. We cannot say with any certainty that the prosecutor's errors during closing arguments did not contribute to defendant's guilty verdict. The case relied on the jury's assessment of witness credibility, and the prosecutor's improper remarks during closing arguments prejudiced defendant.

¶ 56 The State's improper comments during closing arguments constituted reversible error under the first prong of the plain-error doctrine. We reverse and remand for a new trial. However, because the remaining issues are likely to arise on retrial, we briefly address them.

¶ 57 B. Shifting the Burden of Proof

¶ 58 Defendant argues next that the State improperly bolstered the detectives' credibility when, during closing arguments, it shifted the burden of proof by suggesting, without evidence, that the detectives' trial testimony matched their pretrial accounts. The State responds that the comments were a legitimate inference based on the fact that the detectives' testimony was not impeached by any pretrial statements. We agree with defendant that they were improper.

¶ 59 During closing arguments, the prosecutor, addressing the detectives' testimony, asked the jury: "Were they impeached with something they said on a previous date that was different from what they said? No." Generally, "the prosecution has the burden of proving beyond a reasonable doubt all the material and essential facts constituting the crime. [Citations.] The burden of such proof never shifts to the accused, but remains the responsibility of the prosecution throughout the trial." *People v. Weinstein*, 35 Ill. 2d 467, 470 (1966). It is permissible for a prosecutor to comment on the uncontradicted nature of a case. *People v. Herrett*, 137 Ill. 2d 195, 211 (1990). However, "a prosecutor must not state that the defendant has an obligation to come

forward with evidence that would create a reasonable doubt as to his guilt." *People v. Luna*, 2013 IL App (1st) 072253, ¶ 129.

¶ 60 Defendant contends that the State improperly shifted the burden of proof during closing arguments by noting that he failed to offer corroborating evidence. Defendant cites *People v. Clark*, 186 Ill. App. 3d 109, 115 (1989), where the prosecutor, without producing evidence, stated: "I don't know what [defendant] was doing that day. I haven't seen any taxicab receipts. I haven't seen any Northwestern receipts." *Id.* The appellate court held that "this comment shifted the burden of proof to defendant by emphasizing defendant's lack of evidence." *Id.* Here, similarly, the prosecutor's comment emphasized defendant's lack of evidence to impeach the detectives' testimony and, therefore, improperly shifted the burden of proof to defendant. The State argues that the prosecutor was merely commenting on the fact that the detectives' testimony was uncontradicted. However, "although the State may comment that the evidence is uncontradicted, even when the defendant is the only person who could have provided contrary proof, there is a line beyond which the State may not go." *People v. Edgecombe*, 317 Ill. App. 3d 615, 620 (2000). "The State is free to point out *what* evidence was uncontradicted so long as it expresses no thought about *who* specifically–meaning the defendant–could have done the contradicting." (Emphasis in original.) *Id.* at 621. Accordingly, we conclude that the comment was impermissible.

¶ 61 C. Misstating Facts

¶ 62 Defendant's final argument is that the State misstated facts to create a false admission. The State responds that the prosecutor was merely repeating defendant's testimony. We agree with defendant that the comments were improper.

¶ 63 During closing arguments, the prosecutor stated that defendant testified that "he didn't see that truck there either. How in the world would [Baker] have been there[?] He needed to go to work. [Baker] told you. He drives himself to work [and] he only had a truck. *The defendant admitted the truck wasn't there, the truck wasn't there*." (Emphasis added.) However, defendant merely testified that he "didn't notice [Baker's] truck." The prosecutor's misstatement that defendant affirmatively stated that Baker's truck was not at the building misrepresented defendant's testimony acknowledging that he merely did not notice the truck. This misstatement directly affected defendant's case since he argued that he was at the apartment building to visit Baker. See *People v. Jackson*, 2012 IL App (1st) 102035, ¶ 20 (finding error when the defendant's core defense was compromised after the State's misstatement that the defendant told police he found a gun in his car that directly contradicted the defendant's trial testimony of not knowing about the gun). Accordingly, we conclude that the prosecutor's comments were impermissible.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we reverse and remand for a new trial. Because the evidence was sufficient to sustain defendant's convictions, there is no double jeopardy impediment to retrial. See *People v. Ward*, 2011 IL 108690, ¶ 50.

¶ 66 Reversed and remanded.