

IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL WILLIAMS,	§
	§ No. 464, 2013
Defendant Below,	§
Appellant,	§ Court Below: Superior Court of
	§ the State of Delaware, in and for
v.	§ Sussex County
	§
STATE OF DELAWARE,	§ Cr. ID No. 1212009692
	§
Plaintiff Below,	§
Appellee.	§

Submitted: February 12, 2014
Decided: April 16, 2014

Before **HOLLAND**, **BERGER**, and **JACOBS**, Justices.

ORDER

This 16th day of April 2014, upon consideration of the briefs of the parties and the record in this case, it appears to the Court that:

1. The Defendant-below/appellant Michael Williams (“Williams”) appeals from his convictions, after a Superior Court jury trial, of 16 traffic-related offenses, including driving at an unreasonable or imprudent speed and disregarding a police officer’s signal. Williams claims that: (i) the trial judge erred by denying his motion for a judgment of acquittal on the unreasonable speed charge, and (ii) the prosecutor made improper statements during closing arguments that denied Williams a fair trial. We conclude that Williams’ claims lack merit and affirm his conviction.

2. At around 6:30 p.m. on December 14, 2012, while driving on Concord Pond Road in Sussex County, Delaware, Corporal Charles Simpson of the Delaware State Police (“Simpson”) observed Williams, who was driving a green Jeep Cherokee, cross over into the road’s opposite lane. Simpson began following Williams. After observing Williams once again cross into an opposite lane of travel, Simpson activated his emergency lights and sirens, but Williams did not stop. After driving on various roads while being followed by Simpson,¹ Williams turned left onto Middleford Road without stopping at a stop sign or signaling. Simpson testified that Williams was “probably” driving at least 60 miles per hour, because Simpson was driving around 60 miles per hour to catch up with Williams. The speed limit on Middleford Road was 40 miles per hour. After several more minutes of driving on other roads (during which Williams failed to stop at stop signs and illegally passed other cars), Williams stopped and parked his car at his house.² After Williams exited his car, Simpson ordered Williams to drop to the ground.

3. On January 10, 2013, the State filed an information (which was later amended on June 26, 2013) charging Williams with 16 counts of traffic-related

¹ During this time, Williams drove through the yard of an abandoned home.

² Simpson testified that five to seven minutes passed from the time that Simpson first spotted Williams to the time that Williams stopped at his house.

offenses.³ Count 1 charged Williams with disregarding a police officer's signal. Count 12 charged Williams with driving at an unreasonable or imprudent speed on Middleford Road, in violation of 21 *Del. C.* § 4168(a).⁴

4. On June 27, 2013, a jury trial was held in the Superior Court, at which Simpson testified about his pursuit of Williams on December 14, 2012. During cross examination, Simpson recalled that at 6:30 p.m. on that day, the weather was "clear" and that it was getting dark. Simpson also testified that a deli was located on Middleford Road where there are "a lot of cars, a lot of vehicles that pull in and out of there."⁵ Simpson admitted that he could not recall whether he observed any cars entering or exiting the deli while he and Williams were driving on Middleford Road.

5. After the State rested its case, Williams moved for a judgment of acquittal on Count 12 of the information. Williams argued that the State had presented no evidence that the weather or road conditions at the time Williams

³ Amended Information, *State v. Williams*, Cr. ID No. 1212009692 (Del. Super. Ct. June 26, 2013) [hereinafter, Information] (Appellant's Appendix at A5).

⁴ Information (A5, 7). 21 *Del. C.* § 4168(a) provides that "[n]o person shall drive a vehicle on a highway at a speed greater than is reasonable and prudent under the conditions and without having regard to the actual and potential hazards then existing."

⁵ Trial Transcript at B-48, *State v. Williams*, Cr. ID No. 1212009692 (Del. Super. Ct. June 27, 2013) [hereinafter Trial Tr.] (A56).

drove down Middleford Road rendered Williams' speed "unreasonable" or "imprudent." The trial court denied that motion.⁶

6. During the State's closing arguments in rebuttal, the prosecutor summarized the State's evidence relating to Count 12 thusly: "You want to talk about potential hazards. Potential hazards everywhere: children, cars, other people, people coming out of that deli. Potential hazards everywhere."⁷ The jury found Williams guilty of all 16 charges. On Count 1 (disregarding a police officer's signal), Williams was sentenced to two years at supervision level five, suspended after six months at decreasing levels of supervision. On Count 12, Williams was fined \$25.⁸ Williams timely appealed.

7. Williams raises two claims of error. First, he argues that the trial court erred by denying Williams' motion for a judgment of acquittal on Count 12 because the State failed to establish an essential element of that offense—that the road conditions and actual or potential hazards rendered Williams' speed unreasonable. Second, Williams claims that during the State's rebuttal, the prosecutor misrepresented record evidence when arguing before the jury the potential hazards on Middleford Road. That misrepresentation, Williams argues,

⁶ *Id.* at B-61 (A69).

⁷ *Id.* at B-95 (A103).

⁸ Williams was fined \$25 for each of the remaining counts.

deprived him of his right to a fair trial. Accordingly, Williams urges this Court to reverse his conviction and remand for a new trial. In response, the State argues that this Court lacks subject matter jurisdiction to consider Williams' first claim, and contests Williams' second claim on the merits. Because it lacks subject matter jurisdiction over Williams' first claim, this Court addresses the merits of Williams' second claim only.

8. This Court lacks subject matter jurisdiction to adjudicate Williams' claim regarding the trial court's denial of his motion for a judgment of acquittal on Count 12. Article IV § 11 of the Delaware Constitution limits this Court's jurisdiction in criminal matters to appeals from convictions "in which the sentence shall be death, imprisonment exceeding one month, or fine exceeding One Hundred Dollars, and in such other cases as shall be provided by law[.]"⁹ Here, Williams' conviction on Count 12 (driving at an unreasonable or imprudent speed) resulted in a \$25 fine. That amount does not meet this Court's jurisdictional threshold. Therefore, Williams' appeal from his conviction on Count 12 must be dismissed.¹⁰

⁹ DEL. CONST. art. IV, § 11(1)(b).

¹⁰ See *Castura v. State*, 2009 WL 2365558, at *2 (Del. July 16, 2009) ("[E]ach sentence [imposed on the appellant] must be evaluated individually in order to determine whether it meets the constitutional threshold.") (citing *Marker v. State*, 450 A.2d 397, 399 (Del. 1982)); *Weaver v. State*, 779 A.2d 254, 257 (Del. 2001) (explaining that assessments for a victim's compensation fund or court-ordered restitution do not constitute "fines").

9. As for his second claim, Williams argues that the prosecutor's statements during the State's rebuttal that "children, cars, other people, people coming out of that deli" were "everywhere" while Williams drove down Middleford Road, amounted to misconduct that denied him a fair trial. The prosecutor's statements, while improper, do not warrant reversal.

10. Because Williams did not object to the prosecutor's statements during the trial, we review his claim of prosecutorial misconduct for plain error.¹¹ In *Baker v. State*,¹² this Court set forth the proper inquiry for claims of prosecutorial misconduct. First, the Court must review the record *de novo* to determine whether prosecutorial misconduct occurred.¹³ Second, if we find that misconduct occurred, we then determine whether that misconduct amounted to plain error,¹⁴ as defined in *Wainwright v. State*:¹⁵

[T]he error complained of must be so clearly prejudicial to substantial rights as to jeopardize the fairness and integrity of the trial process. Furthermore, the doctrine of plain error is limited to material defects which are apparent on the face of the record; which are basic, serious and fundamental in their character, and which clearly deprive an

¹¹ DEL. SUPR. CT. R. 8; *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).

¹² 906 A.2d 139 (Del. 2006).

¹³ *Id.* at 150.

¹⁴ *Id.*

¹⁵ 504 A.2d 1096 (Del. 1986).

accused of a substantial right, or which clearly show manifest injustice.¹⁶

Third, even if the misconduct did not rise to the level of plain error, we may reverse if the misconduct constituted “repetitive errors that require reversal because they cast doubt on the integrity of the *judicial* process.”¹⁷

11. Although the question is close, we determine that the prosecutor’s rebuttal statements were improper. A prosecutor’s duty to “to see that justice be done by giving [a] defendant a fair and impartial trial” extends through closing arguments.¹⁸ It is settled law that a prosecutor may not misrepresent the evidence presented at trial.¹⁹ Although a prosecutor may argue all reasonable inferences from evidence in the record, the prosecutor must not misstate the evidence or mislead the jury as to the inferences it may draw.²⁰

12. Here, the prosecutor stated that “[p]otential hazards [were] everywhere: children, cars, other people, people coming out of that deli.” That argument overstated Simpson’s testimony about the hazards present on Middleford Road

¹⁶ *Id.* at 1100 (citations omitted).

¹⁷ *Baker*, 906 A.2d at 150.

¹⁸ *Hughes v. State*, 437 A.2d 559, 568 (Del. 1981) (quoting *Bennett v. State*, 164 A.2d 442, 446 (Del. 1960)).

¹⁹ *Flonnory v. State*, 893 A.2d 507, 540 (Del. 2006).

²⁰ *Hughes*, 437 A.2d at 567 (citing ABA Standards, the Prosecution and Defense Functions § 5.8 (Approved Draft, 1971)).

while he pursued Williams.²¹ Simpson testified that he could not recall whether the deli was in fact busy on the night of December 14, 2012. He testified only that the deli was usually busy. The specificity of the prosecutor's statements, however, suggested that, as a factual matter, people (and particularly children) were actually present while Williams and Simpson drove down Middleford Road—facts not in the record. Nor did the prosecutor make clear that the scenario presented was merely hypothetical. Because the prosecutor's statements misrepresented the evidence presented by the State, they were improper.

13. Those statements do not warrant reversal, however. Although the prosecutor's statements could have influenced the jury's finding that Williams violated 21 *Del. C.* § 4168(a), this Court lacks jurisdiction to consider Williams' appeal from that particular conviction. The only conviction that we may consider on this appeal is Williams' conviction on Count 1—disregarding a police officer's signal—which resulted in a two year prison sentence. With respect to that latter conviction, the statements did not rise to the level of plain error.²² The trial court instructed the jury that the offense of disregarding a police officer's signal consisted of two elements: "One, the defendant was operating a motor vehicle on

²¹ No other evidence was presented regarding the conditions or hazards on Middleford Road.

²² See *Sexton v. State*, 397 A.2d 540, 544 (Del. 1979), *abrogated on other grounds by Lecates v. State*, 987 A.2d 413 (Del. 2009) and *Hughes v. State*, 437 A.2d 559 (Del. 1981) (determining that prosecutorial misconduct substantially affected a defendant's right to a fair trial on certain charges but not on others).

or about December 14, 2012. And two, the defendant failed to bring the vehicle to a stop after having received a visual and audible signal from a police officer, so as to flee from or elude the officer.”²³ The prosecutor’s improper statements were not relevant to either of those elements required to find that Williams disregarded a police signal in violation of 21 *Del. C.* § 4103(b).²⁴

14. Williams argues that even if the prosecutor’s improper statements were not legally relevant to his conviction of Count 1, those statements colored the jury’s view of Williams and therefore could have impacted the jury’s decision to convict on Count 1. That argument is unavailing. Corporal Simpson’s testimony about Williams’ persistent disregard of the police signal, excessive speed, and other traffic violations provided ample evidence to support the jury’s finding that Williams violated 21 *Del. C.* § 4103(b). Thus, the prosecutor’s improper statements did not “clearly deprive” Williams of a fair trial on the charge of disregarding a police officer’s signal.

²³ Trial Tr. at B-67-68 (A75-76).

²⁴ 21 *Del. C.* § 4103(b) provides that “[a]ny driver who, having received a visual or audible signal from a police officer identifiable by uniform, by motor vehicle or by a clearly discernible police signal to bring the driver's vehicle to a stop, operates the vehicle in disregard of the signal or interferes with or endangers the operation of the police vehicle or who increases speed or extinguishes the vehicle's lights and attempts to flee or elude the police officer shall be guilty of a class G felony”

15. Finally, the prosecutor's statements were not repetitive. They involved only one instance of misconduct during closing arguments. The prosecutorial misconduct in this case does not necessitate reversal.

NOW, THEREFORE, IT IS ORDERED that the judgment of the Superior Court is **AFFIRMED**.

BY THE COURT:

/s/ Jack B. Jacobs
Justice