



IN THE SUPREME COURT OF THE STATE OF DELAWARE

JAQUAN S. BROOKS,)
)
 Defendant Below,)
 Appellant,)
)
 v.) No. 281, 2022
)
 STATE OF DELAWARE,)
)
 Plaintiff Below,)
 Appellee.)

ON APPEAL FROM THE SUPERIOR COURT
OF THE STATE OF DELAWARE
IN AND FOR KENT COUNTY

APPELLANT'S OPENING BRIEF

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DATED: November 1, 2022

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NATURE AND STAGE OF THE PROCEEDINGS

Jaquan S. Brooks ("Brooks") was indicted on charges of carrying a concealed deadly weapon ("CCDW"), driving while suspended and failing to signal an intention to turn while driving a motor vehicle. A5.

Brooks, represented by Christopher D. Tease, Esquire, proceeded to a two-day jury trial commencing on April 5, 2022. Brooks was convicted of all charges. (D.I. #25). He was sentenced to eight years at Level 5 followed by various levels of probation. (*See* Sentence Order, attached as Ex. A).

A timely notice of appeal was docketed for the Brooks. This is his opening brief in support of that appeal.

SUMMARY OF THE ARGUMENTS

1. The Due Process Clause of the Fourteenth Amendment protects a criminal defendant's right to a fair trial. Although prosecutors are afforded wide latitude in making closing arguments, prosecutors may not misstate the law. Here, in discussing whether the defendant's weapon was concealed for purposes of the lead charge of CCDW, the prosecutor suggested that "it certainly wasn't open carry." Although counsel did not object to the prosecutor's improper statement, the trial court plainly erred by failing to strike the argument, give a curative instruction, or declare a mistrial. This court should exercise its discretion to correct that error.

STATEMENT OF FACTS

On August 2, 2020, Officer Trevor Pendleton ("Pendleton") was on routine patrol in the area of Route 13 and POW-MIA Parkway. A26. A dispatch was received to look out for a green Mazda 6 driving in an aggressive manner. A23. Pendleton ultimately observed the vehicle driving northbound and effectuated a traffic stop after the operator failed to signal while changing lanes. A26.

Pendleton approached the vehicle to obtain license and registration. Brooks produced a State Identification card, rather than a driver's license. When the Officer checked his license status at the time of the stop, it came back as suspended. A42. As Brooks went to retrieve these documents, the Officer noticed the handle of a firearm in his left pocket. A28. Pendleton requested for additional units to the scene and asked Brooks if he had a license to carry, concealed permits. Pendleton testified that Brooks said that he did not. A29.

As additional units arrived, Brooks was immediately removed from the vehicle and arrested. A29.

- I. THE TRIAL COURT PLAINLY ERRED WHEN IT FAILED TO CORRECT THE PROSECUTOR'S MISSTATEMENT OF LAW DURING CLOSING ARGUMENT AND THIS COURT SHOULD EXERCISE ITS DISCRETION TO CORRECT THAT ERROR.

Question Presented

Was the defendant deprived of a fair trial when the trial court failed to sua sponte grant a mistrial or give a curative instruction after the prosecutor made an incorrect statement of the law to the jury during closing argument? There was no defense objection to the improper statement. The improper argument should nonetheless be reviewed in the interest of justice because it “amounted to plain or fundamental error so as to clearly deprive [defendant] of a substantial right, or which clearly show[s] manifest injustice.” *Brokenbrough v. State*, 522 A.2d 851, 856 (1986); Supreme Court Rule 8.

Standard and Scope of Review

The standard and scope of review is plain error. Supreme Court Rule 8. Plain error exists where credibility is a central issue in a close case and the error is so clear that the trial judge should have intervened in the interest of fundamental fairness. *Williams v. State*, 803 A.2d 927, 928 (Del. 2002); *also Trump v. State*, 753 A.2d 963, 964-65 (Del.2000); *Bowe v. State*, 514 A.2d 408 (Del. 1986) (plain error for commenting in closing argument on post-arrest silence); *see also Whittle v. State*, 77 A.3d 239, 243 (Del. 2013) (prosecutorial

vouching constituted plain error); and *Hughes v. State*, 437 A.2d at 571-72 (determining whether improper prosecutorial remarks require reversal, considering the centrality of the issue affected by the alleged error, the closeness of the case, and the steps taken to mitigate the effect of alleged error).

Merits of Argument

The Due Process Clause of the Fourteenth Amendment protects a criminal defendant's right to a fair trial. Although prosecutors are afforded wide latitude in making closing arguments, prosecutors may not misstate the law. Here, in discussing whether Brook's weapon was concealed for purposes of the lead charge of CCDW, the prosecutor suggested that "it certainly wasn't open carry." A55. Although counsel did not object to the prosecutor's improper statement, the trial court plainly erred by failing to strike the argument, give a curative instruction, or declare a mistrial. This court should exercise its discretion to correct that error.

11 *Del. C.* § 1442 provides, in relevant part, that "[a] person is guilty of [CCDW] when the person carries concealed a deadly weapon upon or about the person without a license to do so...." Del. Code Ann. tit. 11, § 1442. Here, there is no dispute that the weapon at issue was upon or about Brook's person. However, Section 1442 also expressly requires proof of *concealment*. *Ryle v. State*, 271 A.3d 1142 (Del. 2022). This Court has repeatedly confirmed that

Delaware is an “open carry” state. *Doe v. Wilmington Hous. Auth.*, 88 A.3d 654, 663 (Del. 2014). In other words, if one does not have a permit to carry, it can still be lawful to carry the weapon so long as it’s visible, hence not concealed and no need for a permit. *Griffin v. State*, 47 A.3d 487, 491 (Del. 2012).

During Opening Statements, defense counsel discussed the aforementioned “open carry” designation in Delaware and the law regarding “concealment” as it pertained to the CCDW charge against Brooks. A15. However, in Rebuttal Closing, the prosecutor commented that under the facts of this case, “it’s certainly not open carrying.” A55. This argument was a clear misstatement of law. Moreover, the trial judge failed to intervene *sua sponte* and issue a curative instruction. Thus, the jury was left with the impression that the prosecutor advised them correctly.

A prosecutor who misstates the law during closing argument engages in misconduct. *Money v. State*, 957 A.2d 2 (Del. 2008). Although defense counsel did not object, misstatements by a prosecutor can amount to plain error causing reversal on appeal even in the absence of objection at the trial level. *Hooks v. State*, 416 A.2d 189, 204 (Del. 1980). Moreover, in this State, there is some tradition that objections to closing argument are restricted. Trial judges are to ensure that final arguments are uniformly kept within proper bounds and

thus relieve counsel of the unpleasant obligation of having to object during closing arguments. *State v. Bennefield*, 567 A.2d 863, 868 (Del. 1989).

Here, the trial court, in the interest of fundamental fairness, had no reasonable alternative other than to intervene *sua sponte* and declare a mistrial or issue a curative instruction. Reversal is required because “[] the trial court's failure to give appropriate instructions to the jury undermined the jury's ability to intelligently perform its duty in returning a verdict.” *Sirmans v. Penn*, 588 A.2d 1103, 1104 (Del. 1991). The record reflects that this was a very close case. The prosecutor's comments went to the heart of the most serious charge against Brooks. The misstatement was likely to influence the jury's verdict and deny him a fair trial. Therefore, the gravity of the error weighs in favor of this court's exercise of discretion to correct it.

CONCLUSION

For the reasons and upon the authorities cited herein, the Defendant's conviction and sentence for CCDW should be reversed.

Respectfully submitted,

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