IN THE SUPREME COURT OF THE STATE OF DELAWARE

BRANDON ROBINSON,	§	
	§	No. 347, 2012
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	Cr.I.D. No. 1009012821
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: April 17, 2013
Decided: May 10, 2013

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

O R D E R

This 10th day of May, 2013, it appears to the Court that:

1) The defendant-appellant, Brandon Robinson ("Robinson"), was indicted on charges of Murder in the First Degree, Attempted Murder in the First Degree, and two counts of Possession of a Firearm During the Commission of a Felony ("PFDCF").[1] Following a seven-day jury trial in the Superior Court, Robinson was convicted of Murder in the First Degree and one count of PFDCF. The jury acquitted him of Attempted Murder and its related PFDCF charge. The trial judge sentenced Robinson to life in

[1] Del. Code Ann. tit. 11, §§ 636, 531, and 1447A.

prison on the charge of Murder in the First Degree and eight years at Level V for the PFDCF charge.

2) Robinson has raised one argument in this direct appeal. He contends that the prosecutrix impermissibly vouched for its complainant witness. We have concluded that argument is without merit. Accordingly, Robinson's convictions are affirmed.

3) On September 14, 2010, at around 2 p.m., Jarren Glandton ("Glandton") and Cameron Johnson ("Johnson"), were sitting with a group of people outside a mutual friend's house when Robinson approached the group with two other young men. Robinson and Glandton had been previously introduced in 2006 by "Amir," a mutual friend. They had seen each other numerous times around the neighborhood, but Glandton only knew Robinson as "Brandon" or "B." The other young men were familiar to Glandton. After later viewing pictures on Facebook, Glandton was able to identify one of Robinson's associates as "RC." The third young man remained unidentified.

4) Robinson and Johnson stepped away from the group to discuss Robinson purchasing pills from Johnson. The conversation lasted less than five minutes. Then, Robinson, RC, and the third man left. Later that same evening, around 9 p.m., Glandton and Johnson left their friend's house and

walked to a convenience store on Second and VanBuren Streets to get something to eat. The two friends then walked to the corner of Elm and VanBuren Streets, where Johnson met up with the third, unidentified young man whom they had seen earlier in the evening with Robinson and RC.

5) While Glandton was on the phone with his cousin, he overheard Johnson talking to the young man about purchasing one pill, and he saw the young man hand Johnson a $5 bill. As Johnson took the young man's money, Robinson and RC approached. Robinson stopped directly before Johnson, pulled a black and silver semi-automatic gun from his waistband, and shot Johnson from an arm's length distance. Glandton was also shot. As Glandton fell into the street, he watched Robinson, RC, and the other young man flee down Elm Street. Glandton called 911.

6) As emergency medical personnel arrived, a crowd gathered around Glandton and Johnson. Glandton recognized Amir in the crowd, and shouted to him, "B did this, your peoples did this." Both Glandton and Johnson received emergency medical treatment at the scene and were transported to Christiana Hospital. Glandton, who had been shot in the leg, required surgery and was unable to walk for seven months. Johnson was pronounced dead in the emergency room.

7) At trial, Robinson did not raise the issue of improper vouching. Therefore, that issue must be reviewed on appeal for plain error.

8) The plain error standard for prosecutorial misconduct was explained in *Baker v. State*.[2] This Court will first review the record *de novo* to determine whether prosecutorial misconduct has in fact occurred.[3] If the Court finds no error, the analysis ends.[4] If the Court finds the prosecutor erred, the Court applies the *Wainwright* standard, under which, "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 accused of a substantial right, or which clearly show manifest injustice."[5]

9) Glandton originally stated in a taped statement to the police that Robinson's eyes were light brown or hazel. At trial, Glandton conceded that Robinson's eyes were dark brown and admitted his earlier statement was in error. Defense counsel attempted to draw inferences from the inconsistency by questioning Glandton not only about when he realized his error, but where and with whom he was at that same time. The cross-examination by defense counsel proceeded as follows:

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[2] *Baker v. State*, 906 A.2d 139 (Del. 2006).
[3] *Id*. at 150.
[4] *Id*.
[5] *Wainwright v. State*, 504 A.2d 1096, 1100 (Del. 1986) (citations omitted).

Defense Counsel ("DC"): You are sure that description is accurate?

Jarren Glandton ("JG"): Not 100 percent, no.

DC: How do you know if wasn't 100 percent?

JG: Because I listened to my statement, and as I thought about it and remember, seeing the picture in the paper and on the Delaware website, I know that one of the features I said about eye color was not correct.

DC: Let me go through that with you. When did you come to this realization, last week?

JG: Yes.

DC: Preparing for trial?

JG: Right.

DC: While meeting with the prosecutors?

JG: Yes.

10) The prosecutrix immediately requested a sidebar conference and objected to defense counsel's line of questioning. Defense counsel responded that his only purpose was to suggest the timing of Glandton's realization – one week before trial – was "convenient." Notwithstanding that "timing" representation at sidebar, defense counsel again asked about not only when Glandton realized he was mistaken about Robinson's eye color, but again where he was when he had that realization:

DC: Thank you. So then was it at 7 o'clock this morning that you realized for the first time that you had been mistaken?

JG: No, I just said that I realized last week when I listened to my statement that was wrong.

DC: That was when you were in the Attorney General's office?

JG: Correct.

11) On direct examination, the prosecutrix asked Glandton whether "[a]t any point during any of [the] meeting [with prosecutors]" he was told "what [he] should say when [he] w[as] here [testifying]?" In response, Glandton testified that yes he did receive an instruction: "Tell the truth."

12) Robinson contends this question and answer constituted improper vouching. The State submits this question was asked in order to rebut any potential and improper inference that the prosecutors had in some way influenced Glandton to change his testimony.

13) "Improper vouching occurs when the prosecutor implies some personal superior knowledge . . . that the witness has testified truthfully."[6] Prosecutors are prohibited from vouching for the credibility of a witness by stating or implying personal knowledge of the truth of the testimony, beyond

[6] *White v. State*, 816 A.2d 766, 779 (Del. 2003) (citation omitted). *See also Clayton v. State*, 765 A.2d 940, 942 (Del. 2001) ("As a general rule, prosecutors may not express their personal opinions or beliefs about the credibility of witnesses or about the truth of testimony.").

that which can be logically deduced from the witness' trial testimony.[7] The State argues that there was no vouching in Robinson's case because, in questioning Glandton, the prosecutrix did not express a personal opinion regarding Glandton's truthfulness.[8] The State also notes that the prosecutrix did not "stat[e] or imply[] personal knowledge of the truth of [Glandton's] testimony 'beyond that logically inferred from the evidence presented at trial.'"[9]

14) The record reflects the prosecutrix expressed no opinion on Glandton's truthfulness. She neither implied nor offered testimony that would imply she had some personal knowledge of Glandton's truthfulness.[10] Glandton's answer to the prosecutrix's question recounted the instruction given to him to "tell the truth." It was a statement by Glandton himself.

15) The question posed to Glandton was in direct rebuttal to the defense counsel's inference that the State somehow induced Glandton's realization that he incorrectly stated Robinson's eye color during a police

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[7] *Caldwell v. State*, 770 A.2d 522, 530 (Del. 2001); *Weber v. State*, 547 A.2d 948, 960 (Del. 1988).

[8] *C.f. Richardson v. State*, 43 A.3d 906, 910-11 (Del. 2012) (finding plain error where a forensic interviewer expressed her personal opinion of the truthfulness of the victim).

[9] *Caldwell v. State*, 770 A.2d at 530 (quoting *Saunders v. State*, 602 A.2d 623, 624 (Del. 1984)).

[10] *Compare Capano v. State*, 781 A.2d 556, 594-96 (Del. 2001) (experienced defense counsel called as a State's witness improperly – albeit "subtl[y] and indirect[ly]" – vouched for the truthfulness of State's witness because it was "implicit in [attorney's] testimony that [attorney] believed his own admonitions to have been effective.").

interview in order to shore up its case at trial. The question was not an attempt to "rehabilitate the witness" through personal prosecutorial opinion. Under the facts of this case, the question was a permissible method of rebutting any suggestion of impropriety.[11] We hold that the record reflects no vouching.

NOW, THEREFORE, IT IS HEREBY ORDERED that the judgments of the Superior Court are AFFIRMED.

BY THE COURT:

/s/ Randy J. Holland
Justice

[11] *See Churchill v. State*, 812 A.2d 224, 2002 WL 31780197, at *2 (Del. Nov. 20, 2002) (table) (use of rhetorical question to rebut claim of bias or prejudice not improper).