IN THE SUPREME COURT OF THE STATE OF DELAWARE

MICHAEL BROWN,	§	
	§	No. 44, 2007
Defendant Below,	§	
Appellant,	§	Court Below – Superior Court
	§	of the State of Delaware,
v.	§	in and for New Castle County
	§	Cr. A. No. 0412008486
STATE OF DELAWARE,	§	
	§	
Plaintiff Below,	§	
Appellee.	§	

Submitted: August 22, 2007
Decided: August 22, 2007

Before **STEELE**, Chief Justice, **HOLLAND** and **RIDGELY**, Justices.

O R D E R

This 22nd day of August 2007, it appears to the Court that:

(1) The defendant-appellant, Michael Brown, appeals from final judgments of conviction that were entered by the Superior Court. Brown was indicted for sixteen counts of Robbery in the First Degree, two counts of Attempted Robbery in the First Degree, fourteen counts of Wearing a Disguise During the Commission of a Felony, and nine counts of Possession of a Firearm During the Commission of a Felony. Following a jury trial Brown was convicted of all charges, except four of the counts of Robbery in the First Degree, as well as the weapons and disguise charges to relating to those counts. He was sentenced on January 19, 2007, to seventy-four years

of imprisonment followed by probation with conditions to pay restitution and costs.

(2) In this direct appeal, Brown argues that plain error occurred when the prosecutor made allegedly improper comments during closing argument. We have determined that Brown's plain error argument is without merit. Therefore, the judgments of the Superior Court are affirmed.

(3) Brown was arrested in connection with a crime spree that spanned over five months and involved the robbery, attempted robbery or carjacking of eighteen separate individuals. During trial, each of the victims testified their assailant wore a mask, bandanna or scarf covering his face. Additionally, jurors were shown videotapes of many of the robberies that had been recorded by surveillance cameras.

(4) Around midnight on December 10, 2004, the night of Brown's arrest, Delaware State Police Detective Potts was conducting surveillance from an unmarked police car outside of Chelsea Wine and Spirits in New Castle. He testified that he saw Brown pull up in front of the liquor store in an Acura, which was later determined to have been a stolen vehicle. Detective Potts observed Brown entered the liquor store and raise a handgun he had been holding. Detective Potts heard a shot go off and saw Brown run back to the car and drive away. The Detective followed Brown and

observed him lose control of the car around Hawthorn Avenue, jump out of the still moving vehicle, and proceed to flee the scene on foot while removing a dark colored piece of clothing.

(5) The Delaware State Police searched the area and Brown was eventually found hiding under the porch of number 17, Hawthorn Avenue. The area around the stolen car and between the car and Brown's hiding place were canvassed. The police found a black long sleeve shirt and a brown, neoprene, hunting mask. Another police search team canvassed the road Brown had driven from Chelsea Wine and Spirits and recovered a .22 caliber revolver on the side of the road two blocks from where the car was ditched.

(6) Brown's DNA was subsequently recovered in both the vehicles he was charged with stealing. Multiple bandannas were found in the stolen cars, on Brown's person when he was arrested and during a subsequent search of his residence. Further, distinctive clothing was also recovered that matched the clothing worn by the assailant in many of the surveillance videos.

(7) During closing argument, the State used rhetorical language asserting that Brown's use of a mask during his crimes amounted to a challenge to the State to "prove it was him." In this appeal, Brown contends that the State violated his due process rights when it used the phrase "prove

it was me" during closing arguments. However, Brown's trial attorney did not object to these statements at trial. Therefore, the standard of review on appeal is plain error. For claims involving prosecutorial midconduct, plain error review first requires us to "examine the record *de novo* to determine whether prosecutorial misconduct occurred. If we determine that no misconduct occurred, our analysis ends."[1]

(8) The record reflects that the prosecutor used the phrase "prove it was me" several times during closing arguments. First, the prosecutor stated:

> Like I said, 14 separate incidents, 41 charges. There's 16 robbery counts, Robbery in the First Degree; two Attempted Robbery in the First Degree; possession of a firearm there are nine counts; and Wearing a Disguise During the commission of a felony there are 14 because each and every time that Michael Brown accosted one of those people, went into those liquor stores, or stole these cars, he masked himself up. Why? So that he could try to put the State to the challenge he does today. Prove it's me. Is there any doubt that these places were robbed? Any doubt that the person who did it wore a disguise? Any doubt as to what he was going to do in that Chelsea Liquor store when he went to the door and lifted that firearm at James Black and at Charles Sevier? State suggested probably not by now.

The prosecutor also said:

> Prove it's me. Comes in with a black bag in one hand, a gun in the other, racks the slide. The victim . . . sees the gun in the courtroom and says, "Yeah, that's the kind of gun." Remember

[1] *Baker v. State*, 906 A.2d 139, 150 (Del. 2006).

> demonstrating the slide. Yeah, that's what he did, and you can hear it in the video.

Finally, the prosecutor told the jury:

> It's not just he was just some weird victim of circumstance on December 10th that just happened to put his DNA and his fingerprints – his DNA in two different cars in two different incidents totally months apart. It tells you, prove it was me. It was.

(9) A prosecutor is entitled to "explain all legitimate inferences of [a defendant's] guilt that flow from th[e] evidence" presented at trial.[2] In Brown's case, the repeated use of the phrase "prove it was me" was properly used to support an argument that, despite Brown's efforts to conceal his identity by using a mask, the State still had other sufficient independent evidence to "prove it was him." The record also reflects that the prosecutor reminded the jury of the reasonable doubt standard on at least two occasions.[3] Thus, we hold that the prosecutor did not denigrate Brown's due process rights or the reasonable doubt standard by using the phrase "prove it

[2] *Johnson v. State*, 711 A.2d 18, 31 (Del. 1998) (quoting *Hooks v. State*, 416 A.2d 189, 204 (Del. 1980)).

[3] During closing arguments, the State told the jury that, "you must understand these counts are Robbery in the First Degree. You must find that beyond a reasonable doubt." Moreover, during its rebuttal argument, the State explained that, "[r]easonable doubt, evidence beyond a reasonable doubt is that which leaves you firmly convinced of the defendant's guilt. That's what the judge will tell you." *See Smith v. State*, 913 A.2d 1197 (Del. 2006).

was me" during closing argument. Since Brown has failed to establish plain error, this ends our analysis.[4]

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

BY THE COURT

/s/ Randy J. Holland
Justice

[4] *Baker v. State*, 906 A.2d 139 (Del. 2006).