

IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA

FIFTH DISTRICT

NOT FINAL UNTIL TIME EXPIRES TO
FILE MOTION FOR REHEARING AND
DISPOSITION THEREOF IF FILED

SAVONIA LATRICE COLLINS,

Appellant,

v.

Case No. 5D13-637

STATE OF FLORIDA,

Appellee.

_____ /

Opinion filed March 28, 2014

Appeal from the Circuit
Court for Orange County,
Margaret Schreiber, Judge.

James S. Purdy, Public Defender, and
Steven N. Gosney, Assistant Public
Defender, Daytona Beach, for Appellant.

Pamela Jo Bondi, Attorney General,
Tallahassee, and Anthony J. Golden,
Assistant Attorney General, Daytona
Beach, for Appellee.

PALMER, J.

Savonia Latrice Collins appeals her judgment and sentences which were entered by the trial court after a jury found her guilty of committing a burglary of a dwelling with an assault or battery and aggravated assault with a deadly weapon. Determining that the

prosecutor committed fundamental error by arguing, during closing, that Collins had coerced a key State witness to change her trial testimony, we reverse.

After engaging in an argument over the phone with Shanique Marlin (the girlfriend of her ex-boyfriend), Collins and another woman (nicknamed Money) entered Marlin's home. While there, Marlin was struck with a stick and her head was cut open with a knife. The key factual issue at trial was whether Marlin was battered by Collins or by Money.

Marlin initially identified Collins as her assailant, but at trial she testified that she did not know if it was Collins or Money who had battered her. Marlin testified to the following facts.

On the day of the attack, Marlin lived with her boyfriend, Kenny Thompson. Collins was Thompson's ex-girlfriend. On the morning of the attack, Marlin argued with Collins over the phone. When Collins said she was coming over to talk, Marlin replied, "Bring your ass." Marlin was in the back of the house when Collins arrived. Collins called out Marlin's name. Marlin walked down the hall and saw Collins standing behind Money. When Marlin reached the end of the hall, she was struck with a stick, but she testified that she did not see who swung the stick. Marlin's head was cut with the knife and the wound required seventeen staples to close. When asked who cut her, Marlin stated:

Um, Ms. Collins cut me with the knife on my head, but my head was down, so I did not see the cut. So I did not see the cut, I just felt it. Money was in close proximity, too, so I don't want to say for definite it was her. My head was down. I didn't get to see where the knife came from. I just felt the cut.

Marlin heard Collins ask Money for a knife before she was cut. Collins said, "Um, hurry up, hurry up, let me see the knife." Fifteen or twenty seconds later, Marlin was cut. Marlin did not see Money throw the knife to Collins. The prosecutor questioned Marlin:

- Q Ms. Marlin, today you testified that Savonia Collins is the one who cut you in the head, is that your testimony today, with the knife?
- A I'm saying it's a possibility.
- Q Okay.
- A I'm not saying for definite it was her, because my head was down. I know what I heard, I know what was said.
- Q I am going to just ask you, is your testimony today that it was Savonia Collins that cut you in your head with the knife?
- A No, because I can't say for a fact that it was.
- Q You recall the statement that you wrote on December 14th of 2011.
- A Yes, ma'am.
- Q And you wrote Savonia cut me in my head, not Money, I do want to prosecute'. You did write that, correct?
- A Yes.

The prosecutor impeached Marlin with her written statement that "[Collins] told Money to give her the knife and [Collins] began swinging the knife at my head." Also, the State impeached Marlin by using a prior written statement that Collins swung the stick and struck her. However, Marlin testified that her written statement was based partly on what other people said they had observed, that she did not see Collins strike her with the stick or cut her with the knife, and that it was possible that Money had done those things.

The prosecutor asked Marlin whether she had received any threats from Collins or anyone in her family after charges were filed. Marlin said one of Collins' family members had threatened her, but Marlin did not believe Collins was aware of the threat. She added that the male family member "didn't even know I felt threatened by [him talking to me]." Marlin explained that a male cousin of Collins explained to her that her boyfriend, Thompson, was playing both sides between Marlin and Collins, and that it was wrong for Marlin to make the hasty decision to prosecute without hearing Collins' side of things. On

re-cross, Marlin said the male cousin did not threaten her and his actions did not affect her testimony.

Calls made by Collins from jail were published to the jury. In the first phone call, Collins asked both her Uncle Duke and her father to pick up Marlin and take her to the State Attorney's Office or to her defense lawyer's office so that she could drop the charges against Collins. The State published an additional jail call that had been made the previous Sunday. In that call, Collins is heard telling the listener that "K.T." (presumably Thompson) had just visited her and that "we are all on one accord, we are on the same page ... ". When the other person on the call said "I am gonna call 'Duke,' and make sure he come," Ms. Collins responded, "yeah if she see's 'Uncle [Duke]' there ..." Collins also said, "I need you all at the bond hearing", and that she was getting out of jail on Tuesday.

In testifying at trial, Collins stated that she had a prior relationship with Marlin's boyfriend, Thompson, and that she and Marlin were still good friends. After a conversation on the phone with Marlin, she went over to Marlin's house because she was invited to come over to talk. She was not angry at Marlin. On the way over, Collins ran into Money, who accompanied her to Marlin's home. Collins knocked on the door and a man said, "Come in." Once inside, Marlin and Money started to brawl. Collins yelled for Thompson's brother, Karl, to help. Karl grabbed Collins to keep her from getting involved. Collins saw Money holding a stick. Out of the blue, Money reached up and grabbed a knife from the windowsill. Collins yelled, "Give me that knife Money, no Money, no, Money." She said Money never gave her the knife and she never held the stick or the knife.

When questioned about the first jail call, Collins explained that, based on a conversation with Marlin's best friend, Ashley, Collins understood that Marlin had dropped the charges, which is what she was attempting to confirm on the phone. Regarding the first phone call, the following exchange occurred:

- Q So when I played that call and you were actually saying to Uncle Duke to go get Shanique to drop the charges and you said to tell your daddy to call Shanique to get her to drop the charges, you were just actually asking if she had dropped the charges?
- A That's what I was doing.
- Q So you weren't encouraging anyone to talk to her?
- A No.

Regarding the second call, Collins believed she would be having a bond hearing (instead of a trial) on Tuesday and that was the context of the phone call. Collins admitted that Thompson had just visited her in jail:

- Q We are all on one accord, everything is one accord, will be on the same page, I'm coming home Tuesday, I will be home Tuesday, is that correct?
- A That's what I said, yes.
- Q You knew that your case was set for trial on Tuesday, correct?
- A Yes.

On re-direct, Collins explained that the case had been set for trial before, and if the case did not proceed to trial on Tuesday, she hoped to get a bond hearing.

During the State's closing, the prosecutor argued that Marlin testified the way she did because Collins used her family members to pressure her:

We know from her testimony that people, men in the defendant's family came and talked to her to encourage her to drop charges against the defendant, and we know from the defendant's own jail calls that she encouraged them to go and talk to the victim to get her to drop the charges against her, and we know that when the defendant was anticipating this trial, just on Sunday night, she was relaying to her family that

her and Shanique Marlin are all on the same page, that's because Kenny Thompson talked to both of them.

.....

[S]he said she was in fear after this happened, and since then, the defendant has used her family to pressure Ms. Marlin to essentially drop charges against the defendant, and that's not justice, that's not the justice that you take an oath to follow when you are the fact-finders in this case. So that's why you should care.

.....

We know that the defendant's family, a guy in her family, talked to Ms. Marlin and Ms. Marlin said, yes, she was threatened by somebody in the defendant's family. Then she backtracked again and said no I wasn't really threatened, I was more made to kind of see the other side. And then we know just as recently as Sunday, Kenny Thompson went to the jail to where Ms. Marlin was, as well, because of this violation of probation that she's facing, and so he went to visit her and he went to visit the defendant, and they are all on one accord, you-all play that call again, but we're all on one accord and on the same page, and that's all I can say.

The last area that you should examine when you are looking at the defendant's testimony are the jail calls that she made, and so she made that call in August, a month after she had been arrested, to her dad or her uncle, both of them, saying I want you to talk to Shaniqua and get her to drop the charges.

.....

It's pretty clear what she was doing in that call, to go talk to Shanique and drop the charges. She tried to change what her intent was. This last call I will play it for you again. (whereupon, the inaudible audio was again played in open court, after which the proceedings continued as follows)

The defendant knew the trial was set for trial on Tuesday, she knows Ms. Marlin is going to be a witness on Tuesday. When Kenny goes to talk to Ms. Marlin and the defendant, he is doing that to make sure they are on the same page, maybe for bond hearing and maybe for trial, and you see how that played out in court.

'We are on one accord'

Ladies and Gentlemen, hold the defendant responsible for the crime she committed and don't award that pressure that was put on the victim by the defendant, don't award that.

Collins raises several issues on appeal, only two of which merit discussion. Collins first argues that the trial court erred by denying her motion for judgment of acquittal when the only substantive evidence of guilt was Marlin's prior inconsistent statements. See State v. Moore, 485 So. 2d 1279, 1281 (Fla. 1986) (holding "as a matter of law, that in a criminal prosecution a prior inconsistent statement standing alone is insufficient to prove guilt beyond a reasonable doubt."). The trial court correctly denied the motion for judgment of acquittal because there was sufficient evidence indicating that Collins committed the crimes charged. Marlin testified that, after starting to fight with Money, she heard Collins ask Money for a knife. Fifteen or twenty seconds later, she was cut. Marlin also initially identified Collins as the person who cut her, but later waffled. This evidence was sufficient to overcome the judgment of acquittal motion.

Collins also argues that the prosecutor committed fundamental error by arguing, during closing, that Collins used her family members to pressure Marlin to change her testimony. There is no evidence of record to support such a prejudicial argument. See Penalver v. State, 926 So. 2d 1118, 1129 (Fla. 2006) ("Generally, comments by the State implying that the defense tampered with a witness without evidentiary support constitute reversible error.").

The jail calls published to the jury do not suggest that Collins used her family members in an attempt to get Marlin to change her testimony. In the first call, she asked both her father and her Uncle Duke to take Marlin to drop the charges against her. In the second call, she agreed with another family member that they should have Uncle Duke in court so Marlin would see him. The prosecutor specifically stated:

[T]he defendant has used her family to pressure Ms. Marlin to essentially drop charges against the defendant, and that's not

justice, that's not the justice that you take an oath to follow when you are the fact-finders in this case. So that's why you should care.

There was no evidence to support this statement. Further, the prosecutor stated:

Ladies and Gentlemen, hold the defendant responsible for the crime she committed and don't award that pressure that was put on the victim by the defendant, don't award that.

There was no evidence that Collins put any pressure on Marlin to change her testimony.

The alleged coercion by Collins was a feature of the prosecutor's closing argument, and was not supported by the evidence. Thus, the prosecutor's unobjected-to argument was fundamental error. *Thompson v. State*, 88 So. 3d 322, 324 (Fla. 4th DCA 2012). (explaining that unobjected-to prosecutorial closing arguments are reversible only if they constitute fundamental error).

Accordingly, we reverse and remand for a new trial.

REVERSED AND REMANDED.

COHEN, J., concurs.

LAWSON, J., dissents with opinion.

LAWSON, J., dissenting in part.

“[T]he proper exercise of closing argument is to review the evidence and to explicate those inferences which may reasonably be drawn from the evidence.” *Gonzalez v. State*, 990 So. 2d 1017, 1028–29 (Fla. 2008) (quoting *Bertolotti v. State*, 476 So. 2d 130, 134 (Fla. 1985)). In this case, immediately following the attack resulting in the charges, the victim and other third party witnesses uniformly and definitively identified Collins as the person who struck the victim and cut her with a knife. At trial, the victim first testified that “Collins cut me with the knife on my head,” but immediately equivocated (explaining that she was not looking at the person attacking her and therefore could not be sure that it was Collins). The victim also acknowledged that at least one member of Collins’ family had threatened her in an attempt to influence her testimony. She also equivocated as to this testimony, ultimately explaining that this family member just encouraged her to view the events from Collins’ perspective, and had not influenced her testimony. The victim further testified that Collins’ family members had recently contacted her to tell her what was going on with Collins’ children since Collins had been in jail.

As discussed by the majority, the State also introduced recordings of two telephone calls that Collins made from the county jail to members of her family. In the first phone call, Collins repeatedly asked her father and her uncle Duke to physically take the victim to the State Attorney’s Office to drop the charges so she could be released from jail. In the second conversation, held a few days before the trial, Collins confirmed that she and the victim were “on one accord, we are on the same page.” She also agreed

that her Uncle Duke needed to be in the courtroom, visible to the victim, presumably to influence her testimony. It was uncontroverted, then, that Collins was directing her family to pressure the victim relating to her testimony and that Collins' family members were pressuring the victim. The only real question is whether Collins was innocently attempting to assure that the victim told the truth (which is what her attorney argued to the jury) or whether she was using her family to intimidate the victim so that she would not tell the truth (which is what the prosecutor argued to the jury). Both arguments are simply an explication of inferences that can reasonably be drawn from the evidence. There was nothing improper about the prosecutor's argument in this case. It was not even error, much less fundamental error. The majority seems to have lost sight of the fact that even a prosecutor in a criminal case should be "permitted wide latitude in closing argument," *Silvia v. State*, 60 So. 3d 959, 977 (Fla. 2011), particularly when arguing the "inferences" that can be drawn from the evidence. *Id.*

I would affirm.