

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FOURTH DISTRICT
January Term 2011

CASEY KIRKBRIDE,
Appellant,

v.

STATE OF FLORIDA,
Appellee.

No. 4D10-230

[May 11, 2011]

GERBER, J.

The defendant argues that the trial court erred by allowing the state to waive its initial closing argument and give only a rebuttal closing argument, which he claims went beyond the scope of his closing argument. The defendant did not raise this argument at trial and, therefore, he must show fundamental error. Based on our review of the record and the parties' arguments, the defendant has not shown fundamental error. *See Boyd v. State*, 45 So. 3d 557 (Fla. 4th DCA 2010) ("Improper comments rise to the level of fundamental error only where the error 'reaches down into the validity of the trial itself to the extent that a verdict of guilty could not have been obtained without the assistance of the alleged error.'") (citation omitted). However, we use this opportunity to remind the state that "[t]he proper limit of a rebuttal is 'a reply to what has been brought out in the defendant's [closing] argument.'" *Brown v. State*, 18 So. 3d 1149, 1151 (Fla. 4th DCA 2009) (citation omitted).

Affirmed.

STEVENSON and TAYLOR, JJ., concur.

* * *

Appeal from the Circuit Court for the Nineteenth Judicial Circuit, Martin County; Sherwood Bauer, Jr., Judge; L.T. Case No. 432008CF001775A.

Carey Haughwout, Public Defender, and Peggy Natale, Assistant Public Defender, West Palm Beach, for appellant.

Pamela Jo Bondi, Attorney General, Tallahassee, and Melynda Melear, Assistant Attorney General, West Palm Beach, for appellee.

Not final until disposition of timely filed motion for rehearing.