

IN THE COURT OF APPEALS OF THE STATE OF WASHINGTON

CITY OF AUBURN,	)	
	)	No. 66223-6-I
Appellant,	)	
	)	DIVISION ONE
v.	)	
	)	UNPUBLISHED OPINION
	)	
RONALD JAMES CRAWFORD,	)	
	)	
Respondent	)	FILED: July 16, 2012

Grosse, J. — To establish prosecutorial misconduct during closing argument, a defendant must prove that the challenged comments are both improper and prejudicial. Where no objection is made to the remarks, the reviewability of the alleged prosecutorial misconduct depends on whether the prosecutor’s conduct was so flagrant and ill-intentioned as to create prejudice that could not be negated by a curative instruction. Here, the remarks made in rebuttal argument are not so flagrant and ill-intentioned that they could not have been cured by an instruction. Affirmed.

As a result of a 911 call made by his 16-year-old daughter, Ronald Crawford was charged with unlawful use of drug paraphernalia, making a false statement to a public servant, and fourth degree assault, domestic violence. At trial, the daughter’s testimony was different than her remarks given during the 911 call and her statement to the police. Nevertheless, a jury in Auburn Municipal Court convicted Crawford on all counts.

Crawford filed a RALJ appeal in King County Superior Court asserting various errors, including prosecutorial misconduct during closing argument. The superior court

found no errors in the other allegations, but agreed that the closing argument constituted prosecutorial misconduct and remanded for a new trial. The city of Auburn (City) appeals and Crawford cross-appeals. This court granted discretionary review to the City, but denied discretionary review of Crawford's cross-appeal. Thus, the sole issue before us is whether the prosecutor's argument constituted misconduct.

Crawford argues that the comments were designed to inflame the passion of the jury by accusing Crawford of abusing his daughter. During rebuttal closing argument, the deputy prosecutor stated:

That's not where the evidence comes from in this case. It comes from his own daughter. That's where the evidence comes from in this case. And how do we treat her as that source of evidence? What do we do with his own daughter? What did he do at the scene? What's he doing to her today? Throw her to the wolves. Throw her under the bus. When the police officers arrive to try to investigate, what does the Defendant do? What does he tell the officers? She's the problem. She's a runaway. She stays out all night.

Defense counsel objected, contending that there was no evidence at trial that the defendant said anything to the police officers. The trial court overruled the objection and permitted the argument to continue.

Crawford argues that the prosecution insinuates that Crawford's legal team is abusing his daughter:

What are we doing today? Blaming her. You heard the arguments from the Defense. Many of the arguments are really insulting to the intelligence, and I won't go into most of those. But it's really unfortunate that that's what's happening here. His own daughter is the source of the evidence. She's being fed to the wolves in this case by her own father.

And finally, Crawford argues that the prosecutor misstates the law regarding reasonable doubt.

And there is an emotional impact in this case. You know what that emotion is that you're feeling, that sort of anger, that sort of aspect to the evidence, that feeling that you get? You know what that is? That's you being convinced beyond a reasonable doubt that he's guilty. That's exactly what that is.

Prosecutorial misconduct requires a showing that the prosecutor's conduct was both improper and prejudicial in the context of the entire record and circumstances at trial.<sup>1</sup> Making disparaging comments on defense counsel's role is improper.<sup>2</sup> Referring to defense counsel and his client as wolves is not appropriate. Taken alone, the prosecutor's comments are not so prejudicial as to warrant reversal. Cumulatively, however, the prosecutor's remarks are misconduct. He appealed to the jury's sympathy for the daughter, and called for the jury to convict on the basis of their anger about the daughter's treatment. Requesting that a jury substitute their outrage and passion to convict rather than applying the reasonable doubt standard as instructed by the court is error.<sup>3</sup>

In his RALJ appeal, defense counsel admitted that his objection was inadequate, but nonetheless argued, as he does here, that the conduct was so flagrant and prejudicial that it could not have been cured by an instruction. We disagree.

The prejudicial effect of the prosecutor's remarks could have been obviated by a curative instruction reminding the jury of the law on reasonable doubt and directing them to ignore any plea to their passions or feelings.<sup>4</sup> Moreover, we note that the jury

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<sup>1</sup> State v. Hughes, 118 Wn. App. 713, 727, 77 P.3d 681 (2003) (citing State v. Stenson, 132 Wn.2d 668, 718, 940 P.2d 1239 (1997)).

<sup>2</sup> State v. Thorgerson, 172 Wn.2d 438, 451, 258 P.3d 43 (2011).

<sup>3</sup> State v. Warren, 165 Wn.2d 17, 27, 195 P.3d 940 (2008).

<sup>4</sup> See Warren, 165 Wn.2d 17 (curative instruction sufficient to negate prejudice where prosecutor flagrantly told jurors three separate times that reasonable doubt did not mean giving the defendant the benefit of the doubt).

was properly instructed regarding the City's burden of proof in the trial court's instructions to the jury. Jurors are presumed to follow the court's instructions.<sup>5</sup>

The RALJ court is reversed. We affirm the municipal court's judgment and sentence.

Grosse, J.

WE CONCUR:

Demp, J.

Cox, J.

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<sup>5</sup> State v. Stein, 144 Wn.2d 236, 247, 27 P.3d 184 (2001).