

**NOT FOR PUBLICATION WITHOUT THE
APPROVAL OF THE APPELLATE DIVISION**

This opinion shall not "constitute precedent or be binding upon any court." Although it is posted on the internet, this opinion is binding only on the parties in the case and its use in other cases is limited. R. 1:36-3.

**SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION
DOCKET NO. A-0532-20**

STATE OF NEW JERSEY,

Plaintiff-Respondent,

v.

ANDREA CUMMINGS, a/k/a
CHERIANNE SIMMONS,
ANGELA SIMMON, ANDREA
R CUMMINGS, ANGELA
CUMMINGS, ANGIE
CUMMINGS, ANGELA C
SIMMONS, ANGELINA
CUMMINGS, ANGIE R.
CUMMINGS, ANGELA DAVIS,
MONIQUE HARDEN, CONNIE
HORSEY, and AMY BRADY,

Defendant-Appellant.

Submitted April 26, 2023 – Decided July 24, 2023

Before Judges Currier and Bishop-Thompson.

On appeal from the Superior Court of New Jersey, Law
Division, Somerset County, Indictment No.
19-10-0584.

Joseph E. Krakora, Public Defender, attorney for appellant (Simon Wiener, Assistant Deputy Public Defender, of counsel and on the brief).

John P. McDonald, Somerset County Prosecutor, attorney for respondent (Paul H. Heinzl, Assistant Prosecutor, of counsel and on the brief).

PER CURIAM

Defendant appeals from her convictions following a jury trial. She alleges the court erred in admitting certain evidence and in denying her motion for acquittal, and there was prosecutorial misconduct in the State's closing argument. We affirm.

I.

We derive the facts from the evidence presented at trial. On August 18, 2019, South Bound Brook police officer Ryan Carideo pulled over a vehicle after he observed a traffic violation. He recognized the vehicle because he had "pulled it over six days prior." The driver on this date, identified later as defendant, was a black woman.

The police vehicle was equipped with a "motor vehicle recording dash cam" (MVR), which records both video and audio through a microphone attached to an officer's vest. The MVR is activated when the police officer turns

on the emergency overhead lights. Carideo testified he is aware he is being recorded once he turns on the overhead lights.

The MVR was played for the jury during trial. The jury was also given an unofficial transcription of the MVR. Carideo described for the jury what they were seeing on the video.

Carideo reported the stop to police dispatch, relaying the vehicle's license plate number and its color and make. As part of the report, Carideo testified he also stated "[u]nknown in[,] meaning unknown amount of occupants within the vehicle." The transcript also stated "unknown in."

According to Carideo, when he approached the vehicle, he did not know the driver but recognized the front passenger as the person driving the car during the prior stop—Latoya Martin. When Carideo stopped the car on the prior occasion, Martin did not have a valid driver's license—her license was suspended.

Carideo asked defendant her name. She replied: "Amy" and said she lived at 111 East Avondale Drive. In response to Carideo's request, defendant produced a North Carolina driver's license and the vehicle registration. The name on the license was Amy E. Brady; the photo was of defendant. Carideo said when he looked at the license, "[i]t appeared fake" because "[t]he picture

wasn't centered. It was shifted over. The fonts[,] . . . the letters, they had like different fonts, sizes and boldness."

When Carideo inputted the information into his vehicle's computer, the scan of the driver's license showed "a [Department of Motor Vehicles (DMV)] photo of a Caucasian female" named Amy Elizabeth Harriet Brady. The license, "verified through dispatch described the person to be five foot four with hazel eyes." The address on the license was 111 East Avondale Drive, Greensboro, North Carolina.

Carideo then asked defendant for an additional form of identification. She produced a credit card with the name Amy Brady on it. A second officer—Vincent Pelino—had arrived at the scene by this point to assist. He was also wearing an MVR.

The officers then asked defendant to step out of the vehicle, asking her for her Social Security number, prior addresses, current address, her birth date, and height. Defendant said she was five-foot-eight. The Social Security number and prior address given by defendant matched Amy Brady's information displayed on the computer.

Carideo used a blacklight to examine the license because he knew driver's licenses have holograms on them that will "illuminate" with black light; he said holograms on false driver's licenses often will not illuminate.

When Pelino informed defendant that the computer scan displayed a photo of a "Caucasian female," defendant asked to see the photo. As the officers showed defendant the photo on the computer screen, she "tried multiple times . . . to take the North Carolina driver's license from . . . Pelino's hands." Carideo said he "advised her, for her safety, to get out of the street, and go to the side, and just stand there for a moment."

At this point, Carideo "observed two males approaching the motor vehicle stop." He was "familiar" with one of the males—Sherman Martin, Latoya's brother, and was aware there were three active bench warrants issued for Sherman.¹ Carideo asked Sherman for his driver's license number and verified through dispatch the warrants were still active.

According to Pelino, defendant "grabbed [the North Carolina driver's license] out of [his] hand and refused to give it back after numerous commands to" do so. After Pelino told her she was under arrest, defendant began to run

¹ We refer to Sherman and Latoya by their first names to avoid any confusion caused by their common last name.

away. Carideo apprehended her. While defendant was on the ground, she continued to fight and resist the officers and their attempts to handcuff her. She refused to follow the officers' commands and take her hands out from underneath her body.

During the arrest, several items fell out of defendant's pocket, including a Family First card with the name Andrea Cummings on it. Defendant said the card belonged to her niece.

When Carideo asked defendant to get into the backseat of the police vehicle, she refused. After numerous requests, the officer used his hands to move defendant's legs into the car.

The officers never recovered the North Carolina driver's license despite Carideo, Pelino, and additional officers looking for it at the scene. Pelino testified they searched for two-and-a-half hours, and he later returned to the scene to search for another hour, but they never found the license. Carideo thought defendant might "have thrown it into the passenger front window [of the car], which was open with Latoya Martin sitting right there." But the officers did not find it in their later search of the car either.

In searching defendant's purse, the officers found the credit card with Amy Brady's name on it as well as other credit cards and a New Jersey driver's license.

Defendant stated none of the items belonged to her. Law enforcement later learned defendant's license was suspended.

When defendant was in the backseat of the police vehicle, she said she was having a panic attack and complained of head and neck pain. The officers called Basic Life Support (BLS) to the scene to check defendant's vital signs. BLS transported defendant to the hospital accompanied by Carideo.

When BLS asked defendant for her name, she said "[m]y name is unknown." She continued to tell BLS that was her first and last name, spelling it for them. She also said her date of birth was unknown.

Sherman told Pelino defendant's name was Andrea Cummings. After confirming defendant's identity through the computer system, Pelino called Carideo at the hospital and told him defendant's real name was Andrea Cummings. Defendant thereafter admitted to Carideo that her name was Andrea Cummings.

After police transported defendant from the hospital to police headquarters, defendant told Pelino that Latoya wanted defendant to drive the vehicle because Latoya's license was suspended. Latoya then went into another room and came out with the North Carolina license, credit cards, and other forms of identification which she gave to defendant.

During the trial, the State presented testimony that the credit card in defendant's purse with Amy Brady's name on it was not a real credit card. The prosecutor's office used a card reader and determined the credit card did not have a "real magnetic strip," and the card number "[wa]s not a real Discover number." An officer also contacted a woman named Amy Brady in Greensboro, North Carolina.

II.

Defendant was charged in an indictment with third-degree fraudulent use of a credit card (count one), N.J.S.A. 2C:21-6(h); third-degree exhibiting a false driver's license (count two), N.J.S.A. 2C:21-2.1(c); fourth-degree hindering apprehension or prosecution (count three), N.J.S.A. 2C:29-3(b)(1); third-degree resisting arrest (count four), N.J.S.A. 2C:29-2(a)(3)(a); and fourth-degree tampering with physical evidence (count five), N.J.S.A. 2C:28-6(1).

A.

Defendant moved for a judgment of acquittal of counts two and four.² The court denied the motion, stating

[T]he testimony plainly demonstrated that [defendant] alternated between claiming she was Amy Brady or Andrea Cummings later at the police station when she was being questioned by Officers Pelino and Carideo.

² Defendant only appeals from the denial of her motion as to count two.

Moreover, the State offered testimony that she knew the Social Security number of Ms. Brady. She knew the prior address of Ms. Brady. She did display a document that the officers testified had an off center picture that had faded print and that other portions of the documents caused the officers reason to believe it to be false.

If the . . . [c]ourt simply credits that testimony from the State, it can certainly draw inferences from that testimony of the State that a reasonable jury could conclude that she exhibited a false driver's license on the 18th day of August.

B.

In his summation, defense counsel stated:

When [Carideo] approaches the car, he reads off the plate number and then he says . . . something about unknown N. okay? The transcript read unknown in. Ladies and gentlemen, I suggest that you listen. He testified here under oath that it . . . said unknown N and he gave an explanation. Again, this is not necessarily relevant to some of the issues of the case, but it is relevant to his credibility.

. . . .

So he pulls over the vehicle. He does not know the driver. This is why he says unknown N on the radio.

. . . .

Now, you know, the use [of] the racial epithets is really not relevant, but it's inappropriate

The prosecutor addressed those statements during his closing argument, stating:

Now, I got to—look, we got to talk about this. We don't all like talking about it. It's going to be a little uncomfortable, but let's talk about what [defense counsel] said about Officer Carideo. Okay? He said that Officer Carideo said Unknown N. And we all know what he means by Unknown N. He's insinuating that Officer Carideo used the N word. Listen. Go ahead, listen. He told you what he said and you'll hear what he said.

(MVR playback begins)

....

You looked at—you're looking at the vehicle. Take a look. Can you tell how many people are in that car right now? He said—he told you what he said, Unknown N, as in unknown—who the occupants are in the vehicle. And, folks, let's pretend for the sake of argument that he said Unknown N. Do you really think he's that stupid? He knows he's being recorded. Do you really think he's that stupid?

First of all, you got to see Officer Carideo here. You think that's his personality? You think that's who he is? Look. I got to tell you, if he's the racist that [defense counsel] is insinuating, nobody's going home that night. Okay?

....

There's a child in the car. There's another person in the car. There's Ms. Martin in the car. There's other people there. They're trying to find the driver's license.

They're short staffed. If they're really, really, as [defense counsel] has pointed them out to be, okay, that car is getting impounded. Nobody's going home and they're going to do a full search of that car when they get around to it, after they get a search warrant, when they get around to it.

If that's what [defense counsel] is implying, that that is the character of Officer Carideo, I submit to you that nobody in that car is going home that night. That car was not going to be allowed to leave.

The jury found defendant guilty on all counts, except for count four, on which the jury found her guilty of the fourth-degree lesser offense of resisting arrest by flight rather than third-degree resisting arrest. On July 29, 2020, the court imposed an aggregate sentence of four years in prison subject to two years of parole ineligibility. She was released in August 2021.

III.

On appeal, defendant raises the following points for our consideration:

POINT I

THE PROSECUTOR IMPROPERLY VOUCHERED FOR THE STATE'S KEY WITNESS'S CREDIBILITY ON A RACIALLY INFLAMMATORY ISSUE, DEPRIVING [DEFENDANT] OF A FAIR TRIAL

A. The Prosecutor Improperly Vouched for Officer Carideo's Credibility

B. The Prosecutor's Rhetoric Exacerbated Racial Tensions Already Implicated at Trial

C. In Context, the Prosecutor's Vouching Deprived [Defendant] of a Fair Trial

POINT II

THE TRIAL COURT ERRED BY PERMITTING A POLICE WITNESS, WHO WAS NOT ADMITTED AS AN EXPERT, TO OPINE THAT THE LICENSE WAS ILLEGITIMATE

POINT III

THE TRIAL COURT ERRED BY DENYING [DEFENDANT]'S REYES MOTION AS TO COUNT 2 BECAUSE IT MISINTERPRETED THE FALSE-LICENSE STATUTE, FAILING TO RECOGNIZE THAT THE STATE DID NOT ESTABLISH [DEFENDANT]'S GUILT BEYOND A REASONABLE DOUBT ON EVERY ELEMENT OF THE OFFENSE

A.

We begin with defendant's Point I, in which she asserts the prosecutor impermissibly "vouched" for Carideo during his summation by "assuring the jury" Carideo was not racist and therefore credible. Defendant did not object to the comments when they were made.

In our review of the prosecutor's statement, we acknowledge that "prosecutors are given wide latitude in making their summations and may sum up 'graphically and forcefully.'" State v. Garcia, 245 N.J. 412, 435 (2021) (quoting State v. Johnson, 31 N.J. 489, 510 (1960)). A prosecutor is "afforded considerable leeway in closing arguments as long as their comments are

reasonably related to the scope of the evidence presented." State v. McNeil-Thomas, 238 N.J. 256, 275 (2019) (quoting State v. Frost, 158 N.J. 76, 82 (1999)).

This court should "reverse a conviction on the basis of prosecutorial misconduct only if 'the conduct was so egregious as to deprive defendant of a fair trial.'" Ibid. (quoting State v. Wakefield, 190 N.J. 397, 437 (2007)). "Only when the prosecutor's conduct in summation so 'substantially prejudice[s] the defendant's fundamental right to have the jury fairly evaluate the merits of his defense' must a court reverse a conviction and grant a new trial." Garcia, 245 N.J. at 436 (alteration in original) (quoting State v. Bucanis, 26 N.J. 45, 56 (1958)).

Additionally, if a party did not object to a statement during the trial, the plain error rule applies. R. 2:10-2; State v. Clark, 251 N.J. 266, 286-87 (2022). "[A]n unchallenged error constitutes plain error if it was 'clearly capable of producing an unjust result.'" Id. at 287. "To determine whether an alleged error rises to the level of plain error, it 'must be evaluated in light of the overall strength of the State's case.'" Ibid. (quoting State v. Sanchez-Medina, 231 N.J. 452, 468 (2018) (internal quotation marks omitted)). The burden is on the defendant to establish plain error "because 'to rerun a trial when the error could

easily have been cured on request[] would reward the litigant who suffers an error for tactical advantage either in the trial or on appeal.'" State v. Santamaria, 236 N.J. 390, 404-05 (2019) (alteration in original) (quoting State v. Ross, 229 N.J. 389, 407 (2017)).

"Generally, if no objection was made to the improper remarks, the remarks will not be deemed prejudicial." Frost, 158 N.J. at 83. This is because "when counsel does not make a timely objection at trial, it is a sign that 'defense counsel did not believe the remarks were prejudicial' when they were made." State v. Pressley, 232 N.J. 587, 594 (2018) (quoting State v. Echols, 199 N.J. 344, 360 (2009)).

During cross-examination, defense counsel asked Carideo about the phrase "Unknown N." Carideo explained it was "Unknown in," used to inform headquarters he did not know how many occupants were in the vehicle he was stopping. The transcript also stated "Unknown in" in the transcription of the MVR. Defense counsel again referred to the phrase in his closing argument, insinuating Carideo used the phrase "unknown N" to refer to defendant using a racial slur.

The State was permitted to respond to the comments made by defense counsel in his summation. See State v. Bradshaw, 392 N.J. Super. 425, 437

(App. Div. 2007) (citing State v. Wilson, 57 N.J. 39, 50 (1970)). Although "[i]t is improper for a prosecutor to express his personal opinion on the veracity of any witness," State v. Supreme Life, 473 N.J. Super. 165, 174 (App. Div. 2022) (quoting State v. Rivera, 437 N.J. Super. 434, 463 (App. Div. 2014)), the State "may argue that a witness is credible, so long as the prosecutor does not personally vouch for the witness or refer to matters outside the record [for] support," State v. Walden, 370 N.J. Super. 549, 560 (App. Div. 2004). Thus, the prosecutor's comments are "confine[d] . . . to the evidence admitted at trial and reasonable inferences drawn therefrom." State v. Williams, 244 N.J. 592, 613 (2021).

We are satisfied the prosecutor did not stray from the permissible path here. The prosecutor properly commented on the evidence presented in the trial—Carideo's testimony and the transcript—and defense counsel's closing argument. He did not give the jury his personal opinion as to Carideo's credibility. He invited them to evaluate the MVR and the officer's conduct themselves in assessing Carideo's credibility.

We discern no plain error in the brief statement as it did not "raise a reasonable doubt as to whether the error led the jury to a result it otherwise might

not have reached." See Clark, 251 N.J. at 287 (quoting State v. Melvin, 65 N.J. 1, 18-19 (1974)).

B.

In Point II, defendant contends the court erred in permitting Carideo to opine on the legitimacy of the North Carolina license because he was not qualified as an expert to give such an opinion.

We review the court's evidentiary ruling for an abuse of discretion. Garcia, 245 N.J. at 430. "[T]he decision to admit or exclude evidence is one firmly entrusted to the trial court's discretion." State v. Prall, 231 N.J. 567, 580 (2018) (quoting Est. of Hanges v. Metro. Prop. & Cas. Ins. Co., 202 N.J. 369, 383-84 (2010)). However, we review an evidentiary decision de novo "where the trial court fails to apply the proper legal standard in evaluating the admissibility of evidence." State v. Trinidad, 241 N.J. 425, 448 (2020).

At trial, the following exchange took place:

STATE: So . . . when you looked at this driver's license did you make any observations of the driver's license initially?

CARIDEO: Yes.

STATE: What was that?

CARIDEO: It appeared fake to me.

STATE: Why is that?

CARIDEO: The picture wasn't centered. It was shifted over. The fonts—the letters, they had like different fonts, sizes and boldness.

Defense counsel objected, arguing Carideo was "giving an opinion and he's a fact witness. He does not work for the . . . North Carolina Division of Motor Vehicles. He has no . . . ability to say whether or not a particular license is fake or not." The trial court overruled the objection, reasoning:

[H]e said that it appeared to him the license was—and he's describing why. The different fonts and the off centered picture. I don't think that's an opinion by a fact witness. I think it's an observation, and—and the officer does have some training in identifying fake identification anyway.³

Under N.J.R.E. 701, "[i]f a witness is not testifying as an expert, the witness'[s] testimony in the form of opinions or inferences may be admitted if it: (a) is rationally based on the witness'[s] perception; and (b) will assist in understanding the witness'[s] testimony or determining a fact in issue."

³ During defense counsel's cross-examination of Pelino, counsel elicited testimony that there were "books with different licenses and what to look for [regarding] a fake ID" at police headquarters and that the officers "actually read [the books] a lot[] and review [them] a lot."

Our courts "have permitted police officers to testify as lay witnesses, based on their personal observations and their long experience in areas where expert testimony might otherwise be deemed necessary." Trinidad, 241 N.J. at 445 (quoting State v. LaBrutto, 114 N.J. 187, 198 (1989)). "However, police officers may not opine directly on a defendant's guilt in a criminal case." Ibid.

In State v. McLean, the Supreme Court interpreted the first prong under Rule 701 to mean that perception "rests on the acquisition of knowledge through use of one's sense of touch, taste, sight, smell or hearing." 205 N.J. 438, 457 (2011). The second prong allows testimony which "will assist the trier of fact either by helping to explain the witness's testimony or by shedding light on the determination of a disputed factual issue." Id. at 458.

We are satisfied the court did not err in permitting the limited testimony. In answering the State's question, Carideo informed the jury of his perception of the license, noting the photo was not centered, and the fonts were different. This was a personal observation permitted under McLean. Carideo's testimony also satisfied the second prong of Rule 701 because it assisted the jury in understanding why the driver's license appeared irregular. Because police never retrieved the license, Carideo's description aided the jury's understanding of the officers' thinking and actions at the scene. His testimony did not "presume[] to

give an opinion on matters that were not beyond the understanding of the jury."

See id. at 463.

Moreover, Carideo's testimony was supplemented by additional evidence regarding the falsity of the license. The MVR showed that when Carideo ran the license information through the computer system in his police vehicle, "it popped up a . . . DMV photo of a Caucasian female" who was "five foot four with hazel eyes." The video and testimony also demonstrated the license lacked a hologram when Carideo applied a blacklight to it. And law enforcement testified they contacted a woman named Amy Brady in Greensboro, North Carolina. Therefore, any error in the admission of Carideo's testimony was harmless because other evidence was presented that allowed the jury to reach the same conclusion.

C.

We turn to defendant's Point III. She contends the court erred in denying her motion for acquittal of count two, third-degree exhibiting a false driver's license under N.J.S.A. 2C:21-2.1(c), because the court incorrectly interpreted the statute. Defendant asserts the State did not prove beyond a reasonable doubt that she had knowledge that "the document she presented falsely purported to be a legitimate government document—that is, that she knew the license was false

as opposed to that she knew it listed someone else's name." We see no merit to this contention.

Rule 3:18-1 states in part:

At the close of the State's case or after the evidence of all parties has been closed, the court shall, on defendant's motion or its own initiative, order the entry of a judgment of acquittal of one or more offenses charged in the indictment or accusation if the evidence is insufficient to warrant a conviction.

When the motion is made at the close of the State's case, the trial judge must deny it if "viewing the State's evidence in its entirety, be that evidence direct or circumstantial, and giving the State the benefit of all its favorable testimony as well as all of the favorable inferences which reasonably could be drawn therefrom," a reasonable jury could find the defendant's guilt beyond a reasonable doubt. State v. Reyes, 50 N.J. 454, 458-59 (1967).

We review de novo whether "the State presented sufficient evidence for the case to go to the jury," applying the same standard as the trial court. State v. Cruz-Pena, 243 N.J. 342, 348 (2020). "We assess the sufficiency in the record anew, and therefore owe no deference to the findings of the trial court." State v. Berry, 471 N.J. Super. 76, 99 (App. Div. 2022).

Defendant vacillated between telling police she was Amy Brady or Andrea Cummings. In addition, she knew personal identifying information regarding

Amy Brady, such as her social security number, and prior address. When BLS arrived at the scene, defendant told them her name was "unknown," spelling the word out for them. Initially, she told police the Family First card with her name on it was not hers, but she later stated it belonged to her niece. Viewing the evidence in its entirety, a reasonable jury could find the defendant's guilt beyond a reasonable doubt. See Reyes, 50 N.J. at 458-59.

Affirmed.

I hereby certify that the foregoing
is a true copy of the original on
file in my office.



CLERK OF THE APPELLATE DIVISION