

No. 1-13-0191

**NOTICE:** This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

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IN THE  
APPELLATE COURT OF ILLINOIS  
FIRST JUDICIAL DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 10 CR 21078
	)	
MARCUS COCROFT,	)	Honorable
	)	Stanley J. Sacks,
Defendant-Appellant.	)	Judge Presiding.

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JUSTICE LIU delivered the judgment of the court.  
Justices Neville and Pierce concurred in the judgment.

**ORDER**

- ¶ 1 *HELD:* Defendant's conviction for first-degree murder and aggravated battery with a firearm affirmed over defendant's claims that he was denied his right to a fair trial based on the prosecutor's statements during closing argument and that the automatic transfer provision of the Juvenile Court Act is unconstitutional.
- ¶ 2 Following a jury trial, defendant Marcus Cocroft (defendant) was found guilty of first-degree murder and aggravated battery with a firearm. The trial court sentenced him to consecutive terms of 37½ years' imprisonment for murder and 17½ years' imprisonment for

aggravated battery with a firearm. On appeal, defendant contends that the prosecutor engaged in misconduct during closing arguments, depriving him of his right to a fair trial. He further argues that the automatic transfer provision of the Juvenile Court Act (705 ILCS 5/5-130(1)(a) (West 2010)) (Act) is unconstitutional. For the following reasons, we affirm.

¶ 3

### BACKGROUND

¶ 4 On the evening of August 10, 2010, defendant, then 16 years old, and 17-year-old Steshawn Brisco approached a group of young men who were standing near the corner of 107th Street and South Indiana Avenue in Chicago, Illinois. Gunshots were fired at the group. None of the young men was struck or injured. The victims, however, were two girls who were playing outside: eight-year-old Tanaja Stokes and seven-year-old Ariana Jones. Stokes was shot in the head and killed, and Jones suffered a gunshot wound to the back of the head but survived.

¶ 5 Several witnesses identified defendant and Brisco as the shooters. Brisco was arrested on August 11, 2010, after surrendering at the police station; defendant was subsequently arrested on October 29, 2010, in Rockford, Illinois. Defendant and Brisco were charged as adults with multiple counts of first-degree murder, attempted first-degree murder, aggravated battery with a firearm, and aggravated discharge of a firearm. Prior to trial, the State elected to proceed on two counts of murder and one count of aggravated battery with a firearm; it *nolle prossed* the remaining counts in the indictment. During joint but severed jury trials, the State presented testimony from several witnesses who recognized defendant as one of the shooters as well as testimony from witnesses who heard defendant and Brisco bragging about the shooting later that same night.

¶ 6 Of relevance to defendant's arguments on appeal, during the trial there was evidence and argument related to officers' efforts to locate defendant after the shooting and whether he was

actively running from law enforcement when he was finally located over two months later in Rockford, Illinois. Detective Brian Forberg of the Chicago Police Department testified during trial about the investigation into the shooting. According to Detective Forberg, they interviewed several witnesses who identified defendant as one of the shooters. The officers then proceeded to search for defendant between August 13, 2010, and October 28, 2010, when Rockford police notified Detective Forberg that they had located defendant. Detective Forberg specifically explained their efforts to locate defendant during this period, stating:

¶ 7 "We were looking at addresses obviously what we had as a home address, as well as any other addresses connected to his family that we were able to discover. We were looking in the area that we believed he frequented. We contacted the Chicago public schools to determine whether he was a student and was attending, and we then continued looking for him through databases that we had access to."

¶ 8 Later, during closing arguments, the prosecutor argued that defendant was "running" to avoid arrest, stating: "And let's talk about where the police found this defendant. They were looking for this defendant from day one because he was identified from day one. They found him in Rockford, Winnebago County. Ladies and gentlemen, he was running. He was running - \*\*\* He was running to avoid this moment right before you." The trial court overruled defense counsel's objection to this statement, stating, "It's argument. The jurors can accept it or reject it." Then, in response to the prosecution's argument on this point, defendant's counsel argued to the jury, without any objection from the State, that there was "no evidence" the defendant was "running away," and that "why he was [in Rockford]" was not their "concern" because "[i]t [was]

not within the purview of [the] case and was only thrown out to prejudice [the jury] against [the defendant]."

¶ 9 Also relevant to defendant's appeal, during closing arguments, the prosecutor repeatedly referred to the victims as "Little Tanaja" and "Little Ariana" and noted their young ages:

"Ladies and gentlemen, little girls have the right to the [sic] play in front of their house and [sic] free of bullets flying. Remember when Little Ariana took the stand and I asked her, What happened when you were cheerleading. Remember her answer? I got shot. In what kind of a world should the answer from a little girl after somebody asked her what happened while you were cheerleading should the words I got shot come out of her mouth?"

¶ 10 The prosecutor made a similar statement during rebuttal argument:

"Ladies and gentlemen, August 10th of the year 2010, Tanaja Stokes was eight years old, Ariana Jones was seven years old. And on that August night that evening of that summer day, they were doing what thousands of children around Chicago were doing at that very same time, they were playing, they were squeezing all the fun they could into a summer's day. They were being kids."

¶ 11 The prosecutor, however, further argued to the jurors that they should not be guided by sympathy for the victims or by prejudice, stating:

"Ladies and gentlemen, his Honor is going to tell you neither sympathy nor prejudice should guide your verdict. We are not asking you to find this defendant guilty because you feel bad for

Ariana or Tanaja. We're asking you to find this defendant guilty because of the evidence that you heard and because of the law that your swore to uphold."

¶ 12 During the defense's closing arguments, defendant's counsel acknowledged that "it's really a tragic situation when children cannot play in front of their house on the sidewalk" but emphasized that "jurors have to set aside any sympathy and look at \*\*\* the cold bare facts." The trial court reinforced this instruction to the jurors, informing them that "[n]either sympathy nor prejudice should influence you."

¶ 13 Both defendant and Brisco ultimately were found guilty of first-degree murder and aggravated battery with a firearm. The trial court sentenced defendant to consecutive terms of 37½ years' imprisonment for murder and 17½ years' imprisonment for aggravated battery with a firearm. Defendant appeals, and we have jurisdiction pursuant to Illinois Supreme Court Rules 603 and 606. Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 14 ANALYSIS

¶ 15 On appeal, defendant argues that he was denied a fair trial because the prosecutor, during closing arguments, repeatedly referred to the victims' ages and referenced defendant's "running" from law enforcement to Rockford. He additionally maintains that the automatic transfer provision of the Act is unconstitutional because it violates Federal and Illinois due process clauses, the eighth amendment to the United States Constitution, and the proportionate penalties clause of the Illinois Constitution.

¶ 16 A. Prosecutor's Closing Argument

¶ 17 Defendant first contends that prosecutorial misconduct deprived him of a fair trial. Specifically, he maintains that the prosecutor engaged in misconduct by (1) referring repeatedly

to the ages of the victims during closing argument to appeal to the jury's sympathies; and (2) telling the jury that defendant was "running" away to Rockford to avoid arrest, even though, according to defendant, the evidence presented at trial did not support this statement. Defendant concedes that these issues were not properly preserved for appeal and as a result are subject to plain error review.

¶ 18 The plain error doctrine is a " 'narrow and limited exception to the general [rule of procedural default].' [Citations.]" (Alteration in original.) *People v. Naylor*, 229 Ill. 2d 584, 593 (2008). "To obtain relief under this rule, a defendant must first show that a clear or obvious error occurred." *People v. Hillier*, 237 Ill. 2d 539, 545 (2010). Then, he must demonstrate that (1) the evidence was closely balanced, *or* (2) the error was " 'so serious that it affected the fairness of defendant's trial and challenged the integrity of the judicial process.' [Citations.]" *Naylor*, 229 Ill. 2d at 593. Defendant bears the burden of persuasion under both prongs. *Id.* "If the defendant fails to meet his burden, the procedural default will be honored." *Hillier*, 237 Ill. 2d at 545.

¶ 19 In this case, defendant argues that the second prong of the plain error analysis applies because the prosecutor's remarks "resulted in substantial prejudice and compromised [defendant's] right to a fair trial." But "[b]efore we may apply [the second] prong of the plain error doctrine, \*\*\* there must be a plain error." *People v. Nicholas*, 218 Ill. 2d 104, 121 (2005). Here, we find no error.

¶ 20 The State generally has "wide latitude in the content of [its] closing arguments." *People v. Perry*, 224 Ill. 2d 312, 347 (2007). Indeed, the State "may comment on the evidence and any fair and reasonable inferences" to be drawn, even when those "inferences reflect negatively on the defendant." *Nicholas*, 218 Ill. 2d at 121. While "[a] closing argument must serve a purpose beyond inflaming the emotions of the jury," the prosecutor nevertheless "may comment

unfavorably on the evil effects of the crime and urge the jury to administer the law without fear, when such argument is based upon competent and pertinent evidence." *Id.* at 121-22. We consider closing argument as a whole instead of focusing on a selected phrase or remark. *Perry*, 224 Ill. 2d at 347.

¶ 21 With respect to the prosecutor's comments emphasizing that the victims were children, these statements were not plain error. Viewing the closing arguments as a whole, the prosecutor's references to the age of the victims and the impact of defendant's accused offense is the type of permissible commentary of the "evil effects of the crime" which is within the prosecutor's purview to address. See *Nicholas*, 218 Ill. 2d at 121-22. Moreover, the jury also was repeatedly instructed by the prosecutor, defense counsel, and the trial court that it should not allow its sympathies for the victims to affect its deliberations. We find no error here.

¶ 22 Defendant's cited authority does not support the opposite result. In his cited cases, the prosecutor interjected the defendant's potential threat to children into the trial even though the underlying offense was not actually linked to such harm. In *People v. Ford*, 113 Ill. App. 3d 659 (3d Dist. 1983), for example, the prosecutor's statement that the defendant preyed on "poor, innocent, susceptible children in our community who are tempted and forced by peer pressure," was unrelated to both the defendant's charged offense (unlawful delivery of cannabis) and the evidence presented at trial. *Id.* at 662. Moreover, *Ford* involved multiple alleged errors by the prosecutor, and the court acknowledged that it "would be reluctant to order a new trial based on any one of the errors standing alone." *Id.* at 663. Rather, the court found reversible error based on the "cumulative impact" of the prosecution's various improper statements during closing arguments, which also included argument that a witness was more credible than the defendant

because she was a police officer and "repeated references" to that witness's police officer status (*id.* at 661-62).

¶ 23 Similarly in *People v. Carter*, 297 Ill. App. 3d 1028 (1st Dist. 1998), from "opening statement to rebuttal closing argument, the prosecution made [the] case about schools and schoolchildren" even though "[t]here was no evidence \*\*\* that [the] defendant possessed or sold drugs anywhere in the vicinity of children." *Id.* at 1033, 1034. Considering the "entirety of improper comments and evidence," the court concluded that the jury's deliberations on the intent to distribute a controlled substance charge might have been "tainted," such that the conviction on that count could not stand. *Id.* at 1037.

¶ 24 Defendant also contends that under *People v. Beringer*, 151 Ill. App. 3d 558 (1st Dist. 1987), the prosecutor's reminder to the jury that it should not rely on its sympathies cannot "alleviate the damage" caused by the improper closing argument. *Beringer*, however, is distinguishable on its facts. In that case, the prosecution's improper conduct was not limited to a few isolated statements during closing argument but pervaded the entire trial, including "unsupported cross-examination to destroy a key defense witness and impugn the integrity of defense counsel" as well as a closing argument with "vengeful commentary" and additional "personal attacks on defense counsel." *Id.* at 564. The prosecutor's accused conduct in this case, in contrast, was not as pervasive or egregious.

¶ 25 We reach a similar conclusion with respect to defendant's argument that the prosecutor's comments that defendant was "running" from authorities were improper. Viewing the closing arguments as a whole, this isolated remark does not amount to plain error. First, in overruling defense counsel's objection to this statement, the trial court expressly acknowledged that it was merely "argument" which the jury was free to "accept" or "reject." Second, defense counsel

argued to the jury that there was no evidence of defendant's flight and that the State's argument on this point was irrelevant to the issues before the jury. Finally, there was sufficient evidence presented at trial from which the prosecutor could reasonably argue that defendant was running from authorities; namely, testimony from Detective Forberg that the police were searching for defendant at what they believed was his home address in Chicago as well as other addresses connected to his family but were unable to locate him until over two months later on October 28, 2010, when Rockford police notified Detective Forberg that they had located defendant.

¶ 26 Neither *People v. Harris*, 23 Ill. 2d 270 (1961), nor *People v. Hayes*, 139 Ill. 2d 89 (1990), cited by defendant, are controlling on this point because they do not address whether a prosecutor's statements during closing arguments required a new trial. *Harris* considered whether sufficient evidence supported the defendant's conviction, concluding that the State could not rely on an inference of guilt drawn from the defendant's flight where the defendant "voluntarily surrendered himself" to the police "in connection with an unrelated charge." 23 Ill. 2d at 273.

¶ 27 In *Hayes*, the court discussed whether evidence that the police were unable to locate defendant for two weeks "was admissible to show that the defendant consciously avoided arrest." 139 Ill. 2d at 132. There, a detective had left a card at the defendant's parents' home and returned to the home several times to try to locate the defendant, but the State did not present any evidence that the defendant was living at his parents' home prior to his arrest, that he received the detective's business card, or that he was ever informed that the police were looking for him. "In such circumstances," the court concluded, the evidence did "not support an inference that defendant consciously avoided apprehension." *Id.*

¶ 28 In sum, in this case the prosecutor's allegedly improper statements, viewed either alone or in the aggregate, did not fall outside of the bounds of permissible argument. But even if we were

to agree with defendant that the prosecutor's comments were improper, when viewed in the context of the entire closing arguments, they were not the type of statements which were "so serious" that they "affected the fairness of defendant's trial and challenged the integrity of the judicial process." [Citations.]" *Naylor*, 229 Ill. 2d at 593. Accordingly, defendant has failed to demonstrate that he is entitled to relief under the plain error doctrine.

¶ 29 B. Automatic Transfer Provision of the Act

¶ 30 Defendant was 16 years old at the time of the shooting but was prosecuted as an adult under the automatic transfer provision of the Act. 705 ILCS 405/5-130(1)(a) (West 2010). Defendant argues that this provision is unconstitutional based on the United States Supreme Court's decisions in *Roper v. Simmons*, 543 U.S. 551 (2005), *Graham v. Florida*, 130 S. Ct. 2011 (2010); *J.D.B. v. North Carolina*, 131 S. Ct. 2394 (2011), and *Miller v. Alabama*, 132 S. Ct. 2455 (2012). Specifically, relying on these decisions, defendant contends that the automatic transfer provision violates the due process clauses of the Illinois and United States Constitutions, the eighth amendment to the United States Constitution, and the proportionate penalties clause of the Illinois Constitution.

¶ 31 Our supreme court recently rejected a similar constitutional challenge to this automatic transfer provision in *People v. Patterson*, 2014 IL 115102. In *Patterson*, the court emphasized that "[c]onstitutional challenges carry the heavy burden of successfully rebutting the strong judicial presumption that statutes are constitutional." *Id.* ¶ 90. Consistent with this presumption, the court explained that we must "uphold the constitutionality of a statute whenever reasonably possible, resolving any doubts in favor of its validity." *Id.*

¶ 32 As in this case, the defendant in *Patterson* raised a due process challenge to the automatic transfer provision, relying on the Supreme Court's recent eighth amendment decisions in *Roper*,

*Graham*, and *Miller*. Our supreme court refused to extend the Court's eighth amendment analyses in those cases to the defendant's due process challenge in *Patterson* because the defendant's argument was "crafted from incongruous components":

"[T]he applicable constitutional standards differ considerably between due process and eighth amendment analyses. A ruling on a specific flavor of constitutional claim may not justify a similar ruling brought pursuant to another constitutional provision. [Citation.] In other words, a constitutional challenge raised under one theory cannot be supported by decisional law based purely on another provision. [Citation.] Accordingly, we reject defendant's reliance on the Supreme Court's eighth amendment case law to support his procedural and substantive due process claims." *Id.* ¶ 98.

¶ 33 The court in *Patterson* additionally rejected the defendant's constitutional challenges under the eighth amendment's cruel and unusual punishments clause and the Illinois proportionate penalties clause. "[N]either clause," the court explained, "applies unless a punishment or penalty has been imposed." *Id.* ¶ 101. Concluding that the automatic transfer provision is "purely procedural" rather than punitive, the supreme court held that neither the eighth amendment nor the proportionate penalties clause applied. *Id.* ¶¶ 104-06

¶ 34 Again, in this case defendant raises the same constitutional challenges advanced—and rejected—by our supreme court in *Patterson*. Therefore, under *Patterson*, defendant's challenge to the automatic transfer provision necessarily fails.

¶ 35

CONCLUSION

¶ 36 For the above reasons, defendant has failed to demonstrate that the prosecutor's statements during closing argument satisfy the plain error test, and, therefore, "the procedural default will be honored." *Hillier*, 237 Ill. 2d at 545. Further, under *Patterson*, we reject defendant's constitutional challenge to the automatic transfer provision in the Act. Accordingly, we affirm the judgment of the circuit court.

¶ 37 Affirmed.