IN THE CIRCUIT COURT OF THE FIFTEENTH JUDICIAL CIRCUIT
IN AND FOR PALM BEACH COUNTY, FLORIDA

APPELLATE DIVISION (CRIMINAL): AC
CASE NO: 502014AP900059
L.T. NO: 502014MM01814

RANDY SANDERS JR.,
Appellant,

v.

STATE OF FLORIDA,
Appellee.
_____/

Opinion filed: AUG 3 2015

Appeal from the County Court in and for Palm Beach County,
Judge Sheree Cunningham.

For Appellant: Alan T. Lipson, Esq., Office of the Public Defender
421 Third Street, 6th Floor
West Palm Beach, FL 33401
appeals@pd15.state.fl.us

For Appellee: Ari S. Goldberg, Esq., Office of the State Attorney
401 N. Dixie Highway
West Palm Beach, FL 33401
agoldberg@sa15.org

PER CURIAM.

Randy Sanders, Jr. ("Defendant") appeals his judgment and sentence entered by the trial court after a jury found him guilty of resisting an officer without violence. The issue on appeal is whether the trial court abused its discretion when it overruled Defendant's objection to the State's comments during its closing argument, which comments improperly bolstered the credibility of Officer Sohn, the State's chief witness. The State concedes, and we agree, that the trial court abused its discretion and that the error was harmful because the case was a "swearing match" between Officer Sohn and Defendant.

Officer Sohn testified that he stopped a vehicle at a driveway of a house that was later confirmed to be Defendant's residence. After identifying himself as a police officer, Officer Sohn ordered both passengers to stop and return to the vehicle. According to Officer Sohn, one of the men, whom was later identified as Defendant, looked back and proceeded to walk through the front door. Officer Sohn testified that shortly thereafter, Defendant walked out the front door and was subsequently detained.

Defendant, on the other hand, testified that he was not in the car which was stopped by Officer Sohn. Rather, on the day of the incident, he was with a friend in his backyard and he walked to the front of the house when he heard the voice of a police officer. Defendant further stated that after opening the front door, Officer Sohn directed another officer to detain Defendant after identifying him as being the one who had exited the vehicle.

During closing argument, the State twice argued to the jury that in order for Defendant's testimony to be true, Officer Sohn would have "had to completely concoct his testimony." Specifically, the State argued that Officer Sohn would have had to "lie" and "completely make up the entire story" he told to the jury. The State further argued that Officer Sohn did not have an interest to lie because he would have to "swear under oath and under threat of perjury with the threat of losing his job." Defense counsel's objections based on improper argument were overruled. The jury found Defendant guilty.

The standard of review for errors made by a trial court regarding the overruling of objections to improper comments made during closing argument is abuse of discretion. *Card v.* State, 803 So. 2d 613, 621-22 (Fla. 2001). The role of an attorney in closing argument is "to assist the jury in analyzing, evaluating and applying the evidence." *Ruiz v. State*, 743 So.2d 1 (Fla. 1999). If an attorney's closing argument extends beyond these boundaries then it is

considered improper. *Id.* Such extents of these boundaries include an attorney's opinion on the evidence in the case, any personal opinions on the merits of the case, or remarks on the credibility of witnesses. *Id.*

It is well established that it is improper for an attorney to vouch for the credibility of a police officer by arguing that the jury should believe the officer's testimony solely because he or she is a police officer. *Cisneros v. State*, 678 So. 2d 888, 890 (Fla. 4th DCA 1996); *Davis v. State*, 663 So. 2d 1379, 1380 (Fla. 4th DCA 1995). A lawyer's personal opinion as to the truthfulness of the testimony of any witness has no place in the courtroom because the trial process serves the purpose of providing an honest search for the truth. *Id. Compare Jorlett v. State*, 766 So. 2d 1226 (Fla. 5th DCA 2000) (improper bolstering to vouch for credibility of police officer because "police officer was the only person who was there" and could tell the story of what happened); *Williams v State*, 747 So. 2d 474 (Fla. 5th DCA 1999) (improper bolstering to say "[The police officer] is just doing his job and telling you all the truth") *with Johnson v. State*, 801 So. 2d 141, 142-43 (Fla. 4th DCA 2001) (not improper bolstering where the attorney asked the jurors, themselves, what motive the officer would have to deceive them).

It is clear that the prosecuting attorney's comments regarding his personal opinion and remarks as to the truthfulness of the officer's testimony were improper. We find that the trial court abused its discretion by allowing the State to improperly bolster the officer's credibility during its closing argument.

We further find that the error was harmful due to the nature of the evidence in this case. When a case comes down to a swearing match between the arresting officer and Defendant, meaning that the case revolves entirely around the believability of the arresting officer, improper bolstering cannot be considered harmless. *Cisneros*, 678 So. 2d at 890; *Williams v. State*, 747

So. 2d 474, 475 (Fla. 5th DCA 1999) (holding that the prosecution's comments during closing argument cannot be considered harmless error because the evidence at trial was limited to the police officers' testimony versus the defendant's testimony). In this case, overruling Defendant's objection to the State's improper bolstering cannot be considered harmless because the State's case depended entirely on the arresting officer's credibility.

Based on the foregoing, we **REVERSE** the Defendant's judgment and sentence and **REMAND** for a new trial.

KELLEY, FEUER, and MILLER, JJ. Concur.