



saw an intruder standing in her kitchen. The intruder was wearing a hooded black sweatshirt with a white design on the front, jeans, and white shoes. The victim saw him take both her camera and her father's; both were inside black canvas cases. The victim retreated to her father's bedroom and called 9-1-1.

¶ 5 A short distance from the victim's home, the police officers apprehended the defendant wearing dark clothing and a dark hooded sweatshirt. After searching the area where the defendant was arrested, the police also found a white plastic bag containing, *inter alia*, two black cameras enclosed in black canvas camera cases.

¶ 6 The police officers returned the cameras to the victim and her father and brought the defendant back to the victim's house as well. The victim identified defendant as the intruder she had seen inside her house. Defendant was charged with residential burglary and theft. At the trial, defendant testified that he was walking to his cousin's house on the night in question, when he saw a man dressed similarly to him running from behind a nearby house. He further testified that he ran from the police officers because there was a parole warrant out for him.

¶ 7 At the trial and during opening statement, questioning, and closing argument, the prosecutor made a reference to the state of dress of the victim. On October 10, 2009, defendant filed a posttrial motion. The posttrial motion did not include the issue being raised on appeal. The circuit court denied the posttrial motion. Defendant was then sentenced to 30 years of imprisonment.

¶ 8 On October 26, 2009, defendant filed a motion to reconsider the sentence. The circuit court denied the motion. Defendant filed this timely appeal.

¶ 9 ANALYSIS

¶ 10 On appeal, defendant argues that the prosecutor's repeated reference to the near nudity of the woman victim was prejudicial and deprived him of a fair trial. In

response, the State argues that defendant's claim is forfeited and that it does not meet the plain error standard necessary to allow the consideration of a forfeited claim.

¶ 11 Generally, an alleged error is deemed forfeited unless the alleged error was objected to in the trial court and a written posttrial motion including the alleged error was filed. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Here, defendant failed to object to the alleged error in the trial court, and although he filed a posttrial motion, it did not include the alleged error at issue before the reviewing court. Thus, the alleged error is forfeited.

¶ 12 "Under Illinois's plain-error doctrine, however, a reviewing court may consider a forfeited claim when:

'(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the strength of the evidence.' " *People v. Johnson*, 238 Ill. 2d 478, 484 (2010) (quoting *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007)).

"Rather than operating as a general savings clause, [the plain error doctrine] is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims." *Johnson*, 238 Ill. 2d at 484.

¶ 13 However, before addressing either of the prongs of the plain error doctrine, we must first determine if any error occurred at all. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Although the exact alleged error is difficult to decipher from defendant's brief, we think defendant is arguing that error occurred as a result of the admission of the evidence regarding the victim's state of dress. Additionally,

defendant argues that the prosecutor committed misconduct by repeatedly referencing the irrelevant evidence concerning the victim's state of dress. We will address each of defendant's arguments separately to determine if error occurred.

¶ 14

#### I. Admission of Evidence

¶ 15

We first address whether error was committed by the admission of the evidence regarding the victim's state of dress. "It is within the discretion of the trial court to decide whether evidence is relevant and admissible and its decision will not be reversed absent a clear abuse of discretion resulting in manifest prejudice to the defendant." *People v. Hayes*, 139 Ill. 2d 89, 130 (1990). "Evidence is admissible when it is relevant to an issue in dispute and its probative value is not substantially outweighed by its prejudicial effect." *People v. Atherton*, 406 Ill. App. 3d 598, 615 (2010). "Evidence is considered relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of an action either more or less probable than it would be without the evidence." *People v. Morgan*, 197 Ill. 2d 404, 455-56 (2001).

¶ 16

Here, we find the victim's state of dress to be a material fact that is relevant and admissible. The instant case was about the burglary of a home and the theft of two cameras, during which the victim spotted defendant after the victim had just stepped out of the shower, clothed in only a towel. The prosecution used the evidence of the victim's near nudity to attempt to show that the victim was living in the house and that she was surprised by defendant's presence in her home. The information was also relevant to the victim's state of mind at the time she saw defendant and the accuracy of her identification.

¶ 17

Furthermore, the evidence's probative value was not substantially outweighed by its prejudicial effect. Defendant argues that the evidence was prejudicial because

it was of a sexual nature and was used to illicit sympathy from the jury. We find that the information was not of a sexual nature but was used to explain the victim's state of mind at the time of her identification of defendant. This case did not involve any sexual undertones that might have led to this information prejudicing defendant. Moreover, even if defendant were prejudiced in any way, it was of such minimal value that defendant's attorney did not even object. Since the evidence was relevant and not substantially outweighed by prejudice, we find that the circuit court properly admitted the evidence and that no error occurred.

¶ 18 II. Prosecutorial Misconduct in Opening Statement and Closing Argument

¶ 19 Next, we address defendant's argument that the prosecutor committed misconduct by repeatedly referencing the victim's state of dress. Since we have concluded that the evidence was properly admitted during the trial, we will only focus on the comments in the opening statement and closing argument. "[A]bsent a clear abuse of discretion, a court's rulings on the propriety of these comments will not be disturbed on review." *People v. Collins*, 227 Ill. App. 3d 670, 679 (1992).

¶ 20 "The purpose of an opening statement is to apprise the jury of what each party expects the evidence to prove. [Citation.] An opening statement may include a discussion of the expected evidence and reasonable inferences from the evidence. [Citations.] \*\*\* Reversible error occurs only where the prosecutor's opening comments are attributable to deliberate misconduct of the prosecutor *and* result in substantial prejudice to the defendant." (Emphasis in the original.) *People v. Kliner*, 185 Ill. 2d 81, 127 (1998).

¶ 21 Here, the prosecutor's reference to the victim's state of dress during the opening statement was proper. He simply referenced expected evidence in a narrative concerning what happened the day of the burglary. This is the same

evidence that was properly admitted during the trial. Therefore, the prosecutor's reference was within the realm of what is allowed during an opening statement, and we do not find that there was any deliberate misconduct that resulted in substantial prejudice to defendant.

¶ 22 Now we turn to the prosecutor's references during closing arguments. "[P]rosecutors have wide latitude to comment on the evidence and draw reasonable inferences therefrom. [Citation.] When reviewing prosecutorial misconduct claims based on statements made during closing argument, we must examine the statements in their entirety and scrutinize them in their proper context. [Citation.] Even if the prosecutor's comments exceed the bounds of proper argument, the jury's verdict will not be disturbed unless the prosecutor's remarks cause substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial." *People v. Liner*, 356 Ill. App. 3d 284, 295-96 (2005).

¶ 23 In the instant case, in his closing argument, the prosecutor simply mentioned a piece of properly admitted evidence in his closing argument. The evidence was not inflamed or taken out of context. Even if the remarks had been omitted from the closing argument, the outcome would not have been different. The evidence presented in this case was overwhelmingly supportive of the verdict. Therefore, we conclude that these remarks were within the bounds of proper argument.

¶ 24 In conclusion, since the prosecutor's remarks throughout the trial were relevant and did not constitute prosecutorial misconduct, we cannot find any clear and obvious error. Because defendant did not object to those remarks, this claim was forfeited, and because no error occurred, the plain error doctrine is not applicable.

¶ 25 CONCLUSION

¶ 26 For the foregoing reasons, defendant's conviction and sentence are affirmed.

¶ 27 Affirmed.