

NOTICE

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2013 IL App (4th) 111127-U

Order filed November 5, 2013

NO. 4-11-1127

Modified upon denial of rehearing January 24, 2014

IN THE APPELLATE COURT
OF ILLINOIS
FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,
Plaintiff-Appellee,
v.
JESS M. KNIGHT,
Defendant-Appellant.

) Appeal from
) Circuit Court of
) Woodford County
) No. 11CF61
)
) Honorable
) John B. Huschen,
) Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justice Knecht concurred in the judgment.
Justice Turner dissented.

ORDER

¶1 *Held:* The appellate court (1) affirmed the defendant's convictions, concluding that (a) the State proved the defendant guilty beyond a reasonable doubt and (b) although the State erred by attempting to indoctrinate jurors by asking questions about their individual sexual encounters during *voir dire*, that error did not amount to plain error; and (2) vacated the defendant's sentence and remanded for resentencing.

¶2 In April 2011, the State charged defendant, Jess M. Knight, with (1) criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2010)) and (2) aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2010)), alleging that defendant placed his penis in the vagina of his stepdaughter, K.D. (born December 20, 1994). Following an October 2011 trial, a jury convicted defendant on both counts. The trial court later sentenced defendant to 10 years in prison for criminal sexual assault and 5 years in prison for aggravated criminal sexual abuse, ordering those sentences to be

served concurrently.

¶ 3 Defendant appeals, arguing that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he was denied a fair trial when the prosecutor improperly indoctrinated the jurors during *voir dire*. We disagree and affirm defendant's convictions. However, we vacate defendant's sentence and remand for resentencing because the trial court failed to impose consecutive prison terms as statutorily mandated.

¶ 4 I. BACKGROUND

¶ 5 A. Jury Selection

¶ 6 During *voir dire* at defendant's jury trial, the trial court asked questions of prospective jurors and then provided the State and the defense the opportunity to do so. The State began its questioning of the panel as follows:

"[PROSECUTOR]: *** Would somebody volunteer to tell all of us about your last sexual experience. Not all at once. Just one person. How about last year, experience from last year? Doesn't have to be the most recent. Okay. Well, [Juror] Pierce, I'm going to ask you a different question. Why didn't you raise your hand and tell everybody about that, assuming you have had past sexual experience? Not saying you have. Why didn't you raise your hand? Were you nervous?"

JUROR PIERCE: No.

[PROSECUTOR]: Kind of embarrassing in front of a room full of strangers to be asked, put on the spot about that?

JUROR PIERCE: Nothing to tell.

[PROSECUTOR]: Probably should have asked somebody who is married with kids. Let's see, [Juror] Harms, why wouldn't you raise your hand and answer about that?

JUROR HARMS: To me that's more of a private matter, and I just don't choose to share it with everyone.

[PROSECUTOR]: Especially strangers?

JUROR HARMS: Correct.

[PROSECUTOR]: Would you agree that's something hard to talk about to people that you don't know?

JUROR HARMS: I would say it is, yeah.

[PROSECUTOR]: And there are some feelings of nervousness and embarrassment and that sort of thing involved and attached to that question?

JUROR HARMS: I would agree with that, yeah.

[PROSECUTOR]¹: Does everyone agree with [Juror] Harms' response to that? Anybody have a different opinion or different view of that? Okay.

¹The record attributes the following statements and questions to the trial court. However, taken in context, these statements and questions were those of the prosecutor and apparently attributed to the court in the record of proceedings by mistake.

Now, imagine if you were a 15-year-old girl and that sexual experience was with your step[father]. Would everyone agree with [Juror] Harms that although the principles would still apply to that 15-year-old girl, it would be hard and embarrassing? Does anybody not agree with that?

[You are g]oing to hear testimony from some teenagers in this case. Does anyone here feel that teenagers are just untruthful, that they lie and they never tell the truth, it's one bad thing after another out of their mouth? Anybody feel that way? What if their word is in opposite of an adult? Would you believe an adult just because they're an adult and the other person is a teenager? Does anybody feel that just in that circumstance you purely believe the adult? Anyone? Okay."

Following additional inquiries, the parties selected a jury, and the State presented its case.

¶ 7 B. Defendant's October 2011 Jury Trial

¶ 8 In 2002, defendant married Tammy, who had two children, K.D. and E.D. Defendant had a daughter of his own, K.K., from a previous relationship. Defendant and Tammy had one child together, J.K. Defendant and Tammy separated in 2011 and defendant moved out, but only a mile away. J.K. alternated weeks of visitation between defendant and Tammy, while E.D. and K.D. moved in with defendant.

¶ 9 During the summer of 2010, before defendant and Tammy separated, defendant had been taking E.D., K.D., and K.D.'s friend Shelby to a nearby pond. The group would spend

the day there and frequently camped overnight.

¶ 10 When school started the next fall, rumors of a sexual nature involving defendant began to circulate around the high school. The rumor was that defendant was having sex with Shelby. The high school's dean of students heard the rumors and reported them to the Department of Children and Family Services (DCFS). Shortly thereafter, the dean, a DCFS representative, and a police officer interviewed K.D. During the interview, the police officer asked K.D. whether defendant had a sexual relationship either with her or Shelby. K.D. denied the allegations and became "visibly angry."

¶ 11 Shortly thereafter, Shelby's mother called Tammy, threatening to sue her because of the rumors about Shelby and defendant, which she claimed K.D. had started. When the telephone call ended, Tammy became "hysterical." K.D. decided that she "needed to tell the truth," so she told Tammy that defendant had sexual intercourse with her, not Shelby.

¶ 12 K.D. testified that she had sexual intercourse with defendant twice, both times when she was with defendant at the pond while camping. K.D. explained that defendant would supply alcohol for himself, her, Shelby, and E.D. All four of them would drink together. K.D. said that on one night, defendant "raped" her on a "little hill." She said that she simply "blacked out" after defendant put his penis in her vagina. K.D. said that she confronted defendant the next morning about it, and he said, "yeah, I'm sorry. We were both drunk." The second time, the sexual intercourse occurred in a small cabin near the pond. K.D. explained that defendant was in a recliner chair. Defendant took her pants and underwear off and began to have sexual intercourse with her in the chair, face-to-face. When the sexual intercourse began, she "blacked out."

¶ 13 Approximately a year later, a doctor examined K.D. The doctor testified that his exam revealed that K.D.'s hymen had been torn in the past and then healed. In his opinion, this was indicative of "some form of blunt force penetrating trauma to the vagina." The doctor noted that K.D.'s medical history did not indicate that she had ever reported anything—other than the current sexual assaults—that would be consistent with the tear.

¶ 14 K.K. testified that she was 15 years old and defendant's daughter. During the summer of 2010, she went camping three times with defendant and her siblings at a lake. On one occasion, she spent the night there and saw K.D., E.D., and defendant drinking beer and wine coolers. Defendant told her not to say anything about that.

¶ 15 Shelby testified for the defense. Shelby explained that she had been friends with K.D. and had gone camping with K.D. and her family during the summer at issue. Shelby said that she and K.D. would sleep together, usually in the tent but sometimes in the cabin if it got too cold. Normally, defendant and E.D. would sleep wherever the girls were not sleeping. Shelby said that K.D. never slept with defendant because Shelby was "always with her." She added that she never received alcohol from defendant and never saw defendant provide alcohol to K.D. Shelby told the jury that she was no longer friends with K.D., in part because K.D. spread the rumor that Shelby had sexual intercourse with defendant.

¶ 16 E.D. testified that when the group went camping, the entire group would usually sleep in a tent. Occasionally, defendant would sleep in the van, but K.D. was never alone with defendant. "[O]nce or twice" defendant slept in the cabin with E.D., but K.D. was not there. E.D. said that defendant never provided any of them alcohol.

¶ 17 E.D. also outlined for the jury a conversation that he had with K.D. following her

allegation that defendant had engaged in sexual intercourse with her. He said that he got into an argument with K.D., during which she admitted that she never had sexual intercourse with defendant. E.D. said that he encouraged her to tell the truth, but she told them that she could not "because her reputation would be ruined."

¶ 18 Defendant testified in his own defense, explaining that he took the kids to the pond numerous times during that summer to swim. Defendant said that they only camped overnight about "half a dozen times." Defendant testified that he did not have sexual intercourse with K.D. or Shelby and that he did not provide alcohol to any of the children.

¶ 19 C. Closing Arguments

¶ 20 During his closing argument, defense counsel argued primarily that K.D. was being untruthful, noting at one point that the case was "about a lying teenager." In support of his argument, counsel pointed to inconsistencies in K.D.'s story and some of K.D.'s admitted falsehoods. In rebuttal, the prosecutor responded that K.D.'s initial denial to authorities was based on her fear of reporting, harkening the jurors back to the *voir dire* questioning as follows:

"She was up front with you on the stand and told you,
[']yeah, when I went to the school that day I denied all of this.[']
But then she told you the circumstances surrounding that. And this
is something we talked about in *voir dire* as well. Once you know
the circumstances of that day and that interview, it's a whole
different light than just saying she lied."

¶ 21 A short time later, the prosecutor referenced the *voir dire* again, this time in regard to K.D.'s reluctance to speak of the sexual activity in front of others:

"And when this 15-year-old girl gets to school and signs in at the secretary's office, where does she go? She's immediately taken to a room with a police detective who[m] she doesn't know, DCFS workers who[m] she doesn't know, and the dean of the school, and is then asked some of the most personal private, embarrassing questions ever out of left field. She doesn't know that was going to be asked that day. [D]efendant told her just deny, deny, deny, deny, deny. Nothing happened, nothing happened, nothing happened. So in that situation that's what she did.

And in *voir dire* some of you [were] asked to talk about things like that and no one raised their hand[, b]ecause that's a hard thing to talk about. Now, imagine [being] 15 in those circumstances how much harder, how much more terrifying and intimidating. So to just call her a flat-out liar doesn't—that's not the whole truth. That doesn't take into account the circumstances, the situation. I think we all wish at that time she would have voiced what had happened, but it took her actually seeing her mother and what this was doing to the family to do that. She needed that trigger. She needed something to push her forward to get past that fear. And that was seeing her mother's response. That's totally understandable for a 15-year-old girl."

¶ 23 On this evidence and the parties' arguments, the jury convicted defendant. Shortly thereafter, the trial court sentenced defendant to concurrent terms of 10 years in prison for criminal sexual assault and 5 years in prison for aggravated criminal sexual abuse.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 Defendant argues that (1) the State failed to prove him guilty beyond a reasonable doubt and (2) he was denied a fair trial when the prosecutor improperly indoctrinated the jurors during *voir dire*. The State argues that we should vacate defendant's sentence and remand for resentencing because the trial court failed to impose consecutive prison terms as statutorily mandated. We address the parties' contentions in turn.

¶ 27 A. Defendant's Claim that the State Failed To Prove
Him Guilty Beyond a Reasonable Doubt

¶ 28 Defendant first contends that the State failed to prove him guilty beyond a reasonable doubt. Specifically, defendant asserts that the following three "objective problems" with K.D.'s testimony sufficiently undermine her credibility to render the State's case insufficient to support his convictions beyond a reasonable doubt: (1) K.D. admitted that she had initially vehemently denied any sexual contact with defendant; (2) K.D.'s testimony was contradicted by at least two witnesses who testified that she lacked an opportunity to engage in sexual intercourse with defendant; and (3) K.D.'s credibility was impeached when E.D. testified that, during an argument, she admitted to him that she never had sexual intercourse with defendant. Defendant posits that because K.D.'s testimony was utterly unreliable and the only other evidence presented by the State was the medical evidence that merely showed that K.D. had engaged in sexual

intercourse at some point during her lifetime, the State's case failed to prove him guilty beyond a reasonable doubt. We disagree.

¶ 29 When considering a challenge to the sufficiency of the evidence in a criminal case, our function is not to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). Instead, our goal is to determine whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Davison*, 233 Ill. 2d 30, 43, 906 N.E.2d 545, 553 (2009). "This means that we must allow all reasonable inferences from the record in favor of the prosecution." *People v. Lloyd*, 2013 IL 113510, ¶ 42, 987 N.E.2d 386. "We will not reverse a conviction unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt." *People v. Collins*, 214 Ill. 2d 206, 217, 824 N.E.2d 262, 267-68 (2005).

¶ 30 The State's evidence in this case, viewed in the light most favorable to the prosecution, allowing for *all* reasonable inferences, showed that on two separate occasions, defendant engaged in sexual intercourse with K.D. The jury, which was in the best position to judge the credibility of the witnesses (*People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007) (the trier of fact is in the best position to judge the credibility of the witnesses, and "due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses")), could reasonably have rejected the testimony from Shelby, E.D., and defendant. The jury could reasonably have rejected the testimony from (1) Shelby because she had a motive to lie, given that she believed that K.D. had betrayed their friendship by spreading rumors about her, (2) E.D. because he did not want to see his stepfather, to whom the evidence showed he was close,

go to prison, and (3) defendant because he wanted to protect his reputation and avoid a lengthy prison sentence. Additionally, the jury could have noted that the testimony of Shelby and E.D. that defendant had never provided alcohol was contradicted by the testimony of defendant's daughter, K.K. Moreover, the jury could reasonably have found credible K.D.'s account of what happened—perhaps based upon her specificity—and her explanations for why she initially denied that she had sexual intercourse with defendant—namely, that she was uncomfortable admitting in front of the high school dean, the police, and a DCFS caseworker that she had engaged in sexual intercourse with her stepfather. Having found K.D. credible, the jury could reasonably have also found the medical testimony supportive of K.D.'s claim, particularly in light of the fact that no other explanation was presented for the fact that K.D.'s hymen had been torn and healed.

¶ 31 Accordingly, we reject defendant's contention that the State failed to prove him guilty beyond a reasonable doubt.

¶ 32 B. Defendant's Claim That the Prosecutor Improperly Indoctrinated the Jury

¶ 33 Defendant next contends that he was denied a fair trial when the prosecutor improperly indoctrinated the jurors during *voir dire*. Specifically, defendant asserts that he is entitled to a new trial because the prosecutor indoctrinated the jurors during *voir dire* by questioning them about their sexual habits and positing to them that a 15-year-old would be more credible if she was able to do that in a courtroom, and then later referring back to that interaction during his closing argument. The State responds that defendant has forfeited this argument because he failed to object (1) to the initial *voir dire* questioning or (2) during the prosecutor's closing arguments. Because the State's conduct does not rise to the level of plain error, we conclude that defendant has forfeited his claim and is not entitled to a new trial.

¶ 34 Initially, we note that defendant concedes that he has forfeited his contention that the prosecutor improperly indoctrinated the jury during *voir dire* but posits that we should nevertheless review his claim for plain error. The Supreme Court of Illinois has outlined the standard for conducting plain-error review as follows:

"Under Illinois's plain-error doctrine *** 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 closeness of the evidence.

The doctrine is intended to ensure that a defendant receives a fair trial, but it does not guarantee every defendant a perfect trial. Rather than operating as a general savings clause, it is construed as a narrow and limited exception to the typical forfeiture rule applicable to unpreserved claims.

A defendant seeking plain-error review has the burden of persuasion to show the underlying forfeiture should be excused. The ultimate question of whether a forfeited claim is reviewable as plain error is a question of law that is reviewed *de novo*." (Internal quotations and citations omitted.) *People v. Johnson*, 238 Ill. 2d

478, 484-85, 939 N.E.2d 475, 479-80 (2010).

¶ 35 The threshold question, or course, is whether any error occurred at all. *People v. Sykes*, 2012 IL App (4th) 111110 ¶31, 972 N.E.2d 1272. If error did occur, only then do we turn to whether either prong of the plain-error doctrine has been satisfied as outlined by the court in *Johnson. Id.*

¶ 36 Here, an error occurred. "[V]oir dire 'is not to be used as a means of indoctrinating a jury, or impaneling a jury with a particular predisposition.'" *People v. Boston*, 383 Ill. App. 3d 352, 354, 893 N.E.2d 677, 680 (2008) (quoting *People v. Bowel*, 111 Ill. 2d 58, 64, 488 N.E.2d 995, 998 (1986)). In this case, the prosecutor erroneously incorporated specific facts from his case into his *voir dire* inquiry, essentially attempting to bolster his star witness's credibility before the trial began, as follows: "[I]magine if you were a 15-year-old girl and that sexual experience was with your stepfather. Would everyone agree *** that although the principles would still apply to that 15-year-old girl, it would be hard and embarrassing?" Indeed, the prosecutor reminded the jurors during his closing argument that he had planted this seed:

"And this is something we talked about in *voir dire* as well.

Once you know the circumstances of that day and that interview, it's a whole different light than just saying she lied.

* * *

And in *voir dire* some of you [were] asked to talk about things like that and no one raised their hand[, b]ecause that's a hard thing to talk about. Now, imagine [being] 15 in those circumstances how much harder, how much more terrifying and

intimidating. So to just call her a flat-out liar doesn't—that's not the whole truth. "

¶ 37 In light of the foregoing, we are left with no doubt that the prosecutor intended to "impanel[] a jury with a particular predisposition"—namely, to be predisposed to believe K.D. However, this does not end our analysis. Having determined that error occurred, we must now decide whether, under the plain-error doctrine, a new trial is warranted. In other words, we must determine whether the prosecutor was successful in his attempt to predispose the jury into believing K.D.'s version of events. For the reasons that follow, we do not so conclude.

¶ 38 As previously discussed, plain error requires us to set aside a defendant's procedural default when an error occurs and (1) 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) 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 closeness of the evidence.

Johnson, 238 Ill. 2d at 484, 939 N.E.2d 479.

¶ 39 First, although the evidence was arguably "closely balanced"—that is, the evidence the State presented was sufficient but consisted of the testimony of the victim and circumstantial medical testimony, and the defense presented evidence rebutting the State's case—it was not so closely balanced that the prosecutor's error "threatened to tip the scales of justice" against defendant. The prosecutor's actions in this case, while erroneous, merely pointed out to the jury what it most assuredly already knew—namely, that it would be very difficult for a 15-year-old girl to explain in an open courtroom that she had been sexually assaulted by her stepfather. Accordingly, we do not believe that the prosecutor's error "threatened to tip the scales of justice"

against defendant.

¶ 40 Moreover, our review of the record reveals that the prosecutor's error was not so serious that it "affected the fairness of the defendant's trial and challenged the integrity of the judicial process." This case dealt with credibility. Essentially, the jury—which was in the best position to judge that credibility—believed K.D.'s version of events. The jury heard testimony from all the witnesses, including defendant, and determined that K.D. was more credible. We do not believe the fairness of defendant's trial or the integrity of the judicial process as a whole were affected, given that—as previously discussed—the attempt by the prosecutor to bolster K.D.'s testimony simply outlined what the jurors already knew; as a 15-year-old girl, K.D. would feel uncomfortable explaining that she had been sexually assaulted by her stepfather.

¶ 41 We note that this case once again demonstrates the importance of adhering to the forfeiture doctrine when appropriate. Allowing criminal defendants to sit idly by while error is committed, lying in wait, assuming that permitting the error might provide them another "bite at the apple," reflects poorly on the integrity of the judicial process. *People v. Cook*, 2011 IL App (4th) 090875 ¶25, 957 N.E.2d 563. Were we to ignore defendant's forfeiture in this case—that is, if we were to find "plain error"—we would essentially be encouraging future defendants (and their counsel) to sit idly by while the prosecutor (or trial judge) commits an error that, for the reasons outlined above, would not actually prejudice him at trial, in hopes that if he is convicted, he will be entitled to another shot at acquittal if the evidence is "closely balanced." We are disinclined to do so.

¶ 42 In closing, we also note that defendant asserts as a last resort that we should view his trial counsel's failure to preserve these issues as ineffective assistance of counsel. For the

reasons that this court has outlined in *People v. Durgan*, 346 Ill. App. 3d 1121, 806 N.E.2d 1233 (2004), we decline to address this claim.

¶ 43 C. Defendant's Sentence

¶ 44 The State argues that this court should vacate defendant's sentence and remand for resentencing because the trial court failed to impose consecutive prison terms as statutorily mandated. Defendant concedes that his sentence is void. We accept defendant's concession, vacate the court's sentencing order, and remand for resentencing.

¶ 45 As noted, the trial court sentenced defendant to concurrent terms of 10 years in prison for criminal sexual assault and 5 years in prison for aggravated criminal sexual abuse. However, section 5-8-4(d)(2) of the Unified Code of Corrections (Unified Code) (730 ILCS 5/5-8-4(d)(2) (West 2010)) required the court to impose consecutive sentences because defendant was convicted of criminal sexual assault under section 12-13 of the Criminal Code of 1961 (720 ILCS 5/12-13 (West 2010)). In *People ex rel. Senko v. Meersman*, 2012 IL 114163, ¶ 19, 980 N.E.2d 1115, the supreme court held that, under section 5-8-4(d)(2) of the Unified Code, "any consecutive sentences imposed for triggering offenses must be served prior to, and independent of, any sentences imposed for nontriggering offenses."

¶ 46 The Unified Code requires defendant to serve his 10-year sentence for criminal sexual assault—the triggering offense—prior to, and independent of, his 5-year sentence for aggravated criminal sexual abuse. The court's order that defendant serve the two sentences concurrently is therefore void. *People v. Arna*, 168 Ill. 2d 107, 113, 658 N.E.2d 445, 448 (1995) ("A sentence which does not conform to a statutory requirement is void.") Accordingly, we vacate the court's sentencing order and remand for resentencing in accordance with section

5-8-4(d)(2) of the Unified Code.

¶ 47

III. EPILOGUE

¶ 48 We earlier disagreed with defendant's claim that the prosecutor improperly indoctrinated the jury, but our disagreement does not suggest approval of the prosecutor's inquiries during *voir dire* examination of the jury. In fact, we deem them offensive and nonsensical. The prosecutor should never have asked these questions, and once they were asked, the trial court should have emphatically stopped this line of inquiry.

¶ 49 On this last point, no citation of authority is necessary to point out that trial courts have a responsibility to the citizens who appear for jury service. At a minimum, that responsibility includes not permitting (1) courtroom proceedings to embarrass them and (2) trial court participants to engage in offensive conduct. By not stopping the prosecutor from offending the jurors, the trial court failed in its duty to protect them.

¶ 50 We have repeatedly termed the prosecutor's inquiries during *voir dire* nonsensical because they were hardly necessary to get the point across that a 15-year-old girl would be embarrassed by being questioned in school by various officials she does not know about whether she had a sexual relationship with her stepfather. After all, the very first instruction the trial court gave to the jury included the direction that the members of the jury "should consider all the evidence in the light of your own observations and experience in life." Illinois Pattern Jury Instructions, Criminal, No. 1.01 (4th ed. 2000). The offensive questioning of the jurors about this point was completely unnecessary.

¶ 51 Experienced trial lawyers know the importance of establishing and maintaining their own credibility with the jury, so that (among other reasons) the jury will be receptive to

counsel's closing argument. This is especially true regarding prosecutors, whose burden of proof is so great. The prosecutor's nonsensical, offensive inquiries during *voir dire* in this case would have served only to diminish his credibility. In our judgment, the jury convicted defendant *despite, not because* of, those inquiries.

¶ 52

IV. CONCLUSION

¶ 53 For the reasons stated, we affirm defendant's convictions, vacate the trial court's sentencing order, and remand for resentencing. As part of our judgment, we grant the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 54

Affirmed in part and vacated in part; cause remanded with directions.

¶ 55 JUSTICE TURNER, dissenting.

¶ 56 I respectfully dissent. I would reverse defendant's conviction and remand for a new trial.

¶ 57 I fully agree with the majority the prosecutor's *voir dire* questioning was improper and was "intended to 'impanel[] a jury with a particular predisposition'—namely, to be predisposed to believe K.D." Supra ¶ 37. However, unlike the majority, I find the error rises to the level of plain error.

¶ 58 This case rested upon K.D.'s credibility, and the prosecutor began bolstering her credibility with his very first volley to the venire, focusing on the jurors' personal sexual activities. The highly improper and prejudicial questions posed to prospective jurors were then referenced in closing argument. The majority acknowledges this case hinged on credibility but finds no plain error because the jury "believed K.D.'s version of events" and "determined that K.D. was more credible." Supra ¶ 40. I find this reasoning both circular and vexing. The improper questions were designed to bias the jurors in assessing credibility, and the case hinged on credibility. From these two premises, the majority concludes the credibility findings themselves demonstrate defendant was not prejudiced. That is *non sequitur*.

¶ 59 The majority also suggests the improper questions were more harmful than helpful to the prosecutor's case because they likely offended the jurors. I agree the jurors may have resented the prosecutor's questions. However, I disagree it is reasonable to conclude the message conveyed by the insipid queries at the case's outset and reinforced at the case's conclusion could not have impacted the jury's credibility findings.

¶ 60 The test is not whether the scales of justice were tipped against defendant but

whether the error " *threatened* to tip the scales." (Emphasis added.) Supra ¶ 34 (quoting *Johnson*, 238 Ill. 2d at 484, 939 N.E.2d at 479). While the improper questions may not have actually tipped the scales of justice, they certainly threatened to tip them by trying to improperly influence the jury's credibility determinations. Additionally, I find the error in attempting to indoctrinate the jury and the methodology utilized in the attempt affected the fairness of defendant's trial and challenged the integrity of the judicial process. Accordingly, the case should be reversed and remanded for a new trial.