2015 IL App (5th) 120240-U

NO. 5-12-0240

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Saline County.
	)	
v.	)	No. 11-CF-28
	)	
RAYMOND E. MOSS,	)	Honorable
	)	Mark H. Clarke,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err where the defendant was not surprised or prejudiced by a formal amendment to the indictment; the defendant's claims of ineffective assistance of counsel fails where his counsel's assistance was not deficient and/or did not prejudice the defendant; the court did not err in denying counsel's request to replace a juror where the defendant did not establish bias or prejudice; the defendant is not entitled to a new trial where the State's closing argument was based on evidence presented at trial; and the court properly imposed fees on each convicted count against the defendant.

¶ 2 On January 25, 2011, the defendant, Raymond E. Moss, was charged by indictment with two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(1) (West 2010)), two counts of domestic battery (720 ILCS 5/12-3.2 (West 2010)), and two counts

of unlawful restraint (720 ILCS 5/10-3 (West 2010)). The indictment pertained to conduct by the defendant against his alleged victims, Y.H. and R.C., on or about September 17, 2010. At the conclusion of trial on March 20, 2012, the jury found the defendant guilty of two counts of criminal sexual assault and two counts of domestic battery against Y.H., and acquitted the defendant of the charges for unlawful restraint against Y.H. and R.C. On April 27, 2012, the court sentenced the defendant to 25 years' imprisonment, as well as imposed fines and fees. For the following reasons, we affirm the decision of the circuit court.

¶ 3 The following facts were adduced from the defendant's jury trial. On March 14, 2012, Y.H. testified that she was with the defendant in Harrisburg, Illinois, on September 17, 2010. Y.H. testified that on that evening, the defendant became angry with her, accusing her of cheating on him. Y.H. testified that after the fighing ensued between them, she drove the defendant to several homes in Harrisburg and Marion, Illinois. At each home, the defendant would take the car keys into his possession and leave Y.H. in the car for 10 to 15 minutes. Y.H. testified that she believed the defendant was smoking crack while inside the homes. Y.H. testified that while driving, the defendant was yelling at her to drive faster "so the police will pull you over to save your life from me." Y.H. testified that, scared for her life, she continued to drive and listen to the defendant that evening.

¶ 4 Y.H. testified that she accompanied the defendant into one of the homes they visited together. Y.H. testified that upon the defendant's instruction, she entered the bathroom with the defendant and he smoked crack. Y.H. testified that while in the

bathroom, the defendant was "shoving his hands down my pants into my private areas and my anus area, being very rough." Y.H. further testified that she was caught off guard when the defendant threw her into the bathtub and "started stomping on my face." After leaving the bathroom, Y.H. entered a living room where two other individuals were present. At that time, the defendant shoved his fingers in Y.H.'s vagina and anus, and then into her mouth. Y.H. estimated that the defendant forcibly shoved two or three of his fingers into her vagina and anus at least six times that evening, describing his actions as "pulling and making it feel like something was going to rip." Further, Y.H. testified that the defendant continued to strike her in the head and right eye as she was driving the vehicle, testifying that she "didn't know if he was going to hit me hard enough for my head to go through the window."

¶ 5 In the early morning hours of September 18, 2010, Y.H. and the defendant visited R.C.'s home. R.C. testified that she had known the defendant her entire life, as he often supplied her with cocaine, food, and money. R.C. testified that Y.H. was "covering the side of her eye and the side of [her] face," and that Y.H. seemed very scared upon entering her home. When asked further about the condition of Y.H.'s eye on direct examination, R.C. testified:

> "It was swollen. It was watering a lot. We were having to get paper towels to cover up the eye. We had tried to make an ice pack at one time to hold on her eye because it was–it was watering a lot and it was swollen. And she just, you know, kept it covered."

¶ 6 Y.H. and R.C. both testified that they had been restrained in the bathroom by the defendant for approximately 90 minutes while he cooked and smoked crack. Y.H. testified that they were both restrained until the defendant instructed R.C. to retrieve ice for her eye, as well as additional items to cook crack. Both women testified that they attempted to leave the bathroom at some point, but refrained from pushing the issue out of fear. Y.H. testified that the defendant allowed her to leave the bathroom one time to retrieve cigarettes from the car; however, the defendant followed her and again forcibly shoved his hands into her vagina and anus, and twisted her nipples, causing bruising.

¶ 7 R.C. testified that she was fearful while restrained in the bathroom, stating:

> "I felt that if I continued to push the issue, if I tried to leave voluntarily that there may have been some physical harm towards me; or if my kids had woke up, there may have been physical harm towards my kids."

¶ 8 Y.H. testified that she and the defendant left R.C.'s home at 4:30 a.m. and returned to the defendant's home in Harrisburg, Illinois. Y.H. testified that she performed oral sex on the defendant and the two had nonconsensual sexual intercourse, testifying, "If I would have fought him back, then things would have gotten even uglier." Y.H. testified that, afraid for her life, she did not resist his sexual advances, even though the defendant continued to hit her in the head while engaging in sexual intercourse. Describing the situation, Y.H. testified that the defendant overpowered her during sexual intercourse, stating:

"He's so powerful on me. And he's got my legs back. And all I can picture is if I don't just go along with whatever is going on, I know I'm going to fly through this window that's behind me because he's so powerful on me."

¶ 9 On direct examination, the defendant testified to a different version of events. The defendant testified that he did not restrain the women in R.C.'s bathroom. Rather, the defendant testified that all three sat in the bathroom and smoked crack together. Further, the defendant testified that he never threatened or intimidated Y.H., did not forcefully punch Y.H. in the head or face, nor did he forcibly place his hands in Y.H.'s private areas or mouth without her consent. The defendant testified that aside from unintentionally hitting Y.H. with a football earlier that week, causing her right eye to swell, he never struck her, caused her any injury, or forced her to engage in oral or sexual intercourse, as she had alleged. The defendant testified that Y.H.'s allegations were completely falsified.

¶ 10 At about 6:30 a.m. on September 18, 2010, the defendant fell asleep. At that time, Y.H. left and drove to Amy Taborn-Tyson's (Tyson) home, the defendant's niece. While there, Y.H. showed Tyson her injuries and informed her that the defendant had beaten her, but did not disclose that she had been sexually assaulted. Tyson testified that Y.H. did not have visible bruising, but seemed afraid when she arrived, as well as under the influence of some substance.

¶ 11 After Y.H. left Tyson's home, she sought medical care at Memorial Hospital of Carbondale on September 18, 2010. While there, she received medical care from Dr. Donvito. Dr. Donvito testified that Y.H.'s chief complaints were "primarily facial injuries and trauma and a headache," and that Y.H. did not inform medical personnel that

she had been sexually assaulted the night before. Dr. Donvito testified that the amount of force had to be "fairly significant to cause the amount of swelling and bruising that I saw, particularly on the right side of her face when I examined her." Dr. Donvito described Y.H. as emotionally withdrawn and in a state of emotional shock, indicating that it was not uncommon for victims in her state to provide minimal information, often providing information only pertaining to visible injuries.

¶ 12 On direct examination, Dr. Donvito testified that the trial exhibits did not accurately depict the severity of Y.H.'s injuries, testifying:

> "She had multiple facial abrasions and bruises, primarily affecting the right side of her face, forehead, eye and lower jaw, as well as her nose. *** [S]he also had some bruising or ecchymosis to the area beneath the left eye, as well."

¶ 13 At trial, Carbondale police officer Mark Murray testified that he interviewed Y.H. on September 19, 2010, at The Women's Center Shelter in Carbondale, Illinois, and documented her account of the events in his police report. Officer Murray testified that Y.H. "seemed scared and embarrassed discussing the things that had transpired," stating that Y.H. told him that the defendant had become angry with her and accused her of cheating on him. Officer Murray testified that Y.H. told him that the defendant forced her into a bathroom of a house where he punched her in the head, pushed her in the bathtub, and stomped on her head two times with his foot. Officer Murray testified that Y.H. told him that the defendant had forcibly placed his fingers in her vagina, anus, and mouth, and grabbed and twisted her nipples, bruising her breasts. Y.H. also told Officer Murray that she did not consent to the defendant's advances, and that he refused to stop

when she asked him. Officer Murray also testified that Y.H. did not fight back against the defendant because "she was afraid that Raymond Moss was going to kill her." Consistent with Dr. Donvito's testimony, Officer Murray testified that the trial exhibits depicting Y.H.'s injuries did not fairly and accurately represent the severity of her facial injuries as he saw them on September 19, 2010.

¶ 14 On March 20, 2012, after the close of evidence, the jury returned a guilty verdict for the two counts of criminal sexual assault and two counts of domestic battery against Y.H. The defendant was acquitted on the two counts of unlawful restraint against Y.H. and R.C.

¶ 15 The defendant filed a motion to reconsider his sentence on May 3, 2012, and a motion for a new trial on May 16, 2012, with an amended motion to reconsider sentencing on May 24, 2012. The circuit court denied the defendant's motions on May 24, 2012. The defendant then filed a *pro se* motion to reconsider the motion for a new trial on May 31, 2012. The court denied this motion on June 4, 2012. Notice of appeal followed on June 6, 2012.

¶ 16 On appeal, the defendant contends that the circuit court's ruling should be reversed for the following reasons: (1) the court erred in permitting the State to amend the indictment on the fourth day of trial; (2) regardless of whether the amendment cured a formal defect, the defendant was surprised and prejudiced as a result; (3) if the State was entitled to amend the indictment, defense counsel provided ineffective assistance of counsel; (4) the court erred in denying defense counsel's request to replace a biased juror; (5) the defendant is entitled to a new trial because the State's closing argument was

inappropriate and not based on evidence presented at trial; and (6) the court improperly imposed monetary fees on all four counts, including fees for the Violent Crime Victims Assistance Fund and drug-court fines.

¶ 17 First, the defendant contends that the circuit court erred in permitting the State to amend the indictment on the fourth day of trial. The defendant argues that the amendment was not formal, but substantive, and greatly broadened the conduct that could constitute a criminal sexual assault. The defendant contends that the amendment essentially vitiated the defense strategy, which was to show that the force described by Y.H. did not constitute the type of force, through strength or power, that was necessary for a conviction of criminal sexual assault. The defendant argues that the amendment lessened the State's burden by requiring only proof that Y.H. felt threatened or the defendant threatened her, thus he was surprised and prejudiced as a result. We disagree.

¶ 18 During opening statements on March 14, 2012, defense counsel informed the jury that threats were not at issue against the defendant. Defense counsel stated:

> "MR. TURNER: Now, I want you to remember through all of this that he is charged with inserting his finger into her vagina by force, okay. Not intimidation, not by threat of force, but by force. And that he's charged with inserting his fingers into her anus by force. I'm not talking about forcefully inserting, but force, hitting, overpowering. He's charged with doing that. He's not charged with threatening the use of force. So you don't get to consider that, because [the State has] taken that off the table."

During opening statements and throughout trial, the defense strategy focused on undermining Y.H.'s credibility. The defense highlighted that the Illinois Department of Children and Family Services had informed Y.H. that the State would have care and possession of her children as long as she had a relationship with the defendant. With this information, defense counsel attempted to show that Y.H. falsified the allegations against the defendant as a means to show that she was no longer in contact with the defendant.

¶ 19 On March 19, 2012, the State moved to amend the indictment pertaining to the two counts of criminal sexual assault to include "or threat of force." Defense counsel objected, stating that "threat of force" was not at issue as he had indicated to the jury during his opening statement. The State countered by arguing that the amendment merely corrected a formal defect in the original indictment, indicating that the statute states "two ways the defendant can be convicted of committing this offense," therefore "threat of force" was an alternative allegation. The State informed the circuit court that defense counsel had received the IPI jury instructions on March 16, 2012, which included the exact language from section 11-1.20(a)(1), which states "uses force or threat of force" as the means by which a criminal sexual assault can occur. The court took the State's motion to amend under advisement, and then subsequently allowed the amendment during the jury instruction conference.

¶ 20 An indictment may be amended on motion by the State's Attorney or defendant at any time because of formal defects, including: "(f) [t]he use of alternative or disjunctive allegations as to the acts, means, intents or results charged." 725 ILCS 5/111-5(f) (West 2010). Formal amendment is warranted especially where there is no resulting surprise or

prejudice to the defendant or where the record clearly shows that he was otherwise aware of the charge against him. *People v. Flores*, 250 Ill. App. 3d 399, 401 (1993). Formal defects are distinguished from substantive changes that alter the nature and elements of the offense charged. *Id.* An amendment has been found to be substantive and therefore improper if it: (1) materially alters the charge, and (2) cannot be determined whether the grand jury intended the alteration. *People v. Milton*, 309 Ill. App. 3d 863, 866 (1999). A circuit court's decision to allow amendments to the charging indictment will not be disturbed by a reviewing court unless the court abused its discretion. *People v. Alston*, 302 Ill. App. 3d 207, 211 (1999).

¶ 21 Pursuant to section 11-1.20(a)(1) of the Criminal Code of 1961 (Criminal Code), "[a] person commits criminal sexual assault if that person commits an act of sexual penetration and *** uses force or threat of force." 720 ILCS 5/11-1.20(a)(1) (West 2010). The Criminal Code further defines:

> "the use of force or violence or the threat of force or violence, including, but not limited to, the following situations:
>
> (1) when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat; or
>
> (2) when the accused overcomes the victim by use of superior strength or size, physical restraint, or physical confinement." 720 ILCS 5/11-0.1 (West 2010).

¶ 22 Similar to the case at issue, in *Alston*, 302 Ill. App. 3d at 210, defendant argued that the circuit court erred in permitting the State to amend the information during trial to include the language "about his person" for a charge of unlawful use of weapons. Defendant claimed the amendment changed the State's theory of the case and prejudiced defendant. *Id.* In affirming the circuit court's amendment as proper, the Second District determined that the amendment merely added an additional means by which defendant could commit the same offense, and as a result, defendant was not prejudiced. *Id.* at 211.

¶ 23 Here, the record reflects that the defense strategy focused on discrediting Y.H.'s credibility with attempts to show she fabricated the allegations against the defendant. On appeal, the defendant argues that the amendment was prejudicial because, absent the amendment, the defense strategy to challenge whether the defendant used force could have been successful. However, in both the defense counsel's opening statement, before the amendment, and closing argument, after the amendment, it appears from the record that no change in his defense occurred, as the strategy was to show that the offenses never occurred. The defendant testified that the allegations of sexual assault and domestic battery were falsified, because he had never threatened, used force against, or injured Y.H. at any point in time. Thus, as similar in *Alston*, here, the amendment did not change the defense counsel's strategy to where it could have prejudiced the defendant. The defense purported that the offenses never took place, regardless of by what means, whether through the use or threat of force. Instead, the amended indictment charged the defendant with an offense in the form in which the legislature defined. The amendment merely added an additional way by which the defendant could commit the same offense.

See also *People v. Ross*, 395 Ill. App. 3d 660, 670 (2009) (amendments changing the manner in which defendant committed the offense are formal, not substantive). The amendment merely tracked more closely the precise language of the statute, as well as the evidence that had been presented throughout the first three days of trial.

¶ 24 Furthermore, this court believes that the use of force reasonably suggests that the threat of force was inherent in the defendant's conduct. We do find it important to note that a threat of force does not necessarily imply the use of force, which is not the case here. The record is replete with testimony and other evidence that the defendant used actual force and threatened to continue to use force against Y.H. Moreover, after a careful examination of the record, it is apparent that Y.H. reasonably believed that the defendant had the ability to execute his threats, and that he had used force against Y.H. for hours on the evening of September 17, 2010, as well as during the morning of September 18, 2010. The imminent use of force by the defendant in stomping on and repeatedly punching Y.H.'s face and head, as well as forcibly shoving his fingers into her private areas and mouth, shows that the defendant's use of force also contained an implicit threat of force that would continue if Y.H. attempted to fight back. See *People v. Ware*, 168 Ill. App. 3d 845, 846 (1988) (inherent in defendant's conduct was the use of force and the implicit threat of the imminent use of more force if victim tried to stop defendant from smashing her car window, leaning into victim's car, and grabbing her purse). Thus, the amended indictment was formal and did not prejudice the defendant.

¶ 25 Also, the defendant argues he was surprised by the amendment. However, we find this argument to lack merit. The existence of the standard IPI jury instructions, given to

defense counsel on March 16, 2012, put the defense on notice of exactly what offense the defendant was facing at trial, what section number to rely on, as well as the State's burden in charging and proving the defendant's guilt. Thus, the circuit court did not abuse its discretion in granting the State's motion to amend the original indictment.

¶ 26 Next, the defendant argues that should the amendment be found proper, defense counsel rendered ineffective assistance of counsel. First, the defendant argues defense counsel was ineffective for failing to foresee the State's ability to amend the indictment, and second, for adopting a defense strategy, which allowed the State's admission of hearsay statements and excluded "threat of force" in opening statement, that he argues, left the jury with no choice but to convict the defendant of criminal sexual assault.

¶ 27 Claims of ineffective assistance of counsel are evaluated according to the standard articulated in *Strickland v. Washington*, 466 U.S. 668 (1984), as adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). Under the *Strickland* two-prong test, a defendant must show that (1) his counsel's performance was deficient in that it fell below an objective standard of reasonableness, and (2) the deficient performance prejudiced the defendant in that, but for counsel's deficient performance, there is a reasonable probability that the result of the proceeding would have been different. *People v. Houston*, 226 Ill. 2d 135, 144 (2007). A reasonable probability that the result would have been different is a probability sufficient to undermine confidence in the outcome. *Id.*

¶ 28 In demonstrating that his counsel's performance was deficient, a defendant must overcome a strong presumption that, under the circumstances, counsel's conduct might be

considered sound trial strategy. *Id.* Counsel is afforded wide latitude when making tactical decisions, and the law presumes that counsel will faithfully fulfill his role envisioned by the sixth amendment. *People v. Cunningham*, 376 Ill. App. 3d 298, 301 (2007). Hence, counsel's performance must fall " 'outside the wide range of professionally competent assistance' " considering all the circumstances. *Id.* (quoting *Strickland*, 466 U.S. at 690). Choices of trial strategy are virtually unchallengeable because such a choice " 'is a matter of professional judgment to which a review of counsel's competency does not extend.' " *Id.* (quoting *People v. Cundiff*, 322 Ill. App. 3d 426, 435 (2001)). Furthermore, trial strategy includes an attorney's choice of one theory of defense over another. *Id.* at 301-02.

¶ 29 In order to prevail on a claim of ineffective assistance of counsel, a defendant must satisfy both the performance and prejudice prongs of *Strickland*. However, in determining whether a defendant has received ineffective assistance of counsel, a reviewing court may review either prong first, and the court need not consider both prongs of the standard if the defendant fails to show one prong. *Id.* at 301.

¶ 30 The defendant first argues on appeal that defense counsel misapprehended the law in opening statement, failing to foresee the State's ability to amend the indictment. Further, the defendant contends that defense counsel's strategy was substandard, in that it allowed the admission of hearsay testimony by Officer Murray that bolstered Y.H.'s credibility, ultimately prejudicing the defendant and leading to his conviction.

¶ 31 The defendant's claim that Officer Murray's hearsay testimony left the jury with no choice but conviction is not supported by the record. The right to effective assistance of

counsel refers to " 'competent, not perfect, representation.' " *People v. West*, 187 Ill. 2d 418, 432 (1999) (quoting *People v. Stewart*, 104 Ill. 2d 463, 492 (1984)). Mistakes in trial strategy or tactics, or even in judgment, do not of themselves render the representation incompetent. *Id.* The only exception to this rule is when counsel's chosen trial strategy is so unsound that counsel entirely fails to conduct any meaningful adversarial testing of the State's case. *Id.* at 432-33.

¶ 32 Contrary to the defendant's position, our review of the record reveals that defense counsel's strategy cannot be deemed so unsound as to lead us to believe that he did not fulfill his constitutional obligation to provide meaningful adversarial testing of the State's case. Even absent a failure to object to Officer Murray's hearsay testimony regarding the defendant threatening Y.H. and also putting his fingers in her mouth, the defendant was not prejudiced as a result, as Officer Murray's statements were cumulative of Y.H.'s in-court testimony and out-of-court written statements. In light of the evidence, it is unlikely that the jury's verdict would have been different but for the admission of Officer Murray's testimony, as his testimony did not single-handedly establish these facts, as the defendant essentially contends. Instead, it is important to note that the jury could have relied on the testimony of other witnesses. Thus, the defendant's claim of ineffective assistance fails the *Strickland* test, as we do not believe the defendant has shown that there is reasonable probability that, but for defense counsel's failure to object to the inclusion of Officer Murray's hearsay statements or to adopt a different strategy, he would not have been found guilty of criminal sexual assault and domestic battery.

Instead, the evidence of defendant's guilt was overwhelming to support a guilty conviction.

¶ 33 Next, the defendant argues defense counsel was ineffective for failing to object to the admission of medical records of J.B., an alleged victim claiming the defendant raped her in September 2010. We find this argument to lack merit. Assuming *arguendo* that defense counsel was deficient in his performance regarding evidentiary rules, this court concludes the defendant was not prejudiced by the inclusion of the medical records, as we have already determined that overwhelming evidence established the defendant's guilt for criminal sexual assault.

¶ 34 Next, the defendant contends that the circuit court erred in refusing to grant an evidentiary hearing and in denying a posttrial motion because juror Quinn failed to truthfully answer questions during *voir dire.* In particular, the defendant argues that juror Quinn was untruthful in failing to reveal his relationship with Saline County State's Attorney Mike Henshaw; for failing to disclose that he was an appointed member on the Sheriff's Merit Commission; and in failing to reveal that his son-in-law was employed as a 9-1-1 dispatcher. The defendant argues that juror Quinn was "unnatural" in his response, which he contends raises suspicion as to his bias against the defendant.

¶ 35 According to the circuit court's April 27, 2012, order addressing this issue, the court found as follows:

> "This Court does not find that Juror Quinn testified falsely under oath during *voir dire,* and further finds that his political activities and presence on the

Merit Commission does not constitute any conflict with his duties as juror in this cause."

¶ 36 Of course the right to a jury guarantees to a criminal defendant a fair trial by a panel of impartial jurors. *People v. Kuntu*, 196 Ill. 2d 105, 126 (2001). Impartiality is a state of mind, or a mental attitude, and this is ascertained by the circuit court during the entire *voir dire* examination. *Id.* In any case in which a defendant alleges that he was deprived of a fair trial by a biased juror, the defendant has the burden to prove that a juror possessed a disqualifying state of mind. *Id.* at 127. The circuit court must determine the juror's disqualifying state of mind based on the evidence; mere suspicion of bias is not evidence. *Id.* The circuit court's determination will not be set aside on review unless it is against the manifest weight of the evidence. *Id.*

¶ 37 After a careful review of the record, we cannot say that the circuit court's determination is against the manifest weight of the evidence. The order shows that the court found that juror Quinn correctly answered the questions asked of him during *voir dire.* The *voir dire* questions were as follows:

"THE COURT: Do you know Ms. Walker, the assistant state's attorney?

PROSPECTIVE JUROR QUINN: No.

THE COURT: Do you have any business with the State's Attorney's Office, Mr. Henshaw's office?

PROSPECTIVE JUROR QUINN: No.

THE COURT: Do you have any friends or family that work for law enforcement anywhere, or for the State's Attorney's Office?

PROSPECTIVE JUROR QUINN: No, not that I know of."

¶ 38 The circuit court had the opportunity to observe juror Quinn's demeanor and evaluate his candor. The evidence amply supports the court's findings that juror Quinn did not falsely testify. In fact, when asked questions in which his answer was yes, in particular, whether he knew the defendant's sister, he answered that he did in fact know of her since he, too, lived in Harrisburg, Illinois. Based on the evidence, the circuit court determined that juror Quinn's service on the jury did not deny the defendant a fair and impartial trial. Thus, based on the evidence, we conclude that the circuit court's decision was not against the manifest weight of the evidence.

¶ 39 Next, the defendant contends that the State's closing argument contained error. During closing argument, the State made the following remarks to more clearly clarify Y.H.'s decision not to immediately tell medical personnel that she had been sexually assaulted:

> "WALKER: You're going to hear arguments I'm sure about why didn't [Y.H.] report the sexual assault at the hospital? Why do sexual assault victims delay years? It happens all the time."

The defendant contends that the State's remarks were improper, arguing that the assistant State's Attorney substituted her own opinion for sworn, admissible evidence. Citing *People v. Barraza*, 303 Ill. App. 3d 794, 796 (1999), where the court found reversible error when a prosecutor attempted to bolster the victim's credibility by eliciting sympathy through a personal story about a conversation with his 10-year-old daughter, the

defendant claims the State, here, attempted to bolster Y.H.'s credibility on evidence not presented at trial. We disagree.

¶ 40 Prosecutors are generally afforded wide latitude in the content of their closing arguments. *People v. Runge*, 234 Ill. 2d 68, 142 (2009). When reviewing claims of prosecutorial misconduct in closing argument, the court will consider the entire arguments of both parties, in order to place the remarks in context. *People v. Phillips*, 392 Ill. App. 3d 243, 275 (2009). For reversible error to take place, the remarks must have resulted in substantial prejudice, such that without the remarks, the verdict would have been different. *People v. Cisewski*, 118 Ill. 2d 163, 175 (1987). While a prosecutor's closing argument may not be based on facts not in evidence, a prosecutor is permitted to comment on evidence and any fair, reasonable inferences it yields. *People v. Sykes*, 2012 IL App (4th) 111110, ¶ 45.

¶ 41 Here, the State argued in closing argument that sexual assault victims are often reluctant to inform authorities when they have been sexually assaulted. The State attempted to normalize Y.H.'s conduct, a point heavily attacked by the defense, based on evidence presented at trial, making a reasonable inference based on the testimony of Dr. Donvito. We find that the prosecutorial conduct of which the defendant complains was proper given the evidence admitted by Dr. Donvito's testimony regarding how a victim's state of emotional shock could delay a victim from reporting a sexual assault, especially when injuries are not visible. Dr. Donvito testified:

> "It's been my experience in practicing emergency medicine that many battered individuals, both men and women, will report only the injuries that are

> obvious to the naked eye. *** And its been my experience that I would say probably one in three people don't report any other injuries, other than that which we can see obviously to the naked eye."

Moreover, any error was undoubtedly harmless given the brief comment by the State's Attorney during closing argument and the overall strength of the State's case against the defendant.

¶ 42 Lastly, the defendant argues that the circuit court erred in assessing eight fees, four $25 charges to the Violent Crime Victims Assistance Fund (725 ILCS 240/10 (West 2012)), and four $5 drug-court fees (55 ILCS 5/5-1101(f) (West 2012)), on the two counts of criminal sexual assault and two counts of domestic battery. We disagree.

¶ 43 The Second and Fourth Appellate Districts have addressed this issue in multiple cases. In particular, the Second and Fourth District courts have looked to the language of the statutes providing for their imposition to determine whether fees could be imposed more than once in a single case, ruling that a fine for each violation could be imposed on each count in a defendant's case. See *People v. Martino*, 2012 IL App (2d) 101244, ¶¶ 50, 54; see also *People v. Warren*, 2014 IL App (4th) 120721, ¶¶ 132, 137; *People v. Smith*, 2014 IL App (4th) 121118, ¶¶ 58, 65. Accordingly, we find the circuit court did not err in imposing multiple fines on all four counts against the defendant.

¶ 44 For the foregoing reasons, we affirm the circuit court's ruling.

¶ 45 Affirmed.