2016 IL App (2d) 140086-U
No. 2-14-0086
Order filed June 2, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of McHenry County.
Plaintiff-Appellee,	)	
v.	)	No. 12-CF-282
ROBERT SIGNORILE,	)	Honorable Sharon L. Prather,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices Zenoff and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: The prosecutor made two erroneous comments during closing argument; however, these comments did not deprive defendant of a fair trial, and trial counsel was therefore not ineffective for failing to preserve objections to the comments in question. We affirm.

¶ 2 Defendant, Robert Signorile, appeals his conviction for first-degree murder, arguing that he was denied a fair trial due to improper arguments by the prosecutor which: (1) lessened the State's burden of proof; (2) invoked sympathy for the victim and disparaged the defendant; and (3) offered facts not in evidence. Alternatively, defendant contends that his trial counsel was

ineffective for failing to preserve objections to the prosecutor's comments. For the following reasons, we affirm defendant's conviction.

¶ 3 I. BACKGROUND

¶ 4 On the afternoon of March 18, 2012, Huntley police officers and paramedics arrived at the home of Michelle Mathieu and defendant, Robert Signorile, in response to a 911 call. The call was placed by Bette Lemke at approximately 4:30 p.m. after her husband, Mike, received a call from defendant concerning his non-responsive girlfriend, Michelle. When police and paramedics arrived they found Michelle lying face down on the bedroom floor, unconscious but still breathing. Her body was covered in a number of bruises. When questioned at the house by Officer Dave Sander, defendant explained that he found Michelle on the floor at 5:00 a.m. and put ice on her head. He then went to Jewel at 7:00 a.m. to buy vodka and found Michelle still on the floor upon his return. When Sander asked why defendant had waited so long to call for help, defendant changed his story and claimed he had not found Michelle until later in the day. When asked about the bruises covering Michelle's body, defendant responded that Michelle was an alcoholic and she fell down a lot. Sander observed that defendant appeared intoxicated.

¶ 5 An autopsy was performed on March 26, 2012, by forensic pathologist Dr. Larry Blum. Blum concluded that Michelle's death was caused by blunt force trauma to her head, consistent with physical assault, and not consistent with an accidental fall. Defendant was charged by indictment with one count of first-degree murder. The State alleged that defendant repeatedly struck Michelle, knowing that such acts created a strong probability of death or great bodily harm, thereby causing Michelle's death.

¶ 6 At trial, it was established that Michelle was taken to the emergency room at Sherman Hospital and seen by Dr. Nicole Lavanway at 5:10 p.m. on March 18, 2012. Lavanway testified

that she observed bruising to Michelle's breasts, left hip, and arms. Michelle also had fresh fractures to her ribs and vertebra. Lavanway opined that these injuries had been caused by significant blunt force trauma consistent with physical assault; she did not believe that Michelle's injuries were caused by falling.

¶ 7 Dr. Christopher Cascino was called to treat Michelle at around 7:00 p.m. According to Cascino, Michelle was in a neurologic emergency due to her injuries. She suffered from a blown pupil caused by swelling of the brain stem, and a subdural hematoma with substantial bleeding which caused the right hemisphere of her brain to be pushed to the left side. This resulted in a loss of consciousness and seizures. Cascino removed the hematoma, but saw no reasonable expectation of meaningful recovery due to the extent of the injuries. Michelle's family decided to withdraw care and she died on March 26, 2012. Cascino opined that Michelle's death was caused by an acute subdural hematoma brought upon by blunt force trauma, consistent with physical assault. Cascino did not believe the injuries were the result of a seizure or other spontaneous injury like a simple fall, explaining that the force exuded from a fall would not have been great enough to cause the injuries Michelle suffered.

¶ 8 Mike and Bette Lemke had known defendant and Michelle for approximately five years before Michelle's death. Mike testified that he drove defendant to the hospital after paramedics took Michelle from the house because defendant was too intoxicated to drive himself. According to Mike, defendant was calling Michelle profane names and claiming that she must have had a seizure from drinking and falling, which caused her to hit her head. Defendant kept saying that he was going to be charged with a crime and he refused to enter the hospital. Defendant spent that evening at the Lemke's residence. The next morning, Mike heard defendant speaking with his three-year old granddaughter, Gia. Michelle was Gia's paternal

grandmother.[1] Defendant told Gia, "Remember that, honey, remember when you were at grandma and grandpa's and grandma was falling down? You're going to be grandpa's little witness aren't you?" Bette intervened and removed Gia.

¶ 9 The trial court allowed the State to present evidence of prior acts of domestic violence and hearsay regarding domestic violence by the defendant against Michelle. See 725 ILCS 5/115-7.4 (West 2012); 725 ILCS 5/115-10.2(a) (West 2012). Testimony from multiple witnesses revealed that Michelle and defendant's relationship was riddled with past instances of domestic violence.

¶ 10 Bette Lemke testified that sometime in 2009 or 2010, Michelle had a big "egg" on her head and black eyes. When Bette asked Michelle what had happened, defendant interjected and said, "Oh, dumb ass was walking through the backyard and tripped over the hose and hit her head on the sprinkler." Michelle did not say anything. Bette testified to another time that she saw Michelle with a huge bruise going from her knee up to her hip, and she again asked Michelle what had happened. Defendant again interjected and said that Michelle had another accident. Michelle looked at defendant, then toward Bette, but she did not say anything.

¶ 11 Huntley police officer Brett Kinney testified that he had responded to a domestic violence call involving defendant and Michelle on August 21, 2011. According to Kinney, defendant answered the door smelling of alcohol. Defendant denied hitting Michelle and claimed that Michelle suffered from seizures, which caused her to fall. Kinney found Michelle locked in her bedroom with bruises and wounds on her chest, arms, and back. Kinney testified that Michelle did not seem to be suffering from a seizure and she was not struggling to walk. Defendant was arrested for domestic violence and Michelle was taken to the hospital to be evaluated. Defendant

[1] Mike's daughter, Mariana, and Michelle's son, Michael, are Gia's parents.

subsequently pleaded guilty to the reduced charge of battery. Bette Lemke testified that, following the incident, defendant denied hitting Michelle and claimed that Michelle had been pulled down by her dog when she was drinking. Michelle told Bette, however, that defendant had hit her and she had him arrested.

¶ 12 Michelle's friend, Jeffrey Nickerson, testified to several incidents involving domestic violence between defendant and Michelle. Nickerson testified that in spring 2011, he met Michelle at a hotel where she had been staying and took her to a storage unit to retrieve some of her personal items. While driving to the storage facility, defendant drove head-on at Nickerson's car. Defendant forced Nickerson off the road, then exited his vehicle and stormed toward Nickerson's vehicle. Defendant began yelling at Michelle that he would not allow her to remove anything from the storage unit. Nickerson called 911 and officers arrived at the storage unit. No arrests were made.

¶ 13 Nickerson further testified that in August 2011, Michelle called him saying that she had locked herself in her bedroom for three days because she was scared that defendant was going to kill her. Defendant could be heard on the phone screaming in the background for Michelle to let him into the room. Shortly thereafter, Michelle called Nickerson to tell him that defendant had thrown her against a wall, injuring her back and ribs. Nickerson drove to Michelle's residence to take her back to his home. Nickerson testified that he saw a large bruise on Michelle's head and he noticed that she had trouble walking and lifting her purse.

¶ 14 Anne Peeples, a friend of Michelle's, testified that she had never seen Michelle fall down while drinking or otherwise. Peeples testified that she spoke with Michelle after defendant was arrested for domestic violence in 2011, and Michelle told her that she was considering dropping

the charges against defendant for fear that he may kill her. Peeples attempted talking Michelle into going to a shelter or moving in with her.

¶ 15 Another of Michelle's friends, Judy Ballering, testified that she had spoken with Michelle in 2011 regarding stitches that Michelle needed in her head. Michelle initially told Ballering that the dog had pulled her over, but later stated that the injury was caused by defendant. Ballering further testified that, while on the phone with Michelle, she heard defendant call Michelle a profane name. One week before her death, Michelle seemed scared and she told Ballering that her relationship with defendant had become "really bad." Ballering testified that defendant once told her that Michelle had a seizure, but she had never known Michelle to suffer from seizures.

¶ 16 Kathryn Killebrew testified that she met Michelle on the walking path in their residential community in August 2011. Killebrew told Michelle that she worked at Turning Point, a domestic violence abuse center. In December 2011, Killebrew encountered Michelle in the parking lot of a grocery store and saw that Michelle's face was bruised and she had a black eye. Michelle did not respond when Killebrew asked her what had happened. Killebrew advised Michelle that it appeared she was in an abusive relationship. Michelle told Killebrew that she could not leave defendant.

¶ 17 Charles Mathieu, Michelle's brother, testified to a conversation he had with Michelle on August 9, 2011, in which Michelle told him that defendant was becoming more violent toward her. A few days after this conversation, Charles noticed bruises on Michelle's face. She was wearing long sleeves and pants on a hot summer day. Michelle told Charles that defendant had hit her. Charles saw his sister again on January 3, 2012, and again noticed that she had bruises on her face and neck. Michelle again told Charles that defendant had been hitting her.

¶ 18 The State introduced a series of videos obtained from defendant's cell phone. The videos were dated from February 3 through March 9, 2012. In one of the videos, defendant can be heard telling Michelle that she was a "Stumblina," and that her clumsiness had caused her bruising. Michelle can be heard on another video telling defendant that she was bruised because defendant "beat the shit out of her."

¶ 19 Following the denial of the defense's motion for a directed verdict and admonishments from the trial court, defendant stated his choice not to testify. The defense did not present any witnesses. After closing arguments and instructions from the court, the jury found defendant guilty. The defense filed a motion for a new trial and a motion for judgment notwithstanding the verdict. The trial court denied both motions. On January 24, 2014, the trial court sentenced defendant to serve 40 years in prison. Defendant timely appeals.

¶ 20 II. ANALYSIS

¶ 21 Defendant contends that he was denied a fair trial due to improper comments by the prosecutor during closing argument. Specifically, defendant argues that the State made comments which: (1) lessened the State's burden of proof; (2) invoked sympathy for the victim and disparaged the defendant; and (3) offered facts not in evidence. In the alternative, defendant contends that his trial counsel was ineffective for failing to preserve objections to the comments in question. As we will explain, we agree with defendant that the prosecution made two erroneous comments. However, we are not persuaded that a new trial is warranted.

¶ 22 Prosecutors are given wide latitude during closing argument and may comment on the evidence and fair and reasonable inferences arising from the evidence. *People v. Glasper*, 234 Ill. 2d. 173, 204 (2009). However, it is improper for prosecutors to argue assumptions or facts not contained in the record. *Id.* Furthermore, a prosecutor's comments during closing argument

must serve a purpose beyond inflaming the emotions of the jurors and prejudicing them against the defendant. *People v. Tiller*, 94 Ill. 2d 303, 321 (1982). "Closing arguments must be reviewed in their entirety, and the challenged remarks must be viewed in context." *People v. Caffey*, 205 Ill. 2d. 52, 131 (2001). A new trial is warranted only if the prosecutor's improper remarks constituted a "material factor" in a defendant's conviction. *People v. Wheeler*, 226 Ill. 2d. 92, 123 (2007). "If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Id*. Whether a prosecutor's statements during closing argument were so egregious that a new trial is warranted is a legal issue that we review *de novo*. *People v. Beltran*, 2011 IL App (2d) 090856, ¶ 59.

¶ 23 We first note defendant's concession that he failed to object to the comments in question during trial or in a post-trial motion. Both a trial objection and a written post-trial motion raising the issue are required to preserve an issue for appellate review. *People v. Naylor*, 229 Ill. 2d. 584, 592 (2008). The plain-error doctrine allows a reviewing court to reach a forfeited error affecting substantial rights in two circumstances: (1) where the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence, the reviewing court may consider the forfeited error to preclude an argument that an innocent person was wrongly convicted; or (2) where the error is so serious that the defendant was denied a substantial right and thus a fair trial, the reviewing court may consider the forfeited error to preserve the integrity of the judicial process. *People v. Cosby*, 231 Ill. 2d 262, 272 (2008) (citing *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005)). "The first step of plain-error review is determining whether any error occurred." *People v. Thompson*, 238 Ill. 2d 598, 613 (2010).

With these principles in mind, we will begin by determining whether the comments in question constituted error.

¶ 24 Defendant first takes issue with what he deems to be improper comments that lessened the State's burden of proof. This pertains to the following remarks, which were made after the prosecutor summarized the State's evidence against defendant and discussed the trial court's first-degree murder issues instruction:

> "To the (sic) sustain the charge of first degree murder, the State must prove the following propositions. First proposition, [defendant] performed the acts which caused the death of [Michelle]; and, second proposition, that when defendant did so, he knew that his acts created a strong probability of death or great bodily harm to [Michelle].
>
> If you find from your consideration of all of the evidence that each one of these propositions has been proved beyond a reasonable doubt, you should find the defendant guilty. If you find from your consideration of all the evidence that any one of these propositions has not been proved beyond a reasonable doubt, you should find the defendant not guilty.
>
> That's it. That's all we have to prove. He knew that his acts created a strong probability of death or great bodily harm to Michelle Mathieu. We don't have to prove that he set out to kill her. We don't have to prove that he planned to kill her. We don't have to prove that when he was hitting her, that he wanted to kill her. We don't have to prove that when he was hitting her he wanted to create bodily harm. We don't have to prove intent to create bodily harm.

> All we have to prove, ladies and gentlemen, is that he knew that his acts created a strong probability of great bodily harm to Michelle. That's it. That's all we have to prove. And we've met it."

¶ 25 After explaining that it was not necessary for the jury to find that defendant's acts were the sole and immediate cause of Michelle's death (see Illinois Pattern Jury Instructions, Criminal, No. 7.15 (4th ed. 2000)), the prosecutor remarked, "[e]ven less we have to prove." The prosecutor proceeded to address the notion that the evidence was insufficient because the State had not presented an eyewitness or video evidence. The prosecutor noted, however, that such evidence was not necessary for the state to obtain a conviction because the jury could consider circumstantial evidence to draw a reasonable inference of other facts which tended to establish the defendant's guilt. See *People v. Hinton*, 402 Ill. App. 3d 181, 185 (2010).

¶ 26 Defendant argues that these comments systematically minimized the State's burden of proof by repeatedly telling the jury what the State did not have to prove. We disagree. In *People v. Moore*, 358 Ill. App. 3d 683, 693 (2005), the defendant argued that the prosecutor improperly minimized its burden of proving intent by inverting the elements of aggravated battery with a firearm. In holding that this did not constitute error, the appellate court observed that the prosecutor had nonetheless discussed every element of the offense. *Id*. Here, the prosecutor correctly reminded the jury that they should not find defendant guilty unless both of the propositions contained in the first-degree murder issues instruction were proved beyond a reasonable doubt. In his ensuing comments, the prosecutor did not misstate the law or omit discussion of any necessary elements. Thus, similar to *Moore*, we do not believe that the prosecutor in this case erroneously misstated the State's burden of proof.

¶ 27 Defendant next argues that the prosecutor improperly invoked sympathy for the victim and disparaged the defendant when he made the following comments:

> "Michelle Mathieu: Somebody you got to know this week, somebody you get to hear a lot about this week, somebody – you heard from her friends, her family. This is somebody that opened up her house, opened up her life, opened up her love to many people. She was a neighbor, she was a friend, she was a sister, she was a mother, she was a grandmother, somebody who gave a lot of love to a lot of people.
>
> Ladies and gentlemen, her mistake, her fatal mistake, was the fact that she gave all of that love to this belligerent alcoholic right here."

¶ 28 The prosecutor then played an unidentified audiotape of defendant's voice and commented:

> "[Michelle] loved him. For whatever reason, she unconditionally loved that. But what did he do with that love? You heard all week what he did with that love. He controlled her. He manipulated her. He beat her time and again. * * * He killed a neighbor, he killed a friend, he killed a sister. He murdered a mother and he murdered a grandmother. He turned that woman right there into page nine of a pathologist's autopsy report."

¶ 29 Defendant argues that it was improper for the prosecutor to note that Michelle left a surviving family, asserting that these comments were made for the sole purpose of inflaming the passions or sympathies of the jury. Defendant supports this argument by looking to *People v. Blue*, 189 Ill. 2d 99, 129 (2000), where our supreme court held, "[p]roof that the victim of a crime is survived by a family is irrelevant to the guilt or innocence of a criminal defendant. [Citation]. It can only serve to prejudice a defendant in the eyes of the jury. [Citation].

Therefore, * * * evidence or argument dwelling on the victim's family, or relating defendant's punishment to the existence of a family, is 'inflammatory and improper' and constitutes reversible error."

¶ 30 In *Blue*, the State elicited testimony from the victim's father regarding his age, his lengthy marriage to the victim's mother, his close living proximity to his son, the fact that his son and granddaughter shared a common birthday, and the events that took place in his life following the news of his son's death. The court found that this type of evidence served only to "highlight the poignancy" of the family's loss, and to "suggest to the jury that the family's pain could be alleviated by a guilty verdict." *Blue*, 189 Ill. 2d at 131. The jury's knowledge of these facts heightened the impact of the State's emotional closing argument, and the errors could not be undone through the jury instructions or court admonishments. The court further concluded that it was improper for the prosecutor to suggest during closing argument that the jury's verdict should be viewed as a vehicle to vindicate the victim's family. *Id*. at 131-132.

¶ 31 Here, unlike in *Blue*, Michelle's family members were called to testify only to their personal knowledge regarding the relationship between Michelle and defendant. The prosecutor's comments during closing argument did not suggest that the jury should return a guilty verdict as a means of alleviating their pain; rather, the prosecutor spoke to the evidence that defendant exploited Michelle's loving nature by controlling, manipulating and beating her. We note that "incidental evidence" of a victim's family is "unavoidable" in most trials because murder victims invariably leave behind family members. *Blue*, 189 Ill. 2d at 131 (quoting *People v. Free,* 94 Ill. 2d 378, 415 (1983)). While we caution prosecutors against referencing a murder victim's family members for improper purposes, we do not believe that the prosecutor in this case dwelled on Michelle's family members or related defendant's punishment to the

existence of her family members. See *Blue*, 189 Ill. 2d at 129. We therefore decline to hold that these comments constituted error.

¶ 32 Defendant also argues that the prosecution improperly used Michelle's own words to accuse him of her murder. Prior to playing a recording of defendant and Michelle, the prosecutor commented to the jury, "[i]f you have any questions about what caused those bruises that night or any other night, I think Michelle said it best." The prosecutor proceeded to play the recording of Michelle saying that defendant had "beat the shit of [her]." Defendant asserts that this was misleading, because the recording was not made on the date of the offense. We disagree. The audio and video files were properly admitted into evidence pursuant to section 115-7.4 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.4 (West 2012)), which permits the use of a prior instance of domestic violence for its "bearing on any matter to which it is relevant." Officer Kevin Keane, of the Huntley Police Department, testified to finding each of the files on defendant's cell phone, and the prosecution played each file for the jury by referencing the date and time that it was created. The prosecutor did not misstate the evidence by arguing that the recording in question was useful in determining what caused Michelle's bruises on "that night or any other night," and we therefore find no error in the prosecutor's use of the recording.

¶ 33 Defendant next challenges comments made during the State's rebuttal argument, where the prosecutor remarked that Michelle "didn't have enough faith in herself to believe that anybody other than a drunken bully could love her." The prosecutor went on to tell the jury, "[t]his was not an unfortunate happenstance. This was a crime. This was murder. And we're going to ask that you hold that horror of a human being responsible for what he did." Defendant argues that it was improper for the prosecutor to characterize him as a "drunken bully" and a "horror of a human being."

¶ 34 We note that a prosecutor may properly comment on the evidence presented or the reasonable inferences to be drawn from that evidence. *People v. Cosmano*, 2011 IL App (1st) 101196, ¶ 35. Here, there was ample evidence that defendant and Michelle were heavy drinkers, and that defendant had a history of physically abusing Michelle. Thus, we find no error in the prosecutor's "drunken bully" comment. See *People v. Perry*, 224 Ill. 2d 312, 350 (2007) (finding no error where the prosecutor called the defendant a "conman," as the evidence showed that defendant had been deliberately deceitful); *People v. Jackson*, 391 Ill. App. 3d 11, 39 (2009) (finding no error where the prosecutor called the defendant a "scam artist," as the term was "utilized to describe the defendant as what the prosecution hoped the evidence would demonstrate").

¶ 35 However, it is improper to characterize a defendant as "evil," or to imply that the jury has to choose between "good and evil." *People v. Johnson*, 208 Ill. 2d 53, 80 (2003). In *People v. Nicolas*, 218 Ill. 2d 104 (2005), the defendant was accused of killing his mother because she demanded that he get a job and pay rent. During closing argument, the prosecution discussed evidence of what the defendant had done before and after committing the crime: he got a gun, hunted his mother in the street, shot her multiple times, went home to bed, and later asked who would braid his hair after the police informed him that his mother was dead. The prosecutor intermittently stopped while describing these actions and remarked, "pure evil." *Nicolas*, 218 Ill. 2d. at 113. Our supreme court held that the prosecutor's "pure evil" references were permissible because they were directed to the specific actions of the defendant in order to preface the argument that the facts proved the defendant guilty. *Id*. at 122.

¶ 36 Here, by asking the jury to convict "that horror of a human being," the prosecutor went beyond merely commenting unfavorably on the effects of the alleged crime. See *Nicolas*, 218

Ill. 2d. at 121-22. Moreover, we have found nothing in the evidence to suggest that the defendant was ever referenced as a "horror of a human being" by anyone other than the prosecutor. See *People v. Gutierrez*, 402 Ill. App. 3d 866, 898 (2010) (holding that it was permissible for the prosecutor to call defendant a "monster" because the defendant had called himself a "monster" in a note to his former lover and in a videotaped statement). We therefore conclude that the prosecutor erred by characterizing defendant as "that horror of a human being."

¶ 37 Defendant's final argument is that the prosecutor improperly commented on facts not in evidence when he made the following comments about domestic violence victims and patterns of abuse:

> "There's a concept in these kinds of cases. It's called cycle of violence. All right? There's an abuse phase; there's a honeymoon period, such as flowers, such as making dinner together, such as trying to ply somebody with alcohol; then there's building of attention [sic] phase; and then there's an abuse phase. And it's wash and repeat. And you can see on March 17th of 2012, them go through that process on an accelerated basis. He comes back with flowers. They make dinner. Then he starts drinking. The next morning Michelle's waking up, blood clotting her head."

¶ 38 Defendant points out that, while there was evidence that he bought alcohol and flowers on March 17, there was no testimony to properly place that evidence in the context of a "cycle of violence." Defendant argues that such statements should only have come from an expert in the field. We agree, and we therefore hold that these remarks were erroneous. See *People v. Dukes*, 12 Ill. 2d 334, 341 (1957) ("A prosecutor should never inject into his argument evidence not introduced at the trial."); *Johnson*, 208 Ill. 2d at 115 ("It is improper to argue assumptions or facts not based upon the evidence in the record.").

¶ 39 The State argues that the prosecutor's "cycle of violence" comments were proper, once again directing our attention to the holding in *Moore*. There, the prosecutor stated that "domestic violence is about power and control," and later commented that the defendant shot the victim because she "got out of line." *People v. Moore*, 358 Ill. App. 3d 683, 694 (2005). The appellate court held that, although a prosecutor may not express his personal opinion or argue facts that are not in evidence, he may properly offer an opinion based on the record. *Id*. The court found no reversible error, noting that it could be properly inferred from the evidence that defendant was threatening the victim with violence to assert control over her interactions with other men. *Id*.

¶ 40 We find the holding in *Moore* incongruous with the comments made by the prosecutor in the present case. Here, the prosecution introduced evidence of defendant's prior conviction for domestic battery and testimony from numerous witnesses concerning instances of domestic violence perpetrated by defendant. However, at no time did the prosecution place the behavior of the defendant into the context of a "cycle of violence." The term "cycle of violence" is a clinical term that requires testimony regarding the scientific basis for its introduction as evidence. See *People v. Williams*, 332 Ill. App. 3d. 693, 698 (2002) (finding an abuse of discretion in allowing a police officer to testify to the concept of a "cycle of violence" based on the officer's domestic violence training when State failed to offer evidence that the concept had been generally accepted in the scientific community). Here, the prosecution erred by discussing the concept of a "cycle of violence" without having presented any expert testimony on the subject.

¶ 41 Having determined that the prosecution erred by characterizing defendant as "that horror of a human being" and by discussing the concept of a "cycle of violence," we must now determine whether the comments constituted plain error. Regarding the first prong of plain-error

review, we agree with the State that the evidence in this case was not closely balanced. See *Herron*, 215 Ill. 2d at 178-79. The evidence against defendant may have been largely circumstantial, but it was nonetheless overwhelming. See *People v. Patterson*, 217 Ill. 2d 407, 434-435 (2005) (holding that a conviction may be upheld on overwhelming circumstantial evidence). Defense counsel challenged the sufficiency of the state's evidence during closing argument, asserting that there was a lack of evidence establishing that Michelle's wounds had been inflicted by defendant. However, the medical examiners determined that Michelle's death was caused by a physical assault, and the State presented compelling evidence that defendant had a history of physically abusing Michelle. Furthermore, the fact that Michelle had no alcohol in her blood at the time of her death contradicted defense counsel's inference that she was prone to falling due to her heavy drinking. Finally, given the evidence of defendant's statements and actions on the day that Michelle was found unconscious in the bedroom that she shared with defendant, we reject defendant's argument that this was a closely balanced case.

¶ 42 Turning to the second prong of plain-error review, we also reject defendant's argument that he was deprived of his right to a fair trial. See *Herron*, 215 Ill. 2d at 178-79. We note that we do not condone the prosecutor's erroneous comments, and we are confounded as to why he would have resorted to such tactics given the State's overwhelming evidence. However, we do not believe that the comments were substantially prejudicial to defendant such that they constituted a material factor in his conviction, and we do not believe they affected the fairness of defendant's trial. See *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 43. Moreover, we believe that any resulting prejudice was cured when the trial court admonished the jury that closing arguments are not evidence, and that neither sympathy nor prejudice should have any influence

on their deliberations. See *People v. Simms*, 192 Ill. 2d 348, 396 (2000). We therefore hold that the prosecutor's erroneous comments do not satisfy the second prong of the plain-error doctrine.

¶ 43 Finally, we reject defendant's contention that his trial counsel was ineffective for failing to object to the prosecutor's erroneous remarks or preserve them in a post-trial motion. A challenge to a guilty verdict alleging ineffective assistance of counsel is subject to the two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). Under *Strickland*, a defendant must show that: (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's performance was prejudicial, meaning "there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland*, 466 U.S. at 688, 694. "The failure to satisfy either the deficiency prong or the prejudice prong of the *Strickland* test precludes a finding of ineffective assistance of counsel." *People v. Enis*, 194 Ill. 2d 361, 377 (2000). Courts may therefore resolve ineffectiveness claims by reaching only the prejudice component of *Strickland*, "for lack of prejudice renders irrelevant the issue of counsel's performance." *People v. Coleman*, 183 Ill. 2d 366, 397-98 (1998). As explained above, defendant cannot show a reasonable probability that the result of his trial would have been different if his trial counsel had preserved objections to the prosecutor's erroneous comments. Therefore, defendant cannot show that his trial counsel was ineffective.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the judgment of the circuit court of McHenry County.

¶ 49 Affirmed.