2016 IL App (3d) 140013-U

Order filed February 18, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 10th Judicial Circuit, Peoria County, Illinois,
Plaintiff-Appellee,	)	
	)	Appeal No. 3-14-0013
v.	)	Circuit No. 12-CF-826
	)	
LAMONT STUCKEY,	)	Honorable Thomas A. Keith, Judge, Presiding.
Defendant-Appellant.	)	

JUSTICE MCDADE delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty of aggravated battery beyond a reasonable doubt. In addition, defendant was not denied a fair trial.

¶ 2 A jury convicted defendant, Lamont Stuckey, of aggravated battery causing great bodily harm. Defendant appeals, contending the State failed to prove his guilt beyond a reasonable doubt. Alternatively, defendant argues he is entitled to a new trial because the circuit court failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). If the alleged Rule 431(b) error alone is insufficient to warrant a new trial, defendant argues he was cumulatively

denied a fair trial when: (1) the trial court erred by allowing the State to present a 911 call recording; (2) the trial court erred by allowing the State to present evidence of other crimes or bad acts; and (3) the prosecutor made improper statements in his closing and rebuttal arguments. We affirm.

¶ 3 FACTS

¶ 4 The State charged defendant by indictment with aggravated battery alleging in count I defendant struck his three-month old son, T.V., causing him great bodily harm (720 ILCS 5/12-3.05(b)(1) (West 2012)) or count II bodily harm (720 ILCS 5/12-3.05(b)(2) (West 2012)). Initially, the State also charged defendant with domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)) against T.V.'s mother, Tavionne V., but the State dropped that charge prior to trial.

¶ 5 During jury selection, the trial court instructed the entire jury pool of the Rule 431(b) principles. When individually questioning the prospective jurors, four of the jurors selected to sit on the jury were not specifically asked if they understood and accepted that defendant was not required to present evidence or testify. Defense counsel did not raise an objection to the trial court's failure to ask the four jurors those questions.

¶ 6 Tavionne's sister, Taneira V., testified for the State. At the time of the offense, Taneira lived with Tavionne and T.V. and defendant stayed at their home occasionally. The day of the offense, Tavionne and their other sister, Tatianna, left the home around 3 p.m. At first, Taneira planned to stay at the residence and watch T.V. However, Taneira left to work out at the gym after defendant told her he wanted to watch his son to show that he could take responsibility for his care.

¶ 7 About an hour after Taneira left, defendant sent her a text message telling her, "I don't know what to do with the baby. The baby won't stop crying. Like come get your baby, come get

your nephew, like, shut this baby up or I'm going to kill this baby, like, I don't know what to do, like, where are you at?" Later, defendant told Taneira that he would leave T.V. by himself if she did not come home. Taneira did not take defendant's threats seriously because defendant "always" said that he wished T.V. was dead when he could not stop him from crying.

¶ 8 When Taneira finished her work out, she returned home. From outside the residence Taneira heard a thumping noise and Tavionne loudly yelling for someone to "get off" of her and "[l]ook at my baby." Taneira ran into the house, opened the door, and observed defendant and Tavionne engaged in a physical altercation with defendant pinning Tavionne against the wall. Taneira also observed T.V. lying in a bouncy seat. When defendant saw Taneira enter the apartment, he ran out the door.

¶ 9 After defendant ran from the apartment, Taneira observed scratches on Tavionne's face and noticed her lip was swelling. Taneira also observed T.V. and noticed hand and thumb marks on T.V.'s hips and face. T.V.'s ears were also swollen. When Taneira picked T.V. up from the bouncer he began screaming. Taneira then called 911.

¶ 10 The day before Taneira testified at defendant's trial, the State presented the 911 recording to the jury. Defense counsel had moved to suppress the recording arguing that it contained hearsay and was highly prejudicial. However, the trial court denied the motion. During the call, the operator instructed Taneira to focus on his questions because she was crying and the operator was having difficulty understanding her. Taneira told the operator that defendant "abused" T.V. and that T.V. had "bruises everywhere." Taneira also told the operator that T.V. was not acting like himself, was conscious, was not bleeding, and his face was swollen. When the operator asked Taneira if the "person that did this" was still present, Taneira mentioned defendant by

name. Taneira told the operator that defendant was on his way to the Lexington Hills apartment complex across the street from her residence.

¶ 11 Officer Morris Franklin was dispatched to the residence in response to Taneira's 911 call. Franklin knew defendant because defendant was on the Lexington Hills apartment complex trespass list. On his way to the residence, Franklin spotted defendant outside the Lexington Hills apartment complex. When defendant saw Franklin, he ran into the building. When Franklin found defendant, he placed him under arrest for trespassing and took him to Taneira and Tavionne's house for identification.

¶ 12 When they arrived at the house, Franklin observed that Tavionne's face had scratches, was swollen, and bloody. Another officer took photographs of Tavionne's injuries which were admitted into evidence and presented to the jury. Franklin asked Tavionne who hurt her. After sustaining defense counsel's hearsay objection, the trial court instructed Franklin to continue without repeating Tavionne's response. Franklin then said, "I then shined my light in the back [of the patrol car], and she said, [defendant]." The trial court sustained defense counsel's second hearsay objection.

¶ 13 Franklin drove defendant to the police station and told defendant that he was "investigating a domestic and a child abuse." According to Franklin, defendant began explaining the events from earlier in the day. Defendant explained that he had been home sick and T.V. had been injured when he fell from a bed—which the record suggests was a mattress on the floor—while defendant was in another room. Defendant denied hitting Tavionne.

¶ 14 When defendant arrived at the police station, he was interviewed by Detective Roberto Vasquez. Defendant explained to Vasquez that on the day of the incident, he had come home around 6 a.m., did not feel well, and slept intermittently throughout the morning. Defendant

believed Tavionne's sister was watching T.V. that day, but at some point, defendant woke up and T.V. was in bed with him. Defendant went downstairs for food and when he returned, T.V. had fallen from the bed and was lying on the floor.

¶ 15 The following night, Vasquez interviewed defendant again. Vasquez showed defendant photos of T.V.'s injuries. The photographs caused defendant to cry. Defendant explained that when he woke up the previous day he had a headache and T.V. had been crying. He then "grabbed [T.V.] by the jaw area and held his face" and told the infant to stop crying. T.V. did not stop crying and defendant grabbed him by the legs and spanked him. When Tavionne came home, defendant told her T.V. had fallen from the bed. At the time, Tavionne was holding T.V. and she attempted to swing at defendant with her free hand. Defendant grabbed her hand and Tavionne swung her other hand, dropping T.V. The two continued to fight and fell on top of T.V.

¶ 16 Following the interview, defendant agreed to give a video-recorded statement. The video was admitted and played for the jurors without objection. In the video, defendant admitted he had grabbed T.V.'s face and spanked his buttocks. Using his hands, defendant demonstrated both actions. Defendant explained that he had grabbed T.V. too hard and should not have "popped" him. Defendant still claimed that T.V. had fallen from the bed, Tavionne dropped him, and she and defendant fell on top of T.V. when they fought. Vasquez left the interview room and defendant stated he "didn't mean to pop [T.V.] that hard."

¶ 17 James Szudera, an attending emergency room physician, treated T.V. on the day of his injuries. He observed swelling, abrasions, and bruising on T.V.'s forehead and cheek, as well as bruising on his buttocks. According to Szudera, a CT scan of T.V.'s head showed a potential skull fracture and a small brain bleed. Szudera learned the brain bleed had been present within

24 to 48 hours from the time of the CT scan. Within a reasonable degree of medical certainty, Szudera opined that the degree of bruising and bleeding on T.V.'s brain would be consistent with nonaccidental trauma. Szudera also believed that T.V.'s injuries were consistent with those having been inflicted by another person. Szudera agreed that a piece of machinery, a vehicle, or an animal could have theoretically caused a brain bleed or a head contusion, but T.V.'s injuries were not consistent with any of those causes.

¶ 18 Penelope Sandiford, a physician at the University of Illinois College of Medicine, treated T.V. in the intensive care unit. Sandiford's primary concern in treating T.V. was whether the bleeding in his brain would expand and create any further alteration in his mental status. Sandiford believed, within a reasonable degree of medical certainty, the injuries T.V. sustained were consistent with nonaccidental trauma because "usually those types of bleeds require a significant acceleration/deceleration movement of the brain within the skull cavity." The "violent movement backwards and forwards" required to create the type of bleed T.V., a small baby, had was consistent with a "non-accident."

¶ 19 According to Sandiford, the type of acceleration and deceleration required to cause T.V.'s injuries could come from a "really bad car accident" or from a fall higher than a fall off of a bed, a fall "maybe greater than 10 feet or so." The bruising on T.V.'s face plus the fact that he had a brain bleed suggested to Sandiford that nonaccidental trauma caused T.V.'s injuries.

¶ 20 Channing Petrak, the medical director at the Pediatric Resource Center in Peoria, testified that she reviewed T.V.'s medical chart and conducted a full physical examination of his body. Her exam revealed "significant bruising on multiple areas of [T.V.'s] body," including "both" sides of his face, chest, abdomen, left ear, lower abdomen, both legs, and on his "entire

buttocks." She observed 14 bruises in total. Petrak believed that "in a nonmobile infant that would be highly suspicious for abuse."

¶ 21 Petrak explained that the CT scan of T.V.'s head showed a subdural hematoma, or a brain bleed, on the left side of his head. According to Petrak, a subdural hematoma in an infant of three months can affect future cognitive reasoning or development. Petrak believed within a reasonable degree of medical certainty that T.V.'s injuries were inflicted and consistent with abusive head trauma and child abuse. She added that the sustained injuries were not consistent with a fall from the bed. To cause the brain bleed, she explained, sudden acceleration and deceleration, usually shaking or impact, is necessary. Petrak noted that nothing on the CT scan indicated a hard impact to the skull or scalp. She believed grabbing T.V. by the jaw alone would not cause a brain bleed and might only if "well beyond normal" shaking was added. Petrak also believed the mother falling on top of the child would not cause the brain bleed. Petrak noted that defendant provided no explanation that would have explained T.V.'s subdural hematoma.

¶ 22 During the State's closing argument, the prosecutor described defendant as "this so-called father." Later in his argument, the prosecutor referred to defendant as "Father of the year." The prosecutor also argued that defendant had come home at 6 a.m. "hungover and God knows what," and that the jurors should "use [their] imagination on why" defendant came home at that hour. The prosecutor referred to Taneira's 911 telephone call noting the tone she showed "wasn't acting *** wasn't faking it," and that she "tells you right on the 911 call who did it." The prosecutor reminded the jurors of Tavionne's injuries then, remarked that defendant was the "only animal here."

¶ 23 The jury found defendant guilty of both counts (I and II) and the trial court entered judgments of conviction for both.

¶ 24 Defendant filed a *pro se* motion for new trial arguing ineffective assistance of counsel. The court appointed an attorney to represent defendant. Appointed counsel filed a supplemental posttrial motion alleging numerous errors, including defense counsel's failure to object to the 911 telephone call recording, as well as cumulative error.

¶ 25 After considering the supplemental motion, the trial court found that trial counsel had not rendered ineffective assistance noting the very strong evidence against defendant. The trial court and the parties agreed a judgment of conviction should have been entered only for the count I charge of aggravated battery causing great bodily harm (720 ILCS 5/12-3.05(b)(1) (West 2012)). The trial court sentenced defendant to 22 years' imprisonment.

¶ 26 ANALYSIS

¶ 27 On appeal, defendant argues the State failed to prove his guilt beyond a reasonable doubt. In addition, defendant contends the trial court committed reversible error when it failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Alternatively, defendant argues the Rule 431(b) error, along with two evidentiary errors (admission of 911 recording and other-crimes evidence) and improper comments during closing arguments, cumulatively deprived him of a fair trial.

¶ 28 Upon review, we find the evidence sufficient to prove defendant guilty beyond a reasonable doubt. We also reject defendant's two claims of evidentiary error. In addition, while we find the trial court failed to comply with Rule 431(b) and certain comments during closing arguments were improper, we find that these two errors, when viewed together, do not amount to cumulative error.

¶ 29 I. Sufficiency of the Evidence

¶ 30 First, we consider whether the evidence at trial proved beyond a reasonable doubt that defendant committed aggravated battery causing great bodily harm. In reviewing a challenge to the sufficiency of the evidence, the question is 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 crime charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In doing so, we are mindful that "it is for the jury to weigh the credibility of the witnesses and to resolve conflicts or inconsistencies in their testimony" (*People v. Frieberg*, 147 Ill. 2d 326, 360 (1992)) and it is not the function of this court to retry the defendant (*People v. Givens*, 237 Ill. 2d 311, 334 (2010)). When a challenge to the sufficiency of the evidence is presented, all reasonable inferences from the record are drawn in favor of the prosecution. *Id.* We find the evidence viewed in the light most favorable to the prosecution supports the jury's verdict.

¶ 31 A person 18 or older commits aggravated battery when he knowingly and without legal justification causes great bodily harm to a child under the age of 13. 720 ILCS 5/12-3.05(b)(1) (West 2012). In this case, defendant concedes a rational trier of fact could conclude he caused T.V.'s injuries, but argues the State failed to prove his guilt beyond a reasonable doubt because the State failed to prove he acted *knowingly* as to the result of his conduct.

¶ 32 A person acts knowingly when he is "consciously aware that that result is practically certain to be caused by his conduct." 720 ILCS 5/4-5(b) (West 2012). "Because of its nature, knowledge is ordinarily established by circumstantial evidence, rather than by direct proof." *People v. Rader*, 272 Ill. App. 3d 796, 803 (1995). "A defendant is presumed to intend the probable consequences of his acts, and great disparity in size and strength between the defendant and the victim, as well as the nature of the injuries, may be considered in this context." *Id.*

¶ 33 The record establishes that defendant, an adult male, caused a subdural hematoma, as well as significant bruising throughout his infant son's body. We call attention to the fact that defendant admitted in his video-recorded statement that he should not have "popped" T.V. Defendant subsequently admitted that he "didn't mean to pop [T.V.] that hard." We view these concessions in conjunction with the expert opinions of (1) Dr. Sandiford who testified that the type of blain breed T.V. suffered required "violent movement backwards and forwards" and (2) Dr. Petrak who testified that sudden acceleration and deceleration, usually shaking, is necessary to cause the brain bleed that T.V. presented. Defendant's explanation of the events that led to the injury changed twice throughout the course of the investigation and medical experts testified that those explanations were inconsistent with T.V.'s injuries. For example, defendant claimed he grabbed T.V. by the jaw. However, according to Petrak, grabbing T.V. by the jaw alone would not cause a brain bleed and might only if "well beyond normal" shaking was added. We also note T.V.'s injury came shortly after defendant sent a text message to Taneira telling her he wanted to kill T.V. because he would not stop crying. Although she did not take the threat seriously because defendant did not follow through on previous threats to kill T.V., the message itself supports the inference that at the time defendant took his actions, he wanted to cause great bodily harm to T.V. Viewing the above evidence in the light most favorable to the State, we hold that a rational trier of fact could reasonably conclude that defendant was consciously aware that great bodily harm was practically certain to be caused by his conduct.

¶ 34 In reaching our conclusion, we reject defendant's argument that the State failed to prove his guilt beyond a reasonable doubt because it did not present any evidence that shaking an infant would naturally and probably cause a subdural hematoma. Specifically, defendant argues he did not know that shaking T.V. would naturally and probably cause a subdural hematoma in an

infant. However, we note that "[i]t is not necessary that the State prove that the defendant intended the specific consequence that occurred." See *People v. Isunza*, 396 Ill. App. 3d 127, 132 (2009). Put another way, defendant need not know that his actions could cause a subdural hematoma in his infant child, but rather, he must be consciously aware that they could cause great bodily harm. As detailed above, the evidence overwhelming supports the jury's finding on this issue. Moreover, three doctors opined in their testimony that T.V.'s injuries were consistent with nonaccidental trauma. In other words, T.V.'s injuries were not the result of an accident, but instead were knowingly inflicted.

¶ 35 II. Supreme Court Rule 431(b)

¶ 36 Next, defendant contends the court committed reversible error when it failed to comply with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). Specifically, defendant argues that the trial court failed to ask four of the jurors selected to sit on the jury if they understood and accepted that defendant was not required to present evidence or testify. The State concedes that the trial court failed to strictly comply with Rule 431(b), but argues defendant forfeited review of the error when he failed to object or raise the issue in his posttrial motion. *People v. Herron*, 215 Ill. 2d 167, 175 (2005). In reply, defendant argues the error can be reviewed under the plain error doctrine because the evidence is closely balanced. After careful consideration of the arguments and the record, we agree the trial court violated Rule 431(b), however, we find defendant has failed to satisfy the plain error doctrine.

¶ 37 We apply the plain error doctrine 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." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). Because a "violation of Rule 431(b) does not implicate a fundamental right or constitutional protection," we only consider whether the trial court's failure to question and admonish the prospective jurors satisfies the first prong of the plain error doctrine. *People v. Thompson*, 238 Ill. 2d 598, 614-15 (2010).

¶ 38 As defendant acknowledges, the only real issue at trial was whether defendant caused T.V. great bodily harm and whether he did so knowingly. Defendant concedes, and we agree, the evidence was sufficient to prove the former and, as detailed above, the evidence overwhelmingly supports the finding that he did so knowingly. *Supra* ¶¶ 32-33. Although the test for reviewing the sufficiency of the evidence is distinct from the closely balanced test, we find the overwhelming evidence presented against defendant sufficient to satisfy both tests. *Piatkowski*, 225 Ill. 2d at 565-67. Therefore, the trial court's failure to question and admonish all the jurors regarding the principles of Rule 431(b) alone is insufficient to satisfy the plain error doctrine.

¶ 39 III. Cumulative Error

¶ 40 Alternatively, defendant argues the Rule 431(b) violation coupled with evidentiary errors and the prosecutor's improper statements cumulatively denied him a fair trial. Specifically, defendant argues: (1) the trial court erred by allowing the State to present the recording of Taneira's 911 call; (2) the trial court erred by allowing the State to present evidence of Tavionne's injuries; and (3) the prosecutor made improper statements in his closing arguments. In considering defendant's cumulative error claim, we apply a mixed standard of review. While we review a trial court's evidentiary rulings under an abuse of discretion standard (*People v.*

Enis, 139 Ill. 2d 264, 281 (1990)), we review a prosecutor's comments in closing arguments *de novo* (*People v. Graham*, 206 Ill. 2d 465, 474 (2003)).

¶ 41 Before considering defendant's specific arguments, we note that defendant failed to preserve the above errors (except his claim regarding Taneira's 911 call) for review, by failing to object or raise the issues in his posttrial motion. *Herron*, 215 Ill. 2d at 175. Despite this, defendant asks this court to apply the same test employed under the second prong of the plain error doctrine and consider whether the cumulative effect of the above errors "created a pervasive pattern of unfair prejudice." *People v. Blue*, 189 Ill. 2d 99, 139 (2000) (considering defendant's claim regarding the cumulative effect of preserved and unpreserved errors under the same standard employed under the second prong of plain error.). We consider each argument individually, then consider whether the alleged errors as a whole denied defendant a fair trial.

¶ 42 A. Taneira's 911 Call

¶ 43 First, defendant argues the recording of Taneira's 911 call should have been excluded because it was unfairly prejudicial and statements made by Taneira to the 911 operator were inadmissible hearsay. Upon review, we find the recording is relevant, not unfairly prejudicial, and qualifies as admissible hearsay under the excited utterance exception. Therefore, we hold the trial court did not abuse its discretion in allowing the State to present the recording to the jury.

¶ 44 Evidence is relevant if it tends to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Ill. R. Evid. 401 (eff. Jan. 1, 2011). Generally, relevant evidence is admissible (Ill. R. Evid. 402 (eff. Jan 1, 2011)) but may be excluded when its probative value is substantially outweighed by the danger of unfair prejudice or it involves needless presentation of cumulative evidence (Ill. R.

Evid. 403 (eff. Jan. 1, 2011)). Unfair prejudice means an undue tendency to suggest a decision on improper basis, often an "emotional one, such as sympathy, hatred, contempt, or horror." *People v. Lewis*, 165 Ill. 2d 305, 329 (1995).

¶ 45 Here, the 911 recording is relevant because it contained Taniera's statements to the operator that defendant "abused" T.V. and that T.V. had "bruises everywhere." In addition, the recording contained Taniera's statements that T.V. was not acting like himself, was conscious, was not bleeding, and his face was swollen. When the operator asked Taneira if the "person that did this" was still present, Taneira mentioned defendant by name. These facts were extremely relevant to the question of whether defendant struck T.V. causing him great bodily harm or bodily harm.

¶ 46 Further, Taneira's statements to the 911 operator qualify as admissible hearsay under the excited utterance exception. For a hearsay statement to be admitted under the excited utterance exception there must be "an occurrence sufficiently startling to produce a spontaneous and unreflecting statement, there must be an absence of time for the declarant to fabricate the statement, and the statement must relate to the circumstances of the occurrence." *People v. Sutton*, 233 Ill. 2d 89, 107 (2009). Defendant concedes that much of the recording qualifies as an excited utterance, but argues that key parts do not and should have been excluded at trial. Specifically, defendant challenges Taneira's explicit accusation that defendant had just abused T.V., as well as her identification of defendant by name when the 911 operator asked if the "person that did this" was still present. Defendant argues these statements do not qualify as an excited utterance because her later testimony revealed that she did not observe defendant abuse T.V.

¶ 47 In the instant case, Taneira testified that she knew defendant was the only person home with T.V. at the time of the injury because she had expected to watch T.V., but allowed defendant's request to take care of T.V. for the day. While Taneira was at the gym, defendant sent her a text message telling her to return to the house because T.V. would not stop crying and he threatened to kill the infant. From outside the residence, Taneira heard a thumping noise and Tavionne loudly yelling for someone to "get off" of her and "[l]ook at my baby." Then, when Taneira opened the door, she observed defendant in a physical altercation with Tavionne. When defendant saw Taneira he fled. Taneira then observed T.V. and discovered that he had bruising and cuts all over his body and he was not acting normal. Although Taneira did not visually observe defendant abusing T.V., the above facts support her statement to the 911 dispatcher that defendant was the person who abused T.V. Further, the admission of the recorded statement is not unduly prejudicial to defendant because Taneira testified at trial and defendant had the opportunity to cross-examine her regarding her observations.

¶ 48 B. Tavionne's Injuries

¶ 49 Next, defendant contends the State should have been prohibited from presenting evidence of Tavionne's (T.V.'s mother) injuries because the prejudice of the other-crimes evidence substantially outweighed its probative value. Defendant points to Officer Franklin's testimony regarding the injuries he observed on Tavionne, photographs of Tavionne's injuries presented to the jury, and the State's use of Tavionne's injuries in his closing argument. Like our consideration of the 911 recording's admissibility, the trial court's decision to allow evidence of other crimes is reviewed under an abuse of discretion standard. *Enis*, 139 Ill. 2d at 281. Upon review, we find the trial court did not abuse its discretion in allowing the admission of Tavionne's injuries.

¶ 50 Generally, evidence of a defendant's other offenses, crimes or bad acts is inadmissible to show a defendant's disposition or propensity to commit crimes. *People v. Illgen*, 145 Ill. 2d 353, 365 (1991). However, "evidence of another crime is admissible if it is part of a continuing narrative of the event giving rise to the offense or, in other words, intertwined with the offense charged." *People v. Thompson*, 359 Ill. App. 3d 947, 951 (2005). Further, " '[w]hen facts concerning uncharged criminal conduct are all part of a continuing narrative which concerns the circumstances attending the entire transaction, they do not concern separate, distinct, and unconnected crimes.' " *Id.* (quoting *People v. Collette*, 217 Ill. App. 3d 465, 472 (1991)). Where the State seeks to admit evidence of other crimes, the trial court must weigh the evidence's probative value against its prejudicial effect and may exclude evidence if its prejudicial effect substantially outweighs its probative value. *Illgen*, 145 Ill. 2d at 365.

¶ 51 Here, evidence of Tavionne's injuries was admissible to corroborate Taneira's account of the events and provide a continuing narrative concerning the entire course of events. Specifically, evidence of Tavionne's injuries supported Taniera's in-court testimony and her statements to the 911 operator describing the startling scene she observed when she entered the residence in addition to defendant's actions following T.V.'s injury. The evidence also tends to discredit defendant's description of the events which was presented to the jury via his statements to investigators. In his first interview with police, defendant did not mention any physical encounter with Tavionne. However, in the second interview defendant claimed Tavionne swung at him, he grabbed her arm, and a physical altercation ensued. Evidence of Tavionne's injuries therefore tended to attack the credibility of defendant's statements by suggesting that he had been downplaying the severity of his conduct. Further, the probative value of Tavionne's injuries outweighed its prejudicial effect. Tavionne's injuries were a significant part of the events

following T.V.'s injury and play a crucial role in establishing the circumstances surrounding the incident. *People v. Edgeston*, 157 Ill. 2d 201, 237-38 (1993) ("evidence which is otherwise relevant need not be excluded merely because it may prejudice the accused or arouse feelings of horror or indignation in the jury [Citations].").

¶ 52 C. Prosecutor's Closing Remarks

¶ 53 Next, defendant argues the prosecutor made improper arguments during his closing argument and rebuttal which denied him a fair trial. Specifically, defendant argues the prosecutor improperly urged jurors to speculate that defendant had been drinking or used drugs the night before T.V.'s injury and referred to defendant as an "animal," "so-called father," and "Father of the year." While we find the prosecutor's comments were improper and incendiary, we hold they did not deny defendant a fair trial.

¶ 54 Prosecutors are afforded wide latitude in closing arguments. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). A reviewing court must ask whether the complained-of comments "engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *Id*. Among the factors a reviewing court considers are whether the remarks were isolated and whether the jury was instructed that arguments are not evidence. See *People v. Caffey*, 205 Ill. 2d 52, 105 (2001). Although courts have held that it is improper to refer to a defendant as an animal and to make inflammatory comments designed to arouse the jury's passions, "improper remarks generally do not constitute reversible error unless they result in substantial prejudice to the accused." *People v. Baptist*, 76 Ill. 2d 19, 29 (1979). For example, a prosecutor's reference to a defendant as an animal has been found to not rise to the level of reversible error when the comment was isolated and the jury was specifically instructed closing

arguments are not evidence and the evidence was not closely balanced. *People v. Johnson*, 119 Ill. 2d 119, 140 (1987).

¶ 55 Here, we find the challenged comments were totally out of line. It was improper to speculate on defendant's conduct the night before the incident and deride defendant as an "animal," "so-called father," and "Father of the year." However, the comments were isolated and the prosecutor did not dwell upon them throughout his arguments. In addition, the trial court instructed the jury that closing arguments were not evidence and that any statement or argument made therein not based on evidence should be disregarded. Moreover, the evidence against defendant was not closely balanced. Although the prosecutor's use of the language in question was improper and might constitute reversible error in a different case, we cannot find that this defendant has shown substantial prejudice such that the verdict would have been different had the prosecutor not made the remarks. See *People v. Cisewksi*, 118 Ill. 2d 163, 178 (1987) ("Although we believe this comment would have been best left unsaid by the prosecutor, in light of the overwhelming evidence of defendant's guilt, we cannot say that the verdict would have been different absent this single isolated remark.").

¶ 56 Finally, we return to defendant's claim that the alleged errors cumulatively denied him a fair trial. To recap, we have found only the trial court's failure to comply with Rule 431(b) and the prosecutor's comments in closing and rebuttal arguments to be error. Despite our finding that defendant forfeited individual review of his Rule 431(b) claim and that the prosecutor's comments did not themselves necessitate a new trial, we must still consider whether those errors had the cumulative effect of denying defendant a fair trial. *Blue*, 189 Ill. 2d at 137. Based on our careful consideration of the record, we find defendant has failed to establish cumulative error.

¶ 57 Even though the trial court failed to ask four of the prospective jurors if he or she understood and accepted all of Rule 431(b)'s principles, it did instruct the entire jury venire on the principals of Rule 431(b). Further, while the prosecutor made improper comments during his closing and rebuttal arguments, the comments were isolated and the trial court instructed the jury more than once that arguments made during closing arguments not based on evidence should be disregarded. Perhaps most significantly, however, we emphasize the substantial amount and nature of evidence presented against defendant. Specifically, we note defendant's own admissions and the medical expert testimony establishing T.V.'s injuries were the result of violent nonaccidental trauma. See s*upra* ¶ 36.

¶ 58 In reaching this conclusion, we reject defendant's reliance on *Blue*, 189 Ill. 2d 99, in arguing that a new trial is warranted regardless of the closeness of the evidence. We find *Blue* factually unique and sufficiently distinguishable to warrant this rejection. Throughout the course of the trial in *Blue*, the prosecutor, through his objections, accused witnesses of lying, introduced evidence that a warrant was out for a witness, and accused defense counsel of continually misstating the record. *Id.* at 140-42. After concluding the trial had been permeated by the presentation of emotionally charged evidence, and the prosecutors "encouraged the jury to return a verdict grounded in emotion, and not a rational deliberation of the facts," our supreme court, despite the overwhelming evidence of defendant's guilt, reversed and remanded for a new trial to protect the integrity of the criminal justice system. *Id.* at 139.

¶ 59 By contrast, the trial court's error in questioning potential jurors on the principles of Rule 431(b), together with the prosecutor's misconduct in his closing argument, did not constitute a pervasive pattern of error similar to that in *Blue* that would require a new trial.

¶ 60 CONCLUSION

¶ 61 The judgment of the circuit court of Peoria County is affirmed.

¶ 62 Affirmed.