FOURTH DIVISION
February 9, 2017

No. 1-14-0143

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 13 CR 17031
	)	
ISMAEL YANEZ,	)	Honorable
	)	Colleen Ann Hyland,
Defendant-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE ELLIS delivered the judgment of the court.
Justices McBride and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: Affirmed. Defense counsel's eliciting improper hearsay testimony did not amount to ineffective assistance of counsel. Prosecution's question asking defendant to comment on witness credibility did not rise to level of plain error. Prosecution rebuttal argument was not improper.

¶ 2 Defendant, Ismael "Milo" Yanez, 31, was charged with four counts of aggravated criminal sexual abuse against 14 year old Y.R. After a jury trial, defendant was convicted of all counts, which were merged into a single Class 2 aggravated criminal sexual abuse verdict. He appeals, raising two contentions of error: (1) that defendant's counsel was ineffective for eliciting hearsay testimony, testimony the prosecution later relied upon in closing argument; and (2) that defendant's right to a fair trial was violated, both by forcing defendant to comment on the

credibility of a State witness, and by suggesting that jurors conform their verdict to verdicts in other cases.

¶ 3 We disagree with defendant's contentions. Defendant's counsel's elicitation of hearsay evidence did not constitute ineffective assistance, because the testimony did not sufficiently prejudice defendant in light of the evidence presented against defendant. We also disagree that defendant's right to a fair trial was violated. The prosecutor did ask defendant to comment on the veracity of an adverse witness with a single question, but even if it was error to do so, we do not find sufficient prejudice, or a denial of fundamental fairness, sufficient to constitute plain error. Nor was the prosecutor's comment on the burden of proof error, much less plain error.

¶ 4 I. BACKGROUND

¶ 5 A. Trial Proceedings

¶ 6 The State charged defendant with four counts of aggravated criminal sexual abuse against 14 year-old Y.R., based on acts of sexual penetration when defendant was at least five years older than Y.R. Defendant filed an answer denying all charges.

¶ 7 Y.R. testified that she was 14 years old at the time of trial, and was that age at the time of the alleged sexual abuse. At that time, she was living in an apartment complex with her mother Rosa, mom's boyfriend Rafael, and her two younger brothers Raul and Miguel.

¶ 8 One door down from Y.R. lived a woman named Ashley Rodriguez. Because Rosa and Rafael needed to leave for work by 5 o'clock in the morning, Ashley was trusted to wake Y.R. and her brothers so they could get ready for school. This arrangement was typically the routine on weekends because Rosa and Rafael had to work, thereby allowing Ashley to babysit her sometimes, too. In exchange, Y.R., often accompanied by her best friend Arcelli Aguilar, would

babysit Ashley's four children when Ashley needed to leave for work. Y.R. and Arcelli would also go to Ashley's apartment just to "hang out" and watch television as well.

¶ 9 It was in this way that Y.R. met defendant, who was dating Ashley and planned to eventually marry her. Y.R. testified that she began to interact with defendant when they would talk while standing outside her apartment, approximately in June of 2012. Eventually, they began to talk more, and their conversations moved to the front of the apartment building where defendant parked his car. It was here where defendant asked Y.R. how old she was and learned she was 13 years of age.

¶ 10 Later, according to Y.R., defendant began kissing her behind the apartment building, leading Y.R. to believe they had become more than just friends. Y.R. recalls neither how the kissing started nor when the kissing began, but thinks "it was either the summer or it was cold out. I'm not sure." She does recall, however, that defendant kissed her only on the mouth.

¶ 11 Y.R. noticed defendant would also talk to her in a manner that made her believe they were more than friends but cannot remember what he said. Starting in January 2013, these conversations extended to text messaging. Y.R. did not have her own phone, but she was able to access her mom's phone both when she came home from work and on the weekends. And on the weekends, she often was alone in the apartment because both her mother, Rosa, and Rafael were working, and her brothers were at their uncle's house.

¶ 12 Y.R. estimated that she text-messaged defendant "around 100 times." Despite writing them in English, Y.R. took care to delete them so her mom could not have Rafael translate, because she would not like that "I would be texting Milo and he was older than me." Ultimately, the evidence showed that 71 phone calls and over 250 text messages were received back and

forth between defendant's phone and the phone Y.R. used during this three-and-a-half-month period.

¶ 13 According to Y.R., she and defendant first had sex on March 23, 2013, in her room, when defendant put his penis in her vagina, the first of four such incidents. On this day, her mom and her mom's boyfriend, Rafael, were working, and her brothers were with their uncle, leaving Y.R. alone in the apartment. Y.R. testified that defendant put on a condom prior to sex, and after sex, he "flushed it down the toilet." Y.R. also noted that defendant used a condom for the other three encounters and always flushed it down the toilet.

¶ 14 Although she had sex with defendant three other times, Y.R. remembers the date of just one other encounter, March 27, 2013 because it was the date of her father's birthday. She recalls the third time they had sex was "within days" later and took place in her room. She also remembers that the last time they had sex was in Ashley's apartment. This final time, according to Y.R., defendant insisted they have sex in Ashley's bedroom, but Y.R. did not want to go in that room because that was where Ashley and defendant would have sex. Instead, Y.R. and defendant had sex on the couch in Ashley's living room.

¶ 15 Both Y.R. and her brother Raul testified that defendant would visit Rosa's apartment a total of "around 15 times," when her mother and Rafael were gone so he could see Y.R. Raul also noted that there were times defendant would call Y.R. on Rosa's cell phone and have her come to Ashley's apartment. And there were other times when defendant would come to Y.R.'s apartment just to see Raul, so he could collect payment for the X-box console he sold Raul. When defendant was at Rosa's apartment, he often observed Y.R. hug defendant. He became concerned for Y.R. and told her it was strange for her to be hanging around an older guy.

¶ 16 Arcelli Aguilar, age fifteen, lived next door to Ashley in the same apartment complex and would help Y.R. babysit Ashley's children. Arcelli observed a number of interactions between Y.R. and defendant, including several calls to Y.R. to come to Ashley's apartment, conversations at the front door of Rosa's apartment, and following Y.R. to the local park and another building. She did state, however, that she never saw the two hold hands, hug, or kiss.

¶ 17 Notably, she testified that while in Y.R.'s room one day, Y.R. put the phone on speaker so Arcelli could listen to her conversation with defendant. On this particular call, defendant, according to Arcelli, told Y.R.: "You're mine. I love you." Though she had heard him speak in person before, this was the first time Arcelli had heard defendant speak over the phone. She did not reveal this exchange to Detective Michael Bennett when she talked with him.

¶ 18 Arcelli visited Y.R. at her apartment on March 23, 2013. She remembers this date because this is the day she went shopping for her Quinceanera dress. On direct examination, Arcelli testified that she and Y.R. merely talked in Y.R.'s room. But on cross-examination, Arcelli explained that Y.R. told her she retrieved a condom from Rosa's room and had sex with defendant in that same room:

"Q. She told you at some point that she had sex with him, is that true?

A. Yeah.

Q. And she told you that that happened in her apartment?

A. Yes.

Q. She said that happened in her mother's room?

A. Yes.

Q. And she said that she got the condom out of her mother's room?

A. Yes."

¶ 19 During his testimony, defendant stated he began the day on March 23, 2013 at his parents' house, where he lives. He arrived at Ashley's apartment "about 5:30-ish, 6," and watched television, listened to music, and ate food. He testified that he did see Y.R. come in and out of Ashley's apartment, and despite getting the impression that Y.R. "liked" him, at no point did he ever kiss, hug, or have any sexual contact with her.

¶ 20 On cross-examination, defendant was asked if he heard testimony given by Raul. The prosecutor went on to conduct the following exchange:

> "Q. And Raul said that he saw you inside of that house on multiple occasions when mom and Rafael were gone at work in the factory. Do you remember that testimony?
>
> A. Yes.
>
> Q. So Raul is lying?
>
> A. He—you can say he is lying. He may have been mistaken by something. I was never in the apartment."

¶ 21 During her closing argument, the prosecutor more than once referenced the defense's cross-examination of Arcelli, in which Arcelli said that Y.R. told her about a sexual encounter with defendant.

¶ 22 The prosecutor, in rebuttal closing argument, discussed the burden of proof, saying:

> "And as far as that burden goes, that burden beyond a reasonable doubt is met in this courthouse, in the courthouses in Maywood, Skokie, Markham, at 26th Street and courthouses in LaSalle County, in courthouses [in] Kankakee, in courthouses in New Mexico, in courthouses in Arizona every single day. Every single day."

Defense counsel did not object to these statements.

¶ 23 The jury convicted defendant of four counts of aggravated criminal sexual abuse. The counts were merged into a single Class 2 aggravated criminal sexual abuse verdict. Defendant was sentenced to 5 years' incarceration. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Ineffective Assistance of Counsel

¶ 26 Defendant's first argument on appeal is that his trial attorney was ineffective in that he elicited hearsay testimony on cross-examination of Arcelli Aguilar, Y.R.'s best friend, that Y.R. had confided in Arcelli about having had sex with defendant, thereby bolstering the State's case. To reiterate, on cross-examination, defense counsel elicited the following testimony from Arcelli about a conversation she had had with Y.R.:

"Q. She told you at some point that she had sex with him, is that true?

A. Yeah.

Q. And she told you that that happened in her apartment?

A. Yes.

Q. She said that happened in her mother's room?

A. Yes.

Q. And she said that she got the condom out of her mother's room?

A. Yes."

¶ 27 The State had not introduced any such evidence on direct examination. Defendant claims that this hearsay testimony elicited by defense counsel, which was later used by the prosecution during closing arguments, prejudiced defendant by driving home the point that defendant had sex with Y.R.

¶ 28 To establish a claim of ineffective assistance of trial counsel, defendant must show that his attorney's performance was deficient, and that he suffered prejudice as a result. *Strickland v. Washington*, 466 U.S. 668, 687, 694 (1984). To show that his attorney's performance was deficient, a defendant must establish that his attorney's performance was objectively unreasonable under prevailing professional norms. *Id.* at 688. A defendant shows prejudice where a reasonable probability exists that, but for counsel's deficient performance, the result of the proceedings would have been different. *Id.* at 694. "A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Id.* The prejudice component, however, is not just an outcome-determinative test; a defendant must show the deficient performance made "the result of the trial unreliable or the proceeding fundamentally unfair." *People v. Jura*, 352 Ill.App.3d 1080, 1092 (2004).

¶ 29 Our review of defendant's claim of ineffective assistance of counsel is a mixed question of fact and law. *Strickland*, 466 U.S. at 698. As such, we will defer to the trial court's findings of fact but review *de novo* the legal issue whether defense counsel's questioning supports an ineffective assistance claim. *People v. Crawford*, 2013 IL App (1st) 100310, ¶ 130.

¶ 30 Generally, decisions to cross-examine or impeach a witness, as matters of trial strategy, will not support a claim of ineffective assistance of counsel. *People v. Pecoraro*, 175 Ill. 2d 294, 327 (1997). And the manner in which defense counsel carries out that strategy is accorded substantial deference. *Id.*; *People v. Perry*, 224 Ill. 2d 312, 344 (2007). We must view counsel's performance "from his perspective at the time, rather than through the lens of hindsight." *Perry*, 224 Ill. 2d at 344.

¶ 31 But when defense counsel elicits damaging hearsay testimony on cross-examination that disadvantages defendant's case, counsel's actions cannot be viewed as mere "trial strategy."

People v. Phillips, 227 Ill.App.3d 581, 590 (1992). If a strategic decision "appears so irrational and unreasonable that no reasonably effective defense attorney, facing similar circumstances, would pursue such a strategy," the deference accorded to defense counsel will be overcome. *People v. King*, 316 Ill. App. 3d 901, 916 (2000).

¶ 32 The State says that, whether successful or not, defense counsel's questions at issue were part of a reasonable trial strategy of trying to demonstrate that Y.R. was not consistent in her recitation of events, because she was fabricating her claims of sex with defendant. It was certainly a viable theory. Y.R., after all, had initially denied any sexual relationship when confronted by her mother, and she initially denied any sexual relationship in her first conversation with the police. Then she later admitted, to both her mother and the police, to a single sexual encounter with defendant in the apartment of defendant's girlfriend, Ashley, before later stating that there were four sexual encounters.

¶ 33 In line with this theory, the point of defense counsel's questions to Arcelli was to show that Y.R. told Arcelli that the first time she had sex with defendant was in her mother Rosa's room, whereas Y.R. testified on direct examination that the first sexual encounter took place in Y.R.'s bedroom. In closing arguments, defense counsel highlighted this discrepancy, referencing the fact that her version of the events changed many times, including the version of events she related to her friend, Arcelli. Thus, the State argues, the questions to Arcelli were part of a reasonable trial strategy.

¶ 34 Defendant claims that the testimony backfired, that it was tantamount to a prior consistent statement that bolstered Y.R.'s testimony about sex with defendant by showing that she told her closest friend about the sex, too. Defendant relies on *Phillips*, 227 Ill. App. 3d 581. In *Phillips*, involving an armed robbery in Oak Park, defense counsel elicited hearsay testimony on cross-

examination of a detective that incriminated his client—that another suspect in the case, Carl Curry, told the detective that the defendant was the one who robbed the victim in Oak Park and that the defendant and Curry had previously committed another robbery together in Chicago. *Id*. at 584. The initial goal was to discredit Curry's implication that the defendant was involved in the robbery by showing Curry was also involved, or at least why he might want to implicate defendant. *Id.* at 589. This court reversed the conviction. The court reasoned that the only other evidence implicating the defendant was eyewitness testimony from the victim, whose initial description of the perpetrator differed from the defendant she later identified in a photo array, and that defense counsel should have known that he would not be able to directly question Curry, who was incarcerated and who ultimately refused to testify. Thus, the evidence that Curry implicated the defendant for both the Oak Park robbery as well as another, unrelated robbery in Chicago was sufficiently prejudicial that no reasonable approach could color this decision as "sound trial strategy." *Id.* at 590.

¶ 35 Defendant's position here is not as strong as the defendant's in *Phillips*, where the only other evidence against the defendant was the victim's brief and flawed eyewitness testimony. The questions put to Curry in that case on cross-examination both implicated the defendant for the charged Oak Park robbery as well as admitting other-crimes evidence concerning an uncharged robbery in Chicago, making a rather weak prosecution case much stronger. Nor could defense counsel in *Phillips* be credited with any kind of reasonable strategy for asking the questions, given the damaging information it would elicit and without having any certainty that defense counsel would be able to question Curry directly. *Id*. at 589. In the present case, in contrast, defense counsel's cross-examination questions to Arcelli, for better or worse, did

contribute to the defense's overriding theory that Y.R. told different versions of the events to different people.

¶ 36 Still, in our review of the record, defendant's claim that this hearsay testimony did more harm than good to defendant's case is not without merit. It is at least arguable that defendant would have benefitted more from having no testimony whatsoever from Arcelli that Y.R. told her about the sexual encounter with defendant, rather than Arcelli telling the jury that Y.R. did, in fact, relate the sexual encounter to her, albeit with a significant discrepancy as to where this sexual act took place.

¶ 37 But even if defendant were correct that defense counsel's questions were so ill-conceived that they overcame the deference typically accorded to trial strategy, such that they constituted deficient performance, we would affirm this conviction in any event, because we find that defendant was not sufficiently prejudiced by any such error to afford him relief. See *People v. Williams*, 192 Ill. 2d 548, 568 (2000) (even if deficient performance found, court will affirm if defendant cannot establish prejudice); *Strickland*, 466 U.S. at 697 (same). Defendant cannot establish a reasonable probability that, but for this alleged trial error, the result of the proceedings would have been different. *Strickland*, 466 U.S. at 694.

¶ 38 The evidence was not as closely balanced as defendant would have it appear. It is true that the young victim showed initial reluctance in coming forth with accusations of improper sexual conduct and was not consistent in her portrayal of events when she did, but the jury obviously found her testimony credible, a finding that was well within its province. *People v. Hogan*, 388 Ill. App. 3d 885, 895 (2009) (" '[I]t is the function of the jury as the trier of fact to assess the credibility of the witnesses, the weight to be given their testimony, and the inferences to be drawn from the evidence.' ") (quoting *People v. Tenney,* 205 Ill. 2d 411, 428 (2002)).

Beyond that, the State presented evidence of hundreds of telephonic communications between Y.R. and defendant—71 phone calls and over 250 text messages—within a three-and-a-half-month window of time between the 32-year-old defendant and the 14-year-old Y.R. Moreover, Raul corroborated Y.R.'s testimony that defendant visited their apartment approximately 15 times when their parents were not around, *not* including the times when defendant came around for a payment on the X-box console, which included hugs between Y.R. and defendant. Arcelli testified to several interactions between defendant and Y.R., including where defendant called Y.R. over to his girlfriend's apartment or met or followed her in public, not the least of which was the time Arcelli heard defendant say through the speakerphone to Y.R. that "You're mine. I love you."

¶ 39 We cannot say that there is a reasonable probability that, but for the challenged hearsay testimony, defendant would have been acquitted. Even if eliciting that testimony was not the best move for defense counsel to make, it did contribute to some extent to the defense theory that Y.R. gave divergent versions of the events at different times to different people. And to the extent it was error to elicit that testimony, the case against defendant was sufficiently strong that we do not find prejudice under *Strickland*.

¶ 40 Defendant relies on *People v. Park*, 245 Ill. App. 3d 994 (1993), where the court reversed defendant's conviction for sexually abusing his minor daughter based on trial errors, some of which were committed by defense counsel. One of those errors, highlighted here by defendant, was that defense counsel elicited testimony from the victim's friend, and from a police officer, that the victim had told them her father sexually abused her. The court reasoned that where, as in that case, "there is no evidence against defendant except that found in the accusation of the

victim, there is a danger that the jury's verdict was the result of hearing the victim's version more than once." *Id*. at 1003.

¶ 41 We find *Park* distinguishable on two grounds. First, unlike *Park*, this is not a case where the only evidence came from the victim's accusation. As previously discussed, the evidence here also consisted of telephone records of a startlingly high number of communications between defendant and Y.R., unusual behavior between defendant and Y.R. observed by others, and defendant's telling Y.R. that he loved her and she was "his," heard by Arcelli via speakerphone. Second, there were multiple errors in *Park*, including the admission of other-crimes evidence without a limiting instruction—the first error found by the court (*id*. at 1002-03)—as well as the trial court's error in admitting (and defense counsel's failure to object to) a letter written by the victim to defendant, accusing him of sexual molestation, and the publication of that letter to the jury (*id*. at 1004-05). The court noted that it "[did] not determine whether any single flaw, by itself, would require reversal" but that "collectively, the errors were sufficient to deprive defendant of a fair trial." *Id*. at 1006.

¶ 42 Because defendant cannot establish prejudice, his *Strickland* claim relating to the elicitation of Arcelli's hearsay testimony on cross-examination fails.

¶ 43 B. Prosecutorial Misconduct

¶ 44 Defendant asserts his right to a fair trial was violated due to prosecutorial misconduct for two reasons: (1) the prosecution forced him on cross-examination to comment on the credibility of Raul's testimony, and (2) the prosecutor diluted the reasonable doubt standard during rebuttal argument by asserting that juries across the country convict defendants every day. Defendant makes the related contention that his counsel was ineffective for failing to object to the cross-

examination question. We turn first to the issue of commenting on the credibility or veracity of witnesses.

¶ 45 1. Comment on Witness Credibility

¶ 46 On cross-examination, the prosecutor had the following exchange with defendant:

> "Q. And Raul said that he saw you inside of that house on multiple occasions when mom and Rafael were gone at work in the factory. Do you remember that testimony?
>
> A. Yes.
>
> Q. So Raul is lying?
>
> A. He—you can say he is lying. He may have been mistaken by something. I was never in the apartment."

¶ 47 Defendant argues the prosecutor violated his right to a fair trial by asking him to testify about another witness's credibility. Because defense counsel did not timely object to the question, the issue is reviewable only for plain error. *People v. Thurow*, 203 Ill. 2d 352, 363 (2003). Under the doctrine of plain error, a reviewing court can consider the error when either: (1) the evidence was closely balanced, and the error was sufficiently serious to tip the scales of justice against defendant, or (2) where the error was so serious that it "affected the fairness of the defendant's trial and challenged the integrity of the judicial process." *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Defendant contends that both prongs apply to this claim.

¶ 48 Before we can determine whether there was plain error, we must decide whether any error occurred at all. *Id.*

¶ 49 It is generally improper for the prosecution to ask a criminal defendant to comment on the credibility of witnesses against him. *People v. Kokoraleis*, 132 Ill. 2d 235, 247 (1989);

People v. Turner, 128 Ill. 2d 540, 558 (1989); *People v. Weinke*, 2016 IL App (1st) 141196, ¶ 71; *People v. Martin*, 271, Ill. App. 3d 346, 356 (1995). Doing so invades the jury's function to determine the credibility of witnesses and also serves "to demean and ridicule the defendant." *Weinke*, 2016 IL App (1st) 141196, ¶ 70; *People v. Young*, 347 Ill.App.3d 909, 926 (2004).

¶ 50 Defendant principally cites *Young*, 347 Ill. App. 3d 909, for the prohibition on asking a defendant to comment on the veracity of witnesses. In *Young*, a number of prosecutorial errors were present that justified reversal and a new trial: the prosecutor suggested the jury could decide guilt or innocence by determining which witnesses to believe, cross-examined the defendant on his post-arrest silence, injected its own opinions regarding evidence and the believability of witnesses, and commented on prior bad acts. *Id.* at 926-27. The prosecutor was also found to have improperly asked defendant to comment on the veracity of witnesses on repeated occasions:

> [T]he prosecutor asked defendant several times to comment on the State witnesses' veracity: "So the medical examiner lied when he said that this was an entrance wound?"; "So you can't think of any reason why he [Kenneth Simmons] would lie about what you did, can you?"; "We expect our enemies to lie on us. It [*sic*] was your friend, wasn't he?"; and "Can you think of any reason why she [Doanita Simmons] would lie?" *Id*. at 925.

¶ 51 And while that error was one reason a new trial was ordered, this court took care to note it was the multitude of improper actions that "endangered the integrity of the judicial process" to a degree that could not be ignored. *Id.* at 927.

¶ 52 The State cites two cases, *People v. Kokoraleis*, 132 Ill. 2d 235 (1989), and *People v. Turner*, 128 Ill. 2d 540 (1989), for its position that a contextual approach should be adopted

rather than a *per se* rule of impropriety favored by defendant. In both *Kokoraleis* and *Turner*, our Supreme Court held that, while asking a defendant to comment on the veracity of opposing witnesses is generally improper, given the context of those particular cross-examinations, it was not inappropriate to ask the defendant to explain his story in light of the evidence. *Kokoraleis*, 132 Ill. 2d at 265; *Turner*, 128 Ill. 2d at 558.

¶ 53 In *Kokoraleis*, the defendant claimed that incriminating information he gave in oral and written statements had been supplied to him by law enforcement officers who had framed him, and thus the supreme court deemed it proper for the State to cross-examine the defendant on whether certain adverse witnesses were lying when they testified contrarily to the defendant's testimony. *Kokoraleis*, 132 Ill. 2d at 264-65. In *Turner*, 128 Ill. 2d at 555-57, the State repeatedly asked the defendant to comment on the veracity or motives of adverse witnesses, asking the defendant to explain the discrepancies in testimony, whether certain witnesses were lying when their testimony contradicted his, or whether he could explain why certain witnesses would testify in a manner inconsistent with the defendant's sworn testimony. Despite recognizing the general impropriety of asking defendants to comment on the veracity of adverse witnesses, the court found no reversible error, reasoning that it did "not appear that the prosecutor humiliated or embarrassed the defendant" but, instead, "attempted to have him explain his story in light of the overwhelmingly conflicting evidence." *Id*. at 558.

¶ 54 We also find guidance in *People v. Baugh*, 358 Ill. App. 3d 718, 740–41 (2005), where the defendant testified on direct examination that he did not meet with a Detective Johnson for an interview for the purpose of implicating another person in the crime, contrary to Detective Johnson's testimony on the witness stand. On cross-examination, the prosecutor asked, "And Detective Johnson is making that up, right?" *Id*. This court held that the question did not

constitute reversible error, both because it was a single, isolated question, and moreover because "the question was directed at defendant's specific testimony, which denied making an admission to Detective Johnson; the prosecutor did not ask defendant's opinion of the general veracity of Detective Johnson's testimony." *Id*. at 741.

¶ 55 In this case, even if the prosecutor's question to defendant was error, it would not rise to the level of plain error under either prong. It was a single, isolated question in a lengthy cross-examination, quite apart from the repeated attempts by the prosecutor in *Young*, 347 Ill. App. 3d at 925, to say nothing of the many other instances of prosecutorial misconduct in that case. See *id*. at 926-27. As in *Turner*, 128 Ill. 2d at 558, there is no indication that the prosecutor was trying to humiliate defendant or that she succeeded in doing so. The question directly addressed a specific contradiction between defendant's and Raul's testimony as opposed to being a general comment on Raul's veracity. See *Baugh*, 358 Ill. App. 3d at 741. And while this single, isolated question concerned an important detail in the case—whether defendant came to Y.R.'s house several times when the parents were absent—it did not concern the ultimate question in this case directly.

¶ 56 As to the first prong of plain error, we have already disagreed with defendant that the evidence was as balanced as he claims, and in any event we do not believe that this single error would have tipped the scales of justice against defendant. *Herron*, 215 Ill. 2d at 187. Regarding second-prong plain error, for many of the reasons already given, we do not find any error in this question to be so serious as to affect the fairness or integrity of the judicial process. *Id*. Thus, even if this single question constituted error, it was not plain error.

¶ 57 2. Rebuttal Argument Comments

¶ 58 Defendant next contends that the following comments by the State during rebuttal argument invited the jury to conform their verdicts to unrelated cases and diminished the burden of proof:

> "And as far as that burden goes that burden beyond a reasonable doubt is met in this courthouse, in the courthouses in Maywood, Skokie, Markham, at 26th Street, and courthouses in LaSalle County, in courthouses [in] Kankakee, in courthouses in New Mexico, in courthouses in Arizona every single day. Every single day."

Defendant concludes that these comments denied him a fair trial under both plain error prongs.

¶ 59 The State is allowed considerable latitude during closing arguments, including the option to rebut comments from defense counsel that invite a response. *People v. Hall*, 194 Ill. 2d 305, 346; *People v. Cosmano*, 2011 IL App (1st) 101196 ¶ 57; *People v. Sangster*, 2014 IL App (1st) 113457, ¶ 113. We must review comments from the State and the defense in their entirety, with challenged portions placed in their proper contexts. See *People v. Cisewski*, 118 Ill. 2d 163, 176 (1987). A significant factor to consider is whether "the comments were brief and isolated in the context of lengthy closing arguments." *People v. Runge*, 234 Ill. 2d 68, 142 (2009). A "prosecutor's comments in closing argument will result in reversible error only when they engender 'substantial prejudice' against the defendant to the extent that it is impossible to determine whether the verdict of the jury was caused by the comments or the evidence." *People v. Macri*, 185 Ill. 2d 1, 62 (1998).

¶ 60 It is unclear what standard of review governs our review of comments made by the State in closing argument, given an apparent conflict between two supreme court cases: *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007) (*de novo*), and *People v. Blue*, 189 Ill. 2d 99, 128 (2000) (abuse of discretion); see *People v. Johnson*, 2015 IL App (1st) 123249, ¶ 39 (noting conflict

between *Wheeler* and *Blue*). But we need not decide which standard applies, as defendant's argument fails under either standard. See *Johnson*, 2015 IL App (1st) 123249, ¶ 39.

¶ 61 Our supreme court has repeatedly held that comments similar to those under challenge here did not serve to diminish the State's burden of proof and were not improper. See, *e.g.*, *People v. Kidd*, 175 Ill. 2d 1, 40 (1996) (prosecutor's rebuttal argument that the State's burden of proof " 'is a burden of proof that is met in courtrooms across this county and in this building each and every day" was not error); *People v. Gacho*, 122 Ill. 2d 221, 255 (1988) (comments that proving a defendant guilty beyond a reasonable doubt "happens in every courtroom in this building, in every criminal court building in this county, every county in this state and every state in this country" was not error); *People v. Collins*, 106 Ill. 2d 237, 277 (1985) (prosecutor commented that reasonable-doubt standard "is the same burden of proof in every case that is tried in this courtroom, every case that is tried in this county, and every case that is tried in this country" and that "[t]he penitentiary is full of people like [the defendants] who have been proved guilty beyond a reasonable doubt"); *People v. Bryant*, 94 Ill. 2d 514, 523-24 (1983) (prosecutor's comment that burden of proof beyond reasonable doubt was "met each and every day in courts" did not reduce State's burden).

¶ 62 Likewise, this court has upheld prosecutor comments that the State's burden of proof is "*not some mythical, unattainable standard that can't be met*. It's met in courtrooms around the country every day, and we've met [it] in here in this courtroom this week." (Emphasis in original.) *People v. Laugharn*, 297 Ill. App. 3d 807, 810 (1998). Likewise, this court upheld comments from a prosecutor that "a burden is met every day in every courtroom." *People v. Ward*, 371 Ill. App. 3d 382, 422-23 (2007).

¶ 63 The prosecutor's remarks in this case fall comfortably within those upheld repeatedly by our supreme court. We find no error and, as such, find no plain error, either.

¶ 64 3. Ineffective Assistance of Counsel

¶ 65 As an alternative to each of his arguments regarding alleged prosecutorial misconduct, defendant claims his counsel was ineffective for failing to object to the misconduct. Given what we have held above, this argument must fail.

¶ 66 We have already determined that even if the prosecutor's single question about the credibility of a witness on a specific point was error, it was not prejudicial error, given the evidence presented against the defendant and the fact that the challenged question was one isolated instance. As defendant cannot establish prejudice, his *Strickland* claim on this point fails as well. See *Williams*, 192 Ill. 2d at 568; *Strickland*, 466 U.S. at 697. And we have just held that the prosecutor's comment on the burden of proof was not error in the first place, so defendant cannot establish deficient performance by counsel for failing to object to it. See *Strickland*, 466 U.S. at 688 (defendant must show counsel's performance was objective unreasonable).

¶ 67 III. CONCLUSION

¶ 68 For the reasons stated, we reject defendant's arguments and affirm his conviction.

¶ 69 Affirmed.