2019 IL App (1st) 163393-U
No. 1-16-3393
Order filed September 3, 2019

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of Cook County.
Plaintiff-Appellee,	)	
	)	No. 07 CR 19160
v.	)	
	)	Honorable Timothy J. Joyce,
CHAZZ COLLINS,	)	Judge Presiding.
	)	
Defendant-Appellant.	)	

PRESIDING JUSTICE GRIFFIN delivered the judgment of the court.
Justices Mikva and Pierce concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's convictions for three counts of aggravated criminal sexual assault are affirmed where statements made by the State during closing argument did not constitute plain error and thus defendant forfeited the issue for review.

¶ 2 Following a jury trial, defendant Chazz Collins was convicted of three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30 (West 2006)) and sentenced to three consecutive terms of 12 years' imprisonment. On appeal, defendant argues that prosecutorial misconduct during closing arguments denied him a fair trial. For the reasons set forth herein, we affirm the judgment of the trial court.

¶ 3 Defendant was charged by indictment with nine counts of aggravated criminal sexual assault, three counts of criminal sexual assault, four counts of aggravated kidnapping, and two counts of kidnapping. The case proceeded to a jury trial, where defendant was found guilty of three counts of aggravated criminal sexual assault.

¶ 4 C.S. testified that in August 2007 she lived with her brother, his wife, and her nieces on the 11700 block of South Stewart Avenue. On the evening of August 11, 2007, into the morning of August 12, 2007, she was sitting alone on the back porch of her home when she was joined by defendant, and another man. C.S. was drinking alcohol and had consumed about half of a cup of vodka.

¶ 5 After the other man left, defendant and C.S. walked to a liquor store. Because the store was closed, they returned to C.S.'s home. Once there, C.S. announced that she was going into her house. Defendant then hit her in the mouth and said, "don't say nothing - - B, don't say nothing or I'm gonna kill you." Defendant put C.S., who is partially paralyzed in one arm, into a headlock, and he dragged her by the neck from the front porch to the back of an alley. Defendant pushed C.S. into a garage and told her to get on her hands and knees. C.S. did not scream because she was afraid defendant would kill her. Defendant removed C.S.'s pants and underwear, and inserted his penis first into C.S.'s anus and then into her vagina. When asked if defendant went into C.S.'s vagina more than once, C.S. responded yes. She clarified that defendant's penis went "half way" into her vagina, went "half way" into her anus, and again went "half way" into her vagina. At no point in time did C.S. agree to have vaginal or anal sex with defendant.

¶ 6 C.S. testified that while defendant was sexually assaulting her, he stated that he "did a white girl like this. But she didn't come through the lineup." Afterwards, defendant and C.S. exited the garage, and defendant sprayed C.S. with water from a garden hose. Defendant then left. C.S. testified that after the attack she felt pain in her face, anus, and vagina. Prior to the encounter with defendant, C.S. was not injured and she had no blood or fecal matter in her underwear.

¶ 7 C.S. returned home and called the police. She was taken to the hospital, where she completed a sexual assault kit. On August 20, 2007, she was presented with a photo array by police and identified defendant. On August 31, 2007, C.S. went to the police station, and identified defendant from a lineup. She identified defendant in court as the man who assaulted her on the evening of August 11, into the morning of August 12, 2007.

¶ 8 On cross-examination, C.S. testified that, on the date in question, defendant approached her home at approximately 11:00 p.m. looking for C.S.'s two nieces. C.S. denied sitting with defendant for a few hours. Defendant and C.S. went to a liquor store a block away but returned because it was closed. When they returned, C.S.'s nieces were outside her home but they went inside the house without talking to either defendant or C.S. She stated that the sexual assault took place at approximately 2:30 a.m. She denied drinking gin that night. She acknowledged that, at the hospital, she told the nurse that she had had a bottle of gin. On redirect examination, C.S. stated she was not viewing a clock at the time of the offense, and did not drink gin that night.

¶ 9 Chrishawn Cottrell, C.S.'s niece, testified that in August 2007, she was living with her aunt and mom. On August 10, 2007, Cottrell met defendant for the first time, and defendant gave her his telephone number and name. Cottrell entered her home in front of defendant. On the

evening of August 11, 2007, Cottrell saw C.S. and defendant on the porch. Later, she saw C.S. enter the home. C.S.'s mouth was swollen and bleeding, and she had dirt marks on her shirt. Also, she was drenched with water, and she had leaves in her hair.

¶ 10 Paula Baumann, the registered nurse who examined C.S., testified that she met C.S. in the emergency room of the hospital. During the examination, C.S. told Baumann she drinks daily, and what she drinks is a fifth of gin but C.S. did not state that she drank a fifth of gin that day. C.S. did not appear intoxicated to Baumann. Baumann did not smell any alcohol on C.S. or observe an inability by C.S. to walk or speak clearly. C.S. told Baumann that she was vaginally and rectally raped. Baumann observed C.S.'s top and bottom lips were lacerated, and her face was swollen. There was fecal matter and blood in C.S.'s underwear. C.S. informed Baumann that she no longer had a menstrual cycle. C.S. completed a sexual assault kit, which included vaginal and anal swabs.

¶ 11 The parties stipulated that DNA analysis was conducted on a buccal swab standard obtained from defendant which generated a DNA profile suitable for comparison with a DNA profile obtained from vaginal swabs from C.S.'s sexual assault kit. The male DNA profile obtained from the vaginal swabs matched defendant's DNA profile.

¶ 12 The State presented other crimes evidence. T.W. testified that on the evening of July 1, 2007, she was walking in Calumet City alone. Defendant called out to her and she recognized him because he dated her friend. Defendant grabbed T.W.'s hair, and pulled her into an alley. Defendant told T.W. to "suck his dick." When she refused, he forced her onto the ground and removed her clothes. Defendant hit T.W. multiple times in the head, and he threatened to continue to hit her if she kept yelling for help. He forced his penis into her vagina. Then

defendant attempted to go into T.W.'s anus but was unsuccessful. Defendant threatened to kill T.W. if she told anybody about the assault, and he left the scene.

¶ 13 T.W. went to a hospital where a sexual assault kit was completed. She also spoke with the police, and on July 31, 2007, identified defendant from a lineup. Kelly Krajnik, a forensic DNA analyst, testified that a vaginal swab taken from T.W. from the sexual assault kit had a male DNA profile that matched the DNA profile taken from defendant's buccal swab.

¶ 14 Defendant moved for a directed verdict. After hearing arguments from the parties, the trial court denied the motion. Defendant did not present any evidence.

¶ 15 Prior to closing argument, the trial court admonished the jury that statements made in closing were not evidence and anything not based in evidence should be disregarded. During both closing and rebuttal arguments, the State also informed the jury that closing arguments were not to be taken as evidence.

¶ 16 In closing argument, the State recounted the evidence presented. In doing so, the State noted, "[C.S.] told you how this defendant forced his penis into her vagina. How this defendant forced his penis into her anus and forced it into her vagina again." The State also said, "[t]he first penetration is he put that penis, he put his penis in her vagina two different times. He was in her vagina, he went to the anus. He went from the anus, he went back to the vagina."

¶ 17 In rebuttal argument, the State told the jury that defendant "vaginally penetrates her. But that's not enough for this guy, right ***. So he takes it out of her vagina and sticks it into her anus, right. And when he's done with that how do we know he goes back into her vagina, because he ejaculates in there."

¶ 18 After closing arguments, the trial court read the jury instructions, including Illinois Pattern Jury Instructions, Criminal, No. 1.03 (approved July 18, 2014) (hereinafter IPI Criminal No. 1.03):

> "Opening statements are made by the attorneys to acquaint you with the facts they expect to prove. Closing arguments are made by the attorneys to discuss the facts and circumstances in the case and should be confined to the evidence and to reasonable inferences to be drawn from the evidence. Neither opening statements nor closing arguments are evidence. Any statement or argument made by the attorneys which is not based on the evidence should be disregarded." IPI Criminal No. 1.03.

The trial court also tendered this instruction to the jury in written form for deliberations.

¶ 19 The jury found defendant guilty on three counts of aggravated criminal sexual assault. The court subsequently sentenced defendant to three consecutive terms of 12 years' imprisonment.

¶ 20 On appeal, defendant contends that this court should remand for a new trial because the State's closing argument included misstatements of fact about the sequence of penetrations by defendant. He argues that these statements were prosecutorial misconduct that violated his right to a fair trial. In his reply brief, defendant acknowledges that he failed to preserve this argument for review by not objecting at trial and raising it in a posttrial motion. However, he requests this court to review the issue as plain error.

¶ 21 In order to preserve an alleged error for consideration by the appellate court, "a defendant must object to the error at trial and raise the error in a posttrial motion." *People v. Sebby*, 2017 IL 119445, ¶ 48. Not doing either results in forfeiture. *Id.*

¶ 22 Illinois Supreme Court Rule 615 provides an exception to forfeiture when there are "plain errors or defects affecting substantial rights." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). A plain error may occur 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). Absent reversible error, there can be no plain error. *People v. Johnson*, 208 Ill. 2d 53, 64 (2003).

¶ 23 It is well-settled that the State has "wide latitude" in closing argument. *E.g. People v. Runge*, 234 Ill. 2d 68, 142 (2009). A prosecutor may comment on the evidence presented at trial and the reasonable inferences therefrom. *People v. Nicholas*, 218 Ill. 2d 104, 121-22 (2005). Even where there are improper comments, reversal is warranted only where the "remarks caused substantial prejudice to the defendant, taking into account the content and context of the comment, its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial." *Johnson*, 208 Ill. 2d at 115; accord *People v. Love*, 377 Ill. App. 3d 306, 313 (1st Dist. 2007). Substantial prejudice is caused when "it is impossible to say whether or not a verdict of guilt resulted from" the comments. *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.* We review *de novo* the legal issue of whether a prosecutor's misconduct, such as improper statements during closing argument, was so egregious

that it warrants a new trial. *People v. Cook*, 2018 IL App (1st) 142134, ¶¶ 61-62 (citing *Wheeler*, 226 Ill. 2d at 121).

¶ 24 The record shows that during the State's closing argument, the prosecution stated that defendant first inserted his penis into C.S.'s vagina, then anus, and then vagina again. C.S.'s testimony was that defendant first inserted his penis into her anus, and then he inserted his penis into her vagina multiple times. Defendant maintains that these statements by the prosecution distracted, provoked and confused the jury resulting in an unfair trial.

¶ 25 After taking into account the content of the comments, their relationship to the evidence, and their effect on defendant's right to a fair trial, we find that the prosecutor's remarks did not cause substantial prejudice to defendant. Stated differently, the prosecutor's remarks did not contribute to defendant's conviction. The jury found defendant guilty of three counts of aggravated criminal sexual assault based on penis to anus penetration (count five) and penis to vagina penetration (counts four & six). The record shows that C.S. testified that defendant first inserted his penis into her anus and then into her vagina. When asked if defendant's penis went into her vagina more than once, C.S. responded yes. She clarified that defendant's penis went into her vagina, her anus, and again into her vagina. Although the prosecution misstated the order of penetrations, it did not misstate the number of vaginal penetrations, which is the key element leading to defendant's multiple convictions. When viewed in the context of the closing argument the prosecutor's statements on the order of penetrations were brief and not the theme of the State's closing. See *Runge*, 234 Ill. 2d at 142 (a significant factor in determining the impact of the prosecutor's comments on the jury is whether the comments in the context of the closing are "brief and isolated.").

¶ 26 Moreover, the jury was repeatedly instructed that closing arguments are not evidence and that any statements made by the attorneys not in evidence should be disregarded. A prosecutor's improper remarks may be cured by the trial court "by giving the jury proper instructions on the law to be applied; informing the jury that arguments are not themselves evidence and must be disregarded if not supported by the evidence at trial; or sustaining the defendant's objections and instructing the jury to disregard the inappropriate remark." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). Furthermore, "[w]e must presume, absent a showing to the contrary, that the jury followed the trial judge's instructions in reaching a verdict." *Id.* at 373. Defendant has not provided any evidence to contradict the presumption that the jury followed the trial court's instructions in finding him guilty. See *People v. Taylor*, 166 Ill. 2d 414, 438 (1995) ("The jury is presumed to follow the instructions that the court gives it"). Given this record, defendant was not prejudiced by the prosecutor's comments.

¶ 27 Defendant nevertheless argues that the prosecutor's misstatements led the jury into believing there was significantly more evidence of a second vaginal penetration then presented at trial. He maintains that this was especially the case here because C.S. lacked credibility where she admitted to drinking alcohol on the night in question. Although C.S. admitted to consuming alcohol, Baumann confirmed that C.S. did not appear intoxicated at the hospital, or display the typical behaviors of an intoxicated individual. C.S.'s testimony was consistent on the elements of the offense with respect to the number of penetrations. Importantly, the prosecutor's remarks did not misstate the number of penetrations which formed the basis for defendant's convictions.

¶ 28 We are also not persuaded by defendant's reliance on *People v. Blue*, 189 Ill. 2d 99. Here, unlike in *Blue* there is no "pervasive pattern of unfair prejudice" created by the cumulative

effect of prosecutorial misconduct. *Id.* at 138-40. In *Blue*, prosecutors reminded the jury of the loss the parents of the victim felt, and argued that the family of the victim needed to "hear" from the jury. *Id.* at 130. The State went on to exhort the jury to send a message to all police that they supported officers by convicting the defendant for the murder of the victim, an officer. *Id.* at 132-33. Those comments and the "introduction of the victim's bloody uniform" produced a "synergistic effect" that led "the jury to return a verdict grounded in emotion." *Id.* at 139. In this case, the prosecutor's misstatements were not designed to lead the jury to return a verdict formed in emotion. Rather, the prosecutor's statements were based on the evidence presented regarding the number of penetrations albeit not the sequence of penetrations.

¶ 29 Because defendant has failed to demonstrate plain error he has forfeited this argument on appeal. See *Johnson*, 208 Ill. 2d at 64 (If an error is found not to rise to the level of a plain error as contemplated by Rule 615(a), the procedural default must be honored).

¶ 30 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 31 Affirmed.