2011 IL App (1st) 1093574-U

FOURTH DIVISION
March 15, 2012

No. 1-09-3574

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. 06 C6 60362
	)	
KEVIN HALL,	)	
	)	The Honorable
Defendant-Appellant.	)	Michele M. Simmons,
	)	Judge Presiding.

PRESIDING JUSTICE LAVIN delivered the judgment of the court.
Justice Pucinski and Sterba concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly denied defendant's motion for a continuance on his retrial, since the court had previously granted several continuances and since defense counsel had answered ready for trial before moving to continue the retrial. Although the trial court erred by allowing a medical witness to testify that the findings of her physical examination of the minor sex abuse victim were "awful" and "heartbreaking," its ruling did not rise to the level of plain error, because the evidence against defendant was neither closely balanced nor resulted in substantial prejudice. Finally, the State's closing argument was proper. Affirmed.

¶ 2 Following a second jury trial (the first ended in a mistrial after a hung jury), defendant

Kevin Hall was convicted of predatory criminal sexual assault of his 10-year-old stepdaughter,

N.T. and was sentenced to 26 years' imprisonment. In this timely appeal, defendant contends that he is entitled to a new trial because, *inter alia*, the lower court erred by denying him a continuance in order to fully prepare and investigate a potential medical defense, by allowing a medical witness to express her personal "heartbreak" at the results of her physical examination of the victim and by allowing the State to improperly argue various matters in closing argument. We affirm.

¶ 3 BACKGROUND

¶ 4 In 2006, defendant lived in an apartment in Robbins, Illinois, with his wife, Tomasenia, their daughter Ka. T., and Tomasenia's two daughters from another relationship, N.T. and Ke. T. The State alleged that defendant had anal intercourse with N.T. on March 3, 2006, in her bedroom, an event that was initially denied by the victim when confronted by her mother. Nine days after this alleged occurrence, the child told her mother that her stepfather had put his "penis" into her "butt." Tomasenia's sister took N.T. to the hospital that evening. Several days later, at a detective's urging, N.T. was seen by Dr. Sangita Rangala, a physician who specializes in sexual abuse cases, at Edward Hospital in Naperville. At that visit, Dr. Rangala's examination of the young girl revealed signs and symptoms of anal sexual abuse and trichomonas, a sexually transmitted infection.

¶ 5 On the day that the retrial was scheduled to begin, with both parties having answered ready for trial and with the jury literally in the hallway outside the courtroom, defense counsel moved for a continuance to investigate whether the minor victim N.T. had been tested for chlamydia, a sexually transmitted disease. Defense counsel argued that it had received

information from Tomasenia indicating that N.T. had been diagnosed with three sexually transmitted diseases, including chlamydia. Defense counsel maintains that Tomasenia admitted that both she and the man she was then involved with tested positive for chlamydia, while defendant had tested negative for the disease. During a subsequent telephone conversation, defense counsel claimed that Tomasenia could not remember where the testing for N.T. was done, only that it was done in Gary, Indiana, and that Detective Jamison would have the exact location. Defense counsel contended that defendant's right to a fair trial would be compromised if he were not allowed a continuance to further investigate the matter. The court denied this motion, noting that counsel had answered ready for trial and had been given plenty of time before trial to investigate this specific allegation.

¶ 6 At trial, N.T. testified that she lived with her siblings, her mother and defendant, who was her stepfather. She testified that at approximately 3:00 p.m. on March 3, 2006 she returned from school with Ke. T. to an empty home. Two hours later, she and Ke. T. were in their bedroom when defendant returned from work, entered his bedroom, and began playing video games. Soon thereafter, defendant entered the girls' bedroom wearing only boxer shorts and told Ke. T. to go into his bedroom to play video games. N.T. testified that once her sister was out of the room, defendant removed N.T.'s pants and underwear, laid her across the bed, "put his penis in my butt" and began moving "up and down." This was interrupted when Ke. T. yelled from defendant's bedroom, "mama is home." Defendant "jumped up" and went to the hallway. Her mother then entered the girls' bedroom, approached N.T. and pulled off the blanket that was covering N.T.'s lower half, revealing that she was naked from the waist down. N.T. testified that she told her

mother that "nothing" had happened when questioned, because she was scared that defendant might hurt her mother, based on warnings from defendant on earlier occasions when this same abuse had occurred. N.T. acknowledged that she waited until nine days later to tell her mother what happened. At that time, N.T. told her mother that defendant had abused her in a similar fashion on at least five previous occasions.

¶ 7 Tomasenia testified that on March 3, 2006, she went with her father, stepmother and daughter, Ka. T., to purchase a car in Lansing, Illinois. She returned to the apartment around 7:30 p.m and immediately noticed Ke. T. playing a video game. Tomasenia walked down the hallway and saw defendant leaving the girls' bedroom, clad only in boxer shorts and a T-shirt. Tomasenia made eye contact with defendant, prompting him to volunteer that he was not "doing anything" and that he just "got after" N.T. for walking around in the nude. Defendant then went to the bathroom, while she entered the girls' bedroom and saw N.T. sitting on a bed wearing a shirt with a blanket draped across her legs. The girl appeared to have tears in her eyes. Tomasenia asked N.T. what was wrong and N.T. said that she had hit her head. Tomasenia then asked N.T. to come downstairs to look at the new car, but N.T. would not immediately get out of the bed, prompting Tomasenia to pull the covers off her daughter's lap, revealing that the child was naked below the waist.

¶ 8 N.T. then accompanied her mother for a ride in the new car and it was upon their return that mother took child to the bathroom and examined her, noticing moisture near her vagina and anus. Tomasenia testified that for the next week, she continued to ask N.T. what happened, often asking N.T. if Kevin was "messing" with her. Finally, on March 12, in a lengthy conversation,

N.T. told Tomasenia what had occurred on March 3.

¶ 9 Following that conversation, Tomasenia phoned her sister and asked her to bring N.T. to a local hospital for treatment. Tomasenia testified that she did not take the child herself, because she feared defendant finding out. Tomasenia telephonically gave her permission for the hospital to examine N.T. Although Tomasenia did not initiate contact with the police, she did receive a telephone call from Detective Jamison and related her daughter's accusation. Tomasenia stated that on the detective's recommendation, she subsequently brought N.T. to Edward Hospital on March 17, where her daughter underwent a complete physical examination by a physician specializing in sex abuse cases.

¶ 10 Diane S. testified that she had two children with defendant and that their relationship ended many years earlier. She also has another child, J.S., who is approximately two years older than N.T. Diane testified that, despite the fact that her relationship with defendant ended many years earlier, she maintained contact with him and that she occasionally was a babysitter for Tomasenia's three daughters. Diane's testimony was significant mostly because of two conversations she had with defendant after he had been arrested for assaulting N.T. She received a telephone call from defendant just after he was released from jail following his arrest for the alleged assault of N.T. Defendant told her that he had just been arrested after being accused of molesting N.T., and specifically asked her whether she thought it was "possible" that J.S. was having sex with N.T. Diane replied that would be "impossible" because she was always present when N.T. and J.S. were together.

¶ 11 Diane also testified that defendant subsequently came to her home, laid on her couch and

demonstrated his version of what had occurred on the evening that N.T. alleged that she was assaulted by him. Defendant said that he was in his room after coming home from work, and had taken off all of his clothes except for his T-shirt and boxers. He explained that he was doing stomach exercises, with the girls "helping" him by sitting on his stomach. Diane testified that defendant then explained that N.T. got on his stomach, "grabbed his penis, and tried to stick it in her anus, and he slapped her." This testimony prompted the State to impeach Diane with her grand jury testimony which was somewhat different. There, she testified under oath that defendant told her that the child started "grinding" against him and that she herself grabbed his "penis out of his boxers and put it inside of her vagina, and then took it out of her vagina and put it in her anus."

¶ 12 Diane's testimony was further clouded during cross-examination. Defense counsel attempted to further its theory that Diane was testifying truthfully before the jury, but was lying during her grand jury testimony after being pressured by Detective Jamison. Diane, however, initially denied that Detective Jamison "pressured her" about how to testify at the grand jury. Defense counsel then confronted Diane with her testimony from the first trial, where she admitted that she testified differently at the grand jury because "Jamison was pressuring me to say things." Ultimately, Diane explained that Jamison's alleged influence upon her had occurred at her home and not while in the car on the way to the grand jury.

¶ 13 On redirect, Diane testified that defendant told her N.T. only "tried" to put defendant's penis in her anus and that the testimony she gave before the grand jury "came out of [her] mouth," but "they was [sic] Detective Jamison's words."

¶ 14 Dr. Rangala, an expert in the field of pediatric sexual trauma, examined N.T. at Edward Hospital approximately two weeks after the alleged assault. Her physical examination included a head-to-toe exam similar to one which might occur at a pediatrician's office, but she also performed a detailed examination of the child's genitalia. Dr. Rangala explained that she purposefully brushed her hand near the victim's anus and that it spontaneously dilated, which the doctor explained was remarkably unusual in a child. She testified that it is contrary to the natural reflex which tightens the sphincter muscle around the anal opening. She opined that this was a sign of sexual abuse because the child had essentially trained herself to relax her sphincter muscle in order to minimize pain encountered with penetration.

¶ 15 After the testimony about the particulars of the examination of the child's anal area, the prosecutor rather deliberately tried to elicit the doctor's "reaction" to the examination. A defense objection was sustained. The next question asked for the doctor's "response" to the examination. A defense objection was again sustained. The third, nearly identical, question asked Dr. Rangala "what did you think?" The question was allowed to stand despite another objection. The expert witness immediately responded, "I thought it was awful," and later in the long, narrative answer, Dr. Rangala stated that "when you see a child who dilates their sphincter just from the touch of the hand to the outside, it is actually is [sic] heartbreaking. It is not normal." Finally, Dr. Rangala readily acknowledged that she was unable to identify the offender in any way.

¶ 16 Following the close of the State's case, defendant rested without presenting any evidence. Defendant was convicted of predatory criminal sexual assault and was sentenced to 26 years in prison.

¶ 17 ANALYSIS

¶ 18 I. Continuance

¶ 19 Defendant first contends that the trial court improperly denied his motion for continuance to allow further investigation into the possibility that the victim was diagnosed with chlamydia, an STD that defendant claims he has not been diagnosed with. We review the denial of a motion for continuance for an abuse of the trial court's discretion. *People v. Chapman*, 194 Ill. 2d 186, 241(2000). Whether the lower court has abused its discretion depends on the circumstances and facts in each case, and no mechanical test exists for determining the point at which the denial of a continuance violates the substantive rights of the accused to properly defend. *People v. Walker*, 232 Ill. 2d 113, 125 (2009). We regard defendant's argument on this issue as rather insubstantial, in light of the fact that the trial court granted several continuances after the first jury trial in order to allow defendant to investigate this very issue. Furthermore, defense counsel's motion for a continuance was made after counsel had already answered "ready" for trial and after the trial court had summoned the *venire* for jury selection. Under these circumstances, we cannot find that the trial court abused its discretion in denying defendant a continuance.

¶ 20 II. Prosecutorial Misconduct

¶ 21 Defendant also asserts that the State engaged in numerous instances of prosecutorial misconduct, which mostly pertain to the alleged improper closing argument by the State. It is of note, that the First District has recently acknowledged a divide with regard to the standard of review for closing arguments. See *People v. Maldonado*, 402 Ill. App. 3d 411, 421 (2010). In *Maldonado*, the court claimed that the confusion arose due to an apparent conflict between two

supreme court cases: *People v. Wheeler*, 226 Ill. 2d 92, 121 (2007), *People v. Blue*, 189 Ill. 2d 99 (2000). In *Wheeler*, the court held that whether a prosecutor's remarks are so egregious as to require a new trial presents a question of law that is reviewed de novo. *Wheeler*, 226 Ill. 2d at 121. Confusion arises due to *Wheeler* also citing with approval *Blue* , wherein the court held that the propriety of closing remarks shall not be disturbed absent an abuse of discretion. *Blue*, 189 Ill. 2d at 128. The Second District Appellate Court, however, has held that there may be no conflict between the standard of review as stated in *Blue* and *Wheeler* but rather, the standards of review set forth in those two cases apply to two distinct issues. See *People v. Robinson*, 391 Ill. App. 3d 822, 840 (2009) ("Arguably, the supreme court may have intended that we review the propriety of rulings on individual remarks under an abuse-of-discretion standard while we review the cumulative effect of all of the improper remarks under a *de novo* standard.") Nevertheless, due to the fact that we would reach the same result, whether under a *de novo* or an abuse-of-discretion standard in this case, we need not reach the issue of the potential divide.

¶ 22 We must review closing arguments in their entirety, and consider challenged remarks in context; including the context of the statements which were not properly objected to. *Wheeler*, 226 Ill. 2d at 122-23. Generally, prosecutors are given wide latitude in closing arguments, and typically the trial court's determination as to the appropriateness of such arguments will not be disturbed on review. *People v. Derr*, 316 Ill. App. 3d 272, 275 (2000). Furthermore, assuming *arguendo*, even if the prosecutor's statements are considered improper, they are not considered reversible error unless they result in substantial prejudice against the defendant so as to constitute a material factor in the defendant's conviction. *Chapman*, 262 Ill. App. 3d at 439.

¶ 23 Defendant's main contention with respect to the State's closing argument concerns the testimony of Diane. Defendant asserts that statements made by the State during closing argument regarding Diane's testimony misstated the law. In brief reiteration, Diane testified that defendant came over to her house and gave a version of what happened on the date of the alleged assault of N.T. In her testimony at the retrial, she essentially testified that defendant reenacted the incident on her couch. While lying on her couch, he explained how he was doing some stomach exercises when N.T. came into the room, grabbed his penis and *tried* to stick it in her anus. Defendant argues that the offense of predatory criminal sexual assault requires actual penetration. See 720 ILCS 5/12-14.1(a)(1) (West 2004).

¶ 24 Diane's grand jury testimony was different. There, she testified that defendant said N.T. grabbed his penis out of his boxers and actually put it inside of her vagina and then took it out of her vagina and put it in her anus. The State impeached Diane with this testimony. Defendant contends that the two "versions" given by Diane were materially different because the in-court version did not specifically include evidence of penetration.

¶ 25 Thus, defendant contends the State misstated the law by arguing in closing that defendant was guilty of "sexual penetration" no matter which "version" the jury believed. Contrary to defendant's argument, this is not a statement of law, let alone a misstatement of law. At best, this argument amounts only to a misstatement of the facts as it relates to the applicable law. In any event, right after this argument, the prosecutor read the jury instruction on this issue. We find that any possible error was mitigated by the prosecution reciting the instruction and was later effectively cured by the proper instruction of the jury on the issue of the nature of proof required

to find the defendant guilty. See *People v. Lawler*, 142 Ill. 2d 548, 565 (1991) ("because the jury was properly instructed on the law ***, the prosecutor's misstatement was of little consequence and, thus, not reversible error.") The jury had plenty of proof of repeated anal penetration and any discrepant argument by the State did not meaningfully prejudice defendant or mislead this properly instructed jury which was told that "any contact" "however slight" could constitute penetration.

¶ 26 Next, defendant maintains that comments made by the prosecutor suggested that the jury should disregard the evidence in reaching a verdict. Defendant, remarkably, in support of its position, cites to one particular statement made in the State's closing argument, "pay attention to the evidence that came out at this trial, not what they say, not how they try to spin it." We find defendant's argument to be disingenuous and belied by the very statement in record used to support its position. Therefore, we find no error.

¶ 27 Defendant next argues that comments made by the prosecutor during the closing argument were used solely to appeal to the jury to align with the child victim and to use its verdict to vindicate her. Specifically, defendant refers to multiple comments the State made during closing, including, "[l]adies and gentleman, don't let all of [N.T.]'s pain, her embarrassment, her humiliation, her fear be for nothing. Let her know that she is not alone anymore. She has you." Defendant cites to a line of cases that have held that it is improper to appeal to a criminal jury to "send a message" to the community or to overtly suggest that a jury should put itself in the victim's position. See *Wheeler*, 226 Ill. 2d at 129.

¶ 28 Further, defendant directs our attention to *People v. Blue*, 189 Ill. 2d 99, 130-31 (2000),

in which the supreme court remanded after noting numerous instances of prosecutorial misconduct in its closing argument along with significant testimony from the victim's family member which was solely used to inflame the passions of the jury. In *Blue*, the prosecutor urged the jury that the victim's family members and fellow officers "needed to hear" from the jury, and that the victim's "heroics, his courage, his honor, and his duty didn't go in vain." *Id.* at 128. The court in *Blue* noted, however, that "the inflammatory impact of the State's argument cannot be fully understood without also knowing the evidence that preceded it." *Id* at 130. The Blue court went on to highlight pages of testimony given by the State's witnesses which were used merely to "highlight the poignancy of (decedent's) family's loss and to suggest to the jury that the family's pain could be alleviated by a guilty verdict." *Id.* At 131. The objectionable conduct apparent in *Blue* is nowhere apparent in the case *sub judice*. While not entirely proper, it was not the sort of improper appeal that prejudiced defendant's right to a fair trial considered in light of defendant's remaining challenges to alleged prosecutorial misconduct. Improper remarks will only require a reversal of defendant's conviction if they constitute a material factor in defendant's conviction. *People v. Chapman*, 262 Ill. App. 3d 439, 454 (1992).

¶ 29 Finally, as to the State's comments regarding the defense's attempt to spin the evidence "hoping that something will stick," we find *People v. Gonzalez*, 388 Ill. App. 3d 566 (2008), particularly instructive on this issue. In *Gonzalez*, the defendant made numerous arguments that comments made by the prosecutor were improper, and due to these comments the defendant demanded a new trial. Throughout its analysis, the court repeatedly determined whether the complained of comments were isolated or permeated the entire closing argument. *Id.* at 592.

This same analysis is applicable in the case *sub judice*. While we acknowledge that the State should not attack defendant's theory of defense or label it as "spin," we find that those comments were isolated, were not a central theme in the State's closing argument, and therefore, did not shift the jury's focus away from the facts of the case or otherwise deny defendant a fair trial.

¶ 30 Defendant raises additional challenges regarding alleged prosecutorial misconduct which he failed to preserve and are forfeited. See *People v. Enoch, 122 Ill. 2d 176, 186 (1988).* He has also forfeited his contention that these errors cumulatively require reversal. See *Wheeler*, 226 Ill. 2d at 122. Nevertheless, pursuant to the plain error doctrine, we may review unpreserved error where (1) the evidence in the case was so closely balanced that the error alone threatened to tip the scales of justice or (2) the error is so serious that it denied the defendant a fair trial and challenged the integrity of the judicial process, regardless of the closeness. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2001). Before considering defendant's claims under the plain error doctrine, an initial determination must be made as to whether error occurred. *People v. Thompson*, 238 Ill. 2d 598, 613 (2010). Accordingly, we now determine whether any of defendant's remaining contentions constitute error.

¶ 31 Defendant asserts that the State improperly commented on his right to confront witnesses. Defendant maintains that the State erred when it attacked defendant for cross-examining Dr. Rangala. Defendant points to statements made by the State in its closing argument: "Why are they going after the doctor like they were going after her? There should not have been one question. 'Judge no questions. We concede that [N.T.] was anally raped.'" In sum, defendant contends that the prosecutor's comments were improper because they attacked its constitutional

right to confront witnesses against him.

¶ 32 We find, despite defendant's contentions, that the comments made during the State's closing argument were proper. As stated above, the prosecution is afforded a wide latitude in making its closing arguments. We find that the prosecutor's comments regarding defendant cross-examining Dr. Rangala was proper because it was supported by the evidence at trial. It is uncontested that defendant's theory of defense at trial was that N.T. had been sexually abused, but not by defendant. Thus, the comments made by the State during closing argument merely point out that defendant's theory of defense was inconsistent with its thorough cross-examination of Dr. Rangala.

¶ 33 Defendant's next argument relates to the testimony of Dr. Rangala and avers that the trial judge erred in allowing Dr. Rangala, the State's principal expert witness, to unfairly inject her personal, emotional opinions into her testimony. This subject had been previewed in the prosecutor's opening statement, in which the prosecutor, without objection, told the jury that the finding on the anal examination "stopped Dr. Rangala in her tracks" and "took the doctor's breath away." As mentioned above, Dr. Rangala's testimony to that effect was allowed after the trial court had just sustained defense objections to two nearly identical questions. Although defense counsel did object to the third offering, counsel did not move to strike the answer and failed to include the issue in defendant's post-trial motion, resulting in forfeiture of this issue.

¶ 34 As a threshold matter, it bears mention that the admissibility of evidence is dependent upon a showing that it is legally relevant. *People v. Hope*, 168 Ill. 2d 1, 23 (1995). In order to be relevant, the evidence must show "any tendency to make the existence of any fact in consequence

to the determination of the action more or less probable than it would be without the evidence." *Id*. Defendant here argues that the opinions admitted were both irrelevant and outside the allowable scope of medical opinions by an examining physician. Although the State's brief suggests that the challenged testimony was relevant, when questioned at oral argument in this case, the State conceded it was irrelevant that Dr. Rangala found this to be "heartbreaking." Defendant cites *People v. Jordan*, 103 Ill. 2d 192, 208 (1984), for the inarguable, yet general proposition that an expert is permitted to testify to opinions based upon generally accepted scientific theories and only where his experience and qualifications afford him knowledge which is not common to the lay juror and where the testimony will aid the trier of fact in reaching its conclusion. Defendant maintains that Dr. Rangala's personal opinion violated these accepted principles. Nonetheless, neither party has cited a case in which a medical expert espoused a "personal opinion" and the party presenting the witness maintained that the elicited testimony related to the doctor's "professional opinion."

¶ 35 Our first observation is that the testimony of the witness as to the unvarnished medical facts was quite compelling in its own right. The doctor painstakingly detailed the intrusive nature of her examination and described in detail how she brushed her hand across the child’s anal area. Under normal circumstances, the doctor explained, the sphincter would remain tight, but when she examined N.T., the child’s anus spontaneously dilated. In her expert opinion, this physical sign was consistent with repeated anal trauma, because the child had essentially trained her sphincter muscle to relax to minimize anticipated trauma. Given the undeniable impact of the testimony about the exam itself, it is difficult to condone the admission of this expert's

emotional reactions to this physical examination in cases of suspected sexual abuse. It strains credulity to suggest that this doctor's thoughts, perceptions or reactions to these findings were in any way relevant to the issues before this jury. Thus, we find that an error occurred.

¶ 36 Notwithstanding our determination that error occurred with respect to Dr. Rangala's testimony, as stated, the error was unpreserved. Defendant similarly forfeited his contention that cumulative error, including this error as well as the State's improper commentary attempting to align the jury with the victim and improper commentary on the defense's attempt to spin the evidence, requires reversal. Although defendant's argument is somewhat unclear, he apparently contends that the cumulative error in this case amounts to plain error. We disagree.

¶ 37 In our view, the evidence was not closely balanced. Several observations are relevant here. First and foremost, defendant did not claim at trial that the child was not the victim of repeated anal sexual abuse, which was the gravamen of Dr. Rangala's testimony. Defense counsel went to some lengths to concede that the child was, in fact, abused in this manner, but urged the jury to find that defendant was not the perpetrator of the abuse. Thus, improper testimony concerning the extent of the abuse could not have affected the defense theory. Next, this jury heard testimony from Diane about two conversations that she had with defendant after he was released from jail following his arrest on these charges. In the first conversation, over the telephone, defendant asked Diane if her son J.S., a 12-year-old, may have been responsible. In the next conversation, at her home, defendant acknowledged that there was some contact between him and his 10-year-old stepchild on the date in question, but he claimed that it was the *child* who voluntarily grabbed his penis and attempted to put it in her anus. Furthermore, the

victim's mother testified that she saw defendant leave the girls' room, clad only in his underwear, declaiming that he had not done anything. When Tomasenia saw the child in her bed, her eyes were watery and only a blanket covered the fact that she was naked below the waist. When the testimony of these two witnesses is considered in conjunction with the rather detailed and compelling testimony of the child victim, it is difficult to accept the defendant's contention that the evidence against him was close. More properly put, it was overwhelming.

¶ 38 We also reject defendant's argument that the cumulative error in this case satisfies the second prong of plain error. Under this prong, "[p]rejudice to the defendant is presumed because of the importance of the right involved, regardless of the strength of the evidence." *Thompson*, 238 Ill. 2d 598, 613 (2010). Nevertheless, defendant has failed to persuade us that the error here was so serious that it denied him a fair trial and challenged the integrity of the judicial process. *Piatkowski*, 225 Ill. 2d at 565. Without citing case law, he argues that "the prosecutors' persistent interference with the ability of the jury to dispassionately weigh the evidence *** tainted the process" in this case. While we find that the personal opinions of the expert were not probative of any issue in this case, we are likewise unable to say that these non-probative opinions were so prejudicial to have deprived defendant of his right to a fair trial. See *People v. Cosmano*, 2011 Il App (1st) 101196, ¶ 78 (error in closing argument does not fall into the type of error recognized as plain error under the second prong.) Thus, defendant's alleged error fails under both prongs of the plain error rule.

¶ 39 CONCLUSION

¶ 40 The trial court correctly denied defendant's motion for a continuance of his retrial on

predatory criminal sex abuse charges since he was granted several prior continuances to investigate a medical defense and because his lawyer answered ready for trial before moving to continue the retrial. This jury heard plentiful evidence that supported defendant's conviction on charges of predatory criminal sexual abuse and the trial court's error in allowing into evidence the personal reaction of the medical expert didn't prejudice defendant because the evidence against him was overwhelming. Similarly, none of the comments in the prosecutor's closing argument unfairly prejudiced defendant's right to a fair trial.

¶ 41 Affirmed.