2013 IL App (1st) 100332-U

FIFTH DIVISION
March 1, 2013

No. 1-10-0332

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. KEVIN SKOWRON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Cook County 08 CR 23095 Honorable Thomas Fecarotta, Judge Presiding.

PRESIDING JUSTICE McBRIDE delivered the judgment of the court.
Justices Palmer and Taylor concurred in the judgment.

O R D E R

¶ 1 HELD: Defendant was not denied his right to a fair trial due to prosecutorial misconduct

¶ 2 Following a jury trial, defendant Kevin Skowron was convicted of the predatory criminal sexual assault of four-year-old N.J. The trial court subsequently sentenced defendant to a term of ten years in prison. Defendant appeals, arguing that he was deprived of a fair trial because of pervasive prosecutorial misconduct.

¶ 3 The following evidence was presented at defendant's jury trial.

¶ 4 N.J. testified that she was currently five years old and was in kindergarten. A year earlier, when she was four, N.J. was taking swimming lessons at the YMCA. She stated that there was "a bad guy" who was her swimming teacher. N.J. described what happened: "He was helping me swim. And he did something bad to me. He was digging in my privates, and I did not like that." She testified that the man's hand was on her stomach, the other was in her "privates," and "it hurted." When asked where were her privates, N.J. pointed to her vaginal area. She said the man was white with a beard and a mustache.

¶ 5 After that happened, the man returned N.J. to the wall and she tried to get her mother's attention, but she was not able to tell her mother what happened while she was in the pool. When class ended, N.J. told her mother what happened and they went to the locker room. N.J. testified that her father arrived and she told him what happened. She said her father got "very mad." He asked her which man did it, N.J. pointed him out, and her father punched him.

¶ 6 Naomi J. testified that she is N.J.'s mother. N.J. was born June 14, 2004. On November 22, 2008, at approximately 8:30 a.m., Naomi was at the YMCA in Palatine, Illinois for N.J.'s swimming lesson. While N.J. was at her lesson, Naomi observed from nearby. Naomi briefly left the pool area to lock her car, but returned to watch N.J.'s lesson. Naomi stated that N.J.'s class had two instructors, one male and one female. Naomi identified defendant as the male instructor. Naomi saw N.J. receive individual instruction from defendant. After the individual instruction, N.J. tried to get her attention. Naomi went closer to her daughter and heard her say "pee-pee" and "underwater." Naomi asked N.J. if she need to use the restroom, N.J. said she did not. Naomi assumed that N.J. had an accident in the water and told her to stay in the pool and

finish class.

¶ 7 When class finished half an hour later, N.J. came straight to Naomi and said, "He touched my pee-pee." Naomi testified that N.J. pointed at defendant when she made this statement. Naomi stated that the family referred to the vaginal area as "privacy" or "pee-pee." Naomi asked N.J. if she meant he touched her inside her swimsuit and N.J. said yes. Naomi then spoke with someone in the YMCA management.

¶ 8 Naomi took N.J. to the family locker room to change. While changing, N.J. told her mother that "he was digging my pee-pee so hard that [she] could not swim." While they were there, her husband and older daughter arrived for the older daughter's gymnastics class. She told her husband what happened. Her husband left the locker room with N.J. Naomi gathered their belongings and followed them. She saw N.J. point out the instructor to her father. Her husband turned to Naomi and Naomi confirmed that was the man. Her husband then punched defendant. The police arrived shortly thereafter.

¶ 9 When they left the YMCA, Naomi took her daughters to a family friend's house and then went to the police station. She spoke with Detective Ericksen. Later that afternoon, Naomi took N.J. to be interviewed at the Children's Advocacy Center and later to be examined at Northwest Community Hospital.

¶ 10 Detective Chad Ericksen testified that he was a detective in the Palatine police department and received the assignment on November 22, 2008, to investigate an alleged predatory criminal sexual assault. He first met defendant around noon that day in an interview room at the Palatine police station with his partner Detective Leal. He briefly introduced himself

to defendant and left to interview N.J.'s father. Later, the detective brought defendant food around 12:30 p.m. Detective Ericksen stated that defendant did not appear to have an injury and was not bleeding from the nose. He said that defendant never complained about any pain or requested medical attention. Detective Ericksen admitted on cross-examination that defendant had a tissue or paper towel with drying blood on it.

¶ 11 He next spoke with defendant shortly after 2 p.m. with Detective Leal. This interview lasted approximately 40 minutes. Detective Ericksen advised defendant of his *Miranda* rights from a printed form, which defendant and the two detectives signed. Defendant told them he was 22 years old and had attended the University of Illinois at Chicago for three years and studied bioengineering. Detective Ericksen testified that defendant admitted to touching N.J.'s vagina, but that it was an accident. He spoke with defendant again around 3:30 p.m. and defendant maintained that the vaginal contact was an accident. Detective Leal was not present at this interview, he was observing N.J.'s interview at the Children's Advocacy Center.

¶ 12 After Detective Leal returned to the police station, Detective Ericksen along with Detective Leal interviewed defendant again at around 5 p.m. During this interview, defendant no longer contended that he accidentally touched N.J.'s vagina. Detective Ericksen testified that defendant said he "did it for the excitement of possibly getting caught." This interview lasted approximately 45 minutes.

¶ 13 At 6 p.m., Assistant State's Attorney (ASA) Melissa Meana arrived at the police station. He spoke with the ASA and then they talked to defendant. Defendant reiterated what he had previously told the detective. Defendant was given another meal at 7 p.m. At 7:40 p.m.,

defendant agreed to give a handwritten statement to the ASA and Detective Ericksen was present when the statement was given. Detective Ericksen estimated that in total he spoke with defendant for about two hours during the course of the day.

¶ 14 ASA Melissa Meana testified that on November 22, 2008, she worked in the felony review section of the state's attorney's office and received a call from the Palatine police department. She was informed about the victim interview at the Children's Advocacy Center, which she observed. After the interview, ASA Meana went to the Palatine police station and spoke with defendant. She stated that defendant did not appear to have any injuries and did not complain of any pain. ASA Meana talked to defendant alone and asked if he had been threatened or promised anything, defendant responded that he had not.

¶ 15 At approximately 7:40 p.m., ASA Meana took defendant's handwritten statement. She handwrote the statement based on what defendant told her and then they went through the statement to make any necessary corrections. ASA Meana, Detective Ericksen and defendant signed the statement. The statement was then published to the jury.

¶ 16 Defendant stated that he was instructing N.J. on the front crawl. Her stomach was in the water and her back in the air. One of his hands was holding her stomach. Defendant, with his other hand, moved N.J.'s swimsuit to the side and exposed her vagina. One of defendant's fingers touched the lips of N.J.'s vagina and he kept his finger there for a couple seconds. Defendant realized this was wrong and placed N.J.'s swimsuit back.

¶ 17 Dr. Meta Carroll testified that she was an emergency room pediatrician at Northwest Community Hospital. On November 22, 2008, she examined N.J. She stated that N.J. was

"clingy" to her mother and appeared anxious. She observed a small area of redness extreme tenderness, less than the size of a dime, within the left labia minora. In her expert opinion, the redness was consistent with digital penetration and an acute sexual assault. Her opinion was based on the vaginal examination as well as N.J.'s demeanor and N.J.'s outcry.

¶ 18 The State then rested. Defendant moved for a directed finding, which the trial court denied.

¶ 19 Defendant testified on his behalf. He denied touching N.J.'s vagina. He stated that Detective Ericksen told him that if he signed the statement, then he would be able to go home and receive a lesser charge.

¶ 20 On cross-examination, defendant testified that he believed what Detective Ericksen told him, that he could go home if he signed the confession. Defendant denied having contact with N.J. and said he was no longer in the pool at the end of her class, but had gone to another pool for his next class. Later, defendant admitted that the portion of his statement about instructing N.J. in front crawl was correct. He denied moving her swimsuit. Defendant stated that he asked for medical attention and told others that his nose was broken, but did not receive any assistance.

¶ 21 The defense rested after defendant's testimony. Following closing arguments, the jury deliberated and found defendant guilty of predatory criminal sexual assault. Defendant filed a motion for a new trial, which the trial court denied. At the sentencing hearing, the trial court sentenced defendant to ten years in the Illinois Department of Corrections.

¶ 22 This appeal followed.

¶ 23 On appeal, defendant argues that he was denied a fair trial because of pervasive

prosecutorial misconduct. Specifically, defendant contends that (1) during cross-examination, the prosecutor improperly forced defendant to call the State's witnesses liars, posed sarcastic and rhetorical questions to demean defendant, and inserted his own assertions and opinions into the proceedings, (2) during closing arguments, the prosecutor improperly bolstered his own witness, inflamed the emotions of the jury and sarcastically addressed defendant instead of directing his comments to the jury, and (3) the cumulative effect of these errors mandate a new trial.

¶ 24 The State initially responds that defendant has forfeited the claims of prosecutorial misconduct by failing to both object at trial and raise these issues in his motion for a new trial. Defendant admits that he failed to preserve these issues for appeal. To preserve an issue for review, defendant must both object at trial and in a written posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Failure to do so operates as a forfeiture as to that issue on appeal. *People v. Ward*, 154 Ill. 2d 272, 293 (1992).

¶ 25 Defendant, however, asks this court to review the issues as plain error. Supreme Court Rule 615(a) states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded. Plain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the trial court." Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967). The plain error rule "allows a reviewing court to consider unpreserved error 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) (citing *People v. Herron*, 215 Ill. 2d 167, 186-87 (2005)). The plain error rule, however, "is not 'a general saving clause preserving for review all errors affecting substantial rights whether or not they have been brought to the attention of the trial court.' " *Herron*, 215 Ill. 2d at 177 (quoting *People v. Precup*, 73 Ill. 2d 7, 16 (1978)). Rather, the supreme court has held that the plain error rule is narrow and limited exception to the general rules of forfeiture. *Herron*, 215 Ill. 2d at 177.

¶ 26 Defendant carries the burden of persuasion under both prongs of the plain error rule. *People v. Lewis*, 234 Ill. 2d 32, 43 (2009). Here, defendant asserts that the second prong of the plain error rule applies in this case because the prosecutor's conduct permeated the entire proceedings as to seriously undermine the integrity of the judicial proceedings. However, "[t]he first step of plain-error review is to determine whether any error occurred." *Lewis*, 234 Ill. 2d at 43. We will review defendant's claim to determine if there was any error before considering it under plain error.

¶ 27 "Prosecutorial misconduct warrants reversal only if it 'caused substantial prejudice to the defendant, taking into account the content and context of the comment[s], its relationship to the evidence, and its effect on the defendant's right to a fair and impartial trial.' " *People v. Love*, 377 Ill. App. 3d 306, 313 (2007), quoting *People v. Johnson*, 208 Ill. 2d 53, 115 (2004).

¶ 28 Defendant first contends that during cross-examination the prosecutor improperly forced defendant to call the State's witnesses liars and posed sarcastic and rhetorical questions intended to disparage and demean defendant in front of the jury. The State maintains that the questions were proper and invited by defendant's testimony that he did not sexually abuse N.J.

¶ 29 "A trial court has discretion to allow the prosecution wide latitude during cross-examination of the defense witnesses." *People v. Shelton*, 401 Ill. App. 3d 564, 582 (2010). "The proper scope of cross-examination extends to matters raised on direct examination, including all matters which explain, qualify, or destroy the testimony on direct examination." *Shelton*, 401 Ill. App. 3d at 582. It is improper to question a defendant about the truthfulness of other witnesses because such questions invade the jury's function of determining for itself the credibility of witnesses. *People v. Evans*, 373 Ill. App. 3d 948, 961 (2007) (citing *People v. Martin*, 271 Ill. App. 3d 346, 356 (1995)). Reversal is warranted only where the resulting prejudice is substantial. *Evans*, 373 Ill. App. 3d at 961.

¶ 30 Defendant points to several questions during his cross-examination that improperly asked him to comment on the veracity of the State's witnesses. The prosecutor had the following exchange with defendant.

> "PROSECUTOR: So when [N.J.] testified here in court, [N.J.] and the State's Attorney and Detective Ericksen, they're all making this up. For some reason, they want to nail you. Is that what you're telling us, sir?
>
> DEFENDANT: Ericksen told me about these things."

¶ 31 Defendant also complains of the following colloquy about his injury.

> "PROSECUTOR: And it was a pretty hard blow that was laid upon you?
>
> DEFENDANT: It knocked me to the ground.

PROSECUTOR: And you had a lot of swelling?

DEFENDANT: I had bruised. [*sic*] I know that. There's no mirror or anything like that in the interrogation room.

PROSECUTOR: But you were in pain?

DEFENDANT: Correct. I asked for painkillers.

PROSECUTOR: So Detective Ericksen, the office that transported you, and the State's Attorney are all in here lying when they say you never asked for pain pills?

DEFENDANT: I asked Ericksen for pain pills. I told everyone else I thought my nose is broken.

PROSECUTOR: So when the Detective says you never asked for pain pills or complained of any pain, he was lying?

DEFENDANT: Yes, because I asked — I specifically told people that I had — I thought my nose is broken. When I first got hit, I told the people around that I though my nose is broken. When the cop came, the first police officer that wasn't even Dom (phonetic)[1] that first talked to me, I told her I thought my nose was broken. When Dom took me in the locker room, I told him, 'I think my nose is broken.' I told every person.

---

[1] It is not clear from the record if defendant was referring to Officer Mark Dahlem, who transported defendant from the YMCA to the Palatine police department.

PROSECUTOR: Including the State's Attorney

DEFENDANT: Yes.

PROSECUTOR: So she lied, too?

DEFENDANT: I— I'm not a hundred percent sure if I told the State's Attorney, but I know I told Ericksen and I know I told Leal."

¶ 32 "While it is improper for the State to ask a defendant if other witnesses have given false testimony, such questioning is not grounds for a new trial where, as here, the questioning is not extensive and is primarily directed to the defendant's denials of statements he has made in police custody." *People v. Baugh*, 358 Ill. App. 3d 718, 740 (2005). "A defendant who testifies in a criminal case and subsequently contradicts testimony of the State's witnesses subjects himself to questions formulated to point out these contradictions." *Evans*, 373 Ill. App. 3d at 962-63.

¶ 33 In *People v. Piscotti*, 136 Ill. App. 3d 420, 440 (1985), the reviewing court recognized that while it was generally improper to ask a defendant about the credibility or veracity of the State's witnesses, it was not reversible error to ask the defendant such questions when his testimony on direct was that he was forced to make incriminating statements by police. There, the defendant testified on direct examination that he was not involved in the commission of the crimes, the police fabricated his various statements, and the police threatened him with force to repeat the statements to the ASA. The court on appeal found that questions by the prosecutor about whether the ASA lied and what the police forced the defendant to say were within the scope of the direct and provoked by the defendant's testimony. *Piscotti*, 136 Ill. App. 3d at 440.

¶ 34 The State asserts that the questions were in response to defendant's testimony on direct examination that he did not touch N.J. and he was coerced into signing the statement because Detective Ericksen told him that he would be able to go home and receive a lesser charge. The State relies on the supreme court decision in *People v. Kokoraleis*, 132 Ill. 2d 235 (1989), as support.

¶ 35 In *Kokoraleis*, the defendant argued on appeal that he was denied a fair trial because the State improperly questioned him on cross-examination about the veracity of adverse witnesses. He asserted that the prosecutor improperly asked questions about whether the State's witnesses were lying when their testimony differed from the defendant's version of the events. The State responded that the questions were invited by the defendant's theory of the case, which was that the police gave the defendant information about three homicides and the defendant repeated that information in his statements. The defendant stated that his cooperation was induced by promises of lenient treatment and coerced by mistreatment. *Kokoraleis*, 132 Ill. 2d at 264-65.

¶ 36 The supreme court acknowledged that "[t]here is authority approving cross-examination of this nature following testimony by a defendant on direct examination that he was coerced into repeating inculpatory statements furnished to him by the authorities." *Kokoraleis*, 132 Ill. 2d at 265 (citing *Piscotti*, 136 Ill. App. 3d at 440).

> "Such could be the case here, for the defendant maintained in his testimony that the police had 'framed' him by providing him with information about the murders and causing him to repeat those facts in his statements. That portion of the cross-examination

> eliciting the defendant's comments on the veracity of adverse witnesses, while generally disapproved, was not necessarily inappropriate in the circumstances present in this case." *Kokoraleis*, 132 Ill. 2d at 265; see also *Baugh*, 358 Ill. App. 3d at 740.

¶ 37 Defendant contends that the decision in *People v. Nwadiei*, 207 Ill. App. 3d 869 (1990), is more analogous to the issues presented here. In *Nwadiei*, the defendant argued that he was deprived of a fair trial because of prosecutorial misconduct, including asking the defendant during cross-examination if the State's witnesses had lied. The reviewing court noted that while this line of questioning was improper, it was generally not a reversible error. *Nwadiei*, 207 Ill. App. 3d at 876. However, the *Nwadiei* court found the questioning to be "far more extensive than in any prior case" and the prosecution devoted most of its cross-examination to questions about whether the six State witnesses had lied. *Nwadiei*, 207 Ill. App. 3d at 876-77.

¶ 38 There, the prosecutor asked multiple times about whether each of six witnesses had lied, including asking 12 times whether one witness had lied. The court distinguished this case from *Piscotti*, noting that in that case the defendant on direct examination claimed that certain State witnesses had lied and he was a victim of a police conspiracy. *Nwadiei*, 207 Ill. App. 3d at 877 (citing *Piscotti*, 136 Ill. App. 3d at 424). The reviewing court found these questions went beyond the scope of direct examination because the defendant had denied the charges against him, but did not assert that another witness had lied. *Nwadiei*, 207 Ill. App. 3d at 877.

¶ 39 Here, the prosecutor's questions were within the scope of direct examination. While

inartful, the prosecutor's questions were in response to defendant's testimony that he signed the handwritten statement after promises of leniency by Detective Ericksen despite the fact that he never touched N.J. The prosecutor did not extensively question defendant about the veracity of its witnesses, as in *Nwadiei*. Rather, the prosecutor asked if the State's witnesses "made up" the allegations that he touched N.J. and then later asked if the witnesses lied when they testified that defendant did not request pain medication. Even if this brief line of questioning was erroneous, we cannot find that the improper questions reached plain error such that it affected the fairness of defendant's trial and the integrity of the proceedings.

¶ 40 Defendant also contends that the prosecutor was sarcastic and demeaning during cross-examination. "While it is permissible to cross-examine a witness in order to explain, modify or discredit what he said on direct examination, cross-examination that is designed to harass, annoy or humiliate a witness should not be tolerated." *Baugh*, 358 Ill. App. 3d at 739.

¶ 41 After defendant testified that he signed the statement because Detective Ericksen told him that he would be able to go home, the prosecutor asked defendant, "You're not stupid, are you?" Defense counsel objected, but the trial court overruled the objection. Defendant responded "no" and the prosecutor asked further questions about defendant's educational background. Defendant also complains of this exchange with the prosecutor.

> "PROSECUTOR: Because the little girl told her mother, and that's how the police came into this. Detective Ericksen didn't just fall out of a police cloud in heaven –
>
> DEFENSE COUNSEL: Objection. Is there a question

there, Judge?

TRIAL COURT: I don't know. I'm waiting for it.

PROSECUTOR: Detective Ericksen didn't fall out of a police department cloud in heaven and start interviewing you, did he?

DEFENDANT: No. He had me wait several hours."

¶ 42 These questions were posed by the prosecutor to discredit defendant's testimony that he only confessed to the predatory sexual assault of N.J. because he was told he could go home. "Great latitude is allowed in cross-examination in order to achieve the well-recognized purpose of showing those matters which affect the credibility of the witness." *Baugh*, 358 Ill. App. 3d at 740. "The adversarial process of cross-examination may at times offend the sensibilities of the uninitiated, and the savvy attorney might well tend to avoid being classified as a bully by the jury he is trying to influence if confronted by an inexperienced or shy witness." *Baugh*, 358 Ill. App. 3d at 740. The type of questions posed by the prosecutor are "not automatically elevated to harassing or humiliating conduct merely because it may be perceived as difficult when it seeks to clarify a point that the proponent would rather not have elucidated." *Baugh*, 358 Ill. App. 3d at 740. The questions were intended to illustrate defendant's lack of credibility. After the "stupid" question, the prosecutor asked defendant about his three years in college for bioengineering, which was used to show that defendant was educated and could understand the gravity of the case. While the prosecutor could have asked similar questions without the sarcastic tone, any error in these questions did not affect the overall fairness of defendant's trial and challenged the

integrity of the judicial process, and thus, there was no plain error.

¶ 43 Defendant also contends that during defendant's cross-examination the prosecutor improperly inserted his own assertions and opinions about the incident into the proceedings. Specifically, defendant complains about the following statements:

> "PROSECUTOR: When [Detective Ericksen] told you that the little girl said you had put your finger in her vagina under the water, did you think you might be in a little bit of trouble?
>
> DEFENDANT: Hearing these kinds of things, why wouldn't you think you're in trouble? I'm a police station. I've been locked up – I've been held there, arrested for twelve hours. I had been bleeding.
>
> PROSECUTOR: It wasn't quite twelve hours, was it, sir?
>
> DEFENDANT: However many hours it was up until that point.
>
> PROSECUTOR: It was a few hours. But neither here nor there. Let's not nit-pick."

¶ 44 Defendant also complains about this exchange.

> "PROSECUTOR: Do you think that the little girl going to her mommy immediately and telling that you had put your finger in her and that she had redness diagnosed by a doctor and that you told the police officer and then put a written statement and signed

it by a State's Attorney, these are all just little acts of coincidence? Do you think that is what this is, sir?

DEFENDANT: I think that I was at the wrong place at the wrong time kind of thing.

PROSECUTOR: You were in the swimming pool with your finger in the vagina of a 4-year-old girl—

DEFENDANT: No.

PROSECUTOR: —that's where you were, sir."

¶ 45 Defendant contends that the prosecutor was improperly asserting contrary evidence in his questioning of defendant. The State responds that the remarks were isolated and not improper. We find that any error in these instances was harmless. The prosecutor's statements were brief and did not inject any improper evidence into the trial. Defendant's direct examination was very brief and addressed two things, his denial that he touched N.J. and that his confession was the result of coercion and the promise that he could go home. In contrast, the prosecutor's cross-examination was extensive and these brief comments were only a minor part. Defendant's reliance on *People v. Blue*, 189 Ill. 2d 99 (2000), is misplaced where that case involved multiple prejudicial errors, including testimony about the victim's status as a police officer who gave his life for his job, the displaying of the victim's blood-spattered uniform, and other prejudicial comments to invoke the jury's sympathy. We conclude that neither instance affected the fairness of defendant's trial such that a plain error occurred.

¶ 46 Defendant also argues that the prosecutor improperly "vouched" for the credibility of

Detective Ericksen and sarcastically addressed defendant during closing arguments. The State maintains that the references were fair comments on the part of the prosecutor.

¶ 47 "Defendant faces a substantial burden in attempting to achieve reversal of his conviction based upon improper remarks made during closing argument." *People v. Moore*, 358 Ill. App. 3d 683, 693 (2005). Generally, a prosecutor is given wide latitude in closing arguments, although his comments must be based on the facts in evidence or upon reasonable inferences drawn therefrom. *People v. Page*, 156 Ill. 2d 258, 276 (1993). "The prosecutor has the right to comment on the evidence and to draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant." *People v. Simms*, 192 Ill. 2d 348, 396 (2000). "Whether a prosecutor's comments or arguments constitute prejudicial error is evaluated according to the language used, its relation to the evidence, and the effect of the argument on the defendant's right to a fair and impartial trial." *Simms*, 192 Ill. 2d at 396. While a prosecutor's remarks may sometimes exceed the bounds of proper comment, the verdict must not be disturbed unless it can be said that the remarks resulted in substantial prejudice to the accused, such that absent those remarks the verdict would have been different. *People v. Byron*, 164 Ill. 2d 279, 295 (1995). Thus, "comments constitute reversible error only when they engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from those comments." *People v. Nieves*, 193 Ill. 2d 513, 533 (2000).

¶ 48 Defendant complains of the following comments about Detective Ericksen made by the prosecutor in rebuttal closing argument.

"We need to stand up and tell Detective Erickson [sic]

> thank you, thank you for being there; thank you for doing your job because that's what he did. He's a police officer. He's investigating a predatory criminal sexual assault."

¶ 49 Defendant asserts that this comment was "entirely improper" and its sole purpose was to bolster Detective Ericksen's testimony because he was a police officer and the jury owed him a debt of gratitude for his public service. The State maintains that the comments were proper and were invited by defense counsel's closing argument. "A prosecutor's comments during rebuttal argument will not be deemed improper, however, if they were invited by defense counsel's closing argument." *People v. Love*, 377 Ill. App. 3d 306, 313 (2007). " [W]here the complained-of remarks are in response to opposing counsel's own statements contradicting the credibility of a witness, there is no prejudicial error." *Love*, 377 Ill. App. 3d at 314 (quoting *People v. Carson*, 238 Ill. App. 3d 457, 468 (1992)). "It 'is well established that a prosecutor may not argue that a witness is more credible because of his status as a police officer.' " *People v. Gorosteata,* 374 Ill. App. 3d 203, 219 (2007) (quoting *People v. Fields*, 258 Ill. App. 3d 912, 921 (1994)). However, the credibility of a witness is a proper subject for closing arguments if it is based on the evidence or inferences therefrom. *Gorosteata*, 374 Ill. App. 3d at 223.

¶ 50 During closing argument, defense counsel repeatedly referenced Detective Ericksen and his "interrogation" of defendant. Counsel stated that Detective Ericksen was "a professionally trained police officer. It's his job, and he has a lot of training in how to collect evidence, how to secure a crime scene, how to question witnesses, how to investigate case; and yes, how to interrogate people." Defense counsel discussed Detective Ericksen's training in interrogation

techniques and that the detective takes notes for the police report where "whatever he thinks is bad for Mr. Skowron ends up in the report, anything else, it ends up in the garbage." Defense counsel argued that Detective Ericksen coerced defendant's confession with promises that defendant could go home after defendant had been held for a long period of time. Counsel summarized his closing argument with this comment, "Why was [defendant] locked up immediately afterwards, after forty-five minutes perhaps of investigation? Why did detectives use coercive techniques, techniques he told you was coercive to extract confessions."

¶ 51 We find no error in the prosecutor's comments about Detective Ericksen. Defense counsel repeatedly commented on the detective's investigation and argued that defendant's confession was the result of Detective Ericksen's coercive interrogation and promises of leniency. The prosecutor did not inject his own opinion on Detective Ericksen's credibility and the comments were not used to inflame the jury's passions. The prosecutor was entitled to respond in rebuttal to defense counsel's comments regarding Detective Ericksen's credibility and the complained-of comments were a proper response.

¶ 52 Defendant also complains about the following comments that were addressed to him by the prosecutor during closing argument.

> "I want to apologize to you, Mr. Skowron. I know that it was a horrible day for you on the 22nd. The chamber of horrors that you were having, all of those interrogators, all of that misconduct and coercion and getting punched by some guy that came into the swimming pool for no reason at all, I'm really sorry

about the inconvenience to you, sir. I want to start out by telling you that."

¶ 53 Defendant contends that the sole purpose of these comments was to belittle and make fun of defendant's claim that his confession was coerced and the prosecutor's comments showed "extreme disdain" for defendant's theory of defense. The comments "served no purpose other than to bolster the State's case by humiliating the defendant and distracting the jury from the facts of the case."

¶ 54 However, "[t]he wide latitude extended to prosecutors during their closing remarks has been held to include some degree of both sarcasm and invective to express their points." *People v. Banks*, 237 Ill. 2d 154, 183 (2010). The comments by the prosecutor were in response to the defense counsel's argument that defendant had been subjected to coercive police interrogation during an extended period of detention and his confession was controlled by both Detective Ericksen and ASA Meana. These comments were considerably less inflammatory than the examples cited by defendant. See *People v. Davis*, 287 Ill. App. 3d 46, 57 (1997) (the prosecutor showed "extreme disdain" for the defense by crumpling up a defense exhibit and stating " 'this is how worthless this piece of paper is' "); *People v. Moss*, 205 Ill. 2d 139, 170-71 (2001) (the prosecutor at the death penalty phase referred to the defendant's psychiatrist's diagnosis as a " 'boo-boo to the head' " and the defendant's expert witnesses as " 'cash for trash doctors' ").

¶ 55 Here, the defense presented a trial was that defendant denied touching N.J., defendant suggested that he was in a different pool when N.J.'s class ended, and he was subjected to repeated coercive interrogation during an extensive detention at the police station. He was

promised leniency and that he could go home if he confessed to the sexual assault. During closing arguments, defense counsel continued these themes that defendant had been improperly subjected to this treatment. The prosecutor's comments in rebuttal closing argument were in response to defense counsel's argument. While sarcastic, the comments did not distract the jury from the facts of the case or deprive defendant of a fair trial. Given the prosecutor's wide latitude during closing arguments, we cannot say that these comments affected the outcome of defendant's trial and we decline to find plain error.

¶ 56 Defendant also argues that the cumulative effect of these instances of prosecutorial misconduct deprived him of a fair trial. Since we have found that defendant's claims of prosecutorial misconduct were either not error, harmless error or forfeited, we decline to hold that the cumulative effect of these claims deprived defendant of a fair trial.

¶ 57 Finally, defendant contends that his trial counsel was ineffective for failing to object at trial and in his posttrial motion to these improper questions and comments by the prosecutor.

¶ 58 Claims of ineffective assistance of counsel are resolved under the standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984). In *Strickland*, the Supreme Court delineated a two-part test to use when evaluating whether a defendant was denied the effective assistance of counsel in violation of the sixth amendment. Under *Strickland*, a defendant must demonstrate that counsel's performance was deficient and that such deficient performance substantially prejudiced defendant. *Strickland*, 466 U.S. at 687. To demonstrate performance deficiency, a defendant must establish that counsel's performance fell below an objective standard of reasonableness. *People v. Edwards*, 195 Ill. 2d 142, 163 (2001). In evaluating sufficient

prejudice, "[t]he defendant must show that there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. A reasonable probability is a probability sufficient to undermine confidence in the outcome." *Strickland*, 466 U.S. at 694. If a case may be disposed of on the ground of lack of sufficient prejudice, that course should be taken, and the court need not ever consider the quality of the attorney's performance. *Strickland*, 466 U.S. at 697.

¶ 59 Defendant cannot establish sufficient prejudice. The State's evidence was overwhelming. N.J. made an immediate outcry as soon as she got out of the pool after her lesson. She identified defendant as the person who touched her underneath her swimsuit to her mother. Naomi identified defendant at trial as the man her daughter indicated. Dr. Carroll testified that N.J. had a red area on her labia minora, consistent with digital penetration and diagnosed acute sexual assault. Defendant was taken to the police station and initially denied touching N.J., and then said if he did it, it was an accident. Later, defendant admitted to Detective Ericksen that he touched N.J. for the excitement of possibly getting caught. Defendant agreed to give a handwritten statement to ASA Meana and again admitted to touching N.J.'s vagina. The only evidence to contradict the State's case was defendant's testimony that he confessed after promises of leniency by Detective Ericksen.

¶ 60 Based on the evidence presented, defendant cannot show that there was a reasonable probability that the result of his trial would have been different if his attorney had objected to each complained-of question or comment by the prosecution. Accordingly, defendant's claim of ineffective assistance of counsel must fail.

¶ 61 Based on the foregoing reason, we affirm defendant's conviction and sentence.

¶ 62 Affirmed.