THIRD DIVISION
February 6, 2019

No. 1-18-0287

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

PAMELA GOFFIN, Plaintiff-Appellee, v. CITY OF CHICAGO, a Municipal Corporation, Defendant-Appellant.	)))))))))	Circuit Court of Cook County 15 L 5149 Honorable Larry G. Axelrood Judge Presiding

JUSTICE ELLIS delivered the judgment of the court.
Presiding Justice Fitzgerald Smith and Justice Cobbs concurred in the judgment.

ORDER

¶ 1 *Held*: Reversed and remanded. Trial court erred in granting new trial.

¶ 2 Appellee, Pamela Goffin, filed suit against Appellant, City of Chicago (the City), after she was injured when tripping over a water meter lid maintained by the City. After trial, the jury returned a verdict in favor of the City. Goffin filed a post-trial motion claiming she was denied a fair trial because the City continuously violated certain motions *in limine*.

¶ 3 The court determined it had "no choice but to grant the motion for a new trial" based on its findings that one of the City's attorneys "purposeful[ly], willful[ly], and with her full

knowledge and intent" violated its rulings on motions *in limine*. The City appealed. For the following reasons, we reverse and remand with instructions to reinstate the jury verdict.

¶ 4 BACKGROUND

¶ 5 In July 2014, Goffin tripped over a water meter lid that was not level with the sidewalk on which she'd been walking in Chicago. The photos produced at trial showed that the water meter lid was sunken below the level of the sidewalk. The witnesses consistently testified that the deviation between the sidewalk and the water meter lid was anywhere from 2.5 to 3 inches. After the accident, Goffin called 311 to report this sidewalk deviation. As a result of her fall, Goffin required surgery on her shoulder and missed nearly a year of work. She later filed suit to recover these losses.

¶ 6 The City claimed it was not liable because: (1) it did not have notice of the alleged defective water meter lid and (2) the defect was not unreasonably unsafe. Prior to trial, Goffin filed motions *in limine*—motion *in limine* 21 and a general motion *in limine*, paragraph 21—to bar the City from introducing evidence of the lack of previous falls or accidents at this location. Motion *in limine* 21 sought an order "instructing the [City and their witnesses] from any questions, evidence or innuendo regarding any suggestion the absence of prior falls establishes defendant was not put on notice of the defected water lid." Meanwhile, general motion *in limine*, paragraph 21 requested "that no mention be made or attempt to convey to the jury that no other individuals had fallen due to the defect in question."

¶ 7 At the hearing on the motions *in limine*, the City said "the only thing [it] would argue is prior to the date of the accident no one made a service request to the City of Chicago regarding the lid itself." The City was referring to its "311 system," which allows citizens to call and report non-emergency issues, such as unsafe sidewalks. After some more discussion, the court stated:

> "You know, you can get in they weren't aware of anything but you can't get in that no one fell over this obstruction before and therefore because no one fell they had—they didn't have notice of it. *You can get in that no one ever called 311 and never notified you*, can't get in no one was injured there.
>
> So you can get in whatever their testimony was, that they weren't made aware of a problem there and you can argue they weren't aware of it because whatever—based on on whatever their testimony was and use inferences from that testimony. But you can't get to the next step and say no one ever fell there, therefore, it's safe; do you understand?" (Emphasis added.)

The City's counsel responded: "Yes."

¶ 8 The subsequent written order stated: "Defense counsel and its witnesses are barred from stating, implying or in any other way suggesting that no individuals have fallen due to the defect in question" and that "Plaintiff's Motion in Limine Regarding Absence of Prior Falls is hereby granted." (capitalization in original).

¶ 9 The record reveals numerous objections at trial based on the above *in limine* ruling. Some of these objections were overruled, while others were sustained. Our review of the parties' briefs and the record reveal seven sustained objections that the court determined where violations of the order *in limine*—one during opening arguments, two during the testimony of Joseph Levecchia, one during the testimony of Dennis Flynn, and three during closing arguments. Because of the nature of the arguments on appeal, we are required to quote from the transcript at length.

¶ 10 <u>Objection During Opening Argument</u>

¶ 11 Almost immediately into their opening argument, the City contended:

> "What the evidence will show is that the water meter lid and the surrounding sidewalk in question was reasonably safe. The Water meter lid is located down the block from Ricobene's. It is not an area unfamiliar to Plaintiff. Plaintiff had been to Ricobene's in the area two or three times before. The evidence will show that before July 3rd, 2014, no one ever told the City that there was a problem with this water meter lid."

Goffin's counsel objected by stating, "motion in limine." The court sustained the objection and told the City to "move on."

¶ 12 Objections During Testimony of Joseph Levecchia

¶ 13 Goffin called Joseph Levecchia, the acting chief mason inspector for the City, to testify about the condition of the water meter lid. Just two questions into the City's cross-examination, counsel asked:

> "MR. GOLE: And you have been out to repair the water meter lids during the course of your career with the City?
>
> LEVECCHIA: Yes
>
> Q: How does the City of Chicago learn the conditions of its property?
>
> A: Primarily though the 311 system.
>
> Q: And did you review any 311 complaints prior to coming to court today?
>
> A: Yes.
>
> MR. BAKER [Goffin's lead counsel]: Objection, your Honor.
>
> THE COURT: Sustained.
>
> MR. BAKER: Motion in limine.
>
> THE COURT: Sustained.
>
> MR. BAKER: Move for a mistrial.

THE COURT: We will take that under advisement.

Ask your next question.

Ladies and gentlemen, you are to disregard that last question and answer. Okay. Continue.

MR. GOLE: Was the City ever notified about any problems with this water meter?

MR. BAKER: Objection, your Honor.

THE COURT: Sustained.

MR. BAKER: Motion in limine.

THE COURT: Noted.

Next Question."

¶ 14 After the conclusion of Levecchia's testimony, the court held a sidebar on Goffin's motion for a mistrial. As part of the discussion on the motion, the court cautioned:

"THE COURT: Okay, I'm going to hold your request [for a mistrial] in abeyance. And we will continue.

Please, we had extensive motions in limine. I want both sides to follow the rulings and the motions in limine. We will continue. Call your—we will call your next witness.

MR. GOLE [the City's lead counsel]: Your Honor, if I may, the motion in limine, I believe, had to do with the City was prevented from asking about any witness that asked about other prior falls. Whether the City was notified about a problem with the lid would not be a violation of the 311 system.

THE COURT: No, it absolutely is in violation both to the letter and the spirit. And that entire response is disingenuous and beneath you. You're a better lawyer than

that. And I expect better lawyering going forward. You absolutely violated my motion in limine."

¶ 15 Objection During Testimony of Dennis Flynn

¶ 16 Dennis Flynn was a laborer working at a nearby construction site the day Goffin fell. He saw her fall and helped tend to her wounds. During cross, the City asked:

"MS. ARGUETA [the City's assistant counsel]: The first time you noticed [the water meter lid] was when you started the job, correct?

FLYNN: Yes.

Q: It's your testimony that you stumbled over the water meter lid, correct?

A: Correct.

Q: According to your testimony it's because the front of your foot got caught, correct?

A: Yes, ma'am.

Q: Now, when this stumble happened, were you going to go to Ricobenes?

A: No, I was going to the building.

Q: You were walking to the building. Okay. That's when you stumbled, you didn't fall, correct?

A: No.

Q: You didn't injure yourself, correct?

A: No, I didn't.

Q: And after you stumbled you didn't notify the City of Chicago about the water meter lid, correct?

A: No, I didn't. I was just trying to do my job.

Q: You didn't notify the City, correct?

A: No.

Q: You didn't notify the City that you had stumbled over the water meter lid, correct.

MR. KOPSICK [Goffin's assistant counsel]: Objection; asked and answered.

THE COURT: Overruled, she can make a distinction.

MS. ARGUETA: You can answer.

FLYNN: No.

Q: You didn't notify the city that the front of your boot had gotten caught because of the water meter lid and the surrounding sidewalk, correct?

A: No.

Q: And you didn't notify the City by way of the 311 concerning the water meter—

MR. KOPSICK: Objection, Your Honor.

THE COURT: Sustained.

MS. ARGUETA: Okay.

THE COURT: Are you looking for help? You asked him four times if he notified the City and each time he said no. You've established that. Let's move on."

¶ 17 Objections During Closing Arguments

¶ 18 Finally, there were five objections during the City's closing argument—three sustained, two overruled. Ms. Argueta, for the City, argued:

"So what evidence was there that the water meter lid could be an unreasonable risk of harm. None. The testimony that you heard was that the City received no notification of maintenance or repair by any method regarding the water meter lid prior to the date of July 3rd, 2014."

MR. BAKER: Objection, Your Honor, move to strike.

THE COURT: Objection is overruled.

MS. ARGUETA: And if in fact the water meter lid was unreasonably dangerous then the plaintiff would have presented such evidence regarding—

MR. BAKER. Same.

THE COURT: Ladies and gentlemen, you are to disregard that last comment. And you will be the ultimate determination of what the facts in this case were.

***

MS. ARGUETA: But what is important to note is that we know for sure that even thought [the defect] may have been there at least in 2007, we know that no one notified the City in 2007.

And how do we know that? We know there's buildings here. We know there's businesses there. There is testimony from the witnesses that this is a commercial and/or residential area. There's no evidence whatsoever that the people in the neighborhood notified the City about anything—

MR. BAKER: Objection.

MS. ARGUETA: —in 2007.

THE COURT: All right. All I can tell you is that the door is open for you on rebuttal.

MR. BAKER: Fair enough. Fair enough.

MS. ARGUETA: May I have a sidebar?

THE COURT: No, you may not. Continue.

MS. ARGUETA: If the City was not aware of the condition of the water meter lid and was not aware that it posed a risk, how should it have known to do anything?

This is no different than a property owner that has rental property. If there are things in a rental property that need attention or that require any kind of repair or maintenance and the tenants never informed the landlord, then how can the landlord know about it?

The same applies here even though we are talking about an entity that in this case is the City of Chicago. The City cannot know about something that was not brought to its attention. And again, Mr. Flynn who claims to have stumbled on the water meter lid told you that he didn't notify the City about his stumble.

MR. BAKER: Objection, Judge, you've already ruled on this.

THE COURT: Sustained. Ladies and gentlemen you are to disregard the last comment.

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MS. ARGUETA: Ladies and gentlemen, this is a condition that was not concealed, that could have been seen. And so it was open and obvious on July 3rd of 2014.

Now the fourth element that the plaintiff has to prove is that the defendant was negligent in one or more of the following ways. That the City permitted a discrepancy in the height between the sidewalk and the water meter lid or that it failed to repair the uneven condition between the sidewalk and the water meter lid.

And the judge will instruct you on what is negligence. Now I submit to you that a reasonable city the size of the City of Chicago sets up the 311 system that Mr. Lavecchia [*sic*] and Mr. Quinn testified that that's how the City know about things that needs to be handled.

And you heard again that the City didn't receive notification about this water meter lid prior to July the 3rd—

MR. BAKER: Objection.

THE COURT: Sustained. The jury is to disregard that last comment."

¶ 19 Jury Verdict

¶ 20 After closing arguments, the court tendered the case to the jury. During their deliberations, they sent out a number of questions. Most pertinent, the jury asked: "Why can't we know if 311 was called?" Based on the transcript, the court appears to have answered this question by instructing the jury that: "You have all the evidence which was produced in court. Please continue your deliberations."

¶ 21 The jury returned a verdict in the City's favor. The jury also answered "no" to a special interrogatory which asked: "On or before July 3, 2014 did the condition of the property, which Pamela Goffin claims caused her fall, pose an unreasonable risk of harm to people on the property?"

¶ 22 Motion for New Trial

¶ 23 Goffin filed a post-trial motion for a new trial based on the above-quoted objections. Goffin argued that, considering the "totality of the circumstances," the City "clear[ly] and continous[ly]" violated the motions *in limine* by suggesting the absence of prior falls. Goffin concluded that the jury question was clear evidence that the jury focused on evidence that the court instructed it not to consider. The City responded by arguing, as it does on appeal, that the testimony it elicited did not violate the motions *in limine*, because the City explicitly limited its questioning to notice. Alternatively, the City argued that even if these were violations of the

motions *in limine*, Goffin failed to show any prejudice, primarily because the court cured any defects.

¶ 24 The trial court heard arguments on the motion for a new trial. Goffin's argument, at the hearing, can be summed up as: "the defense counsel continued to disrespect and disregard your Honor's rulings over and over again creating an environment with which my client was prejudiced and not able to talk about the substantive facts of this case. The jury was clearly confused. The jury was distracted, and they were distracted from the facts of this case and that's why we're asking for a new trial." The court then had an extended discussion with Mr. Gole (Ms. Argueta was not present for the argument on the motion for a new trial).

¶ 25 The court believed "the order was that you were to not get into 311 and there was a lack of calls because you weren't going to get into 311, isn't that what the order was?" The City quickly responded "no" and attempted to explain to the court that it had expressly stated the City *could* discuss the absence of 311 calls, but not the absence of prior *falls*. Even Goffin's counsel acknowledged that "I understand they they're allowed to go into the 311 system, but the violation occurs when they start to blend a lack of prior falls with the notice that they're attempting to persuade you that they're trying to prove."

¶ 26 The Court noted that "it is Ms. Argueta who for all [*sic*] of the things at issue, it was her. It wasn't you. You [Mr. Gole] were flawless in this." In finishing his argument, Goffin's counsel described Ms. Argueta's "cavalier behavior" in disregarding the court's order. The court interjected, "[i]t was not cavalier. Cavalier indicates a disinterest or disregard where the misconduct is done because they simply don't care enough to follow it. This was a purposeful plan and consistent." In making its ruling, the court determined that

"Ms. Argueta was completely unfettered by any of the prior rulings and she did whatever she saw fit whenever she saw fit that put her trial partner in a bad position.

***

In this case, the jury asked a question which focused directly on point[s] that Ms. Argueta emphasized improperly in a number of different ways, but more than that, she simply tried this case with an absence of any intention to follow the rules. Her conduct was egregious, and I understand that this is something, this is a transcript that may come back to haunt her, but her entire conduct during this trial was improper.

There were many instances where the objections were sustained, and that's not the acid test, but it was the fact that it was consistent. It was deliberate. It was clearly part of her strategy ***. I don't know what was in the jury's mind other than that they had a question specific to the 311 system, and that she, Ms. Argueta, brought focus to something that was prohibited. I find that her conduct was purposeful, willful, and with her full knowledge and intent.

So when I make those findings, I have no choice but to grant the motion for a new trial."

¶ 27 The court granted Goffin's motion for a new trial. The City appealed. We allowed this appeal pursuant to Illinois Supreme Court Rule 306(a)(1) (eff. Nov. 1, 2017).

¶ 28 ANALYSIS

¶ 29 The parties' arguments are similar to those they made in the trial court. The City says it did not violate the motions *in limine* or, alternatively, if it did, Goffin suffered no prejudice. Goffin argues the City violated the trial court's rulings, and thus the court did not abuse its discretion by granting a new trial.

¶ 30 A motion *in limine* allows a party to request a ruling on the admissibility of certain evidence in advance of its presentation at trial. *Cunningham v. Millers General Insurance Company*, 227 Ill. App. 3d 201, 205 (1992). Its purpose "is to promote a trial free of prejudicial material and to avoid highlighting the evidence to the jury through objection." *Konieczny v. Kamin Builders, Inc.*, 304 Ill. App. 3d 131, 136 (1999). It is manifestly not the purpose of an *in limine* order to "create a trap that results in a new trial if the court determines in retrospect that the order was violated." *Compton v. Ubilluz*, 353 Ill. App. 3d 863, 872 (2004).

¶ 31 It is thus "imperative that the *in limine* order be clear and that all parties concerned have an accurate understanding of the limitations." *Reidelberger v. Highland Body Shop, Inc.*, 83 Ill. 2d 545, 550 (1981). We have said many times that "[a]n unclear order *in limine* is worse than no order at all." *People v. Stevenson*, 2014 IL App (4th) 130313, ¶ 30 (quoting *Compton*, 353 Ill. App. 3d at 871); *Cunningham,* 227 Ill. App. 3d at 205.

¶ 32 We review the grant of a new trial for an abuse of discretion. *Boren v. BOC, Inc.*, 385 Ill. App. 3d 248, 254 (2008). A violation of an *in limine* order will warrant a new trial only if the order is specific, the violation is clear, and the violation deprived one party of a fair trial. *Bakes v. St. Alexius Medical Center*, 2011 IL App (1st) 101646, ¶ 40; *Fletcher*, 394 Ill. App. 3d at 589; *Compton*, 353 Ill. App. 3d at 872.

¶ 33 We note initially that the City does not take issue with the *in limine* order itself; the City does not contend that the court's order was erroneous or that it was unclear. The City says that the court created a "clear" distinction about what evidence was allowed and what was not.

¶ 34 We agree with that assessment. The court's written instructions required that "Defense counsel and its witnesses are barred from stating, implying or in any other way suggesting that no individuals have fallen due to the defect in question" and it granted the request that "that no

mention be made or attempt to convey to the jury that no other individuals had fallen due to the defect in question."

¶ 35 In articulating the scope of its rulings, the court described clear distinctions: (1) "you *can* get in they weren't aware of anything;" (2) "but you *can't* get in that no one fell over this obstruction before and therefore *** they didn't have notice of it;" (3) "[y]ou *can* get in that no one ever called 311 and never notified you;" (4) "*can't* get in no one was injured there;" (5) "you *can* get in *** they weren't made aware of a problem there and you *can* argue they weren't aware of it;" (6) "[b]ut you *can't* get to the next step and say no one ever fell there, therefore, it's safe." (Emphasis added.)

¶ 36 Though we are not asked to review the propriety of the *in limine* order, we agree that the trial court's order was clear, and it drew a reasonable distinction between the absence of notice to the City and the absence of prior falls. It is undeniable, after all, that Goffin was required to prove that the City knew or should have known of the allegedly defective condition. The City was thus permitted to challenge the proof of that element by demonstrating that it lacked notice of the condition. And one obvious way to do so was to point to the lack of calls to the 311 system. On the other hand, the court didn't want the City to argue that no prior falls occurred, because doing so would be, in the court's view, a back-handed way of arguing that the absence of prior accidents meant the water meter lid was reasonably safe.

¶ 37 The trial court, in our view, struck an appropriate balance in its order *in limine*. It allowed the City to show that it received no notice of problems with the water meter lid via the 311 system or otherwise but barred the City from arguing that there were no falls associated with the water meter lid, or that the absence of falls meant the water meter lid was not defective.

¶ 38 But the City says that the court misapplied the *in limine* order throughout the trial—to the City's disfavor—and then granted a new trial based on a misunderstanding of its *in limine* order. It claims that the trial court "lost track of its ruling, including the clear distinction it had drawn between evidence about lack of falls and evidence about notice," that the "court's understanding of the scope of [its] ruling seemed to fluctuate unpredictably."

¶ 39 With this in mind, we must analyze in more detail each instance cited where the City discussed notice to determine whether the trial exchange or comment during closing argument complied with the court's *in limine* ruling or crossed the line.

¶ 40 I

¶ 41 A. Opening Argument

¶ 42 During its opening statement, the City argued that "no one ever told the City that there was a problem with this water meter lid." That statement complied with the court's order *in limine*. There was no mention of falls or accidents or injuries, nor any suggestion that their absence meant that the water meter lid was safe. The statement stuck to notice, nothing more, just as the trial court ordered.

¶ 43 B. Testimony of Levecchia

¶ 44 During Levecchia's testimony, counsel for the City asked him whether he "review[ed] any 311 complaints" and "was the City ever notified about any problems with this water meter?" Goffin argues that this line of questioning was improper because "the scope of what is included within a 311 complaint is substantially broader than the scope of 311 reports which the City of Chicago received notice. The scope of his question was inclusive of, for example, 311 complaints about prior accidents." Goffin posits that more targeted questions to Levecchia, eliminating any possible reference to accidents, would have been permissible, such as:

- "[D]id you review any 311 calls reporting the water meter's condition?"
- "Did the City receive any service requests with respect to this water meter lid, from 311?"
- "Were you able to identify any complaints from 311 in which the City was informed of a need to repair the water meter lid, before the date that [Goffin] was injured?"

¶ 45 We agree, as does the City, that calls to the 311 system may include more than calls about accidents or injuries. Someone could call 311, for example, to merely complain about the unsafe nature of the water meter lid. They might call because they find that lid to be an unsightly crater in the sidewalk. They might complain of its inconvenience. They might make a service or repair request. So to that extent, Goffin's point is well-taken.

¶ 46 The problem is that, however Goffin may wish to dice up 311 complaints into different categories, the trial court did not make such distinctions. The trial court told the parties that the City could introduce evidence that "no one ever called 311 and never notified [the City]." To be sure, the court instructed the City not to discuss the lack of falls or accidents—but the City didn't. These questions to Levecchia only generically referenced "complaints" and "problems." Yes, that could include injuries or accidents, but then again, "complaints" and "problems" would include just about *any* call to 311.

¶ 47 Goffin never asked the trial court, during the hearing on the motions *in limine*, or for that matter at any time during trial, to dissect the totality of 311 calls into various categories so as to include everything under the sun *except* accidents or injuries. And the trial court never ordered the City to do so.

¶ 48 And one final note—the City never got an answer to its question about whether the City was ever notified of problems with the water meter lid. Goffin immediately objected, and again

the trial court sustained the objection. Yes, a question alone could be sufficiently prejudicial in and of itself, but the fact remains that the City never established, through Levecchia, the absence of complaints about the water meter lid, via 311 or otherwise.

¶ 49 We find nothing in the City's cross-examination of Levecchia that violated the trial court's well-reasoned *in limine* order. The City followed that order to the letter here.

¶ 50 C. Testimony of Flynn

¶ 51 After Flynn testified that he had previously tripped on that water meter lid, he was repeatedly asked whether he notified the City. When Goffin first objected—after the third time it was asked—the court overruled an "asked and answered" objection. In yet another question on the subject, the City asked: "You didn't notify the City by way of the 311 concerning the water meter—." Goffin interrupted and again objected, but this time counsel did not state a basis. In sustaining the objection, the court appeared to be concerned about the repetitiveness of the line of questioning—noting that counsel had already asked the question four times—not about a violation of the order *in limine*. Neither Goffin nor the court ever mentioned the *in limine* ruling during this line of questioning.

¶ 52 Regardless, Goffin says that, "as the plain text of Arguetta's [*sic*] line of questions reveals in the record, she didn't *only* ask about notice of *the condition*. What she asked was about notice of *any prior accident*, and in particular, to call into question whether Flynn was being truthful about his incident with the same water meter cover that caused Plaintiff's injuries." (Emphasis in original.)

¶ 53 We see that as two different arguments. The first—that the City didn't limit its question to notice of the *condition* but included notice of a prior *accident*—is hard to take seriously. It was *Goffin* that introduced evidence of Flynn's prior stumble over the water meter lid. The City just

asked Flynn whether he reported it to the City. So yes, technically speaking, the City was asking about notice to the City of a previous stumble—but only because *Goffin introduced that evidence* first. The City stayed precisely in the lane prescribed by the *in limine* order. It asked about notice and nothing more. The City was obviously entitled to clarify that it was never made aware of this incident.

¶ 54 Indeed, though we can understand why the City wanted to demonstrate that Flynn never gave the City notice of this stumble, it is fair to note that this evidence at least indirectly benefited Goffin, too. Goffin's concern was and is that the jury might infer, from the absence of 311 complaints, that no such falls or stumbles ever occurred—and here was a witness testifying that he *did* suffer a previous stumble but *didn't* report it. He was a living, breathing example of the very point Goffin would want the jury to tacitly embrace—not to read too much into the absence of 311 complaints, because some people might have stumbled or tripped but failed to report it, like Flynn. It's thus hard to see how Goffin could have suffered prejudice, in any event, even if we agreed with Goffin that the Flynn testimony violated the *in limine* ruling.

¶ 55 The second argument takes issue with the fact that the City "call[ed] into question whether Flynn was being truthful" about his stumble over the water meter. Goffin seems to be saying that by challenging Flynn's testimony of a stumble, the City was introducing evidence of a lack of stumbles over the water meter lid, against the express dictate of the pretrial order.

¶ 56 Nonsense. The pretrial order instructed the City not to argue that no falls occurred. The City wasn't doing that here. It was simply challenging whether *Flynn's* fall occurred. The City, that is, was just doing what any party has the right to do—challenge the veracity of an adverse witness's testimony. Goffin would have us hold that the City was required to stand mute, defenseless, while a witness for the plaintiff testified to stumbling over that same water meter lid,

suggesting in the process that there was something unsafe about that lid. We do not read the trial court's *in limine* order as turning the adversarial trial process on its head.

¶ 57 The City did nothing more here than what the trial court carefully prescribed in its *in limine* order. We find no violation of that order during the examination of Flynn.

¶ 58 D. Closing Arguments

¶ 59 There were several comments during the City's closing argument regarding notice and 311 calls that are relevant to this appeal.

¶ 60 First, Goffin objected when the City argued to the jury that "[t]he testimony you heard was that the city received no notification of maintenance or repair by any method regarding the water meter lid prior to the date of July 3rd, 2014." The court overruled that objection, and properly so. Even by Goffin's interpretation of the court's *in limine* order, based on the model questions he posed (see *supra*, ¶ 44), this statement was proper.

¶ 61 But the City immediately continued to argue: "And if in fact the water meter lid was unreasonably dangerous then the plaintiff would have presented such evidence regarding—." Again, counsel objected, but this time the court sustained the objection and informed the jury to disregard that last statement.

¶ 62 We never heard the end of that sentence, but based on the comment that preceded it, it certainly sounded as if counsel for the City was about to argue that, if the water meter lid was unreasonably dangerous, then the plaintiff would have presented evidence regarding … *complaints made to the City about it*. The City, in other words, was about to tie the lack of 311 complaints to safety—something clearly barred by the *in limine* ruling. The court would have been within its discretion to find a violation of its order *in limine* in this instance.

¶ 63 Later in her closing argument, counsel for the City said: "The City cannot know about something that was not brought to its attention. And again, Mr. Flynn who claims to have stumbled on the water meter lid told you he didn't notify the City about his stumble." Goffin's counsel objected, arguing "Judge, you've already ruled on this." The court sustained the objection and instructed the jury to disregard the comment.

¶ 64 As we discussed above, making the point that Flynn did not notify the City of his stumble did not violate the *in limine* order. Nor, as we also recounted, did Goffin argue otherwise when this testimony was elicited at trial: Flynn answered that question twice before Goffin objected the third time, only on the basis of "asked and answered," and the trial court sustained that objection and stopped the City from getting yet another answer to basically the same question for that same reason—undue repetition. This comment in closing argument was clearly proper.

¶ 65 Finally: Goffin objected when the City argued, once again, "that the City didn't receive notification about this water meter lid prior to July the 3rd—." Here, though we already recounted it in the background section, we must again provide the lead-up to this comment:

> "Now *the fourth element that the plaintiff has to prove is that the defendant was negligent* in one or more of the following ways. That the City permitted a discrepancy in the height between the sidewalk and the water meter lid or that it failed to repair the uneven condition between the sidewalk and the water meter lid.
>
> And the judge will instruct you on what is negligence. Now I submit to you that a reasonable city the size of the City of Chicago sets up the 311 system that Mr. Lavecchia and Mr. Quinn testified that that's how the City know about things that need to be handled.

And you heard again that the City didn't receive notification about this water meter lid prior to July the 3rd—

[GOFFIN'S COUNSEL]: Objection.

THE COURT: Sustained. The jury is to disregard that last comment." (Emphasis added.)

¶ 66 Goffin's argument is that by this stage of the closing argument, the City had moved off the element of notice and had moved onto the "fourth" element Goffin had to prove, namely, whether the City was negligent. Thus, says Goffin, the reference to the 311 system was not tied to notice, but rather to the City's negligence in general—whether it was negligent in permitting the allegedly defective condition to exist and in failing to repair it.

¶ 67 In context, however, it seems clear that the City was falling back on essentially the same argument—that "a reasonable city the size of the City of Chicago" can't be expected to know of every problem on every street or sidewalk, which is why it has a 311 system to allow citizens to notify it of such issues. True, the City may have been commingling notice with negligent acts or omissions here, but the two do, in fact, overlap. Above all, for our purposes, the question is whether the City was arguing, in violation of the *in limine* order, that no accidents had ever occurred, based on the absence of complaints made to the City. We see no indication whatsoever that the City was doing so. We find no violation of the *in limine* order in this instance, either.

¶ 68 II

¶ 69 Having reviewed the challenged comments, we cannot agree that the City's counsel consistently "disrespecte[ed] and disregard[ed]" the trial court's *in limine* rulings, or that she acted in a manner that was "purposeful," "willful," or "with her full knowledge and intent" in doing so. Instead, we find that the trial court crafted a clear and well-reasoned *in limine* ruling to

balance the City's right to demonstrate lack of notice with Goffin's desire to exclude any suggestion that the lack of notice meant a lack of accidents involving the water meter lid (and thus any inference that the lid must have been reasonably safe). The City's lawyers respected and followed that ruling. From our review of the record above, we have found that the City violated that *in limine* ruling a grand total of one time.

¶ 70 That occurred, again, when, after stating in closing argument that the City received no maintenance or repair requests by any method regarding the water meter lid before the date of Goffin's injury, counsel stated: "And if in fact the water meter lid was unreasonably dangerous then the plaintiff would have presented such evidence regarding—." An objection interrupted the statement, and counsel never finished that sentence after the court sustained the objection.

¶ 71 So the question is whether that one comment constituted grounds for a new trial. Again, a violation of an *in limine* order will warrant a new trial only if the order is specific, the violation is clear, and the violation deprived one party of a fair trial. *Bakes*, 2011 IL App (1st) 101646, ¶ 40; *Fletcher*, 394 Ill. App. 3d at 589; *Compton*, 353 Ill. App. 3d at 872.

¶ 72 The pretrial order, as given, was clear. The violation of that order was *somewhat* clear. We say *somewhat* only because counsel never finished her thought. We are guessing as to what she was going to say. It's an educated guess, to be sure, and we uphold the trial court's finding of a violation under our deferential standard of review, but it's at least worth mentioning that the cited comment by the City's lawyer was not even a completed thought.

¶ 73 More importantly, for several reasons, we do not see how this isolated, abbreviated comment alone could have deprived Goffin of a fair trial. First, the comment in question was a half-sentence among a closing argument by the City that spanned 24 pages of transcript. *Cf. Lagoni v. Holiday Inn Midway*, 262 Ill. App. 3d 1020, 1035 (1994) (counsel's misstatement in

closing argument did not warrant new trial, as comment "comprised only a small segment of defense counsel's closing argument"); *Greig v. Griffel*, 49 Ill. App. 3d 829, 843 (1977) (reference to irrelevant matters "covered only three sentences in plaintiff's closing argument which stretches over approximately 23 pages of the record").

¶ 74 Second, the City constantly (and Goffin sometimes) raised the 311 issue throughout the trial and closing argument, some instances of which we have reviewed here because they were cited as a basis for a new trial, and some of which Goffin doesn't even challenge. The 311 issue was omnipresent at trial. And every time it was mentioned, save one, it was properly raised as to the City's notice. It is impossible to believe that a single, isolated, abbreviated comment stood out in any meaningful way from all the other references.

¶ 75 Third, Goffin objected to the comment, and the trial court sustained that objection and told the jury to disregard it. While the court's sustaining of an objection and instruction to disregard the comment may not always be the cure-all an appellee suggests, we have often noted that as a general matter, such actions by the court are deemed sufficient to cure any prejudice. See, *e.g.*, *Eid v. Loyola University Medical Center*, 2017 IL App (1st) 143967, ¶ 62; *Vanderhoof v. Berk*, 2015 IL App (1st) 132927, ¶ 101 (any prejudice from counsel's statement in closing argument, improperly suggesting that jury should "send a message," was cured by court's sustaining of objection and instruction that argument was "improper"); *Zickuhr v. Ericsson, Inc.*, 2011 IL App (1st) 103430, ¶ 75; *Clayton v. County of Cook*, 346 Ill. App. 3d 367, 383, 805 N.E.2d 222, 236 (1st Dist. 2003) ("A circuit court's decision to sustain an objection and instruct the jury to disregard the remark cures the prejudicial impact from the improper statement.").

¶ 76 Indeed, though Goffin cites one of the jury notes as proving she was prejudiced ("Why can't we know if 311 was called?"), we agree with the City that, if anything, this note seems to

indicate that the court's instruction to disregard 311 evidence registered, loud and clear, with the jury. The jury clearly recognized that it was not supposed to consider "if 311 was called." And we presume that a jury follows the trial court's instructions. See, *e.g.*, *McDonnell v. McPartlin*, 192 Ill. 2d 505, 535 (2000); *Vanderhoof*, 2015 IL App (1st) 132927, ¶ 101.

¶ 77 To be clear, we don't normally make it a practice of reading jurors' minds via jury notes. See, *e.g.*, *Carillo v. Ford Motor Co.*, 325 Ill. App. 3d 955, 965 (2001) ("We decline to speculate on why the jury sent out the question it did."); *People v. Miller*, 2017 IL App (3d) 140977, ¶ 54 (declining to take "speculative leaps" about why jury sent out note); *People v. Carrilalez*, 2012 IL App (1st) 102687, ¶ 49 ("We decline to engage in speculation regarding how the jury deliberated."); *People v. Minniweather,* 301 Ill.App.3d 574, 580 (1998) (jury's "request to review evidence and [its] questions posed to the court during deliberations * * * merely indicates that the jury took its job seriously and conscientiously worked to come to a just decision"). We cite the City's point above about the jury note only to say that if we did endeavor to draw inferences from it, as Goffin urges, the inference we drew might not favor Goffin.

¶ 78 But let's consider Goffin's position for argument's sake. Let's suppose that we *can* infer something from that jury note, that the jury note highlighted the importance placed on the 311 issue by the jury, and that the jury ignored the trial court's instruction to disregard the references to it. It wouldn't change our conclusion, because again, we have found that every reference to the 311 system, save one, was proper. So even if we were willing to speculate that the jury was laser-focused on the 311 issue, it was a perfectly relevant consideration as to the City's lack of notice of the alleged defect. We have no basis in the record to conclude, instead, that the jury ignored all the multiple other references to the 311 system and focused solely on the one improper, half-sentence reference to it in the closing argument. It's not as if the jury note

referenced accidents or injuries or falls. It just generically asked why the jury was not allowed to consider 311 calls.

¶ 79 In sum, nothing in the record supports the conclusion that a new trial was warranted. The City nearly perfectly complied with a well-reasoned *in limine* ruling that was faithful to the law and appropriately balanced the rights of the parties. The one brief, isolated instance where the City crossed the line came nowhere close to causing prejudice or denying Goffin a fair trial. The grant of a new trial was an abuse of discretion.

¶ 80 CONCLUSION

¶ 81 The order granting a new trial is reversed. The cause is remanded with instructions to reinstate the jury verdict.

¶ 82 Reversed and remanded with instructions.