2014 IL App (2d) 121053-U
No. 2-12-1053
Order filed August 22, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-1221
CHRISTOPHER A. CARTER,	)	Honorable George J. Bakalis,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Hudson concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant's predatory criminal sexual assault convictions were affirmed where the jury was properly instructed on the purposes of the other-crimes evidence, and there was no error regarding the State's closing argument.

¶ 2 Defendant, Christopher A. Carter, was convicted of six counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1), (b)(1.2) (West 2008)), and sentenced to natural life in prison. For the reasons that follow, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On May 27, 2008, defendant was indicted on six counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1), (b)(1.2) (West 2008)) and one count of criminal sexual assault of a child (720 ILCS 5/12-13(a)(4) (West 2008)). The charges stemmed from allegations that defendant committed acts of sexual penetration with C.C. and T.C. C.C. was defendant's biological daughter born on May 28, 1994. T.C. was born on June 9, 1996. Until the time of his arrest in May 2008, defendant believed that T.C. was also his biological daughter; however, she was not.

¶ 5 Count I (predatory criminal sexual assault of a child) alleged that defendant placed his penis in the sex organ of C.C. on or between May 28, 2004, and May 27, 2007. Count II (predatory criminal sexual assault of a child) alleged that defendant placed his finger in the sex organ of C.C. on or between May 28, 2004, and May 27, 2007. Count III (criminal sexual assault) alleged that defendant placed his penis in the sex organ of C.C. on or about April 20, 2008, while, as C.C.'s father, he held a position of trust, authority, or supervision in relation to C.C. Count IV (predatory criminal sexual assault of a child) alleged that defendant placed his penis in the sex organ of T.C. on or about May 1, 2008. Count V (predatory criminal sexual assault of a child) alleged that defendant placed his penis in the sex organ of T.C. on or between April 1, 2008, and April 30, 2008. Count VI (predatory criminal sexual assault of a child) alleged that defendant placed his finger in the sex organ of T.C. on or between (as later amended to correct a scrivener's error) August 1, 2006, and December 31, 2007. Count VII (predatory criminal sexual assault of a child) alleged that defendant placed his penis in the sex organ of T.C. on or between (as later amended to correct a scrivener's error) August 1, 2006, and March 31, 2008.

¶ 6 The State filed a motion *in limine* to admit evidence of defendant's other crimes and bad

acts. Specifically, the State sought to admit evidence of defendant's acts of physical violence against C.C. and T.C. to show how defendant gained both victims' passive acceptance of the sexual assaults, to explain the victims' delay in disclosure, and to corroborate the testimony of each victim. The State also sought to admit evidence of uncharged sexual acts by defendant against the victims to show defendant's propensity to commit sex offenses, his *modus operandi*, and his course of conduct with the victims, and to corroborate each victim's testimony. After hearing argument, the trial court granted the State's motion. The court ruled that the uncharged acts of physical violence were admissible under the common law to show why the victims did not report the sexual assaults. With respect to the uncharged sexual acts, the court ruled that they were admissible under section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West 2012)) to show propensity and course of conduct.

¶ 7 The case went to trial.[1] The undisputed evidence established that C.C. and T.C. were born in St. Louis, Missouri, where they lived with their mother, Gathyn Allen. Defendant lived with Gathyn briefly after C.C. was born. Defendant believed that he was the biological father of both C.C. and T.C. The Allens had a large, close-knit extended family. Defendant moved to Illinois in about 1996. He visited the girls in St. Louis once or twice a month. At the end of 2004, Gathyn and defendant agreed that it would be best for the girls to live with defendant. In January 2005, they moved to Naperville, Illinois, to live with defendant.

¶ 8 After the girls moved to Illinois, defendant severely limited their contact with the Allen family. Defendant had a "workable" relationship with the Allens but it was marked by tension.

[1] The trial court originally declared a mistrial based on private counsel's motion alleging her own ineffectiveness. We discuss only the retrial for which the court appointed the public defender's office.

In 2006, Gathyn was murdered. Defendant took the girls to the funeral, but they arrived late and left early. The girls rarely spoke on the telephone with the Allen family, and even then, it was usually on speakerphone. By 2007, the Allens felt they were losing touch with the girls. Members of the Allen family drove from St. Louis to Naperville in the summer of 2007 and in April 2008. They visited with the girls in the apartment parking lot with defendant nearby because he did not want the Allens in his apartment. During the April 2008 visit, defendant and the Allens had a heated argument.

¶ 9 Defendant and the girls initially resided in a two-bedroom apartment. In about 2007, they moved to a three-bedroom apartment in the same complex, where defendant's mother, Peggy Nofles, occupied the third bedroom. (It was disputed whether Nofles also sometimes lived with defendant and the girls in the two-bedroom apartment.) In both apartments, the girls slept on bunk beds in their bedroom and used the hallway bathroom. Defendant occupied the master bedroom, which had its own bathroom, accessible only from the bedroom. (Defendant's younger son from a different relationship also resided with the family sometimes. It was disputed whether he slept in defendant's bed or on the couch.)

¶ 10 On April 30, 2008, C.C. attended "Aware," a sexual education program offered to eighth graders at her school designed to increase awareness and encourage reporting of sexual abuse. At some point that day, C.C.'s friends became concerned about her and took her to talk to a teacher, who took C.C. to the principal. C.C. and T.C. went home that night.

¶ 11 After school the next day, May 1, 2008, C.C. and T.C. were taken to the Juvenile Youth Services lobby at the Naperville police department. They sat at a table in the lobby doing homework. About an hour later, Officer Anthony Simpson of the Naperville police department and Larissa Rico of the Illinois Department of Children and Family Services (DCFS) interviewed

C.C. and then T.C. in a "soft interview room" while the other girl waited in the lobby. Each interview was video recorded.[2]

¶ 12 Rico then took the girls to the Care Center for child sexual abuse victims at Edward Hospital in Naperville, where Dr. Sangita Rangala examined them. Dr. Rangala, an expert in emergency medicine and medical evaluation of pediatric sexual abuse, opined that both girls had been subjected to sexual trauma. Her opinion was based on the "definitive" evidence that T.C. had a "complete hymenal transection" and C.C. had an "almost complete transection of the hymen." Dr. Rangala also completed a sexual assault kit of T.C., including a vaginal swab.

¶ 13 Meanwhile, defendant came home from work and found that the girls were not there. He spoke on the phone with the school resource officer Juan Rios. Defendant drove to the Naperville police department at about 8 p.m. Officers Rios and Simpson advised defendant of his *Miranda* rights, which he waived. When confronted with the girls' accusations against him, defendant denied any wrongdoing. He consented to a search of his apartment.[3] Among the items collected from the apartment were several items of girls' underwear.

¶ 14 Forensic testing established the following. T.C.'s vaginal swab contained male DNA consistent with defendant's DNA profile. Two pairs of T.C.'s underpants had semen stains in the crotch. The stains were positive for semen and had a DNA profile consistent with defendant's DNA profile. The DNA from the underpants matched defendant's DNA profile.

¶ 15 We now summarize the testimony of C.C., T.C., and defendant. Prior to each victim's

[2] Part of T.C.'s recorded interview was played for the jury pursuant to section 115-10 of the Code (725 ILCS 5/115-10 (West 2010)).

[3] In a motion to quash arrest and suppress evidence, defendant challenged the validity of the consent. The trial court denied the motion. It is not at issue in this appeal.

testimony, the trial court instructed the jury, using Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.14), that the evidence of defendant's uncharged sexual acts against the victims was being admitted for the limited purposes of showing defendant's propensity to commit sexual offenses and his course of conduct with the girls.

¶ 16 C.C.'s Testimony

¶ 17 C.C. testified that she originally was excited about moving to Illinois to live with defendant. On the way from St. Louis to Naperville, she, T.C., and defendant spent the night at Nofles' condominium about 20 minutes from St. Louis. Nofles slept in the only bedroom; defendant and the girls slept on the living room floor. During the night, defendant woke C.C. and asked her to "sit on him." She was not sure what that meant, but assumed it was sexual; she refused and went back to sleep. Shortly after moving into defendant's two-bedroom apartment, defendant called C.C. into his bedroom and asked her to "help him." Again, she thought he meant something sexual, but she was not sure. C.C. told defendant to "do it hisself [*sic*]."

¶ 18 C.C. testified that, within one year of the move, defendant began sexually assaulting her. She was in the fifth grade when the assaults began but could not remember the first time specifically. She recalled one incident in the first apartment when she had fallen asleep watching a movie with T.C. and defendant. She remembered that they were lying on two couches that were pushed together, the three of them were covered with a black blanket with white print, and the fireplace was on. Defendant placed his penis in her vagina.

¶ 19 C.C. further testified that, after they moved to the three-bedroom apartment, a pattern developed where defendant would wake C.C. very late at night or very early in the morning. He would guide her to his bedroom where he locked the door, removed his clothes and hers, and

sexually assaulted C.C. on the bed. C.C. also testified that one time defendant entered the bathroom while she was bathing and inserted his finger into her vagina, and another time he assaulted her on the master bathroom floor. C.C. said that the assaults occurred "whenever he felt like it" and estimated that there were about 30 to 40 total assaults. C.C. testified that defendant told her that it was a "secret that we were supposed to take to our grave."

¶ 20 C.C. described being in trouble once or twice a week, and how defendant would hit her on the buttocks or legs using his hands, a belt, or a paddle in his bedroom. Defendant had carved into the paddle the words "laughing hyena." Defendant told C.C. that the "devil was laughing" at her when she got in trouble. He usually put on music when he was paddling the girls; a few times, C.C. heard defendant telling T.C. to put a sock in her mouth. Defendant also "disciplined" C.C. by making her hold a heavy stack of encyclopedias out in front of her for about 20 minutes. C.C. said that the punishments were often for minor infractions, such as wearing flip-flops to school or going to sleep too early, and that the punishments got worse as time went on. Sometimes C.C. did not even know why she was being punished.

¶ 21 C.C. testified that, just before May 1, 2008, defendant was lecturing C.C. in the living room. Defendant raised his hand, and C.C. flinched. Defendant told her that he could hurt her even if she put up her guard, and then he punched her in the stomach with a closed fist. Nofles was present for this incident and did nothing.

¶ 22 C.C. testified that she never told anyone about the assaults before May 1, 2008, not even T.C., because she was afraid of defendant. C.C. was afraid that if she told Nofles, then Nofles would tell defendant and take his side. C.C. further testified that defendant kept her separated from the Allen family and "convinced [the girls] that [they] shouldn't want to" talk to them because St. Louis was in the past.

¶ 23 C.C. testified about attending the Aware program on April 30, 2008. She was "kind of sensitive to the topics" addressed. At lunch, her friends were playing around and poking C.C. in the stomach. C.C. told them to stop because her stomach hurt from defendant punching her. Her friends took her to a teacher, who talked to her briefly and took her to the office.

¶ 24 C.C. said that, at the police department, she confided to T.C. for the first time that defendant had been sexually assaulting her. T.C. admitted that she too had been sexually assaulted. Neither girl went into detail with the other.

¶ 25 T.C.'s Testimony

¶ 26 T.C. testified that when she went to live with defendant, she was seven years old and in the third grade. After they moved to the three-bedroom apartment, while she was in fifth grade, defendant talked to her in his bedroom about "what was going to happen." He told her that if she went along with it, he would reward her with snacks and candy. Defendant also told her not to tell anyone.

¶ 27 T.C. explained that, not too long after that conversation, defendant woke her very late at night or very early in the morning and led her to the master bathroom. He locked the door, pulled down her underwear, and sat her on the counter. He got a clear bottle of lotion with a big yellow label and white top. He put lotion on his finger and inserted it into her vagina and moved it in and out. Defendant repeated this ritual for three or four nights in a row. Not long after that, defendant woke T.C. and sexually assaulted her on the master bathroom floor. The routine continued with defendant assaulting T.C. in the master bedroom using different positions. T.C. testified that defendant would instruct her how to position herself and told her to "go faster or slower." The last assault took place on the "day the police got involved." Defendant assaulted T.C. at least 15 to 20 times.

¶ 28 T.C. also testified about defendant paddling her in his bedroom with the "laughing hyena" and telling her that the "devil was laughing" at her. Defendant made T.C. put a dirty sock or towel in her mouth while he paddled her. T.C. said that defendant paddled her often and that the discipline did not seem appropriate to her misbehavior. T.C. described an incident when she was in fourth grade, and defendant paddled her for walking to school with her friend. She elaborated that she had been going to a babysitter's house in the mornings before school but that defendant stopped sending her there when the sitter started charging for T.C.'s breakfast. Instead, defendant told her to stay in a storage closet and not leave for school until the alarm clock that he gave her went off. One day, T.C. left the house before she was supposed to so that she could walk to school with her friends. Defendant, returning home to retrieve something he had forgotten, saw T.C. with her friends and paddled her after school.

¶ 29 T.C. testified that defendant "brainwashed" her and C.C. into thinking that the Allen family was not good for them. She felt isolated and rarely saw or talked to the Allens. T.C. was afraid of defendant and never told anyone what defendant was doing to her because he told her not to tell. T.C. did not understand that defendant's conduct was wrong. On May 1, 2008, she talked with C.C. at the police department, but the girls did not share any details at the time.

¶ 30 Defendant's Testimony

¶ 31 Defendant testified in his own behalf. He worked seasonally as an operating engineer building roads and other infrastructure, usually from May through November. When he was arrested on May 1, 2008, he was just getting ready to start back up.

¶ 32 Regarding the trip from St. Louis to Naperville, defendant testified that he and the girls spent the night at Nofles' two-bedroom house. The girls slept in Nofles' room with her; defendant slept in the second bedroom. Defendant never asked C.C. to sit on him.

¶ 33 Defendant repeatedly denied ever having any sexual contact with either C.C. or T.C. He testified that he masturbated in his bedroom "about every day, whenever the house was empty." After masturbating, defendant would walk to a hamper either in the hallway or the laundry room and take a dirty clothes item to clean himself. He then put the item back in the hamper. He could not say specifically that he ever wiped himself with the girls' underpants, but it was possible, and he thought he probably did.

¶ 34 Defendant explained that he set house rules, including chore assignments. He disciplined the girls by grounding, standing in the corner, or paddling. He confirmed that he made and used the "laughing hyena" to paddle the girls in his bedroom. He kept the paddle in his bedroom, standing against his dresser. Defendant explained that he had to punish the girls more frequently in the second apartment because their misbehavior was increasing.

¶ 35 Defendant further testified that he noticed what he thought were herpes sores on his genitals in 1996. He had monthly outbreaks of varying severity ever since then. Defendant said that he did not tell the Du Page County jail that he had herpes. He never had sex in the jail.

¶ 36 The parties stipulated that defendant tested positive for genital herpes in October 2010 (when he had been continuously incarcerated since May 2008) and that C.C. and T.C. tested negative for genital herpes in 2011. Dr. Rangala was aware of the number of times that defendant allegedly sexually assaulted the girls, and she testified that it did not surprise her that neither one had contracted genital herpes. She explained that, despite the public health message, the actual numbers for transmission rates were "quite low." Dr. Rangala testified that "the chances would be rare" that a female child would contract the disease from sexual intercourse with an infected male.

¶ 37 Defendant further testified that about four or five days before his arrest, C.C. missed an appointment she had with a modeling agency. C.C. was angry with defendant and told him something like "you are going to get yours."

¶ 38 The jury found defendant guilty of all seven counts of the indictment. On the State's motion, the trial court nol-prossed the criminal sexual assault charge (count III). The court sentenced defendant to life in prison on the predatory criminal sexual assault convictions. See 720 ILCS 5/12-14.1(b)(1.2) (West 2008) (renumbered 720 ILCS 5/11-1.40(b)(1.2) (eff. July 1, 2011) (providing that a person convicted of predatory criminal sexual assault of a child against two or more persons shall be sentenced to a term of natural life imprisonment)). Defendant timely appeals.

¶ 39 II. ANALYSIS

¶ 40 Defendant raises two claims of error. The first involves a limiting instruction provided to the jury regarding other-crimes evidence. The second involves the State's comment during closing argument that defendant was "starving" C.C. and T.C. We address each in turn.

¶ 41 A. Jury Instruction on Other-Crimes Evidence

¶ 42 It is well established that "the risk associated with the admission of other-crimes evidence is that it might prove 'too much,' rendering a jury inclined to convict the defendant simply because it believes that he or she is a bad person deserving of punishment." *People v. Perez*, 2012 IL App (2d) 100865, ¶ 45 (quoting *People v. Donoho*, 204 Ill. 2d 159, 170 (2003)). Under the common law, other-crimes evidence may be admitted for limited purposes, such as establishing motive, identity, presence, *modus operandi*, knowledge, intent, common design, or absence of mistake. *Perez*, 2012 IL App (2d) 100865, ¶ 45. However, under the common law,

other-crimes evidence is never admissible to show a defendant's bad character or propensity to commit crime.[4] *Perez*, 2012 IL App (2d) 100865, ¶ 45.

¶ 43 An exception to the common-law prohibition against other-crimes as evidence of propensity is found in section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2012)). When a defendant is accused of certain sexual offenses, evidence of the defendant's commission of other sex offenses "may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(b) (West 2012). Other-crimes evidence is admissible to show a defendant's propensity to commit sex offenses. *Donoho*, 204 Ill. 2d at 176.

¶ 44 In the present case, defendant does not dispute that under section 115-7.3 the trial court properly admitted evidence about uncharged sexual offenses as other-crimes evidence. Rather, defendant maintains that the court's instruction that the jury could consider the other-crimes evidence for the limited purpose of defendant's propensity to commit sex offenses against children was unnecessary and a misstatement of the law. Defendant further urges that the court's instruction "unfairly drew the jury's attention to, and placed the court's imprimatur on, the very inference that the State *wanted* the jury to draw from the evidence: that [defendant] had a

[4] The common-law other-crimes rule was codified in Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011) ("Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith except as provided by sections 115-7.3, 115-7.4, and 115-20 of the Code of Criminal Procedure (725 ILCS 5/115-7.3, 725 ILCS 5/115-7.4, and 725 ILCS 5/115-20). Such evidence may also be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.").

propensity to commit sex crimes against children, so that the jury should believe both complaining witnesses." (Emphasis in original.)

¶ 45 Defendant acknowledges that he failed to preserve this argument for review; therefore, he asks us to consider it under the plain-error doctrine. See *People v. Herron*, 215 Ill. 2d 167, 175 (2005) (explaining that, to preserve an error for review, a defendant must both object at trial and raise the issue in a posttrial motion). A reviewing court will find plain error only 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). The defendant bears the burden of persuasion under either prong. *Piatkowski*, 225 Ill. 2d at 565. We must first determine whether any error occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 46 The purpose of jury instructions is to convey to the jury the applicable law. *People v. Mohr*, 228 Ill. 2d 53, 65 (2008). "The task of a reviewing court is to determine whether the instructions, considered together, fully and fairly announce the law applicable to the theories of the State and the defense." *Mohr*, 228 Ill. 2d at 65. The issue of whether a jury instruction accurately conveys the applicable law to the jury is reviewed *de novo*. *People v. Watt*, 2013 IL App (2d) 120183, ¶ 30 (citing *People v. Parker*, 223 Ill. 2d 494, 501 (2006)). "[I]t is within the trial court's discretion to determine which issues are raised by the evidence and whether an instruction should be given." *Mohr*, 228 Ill. 2d at 65. We review the trial court's exercise of its discretion to determine if it abused its discretion. *Mohr*, 228 Ill. 2d at 66. "A trial court abuses

its discretion if jury instructions are not clear enough to avoid misleading the jury." (Internal quotation marks omitted.) *Mohr*, 228 Ill. 2d at 66.

¶ 47 Here, the trial court's instructions to the jury immediately before its deliberations included IPI Criminal 4th No. 3.14 as follows:

> "Evidence has been received that the defendant has been involved in offenses other than those charged in the indictment. Evidence of other sexual contacts with the victims has been received on the issues of the defendant's propensity to commit sex offenses against children, and his continuing course of conduct with the victims.
>
> This evidence may be considered by you only for this limited purpose. It is for you to determine whether the defendant was involved in those offenses, and, if so, what weight should be given to this evidence on the issues stated."

The court also gave this instruction just prior to C.C's testimony and again just prior to T.C.'s testimony. The State read the instruction during its closing argument.

¶ 48 Defendant contends that, because the other-crimes evidence was admissible without limitation, a limiting instruction was unnecessary. Defendant further asserts that the trial court's instruction misstated the law. According to defendant, the rationale for IPI Criminal 4th No. 3.14, as described in the committee note—that "evidence of other crimes is admissible if it is relevant to establish any fact material to the case other than propensity to commit crime"—is not applicable under section 115-7.3, where other-crimes evidence is admissible to show propensity. Defendant relies on *Perez*, where the issue was whether the trial court erred in not providing a limiting instruction contemporaneous with the other-crimes evidence admitted under section 115-7.3. The court held that, because the common law does not require limiting instructions contemporaneous with the admission of the evidence, where other-crimes evidence is admissible

only for certain purposes, then a contemporaneous limiting instruction was certainly not required under section 115-7.3, where other-crimes evidence is admissible "for any purpose, *i.e., without limitation*." (Emphasis in original.) *Perez*, 2012 IL App (2d) 100865, ¶ 58.

¶ 49 While these sources may lend some support to defendant's position that a limiting instruction may not always be necessary when the other-crimes evidence is admitted under section 115-7.3, we are not persuaded that a limiting instruction was unnecessary in the present case. As discussed above, in its motion *in limine*, the State sought to admit the other-crimes evidence for four different purposes: propensity, *modus operandi*, course of conduct, and to corroborate each victim's testimony. The court ruled that the evidence was admissible for only two of those purposes—propensity and course of conduct. In light of this record, we cannot say that the limiting instruction was unnecessary.

¶ 50 Even assuming for the sake of argument that a limiting instruction was unnecessary, defendant has not shown that IPI Criminal 4th No. 3.14 was a misstatement of the law. In his reply brief, defendant reiterates his argument as follows: "The court instructed the jury that the evidence of uncharged sex offenses was admissible only to show propensity and course of conduct, and this was incorrect: the evidence was admissible for any relevant purpose." Given the trial court's determination that the other-crimes evidence was admissible only to show propensity and course of conduct, the court's instruction accurately stated the law. In other words, the instruction correctly stated that the other-crimes evidence was admissible only to the extent that it was relevant to propensity and course of conduct.

¶ 51 Nonetheless, defendant urges that the instruction, because it was "repeatedly" given, unfairly prejudiced the jury against him and placed the court's imprimatur on the propensity inference, which created a "mutually reinforcing circuit" whereby C.C.'s allegations made T.C's

allegations more likely true and vice versa. This was particularly prejudicial, according to defendant, because convictions related to both victims subjected him to mandatory life imprisonment. See 720 ILCS 5/12-14.1(b)(1.2) (West 2008) (renumbered 720 ILCS 5/11-1.40(b)(1.2) (eff. July 1, 2011)).

¶ 52 As noted above, the record reflects that the jury heard IPI Criminal 4th No. 3.14 during the trial prior to each victim's testimony, once during the State's closing argument, and once in the court's instructions prior to jury deliberations. Defendant does not contend that any of these times were inappropriate times to give a limiting instruction.

¶ 53 Rather, defendant relies on the well-established proposition that a trial court may not unfairly emphasize one part of the evidence. See *e.g.*, *People v. McClellan*, 62 Ill. App. 3d 590, 595-96 (1978) (explaining that courts have a "general obligation to avoid giving instructions which unduly emphasize one part of the evidence in a case, [citation], and are not required to give an instruction that would provide the jury with no more guidance than that available to them by application of common sense"). However, none of the cases upon which defendant relies stands for the proposition that giving an IPI instruction that accurately states the law is prejudicial or an abuse of discretion. See *People v. Armstrong*, 183 Ill. 2d 130 (1998) (trial court did not err in denying a requested defense instruction on the credibility of a drug addict's testimony); *People v. Reed*, 405 Ill. App. 3d 279 (2010) (trial court did not abuse its discretion in refusing to give a modified IPI instruction on the credibility of a drug-addicted witness); *People v. Buck*, 361 Ill. App. 3d 923 (2005) (trial court did not abuse its discretion in refusing to give a modified IPI instruction on the reliability of a recorded confession as opposed to an unrecorded one); *People v. Grabbe*, 148 Ill. App. 3d 678 (1986) (trial court erred in refusing the defendant's request to give Illinois Pattern Jury Instructions, Criminal, No. 3.17 (2d ed. 1981)); *McClellan*,

62 Ill. App. 3d 590 (trial court did not abuse its discretion in refusing to give an instruction about a witness's prior inconsistent conduct); *People v. Godbout*, 42 Ill. App. 3d 1001, 1009 (1976) (the defendant was prejudiced where "the numerous [non-IPI] instructions dealing with the breathalyzer tests unnecessarily emphasized that evidence").

¶ 54 Defendant asks this court to hold that giving an IPI instruction that provided the jury with an accurate statement of the law was somehow prejudicial. Defendant has failed to meet his burden of persuasion. If anything, IPI Criminal 4th No. 3.14 focused the jury's attention on the limited nature of the other-crimes evidence. Furthermore, the limiting instruction alerted the jury that the other-crimes evidence pertained to uncharged offenses as opposed to charged offenses. See *Perez*, 2012 IL App (2d) 100865, ¶ 63 (rejecting the defendant's argument that the jury was not apprised of the distinction between the charged and uncharged offenses and noting that "in most cases, the better practice will be to inform the jury of the charged versus uncharged conduct as the evidence is admitted"). What defendant characterizes as the trial court's repeatedly prejudicing the jury against him and placing the court's imprimatur on the propensity inference was merely the court's accurate statement of the law. Because there was no error, there was no plain error. *People v. Gumila*, 2012 IL App (2d) 110761, ¶ 58 ("Since there was no error, there can be no plain error." (citing *People v. Bannister*, 232 Ill. 2d 52, 79 (2008)).

¶ 55 In the alternative, defendant contends that he received ineffective assistance of trial counsel for failure to preserve the jury-instruction issue for review. Under *Strickland v. Washington*, 466 U.S. 668 (1984), to succeed on an ineffective-assistance-of-counsel claim, a defendant must show both (1) that counsel's performance fell below an objective standard of reasonableness and (2) that the deficient performance prejudiced the defendant in that, but for counsel's deficient performance, there is a reasonable probability that the result of the

proceeding would have been different. *Strickland*, 466 U.S. at 687-88, 694; *People v. Manning*, 241 Ill. 2d 319, 326 (2011). Given our determination that the limiting instruction was proper, counsel was not objectively deficient for failing to object to the instruction and to raise it in a posttrial motion. *People v. Phipps*, 238 Ill. 2d 54, 64-65 (2010) (explaining that counsel is not required to offer baseless or losing arguments to avoid being found ineffective); *People v. Carter*, 405 Ill. App. 3d 246, 256 (2010) (holding that the defendant could not complain that his counsel was deficient for not challenging errors that caused no prejudice). Accordingly, defendant's ineffective-assistance claim fails. See *People v. Deleon*, 227 Ill. 2d 322, 338 (2008) ("The failure to satisfy either prong of the *Strickland* test precludes a finding of ineffective assistance of counsel.").

¶ 56 B. Closing Arguments

¶ 57 Defendant takes issue with the State's argument about how defendant groomed the girls for sexual conduct as reflected in the following colloquy:

> "[PROSECUTOR]: With [T.C.] the grooming started a little bit later, but at about the same age. That's what the defendant liked. He likes children of about nine, ten years old. Started with [T.C.] with a conversation. Remember that? He pulled her into his bedroom, promised her treats, rewards, chocolate, puddings, candies. That meant a lot to them because at the time he was starving them.
>
> [DEFENSE COUNSEL]: Objection.
>
> [PROSECUTOR]: Wouldn't give them food.
>
> COURT: Sustained.
>
> [PROSCUTOR]: You recall the testimony that she was at the baby-sitter's house and that the defendant stopped sending her to the baby-sitter's house because it cost too

much money in food. Draw whatever reasonable inference from that you will."

¶ 58 Specifically, defendant contends that the "trial court plainly erred in permitting the State to ignore its ruling and urge the jury to draw an unreasonable inference that [defendant] was 'starving' C.C. and T.C." Defendant acknowledges his forfeiture of this argument for failure to raise it in a posttrial motion, but asks us to review it under the plain-error doctrine. Again, we must first determine whether any error occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 59 "Arguments and statements based upon the facts and evidence, or upon reasonable inferences drawn therefrom, are within the scope of proper closing." *People v. Wilson*, 312 Ill. App. 3d 276, 287 (2000). Following the sustained objection, the State reminded the jury of T.C.'s testimony about being forced to wait in a closet before school instead of going to the babysitter's house because the sitter charged too much for breakfast, and the State told the jury to draw its own inference from that testimony. There was nothing improper about these comments. The State did not "ignore" the court's ruling, but rather, told the jury to properly do its job. Because there was no error, there was no plain error. *Gumila*, 2012 IL App (2d) 110761, ¶ 58.

¶ 60 Given defendant's failure to establish that any plain error occurred with respect to the limiting instruction or the State's closing argument, his forfeiture of these issues stands. *Perez*, 2012 IL App (2d) 100865, ¶ 59 (where the defendant failed to establish plain error, his argument remained forfeited).

¶ 61 III. CONCLUSION

¶ 62 For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

¶ 63 Affirmed.