2023 IL App (4th) 220768-U

NO. 4-22-0768

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 1, 2023
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
GIOBEL SEVERIANO-NAVA,	)	No. 21CF74
Defendant-Appellant.	)	
	)	Honorable
	)	Charles M. Feeney III,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Steigmann and Doherty concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, holding that defendant failed to show the prosecutor's remarks during rebuttal closing argument amounted to clear or obvious error.

¶ 2 Defendant, Giobel Severiano-Nava, appeals his conviction for criminal sexual assault. Specifically, defendant contends the prosecutor improperly argued during rebuttal closing argument that a detective had taken a statement from the victim at the hospital after the charged incident and that the detective could have testified that he met her at the hospital. Defendant contends this argument was not supported by the trial evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Defendant was charged with aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(2) (West 2020)) and criminal sexual assault (*id.* § 11-1.20(a)(1)). The indictment

alleged defendant knowingly committed an act of sexual penetration with A.R. by the use of force in that he placed his finger in A.R.'s vagina.

¶ 5 At the jury trial, A.R. testified she worked as a dancer at the Kappa Men's Club (Club). She indicated there was a main stage at the Club where the dancers took turns performing. There were other areas of the Club where customers could purchase private dances, including a "lap dance room" where customers could purchase topless dances for the duration of one song, a "VIP room" where customers could purchase 30-minute topless dances for $200, and a "champagne room" where customers could purchase 30-minute dances for $300. The champagne room afforded more privacy, and dancers were permitted to be fully nude there.

¶ 6 On the night before the incident, A.R. began working at the Club at 9 or 10 p.m. Defendant and his friends were at the Club and were buying drinks for the dancers. Defendant had been to the Club on prior occasions and had previously purchased a dance from A.R. in the lap dance room. On prior occasions, A.R. had discussed with defendant what could happen in the VIP room. The prosecutor asked A.R. if she had talked to defendant about what kind of touching can happen. A.R. replied, "There is no *** touching unless I used his hands to touch me."

¶ 7 On the morning of the incident, at approximately 2:30 a.m., defendant asked A.R. for a VIP room dance and paid for the dance. A.R. and defendant entered one of several "cubicles" in the VIP room. A.R. removed her bikini top and began dancing "over top of" defendant. She did not remove her bikini bottoms at any point during the dance. At first, defendant was gently rubbing her outer thighs, which was normal for customers to do. Defendant attempted to touch her breasts, and she "nicely moved his hands." A few minutes later, defendant picked her up, turned her around, and inserted three fingers into her vagina "forcefully, really hard." A.R. believed defendant possibly bit her chest and scratched her as well. She did not guide

defendant's hands to her vagina or tell him that he could touch her in that manner. She did not touch herself in her vaginal area during the dance. After defendant grabbed her, she walked out of the room and told a "floor guy" (who provided security at the Club) what happened. She then went to the manager's office to tell someone to call the police.

¶ 8 The next thing she remembered was being inside an ambulance and talking to a police officer. She was no longer wearing the bikini she had been wearing at the time of the incident and was dressed in her clothing. Her clothes had been in the locker room while she was working, but she did not recall going to the locker room or getting dressed after the incident. She did not remember speaking to Sarah Shelton, another dancer at the Club, after the incident. A.R. was crying and extremely tired when she was in the ambulance. She then went to the hospital and was examined by a nurse. A.R. did not recall making any statements to the nurse concerning what occurred during the incident. An officer came to the hospital and took a statement as well.

¶ 9 Dakota Park, a Woodford County sheriff's deputy, testified he was dispatched to the Club at approximately 2:30 or 3 a.m. to respond to a reported sexual assault. He observed A.R. sitting inside an ambulance. Her eyes were swollen, and it appeared she had been crying. A.R. identified defendant as the individual who had sexually assaulted her. The ambulance carrying A.R. then drove away, and a detective responded to the hospital where she was taken.

¶ 10 Shelton testified she was working as a dancer at the Club on the morning of the incident. At approximately 2:30 a.m., Shelton saw A.R. in the locker room. A.R. was crying and distraught. Shelton asked A.R. what was wrong. A.R. did not say anything but held up her bikini bottoms, which were stained with blood. Shelton had seen A.R. wearing the bikini earlier. Photographs of the stained bikini bottoms were admitted into evidence.

¶ 11 Ethelinde Bausley, a sexual assault nurse examiner, testified that she examined A.R. on the morning of the incident at the hospital emergency department where she worked. A.R. told Bausley that a customer had inserted three fingers into her vagina and bit her. Bausley did not observe any blood on A.R.'s vagina. She administered dye to A.R.'s vaginal area and observed a "positive uptake" on the outside of the vagina, which indicated there was a microtear. Bausley also observed a bite mark on A.R.'s left breast, a bruise on her right inner thigh, and a bruise on her right buttock.

¶ 12 Defendant testified on his own behalf. Defendant indicated he was at the Club on the morning of the incident and arranged to go to the VIP room with A.R. Defendant paid the cashier $200 before he entered the VIP room. Based on where A.R. was standing at that time, she would have been able to see his wallet, which contained an additional $360 in cash. They entered a booth in the VIP room, defendant sat down, and A.R. began dancing. She removed her top and bikini bottoms during the dance. In the middle of the dance, A.R. asked defendant to give her more money. He refused, and she continued dancing. During the dance, A.R. inserted her own fingers into her vagina. Defendant stated he touched A.R.'s pubic area after she "invited" him to do so, but he did not place his fingers in her vagina. A.R. got up when there was still 10 minutes left in the dance. Defendant asked her to continue dancing, and she suggested he pay more money to go to the champagne room. Defendant refused, and A.R. left the room. A few minutes later, a man who worked at the Club told defendant to leave for the night. Defendant walked to the parking lot, and he was subsequently arrested there. Defendant stated he did not bite A.R.'s breast, try to pick her up, or hold her down during the dance.

¶ 13 During closing argument, defense counsel stated:

"Let's talk about the lack of investigation on this case. This place was full of witnesses that night, patrons. The floor guy. The four men who were around the VIP room when [A.R.] was talking to them, where are they? Why didn't we hear from them? Because you remember the State is required to prove this case. What about the detective? Why wasn't there a detective?"

¶ 14 During the State's rebuttal, the prosecutor stated:

"The statements that were given by [A.R.] at the time of—the night it happened, we have a detective. You didn't hear from the detective. He took a statement from her. She already testified to what the statement was. Hearsay to talk about it otherwise. Could have testified he met her at the hospital. Okay."

¶ 15 The jury found defendant not guilty of aggravated criminal sexual assault and guilty of criminal sexual assault. The trial court subsequently sentenced defendant to four years and three months' imprisonment. This appeal followed.

¶ 16 II. ANALYSIS

¶ 17 On appeal, defendant argues error occurred when the State argued during its rebuttal closing argument that a detective had taken a statement from A.R. at the hospital and could have testified that he met her at the hospital. Defendant contends these statements were unsupported by the trial evidence and generally indicated the police had conducted a more detailed investigation than the evidence had shown. Defendant also argues the prosecutor indicated A.R.'s prior statement to the detective would "match" her trial testimony when he stated A.R. "already testified to what the statement was." Defendant argues that by making this comment, the prosecutor improperly bolstered A.R.'s credibility by invoking a prior consistent statement that was not presented at trial.

¶ 18 "In general, prosecutors have wide latitude in the content of their closing arguments." *People v. Perry*, 224 Ill. 2d 312, 347 (2007). The prosecutor may comment on the trial evidence and any reasonable inference that may be drawn from the evidence. *Id*. However, "[i]t is error to comment on facts which are inadmissible [citation], or to suggest that evidence of guilt existed which, because of defendant's objection, cannot be brought before the jury." *People v. Emerson*, 97 Ill. 2d 487, 497 (1983); see also *People v. Vasquez*, 8 Ill. App. 3d 679, 681 (1972) ("It is axiomatic that the prosecutor must confine himself to facts introduced in evidence and to the fair and reasonable deductions and conclusions to be drawn therefrom."). Also, "a prosecutor may offer a response to comments by defense counsel that clearly warrant one, and such a response should be considered in the context of both parties' closing arguments." *People v. Williams*, 2022 IL 126918, ¶ 53.

¶ 19 Defendant acknowledges he failed to preserve his challenge to the State's rebuttal closing argument for appeal by failing to object to the challenged comment at trial or include the issue in a posttrial motion. See *People v. Sebby*, 2017 IL 119445, ¶ 48 ("To preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion."). However, defendant argues we may review the error under the first prong of the plain error doctrine because the trial evidence was closely balanced.

> "[T]he plain-error doctrine 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).

"The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial." *Sebby*, 2017 IL 119445, ¶ 49.

¶ 20 In the instant case, the challenged prosecutorial comments did not amount to clear or obvious error. The challenged comments were invited by defense counsel's closing argument when counsel asked why the jury had not heard from the detective. The prosecutor responded to this question in rebuttal by indicating the detective was not called to testify because he could have only testified that he met A.R. at the hospital and could not have testified to the substance of A.R.'s statement, as such testimony would have been hearsay. Contrary to defendant's argument on appeal, evidence was presented at the trial that, in fact, a detective had met with A.R. at the hospital, and she gave a statement to a police officer while there. Park testified that a detective responded to the hospital after A.R. was transported there, and A.R. testified that she gave a statement to an officer at the hospital.

¶ 21 While defendant contends the challenged remarks served to improperly bolster A.R.'s credibility by indicating that her prior statement to the detective "match[ed]" her trial testimony, the prosecutor did not expressly indicate that the statements would "match" or that A.R.'s prior statement would have corroborated her trial testimony. Rather, the prosecutor stated A.R. had already testified "to what the statement was." This comment was ambiguous and could have merely been referencing the fact that A.R. testified concerning her version of the incident. Notably, A.R. testified at the trial concerning only her personal recollection of the incident and did not discuss what she told the police officer at the hospital on the morning of the incident. As

the prosecutor's comment could be subject to multiple interpretations, we find it did not amount to clear or obvious error.

¶ 22 Even if we were to find the prosecutor's comments to be improper, the evidence in this case was not closely balanced such that the first prong of the plain error doctrine applies. "In determining whether the evidence adduced at trial was close, a reviewing court must evaluate the totality of the evidence and conduct a qualitative, commonsense assessment of it within the context of the case." *Id.* ¶ 53. Here, A.R. gave a consistent, detailed account of the assault during her trial testimony. Her account of the incident was supported by the other evidence presented by the State. Specifically, A.R.'s testimony that defendant caused her to bleed by forcefully inserting three fingers into her vagina was corroborated by evidence of her stained bikini bottoms and Bausley's testimony that a microtear was present on the outside of A.R.'s vagina. Bausley also testified concerning other injuries on A.R.'s body that were consistent with being forcefully assaulted. Both Park and Shelton testified that A.R. was crying and upset following the incident, which was also consistent with A.R.'s testimony that she was assaulted. Defendant's version of the incident, however, was far less plausible. On this record, we find the evidence was not closely balanced.

¶ 23 III. CONCLUSION

¶ 24 For the reasons stated, we affirm the trial court's judgment.

¶ 25 Affirmed.