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2014 IL App (5th) 120137-U

NO. 5-12-0137

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Hardin County.
)	
v.)	No. 11-CF-15
)	
ROBERT H. BOWLING,)	Honorable
)	Paul W. Lamar,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Goldenhersh and Cates concurred in the judgment.

ORDER

¶ 1 *Held:* The defendant is unable to demonstrate he suffered prejudice as a result of attorney's allegedly deficient performance where (1) evidence of the defendant's guilt was overwhelming; (2) witness was effectively impeached with evidence that was more damaging to his credibility than the fact that he had two prior felony convictions; and (3) challenged statements in prosecutor's closing argument were not prejudicial enough to warrant reversal.

¶ 2 The defendant, Robert H. Bowling, appeals his conviction for aggravated domestic battery. He argues that (1) the court incorrectly ruled that defense counsel was limited to impeaching a key State witness with the "mere fact" of his two prior felony convictions; (2) trial counsel was ineffective for failing to object to this ruling and failing to introduce

any evidence of the prior felonies during cross-examination; and (3) two statements in the prosecutor's closing argument deprived him of a fair trial. We affirm.

¶ 3 The events at issue took place in April 2011. Prior to that time, the defendant, Robert Bowling, and the victim, Erica Neighbors, lived together. On the night in question, however, Neighbors was staying with her mother because they had been arguing recently. The defendant is the father of Neighbors' young daughter. The defendant was charged with one count each of aggravated domestic battery and domestic battery.

¶ 4 At trial, Neighbors testified that on the day the events at issue took place, she and the defendant went to the home of the defendant's friend, Eric Tolbert, in Elizabethtown, Illinois. They arrived at approximately noon with plans to spend the night. They did not have their own vehicle. Neighbors explained that they got a ride from one of her mother's neighbors. When they arrived, Tolbert invited them in and then left for work. Neighbors testified that she and the defendant walked to a neighborhood bar (the E-town Tap). There, the defendant ordered a pitcher of beer, which they shared. According to Neighbors, she drank only a couple of glasses of beer.

¶ 5 After a few hours, the defendant called another of his friends, Ronald Williams. We note that Ronald Williams's brother, Donald Williams, was also involved in the events at issue and testified in the defendant's trial. For the sake of clarity, we will refer to the two brothers by their first names. Neighbors testified that Ronald came to the bar to pick up her and the defendant. He drove them to his house in Rosiclare for a fish fry. Neighbors had never met Ronald or his wife, Stacy, prior to this time.

¶ 6 Neighbors testified that she and the defendant arrived at the Williams home for the fish fry at approximately 3 or 3:30 in the afternoon. She stated that both she and the defendant drank more beer while they were there. Neighbors had three or four beers. She did not know how much beer the defendant drank. She denied being intoxicated, but acknowledged that she "did have a buzz." She testified that she was not too drunk to know "everything that was going on."

¶ 7 Neighbors left the Williams's house sometime between 8 and 8:30 p.m. She explained that she left without the defendant because they had argued and he had choked her. Neighbors further testified that she tried to find her way back to Eric Tolbert's house but got lost. She did not realize until later that she was in Rosiclare, while Tolbert's house was in Elizabethtown, which is approximately 10 minutes away by car.

¶ 8 Neighbors found her way instead to Rosiclare Park. There, she encountered a police officer and asked him for help. She testified that she told him she was lost but did not ask for assistance getting to the emergency room. According to Neighbors, the officer took her to the emergency room anyway "for some reason." After she was treated, the officer drove her to Ronald and Stacy's house, but no one answered the door. The officer then drove Neighbors back to Elizabethtown.

¶ 9 Neighbors testified that the officer was "going to" take her to Eric Tolbert's house, but someone told her that the defendant was at the trailer of Ronald's brother, Donald. Donald, also known as "Doogle," lived in a trailer down the street from Ronald and Stacy. The officer who assisted Neighbors testified that he did drive her to Tolbert's house, but nobody answered the door. He explained that Neighbors then went on foot to

a nearby bar (the E-town Tap). The owner of the E-town Tap testified that Donald and the defendant were in the bar earlier, and he told Neighbors where they went. All three witnesses testified that the bar owner drove Neighbors to Donald's trailer in his truck.

¶ 10 Neighbors next testified about what happened when she arrived at Donald's trailer. She stated that the defendant "acted like he was going to give [her] a hug," but instead began punching her in the face repeatedly. Neighbors tried to shield her face and begged him to stop. She was unsure whether he hit her anywhere other than her face. Asked what Donald did to help her, she testified that he got paper towels to stop the bleeding.

¶ 11 Neighbors testified that the "first chance [she] got to get up and get away," she ran out of the trailer and went to the house next door. There, she asked the man who answered the door for help. She testified that the man called for an ambulance and then Donald came over and brought her back to his house to lay down and wait for the ambulance to arrive. She further testified that the same officer who helped her earlier came to the hospital to take her statement.

¶ 12 Neighbors testified that she told emergency room personnel that her injuries were the result of the defendant's beating her. She described the injuries she sustained as follows: she had two black eyes, her nose was "busted really bad," and her lip was swollen and cut. Neighbors acknowledged that no bones were broken and she did not get stitches, although she believed she needed stitches. She testified that she was released from the hospital the following morning. After her release, she stayed at her father's house for one night. Then she moved into a shelter for victims of domestic violence.

¶ 13 The only other eyewitness to the beating was Donald Williams. Before he took the stand, defense counsel argued for the admission of Donald's two prior felony convictions for purposes of impeachment. Both convictions were for Class 4 felonies, and both were within 10 years before the trial. The State objected, arguing that the prejudice would outweigh the probative value because neither conviction involved a crime of dishonesty. The following colloquy then occurred:

"THE COURT: Do you intend to ask the witness whether he's been convicted of a felony in the last ten years?

[Defense Counsel]: Yes.

THE COURT: You don't intend to offer those if he answers yes? Do you object to him being able to ask him that?

[Prosecutor]: Yes.

THE COURT: I think that's the only proper impeachment method.

[Defense Counsel]: I've got them ready if he says no or 'I don't remember what they were.' I want to refresh his memory.

THE COURT: Okay. If he says no, you have to ask particulars. ***

[Prosecutor]: If he says yes, it's going to be the State's position that that's the end of the questioning.

THE COURT: If he says yes, that's it, you don't get to go into particulars; do you agree with that?

[Defense Counsel]: Yes."

¶ 14 Donald Williams then took the stand. He testified that he went to the fish fry at Ronald and Stacy's house. He stated that he might have had one or two drinks while he was there. When it got dark, Ronald told Donald that he was ready to turn in for the night. Donald invited the defendant to sleep on the sofa in his trailer. He testified that Erica Neighbors left before this time, although he could not remember exactly when she left. He did not know why she left, but he believed it may have been because she was arguing with the defendant. He did not see the defendant choking Neighbors.

¶ 15 Donald further testified that he left Ronald's house with the defendant. They first went to his trailer—which was down the street from Ronald's house—and then went to a tavern (the E-town Tap). There, they ordered a pizza and Donald drank half of a beer. He did not know whether the defendant had any drinks.

¶ 16 Donald testified that after he and the defendant returned to his trailer, someone gave Erica Neighbors a ride to the trailer. He testified that upon her arrival, Neighbors and the defendant started to argue. Donald went into the bathroom because he did not want to hear the argument. At some point, he came out. He described what he witnessed as follows: "Before I knew it, he was beating on her and he knocked her out and kind of picked her up and laid her on the couch like that and knocked her plum out." He further testified that when Neighbors regained consciousness, the defendant hit her again. Donald did not want to try to physically stop the defendant from hitting Neighbors because he was afraid that the defendant would attack him. He testified, however, that he told the defendant to stop and he told Neighbors to run out the door.

¶ 17 Donald next testified that Neighbors ran out the door and went to the next-door neighbors' house to call for help. He stated that she then came back to his trailer. At this time, he wiped the blood off of her face and asked if she wanted him to call anyone for her. Neighbors asked him to call her father. As he was opening the door to leave to place the call, the police showed up. Donald admitted that this was the second time the police had been to the trailer. He explained that officers had come to his trailer while Neighbors was next door calling for help, and he told them that she was not there. He admitted that the second time they arrived, he was arrested because the officers believed he was not telling the truth when he told them she was not in the trailer the first time they came. On cross-examination, he admitted that when he was arrested, the officers also found marijuana in his pocket.

¶ 18 Wayne Cullum, the officer who assisted Neighbors both times, also testified for the State. He testified that he first encountered Erica Neighbors in Rosiclare Park at approximately 9 p.m. When he saw her, she was lying on the ground with paramedics attending to her. He further testified that Neighbors was "highly intoxicated." She thought that she was in Elizabethtown and did not seem to know her name. Neighbors told Officer Cullum that someone had beaten her up and dumped her in the park. He testified that she had scrapes and bruises that appeared to be fresh.

¶ 19 Officer Cullum testified that Neighbors was reluctant to allow him to take her to the emergency room for treatment. Due to her reluctance, he drove Neighbors and one of the paramedics to the sheriff's department, where a female dispatcher talked to Neighbors

and convinced her to go to the emergency room. Officer Cullum then drove her to the emergency room.

¶ 20 Officer Cullum testified that he left the emergency room with Neighbors at 1 a.m. By this time, she was considerably less intoxicated than she was when he first encountered her four hours earlier. However, he did not believe she was completely sober.

¶ 21 After leaving the emergency room, Officer Cullum drove Neighbors to the home of Ronald and Stacy Williams, where she thought she had left her clothes. The paramedic and a sheriff's deputy were in the car with them. At the Williamses' home, they were told that Neighbors had left her clothes at Eric Tolbert's house in Elizabethtown, so Officer Cullum drove her there next. When they arrived at Tolbert's house, however, no one answered the door. Cullum testified that this angered Neighbors, so she walked to a nearby bar (the E-town Tap).

¶ 22 Officer Cullum followed Neighbors in his car. He explained that he followed her in the hope that she would lead him to the person who had beaten her up, which would allow him to arrest the perpetrator. Officer Cullum saw Neighbors leave the bar with bar owner Ricky Love. Love told the officer that he was taking Neighbors to Donald's house in Rosiclare. Cullum followed Love's truck to Donald's trailer. At that point, however, he drove back to the hospital parking lot so the deputy could return to his own car. About 15 minutes later, he got a call from dispatch about a disturbance at Donald's trailer.

¶ 23 Officer Cullum first went to the home of the Tinsleys, the neighbors who called to report the incident. The Tinsleys told him that the woman involved went next door.

Cullum went to the trailer, but Donald told him that Neighbors was not there. According to Officer Cullum, Donald told him that she may have gone to Ronald and Stacy's house. Eventually, Cullum and another officer found Neighbors in the back room of the trailer.

¶ 24 Ricky Love testified that he heard Neighbors pounding on the window of the E-town Tap at 12:55 a.m. on the night in question. The bar was closed, but he let her in. She told him that she needed a ride to Rosiclare to find the defendant. He testified that she did not appear to be hurt. Love drove Neighbors to Donald Williams's trailer in Rosiclare. He testified that when they arrived, both the defendant and Donald were outside in front of the trailer. According to Love, Neighbors jumped out of his truck, ran to the defendant, and began yelling at him. At this point, Love drove away.

¶ 25 William Tinsley testified that when Neighbors came to his house asking for help, she appeared to be injured. She was bleeding from her face and her mouth "just looked like *** all was beat up." He testified that Neighbors did not tell him what happened to her until he asked her. Then she told him, " 'He's messed me up this time.' " When Tinsley asked who she meant, Neighbors said, "Rob Bowling."

¶ 26 Kathy Gibson, the paramedic who responded to the call, and Darlene Edwards, an emergency room nurse who treated Neighbors twice that night, both testified about Neighbors' injuries. Gibson testified that she had cuts on the inside of her lips and scratches on her arms and legs. Gibson further testified that Neighbors' mouth was very swollen. Edwards testified that Neighbors had facial abrasions, bruises on her legs, and marks on her neck. She testified that Neighbors was bleeding from her face and the area

around her eyes was swollen. Edwards further testified that X-rays and a CT scan revealed no broken bones or fractures.

¶ 27 The lone defense witness was Daniel Joiner, a friend of the defendant's mother. Joiner testified that he saw Neighbors at a minimart at approximately 10 p.m. He testified that she was clearly intoxicated and asked employees for help. She told them that she had been beaten up and asked to use the phone. Joiner testified that the minimart employees were going to let her use the phone, but when she went behind the counter to do so, she pulled a beer out of her jacket and began drinking it. At this point, she was thrown out of the minimart. Joiner later stated that he did not actually hear Neighbors say she had been beaten up; she just said that she was hurt. He testified that she had scratches and looked like she had a busted lip and "maybe something the matter with one of her eyes."

¶ 28 In closing arguments, the prosecutor told the jury that most of the evidence against the defendant was un rebutted. He then acknowledged that Erica Neighbors was intoxicated "and maybe even belligerent" when the events at issue took place, but he argued that this was irrelevant because all witnesses testified that the defendant struck Neighbors first.

¶ 29 The prosecutor next addressed the evidence that Neighbors did not break any bones or require stitches. He explained that the difference between aggravated domestic battery and domestic battery is that aggravated domestic battery requires proof of great bodily harm while domestic battery requires proof only of bodily harm. He then argued that simple domestic battery is what "happens when somebody gets mad and slaps

somebody or pushes them." He went on to state that "the most insulting part of this case [is] to suggest that what happened to this woman is not great bodily harm."

¶ 30 The prosecutor then argued as follows:

"I submit to you that this community is represented by this jury here today, and that this jury has an obligation to take a stand as to what we believe is acceptable in this community. And if this jury is willing to call this a regular Saturday night, we have a problem. Because a message needs to be sent that this is not a regular Saturday night. This isn't what's going to happen here."

¶ 31 In defense counsel's argument, he highlighted the inconsistencies in the testimony of the State's witnesses and emphasized the fact that Neighbors' state of intoxication was relevant to her credibility as a witness. He then argued that if the jury believed that the defendant beat Erica Neighbors, it should find him guilty of simple domestic battery because her injuries constituted bodily harm rather than great bodily harm. He emphasized the testimony that Neighbors did not sustain any broken bones. In rebuttal, the prosecutor told jurors: "And then the defendant wants to tell you that you have to break a woman's bones to cause great bodily harm. How about that one? CT scan was normal. Go on home and shut your mouth."

¶ 32 The jury returned a verdict of guilty on the charge of aggravated domestic battery. The court subsequently sentenced the defendant to 54 months in prison. This appeal followed.

¶ 33 The defendant argues that (1) the court erred in ruling that defense counsel was limited to the "mere fact" method of impeaching Donald Williams with his prior felonies

(see *People v. Atkinson*, 186 Ill. 2d 450, 457, 713 N.E.2d 532, 535 (1999) (explaining that "the mere-fact method of impeachment informs the jury only of the 'mere fact' of a witness'[s] prior conviction, but not the nature of that conviction")); and (2) he was denied a fair trial by two improper remarks during the prosecutor's closing argument. The defendant acknowledges that he did not object to the court's ruling or to either of the remarks he now challenges, but he asks us to consider them under the plain error doctrine. He further contends that he received ineffective assistance of counsel because counsel (1) acquiesced in the court's ruling regarding the "mere fact" method of impeachment; (2) did not attempt to impeach Donald Williams with even the mere fact of his prior felonies; and (3) failed to object to the challenged remarks.

¶ 34 Because defense counsel did not attempt to impeach Donald Williams with his prior felony convictions, we need not address his arguments concerning the court's ruling on the "mere fact" method of impeachment. In addition, we do not believe the two challenged statements in the State's closing arguments rise to the level of plain error. The evidence in this case was not closely balanced, and the remarks did not amount to an error so serious that it deprived the defendant of a fair trial or undermined the integrity of the judicial process. See *People v. Herron*, 215 Ill. 2d 167, 186-87, 830 N.E.2d 467, 479-80 (2005). We will thus consider whether counsel's failure to impeach Donald Williams with his prior felonies combined with his failure to object to the two challenged statements amounted to ineffective assistance of counsel. For the following reasons, we reject the defendant's claim.

¶ 35 A defendant seeking to overturn his conviction on the basis of ineffective assistance of counsel must demonstrate both that (1) his attorney's performance was deficient and (2) but for counsel's mistakes, a more favorable outcome was reasonably probable. *Strickland v. Washington*, 466 U.S. 668, 687 (1984); *People v. Albanese*, 104 Ill. 2d 504, 525, 473 N.E.2d 1246, 1255 (1984). If we find that the defendant is unable to show that he was prejudiced by counsel's errors—that is, if he is unable to show that a more favorable outcome was reasonably probable—we need not determine whether counsel's performance was deficient. *Strickland*, 466 U.S. at 697.

¶ 36 A claim of ineffective assistance of counsel is most likely to succeed in cases where defense counsel makes several errors or the evidence is closely balanced. *People v. Salgado*, 263 Ill. App. 3d 238, 244, 635 N.E.2d 1367, 1371 (1994). Here, the defendant points to two errors. We do not believe either error was sufficiently prejudicial to support a claim of ineffective assistance in the face of the overwhelming evidence of the defendant's guilt.

¶ 37 The defendant argues that the evidence was closely balanced because Erica Neighbors was too intoxicated to be a credible witness, thereby making the credibility of the only other eyewitness—Donald Williams—a crucial factor. We are not persuaded. Although Erica Neighbors was highly intoxicated when she first encountered Officer Cullum in Rosiclare Park, Officer Cullum testified that she was significantly less intoxicated when the beating took place more than four hours later. In addition, portions of their testimony about the events leading up to the beating were corroborated by the testimony of other witnesses, and the testimony that the defendant beat Neighbors and

caused her injuries was supported by William Tinsley's testimony that Neighbors told him that Rob Bowling, the defendant, was the person who beat her. With this in mind, we will consider whether the claimed errors prejudiced the defendant.

¶ 38 First, the defendant challenges defense counsel's failure to impeach Donald Williams with his two previous felony convictions. Generally, the decision of whether and how to cross-examine a witness is a matter of trial strategy which will not support a claim of ineffective assistance of counsel. *Salgado*, 263 Ill. App. 3d at 246, 635 N.E.2d at 1373. However, the complete failure to impeach a key witness with significant impeachment evidence is not sound trial strategy and may support a claim of ineffective assistance of counsel. *Salgado*, 263 Ill. App. 3d at 246-47, 635 N.E.2d at 1373. In assessing the importance of potential impeachment evidence to a defendant's case, we must consider the value of that evidence in context. *Salgado*, 263 Ill. App. 3d at 247, 635 N.E.2d at 1374 (quoting *People v. Jimerson*, 127 Ill. 2d 12, 33, 535 N.E.2d 889, 898 (1989)).

¶ 39 *Jimerson* and *Salgado* both involved claims that defense counsel was ineffective for failing to impeach key State witnesses with prior inconsistent statements. While neither case is precisely analogous to the case before us, we believe that they provide a good illustration of this principle.

¶ 40 In *Jimerson*, the defendant argued that counsel was ineffective for failure to impeach two State witnesses with their prior inconsistent testimony. *Jimerson*, 127 Ill. 2d at 31, 535 N.E.2d at 897. In rejecting this claim, the court considered the nature of the prior inconsistent testimony in order to determine how helpful the statements would have

been to the defendant had counsel introduced them. The court found that the inconsistencies in the testimony of one of the witnesses were insignificant and thus concluded that failure to impeach him with the prior testimony was not prejudicial to the defendant. *Jimerson*, 127 Ill. 2d at 37, 535 N.E.2d at 900.

¶ 41 The other witness made numerous prior inconsistent statements. However, she never made a statement exculpating the defendant. *Jimerson*, 127 Ill. 2d at 33, 535 N.E.2d at 898. At a preliminary hearing, she testified that she knew nothing about the crime. In statements made earlier, however, she implicated herself, the defendant, and other codefendants in the crime. At the hearing, she testified that those previous statements were untrue. *Jimerson*, 127 Ill. 2d at 33, 535 N.E.2d at 898.

¶ 42 In rejecting the defendant's ineffective assistance argument, the supreme court first emphasized the fact that the witness never gave any exculpatory statements. *Jimerson*, 127 Ill. 2d at 33, 535 N.E.2d at 898. The court then noted that using "the full range of her prior testimony" to impeach the witness may have made her trial testimony more believable due to "the unbelievable character of her earlier assertions that she knew nothing about the crimes." *Jimerson*, 127 Ill. 2d at 33-34, 535 N.E.2d at 898.

¶ 43 In *Salgado*, by contrast, the witness in question was the only witness to testify that he saw the defendant shoot the victim. However, the same witness testified at a codefendant's earlier trial that he did not see the defendant shoot anyone on the night of the murder. *Salgado*, 263 Ill. App. 3d at 246, 635 N.E.2d at 1373. Defense counsel did not impeach the witness with the prior inconsistent testimony. *Salgado*, 263 Ill. App. 3d at 246, 635 N.E.2d at 1373. In finding that this decision was prejudicial enough to

support the defendant's claim, the court explained that "the impeachment value of directly contradictory testimony made under oath at a prior trial by the State's premier eyewitness can hardly be overestimated." *Salgado*, 263 Ill. App. 3d at 247, 635 N.E.2d at 1374. (We note that the *Salgado* court found counsel to be ineffective on the basis of "two crucial errors" (*Salgado*, 263 Ill. App. 3d at 244, 635 N.E.2d at 1372). The court therefore did not have to decide whether the impeachment issue alone warranted reversal.)

¶ 44 Here, there is no question that Donald Williams was a crucial State witness. As the State points out, he was not the *sole* eyewitness to the crime because Neighbors herself also testified about the beating. Nevertheless, his corroboration of the key points of Neighbors' account provided powerful support for the State's case. Evidence that he had been convicted of two Class 4 felonies four years prior to the trial had the potential to damage his credibility.

¶ 45 However, unlike the prior inconsistent testimony at issue in *Salgado*, these convictions did not relate directly to the veracity of Donald Williams's testimony. Moreover, the jury was presented with evidence that Donald lied to police about Neighbors' whereabouts on the night of the crime and evidence that he was in possession of marijuana at the time he was arrested for doing so. Evidence that Williams impeded the police investigation is far more probative of his credibility than the fact that he was convicted of two prior unrelated felonies that did not involve dishonesty. In addition, evidence that he had marijuana in his pocket could lead the jury to infer that he had been smoking it that night, an inference which might have led jurors to question his ability to

perceive relevant events. Moreover, as stated previously, the evidence in this case was overwhelming. We find that it was not reasonably probable that presenting evidence of the two convictions four years before trial would have damaged Donald's credibility to the point where the jury would have acquitted the defendant. This is true regardless of whether the jury was told the nature of the felonies.

¶ 46 The defendant next contends that two comments made by the prosecutor during closing arguments were prejudicial. First, the defendant points to the prosecutor's exhortation to jurors to send a message that domestic violence would not be tolerated in their community. As noted previously, the prosecutor told jurors that they had an "obligation to take a stand as to what we believe is acceptable in this community." He then told them that "a message needs to be sent that this is not a regular Saturday night. This isn't what's going to happen here." Next, he points to the following statement from the State's rebuttal argument: "And then the defendant wants to tell you that you have to break a woman's bones to cause great bodily harm. How about that one? CT scan was normal. Go on home and shut your mouth." We are not persuaded that these statements warrant reversal, even considered cumulatively with counsel's failure to impeach Donald Williams with evidence of his prior convictions.

¶ 47 Prosecutors are afforded wide latitude in closing arguments. They may comment on the evidence presented at trial and any inferences reasonably supported by the evidence. *People v. Blue*, 189 Ill. 2d 99, 127, 724 N.E.2d 920, 935 (2000). "However, argument that serves no purpose but to inflame the jury constitutes error." *Blue*, 189 Ill. 2d at 128, 724 N.E.2d at 935. In determining whether remarks are improper, courts must

view them in context and consider the prosecutor's closing argument in its entirety. *Blue*, 189 Ill. 2d at 128, 724 N.E.2d at 935. In addition, improper arguments will not warrant reversal " 'unless they result in substantial prejudice to the defendant.' " *People v. Kidd*, 147 Ill. 2d 510, 542, 591 N.E.2d 431, 446 (1992) (quoting *People v. Smith*, 141 Ill. 2d 40, 60, 565 N.E.2d 900, 908 (1990)).

¶ 48 We will first consider the challenged remark from the prosecutor's rebuttal argument. The defendant argues that the statement, "Go on home and shut your mouth," constituted a personal attack on defense counsel. As the defendant correctly notes, it is blatantly improper to make personal attacks against defense counsel during closing arguments. See, e.g., *Kidd*, 147 Ill. 2d at 542, 591 N.E.2d at 446 (noting that it is improper to suggest that defense counsel is fabricating a defense); *People v. Beringer*, 151 Ill. App. 3d 558, 563-64, 503 N.E.2d 778, 781 (1987) (stating that it is improper to disparage counsel's integrity). However, we do not agree with the defendant's claim that the vague statement was, in fact, a personal attack.

¶ 49 The defendant interprets the statement as the prosecutor telling defense counsel to "go on home and shut [his] mouth." Although the statement is quite vague, we find that this interpretation requires a strained reading of the statement. We have set out the statement in its entirety. In context, it appears to be a characterization of defense counsel's argument that Erica Neighbors suffered bodily harm but not great bodily harm. To the extent the comment might be read as a suggestion that defense counsel was telling Neighbors to "go home and shut [her] mouth" because she had no broken bones, it was

not proper because it mischaracterized defense counsel's argument. However, the statement is simply too vague and too isolated to have much, if any, impact.

¶ 50 We further note that were we to give the remark the interpretation urged by the defendant, we would find it even less prejudicial. If anything, an attorney telling opposing counsel to go home and "shut [his] mouth" makes himself look bad in the eyes of jurors. The comment is not likely to have the same type of impact as the accusations of dishonesty that required reversal in *Kidd* and *Beringer*.

¶ 51 We next consider the challenged statement from the prosecutor's initial argument. As noted, he argued to jurors that they had an obligation to represent their community and that a message needed to be sent. It is improper to urge jurors to send a message, "whether to the defendant, to the police[,] or to society." *People v. Hayes*, 353 Ill. App. 3d 578, 586, 819 N.E.2d 341, 348 (2004). We therefore agree with the defendant that the statement was improper.

¶ 52 However, isolated references to the need to send a message or do something about the problem of crime do not ordinarily require reversal. It is only when such themes are argued pervasively that they become prejudicial enough to warrant reversal. See *People v. Johnson*, 208 Ill. 2d 53, 79, 803 N.E.2d 405, 420 (2003) (drawing this distinction). In light of the overwhelming evidence against the defendant, we do not find it reasonably probable these two comments coupled with counsel's failure to introduce evidence of Donald Williams's prior felony convictions impacted the outcome of the defendant's trial.

¶ 53 For the foregoing reasons, we affirm the defendant's conviction.

¶ 54 Affirmed.