2016 IL App (4th) 150380-U

NO. 4-15-0380

FILED
December 8, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Adams County
CHARLES W. ARMOUR,	)	No. 14CF245
Defendant-Appellant.	)	
	)	Honorable
	)	Robert K. Adrian,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction in this case. The admission of Mark Foley's testimony as a lay opinion was not error. The trial court did not abuse its discretion in admitting C.K.A.'s videotaped interview pursuant to section 115-10.1 of the Code of Criminal Procedure (725 ILCS 5/115-10.1 (West 2014)). Defendant was not substantially prejudiced by the allegedly improper remarks made during the State's closing argument. Finally, the State presented sufficient evidence for a rational trier of fact to find defendant guilty of the charged offenses.

¶ 2 In February 2015, a jury found defendant, Charles W. Armour, guilty of aggravated domestic battery and aggravated battery. Defendant appeals, raising the following issues: (1) the trial court erred in allowing Mark Foley to offer opinion testimony on the cause of A.A.'s injuries; (2) the court erred in allowing a videotaped interview to be played for the jury pursuant to section 115-10.1 of the Code of Criminal Procedure (Code) (725 ILCS 5/115-10.1

(West 2014)); (3) the State's closing argument was improper; and (4) the State failed to establish defendant's guilt beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 21, 2014, the State charged defendant by information with aggravated domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2012)) and aggravated battery (720 ILCS 5/12-3 (West 2012)). Both counts alleged defendant repeatedly struck his son, A.A., with a belt, causing great bodily harm. A.A. was under 13 years of age.

¶ 5 On January 30, 2015, defendant filed a motion *in limine* asking the trial court to "enter an order excluding any and all testimony, reference to testimony or argument that the bruising depicted on [A.A.] was caused by the belt in evidence or any other belt, and for such other and further relief as this Court deems fair and just." The motion noted the State listed no expert witnesses to provide testimony A.A.'s injuries "were made by the belt in the custody of the State or any belt."

¶ 6 On February 4, 2015, defense counsel noted he did not believe the State was going to call any expert witnesses to testify as to the origin of A.A.'s injuries based on conversations with the State. Further, defense counsel noted the State had not disclosed any expert witnesses. However, defendant did not withdraw his motion *in limine*.

¶ 7 On February 9, 2015, the trial court held a pretrial conference. Without objection, the court allowed the State to amend count II on its face to only allege defendant caused bodily harm to A.A., as opposed to great bodily harm.

¶ 8 At trial, Brent Zanger, A.A.'s third-grade teacher, offered the following testimony with regard to his interaction with A.A. on April 16, 2014. At the start of the school day, A.A.

told Zanger defendant hit him with a belt and showed Zanger bruises on his legs and back. Zanger took A.A. to the school principal's office.

¶ 9 Theresa Fessler, the school principal, testified A.A. showed her bruises on his legs, chest, and back, including a three- or four-inch bruise on his left leg. The injuries on A.A.'s right leg were not as severe. She contacted DCFS. A DCFS worker and three sheriff's deputies came to the school and interviewed A.A. Fessler was present for the interview.

¶ 10 During the interview, A.A. said he got in trouble at home for a school disciplinary issue. According to Fessler, A.A. said his father hit him with a belt. A.A. tried to get away through a door. When A.A. came back inside, his father hit him again.

¶ 11 A.A., 9 years old at the time of trial, testified he lived with his grandmother, his father's wife Patty, and his younger brother C.K.A. (8 years old), when A.A. was in third grade. Mr. Zanger was his teacher. A.A. testified he remembered talking to some police officers about whether his father "whopped" him. A.A. testified his father never "whopped" him. He said he told Mr. Zanger and the principal his father "whopped" him, but it was not true. A.A. testified he did not remember what he told the police officers either at the school or the next day at the Children's Advocacy Center in Quincy. According to his testimony, his bruises resulted from his brother C.K.A. striking him with a toy snake. He did not mention the toy snake to the police because he thought he might get in trouble. A.A. said he told the police his father caused the bruises to "get payback on him" for paying attention to A.A.'s older brother. According to A.A., he lied to the people at school when he said his father hit him.

¶ 12 On cross-examination, A.A. testified he and C.K.A. wrestle a lot and hit each other with a toy snake. A.A. stated the bruise on his leg was caused by him running into a table.

He testified some of his other injuries were caused by poison ivy. According to A.A., his grandmother, Lois Armour, hit him with rulers, belts, spoons, or whatever else she could grab.

¶ 13 On redirect, A.A. said he did not tell the police his grandmother was the one who hit him because he was afraid of his grandmother. With regard to the toy snake, he said he would usually hit C.K.A. pretty hard with the snake, but it did not leave marks. A.A. testified he was bigger than C.K.A. He also testified he would not have marks when C.K.A. hit him with the snake. According to A.A., his grandmother told him to tell the people at school that his father hit him with the belt.

¶ 14 C.K.A. also testified. At the time of his testimony, he was eight years old and in second grade. C.K.A. testified he remembered talking to some police officers when he was in first grade but did not remember what they talked about. He did not remember A.A. getting hit with a belt. He also did not remember telling the police he saw his brother get hit with a belt or that his father hit A.A. with the belt. C.K.A. also stated he did not remember telling the police A.A. tried to run outside or that Patty, defendant's wife, told A.A. to come back inside. C.K.A. also did not remember telling the police A.A. had scratches on his chest. C.K.A. testified he liked living with his grandmother and wanted to make his grandmother happy. He also testified he wanted his father to come home.

¶ 15 On cross-examination, C.K.A. testified his grandmother disciplined A.A. When A.A. got in trouble, A.A. would get his "butt whooped" by their grandmother. C.K.A. also testified he and A.A. would "whoop" each other with the toy snake. On redirect, C.K.A. stated both his father and grandmother would punish the boys. According to C.K.A., his grandmother "whooped" them, but his father just put the boys in time-out when they were in trouble.

¶ 16 Mark Foley testified he worked for DCFS and investigated abuse and neglect claims. He went to A.A.'s school after the principal's call and met the sheriff's deputies. He spoke with A.A. in the principal's office. Principal Fessler and the deputies were present for the interview. According to Foley, A.A. indicated his father was upset because A.A. got in trouble at school. A.A. said his father hit him with a belt between 10 and 20 times across his body. A.A. tried to get away, but his foot got caught. His stepmother asked him to come back inside the house, which he did. When he was back inside, his father smacked him on the head with his hand. Foley also testified he observed A.A.'s injuries. A.A. had bruises on his legs, his foot, his arms, and his midsection. Foley was allowed to testify A.A.'s injuries were consistent with A.A.'s statement over defendant's objection. We discuss Foley's testimony more fully later in our analysis.

¶ 17 Foley also testified he watched A.A.'s and C.K.A.'s respective interviews at the Children's Advocacy Center in Quincy. Foley testified A.A. gave the same statement he made at school. On cross-examination, Foley testified A.A.'s bruising could potentially be consistent with a version of events where A.A. was hit with a toy snake. On redirect, Foley testified A.A. never mentioned getting hit with a plastic snake or being exposed to poison ivy.

¶ 18 At the end of the first day of trial, the parties and the trial court discussed the introduction of A.A.'s and C.K.A.'s recorded statements made at the Children's Advocacy Center. Over defendant's objection, the court ruled it would allow A.A.'s recorded interview to be played for the jury and used as substantive evidence. As to C.K.A.'s recorded interview, the State asked for it to be admitted for purposes of impeachment as a prior inconsistent statement. The court asked the parties to find some authority on that issue.

¶ 19 The next morning, the State changed its motion with regard to C.K.A.'s recorded statement. The State asked the court to admit C.K.A.'s interview pursuant to section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2014)). The court granted the State's motion. However, the court later stated it did not know how it could make a decision without watching C.K.A.'s interview. After watching the interview, the court found the recorded interview, as a whole, was inconsistent with C.K.A.'s testimony in court. The court also found C.K.A. was subject to cross-examination. The court noted the State still had to lay an appropriate foundation to prove the interview was accurately recorded. Later, after establishing the foundation, the State played both interviews.

¶ 20 Danielle Fearn testified she was staying with defendant and Patty Armour on or about April 15, 2014, and was around A.A. and C.K.A. on a daily basis at that time. According to her testimony, the boys liked roughhousing with each other. She said the boys' grandmother, Lois Armour, tried to discipline the boys. She never saw defendant discipline the boys. She saw Lois Armour use a belt, ruler, coat hanger, or anything else she could grab to discipline the boys. Fearn testified she woke up and saw Lois screaming and chasing A.A. on April 15, 2014. She did not see defendant discipline A.A. but did see Lois spank A.A. that day.

¶ 21 Eric Willemarck testified he was Danielle Fearn's boyfriend. He and Danielle were living with the Armours on April 15, 2014. He also testified A.A. and C.K.A. liked to wrestle and roughhouse, threw toys at each other, and chased each other with a rubber snake. The boys even hit him with the snake. On April 15, 2014, he did not see anything happen between A.A. and defendant or see A.A. running around the inside of the house yelling and screaming. Eric testified he had never seen defendant hit A.A. with a belt. Instead, Eric stated Lois Armour disciplined the boys with her hand, belt, flyswatter, or ruler.

¶ 22 Patty Armour, defendant's wife, testified Lois Armour disciplined the boys when they got in trouble at school by yelling at them and hitting them with a belt or ruler. Patty said she personally had never used a belt on the boys. According to Patty, A.A. was not truthful. She also testified A.A. and C.K.A. liked to roughhouse with each other. According to Patty, she heard Lois Armour tell the boys not to tell on their grandmother or they would be in trouble at home. Patty stated the boys were scared of Lois Armour.

¶ 23 According to Patty, A.A.'s injuries happened when he slid and fell into the kitchen table. Patty stated she never saw defendant use a belt on A.A. on April 15 or ever spank the children. On the morning of April 16, A.A. was wrestling with defendant on the bed and fell off the bed and hit the dresser. However, she testified he did not hit the dresser very hard. She checked his back for marks and did not see any.

¶ 24 Tracy Marlow testified she dated defendant for a "couple years," beginning in 2007. She lived with defendant, A.A., and C.K.A. She stated she still sees the boys as often as she can. Tracy described A.A. and C.K.A. as being typical boys—fighting, arguing, wrestling, kicking, and punching each other. She stated C.K.A. would get mad and throw toys at, slap, and hit A.A. According to Tracy, the boys would end up with marks and bruises. She saw Lois Armour spank the boys with her hand but never saw her use a belt. She never saw defendant "raise a hand to those boys."

¶ 25 DeWane McMullen testified he had been friends with defendant since 2000 or 2001. He was often around defendant and the boys. He had never seen defendant physically discipline A.A. or C.K.A. According to McMullen, defendant was not very strict with the boys. McMullen testified the boys would fight with each other like typical kids.

¶ 26 On February 19, 2015, the jury found defendant guilty on both counts. On March 18, 2015, the trial court sentenced defendant to seven years in prison on the aggravated domestic battery conviction. The court vacated defendant's aggravated battery conviction based on the one act, one crime doctrine.

¶ 27 On March 23, 2015, defendant filed a motion for a judgment notwithstanding the verdict or for a new trial. On April 16, 2015, defendant filed a motion to reduce or modify his sentence. On April 16, 2015, the trial court denied both of these motions.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 A. Mark Foley's Testimony

¶ 31 Defendant first argues the trial court erred in allowing Mark Foley to offer lay testimony based on his specialized knowledge. Defendant notes he filed a motion *in limine* to bar the state from presenting any expert testimony on the cause of A.A.'s injuries. At a hearing on February 4, 2015, defense counsel stated he did not believe—based on his conversations with the State—the State would call any witnesses to offer expert testimony on the origin or cause of any of A.A.'s marks or bruises. Defendant noted the State had not disclosed any expert witnesses. As a result, the motion was tabled. The court indicated the motion could be heard at the final pretrial hearing if necessary. The issue was never taken up again prior to trial because the State did not disclose any expert witnesses.

¶ 32 During the trial, Mark Foley testified he was employed by DCFS and investigated reports of abuse and neglect. He investigated the allegations at issue in this case and was present for A.A.'s interview. Foley recounted what he remembered A.A. saying in the principal's office. Foley also testified A.A. had several bruises on his legs, his foot, his arms, and his midsection.

¶ 33 In describing the injuries, Foley stated A.A. had "several bruises that you could see in a shape that was consistent with what he was saying had happened that he had been hit with a belt." Defendant objected to Foley's testimony regarding the consistency of the injuries and A.A.'s statement. The trial court sustained defendant's objection because Foley had not been qualified to give that opinion. The State then said it would try to lay a foundation. Foley then testified he had been employed by DCFS for 20 years and had been an investigator for 16 years. According to Foley, he had handled close to 2,000 investigations where he had the opportunity to observe injuries. Defendant did not object to these questions.

¶ 34 The State then asked, "Again, you've stated that the injuries you observed you believe were caused by a belt?" Defendant objected again, arguing expert testimony had been the subject of a motion *in limine* and the State had not disclosed any expert witnesses. The trial court stated:

> "It's an opinion, but the Court does not believe it's to the extent where it needs an expert witness to testify as to that. It would be a layman's opinion as to whether or not it was consistent, the bruises were consistent with what he was told so the Court's going to overrule the objection, let him testify because it would be a layman's opinion as to the issue concerning the bruising."

The court then clarified its ruling, stating it did not "believe it would require an expert testimony [*sic*] to testify as to whether or not it was consistent with striking of—with an object such as a belt. I think a layman can make that opinion, can make that determination." As a result, the court found Foley could testify whether the injuries were consistent with A.A.'s statement. According to the court, the jury would determine the weight to give Foley's testimony.

¶ 35 Defendant later moved for a mistrial based on what he classified as Foley's inadmissible opinion testimony, which the State had not disclosed. Defendant argued Foley testified just like an expert based on specialized knowledge he obtained as a DCFS investigator in abuse cases.

¶ 36 The trial court noted it did not qualify Foley as an expert or allow him to testify as an expert. The court denied the mistrial motion, stating Foley only offered a layman's opinion on the cause of A.A.'s injuries. According to the court, Foley's experience would go to the weight of the evidence.

¶ 37 Defendant argues Foley's opinion was not admissible as a lay opinion. According to defendant, the trial court's explanation demonstrates it did not understand lay opinion testimony. Illinois Rule of Evidence 701 (eff. Jan. 1, 2011) states:

> "If the witness is not testifying as an expert, the witness' testimony in the form of opinions or inferences is limited to those opinions or inferences which are (a) rationally based on the perception of the witness, and (b) helpful to a clear understanding of the witness' testimony or the determination of a fact in issue, and (c) not based on scientific, technical, or other specialized knowledge within the scope of Rule 702."

Relying on the questions the State asked Foley regarding his background and experience working as a DCFS investigator, defendant argues the State's "goal was to have Foley employ his allegedly specialized knowledge to the facts of this case." Defendant argues this violates Rule 701.

¶ 38 Here, Foley observed the actual bruising and had a better view of the injuries than the photographs could depict. Thus, Foley's opinions were rationally based on his perceptions, helpful to a determination of a fact in issue, and not necessarily based on specialized knowledge. In other words, a lay person would be able to give an opinion on the issue of whether the bruising appeared to have been inflicted by a belt.

¶ 39 B. Admission of C.K.A.'s Videotaped Interview

¶ 40 Defendant next argues the trial court erred in admitting the video of C.K.A.'s interview at the Children's Advocacy Center pursuant to section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2014)). Section 115-10.1 of the Code states:

> "Admissibility of Prior Inconsistent Statements. In all criminal cases, evidence of a statement made by a witness is not made inadmissible by the hearsay rule if
>
> (a) the statement is inconsistent with his testimony at the hearing or trial, and
>
> (b) the witness is subject to cross-examination concerning the statement, and
>
> (c) the statement—
>
> (1) was made under oath at a trial, hearing, or other proceeding, or
>
> (2) narrates, describes, or explains an event or condition of which the witness had personal knowledge, and

(A) the statement is proved to have been written or signed by the witness, or

(B) the witness acknowledged under oath the making of the statement either in his testimony at the hearing or trial in which the admission into evidence of the prior statement is being sought, or at a trial, hearing, or other proceeding, or

(C) the statement is proved to have been accurately recorded by a tape recorder, videotape recording, or any other similar electronic means of sound recording.

Nothing in this Section shall render a prior inconsistent statement inadmissible for purposes of impeachment because such statement was not recorded or otherwise fails to meet the criteria set forth herein." *Id.*

According to defendant, the State did not demonstrate inconsistencies between C.K.A.'s testimony and his recorded interview. Defendant argues the court should not have let the State play the video for the jury because C.K.A. was not confronted with his prior statement while on the witness stand. In addition, even if the court did not err in playing the video, defendant argues only the portions of the video that were actually inconsistent should have been played.

¶ 41 Citing *People v. Grayson*, 321 Ill. App. 3d 397, 407, 747 N.E.2d 460, 468 (2001), defendant argues a party must lay a proper foundation to introduce a prior inconsistent statement regardless of whether the prior inconsistent statement is to be used as substantive evidence or for

impeachment purposes. The situation in this case is distinguishable from what occurred in *Grayson* because the witness in *Grayson* was not asked anything about the contents of the prior inconsistent statement—a recorded 9-1-1 call. Instead, the witness was only asked whether he made the call and whether his voice was on the recording. *Id.* at 405, 747 N.E.2d at 467. In the case *sub judice*, C.K.A. testified and was asked about his statement at the Children's Advocacy Center. The State confronted C.K.A. with information he provided in his recorded interview at the Children's Advocacy Center in Quincy.

¶ 42 C.K.A. testified he remembered talking to some police officers when he was in first grade but did not remember what they talked about. He testified he did not remember telling police officers he saw his brother get hit with a belt or that his father hit A.A. with the belt. C.K.A. also said he did not remember telling the police A.A. tried to run outside or that Patty told A.A. to come back inside. He also did not remember telling police A.A. had scratches on his chest.

¶ 43 Defense counsel also had the opportunity to cross-examine C.K.A. On cross-examination, C.K.A. testified his grandmother disciplined A.A., and he had seen her do so. When A.A. got in trouble, A.A. would get his "butt whooped" by his grandmother. C.K.A. testified he and A.A. would "whoop" each other with the toy snake. On redirect, C.K.A. testified both his father and grandmother would punish the boys when his father was living with them. According to C.K.A., his grandmother "whooped his butt," but his father would just put the boys in time-out when they were in trouble.

¶ 44 Our supreme court has stated a prior inconsistent statement does not have to "directly contradict testimony given at trial to be considered inconsistent within the meaning of that term as set out in section 115-10.1." *People v. Flores*, 128 Ill. 2d 66, 87, 538 N.E.2d 481,

488 (1989). A witness's professed memory loss can be enough to allow the introduction of a prior inconsistent statement. *Id.* at 87-88, 538 N.E.2d at 489. "The determination of whether a witness' prior testimony is inconsistent with his present testimony is left to the sound discretion of the trial court." *Id.* In this case, the trial court did not abuse it discretion in determining C.K.A.'s videotaped interview was inconsistent with his trial testimony and therefore admissible pursuant to section 115-10.1 of the Code (725 ILCS 5/115-10.1 (West 2014)).

¶ 45 In addition, citing *People v. Wiggins*, 2015 IL App (1st) 133033, ¶ 36, 40 N.E.3d 1197, defendant argues C.K.A.'s interview statements were also inadmissible because the court could only admit the portions of C.K.A.'s interview actually inconsistent with his testimony. However, the situation in *Wiggins* is distinguishable from the situation here. In *Wiggins*, the appellate court noted "[t]he trial judge *** made no effort to follow the statutory strictures [and] permitted the prosecution to read to the jury the entirety of the [signed statement], when that statement repeated his trial testimony in all significant respects but one." *Id.* That was not the situation here.

¶ 46 C. The State's Closing Argument

¶ 47 Defendant next takes issue with statements the State made in its closing argument. We note defendant did not object to the State's closing argument at trial. As a result, he forfeited the arguments he makes here. However, defendant argues we should consider his argument pursuant to the plain-error doctrine. The plain-error rule applies if "(1) the evidence is close, regardless of the seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Boling*, 2014 IL App (4th) 120634, ¶ 77, 8 N.E.3d 65. Under plain-error analysis, the defendant bears the burden of persuasion with regard to prejudice. *People v. Thurow*, 203 Ill. 2d 352, 363, 786 N.E.2d 1019, 1025 (2003).

¶ 48 According to defendant, the prosecutor should not have provided the jury his personal opinion that A.A.'s injuries constituted great bodily harm. Defendant claims the prosecutor's actions were "plainly intended to persuade the jurors that they should defer to him in determining what constitutes aggravated battery." Defendant argues the prosecutor's expression of his personal opinion of defendant's guilt usurped the jury's role. In addition, defendant contends the prosecution minimized its burden of proof by stating reasonable doubt is "just a doubt that is reasonable to you." Defendant also takes issue with the prosecutor's comments regarding the credibility of certain witnesses. According to defendant, "The prosecutor's many offensive and improper comments create a royal flush of prosecutorial misconduct in the closing argument."

¶ 49 We note a prosecutor is given much leeway in his closing argument. *People v. Simms*, 192 Ill. 2d 348, 396, 736 N.E.2d 1092, 1124 (2000). According to our supreme court:

> "The prosecutor has the right to comment on the evidence and to draw all legitimate inferences deducible therefrom, even if they are unfavorable to the defendant. [Citation.] Because the trial court is in a better position than a reviewing court to determine the prejudicial effect of any remarks made, the regulation of the substance and style of the argument is within the trial court's discretion. [Citation.] The trial court may cure errors by giving the jury proper instructions on the law to be applied; informing the jury that arguments are not themselves evidence and must be disregarded if not supported by the evidence at trial; or sustaining

> the defendant's objections and instructing the jury to disregard the inappropriate remark." *Id.*

In determining whether a prosecutor has made erroneous remarks during his closing argument, we consider the remarks in the context of the closing argument as a whole. *Id.* at 397, 736 N.E.2d at 1125. Remarks made during closing argument do not merit reversal unless the defendant is substantially prejudiced. *Id.* A reviewing court will not disturb the verdict unless the remarks resulted in substantial prejudice to the accused, such that absent those remarks the verdict would have been different. *Id.*

¶ 50 We have reviewed the State's closing argument. We find no merit in defendant's argument the prosecutor improperly inserted his personal opinion as to defendant's guilt or the credibility of certain witnesses into his closing argument. The prosecutor's comments were based on the evidence in the case. "[I]t is perfectly permissible for the prosecutor to state an opinion which is based on the record, or on a legitimate inference derived therefrom." *People v. Johnson*, 119 Ill. 2d 119, 143, 518 N.E.2d 100, 111 (1987). If anything, the prosecutor's language was less persuasive than if he had simply made the same points as declarations.

¶ 51 We do take issue with several statements made by the State with regard to the burden of proof in this case. We note a prosecutor should not argue a defendant has failed to prove he is not guilty. *People v. Johnson*, 218 Ill. 2d 125, 140, 842 N.E.2d 714, 723 (2005). We note some of the prosecutor's comments during his closing argument could appear to be attempts to shift the burden of proof if read in isolation. Defendant points to the following statement by the prosecutor during his closing argument.

> "I also believe he is guilty of aggravated battery to a child by causing bodily harm to A.A. and A.A. was under the age of

thirteen. And I believe I've proven both of those beyond a reasonable doubt. *I don't believe the defense has shown enough here to create reasonable doubt.*

And, again, we had three different witnesses for the defense that say they were present that night and each of them tell a different story. We have Danielle who didn't see anything, we have Eric or, excuse me, Danielle saw an argument between Lois and A.A., Eric didn't see anything at all, and Patty saw him run into a table so their statements don't match up.

I don't believe any of those statements create any kind of doubt, and, again, this is beyond a reasonable doubt. We're not going to give you a definition of that. This is just doubt that is reasonable to you. And this is not beyond a shadow of a doubt, this is not beyond any doubt. It is just beyond a reasonable doubt. It is just beyond a reasonable doubt and I don't believe there is any reasonable doubt as to the guilt of [defendant] to these two charges of aggravated domestic battery and aggravated battery. And I believe after your deliberations, that will be your verdicts. And I want to thank you all for your time. Have a good day." (Emphasis added.)

¶ 52 It is not a defendant's obligation to create reasonable doubt. The State should avoid making this sort of comment. However, we note the prosecutor made this statement immediately after saying the State had proved both offenses beyond a reasonable doubt.

¶ 53 Defendant also takes issue with the State's comments on what constitutes reasonable doubt. "The law in Illinois is clear that the concept of reasonable doubt needs no definition." *People v. Eddington*, 129 Ill. App. 3d 745, 780, 473 N.E.2d 103, 127 (1984). It is inappropriate for either counsel or the court to provide the jury with a definition of reasonable doubt. *Id.* However, this court has also stated, "[a] prosecutor may argue that the State does not have the burden of proving the guilt of the defendant beyond *any* doubt, that the doubt must be a reasonable one. Such an argument does no more than discuss the grammatical fact that the word 'reasonable' modifies the word 'doubt.' " (Emphasis in original.) *People v. Carroll*, 278 Ill. App. 3d 464, 467, 663 N.E.2d 458, 461 (1996).

¶ 54 However, even if we assumed the State erred by making the statements at issue regarding the burden of proof and reasonable doubt, defendant suffered no substantial prejudice as a result of these comments based on the record in this case and reading the State's closing argument in its entirety. In *Johnson*, 218 Ill. 2d at 143, 842 N.E.2d at 725, our supreme court stated:

> "Having considered the prosecutor's improper remarks in the context of the closing argument as a whole, we find that defendant has failed to persuade us that the verdict would not have been the same had the improper remarks been omitted. We find that the prosecutor's improper remarks were not so prejudicial that real justice was denied. We are convinced that the jury verdict was unaffected by the improper comments. We conclude that defendant was not deprived of a fair trial, that no plain error occurred, and, thus, reversal is not warranted."

The same is true in this case. We note the trial court instructed the jury on defendant's presumption of innocence and the State's burden of proving defendant's guilt beyond a reasonable doubt. The court also instructed the jury defendant is not required to prove his innocence.

¶ 55 D. Sufficiency of the Evidence

¶ 56 Defendant's final argument is the State failed to introduce sufficient evidence to prove the aggravated domestic battery charge beyond a reasonable doubt. When a defendant challenges the sufficiency of the evidence, we will only disturb the result if no rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler,* 226 Ill. 2d 92, 114, 871 N.E.2d 728, 740 (2007).

¶ 57 Defendant does not argue the State failed to introduce sufficient evidence he battered A.A. Instead, he argues the State did not present sufficient evidence to show A.A.'s injuries constituted "great bodily harm" and not just "bodily harm."

¶ 58 Based on the evidence in this case, a rational trier of fact could have determined A.A.'s injuries constituted "great bodily harm." The State introduced pictures of A.A.'s injuries, and the jury heard testimony from individuals who saw the injuries in person. The evidence in this case showed defendant hit A.A. between 10 and 20 times with a belt. A.A. had numerous injuries on his body, including bruises on both legs, his chest, and his back. The jury was in a better position to determine whether A.A.'s injuries constituted great bodily harm than is this court. Based on the standard of review in this case, we will not substitute our judgment for the jury's on the issue of the severity of A.A.'s injuries.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm the trial court's judgment in this case. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 61 Affirmed.