2019 IL App (4th) 170403-U

NO. 4-17-0403

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 17, 2019
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LANAY DENIECE WALLS, Defendant-Appellant.	) Appeal from the) Circuit Court of) Macon County) No. 16CF750)) Honorable) Phoebe S. Bowers,) Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Presiding Justice Holder White and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: (1) When all of the evidence is viewed in a light most favorable to the prosecution, a rational trier of fact could find the elements of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2016)) to be proven beyond a reasonable doubt.

(2) Evidence that defendant, as an investigator for the Illinois Department of Children and Family Services (DCFS), violated the agency's policy on conflicts of interest could reasonably be regarded as relevant to prove her motive to commit the charged offense of criminal trespass to a residence.

(3) The burden is on the party desiring the benefit of a limiting jury instruction to tender such an instruction to the trial court.

(4) The evidence in this case, though sufficient to support the conviction, was closely balanced, and, thus, the doctrine of plain error averts the procedural forfeiture of clear or obvious errors in the prosecutor's closing and rebuttal arguments; the burden is on defendant, however, to show that the clear or obvious errors, substantial or not, were of such a nature that they could have made a difference in the verdict.

(5) By drawing an inference, in his closing argument, that a desire to harass or intimidate a witness was what had motivated defendant to commit criminal trespass to a residence, the prosecutor did not exceed the wide latitude allowed to prosecutors in their closing arguments.

(6) The prosecutor's statement, in his closing argument, that defendant had been to the residence numerous times to see grandchildren was a clear or obvious error because the statement lacked any basis in the evidence; and the error raised the risk of unfairness in this case in which the evidence was closely balanced.

(7) By asserting, in his closing argument, that one of the reasons why defendant was "without authority" (*id*.) to enter the residence was that a DCFS policy on conflicts of interest forbade her to do so, the prosecutor committed a clear or obvious error, considering that no evidence had been adduced that DCFS had any ownership or possessory interest in the residence; and because this misstatement of law, uncorrected by the jury instructions, could have made a difference in the outcome of the trial, in which the evidence was closely balanced, defendant deserves a new trial.

¶ 2 A jury found defendant, Lanay Deniece Walls, to be guilty of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2016), and the circuit court of Macon County sentenced her to probation for 12 months. Defendant appeals on five grounds.

¶ 3 First, defendant challenges the sufficiency of the evidence. Viewing all the evidence in a light most favorable to the prosecution, we conclude that a rational trier of fact could find the elements of criminal trespass to a residence (*id.*) to be proven beyond a reasonable doubt.

¶ 4 Second, defendant argues that the trial court abused its discretion by overruling her irrelevancy objections to a DCFS policy on conflicts of interest. We find the court's ruling to be reasonably defensible on the theory that the evidence was relevant to defendant's motive.

¶ 5 Third, defendant argues that the prosecutor committed a plain error in his closing argument by drawing an inference that had no basis in the evidence. On the contrary, the inference the prosecutor drew was sufficiently justifiable given the wide latitude allowed to prosecutors in their closing arguments.

¶ 6 Fourth, defendant argues that the prosecutor committed a clear or obvious error in his closing arguments by misstating the evidence. We agree. Although the misstatement of evidence was brief and isolated, it was pertinent to guilt, and in this case in which the evidence was closely balanced, it threatened the fairness of the trial, despite the trial court's instruction to the jury that closing arguments were not evidence.

¶ 7 Fifth, defendant points out that, in addition, the prosecutor made a misstatement of law in his closing argument. Again, we agree. And instead of being a merely arguable misstatement of law, it was a clear or obvious legal error pertaining to the pivotal issue of authority to enter the residence, the only real issue in the trial. Because (1) the evidence was closely balanced, (2) the misstatement of law figured prominently in the prosecutor's closing argument, and (3) the jury instructions provided no corrective guidance, we find resulting prejudice to the defense. The jury could well have been misled, and defendant deserves a new trial.

¶ 8 Therefore, we reverse the judgment and remand this case for further proceedings.

¶ 9 I. BACKGROUND

¶ 10 A. The Charge

¶ 11 On June 13, 2016, the State charged defendant with criminal trespass to a residence (*id.*). The information alleged that on or about May 5, 2016, defendant "knowingly and without authority entered a residence of Andreanna Wood located at 1971 W[est] Cantrell [Street], Decatur, Macon County, Illinois[,] at a time when the defendant knew or had reason to know that Andreanna Wood was present in that residence."

¶ 12 B. The Jury Trial (March 7, 2017)

¶ 13 1. *The State's Case in Chief*

¶ 14 a. The Testimony of Andreanna Wood

¶ 15 Andreanna Wood dated Nirin Walls "[f]rom probably eight months to a year." Andreanna became acquainted with defendant because defendant was Nirin's mother.

¶ 16 In August 2015, Nirin shot at Andreanna. The State charged him with attempted murder.

¶ 17 "[I]n the first week or so" after the shooting, defendant "at first" seemed "accepting [of] what had happened with her son." Andreanna testified:

> "Then it was, like, once I realized that it was, like, borderline and she wasn't for sure if she was okay with it, I'm done. I have kids. I don't have time for any of that. I made it very clear to her daughters and to her several occasions. I had to go pick my car keys up from her home, and I made it clear to them that we wanted nothing to do with it. That would be the last of interactions. And that several occasions, it was several occasions."

¶ 18 Andreanna had to pick up her car keys from defendant's house because, at the time Nirin was arrested, Andreanna's car was parked there. So, Andreanna drove to defendant's house, and Andreanna's brothers and sister-in-law were with her. Andreanna testified:

> "When we pulled up to get the keys, they were all there, and of course, you know, the incident had just occurred. So[,] I was obviously scared. Everybody was out there, and they kept telling me to get out the car. I was too scared to get out the car. So[,] they handed me the keys through the window. I left.
>
> Q. All right.

A. I didn't even—the car was parked outside in front of the house. I left and did not come back until everybody had cleared out from her home to get the car.

* * *

Q. All right. And are you telling us that even though you were there to pick up your car and your keys, that you're telling her[,] ['Y]ou stay off my property?[']

A. I told her to stay away from me, my children, my family, my home[,] and everything else, my job, everything. Stay away from me in general. Yes, I did."

¶ 19 Considering that the Nirin incident was in August 2015, defense counsel asked Andreanna if she agreed that defendant's alleged trespass into her residence "was a good eight, nine months" later, that is, eight or nine months after the Nirin incident. Andreanna answered:

"A. All I can tell you Nirin tried to shoot and kill me. [Defendant] gave me my car keys after that.

Q. Well, my question is about the eight or nine months. Do you agree—

A. It happened right after the Nirin stuff. It happened after she realized that I was not going to give up going to court on her son because we had no problems up until then. Then I went ahead and decided to pursue charges with her son because we had no problems up until then. Then[,] when I went ahead and decided to pursue charges with her son is when all the other stuff started. She came to my house after—she came to my house. Her daughter started harassing me. My kids got harassed. They go to school."

¶ 20 Andreanna had three children: two daughters, ages 11 and 9, and a son, age 5. Also, her five-year-old nephew lived with her.

¶ 21 On May 5, 2016, Andreanna was home, at 1971 East Cantrell Street, doing laundry in a back room of the house. (The information alleges that the residence in question was at "1971 W[est] Cantrell [Street]," but both Andreanna and her sister, Drenesha Wood, testified that the residence was at 1971 East Cantrell Street.) "The kids were in the front[,] watching TV in the front room." While doing laundry, Andreanna heard the dog barking, and one of her daughters "[came] flying to the back" and told her, "['O]h[,] my god, [M]om. She's in the house. Nirin's mom is in the house. She's in the house, [M]om. You got to come up here.[']" Andreanna "ran to the front," and there was defendant, clipboard in hand, about two steps inside the door, and the dog was barking at her.

¶ 22 The prosecutor asked Andreanna:

> "Q. Did you confront the defendant at this point?
>
> A. Yes, I did. I immediately started to freak out. [']What are you doing here? Why are you here? You need to leave now. You have to leave.['] ['O]h, I'm here on official business. You had a report from DCFS that your kids were[']—Somebody reported that my kids were playing near the street or something like that, and that she had every right to walk into my home. And that she could, that was her job. That's what she was there to do."

¶ 23 Defendant requested that Andreanna restrain her dog. Andreanna responded that defendant just needed to leave. Defendant then remarked to Andreanna, "['W]ell, you know what, bitch, you got what you deserved. You know what you were dealing with when you got into it. You deserve to die.[']"

¶ 24 "It was complete chaos," Andreanna testified. Not only was she screaming at defendant, but Drenesha came running into the living room and likewise began screaming at defendant to leave. Defendant "finally end[ed] up" saying, " ['O]h, I'm leaving. I'm leaving. But don't worry about it. Somebody will be back." Defendant then turned around, exited the house, got in her truck, and drove away.

¶ 25 The prosecutor asked Andreanna:

"Q. Prior to that incident where the defendant came to your house and was threatening you, prior to that incident, had you ever told her that she was not allowed at your house?

A. Yes. After the incident with Nirin, it was very—I made it clear on several occasions to her and her daughters. I wanted nothing to do with any of them. Nothing.

Q. So[,] after what happened to Nirin, you told the defendant, as well as any of her family members[,] you did not want contact with them, and they were not to go to your residence?

A. Yes."

¶ 26 The prosecutor further asked Andreanna:

"Q. *** Before the incident with the defendant's son happened, before the incident with Nirin, how many times had the defendant been to your house at 1971 East Cantrell?

A. Several times.

Q. Would you have an estimate[,] or would you say if you could put a number on it?

A. For a while, we didn't have a car. So[,] she would pick me up and take—She'd pick me up and take me up [*sic*] from work several times. Christmas, her son would be there. She would come by and pick him up or drop him off. She been to my home hundreds of times. She had eaten there. She been there with her grandkids. Her grandkids have been there. They had all been there lots of times.

Q. Now[,] on the date that the defendant came to your house and threatened you, was there anything outside of the house that would have indicated to the defendant that you were the resident?

A. I have a very large, big, bright beige Lincoln Continental, the one that me and her son went and picked out that she dropped us to the car lot to pick up, was in the driveway at the time."

¶ 27 On the date when defendant entered her house with the clipboard, Andreanna did not immediately call the police. Instead, she called defendant's employer, DCFS, which assured her that "they were going to handle it." Eventually, on May 11, 2016, Andreanna called the police because DCFS was not "moving quick[ly] enough" and was not "doing what [she] wanted them to do with getting the situation handled."

¶ 28 The prosecutor asked Andreanna:

"Q. *** After the incident, when the defendant came to your house and threatened you, after that, has she harassed you any further?

A. There were several—There's been several instances that there's been police reports where they've had to come to my house because they've come over and harassed me. I wasn't there on a couple of them. My kids, they came over to fight my kids. They've come—My sister went to jail one of the times the police

had to come over there because they were over at my house acting a fool, talking about they wanted to fight. We had what we had coming. There's several instances."

¶ 29 On cross-examination, Andreanna admitted that she "couldn't see how [defendant] came in the front door." Defense counsel then asked Andreanna:

"Q. *** And she was only there inside the house for two, three minutes; isn't that right?

A. I would say probably closer to five because there was a lot of screaming and yelling going on, and she was very stubborn on the fact that I was telling her to leave right now.

* * *

Q. *** And you were directing some of your angry remarks towards [defendant]?

* * *

A. After I, more than one time asked her to leave my home and she refused to do it. Yes, I did.

Q. Well, you testified that she had a clipboard?

A. Yes, she came in there with her little board.

Q. Yes. Okay, and did she hold the clipboard up and make reference to that she was there because of a report?

A. No. She held it on her hip, and she proceeded to tell me that she was here for my kids."

¶ 30 b. The Testimony of Drenesha Wood

¶ 31 Andreanna's sister, Drenesha Wood, had failed to appear in a case charging her with a misdemeanor, and in return for Drenesha's agreement to be served in the present case, the State's Attorney's office had agreed to quash a warrant for Drenesha's arrest in the misdemeanor case. But no other promise had been made to her.

¶ 32 At 5:15 or 5:30 p.m., on "a date in late April" or "early May" 2016, Drenesha was in her nephew's bedroom in Andreanna's house, having just taken a shower, when she heard Andreanna arguing with someone. Drenesha came into the living room, where the argument was taking place, and saw defendant and Andreanna. Drenesha heard defendant tell Andreanna that "she deserved everything she got" and that "she deserved to die." Andreanna "asked [defendant] to leave quite a few times, but she wouldn't leave."

¶ 33 On cross-examination, defense counsel asked Drenesha:

"Q. All right. And do you recall, did this occasion take place on or about April the 26th of last year?

A. No. It was the beginning of May, about May 5th.

Q. Okay.

A. Couple of days before my niece's birthday."

¶ 34 Defense counsel asked Drenesha if it was true that, in less than a minute after Drenesha came into the living room, defendant left the house. Drenesha answered:

"A. I want to say within five minutes she was out of the house, maybe.

* * *

Q. Okay. And you didn't come up with this five minutes in a conversation with your sister?

A. No."

In fact, Drenesha denied ever discussing this case with Andreanna.

¶ 35 Drenesha admitted that although she saw defendant leave the house and another DCFS investigator arrive in defendant's stead, Drenesha never saw defendant enter the house in the first place. Defense counsel asked Drenesha:

> "Q. You didn't know that [defendant] was let into the house or how she got into the house?
>
> A. My niece told me that she pushed past her.
>
> * * *
>
> Q. *** [Y]ou don't know whether somebody, from your own personal observation, whether somebody let her in or not?
>
> A. Right."

¶ 36 Although Drenesha had a cell phone at the time, it was not until May 11, 2016, the day after her niece's birthday, that she talked with the police about the incident.

¶ 37 c. The Testimony of Angelique Maxwell

¶ 38 For about a year, Angelique Maxwell had been a supervisor for child protection in the Decatur office of DCFS. She had worked for DCFS for about 11 years.

¶ 39 The prosecutor asked Maxwell: "If a DCFS investigator has a previous or existing relationship with the subject of a DCFS investigation, is there any kind of conflict of interest there?" Defense counsel objected on the ground of irrelevancy. The prosecutor responded: "While no specific testimony's been offered yet, there is testimony that the defendant was working for DCFS at the time. And this would be offering to the [c]ourt and the jury information about when a DCFS employee is allowed to investigate cases that involve people that they are familiar with." The trial court ruled: "I do believe this is relevant. Objection is overruled. You

may proceed." Defense counsel requested the court to regard his irrelevancy objection as continuing. The court agreed to do so.

¶ 40 Maxwell answered that, yes, there would be a conflict of interest if a DCFS investigator had either a previous or continuing relationship with the subject of a DCFS investigation.

¶ 41 The prosecutor next asked Maxwell:

> "Q. If a DCFS investigator has a conflict of interest in an investigation, does that investigator have the authority to assist in the investigation at all?
>
> [DEFENSE COUNSEL]: Judge, I'm going to object to that. That is calling for a legal conclusion of the witness."

The prosecutor disagreed he was asking Maxwell for a legal conclusion; he was just asking a supervisor of DCFS whether an investigator with a conflict of interest was permitted to assist with an investigation. The trial court overruled the objection, and Maxwell answered: "They are not allowed to assist in the investigation at all, and they shouldn't pull the investigation up or hav[e] anything else to do with it."

¶ 42 Next, the prosecutor asked Maxwell:

> "Q. If a DCFS investigator drives up to a house they were assigned to investigate and they realize that they know the occupants, are they allowed to continue in the investigation[,] or at what point does the conflict of interest exist?
>
> [DEFENSE COUNSEL]: Objection. Again, irrelevant. And, also, calls for a conclusion and opinion of the witness as to the issue of authorization, which is a jury question."

The prosecutor responded, "Judge, the issue of whether or not there was an authorization generally is a matter for the jury. Whether or not a DCFS investigator has authorization through DCFS is not a general question for the jury." The trial court overruled the objection, and Maxwell answered that if a DCFS investigator were to go to a residence and perceive that he or she knew the person or family or that he or she was "somehow tied to them," the investigator should not even go to the door but instead should call his or her supervisor and say, " ['T]his would be conflict of interest for me.['] " The supervisor then would send a different investigator.

¶ 43 The Decatur field office had 12 investigators, who were on a "rotation system." Whenever it was an investigator's turn, that investigator received the incoming report unless the investigator had a conflict of interest. The assigned investigator then had 24 hours in which "to see the kids or sooner."

¶ 44 On cross-examination, Maxwell explained that the "report" the investigator received was a CANTS (Child Abuse and Neglect Tracking System)/1 form, which came from the state central registry, in Springfield. Defense counsel asked Maxwell:

> "Q. *** And sometimes these forms have—are what we call ['Junknown unknowns[']?
>
> A. If a DCFS report that is called in and the person does not know who the family or the children are, they do come in as unknown unknown. They may only have, like, a piece of the information, maybe just an address or where the school, the children attend school.
>
> Q. Okay. And sometimes it would be something as general as there's children playing out in the street?
>
> A. It could be even more vague than that.

Q. Okay. And then the supervisor reviews this and then assigns it?

A. Yes.

Q. Okay. And then that form, I think you referred to it as a CANTS form, that is actually the report that the investigator takes with them when they actually go out to—

A. Yes.

Q. Investigate.

A. The CANTS form and then the CANTS 8 form."

¶ 45 The State rested.

¶ 46 Outside the jury's presence, defense counsel moved for a directed verdict on the ground that defendant's lack of authority to enter the residence was unproven. Defense counsel argued: "Whether there was a conflict of interest or not, that wouldn't remove the authority to come to the house. And in turn, if the child opened the door and let her in, we think that that consisted of authority to enter into the house."

¶ 47 The prosecutor countered:

"There is testimony from Andreanna Wood that the defendant was barred from her property. She told her she was not allowed to enter it. We have testimony from Ms. Maxwell *** that ***, in a situation like this, there is a conflict of interest, and when they have that conflict of interest, they cannot assist in any DCFS investigation. So[,] the defendant denied [*sic*] the authority to enter the house because she didn't enter under DCFS authority. She was told she was not allowed to enter the house by the person with the superior interest. *** [T]he law

is that a minor child cannot give authority to enter a residence of someone who[m] the owner's previously barred."

¶ 48 Viewing the evidence in a light most favorable to the State, the trial court denied defendant's motion for a directed verdict. The court noted: "Andreanna Wood did testify that she had previously informed [defendant] that she was not allowed on the property or at her residence."

¶ 49 2. *Defendant's Case in Chief*

¶ 50 a. The Testimony of Robbie Gephardt

¶ 51 Robbie Gephardt had worked for DCFS since 1981. In April 2016, she was a supervisor at the Decatur field office. In May 2016, she began working in the Champaign field office.

¶ 52 On April 26, 2016, when Gephardt still was a supervisor in Decatur, she gave defendant a report to investigate: a computer-generated CANTS form pertaining to a house on Cantrell Street. This report was an "unknown unknown," meaning that when calling in, the reporter "[did] not know the person's name." Thus, the CANTS form "did not indicate any names of occupants of the house." Before defendant went to the house, Gephardt herself did not know the names of any of its occupants.

¶ 53 After sending defendant to this "unknown unknown," Gephardt received a call from her. Defendant was upset and weeping and told Gephardt that she, defendant, had a conflict of interest. After talking with defendant, Gephardt agreed she had a conflict of interest. Therefore, Gephardt instructed defendant to go to the parking lot of the nearest drugstore, where one of her coworkers would meet her and take over the file from her. Gephardt then sent another investigator to meet defendant at the drugstore.

¶ 54 On cross-examination, Gephardt denied that she and defendant were friends. She also denied that she had spoken with defendant "several times since the incident."

¶ 55 b. The Testimony of Defendant

¶ 56 Defendant was unsure, but she believed it was in June 2015 that the State charged her son, Nirin, with attempting to murder Andreanna. Defendant denied having any animosity toward Andreanna for turning Nirin in to the police. Defense counsel asked defendant:

> "Q. Had you been harassing Andreanna Woods [*sic*] about your son or your son's case?
>
> A. I had no reason to harass her. My son is 33 years old. I am no longer concerned with his activities.
>
> Q. So[,] did you contact her in any way, shape[,] or form, either on the phone, through the mail, or in person[,] to harass her about that case?
>
> A. I had—I have no bad feelings about Andreanna. I'm a woman myself."

¶ 57 At the time Nirin was arrested, Andreanna's car was parked at defendant's house. Andreanna came to pick up the car, and defendant gave her own daughter the car keys to give to Andreanna. Defendant and Andreanna did not talk at all on that occasion, and from the time Andreanna came to defendant's house to pick up the car keys to the time defendant went to Andreanna's house to investigate the DCFS hotline complaint, the two of them never conversed. Andreanna denied that defendant ever had told her not come to her house or property. "I've never really had a relationship with her, period," defendant insisted. Before going to 1971 East Cantrell Street on April 26, 2016, defendant had been to that house on only one occasion—around March 2014, defendant believed. She testified: "I went to the house one time, but I never

made contact with [Andreanna]. I went there to get a car that my son had from my daughter, and I only made contact with him[,] and I got the car back."

¶ 58 Consequently, on April 26, 2016, when defendant arrived at 1971 East Cantrell Street, which was the address on the CANTS form, she had only a vague memory of having stopped at the house one time years ago; she did not know that Andreanna lived there, and the CANTS form gave no clue who lived there.

¶ 59 For three reasons, defendant was certain that April 26, 2015—instead of May 5, 2016, as Andreanna and Drenesha had testified—was the date when she made her investigative trip to 1971 East Cantrell Street.

¶ 60 First, defendant resigned from DCFS on May 4, 2016. She could not have undertaken an investigation the day after she resigned.

¶ 61 Second, defendant's exhibit No. 1 was a telephone record showing that she called Gephardt's number at 5:18 p.m. and 5:21 p.m. on April 26, 2016.

¶ 62 Third, defendant's exhibit No. 2 was a DCFS travel sheet, in which defendant had noted that at 5:15 p.m. on April 26, 2016, she departed Andreanna's residence and that at 5:18 p.m. she arrived in a CVS drugstore parking lot, where she met the substitute investigator. (To be precise, defendant's exhibit No. 2 does not specify Andreanna's residence, the CVS drug store, or any address. It merely gives the date of "4/26/16"; what appears to be a DCFS case number, 2240732A; a departure time of 5:15 p.m. from a "Departure Place" of "VIC"; and an arrival time of 5:18 p.m. at an "Arrival Place" of "VIC.")

¶ 63 Defendant admitted that she was, though unwittingly, in a conflict of interest when she went to Andreanna's house on April 26, 2016; that was why, upon discovering the conflict, she immediately arranged to hand the file off to a different investigator. But defendant

insisted she had been unaware at first that she was in a conflict of interest; she did not know the residence was Andreanna's until Andreanna strode into the living room. As defendant pulled into the driveway of 1971 East Cantrell Street, she did not see Andreanna's car in the driveway. And someone other than Andreanna admitted her into the house.

¶ 64 Defense counsel asked defendant:

> "Q. All right. And when you got to the house, did you come up to the front door?
>
> A. When I got out of the truck, and as I was approaching the door, it was a teen or pre-teen, I'm not sure, about from [10] to 14. She was standing between the door, the house door and the screen door. And she had the door, she was standing in the screen door. So[,] as I'm approaching her, I said[,] ['I]s your mother home[?'] She said, ['Y]es.['] So[,] as I'm walking, she extends the door fully open and allows me to pass through."

Not recognizing the child, defendant entered the house and stood "within a step or two of the door."

¶ 65 Defense counsel asked defendant:

> "Q. When you got inside the door, were there children in there watching television?
>
> A. No.
>
> Q. Who was in the living room?
>
> A. It was—when I entered the house, it was two females seated in the living room. It was one young female and a older female."

Defendant asked the younger female if she was the mother. She answered that she was not. The child who had let defendant in had gone to the back of the house. Within about a minute, Andreanna came into the living room, and defendant "was shocked to see her."

¶ 66 Defense counsel asked defendant:

> "Q. Who spoke first between the two of you?
>
> A. She did.
>
> Q. What did she say?
>
> A. She was irate. She started screaming, yelling[,] and cursing. She called me every B in the book.
>
> Q. And how did you respond to her?
>
> A. I just stood there. I was like I was shocked.
>
> Q. Was she telling you to leave and get out[,] or what was she saying?
>
> A. No. She was busy calling me every B in the book."

Defendant testified she showed Andreanna her clipboard and tried to explain to her "that it came in unknown, the report," but Andreanna was unwilling to look; "[s]he was busy calling [defendant] every kind of B in the book."

¶ 67 A dog approached defendant, and defendant asked Andreanna if she would put the dog up. It was then that Andreanna said, for the first time, "['N]o, you can get out[']—whereupon defendant "just turned around and walked out," without saying anything further.

¶ 68 Had defendant known, at first sight, that Andreanna lived at 1971 East Cantrell Street, she never would have approached the house in the first place. Defendant testified: "When I walked in and made eye contact with Andreanna Woods [*sic*], I knew it was a conflict of interest. I been a supervisor myself at DCFS."

¶ 69 After the admission of defendant's exhibit Nos. 1 and 2, the defense rested.

¶ 70 3. *The State's Case in Rebuttal*

¶ 71 The State called James Owens, an investigator with the Macon County State's Attorney's office, who testified that on October 16, 2016, he interviewed Gephardt, who told him that she and defendant were friends and that "they ha[d] spoken since the incident." Gephardt and Owens discussed a DCFS case that had the "SCR number 2241899A."

¶ 72 Defense counsel asked Owens on cross-examination: "[W]hen there are two separate reports that are made to the DCFS involving a particular house or welfare of children, do you know whether there are two different numbers that are assigned because each report is given a separate number?" Owens answered that he did not know.

¶ 73 The State rested.

¶ 74 4. *The Prosecutor's Closing Argument*

¶ 75 In his closing argument to the jury, the prosecutor granted that a child had let defendant into Andreanna's house; that was how defendant "kn[e]w that [at least one person was] present" in the house when defendant entered (*id.*). The prosecutor stated:

> "The defendant testified that an individual, an adolescent, so someone between, I believe she said, the ages of [8] and 11[,] let her in the house, saw her through the screen door, I believe, and opened the door for her. So[,] when defendant entered the residence, she knew at least one person was in there because someone opened the door for her. That fact is not disputed by either side."

Nor, according to the prosecutor, was it disputed that defendant's entry of the house was knowing. See *id.* Unless defendant was "sleepwalking" at the time, she surely was aware of her own act of passing the threshold and entering the house.

¶ 76 That left the question of whether defendant's entry of the house was "without authority" (*id.*). "What this trial really has been about," the prosecutor explained, "is whether or not the defendant entered the residence with the authority to do so." Andreanna had told defendant to stay away from her home, the prosecutor argued, and that previous directive from Andreanna overrode any authority Andreanna's minor child later could try to give to defendant. And, besides, the prosecutor added, the policy of DCFS on conflicts of interest likewise negated any authority of defendant to enter Andreanna's house.

¶ 77 In that vein, the prosecutor told the jury:

> "Now, the defendant had testified that she was working at DCFS and had a report that would give her the authority to investigate the house under DCFS. So it doesn't matter that Andreanna told her that she wasn't allowed in the residence. However, you also heard from Angelique Maxwell, a senior supervisor at DCFS, and she said that when an individual, a DCFS investigator like [defendant] was on that date, drives up to a house, sees I've been in this house before, I know the people there, that they no longer have authority under DCFS to investigate; that they do not have the authority to enter the house to investigate any further ***.
>
> * * *
>
> *** And because of that conflict of interest, the second [defendant] knew who was there, which it clearly she knew before she entered, she no longer had any authority under DCFS; not to enter the house, not the [*sic*] investigate further, none of that. She was barred from the residence by the head of the household, Andreanna Wood. She was not given permission from Andreanna to enter. She was not allowed to enter. She was told very clearly, ['Y]ou are not allowed at this house.['] She had a conflict of interest with DCFS and, therefore, could not enter

as a DCFS agent. We know that very clearly from what Ms. Maxwell testified. So her entrance was without authority."

¶ 78 The prosecutor claimed that the moment defendant approached 1971 East Cantrell Street, defendant knew it was Andreanna's house because defendant had been to Andreanna's house "numerous times on family gatherings, on Christmas, to see grandchildren, everything like that." The prosecutor asserted that, knowing full well that 1971 East Cantrell Street was where Andreanna lived, defendant went there "to harass a witness" and "to threaten Andreanna Wood to try to get her not to testify against [defendant's] son."

¶ 79 5. *The Issues Instruction*

¶ 80 Without objection by defendant, the trial court read to the jury the following issues instruction, which the State had tendered:

"To sustain the charge of criminal trespass to a residence with a person present, the State must prove the following propositions:

First Proposition: That the defendant knowingly entered a residence; and

Second Proposition: That the defendant entered the residence without authority to do so; and

Third Proposition: That the defendant knew or had reason to know that one or more persons were [*sic*] present in the residence at the time of entry."

¶ 81 The jury found defendant guilty of criminal trespass to a residence, and the trial court sentenced her to probation for 12 months.

¶ 82 This appeal followed.

¶ 83 II. ANALYSIS

¶ 84 A. The Sufficiency of the Evidence

¶ 85 Defendant contends that the evidence is insufficient, as a matter of law, to sustain the conviction of criminal trespass to a residence (*id.*).

¶ 86 The due process clause of the fourteenth amendment to the United States Constitution (U.S. Const., amend. XIV) forbids a conviction " 'except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which [the defendant] is charged.' " *People v. Cunningham*, 212 Ill. 2d 274, 278 (2004) (quoting *In re Winship*, 397 U.S. 358, 364 (1970)). To decide whether the due process clause of the fourteenth amendment is satisfied, we ask " 'whether the record evidence could reasonably support a finding of guilty beyond a reasonable doubt.' " *Id.* (quoting *Jackson v. Virginia*, 443 U.S. 307, 318 (1979)). This is not to say that, in our review of the evidentiary record, we attempt to retry the defendant. *People v. Nere*, 2018 IL 122566, ¶ 69. Instead, unlike a trier of fact, we view the evidence in the light most favorable to the prosecution: that is to say, we draw inferences in favor of the prosecution insomuch as such inferences would be reasonably defensible (*Cunningham*, 212 Ill. 2d at 280). Viewing the evidence in such a deferential light, we decide whether " ' "*any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." ' " (Emphasis in original.) *Nere*, 2018 IL 122566, ¶ 69 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson*, 443 U.S. at 319)).

¶ 87 Defendant enumerates the elements of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2016)) as follows: "(i) that the defendant knowingly entered the residence of another; (ii) that the defendant entered the residence without authority; and (iii) that the defendant knew or had reason to know that one or more persons were present in the residence at

the time of entry." The first and third elements, as the prosecutor argued, appear to be undisputed in this case. It is the second element that is at issue: whether defendant's entry of the residence at 1971 East Cantrell Street was without authority.

¶ 88 If Andreanna was to be believed when she testified that she previously told defendant to stay away from her house, any permission that Andreanna's minor child later gave defendant to enter the house would have been ineffectual; even though an unemancipated child occupant opened the door for her, defendant would have lacked authority to enter. See *People v. Long*, 283 Ill. App. 3d 224, 226 (1996). But defendant argues that, for essentially eight reasons, Andreanna is unbelievable to any rational trier of fact.

¶ 89 First, defendant notes, Andreanna's testimony that she forbade defendant to come to her house is uncorroborated. Case law teaches, however, that "[p]ositive and credible testimony by a single witness is sufficient to convict, even if contradicted by the defendant." *People v. Charles*, 2018 IL App (1st) 153625, ¶ 25; see also *People v. Guido*, 25 Ill. 2d 204, 208-09 (1962). The qualifier "credible" might at first seem to invite a *de novo* assessment of credibility, but, actually, we do not reweigh credibility (*People v. Moore*, 171 Ill. 2d 74, 96 (1996); *People v. McCann*, 348 Ill. App. 3d 328, 334 (2004)). This is not to say that a jury's assessment of credibility is unreviewable; it, too, has to pass the test in *Jackson*. But when it comes to the believability of a witness, we are a deferential gatekeeper, not a second jury. We may overturn a jury's assessment of credibility only if *every* rational trier of fact would disbelieve the witness. See *Nere*, 2018 IL 122566, ¶ 69; *Cunningham*, 212 Ill. 2d at 279-80; *People v. Smith*, 185 Ill. 2d 532, 545 (1999). Otherwise, we are supposed to keep our hands off the credibility determination, even if the testimony the jury chose to believe was uncorroborated (see *Guido*, 25 Ill. 2d at 208-09; *Charles*, 2018 IL App (1st) 153625, ¶ 25).

¶ 90 Second, in arguing that Andreanna lacks credibility, defendant repeatedly pits her own testimony against Andreanna's testimony—as if to suggest that because defendant contradicted her, Andreanna cannot be believed. Again, though, the uncorroborated testimony of a witness can support a conviction even if the defendant contradicted the witness's testimony. *Guido*, 25 Ill. 2d at 208-09; *Charles*, 2018 IL App (1st) 153625, ¶ 25.

¶ 91 Third, Andreanna and Drenesha testified that the incident happened on May 5, 2016, but defendant, by contrast, testified that it happened on April 26, 2016, and defendant presented a travel sheet and phone record to prove that April 26, 2016, was the correct date. Defendant accuses Andreanna and Drenesha of jointly fabricating their testimony, since they both chose the same incorrect date. But the travel sheet and phone record do not conclusively prove that April 26, 2016, is the correct date. Neither document references 1971 East Cantrell Street, and the case number on the travel sheet does not match the case number that Owens purported to have obtained from his interview of Gephardt. So, Andreanna and Drenesha are not clearly mistaken.

¶ 92 Fourth, defendant argues that if Andreanna really felt threatened by defendant, she surely would not have returned to defendant's house, not once but twice, to pick up her car. But if Andreanna needed the car to get to work, buy groceries, and transport her children, necessity might have struggled with fear. Only later, after the taunters had dispersed, did Andreanna risk returning to defendant's house to retrieve her car, having dared, in the first trip, to retrieve only the car keys.

¶ 93 Fifth, defendant argues that if indeed she had trespassed into Andreanna's residence, it would have made no sense for Andreanna to wait one week or two weeks, until May 11, 2016, to call the police. In her testimony, however, Andreanna explained that she first tried to

get satisfaction from defendant's employer, DCFS, and that after giving DCFS time to take corrective action and DCFS failed to do so, she then resorted to calling the police. Therefore, Andreanna offered an explanation for the delay, and it was for the jury to decide whether her explanation was believable.

¶ 94 Sixth, defendant argues:

> "The State's theory that [defendant] went to Andreanna's house to harass her is contradicted by the corroborated fact that [defendant] immediately called her supervisor[,] crying[,] afterward. [Citations.] If [defendant] went to Andreanna's house to harass her, she would not be concerned with following through with DCFS protocol and reporting the incident so that a new investigator could be assigned to the case."

That is a good argument for the defense, but in the mind of every reasonable trier of fact, it would not necessarily be an argument that is fatal to the State's case. A counterargument might be made along the following lines. To accomplish the objective of intimidating or harassing Andreanna, all defendant had to do was leave Andreanna with the impression that she, defendant, was a participant in the DCFS investigation. Defendant could have accomplished that objective by making an appearance in Andreanna's house, clipboard on hip, before handing the investigative file off to a different investigator. This strategy, as might be expected, exacted an emotional price. Being called "every B in the book" proved to be upsetting, and defendant left in tears. It was an unpleasant encounter; but it was worth it because the seed had been planted in Andreanna's mind.

¶ 95 Seventh, defendant argues that even if she recognized that the house belonged to Andreanna, the incident happened eight months after charges were filed against defendant's son

and it is unlikely that defendant would have waited so long to harass Andreanna. Maybe, however, such a tempting opportunity never arose earlier, and but for this ideal opportunity that fortuitously arose, defendant would never have harassed Andreanna at all.

¶ 96 Eighth, although Andreanna testified that she had told defendant several times not to come to her house, "Andreanna never specified an exact time when she told [defendant] that she could not come to her house." True, and that is another good point for the defense, but the inability of a witness to remember exact dates and times does not necessarily make the witness unbelievable or create reasonable doubt. See *People v. Walker*, 255 Ill. App. 3d 10, 18-19 (1993); *People v. Williams*, 223 Ill. App. 3d 692, 697 (1992).

¶ 97 In sum, although the jury trial was largely a credibility contest between defendant and Andreanna and the evidence of guilt was not overwhelming, when we look at all the evidence in a light most favorable to the prosecution, as we must do, we are unable to say it would be impossible for *any* rational trier of fact to find the elements of criminal trespass to a residence (720 ILCS 5/19-4(a)(2) (West 2016)) to be proven beyond a reasonable doubt. See *Nere*, 2018 IL 122566, ¶ 69.

¶ 98 B. The Overruling of Defendant's Irrelevancy Objection to Maxwell's Testimony on Conflicts of Interest

¶ 99 The prosecutor asked Maxwell: "If a DCFS investigator has a previous existing relationship with the subject of a DCFS investigation, is there any kind of conflict of interest there?" Defense counsel objected on the ground of irrelevancy, but the trial court overruled the objection. On appeal, defendant argues the court thereby abused its discretion. See *People v. Morgan*, 197 Ill. 2d 404, 455 (2001).

¶ 100 The State disagrees. It argues that if, under her employer's policy on conflicts of interest, defendant knew she "had no legitimate reason for going to Andreanna's house, the

evidence establishes that the motive for going to the house [was] harassment of a witness"—which, in turn, could serve as a motive for criminal trespass to Andreanna's residence (on the theory, apparently, that a DCFS investigator is more harassing standing in one's living room than on one's doorstep). The State observes that although evidence of other wrongs, such as a violation of the DCFS policy on conflicts of interest, is "not admissible to prove the character of a person in order to show action in conformity therewith except as provided" by statutory law, "[s]uch evidence may *** be admissible for other purposes, such as proof of motive ***." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 101 It is not our place to decide *de novo* whether Maxwell's testimony was admissible as motive evidence; rather, we defer to such an evidentiary ruling unless we can fairly characterize it as "a clear abuse of discretion." *Morgan*, 197 Ill. 2d at 455. A ruling is an abuse of discretion only if the ruling is arbitrary, fanciful, or unreasonable or only if no reasonable person could take the trial court's view. *Id.* The question for us, then, is as follows: By deciding that the policy of DCFS on conflicts of interest was relevant, did the trial court make a decision that was arbitrary, fanciful, and unreasonable—a decision with which *no* reasonable person (thinking reasonably) could agree?

¶ 102 The answer is no. If indeed defendant recognized the house as belonging to Andreanna the moment she drove up to it, that defendant nevertheless forged on with her investigation might support an inference that she wished to be one of the investigators who inflicted fear upon Andreanna and her children—with the aim of shaking Andreanna's resolve to testify against her son. It could be argued that trespassing into Andreanna's residence was a way of maximizing the trauma. Usually, people do not enter someone else's house after being told by the head of the household to stay out, and, thus, in deciding whether defendant had been proven

guilty beyond a reasonable doubt of criminal trespass to a residence, a jury might naturally ask why defendant would have committed this offense. Evidence supporting an inference that defendant wanted to intimidate and harass Andreanna for agreeing to testify against her son arguably had *some* tendency to increase the probability that defendant, in pursuit of that end, would defy a command by Andreanna to stay out of her house. See *People v. Novotny*, 371 Ill. 58, 61-62 (1939); see also Ill. R. Evid. 401 (eff. Jan. 1, 2011) (" 'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."). If, in approaching Andreanna's house to perform the investigation, defendant was in knowing violation of her employer's policy on conflicts of interest—if, at her first glimpse of 1971 East Cantrell Street, defendant knew it was Andreanna's house and that DCFS policy required her to turn around and leave but she was unwilling to do so—that fact arguably would increase the likelihood that defendant had it in for Andreanna: that defendant had an overriding malicious desire to intimidate Andreanna *no matter what* and the "no matter what" included not only DCFS policy but also a previous command by Andreanna to never set foot in her house.

¶ 103 Defendant objects that by raising this new theory on appeal, *i.e.*, the admissibility of Maxwell's testimony to prove defendant's malicious motive to commit criminal trespass to a residence, the State does an about face from the theory it advocated in the trial court. In his closing argument to the jury, the prosecutor argued that the policy of DCFS on conflicts of interest was relevant to the question of authority, not motive. The prosecutor argued: "[Defendant] had a conflict of interest with DCFS and, therefore, could not enter as a DCFS agent. We know that very clearly from what Ms. Maxwell testified. So her entrance was without authority." Quoting from *People v. Denson*, 2014 IL 116231, ¶ 17, defendant argues that " 'while

a prevailing party may defend its judgment on any basis appearing in the record, it may not advance a theory or argument on appeal that is inconsistent with the position taken below.' "

¶ 104 We see no *inconsistency*, however, between arguing that Maxwell's testimony was relevant to the question of defendant's motive and arguing that her testimony was relevant to the question of authority. Those are not mutually exclusive arguments. See *id.* "[A] prevailing party generally may raise, in support of a decision, arguments that were not made in the trial court[,]" provided that the prevailing party does not contradict a position it took in the trial court or contradict a ruling to which it acquiesced in the trial court. *People v. Sloan*, 111 Ill. 2d 517, 522-23 (1986).

¶ 105 Even so, defendant argues, this new position that the State now takes on appeal would have required a limiting jury instruction below, and "the State did not tender a limiting instruction indicating that the DCFS conflict of interest policy was admitted for the limited purpose of showing [defendant's] motive to harass Andreanna." Illinois Rule of Evidence 105 (eff. Jan. 1, 2011) provides: "When evidence which is admissible *** for one purpose but not admissible *** for another purpose is admitted, the court, upon request, shall restrict the evidence to its proper purpose or scope and instruct the jury accordingly."

¶ 106 The burden of making such a request, however, is on the party that wants the benefit of the limiting instruction. *People v. Gratton*, 28 Ill. 2d 450, 455 (1963). "A defendant who desires the advantage of limiting instructions has the burden of submitting them." *People v. Bodoh*, 200 Ill. App. 3d 415, 431 (1990). There is a typical procedure leading to the tender of a limiting instruction. Normally, the defendant first objects to the propensity evidence (in this case, defendant's alleged violation of the DCFS policy on conflicts of interest, which would be a wrong other than the one charged (see Ill. R. Evid. 404(3)(b) (eff. Jan. 1, 2011). In response to

the defendant's propensity objection, the State then identifies a legitimate purpose for the evidence, that is, a purpose other than "prov[ing] the character of [the defendant] in order to show action in conformity therewith ***." *Id.* Finally—assuming that the probative value of the evidence is not substantially outweighed by the danger of unfair prejudice, confusion of the issues, or waste of time (see Ill. R. Evid. 403 (eff. Jan. 1, 2011))—the defendant tenders a proposed jury instruction limiting consideration of the evidence to the legitimate purpose the State identified (see Ill. R. Evid. 105 (eff. Jan. 1, 2011); *Bodoh*, 200 Ill. App. 3d at 431). In this case, defendant short-circuited that usual procedure by omitting to make a propensity objection to Maxwell's testimony. Instead, defendant objected on the grounds of irrelevancy and legal conclusoriness. But see *People v. Daniels*, 2016 IL App (4th) 140131, ¶ 76 ("The concern is that other-crimes evidence is too relevant and might cause the jury to convict because it believes the defendant is a bad person.").

¶ 107 Reasonable minds could differ on this question, but, arguably, Maxwell's testimony was relevant for a limited purpose, to strengthen the inference that defendant had a motive to commit criminal trespass to a residence, namely, a desire to personally harass Andreanna for agreeing to be the State's primary witness against defendant's son in a criminal case pending against him for attempted murder. See *Morgan*, 197 Ill. 2d at 455.

¶ 108 C. Plain Error in the Prosecutor's Closing Argument

¶ 109 If a party says something objectionable in a closing argument, the opposing party must object at that time (as well as raise the issue in a posttrial motion). *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Washington*, 375 Ill. App. 3d 243, 251 (2007). Generally, in the absence of a contemporaneous objection, the doctrine of procedural forfeiture bars any appellate issue about a closing argument. *Washington*, 375 Ill. App. 3d at 251. We say "generally" because

the doctrine of plain error can avert a procedural forfeiture if "either (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. Herron*, 215 Ill. 2d 167, 186-87 (2005).

¶ 110 In the present case, defense counsel never made any contemporaneous objection to the errors that defendant now claims the prosecutor made in his closing and rebuttal arguments. Nevertheless, defendant argues that because the evidence was closely balanced, we should consider these unpreserved errors. See *id.*

¶ 111 1. *The Initial Question of Whether There Was a Clear or Obvious Error*

¶ 112 a. The Prosecutor's Argument That Defendant Intended to Intimidate Andreanna Into Not Testifying Against Defendant's Son

¶ 113 The first step in plain-error analysis is to decide "whether there was a clear or obvious error at trial." *People v. Sebby*, 2017 IL 119445, ¶ 49. Defendant contends that the prosecutor clearly erred by asserting to the jury, over and over again, that defendant went to Andreanna's residence "to harass a witness" and "to threaten Andreanna Wood to try to get her not to testify against [defendant's] son." According to defendant, this inference the prosecutor drew was unjustifiable and unsupported by the evidence, considering that, during her visit to Andreanna's residence, defendant never demanded that Andreanna refrain from testifying against Nirin, never uttered a threat against Andreanna, and never so much as referred to the criminal charge pending against Nirin.

¶ 114 Under the circumstances, however, defendant did not have to explicitly say any of those things to Andreanna before an inference might reasonably be drawn that defendant had a motive to intimidate her. "In presenting a closing argument, the prosecutor is allowed a great deal of latitude and is entitled to argue all reasonable inferences from the evidence." *People v. Nieves*, 193 Ill. 2d 513, 532-33 (2000). Therefore, to set aside the procedural forfeiture of

defendant's objection, we would have to conclude it is clear or obvious that by inferring a motive of defendant to intimidate Andreanna, the prosecutor exceeded the great deal of latitude that prosecutors are allowed in their closing arguments. See *Sebby*, 2017 IL 119445, ¶ 49; *Nieves*, 193 Ill. 2d at 532-33. We are unable to so conclude. We are unconvinced that the reasonableness of the prosecutor's inference depended on whether defendant explicitly demanded to Andreanna that she refrain from testifying against Nirin on pain of losing custody of her children to DCFS. A threat need not always be spelled out. Sometimes it is shrewder to let the threat remain implicit in the circumstances—or to let the very ambiguity of the circumstances do the intimidating.

¶ 115 b. The Prosecutor's Comment That Defendant Had Been to Andreanna's House "to See Grandchildren"

¶ 116 In his closing argument to the jury, the prosecutor asserted that before the incident in question, defendant had been to Andreanna's house "numerous times on family gatherings, on Christmas, *to see grandchildren*, everything like that." (Emphasis added.) Defendant points out, correctly, that the emphasized phrase is unsupported by evidence. Although Andreanna testified that defendant had "been [at Andreanna's home] with her grandkids" and that "[h]er grandkids ha[d] been there," Andreanna never testified that defendant had ever come to Andreanna's house to visit grandchildren. There was no evidence that Andreanna and Nirin had any children together. The prosecutor's assertion that defendant had been to Andreanna's house "to see grandchildren" was a clear or obvious error because the assertion had no arguable basis in the evidence. See *Sebby*, 2017 IL 119445, ¶ 49. "[A] prosecutor may not misstate the evidence and may not argue assumptions that are not based on the evidence." *People v. Jackson*, 2018 IL App (5th) 150274, ¶ 71.

¶ 117 c. The Prosecutor's Argument on Defendant's Lack of "Authority" From DCFS

¶ 118 Defendant contends that the prosecutor further misled the jury on the all-important legal issue of authority. The prosecutor told the jury, erroneously, that one of the reasons why defendant was "without authority" (720 ILCS 5/19-4(a)(2) (West 2016)) to enter Andreanna's residence was that the policy of DCFS on conflicts of interest barred defendant from entering the residence. For example, the prosecutor argued to the jury: "[Defendant] had a conflict of interest with DCFS and, therefore, could not enter as a DCFS agent. We know that very clearly from what Ms. Maxwell testified. So her entrance was without authority." Although it is true that the prosecutor cited Andreanna's prohibition as a reason why defendant lacked authority to enter the residence, the prosecutor cited the policy of DCFS on conflicts of interest as an additional reason why defendant lacked such authority.

¶ 119 Actually, for purposes of section 19-4(a)(2) of the Criminal Code of 2012 (*id.*), DCFS had no say, one way or the other, whether defendant had authority to enter Andreanna's residence, and at no point in the jury trial did the defense say or imply otherwise. "Criminal trespass cases consistently refer to the source of the authority to enter as the consent or permission of a person having an ownership or possessory interest in the property." *People v. Brant*, 394 Ill. App. 3d 663, 670 (2009). An occupant of a house has a possessory interest in the house. *Robinson v. Illinois Power Co.*, 338 Ill. App. 3d 1088, 1091 (2003). As an occupant who had a possessory interest, Andreanna's unemancipated daughter could confer authority upon defendant to enter the house (see *Brant*, 394 Ill. App. 3d at 670; *Robinson*, 338 Ill. App. 3d at 1091)—*unless* Andreanna, who had an ownership or possessory interest superior to that of her unemancipated daughter, had previously told defendant to stay out of the house (see *Long*, 283 Ill. App. 3d at 226). Because there was no evidence that DCFS had any ownership or possessory interest in 1971 East Cantrell Street, DCFS could confer no authority on defendant to enter the

house at that address. DCFS was equally powerless to override either the permission the child gave defendant to enter the house or Andreanna's alleged command to defendant that she stay away from her house. In short, the policy of DCFS on conflicts of interests was legally irrelevant to the question of authority under section 19-4(a)(2) (720 ILCS 5/19-4(a)(2) (West 2016)), and the prosecutor's suggestion to the contrary, in his closing argument, was a clear and obvious error. See *People v. Carbajal*, 2013 IL App (2d) 111018, ¶ 29 ("Though the State is given wide latitude in closing arguments [citation], the State is not allowed to misstate the law ***.").

¶ 120 The appellate court has held: "Improper use during closing argument of evidence that was introduced for a limited purpose can be reversible error." *People v. Hood*, 229 Ill. App. 3d 202, 218 (1992). By corollary, if evidence was admissible only for a limited purpose—in this case, as proof of defendant's motive—the prosecutor's use of that evidence, in his closing argument, for an illegitimate purpose is an error.

¶ 121 2. *The Next Question of Whether the Evidence Was Closely Balanced*

¶ 122 In our qualitative review of the evidence (see *Sebby*, 2017 IL 119445, ¶ 53), we conclude, for three reasons, that the evidence in this case was closely balanced.

¶ 123 First, although it was critical to the State's case that before the alleged trespass, Andreanna told defendant to stay away from her house and although Andreanna testified that she repeatedly had told defendant to stay away from her house, Andreanna testified to only one specific occasion when she so told defendant: Andreanna's first trip to defendant's house to retrieve her car. In response to a leading question from the prosecutor, Andreanna testified that she told defendant, on that occasion, to "stay away from [her] home." A reasonable trier of fact could regard that testimony by Andreanna as potentially pivotal to the case and worth nailing down with all possible corroboration. See *Long*, 283 Ill. App. 3d at 226 ("[A] parent owner of

the premises has a superior interest in the home to that of an unemancipated minor residing there[,] and *** such parent's withdrawal of authority to enter the house supersedes any authority the minor may have to invite others to enter the home."). Thus, after hearing Andreanna testify, "When we pulled up to get my keys, my brothers and sister in law were with me," a reasonable trier of fact might well wonder why the State never called those additional three or more witnesses to corroborate that Andreanna had indeed told defendant, on this occasion, to stay away from her home—considering that (1) under the tense circumstances, everyone in the car likely would have been paying attention to what was said and (2) one might assume that those relatives of Andreanna would have been as supportive of her as possible, short of perjury. This unexplained omission could be held against the State. A reasonable trier of fact might wonder if the reason why the State omitted calling those three or more additional witnesses was that they would have been unhelpful to the prosecution. That is to say, they would *not* have corroborated that Andreanna told defendant, on this occasion, to stay away from her home—perhaps because Andreanna told defendant no such thing.

¶ 124 Second, Andreanna seemed to have a slight tendency to "improve" her testimony. Initially, she testified that defendant had been to her house "several" times—meaning that defendant had been to her house "more than two but fewer than many" times. Merriam-Webster's Collegiate Dictionary 1070 (10th ed. 2000). Then, three sentences later, Andreanna testified that defendant had been to her house "hundreds" of times. Considering that Andreanna and Nirin had been in a dating relationship for only eight months to a year and that Andreanna had become acquainted with defendant through Nirin, Andreanna and defendant would have known one another for no longer than one year. A reasonable trier of fact could find it to be implausible that defendant had been to Andreanna's house 200 or more times in that 8-to-12-

month period, prior to which the two had been complete strangers to one another. Also, on cross-examination, Andreanna testified: "[Defendant] held [the clipboard] on her hip, and she proceeded to tell me that she was here for my kids." In the preceding direct examination, however, Andreanna never mentioned that defendant made that statement to her (that she was there for her kids), although, in the direct examination, Andreanna purported to quote what defendant had said to her. Some reasonable minds could suspect that Andreanna was prone to embellishment and exaggeration.

¶ 125 Third, Andreanna described what appeared to be a family feud between the Wallses and the Woods. Thus, her impartiality could be called into question.

¶ 126 Fourth, if, as Andreanna testified, defendant had been to her house "lots of times"—indeed, "hundreds" of times—such as for Christmas and for meals, a reasonable trier of fact might wonder why the State called no other witness to so testify. A reasonable trier of fact might wonder why not even Drenesha, Andreanna's sister, so testified. Arguably, defendant's frequent presence in Andreanna's home was another fact worth nailing down, considering that, unless defendant had been accustomed to visit Andreanna, Andreanna had less of an occasion to tell defendant she henceforth was unwelcome in her home.

¶ 127 Fifth, it could strike a reasonable trier of fact as illogical and implausible that, after the adolescent child voluntarily opened the door for defendant and admitted her into the house (as the prosecutor conceded the child had done), the child would go running in a panic to Andreanna and say, " ['O]h[,] my god, [M]om. She's in the house. Nirin's mom is in the house. She's in the house, [M]om. You got to come up here[,'] " as Andreanna claimed the child had said to her. A reasonable trier of fact might think that makes no sense—and, again, suspect an embellishment.

¶ 128 For those reasons, we find that the evidence—though sufficient to support the conviction—was closely balanced for purposes of the plain-error doctrine. Whether defendant lacked authority to enter the residence at 1971 East Cantrell Street depended on Andreanna's uncorroborated testimony that she previously forbade defendant to come to the residence. See *Long*, 283 Ill. App. 3d at 226. In her own testimony, defendant denied that Andreanna had forbidden her to come to the residence, and Andreanna's credibility is not clearly superior to that of defendant. Nor is the evidence of guilt overwhelming. *Cf. Sebby*, 2017 IL 119445, ¶ 63 (evidence closely balanced because the outcome depended on a choice between two versions that were both credible) with *People v. Anderson*, 407 Ill. App. 3d 662, 672 (2011) (evidence not closely balanced because the defendant's version was implausible).

¶ 129 3. *The Final Question of Whether These Clear or Obvious Errors Were of Such a Nature That They Could Have Made a Difference in the Outcome*

¶ 130 Again, there are two alternative "prongs" of plain-error review: " '(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. Ely*, 2018 IL App (4th) 150906, ¶ 15 (quoting *Herron*, 215 Ill. 2d at 187)). Defendant invokes only the first prong.

¶ 131 "[F]or purposes of the first prong [of plain-error analysis], the claimed error—substantial or not—has to be *of such a nature* that it might have tipped the scales against the defendant." (Emphasis in original.) *Id.* ¶ 18. "Whereas prejudice is *presumed* for purposes of the second prong of plain error, it must be *proved* for purposes of the first prong." (Emphases in original.) *Id.*

¶ 132 Thus, considering that the evidence in this case was closely balanced, we have to decide whether the two clear or obvious errors we have discussed were of such a nature that they might have tipped the scales against defendant. See *id.*

¶ 133 The first error was the prosecutor's misstatement of the evidence: his statement that defendant had been to defendant's house numerous times "to see grandchildren." The prosecutor made that misrepresentation of the evidence only once in his closing statement, and the trial court instructed the jury that "[n]either opening statements nor closing arguments are evidence and any statement or argument made by the attorneys which is not based on the evidence should be disregarded." The supreme court has said:

> "Instructing the jury that arguments are not evidence will not, in every instance, cure the defect caused by introduction of such evidence. Whether the remarks and/or evidence constitute error depends, in each case, on the nature and extent of the statements and whether they are probative of [the] defendant's guilt." *People v. Blue*, 189 Ill. 2d 99, 132 (2000).

¶ 134 The prosecutor's misstatement of evidence was isolated rather than extensive, but it was indirectly probative of defendant's guilt. That defendant had grandchildren at Andreanna's house would have increased the likelihood that defendant had been to Andreanna's house numerous times to visit them and in turn would have increased the likelihood that Andreanna had occasion to tell defendant that she henceforth was to stay away from Andreanna's residence.

¶ 135 This misstatement of the evidence was not the only error the prosecutor made in his closing argument. The prosecutor also argued that one of the reasons why defendant lacked authority to enter Andreanna's residence was that the policy of DCFS on conflicts of interest had required defendant to recuse herself from the investigation. If (for the reasons we have discussed) the jury was uncertain whether to believe Andreanna's uncorroborated testimony that she previously forbade defendant to enter her residence, the jury could have decided it did not matter because, in any event, as the prosecutor argued, DCFS policy forbade defendant to enter

Andreanna's residence and, hence, defendant entered the residence "without authority" (720 ILCS 5/19-4(a)(2) (West 2016))—that is to say, without DCFS authority. The jury could have decided, incorrectly, that if the policy of DCFS on conflicts of interest forbade defendant to even approach the residence, it did not matter that an occupant of the house had let defendant in and it did not matter that Andreanna's testimony was vague and uncorroborated on the subject of her previous prohibition.

¶ 136 Because the evidence is closely balanced, the risk is too great that the prosecutor's misstatements of the evidence and the law made a difference in the outcome of the trial. See *People v. Buckley*, 282 Ill. App. 3d 81, 90 (1996). The jury instructions contained no guidance that would have cured the misstatement of law. *Cf. People v. Keene*, 169 Ill. 2d 1, 25 (1995) (misstatements of law in closing arguments "are often held remedied by jury instructions"). We are unable to say, with a reasonable degree of certainty, that the errors did not contribute to the guilty verdict. See *Buckley*, 282 Ill. App. 3d at 90. Nor are we able to say, with reasonable certainty, that the jury could not have reached a contrary verdict in the absence of the erroneous remarks. See *id.*

¶ 137 III. CONCLUSION

¶ 138 For the foregoing reasons, we reverse the trial court's judgment and remand this case for further proceedings consistent with this order.

¶ 139 Reversed and remanded.