NOT RECOMMENDED FOR PUBLICATION

No. 23-3962

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff-Appellee,	)	
	)	ON APPEAL FROM THE UNITED
v.	)	STATES DISTRICT COURT FOR
	)	THE NORTHERN DISTRICT OF
MICHAEL J. ZACHARIAS,	)	OHIO
	)	
Defendant-Appellant.	)	

O R D E R

Before: BOGGS, WHITE, and RITZ, Circuit Judges.

Michael J. Zacharias appeals the district court's judgment of conviction and sentence for sex-trafficking crimes. The parties have waived oral argument, and this panel unanimously agrees that oral argument is not needed. *See* Fed. R. App. P. 34(a). For the reasons set forth below, we affirm.

I. Factual Background

Zacharias was a Catholic priest who served in several parishes throughout northwest Ohio between 1999 and 2020. While working as a seminarian at a Catholic elementary school in Toledo during the 1999-2000 school year, Zacharias met the three victims in this case—brothers Robert, a sixth-grader, and Grant, a kindergartner, and an eighth-grade boy named Graham. During that school year, Zacharias began to mentor Robert after learning of his difficult home life. He spent time with Robert, visited Robert's family's home, and befriended Robert's mother. Zacharias left that parish in 2000, but he continued a relationship with Robert, who struggled with drug and alcohol problems throughout junior high and high school. Despite knowing that Robert was using opioids, Zacharias often gave him money during their visits. When Robert was in high school and

under the age of 18, Zacharias began to offer him money in exchange for allowing Zacharias to perform sexual acts on him. Robert eventually "gave in" and accepted increasing amounts of money from Zacharias for allowing him to perform escalating sexual acts. This continued after Robert turned 18 and as he continued to struggle with drug addiction.

In 2010, Robert pleaded guilty to burglary and served a little over two years in prison. While Robert was in prison, Zacharias began reaching out to Grant, who was a minor at the time and, like his brother, struggling with an opioid addiction. When Grant told Zacharias that he was struggling from opioid-withdrawal symptoms, Zacharias offered to give Grant money for more drugs if he would let him perform oral sex on him. Grant agreed. This happened on one more occasion while Grant was still a minor and one final time after Grant turned 18.

Back in 1999, when Zacharias was working as a seminarian at the Toledo parochial school, Zacharias also befriended eighth--grader Graham. During that school year, Zacharias repeatedly attempted to see or touch Graham's penis. On two occasions, Zacharias touched Graham inappropriately, and on another he pulled Graham's shorts down and began to perform oral sex on him.

Graham had no contact with Zacharias after he left the school until Zacharias unexpectedly called him in 2009. At that point, Graham was addicted to opioids after having been prescribed oxycodone for injuries sustained during a car accident in 2008. He told Zacharias about his struggles. Zacharias and Graham began to speak more regularly, and eventually, Zacharias began to offer Graham money in exchange for photographs of his penis and sexually explicit communication via text. Because he needed money to sustain his drug habit, Graham accepted Zacharias's offer. Zacharias also repeatedly offered Graham increasing amounts of money for in-person sexual encounters. Graham always declined. But during one of Graham's periods of relapse, he lost all his money gambling. Knowing that Zacharias had offered him $3500 to meet with him in person, Graham met up with Zacharias and allowed him to perform oral sex on him in exchange for money. These in-person encounters and text communications continued for the next several years while Graham was in the throes of his drug addiction.

In 2020, Robert was arrested on drug charges. During a search of Robert's phone, law enforcement discovered text messages with Zacharias, which prompted an investigation into Zacharias's conduct. Upon learning of Zacharias's arrest, Graham's sister called the police tip line and identified Graham as a possible victim.

II. Relevant Procedural History

Zacharias was charged in a superseding indictment with two counts of sex trafficking of a minor by force, fraud, and coercion, in violation of 18 U.S.C. § 1591(a)(1), (b)(1) and (b)(2), and three counts of sex trafficking by force, fraud, or coercion, in violation of 18 U.S.C. § 1591(a)(1) and (b)(1). He proceeded to trial on all counts.

Prior to trial, Zacharias moved to exclude FBI Special Agent Dan O'Donnell's testimony about the process of "grooming" minor victims of sexual abuse. Zacharias argued that O'Donnell's testimony was not relevant to the charged conduct and that, even if it was, the prejudicial effect it would have on the jury substantially outweighed its probative value. The district court denied the motion.

During trial, the government introduced evidence of Zacharias's internet search activity from his electronic devices, which included pornographic websites and search terms. Zacharias objected, arguing that evidence of his history of visiting gay-pornography sites was irrelevant and prejudicial. The district court overruled the objection, finding that the evidence was relevant because Zacharias denied any sexual activity with the victims when they were minors and the internet-search terms and website titles included phrases such as "teen boy." The court allowed the government to introduce the search terms and website titles but not the videos or images associated with those searches and websites.

Before the case was submitted to the jury, the prosecutor and Zacharias's attorney offered closing statements. At the end of the prosecutor's rebuttal to Zacharias's closing statement, she asked the jury: "Would you let [Zacharias] watch your kids?" Zacharias did not object.

During deliberations, the jurors asked the court what to do if they could not reach a unanimous verdict on one count and did not believe they could come to an agreement. At the time,

the judge who presided over the trial, Judge Zouhary, was out of the courthouse. Another judge, Judge Knepp, held a telephone conference with counsel and Judge Zouhary to discuss how to answer the jury's question. The attorneys and the court agreed that, in Judge Zouhary's absence, Judge Knepp would give the jury a modified *Allen*[1] charge, as set forth in Sixth Circuit Pattern Jury Instruction 9.04. Zacharias's counsel told the court that his "preference would be to have [Zacharias] present and be present with him, as his counsel, in court when the jury is given an *Allen* charge." The court denied that request, stating that the charge would be read in the courtroom without parties or counsel. At the conclusion of the conference, defense counsel again objected to the reading of the *Allen* charge outside the presence of the defendant and his counsel, stating, "My client's Sixth Amendment rights are implicated here." Judge Knepp then read the *Allen* charge to the jury in the jury room without Zacharias or his attorneys present.

Following the reading of the *Allen* charge, the jury returned a verdict of guilty on all counts. The district court sentenced Zacharias to a total term of life imprisonment.

III. Discussion

On appeal, Zacharias first contends that the district court violated his right to be present for all critical stages of the trial when it gave the jury an *Allen* charge outside of his and his attorney's presence. Next, he argues that the court improperly admitted evidence of his history of searching for and accessing gay pornography on the internet. He also challenges the admission of O'Donnell's testimony regarding grooming. Fourth, he contends that the court plainly erred by allowing the prosecutor to ask the jurors during her closing argument whether they would let Zacharias watch their children. Finally, Zacharias argues that the cumulative effect of the district court's errors warrants a new trial.

A. The Allen Charge

Zacharias contends that "[t]he district court violated [his] right to be present by giving the *Allen* charge outside his presence and the presence of his counsel over a contemporaneous objection." This claim implicates two rights: the right to representation by counsel at critical

[1] *Allen v. United States*, 164 U.S. 492, 501-02 (1896).

stages of a criminal proceeding and the right of a defendant to be physically present at every stage of trial. We discuss each in turn.

A defendant has a constitutional right to counsel at all critical stages of a criminal proceeding. *United States v. Cronic*, 466 U.S. 648, 659 (1984). If counsel was totally absent during a critical stage of trial, the defendant is entitled to relief "without any showing of prejudice." *Id.* at 659 n.25. In some circumstances, "reinstruction of the jury is a 'critical stage' of the trial" that requires the presence of counsel. *United States v. Brika*, 416 F.3d 514, 525 (6th Cir. 2005); *see French v. Jones*, 332 F.3d 430, 438 (6th Cir. 2003). In *Brika*, however, we held that "where [defense] counsel was afforded the opportunity to preview, argue about, and object to the judge's proposed jury instructions, the actual moment of instructing the jury does not constitute a critical stage of the trial." 416 F.3d at 525; *see Hudson v. Jones*, 351 F.3d 212, 217 (6th Cir. 2003) ("[R]eading instructions to the jury is not a critical stage of the proceedings if trial counsel has previously agreed to the instructions."); *see also United States v. Morrison*, 946 F.2d 484, 503 (7th Cir. 1991) ("[W]e do not find the court's *reading* of the jury instructions (as opposed, perhaps to a court's jury instruction conference with counsel) to have been a critical stage of the proceedings."). Here, the record reflects that Judge Knepp conferred with counsel before he gave the *Allen* charge. The parties came to an agreement about the exact text of the charge. Thus, Judge Knepp's reading of the charge as agreed to by the parties did not constitute a critical stage of the proceedings.

Zacharias argues that *Brika* is distinguishable because Brika's attorney, after having had the opportunity to discuss and object to the proposed supplemental jury instruction, willingly permitted the court to give the instruction to the jury without him or his client being present. Here, in contrast, Zacharias's attorney requested that Zacharias be present for the reading of the *Allen* charge and objected when the court denied that request. Although we found in *Brika* that "counsel's decision to permit the judge to speak to the jury in the jury room was an invited error that did not result in prejudice to Brika," that finding concerned only whether Brika could establish prejudice and did not bear on our determination that the reading of the agreed-upon supplemental

instruction was not a critical stage of the proceeding. *Id.* The fact that defense counsel asked that he and Zacharias be present during the actual reading of the charge did not render the reading of the charge a critical stage of the proceeding. Because Zacharias was not denied counsel at a critical stage of the proceedings, there is no presumption of prejudice. And given that Judge Knepp read the *Allen* charge agreed to by the parties, Zacharias cannot show that he suffered actual prejudice as a result of the court's denial of counsel's request to be present.

Zacharias further contends that his absence during the court's conference with counsel about the *Allen* charge and the reading of the charge to the jury violated his right to be present at all stages of the proceeding. "A defendant's right to be physically present at every stage of his trial has a longstanding tradition in this country's criminal jurisprudence." *Gray v. Moore*, 520 F.3d 616, 622 (6th Cir. 2008). We have held that "a defendant's right to be present at every stage of the trial is not absolute, but exists only when 'his presence has a relation, reasonably substantial, to the fullness of his opportunity to defend against the charge.'" *United States v. Henderson*, 626 F.3d 326, 343 (6th Cir. 2010) (quoting *Brika*, 416 F.3d at 526).

Zacharias contends that, "[w]hile . . . counsel had an opportunity to review and discuss the charge, [counsel] was denied the opportunity to review the charge with [him] and be assisted by him." He states that he "remained completely uninformed as to the need for an *Allen* charge and the substance of it." But Zacharias fails to show how his absence from counsel's conference thwarted his right to a fair and just trial. He does not identify any error in the *Allen* charge that was read to the jury and does not explain what assistance he would have offered that would have resulted in a different outcome. Indeed, we have held that a criminal defendant has no due-process "right to attend a conference between the court and counsel concerning the legal matter of the instructions to be given to the jury." *United States v. Hills*, 27 F.4th 1155, 1187-88 (6th Cir. 2022).

Zacharias further argues that his absence from the reading of the charge to the jury prejudiced him because "the jury likely inferred incorrectly that [he] stood accused of some misconduct based on his unexplained absence." But neither party was present during the reading of the charge. "[S]ince only the judge was present, the jury could hardly have drawn prejudicial

conclusions about [Zacharias]'s absence." *Brika*, 416 F.3d at 527. We find no error warranting reversal in the district court's handling of the *Allen* charge.

B. Evidentiary Rulings

"We review a district court's decision to admit evidence for abuse of discretion." *United States v. You*, 74 F.4th 378, 388 (6th Cir. 2023). "A district court abuses its discretion when it improperly applies the law, uses the wrong legal standard, or relies on clearly erroneous findings of fact." *Id.* "In reviewing the trial court's decision for an abuse of discretion, the appellate court must view the evidence in the light most favorable to [the government], giving the evidence its maximum reasonable probative force and its minimum reasonable prejudicial value." *United States v. Hruby*, 19 F.4th 963, 969 (6th Cir. 2021) (quoting *United States v. Whittington*, 455 F.3d 736, 739 (6th Cir. 2006) (alteration in original)). Even when the district court abuses its discretion in admitting evidence, reversal is warranted only if the error is not harmless. *United States v. Childs*, 539 F.3d 552, 559 (6th Cir. 2008).

Zacharias challenges the evidence of his internet search activity and the expert testimony about grooming; he argues that both were irrelevant and more prejudicial than probative. Evidence is relevant if it tends to make a fact of consequence "more or less probable than it would be without the evidence." Fed. R. Evid. 401. A court may exclude relevant evidence if its probative value is substantially outweighed by the risk of unfair prejudice. Fed. R. Evid. 403.

1. Internet Search Activity Evidence

Through the testimony of Officer David Morford with the Ohio Narcotics Intelligence Center, who conducted a digital forensic analysis of Zacharias's computers, the government introduced evidence that Zacharias visited websites with the following titles: (1) "HD images, sex boy teen, gay, first time teacher, Mike Manchester is working, porn video, 02128," (2) "Gay porn videos and free gay men twink sex movies, porn hub," (3) "Discreet gay section in basement while parents are asleep upstairs, Pornhub.com," and (4) "Ex-priest accused of sexual abuse was killed after placing Craigslist ad, police say, New York [T]imes." The government also introduced evidence that Zacharias searched the internet with the term "[a]nal sex, giving head, Graham D.

twice, tender dick after cumming." And one of his devices had a cookie on it for the website "hisfirstgaysex.com."

Defense counsel objected to the introduction of this evidence, arguing that evidence of Zacharias's web searches for gay pornography was irrelevant and prejudicial. The district court found that, in light of Zacharias's denial that he committed any sex acts with the victims when they were minors, the evidence had some relevance that was not substantially outweighed by any prejudice and overruled the objection. The court, however, admitted only the website titles and the words searched and did not allow any videos to be shown.

Zacharias argues that the district court abused its discretion by admitting this evidence because his "legal pornography preferences and whether he was a homosexual had nothing to do with the issue of whether he had sex with a minor or whether his sex with adults occurred through force, fraud, or coercion." He contends that the evidence "suggested that [he] must have sexually assaulted minors as charged . . . because he was a homosexual who viewed legal gay pornography on a mainstream website."

The district court did not abuse its discretion by admitting evidence of this internet search activity. Zacharias was charged with two counts of sex trafficking of a minor by force, fraud, or coercion. As part of his defense to these counts, Zacharias denied ever engaging in sex acts with the victims when they were minors. He contends that the evidence in question showed only that he had "an interest in youthful-but-legal male performers," but the district court reasonably found otherwise. The terms "teen" and "boy" clearly referred to age, and the terms referring to "teacher," "parents asleep upstairs," "twink," and "hisfirstgaysex.com" are suggestive of youth or minors. Because the evidence suggested sexual interest in young boys, it tended to make it more probable that Zacharias engaged in sexual acts with the victims when they were minors and was therefore relevant. *See United States v. Ingram*, 846 F. App'x 374, 379-80 (6th Cir. 2021) (recognizing that a defendant's history with pornography that is similar to the charged sexual offenses can be properly admitted as relevant).

With respect to the news article about the murder of an ex-priest who had been accused of sexual abuse, giving this evidence its maximum probative value, Zacharias's viewing of the article at a time when he (a priest himself) was engaging in sexual acts with individuals he had been involved with as minors tended to make it more probable that he committed the acts charged.

The probative value of this evidence was not outweighed by any prejudicial effect. Zacharias's brief does not explain why evidence of his internet-search history would unfairly prejudice him beyond the assertion that the evidence suggested he "fit the stereotypes of homosexuals-as-child-molesters and abusive Catholic priests." But "[e]vidence that is prejudicial only in the sense that it paints the defendant in a bad light is not unfairly prejudicial pursuant to Rule 403." *United States v. Sanders*, 95 F.3d 449, 453 (6th Cir. 1996); *see United States v. Libbey--Tipton*, 948 F.3d 694, 704 (6th Cir. 2020) (rejecting defendant's challenge in child-pornography case to admission of his prior conviction for gross sexual imposition of a minor and explaining that the "stigma associated with child molestation" does not amount to unfair prejudice under Rule 403). Moreover, any prejudicial effect was mitigated by the fact that the government spent only limited time on the evidence and the district court allowed the introduction of only the website titles and search terms. Given the district court's broad discretion and viewing the evidence in the light most favorable to the government, we decline to hold that the district court abused its discretion by admitting this evidence.

2. Expert Grooming Evidence

Next, Zacharias challenges the district court's admission of the testimony of FBI Special Agent Dan O'Donnell concerning the grooming of minor victims of sexual abuse as barred by Rule 403. Prior to trial, Zacharias moved to exclude this evidence, arguing that it would "unfairly prejudice [him] since the jury will be misled and confused concerning the import of the 'grooming' evidence." The district court denied Zacharias's motion, concluding that the evidence was admissible to show the "alleged modus operandi and to assist the jury in understanding a specialized area of information." Noting the government's assurance that O'Donnell would not offer his personal opinion or an evaluation of Zacharias's case, the court informed the parties that

it would give a limiting instruction to the jury to remind them to consider O'Donnell's "testimony and opinions only as general principles."

At the outset of O'Donnell's testimony, the government established that he would be testifying as a "blind expert" with no knowledge of the case and that the purpose of his testimony was to "educate members of the jury on characteristics that are common to certain types of offenders who engage in the grooming process to sexually abuse children." O'Donnell testified that the term grooming describes "clusters of behaviors" that child sex offenders use to "manipulate, coerce, and exploit . . . children for the purpose of . . . engaging in sexual activity, preventing discovery of that activity, and preventing or delaying disclosure." O'Donnell described five stages of the grooming cycle: (1) identifying a target based on availability, vulnerability, and desirability; (2) establishing a connection with the child and his or her caregivers; (3) gathering information about the child and his or her caregivers and surroundings; (4) filling needs and exploiting vulnerabilities of the child; and (5) lowering inhibitions. In discussing these five stages, O'Donnell explained the purpose of each stage and gave examples of behaviors an offender might exhibit to accomplish these purposes. O'Donnell explained that "grooming is not necessarily a step--by--step process that you must engage in one behavior in order to get to the next steps. But, rather, is much more dynamic and is more of a cycle."

Zacharias argues on appeal that O'Donnell's testimony was minimally probative because he testified only "about what sometimes happens in other criminal cases" and gave "subjective, conclusory, and hedged testimony." Zacharias further contends that the prejudicial effect of the evidence outweighed any probative value because the testimony "was divorced from the facts of the case, could not be impeached or effectively cross-examined because it was non-falsifiable, and effectively amounted to innuendo that [he] was guilty because some of his behaviors could be consistent to what Agent O'Donnell said might be grooming."

As Zacharias acknowledges, other circuits have held that it is not an abuse of discretion to admit expert testimony on grooming in the prosecution of a sexual offense against a minor. *See United States v. Dingwall*, 6 F.4th 744, 754 (7th Cir. 2021); *United States v. Halamek*, 5 F.4th

1081, 1088 (9th Cir. 2021); *United States v. Batton*, 602 F.3d 1191, 1202 (10th Cir. 2010); *United States v. Hitt*, 473 F.3d 146, 158-59 (5th Cir. 2006); *United States v. Hayward*, 359 F.3d 631, 636-37 (3d Cir. 2004). And we recently held the same. In another child-exploitation case, we rejected the defendant's challenge to the admission of expert testimony on common grooming practices among child-sex offenders, finding that "[g]rooming methods are relevant to evaluating [the defendant]'s behavior and may be fairly considered to be 'beyond the common knowledge of lay jurors.'" *United States v. Miller*, No. 23-5485, 2024 WL 3760328, at *8 (6th Cir. Aug. 12, 2024) (quoting *Batton*, 602 F.3d at 1201). We further held that the defendant was not unfairly prejudiced by admission of the grooming testimony, noting that the agent "did not testify about Miller's actions in th[e] case, admitted that she did not review the specific [evidence] at issue, and did not suggest to the jury that it should deem Miller's actions as grooming." *Id.*

Similarly, O'Donnell's testimony on grooming as a general principle was relevant to help the jury understand Zacharias's relationship with Robert, Grant, and Graham when they were minors and contextualize the conduct he engaged in as those relationships developed, such as giving gifts, befriending family members, and visiting their homes. What is more, in his interview with the FBI after his arrest, Zacharias himself characterized his own behavior toward Robert as grooming. O'Donnell's testimony was relevant to help the jury understand what Zacharias meant by that statement. And as in *Miller*, the probative value of O'Donnell's testimony was not outweighed by the risk of unfair prejudice. O'Donnell testified as a blind expert with no knowledge about the facts of the case, and the court gave the jury a limiting instruction, reminding them that O'Donnell's testimony did not concern the facts or specifics of this case. We presume that juries in criminal trials follow the trial court's instructions. *See Bales v. Bell*, 788 F.3d 568, 579 (6th Cir. 2015). Given the case law upholding the admission of expert grooming evidence in child-sexual-abuse cases, we cannot find that the district court abused its discretion by admitting the evidence in this case.

C. Prosecutor's Closing Argument

Zacharias next argues that one of the prosecutor's remarks in her closing rebuttal argument amounted to prosecutorial misconduct that warrants a new trial. According to Zacharias, the prosecutor committed misconduct when she made the following argument to the jury at the end of her rebuttal: "Would you rely on what he told you, based on everything you saw on the witness stand, based on everything you know that contradicts what he told you? Would you let him watch your kids? Find him guilty." Because Zacharias did not object to the comment at the time, we review for plain error. *See United States v. Bradley*, 917 F.3d 493, 505 (6th Cir. 2019). "Plain error is '(1) error (2) that was obvious or clear, (3) that affected defendant's substantial rights and (4) that affected the fairness, integrity, or public reputation of the judicial proceedings.'" *United States v. Wells*, 623 F.3d 332, 337 (6th Cir. 2010) (quoting *United States v. Vonner*, 516 F.3d 382, 386 (6th Cir. 2008) (en banc)). We will reverse a conviction on plain-error review "[o]nly in exceptional circumstances in which the error is so plain that the trial judge and prosecutor were derelict in countenancing it." *United States v. Emuegbunam*, 268 F.3d 377, 406 (6th Cir. 2001).

On plain error review, our prosecutorial misconduct analysis has three steps. First, "we decide whether the prosecutor's statements were improper enough to constitute plain error." *United States v. Hall*, 979 F.3d 1107, 1119 (6th Cir. 2020). If so, we ask "whether the statements were flagrant enough to affect the defendant's substantial rights." *Id.* Flagrancy looks to (1) whether the prosecutor misled the jury, (2) whether the challenged conduct was "isolated or extensive, (3) whether the challenge conduct was deliberate, and (4) the strength of the other evidence against the defendant. *Id.* We reverse only if the conduct affected the fairness and integrity of the proceedings. *Id.*

Zacharias argues that the prosecutor's final question to the jury was "highly improper" because it "suggested to members of the jury that they should return a guilty verdict to protect their own children from [him]." He further argued that the remark was flagrant because it violated the "Golden Rule" by asking the jurors to step into the shoes of the victims' mothers. Zacharias asserted that, although isolated, the remark came at the end of the prosecutor's rebuttal, so he had

no opportunity to respond. And he argued that the evidence against him was weak and that there was a reasonable probability that the error affected the outcome of the trial. The government argues that the prosecutor's remark was not plainly improper because it was made in the context of an argument about Zacharias's credibility and did not "invite[] the jury to rely on fear or sympathy."

We are not persuaded by the government's argument that the prosecutor was merely making an argument about Zacharias's credibility when she asked, "Would you let him watch your kids?" It appears instead that the prosecutor was appealing to the jurors' emotions and asking them to identify or sympathize with the victims and their parents. A prosecutor "may not urge jurors to identify individually with the victims with comments like '[i]t could have been you' the defendant killed or '[i]t could have been your children.'" *Bedford v. Collins*, 567 F.3d 225, 234 (6th Cir. 2009) (quoting *Johnson v. Bell*, 525 F.3d 466, 484 (6th Cir. 2008) (alterations in original)); *see Hall*, 979 F.3d at 1119 ("Asking jurors to place themselves in the victim's shoes violates the ban on Golden Rule arguments."). The prosecutor's comment here violated this prohibition.

Although improper, we find that the comment was not flagrant. First, the comment likely did not mislead the jury. Immediately after the rebuttal, the district court read the jury instructions, which included an admonishment to "disregard sympathy and not . . . permit it to influence your verdict." Although the curative instruction did not single out the problematic remark, it came only minutes after the jury heard the comment. And jurors are presumed to follow the court's instructions. *See Bales*, 788 F.3d at 579. Second, the singular remark was isolated and came at the very end of the prosecutor's lengthy closing and rebuttal. Third, the circumstances under which the comment was made do not suggest that it "stemmed from a deliberate plan to inflame the jury as opposed to unduly-zealous advocacy." *United States v. Carson*, 560 F.3d 566, 577 (6th Cir. 2009) (quoting *United States v. Shalash*, 108 F. App'x 269, 281 (6th Cir. 2004)). The prosecutor did not repeat the comment at any point, and it was made during her rebuttal argument, which as the government points out, are generally made in response to defendant's closing and "largely

improvised." Lastly, contrary to Zacharias's assertion, the evidence against him was strong. According to Zacharias, the only evidence that he engaged in sex acts with minors was the victims' testimony, which he contends lacked credibility. But their testimony was corroborated by the similarities in their descriptions of Zacharias's conduct and other evidence, including financial, phone, and other records; the testimony of other witnesses; and Zacharias's own admissions.

D. Cumulative Error

Finally, Zacharias asserts that, if this court finds errors that it deems harmless, he should receive a new trial based on the cumulative effect of the errors. The cumulative effect of errors that are harmless by themselves can be so prejudicial as to warrant a new trial. *See United States v. Hernandez*, 227 F.3d 686, 697 (6th Cir. 2000). To warrant a new trial, however, the cumulative effect of the errors must have "deprived [the defendant] of a trial consistent with constitutional guarantees of due process." *Id.*; *see also United States v. Deitz*, 577 F.3d 672, 697 (6th Cir. 2009). Where, as in this case, no individual ruling has been shown to be erroneous, there is no "error" to consider, and the cumulative error doctrine does not warrant reversal. *Deitz*, 577 F.3d at 697.

For these reasons, we **AFFIRM** the district court's judgment.

ENTERED BY ORDER OF THE COURT

Kelly L. Stephens, Clerk