
While prosecutors are entitled to argue forcefully for a defendant’s conviction, well-settled Massachusetts case law has held that closing arguments must be limited to facts in evidence and fair inferences that may be drawn from those facts.1 If a prosecutor errs by misstating the evidence or referring to facts not in evidence, convictions may be overturned if the error had more than a very slight influential effect on the jury—making it prejudicial to the defendant.2 In Commonwealth v. Alvarez,3 the Massachusetts Supreme Judicial Court (SJC) addressed whether a prosecutor’s factually incorrect statement, during closing argument and regarding the child victim’s credibility, was sufficient to overturn convictions of both rape of a child and assault and battery.4 Looking at the context of the entire argument, the SJC held that the convictions must be overturned because the child’s testimony and credibility was at the “heart of the case,” defense counsel made a timely objection, and the trial judge only gave a general mitigating instruction.5

Angel Luis Alvarez was charged with three counts of rape of a child and one count of assault and battery upon a child for sexual abuse of his goddaughter Camila.6 Due to the nature of the crimes, the prosecutor’s case rested almost entirely on Camila’s testimony.7 In the prosecutor’s closing argument at trial, the prosecutor incorrectly stated: “[H]er m]om told you, ‘[Camila] did come

4. See id. at 1205 (listing Alvarez’s claims of error on appeal).  
5. See id. at 1205, 1209 (vacating convictions, remanding for new trial, and listing corresponding reasons). Although the SJC overturned the convictions, the court dismissed Alvarez’s appeal of the order denying his motion to stay execution of his sentence as moot. See Alvarez v. Commonwealth, 103 N.E.3d 1225, 1225 (Mass. 2018) (dismissing appeal due to decision in case-in-chief).  
6. See 103 N.E.3d at 1205 (listing charges and indictments). The SJC used the pseudonym “Camila” for the child, who was between six and nine years old when the sexual abuse took place. Id. at 1206 n.1. Camila, who is also Alvarez’s wife’s niece, disclosed the abuse when she was nine years old, and was approximately twelve years old at the time of trial. Id. at 1206-07.  
7. See id. at 1205-06 (stating outcome of case depended on victim’s credibility). Camila provided detailed testimony about multiple incidences of sexual abuse at the hands of Alvarez. See id. at 1206-08.
home one day and ask to take a bath, and I thought it was weird, because she had
taken a bath that morning.’ That’s corroboration.’ Camila’s mother had
tested as her first complaint witness, but the prosecutor failed to elicit this
specific testimony about Camila’s alleged desire to take a bath following that
first assault.9

Defense counsel objected at the end of the prosecutor’s closing statement, but
neither the prosecutor nor the trial judge could remember if Camila’s mother had
tested that Camila wanted to take a bath.10 The judge gave a general instruction
to the jury but did not directly address the prosecutor’s misstatement of evidence
with an explicit curative instruction.11 The jury convicted Alvarez, who then
filed a petition for direct appellate review.12 On direct appellate review, the SJC
overturned the convictions and remanded for a new trial.13 The majority
reasoned that it could not definitively say that the prosecutor’s factually incorrect
statements in closing argument did not influence the jury; Justice Lowy wrote a
separate concurrence; and Justice Cypher dissented, arguing that the prosecutor’s
misstatement was nonprejudicial.14

8. Id. at 1208-09 (quoting prosecutor’s misstatement in closing argument).
9. Id. at 1208 (quoting Camila’s mother’s testimony and noting no corroborating testimony elicited). Most
of the details of Camila’s abuse are not pertinent to this Case Comment’s discussion, save for an assault that
occurred at Alvarez’s house when Camila was six years old. See id. at 1206. In her testimony, Camila described
Alvarez sexually abusing her, and stated that her vagina felt “wet and sticky and gross” afterward. See id. Camila
also testified that when she got home she asked her mother if she could shower. See id. This was the only sexual
incident indicating that Alvarez had ejaculated, so testimony from another source besides Camila that she said
she felt “wet and sticky” upon returning home would provide powerful corroborating evidence. Id. at 1208. But,
in her examination of Camila’s mother, the prosecutor did not elicit this corroborating evidence because she did
not ask Camila’s mother about her memory of Camila asking to take a bath or shower when Camila came home
the day of this particular sexual assault. Id. When Camila was nine years old, she disclosed the abuse to her
mother and one of her sisters. Id. at 1207. Consequently, her mother had been called to testify as Camila’s first
complaint witness. Id. at 1208; see infra note 19 (discussing parameters of first complaint doctrine).

10. See 103 N.E.3d at 1209 (discussing confusion over Camila’s mother’s testimony). Defense counsel
noted in her objection that she herself was unsure of the content of Camila’s mother’s testimony and could be
mistaken as to whether Camila’s mother had testified that Camila wanted to take a bath. See id.
11. See id. (stating judge refused to give curative instruction); see infra note 23 (delineating difference
between general and curative instructions). The judge instructed the jury that “opening statements and the closing
arguments of the lawyers are not a substitute for the evidence.” 103 N.E.3d at 1209. The judge also instructed
the jury before closing arguments that “a closing statement is not itself evidence, nor is it a substitute for the
evidence. The evidence . . . is closed.” Id. at 1210.

12. See 103 N.E.3d at 1205 (outlining history of case). Specifically, Alvarez was convicted of rape of a
child and indecent assault and battery on a child. See id.; see also MASS. GEN. LAWS ch. 265, §§ 13B, 22A (2018)
criminalizing indecent assault and battery on child, and rape of a child).
13. See 103 N.E.3d at 1205 (stating disposition of case).
14. See id. at 1209, 1219, 1220-25 (explaining rationale behind overturning convictions). Although this
holding was sufficient to overturn Alvarez’s convictions, the SJC also addressed two other impropriety claims
stemming from the prosecutor’s closing argument. See id. at 1225 n.3. Because those claims were not preserved
by an objection, the SJC only reviewed whether the statements created a substantial risk of a miscarriage of
justice. See id. The SJC held that it was improper for the prosecutor to ask the rhetorical question: “Should we
bring in more witnesses to tell you the same thing?” Id. This question implied that there were other witnesses
prepared to testify corroborating Camila’s testimony about wanting to go home from Alvarez’s house on New
Year’s Eve. See id. But, because there was no objection and no evidence that sexual abuse occurred that evening,
Issues concerning the credibility of sexual assault victims can be traced back to the common law “hue and cry” doctrine, under which victims of all violent crimes were expected to alert the community immediately after the crime to increase the possibility of catching the offender. Although hue and cry was eventually abandoned as a prerequisite for prosecuting all other violent crimes, it persisted as a requirement for proving rape and made its way into the American court system as the “fresh complaint” doctrine. The fresh complaint doctrine the SJC concluded that this rhetorical question did not rise to the level of creating a substantial risk of a miscarriage of justice. The SJC stated, but did not elaborate, that although such a comment was best omitted, it did not create a substantial risk of a miscarriage of justice. The SJC also addressed Alvarez’s two other claims of error on appeal—whether the judge erred by admitting expert opinion testimony of the child’s treating physician, and whether the jury instructions unfairly limited a defense based on inadequacy of the police investigation—because the issues were likely to recur at retrial. These issues are not discussed in this Case Comment, nor is Justice Lowy’s concurrence, as it agrees with the majority’s reasoning but also reiterates issues raised by Justice Cypher in her dissent. See id. at 1219 (Lowy, J., concurring).

15. See Dawn M. DuBois, Note, A Matter of Time: Evidence of a Victim’s Prompt Complaint in New York, 53 BROOK. L. REV. 1087, 1089 (1988) (detailing history of hue and cry, or prompt complaint, requirement); see also Morrison Torrey, When Will We Be Believed? Rape Myths and the Idea of a Fair Trial in Rape Prosecutions, 24 U.C. DAVIS L. REV. 1013, 1041 (1991) (tracing development of hue and cry doctrine). To prosecute a sexual assault, the accusers had the burden of proving that they raised hue and cry; courts would refuse to hear a sexual assault complaint unless there was an immediate outcry. See DuBois, supra, at 1089 (explaining traditional procedure of prosecuting sexual assault cases); see also Torrey, supra, at 1041 (noting sexual assault cases had additional requirements besides statutory elements). The prosecutor needed to prove that the victim resisted, did not consent, and made a prompt complaint. See Torrey, supra, at 1041 (examining rules “special” to sexual assault claims). Similarly, corroboration was also necessary. See id. Underlying these requirements was a “deep distrust of female rape complainants.” See id. at 1027 (criticizing English jurist Matthew Hale’s quote about proving and defending sexual assault charges). Jurists believed that it was natural for a victim to complain as soon as possible, so if the victim never reported the assault, jurists assumed that the assault did not happen and the victim made it up. See id. at 1042 (detailing reasoning behind prompt complaint rule). These additional burdens on the prosecutor’s case were, therefore, deemed necessary to show the credibility of an otherwise unreliable witness. See DuBois, supra, at 1096 (recognizing influence of rape myths on substantive law); see also Tamara Larsen, Comment, Sexual Violence is Unique: Why Evidence of Other Crimes Should be Admissible in Sexual Assault and Child Molestation Cases, 29 HAMLINE L. REV. 177, 199 (2006) (asserting women and children traditionally labeled less credible than men). Despite statistics disproving the contrary, a belief persisted, and arguably still persists, that women “cry rape.” DuBois, supra, at 1101-02 (contrasting beliefs about rape with contradicting statistical data); see Tyler J. Buller, Fighting Rape Culture with Noncorroboration Instructions, 53 TULSA L. REV. 1, 4-7 (2017) (listing myths about sexual assault and contrasting with statistics disproving such myths); see also Larsen, supra, at 200-01 (discussing three credibility categories to explain why women historically not believed). There is no empirical data showing there are more false rape allegations than there are false allegations of any other violent crime. See Buller, supra, at 7, 11, 19 (citing research studies contradicting many common myths about sexual assault).

16. See Commonwealth v. King, 834 N.E.2d 1175, 1187-88 (Mass. 2005) (discussing origins and scope of doctrine). Before its demise, the hue and cry doctrine eroded so that lack of a timely complaint did not completely bar a claim, but still raised an adverse inference to a victim’s claim that required rebuttal in order to succeed at trial. See DuBois, supra note 15, at 1089 (describing evolution of hue and cry doctrine into modern law). Despite this general abandonment, the hue and cry doctrine remained a part of sexual assault cases until recently. See Commonwealth v. Lavalley, 574 N.E.2d 1000, 1004 n.7 (Mass. 1991) (discussing history of hue and cry and fresh complaint doctrines in American courts), overruled by Commonwealth v. King, 834 N.E.2d 1173 (Mass. 2005); Michelle J. Anderson, The Legacy of the Prompt Complaint Requirement, Corroboration Requirement, and Cautionary Instructions on Campus Sexual Assault, 84 B.U. L. REV. 945, 955 (2004) (describing roots and
was a specific exception to the rule against the admission of prior consistent statements, and, in effect, permitted “anticipatory rehabilitation” of a witness whose credibility was suspect from the outset. Until 2005, Massachusetts had a fresh complaint doctrine similar to those of other states. In Commonwealth v. King, the SJC overhauled the previous fresh complaint doctrine in favor of a modified “first complaint” doctrine. Significantly, the historical development of hue and cry doctrine and implementation in American courts; see also State v. Kendricks, 891 S.W.2d 597, 601-02 (Tenn. 1994) (citing examples of use of fresh complaint doctrine from thirty-one different states).

17. See DuBois, supra note 15, at 1093 (comparing fresh complaint witness against prior consistent statements). Under the Federal Rules of Evidence, a prior statement is not hearsay, and thus admissible, if it is consistent with the witness’s testimony and is offered either to rebut an accusation that the witness recently fabricated his or her testimony or to rehabilitate the witness’s credibility if attacked on another ground. See Fed. R. Evid. 801(d)(1); see also Commonwealth v. Bailey, 348 N.E.2d 746, 751 (Mass. 1976) (stating out-of-court statement repeating victim’s testimony usually inadmissible), overruled by Commonwealth v. King, 834 N.E.2d 1175 (Mass. 2005); DuBois, supra note 15, at 1088 (stating prompt complaint doctrine specific exception to rules of evidence). In order to marry the rules of evidence with the fresh complaint rule, American courts reasoned that failure to make a prompt complaint of sexual assault was equal to an inconsistent statement at odds with the victim’s testimony about the sexual assault. See Commonwealth v. King, 834 N.E.2d 1175, 1187-88 (Mass. 2005) (explaining relationship between evidence and fresh complaint rule); Commonwealth v. Lavalley, 574 N.E.2d 1000, 1002 (Mass. 1991) (detailing premise for allowing fresh complaint testimony), overruled by Commonwealth v. King, 834 N.E.2d 1175 (Mass. 2005).

18. See Commonwealth v. King, 834 N.E.2d 1175, 1188 (Mass. 2005) (summarizing Massachusetts’ fresh complaint doctrine). In King, the SJC instructed the jury regarding fresh complaint witness testimony as follows: “‘If an alleged victim of a rape or sexual assault tells someone about the event reasonably promptly after the event,’ then evidence of the statement is admitted ‘only to corroborate the alleged victim’s in-court testimony and not to prove independently that the sexual assault occurred.’” Id. at 1182-83. Other states had similar fresh complaint doctrines at the time. See People v. Brown, 883 P.2d 949, 954-55 (Ca. 1994) (articulating California’s fresh complaint doctrine); State v. Troupe, 677 A.2d 917, 924 (Conn. 1996) (detailing Connecticut’s fresh complaint doctrine), abrogated by Crawford v. Washington, 541 U.S. 36 (2004); State v. Hill, 578 A.2d 370, 377 (N.J. 1990) (upholding New Jersey’s fresh complaint rule); State v. Kendricks, 891 S.W.2d 597, 601-02 (Tenn. 1994) (listing jurisdictions applying fresh complaint doctrine); see also DuBois, supra note 15, at 1087 (discussing development of New York’s fresh complaint doctrine in detail).

19. See Commonwealth v. King, 834 N.E.2d 1175, 1193-94 (Mass. 2005) (reexamining old fresh complaint doctrine); SUPREME JUDICIAL COURT ADVISORY COMM. ON MASS. EVIDENCE LAW, MASSACHUSETTS GUIDE TO EVIDENCE § 413(a) (2018) (outlining first complaint doctrine). Subsequent cases expanded on the first complaint doctrine. See, e.g., Commonwealth v. Mayotte, 56 N.E.3d 756, 763-64 (Mass. 2016) (confirming defendant’s use of first complaint witness within scope and purpose of doctrine); Commonwealth v. Aviles, 958 N.E.2d 37, 46 (Mass. 2011) (summarizing first complaint doctrine and standard of review); Commonwealth v. Murungu, 879 N.E.2d 99, 103 (Mass. 2008) (clarifying first complaint rule allows for different person than first witness in certain circumstances). Under the first complaint doctrine, the recipient of a complainant’s first complaint of an alleged sexual assault may testify to the details of the first complaint—that is, what was told—as well as why the complaint was made at that particular time. See Commonwealth v. King, 834 N.E.2d 1175, 1181 (Mass. 2005) (discussing details of rule); see also Lisa J. Steele, Commonwealth v. King: Massachusetts Charts a New Course in Sexual Assault Cases, Bos. B. J., May/June 2006, at 10, 11 (comparing first complaint and fresh complaint doctrines). This doctrine, developed in King, represents a departure from the old “fresh complaint” doctrine, which the SJC acknowledged as having “‘sexist,’ ‘outmoded[,]’ and ‘invalid’ origins.” See Commonwealth v. King, 834 N.E.2d 1175, 1188 (Mass. 2005) (explaining reasons for and benefits of changing doctrine); Commonwealth v. Licata, 591 N.E.2d 672, 674 (Mass. 1992) (acknowledging doctrine has origins in “outmoded, and invalid, sexual myths”), overruled by Commonwealth v. King, 834 N.E.2d 1175 (Mass. 2005); Anderson, supra note 16, at 978-86 (enumerating faulty assumptions behind fresh complaint requirement). The transformation of the fresh complaint doctrine into the first complaint doctrine was influenced by other reforms.
SJC eliminated the promptness requirement, and restricted testimony to only the first person the victim told about the assault, instead of allowing everyone the victim told about the assault to testify, which was permitted under the fresh complaint doctrine. In its analysis of why the change to the doctrine was overdue, the SJC noted that in addition to reflecting biases against sexual assault victims, the fresh complaint doctrine also posed difficulties when the victims and witnesses—whose credibility was at issue—were children.

in rape law, such as rape shield statutes, the recognition of marital rape as a crime, and the admission of testimony about Rape Trauma Syndrome. See Torrey, supra note 15, at 1062-65 (analyzing benefits and shortcomings of reforms in progress). These changes reflect a societal understanding that not all victims react to sexual assault in the same way. See Commonwealth v. King, 834 N.E.2d 1175, 1193 (Mass. 2005) (reconsidering and modifying fresh complaint doctrine); Torrey, supra note 15, at 1062 (asserting necessity of continuing education of falsity of sexual assault myths); see also Kathryn M. Stanichi, The Paradox of the Fresh Complaint Rule, 37 B.C. L. Rev. 441, 463-64 (1996) (using old assumptions about victims’ behavior to make evidence rules “problematic”). In enacting the first complaint doctrine, the SJC stated:

The goal of this new first complaint doctrine is to give the jury as complete a picture as possible of how the accusation of sexual assault first arose. That complete picture will allow them to make a fairer and more accurate assessment of the validity of that accusation, based on specific information about the people involved rather than on outdated stereotypes and generalities.


20 See Commonwealth v. King, 834 N.E.2d 1175, 1197 (Mass. 2005) (highlighting major changes to fresh complaint doctrine). The SJC held that the promptness requirement was no longer an adequate solution to jury stereotypes, because it fueled preconceived notions about how a victim of sexual assault should act. See id.; Commonwealth v. Licata, 591 N.E.2d 672, 674 (Mass. 1992) (noting juries tend toward considerable skepticism in rape cases), overruled by Commonwealth v. King, 834 N.E.2d 1175 (Mass. 2005). The SJC also forbade the “piling on” of multiple complaint witnesses and limited the first complaint witness to just one person. See Commonwealth v. King, 834 N.E.2d 1175, 1197 (Mass. 2005). The SJC reasoned that having more than one complaint witness would serve no additional corroborative purpose, as “[a] victim who is not fabricating an assault may tell only one other person . . . while a liar may spread the tale widely.” Id. Notably, under the new doctrine the SJC continued to allow the first complaint witness to testify about the complaint’s details, not just the fact that the complaint was made. See id. at 1198; Commonwealth v. Licata, 591 N.E.2d 672, 675 (Mass. 1992) (concluding jury should make own interpretation based on details of complaints), overruled by Commonwealth v. King, 834 N.E.2d 1175 (Mass. 2005).

Witness credibility is an important factor not only when a jury determines whether to convict, but also when a prosecutor misstates evidence or commits some other error during closing argument. Under harmless error analysis, the four factors for determining if the error is nonprejudicial are: whether the defendant made a timely objection; whether the error was about a collateral issue or went to the heart of the case; whether the judge gave any curative instructions;
and whether the error could have made a difference in the jury’s conclusions. An error is characterized as nonprejudicial if it did not influence or only slightly influenced the jury. In a case where the majority of the evidence revolves around the victim’s testimony and credibility, the weight of the victim’s credibility directly relates to the case’s strength.

In Commonwealth v. Alvarez, the SJC applied the four-part harmless error analysis to the prosecutor’s misstatement in her closing argument that Camila’s
mother’s testimony corroborated Camila’s testimony. The SJC held that the error went to the heart of the case—Camila’s credibility and testimony. The majority noted that there was almost no corroboration to Camila’s testimony, apart from Camila’s mother’s testimony as the first complaint witness. The majority compared the prosecutor’s misstatement and the judge’s lack of adequate curative instruction to similar cases, noting that it had found prejudicial error in those other cases despite the seriousness of the alleged crimes. The majority overturned Alvarez’s convictions, reasoning that it could not say with assurance that the prosecutor’s misstatements could not have influenced the jury’s verdict.

In applying the four-part harmless error analysis, the majority unnecessarily dwelled on the lack of corroboration to Camila’s testimony. The majority’s reliance on there being almost no corroboration weakens its argument, because corroboration is not necessary to support Alvarez’s conviction. If the jury


27. See 103 N.E.2d at 1209 (concluding credibility of victim relates to strength of case); see also supra note 20 and accompanying text (discussing issues surrounding credibility of child victims and witnesses).

28. See 103 N.E.2d at 1210-11 (discussing possible other sources of corroboration). The prosecutor argued three other sources of alleged corroboration: Camila’s statement to her mother that she no longer wanted Alvarez to pick her up from school; Camila’s desire to come home from Alvarez’s house in the middle of the night on New Year’s Eve; and Alvarez’s statement that Camila came to his house for sleepovers and played games. See id. The majority noted that there were innocuous explanations for each of these statements and concluded that they did not add credence to Camila’s testimony that she was sexually assaulted. See id. at 1211.


30. See 103 N.E.3d at 1209, 1219 (overturning Alvarez’s convictions).

31. See id. at 1210-11 (discussing three other sources of supposed corroboration).

32. See id. (confirming uncorroborated testimony of child sufficient to support conviction of sexual assault); see also Buller, supra note 15, at 16-22 (discussing merits of noncorroboration jury instructions, including correctly stating applicable law). Jurors often “mistakenly assume that they cannot base their decision on one witness’s testimony even if the testimony establishes every material element of the crime.” Buller, supra note 15, at 18. Justice Lowy’s concurrence also touched upon this when he stated that he agreed with reversing the convictions “not because this is a sexual assault case, nor because the conviction rests on the testimony of a young child. . . . [Rather,] because jurors crave corroboration.” 103 N.E.3d at 1219 (Lowy, J., concurring). But, just because jurors crave corroboration does not mean it is necessary to convict; the jury could have convicted Alvarez solely based on Camila’s testimony, regardless of any of the possibly corroborative evidence discussed and criticized by the majority. See Buller, supra note 15, at 19 (highlighting issue of juries believing corroboration necessary to convict defendant of sexual assault); see also Anderson, supra note 16, at 968-73,
found Camila credible, then no additional corroboration was needed, and conversely, a lack of corroboration should have no effect on Camila’s personal credibility.\textsuperscript{33} The fact that the prosecutor made misstatements was sufficient, and it was unnecessary for the majority to delve into whether the statements were corroborative, if true—doing so only furthers the myth that the testimony of victims like Camila is inherently untrustworthy without supporting evidence.\textsuperscript{34}

Considering the majority’s emphasis on corroboration, in her dissent, Justice Cypher rightly raised concerns over the history of devaluing the testimony of sexual assault victims.\textsuperscript{35} Rather than specifically addressing the four-part harmless error analysis, Justice Cypher maintained that the misstatements required reversal only if they “prejudiced [Alvarez] in light of the entire argument, the trial testimony, and the judge’s instructions to the jury.”\textsuperscript{36} This included the persistency and flagrancy of the remarks—or lack thereof—as well as the strength of Camila’s testimony.\textsuperscript{37} She concluded that when taken in the proper context, with the proper weight given to Camila’s testimony, the prosecutor’s error did not influence or only slightly influenced the jury, and therefore Alvarez’s convictions should have been affirmed.\textsuperscript{38}

But Justice Cypher’s dissent also contained gaps in its analysis of the case-in-chief.\textsuperscript{39} Justice Cypher stated that, in the harmless error analysis of a prosecutorial misstatement, victims’ testimony in nonsexual assault cases are

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\item \textsuperscript{33} See supra note 32 (discussing jurors often lack knowledge of ability to convict without corroboration in sexual assault cases). The majority stated that the issue on appeal was “not whether we credit Camila’s testimony, but whether we are ‘sure that the error did not influence the jury, or had but very slight effect’ in the jury’s evaluation of whether they believed that testimony.” 103 N.E.3d at 1213 n.4. It is likely that this distinction would have been unnecessary if the trial judge had given the jury an instruction that corroboration was not required to convict. See Buller, supra note 15, at 17-18 (discussing how noncorroboration instructions debunk rape myths about victim credibility).
\item \textsuperscript{34} See Anderson, supra note 16, at 979-80 (stating contrary to rape myths, rape and sexual assault often include no corroboration); Torrey, supra note 15, at 1055-56 (discussing judges adopting and enforcing myths about rape and sexual assault); Larsen, supra note 15, at 207 (asserting cultural myths about gender and sexual violence undermine victim credibility); see also Raitt, supra note 21, at 738 (noting “historical[ly] dismissive attitudes towards children’s credibility”).
\item \textsuperscript{35} See 103 N.E.3d at 1220 (Cypher, J., dissenting) (dissenting because majority “more critically” evaluated testimony of sexual assault victims than other witnesses).
\item \textsuperscript{36} See id. at 1222 (emphasizing importance of considering prosecutorial misstatements in context of entire case).
\item \textsuperscript{37} See id. (detailing factors to consider in analysis of whether error prejudicial).
\item \textsuperscript{38} See id. (concluding prosecutor error did not require reversal of convictions). Justice Cypher noted that the prosecutor’s misstatement took up approximately five lines in the middle of a nine-page closing argument, representing an insignificant part of the entire closing. Id. at 1223. She also reasoned that Camila’s testimony was strong enough on its own to support a conviction, given that she had described each count of the abuse in great detail. Id. at 1222. Additionally, Justice Cypher characterized the trial judge’s instructions to the jury about closing arguments not constituting evidence as “repeated and clear.” Id.
\item \textsuperscript{39} See 103 N.E.3d at 1220-25 (Cypher, J., dissenting) (discussing rationale behind upholding Alvarez’s convictions).
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given more weight than the testimony of victims of sexual assault crimes.\textsuperscript{40} While this may very well be true, the dissent relied on two distinct categories of cases: cases with adult victims and witnesses, nonsexual assault charges, and prosecutorial error leading to upheld convictions; and cases with child victims and witnesses, sexual assault charges, and prosecutorial error leading to reversed convictions.\textsuperscript{41} The dissent failed to adequately address the fact that there is another variable at play in \textit{Alvarez}—Camila is a child victim.\textsuperscript{42} To fully bridge the gaps in the analysis, the dissent needed a linking case—for example, one with a child victim witness, no sexual assault, and the conviction upheld despite prosecutorial misstatement and no curative instructions—to truly show that \textit{Alvarez}’s holding came down to Camila’s testimony specifically as a sexual assault victim, and was not the result of her being \textit{both} a child and a sexual assault victim.\textsuperscript{43}


\textsuperscript{41} See supra note 40 (describing holdings of cases discussed in Justice Cypher’s dissent).

\textsuperscript{42} See 103 N.E.3d at 1206 (reporting Camila’s age at time of alleged crimes and at trial). Justice Cypher certainly acknowledged that Camila is a child, but did not fully delve into how that affected the analysis of the case. See id. at 1223-24 (Cypher, J., dissenting). For example, she criticized the majority’s focus on whether Camila displayed the “normal” characteristics of a child victim as creating a kind of “de facto” corroboration requirement, but did not further analyze how Camila’s testimony might be viewed differently, or more critically, as a child victim. See id.; see, e.g., Gilstrap et al., supra note 21, at 65-72 (outlining important memory-related studies in children); Leippe & Romanczyk, supra note 21, at 127 (reporting outcomes of five studies regarding eyewitnesses and age); Ross et al., supra note 21, at 17-18 (contrasting studies of jurors’ perceptions of child witnesses).

\textsuperscript{43} See 103 N.E.3d at 1221-22 (Cypher, J., dissenting) (failing to include analysis connecting two distinct categories of cases). The case cited by the dissent that comes closest to fitting this role is \textit{Commonwealth v. Hammond}, in which there were child victim witnesses and the convictions were upheld despite prosecutorial misstatements; however, the crime was still sexual in nature. See \textit{Commonwealth v. Hammond}, 78 N.E.3d 1128, 1131 (Mass. 2017). Additionally, in \textit{Hammond}, there were three victims, rather than one; the children were twelve, thirteen, and fifteen at the time of the assaults, rather than between six and nine; and, most significantly, the judge gave a pointed curative instruction after the prosecutor’s two improper statements in closing. Compare 103 N.E.3d at 1205-06 (describing Camila and background of case), \textit{with} \textit{Commonwealth v. Hammond}, 78 N.E.3d 1128, 1131-32, 1136-37 (Mass. 2017) (introducing underlying facts of case). \textit{Hammond} is also arguably not an adequate fit for linking the two cases because, in \textit{Hammond}, the victims were male and the perpetrator was female. See \textit{Commonwealth v. Hammond}, 78 N.E.3d 1128, 1131-32 (Mass. 2017). As discussed, much of
The SJC grappled with striking a balance between the credibility of a sexual assault witness and the need for fair trials. Both the majority and the dissent missed the full picture; the majority, by overanalyzing unnecessary corroboration—or lack thereof—and the dissent, by failing to link the factually distinct groups of cases on which it relied. Further, even if a linking case with the exact parameters necessary does not yet exist, the dissent’s analysis would still benefit greatly from including a brief section discussing the credibility of children as a whole, and acknowledging the effect this has on Camila’s credibility in the case. By failing to analyze all variables present, the dissent discredited its otherwise strong analysis regarding the impact of rape myths on the judicial system and the different weights given to victim-witnesses’ testimony.

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_The systemic disbelief of sexual assault victims stems from the historical distrust of women; because this dynamic is not present in _Hammond_, it could alter the analysis of why the court ruled the way it did, and of what variables in the case more heavily influenced the Justices’ decision. See _supra_ note 15 and accompanying text (highlighting how unbelievability of women influenced law and procedure surrounding sexual assaults); see also Torrey, _supra_ note 15, at 1025, 1042 (summarizing myths about sexual assault victims and comparing to statistics); DuBois, _supra_ note 15, at 1098-1100 (listing underlying assumptions about women promulgated by historic sexual assault laws)._