Illinois Official Reports

Appellate Court

People v. Marshall, 2025 IL App (4th) 240368

Appellate Court Caption	THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MARK C. MARSHALL, Defendant-Appellant.
District & No.	Fourth District No. 4-24-0368
Filed	March 24, 2025
Decision Under Review	Appeal from the Circuit Court of McLean County, No. 21-CF-956; the Hon. J. Jason Chambers, Judge, presiding.
Judgment	Reversed and remanded.
Counsel on Appeal	James E. Chadd, Catherine K. Hart, and James Henry Waller, of State Appellate Defender's Office, of Springfield, for appellant. Erika Reynolds, State's Attorney, of Bloomington (Patrick Delfino and David J. Robinson (Lauren Hadley, law student), of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.
Panel	JUSTICE ZENOFF delivered the judgment of the court, with opinion. Presiding Justice Harris and Justice DeArmond concurred in the judgment and opinion.

OPINION

¶ 1 Defendant, Mark C. Marshall, a 20-year-old church volunteer, was charged with grooming (720 ILCS 5/11-25(a) (West 2020)) B.W., a 14-year-old female he met at church events. Before trial, defendant filed motions *in limine* seeking to prohibit the State from presenting testimony from (1) defendant's former girlfriend about photos defendant sent her when he was 17 years old and she was 15 years old and (2) the church pastor about training defendant received as a church volunteer. The trial court denied those motions, and the case proceeded to a jury trial. The jury found defendant guilty, and the court sentenced defendant to 180 days in jail and 30 months of sex offender probation. Defendant appeals, arguing that the court erred in (1) admitting the testimony of his former girlfriend and church pastor and (2) defining certain terms for the jury. We agree that the trial court abused its discretion in admitting testimony and reverse and remand for a new trial.

¶ 2 I. BACKGROUND

¶ 3 A. Charges

¶ 4 On September 15, 2021, defendant was arrested and charged with one count of grooming (720 ILCS 5/11-25(a) (West 2020)). Thereafter, on July 12, 2023, defendant was charged by superseding indictment with a revised count of grooming based on the same conduct. The indictment alleged that on or about June 11, 2021, through July 3, 2021, "defendant knowingly used a device capable of electronic data transmission, a cell phone, to attempt to seduce, lure, or entice a child, B.W. to engage in unlawful sexual conduct with the defendant." At the time of the alleged conduct, defendant was 20 years old and B.W. was 14 years old. Defendant and B.W. met at Vale Church, where defendant was a volunteer assigned to supervise junior high boys.

¶ 5 B. Motions *in Limine*

¶ 6 1. *Defendant's Photos to A.D.*

¶ 7 On January 3, 2023, defendant filed a motion *in limine* seeking, in part, an order excluding all evidence that defendant sent an ex-girlfriend, A.D., photos of his exposed and unexposed penis when he was 17 years old and A.D. was 15 years old. A hearing on that motion was held on March 28, 2023. At the hearing, the State had no objection to the motion. Therefore, the trial court granted that portion of defendant's motion *in limine*.

¶ 8 A few months later, a new attorney took over the prosecution and sought to file a new motion to admit A.D.'s testimony. Defendant objected to the State's motion as untimely and in violation of the State's previous agreement. The trial court allowed the motion to be filed and proceeded to a hearing on the merits of the motion.

¶ 9 The State argued that A.D.'s testimony was admissible under Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011) to show defendant's motive, intent, knowledge, and absence of an innocent frame of mind with respect to the charged conduct. The State also argued that the evidence was admissible to show that defendant lied to police during his interrogation. Defense counsel responded that the testimony of A.D. "is nothing but propensity evidence." The trial court concluded "that the danger of unfair prejudice does outweigh the probative value as to motive, intent, plan, knowledge, identity, [and] absence of mistake." However, the court held

that it would "allow the State to present evidence as it relates to the false exculpatory." The court stated: "If there are statements that [defendant] made of I never sent sexually explicit texts or emojis, anything like that, then I would allow it for that purpose." The court explained that it was allowing A.D.'s testimony about photos to be used as "false exculpatory evidence *** because as to that issue, I think the probative value of it does outweigh the unfair prejudice to [defendant]." Defendant filed a motion to reconsider, which the court denied.

¶ 10 2. *Training and Procedures for Vale Church Volunteers*

¶ 11 On July 25, 2023, defendant filed a second motion *in limine* seeking to prohibit at trial "any and all evidence of Michael Watkins concerning the training and procedures at Vale Church of staff/volunteers and his opinion concerning the communications between students and staff/volunteers at Vale Church." The trial court held a hearing on the motion. At the hearing, defense counsel argued that any evidence regarding training defendant received from Watkins or any other church leader was irrelevant to the charges against defendant and was purely "propensity evidence." The State responded that evidence of the church's training was "very relevant to [defendant's] intent and knowledge." The court ruled that the evidence was admissible to show defendant's intent, finding that "the probative value would not be outweighed by unfair prejudice to the defendant." However, the court stated the evidence could not be used "for propensity purposes."

¶ 12 C. Jury Trial Evidence and Testimony

¶ 13 The case proceeded to a jury trial in July 2023. In opening statements, the prosecutor asserted that defendant was two different people: the one who talked to police and the one who chatted with B.W. The prosecutor then asked the jury to "convict the Mark Marshall that's in those chats." Defense counsel admitted in her opening statement that defendant's Snapchat conversation with B.W. contained some "immature" and "crass" comments. However, she contended that the conversation primarily consisted of "a lot of laughing emojis, funny emojis and jokes." Defense counsel asserted: "[A]t the end of this case, I'm confident you are going to see this is a total joke between these two individuals."

¶ 14 B.W.'s mother, Stacey W., testified that B.W. attended events at Vale Church in the summer of 2021. One evening during the first week of July, B.W. showed Stacey Snapchat messages from defendant. Stacey said B.W. seemed "kind of nervous" and a "little upset" about the messages. Stacey had to go to work, but she took B.W.'s phone with her. While she was at work, Stacey took photographs on her phone of Snapchat exchanges between defendant and B.W. from B.W.'s phone. Those photographs were admitted into evidence. In one of the photos, defendant's face was visible, and the caption stated: "I have such a fat boner while I slep [*sic*]." In another one, defendant was drinking a beer, and the caption stated: "Jesus Christ I'm hammered." After work, Stacey went to the police department and turned over B.W.'s phone to an officer.

¶ 15 Stacey, her husband, and B.W. moved to Bloomington in the spring of 2020. Stacey testified that two years before moving to Bloomington, B.W. was bullied and "became very depressed and suicidal." Stacey believed that during the summer of 2021, B.W. was taking an antidepressant that was prescribed by B.W.'s pediatrician. Approximately a year later, B.W. started seeing a psychiatrist, who prescribed B.W. a new medication for depression and anxiety.

¶ 16 B.W. testified that she began attending Vale Church in the spring of 2021. B.W. first met defendant at an Easter egg hunt in early 2021, when she was 14 years old. B.W. testified that on Easter, she "poked [defendant] on the butt with a water bottle." B.W. saw defendant again at a Vale Church event at Miller Park in June 2021. B.W. approached defendant while he was sitting on a bench, apologized for previously poking him with a water bottle, and asked if he wanted to be friends. B.W. and defendant then exchanged Snapchat account information. Later that day, B.W. and defendant began texting on Snapchat.

¶ 17 The Snapchat messages between defendant and B.W. were admitted into evidence. During an exchange on June 11, 2021, the following occurred:

"[DEFENDANT]: No, I'm weird af and I make dirty jokes all the time. Sometimes I have to be told no because I make dirty joke [*sic*] a lot.

[B.W.]: SAME HAHAHAHA

[DEFENDANT]: Like I will take it VERY far

[B.W.]: i never mean the jokes that I say tho

[DEFENDANT]: What do you mean by that?

[B.W.]: like if i make a dirty joke some guys take it seriously and like purrrr and im like ew no hahaha

[DEFENDANT]: I won't take it serious. I'll probably try to 1up you.

[B.W.]: BET

***

[DEFENDANT]: *** We are so crazy together we exchanged fluids[laughing emoji]

[B.W.]: seggc[;] WOAH WHAT[;] us???!?

[DEFENDANT]: It was a joke

[B.W.]: OR SOMEONE ELSEEEEEE

[DEFENDANT]: You literally spit in my mouth

[B.W.]: and id do it again

[DEFENDANT]: ….

[B.W.]: Hahahahaha IM KIDDING

[DEFENDANT]: I would let you.

[B.W.]: SHEEEEEEEEESH

[DEFENDANT]: I told you I will go one step above you. [laughing emoji]

[B.W.]: thought you were being serious-

[DEFENDANT]: Serious about?

[B.W. sends photos of herself]

***

[B.W.]: exchanging fluids again [two crying emojis] ***

***

[DEFENDANT]: [heart emoji] you are very pretty

[B.W.]: your very pretty<3

[DEFENDANT]: No like lol I'm serious not playin around

[B.W.]: me neither lol

[DEFENDANT]: But I'm not pretty…

[B.W.]: your very very pretty

[DEFENDANT]: Handsome.

[B.W.]: PRETTY[;] you are handsome ig

[DEFENDANT]: Lol, you're freckles and personality get me[.] Thank you.

[B.W.]: HAHAHAHAHAHHA[;] and thank you vry vry much handsome [smiling emoji]

[DEFENDANT]: I hate this, I'm gonna get real for a second[.] You're like 15-16 going probably into high school or were in it for a year and I'm in college…

[B.W.]: OMG NO IVE BEEN IN HIGH SCHOOL LOL ITS FINE LOL[.] Actually got held back lol

[DEFENDANT]: Oh, how old are you?

[B.W.]: 15

[DEFENDANT]: I guess that's not that bad.

[B.W.]: ITS NOT YOUR FINE OMG

[DEFENDANT]: But I'm like hitting on you …

[B.W.]: no your not.

[DEFENDANT]: No, I am.

[B.W.]: (; (;

***

[DEFENDANT]: Since the last time I saw you I've always kinda liked you. ***

[B.W.]: lol?!! [Sad emoji]

[DEFENDANT]: Which one? Into me?

[B.W.]: i mean I don't know about INTO YOU but definitely haven't forgotten you:)

[DEFENDANT]: lol, idk what that even means.

[B.W.]: It means it felt good to see you tonight

[DEFENDANT]: Yeah, I did with you too! Are you able to drive?

****

[DEFENDANT]: Would it be bad if we hung out? Or is that weird.

[B.W.]: *** NO

[DEFENDANT]: *** And do what?

[B.W.]: *** GET ICE CREAM

[DEFENDANT]: Sure. I am on a pretty strict diet but we could share one

[B.W.]: me too lol[;] I dont want to be skinny tho

[DEFENDANT]: I just don't want moobs

[B.W.]: my ass too phat [smiling emoji]

[DEFENDANT]: I do like it [series of emojis]

[B.W.]: [Series of emojis]

[DEFENDANT]: I like to have smaller moobs.

[B.W.]: same!!!

[DEFENDANT]: Dead ass. Wouldn't miss seeing it again lol[;] Mind*[;] I honestly like them… It's not the size it's the shape. [silly face emoji]

[B.W.]: WAIT YOU WERE LOOKIN!! !!

[DEFENDANT]: Just a bit… I wanted to get a better look but …

[B.W.]: i dont send or have seggs just fyi[;] we cool tho right?

[DEFENDANT]: I wasn't really expecting you to send

[B.W.]: ok swag ***

[DEFENDANT]: I'm a very physical touch/looking person but that doesn't mean you have to do that.

[B.W.]: my love language is touch<3

[DEFENDANT]: And anyways jeezzz if you sent a nooood kinda weird. Clothes on.

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[DEFENDANT]: *** I have a pretty serious question just let me know when you prepared for it lol

[B.W.]: IF ITS ANYTHING ABOUT ANAL HELL TO THE NO ***
***

[DEFENDANT]: Yeah…. So the question I was asking is you have had sex?

[B.W.]: nope[;] i said no seggs [B.W. sent several pictures of herself]

[DEFENDANT]: Ok. So what do you like to do out of school and your special time [laughing emoji]

[B.W.]: sleep[;] i have no friends

[DEFENDANT]: I'll be your friend

[B.W.]: good

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[DEFENDANT]: I am leaving for myrtle beach Sunday. ***

***

[B.W.]: TAKE ME WITH YOU WTF

[DEFENDANT]: Sure. I have my own hotel and I can get another flight[.] But I only have a queen bed lol[.] Lol, you could literally just sleep on top of me. ***

***

[DEFENDANT]: *** I will take your heart and treat it well.

***

[B.W.]: like even the girls at church theyre nice but always talking about drama!!!

***

[DEFENDANT]: Also I hate drama[.] So Why do you talk to me? If you don't talk to people

[B.W.]: bc your swaggy duh

[DEFENDANT]: Idk what that means

[B.W.]: also don't want you to hate me after what happened when we first met [crying face emoji]

[DEFENDANT]: What happened when we first met?

[B.W.]: like there's something about you. i want to get to know you yk[;] uuh the water bottle up your ass-

[DEFENDANT]: Yeah, I want to get to know you too!!! [sad emoji]

***

[B.W.]: *** i still have a cat[;] hes my best friend[;] hes the only person I believe loves me

[DEFENDANT]: *** I love you ***

[B.W.]: i luh u too bestayyyy [smiling emoji] [;] i don't say love lol

[DEFENDANT]: You did it earlier

[B.W.]: bc i don't believe in it unless its Roscoe[;] oops[;] LUV

[DEFENDANT]: Ok

[B.W.]: you can try to prove to me it is tho:)

[DEFENDANT]: What is? Love?

[B.W.]: just dont try too hard. thats cringe[;] mhm

[DEFENDANT]: No, I'll just treat you how I treat someone that I love

[B.W.]: [heart emoji] [open hands emoji]

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[B.W. sends pictures of herself]

[DEFENDANT]: Damn, look at that girl in the mirror!

[B.W.]: [sends another picture] shes pretty

[DEFENDANT]: Jesus Christ. You're a bad bitch

[B.W.]: was [sad face emoji]

[DEFENDANT]: I mean you're in that waterpark and you're still bad.

[B.W.]: [photo of cat] roscoe is the only reason im here

[DEFENDANT]: Very pretty

[B.W.]: ong[;] im not suicidal[;] was like 7th grade but roscoe has been with me my whole like [*sic*]

[DEFENDANT]: Being suicidal is scary. It doesn't scare me away from you though.

***

[B.W.]: *** when will you be home

[DEFENDANT]: In a few why's

[B.W.]: we should ft when us get home

[DEFENDANT]: Ok bet

[B.W.]: R u home yet

[DEFENDANT]: Noooo I'm gonna eat this thingy then I will drive home and I will FaceTime you.

[B.W.]: [sends her phone number]."

¶ 18 Defendant and B.W. had other Snapchat conversations on later dates. In a conversation on June 27, 2021, defendant wrote: "But like I'm not trying to get in your pants or anything. Like I thought we just friends." According to B.W., defendant expressed a desire to follow her on Instagram, but she did not want him to. B.W. testified that she gave defendant her phone number so he could call and "FaceTime" her.

¶ 19 B.W. testified that on July 2, 2021, defendant sent her a photo of himself in bed wearing underwear over his erect penis. After that, the following exchange took place:

"[B.W.]: lol? STOP[;] STOP[;] STOP[;] LIKE FR[;] I KNOW YOUR DRUNK[;] GO TO BED

[DEFENDANT]: Ok

[B.W.]: goodnight mark

[DEFENDANT]: I'm sooo really sorry

[B.W.]: yeah

[DEFENDANT]: I'm just duckweed up[.] Fucked

[B.W.]: ik go to bed

[DEFENDANT]: [heart emoji]

[B.W.]: just get some sleep<3

[DEFENDANT]: You just pretty

[B.W.]: i know I am[;] go to bed please

[DEFENDANT]: And u shake your ass like it's jelly[.] Ok ok

[B.W.]: stop."

¶ 20 The next morning, the following exchange between defendant and B.W. took place:

"[B.W.]: do u remember last night

[DEFENDANT]: No… Wait did I text you

[B.W.]: You umm snapped me[;] you don't remember?

[DEFENDANT]: I said I'm sorry. And shake your butt like jelly[;] what else did I say?

[B.W.]: do you remember showing me your thing

[DEFENDANT]: NO! No way I did that. I'm so sorry

[B.W.]: Like through your[ ]underwear

[DEFENDANT]: Like I wippwd [*sic*] it out through the hole in my underwear … Oh no[.] I'm fucking retarded

[B.W.]: yeah you said u were hard and showed me it through your underwear

[DEFENDANT]: Like you saw my underwear but not my dick

[B.W.]: you had black underwear on and just like took a picture sent it to me and said you were hard[;] i didn't do anything tho

[DEFENDANT]: I just sent a picture out of no where?

[B.W.:] yeah

[DEFENDANT]: Thank God you didn't see anything and you didn't do anything

[B.W.]: I would never do anything

[DEFENDANT]: And I'm sorry I did soemthing [*sic*]

[B.W.]: i cant talk to you anymore

[DEFENDANT]: Ok. I understand your feelings and agree I was wrong and I don't blame you. Thanks for being my friend. ***"

¶ 21 B.W. testified that she immediately stopped chatting with defendant and called friends because she "was in shock" and "didn't know what to do." B.W. decided to tell her mother. As B.W. and her mother were looking at B.W.'s phone, defendant was trying to call her through Snapchat and FaceTime.

¶ 22 B.W. testified that at Miller Park she, defendant, and others played a game that involved spitting ice cubes into each other's mouths. That was what defendant was referring to when he said that he and B.W. had "exchanged fluids" and that B.W. "literally spit in his mouth." When defendant responded that he would "let" her do that again, B.W. said she felt uncomfortable, so she "changed the topic." B.W. testified that she also felt uncomfortable when defendant commented on her breasts during the chat. When B.W. wrote that she does not "send or have seggs," she was telling defendant that she does not send nude or explicit photos of herself. B.W. testified that she was uncomfortable when defendant asked if she'd ever had sex, so she "went off topic."

¶ 23 On cross-examination, B.W. admitted she was 14 years old in June 2021, when she told defendant she was 15 years old. B.W. testified that she was never alone with defendant. B.W. agreed that her exchange with defendant on June 11, 2021, was "flirty and joking." She agreed that she and defendant were exchanging "friendly, casual banter." B.W. admitted that defendant never asked her to send him nude photos of herself. B.W. testified that she took defendant's comment about her sleeping on top of him as a joke.

¶ 24 B.W. testified that she did not have a copy of the photo defendant sent her of him in his underwear. B.W. said that she found the photo funny when she first received it but the more she thought about it, the more she thought it went "too far" and "wasn't right." She said that photo caused her to stop chatting with defendant.

¶ 25 Paul Jones, a sergeant with the Bloomington Police Department, testified that he reviewed extracted images from B.W.'s and defendant's phones. Jones never obtained the photo of defendant in his underwear that B.W. testified defendant sent her on July 2, 2021. Jones testified that he served a search warrant on Snapchat and did not receive the image but explained that images quickly disappear from Snapchat.

¶ 26 Jones interviewed B.W. on August 2, 2021. That interview was recorded, and the recording was admitted into evidence and played for the jury. The State offered a copy of that recorded interview as evidence, and it was played for the jury. During his interview, defendant told police that he was trying to relate to B.W. in his conversations with her and only wanted to be her friend. When police asked defendant why he brought up sex with B.W., defendant said he was "trying to understand where she was coming from." Defendant said he was only joking when he complimented B.W.'s breasts and buttocks. Defendant denied ever taking a nude photo of himself. When asked if he could have sent B.W. an inappropriate photo, defendant replied: "Not taking a picture of myself naked. That's not who I am." Defendant denied ever sending a picture like that to anyone.

¶ 27 Watkins, the pastor of Vale Church, testified that church volunteers who work with children receive training on safety, boundaries, and appropriate interactions. Watkins testified that he did not take part in defendant's training as a volunteer and could not recall any specific

conversations with defendant. Watkins testified that after he talked to B.W.'s mother, defendant stopped volunteering at Vale Church. Watkins testified that defendant's communications in the Snapchat texts with B.W. were not "within the rules and boundaries of a church volunteer at Vale." Watkins testified that volunteers are not to have "open sex communication" with children. Watkins found the topics and language defendant used in his texts to be "inconsistent with the rules of a volunteer."

¶ 28 Before A.D. testified, the trial court instructed the jury as follows:

> "Evidence is going to be received from the witness, [A.D.], that the defendant has been involved in conduct other than charged in the Indictment. The evidence is being received on the issue of the truthfulness of defendant's denial of sending pictures of his penis to other people and may be considered by you only for that limited purpose. It is for you to determine whether defendant was involved in that conduct; and if so, what weight should be given to this evidence on the issue of truthfulness of the defendant's statement during his police interview." See Illinois Pattern Jury Instructions, Criminal, No. 3.14 (approved Oct. 17, 2014).

A.D. testified that she met defendant at Vale Church after her freshman year and defendant's junior year in high school. A.D. testified that she and defendant dated for approximately seven or eight months when she was 15 years old and defendant was 17 years old. A.D. testified that during her relationship with defendant, he sent her "several" photos of his penis on Snapchat and Google Hangouts. In some of the photos, defendant's penis was erect. Defendant's penis was exposed in about half the photos and covered by his underwear in the other half.

¶ 29 Defendant did not testify or present any witnesses or evidence at trial. In the State's closing argument, the prosecutor argued that defendant's conduct in his interview with police was "a whole act." The State reminded the jury that defendant was "a church volunteer." The prosecutor then stated:

> "And what should a church volunteer do? *** He's going to go to his church training and boundaries. That's not a crime. He's not on trial for that. But what it does is give you insight into what he's doing and where he's going. If you're going outside the boundaries as a teacher, as a coach, as a church volunteer, that indicates you're headed somewhere. Stay within the boundaries. If you stay within the boundaries of the church, you will never get close to the boundaries of the law. But you step out of those boundaries that we're bound by, that you agreed to be bound by, you're telling everybody where you're headed. He went beyond them because he was going to take her to an illegal place of either sending a pic or some kind of physical sexual conduct that was unlawful."

¶ 30 Defense counsel argued that defendant's text communications with B.W. constituted "banter" and some "inappropriate *** communication" from an immature 20-year-old. According to defense counsel, defendant did not "knowingly engage in these acts, in the attempt to lure or seduce or entice." In rebuttal, the State pointed out the "lies" defendant told police during his interview, including his lie that he "never sent a picture like that to anyone" and argued "that shows consciousness of guilt." The prosecutor then stated: "And who would be lying to the police? A real groomer. A real groomer. He had the fear of being caught."

¶ 31 D. Jury Instructions

¶ 32 At the jury instruction conference, the State tendered nonpattern jury instructions defining the terms "seduce" and "entice." Defendant objected, arguing that those terms should not be defined for the jury. The trial court gave the jury the State's proposed instructions. The jury was instructed: "The term 'seduce' means to persuade or tempt." The jury was also instructed: "The term 'entice' means to persuade or induce."

¶ 33 The State also tendered definitional and issues instructions related to the offense of grooming, which the parties agreed should be given. People's instruction No. 11 stated: "A person commits the offense of grooming when he knowingly uses any device capable of electronic data storage or transmission to attempt to seduce, lure, or entice a child to engage in unlawful sexual conduct with that person." See 720 ILCS 5/11-25 (West 2020). People's instruction No. 19 stated:

> "To sustain the charge of grooming, the State must prove the following propositions:
>
> *First Proposition*: That the defendant knowingly used a device capable of electronic data storage or transmission to attempt to seduce, lure, or entice B.W. to engage in unlawful sexual conduct with himself.
>
> *Second Proposition*: That at that time, B.W. was under 17 years of age."

¶ 34 Additionally, the jury was provided People's instruction No. 17, which stated as follows:

> "The term 'sexual conduct' means any intentional or knowing touching or fondling by the victim or the accused, either directly or through the clothing, of the sex organ or breast of the victim or the sex organ of the accused, for the purpose of sexual gratification or arousal of the victim or the accused." See Illinois Pattern Jury Instructions, Criminal, No. 11.65D (approved Dec. 8, 2011) (hereinafter IPI Criminal No. 11.65D).

¶ 35 E. Verdict, Motion for New Trial, and Sentence

¶ 36 The jury found defendant guilty. Defendant filed a motion for a new trial, arguing that the trial court erred in allowing A.D.'s and Watkins's testimony at trial. The court denied defendant's motion and sentenced defendant to 180 days in jail, with 60 days served upfront and 120 days stayed, as well as 30 months of sex offender probation.

¶ 37 This appeal followed.

¶ 38 II. ANALYSIS

¶ 39 A. Admission of Testimony

¶ 40 Generally, evidence is admissible only if it is relevant. Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence, however, "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." Ill. R. Evid. 403 (eff. Jan. 1, 2011). "Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith ***." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, such evidence may "be admissible for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Ill. R. Evid. 404(b) (eff. Jan. 1, 2011).

¶ 41 "It is not enough for the proponent of such evidence to mechanically invoke a litany of the permissible 'other purposes.' " *People v. Mujkovic*, 2022 IL App (1st) 200717, ¶ 13. "The permissible other purpose must be a material issue in the case [citation], and the other-acts evidence must be relevant to establishing that purpose without relying on the propensity inference." *Mujkovic*, 2022 IL App (1st) 200717, ¶ 13.

¶ 42 We will reverse a trial court's decision to admit evidence if it constitutes an abuse of discretion. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). A trial court abuses its discretion where its ruling is "arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it." *People v. Rivera*, 2013 IL 112467, ¶ 37.

¶ 43 The erroneous admission of evidence of other crimes, wrongs, or acts carries a high risk of prejudice and normally calls for reversal. *People v. Lindgren*, 79 Ill. 2d 129, 140 (1980). A conviction will be upheld despite the erroneous admission of evidence "only if the record affirmatively shows that the error was not prejudicial." *Lindgren*, 79 Ill. 2d at 141. The State bears the burden of proving beyond a reasonable doubt that the error was harmless because the result would have been the same without the error. *People v. Smart*, 2023 IL App (1st) 220427, ¶ 36.

¶ 44 1. *A.D.'s Testimony*

¶ 45 Here, the State sought to introduce the testimony of A.D. as evidence that defendant lied to police when he denied ever sending photos of his penis to anyone. In its motion seeking the admission of this testimony at trial, the State asserted that this evidence was relevant and admissible to show defendant's intent, motive, knowledge, and absence of an innocent frame of mind, pursuant to Rule 404(b). See Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). The trial court refused to allow A.D.'s testimony for those purposes, finding that the evidence would be more prejudicial than probative. However, the court ruled that A.D.'s testimony was admissible to establish that defendant gave the police a "false exculpatory statement."

¶ 46 On appeal, defendant argues that the trial court abused its discretion in allowing the State to present A.D.'s testimony to prove the falsity of his statements to police because the testimony amounted to improper impeachment on a collateral issue. The State responds that A.D.'s testimony was properly admitted to show that defendant provided "false exculpatory statements" to police, as evidence of his consciousness of guilt. The State further responds that impeachment rules do not apply because defendant did not testify and A.D.'s testimony was a proper attack on defendant's credibility. This issue implicates three evidentiary principles: (1) false exculpatory statements, (2) unfair prejudice, and (3) impeachment on a collateral issue.

¶ 47 a. False Exculpatory Statements

¶ 48 "A defendant's false exculpatory statement has independent probative value as evidence of consciousness of guilt and is admissible." *People v. Watson*, 103 Ill. App. 3d 992, 995 (1982). Such statements are admissible even if they are made outside of court and the defendant does not testify. See *Watson*, 103 Ill. App. 3d at 995. The statements themselves are admissible and may be used against the defendant as admissions. *People v. Shaw*, 278 Ill. App. 3d 939, 951 (1996). Examples of false exculpatory statements include a false alibi (*People v. Milka*, 211 Ill. 2d 150, 181-82 (2004)), implicating someone else in the crime (*People v. Seawright*, 228 Ill. App. 3d 939, 969 (1992)), denying having contact with the victim (*People v. Saxon*,

374 Ill. App. 3d 409, 414, 417 (2007)), providing numerous explanations for how the victim's injuries occurred (*People v. Woods*, 2023 IL 127794, ¶ 61), giving different "implausible stories" about the defendant's injuries (*People v. Rose*, 198 Ill. App. 3d 1, 8 (1990)), and telling "various stories" about the origin of "the blood on his clothes" (*People v. Ford*, 118 Ill. App. 3d 59, 61, 64 (1983)).

¶ 49 A false exculpatory statement is made to "attempt to evade criminal liability." *People v. Sanchez*, 2013 IL App (2d) 120445, ¶ 35. The definition of "exculpatory" is " '[c]learing or tending to clear from alleged fault or guilt; excusing.' " *People v. Conley*, 3 Ill. App. 3d 75, 79 (1971) (quoting Black's Law Dictionary 675 (4th rev. ed. 1968)). A lie does not constitute a false exculpatory statement if it is not directly related to the charged offense. See *People v. Wynder*, 2024 IL App (1st) 221875, ¶ 41; *Sanchez*, 2013 IL App (2d) 120445, ¶ 35.

¶ 50 Here, the trial court abused its discretion in allowing A.D. to testify to establish that defendant gave police "false exculpatory statements" because the statements at issue were unrelated to the charges against him. Defendant was charged with grooming by using a cell phone "to attempt to seduce, lure, or entice a child, B.W. to engage in unlawful sexual conduct with the defendant." Whether defendant sent photos of his penis to someone other than B.W. on a prior occasion was not relevant to the current charge. Thus, defendant's statements were not exculpatory. See *Wynder*, 2024 IL App (1st) 221875, ¶ 41; *Sanchez*, 2013 IL App (2d) 120445, ¶ 35. The trial court, therefore, abused its discretion in admitting A.D.'s testimony to prove the falsity of defendant's statements.

¶ 51 b. Unfair Prejudice

¶ 52 Even if defendant's statements could be construed as false exculpatory statements, the trial court abused its discretion in admitting A.D.'s testimony because the court had previously stated that it was more prejudicial than probative.

¶ 53 Relevant evidence may be excluded "if its probative value is substantially outweighed by the danger of unfair prejudice." Ill. R. Evid. 403 (eff. Jan. 1, 2011). "[U]nfair prejudice occurs when a jury would be deciding the case on an improper basis, such as sympathy, hatred, contempt, or horror." (Internal quotation marks omitted.) *People v. Gilker*, 2023 IL App (4th) 220914, ¶ 65. "In other words, the evidence in question will somehow cast a negative light upon a defendant for reasons that have nothing to do with the case on trial." (Internal quotation marks omitted.) *Gilker*, 2023 IL App (4th) 220914, ¶ 65.

¶ 54 Here, the trial court ruled that A.D.'s testimony was not admissible under Rule 404(b) to show defendant's motive, intent, knowledge, and absence of an innocent frame of mind because A.D.'s testimony was more prejudicial than probative for those purposes. However, the court later stated that A.D.'s testimony was more probative than prejudicial for the purpose of establishing defendant's "false exculpatory statement." This was an abuse of discretion for several reasons.

¶ 55 First, as explained above, A.D.'s testimony was not relevant to prove any "false exculpatory statement." Because A.D.'s testimony did not establish the existence of a false exculpatory statement, it could not be more probative than prejudicial for that purpose. Even if there was a probative purpose for the evidence—which there was not—A.D.'s testimony was unfairly prejudicial because it cast a negative light on defendant for reasons that had nothing to do with the charged offense. See *Gilker*, 2023 IL App (4th) 220914, ¶ 65. A.D.'s testimony that defendant sent her photos of his penis three years before he met B.W., when

defendant was 17 years old, had absolutely nothing to do with whether defendant was guilty of grooming B.W. at the age of 20. Rather, A.D.'s testimony encouraged the jury to decide the case on an improper basis, such as animosity or contempt for defendant because he sent images of his penis to a minor. Because A.D.'s testimony was unfairly prejudicial to defendant, the trial court abused its discretion in admitting it.

¶ 56 c. Impeachment on a Collateral Matter

¶ 57 Finally, the trial court abused its discretion in admitting A.D.'s testimony because it amounted to impeachment on a collateral matter through the use of extrinsic evidence.

¶ 58 "Although a witness' testimony may be impeached with evidence which tends to contradict or undermine its believability [citations], such contradictory evidence may not be offered if it is merely collateral to the issues in the case." *People v. Abrams*, 260 Ill. App. 3d 566, 579 (1994). "A matter is collateral if it is not relevant to a material issue of the case." *Esser v. McIntyre*, 169 Ill. 2d 292, 305 (1996). "The test to be applied in determining if a matter is collateral is whether the matter could be introduced for any purpose other than to contradict." *People v. Collins*, 106 Ill. 2d 237, 269 (1985). "Excluding collateral evidence prevents the jury from becoming distracted from the main issues." *Esser*, 169 Ill. 2d at 305.

¶ 59 Furthermore, extrinsic evidence, consisting of evidence or testimony from someone other than the witness himself, may not be used to impeach a witness about a collateral issue. *People v. Terrell*, 185 Ill. 2d 467, 509 (1998) (citing Michael H. Graham, Cleary and Graham's Handbook of Illinois Evidence § 607.2, at 336-37 (5th ed. 1990)). The purpose of this rule is "to avoid confusion, undue consumption of time, and unfair prejudice." *People v. Columbo*, 118 Ill. App. 3d 882, 966 (1983).

¶ 60 "A defendant's right to testify at trial is a fundamental constitutional right, as is his or her right to choose not to testify." *People v. Madej*, 177 Ill. 2d 116, 145-46 (1997). By choosing to testify, a defendant puts his credibility at issue. *People v. Barner*, 374 Ill. App. 3d 963, 971 (2007). Therefore, a defendant who testifies may be impeached by attacking his character and credibility by proof of a prior conviction (*People v. Kellas*, 72 Ill. App. 3d 445, 449 (1979)), a prior inconsistent statement (see *People v. Ritchey*, 286 Ill. App. 3d 848, 850 (1997)), or a prior silence (see *People v. Givens*, 135 Ill. App. 3d 810, 820-25 (1985)). However, when a defendant chooses not to testify, evidence cannot be admitted to impeach the defendant's credibility. See *People v. Fontaine*, 28 Ill. App. 3d 450, 456 (1975); see also *Watson*, 103 Ill. App. 3d at 995 (stating a defendant who does not testify cannot be impeached); *People v. Humphrey*, 129 Ill. App. 2d 404, 414 (1970) (stating only a defendant who chooses to testify is subject to impeachment).

¶ 61 Before addressing the propriety of A.D.'s testimony as impeachment, it is important to put the evidence in its proper context. Defendant did not testify at trial. He did, however, make statements to the police in response to their questioning. Among the statements that defendant made were several denying that he ever sent photos of his penis to anyone. Defendant did not put those statements into evidence; the State did. Thus, the State put defendant's statements into evidence for the sole purpose of contradicting them through the impeaching testimony of A.D. This was improper for several reasons.

¶ 62 First, as the State points out, defendant did not testify. As a result, defendant did not put his credibility at issue, and the State was not allowed to discredit defendant through impeachment. See *Watson*, 103 Ill. App. 3d at 995; *Fontaine*, 28 Ill. App. 3d at 456; *Humphrey*,

129 Ill. App. 2d at 414. A defendant has a constitutional right not to testify. *Madej*, 177 Ill. 2d at 145-46. "[T]he State should not be permitted to circumvent a criminal defendant's decision of whether to place his own credibility in issue by introducing a defendant's statement and then impeaching that statement." *State v. Johnson*, 2008 VT 135, ¶ 17, 185 Vt. 575, 967 A.2d 1174. The State's introduction of defendant's statements to the police did not make defendant's credibility subject to impeachment by the State. See *Johnson*, 2008 VT 135, ¶ 18.

¶ 63 Additionally, the matter on which the State sought to discredit defendant was collateral. Whether defendant sent photos of his penis to someone other than B.W. was not relevant to whether defendant was guilty of grooming B.W. The sole purpose of the evidence was to contradict defendant's statements to police. This is made clear by the instructions the trial court gave the jury before A.D. testified, explaining that A.D.'s testimony was "being received on the issue of the truthfulness of defendant's denial of sending pictures of his penis to other people." Because A.D.'s testimony was not admissible for any purpose other than to contradict defendant's statements to police, it was collateral. See *Collins*, 106 Ill. 2d at 269. Finally, because A.D.'s testimony related to a collateral issue, the State could not present extrinsic evidence to refute defendant's statement to police. See *Terrell*, 185 Ill. 2d at 509. For all these reasons, the trial court abused its discretion in admitting A.D.'s testimony.

¶ 64 The erroneous admission of evidence of prior wrongs and acts carries a high risk of prejudice and normally calls for reversal (*Lindgren*, 79 Ill. 2d at 140) unless the State proves beyond a reasonable doubt that the error was harmless (*Smart*, 2023 IL App (1st) 220427, ¶ 36). Here, the State did not even attempt to argue that the introduction of A.D.'s testimony constituted harmless error. "Given that the State bears the burden of showing harmless error and has failed to make any such argument in its brief, it has forfeited any harmless-error analysis." *People v. Gregory*, 2016 IL App (2d) 140294, ¶ 29.

¶ 65 2. *Watkins's Testimony*

¶ 66 Defendant also argues that the trial court abused its discretion by admitting Watkins's testimony because it was irrelevant and constituted improper propensity evidence. The State responds that Watkins's testimony was properly admitted to prove defendant's intent to groom B.W.

¶ 67 Evidence is relevant if it has "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." Ill. R. Evid. 401 (eff. Jan. 1, 2011). Evidence of other crimes, wrongs, or acts is "not admissible to prove that the defendant has a propensity or disposition to commit the charged offense(s)." *People v. Potts*, 2021 IL App (1st) 161219, ¶ 174 (citing Ill. R. Evid. 404(b) (eff. Jan. 1, 2011)). The problem with such testimony is that it has "too much" probative value. (Internal quotation marks omitted.) *Potts*, 2021 IL App (1st) 161219, ¶ 174. It may tempt the jury to infer that since the defendant has committed other crimes or bad acts, he must have committed this crime too. *Potts*, 2021 IL App (1st) 161219, ¶ 174.

¶ 68 Nevertheless, other acts or crimes are admissible if relevant for a nonpropensity purpose, such as to show defendant's intent. See Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, such evidence should be excluded if the prejudicial effect of the evidence substantially outweighs its probative value. *Donoho*, 204 Ill. 2d at 170.

¶ 69 "Other-acts evidence can be relevant to establishing a defendant's intent because it tends to negate inadvertence, accident, self-defense, or other forms of innocent intent." *Mujkovic*,

2022 IL App (1st) 200717, ¶ 17. However, if a defendant does not offer any evidence or argument that his actions were accidental, incidental, or inadvertent, other acts evidence may not be admitted to prove intent. *Smart*, 2023 IL App (1st) 220427, ¶ 33.

¶ 70 Here, the State argued that Watkins's testimony was relevant to prove defendant's intent, and the trial court agreed. This was an abuse of discretion for several reasons. First, Watkins's testimony was not relevant to prove that defendant had the criminal intent necessary to commit the offense of grooming. Defendant was on trial for grooming, which required the State to prove that defendant "knowingly use[d] a *** device capable of electronic data storage or transmission to seduce, solicit, lure, or entice, or attempt to seduce, solicit, lure, or entice, a child *** to otherwise engage in any unlawful sexual conduct." 720 ILCS 5/11-25(a) (West 2020). Watkins's testimony that defendant's conversations with B.W. violated church policies for volunteers was not relevant to whether defendant had the necessary intent to commit grooming.

¶ 71 Not only was Watkins's testimony irrelevant to prove defendant's intent, Watkins's testimony was irrelevant because Watkins had no firsthand knowledge that defendant was ever told about the church policies he allegedly violated in his communications with B.W. While Watkins testified that all volunteers received training about the church's policies and procedures applicable to them, Watkins admitted that he took no part in training defendant. Therefore, Watkins had no firsthand knowledge that defendant was actually instructed on the church's policies and procedures with respect to the types of communications volunteers were prohibited from having with young people. As such, Watkins's testimony was not even relevant to show that defendant intentionally and knowingly violated church policies and procedures.

¶ 72 Moreover, Watkins's testimony should not have been admitted because it was used solely for propensity purposes. This is made clear by the State's closing argument. The prosecutor argued that defendant's willingness to violate church rules in his communication with B.W. showed that defendant was also willing to break the law, which he did when he committed the criminal offense of grooming. This is the hallmark of propensity evidence—using a defendant's bad acts to show that he is guilty of the crime at issue. See *Potts*, 2021 IL App (1st) 161219, ¶ 174. Here, by asking the jury to infer that because defendant had committed other bad acts, he must have committed this crime, the State used Watkins's testimony as propensity evidence. See *Potts*, 2021 IL App (1st) 161219, ¶ 174. The State's use of Watkins's testimony in this manner not only violated rules of evidence, it also violated the trial court's ruling that Watkins's testimony was not admissible "for propensity purposes." For these reasons, the trial court abused its discretion in admitting Watkins's testimony.

¶ 73 The erroneous admission of evidence of prior wrongs and acts carries a high risk of prejudice and normally calls for reversal (*Lindgren*, 79 Ill. 2d at 140) unless the State proves beyond a reasonable doubt that the error was harmless (*Smart*, 2023 IL App (1st) 220427, ¶ 36). The State did not even argue that Watkins's testimony was harmless. Thus, the State failed to prove the erroneous admission of Watkins's testimony was harmless.

¶ 74 3. *Cumulative Effect of Evidentiary Errors*

¶ 75 As set forth above, the trial court abused its discretion in admitting the testimony of A.D. and Watkins. While each error individually supports reversal of defendant's conviction, when considered together, these errors have the cumulative effect of denying defendant a fair trial.

People v. Hall, 194 Ill. 2d 305, 350 (2000). Thus, even if the court's improper admission of either individual's testimony did not constitute reversible error by itself, the cumulative effect of admitting both witnesses' testimony denied defendant a fair trial and requires us to reverse defendant's conviction and remand for a new trial. See *People v. Miller*, 302 Ill. App. 3d 487, 498 (1998).

¶ 76 However, before we remand for a new trial, we must consider whether a new trial would subject defendant to double jeopardy. See *People v. McKown*, 236 Ill. 2d 278, 311 (2010). Here, the evidence presented at defendant's trial was sufficient for a rational trier of fact to find the essential elements of grooming proven beyond a reasonable doubt. Therefore, there is no double jeopardy impediment to retrial, so remand for a new trial is proper. See *McKown*, 236 Ill. 2d at 311.

¶ 77 B. Jury Instructions

¶ 78 Although we are reversing and remanding for a new trial, we will address defendant's final argument because it may recur on retrial. See *Schlueter v. Barbeau*, 262 Ill. App. 3d 629, 634 (1994) (stating a question regarding the propriety of a jury instruction was likely to recur on retrial). Defendant challenges two of the trial court's jury instructions. "The purpose of jury instructions is to provide the jury with correct legal principles that apply to the evidence, thus enabling the jury to reach a proper conclusion based on the applicable law and the evidence presented in a case." *People v. Jackson*, 331 Ill. App. 3d 279, 290 (2002). "[W]hen applicable, a trial court must use a pattern jury instruction in a criminal case if one exists ***." *People v. Walker*, 227 Ill. App. 3d 102, 105 (1992). If a pattern instruction does not exist for a subject on which the court determines the jury should be instructed, the court may provide a nonpattern instruction that is "simple, brief, impartial and free from argument." *Jackson*, 331 Ill. App. 3d at 290; Ill. S. Ct. R. 451(a) (eff. Apr. 8, 2013). While nonpattern instructions may be given, they "must not be misleading or confusing." *People v. Pollock*, 202 Ill. 2d 189, 212 (2002).

¶ 79 A trial court has discretion to give a nonpattern jury instruction. *Pollock*, 202 Ill. 2d at 211. The court's decision to use a nonpattern instruction will not be disturbed absent an abuse of discretion. *Pollock*, 202 Ill. 2d at 211. "Whether a court has abused its discretion will depend on whether the nonpattern instruction tendered is an accurate, simple, brief, impartial, and nonargumentative statement of the law." *Pollock*, 202 Ill. 2d at 211-12.

¶ 80 "When words used in a jury instruction have a commonly understood meaning, the court need not define them with the use of additional instructions; this is particularly true where the pattern jury instructions do not provide that an additional definition is necessary." *People v. Manning*, 334 Ill. App. 3d 882, 890 (2002). If a jury neither asks the court to define a term nor manifests confusion or doubt about a term's meaning, an instruction is unnecessary. *People ex rel. City of Chicago v. Le Mirage, Inc.*, 2013 IL App (1st) 093547-B, ¶ 101. "[O]nly legal phrases not understood by laymen or words or terms from a foreign language not in common use among the people need to be defined." *Nowak v. Witt*, 14 Ill. App. 2d 482, 488 (1957) (citing *People v. Csontos*, 275 Ill. 402 (1916)).

¶ 81 Here, the State provided nonpattern jury instructions to the trial court defining the terms "seduce" and "entice." Defendant objected, asserting that no definitions were necessary for those terms. The court disagreed and used the State's definitions for the terms to instruct the jury, defining "seduce" as "to persuade or tempt" and "entice" as "to persuade or induce."

¶ 82 Generally, a defendant forfeits review of a jury instruction error if he does not object to the instruction at trial and raise the issue in a posttrial motion. *People v. Herron*, 215 Ill. 2d 167, 175 (2005). However, such errors may be reviewed under the plain-error doctrine. See *Herron*, 215 Ill. 2d at 175-76. "The first step in a plain-error analysis is to determine whether a clear and obvious error occurred." *People v. Henderson*, 2017 IL App (3d) 150550, ¶ 37. If a clear and obvious error occurred, then we consider if either of the two prongs of the plain-error doctrine has been satisfied. *Henderson*, 2017 IL App (3d) 150550, ¶ 37. A defendant can satisfy the first prong by showing that "the evidence in a case is so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence." *Herron*, 215 Ill. 2d at 178. Under the second prong, a defendant must show that "the error is so serious that the defendant was denied a substantial right, and thus a fair trial." *Herron*, 215 Ill. 2d at 179.

¶ 83 "[A] jury instruction error rises to the level of plain error only when it 'creates a serious risk that the jurors incorrectly convicted the defendant because they did not understand the applicable law, so as to severely threaten the fairness of the trial.' " *Herron*, 215 Ill. 2d at 193 (quoting *People v. Hopp*, 209 Ill. 2d 1, 8 (2004)). In determining if the jury was misled by an erroneous instruction, the court should consider all the instructions provided. See *People v. Peterson*, 372 Ill. App. 3d 1010, 1015 (2007).

¶ 84 Here, defendant concedes that he did not raise this error in his posttrial motion but contends that the trial court's erroneous jury instructions rose to the level of plain error under both prongs. The first step in our analysis is to examine if a clear and obvious error occurred. *Henderson*, 2017 IL App (3d) 150550, ¶ 37. As used in the grooming statute, " 'seduce' means to persuade someone to do something, particularly to have sex" and " 'entice' means to attract by arousing hope or desire." *People v. Vara*, 2016 IL App (2d) 140849, ¶ 40. When viewed in isolation, the definitions of the terms "seduce" and "entice" provided to the jury were incomplete because they contained no reference to the sexual connotation of those words. However, when viewed with the other instructions given, they properly conveyed the law to the jury.

¶ 85 Specifically, in addition to the instructions defining "seduce" and "entice," the jury was properly instructed about the sexual component of grooming in three other instructions, People's instruction Nos. 11, 17, and 19. In People's instruction No. 11, the jury was given the following definition of grooming: "A person commits the offense of grooming when he knowingly uses any device capable of electronic data storage or transmission to attempt to seduce, lure, or entice a child *to engage in unlawful sexual conduct with that person*." (Emphasis added.) See 720 ILCS 5/11-25 (West 2020). Additionally, in People's instruction No. 19, the jury was told that to find defendant guilty of grooming, the State had to prove "[t]hat the defendant knowingly used a device capable of electronic data storage or transmission to attempt to seduce, lure, or entice B.W. *to engage in unlawful sexual conduct with himself*." (Emphasis added.) Furthermore, in People's instruction No. 17, the jury was instructed about the definition of the term "sexual conduct" as follows:

> "The term 'sexual conduct' means any intentional or knowing touching or fondling by the victim or the accused, either directly or through the clothing, of the sex organ or breast of the victim or the sex organ of the accused, for the purpose of sexual gratification or arousal of the victim or the accused." See IPI Criminal No. 11.65D.

¶ 86 Because those instructions made clear that defendant had to attempt to seduce, lure, or entice B.W. "to engage in unlawful sexual conduct" and defined "sexual conduct," the trial

court did not commit a clear and obvious error in providing the jury with innocuous definitions of the terms "seduce" and "entice." In the absence of clear and obvious error, there can be no plain error. See *Henderson*, 2017 IL App (3d) 150550, ¶ 37. Thus, defendant's plain-error claim fails.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we reverse and remand for a new trial.

¶ 89 Reversed and remanded.