

NOTICE
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2026 IL App (5th) 240201-U

NO. 5-24-0201

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and is not precedent except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Macon County.
)	
v.)	No. 23-CF-111
)	
JONATHAN S. DEAN,)	Honorable
)	Phoebe S. Bowers,
Defendant-Appellant.)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Barberis and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence was sufficient to prove defendant guilty beyond a reasonable doubt of four counts of predatory criminal sexual assault of a child. The trial court did not err by admitting the minor’s forensic interview. Any error in failing to instruct the jury on how to weigh the victim’s out-of-court statement was harmless. The pattern jury instructions used by the court did not violate defendant’s right to a unanimous verdict.

¶ 2 Following a Macon County jury trial, defendant, Jonathan S. Dean, was convicted of four counts of predatory criminal sexual assault of a child. On direct appeal, defendant contends that the State did not prove him guilty beyond a reasonable doubt. Defendant also argues: (1) the trial court abused its discretion by admitting a recorded statement by the minor made during the investigation; (2) he was denied a fair trial due to the trial court’s failure to instruct the jury pursuant to Illinois Pattern Instruction, Criminal No. 11.66 (approved Dec. 8, 2011) (IPI Criminal

No. 11.66); and (3) his convictions should be vacated, because the jury instructions did not require the jury to unanimously agree on a specific act underlying each of the charged offenses. For the reasons that follow, we affirm.

¶ 3

I. BACKGROUND

¶ 4 On January 27, 2023, defendant was charged by information with four counts of predatory criminal sexual assault of a child in violation of section 11-1.40(a)(1) of the Criminal Code of 2012. 720 ILCS 5/11-1.40(a)(1) (West 2020). Count I alleged that defendant committed an act of sexual penetration in that his penis touched the vagina of M.D. (D.O.B. 05/13/11); count II alleged that defendant committed an act of sexual penetration in that his penis touched the anus of M.D.; count III alleged that defendant committed an act of sexual penetration in that defendant touched M.D.'s vagina with his mouth; and count IV alleged that defendant committed an act of sexual penetration in that he placed his penis in M.D.'s mouth.

¶ 5 Prior to trial, the State filed a motion, pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2020)), seeking to admit a video recorded statement made by M.D. at the Child First Center (CAC). At the hearing on the motion, the trial court told the parties that it watched the video in question. Defense counsel told the court that she watched the video with defendant that morning and that “we are confessing the motion.” The court stated that the motion would be allowed without objection and further found “that the time, content and circumstances of the statements provide sufficient safeguards of reliability.”

¶ 6 The matter proceeded to a jury trial on November 13, 2023. The State's first witness was Jennifer Phipps. Phipps testified that she was married to defendant from 2010 until their divorce in 2015. The two had a daughter together, M.D. Phipps had primary custody of M.D., and defendant was granted visitation every other Friday until the following Tuesday, and one night

during the week when he did not have M.D. for the weekend. On cross-examination, Phipps testified that the visitation schedule was revised in 2017, and that the court proceedings were contested. When asked if there were any other allegations of abuse or neglect by defendant prior to the charges, Phipps testified that there were times that M.D. came home with cuts or fleas but denied reporting these incidents to the police or the Department of Children and Family Services (DCFS). Regarding the sexual abuse, Phipps stated that M.D. did not tell her about it until after M.D. made a disclosure at school. When asked whether she had ever observed M.D. to have problems in her genital area, Phipps stated that M.D. would occasionally itch. Phipps explained that M.D. “has autism” and that her personal hygiene was not always the best.

¶ 7 M.D. testified that she was 12 years old and that defendant was her father. She described defendant’s home as “almost like an abandoned house or something. I don’t know.” M.D. demonstrated that she understood the difference between the truth and a lie, but when asked what happens when someone lies, M.D. answered, “I can’t remember.” The prosecutor then asked M.D. whether “good things” happen to people who lie, and M.D. answered, “Sometimes.” M.D., however, confirmed that she should tell the truth.

¶ 8 When the State asked M.D. what had happened between her and defendant, M.D. stated that she was too scared to tell. When asked what parts of her body defendant touched, M.D. replied, “My private parts.” M.D. testified that she called her private parts her “cooch” and that her “cooch” is between her legs. The State tried to direct M.D.’s attention to a prior discussion about private parts having “holes” and asked, “How many holes are there?” M.D. replied, “I don’t know. Like, three or four” before stating, “Maybe like, one. I don’t know.” M.D. then denied talking about having different names for her holes or what can happen with her holes.

¶ 9 M.D. then testified that defendant touched her “cooch” with his “cooch,” which she described as being “kind of like an oval thing.” M.D. stated defendant’s oval thing was between his legs. She also testified that defendant had her touch his oval thing with her mouth, and that his oval thing “kind of tasted like strawberries.” Finally, M.D. testified that defendant touched her “cooch” with his mouth.

¶ 10 On cross-examination, M.D. testified that she has a younger brother who lived with defendant, and that he slept in the same room as defendant and her stepmother. When asked how many times “these things” occurred, M.D. stated, “I don’t know. Like, 10 times. I just don’t know.” She also stated that she thought it started when she “was, like 8.” M.D. testified that her little brother was at school and that her stepmother was at work when the abuse occurred. When asked when the last time the abuse occurred, M.D. answered, “The last time it happened, I don’t know.” She testified, “I think in 2020 I think. I don’t know.” When asked whether the abuse occurred “every single time you went to dad’s house,” M.D. replied, “When I was like—every time when I come to his house, yeah.”

¶ 11 The State’s next witness was Katie Bohland, a forensic interviewer with the Child First Center, which is also known as the Child Advocacy Center (CAC). Bohland testified that she assisted law enforcement and DCFS with allegations regarding child abuse. She explained that she was trained to ensure that her questions were not leading, to avoid bias, to make sure the interview is age-appropriate, and “what is best for the child.” One of the reasons for interviewing children is to prevent issues or problems associated with children having to tell their story multiple times.

Bohland conducted a CAC interview of M.D. on January 12, 2023. The video recorded interview was admitted into evidence and played for the jury without objection.¹

¶ 12 During the interview, M.D. told Bohland that she was at the CAC because her mom told her to come in and tell Bohland something “pretty disgusting.” M.D. told Bohland that she wants to get pregnant when she is 18 years old “by using his private.” When asked to describe what was “disgusting,” M.D. stated, “His private, you know, his cooch?” M.D. explained, “He like pushes it in, but it can’t get in yet. Probably it’ll make it in at the age of 18.” M.D. further explained that to get pregnant, a male “cooch” has to be put into one of the holes of the female “cooch” and that the male has to put “this white stuff in.” When asked how she learned about this, M.D. said that her dad showed her a video on YouTube. M.D. then described an act of sexual intercourse by grabbing her privates and stated that a man puts his private “in here.” M.D. then explained how the woman acted by laying back and breathing heavily. She then told Bohland that the man gets the white stuff in, again while grabbing her own privates. M.D. and her dad were home alone when he showed her the YouTube video.

¶ 13 Bohland asked M.D. if “anything like that ever happened to” her before. M.D. said it happened in a different hole, “not the pregnant hole.” When asked what about the other hole where it happened, M.D. said that she was not sure. M.D. said it sometimes makes her sick and then related a story of when she “threw up” in the pool at the Y. M.D. said she thought the white thing makes her sick. When asked where the white thing came from, M.D. said it came from the “cooch”. When asked where this happened, M.D. said it happened in her father’s bedroom on his bunk bed. When asked how it happened on the bunk bed, M.D. said that she forgot.

¹Both this video, and the video of defendant’s phone call with his wife (discussed below), are a part of the record on appeal and have been reviewed by this court.

¶ 14 M.D. said she told her mom about the abuse after school. She first denied telling anyone else, before clarifying that she told her second dad. M.D. then said it happened more than one time, but that she was not sure when it last happened.

¶ 15 During the interview, M.D. stated that she was 11 years old. She said that the abuse began when she was 10 years old, and that it happened more than one time. M.D. was not sure when the abuse last occurred and stated that the abuse occurred at defendant's house. M.D. told Bohland that it happened "sometimes" when she was at her dad's house. When asked about the time of day when the abuse occurred, M.D. said that it occurred after school. M.D. told Bohland that defendant's wife, Heather Dean, works at Sam's Club and was at work when the abuse occurred. M.D. said that her little brother was sometimes with them when the abuse occurred, but then said he was at school.

¶ 16 Bohland hung up two anatomically correct drawings, one male and one female. When asked to identify what she called "cooch," M.D. pointed to the female genitalia on the female drawing. When asked where the "white stuff" comes from, M.D. pointed to the penis on the male drawing. M.D. told Bohland that she called her privates her "cooch," and that she also calls boys' privates "cooch." When asked what her dad does with his "cooch," M.D. said, "He puts that in here," pointing first to the male penis and then to the female genitalia. Bohland clarified that her father put his "cooch" inside M.D.'s "cooch." M.D. agreed. Bohland asked how it felt on her body when that happened, and M.D. replied, "It feels good." M.D. told Bohland that both her and her father had their pants off when this happened. M.D. then demonstrated that she is laying down when this happens.

¶ 17 When asked "what makes it stop," M.D. told Bohland that she was not sure. M.D. was also unsure of the very next thing that happens after it stopped. Bohland asked M.D. if, after her father

is done putting his “cooch” inside of her “cooch,” if any other part of his body touched her body. She said no, that they put their pants back on. When asked if her father ever said anything after they were done, M.D. said that he sometimes gives her ice cream or her favorite food, cheeseburgers. M.D. also told Bohlen that her father would thank her afterwards. When asked whether her father ever told her to talk or not talk to someone about it afterwards, M.D. said, “He’s like, like, ‘Say to them, “I love my dad and I will not talk about him.” ’ ”

¶ 18 When Bohland asked M.D. whether her father has ever touched her “cooch” with anything other than his “cooch,” M.D. said, “No.” When asked if her father ever asked her to or made her touch his “cooch” with anything other her “cooch,” M.D. touched her mouth and gestured back and forth with her hand. She then said, “Sometimes he makes me suck it.” She said it was not disgusting, but that it just tasted bad. When asked what it tasted like, M.D. said, “It tastes like strawberries.” M.D. thought maybe it tasted that way because her father had eaten strawberries.

¶ 19 M.D. told Bohlen that her father sometimes gave her a shower. Sometimes she would take baths, and her father would use a bath bomb. M.D. denied that anything happened in the bath or shower but followed up that she decided to “wash it” in the shower. M.D. clarified that “it” was her father’s “cooch.” M.D. did not elaborate any further, telling Bohland that she could not talk about it because her father said so. M.D. was asked what makes her stop sucking her father’s “cooch,” and M.D. said that sometimes it takes “too long” and she “can’t take it anymore.” M.D. also explained that her father sometimes wanted her to keep going until he was done. M.D. could not explain what happened when her father was done other than putting his pants on.

¶ 20 When asked what her father’s “cooch” looks like, M.D. pointed to the drawing of the boy. M.D. said that her father’s “cooch” did not look different or change before the white stuff came

out. M.D. offered that sometimes she made her father suck her “cooch.” Again, M.D. did not want to elaborate because “dad said so.”

¶ 21 M.D. first told one of her teachers about the abuse. When asked what made it okay for M.D. to tell her teacher about what happened, M.D. said, “She just wanted to know” and that “she did not give me a 3:30 detention.” When asked when she last saw her dad, M.D. said that she was not sure. When asked if it happened the last time she saw her dad, M.D. replied, “Yeah.” M.D. then said, “Oh, wait a second, it was, it was on Tuesday” then “well, last Wednesday.” When asked if it happened last Wednesday, M.D. replied, “Probably so.”

¶ 22 Bohland returned to the interview room following a break. In response to questions, M.D. denied seeing her father putting anything on his “cooch” and also denied that he put anything on her “cooch.” When asked about the white stuff, M.D. confirmed that her father never put it in her pregnancy hole. M.D. explained that the “pregnancy hole” is the hole where you get pregnant and the other hole does nothing. M.D. reiterated that her father put his cooch in her other hole and not the pregnancy hole.

¶ 23 Following another break, Bohland returned to the room and brought out some anatomically correct dolls. M.D. removed the pants and the underwear from the male doll and the underwear from the girl doll and said, “I’ll show you how it works.” M.D. first positioned the girl doll on its back and placed the male doll in an upright position. The dolls’ privates appeared to be touching. M.D. moved the male doll back and forth, and had the girl doll say, “Ahh.” When asked what happened after that, M.D. placed the girl doll’s mouth on the male doll’s privates while the male doll was on its back. M.D. moved the girl doll’s head up and down. When Bohland asked M.D. about the pregnancy hole, M.D. demonstrated that the pregnancy hole is the hole on the front of the girl doll’s privates. She told Bohland that he puts his “cooch” “in the other hole” and again

moved the dolls so that girl doll was on its back and the male doll was upright with their privates touching. M.D. said, “You see it’s not getting into the pregnancy hole.” Bohland moved closer to see how the dolls were positioned. M.D. then showed Bohland how he sucks her hole. She positioned the girl doll on her back and placed the male doll’s mouth on top of the girl doll’s privates. When asked, M.D. said that all three things occurred always. In response to a question seeking clarification whether all three things happened when “something” would happen, M.D. said that all three things happened.

¶ 24 Following the final break, Bohland sought clarification of M.D.’s statement about the hole being too small. M.D. stated that she was 11 and that her father was 36. She explained that “kids have small holes.” M.D. thought it might work when she is 18, because “the older you get, the larger the cooch.”

¶ 25 After the video was played, the State asked Bohland questions regarding the use of anatomically correct drawings and dolls during the interview. Bohland testified that when referring to the female “cooch,” M.D. pointed to the vagina on the drawing, and when referring to the male “cooch,” M.D. pointed to the penis on the male drawing. When M.D. referred to the “white stuff” coming out a “cooch,” she pointed to the penis. When asked what defendant’s “cooch” looked like, M.D. pointed to the penis on the male drawing. Regarding the use of the dolls, Bohland testified that M.D. placed the female doll on her back and positioned the male doll on top, and that M.D. “had the penis right at the edge of the *** vaginal opening; kind of like just the tip of the penis in there. And it was that area between the vaginal opening and the anus.” M.D. also placed the male doll on its back and placed the female doll on top with the male doll’s penis on the female doll’s mouth. When M.D. was talking about “the cooch and the non-pregnant hole,” Bohland testified that M.D. placed the dolls so that the penis was “touching essentially the space between

the vagina and the anus. But then she showed the penis going into, like I said, just the tip of the penis going into the vaginal opening.” Bohland also testified that M.D. placed the dolls so that the male doll’s mouth was touching the female doll’s vagina.

¶ 26 On cross-examination, Bohland confirmed that M.D. consistently seemed to understand that the vagina is the opening with which a person could get pregnant and that M.D. consistently stated that, when the abuse occurred, defendant placed his “cooch” in her other hole.

¶ 27 The State called James Wrigley, a detective with the Decatur Police Department. Detective Wrigley was assigned to investigate the allegations against defendant. He reviewed the CAC video interview of M.D. Detective Wrigley also went to defendant’s home as a part of the investigation. While there, he asked defendant’s wife, Heather Dean, whether the couple had any lotions. Heather gave him strawberry flavored lubricant. Detective Wrigley testified the lubricant was located underneath the mattress in Heather and defendant’s bedroom. The lubricant was identified and admitted into evidence.

¶ 28 The State also laid the foundation for and played a video of a phone call between defendant and Heather that occurred after defendant’s arrest and while he was housed in the Macon County Jail. During the call, Heather told defendant that the police stopped by the house. She explained that the police wanted to see their bedroom and she showed it to them. Heather told defendant that the police asked whether there was any lube in the house, and that the police took a bottle of lubricant. Defendant told Heather not to give the police anything else, since he cooperated with them and they told him that they believed M.D. Shortly thereafter, defendant told Heather, “Yeah, you realize you just gave them like an exhibit A kind of like evidence type deal, right?” Defendant reiterated that she should not cooperate with the police anymore. Defendant later told Heather that one of the questions the police asked him was whether defendant and Heather used “ ‘anything to

spice up their love life? Do you use any like lubes or toys or anything like that?’ and I said, ‘Not really.’ So that’s what they’re probably gonna consider a lie. Because we don’t really use any lubes or toys.” Heather agreed, stating, “Yeah, we use the lube for me when I’m going down on you. *** That’s why it’s flavored.” On cross-examination, Detective Wrigley admitted that both defendant and Heather cooperated with the investigation. The State rested.

¶ 29 Defendant presented the testimony of Heather Dean during his case-in-chief. Heather testified that she and defendant had been together for four years and were married for a little over one year. She described their bedroom as having a lofted bed, and that their son’s bed was underneath their bed. The home also had a second bedroom that M.D. used while staying with them. Heather also testified that they used to have a couch in their bedroom, and that M.D. sometimes slept in there, but that Heather was always in the room when this happened.

¶ 30 Heather testified that when M.D. came for the weekend visits, Heather would pick her up from school on Friday afternoon. On rare occasions when he was not working, defendant would pick M.D. up from school. Heather would also take M.D. back to school on Tuesday. Heather testified that she had a close relationship with M.D., and that the two of them played video games together. They never used corporal punishment against M.D.

¶ 31 Regarding her work at Sam’s Club, Heather testified that she worked there from September 2022 until January 2023 and that she worked from 8 or 9 a.m. until 2 p.m. She did not normally work on weekends, and she did not work on weekends when M.D. visited the home. Regarding their son, he attended a program on Wednesdays and Fridays from 9 a.m. until noon. Heather testified that defendant worked as a trucker and worked nights. Defendant would “be up” at 5 p.m. and would return home between 8 and 9 a.m. According to Heather, defendant slept from about 9 a.m. until 3 or 4 p.m. and he would leave the house around 5 p.m.

¶ 32 Heather routinely picked M.D. up from school, returned home, and started dinner. After eating, they would “all hang out and play video games either in the living room on the game system there or we’d go to the bedroom.” When in the bedroom, M.D. would sit in the rocking chair and “we’d be up in the bed.” M.D.’s little brother would go to bed about 9 p.m., and M.D. would go to bed about “9-9:30ish.” When asked if defendant and M.D. were ever home alone together, Heather answered, “Not often, if ever.”

¶ 33 Regarding the strawberry lubricant, Heather testified that it was kept on her side of the bed, between the wall and the mattress. According to Heather, she would find M.D. in Heather and defendant’s bed, rummaging around. Heather did not encourage this behavior and would ask her to get down. Heather never saw any behavior that caused her concern.

¶ 34 Heather testified that the last time M.D. came for visitation was on Friday, January 6, 2023. When Heather took M.D. to school on Monday, M.D. said something unusual to Heather. Heather testified that M.D. told her “that she wasn’t coming home that night” but asked if they could play video games online.

¶ 35 Regarding disagreements with M.D.’s mother, Heather testified that once or twice a year, there would be “investigations” into allegations of neglect, presumably made by M.D.’s mother. According to Heather, the investigations were unfounded.

¶ 36 On cross-examination, Heather admitted that there were times that defendant would be alone with M.D., but “[i]t was very short periods of time” and that she would “be in the other room.” Heather also testified, on cross-examination, that she never discussed the use of lube with M.D.’s mother. The defense did not have any redirect for Heather, and rested following her testimony.

¶ 37 Following closing arguments, the matter was submitted to the jury. During deliberations, the jury asked questions on three occasions. The first two questions concerned what defendant knew about the investigation at the time of his video call with Heather and when the video call was made. The court answered the questions by telling the jury that it had all the evidence and that it was to consider the evidence presented. The third question was a request from the jury to view the video of the call a second time. That request was granted. Following deliberations, the jury found defendant guilty of all four counts of predatory criminal sexual assault of a child.

¶ 38 On December 19, 2023, defendant filed a posttrial motion alleging that the State failed to prove him guilty beyond a reasonable doubt. Defendant's motion was denied on January 4, 2024, and defendant was sentenced to 20 years in the Illinois Department of Corrections on each count, said sentences to be served consecutively to one another. Defendant filed a motion to reconsider his sentence, and that motion was denied on January 24, 2024. A timely notice of appeal was filed on February 8, 2024.

¶ 39 **II. ANALYSIS**

¶ 40 Defendant raises four issues on appeal. First, defendant argues that the evidence was insufficient to support his convictions. Second, defendant argues that the trial court abused its discretion by allowing the State to admit M.D.'s video recorded interview from the CAC. Third, defendant argues his right to a fair trial was denied by the trial court's failure to provide the jury IPI Criminal No. 11.66 as required by section 115-10 of the Code. Finally, defendant argues his convictions must be vacated because the jury instructions did not require the jury to unanimously agree on a specific act underlying each of the charged offenses. We address each of defendant's contentions of error in order.

¶ 41

A. Sufficiency of the Evidence

¶ 42 On appeal, defendant argues that the evidence was insufficient to find him guilty beyond a reasonable doubt. We disagree. We consider each conviction in turn, along with defendant's specific allegations.

¶ 43 “When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt.” *People v. Sauls*, 2022 IL 127732, ¶ 52. This court will not reverse a conviction on sufficiency grounds unless the evidence was so “unreasonable, improbable, or unsatisfactory” that, even when viewed in the light most favorable to the State, no rational trier of fact could accept it as proof beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008); see *Jackson v. Virginia*, 443 U.S. 307 (1979). The findings made by the trier of fact regarding the credibility of witnesses, the inferences to be drawn from the evidence, and the resolution of conflicts in the evidence are all entitled to significant deference. *Ross*, 229 Ill. 2d at 272.

¶ 44 In the case before us, defendant was convicted of four counts of predatory criminal sexual assault of a child. To prove defendant guilty of predatory criminal sexual assault, the State had to prove that defendant was 17 years of age or older and committed “an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration,” and that the victim was under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2022). “Sexual penetration” is defined as “any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus

of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration.” *Id.* § 11-0.1.

¶ 45 Count I alleged that defendant committed an act of sexual penetration in that his penis touched the vagina of M.D. During her testimony, M.D. testified that defendant touched her “private parts.” M.D. indicated that she called her “private parts” her “cooch.” M.D. explained that defendant touched her “cooch” with his “cooch” which she described as being “kind of like an oval thing.”

¶ 46 Kate Bohland testified about M.D.’s CAC interview. During her interview, M.D. explained that defendant “like pushes it in, but it can’t get in yet.” Bohland showed M.D. two anatomically correct drawings, one male and one female. M.D. identified the “cooch” as the female genitalia. M.D. identified male genitalia as “cooch” also. When asked what defendant did with his “cooch,” M.D. said, “He puts that in here,” pointing first to the male penis and then to the female genitalia. Bohland clarified that defendant put his “cooch” inside M.D.’s “cooch” and M.D. agreed.

¶ 47 Bohland used anatomically correct dolls during the interview. M.D. showed Bohland “how it works” and positioned the dolls with their privates appearing to be touching. Although M.D. indicated that defendant did not place his “cooch” in her “pregnancy hole,” Bohland testified that when referring to the female “cooch,” M.D. pointed to the vagina on the drawing, and when referring to the male “cooch,” M.D. pointed to the penis on the male drawing.

¶ 48 Regarding the use of the dolls, Bohland testified that M.D. placed the female doll on her back and positioned the male doll on top, and that M.D. “had the penis right at the edge of the *** vaginal opening; kind of like just the tip of the penis in there. And it was that area between the vaginal opening and the anus.” When M.D. was talking about “the cooch and the non-pregnant hole,” Bohland testified that M.D. placed the dolls so that the penis was “touching essentially the

space between the vagina and the anus. But then she showed the penis going into, like I said, just the tip of the penis going into the vaginal opening.” Bohland sought clarification of M.D.’s statement about the hole being too small. M.D. stated that she was 11 and that her father was 36. She explained that “kids have small holes.” M.D. thought it might work when she is 18, because “the older you get, the larger the cooch.” Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count I, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis on the vagina of M.D.

¶ 49 Count II alleged that defendant committed an act of sexual penetration in that his penis touched the anus of M.D. During her testimony, M.D. testified that defendant touched her “private parts.” M.D. indicated that she called her “private parts” her “cooch.” M.D. explained that defendant touched her “cooch” with his “cooch.”

¶ 50 Kate Bohland testified about M.D.’s CAC interview. During her interview, M.D. explained that defendant “like pushes it in, but it can’t get in yet.” Bohland asked M.D. if “anything like that ever happened to” her before. M.D. said it happened in a different hole, “not the pregnant hole.” When asked what about the other hole where it happened, M.D. said that she was not sure. M.D. said it sometimes makes her sick, although she then recounted a story of becoming ill at the swimming pool.

¶ 51 During the interview, M.D. stated that defendant did not put “it” in her “pregnancy hole.” M.D. explained that the “pregnancy hole” was the hole where one could get pregnant, and the other hole did “nothing.” When asked about the pregnancy hole, using anatomically correct dolls, M.D. demonstrated that the pregnancy hole was the hole on the front of the girl doll’s privates. M.D. told Bohland that defendant put his “cooch” “in the other hole” and moved the dolls so that the

girl doll was on its back and the male doll was upright with their privates touching. M.D. said, “you see it’s not getting into the pregnancy hole.” Bohland confirmed that M.D. consistently seemed to understand that the vagina is the opening with which a person could get pregnant and that M.D. consistently stated that, when the abuse occurred, defendant placed his “cooch” in her other hole. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count II, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis on the anus of M.D.

¶ 52 Count III alleged that defendant committed an act of sexual penetration in that defendant touched M.D.’s vagina with his mouth. M.D. testified that defendant touched her “cooch” with his mouth. During her interview with Bohland, M.D. offered that sometimes she made her father suck her “cooch.” However, she did not elaborate further, because “dad said so.”

¶ 53 Using anatomically correct dolls, during the CAC interview with Bohland, M.D. showed Bohland how defendant “suck[ed]” her “hole.” M.D. positioned the girl doll on her back and placed the male doll’s mouth on top of the girl doll’s privates. Bohland testified that M.D. placed the dolls so that the male doll’s mouth was touching the female doll’s vagina. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count III, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his mouth on the vagina of M.D.

¶ 54 Count IV alleged that defendant committed an act of sexual penetration in that he placed his penis in M.D.’s mouth. M.D. testified that defendant had her touch defendant’s “cooch” with her mouth. She testified that it “kind of tasted like strawberries.” During her interview with

Bohland, M.D. indicated that defendant had her “suck it” and touched her mouth and gestured back and forth with her hand. M.D. said that it tasted like strawberries. When asked what made her stop sucking defendant’s “cooch,” M.D. said that sometimes it took “too long” and she could not “take it anymore.” Using anatomically correct dolls, during the interview with Bohland, M.D. placed the girl doll’s mouth on the male doll’s penis while the male doll was on its back. M.D. moved the girl doll’s head up and down. M.D. also placed the male doll on its back and placed the female doll on top with the male doll’s penis on the female doll’s mouth. Heather Dean and Detective Wrigley corroborated M.D.’s CAC interview statement, wherein both testified that Dean and defendant used strawberry flavored lubricant. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count IV, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual contact by placing his penis in the mouth of M.D.

¶ 55 We recognize that defendant argues that M.D.’s testimony was internally contradictory. As noted above, when considering such a challenge, a reviewing court must determine “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Bush*, 2023 IL 128747, ¶ 33 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The standard of reasonable doubt “does not require the court to “ ‘ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt.’ ” (Emphasis in original.) *People v. Campbell*, 146 Ill. 2d 363, 374 (1992) (quoting *Jackson*, 443 U.S. at 318-19, quoting *Woodby v. Immigration & Naturalization Service*, 385 U.S. 276, 282 (1966)). Rather, a reviewing court must determine “ ‘whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.’ ” (Emphasis in original.) *Bush*, 2023 IL 128747, ¶ 33 (quoting *Collins*, 106 Ill. 2d at 261). This “standard gives ‘full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.’ ” *Campbell*, 146 Ill. 2d at 375 (quoting *Jackson*, 443 U.S. at 319). For this reason, a reviewing court “will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.” *Id.* (citing *People v. Young*, 128 Ill. 2d 1, 51 (1989)). “[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant.” *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We “will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.” *Campbell*, 146 Ill. 2d at 375 (citing *Collins*, 106 Ill. 2d at 261).

¶ 56 Defendant argues that M.D. was not credible due to contradictions between her trial testimony and her CAC interview. Defendant points to several instances where M.D.’s statements and trial testimony were vague and inconsistent. Regarding vagueness, defendant notes that M.D.’s statement at the CAC included numerous answers where M.D. stated that she “forgot” or was “not sure.” For example, during the CAC interview, when Bohland asked M.D. to tell her about “it happening on top of the bunk bed,” M.D. replied, “Oh, I forgot.” M.D. also told Bohland that she did not remember the first time it happened. Examples of M.D. being “not sure” include her not being sure of (1) when the abuse last occurred, (2) what made it stop, (3) when she last saw defendant, and (4) why it started when she was 10 years old. Defendant argues that M.D.’s statements are too vague to prove him guilty beyond a reasonable doubt.

¶ 57 Defendant also notes the differences in M.D.’s CAC statement and her trial testimony, highlighting the fact that M.D. referred to two holes, including a pregnancy hole, during her CAC

interview, but at trial was unsure of the number of holes, denied using different names for them and denied knowing what can happen with one of the holes, *i.e.*, that it is for pregnancy. Defendant also highlights the discrepancy in the number of times M.D. alleged that the assaults took place: during the CAC interview, M.D. said that it happened more than once and that it only happened sometimes, compared to her trial testimony that the assaults occurred 10 times, that she did not know how many times it occurred, and that it happened every time she visited her father.

¶ 58 Defendant also asserts that M.D.’s inability to recall when the assaults began and ended is another major discrepancy. As argued by the State, the date of the offense is not an element of the offense, and “[a]s long as the crime charged allegedly occurred within the applicable statute of limitations period, the State [is] required to do no more than provide the defendant with the best information it has regarding when the offense took place.” *People v. Burton*, 201 Ill. App. 3d 116, 123 (1990) (citing *People v. Patrick*, 38 Ill. 2d 255, 260 (1967)).

¶ 59 Defendant contends that inconsistencies in M.D.’s statement and testimony require reversal on all four counts. Considering the evidence as a whole, we disagree with defendant’s characterization of the inconsistencies and do not find them to be of such significance that they render M.D.’s statement and testimony to be wholly unbelievable. We especially consider this true in light of M.D.’s age and her autism. While some inconsistencies exist, the CAC interview showed M.D. to be comfortable and open in the presence of Bohland when it was just the two of them in the interview room. In comparison, when testifying in front of her father and a roomful of strangers, M.D. testified that she was “too scared” to talk about what happened between her and her father. The jury could have reasonably understood that the difference in these two settings would impact M.D.’s testimony at trial.

¶ 60 Defendant also argues that M.D. had motives to fabricate the allegations. Defendant contends that M.D. told Bohland that she made her initial disclosure to a teacher to avoid a detention. We do not find this supported by the record. When asked why she told her teacher, M.D. answered, “She just wanted to know” and then added, “She did not give me a 3:30 detention.” M.D. then mentioned that detentions could be in the morning or the afternoon. Contrary to defendant’s assertion, it is not clear that M.D. told her teacher about the abuse to *avoid* a detention; indeed, the exchange could be interpreted as M.D. saying that she did not get a detention even though she told her teacher about the abuse. Defendant also speculates that M.D.’s mother, Phipps, “could have influenced M.D. to fabricate the allegations against” defendant, citing trial testimony regarding the fact that the 2017 court proceedings regarding visitation were contested, as well as the fact that Phipps testified that there were times that M.D. came home from visiting her father with cuts or fleas. We note that Phipps denied reporting any concerns to DCFS, but that Heather suggested DCFS involvement by testifying that there were “investigations” that were unfounded.

¶ 61 In the case before us, by convicting defendant of all four counts, the jury found M.D. credible despite any inconsistencies in her testimony. We defer to these credibility determinations and conclude that the evidence was sufficient to prove defendant’s guilt of predatory criminal sexual assault of a child beyond a reasonable doubt. “When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant.” *People v. Givens*, 237 Ill. 2d 311, 334 (2010) (citing *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000)). “Rather, it is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts.” *People v. Gray*, 2017 IL 120958, ¶ 35. Accordingly, this court “will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses.” *Id.* “Where the finding of

the defendant’s guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt.” *Id.* ¶ 36. “Under this standard, the eyewitness testimony may be found insufficient ‘only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.’ ” *Id.* (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). “A conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible.” *Id.*

¶ 62 The jury was aware of the inconsistencies in the testimony and the CAC interview, and it nonetheless found M.D.’s account to be sufficiently credible to find defendant guilty. Given that M.D. was cognitively challenged due to her autism diagnosis, the jury could reasonably conclude that M.D. was mistaken or confused about some of the details. It was the function of the jury to assess the credibility of the witnesses and resolve discrepancies in the testimony, and we cannot substitute our judgment for that of the jury. *Siguenza-Brito*, 235 Ill. 2d at 229. Having thoroughly reviewed the evidence in this matter in the light most favorable to the State and allowing for reasonable inferences therefrom in favor of the prosecution, we conclude the evidence presented was not so unreasonable, so improbable, or so unsatisfactory that defendant’s convictions must be reversed. Stated another way, the jury could have found the essential elements of the offenses beyond a reasonable doubt.

¶ 63 In sum, we cannot say that the evidence presented was so “unreasonable, improbable, or unsatisfactory” that, when viewed in the light most favorable to the State, no rational trier of fact could accept it as proof beyond a reasonable doubt. *Ross*, 229 Ill. 2d at 272. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found the required

elements of the crime beyond a reasonable doubt. Thus, we find the evidence presented at trial sufficient to convict defendant of all four counts of predatory criminal sexual assault.

¶ 64

B. CAC Interview

¶ 65 Defendant next argues that the trial court abused its discretion by allowing the State to introduce M.D.'s statement to Bohland at the CAC. However, defendant acknowledges this issue was forfeited due to defense counsel's failure to both object to the admission of M.D.'s CAC interview and to file a motion for a new trial. Accordingly, defendant asks this court to review the matter under the first prong of the plain-error doctrine. He also contends that his trial counsel was ineffective for failing to object to the admission of the pretrial statements. The State responds, arguing that defendant did not merely forfeit this issue, but instead waived this issue by failing to object to the admissibility of the evidence. *People v. Luckett*, 24 Ill. 2d 550, 554 (1962) (the admissibility of evidence is waived when no objection was made at trial regarding the admission of the evidence). We agree with the State.

¶ 66 In the case before us, defendant contends that the "time, content and circumstances of the interview did not provide sufficient safeguards of reliability." The record demonstrates that defense counsel confessed the State's motion as related to the admissibility of the CAC interview. We note that parties can proceed on stipulated evidence, and that a trial court can draw conclusions about the reliability of out-of-court statements based upon the stipulations. *People v. Morgan*, 259 Ill. App. 3d 770, 780 (1994). We further note that the trial court did not have to rely solely upon defense counsel's confession to the State's motion: the trial court indicated that it had watched the video and found "that the time, content and circumstances of the statements provide sufficient safeguards of reliability." As noted above, defendant acknowledges this issue was forfeited due to defense counsel's failure to both object to the admission of M.D.'s CAC interview and to file a

motion for a new trial. *People v. Woods*, 214 Ill. 2d 455, 469 (2005) (“Ordinarily, a defendant must both specifically object at trial and raise the specific issue again in a posttrial motion to preserve any alleged error for review.”).

¶ 67 “Waiver is the intentional relinquishment of a known right, whereas forfeiture is the failure to make a timely assertion of a known right.” *People v. Hibbler*, 2019 IL App (4th) 160897, ¶ 51 (quoting *People v. Bowens*, 407 Ill. App. 3d 1094, 1098 (2011)). “ ‘In the course of representing their clients, trial attorneys may (1) make a tactical decision not to object to otherwise objectionable matters, which thereby waives appeal of such matters, or (2) fail to recognize the objectionable nature of the matter at issue, which results in procedural forfeiture.’ ” *Id.* (quoting *Bowens*, 407 Ill. App. 3d at 1098.) The plain-error doctrine permits a reviewing court to consider forfeited matters, but not matters that were waived. *Id.* Accordingly, we need not consider defendant’s waived claim under the plain-error doctrine. However, we will review defendant’s argument regarding the admission of the CAC interview under defendant’s claim that defense counsel was ineffective for confessing the State’s section 115-10 motion.

¶ 68 Our review of ineffective assistance of counsel claims is guided by the standards set forth in *Strickland v. Washington*, 466 U.S. 668, 687 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504, 526 (1984). To succeed on a claim of ineffective assistance of counsel under the *Strickland* standard, one must show both that (1) counsel’s representation fell below an objective standard of reasonableness (deficient performance prong) and (2) a reasonable probability exists that, but for the error, the result would have been different (prejudice prong). *People v. Manning*, 241 Ill. 2d 319, 326-27 (2011). A defendant must satisfy both prongs of the *Strickland* test to succeed on a claim of ineffective assistance of counsel. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Thus, defendant’s failure to establish either deficient

performance or prejudice will be fatal to the claim. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000).

¶ 69 To establish deficiency under the first prong of the *Strickland* test, defendant must overcome the strong presumption that the complained-of action or inaction might have been the product of counsel's sound trial strategy. *Manning*, 241 Ill. 2d at 327. The reviewing court must evaluate counsel's performance from her perspective at the time rather than "through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344 (2007). An evaluation of counsel's actions cannot extend into matters involving the exercise of judgment, strategy, or trial tactics. *People v. Penrod*, 316 Ill. App. 3d 713, 722 (2000). "Reviewing courts should hesitate to second-guess counsel's strategic decisions, even where those decisions seem questionable." *Manning*, 241 Ill. 2d at 335. Only the most egregious of tactical or strategic blunders may provide a basis for a violation of a defendant's right to the effective assistance of counsel (*People v. Kubik*, 214 Ill. App. 3d 649, 661 (1991)), such as when defense counsel's chosen strategy was so unsound that counsel completely failed to conduct any meaningful adversarial testing. *People v. Reid*, 179 Ill. 2d 297, 310 (1997). We review ineffective assistance of counsel claims *de novo*. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 25.

¶ 70 Whether to object to the foundation for the admission of evidence is generally a matter of trial strategy. *People v. Probst*, 344 Ill. App. 3d 378, 387 (2003). "As a matter of strategy, failure to object does not necessarily establish substandard performance." *Id.* (citing *People v. Graham*, 206 Ill. 2d 465, 478-79 (2003)). Based upon the record before this court, we cannot find that defense counsel's decision to confess the State's motion fell below an objective standard of reasonableness.

¶ 71 Here, defense counsel could have decided, based upon viewing the video that morning with her client, that arguing against admission of the evidence would be futile, and that doing so would have only tipped her hand on how she planned to handle M.D.’s statement and trial testimony. Furthermore, as defendant indicated, M.D.’s CAC statement included internal inconsistencies, and was also inconsistent with her testimony at trial. Defense counsel may have anticipated, in the absence of the CAC interview, that she would be limited in her ability to cross-examine M.D. “ ‘Neither mistakes in strategy nor the fact that another attorney with the benefit of hindsight would have proceeded differently is sufficient to establish ineffective assistance of counsel.’ ” *People v. Hotwagner*, 2015 IL App (5th) 130525, ¶ 35 (quoting *People v. Dobbs*, 353 Ill. App. 3d 817, 827 (2004)). Having found that defense counsel’s performance was not deficient, we need not consider the prejudice prong of the *Strickland* standard.

¶ 72 For the foregoing reasons, we find defendant waived any challenge to the admissibility of M.D.’s out-of-court statement to Bohland at the CAC. Furthermore, because there were strategic reasons for defense counsel wanting to have the CAC interview admitted into evidence, we find that defense counsel was not ineffective for confessing the State’s motion to admit the same.

¶ 73 C. Jury Instructions

¶ 74 Next, defendant argues that the trial court’s failure to give Illinois Pattern Instruction, Criminal No. 11.66 deprived him of a fair trial. IPI Criminal No. 11.66 is a mandatory instruction required by section 115-10(c) of the Code (725 ILCS 5/115-10(c) (West 2022)). IPI Criminal No. 11.66 provides:

“You have before you evidence that ____ made [(a statement) (statements)] concerning [(an) (the)] offense[s] charge in this case. It is for you to determine [whether the statement[s] [(was) (were)] made, and, if so,] what weight should be given to the statement[s]. In making that determination, you should consider the age and maturity of ____, the nature of the statement[s], [and] the circumstances

under which [(a) (the)] statement[s] [(was) (were)] made[, and ____].” IPI Criminal No. 11.66

Defendant argues it was essential that the jury receive this instruction so it could understand exactly how to evaluate M.D.’s statement at the CAC. Defendant contends that, although this issue was not preserved and is therefore forfeited, the evidence in this case was closely balanced and that the failure to give the instruction was first prong plain error. Alternatively, defendant argues defense counsel was ineffective for failing to request the instruction. The State admits that the failure to give the instruction was error but denies that the failure rises to the level of plain error or ineffective assistance of counsel. We agree with the State.

¶ 75 The initial step under either prong of the plain-error doctrine is to determine whether there was a clear or obvious error at trial. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007). We agree that error occurred. There is no dispute that the jury should have been instructed in accordance with section 115-10(c) of the Code. 725 ILCS 5/115-10(c). Failure to provide the jury with IPI Criminal No. 11.66 “was clear and obvious error.” *People v. Sargent*, 239 Ill. 2d 166, 190 (2010).

¶ 76 However, because defendant raises this issue under the first prong of the plain-error doctrine, in order to excuse defendant’s forfeiture, he bears the burden of persuasion that the evidence in this matter was closely balanced. *People v. Herron*, 215 Ill. 2d 167, 187 (2005). Defendant argues that the evidence in this matter was closely balanced. We disagree.

¶ 77 As noted above, notwithstanding some inconsistencies in M.D.’s statement and testimony and her inability to recall dates and specific details regarding the sexual acts, we do not find that they rise to the level of rendering the evidence closely balanced. M.D. was consistently clear that defendant was the person who committed sexual acts upon her. M.D. was also consistent in her explanation of where the abuse occurred, and in the acts that were committed: that defendant placed his “cooch” in her “cooch,” that defendant put his penis in M.D.’s mouth, and that defendant

placed his mouth on M.D.'s "cooch." M.D. also used anatomically correct drawings and dolls to demonstrate the acts that were perpetrated on her, complete with movement and vocalization. Furthermore, M.D.'s allegations were corroborated by her statement that defendant's "cooch" tasted like strawberries and defendant's apparent concern that the police seized Heather's strawberry lubricant from the very location where M.D. alleged that the abuse occurred. The significance of these facts cannot be overstated. Under these circumstances, we find that the evidence presented was overwhelming. Accordingly, defendant's forfeiture of this issue will not be excused under the plain-error doctrine.

¶ 78 As noted above, defendant argues, in the alternative, that counsel was ineffective for failing to request that IPI Criminal No. 11.66 was submitted to the jury. Again, to prevail on a claim of ineffective assistance of counsel, defendant must meet both prongs of the *Strickland* test: (1) that defense counsel's performance was deficient and (2) that a reasonable probability exists that, but for the error, the result would have been different. *Manning*, 241 Ill. 2d at 326-27. "A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding." (Internal quotation marks omitted.) *People v. Moore*, 2020 IL 124538, ¶ 29. Both parties agree that defense counsel's failure to tender IPI Criminal No. 11.66 constituted deficient performance. Accordingly, we turn our attention to defendant's claim of prejudice.

¶ 79 Defendant's argument in his brief is simply a conclusion: Had IPI Criminal No. 11.66 been given, the jury would have been able to "assess the weight and credibility of M.D.'s out of court statements in light of her age and maturity, the nature of those statements, and the circumstances in which they were given, there is at least a reasonable probability the jury would have found M.D. incredible and [defendant] not guilty." The State responds and notes that defendant did not suffer

prejudice from the failure to instruct the jury pursuant to IPI Criminal No. 11.66. The State notes that the jury was provided with IPI Criminal No. 1.02, which states:

“Only you are the judges of the believability of the witnesses and of the weight to be given to the testimony of each of them. In considering the testimony of any witness, you may take into account his ability and opportunity to observe, his age, his memory, his manner while testifying, and interest, bias, or prejudice he may have, and the reasonableness of his testimony considered in light of all the evidence in the case.” IPI Criminal No. 1.02 (Approved Dec. 8, 2011).

The State also relies on the supreme court’s decision in *Sargent*, 239 Ill. 2d 166.

¶ 80 In *Sargent*, like the case before this court, the trial court did not provide the jury with the instruction required by section 115-10(c) of the Code and IPI Criminal No. 11.66 (*id.* at 188), but did provide the provide the jury with IPI Criminal No. 1.02. *Id.* at 192. The *Sargent* court rejected defendant’s first-prong plain-error claim, finding that the evidence against the defendant was overwhelming. *Id.* at 190. The *Sargent* court also rejected defendant’s claim under the second prong of the plain-error doctrine by noting that “it seems highly likely that the jury understood that the victims’ videotaped statements fell within the terms of the instruction it received based on” IPI Criminal 1.02. *Id.* at 194.

¶ 81 Defendant argues that *Sargent* is distinguishable due to the fact that the trial court in *Sargent* held a hearing to determine whether the minor’s videotaped statements were sufficiently reliable to render them admissible, and that no such hearing was held here. As noted above, defendant waived this aspect of his argument.

¶ 82 Defendant also attempts to distinguish *Sargent* because the court discussed IPI Criminal No. 1.02 in terms of the second prong of the plain-error doctrine and under the second prong, prejudice is presumed. We find this to be a distinction without a difference. If the omission of IPI Criminal No. 11.66 does not severely threaten the fairness of a defendant’s trial when there is overwhelming evidence of defendant’s guilt, it seems incongruous to suggest that a defendant can

be prejudiced to the extent that, but for defense counsel's failure to request the instruction, a reasonable probability exists that the result would have been different.

¶ 83 Here, the jury was instructed regarding similar principles pertaining to its role in assessing witness credibility and the various criteria to consider when making that assessment, including the age of the witness. As outlined above, the evidence in this case was more than sufficient. As such, we find that there is no reasonable probability that the result of the trial would have been different had defense counsel requested this mandatory instruction. For this reason, we find that defendant did not receive ineffective assistance of counsel.

¶ 84 D. Non-Pattern Instruction

¶ 85 Finally, defendant contends that his convictions must be vacated because the jury instructions did not require the jury to unanimously agree on a specific occurrence of the sexual act underlying each of his convictions. According to defendant, this failure violated his sixth amendment right to a unanimous jury verdict. Defendant argues that the jury should have been given a non-pattern jury instruction on jury unanimity. Defendant acknowledges that defense counsel did not request such an instruction and that the issue was not preserved but asks this court to review the matter under the second prong of the plain-error doctrine, or alternatively, find that defense counsel was ineffective for failing to request the instruction.

¶ 86 Our colleagues in the First District recently considered these arguments in *People v. Alvarado-Morales*, 2025 IL App (1st) 240134-U. There, the defendant was charged with four counts of predatory criminal sexual assault of a child and was found guilty of two of those counts. Similar to the case before this court, the State alleged that the defendant's behavior was a course of conduct that occurred over a period of three years but did not allege specific dates when the individual acts took place. The defendant argued his sixth amendment right to a unanimous jury

verdict was violated. The defendant in *Alvarado-Morales* relied on the same cases and reasoning that defendant herein uses in support of this argument. The *Alvarado-Morales* court rejected the defendant's argument. We agree with the *Alvarado-Morales* court's reasoning and likewise reject defendant's argument.

¶ 87 As noted in *Alvarado-Morales*, under both the United States and Illinois constitutions, a defendant has a right to a unanimous jury verdict in support of a criminal conviction. *People v. Jackson*, 2022 IL 127256, ¶ 33. Whether this or any other constitutional right has been violated is a question we review *de novo*. *People v. Burns*, 209 Ill. 2d 551, 560 (2004).

¶ 88 “Jury instructions are intended to help jurors properly apply the law to the evidence presented and reach a correct verdict.” *People v. Hampton*, 2024 IL App (1st) 230171, ¶ 28. When the Illinois Pattern Jury Instructions contain an applicable instruction, that instruction “shall be used, unless the court determines that it does not accurately state the law.” Illinois Supreme Court Rule 451(a) (eff. Apr. 8, 2013). In the absence of an applicable IPI instruction, the trial court may, in its discretion, give a nonpattern instruction on a matter that the trial court concludes the jury should be instructed on. *Hampton*, 2024 IL App (1st) 230171, ¶ 28. The nonpattern instruction should be “simple, brief, impartial, and free from argument.” *Id.* Whether the instructions given accurately conveyed the law to the jury is also a question we review *de novo*. *People v. Parker*, 223 Ill. 2d 494, 501 (2006).

¶ 89 Here, the trial court gave the jurors both a guilty and a not guilty verdict form for each of the four counts of predatory criminal sexual assault of a child that defendant faced. These included one count based on penetration consisting of contact between defendant's penis and M.D.'s vagina (count I), one count based on penetration between defendant's penis and M.D.'s anus (count II), one count based on penetration between defendant's mouth and M.D.'s sex organ (count III), and

one count based on penetration between defendant's penis and M.D.'s mouth (count IV). The court instructed the jurors that, to find defendant guilty of those charges, they had to unanimously conclude beyond a reasonable doubt that he knowingly committed "an act" of sexual penetration of the type specified in each of the charges. Defendant argues on appeal, however, that the verdict forms and instructions given did not require the jurors to clearly and unanimously agree "on a *specific act* underlying each charged offense" for which he was found guilty. (Emphases added.) In other words, defendant argues that the jurors also needed to agree on a specific *instance* for each act.

¶ 90 The State argues that the lack of a non-IPI instruction requiring the jurors to agree on a specific instance of these three types of contact did not violate defendant's right to a unanimous verdict. We agree with the State. As noted in *Alvarado-Morales*, this same argument was rejected in *People v. Reynolds*, 294 Ill. App. 3d 58, 70 (1997). The defendant in *Reynolds* was charged with obstruction of justice, sexual assault, child pornography, and aggravated sexual abuse, all stemming from sexual intercourse he had with a 16-year-old girl over a period of 5 months. *Id.* at 60-61. On appeal, the defendant argued that the jurors in his case should have been given separate forms, not only for each type of sexual penetration, but "for each of the three identifiable 'episodes' of sexual interaction," to ensure that any guilty verdict they reached was unanimously based on the same specific incident. *Id.* at 70. The *Reynolds* court disagreed, concluding that the testimony at trial established not three distinct "episodes" of unlawful conduct, but rather "an ongoing sexual relationship between [the] defendant and [the victim]" that constituted a continuous course of conduct, and in such a case, no separate verdict form was required for each individual occurrence. *Id.* at 70-71.

¶ 91 The cases relied on by defendant in this matter were readily and persuasively distinguished by the *Alvarado-Morales* court. 2025 IL App (1st) 240134-U, ¶¶ 62-66. Some were distinguished because, unlike the case before this court, the cases do not involve charges based on a continuous course of conduct. *Id.* ¶¶ 62-63 (distinguishing *People v. Scott*, 243 Ill. App. 3d 167 (1993) (three separated controlled substances sales to three separated undercover agents) and *People v. Cardamone* (over two dozen charges of sex offenses committed by a gymnastics coach against 14 different gymnasts, plus a uniquely high volume of other crimes evidence introduced during the two-month trial.))

¶ 92 The *Alvarado-Morales* court also distinguished *People v. Filipiak*, 2023 IL App (3d) 220024, noting that although *Filipiak* arguably involved a continuous course of conduct, the defendant therein was charged with two counts of the same sexual conduct committed at two different times against one victim. *Alvarado-Morales*, 2025 IL App (1st) 240134-U, ¶ 64. In *Filipiak*, the jury verdict forms did not adequately distinguish between the two acts, and the jury convicted defendant of one act and acquitted him of the other act. *Filipiak*, 2023 IL App (3d) 220024, ¶¶ 9-12. The *Filipiak* court reversed, finding it was impossible to “ascertain[] with reasonable certainty whether the jury intended to convict [the] defendant of the shower conduct while acquitting him of the couch conduct or vice versa.” *Id.* ¶ 16. The court explained that, where the State elects to charge distinct instances of the same illegal sexual conduct as separate offenses that could subject the defendant to separate penalties, then the jury must be unanimous as to which of those distinct instances is the basis for its finding of guilt. *Id.* ¶ 17. Here, although the evidence demonstrated that the penis-to-vagina contact, the penis-to-anus contact, the mouth-to-sex organ contact and the penis-to-mouth contact all occurred multiple times, the State did *not* charge defendant with separate instances for each these contacts. The jurors were therefore not required

to unanimously base their guilty verdict on a single instance of sexual contact as alleged in each count.

¶ 93 Also, like the defendant *Alvarado-Morales*, defendant herein also cites a number of out-of-state cases. As noted by the *Alvarado-Morales* court, “[s]ome are distinguishable on the same bases we have just discussed. To the extent that any others are not, we ‘do not look to the law of other states when there is relevant Illinois case law available.’ ” *Alvarado-Morales*, 2025 IL App (1st) 240134-U, ¶ 67 (quoting *In re Estate of Walsh*, 2012 IL App (2d) 110938, ¶ 45.) Like the *Alvarado-Morales* court, “[w]e see no reason here to depart from the relevant decisions of our own courts in favor of out-of-state precedent.” *Id.*

¶ 94 Succinctly stated, the signed verdict forms show that the jurors unanimously found defendant guilty of predatory criminal sexual assault of a child based on acts of contact between (1) his sex organ and M.D.’s vagina (count I), (2) his sex organ and M.D.’s anus (count II), (3) his mouth and her sex organ (count III), and (4) his sex organ and M.D.’s mouth (count IV). Because he was not charged with multiple counts of any specific type of contact, the jury was not required to pinpoint the specific instance of the conduct underlying their finding of guilt on each charge.

¶ 95 Having found that there is no error, there can be no plain error. *Piatkowski*, 225 Ill. 2d at 565. Likewise, we fail to find ineffective assistance of counsel. Counsel is not ineffective for failing to raise an objection to jury verdict forms and instructions that accurately state the law. See *People v. Lewis*, 88 Ill. 2d 129, 156 (1981) (“Counsel is not required to make losing objections in order to provide effective representation.”).

¶ 96 III. CONCLUSION

¶ 97 For the foregoing reasons, we affirm defendant’s convictions for predatory criminal sexual assault of a child.

¶ 98 Affirmed.