

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).

2026 IL App (4th) 250312-U

NO. 4-25-0312

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED

September 15, 2026
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Tazewell County
JACOB C. SMITH,	)	No. 24CF179
Defendant-Appellant.	)	
	)	Honorable
	)	Christopher R. Doscotch,
	)	Judge Presiding.

PRESIDING JUSTICE STEIGMANN delivered the judgment of the court.
Justices Zenoff and Lannerd concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed defendant's conviction for predatory criminal sexual assault of a child.

¶ 2 In March 2024, the State charged defendant, Jacob C. Smith, with predatory criminal sexual assault of a child, M.K., a Class X felony (720 ILCS 5/11-1.40(a)(1) (West 2024)). The State alleged, generally, that on February 24, 2024, defendant (who was M.K.'s uncle) touched M.K.'s vagina for the purpose of his own sexual gratification.

¶ 3 In January 2025, following a jury trial, defendant was found guilty of predatory criminal sexual assault of a child. Later, the trial court sentenced defendant to eight years in prison.

¶ 4 Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt of predatory criminal sexual assault of a child because the evidence was insufficient to show (1) defendant touched the victim and (2) it was done for the purpose of sexual

gratification. We disagree and affirm.

¶ 5

I. BACKGROUND

¶ 6

A. The Charges

¶ 7

In March 2024, the State charged defendant with predatory criminal sexual assault of a child, a Class X felony (*id.* § 11-1.40(a)(1)). The State alleged that on February 24, 2024, defendant committed an act of contact between his hand and the vagina of M.K., who was under 13 years old, for the purpose of sexual gratification.

¶ 8

A probable cause affidavit filed with the trial court stated that M.K. told her mother that defendant touched her vagina while they were in a bedroom at her grandparent's house.

¶ 9

B. The Jury Trial

¶ 10

In January 2025, the trial court conducted defendant's jury trial.

¶ 11

1. M.K.

¶ 12

M.K. testified that she was five years old and enrolled in daycare. M.K. said that she lived with her mother and her mother's boyfriend, Josh S. Her grandparents were Randy S. and Penny S. She would go to their house on occasion when her mother and Josh were "doing other stuff." When she was at their house, she would play in the "bounce house," which was a Fisher-Price brand inflatable toy that was about five feet by five feet in size. She identified the bounce house as being in an upstairs room at her grandparents' house. She would play in that bounce house with her siblings.

¶ 13

When asked whether there were "parts of your body that you don't want other people to touch," she responded, "Yeah," and pointed between her legs, identifying that body part as her vagina. When asked whether there was a time when she was in the room with the bounce house and somebody touched that part of her body, she said, "[Defendant]." When asked, "Did he

touch under your clothes?” she answered, “No.” When asked, “Did he do anything with his finger before he touched there?” she responded, “Hmm-mmm.” M.K. testified that she remembered speaking with Larry Milsteadt at the Tazewell County Children’s Advocacy Center (CAC) about defendant.

¶ 14

2. Milsteadt

¶ 15

Milsteadt testified that he was a child forensic interviewer employed by the CAC. As part of his duties, he conducts forensic interviews of children in suspected abuse cases. He stated that he interviewed M.K. and E.S. (who is M.K.’s stepbrother) at the CAC on February 26, 2024. These interviews were audio and video recorded. They were also witnessed by police officers, Illinois Department of Children and Family Services personnel, and the State, who were present in a separate room while the interviews were conducted. The observers could direct him to ask questions through a computer he had with him during the interview.

¶ 16

Milsteadt described his interview with M.K., and the video of it was published to the jury. Regarding the interview with M.K., Milsteadt testified that during the interview, when discussing the bounce-house room, M.K. stated that “somebody wiped slobber” on her vagina and named defendant. When Milsteadt asked whether defendant touched M.K. under her clothes, she said he touched her on top of her clothes. M.K then wanted to play with the anatomical dolls. When she went to grab one, Milsteadt directed her to grab a female doll that looked like her. Using the doll, M.K. demonstrated what occurred with defendant. Describing M.K.’s interaction with the doll, Milsteadt said, “So she put her finger in her mouth and then she pulled the underwear down on the doll and then placed her finger inside the doll’s vagina.” When Milsteadt asked whether defendant touched her under her clothing, she said, “ ‘[Y]es.’ ” M.K. described the abuse as having felt “weird.”

¶ 17

3. *E.S.*

¶ 18

Defendant's nephew, E.S., testified that he was six years old and was M.K.'s stepbrother. He testified that one day, when he and M.K. were playing at Randy and Penny's house in the room with the bounce house, defendant came into the room. Defendant spoke to M.K. and came close to her. Regarding what occurred next, the following colloquy occurred:

“Q. Did you see anything happen with [defendant's] body and [M.K.'s] body?

A. I don't remember.

Q. Don't remember? Did you see anything with [defendant's] hands?

A. I don't know if they was in or out. I don't know.

Q. Did you see [defendant] touch [M.K.'s] pants?

A. Yeah.

Q. Yeah? Did you ever see [defendant's] hands go inside [M.K.'s] pants?

A. No.”

¶ 19

When asked whether he remembered talking to Milsteadt at the CAC, he responded, “I don't think so. No.”

¶ 20

4. *Amanda E.*

¶ 21

Amanda E. testified that she was M.K.'s mother and was engaged to Josh, who was defendant's brother. Between the two of them, they had five children, including M.K. and E.S. The parties stipulated that M.K. was four years old on February 24, 2024. She and Josh began dating in December 2022, and they moved in together a year later, in December 2023. All five children lived with them. She knew Josh's parents and siblings, including defendant.

¶ 22

On Saturday, February 24, 2024, Amanda and Josh went grocery shopping, and

they dropped off E.S. and M.K. with Randy and Penny in the morning. They picked the children up around 5 or 5:30 p.m. M.K. did not appear to have had any toilet training accident while at Randy and Penny's house. However, once they were back home, M.K. had an accident involving urine and feces. Amanda said that she thoroughly cleaned M.K.'s vagina and buttocks with baby wipes.

¶ 23 Amanda testified that later that evening, M.K. told her while they were in the kitchen, "[Defendant] slobbered on her 'gina.'" Amanda explained that "gina" was the word she had taught her daughter to use for her vagina. Amanda testified that M.K. stated that while in the bounce-house room at the grandparents' house, defendant "slobbered on his finger and put it down her pants and put it back in his mouth." Amanda then called law enforcement. She then took M.K. to OSF Children's Hospital of Illinois for an exam; a doctor and nurse were present for the exam.

¶ 24 Two days later, she took M.K. and E.S. to the CAC for interviews. That same day, she also took M.K. to another medical facility in Peoria, Illinois, but could not recall the name.

¶ 25 *5. Forensic and Medical Evidence*

¶ 26 Claudia Plumer, a pediatric nurse practitioner, testified she performed a sexual-abuse examination of M.K. on March 4, 2024. She stated she reviewed an emergency room report from February 24, 2024, noting M.K. had reported that defendant placed his tongue on her vagina. Plumer averred that M.K. did not disclose any sexual abuse at the exam, and the exam showed no physical injury or trauma. During the emergency room examination, swabs were taken from M.K.'s body, and the clothing she was wearing at the time of the incident was collected. Both the swabs and the clothing were subsequently sent to the Illinois State Police Forensic Science Laboratory in Springfield, Illinois, for analysis, which revealed no male DNA.

¶ 27 *6. Penny and Randy*

¶ 28 Penny and Randy, defendant’s mother and father, testified they were at home caring for their grandchildren on February 24, 2024, and neither of them observed anything unusual with M.K.

¶ 29 *7. Allison Palmer*

¶ 30 Allison Palmer, a detective with the Pekin Police Department, testified she became involved in the investigation on February 24, 2024, after Amanda contacted law enforcement. She stated she arranged for M.K. and E.S. to be interviewed at the CAC on February 26, 2024, and she interviewed defendant at the police department on February 29 and March 15, 2024.

¶ 31 Palmer testified that she observed the interview between E.S. and Milsteadt at the CAC. Palmer stated that E.S. indicated in the interview that he saw defendant’s hand “go inside the pants of [M.K.]” in the front. The video of an approximately one-minute-long excerpt from the interview was admitted and published to the jury over defendant’s objection.

¶ 32 In the clip, E.S. told Milsteadt that defendant used his hands to check M.K. When prompted by Milsteadt to specify where defendant put his hand, E.S. said that defendant put his hand “in the private spot” and agreed with Milsteadt that it was “in the front of her.” E.S. also said that he did not see exactly what defendant was doing with his hand because defendant and M.K. were turned away from him. When Milsteadt asked whether defendant touched M.K. on top or underneath her clothes, E.S. responded, “Underneath.”

¶ 33 On February 29, 2024, Palmer interviewed defendant at the police department. This interview was video and audio recorded, and portions of it were played for the jury. During that interview, defendant stated that E.S. and M.K. were over at Randy and Penny’s house on February 24, 2024. He was not very familiar with M.K. but remembered her name because it was unusual to him. Defendant had his two-year-old son with him that day. Defendant described the events,

stating that he went upstairs to blow up the bounce house while holding his son. E.S. and M.K. were in the room. As it was filling up, he went back downstairs to put his son down for a nap. His son did not cooperate, and defendant returned upstairs to finish blowing up the bounce house, still holding his son. When he came back upstairs, he smelled feces; thinking M.K. might have had an accident, he decided to check her pants. He asked her to stop playing for a moment and asked if she had a diaper, to which she responded yes. He then pulled on the back of her pants, discovering she did not have an accident, and she was not wearing a diaper.

¶ 34 Initially during the interview, he did not disclose that he had any contact with the front of her pants. However, he later said that her button came unfastened, and he had to touch the front of her pants to refasten the button. When confronted by Palmer about M.K.'s and E.S.'s statements that he had placed his hand in M.K.'s pants, among other things, defendant responded that he did not want to call the children liars but had no explanation for why the children's statements matched up. He acknowledged they had no reason to make something like that up. Defendant said that he never had any issues with E.S., and he had no idea why he and M.K. would say that he checked the front of her pants. During the entire interaction, defendant was crouched down and had to set his son down briefly while he buttoned her pants.

¶ 35 Defendant told Palmer that he later thought about the interaction and thought it was inappropriate for him to check M.K. since she was not his child; he had done so out of habit, and "it wasn't like that."

¶ 36 On March 15, 2024, Palmer again spoke with defendant at the police station. This interview was audio and video recorded, and parts of it were played for the jury. Palmer testified that there were some changes to the narrative that defendant had given during the first interview, and his statements were at times confusing regarding the sequence of events surrounding the

offense, such as how many times he went up to the room with the bounce house or the timing of when he entered the room.

¶ 37 In the video of the March 2024 interview, which was played for the jury, Palmer asked whether defendant checked both E.S. and M.K. for the smell of feces. He said that he checked only M.K. because he knew E.S. was potty trained.

¶ 38 Palmer mentioned to defendant that after seeing the bounce house, she realized that E.S. probably had an unobstructed view of what happened. Defendant responded that when he checked M.K. to see if she had had an accident, the children were not playing in the bounce house because it was still being blown up by the air pump. Instead, M.K. was in the doorway of the guest room. Defendant said that he crouched down, had her turn around, pulled on her pants, and her button came undone. He then had her turn around and buttoned her pants back up.

¶ 39 Palmer told defendant that M.K.'s statements had been consistent, and E.S. said defendant checked underneath M.K.'s pants. Defendant responded that it was confusing that E.S. said he saw this from the bounce house because the children could not play in it until defendant left the room. He asserted that he checked on the children only for a few minutes, and that was it.

¶ 40 Defendant did not testify at trial.

¶ 41 Ultimately, the jury found defendant guilty of one count of predatory criminal sexual assault of a child. Later, the trial court sentenced defendant to eight years in prison.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 Defendant appeals, arguing that the State failed to prove him guilty beyond a reasonable doubt of predatory criminal sexual assault of a child because the evidence was insufficient to show (1) he touched the victim and (2) it was done for the purpose of sexual

gratification. We affirm.

¶ 45 A. The Applicable Law and the Standard of Review

¶ 46 In *People v. Jackson*, 232 Ill. 2d 246, 280-81 (2009), the supreme court wrote the following regarding the standard of review applicable when a defendant, as in this case, contests the sufficiency of the State’s evidence to convict him:

“When a court reviews the sufficiency of the evidence, the relevant question is ‘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.) *Jackson v. Virginia*, 443 U.S. 307, 318-19 *** (1979); [citations.] This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses. *People v. Sutherland*, 155 Ill. 2d 1, 17 (1992), quoting *People v. Campbell*, 146 Ill. 2d 363, 375 (1992). *** Thus, the standard of review 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.’ *Jackson v. Virginia*, 443 U.S. at 319 ***; *People v. Nitz*, 143 Ill. 2d 82, 95 (1991); *People v. Young*, 128 Ill. 2d 1, 51 (1989).

*** A reviewing court will not reverse a conviction unless the evidence is ‘unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant’s guilt.’ *Campbell*, 146 Ill. 2d at 375.”

¶ 47 B. This Case

¶ 48 The jury found defendant guilty of one count of predatory criminal assault of a

child. Section 11-1.40(a)(1) of the Criminal Code of 2012 states the following:

“A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits 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:

(1) the victim is under 13 years of age.” 720 ILCS 5/11-1.40(a)

(West 2024).

¶ 49 As an initial matter, defendant does not dispute that he was over 17 years old and M.K. was under 13 years old at the time of the offense. However, defendant does dispute that he (1) touched M.K.’s vagina and (2) did so for the purpose of sexual gratification.

¶ 50 Defendant largely bases his argument on his assertion that M.K. was an incredible witness whose testimony was uncorroborated by any physical evidence. Defendant contends that M.K.’s testimony was so inconsistent that it was unreasonable, improbable, or unsatisfactory to prove his guilt beyond a reasonable doubt.

¶ 51 The State disagrees, pointing to the deference appellate courts must give to credibility findings by the finder of fact and the importance of paralinguage to those findings.

¶ 52 Because credibility is the central theme of defendant’s argument, we set forth what we have previously written on the topic of paralinguage and our deference to the finder of fact: “Such deference is due because trial courts acting as fact-finders rely heavily on the demeanor and paralinguage of the witnesses to assess their credibility—factors unavailable to a reviewing court, which has at its disposal only the transcript of a cold record.” *People v. House*, 2023 IL App (4th) 220891, ¶ 89.

¶ 53 In *People v. Hadden*, 2015 IL App (4th) 140226, ¶ 28, we explained in greater detail the concept of “paralanguage” when we wrote the following:

“Spoken language contains more communicative information than the mere words because spoken language contains ‘paralanguage’—that is, the ‘vocal signs perceptible to the human ear that are not actual words.’ Keith A. Gorgos, *Lost in Transcription: Why the Video Record Is Actually Verbatim*, 57 Buff. L. Rev. 1057, 1107 (2009). Paralanguage includes ‘quality of voice (shrill, smooth, shaky, gravely, whiny, giggling), variations in pitch, intonation, stress, emphasis, breathiness, volume, extent (how drawn out or clipped speech is), hesitations or silent pauses, filled pauses or speech fillers (*e.g.*, “um/uhm,” “hmm,” “er”), the rate of speech, and extra-speech sounds such as hissing, shushing, whistling, and imitations sounds.’ Gorgos, *supra*, at 1108. The information expressed through paralanguage is rarely included in the transcript, as there is generally no written counterpart for these features of speech. Gorgos, *supra*, at 1109.”

¶ 54 In *People v. Carter*, 2021 IL App (4th) 180581, ¶¶ 70-71, we reaffirmed what we wrote in *Hadden* and elaborated as follows:

“Paralanguage is critical to evaluating oral testimony, and we note that paralanguage is even more important when evaluating witnesses who are testifying from the witness stand than it is, as in *Hadden*, when evaluating a recording of what a witness said. When assessing credibility, a trial court is called upon to evaluate everything together—visual (demeanor, body language), audio (tone), and the effect of the witness’s testimony (*i.e.*, the impact a witness’s testimony has upon the listeners)—which is an entirely different task than this court’s when reviewing

a cold record devoid of all of the crucial ways in which humans communicate in person, both verbally and nonverbally.

The old adage that it is not what one says but how one says it comes to mind. Identical words can have vastly different meanings based solely on the speaker's tone, body language, or both. And these factors may have a profound effect on a fact finder's evaluation of a speaker's credibility, believability, or trustworthiness. That is to say, a person's tone or body language can enhance or detract from his credibility. Judging whether someone is testifying truthfully, fully, honestly, and earnestly is nigh impossible from the mere words on a page."

¶ 55 The present case illustrates the significance of paralanguage in shaping a jury's credibility and factual determinations. In reviewing this appeal, we examined the video exhibits, including the recordings of defendant's February and March 2024 interviews with Palmer. Palmer testified that during the second interview, defendant's account of the timeline and the locations of certain events was confusing. While we do not substitute our own impressions of the recordings for the jury's, we observed that defendant's statements appeared fragmented, inconsistent, and at times unusual. Notably, during the March interview, he digressed into an unrelated comment about construction outside the police station, and his demeanor further underscored the odd nature of his statements—particularly when the conversation involved M.K. or the commission of the offense.

¶ 56 Although our impressions regarding the paralanguage have little bearing on the jury's findings or our review of those findings, they underscore how a witness's demeanor and manner of speaking can reasonably strengthen or weaken credibility in ways a written record alone cannot capture.

¶ 57 We emphasize that "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.’ ” *People v. Gray*, 2017 IL 120958, ¶ 36 (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.*

¶ 58 In the present case, viewing the evidence in the light most favorable to the State, we conclude the State presented sufficient evidence through witness testimony that defendant touched M.K.’s vagina and did so for his own sexual gratification. M.K. told Milsteadt during her CAC interview that defendant “put his finger in his mouth and then put it on my vagina.” Then using a doll, she pulled down the doll’s underwear and demonstrated defendant’s touching of her vagina. Amanda testified that after M.K. came home from her grandparents’ house, she told Amanda that defendant had “slobbered on his finger” and put it “down her pants and put it back in his mouth.” During his CAC interview, E.S. indicated that he saw defendant put his hand underneath M.K.’s clothes “in the private spot.”

¶ 59 Although defendant notes that both M.K. and E.S. testified that defendant touched M.K. under her clothes and over her clothes, that discrepancy—along with other inconsistencies in the interviews—was thoroughly examined by defense counsel. The jury, having observed the witnesses directly and with access to paralinguistic evidence absent from the appellate record, was in the best position to assess their credibility. See *supra* ¶¶ 52-55; see also *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (“The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses.”).

¶ 60 In *People v. Dye*, 2026 IL App (4th) 241001, this court faced a similar set of circumstances as in the present case. The victim in *Dye* was four years old at the time of the offense

Id. ¶ 5. At trial, the victim denied that the defendant’s finger made contact with her anus, and the only evidence that supported these charges was the victim’s prior statements from her CAC interview, in which she said that the contact occurred. *Id.* ¶¶ 61-62.

¶ 61 On appeal, this court concluded that those statements were sufficient to show the touching occurred, noting, “The purpose of the hearsay exception in section 115-10 [(725 ILCS 5/115-10 (West 2024))] ‘is to alleviate concerns that at trial very young child witnesses often lack the cognitive skills to effectively communicate instances of abuse or might be psychologically impeded from doing so.’ ” *Id.* ¶¶ 62, 64 (quoting *People v. Foster*, 2020 IL App (2d) 170683, ¶ 28). We also emphasized, “The trier of fact has the opportunity to hear and see the witnesses and is in the best position to judge credibility.” *Id.* ¶ 63.

¶ 62 Like in *Dye*, the evidence here was sufficient to show that defendant touched M.K., and likewise, the jury could infer that the manner and act of touching itself showed defendant acted for the purposes of sexual arousal or gratification. See *People v. Burton*, 399 Ill. App. 3d 809, 813 (2010) (“A defendant’s intent to arouse or gratify himself sexually can be inferred solely from the nature of the act.”); see also *In re M.H.*, 2019 IL App (3d) 180625, ¶ 16 (“When the accused is an adult, a trier of fact can infer that the accused acted for the purpose of sexual gratification or arousal.”).

¶ 63 Ultimately, we (1) deem the arguments defendant makes and the cases he cites to be unpersuasive and distinguishable and (2) view the evidence of defendant’s guilt to be far from “unreasonable, improbable, or unsatisfactory.” *Campbell*, 146 Ill. 2d at 375.

¶ 64 III. CONCLUSION

¶ 65 For the reasons stated, we affirm defendant’s conviction and sentence.

¶ 66 Affirmed.