2026 IL App (2d) 240647-U
No. 2-24-0647
Order filed October 14, 2026

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

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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,
v. SAID RAMSES MARCO PABLO BERNAL-GRANADOS,
Defendant-Appellant.

Appeal from the Circuit Court of McHenry County.
Honorable Mark R. Gerhardt, Judge, Presiding.
No. 21-CF-786

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JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

**ORDER**

¶ 1 *Held*: (1) Sufficient evidence, including the victim's out-of-court statements, supported defendant's conviction of aggravated battery for pulling out the victim's hair; (2) defense counsel was not ineffective for asking an outcry witness about prior injuries that defendant allegedly inflicted upon the victim, because the witness's failure to report those prior injuries bore upon the reliability of her outcry testimony. (3) we remand for defendant to submit a posttrial application for a waiver of assessments.

¶ 2 A McHenry County grand jury indicted defendant, Said Ramses Marco Pablo Bernal-Granados, on a single count of aggravated battery (720 ILCS 5/12-3(a) (West 2020)) and two counts of domestic battery (*id.* § 12-3.2(a)(1), (a)(2)). The charges were based on allegations that he pulled hair from the head of J.V., a household member under the age of 13. After a bench trial, defendant was found guilty of all three counts, but the trial court merged the two counts of domestic

battery into the aggravated battery count. The court sentenced defendant to a 24-month term of probation with conditions including 18 days' periodic imprisonment. Defendant was ordered to pay a $500 fine and various assessments. Defendant argues on appeal that the State failed to prove his guilt beyond a reasonable doubt and that he received ineffective assistance of counsel. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Before trial, the trial court conducted a hearing under section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2022)) to determine whether to permit the State to admit certain out-of-court statements by J.V. The trial court ruled that J.V.'s statements were admissible under that provision.

¶ 5 Evidence presented at trial established that J.V. was born on February 27, 2015. He was nine years old at the time of trial. J.V.'s grandmother, Sandra, testified that her daughter, Laeci, was J.V.'s mother. Laeci was married to defendant. J.V. called Sandra "Mama." In the summer of 2021, Sandra's relationship with Laeci was strained, and Sandra did not see J.V. often. During Sandra's testimony, screenshots of an exchange of text messages between Sandra and Laeci on September 23, 2021, were admitted into evidence. In the messages, Laeci indicated that, after wearing a hat to school for a couple of days, J.V. had bald spots on his head. Laeci believed J.V. had lost some hair because the hat was too tight.

¶ 6 J.V. visited with Sandra and her husband, Paul, on September 24, 2021. Paul picked J.V. up from school, and Sandra first saw him that day when she returned home from work at about 4 or 5 p.m. J.V. wore a baseball cap, and he was "quiet and cowering." Sandra took J.V. upstairs to her bedroom and asked him what was going on. He was reluctant to answer, but eventually he took his cap off. Sandra saw spots on his head where he was missing hair. Sandra asked J.V., "[W]ho

did this to you?" She testified, "[J.V.] said, Papi did it. Papi pulled my hair out." "Papi" was J.V.'s name for defendant. J.V. told Sandra that defendant pulled his hair because J.V. touched defendant's daughter's butt. J.V. said the incident occurred "on the way to pick up his mother or before he was picking up *** his mother from work."

¶ 7 Sandra told Paul what had happened, and they called the Department of Children and Family Services (DCFS). They then took J.V. to a hospital. They later took J.V. to be interviewed at the McHenry County Child Advocacy Center (CAC) and to be examined at the University of Illinois College of Medicine's Medical Evaluation Response Initiative Team (MERIT). Photographs of J.V. taken at the CAC were admitted into evidence. They showed a patch of hair missing from J.V.'s head. Sandra testified that J.V. had been living with her and Paul since September 24, 2021.

¶ 8 On cross-examination, Sandra was asked how she felt about defendant. She responded: "At first I liked him a lot. Right now I have no feelings." She testified that, after Laeci began dating defendant, Laeci would not let Sandra see J.V. Sandra acknowledged that she told the police and DCFS that, in September 2020, she began noticing injuries to J.V.'s ears and other parts of his body. Asked whether J.V. ever told Sandra that defendant "spanked him or grabbed his ears or hit him in any way," Sandra responded, "Yes, he did." Sandra, Paul, and Sandra's sister-in-law confronted defendant about the injuries Sandra observed, but Sandra did not at that time report any of those injuries or any alleged abuse. Sandra never observed defendant abuse either Laeci or J.V.

¶ 9 On redirect examination, Sandra testified that the injuries she observed before the charged incident occurred included bruising that she noticed while J.V. was bathing. J.V. explained that defendant had pinched him for not doing his homework. Sandra asked Laeci about the injury.

Sandra testified that, on other occasions when she brought injuries to Laeci's attention, Laeci would respond by not letting Sandra see J.V.

¶ 10 The State called J.V. as a witness. Before direct examination started, the trial court asked J.V. if he knew what the truth is and what a lie is. The following exchange then occurred:

> "[J.V.]: A truth is that you say that *** my dad pulled my hair and it was the truth.
>
> THE COURT: Well, I'm not asking you about that. I'm just asking you if you know what the truth is. If I told you that this pen was purple, would that be true or a lie?
>
> [J.V.]: A lie.
>
> THE COURT: If I told you I had a wonderful full head of flowing hair, would that be true or a lie?
>
> [J.V.]: A lie."

After J.V. promised that he would tell the truth, he was formally placed under oath.

¶ 11 J.V. testified that he lived with his grandparents, two uncles, and an aunt. He previously lived with his mother and "Pablo," whom he called "dad," and Pablo's daughter. J.V. testified that Pablo was mean to him and tried to make him eat soap. J.V. initially claimed that he did not know anyone named "Ari," but later, when asked who Pablo's daughter was, he responded, "Ari." J.V. did not remember going with Pablo and Ari to pick up J.V.'s mother from work. He also did not remember getting in trouble for touching Ari's butt. However, he did recall that Ari told Pablo that J.V. touched her butt. J.V. said he was grounded as a result. Asked if he remembered a time when Pablo grabbed his hair, J.V. responded, "When he was trying to make me eat soap, and he forgot that we had to go to his meeting, so he stopped. And when I was about to get in the car, he just pulled my hair." J.V. did not remember Pablo pulling his hair on any other occasion.

¶ 12 J.V.'s biological father testified that he had seen J.V. from September 17, 2021, through September 19, 2021. J.V. was not missing any hair during that period.

¶ 13 Anna Krause, the operations manager at the CAC, testified that she interviewed J.V. on September 26, 2021. A video recording of the interview was admitted into evidence and played in court. A transcript was also admitted. During the interview, J.V. stated that his sister, Ariana, told his stepfather, Marco (whom he also referred to as Pablo), that J.V. touched her butt and said mean things to her. Marco got mad and pulled J.V.'s hair. He added that when Marco got mad at him, Marco would "smack" him on the butt and the head with a wooden spoon. J.V. recounted that Marco pulled his hair while they were picking up his mother. J.V. said that that incident took place "yesterday." When Krause asked J.V. if anyone told him what to say to Krause, J.V. replied, "No. Just Mama." Asked what "Mama" told him to say, J.V. replied that she said, "Be brave."

¶ 14 Deborah Bailey, a physician's assistant at Northwestern Hospital, testified that she examined J.V. on September 25, 2021. She asked J.V. when his hair was pulled out. He replied that it "happened the week before."

¶ 15 Shannon Krueger testified that she was a pediatric nurse and the director of the University of Illinois College of Medicine's MERIT, which takes referrals from law enforcement agencies, DCFS, and other medical providers in cases of suspected child abuse. Krueger examined J.V. on September 29, 2021, at the Rockford MERIT. Krueger observed that J.V. was missing some hair, and she asked what happened. According to Krueger, "[J.V.] said that his stepdad who [sic] he called Marco, they were in a car going to pick up *** [J.V.'s] mom, and he had pulled the car over and said why are you touching Ari's butt, and then he pulled his hair out."

¶ 16 Defendant testified that he previously worked as a residential loan officer but lost his license in that field because of the allegations in this case. At the time of trial, he was performing

odd jobs. Defendant testified that J.V. was his stepson. They had a "great relationship" before September 23, 2021. On that date, he and J.V. took the car to pick Laeci up from work. J.V. rode in the back seat. Defendant, who was about 5 feet 5 inches tall, testified that he was essentially unable to reach from the front seat to the back seat. While driving, defendant and J.V. talked about an incident in which J.V. touched Ariana's butt. Defendant never pulled the car over. He did not remove his seatbelt or climb into the back seat. At no point did he grab J.V.'s hair.

¶ 17 After defendant was convicted and sentenced for aggravated battery, he filed this timely appeal.

¶ 18 II. ANALYSIS

¶ 19 We begin with defendant's contention that there was insufficient evidence to sustain his conviction of aggravated battery to a child. As we have observed:

> "When faced with a challenge to the sufficiency of the evidence, we inquire whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime proved beyond a reasonable doubt. [Citation.] The trier of fact determines the credibility of the witnesses, decides what weight to give their testimony, resolves conflicts in the evidence, and draws reasonable inferences from that evidence. [Citation.] The trial court's credibility determinations are entitled to great weight on appeal. [Citation.] Thus, we will defer to the trial court's findings of fact, unless such findings are against the manifest weight of the evidence. [Citation.] We will reverse a conviction only if the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Soskin*, 2021 IL App (2d) 191017, ¶ 41.

¶ 20 Defendant makes various arguments challenging the sufficiency of the evidence. He contends that Sandra was not a disinterested witness. He notes that, before defendant was accused, Sandra had not seen J.V. often, but after defendant was accused, J.V. came to live with her. However, "the effect of any bias or interest on the credibility of a witness is solely for the trier of fact to decide." *People v. Majka*, 365 Ill. App. 3d 362, 371 (2006). The trial court was not obligated to exclude or disregard Sandra's testimony solely based on where J.V. presently resides.

¶ 21 Defendant also challenges the credibility of J.V.'s testimony because of his answer to the trial court when asked whether he knew the difference between the truth and a lie. J.V.'s initial answer was tautological, but not wrong: "A truth is that you say that *** my dad pulled my hair and it was the truth." The court later clarified J.V.'s ability to differentiate the truth from lies with questions about the color of a pen and the condition of the judge's hair. Rejecting J.V.'s testimony wholesale because of his initial answer to the court would needlessly invade the province of the fact finder, but when J.V.'s testimony is read as a whole, it was more than adequate.

¶ 22 Defendant also challenges the credibility of J.V.'s statement to Krause, who asked J.V. whether anyone told him what to say. J.V. initially responded, "No. Just Mama," but when asked what she told him to say, he replied that she said, "Be brave." In light of J.V.'s clarifying statements, we find no reason to depart from the general rule requiring deference to the trial court's credibility determinations.

¶ 23 Defendant further points to inconsistencies in J.V.'s testimony about when and where defendant pulled his hair. He compares (1) Sandra's testimony that she first learned that J.V. was missing some hair when she received a text message from Laeci on September 23, 2021; and (2) J.V.'s statement to Bailey on September 25, 2021, that the incident occurred "the week before." There is no inconsistency here, unless one takes it as an article of faith that a six-year-old boy

would know what days the week starts and ends on (we note that September 25, 2021, was a Saturday, so perhaps J.V. associated the prior weekdays with "the week before"). The only clearly incorrect statement J.V. made was when he told Krause on September 26, 2021, that the incident happened "yesterday." It is reasonable to believe, however, that a child of J.V.'s age might have a poor sense of time. The error does not necessarily undermine the reliability of his statements that it was defendant (whom he sometimes referred to as Marco or Pablo) who pulled his hair out.

¶ 24 Defendant also argues that J.V.'s out-of-court statements were inconsistent. Defendant compares (1) J.V.'s statement to Sandra that defendant pulled his hair before, or on the way to, picking up his mother; and (2) J.V.'s statement to Krueger that, while he and defendant were driving to pick up J.V.'s mother, defendant pulled the car over and pulled J.V.'s hair. These statements are hardly irreconcilable; there is no reason why defendant could not have pulled over momentarily while he and J.V. were on their way to pick up J.V.'s mother.

¶ 25 Finally, defendant argues that J.V.'s testimony undermined the State's theory of the case because his testimony about defendant pulling his hair bore little resemblance to his more contemporaneous out-of-court statements about the incident. However, our decision in *People v. Dominguez*, 382 Ill. App. 3d 757 (2008), illustrates that defendant's conviction may nonetheless be sustained based on J.V.'s out-of-court statements. In *Dominguez*, the defendant was convicted of aggravated domestic battery and unlawful restraint. *Id.* at 760. At trial, the victim testified that she and the defendant went to a party at the defendant's mother's home. *Id.* After drinking heavily, the victim fell asleep in the early morning hours. *Id.* She awoke at some point with no memory of the night's events. *Id.* She fell asleep again. *Id.* When she woke up again at about 9 a.m., the defendant was sleeping beside her. *Id.* The victim and the defendant later started driving to the victim's home. *Id.* En route, the victim looked in the mirror and noticed that her eyes were bruised

and injured. *Id.* She became angry and assumed that the defendant inflicted the injuries, although she still had no recollection of what had happened. *Id.* She called 911. *Id.* at 760-61. The 911 recording was admitted into evidence and published to the jury. *Id.* at 761. During the recording, the victim, who was frantic and crying, told the emergency operator that the defendant had injured her and "kept her overnight." *Id.* She said she called 911 at her first chance to get away from the defendant. *Id.* The victim also prepared a handwritten statement, relating that:

> " '[The] [defendant] held me *** all night in his bedroom. Put his whole hand down my throat. Passed out. I finally got away when [the] [defendant] got out of the truck to go in the back seat ***. That's when I drove off and called 911.' " *Id.* at 770.

The statement was admitted as substantive evidence. *Id.* at 761.

¶ 26 Although the victim's trial testimony—that she was intoxicated during the time frame when she was injured and had no knowledge of how the injuries occurred—had no probative value, we upheld the defendant's conviction entirely based on the victim's admissible out-of-court statements, which proved the defendant's guilt beyond a reasonable doubt. *Id.* at 772. Likewise, here, although at trial J.V.'s recollection of events diverged considerably from his prior statements, the latter were sufficient to prove beyond a reasonable doubt that defendant was guilty of aggravated battery.

¶ 27 Defendant next argues that he did not receive the effective assistance of counsel during trial. He argues that defense counsel's performance was deficient because counsel elicited or opened the door for testimony that defendant committed "bad acts" other than the charged offense. Claims of ineffective assistance of counsel are evaluated under the two-prong *Strickland* test, which requires a showing that counsel's performance "fell below an objective standard of reasonableness" and that the deficient performance was prejudicial in that "there is a reasonable

probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different." *Strickland v. Washington*, 466 U.S. 668, 688, 694 (1984). As we have observed:

> "We assess counsel's performance by using an objective standard of competence under prevailing professional norms. [Citation.] To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy. [Citation.] Counsel's strategic choices that are made after investigation of the law and the facts are virtually unassailable." *People v. Wise*, 2019 IL App (2d) 160611, ¶ 52.

Defendant complains that, when questioning Sandra, defense counsel elicited testimony that she noticed injuries to J.V.'s ears and other parts of his body. Counsel also asked Sandra if J.V. had ever told her that defendant had "spanked him *or* grabbed his ears *or* hit him in any way" (emphasis added), and Sandra said yes. (Notably, Sandra did not specify which of these things defendant had done.) Sanda admitted that she did not immediately report any of those injuries or any alleged abuse. Moreover, on redirect, the State elicited testimony from Sandra that, when bathing J.V., she noticed that he had a bruise, which J.V. attributed to defendant pinching him.

¶ 28 Defense counsel's questioning was within the realm of sound trial strategy. Sandra's testimony on cross-examination that she had previously seen injuries on J.V.'s body, but refrained from contemporaneously reporting the injuries, raised the question of why she decided to report J.V.'s missing patch of hair. Counsel was inviting the inference that Sandra, seeing an opportunity to have more contact with J.V. if defendant was suspected of abuse, fabricated her account of what J.V. told her about the hair loss. Because there was a sound strategic basis for the line of questioning defendant complains of, he cannot satisfy the first prong of the *Strickland* test. Thus, his claim of ineffective assistance at trial fails.

¶ 29 Last, defendant argues that defense counsel rendered ineffective assistance after trial because counsel failed to file a timely application under section 124A-20 of the Code (725 ILCS 5/124A-20 (West 2022)) to waive the fees for his assessments. We held this case in abeyance while we awaited clarification from our supreme court in *People v. Nibbelin*, 2026 IL 131825, as there was a split in authority about this issue. *Nibbelin* resolved that split. *Nibbelin* holds that the trial court has continuing jurisdiction to resolve matters related to fees and assessments pursuant to Illinois Supreme Court Rule 472 (eff. Feb. 1, 2024). *Nibbelin*, 2026 IL 131825, ¶ 18. Defendant need not raise the issue as ineffective assistance of counsel to prevail, but he must at least present the application to the trial court before we could consider it. Accordingly, we remand for the limited purpose of allowing defendant to submit an application for a fee waiver if he so chooses. In all other respects, the judgment is affirmed.

¶ 30 III. CONCLUSION

¶ 31 For the reasons stated, we affirm the judgment of the circuit court of McHenry County and remand for defendant to file an application for a fee waiver before the trial court and an adjudication thereon.

¶ 32 Affirmed and remanded.