2026 IL App (1st) 240184-U
No. 1-24-0184
Order filed November 6, 2026

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IN THE

APPELLATE COURT OF ILLINOIS

FIRST DISTRICT

FIFTH DIVISION

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

JEREMY WALTON, Defendant-Appellant

Appeal from the Circuit Court of Cook County.
Honorable Alfredo Maldonado, Judge, Presiding.
No. 2019-CR-0061101

JUSTICE WILSON delivered the judgment of the court.
Justices C.A. Walker and Donnelly concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant was proven guilty of aggravated criminal sexual assault and predatory criminal sexual assault of a child beyond a reasonable doubt. The prosecutor's remarks during closing argument were reasonable inferences from the evidence. The trial court did not coerce the jury. The trial court did not express a bona fide doubt as to defendant's fitness and therefore a fitness hearing was not required.

¶ 2 Following a jury trial, defendant Jeremy Walton was convicted of predatory criminal sexual assault of a child and aggravated criminal sexual assault and was sentenced to two consecutive terms of 25 years' imprisonment. On appeal, he argues: 1) that the State failed to prove him guilty beyond a reasonable doubt; 2) he was deprived of a fair trial when the State made improper

comments in closing argument; 3) he was deprived of a fair trial when the court coerced a jury verdict; and 4) he was denied his right to due process when the court failed to conduct a fitness hearing after expressing a bona fide doubt about his fitness. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 I. BACKGROUND

¶ 4 L.J., the victim, testified at trial. She was 22 years old at the time of her testimony. In August of 2014, she was 12 years old and lived in a two-flat building located on Normal with her mother, siblings, aunt Jaleesa R., and her aunt's children. Walton was L.J.'s mother's best friend and was like an uncle to L.J. He came to the house every day to spend time with L.J.'s mother and others including L.J. and her siblings.

¶ 5 In August of 2014, sometime before her house on Normal burned down, Walton came into L.J.'s bedroom when she was alone. He sat next to her on her bed. The door was closed. Walton began to touch L.J.'s breasts and vagina over her clothing. L.J. testified that Walton "laid [her] down," removed her clothes and "got on top" of her. Walton then removed his bottom clothing and inserted his penis into her vagina and was moving back and forth. L.J.'s top remained on. L.J. felt "so uncomfortable" and "scared" when he put his penis in her vagina. L.J. testified that defendant's body was "big over me." She testified that when Walton was on top of her, she was moving her body and shoulders to push back as Walton was pushing forward. She explained that she moved a lot because she was uncomfortable and was hurting. Walton then got up and left L.J.'s bedroom. He did not say anything to L.J. during the assault.

¶ 6 After Walton left, L.J. laid in her bed and was very confused and in pain. L.J. explained that she was scared of what Walton could do to her family and that she was in shock after the

assault. L.J. testified that she did not tell anyone what Walton did to her because she was scared and did not know what could happen after that if defendant would hurt her or her family.

¶ 7 After that assault, L.J.'s home on Normal caught fire, so she, her mother, Jaleesa, and her siblings, had to move to another residence on 119th. L.J. testified that she celebrated her thirteenth birthday on September 1, 2014, at the home on 119th. Walton continued to visit them in their new home on 119th after L.J. and her family moved there.

¶ 8 L.J. testified to another incident that occurred in her new home when she was alone in her aunt's room downstairs while the other family members were upstairs. Walton entered the room, sat down next to L.J., and started to touch her breasts and vagina. L.J. was feeling uncomfortable and Walton eventually stopped. No one else was present in the room when that incident occurred. L.J. testified that she did not tell anyone about this incident because she was scared of Walton.

¶ 9 On another occasion, after her 13th birthday, L.J. was upstairs alone in her room watching TV, when Walton came into her bedroom, laid next to her on the bed and started touching her. The door was closed and there was no one else in the room. Walton pulled down her underwear and bottom clothing and then he pulled down his clothing. L.J. testified that Walton got on top of her and penetrated her vagina with his penis. L.J. testified that Walton was on top of her moving back and forth and breathing fast and heavily. L.J. was physically in pain. After a few minutes, Walton just got up and left without saying anything. L.J. did not immediately tell anyone because she was scared.

¶ 10 L.J. testified that her mom got her a cell phone near the end of September or October 2014. L.J. communicated with Walton in person and using the cell phone. L.J. stated that she and Walton discussed relationships and both expressed feelings of love. The discussion about feeling in love started after the third incident.

¶ 11 Around December of 2014, L.J.'s aunt Jaleesa took L.J.'s phone and started going through her messages. She saw the messages from Walton on L.J.'s phone. After L.J. spoke to Jaleesa about the text messages, the police arrived at her home. L.J. explained that when she spoke to the police, she said that the first incident with Walton occurred in September of 2014, but she was living on 119th in September of 2014. L.J. then confirmed that the first incident happened when she was still living on Normal and that she told the police the wrong date that the sexual assaults first started.

¶ 12 Screenshots of text messages between L.J. and Walton from December of 2014, were admitted into evidence. Walton sent one message reading, "I neva love nobdy the way I love u," and L.J. responded, "U my first love." Another message Walton sent to L.J. was "I just want to hold you very close to me and kiss that cherry; I know it's red." L.J. responded, "You know it's red cause I sad and I want to kiss all over your face, make you laugh and do my dance, be close to you, you make me smile when I'm sad. I love you and I love when we play a lot. We just crazy." L.J. testified that those messages were sent after the third incident with Walton.

¶ 13 L.J. stated that after she spoke with the police at her house, she went with the police to the Children's Advocacy Center (CAC) in January of 2015 where she spoke to a detective and a doctor. There, L.J. learned that she was pregnant.

¶ 14 Before L.J. learned she was pregnant at CAC, she was still communicating with Walton by phone. She stated that she discussed the police investigation with Walton. Walton told L.J. to lie to the police and tell them that it was someone else. L.J. explained that during the first meeting at the CAC she told them that she had sex with someone else in her class named Brian. L.J. explained that she told them that because Walton told her to. L.J. admitted that she never had sex with anyone other than Walton.

¶ 15 L.J. made an appointment at Planned Parenthood to terminate the pregnancy. She went to Planned Parenthood with her mother and the detective. The detective then collected a DNA sample from L.J. On January 15, 2015, L.J. was 13 years old when she underwent the procedure to terminate her pregnancy.

¶ 16 On cross-examination, L.J. acknowledged she told the responding officers at her home that the first sexual penetration happened in September of 2014. L.J. learned the gestational age of the fetal tissue was seven weeks and six days on January 15, 2015. L.J. did not remember if she told the responding officers at her home, the detective, or the doctors that she was afraid of Walton or that she was afraid of what Walton would do to her family.

¶ 17 On redirect, L.J. acknowledged that when she spoke to the detective and the doctor on January 5, 2015, she was still communicating with Walton, and he told her what to say to the police. L.J. last spoke to Walton in January of 2015, after her initial interviews with the detectives and the doctors at the CAC.

¶ 18 L.J.'s aunt, Jaleesa R., testified she lived with her daughter, L.J., L.J.'s mother, Tiffany R., and L.J.'s siblings in the summer of 2014, on Normal in Chicago. Jaleesa testified that she knew Walton for over 20 years since she was 16 or 17 years old, he was an adult family friend that regularly came by their home almost every day. Walton cooked, played, danced, and hung out with the children and L.J.'s mother.

¶ 19 Jaleesa testified that the house on Normal caught on fire around the first week in August of 2014, after which they moved to the home on 119th Sreet. Jaleesa testified that Walton practically lived with them. Jaleesa stated that she was suspicious of Walton when they lived on Normal because he was an adult, L.J. was a minor, and they used to play a lot. Jaleesa testified that Walton and L.J. used to wrestle around, play in the front room with the kids, dance, and do things like that.

Walton's relationship with L.J. was the same when they moved to 119th. Jaleesa testified that Walton spent the night all the time. He slept in several locations at that home, including on the couch, on pallets that were on the floor of L.J.'s room, and L.J.'s brother's room.

¶ 20 Jaleesa testified that on December 16, 2014, all the children came to help her with the groceries except L.J. so Jaleesa went to her room to see what she was doing. Jaleesa saw L.J. behind her door texting on her phone so she grabbed L.J.'s phone and yelled at her to go get the groceries. Jaleesa recognized Walton's telephone number and read the texts between him and L.J. She photographed the text messages. When Jaleesa asked L.J. what was going on, L.J. started crying. Jaleesa called the police, and when they arrived that night, Jaleesa showed the text messages to the police. Jaleesa had no further interaction with Walton.

¶ 21 Tiffany R., L.J.'s mother, testified that in August of 2014, she lived with her five children, including L.J., and her sister, Jaleesa on Normal until the home caught fire. L.J. was 12 years old just before the house caught fire. After the house caught fire, they all moved to 119th.

¶ 22 Tiffany testified she met Walton over twenty years ago when they lived in the same housing development. Walton had been her best friend since the day they met. Walton came over to her house almost every day. He often watched L.J. and her siblings while Tiffany was at work and hung around, listened to music, and played with them.

¶ 23 Tiffany bought a phone for L.J. for Christmas 2014, but Walton convinced her to give L.J. the phone early. Jaleesa sent Tiffany screen shots of text messages she found on L.J.'s phone. Tiffany recognized those messages came from Walton's phone number. Tiffany last spoke to Walton the morning of December 17, 2014.

¶ 24 Forensic Scientist Megan Neff from the Illinois State Police Forensic Science Center (ISPFC), testified as an expert in forensic DNA analysis. She testified that DNA samples were

received and analyzed from Walton, L.J., and the fetal tissue from L.J.'s pregnancy termination. A suitable profile on each sample was created for DNA comparison.

¶ 25 Forensic Biologist Katherine Sullivan from the ISPFC, testified as an expert in forensic biology and DNA. She testified that she received the DNA profiles from L.J., Walton, and the fetal tissue sample and conducted the probability of Walton being the biological father of the fetal tissue sample. She testified that the combined parentage index results were 676.3 trillion times more likely to see genetic results if Walton is the genetic biological father of the fetal tissue than if an untested man is the father. Further, Sullivan conducted a calculation that supported the probability of Walton's parentage of the fetal tissue as 99.999 percent, as opposed to or compared to an untested man.

¶ 26 Dr. Katherine Sisco, an expert in obstetrics and gynecology, testified she is the medical doctor that performed the pregnancy termination procedure for L.J. on January 15, 2015, when L.J. was 13 years old. Dr. Sisco estimated the gestational age of the fetal tissue to be seven weeks and six days old, which would mean that the conception occurred in the end of November of 2014. Dr. Sisco released the fetal tissue to the CPD Detective. On the cross-examination Dr. Sisco stated that L.J. did not mention she was afraid of the person.

¶ 27 Sergeant Jose Castaneda from the Chicago Police Department testified on December 14, 2018, he collected a buccal swab from Walton by swabbing the inside his cheek and that it was then sent on to the Forensic Services Sections.

¶ 28 Chicago Police Sergeant Moreen Hanrahan testified that she interviewed L.J. and Tiffany at the CAC on January 5, 2015. Sergeant Hanrahan had a conversation with Tiffany regarding L.J.'s pregnancy and informed Tiffany that she would be collecting evidence of the pregnancy whether it be from the birth or termination of the pregnancy.

¶ 29 Sergeant Hanrahan met with L.J. and Tiffany at the medical facility so she could collect a sample of the fetal tissue for evidence. Sergeant Hanrahan also collected a buccal swab from L.J. Those samples were delivered to the Chicago Police Department Forensic Services Section to send on to the Illinois State Police Lab for testing and analysis. Sergeant Hanrahan contacted Walton and attempted to collect a buccal swab from him, but he refused.

¶ 30 On cross-examination, Sergeant Hanrahan acknowledged that she wrote on her general progress note that L.J. told her that the first time Walton assaulted her was in November. Sergeant Hanrahan also testified that L.J. did not tell her that she was afraid of Walton or felt threatened by Walton.

¶ 31 The State rested. Walton's motion for a directed verdict was denied.

¶ 32 Walton testified that he was 37 years old at the time of trial. He stated that he and Tiffany were childhood friends since 2001 or 2002. He fathered a child with a woman named Gabrielle in 2011 or 2012, and at one point Gabrielle and her child lived with Tiffany.

¶ 33 Walton testified that in the fall of 2014, he spent a lot of time with Tiffany and visited her on 119th three to four times a week. He never babysat for Tiffany's children and never babysat L.J. He interacted with L.J.'s siblings sometimes by asking them if they were hungry. Walton testified that he did not spend much time with them alone and never spent time alone with L.J. He denied that he ever went in L.J.'s bedroom, and that she did not have her own bedroom.

¶ 34 Walton testified that in the fall of 2014, L.J. told him that she did not want to go to her father's home because her father had raped her. Walton did not call the police or Tiffany. He testified that he told Tiffany about what he learned two days later but that she did not believe him. He testified that he came back to their home about two days later and started to drink tequila and smoke marijuana. Walton stated that he felt different than he usually did when he smoked

marijuana and drank alcohol. He woke up the next day at 6 a.m. still at Tiffany's. He felt disoriented and noticed that one of his cell phones was gone. He reached out to Tiffany on his other phone. He never saw Tiffany again until the trial.

¶ 35 Walton denied ever placing his penis inside L.J.'s vagina or committing any act of sexual penetration. He also denied ever forcing L.J. to do anything or threatening her or her family. On cross examination, Walton claimed that he did not remember a thing from 10 p.m. to 6 a.m. that night where he drank tequila and smoked marijuana in November of 2014. He claimed he had no idea what happened that night except that his phone went missing but he did not contact the police.

¶ 36 Walton then presented a stipulation that Chicago Police Officer Brian Holoubek arrived at the L.J.'s home on 119th on December 16th, 2014, and L.J. told him that Walton penetrated her three times: in September, in October, and in November of 2014, and that Officer Holoubek did not author a report in this case. Walton rested his case.

¶ 37 After deliberations, the jury found Walton guilty of predatory criminal sexual assault and aggravated criminal sexual assault. The trial court denied his motion for judgment notwithstanding the verdict or in the alternative a new trial. Prior to sentencing, the court also denied Walton's *pro se* request to represent himself because the court noted that Walton had constantly engaged in behavior to obstruct and delay the matter.

¶ 38 M.W., Walton's daughter, testified at the sentencing hearing regarding case 2019CR0610 where she was the victim of a separately charged predatory criminal sexual assault of a child against Walton. The State also introduced Tiffany's impact statement. In mitigation, Walton presented five letters of support from family and friends. In allocution Walton stated that he did not feel he got a fair trial and apologized to the prosecutors, his attorneys, the deputy sheriffs Emergency Response Team, his family, and the bailiffs.

¶ 39 The court sentenced Walton to 25 years in prison for the predatory criminal sexual assault of a child consecutive to 25 years in prison for the aggravated criminal sexual assault. This appeal follows.

¶ 40 II. ANALYSIS

¶ 41 A. Sufficiency of the Evidence

¶ 42 Walton first challenges the sufficiency of the evidence against him. Specifically, he argues that the evidence was insufficient to prove that L.J. was under the age of 13 at the time of the offense and therefore, we should reduce his predatory criminal sexual assault of a child conviction under Count 1 to aggravated criminal sexual abuse. In addition, Walton argues that because L.J. did not testify that he sexually penetrated her by using or threatening force, his conviction for aggravated criminal sexual assault under Count 2 should be reduced to aggravated criminal sexual abuse.

¶ 43 In considering a challenge to the sufficiency of the evidence, the relevant inquiry 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.' " *People v. McLaurin*, 2020 IL 124563, ¶ 22 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). This court will not retry the defendant. *People v. Nere*, 2018 IL 122566, ¶ 69. The trier of fact's role is to "assess the credibility of the witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences from the evidence." *People v. Daniel*, 2022 IL App (1st) 182604, ¶ 102. A reviewing court will not substitute its judgment for that of the trier of fact with respect to those issues. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 44 To prove Walton guilty of predatory criminal sexual assault of a child in Count 1, the State was required to prove that Walton, who was 17 years of age or older sexually penetrated L.J. who

was under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2014). There is no dispute that Walton was over the age of 17. Walton argues, however, that the evidence was insufficient to establish that L.J. was under the age of 13. We disagree.

¶ 45 L.J. described two acts of sexual penetration. She testified directly that she was 12 when the first incident occurred in her house on Normal in August before her house burned down. Tiffany and Jaleesa corroborated the timeframe of when they lived on Normal, when their house burned down (early August), and when they moved to 119th. Viewing the evidence in the light most favorable to the State, we find that Walton was proven guilty of predatory criminal sexual assault of a child beyond a reasonable doubt. *People v. Gray*, 2017 IL 120958, ¶ 36 ("The testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where it is contradicted by the defendant.").

¶ 46 Walton challenges L.J.'s credibility and argues that she was impeached on this issue of her age at the time of the first sexual penetration. L.J. acknowledged that in December 2014, she told police that the first time something happened with Walton was in September of 2014, at which point L.J. was 13. This was corroborated by police officer Brian Holoubek, whose stipulated account was that L.J. told him on December 16, 2014, that the first time Walton penetrated her was in September 2014. Sergeant Hanrahan testified that according to her January 5, 2015, interview report, L.J. told Hanrahan that the first incident between Walton and L.J. occurred in November, after she had turned 13.

¶ 47 However, this conflict between trial testimony and prior statements, and resolving such conflicts is the exclusive province of the trier of fact to resolve. *Gray*, 2017 IL 120958, ¶ 35. A reviewing court does not retry credibility or substitute its judgment for the fact-finder's and will reverse only if the evidence is so improbable or unsatisfactory as to raise a reasonable doubt.

People v. Garcia, 2012 IL App (1st) 103590, ¶¶ 82. Given the guilty verdict, the jury necessarily found L.J.'s testimony credible, and that determination is entitled to great deference. *Gray*, 2017 IL 120958, ¶ 35. Nothing in the record shows the jury's finding was unreasonable.

¶ 48 Walton also argues that the State failed to prove him guilty of aggravated criminal sexual assault under Count 2 beyond a reasonable doubt. Walton does not dispute that he sexually penetrated L.J., or that he caused her bodily harm by impregnating her. Instead, he contends that the State failed to prove that he used force or the threat of force.

¶ 49 To convict Walton of aggravated criminal sexual assault, the State had to prove sexual penetration "by the use of force or threat of force" that caused bodily harm to L.J. 720 ILCS 5/11-1.30(a)(1) (West 2014). “The element of force refers to actions of the defendant that physically compel the victim to submit to the act of sexual penetration.” *People v. Mpulamasaka*, 2016 IL App (2d) 130703, ¶ 74. Force or threat of force is defined as:

> “the use of force or violence or the threat of force or violence, including, but not limited to, the following situations:
>
> (1) when the accused threatens to use force or violence on the victim or on any other person, and the victim under the circumstances reasonably believes that the accused has the ability to execute that threat; or
>
> (2) when the accused overcomes the victim by use of superior strength or size, physical restraint, or physical confinement.” 720 ILCS 5/11-0.1 (West 2022).

¶ 50 “Every act of sexual intercourse involves force in the sense of energy or motion, but it cannot be said that every act of sexual intercourse involves force that will unlawfully ‘overcome’ the other participant or ‘victim.’ ” *People v. Kinney*, 294 Ill. App. 3d 903, 908 (1998). “Force does not include the force inherent to the act of physical penetration; instead, there must be some kind

of physical compulsion, or threat thereof, which causes the victim to submit to the penetration against their will." *People v. Blom*, 2019 IL App (5th) 180260, ¶ 31. "Beyond the fact that the requisite force must be 'something more than the force inherent in the sexual penetration itself,' there is 'no definite standard establishing the amount of force which the State is required to prove in order to prove criminal sexual assault, and each case must be considered on its own facts.' " *People v. Parker*, 2016 IL App (1st) 141597, ¶ 35 (quoting *People v. Alexander*, 2014 IL App (1st) 112207, ¶¶ 52, 54; *People v. Gonzalez*, 2019 IL App (1st) 152760, ¶ 38.) "The question of whether force or threat of force was used is best left to the trier of fact who heard the evidence and observed the demeanor of the witnesses." *Gonzalez*, 2019 IL App (1st) 152760, ¶ 38; *People v. Barbour*, 106 Ill. App. 3d 993, 998-99 (1982).

¶ 51 Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the evidence established beyond a reasonable doubt that Walton committed an act of sexual penetration by force or the threat of force resulting in L.J.'s pregnancy. With respect to the second act of sexual penetration, L.J. testified that Walton repeated the same conduct that occurred during the first act of penetration: he entered L.J.'s closed room, removed articles of clothing, got on top of her, inserted his penis into her vagina and she was scared.

¶ 52 Whether Walton used force presents a genuinely close question. However, the facts give rise to a reasonable inference that he employed force. Because we must view the evidence " 'in the light most favorable to the prosecution,' " we must allow all reasonable inferences from the record in favor of the prosecution. *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004) (quoting *Jackson*, 443 U.S. at 319). Our review " 'gives full play to the responsibility of the trier of fact' " and allows the jury " 'to draw reasonable inferences from basic facts to ultimate facts.' " (Emphasis omitted.) *Id.* (quoting *Jackson*, 443 U.S. at 319). We must allow inferences favoring the

prosecution unless the only conclusion that may reasonably be drawn from the record favors the defendant. *Id*.

¶ 53 Considered in isolation, Walton's getting “on top” of L.J. does not establish force beyond that inherent in penetration because there is no affirmative evidence that he used his bodily inertia to prevent her from disengaging. *Cf. Alexander*, 2014 IL App (1st) 112207, ¶ 54 (defendant used his bodily inertia to prevent the victim from disengaging where the victim testified that she could not “get up” because he was on top of her). However, considering that single fact together with his continuous course of conduct suffices to support an inference of force. Walton did not merely position himself atop L.J.: he entered her room, closed the door, physically pulled down her bottoms, mounted her body, and remained there until he chose to get up and leave. Pulling down her clothing was itself a forcible act overcoming whatever resistance, however passive, she could offer, and the combination of these deliberate acts is an exercise of physical dominance well beyond the motion inherent in the sex act. That L.J. was in physical pain throughout, and that Walton simply "got up and left" when finished, supports the inference that she remained pinned beneath him for the duration. A rational factfinder could find that an adult man used his weight and presence to keep a child from disengaging. Because that forms a reasonable inference, we must allow it. Thus, the facts support the inference that Walton used force.

¶ 54 While there is no evidence that L.J. offered any active resistance during this second act of sexual penetration by Walton, the State was not required to prove that L.J. resisted in order to establish force or threat of force. See 720 ILCS 5/11-0.1 (West 2014) ("Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent."); *Parker*, 2016 IL App (1st) 141597, ¶ 35 (recognizing "no definite standard establishing the amount of force which the State is required to prove" and that

"useless or foolhardy acts of resistance are not required" where the victim is overcome by superior strength or fear). L.J. was a child and we do not expect a child to mount the same resistance that might be typical of an adult woman in similar circumstances. *In re C.K.M.*, 135 Ill. App. 3d 145, 151 (1985).

¶ 55 We similarly reject Walton's claim that the State failed to prove that he physically confined L.J. to the room. His reliance on *People v. Gonzalez*, 2019 IL App (1st) 152760, *People v. Satterfield*, 195 Ill. App. 3d 1087 (1990), and *People v. Drake*, 2024 IL App (1st) 210482-U, is misplaced. These cases differ factually from the instant case in that they involved conditions where the confinement took place outside of their homes, and most importantly, the sexual attacks in those cases were singular attacks committed by strangers to their victims. In this case, L.J. knew and trusted Walton who preyed on her when she was alone in her room and importantly, had already attempted to resist the first time he sexually assaulted her when she was 12 years old. Accordingly, we find that a rational trier of fact could have found that Walton used force or the threat of force to commit an act of sexual penetration that resulted in L.J.'s pregnancy.

¶ 56 B. Closing Argument

¶ 57 Walton next argues that certain remarks made by the prosecutor in closing and rebuttal argument "misrepresented the State's evidence" regarding whether he used or threatened force on the aggravated criminal sexual assault count. Walton acknowledges that he did not object to the complained-of comments, nor did he include these issues in a post-trial motion, and therefore he has forfeited his claims. *People v. Enoch*, 122 Ill.2d 176, 186 (1988). He nevertheless urges us to review this issue for plain error.

¶ 58 "[T]he plain-error doctrine bypasses normal forfeiture principles and allows a reviewing court to consider unpreserved error when either (1) the evidence is close, regardless of the

seriousness of the error, or (2) the error is serious, regardless of the closeness of the evidence." *People v. Herron*, 215 Ill. 2d, 167, 187 (2005). Before considering whether the plain-error exception applies, we must first determine whether any error occurred. *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007).

¶ 59 A review of the forfeited claims demonstrates that the prosecutor's remarks were proper. Walton isolates particular words and phrases from closing argument, but closing arguments must be considered as a whole, and challenged remarks must be evaluated within their full context. *People v. Gonzalez*, 388 Ill. App. 3d 566, 597 (2008). Prosecutors are afforded wide latitude during closing argument and may comment on the evidence and any reasonable inferences that may be drawn from that evidence. *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). They may also discuss matters of common knowledge, common experience, and common sense. *People v. Taylor*, 2018 IL App (4th) 140060-B, ¶ 34. Such arguments are permissible even when the inferences drawn reflect negatively on the defendant. *People v. Jackson*, 2020 IL 124112, ¶ 82. Moreover, even where a prosecutor's comments arguably exceed the bounds of proper argument, reversal is warranted only if the remarks caused substantial prejudice such that the verdict would have been different absent those comments. *People v. Stewart*, 2023 IL App (1st) 210912, ¶ 75.

¶ 60 Walton first challenges the prosecutor's use of the terms "forced," "shoved," and "forcefully shoved" to describe his conduct toward the victim. These comments were proper because they were grounded in the evidence and the reasonable inferences arising from that evidence. *People v. Fountain*, 2016 IL App (1st) 131474, ¶ 82 (the prosecutor "is allowed to comment on the evidence and reasonable inferences from the evidence, including a defendant's credibility or the credibility of the defense's theory of the case"). L.J. testified that, during the two instances of penetration, Walton removed her clothing, climbed on top of her, penetrated her with

his penis, moved his body back and forth, and then abruptly got up and left without saying a word. She further testified that after each assault she remained lying where she was and was scared. Thus, the prosecutor's characterization of the assaults as involving force are a reasonable inference from the evidence presented at trial. Therefore, no error occurred.

¶ 61 Walton next objects to the prosecutor's rebuttal argument describing the aggravated criminal sexual assault as an incident in which L.J. was so uncomfortable that she was pushing away from Walton while he continued moving forward above her, pinning her down with his superior weight and size. Walton argues that no evidence supported this characterization.

¶ 62 The record, however, supports the prosecutor's argument. The evidence established that during the first assault, Walton, an adult male of substantially greater size, entered L.J.'s room, sat down on her bed and touched her chest and her vagina over her clothes. He then "laid [her] down," removed her clothes and then removed his pants. He then positioned himself on top of L.J., a child, moved his body back and forth, and left only after he was finished. L.J. testified that Walton "was big over me" and that he "hurt" her and made her "uncomfortable." Thus, the prosecutor's use of the term "pinned" was a reasonable inference drawn from the evidence that a grown man was on top of a child while committing an act of sexual penetration. Although L.J. did not specifically testify that she pushed herself away during the second penetration incident which formed the basis of the aggravated criminal sexual assault, Walton was still the same adult male of substantially greater size, who entered L.J.'s room when her door was closed. He removed her bottoms and pulled down his pants. He then "got on top" of her, forced his penis into her vagina and moved back and forth. L.J. testified that she was in pain during this second assault and was scared to tell anyone about what happened. She clearly was not an active participant in the sexual assault as Walton suggests.

¶ 63 As discussed, the State was not required to prove that L.J. resisted in order to establish force or threat of force. See 720 ILCS 5/11-0.1 (West 2014) (“Lack of verbal or physical resistance or submission by the victim resulting from the use of force or threat of force by the accused shall not constitute consent”); *Parker*, 2016 IL App (1st) 141597, ¶ 35 (recognizing “no definite standard establishing the amount of force which the State is required to prove" and that "useless or foolhardy acts of resistance are not required” where the victim is overcome by superior strength or fear). The evidence showed that Walton was like an uncle to L.J. and was in a position of trust yet he sexually assaulted her resulting in her pregnancy. L.J. repeatedly expressed fear of Walton, and her testimony regarding her efforts to move away during the first assault further supported the State's theory during the rebuttal argument that the aggravated criminal sexual assault was committed by force. Because the prosecutor's remarks were proper comments on the evidence and reasonable inferences therefrom, no error occurred, and therefore no plain error can exist.

¶ 64 Walton alternatively argues that failing to object to the prosecutor’s improper remarks during closing argument amounted to ineffective assistance of counsel. This claim fails for the same reason his plain-error claim fails: the challenged remarks were proper. Counsel cannot be faulted for not raising a meritless objection. *People v. Hensley*, 2014 IL App (1st) 120802, ¶ 47 (where no error occurred, there is no plain error or ineffective assistance of counsel).

¶ 65 C. Jury Coercion

¶ 66 Walton next argues that he was denied a fair trial when the trial court coerced the jury into a guilty verdict. The State argues that Walton forfeited any challenge to the jury instruction issue because he failed to make a timely objection to the trial court's proposed response to the jury's question during deliberations and did not include the issue in his posttrial motion. *Enoch*, 122 Ill. 2d at 186. Walton acknowledges that he failed to include this issue in his posttrial motion but

claims that he wasn't required to because he requested a mistrial after the jury's note and therefore the issue is "constitutional." In the alternative, Walton argues that if we were to find the issue forfeited, we should consider it for plain error and ineffective assistance of counsel.

¶ 67 Our review of the record shows that Walton has forfeited this issue for failing to include it in his posttrial motion. Contrary to his argument, he did not request a mistrial after the jury's note in this case. Defense counsel merely stated that the court should respond to the jury's note by telling them, "Let them hang on the one and see what the verdict is on the other." In fact, defense counsel never objected to the court's decision to tell the jury to continue deliberating. And furthermore, Walton does not explain how this issue is of constitutional magnitude. Accordingly, we will consider this issue for plain error and ineffective assistance.

¶ 68 Again, the first step in plain error review is to determine if error occurred. *Piatkowski*, 225 Ill. 2d at 565. After two days of trial, deliberations began at 3:30 p.m. The jury sent out the first of two notes at 4:19 p.m., less than one hour after deliberations began asking for a police progress note. After consulting with both parties and no objection from either party, the trial court simply replied, "You have received the evidence on this case. Please continue your deliberations." Later, the jury sent the judge a second note. The judge called the parties in and explained:

> "…it's really more a note, less of a question, but it reads as follows: jury is hung on 11 to 1 to the predatory criminal sexual assault charge. Jury has unanimously signed on the verdict for the aggravated criminal sexual charge. How does the judge want to proceed? That's all it says. I mean, this was sent out only after three hours, exactly on the three hour mark for deliberations. The jury went out at 3:30 p.m. The note came at 6:28 p.m."

¶ 69 The court asked defense counsel how to proceed and counsel replied, "Let them hang on the one and see what the verdict is on the other." The court then asked the prosecutor, who

requested the jury be directed to "continue to deliberate." The court agreed with the prosecutor and said, "I think that it's only three hours in. It's only 6:38 p.m. now. The response is going to be please continue your deliberations. That's it. Please continue your deliberations. Signed it 6:38 p.m." At 6:44 p.m., the jury reached a verdict finding defendant guilty of both charges.

¶ 70 "A trial court may not 'hasten' a verdict by giving the jury an instruction that has the effect of coercing jurors into surrendering their views." *People v. Boyd*, 366 Ill. App. 3d 84, 99 (2006) (citing *People v. Gregory*, 184 Ill. App. 3d 676, 680-81 (1989)). An instruction to continue deliberating should be neutral and avoid implying that the majority view is correct. *People v. Love*, 377 Ill. App. 3d 306, 316 (2007) (citing *Gregory*, 184 Ill. App. 3d at 681). "The test for determining whether the trial court's comments to the jury were improper in this context is whether, under the totality of the circumstances, the language used by the court actually interfered with the jury's deliberations and coerced a guilty verdict." *People v. McCoy*, 405 Ill. App. 3d 269, 275 (2010). Coercion is a highly subjective concept that does not lend itself to precise definition or testing and, as a result, a reviewing court's decision often turns on the difficult task of ascertaining whether the challenged comments imposed such pressure on the minority jurors as to cause them to defer to the conclusions of the majority for the purpose of reaching a verdict. *People v. Branch*, 123 Ill. App. 3d 245, 251 (1984).

¶ 71 We disagree that the court's response was coercive. The court's entire response was "[p]lease continue your deliberations." In *People v. Pulliam*, 176 Ill. 2d 261, 284-85 (1997), our supreme court found a similar note to be noncoercive. The jury asked, " '[w]hat happens if we cannot reach a unanimous decision on either verdict?' " and the court responded, " '[y]ou have your instructions. Keep deliberating.' " *Pulliam*, 176 Ill. 2d at 284. Similarly, in *People v. Boyd*, 366 Ill. App. 3d 84, 98-100 (2006), this court found that two separate instructions stating,

respectively, " You have your instructions. Continue to deliberate," and "Review the instructions and the evidence. Continue to deliberate," were neutral, noncoercive, and not plain error. Likewise, in *People v. Ford*, 2022 IL App (1st) 172581, ¶ 30, we found that the trial court did not coerce the jury when it responded to the jury's note by stating "Dear Jury, Please Continue To Deliberate. Thank You!" There is simply no significant difference between the notes in *Pulliam*, *Boyd* or *Ford* and the note in the case at bar. Accordingly, we find that the note in question was an appropriate exercise of the trial court's discretion.

¶ 72 Walton's reliance on *People v. Wilcox*, 407 Ill. App. 3d 151 (2010), is misplaced. In *Wilcox*, the trial court, over the defendant's objection, responded to the deadlocked jury with the following: "[w]hen you were sworn in as jurors and placed under oath you pledged to obtain a verdict. Please continue to deliberate and obtain a verdict." *Id*. at 164. This court found that the instruction given was coercive as it "indicated that being deadlocked was not an option, that the jurors were required by their oath to obtain a verdict, and that they would be required to deliberate until a verdict was reached." *Id*. at 165. No such instruction was given in this case.

¶ 73 Walton argues that the coercive effect of the court's answer to the jury's question is self-evident where the jury had deliberated for three hours and declared that it was conclusively "hung," but then returned a unanimous verdict only six minutes after receiving the court's response to its note.

¶ 74 While the length of the deliberations following a trial court's comments is alone insufficient to determine whether the comments were the primary factor in procuring a verdict, brief deliberations invite an inference of coercion. *People v. Ferro*, 195 Ill. App. 3d 282, 292 (1990). The interval here, about six minutes, at the most sixteen minutes, is shorter than the hour and a half in *Ford*, 2022 IL App (1st) 172581. But the length of deliberation is not dispositive (*Wilcox*,

407 Ill. App. 3d 151, 165-66), and the brevity cuts against Walton only if the instruction that preceded it was itself coercive, which it was not. A neutral direction to continue does not become coercive because the jury acts on it quickly. *People v. McLaurin*, 235 Ill. 2d 478, 494-99 (2009).

¶ 75 Finally, the absence of a *Prim* instruction (*People v. Prim*, 53 Ill. 2d 62 (1972)), does not change the result. As Walton acknowledges, a *Prim* instruction is not mandatory; the pattern instruction "takes no position on whether [it] should be given or under what circumstances," and the failure to give it *sua sponte* "is not considered error at all." *Ford*, 2022 IL App (1st) 172581, ¶ 34. Because there was no error, there is no plain error. Likewise, we cannot say that counsel was ineffective for failing to raise a meritless issue.

¶ 76 D. Fitness

¶ 77 Finally, Walton argues that the trial court committed reversible error by failing to hold a fitness hearing where the court *sua sponte* ordered a fitness to stand trial examination after it found that it could not accept Walton's waiver of counsel, the examination was never completed because Walton refused to cooperate and the court proceeded to trial on defense counsel's representation that no examination was needed. We find that no error occurred here.

¶ 78 During Rule 401 admonishments, after Walton asked to represent himself, Walton claimed that he did not understand his right to counsel or the sentencing range and expressed confusion about the meaning of "beyond a reasonable doubt" and what it would mean to be "assessed." The court stated it could not find that Walton "has made a knowing and voluntary waiver of his right to counsel" and said it would have him examined "to determine if there is some issue or problem." The court reiterated that the evaluation was "to determine if he's fit to stand trial and if he's able to waive his right to counsel." At the same time, the court told Walton it was unsure whether Walton

was being honest or “trying to play games,” and observed “If you don't understand what's going on here, that's one thing. If you don't want to understand, that's a little different thing.”

¶ 79 The court’s written order dated February 9, 2022, which is a preprinted “Consolidated Referral Order,” directs Forensic Clinical Services to examine Walton as to “Fitness to stand trial,” “Fitness to stand trial with medication,” ‘Sanity,” and “Ability to waive counsel and represent himself.” There is no factual basis for the referral on the order and importantly, the order does not state that the court had a bona fide doubt of fitness.

¶ 80 On the next court date, the court received a report from Forensic Clinical Services that indicated that Walton stopped his evaluation about 30 minutes in and refused to cooperate. The court then ordered that Walton be examined in-person by a doctor, but Walton refused to cooperate. The doctor indicated that as a result, he could not render an opinion on fitness. The trial court explained to Walton that he needed to cooperate with the evaluation, and Walton replied that he would not answer questions that he did not think were accurate. After the court warned Walton of contempt, Walton requested counsel, and the court appointed the Public Defender. The court asked newly appointed counsel to confer with Walton and advise whether the evaluation was necessary. On June 2, 2022, the court noted that counsel saw no need to complete the examination and Walton’s fitness was never revisited. The 2023 trial proceedings contain no further discussion of fitness. The jury returned its verdict on September 20, 2023. Walton did not raise the fitness issue in a post-trial motion.

¶ 81 Walton concedes he did not preserve the issue and seeks plain-error or ineffective-assistance review. As previously stated, the first step under plain error review is to determine whether a clear or obvious error occurred. *Piatkowski*, 225 Ill. 2d at 565.

¶ 82 Due process prohibits the prosecution of an unfit defendant. *People v. Hanson*, 212 Ill. 2d 212, 216 (2004). A defendant is presumed fit to stand trial and is unfit only if, because of a mental or physical condition, he is unable to understand the nature and purpose of the proceedings against him or to assist in his defense. 725 ILCS 5/104-10 (West 2022); *People v. Brown*, 236 Ill. 2d 175, 186 (2010). Fitness concerns only a defendant's ability to function within the context of trial; a defendant "can be fit for trial although his or her mind may be otherwise unsound." *People v. Easley*, 192 Ill. 2d 307, 320 (2000).

¶ 83 Section 104-11(a) of the Code of Criminal Procedure (725 ILCS 5/104-11(a) (West 2020)) provides that either party or the court may raise the issue of defendant's fitness and, "[w]hen a bona fide doubt of the defendant's fitness is raised, the court shall order a determination of the issue before proceeding further." Under section 104-11(b) of the Code (725 ILCS 5/104-11(b) (West 2020)), a defendant may request that the court appoint an expert "to examine [the defendant] to determine prior to trial if a bona fide doubt as to [the defendant's] fitness to stand trial may be raised." In other words, an examination under section 104-11(b) is intended to aid the court in deciding, pursuant to section 104-11(a), whether a bona fide doubt can be raised and thus whether a fitness hearing is necessary. Under section 104-11(a), once a bona fide doubt is raised, a hearing is necessary before the court can address other pretrial matters.

¶ 84 If a bona fide doubt of a defendant's fitness is raised, the court must order a fitness hearing. 725 ILCS 5/104-11(a) (West 2022); *Brown*, 236 Ill. 2d at 186. The test is objective: whether the facts raise a "real, substantial and legitimate doubt" of the defendant's mental capacity to meaningfully participate in his defense. *People v. Eddmonds*, 143 Ill. 2d 501, 518 (1991). Factors to consider are: (1) the rationality of a defendant's behavior and demeanor at trial, (2) any prior medical opinion on his competence, and (3) counsel's statements about his competence. *Id.*;

Hanson, 212 Ill. 2d at 223. No single factor is controlling. *Eddmonds*, 143 Ill. 2d at 518 (quoting *Drope v. Missouri*, 420 U.S. 162, 180 (1975)). On appeal, the defendant bears the burden of showing that, at the time of trial, facts existed that raised a bona fide doubt of his fitness. *Hanson*, 212 Ill. 2d at 221-22. Whether a bona fide doubt arose rests largely within the circuit court's discretion, because that court, unlike this one, observed the defendant firsthand. *People v. Tolefree*, 2011 IL App (1st) 100689, ¶ 53 (citing *People v. Murphy*, 72 Ill. 2d 421, 431 (1978)). An abuse of discretion occurs only where the decision is "arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the trial court." *Tolefree*, 2011 IL App (1st) 100689, ¶ 53.

¶ 85 Here, the record contains absolutely no indication that the court found a bona fide doubt as to Walton's fitness to stand trial. The record establishes that the court entered the order *sua sponte*, to help determine whether a bona fide doubt existed. Having found none, a fitness hearing was not required to proceed to trial. *Cf. People v. Smith*, 353 Ill. App. 3d 236, 238-240 (2004) (after the defendant wanted to represent himself, the court entered a written order stating that it had a bona fide doubt as to the defendant's fitness to stand trial and ordered the defendant to be examined, which required a fitness hearing). On this reading, there was no error, and the forfeited claim fails at the first step of plain-error review. *Piatkowski*, 225 Ill. 2d at 565. The ineffective-assistance claim fails for the same reason, because counsel cannot be faulted for declining to raise a meritless claim. *Hensley*, 2014 IL App (1st) 120802, ¶ 47 (where no error occurred, there is no plain error or ineffective assistance of counsel).

¶ 86 III. CONCLUSION

¶ 87 For the reasons stated, we affirm the judgment of the circuit court of Cook County.

¶ 88 Affirmed.