No. 127732

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- SAMUEL SAULS, Petitioner-Appellant.	)	Appeal from the Appellate Court of Illinois, No. 4-19-0667. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 18-CF-1153. Honorable Thomas J. Difanis, Judge Presiding.

BRIEF AND ARGUMENT FOR PETITIONER-APPELLANT

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NATURE OF THE CASE

Samuel Sauls was convicted of predatory criminal sexual assault of a child after a jury trial and was sentenced to 20 years of imprisonment. (C. 259). Sauls appealed, and the appellate court affirmed.

This is a direct appeal from the judgment of the court below. No issue is raised challenging the charging instrument.

ISSUES PRESENTED FOR REVIEW

I.

Whether Samuel Sauls's conviction must be reversed because the State failed to prove his guilt beyond a reasonable doubt.

II.

Whether this case should be remanded for the trial court to perform an *in camera* review for materiality of the documents subpoenaed from DCFS.

STATUTES AND RULES INVOLVED

"All reports in the central register shall be classified in one of three categories: 'indicated', 'unfounded' or 'undetermined', as the case may be.

* * *

Unfounded reports may only be made available to the Child Protective Service Unit when investigating a subsequent report of suspected abuse or maltreatment involving a child named in the unfounded report; and to the subject of the report, provided the Department has not expunged the file in accordance with Section 7.7. The Child Protective Service Unit shall not indicate the subsequent report solely based upon the existence of the prior unfounded report or reports. Notwithstanding any other provision of law to the contrary, an unfounded report shall not be admissible in any judicial or administrative proceeding or action except for proceedings under Sections 2-10 and 2-21 of the Juvenile Court Act of 1987 involving a petition filed under Section 2-13 of the Juvenile Court Act of 1987 alleging abuse or neglect to the same child, a sibling of the child, or the same perpetrator." 325 ILCS 5/7.14 (2017).

STATEMENT OF FACTS

Samuel Sauls (Sam) grew up on the South Side of Chicago and attended Lincoln's Challenge in order to escape from the bad situations in his school, before joining the Army and serving honorably in Afghanistan. (R. 1108). In 2017, he was 25 years old, (see R. 1108), and separated from his wife Desiree, (R. 71-72), who, along with his young daughter Naomi, and Desiree's extended family, lived in Champaign. (R. 750-53). During this estrangement, Sam was sharing a house with two other men, (R. 754), and doing landscaping work around Champaign in order to stay nearby to see his daughter as much as possible. (R. 907). Naomi was three years old at the time, (R. 847), and was very close to her cousins: LGP, who was seven years old in the late summer of 2017, and JGP, who was five years old. (R. 528-29).

Sam's daughter, Naomi, stayed at his residence regularly, and on at least one occasion in the summer of 2017, had her cousins LGP and JGP over for a sleep-over with her at Sam's house. (R. 912, 917). After a family get-together the next year, on Memorial Day, 2018, there was an event in which Mercedes Gonzales-Panepinto, Sam's sister-in-law and the mother of LGP and JGP, accused Sam of sexual contact with LGP. (R. 925, 553-54).

Sam was charged in Count I with predatory criminal sexual assault of a child, which alleged that sexual contact took place between his penis and the hand of LGP for the purposes of sexual gratification, pursuant to 720 ILCS 5/11-1.40(a)(1) (2017). (C. 19). Sam was also charged in Count II with predatory criminal sexual assault of a child, which alleged that sexual contact took place between his hand and the vagina of JGP for the purposes of sexual gratification, pursuant to the same statute. (C. 18). At jury trial, Sam was acquitted of Count II, but convicted of Count I, which is the subject of this appeal. (R. 1072).

Pre-trial, the State filed a motion to admit, and a notice of intent to present, hearsay statements pursuant to 725 ILCS 5/115-10 (2017). (C. 69). The State sought to admit statements that LGP and JGP made to their mother, statements that they made to the pediatrician Dr. Buetow,

and the contents of the CAC interviews, which were conducted by Illinois Department of Children and Family Services (DCFS) Investigator Chad Turner. (C. 69-72). After a lengthy hearing, the trial court granted the motion, provided that the children testify or were unavailable to do so. (R. 183).

During pre-trial discovery, defense counsel filed a motion pursuant to Illinois Supreme Court Rule 412 on November 28, 2018, seeking, among other things, documents regarding "[t]he prior unfounded DCFS case for [Sam Sauls] and [Desiree Panepinto-Sauls] as reported on page 10 of the state's discovery." (C. 57-58). In a supplemental motion for discovery filed March 4, 2019, the defense informed the court that this information had still not been provided to the defense and also that the defense had become aware of the existence of "DCFS investigations, police reports and CAC interviews regarding allegations of abuse against Mercedes Panepinto-Gonzales, and Angel Walker, the live-in girlfriend of Mercedes Panepinto-Gonzales, which were done in the Fall of 2018, but which have never been turned over." (C. 85-86). This motion argued that the defense believed that these documents should be turned over pursuant to Illinois Supreme Court Rule 412 and *Brady v. Maryland*, 373 U.S. 83 (1963). (C. 85-87). The State filed a response indicating that it had no access to any such unfounded DCFS report and had tried unsuccessfully to request such a report from DCFS, if the report exists. (C. 91). At a hearing on this motion, the State reiterated that DCFS would not give it access to the report(s) in question. (R. 205). The trial court said "Then we'll do a subpoena *duces tecum* for that report." (R. 205).

Defense counsel issued a subpoena duces tecum to DCFS, requesting "All records of investigations including but not limited to written reports, video or audio recordings created since Sept. 1, 2018 related to Mercedes Gonzalez-Panepinto * * * or Angel Walker in your possession or control." (C. 128). DCFS, through the Attorney General's Office, filed a motion

to quash the subpoena, arguing that, as it requests information regarding an unfounded report, the information is confidential and inadmissible under Illinois law. (C. 130). The motion did indicate, though, that "DCFS is willing to turn over a redacted copy of the investigation, for in camera review" by the trial court. (C. 130). DCFS also filed a memorandum of law in support of its motion to quash, which argued that the court should either quash the subpoena or review the records *in camera* and enter a protective order. (C. 133-37).

At the hearing on this motion to quash, defense counsel argued that the information in the reports goes to the interest and bias of the witnesses, and may include contradictory statements that would qualify as *Brady* material. (R. 223). Thus, defense counsel objected to the motion to quash, but agreed that the court can review the materials *in camera*. (R. 223). After hearing a brief argument from the State in favor of the motion, the trial court granted the motion and quashed the subpoena, without requiring production or review of any of the requested materials. (R. 225).

The case proceeded to trial, where Francisco Gonzalez testified that he is the father of LGP and JGP. (R. 418). He testified that he and all of the other family members were at a birthday party for Naomi at the park, in August, 2017. (R. 422). He said that Sam called Mercedes Panepinto-Gonzalez, (LGP and JGP's mother), and invited the girls for a sleep-over with Naomi after the birthday party. (R. 424). Francisco testified that he, (Francisco), and Mercedes dropped LGP and JGP off at Sam's residence later that evening, at around 10:00 p.m. (R. 424). According to Francisco, LGP came back the next day saying that she did not want to go back to Sam's house. (R. 425). He said that this happened in the car on the way home, the next day, when he, Mercedes, LGP, and JGP were all present. (R. 425-27).

LGP, nine years old at the time of the trial, testified next, telling the court that, as they got into the car after her cousin Naomi's birthday party, she wanted to spend the night with Naomi. (R. 461).When asked who dropped her off at Saul's / Naomi's that night, she said

that she thought her grandmother did. (R. 465). She said that she and JGP slept on the floor of Sam's bedroom, while he and Naomi slept on the bed, and that at some point she also ended up in the bed, but does not know how. (R. 466). According to her testimony, she woke up, and thought that she had fallen asleep with one hand clasped in the other, but then realized that it was "his private" in her hand. (R. 470-71). When asked what he was doing, LGP said that "he was just laying down right there and just on his phone I think." (R. 471). She could not remember what he was wearing, but thought that he had on a t-shirt. (R. 471). LGP said that she then got up to wash her hands, which had "sticky stuff" on them. (R. 471).Then, she said, she went back to bed and fell asleep. (R. 472). She said that the lighting was "darkish, lightish" and she could not remember if the television in the bedroom was on. (R. 472-73).

LGP testified that she did not tell her mother about it right away because she was scared. (R. 474). Eventually, she said, she did tell her mother that she was scared during an incident later when she saw Naomi and Sam together "'Cause I thought he would try to get Naomi 'cause I – Naomi's one of my favorite cousins." (R. 474-75). LGP testified that "it upset me 'cause I didn't want Naomi to go over there cause (unintelligible) same thing happen to her." (R. 476). When asked by the State: "Do you know the word penis," LGP answered "Well, I think so. Yeah." When asked "Is that the same thing as private you're talking about," LGP said "Yeah." (R. 477).

On cross-examination, LGP testified that she could not remember what color the sheets were or how many pillows were on the bed. (R. 481-83). She repeated that Sam's hands were on his phone, and had no memory of telling anyone else that they were under his head. (R. 487). LGP testified "I can't really remember that good, if he had a phone or not. I could just remember, like, the bedroom stuff and like, what happened. But I don't really know the details of stuff." (R. 487).

JGP, who was seven years old at the time of the trial, then testified somewhat more reticently, about waking up the same night to being touched by Sam. (R. 508-09). Mercedes Panepinto-Gonzalez testified for the State that she was LGP's and JGP's mother. (R. 528). She gave the names and ages of all parties. (R. 527). Mercedes described Angel Walker as her best friend, whom she said that she had known for about 3 years. (R. 532).

Mercedes testified that she and Francisco dropped LGP and JGP off at Sam's house on the day after Naomi's third birthday on August 28, 2017, and that they picked them up on the following day. (R. 539-40). Mercedes did not testify about any disclosures made by LGP on the way home from the sleep-over. (See. R. 540). Instead, she testified that a similar conversation occurred a couple of days later on her couch, with nobody but her and LGP present. (R. 542). Mercedes's testimony was that LGP had disclosed to her on the couch that during the sleep-over, LGP had awoken to find her hand wrapped around Sam's finger, and then LGP got up to go wash her hands. (R. 543). Mercedes questioned LGP further and that LGP disclosed that Sam was not wearing a shirt or boxers at the time. (R. 544). According to Mercedes, LGP told her that she had not been touched in any other way. (R. 545).

Mercedes further testified that on Memorial Day, 2018, LGP saw Naomi getting into Sam's vehicle after a family event, and that LGP responded to seeing that by saying "Mama, please. Don't let her go with him 'cause he's going to do what he did to me. It wasn't his finger." (R. 550). According to Mercedes, LGP was crying and repeating that "it wasn't his finger." (R. 552). Mercedes testified that when she asked LGP what it was, LGP said "it was his private part." (R. 552).

After this, Mercedes took LGP to Dr. Mary Kathleen Buetow for an examination. (R. 556). Based on Mercedes's representations and the result of Dr. Buetow's interview with LGP, Dr. Buetow contacted DCFS, who began an investigation into the possible sexual abuse of LGP. (R. 610). DCFS Investigator Chad Turner then did a home visit, where he met and spoke

briefly with Mercedes, LGP, and JGP. (R. 562). A forensic interview at the Child Advocacy Center (CAC) was scheduled. (R. 563-64). Mercedes testified that on the morning that the CAC interview was scheduled to occur, her younger child, JGP, indicated that something inappropriate happened between Sam and her, as well. (R. 565). Mercedes relayed those disclosures to the staff at the CAC, who decided to interview both children on the same day. (R. 565). The interview was conducted by Turner. (R. 685). Observing the interview was Champaign Police Detective Amy Petrilli. (R. 124).

Before Dr. Mary Kathleen Buetow testified for the State, the State informed the court that it wanted to introduce statements made to the doctor under both the medical exception to the hearsay rule as well as the Section 115-10 motion, which the court had already granted, and the defense reiterated its ongoing objection to both. (R. 588). Dr. Buetow is a licensed pediatrician, specializing in child abuse and neglect, and was accepted as an expert in those fields by the court. (R. 590).(R. 597). LGP was referred to Dr. Buetow by the child's primary care physician. (R. 598).

Dr. Buetow took a statement from LGP outside of the presence of Mercedes, but with Cathy Johnson, a clinical service worker, present, who participated in the interview. (R. 601). During the interview, according to Dr. Buetow, LGP told her that she had spent a night with her uncle mostly because her cousin was spending the night with her father and she wanted to stay with her cousin. (R. 604). They all slept in one room, which would have included Sam, LGP, her cousin Naomi, and LGP's sister JGP. (R. 604). Dr. Buetow said that LGP told her "when I woke up I thought I was holding his finger, but it wasn't his finger. It was his private part. It was his penis, and my hand was wet so I got up and went to the bathroom and washed my hand." (R. 604). According to Dr. Buetow, LGP told her that she did not ever want to be around Sam, that she was having nightmares and she would see his face in the middle of the night and she was very fearful of him and not sleeping well. (R. 608).

Dr. Buetow gave LGP an examination, which Mercedes was present for, and which did not indicate any physical injury or infection. (R. 609). Dr. Buetow also testified about JGP's later examination and interview, both of which were conducted after JGP's CAC interview, and which testimony had no information relevant to Count I. (R. 620).

DCFS Investigator Chad Turner testified for the State about making the initial conduct with Mercedes, LGP, and JGP, to check on their immediate welfare, and then coordinating and conducting the CAC interviews (R. 664, 669-76). Turner tried to set up an interview with Desiree Sauls and Naomi, but Desiree had no concerns for her daughter, who had made no disclosures. (R. 679). Turner determined that Naomi was safe, but Desiree did not allow Naomi to be interviewed. (R. 679).

Turner testified about the CAC interview room, and how it is set up to be neutral towards the children, without suggestion regarding the content of conversations. (R. 681). Turner laid the foundation for the recordings of the interviews of LGP and JGP, which were admitted without objection and played in open court. (R. 686, 691).

In her CAC interview, LGP described being at Sam's home and spending the night after Naomi's birthday party. (E. 2, 9:31). In the video, LGP described how there was a bed and a pallet, and how she slept on the bed. (E. 2, 10:29). She later clarified that she fell asleep on the pallet, but then woke up on the bed. (E. 2, 11:40). She said on the video that she woke up touching what she thought was a finger, but was "his private." (E. 2, 13:20). "I was lying down, and I thought I was holding his finger, and I woke up and it was his private. So I said can I go to the bathroom. I went to the bathroom and washed my hands. I came back and laid down." (E. 2, 13:50). LGP explained that she wanted to wash her hand because "My hand was like wet kind of." (E. 2, 15:00). LGP said in the video that "he had a t-shirt on but his underwear was pulled down." (E. 2: 15:55). She also said that he was "laying on his hands," and made a gesture of two hands, palms together, under the side of her head. (E. 2, 16:12).

When asked to point out on the anatomical drawing, (E. 15), what it was that was in her hand when she woke up, LGP pointed to the penis on the diagram. (E. 2, 21:30). When asked to describe what was on her hands, she said that it was like "sticky kind of water." (E. 2, 27:30). Turner then testified about the interview with JGP, (R. 698), and that recording was played in open court. (R. 699). Turner testified that after the interviews were completed, they did not release the recordings to Mercedes. (R. 700). He said that they give a summary, but no details, to the parent if there was a disclosure. (R. 700).

On cross-examination, Turner agreed that he was told by Desiree that there had been a physical altercation in the past between Sam and Mercedes and right after that is when the girls started to appear afraid of Sam. (R. 735). But Turner testified that this gave him no cause to believe that the kids had been coached. (R. 735-36).

The State then rested, (R. 737), and defense counsel moved for directed verdict, pointing out the inconsistencies in testimony. (R. 737-40). The court denied the motion, saying that those were factors for the jury to sort out. (R. 740).

Rose Panepinto testified for the defense. (R. 750). Rose is the grandmother of LGP, JGP, and Naomi. (R. 750). Desiree and Naomi live with her, along with another child of Rose's, and their children. (R. 750-51). Rose testified about attending Naomi's birthday party, (R. 758), and how the next day, she dropped off clothes for Naomi at her father's house, and that Naomi was the only child there. (R. 763, 815). Rose said that the girls were always glad to see Sam over that fall, saying "Uncle Sam, Uncle Sam, how are you?" (R. 766). He would pick all three girls up and hug them and put them down. (R. 766)

Rose testified that on the following Memorial Day weekend, she came home to find a commotion at her house, with Mercedes "hollering" and "everyone screaming." (R. 781). She testified that LGP was standing on the porch and Angel and Mercedes were repeatedly telling her to "Tell them, [LGP]. Tell them what's next." (R. 781). After that night LJP and

JGP did not come over to Rose's house as much, and there was not as much interaction between the girls and Sam after the Memorial Day weekend. (R. 782).

On cross-examination, Rose admitted that she loves her grandchildren, and her daughter, and Sam. (R. 788). Rose admitted that she does not know if there was a sleep-over. She was not at Sam's house after the party or the night after that. (R. 792).

Desiree Panepinto-Sauls testified that she had been separated from Sam Sauls since 2015. (R. 836). She said that after the birthday party, Naomi went home with her father, Sam, and stayed with him for a couple of days. (R. 852). Desiree testified about how, earlier that year, (2017), she had been fighting with Sam over taxes, and how everyone knew that Desiree was not talking to Sam or letting him see Naomi. (R. 856). On one occasion, she said, Sam came to the house when Mercedes and the girls were there. (R. 861). This led to Mercedes trying to keep Sam from coming into the house to get Naomi against Desiree's wishes, and ultimately Sam pushing Mercedes, in front of LGP and JGP, who were shocked to see it. (R. 862-64). Desiree testified that she and Sam eventually reconciled the tax issue, and Sam came around more often. (R. 864). She testified that the girls always smiled around him, and that she never observed fear or reticence towards Sam. (R. 875-76).

On cross-examination, Desiree admitted that she was not present on the night following the birthday party at the park, nor on the following night. (R. 877). Desiree admitted not knowing who was at Sam's overnight. (R. 877).

Samuel Sauls testified in his own defense. (R. 901). He said that he and Desiree separated in early 2016. (R. 902). Sam recalled being at the birthday party and that Naomi spent the night with him after it, but he testified that nobody else did. (R. 914). According to Sam, the last time LGP and JGP spent the night with Naomi at his house would have had to have been the summer of 2017, before school started back in session. (R. 916). That summer, Sam said, Mercedes dropped the girls off a couple of times; he said that she would just call and ask if she can bring the kids by and Sam always said yes. (R. 917).

When they did sleep over, Sam testified, he let the kids have the full-sized bed in his room and he slept on the couch in the living room. (R. 918).

Sam testified about the tax dispute and admitted to pushing Mercedes (along with being pushed by Mercedes) at Rose's house. (R. 921). The nieces were there, he said. (R. 921). Sam said that after the pushing incident, he next saw Naomi on Memorial Day Weekend, when he went to pick her up from Mercedes's house. (R. 922). On that occasion, Mercedes started yelling at him, and he eventually left with Naomi. (R. 925).

Sam testified that he has never slept in the same bed with his nieces since they were in diapers. (R. 928). He said that they could not even fit in the same bed, now. (R. 928). Sam denied ever putting his penis in LGP's hand or ever touching JGP on her vagina, or anywhere else. (R. 928). He said that he has never set up a pallet for them, and that they have never slept on the hardwood floor of his home. (R. 951). Sam admitted to having hostile phone calls with Mercedes after May 30, 2018. (R. 955). He said he was upset, calling her up and using bad words at her, yelling at her. (R. 955-56).

The jury returned a verdict of not-guilty on Count II, regarding JGP, as well as a verdict of guilty of predatory criminal sexual assault of LGP in Count I. (R. 1072). Defense counsel filed a timely post-trial motion on August 30, 2019. (C. 240). This motion alleged, *inter alia*, that the State failed to meet its burden of proving Sauls guilty beyond a reasonable doubt, (C. 240), and that the trial court erred in granting the motion to quash subpoena filed by the Attorney General's Office on behalf of DCFS. (C. 241).

After a brief argument, the trial court denied the post-trial motion. (R. 1084). At the sentencing hearing, Sam was sentenced to twenty years in the Illinois Department of Corrections, with credit for 338 days served. (R. 1109).

The appellate court affirmed Samuel Sauls's conviction on August 23, 2021. Sam filed a Petition for Rehearing on August 31, 2021. The appellate court denied the Petition for Rehearing on September 1, 2021. This Court granted leave to appeal on January 26, 2022.

ARGUMENT

I.

Samuel Sauls's conviction must be reversed because the State failed to prove his guilt beyond a reasonable doubt.

The evidence in this case was insufficient to sustain a conviction for predatory criminal sexual assault of a child. The testimony given by the prosecution's only witnesses to the events that are alleged to have occurred during any sleep-over at Samuel Saul's house was incomplete, unreliable, and contradicted by previous statements. (R. 470-71, 481-87; E. 2). The testimony for the defense was clear, consistent, and exculpatory. (R. 928, 951). As this court must consider all of the evidence, it should find that the evidence was so unsatisfactory as to justify a reasonable doubt of Sauls's guilt.

"Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime." *People v. Brown*, 2013 IL 114196, ¶ 48. Even under this forgiving standard, the reviewing court must consider all the evidence, not just the evidence that advances the state's theory of the case. *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). The reviewing court "will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of the witnesses," but the conviction will be reversed "where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Brown*, 2013 IL 114196, ¶ 48.

As charged in this case, to convict Samuel Sauls of predatory criminal sexual assault of a child by an act of contact, the State was required to prove beyond a reasonable doubt the following elements: (1) the accused was at least 17 years old; (2) the victim was under 13 years old; (3) the accused committed an act of contact, however slight, between the sex organ or

anus of himself or the victim and a body part of the other; and (4) such act was for the purpose of sexual gratification or arousal of himself or the victim. (C. 19); 720 ILCS 5/11-1.40(a) (2017). The first and second elements were not disputed at trial, and the sufficiency of the evidence on those elements is not now challenged.

Samuel Sauls (Sam) does challenge the sufficiency of the evidence on the third element of the charge, *i.e.*, that he committed an act of contact between his penis and a part of LGP's body. As the fourth element, that the act was for the purpose of sexual gratification, is dependent upon establishing that the contact happened at all, Sam disputes that the evidence was sufficient to establish this element, as well. The evidence that advanced the State's theory of the case on the third and fourth elements of the charge was as follows:

> • LGP's testimony that at some point she woke up at the sleep-over, thinking that she had fallen asleep with one hand clasped in the other, and then found that it was "his private" in her hand. (R. 470-71).
> • LGP's testimony that she then got up to wash her hands, which had "sticky stuff" on them. (R. 471).
> • The hearsay testimony admitted pursuant to the Section 115-10 exception, (codified as 725 ILCS 5/115-10 (2017)), from LGP's mother, Mercedes, that LGP had told her that she did not want to return to Sam's house. (R. 542).
> • Mercedes's hearsay testimony, admitted through Section 115-10, that, on Memorial Day, 2018, approximately nine months later, LGP saw Naomi getting into Sam's car and said "Mama, please. Don't let her go with him 'cause he's going to do what he did to me. It wasn't his finger," and that "it was his private part." (R. 550, 552).
> • Dr. Buetow's hearsay testimony, admitted through Section 115-10 and the medical examination exception, that LGP had told her that "when I woke up I thought I was holding his finger, but it wasn't his finger. It was his private part. It was his penis, and my hand was wet so I got up and went to the bathroom and washed my hand." (R. 604).
> • The CAC recording of Chad Turner's interview with LGP, admitted through Section 115-10, in which she tells him that "I was lying down, and I thought I was holding his finger, and I woke up and it was his private. So I said can I go to the bathroom. I went to the bathroom and washed my hands. I came back and laid down." (E. 2, 13:50).

If the above were all the evidence relevant to elements three and four, or if this Court were permitted to consider only the evidence that advanced the State's theory of the case, then

a rational trier of fact could have found that the state proved beyond a reasonable doubt the necessary elements of Count I. But this Court must consider all the evidence, not just the evidence that advanced the State's theory of the case. *Wheeler*, 226 Ill. 2d at 117.

The State's evidence is essentially a two-to-three sentence accounting from a child who was seven years old at the time and purportedly waking in the middle of the night. (R. 470). Though the account was retold a few times, only those few sentences remained constant. (R. 470-71, 542, 550, 552, 604; E. 2, 13:50).

Every other detail surrounding this account was either unable to be recalled or varied with each telling. LGP could not describe the bedding, (R. 481-82), the pillows, (R. 482-83), or who picked her up after the sleep-over. (R. 484). On the stand, she testified that Sam's hands were on his phone during the offense (R. 486-87), but during her CAC interview, she said that he was laying with his hands under his head. (E. 2 16:09). According to Mercedes, LGP said that Sam was not wearing a shirt. (R. 544). On the stand, however, LGP said that he was wearing a t-shirt. (R. 471). Dr. Buetow testified that LGP told her that she slept in the bed, and that Naomi and JGP were sleeping on a pallet on the floor. (R. 604). In the recording of her CAC interview, though, LGP described how there was a bed and a pallet, and how she slept on the pallet. (E. 2, 10:29). She could not remember what the lighting conditions were, or whether the television was still on. (R. 472-73).

Nor did any of the State's adult witnesses provide more reliable or consistent testimony. Francisco Gonzalez testified that LGP asked not to go back to Sam's home on the ride home from the sleep-over. (R. 425-27). Meanwhile, Mercedes testified that LGP made this request days later, on the couch, at a time when Francisco was not even around. (R. 543). Francisco testified that the sleep-over happened on the same night as the birthday party, with him and Mercedes dropping off the girls around 10:00 p.m. (R. 424). But Mercedes testified that the sleep-over happened the next evening. (R. 539-40).

That is the State's case: two or three easily-memorized sentences, told a handful of times, surrounded by missing or conflicting details. This evidence must be viewed together with Sam's unequivocal denials, (R. 928, 951), and in light of the history of animosity between Mercedes and Sam, which escalated to the two pushing each other in front of the children, in a dispute over whether Sam could leave with Naomi. (R. 735, 862-64, 921).

In sum, the evidence that advanced the State's theory of the case on the third element of Count I, when considered together with all of the evidence, was "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt" of Sam's guilt on Count I. See *Brown*, 2013 IL 114196, ¶ 48. As the fourth element, regarding sexual gratification, depends upon the same unreasonable, improbable, and unsatisfactory evidence that the State put forth to satisfy the third element, and as that element cannot stand independently of proving the act of contact, the State was unable to establish that fourth element, as well. See *id.* His conviction therefore must be reversed, and his federal and State constitutional rights against double jeopardy preclude the state from retrying him. *Burks v. United States*, 437 U.S. 1, 18 (1978); *People v. Drake*, 2019 IL 123734, ¶ 20; see U.S. Const. amends. V, XIV; Ill. Const. 1970 art. I, § 10.

II.

This case should be remanded for the trial court to perform an *in camera* review for materiality of the documents subpoenaed from DCFS.

When the Department of Children and Family Services (DCFS) moved to quash the defense's subpoena *duces tecum*, the trial court was required to review the relevant documents for materiality, *in camera*, and then to disclose any material information contained therein. *Pennsylvania v. Ritchie*, 480 U.S. 39, 58-60 (1987); *People v. Escareno*, 2013 IL App (3d) 110152, ¶ 21. Instead, the trial court granted DCFS's motion to quash the subpoena, without requiring DCFS to produce the documents, and without doing any review of those documents for material information. (R. 225). This was a violation of Samuel Sauls's (Sam's) constitutional right to any material information that may have been in the report. *Escareno*, 2013 IL App (3d) 110152, ¶ 20. This Court must, therefore, remand the case with directions that the trial court perform an *in camera* review of those subpoenaed documents, and if, after such a review, the trial court determines that the records contain information that, if disclosed to the defense, probably would have changed the outcome of the trial, Sam should be granted a new trial. *Id.*, at ¶ 21.

Standard of Review

Generally, a court's decision after an *in camera* review to withhold disclosure of normally confidential records is reviewed for an abuse of discretion. *People v. Jennings*, 254 Ill. App.3d 14, 22 (2d Dist. 1993). However, when the trial court fails to take the proper steps in order to exercise its discretion (*e.g.*, conduct a legally-required *in camera* review), its decision solely requires a legal analysis such that the *de novo* standard of review is appropriate. See *People v. Newborn*, 379 Ill.App.3d 240, 248 (3d Dist. 2008) (applying the *de novo* standard of review where the circuit court failed to exercise its discretion). *De novo* review is also appropriate to determine whether the trial court complied with Illinois Supreme Court rules. *People v. Suarez*, 224 Ill.2d 37, 41-42 (2007). As the trial court, here, granted a motion to quash a subpoena *duces tecum* issued pursuant to Illinois Supreme Court Rule 412, *de novo* review is appropriate.

Background

In this case, Sam Sauls filed a motion for discovery pursuant to Illinois Supreme Court Rule 412 on November 28, 2018, seeking, among other things, "[t]he prior unfounded DCFS case for [Sam Sauls] and [Desiree Panepinto-Sauls] as reported on page 10 of the State's discovery." (C. 57-58). In a supplemental motion for discovery filed March 4, 2019, the defense informed the court that this information had still not been provided to the defense and also that the defense had become aware of the existence of "DCFS investigations, police reports and CAC interviews regarding allegations of abuse against Mercedes Panepinto-Gonzales, and Angel Walker, the live-in girlfriend of Mercedes Panepinto-Gonzales, which were done in the Fall of 2018, but which have never been turned over." (C. 85-86). This motion indicated that the defense believed that these documents should be turned over pursuant to Illinois Supreme Court Rule 412 and *Brady v. Maryland*. (C. 85-87).

The State filed a response indicating that it had no possession of any such unfounded DCFS report and had tried and not been successful in requesting such a report from DCFS, if it exists. (C. 91). At a hearing on this motion, the State reiterated that DCFS would not give it access to the report(s) in question. (R. 205). The trial court said "Then we'll do a subpoena *duces tecum* for that report." (R. 205).

Defense counsel issued a subpoena *duces tecum* to DCFS, requesting "All records of investigations including but not limited to written reports, video or audio recordings created since Sept. 1, 2018 related to Mercedes Gonzalez-Panepinto * * * or Angel Walker." (C. 128). DCFS, through the Attorney General's Office, filed a motion to quash the subpoena, arguing that, as it requests information regarding an unfounded report, the information is confidential and inadmissible under Illinois law. (C. 130). The motion did indicate, though, that "DCFS is willing to turn over a redacted copy of the investigation, for *in camera* review" by the trial

court. (C. 130). DCFS also filed a memorandum of law in support of its motion to quash, which argued that the court should either quash the subpoena or review the records *in camera* and enter a protective order. (C. 133-37).

At the hearing on this motion to quash, defense counsel argued that the information in the reports goes to the interest and bias of the witnesses, and may include contradictory statements that would qualify as *Brady* material. (R. 223). Defense counsel objected to the motion to quash, but agreed that the court can review the materials *in camera*. (R. 223). After hearing a brief argument from the State in favor of the motion, the trial court granted the motion and quashed the subpoena, without requiring production or *in camera* review of any of the requested materials. (R. 225).

The trial court was required to by Pennsylvania v. Ritchie to conduct an in camera review of the requested documents.

Due process and the sixth amendment compulsory process clause guarantee criminal defendants the right to present a defense, subject to established rules of evidence and procedures aimed at safeguarding the fairness and reliability of trials. *Taylor v. Illinois*, 484 U.S. 400, 409 (1988); *People v. Wheeler*, 151 Ill.2d 298, 305 (1992); U.S. Const. amends. VI, XIV; Ill. Const. 1970, art. I, §2. Therefore, attorneys have the right to examine otherwise statutorily privileged information if that evidence is relevant and impeaching, and its relevance is not outweighed by other factors. *People v. Bean*, 137 Ill.2d 65, 97-99, 101 (1990). Where a State's interest in the confidentiality of a matter clashes with a criminal defendant's constitutional rights to discover favorable evidence, a defendant is entitled to have the trial court review the confidential files *in camera* and determine whether it is material and favorable to the defense. *Ritchie*, 480 U.S. at 58-60; *Bean*, 137 Ill.2d at 99-100; *Escareno*, 2013 IL App (3d) 110152, ¶¶15-21; Ill. S. Ct. Rule 412(c) (eff. March 1, 2001) ("[T]he State shall disclose to defense counsel any material or information within its possession or control which tends to negate the guilty of the accused * * *.").

Before his trial on child-abuse charges, the *Ritchie* defendant subpoenaed records concerning the complainant from a state agency that was charged with investigating child abuse. *Ritchie*, 480 U.S. at 43. The Pennsylvania agency claimed the records were privileged, and the trial court refused to order the agency to turn them over, even though the court had not reviewed all of the records. *Id.* at 43-44. On appeal, the defendant in *Ritchie* argued that the trial court's failure to review and disclose the relevant records violated his constitutional rights. *Id.* at 45-46. Through the due process clause, the United States Supreme Court found that Ritchie was entitled to have the records reviewed by the trial court "to determine whether [they] contain[ ] information that probably would have changed the outcome of his trial." *Id.* at 58. Further, if the records contained such information, the defendant would be entitled to a new trial. *Id.* The Court also held that the trial court on remand had an ongoing obligation to release relevant portions of the records to the parties. *Id.*

Illinois courts have since applied the holding in *Ritchie* to the statute at issue in this case, which also deals with restrictions on information in child-abuse investigations. In *People v. Escareno*, the Third District found that the failure to follow the procedure laid out in *Ritchie*, wherein the trial court was required to do an *in camera* inspection of the documents and release relevant material to the parties, was error requiring remand for just such an inspection of the documents in question. *Escareno*, 2013 IL App (1st) 110152, at ¶ 21. In that case, the defendant issued a subpoena for all records and statements made by witnesses pertaining to the DCFS investigation against him. *Id.*, at ¶ 3. The Attorney General filed a motion to quash that subpoena on the behalf of DCFS, citing the privileged nature of unfounded DCFS reports under 325 ILCS 5/7.14 (2008). *Id.* Without reviewing the records *in camera*, the trial court granted the State's motion to quash that subpoena. *Id.* at ¶ 4.

On appeal, the Third District held that the trial court erred by failing to conduct any *in camera* review. "[E]ven though unfounded DCFS reports are made privileged by section 7.14 of the Act (325 ILCS 5/7.14 (West 2008)), defendant has a constitutional right to all material information contained within the report." *Id.* at ¶ 20.

"However," the appellate court noted, "that right does not include the ability to review the full records alone." *Id.* Relying on the United States Supreme Court's ruling in *Ritchie*, and this Court's ruling in *Bean*, (discussed below), the Third District held that the trial court should have reviewed the DCFS records requested in defendant's subpoena *in camera* and then disclosed any material information contained therein. *Id.*, at ¶ 21. The case was remanded with directions that the trial court conduct the *in camera* review of the documents in question. *Id.* If the trial court determines that the records contain information that, if disclosed to the defense, probably would have changed the outcome of the trial, the Third District ordered, the defendant should be granted a new trial. *Id.*

Notably, in both *Ritchie* and in *Escareno*, the courts did not look for any prejudice. Indeed, it would be impossible to determine prejudice before viewing the as-yet-unreviewed records. It is the trial court's duty, after reviewing the records, to determine if the failure to provide them prior to trial prejudiced the defendant and requires a new trial. *Id.* at ¶ 21; *Ritchie*, 480 U.S. at 58.

This Court has previously applied Pennsylvania v. Ritchie to Illinois law.

The Third District's ruling in *Escareno* was based in part on this Court's holding in *Bean*, 137 Ill.2d at 97-102. In *Bean*, the defendant had been charged with murder, and defense counsel requested an order that the State turn over the mental health records of a witness for the prosecution. *Id.*, at 89-92. The trial court subpoenaed these records, and then reviewed them *in camera* without first disclosing the records to defense counsel or the prosecution. *Id.*, at 90.

The court then held *in camera* hearings, wherein it disclosed some information from the documents that the court found to be relevant to that witness's competence to testify and which could be used to impeach their credibility. *Id.* The court also disclosed to the parties several pages of documents from those requested. *Id.*, at 90-91.

On appeal, the defendant in *Bean* argued that the sixth amendment granted him, or at least defense counsel, the right to read through the mental health records of witnesses, regardless of the statutory provisions guaranteeing the confidentiality of those records. *Id.*, at 92. This Court held that the procedure followed by the trial court was proper, finding that the trial court had balanced the defendant's due process right to a fair trial against the State's interests in keeping certain records confidential by following the procedure laid out by the United States Supreme Court in *Ritchie. Bean*, 137 Ill.2d at 99-100.

However, this Court has not read *Ritchie* to require the *in camera* review procedure for documents that retain an absolute privilege against disclosure. In *People v. Foggy*, 121 Ill. 2d 337, 342 (1988), the defendant was charged with aggravated criminal sexual assault and had subpoenaed communications between the purported victim and their rape crisis counselor. The trial court quashed the subpoena, finding that the communications were protected by Section 8-802.1 of the Code of Civil Procedure (now codified as 735 ILCS 5/8-802.1). *Foggy*, 121 Ill. 2d at 341. In affirming the conviction, this Court noted that *Ritchie* expressly did not apply where the statutory provision granting a record confidentiality is absolute. *Id.*, at 345.

To address that question, this Court found that Section 8-802.1 granted an absolute and unqualified privilege to the communications in question. *Id.*, at 348. This was in contrast to the statute at issue in *Ritchie*, which permitted disclosure of its protected information to courts of competent jurisdiction pursuant to a court order. *Ritchie*, 480 U.S. at 44. Because Section 8-802.1 made no exception for the disclosure of the confidential communications in

question to any court or outside agency, this Court held that the information protected by that statute fell outside of the holding in *Ritchie*, and thus no *in camera* inspection of the information was required. *Foggy*, 121 Ill. 2d at 348.

The *Ritchie* Court noted that Pennsylvania's statute provided that the protected information could only be made available to "a court of competent jurisdiction pursuant to a court order," and to law enforcement officials for use in criminal investigations. *Ritchie*, 480 U.S. at 44 n.2. The *Ritchie* Court took no position on whether a statute that conveyed an absolute bar to disclosure of protected information should be turned over to a trial court to conduct an *in camera* review. *Id.*, at 39. But that exception, which allowed the Pennsylvania agency to disclose the information to courts and law enforcement officials, meant that the concerns sought to be addressed by the legislature in protecting the information could be protected by an *in camera* review of the documents. *Id.*, at 58-59.

Section 7.14 restricts admissibility, not disclosure, and as it does not convey unqualified privilege, it does not fall outside of Pennsylvania v. Ritchie.

In contrast to both the Pennsylvania statute at issue in *Ritchie* and the Illinois statute at issue in *Bean*, the statute in this case does not bar disclosure at all, but is instead an evidentiary rule guiding the admissibility of the protected information in certain court proceedings. Section 7.14 provides that:

> "an unfounded report shall not be admissible in any judicial or administrative proceeding or action except for proceedings under Sections 2-10 and 2-21 of the Juvenile Court Act of 1987 involving a petition filed under Section 2-13 of the Juvenile Court Act of 1987 alleging abuse or neglect to the same child, a sibling of the child, or the same perpetrator." 325 ILCS 5/7.14 (2017).

Recent amendments have further expanded the list of cases in which the protected reports are admissible to now also include petitions alleging abuse by any member of the child's household. 325 ILCS 5/7.14 (2022).

Section 7.14's provisions regarding disclosure (as opposed to mere admissibility) are far more permissive: if the child has an active court case and the report is unfounded, the statute *directs* the Department to transmit a copy of the report to the child's attorney or guardian *ad litem*. 325 ILCS 5/7.14. Unfounded reports may also be made available to the Child Protective Service Unit (with redactions) when investigating a subsequent report of suspected abuse, and to the subject of the report. *Id.*

Thus, Section 7.14, the statute at issue in this case, mandates disclosure in certain circumstances and only restricts admissibility in court of unfounded reports in certain circumstances. See *id.* Any other restrictions on disclosure of unfounded reports can only be read implicitly into the statute, and were therefore clearly not the legislature's chief concern. The limitations on disclosure listed in Section 7.14 are far less restrictive than were the provisions of the Pennsylvania statute at issue in *Ritchie*. In *Ritchie*, the information could not be disclosed at all, to anyone, except for law enforcement and courts pursuant to a court order. *Ritchie*, 480 U.S. at 44 n.2. The Illinois statute, meanwhile, mandates disclosure of the information to several parties and agencies in certain circumstances and only restricts the admissibility in court of the information outside of certain cases. 325 ILCS 5/7.14 (2017).

This means that legislative intent to keep information confidential is not absolute and is far more qualified than the Pennsylvania statute was in *Ritchie*, in which the United States Supreme Court found the privacy interest sufficiently protected by the *in camera* review procedure requested by the Appellant in this case. See *Ritchie*, 480 U.S. at 58. More to the point, the privacy concerns implicit in Section 7.14 are nothing like the absolute and unqualified guarantee of immunity conveyed by the provisions at issue in Section 8-802.1, which this Court held to be the distinguishing factor in denying *in camera* review of information given to a sexual assault counselor in *Foggy*. *Foggy*, 121 Ill. 2d at 348. Section 7.14 is thus less concerned overall

with the privacy of protected information than statutes that both Illinois courts and the United States Supreme Court have found to be subject to the requirements of an *in camera* review and disclosure of relevant information to the parties.

Section 7.14's restrictions on admissibility do not limit the discoverability of the documents.

Just because Section 7.14 makes unfounded reports inadmissible outside of proceedings under the Juvenile Court Act of 1987, (325 ILCS 5/7.14), the documents are still subject to the discovery rules and the State's obligations under *Brady v. Maryland*, 373 U.S. 83 (1963). Pretrial discovery "presupposes a range of relevance and materiality which includes not only what is admissible at the trial, but also that which leads to what is admissible." *People v. Kladis*, 2011 IL 110920, ¶ 26. Even if the withheld evidence is itself inadmissible, it may still be material evidence under *Brady* if it would have led to the discovery of admissible evidence. *People v. Del Prete*, 2017 IL App (3d) 160535, ¶ 47. This Court implicitly recognized this in *People v. Olinger*, 112 Ill.2d 324, 342-43 (1986), when it held that the undisclosed evidence in that case could not have affected the outcome of the trial because it was inadmissible *and* the defendant could point to no admissible evidence that the withheld information would have led to.

In *Del Prete*, the defendant had been convicted of first degree murder based on evidence that an infant in her care had died of shaken baby syndrome. *Del Prete*, 2017 IL App (3d) 160535, ¶¶ 1-6. The State, however, had failed to turn over to the defense a letter indicating that a medical examiner questioned the diagnosis of that syndrome. *Id.*, at ¶ 23. While that letter itself was inadmissible, it led to the discovery of admissible evidence, i.e.., that medical examiner's testimony. *Id.*, at ¶ 48. The letter thus constituted *Brady* material, and was required to be disclosed to the defense. *Id.*

The inadmissibility of the letter did not impair the defendant's right to receive the document in *Del Prete*, and the inadmissibility of the DCFS reports in the case at bar does not impair the discovery of the documents that defense counsel had subpoenaed.

Similarly, evidence that is barred from admission due to the hearsay rule can be admitted itself as a prior inconsistent statement of a witness under certain circumstances. 725 LCS 5/115-10.1 (2017). Defense counsel in this case subpoenaed the documents in question and informed the trial court that the defense believed the reports may reveal biases of the witnesses, may contain prior inconsistent statements, and may constitute *Brady* material. (R. 223-24). As the documents, whether admissible on their own terms or not, may have led to the discovery of other admissible evidence, Section 7.14 was not a bar to the State's obligation to turn over the requested material.

The appellate court's ruling establishes a heightened requirement to defendants seeking potentially exculpatory evidence in the State's possession, and thus violates the guarantee to due process.

In ruling on the issue on direct appeal, the Fourth District held that Sauls "failed to establish a basis for his claim that the unfounded report by DCFS contained material evidence." *People v. Sauls*, 2021 IL App (4th) 190667-U, ¶ 60. The appellate court identified the arguments that defense counsel made at the hearing, but ruled that Sauls "failed to describe how the report might establish interest or bias on Mercedes's part or explain how the presence of 'contradictory statements' by Mercedes could constitute material evidence." *Id.* The appellate court went on to hold that even if he could have provided this information, the remaining evidence in the case (LGP's testimony and hearsay statements allowed under Section 115-10) was such that disclosure of the report would not have resulted in a reasonable probability of a different verdict. *Id.*

Thus, the Fourth District's ruling instituted a heightened requirement that Sauls make a showing that the DCFS report was "material," which was not present in *Ritchie. Id.* To support the appellate court's ruling that Sauls "failed to establish a basis for his claim that he was entitled to an *in camera* review of the DCFS records," the court provided the citation: "See *Ritchie* 480 U.S. at 58 n.15." *Sauls*, 2021 IL App (4th) 190667-U, ¶ 60. In *Ritchie*, the United States

Supreme Court held that if the requested documents contained information that probably would have changed the outcome of Ritchie's trial, he was to be given a new trial. *Ritchie*, 480 U.S. at 58. "If [the requested documents] contain no such information, or if the nondisclosure was harmless beyond a reasonable doubt, the lower court will be free to reinstate the prior conviction.[15]" *Id.* That footnote relied upon by the Fourth District to deny remand, number 15, only served to dispose of the same argument against remand that was made unsuccessfully by the State in *Richie*:

> "15. The Commonwealth also argues that Ritchie is not entitled to disclosure because he did not make a particularized showing of what information he was seeking or how it would be material. See Brief for Petitioner 18 (quoting *United States v. Agurs*, 427 U.S. 97, 109–110, 96 S.Ct. 2392, 2400–2401, 49 L.Ed.2d 342 (1976) ('The mere possibility that an item of undisclosed information might have helped the defense ... does not establish 'materiality' in the constitutional sense')). Ritchie, of course, may not require the trial court to search through the CYS file without first establishing a basis for his claim that it contains material evidence. See *United States v. Valenzuela-Bernal*, 458 U.S. 858, 867, 102 S.Ct. 3440, 3446, 73 L.Ed.2d 1193 (1982) ('He must at least make some plausible showing of how their testimony would have been both material and favorable to his defense'). Although the obligation to disclose exculpatory material does not depend on the presence of a specific request, we note that the degree of specificity of Ritchie's request may have a bearing on the trial court's assessment on remand of the materiality of the nondisclosure. See *United States v. Bagley*, 473 U.S. 667, 682–683, 105 S.Ct. 3375, 3383–3384, 87 L.Ed.2d 481 (1985) (opinion of BLACKMUN, J.)." *Ritchie*, 480 U.S. at 58 n.15.

In this footnote , the United States Supreme Court is giving guidance to the trial court's assessment of materiality on remand. *Id.* The Court, in this section, is continuing to order that the defendant was entitled to an *in camera* review of the requested documents and is holding that the trial court's failure to perform that review requires remand. See *id.* The Court is also dispensing *entirely* with the State's argument that the defendant did not make a specific enough showing of what information he was seeking or how it would be material. See *id.* In denying this argument, the Supreme Court suggested that the level of specificity provided in Ritchie's argument for materiality may affect the trial court's assessment of materiality *while performing* the *in camera* review, not setting that specificity as a bar to earning *in camera* review. See *id.*

The *Ritchie* Court, in the section proceeding the footnote, and in footnote 15 itself, therefore, is discussing the materiality of undisclosed evidence as a bar to granting a new trial, not whether the evidence should be reviewed at all. *Ritchie*, 480 U.S. at 58. The Fourth District appears to have read this footnote in *Ritchie* as requiring a demonstration of specific materiality in order to gain *in camera* review. *Sauls*, 2021 IL App (4th) 190667-U, ¶ 60. The footnote, though, is simply providing guidance for that *in camera* review on remand. *Ritchie*, 480 U.S. at 58 n.15.

The defendant in *Ritchie* did not make more of a case for "materiality" than did Sam Sauls. Ritchie had subpoenaed the reports and statements from a prior abuse investigation, and as his reason for doing so "argued that he was entitled to the information because the file might contain the names of favorable witnesses, as well as other, unspecified exculpatory evidence." *Ritchie*, 480 U.S. at 44. This was a sufficient representation of potential relevance and materiality for the United States Supreme Court, who held that the trial court should have enforced the subpoena in order to review the documents requested *in camera*. *Id.*, at 60. If the Court had intended to suggest that Ritchie's representation of the potential materiality of the evidence was insufficient, it seems unlikely that the Court would have granted the remand. If the Court had intended to suggest that this representation of materiality was just barely sufficient, one would have expected that analysis to appear in the opinion, rather than a footnote that is denying the State's argument that the representation of materiality was insufficient. See *Ritchie*, 480 U.S. at 58 n.15.

Where the defendant in *Ritchie* argued that the documents "may" contain the names of favorable witnesses or "other unspecified exculpatory evidence," *Ritchie*, 480 U.S. at 44, Sauls made a specific demonstration of the witnesses whose statements might be exculpatory and how they might be so. Defense counsel told the trial court that the information in the reports would go to the interests and biases of Mercedes Panepinto-Gonzalez and Angel Walker, and may reveal *Brady* material in the form of contradictory statements. (R. 223). This is a more

specific showing than was made in *Ritchie*, and so the Fourth District's ruling that it was insufficient places an unconstitutionally higher burden on Illinois defendants exercising their right to due process.

When the Third District was asked to interpret and apply *Ritchie* to our State's laws, that court did not find any requirement of a particularized showing of materiality to be barriers to remand. *Escareno*, 2013 IL App (3d) 110152, ¶ 18. The *Escareno* court held that the defendant need not even specifically request *in camera* review of the documents by the trial court in order to protect his right to remand for *in camera* review of the DCFS reports. *Escareno*, 2013 IL App (3d) 110152, ¶ 18. It was sufficient that he had requested them: "The State cites no authority, and we have failed to find any, that requires a defendant to make a request for an *in camera* review of subpoenaed privileged records. Due process demands that a trial court determine if information contained within privileged records is material before ruling on a motion to quash a request for records." *Id*, citing *Ritchie*, 480 U.S. at 60. "Therefore," the Third District continued, "while we note that it would be wise for a defendant to request an *in camera* review, we conclude that the request for relevant privileged records triggers the court's duty to review those records in camera before ruling on a motion to quash the subpoena." *Id*. The defendant need only request the documents to trigger the court's duty to perform an *in camera* review for materiality before ruling on a motion to quash the subpoena. *Id*.

Here, Sam Sauls went above and beyond that requirement. He requested a subpoena *duces tecum* for the reports. (C. 128). His counsel argued a belief that the contents would go to the biases and contradictory statements of witnesses – statements that could therefore qualify as *Brady* material. (R. 223-24). The trial court confirmed its understanding of the basis of this request: "It's my understanding the request is to look at unfounded reports for potential impeachment of a witness that testifies at trial." (R. 224). As in *Escareno*, then, Sauls "has a constitutional right to all material information contained within the report." *Escareno*, 2013 IL App (3d) 110152, ¶ 20.

The question of materiality is applied to whether the trial court must then turn that information over to the defense, not whether the *in camera* review for materiality should have been (or should still be) performed. See *id*. Neither *Ritchie* nor *Escareno* require a defendant to make a showing of materiality of the potential evidence in order to trigger an *in camera* review of the documents. See *Ritchie*, 480 U.S. at 57-60; see also *Escareno* 2013 IL App (3d) 110152, ¶¶ 18-21. Sam Sauls's subpoena of the DCFS reports triggered an *in camera* review of the materials as a matter of right. See *Escareno* 2013 IL App (3d) 110152, ¶¶ 18-21. Even if such a requirement were necessary, this defendant met it by representing to the trial court a good-faith belief that the documents were relevant to showing interests or biases of the witnesses, and may provide impeachment information in the form of contradictory statements. (R. 223-24). As in both *Ritchie* and *Escareno*, the proper remedy is remand for the trial court to perform this *in camera* review. *Ritchie*, 480 U.S. at 57-60; *Escareno* 2013 IL App (3d) 110152, ¶¶ 18-21.

The Fourth District's concerns regarding the balance of the remaining evidence in this case, (*Sauls*, 2021 IL App (4th) 190667-U, ¶ 60), are already addressed in the remedy outlined in *Escareno*. Upon remand the trial court must conduct an *in camera* review, and a new trial should be granted *only* if the trial court then determines that the records contained information that, if disclosed to the defense, probably would have changed the outcome of the trial. *Escareno* 2013 IL App (3d) 110152, ¶¶ 18-21. Because the appellate court incorrectly read a footnote from *Ritchie* to suggest that Sam Sauls had been required to make a demonstration of materiality sufficient to overcome all of the other evidence, before seeing the contents of the subpoenaed documents, (see *Sauls*, 2021 IL App (4th) 190667-U, ¶ 60), this Court should reverse the Fourth District's ruling and ultimately remand the case for an *in camera* review of the subpoenaed documents. *Ritchie*, 480 U.S. at 57-60; *Escareno* 2013 IL App (3d) 110152, ¶¶ 18-21.

The Error Was Not Harmless

Our Supreme Court has held the burden is on the State to establish beyond a reasonable doubt that the infringement of a defendant's constitutional right did not contribute to the outcome

of the case. *People v. Chavez*, 338 Ill.App.3d 835, 843 (1st Dist. 2003); see also *Chapman v. California*, 386 U.S. 18, 24 (1967). This is a burden the State cannot meet here when the entirety of the State's case against Sam Sauls rested on credibility determinations as to whether sexual contact occurred between Sam and LGP. No physical evidence corroborated LGP's version of events. (R. 999). LGP could not describe the bedding, (R. 481-82), the pillows, (R. 482-83), or who picked her up after the sleep-over. (R. 484). On the stand, she testified that Sam's hands were on his phone during the offense (R. 486-87), but during her CAC interview, she said that he was laying with his hands under his head. (E. 2 16:09). According to Mercedes, LGP said that Sam was not wearing a shirt. (R. 544). On the stand, however, LGP said that he was wearing a t-shirt. (R. 471). Dr. Buetow testified that LGP told her that she slept in the bed, and that Naomi and JGP were sleeping on a pallet on the floor. (R. 604). In the recording of her CAC interview, though, LGP described how there was a bed and a pallet, and how she slept on the pallet. (E. 2, 10:29). She could not remember what the lighting conditions were, or whether the television was still on. (R. 472-73).

Nor did any of the State's adult witnesses provide more reliable or consistent testimony. Francisco Gonzalez, LGP's father, testified that LGP asked not to go back to Sam's home on the ride home from the sleep-over. (R. 425-27). Meanwhile, Mercedes Panepinto-Gonzalez, LGP's mother, testified that LGP made this request days later, on the couch, at a time when Francisco was not even around. (R. 543). Francisco testified that the sleep-over happened on the same night as the birthday party, with him and Mercedes dropping off the girls around 10:00 p.m. (R. 424). But Mercedes testified that the sleep-over happened the next evening. (R. 539-40). Due to the extensive testimony about the animosity between Mercedes Panepinto-Gonzalez, (the subject of the report in question), and Sam, which went as far as physical confrontations in front of the children, (R. 735, 862-64, 921-22, 979), the jury had to weigh the credibility of his testimony against the accusation of Mercedes's child.

Further, this case involved a significant amount of evidence that was admitted pursuant to 725 ILCS 5/115-10, wherein hearsay statements regarding abuse may only be admitted when circumstances provide sufficient safeguards of reliability. 725 ILCS 5/115-10 (2019). If the subpoenaed reports contain contradictory information that questions or undermines those safeguards, there can be no confidence that the substantial hearsay evidence in this case was properly admitted.

Thus, an examination of the other evidence in the case does not show that there was overwhelming evidence to support Sam's conviction and further reveals that Sam being prevented from reviewing and possibly presenting the DCFS evidence may have contributed to the conviction. See *People v. Stechly*, 225 Ill.2d 246, 304-05 (2007) (outlining three approaches for measuring error under the harmlesss-constitutional-error test). This Court should therefore remand for the trial court to conduct the appropriate *in camera* review of the requested material. If the trial court determines that the documents contain information that probably would have changed the outcome of trial if disclosed to the defense, Samuel Sauls "must be given a new trial." *Ritchie*, 480 U.S. at 58; see also *Escareno*, 2013 IL App (1st) 110152, at ¶ 21.

CONCLUSION

For the foregoing reasons, Samuel Sauls, Petitioner-Appellant, respectfully requests that this Court reverse the trial court's judgment of guilt and vacate his conviction. In the alternative, if this Court grants relief only on Argument II, Samuel Sauls respectfully requests that this Court remand the case for an *in camera* review of any documents responsive to the subpoena *duces tecum* issued to DCFS on April 11, 2019, (C. 128), with directions that, if the documents contain information that probably would have changed the outcome of trial if disclosed to the defense, his conviction be vacated and a new trial be ordered.

Respectfully submitted,

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COUNSEL FOR PETITIONER-APPELLANT

CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342, is thirty-four pages.

/s/James Henry Waller
JAMES HENRY WALLER
Assistant Appellate Defender

APPENDIX TO THE BRIEF

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner,	)	APPELLATE CASE: **4-19-0667**
— vs —	)	CIRCUIT CASE: **2018-CF-001153**
	)	TRIAL JUDGE: **DIFANIS**
Samuel Sauls,	)	
Respondent.	)	

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner,
— vs —
Samuel Sauls, Respondent.

APPELLATE CASE: **4-19-0667**
CIRCUIT CASE: **2018-CF-001153**
TRIAL JUDGE: **DIFANIS**

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS,)
Petitioner,) APPELLATE CASE: **4-19-0667**
— vs —) CIRCUIT CASE: **2018-CF-001153**
) TRIAL JUDGE: **DIFANIS**
Samuel Sauls,)
Respondent.)

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

THE PEOPLE OF THE STATE OF ILLINOIS, Petitioner,	)	
— vs —	)	APPELLATE CASE: **4-19-0667**
	)	CIRCUIT CASE: **2018-CF-001153**
	)	TRIAL JUDGE: **DIFANIS**
Samuel Sauls, Respondent.	)	

APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

The People of the State of Illinois
Plaintiff/Petitioner

Appellate Court No: 4-19-0667
Circuit Court No: 18-CF-1153
Trial Judge: Difanis

v.

Samuel Sauls
Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

The People of the State of Illinois
Plaintiff/Petitioner

Appellate Court No: 4-19-0667
Circuit Court No: 18-CF-1153
Trial Judge: Difanis

v.

Samuel Sauls
Defendant/Respondent

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APPEAL TO THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT
FROM THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

The People of the State of Illinois
Plaintiff/Petitioner

Appellate Court No: 4-19-0667
Circuit Court No: 18-CF-1153
Trial Judge: Difanis

v.

Samuel Sauls
Defendant/Respondent

IMPOUNDED SUPPLEMENT TO THE RECORD - TABLE OF CONTENTS

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Report of Proceedings

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
CHAMPAIGN COUNTY, ILLINOIS

FILED
SIXTH JUDICIAL CIRCUIT
SEP 16 2019
CLERK OF THE CIRCUIT COURT
CHAMPAIGN COUNTY ILLINOIS 12

PEOPLE OF THE STATE OF ILLINOIS,)
)
Vs) Case Number 2018-CF-001153
Samuel Sauls)

JUDGMENT – SENTENCE TO ILLINOIS DEPARTMENT OF CORRECTIONS

WHEREAS the above named defendant, whose date of birth is November 27, 1991, has been adjudged guilty of the offenses below, IT IS THEREFORE ORDERED that the defendant be and hereby is sentenced to confinement in the Illinois Department of Corrections for the year and months specified for each offense

COUNT	OFFENSE	DATE OF OFFENSE	STATUTORY CITATION	CLASS	SENTENCE	MSR
01	Predatory Criminal Sexual Assault of a Child	August 01, 2017	720 ILCS 5/11-1 40(a)(1)	X	20 years	Natural life

To run (concurrent with) (consecutively to) counts _____ and

To run (concurrent with) (consecutively to) counts _____ and

To run (concurrent with) (consecutively to) counts _____ and served

This Court finds that the defendant is

_____ Convicted a class ____ offense but sentenced as a class X offender pursuant to 730 ILCS 5/5-4 5-95(b)

__X__ The Court further finds that the defendant is entitled to receive credit for time actually served in custody of 338 days as of the date of this order

_____ The Court further finds that the conduct leading to conviction for the offenses enumerated in counts _____ resulted in great bodily harm to the victim (730 ILCS 5/3-6-(a)(2)(iii))

_____ The Court further finds that the defendant meets the eligibility requirements for possible placement in the Impact Incarceration Program (730 ILCS 5/5-4-1(a))

_____ The Court further finds that offense was committed as a result of the use of, abuse of alcohol, or addiction to alcohol or a controlled substance and recommends the defendant for placement in a substance abuse program

_____ IT IS FURTHER ORDERED the sentence(s) imposed on count(s) _____ be (concurrent with) (consecutive to) the sentence imposed in case number _____ in the Circuit Court of Champaign County

_____ It is FURTHER ORDERED that

The Clerk of the Court shall deliver a certified copy of this order to the sheriff The Sheriff shall take the defendant into custody and deliver defendant to the Department of Corrections which shall confine said defendant until expiration of this sentence or until otherwise released by operation of law

This order is effective immediately

DATE September 18, 2019 Entered Thomas J. Difanis

Thomas J. Difanis
Sixth Judicial Circuit Judge, Champaign County, Illinois

Approved by Conference of Chief Judges 6/20/14

No. 4-19-0667

IN THE

APPELLATE COURT OF ILLINOIS

FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, -vs- SAMUEL SAULS, Defendant-Appellant.	)	Appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois No. 18-CF-1153 Honorable Thomas J. Difanis, Judge Presiding.

AMENDED NOTICE OF APPEAL

An appeal is taken to the Appellate Court, Fourth Judicial District:

Appellant(s) Name:	Mr. Samuel Sauls
Appellant's Address:	Stateville Correctional Center P.O. Box 112 Joliet, IL 60434
Appellant(s) Attorney:	Office of the State Appellate Defender
Address:	400 West Monroe Street, Suite 303 Springfield, IL 62704
Offense of which convicted:	Predatory Criminal Sexual Assault of a Child
Date of Judgment or Order:	September 18, 2019
Sentence:	20 years in the Illinois Department of Corrections
Nature of Order Appealed:	Conviction and Sentence

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COUNSEL FOR DEFENDANT-APPELLANT

2021 IL App (4th) 190667-U

NO. 4-19-0667

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
August 23, 2021
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
SAMUEL SAULS,	)	No. 18CF1153
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Steigmann concurred in the judgment.

ORDER

¶ 1 Held: The appellate court affirmed, concluding (1) the State presented sufficient evidence to sustain defendant's conviction, (2) the trial court did not err in quashing his subpoena to DCFS without first reviewing in camera the requested records, and (3) defendant forfeited his claim the court's voir dire examination violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012).

¶ 2 A jury found defendant, Samuel Sauls, guilty of one count of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)), and the trial court sentenced him to twenty years' imprisonment. Defendant appeals, arguing (1) the State failed to prove him guilty beyond a reasonable doubt, (2) the trial court erred in quashing his subpoena requesting records from the Department of Children and Family Services (DCFS) without first reviewing in camera the requested records, and (3) the court's voir dire examination violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012). We affirm.

¶ 3 I. BACKGROUND

¶ 4 A. The Charges

¶ 5 The State charged defendant by information with two counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)). Because the jury acquitted defendant of count II involving J.G.P., we discuss only the facts relevant to count I relating to L.G.P., J.G.P.'s sister. Count I alleged that "on or about August of 2017, *** defendant, who was 17 years of age or older, committed an act of contact, however slight, between [his] sex organ *** and the hand of [L.G.P.], who was under 13 years of age when the act was committed, and was for the purpose of sexual gratification or arousal ***."

¶ 6 B. Pretrial Motions

¶ 7 1. The State's Section 115-10 Motion

¶ 8 Prior to trial, the State filed a motion to allow out-of-court statements by L.G.P. into evidence under section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2018)). The trial court granted the motion after a hearing.

¶ 9 2. Defendant's Motion for Discovery

¶ 10 In March 2019, defendant filed a supplemental motion for discovery pursuant to Illinois Supreme Court Rule 412 (eff. Mar. 1, 2001). Defendant requested documents pertaining to a DCFS investigation into allegations of abuse lodged against L.G.P.'s mother, Mercedes, and Angel Walker, "the live-in girlfriend of Mercedes ***." The record does not reflect the nature of the alleged abuse or the identity of the victim or victims. At a hearing on the motion, the State asserted DCFS refused to turn over the requested records. The court responded, "we'll do a subpoena duces tecum for that report."

¶ 11 Defendant subsequently served a subpoena duces tecum on DCFS for "[a]ll records of investigations" related to Mercedes or Walker. DCFS, through the Attorney General, moved to quash the subpoena. In its motion to quash, DCFS asserted the subpoena sought information contained in an "unfounded DCFS report," which was "confidential and inadmissible" under the Abused and Neglected Child Reporting Act (Reporting Act). See 325 ILCS 5/7.14 (West 2016) (providing unfounded reports are inadmissible in all judicial proceedings except under limited circumstances not relevant here). Alternatively, DCFS indicated it would comply with an order to produce a "redacted copy of the investigation" for in camera review.

¶ 12 The trial court conducted a hearing on the motion to quash. Defendant made the following argument against quashing the subpoena:

> "MISS WYMAN [(DEFENSE COUNSEL)]: [DCFS] want[s] to quash this essentially claiming that it is—well, that it is seeking unfounded DCFS reports. I understand that and think that's accurate, that it's unfounded, but I—the information could be relevant in several ways in this trial. Certainly showing interest and bias of one of the—well, the mother of the accuser and her girlfriend, both of which defense, based on our research believes—well, it goes to interest and bias of the—of the mother of the children who allegedly made these or who made these allegations, and her girlfriend who we believe are playing a part in—in this, and that goes to not only interest and bias, but if there's contradictory statements, that would certainly be Brady material as well."

The State responded the Reporting Act made clear that unfounded reports were confidential, and it contained no provision allowing for disclosure to criminal defendants for the purpose of

impeaching a State witness. The court agreed with the State and granted the motion to quash without reviewing in camera the requested records.

¶ 13 C. Jury Trial

¶ 14 Defendant's jury trial began on July 29, 2019, and concluded on August 1, 2019.

¶ 15 1. Voir Dire Examination

¶ 16 During voir dire, the court separated the venire into three groups and admonished each group regarding the principles enumerated in Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), as follows:

> "THE COURT: All right. For Jurors No. 72, 89, 12, and 31, the four of you understand that the Defendant is presumed to be innocent of the charges against him, that before the Defendant can be convicted the State must prove him guilty beyond a reasonable doubt, that the Defendant is not required to offer any evidence on his own behalf and if the Defendant does not testify that fact cannot be held against him in any way? The four of you understand those instructions; is that correct?
>
> [PROSPECTIVE JURORS:] (Jurors respond affirmatively.)
>
> THE COURT: And they answer in the affirmative. And the four of you accept those instructions; is that correct?
>
> [PROSPECTIVE JURORS:] (Jurors answer affirmatively.)"

¶ 17 2. Evidence Presented

¶ 18 a. Francisco G.

¶ 19 Francisco G., who is L.G.P.'s father and Mercedes's husband, testified that in August 2017, he attended a birthday party for defendant's daughter and L.G.P.'s cousin, N.S.,

who was turning three years old. "All the family members" were at the party. This included Desiree P., who is defendant's wife and Mercedes's sister, and Rose P., who is L.G.P.'s grandmother and Mercedes's mother.

¶ 20 Francisco testified defendant called Mercedes after the party to invite L.G.P. and her younger sister, J.G.P., to his house for a sleepover with N.S. Francisco and Mercedes dropped off the two children at defendant's house around 10 p.m. They picked up the girls the following morning, and L.G.P. told them "she didn't want to go back [to defendant's house]." When Francisco asked why, "she just looked down *** but she didn't say—she wouldn't say why."

¶ 21 b. L.G.P.

¶ 22 L.G.P. (born September 7, 2009), testified that she stayed the night at defendant's house in August 2017 because it was N.S.'s birthday and she wanted to spend the night with her. L.G.P. thought her grandmother dropped her off, but she was not certain. L.G.P. testified she fell asleep watching a movie in defendant's bedroom along with J.G.P., N.S., and defendant. L.G.P. and J.G.P. were on the floor, while defendant and N.S. were on defendant's bed. At some point during the night, L.G.P. and J.G.P. ended up in defendant's bed, but she did not know how. When L.G.P. later awoke in defendant's bed in the middle of the night, she initially thought she was holding her fingers but realized defendant's "private" was in her hand. She stated defendant "was just laying down right there and just on his phone I think." She thought defendant was wearing a T-shirt and nothing else. L.G.P. testified her hands were "sticky" so she went to the bathroom to wash them and then went back to sleep. L.G.P. did not tell her mother about the incident right away because she was scared defendant would get mad at her mother. On cross-examination, she said she could not remember the color of the sheets or the number of

pillows on the bed. When asked if she remembered telling someone defendant's hands were under his head and not holding his phone, L.G.P. responded, "I don't know if he had a phone or not, but I think he did [because], like—I can't really remember that good. I could just remember, like, the bedroom stuff and, like, what happened."

¶ 23 c. Mercedes G.P.

¶ 24 Mercedes G.P., L.G.P.'s mother and defendant's sister-in-law, testified defendant called her the day after N.S.'s birthday party to invite L.G.P. and J.G.P. to a sleepover at his house with N.S. Mercedes and Francisco dropped the girls off at defendant's house later that day and picked them up during the early afternoon of the following day. Mercedes testified the girls were quiet in the car but neither of them made any disclosures on the drive home. According to Mercedes, L.G.P. told her "a couple days later" that she did not "ever want to spend the night with [defendant] again." Mercedes asked why, and L.G.P. explained she woke up with defendant's finger in her hand and then asked to use the bathroom to wash her hands. L.G.P. further explained defendant was not wearing a shirt or boxers. Mercedes then asked if anything felt "not normal" to her or if she had been touched, but L.G.P. said no.

¶ 25 Mercedes testified that on May 30, 2018, she had a family gathering at her house and N.S. attended. Mercedes's brother wanted to meet defendant, so she told her brother that he had to meet him on the street because she did not want defendant near her house. L.G.P. later saw N.S. getting into defendant's car and told Mercedes: "Mama, please. Don't let her go with him [because] he's going to do what he did to me. It wasn't his finger, *** it was his private part." After this disclosure, Mercedes scheduled a doctor's appointment for L.G.P.

¶ 26 d. Dr. Mary Buetow

¶ 27 Dr. Buetow, a licensed pediatrician specializing in child abuse and neglect, testified she met with L.G.P. and Mercedes on June 26, 2018. Dr. Buetow and a clinical social worker interviewed L.G.P. in an exam room outside the presence of her mother. During the interview, L.G.P. explained that she had stayed the night with defendant because she wanted to have a sleepover with N.S. L.G.P. told Dr. Buetow she slept in the same room as N.S., J.G.P., and defendant; L.G.P. and defendant slept in the bed, while J.G.P. and N.S. slept on a "pallet" on the floor. L.G.P. continued: "[W]hen I woke up I thought I was holding [defendant's] finger, but it wasn't his finger. It was his private part. It was his penis, and my hand was wet so I got up and went to the bathroom and washed my hand." Dr. Buetow reported the allegations to DCFS "because of [her] concerns ***."

¶ 28 e. Chad Turner

¶ 29 Chad Turner, a child protective investigator for DCFS, testified that he conducted a forensic interview with L.G.P. at the Children's Advocacy Center (CAC) on July 17, 2018. The interview was recorded. The recording was admitted into evidence and played for the jury.

¶ 30 In her CAC interview, L.G.P. stated that she spent the night at defendant's house after N.S.'s birthday party. L.G.P. said there was a bed and a pallet in defendant's room, and she slept on the bed. She later said that she fell asleep on the pallet but woke up in the bed. In describing the relevant event, L.G.P. stated, "I was lying down, and I thought I was holding his finger, and I woke up and it was his private. So, I said, 'can I go to the bathroom?' I went to the bathroom and washed my hands. I came back and laid down." L.G.P. explained that she washed her hands because they were "like wet kind of." L.G.P. said defendant was wearing a shirt but "his underwear was pulled down." She also stated that defendant was "laying on his hands."

Turner asked L.G.P. to indicate on an anatomical diagram which part of defendant's body was in her hand. L.G.P. pointed to the penis.

¶ 31 On cross-examination, Turner acknowledged that defendant's wife, Desiree, had told him about a "physical altercation" between defendant and Mercedes that occurred shortly before L.G.P. "started to appear to be afraid of [defendant]." However, Turner testified that this did not give him cause to believe "the kids had been coached." Following Turner's testimony, the State rested.

¶ 32 f. Rose P.

¶ 33 Rose P., L.G.P. and N.S.'s grandmother and defendant's mother-in-law, testified that N.S. and Desiree had lived with her since early 2017. Rose attended N.S.'s birthday party in 2017 and dropped off clothes for her at defendant's house the next day. According to Rose, N.S. was the only child present. Rose stated that defendant had a positive relationship with L.G.P. and J.G.P. She explained the girls were "always glad" to see defendant and he would "pick them up and hug them and put them down."

¶ 34 Rose testified that over the Memorial Day weekend in 2018, Mercedes and her friend, Angel Walker, were at her house with L.G.P. and other family members. Rose left briefly and when she returned, "everyone was hollering." Rose walked up to the porch, "and that's when [L.G.P.] was standing on the porch and Angel was to the side and she was, like, and what's next, [L.G.P.] Tell them, [L.G.P.] Tell them what's next, and she kept doing that over and over." Rose testified that she did not see L.G.P. and J.G.P. as frequently after this event.

¶ 35 g. Desiree P.S.

¶ 36 Desiree testified that she had been separated from defendant since 2015. Desiree attended N.S.'s birthday party in 2017, and she said N.S. stayed with defendant for a few days

after the party. In March or April 2018, Desiree and defendant "weren't on the best of terms" due to a tax dispute in which defendant claimed N.S. as a dependent even though she lived with Desiree. As a result, Desiree stopped allowing defendant to see N.S.

¶ 37 On one occasion during this time period, defendant showed up at Desiree's house and asked to see N.S. N.S. was outside at the time, so Desiree picked her up and took her inside. While Desiree was doing this, Mercedes "got in front" of defendant and told him he could not see N.S. When asked if "anything physical" happened, Desiree testified, "It was pretty much he was walking forward. She tried to, like, push him—push him back. *** She pushed him back, and he was just like—he kind of yelled, like, I want to see my daughter ***." Desiree further testified that L.G.P. and J.G.P. witnessed the altercation and they were shocked by it.

¶ 38 Desiree and defendant later resolved the tax dispute, and defendant began coming over more often to pick up N.S. Desiree testified she never observed L.G.P. exhibit any signs of "fear or reticence" towards defendant. On cross-examination, Desiree said that she was not at defendant's house after N.S.'s birthday party so she did not know if L.G.P. and J.G.P. stayed overnight at defendant's house.

¶ 39 h. Defendant

¶ 40 Defendant testified that N.S. stayed with him after her birthday party but L.G.P. and J.G.P. did not. According to defendant, the last time any of his nieces stayed overnight at his house was in the summer of 2017 before school started. Defendant testified that when his nieces did stay overnight, they would sleep in his bedroom and he would sleep on the couch in the living room. He asserted he had never set up a pallet for them and they had never slept on the floor at his house. Defendant also stated he had not shared a bed with his nieces since they were "in diapers." Defendant testified he did not put his penis in L.G.P.'s hand.

¶ 41 3. Finding of Guilt

¶ 42 The jury found defendant guilty of count I beyond a reasonable doubt.

¶ 43 D. Posttrial Proceedings

¶ 44 Defendant filed a timely posttrial motion, arguing, in relevant part, the State failed to prove him guilty beyond a reasonable doubt and the court erred in quashing his subpoena duces tecum. The trial court denied defendant's motion and subsequently sentenced him to 20 years' imprisonment.

¶ 45 This appeal followed.

¶ 46 II. ANALYSIS

¶ 47 Defendant argues (1) the State presented insufficient evidence to prove him guilty beyond a reasonable doubt, (2) the trial court deprived him of his right to material evidence by quashing his subpoena duces tecum without first reviewing in camera the requested records, and (3) the court's voir dire examination violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012).

¶ 48 A. Sufficiency of the Evidence

¶ 49 Defendant argues the evidence was insufficient to sustain his conviction for predatory criminal sexual assault of a child because the State failed to prove he committed an act of contact between his penis and a part of L.G.P.'s body. In support of his argument, defendant points to a lack of detail and inconsistencies in L.G.P.'s various statements, as well as a conflict in the testimony of Mercedes and Francisco. Defendant also highlights his "history of animosity" with Mercedes to imply Mercedes coached L.G.P. to accuse him of sexual assault.

¶ 50 When reviewing the sufficiency of the evidence, the 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, 319 (1979). A court of review "will not substitute its judgment for that of the trier of fact on issues of the weight of evidence or the credibility of witnesses." People v. Cooper, 194 Ill. 2d 419, 431, 743 N.E.2d 32, 40 (2000). "The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact." People v. Sutherland, 223 Ill. 2d 187, 242, 860 N.E.2d 178, 217 (2006). We will not set aside a conviction on appeal "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." People v. Collins, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276 (1985).

¶ 51 Here, the question is whether, after viewing the evidence in the light most favorable to the State, any rational juror could have found defendant committed an act of contact between his penis and a part of L.G.P.'s body beyond a reasonable doubt. L.G.P. testified that at some point during the sleepover at defendant's house, she woke up in his bed thinking she was holding her fingers but realized it was defendant's "private." She further testified her hands were "sticky" so she went to the bathroom to wash them. Mercedes and Dr. Buetow testified L.G.P. gave them the same account she gave at trial. Additionally, L.G.P.'s description of the incident during her CAC interview mirrored her testimony at trial. This evidence was sufficient to sustain defendant's conviction. See, e.g., People v. Siguenza-Brito, 235 Ill. 2d 213, 228, 920 N.E.2d 233, 243 (2009) ("It remains the firm holding of this court that the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant.").

¶ 52 We find defendant's argument to the contrary unpersuasive. As noted above, in challenging the sufficiency of the evidence, defendant points to (1) a lack of detail and inconsistencies in L.G.P.'s various statements, (2) conflicting testimony between Mercedes and Francisco, and (3) his "history of animosity" with Mercedes.

¶ 53 Although L.G.P. could not recall certain details about the event in question, and minor inconsistencies appeared in her various statements, these were factors for the jury, not this court, to weigh and resolve. See Sutherland, 223 Ill. 2d at 242 ("The weight to be given the witnesses' testimony, the credibility of the witnesses, resolution of inconsistencies and conflicts in the evidence, and reasonable inferences to be drawn from the testimony are the responsibility of the trier of fact."). Further, L.G.P. was seven years old at the time and had just awoken in the middle of the night, making it reasonable to believe she would not remember every detail surrounding the event—an event that occurred two years prior to her testimony. As for defendant's second contention, again, it was for the jury to consider and resolve the conflict in Francisco's and Mercedes's testimony regarding L.G.P.'s initial disclosure. See id. As for defendant's third contention, regarding his hostile relationship with Mercedes, we find it also fails to raise a reasonable doubt of his guilt. Defendant points to his contentious relationship with Mercedes and implies she coached L.G.P. to make a false accusation against him. While a reasonable juror could arguably draw this conclusion, it certainly is not the only reasonable conclusion that could be drawn. A juror could just as reasonably conclude the hostility between the two played no role in L.G.P. making these allegations. We will not draw a contrary inference in favor of defendant on review. See People v. Cunningham, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004) ("[I]f only one conclusion may reasonably be drawn from the record, a reviewing court must draw it even if it favors the defendant."). Accordingly, for the reasons

discussed, we find the evidence was sufficient to sustain defendant's conviction for predatory criminal sexual assault of a child.

¶ 54 B. Motion to Quash Subpoena Duces Tecum

¶ 55 Defendant next argues the trial court deprived him of his constitutional right to material evidence by quashing his subpoena duces tecum to DCFS. Citing Pennsylvania v. Ritchie, 480 U.S. 39 (1987), and People v. Escareno, 2013 IL App (3d) 110152, 982 N.E.2d 277, defendant asserts the court was obligated to review the requested records in camera and disclose any evidence it deemed material to his defense. The State maintains that because section 7.14 of the Reporting Act (325 ILCS 5/7.14 (West 2016)) makes unfounded reports statutorily privileged, the information defendant seeks is inadmissible and, by extension, necessarily immaterial. The State further contends Ritchie and Escareno are factually distinguishable and inapplicable to this case.

¶ 56 In Ritchie, the Supreme Court addressed the question of "whether and to what extent a State's interest in the confidentiality of its investigative files concerning child abuse must yield to a criminal defendant's *** Fourteenth Amendment right to discover favorable evidence." Ritchie, 480 U.S. at 42-43. There, the defendant was charged with several sexual offenses against his minor daughter. Id. at 43. During pretrial discovery, he served the state agency responsible for investigating allegations of child abuse with a subpoena, "seeking access to the records concerning the daughter." Id. The agency refused to comply, arguing the records were statutorily privileged—the relevant statute provided all information obtained during the investigation must remain confidential, subject to several enumerated exceptions, including when a court order directs the agency to disclose confidential information. Id. The trial court agreed

with the agency and declined to order disclosure. Id. at 44. A jury subsequently found the defendant guilty on all counts. Id. at 45.

¶ 57 On appeal, the Supreme Court held the defendant had a limited due process right to the requested records, the statutory privilege notwithstanding. Id. at 56-60. The Court provided two bases for its holding. First, it pointed to the well-settled legal principle that "the government has the obligation to turn over evidence in its possession that is both favorable to the accused and material to guilt or punishment." Id. at 57. Second, it noted the statute at issue did not grant the agency "absolute authority to shield its files from all eyes." Id. The Court added that although the defendant had a right to the privileged material, the right "does not include the unsupervised authority to search through the [State's] files." Id. at 59. Instead, the Court found the defendant's interest in a fair trial "can be protected fully by requiring that the *** files be submitted only to the trial court for in camera review." Id. at 60. However, to be entitled to an in camera review of privileged information, a criminal defendant must "first establish[ ] a basis for his claim that it contains material evidence." Id. at 58 n.15; see also United States v. Valenzuela-Bernal, 458 U.S. 858, 867 (1982) (stating a criminal defendant cannot establish he was unconstitutionally denied access to evidence without at least making "some plausible showing" of how the evidence "would have been both material and favorable to his defense"). According to the Supreme Court, "evidence is material only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different. A 'reasonable probability' is a probability sufficient to undermine confidence in the outcome." (Internal quotation marks omitted.) Ritchie, 480 U.S. at 57.

¶ 58 In reviewing whether the trial court erred in determining an in camera review of the unfounded report by DCFS was unnecessary and quashing the subpoena duces tecum, we

examine the court's decision for an abuse of discretion. See, e.g., People v. Hanson, 238 Ill. 2d 74, 121, 939 N.E.2d 238, 265 (2010) (noting a subpoena is a judicial process and trial court decisions regarding subpoenas are reviewed for an abuse of discretion).

¶ 59 In Escareno, the defendant issued a subpoena to DCFS requesting "confidential DCFS records relating to the victim's accusations against" him. Escareno, 2013 IL App (3d) 110152, ¶ 18. DCFS asserted the requested information was contained in an unfounded report and therefore privileged under section 7.14 of the Reporting Act. Id. The trial court quashed the subpoena without reviewing the records in camera. Id. ¶ 4. On appeal, the defendant argued the trial court deprived him of his constitutional right to present a defense by quashing the subpoena without first conducting an in camera review of the records. Id. ¶¶ 1, 16. Relying on Ritchie, the Third District agreed. Id. ¶ 20. In doing so, the Escareno court explicitly acknowledged that the Reporting Act is "different than the statute in Ritchie." Id. Nonetheless, the Third District could not "ignore the due process concerns raised by failing to determine whether material information is contained within statutorily privileged records." Thus, the Escareno court held that "even though unfounded DCFS reports are made privileged by section 7.14 of the [Reporting] Act [citation], defendant has a constitutional right to all material information contained within the report." Id. (citing People v. Bean, 137 Ill. 2d 65, 97, 560 N.E.2d 258, 272 (1990)).

¶ 60 Here, defendant has failed to establish a basis for his claim that the unfounded report by DCFS contained material evidence. At the hearing on the motion to quash, defendant argued the information in the report "could be relevant in several ways ***." Specifically, defendant asserted the report could show "interest and bias *** of the mother of the children *** who made these allegations." Defendant additionally maintained that "if there's contradictory statements, that would certainly be Brady material as well." However, defendant failed to

describe how the report might establish interest or bias on Mercedes's part or explain how the presence of "contradictory statements" by Mercedes could constitute material evidence. Even if defendant had provided further explanation as to how the unfounded report could bolster his claim of Mercedes's interest or bias, given the nature of the evidence in this case—primarily L.G.P.'s trial testimony and CAC statement directly implicating defendant of the crime—it appears unlikely that disclosure of the report would have resulted in a reasonable probability the jury would have found defendant not guilty. Thus, we do not find defendant made the requisite showing that the unfounded report was material evidence, which is necessary in order to implicate a defendant's constitutional right to discover privileged information. See Valenzuela-Bernal, 458 U.S. at 867 (stating a criminal defendant cannot establish he was unconstitutionally denied access to evidence without at least making "some plausible showing" of how the evidence "would have been both material and favorable to his defense"). Accordingly, because defendant failed to establish a basis for his claim he was entitled to an in camera review of the DCFS records, we conclude the trial court's decision to quash the subpoena was not an abuse of discretion. See Ritchie, 480 U.S. at 58 n.15.

¶ 61 C. Voir Dire Examination

¶ 62 Defendant also argues the trial court's voir dire examination violated Illinois Supreme Court Rule 431(b) (eff. July 1, 2012), because the court grouped the four principles into one broad statement of law, thereby failing to implement the "precise question-and-response framework required by [Rule 431(b)]." Defendant acknowledges he forfeited this argument but contends we may review it under the first prong of the plain-error doctrine. See People v. Thompson, 238 Ill. 2d 598, 615, 939 N.E.2d 403, 414 (2010) (concluding a Rule 431(b) claim is reviewable under the first prong of the plain-error doctrine). Defendant further acknowledges in

his reply brief that the supreme court recently rejected the same argument he now raises. See People v. Birge, 2021 IL 125644, ¶ 34 ("[T]here is no requirement that the trial court recite the four principles separately."). However, defendant maintains he is nonetheless entitled to relief because of the "leading nature" of the court's questioning of jurors which he claims was error. He suggests this was somehow violative of Rule 431(b)'s requirement that the court "ask" prospective jurors whether they understand and accept the specified legal principles. Defendant provides no legal or logical support for his argument, and we find it is meritless. Therefore, defendant has failed to establish plain error occurred, and his claim is forfeited.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment.

¶ 65 Affirmed.

No. 127732

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- SAMUEL SAULS, Petitioner-Appellant.	))))))))))	Appeal from the Appellate Court of Illinois, No. 4-19-0667. There on appeal from the Circuit Court of the Sixth Judicial Circuit, Champaign County, Illinois, No. 18-CF-1153. Honorable Thomas J. Difanis, Judge Presiding.

NOTICE AND PROOF OF SERVICE

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Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On February 25, 2022, the Brief and Argument was filed with the Clerk of the Supreme Court of Illinois using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the in an envelope deposited in a U.S. mail box in Springfield, Illinois, with proper postage prepaid. Additionally, upon its acceptance by the court's electronic filing system, the undersigned will send 13 copies of the Brief and Argument to the Clerk of the above Court.

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