NOTICE
Decision filed 03/19/24. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2024 IL App (5th) 220628-U

NO. 5-22-0628

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

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

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Effingham County.
	)	
v.	)	No. 21-CF-469
	)	
MARTIN D. HUBBARD,	)	Honorable
	)	Allan F. Lolie,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE BARBERIS delivered the judgment of the court.
Justices Moore and McHaney concurred in the judgment.

ORDER

¶ 1 *Held:* We affirm defendant's convictions for predatory criminal sexual assault of a child, where the trial court did not abuse its discretion by ruling that the out-of-court statements made by the minor victims were admissible and the evidence was sufficient to support the convictions.

¶ 2 Following a jury trial in the circuit court of Effingham County, defendant, Martin D. Hubbard, was convicted of eight counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)) and sentenced to life in prison. Defendant appeals, arguing that the trial court erred by admitting, as substantive evidence pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2020)), hearsay statements the four minor victims made during forensic interviews and disclosures two of the minor victims made to their parents. Defendant also argues that the State failed to prove his guilt, beyond a reasonable

doubt, of four counts of predatory criminal sexual assault of a child involving two of the minor victims. For the following reasons, we affirm.

¶ 3 I. Background

¶ 4 Prior to December 13, 2021, defendant and his wife, Maria Hubbard, ran a daycare service, known as "Mother Hubbard's Daycare," out of their home. M.B. (age four), T.K. (age three), J.B. (age three), and L.K. (age four) attended the daycare.

¶ 5 On December 13, 2021, the State charged defendant by information with eight counts of predatory criminal sexual assault of a child for eight separate acts of sexual contact that defendant, who was over the age of 17, allegedly committed against four minor children, who were under the age of 13, in violation of section 11-1.40(a)(1) of the Criminal Code of 2012 (720 ILCS 5/11-1.40(a)(1) (West 2020)). The State alleged that defendant knowingly, and with the purpose of sexual gratification, committed two acts of sexual contact with M.B., in that defendant touched M.B.'s penis with his hand (count I) and had M.B. touch defendant's penis with M.B.'s hand (count II). The State alleged that defendant knowingly, and with the purpose of sexual gratification, committed two acts of sexual contact with T.K., in that defendant touched T.K.'s penis with his hand (count III) and had T.K. touch defendant's penis with T.K.'s hand (count IV). The State alleged that defendant knowingly, and with the purpose of sexual gratification, committed two acts of sexual contact with J.B., in that defendant touched J.B.'s penis with his hand (count V) and had J.B. touch defendant's penis with J.B.'s hand (count VI). The State alleged that defendant knowingly, and with the purpose of sexual gratification, committed two acts of sexual contact with L.K., in that defendant touched L.K.'s penis with his hand (count VII) and had L.K. touch defendant's penis with L.K.'s hand (count VIII). The State alleged that defendant committed these

offenses during the period from May 1, 2021, to August 31, 2021. Shortly thereafter, on December 15, 2021, a grand jury returned a bill of indictment against defendant on each count.

¶ 6 A. Pretrial Proceedings

¶ 7 In February 2022, the State filed notices of intent to present evidence pursuant to section 115-10(a)(1) of the Code (725 ILCS 5/115-10(a)(1) (West 2020)). The State sought to offer various out-of-court statements made by M.B., T.K., J.B., and L.K. as an exception to the hearsay rule as permitted by section 115-10(a)(1) of the Code, including out-of-court statements that each child made to a forensic interviewer during their respective interviews at the Child Advocacy Center (CAC) and out-of-court statements each child made to their respective parents.

¶ 8 On February 24, 2022, March 7, 2022, and March 8, 2022, the trial court held hearings on the State's motions. The evidence presented at the hearings generally established that M.B. and L.K. participated in CAC interviews with forensic interviewer Robyn Carr on September 2, 2021, and that T.K. participated in a CAC interview with Carr on September 8, 2021. The evidence demonstrated that M.B., L.K., and T.K. made no allegations against defendant during their initial CAC interviews. The evidence demonstrated that M.B., J.B., L.K., and T.K. participated in a body safety program conducted by Jill Wright and Lenora Carter at a local library on October 15, 2021, and that none of the children made allegations against defendant during the program. The evidence also demonstrated that M.B. and T.K. participated in a second CAC interview with Carr on November 2, 2021, that J.B. participated in his first interview with Carr on November 2, 2021, and that L.K. participated in his second interview with Carr on December 2, 2021. The evidence demonstrated that each child made allegations against defendant during these CAC interviews. In addition, the evidence demonstrated that the children made disclosures to their parents in the time period from August 30, 2021, to November 28, 2021. The State presented witness testimony to

establish the details surrounding the CAC interviews, body safety program at the library, and the disclosures the children made to their parents.

¶ 9 The State first called Jill Wright to testify at the hearing. Wright worked for Sexual Assaults and Family Emergencies (SAFE), a local sexual assault agency. Wright, along with her colleague Lenora Carter, conducted a 20- to 25-minute body safety program with six children at the Effingham Public Library on October 15, 2021. The program was "designed to let kids know that their body belongs to them and it's not okay for someone else to look at or touch it." During the program, Wright did not attempt to lead the children or convince the children that they experienced a past trauma. Carter read the children a book during the program. None of the children present at the program disclosed a past trauma to Wright or Carter, but Wright maintained that it was "fairly rare" for children to make disclosures during the program. Wright advised the children to notify a trusted adult of any trauma they experienced. On cross-examination, Wright testified that she suspected a child in the group had been assaulted because the program at the library was not a routinely scheduled program.

¶ 10 Carter also testified at the hearing. Carter's testimony largely corroborated Wright's testimony regarding the program held at the library. Carter made no leading suggestions to the children during the program. Carter did not suggest to the children that they may have been touched in the past. Before she conducted the program at the library, Carter was told that the children had been touched by "the husband of a daycare provider." Carter claimed that Wright was also aware of the accusations. Carter read a book, titled "My Body Belongs to Me" to the children, which was admitted into evidence at the hearing. None of the children made disclosures to Wright or Carter during or after the program.

¶ 11 Melinda B. next testified at the hearing. Melinda B. had two children, M.B. and J.B., with her husband Josh B. At the time of the hearing, M.B. was five and J.B. was four. Defendant provided daycare services for her two children from May 20, 2019, to August 31, 2021. Melinda B.'s children referred to defendant as "Mr. Martin." Melinda B. stopped sending her children to daycare on August 31, 2021, after M.B. (then age four) told her that defendant touched M.B. and M.B. had to touch defendant. Melinda B. recalled that the conversation with M.B. occurred in the kitchen of their family home at approximately 8:45 p.m. on August 30, 2021. According to Melinda B., M.B. specifically stated, "Mom Martin touched my pee today and made me touch his and I did not like it." Melinda B. understood M.B. to be talking about his private parts when he used the word "pee" because he pointed towards his private parts when he made the statement and commonly referred to his penis as "pee." Melinda B.'s children also referred to their penises as "corn dogs." Josh B. followed up with M.B. regarding the statement later that evening. Melinda B. did not discuss the issue with M.B. again that evening. Melinda B. denied prompting or pushing M.B. to make the statement.

¶ 12 Melinda B. testified that she took her children to daycare on August 31, 2021. Melinda B. advised M.B. to sleep on the cot at daycare during nap time. Melinda B. explained that a different child slept on defendant's lap in a chair during nap time each day. M.B. was one of the children who slept on defendant's lap.

¶ 13 Melinda B. made several phone calls after she dropped her children off at daycare, including a phone call to a counselor, Holly Herboth, who advised Melinda B. to record M.B. making a statement. Melinda B. claimed that Josh B. recorded M.B. making a statement later that evening. Melinda B. also called her friend Christy K., who was the mother of another child at the daycare, L.K. Melinda B. advised Christy K. of M.B.'s statement and told Christy K. that she was

removing her children from the daycare. Shortly thereafter, Melinda B. and Christy K. contacted police at Herboth's recommendation.

¶ 14 Melinda B. testified that prior to August 30, 2021, she thought highly of the daycare. Melinda B. recalled a suspicious statement defendant made approximately two weeks before M.B. made his statement. Specifically, defendant told Melinda B. that M.B. and L.K. "got in trouble because they were walking around with their deals hanging out." When Melinda B. asked why the children were doing that, defendant responded that the children were "comparing them I guess."

¶ 15 Melinda B. testified that M.B. spoke about defendant on several occasions after August 30, 2021. Melinda B. drove M.B. to CAC interviews on September 2, 2021, and November 2, 2021. Melinda B. recalled that M.B. spoke to her about defendant again on October 15, 2021, after he attended the SAFE program at the library with his brother, J.B. Melinda B. recalled that T.K. and L.K. also attended the program. M.B. talked about defendant more frequently after he attended the program. Melinda B. denied leading M.B. in the discussions. She recalled that M.B. again stated on October 23, 2021, that defendant made M.B. touch defendant's private parts, that defendant touched M.B.'s private parts, and that M.B. did not like it. Melinda B. recorded M.B.'s October 23, 2021, statement, and the recording was played and admitted into evidence at the hearing without objection.

¶ 16 Melinda B. next testified regarding a statement made by J.B. After attending the program at the library on October 15, 2021, J.B. (then age three) told Melinda B. that defendant touched his private parts. M.B. was present during the conversation. Melinda B. denied leading J.B. to make the statement. J.B. then demonstrated what defendant had done to him. According to Melinda B., J.B. "unzipped his little sleep pajamas and he went straight to his little deal and touched it." Melinda B. clarified that she meant penis when she used the word "deal." She took J.B. for a CAC

interview on November 2, 2021. Melinda B. agreed that both children discussed the situation more frequently after they attended the program at the library.

¶ 17 On cross-examination, Melinda B. testified that she, along with Josh B. and several other parents from the daycare, went to the public library to meet with the SAFE staff on October 13, 2021, prior to the October 15, 2021, program. Melinda B. testified that both Carter and Wright were present at the October 13, 2021, meeting. At the meeting, the parents informed the SAFE staff "about what was going on" with their children.

¶ 18 Josh B. then testified at the hearing. Josh B. and Melinda B. stopped sending their children to defendant's daycare after M.B. stated that defendant "had touched him and he didn't like it." Josh B. overheard M.B. make the statement to Melinda B. on August 30, 2021. Josh B. asked M.B. about his statement later that evening, and M.B. told Josh B. that defendant "touched his pee-pee and he made him touch his and he didn't like it." Josh B. agreed that M.B. made the second statement in response to a specific inquiry from Josh B. When M.B. made the statement, he pulled down his pants and underwear and "made an up and down motion with his hand." Josh B. did not discuss the incident with M.B. again that evening, and Josh B. denied coaching or leading M.B.

¶ 19 Josh B. testified that he called the child abuse hotline on his way to work on August 31, 2021. Josh B. then called Melinda B., who advised that a counselor had recommended audio or video recording M.B. making a statement. After Josh B. arrived home from work that evening, he drove around in his truck with M.B. During the drive, Josh B. asked M.B. "what he told mom and dad" the night before. M.B. responded that defendant "had touched his pee-pee and he didn't like it" and that defendant was "a bad guy." Josh B. audio recorded the conversation he had with M.B. in the truck on August 31, 2021. The audio recording was played and admitted into evidence at the hearing without objection.

¶ 20 Josh B. testified that he went to police the evening of August 31, 2021. Josh B. claimed that M.B. discussed the touching multiple times after August 31, 2021. Josh B. estimated that M.B. brought it up twice a week. Josh B. specifically recalled that M.B. brought it up after the SAFE program at the library on October 15, 2021. M.B. stated that defendant was "a bad guy" and that defendant touched his private parts. Josh B. indicated that he wanted his children to forget the incident, so he did not bring it up to them.

¶ 21 The State next called Whitney K. to testify at the hearing. Whitney K. had two children with her husband, Brian K., including T.K. T.K. was four years old at the time of the hearing. Defendant provided daycare services for her children. Whitney K. had known defendant's wife for over 20 years because defendant's wife was her daycare provider when she was a child. Prior to September 2021, Whitney K. trusted defendant and his wife. On September 1, 2021, Whitney K. learned from her husband that the Department of Children and Family Services (DCFS) and police were at the daycare. DCFS employee Ashley Hammer advised that there were allegations of sexual abuse at the daycare. Whitney K. took T.K. for a CAC interview on September 8, 2021, at Hammer's recommendation. Whitney K. did not discuss the situation with T.K. prior to the CAC interview. Whitney K. did not know any specific allegations made against defendant at that time.

¶ 22 Whitney K. testified that T.K. "was very concerned about bad guys" from September 1, 2021, to September 8, 2021. Whitney K. recalled that T.K. asked if defendant "was a bad guy because there were cops at his house and cops take bad guys." Whitney K. advised T.K. that he was safe. Whitney K. also informed T.K. that "we don't touch people and people don't touch us."

¶ 23 Whitney K. testified that on September 30, 2021, T.K. indicated that he had a secret and stated, "mommy Mr. Martin touches my pee-pee." When Whitney K. asked T.K. if he touched defendant, T.K. responded, "I'm sorry mommy." After additional questioning by Whitney K., T.K.

confirmed that he touched defendant. T.K. demonstrated “how he did it with his hand.” According to Whitney K., T.K. “moved his shorts out of the way to touch himself.” Whitney K. clarified that T.K. made a jerking motion with his hand during the demonstration. T.K. made the statement in the family’s living room the evening of September 30, 2021. Whitney K. recorded part of the conversation with her phone, and the recording was played and admitted into evidence at the hearing without objection.

¶ 24 Whitney K. testified that T.K. participated in the SAFE program at the library on October 15, 2021, and a second CAC interview on November 2, 2021. Whitney K. denied prompting T.K. to discuss defendant between September 30, 2021, and November 2, 2021. In that time, T.K. had multiple nightmares. Whitney K. comforted T.K. by telling him that defendant was in jail. When T.K.’s sister brought up daycare, T.K. responded that they could not go to daycare because “Mr. Martin was touching our pee-pees.”

¶ 25 Whitney K. testified that she encouraged T.K. to tell more people about the incident when she learned T.K. had to go for another CAC interview. Whitney K. told T.K. that he needed to tell “the right people and that once he told them, that’s what he had to do that I would never ask him about it anymore.” Specifically, Whitney K. told T.K. that he needed to tell “Tom, the police officer,” their “friend Robyn,” and their friend, “Donna.” Whitney K. denied coaching or leading T.K. in their conversations about defendant. Whitney K. did not initiate conversations about defendant, but she did initiate conversations about “good touching” and “bad touching.” Whitney K. asked if T.K. had ever been touched, but T.K. always brushed her off and changed the subject. According to Whitney K., T.K. did not want to talk about it and would say “okay mom” or “no” and just stop talking to her.

¶ 26 On cross-examination, Whitney K. testified that Hammer suspected T.K. was involved in the alleged abuse because of a comment made by defendant. Whitney K. took T.K. to the CAC interview on September 8, 2021, but Whitney K. was informed that T.K. did not reveal any concerning information during the interview. Whitney K. clarified that she first discussed inappropriate touching with her children after the children were removed from daycare. Whitney K. agreed that T.K.'s first disclosure occurred on September 30, 2021. Whitney K. did not believe she asked T.K. leading questions. Whitney K. agreed that she told T.K. to tell Tom Webb, the police detective, Robyn Carr, the CAC interviewer, and Donna, the SAFE advocate, about the abuse before T.K. made disclosures in the second CAC interview.

¶ 27 Sheryl Woodham, a licensed clinical social worker, was the next witness to testify for the State. Woodham was also a director of the Guardian Center Incorporated, a freestanding non-profit CAC where interviews take place. The trial court indicated that it would receive Woodham's testimony as an expert in her field for purposes of the hearing only. Woodham testified that it was very common for children, especially younger children, not to disclose abuse during an initial CAC interview. According to Woodham, approximately "79 percent of children do not disclose in their first interview." When asked if a disclosure during a second interview, but not a first interview, raised alarm that the disclosure was unreliable, Woodham responded, "Not necessarily." Woodham explained that interviewers must build rapport with children before children make disclosures. Woodham explained that interviews with younger children posed challenges due to their limited language and communication skills. Woodham encouraged parents to teach their children basic safety rules on personal touching to ensure that their children understood the need for personal safety and had "the language they need to disclose to adults that they trust." Specifically, parents need to identify "private parts" and explain "that no one is allowed to touch

those parts except to keep them clean or healthy." Basic safety courses provide this information to children, along with a list of adults "they could go to if they had a problem."

¶ 28 Woodham testified that it was not uncommon for a child to disclose abuse after participating in a safety course. When asked to elaborate, Woodham stated, "Because now that child has the means to tell that someone has broken the rule. They have the language that they need to be able to describe it to someone." Woodham also explained that children may not disclose abuse because they may be shy or worried about the consequences of a disclosure. According to Woodham, "when a child has been coached, particularly a very young child, they would have difficulty giving adequate detail about where something happened, when it happened, [and] who was there." When conducting a CAC interview, interviewers ask open-ended and non-leading questions when possible. Woodham explained that "[t]he goal of a forensic interview is to get to the truth, whatever that is. Whether abuse happened or it did not happen." Woodham agreed that a body safety course would not lead a child to fabricate allegations of abuse.

¶ 29 On cross-examination, Woodham testified that certain questions or modes of questioning could lead to untrue disclosures. Specifically, "[i]f a child is interviewed in a repeated fashion and inappropriately or given misleading information." Woodham noted that a child's statement may change when interviewed repeatedly, so it was standard practice to limit the number of interviews of a child. Woodham noted that there may be a specific reason for a child to be interviewed multiple times. Woodham explained that leading questions, or questions that suggest the answer to that question, were inappropriate. Woodham explained that children under the age of 12 were more susceptible to suggestibility. Woodham did not question the reliability of a disclosure made in a CAC interview because CAC interviewers will not ask leading questions. The CAC interviewers have limited information about any prior disclosures made by a child. The CAC interviewers will

not question the child or family prior to the forensic interview. Interviewers also will not review recordings made by the parents prior to the interview.

¶ 30 The State next called Christy K. to testify at the hearing. Christy K. lived with her husband, Robert K., and their four children, including L.K. L.K. was four years old at the time of the hearing. Christy K. had taken her children to defendant's daycare for 14 years. Christy K. "thought the world of [defendant] and [his wife]." She explained that defendant "was like grandpa" and her children "called him papa a lot of times." Christy K. stopped sending L.K. to defendant's daycare on August 31, 2021, after Melinda B. called and advised Christy K. of M.B.'s statement. Christy K. was in shock when she received the phone call and did not believe defendant "would ever do anything like that." Christy K. was concerned that something had happened to L.K. because he was alone at the daycare for an hour every morning.

¶ 31 Christy K. testified that she discussed body safety with L.K. on August 31, 2021, after she received the phone call from Melinda B. She reminded L.K. that "nobody touches him there." Christy K. clarified that she showed L.K. that she was referring to the pubic area when she used the word "there." Christy K. then testified as follows:

> "And then I went through a list of men's names. I said does [G]randpa Kenny touch you there? Nope. Does Uncle Bruce touch you there? Nope. Does the neighbor Devin touch you there? Nope. Then I gave [defendant's] name. And at that point he said oh yeah we do that in the blue chair. We do that all the time. I love it. He loves wee-wees."

L.K. did not make any other statements to Christy K. that day. Christy K. denied suggesting that defendant touched L.K., claiming that she just gave L.K. a list of names.

¶ 32 Christy K. testified that L.K. made another statement about defendant on September 1, 2021. When L.K. was in the bath that evening, Christy K. observed L.K. "kinda exploring his

body." Christy K. clarified that L.K. was making a jerking motion with his hand on his private part. When Christy K. asked L.K. what he was doing, he said "well Martin does that at papa boys house." Christy K. recorded part of the conversation on her phone. During the conversation, she asked why defendant did that and L.K. indicated that he did not know why defendant did that. When Christy K. asked if defendant did it a lot, L.K. responded in the affirmative. L.K. stated that "he likes it" and that "he likes wee-wees." According to Christy K. the whole conversation was very nonchalant. The recording was played and admitted into evidence at the hearing without objection.

¶ 33 Christy K. testified that she did not discuss defendant with L.K. again on the evening of September 1, 2021. She clarified that L.K. used the term "wee-wee" when referring to his penis. Christy K. testified that she had two additional conversations with L.K. about defendant in November 2021, but she denied initiating the conversations. Christy K. recalled that on November 8, 2021, L.K. stated that defendant was "a bad guy" because he touched "people's private parts." When Christy K. asked L.K. what a private part was, he pointed to his genital area. When Christy K. asked L.K. whose private parts defendant touched, L.K. responded, "mine." L.K. stated that the touching occurred when his father dropped him off at daycare in the morning. When Christy K. asked L.K. how many times the touching occurred, he held up 10 fingers indicating that it occurred 10 times.

¶ 34 Christy K. testified that she had another conversation with L.K. on November 28, 2021. She claimed L.K. had been very depressed and was experiencing extreme nightmares. L.K. began crying hysterically, stating that he was scared he would go to jail for touching defendant's private parts. Christy K. was able to recall the specific dates of her conversations with L.K. because she documented the conversations in her journal. Christy K. denied coaching or leading L.K. in the

conversations. She claimed that L.K. initiated each conversation. Christy K. took L.K. for CAC interviews on September 2, 2021, and December 2, 2021.

¶ 35 On cross-examination, Christy K. acknowledged that she initiated the conversation with L.K. on August 31, 2021. Christy K. agreed that she specifically asked L.K. if defendant touched him, and that she listed only names of men.

¶ 36 Robyn Carr then testified for the State. Carr served as the executive director of the CAC of East Central Illinois. Carr estimated that she performed "more than a thousand" forensic interviews with children. She participated in all required training, as well as additional training, related to forensic interviews in child abuse investigations. Carr followed the protocol from her training during each interview. According to Carr, the interview process "is designed to be as non-leading as possible." Carr explained that they sometimes need to focus a child to a specific area, so an interviewer "may ask more focused questions."

¶ 37 Carr testified that she conducted interviews with several children regarding allegations against defendant. Carr interviewed each child separately, and she was alone with each child when the interview took place. All the interviews were recorded.

¶ 38 Carr testified that she interviewed M.B. on September 2, 2021. On that date, M.B. "was pretty reserved" and did not disclose any abuse by defendant. Carr conducted a second interview with M.B. on November 2, 2021. M.B. was more open to the process and made a disclosure on that date. Specifically, M.B. stated that defendant "had touched his privates." A recording of the November 2, 2021, interview was played and admitted into evidence at the hearing without objection.

¶ 39 During the interview, Carr asked M.B. what he knew about talking to her that day and M.B. responded by shaking his head. Carr then asked M.B., "I heard that, since we were here, that you,

Donna—that's here with Faith—you have seen Donna another time since we were here, right?" M.B. shook his head indicating an affirmative response. M.B. indicated that he played with T.K., L.K., and L.K.'s brother at the library. M.B. denied that anyone read books to him at the library.

¶ 40 When Carr stated that she talked to children about touches and body parts, M.B. responded, "Martin touched my private part." The following colloquy then took place between Carr and M.B.:

> "Q. He did?
>
> A. He made me touch his, and he made me touch mine, and he made me touch his in the bathroom. And I said I didn't like it and he said yes.
>
> Q. Okay. And when he said yes, what happened?
>
> A. We just went back to the nap room and laid down.
>
> Q. Okay.
>
> A. And I sit on his lap, and he made me do it—made me touch his private part and made me touch my private part.
>
> Q. Okay. What did he touch your private part with?
>
> A. With his hand.
>
> Q. Okay.
>
> A. And he rubbed—and he rubbed his, like—he made me rub his. He made me rub my hand on his, like this.[1]
>
> Q. Okay. You said he made you do that. Tell me about how he was making you do that.
>
> A. Because I didn't want to do it, and he said (inaudible)[.]
>
> [T.K.] was supposed to be here. Was he here?
>
> Q. I talk to lots of kids, [M.B.], okay?
>
> So you—I heard you talk about stuff that happened in the nap room.
>
> A. Is [L.K.] coming here?
>
> Q. I want to talk about the stuff that happened with you today, [M.B.]. Okay?
>
> A. Okay.
>
> Q. I heard you talk about stuff that happened in the nap room. Did that happen in other rooms?
>
> A. (Shakes head).
>
> Q. I think I heard about the nap room; then did you say something about the bathroom?
>
> A. (Shakes head).
>
> Q. Tell me about what happened in the bathroom.
>
> A. He made me touch his in the bathroom, but not mine.
>
> Q. Okay. Tell me about—all about what happened in the bathroom when he made you touch his.
>
> A. He was peeing. And after he was done peeing, he kept it out and made me.
>
> Q. Okay. Tell me about him making you.

[1]M.B. motioned up and down with his hand when he said, "like this."

> A. He did this.
> Q. He did that.
> Okay. What made it stop when he was doing that?
> A. He just stopped. He just stopped.
> Q. Okay. And when he stopped, what happened next?
> A. We went back to the nap room, and I had to sit on his lap, and he made me do that again."

M.B. stated that his mother picked him up after defendant "made [him] do that." When Carr asked if M.B. ever saw defendant touch anyone else's private parts, M.B. responded, "No. Just [J.B.] I saw him do it." Carr asked if M.B. saw something happen to J.B., and M.B. stated, "Made him—made him not rub it, just go sit on his lap." M.B. added that J.B. was in the chair while M.B. was on a cot.

¶ 41 Carr testified that M.B. "spontaneously told [her] about [defendant] touching him" during the interview on November 2, 2021. Carr explained that she had to ask M.B. a focused question to guide M.B. "toward recalling details that might be relevant to why we were present that day." M.B. did not exhibit any behaviors that indicated he had been coached.

¶ 42 Carr next testified about her interviews with T.K. on September 2, 2021, and November 2, 2021. T.K. was shy and did not make any disclosures during the interview on September 2, 2021. T.K. made a disclosure during the second interview on November 2, 2021. Specifically, T.K. "made a disclosure of contact between [defendant] and himself," but Carr was not "100 percent" sure. Carr noticed no indications that T.K. had been coached. A recording of the interview was played and admitted into evidence at the hearing without objection.

¶ 43 During the interview, Carr asked T.K. what his mother told him was going to happen at the interview. T.K. responded, "Mr. Martin got in trouble." When Carr asked T.K. to elaborate, T.K. responded, "Him touched my pee pee." Carr responded by asking T.K. if defendant touched T.K.'s "pee pee," and T.K. responded in the affirmative. When Carr asked T.K. to elaborate, T.K. stated,

"I was sitting on his lap and he touched [J.B.] and my pee pee." T.K. added that defendant used his hand to touch T.K. in the nap room at the daycare. T.K. denied that "anything happen[ed] to [his] clothes when [defendant]" touched him. When Carr asked how T.K. knew that defendant touched J.B., T.K. responded, "I don't know." Carr asked T.K. to tell her about what he saw, and T.K. stated, "I saw him do it." When Carr asked T.K. to tell her what he saw, T.K. responded, "I don't know."

¶ 44 T.K. stated that defendant touched him "[a] lot." T.K. added that defendant also used his hand to touch T.K.'s "pee pee" in the bathroom. T.K. indicated that his clothes were on when the touching occurred. When asked if the skin of defendant's hand touched the skin of T.K.'s pee pee, T.K. answered in the negative. When Carr asked T.K. to elaborate, T.K. stated, "He touched my pee pee on accident. He touched my pee pee on accident." When Carr asked T.K. how he knew it was an accident, T.K. responded, "I don't know." T.K. stated that he had seen defendant's "pee pee." When Carr asked T.K. to tell her about seeing defendant's "pee pee," T.K. responded, "I don't know. (Inaudible) he touched my pee pee." T.K. told his mother and father about defendant touching his "pee pee." When presented with a drawing of an unclothed boy, T.K. pointed to "a private" which he called a "pee pee."

¶ 45 Carr testified that she also conducted a brief interview with J.B. for the first time on November 2, 2021. J.B., who was only three years old at the time of the interview, was very timid and quiet. J.B. made a disclosure during the interview on November 2, 2021. Specifically, J.B. stated that defendant "would touch his corn dog." Carr learned that J.B. was referring to his penis when he used the word "corn dog." Carr explained that J.B.'s statement that defendant touched his "corn dog" was "pretty much the majority of the disclosure that [J.B.] made to [her] in his interview." J.B. was anxious in the interview, but Carr did not notice any signs that he had been

coached. A recording of Carr's interview with J.B. on November 2, 2021, was played and admitted into evidence at the hearing without objection.

¶ 46 During the interview, Carr asked J.B. who took care of him at daycare and J.B. responded, "I don't know." The following colloquy then took place between Carr and J.B.:

> "Q. Like, who were the grownups that were in charge of you?
> You talked about that it was at Martin and Maria's. Were they the ones that were taking care of you?
> A. Yeah.
> Q. Yeah. I have never met them. Tell me about Martin and Maria.
> A. Martin, he touched my—my corn dog.
> Q. He did?
> A. Yeah.
> Q. Tell me about that.
> A. He—he touched it.
> Q. He touched your corn dog?
> A. (Shakes head).
> Q. Yeah.
> A. Yeah."

When Carr asked J.B. to elaborate, he responded, "I don't know." When Carr asked J.B. what he meant when he said, "corn dog," J.B. responded, "I want to go back to my mommy and daddy." J.B. then stated that defendant used his finger to touch J.B.'s "corn dog." J.B. again asked for his parents. Carr asked J.B. to explain the term "corn dog." J.B. agreed it was a body part and that "[g]irls don't have a corn dog." J.B. then stated that he did not have a "corn dog." When Carr asked J.B. where defendant touched J.B.'s "corn dog," J.B. asked for his parents. J.B. denied seeing or touching anyone else's "corn dog." Carr then allowed J.B. to return to his parents.

¶ 47 Carr next testified regarding her first interview with L.K. on September 8, 2021. L.K. did not want to separate from his father initially and did not make a disclosure during the interview. Carr interviewed L.K. a second time on December 2, 2021, at which time L.K. made a disclosure. Carr did not observe any signs that L.K. had been coached. A recording of the December 2, 2021, interview was played and admitted into evidence at the hearing without objection.

¶ 48 During the interview, Carr asked what L.K.'s mother and father told L.K. would happen during the interview. The following colloquy then took place:

> "A. (Inaudible) did do things.
> Q. Help a boy did what?
> A. Papa Boy touched my privates and that I had to do it to him.
> Q. Where were you when that happened, [L.K.]?
> A. In the blue chair and in the white chair when it was nap time."

L.K. indicated that "Papa Boy" was "Martin." When asked to elaborate on "what Papa Boy did," L.K. responded, "Papa Boy had—I had to touch him private stuff and Papa Boy had to touch my private stuff." L.K. indicated that his "private stuff" was his "pee pee." L.K. indicated that defendant used his hand to touch L.K.'s "pee pee." When asked if defendant used his hand or something else to touch L.K., L.K. responded, "Papa Boy touched my hands and I had to touch—Papa Boy took my hands and I had to touch him pee pee." L.K. stated that defendant had blue jeans on when the touching occurred. L.K. shook his head in the affirmative when Carr asked if the skin of L.K.'s hand touched the skin of defendant's penis. When asked if the touching ever occurred "someplace else," L.K. responded, "No. But [M.B.] and [J.B.] was there." When asked if he ever saw defendant touch anyone else's "pee pee," L.K. responded by shaking his head in the negative. L.K. indicated that he told M.B. and J.B. about defendant touching his "pee pee." L.K. denied that anyone else had touched him. L.K. also denied that defendant made L.K. touch another place on defendant's body and denied that defendant made L.K. touch his penis with something other than L.K.'s hand. Carr then gave L.K. a short break.

¶ 49 When Carr's questioning resumed, she asked how L.K. felt when defendant made L.K. touch his penis and L.K. responded, "It was so yuck." L.K. denied ever seeing "anything come out of Papa Boy's pee pee."

¶ 50 Tom Webb, a Lieutenant with the Effingham Police Department, then testified for the State. Webb conducted a 35-minute interview with defendant at the Effingham Police Department on September 1, 2021, after several parents from the daycare complained about possible sexual abuse. A recording of the interview was played and admitted into evidence at the hearing without objection.

¶ 51 During the interview, Webb informed defendant that two children made allegations against him. Specifically, the children alleged that defendant fondled them and that defendant had the children fondle him at the daycare. Webb noted that the "parents talked" and questioned their children. Defendant admitted that some of the children sat on his lap during nap time. Webb advised that law enforcement had a search warrant to test the blue chair and blankets in the nap room. When asked if there was any reason his semen would be on the chair or blankets, defendant responded, "No. No."

¶ 52 Defendant explained that L.K. usually arrived at the daycare at 5:50 a.m. Defendant then went to the bus with another child at 7:30 a.m. Defendant's wife came down at 7:30 a.m. as well. Defendant claimed that nap time occurred after lunch at approximately 12:30 p.m. The last child left the daycare at approximately 5 p.m.

¶ 53 Defendant claimed that when the children napped with him in the chair, they were usually positioned on their backs with a blanket covering them. Defendant stated that for the first five or six years he assisted with the daycare, he did not fall asleep when the children napped on him. Defendant claimed that he now, at age 66, falls asleep when the children nap on him. When asked if there was "anything that has went on that [he] could think [was] maybe how this got interpreted with the kids," defendant responded, "So a three- or four-year-old boy, when they wake up, they stretch and they have what [defendant's wife] calls pee pee hard-ons." Defendant explained that

the children were fine if they were lying flat on him, but the children were "poking" him if they were lying on their stomachs. Defendant then stated, "And I have more than numerous times through the years adjusted their penis." Defendant explained that he made the adjustment "[s]o that it was up against their stomach instead of sticking straight out into me." Defendant claimed it was "[n]othing intentional" and "[n]othing violating." Defendant claimed that the children were not awake most of the time. Defendant noted that he had changed all the children's diapers since they were born.

¶ 54 Defendant denied that he went to the bathroom in front of the children but claimed that the children occasionally walked in while he was using the bathroom. Defendant explained that this happened once or twice per year. Defendant initially was unable to recall a recent incident where a child walked in while he was using the bathroom, but later stated that "this last week" T.K. walked into the bathroom while defendant was urinating. Defendant denied that T.K. touched him in the bathroom. Defendant initially denied that anything happened in the last couple weeks that would prompt a child to tell their parent that they had touched defendant's penis. Defendant stated that he observed L.K. and M.B. standing with their pants down "looking at each other's penises." Defendant advised Melinda B. of the incident.

¶ 55 When asked if he ever had an erection while sitting in the chair with the children, defendant stated, "Lots of times." Defendant claimed that he sometimes woke up with an erection. Defendant explained that he had not had sexual intercourse with his wife for eight years because she suffered from a medical condition. When asked if a child had ever touched him in the last eight years, defendant responded, "Oh, yeah, that's happened." Defendant explained that if he was "standing there holding [his] penis peeing," T.K. would "put his hand up there." Defendant stated that other boys have done that over the years as well. Defendant denied placing any child's hand on his penis

or having any child rub his penis in the chair. Defendant also denied touching L.K.'s penis "more than [he was] supposed to" in the morning. Defendant claimed that all the male children had erections from time to time. Defendant agreed that he had tucked L.K.'s erection up against his stomach before, but he denied doing so in the week before the interview.

¶ 56 Defendant agreed that he tickled the children, and the children tickled him. When asked if he tickled the "privates" of any boys recently, defendant responded, "Probably." Defendant denied touching any child in a sexual manner, and he denied ever having a child touch him in a sexual manner. When asked to confirm that there would be no semen in the chair that was collected for testing, defendant responded, "I don't know about that. From—the chair has been sitting there for seven or eight years," but defendant "doubt[ed] it." Defendant claimed that he did not regularly masturbate but "it happens." Defendant did not know if he masturbated in the chair but stated "maybe in the morning." Defendant denied that he ever masturbated with children asleep on his lap or in the presence of the children. Defendant stated that he did not usually masturbate in a chair and that there should not be semen on the chairs or blankets.

¶ 57 Webb testified that he was concerned about several statements defendant made during the interview. Specifically, he was concerned that defendant allowed the children to sit on his lap during nap time, which confirmed some of the information provided by the parents. Webb was also concerned that defendant admitted to adjusting the children's "pee-pee hard-ons." Webb further expressed concern regarding defendant's admission that he had erections while sitting in the recliner with the children.

¶ 58 Following the hearings, the State and defense presented arguments. The trial court took the matter under advisement.

¶ 59 On March 15, 2022, the trial court entered a written order on the State's motions. In addressing the parents' testimonies regarding their respective children's out-of-court statements, the court found that the parents did not coach or excessively lead the children so as to render the children's responses unreliable. The court found no dubious motive in the parents' conduct. With regard to Carr's testimony regarding her interviews with the children, the court found persuasive the consistency in the description each child had regarding their interaction with defendant and the technique employed by Carr not to be suggestive, coaching, or leading so as to cast doubt on the reliability of the children's responses. The court also found that defendant's interview with Webb corroborated the statements the children made to their parents and Carr. After considering the totality of the circumstances surrounding the children's out-of-court statements to their parents and Carr, the court found that the content and circumstances of the statements provided a sufficient safeguard of reliability and, thus, the court concluded that the State met its burden under section 115-10(a)(1). Accordingly, the court ruled that "the parents' testimony as to their children's statements made to them including the recorded statements together with the CAC interviews with Robyn Carr will be allowed into evidence contingent upon the children testifying at trial and all other pertinent Rules of Evidence are met."

¶ 60 B. Defendant's Jury Trial

¶ 61 On July 25, 2022, defendant's four-day jury trial commenced. At trial, the four minor children testified via closed-circuit television (CCTV). M.B. was the first to testify at trial. M.B. was five years old at the time of the trial. M.B. indicated that he knew the difference between the truth and a lie. When asked why he stopped going to defendant's daycare, M.B. responded, "Because he touched our private stuff." The State asked M.B. to clarify his testimony that defendant "touched our private stuff," and M.B. responded that defendant "touched mine." The

State asked M.B. to stand up and point to the area where defendant touched him, and M.B. pointed to the location of his penis. M.B. did not recall how many times the touching occurred, but he agreed that it was more than five times. M.B. explained that the touching occurred in the bathroom and nap room. M.B. further explained that defendant touched him when M.B. sat on defendant's lap in the nap room. M.B. testified that defendant used his hand to touch M.B. underneath M.B.'s clothing.

¶ 62 When the State asked M.B. if he touched defendant's penis, M.B. responded, "No." The State then asked M.B. to confirm that he never touched defendant's penis or "private stuff," and M.B. responded, "He made me." When the State asked M.B. to explain how defendant made M.B. touch him, M.B. responded, "I don't know. Like this and like this." When the State asked "what would happen," M.B. responded, "I don't know."

¶ 63 The State then asked what defendant did with his hands when he touched M.B., and M.B. responded, "Do this and this." M.B. agreed that defendant "would make a jerking motion." The State asked that the record reflect that M.B. was making a jerking motion with his right hand when he stated, "Do this and this."

¶ 64 The State then asked M.B. "when you said he—when he made you touch his private stuff, where would that occur at in the daycare? What room?" M.B. responded, "In the nap room." M.B. could not recall how many times he had to touch defendant, but he knew it was more than once. M.B. initially denied that he touched defendant in the bathroom. However, when the State asked if the touching only occurred in the nap room, M.B. responded, "Yeah. And the bathroom too."

¶ 65 On cross-examination, M.B. initially testified that he only talked to his mother and father about the touching. M.B. then agreed that he also talked to Carr about the touching. M.B. was unable to recall how many times he talked to Carr, but he agreed that two times sounded correct.

M.B. remembered the first time he talked to Carr, but he did not remember Carr asking him if he had ever seen any grownups' privates. He also did not remember stating that he had seen his father's privates when his father used the restroom. M.B. was unable to recall any additional details from Carr's interviews on cross-examination.

¶ 66 M.B. did recall talking to the State prior to trial. When asked if any adults told him what to say, M.B. responded, "Yeah. My mommy told me to tell the truth." M.B. indicated that he knew what the truth was. When defense counsel asked M.B. what the truth was here, M.B. responded, "I don't know." M.B. denied that anyone told him that defendant touched him. M.B. initially did not recall the program at the library, but he remembered that they read him a book. M.B. did not remember the book. M.B. recalled that his parents told him "something bad" about defendant, and that defendant was in jail. M.B. also recalled that his parents told him defendant was a bad guy.

¶ 67 J.B. then testified at trial. J.B. testified that he was four years old at the time of the trial. J.B. indicated that he knew the difference between the truth and a lie. When asked if defendant did anything that made him uncomfortable, J.B. responded, "He touched my private." When asked how many times defendant touched his private part, J.B. indicated that the touching occurred five times. When the State asked J.B. to stand up and point to his private area, J.B. stood up and pointed in the direction of his penis. J.B. indicated that the touching occurred when he sat on defendant's lap "[i]n the chair." When asked if he ever touched defendant's private area, J.B. responded, "He made me." When asked how defendant made him, J.B. responded, "He made me touch his." J.B. did not know what he used to touch defendant. When asked specifically if he used his hand to touch defendant, J.B. responded in the affirmative. J.B. indicated that defendant touched him under his clothes.

¶ 68 On cross-examination, J.B. indicated that he wanted defense counsel to stop asking him questions. J.B. stated that he wanted "to go back to mommy and dad." Defense counsel stopped questioning J.B. at that point.

¶ 69 T.K. then testified for the State. T.K. testified that he was four years old at the time of the trial. T.K. indicated that he knew the difference between the truth and a lie. T.K. previously attended defendant's daycare. T.K. agreed that defendant did something that made him uncomfortable at daycare. When the State asked T.K. what happened that he did not like, T.K. responded, "Touched my pee-pee." The State then asked T.K. to stand up and point to his "pee-pee," and T.K. pointed to the area of his penis. T.K. indicated that defendant touched him on one occasion at nap time. T.K. denied that he ever had to touch defendant's private area. On cross-examination, T.K. indicated that he was tired of talking about defendant and he was unable to recall any specific details regarding his prior conversations about defendant.

¶ 70 L.K. then testified for the State. L.K. was five years old at the time of the trial. L.K. went to defendant's daycare but stopped going there because defendant "touched privates." L.K. agreed that defendant touched his privates. When asked how many times defendant touched his privates, L.K. responded, "I don't know. Every day." The touching occurred in the nap room. When asked if the touching occurred over or under the clothing, L.K. responded, "Over the clothing." The State asked L.K. to stand up and point to his private area, and L.K. pointed in the area of his penis. L.K. used his finger to touch defendant's privates in the nap room on one occasion.

¶ 71 On cross-examination, L.K. testified that he went to defendant's daycare with M.B. and J.B. He agreed that he continued to see M.B. and J.B. regularly after he stopped attending daycare. L.K. recalled other people asking him questions about defendant, including Carr. L.K. thought defendant was a "bad guy" because "he touched privates." When asked if adults told him if

someone like defendant "touches privates he is a bad guy," L.K. responded in the affirmative. When defense counsel asked L.K. if adults told him at the library that defendant was a bad guy because he touches privates, L.K. responded, "Yes." He recalled that M.B., J.B., and T.K. were also at the library. L.K. confirmed that the "grownups at the library" told them that defendant was a "bad guy" because he touches privates.

¶ 72 Detective Matthew Hoelscher, a detective for the City of Effingham, then testified on behalf of the State. Detective Hoelscher executed a search warrant at the daycare. Detective Hoelscher photographed and collected two recliner chairs and three blankets located in the daycare. The items were transported back to the police department for further testing. Using a handheld light device, Detective Hoelscher observed bodily fluid stains on the dark blue recliner collected from the main daycare area, the light blue recliner collected from the nap room, and two of the blankets found on the recliners.

¶ 73 Detective Hoelscher testified that he notified the Crime Scene Division of the Illinois State Police (ISP) of his findings. The ISP sent Sergeant Dewayne Morris to assist in the investigation. Detective Hoelscher observed Sergeant Morris examine the items with his own alternate light source, use a black marker to outline the suspicious stains he found on the recliners, take photographs, and use a sharp knife to remove the areas of the recliners identified as having suspicious stains. Detective Hoelscher assisted Sergeant Morris in placing the blankets and samples collected from the recliners in sealed bags. The evidence was then turned over to Detective Hoelscher's evidence supervisor, Steve Fehrenbacher. Fehrenbacher testified that he received the evidence and transported it to and from the Springfield State Police Crime Lab.

¶ 74 Jennifer Aper, an ISP forensic scientist, testified that she tested the samples taken from the recliners, as well as the two blankets. Aper confirmed the presence of semen on all the tested items.

Dexter McElhiney, an ISP DNA analyst, testified that he tested all the items and compared the samples taken from the items to a buccal swab standard taken from defendant. McElhiney testified that all the sperm stains found on the items contained a DNA profile that matched defendant's DNA profile.

¶ 75 Lieutenant Webb provided testimony consistent with the testimony he provided at the pretrial hearing. The recording of Webb's interview with defendant was played and admitted into evidence at trial. A transcript of the interview was also published and admitted into evidence at trial. On cross-examination, Webb agreed that defendant admitted to masturbating in the recliners during the interview. Webb also agreed that he contacted SAFE to set up the body safety courses "to educate the children" and "help their vocabulary along."

¶ 76 Melinda B., Josh B., Whitney K., and Christy K. all provided substantially the same testimony they provided at the pretrial hearing. Through their testimonies, the following were admitted into evidence at trial: the audio recording of M.B. taken by Josh B. on August 31, 2021; the video recording of M.B. taken by Melinda B. on October 23, 2021; the audio recording of L.K. taken by Christy K. on September 1, 2021; and the video recording of T.K. taken by Whitney K. on September 30, 2021.

¶ 77 Woodham, Wright, Carter, and Carr also provided substantially the same testimony that they provided at the pretrial hearing. Through Carter, the entire text of the book read to the children at the library on October 15, 2021, was read into the record as follows:

> "This is my body and it belongs just to me. I have knees and elbows and lots of parts that you see. Other parts I have are not in open view. I call them my private parts, of course, you have them too. Mom and dad once told me I was their little gem and if someone hurt me to always come to them.

> One day when we were visiting my uncle Johnny's house, I was playing with some toys as quiet as a mouse. My uncle's friend came over and sat down next to me and touched me in that place that no one else can see.
>
> I got so scared I froze and just stayed where I sat. I thought this is my body why did he do that?
>
> He said it was our secret and told me not to tell, but I ran away real fast and then began to yell. I told my mom and dad what had taken place. They said that I was really brave and then each kissed my face.
>
> Mom and dad said they were proud I told them right away. It made me feel better too. They believed what I had to say.
>
> I learned if I was too scared to tell my mom or dad, I could have told my teacher what made me feel so sad. I know it wasn't my fault and I did nothing wrong. This is my body and I am growing big and strong."

¶ 78 Through Carr, the recordings of the CAC interviews of each child were published to the jury with accompanying transcripts. Carr testified that she observed no signs of coaching during the interviews.

¶ 79 Defendant elected not to testify at trial, and the defense rested without presenting any evidence. The defense made a general motion for directed finding on all counts, which the trial court denied. Following closing arguments, the jury found defendant guilty of all eight counts of predatory criminal sexual assault of a child.

¶ 80 C. Posttrial Proceedings

¶ 81 On August 8, 2022, defendant filed a motion for new trial. Defendant alleged that, even viewing the evidence in a light most favorable to the State, no rational trier of fact could have

found the essential elements of the crimes beyond a reasonable doubt. Defendant also alleged that the trial court erred by granting the State's motion to admit hearsay statements pursuant to section 115-10 of the Code. Specifically, defendant argued that the court's finding that the time, content, and circumstances of the statements provided sufficient safeguards of reliability was against the manifest weight of the evidence. The court subsequently denied the motion.

¶ 82 On September 20, 2022, the trial court sentenced defendant to life in prison. Defendant filed a timely notice of appeal.

¶ 83 II. Analysis

¶ 84 On appeal, defendant first argues that the trial court erred by admitting the hearsay statements the four minor victims made during their forensic interviews and the disclosures two minor victims made to their parents as substantive evidence pursuant to section 115-10 of the Code. Defendant also argues that the State failed to prove his guilt, beyond a reasonable doubt, of four counts of predatory criminal sexual assault of a child.

¶ 85 A. Admission of Out-of-Court Statements

¶ 86 We first address defendant's argument that the trial court erred by admitting certain out-of-court statements made by the minor victims pursuant to section 115-10 of the Code. In a prosecution for a physical or sexual act perpetrated upon or against a child under 13 years of age, section 115-10 of the Code allows the State to introduce the following testimony as an exception to the hearsay rule:

> "(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and
>
> (2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an

offense which is the subject of a prosecution for a sexual or physical act against that victim." 725 ILCS 5/115-10(a)(1), (2) (West 2020).

Such testimony shall only be admitted into evidence if:

> "(1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
>
> (2) The child *** either:
>
> (A) testifies at the proceeding; or
>
> (B) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement ***." *Id.* § 115-10(b)(1), (2)(A)-(B).

¶ 87 "The State, as the proponent of the out-of-court statements sought to be admitted pursuant to section 115-10 of the Code, bears the burden of establishing that the statements were reliable and not the result of adult prompting or manipulation." *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009). "There are no precise tests for evaluating trustworthiness or reliability, but rather particularized guarantees of trustworthiness must be drawn from the totality of the circumstances surrounding the victim's statements." *People v. Rottau*, 2017 IL App (5th) 150046, ¶ 55 (citing *People v. West*, 158 Ill. 2d 155, 164 (1994); *People v. McMillan*, 231 Ill. App. 3d 1022, 1025 (1992)). "Important factors in determining reliability include the child's spontaneous and consistent repetition of the incident, the child's mental state, the use of terminology expected of a child of a similar age, and lack of motive to fabricate." *Id.* (citing *People v. Bowen*, 183 Ill. 2d 103, 120 (1998); *West*, 158 Ill. 2d at 164). In reviewing the trial court's reliability determination, this court considers the evidence presented at the hearing held pursuant to section 115-10 of the Code, not the evidence presented at trial. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 85.

¶ 88 "A trial court has considerable discretion in admitting hearsay statements; therefore, a reviewing court will not disturb a trial court's decision absent an abuse of discretion." *Rottau*, 2017 IL App (5th) 150046, ¶ 55 (citing *People v. Zwart*, 151 Ill. 2d 37, 44 (1992)). A trial court abuses its discretion "when the trial court's determination is arbitrary, fanciful, or unreasonable or when no reasonable person would agree with the stance adopted by the trial court." *People v. Applewhite*, 2016 IL App (4th) 140558, ¶ 57 (citing *People v. Becker*, 239 Ill. 2d 215, 234 (2010)).

¶ 89 In the present case, the trial court found that the time, content, and circumstances of the minor children's out-of-court statements were sufficiently reliable to warrant admission. In so finding, the court determined that there was no dubious motive in the parents' conduct. As to Carr's testimony regarding her interviews with each child, the court found persuasive the consistency in the children's description of their interaction with defendant. The court also found that the technique employed by Carr during the interviews was not suggestive, in that she did not appear to lead or coach the children so as to cast doubt on the reliability of the children's responses. The court further found that defendant's interview with police corroborated the statements the children made to their parents and Carr. Thus, the record demonstrates that the court considered the appropriate factors when it found the out-of-court statements admissible.

¶ 90 Despite this, defendant argues that the trial court should have excluded (1) the CAC interviews of all four minor victims and (2) the disclosures T.K. and J.B. made to their respective parents. We address defendant's arguments in turn.

¶ 91 1. CAC Interviews

¶ 92 Defendant asserts that the State failed to prove that the CAC interviews of M.B. (November 2, 2021), J.B. (November 2, 2021), T.K. (November 2, 2021), and L.K. (December 2, 2021) were not the result of adult prompting, manipulation, or intervention. In support of this assertion,

defendant raises two primary arguments. First, defendant argues that the State failed to introduce the prior CAC interviews of L.K., T.K., and M.B., in which no disclosures were made.[2] Defendant, relying on *Zwart*, argues that the State was required to introduce the prior interviews into evidence to establish that the interviews were conducted in a non-suggestive manner. Second, defendant argues that the children only made disclosures during their second CAC interviews after they attended a program that encouraged them to make a disclosure. Defendant maintains that these circumstances do not provide sufficient safeguards of reliability to allow the admission of the out-of-court statements under section 115-10 of the Code. After carefully reviewing the record, we cannot say that the court abused its discretion by ruling that the CAC interviews were admissible.

¶ 93 As an initial matter, we find the present case distinguishable from *Zwart*. In *Zwart*, our supreme court held that the trial court abused its discretion by admitting the out-of-court statements made by a three-year-old victim under section 115-10 where there was "substantial adult intervention" before the victim made the statements. 151 Ill. 2d at 44-46. In *Zwart*, the victim's mother observed blood in the victim's diaper and took the victim to the doctor, but the victim made no statements about sexual abuse. *Id.* at 40. The doctor notified DCFS of a possible case of sexual abuse. *Id.* In the week that followed, the victim was interviewed by a police officer, a DCFS worker, and a hospital counselor. *Id.* The victim initially denied any sexual abuse occurred when interviewed by the hospital counselor but later made statements indicating that she was sexually abused by the defendant. *Id.* at 40-41. The State sought to introduce the victim's statements into evidence at the defendant's trial. *Id.* at 41. Following a hearing, the trial court determined that the victim, who was four years old at the time of the hearing, was not competent to testify. *Id.*

[2]We note that J.B.'s November 2, 2021, CAC interview was his first, and only, interview. Thus, defendant's argument in this regard pertains only to the CAC interviews of L.K., T.K., and M.B.

Following another hearing pursuant to section 115-10, the trial court ruled that the victim's mother and counselor could testify at trial concerning the statements the victim made to each of them. *Id.*

¶ 94 On review, our supreme court concluded that the content of the victim's statements supported their reliability, where the statements were consistent, were made spontaneously, and reflected knowledge of sexual activity that was unexpected for a three-year-old. *Id.* at 44. However, our supreme court concluded that the timing and circumstances surrounding the victim's statements failed to provide sufficient safeguards of their reliability. *Id.* Our supreme court found the circumstances surrounding the victim's statements "particularly troubling," where the victim was interviewed by three different people regarding the alleged sexual abuse and "[t]he State failed to introduce *any* evidence regarding the substance of these interviews." (Emphasis in original.) *Id.* Our supreme court noted that "[w]ithout such evidence, it was impossible for the trial court to determine whether the victim was questioned in a suggestive manner or was encouraged to accuse the defendant of sexual abuse" or "whether the victim's precocious knowledge of sexual activity was due to sexual abuse, as the State claims, or was the result of suggestive interview techniques." *Id.* at 44-45. Our supreme court found the evidence as to what transpired in the prior interviews important for two reasons: (1) the victim's age made her particularly susceptible to suggestion from outsiders, and (2) the defendant was unable to question the victim about the interviews at trial because the trial court found the victim incompetent to testify. *Id.*

¶ 95 In the present case, similar to *Zwart*, the minor victims were of a younger age and three of the four victims were interviewed on one occasion before they made disclosures. The evidence demonstrated that M.B., L.K., and T.K. all participated in CAC interviews in September 2021. However, unlike *Zwart*, Carr testified regarding the September 2021 interviews at the hearing. Carr, who was specially trained to conduct such interviews, testified that the children did not make

disclosures during the September 2021 interviews, and that she followed the standard protocol when conducting the interviews. In other words, Carr asked only open-ended or focused questions without asking leading questions. Accordingly, unlike *Zwart*, there was evidence from which the trial court could determine whether the victims were questioned in a suggestive manner, whether the victims were encouraged to accuse defendant of sexual abuse, or whether the victims' knowledge of sexual activity was the result of suggestive interview techniques. Moreover, unlike *Zwart*, none of the minor victims in this case were found incompetent to testify at trial; thus, defendant had the opportunity to question the victims about the interviews at trial. For these reasons, we find the present case distinguishable from *Zwart*.

¶ 96 Next, we reject defendant's assertion that the children's participation in the SAFE program at the library demonstrated that the statements the children made in subsequent CAC interviews were unreliable. Wright testified that the SAFE program did not attempt to lead the children or convince the children that they had a past trauma. Carter testified that she did not make any leading suggestions to the children during the program. Wright and Carter both testified that the program was designed to teach children about inappropriate touching and provide them with the vocabulary to notify an adult if they experienced inappropriate touching. Defendant takes issue with the book Carter read to the children during the program; however, our review of the book fails to support defendant's contention that the book motivated the children to fabricate allegations against defendant. In addition, it appears that M.B., L.K., and T.K. made disclosures to their respective parents before they attended the SAFE program.

¶ 97 Regarding M.B., the evidence demonstrated that he made disclosures to his parents before his first CAC interview and before he attended the SAFE program.[3] Specifically, on August 30,

[3]Defendant does not challenge the statements M.B. made to his parents on appeal.

2021, M.B. told Melinda B. that defendant touched M.B.'s "pee today and made [M.B.] touch his and [M.B.] did not like it." Also, on August 30, 2021, M.B. made a similar statement to Josh B. When M.B. made the statement to Josh B., M.B. pulled down his pants and underwear and "made an up and down motion with his hand." The statements M.B. made during his second CAC interview were consistent with the disclosures M.B. made to his parents before he attended the SAFE program. M.B. also made an up and down motion with his hand when describing the touching to Carr in the CAC interview. Carr testified that she did not observe any signs of coaching, and that she followed the standard protocol during the interview. Accordingly, the trial court could have reasonably concluded that the statements M.B. made during the November 2, 2021, CAC interview were sufficiently reliable.

¶ 98 Regarding L.K., the evidence demonstrated that he also made disclosures to his mother before his first CAC interview and before he attended the SAFE program.[4] Christy K. testified that she discussed body safety with L.K. on August 31, 2021, after she learned of the allegations against defendant. Christy K. reminded L.K. that no one should touch his pubic area. Christy K. then asked L.K. if various men he knew had ever touched his pubic area. L.K. denied that his grandpa, uncle, and neighbor touched him. When Christy K. asked if defendant touched L.K., L.K. responded, "oh yeah we do that in the blue chair. We do that all the time. I love it. He loves wee-wees." Christy K. also testified that L.K. made another statement on September 1, 2021. Christy K. observed L.K. making a jerking motion with his hand on his private part in the bathtub. When Christy K. asked L.K. what he was doing, L.K. responded, "well Martin does that at papa boys house." L.K. again stated that defendant "likes it" and "likes wee-wees." During the interview with Carr on December 2, 2021, L.K. stated that "Papa Boy touched [L.K.'s] privates and that [L.K.] had to do it to him."

[4]Defendant does not challenge the statements L.K. made to Christy K. on appeal.

L.K. indicated that "Papa Boy" was defendant and that his "private stuff" was his "pee pee." When Carr asked where the touching occurred, L.K. responded, "In the blue chair and in the white chair when it was nap time." Although L.K. provided more detail when questioned by Christy K., he provided essentially the same information to Carr during the December 2, 2021, interview. Moreover, Carr testified that she followed the standard protocol during the interview, and she did not ask leading questions. Accordingly, the trial court could have reasonably concluded that the statements L.K. made during the December 2, 2021, CAC interview were sufficiently reliable.

¶ 99 Regarding T.K., the evidence demonstrated that he made disclosures to his mother before he attended the SAFE program. Whitney K. testified that on September 30, 2021, T.K. told her that defendant touched T.K.'s "pee-pee." After repeated questioning by Whitney K., T.K. also indicated that he touched defendant's "pee-pee." T.K. made consistent statements to Carr during the November 2, 2021, CAC interview. T.K. specifically stated, "Him touched my pee pee." Carr responded by asking T.K. if defendant touched T.K.'s "pee pee," and T.K. responded in the affirmative. When Carr asked T.K. to elaborate, T.K. stated, "I was sitting on his lap and he touched [J.B.] and my pee pee." Carr testified that she followed the standard protocol, and that she did not ask leading questions during the interview. Accordingly, the trial court could have reasonably concluded that the statements T.K. made during the November 2, 2021, CAC interview were sufficiently reliable.

¶ 100 Regarding J.B., the evidence demonstrated that he did not make a disclosure to Melinda B. until after he attended the SAFE program. However, Wright and Carter testified that the SAFE program was designed to inform children of inappropriate touching and to provide children with the vocabulary to notify a trusted adult of inappropriate touching. Woodham testified that it was not uncommon for a child to make a disclosure after attending a safety program. Melinda B.

testified that J.B. informed her that defendant touched J.B.'s private parts after J.B. attended the SAFE program on October 15, 2021. J.B. provided a consistent statement to Carr during his November 2, 2021, CAC interview, when he stated that defendant touched his "corn dog." Melinda B. testified that her children sometimes referred to their penises as "corn dogs." Considering the totality of the circumstances, the trial court could have reasonably concluded that the statements J.B. made during the November 2, 2021, CAC interview were sufficiently reliable.

¶ 101 In sum, the State presented sufficient evidence to demonstrate that the statements the children made in the CAC interviews were sufficiently reliable. Therefore, we conclude that the trial court did not abuse its discretion by ruling that the statements the children made in their respective CAC interviews were admissible.

¶ 102 2. Parent Disclosures

¶ 103 Defendant next asserts that the trial court should have excluded the disclosures T.K. and J.B. made to their respective parents. Defendant first argues that, for the same reasons the SAFE program constituted an intervening suggestive influence that rendered the children's CAC interviews unreliable, the SAFE program similarly undermined the reliability of J.B.'s disclosure to Melinda B. Defendant also argues that T.K.'s disclosures to Whitney K., "particularly the video recording made by her," should have been excluded for lacking sufficient safeguards of reliability. We disagree.

¶ 104 As stated, "[s]ome factors that are important in determining whether the time, content, and circumstances of the statements provide sufficient safeguards of reliability include: 'the child's spontaneous and consistent repetition of the incident, the child's mental state, use of terminology unexpected of a child of similar age, and the lack of motive to fabricate.' " *People v. Burgund*, 2016 IL App (5th) 130119, ¶ 247 (quoting *West*, 158 Ill. 2d at 164). "The State bears the burden

of establishing that the statements were 'not the result of adult prompting or manipulation.' " *Id.* (quoting *Sharp*, 391 Ill. App. 3d at 955).

¶ 105 For the same reasons set forth above, we reject defendant's argument that the SAFE program constituted an intervening suggestive influence on J.B. As noted, Wright denied that the SAFE program attempted to lead the children or convince the children that they had a past trauma. Carter testified that she did not make any leading suggestions to the children during the program. Carter did not suggest to the children that they may have been touched in the past. Instead, both women testified that the program was designed to teach children about inappropriate touching and provide them with the vocabulary to notify an adult if they experienced inappropriate touching. Our review of the book read to the children during the program fails to support defendant's contention that the book motivated J.B. to fabricate allegations against defendant. Defendant notes that Melinda B. testified that J.B. made the disclosure on October 15, 2021, directly after he attended the SAFE program. However, the trial court could have reasonably concluded from the evidence that J.B.'s attendance at the program provided him with the necessary vocabulary to notify his mother that he had experienced inappropriate touching. Thus, the court could have reasonably found that the statements J.B. made to Melinda B. were sufficiently reliable.

¶ 106 We also reject defendant's argument that T.K.'s disclosures to Whitney K. should have been excluded for lacking sufficient safeguards of reliability. The content of T.K.'s statements supports their reliability. Specifically, T.K. told Whitney K. that defendant touched his "pee-pee." We acknowledge that T.K. initially denied that he touched defendant, and that T.K. only admitted to touching defendant after repeated questioning by Whitney K. "The fact that a complaint is made in response to questioning, however, does not necessarily destroy its admissibility." *People v. Branch*, 158 Ill. App. 3d 338, 342 (1987). Whitney K. also testified that T.K. showed her "how he

did it with his hand." Whitney K. testified that T.K. "moved his shorts out of the way to touch himself." Whitney K. clarified that T.K. made a jerking motion with his hand during the demonstration. Such demonstration reflects a knowledge of sexual activity that is unexpected and unusual for a three-year-old child. T.K. told Carr during the CAC interview that defendant touched his "pee-pee," but he denied that he touched defendant's penis. However, considering T.K.'s age, he may have felt more comfortable making disclosures to his mother, and the trier of fact could consider the questions Whitney K. posed in determining the weight to give to T.K.'s statements. See *id*. Thus, the trial court could have reasonably found that the statements T.K. made to Whitney K. were sufficiently reliable.

¶ 107 In sum, we cannot say that the trial court's determination was "arbitrary, fanciful, or unreasonable" or that "no reasonable person would agree with the stance adopted by the trial court." *Applewhite*, 2016 IL App (4th) 140558, ¶ 57. Thus, we conclude that the court did not abuse its discretion by allowing admission of the disclosures J.B. and L.K. made to their respective parents.

¶ 108 B. Sufficiency of the Evidence

¶ 109 We next address defendant's contention that the State's evidence was insufficient to sustain convictions for the four counts of predatory criminal sexual assault involving T.K. (counts III and IV) and L.K. (counts VII and VIII). Defendant asserts that both T.K. and L.K. indicated that defendant touched them over the clothing, which fell short of the "contact" required to prove defendant guilty of predatory criminal sexual assault of a child.

¶ 110 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt."

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

¶ 111 Section 11-1.40(a)(1) of the Criminal Code of 2012 provides:

> "(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:
>
> (1) the victim is under 13 years of age[.]" 720 ILCS 5/11-1.40(a)(1) (West 2020).

While "contact" is not defined in the statute, courts have construed that word to mean "any touching." *People v. Kitch*, 2019 IL App (3d) 170522, ¶ 51.

¶ 112 We must first consider whether the State was required to prove that "skin-to-skin" contact occurred as an element of predatory criminal sexual assault. Defendant maintains that the State was required to do so. The State maintains that it was not. We agree with defendant.

¶ 113 As defendant correctly notes, aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1) (West 2020)) sets forth similar elements to predatory criminal sexual assault. In order to prove aggravated criminal sexual abuse, the State must establish that a person over the age of 17 committed an act of "sexual conduct" with someone under the age of 13. *Id.* Unlike the word "contact" used in the offense of predatory criminal sexual assault, "sexual conduct" is defined as

the "knowing touching *** by the victim or the accused, either directly or through clothing, of the sex organs *** of the victim or the accused." *Id.* § 11-0.1.

¶ 114 Recently, in *People v. Currie*, 2023 IL App (2d) 220114, our colleagues in the Second District held that "skin-to-skin" contact was an element of predatory criminal sexual assault of a child. The Second District reasoned as follows:

> "Predatory criminal sexual assault, a Class X felony, is a more serious offense than aggravated criminal sexual abuse, a Class 2 felony. Aggravated criminal sexual abuse can occur through the clothing. 720 ILCS 5/12-12(e) (West 2000). Predatory criminal sexual assault of a child is silent as to this issue. 720 ILCS 5/11-1.40(a)(1) (West 2018). However, reading the two statutory provisions together, the inclusion of the phrase 'through clothing' in the aggravated criminal sexual abuse statute and not in the predatory criminal sexual assault of a child statute implies that predatory criminal sexual assault of a child cannot be done through clothing. See *City of St. Charles v. Illinois Labor Relations Board*, 395 Ill. App. 3d 507, 509-10 (2009) (discussing the statutory maxim of construction *inclusio unius est exclusio alterius*, meaning that the inclusion of one thing implies the exclusion of another).
>
> This comports with logic [citation] because improper sexual contact that occurs skin-to-skin or directly is more offensive than the same conduct done through clothing. As such, we believe that an element of predatory criminal sexual assault of a child is that there be skin-to-skin contact. Thus, the State was required to prove that this type of contact occurred." *Currie*, 2023 IL App (2d) 220114, ¶¶ 41-42.

¶ 115 We note that our colleagues in the Fourth District, in *People v. Johnson*, 2023 IL App (4th) 220201, reduced the defendant's conviction from predatory criminal sexual assault of a child to

aggravated criminal sexual abuse, where the State conceded that the evidence demonstrated that the defendant touched the victim over her clothing. After considering these decisions, we conclude that the State was required to prove skin-to-skin contact as an element of predatory criminal sexual assault of a child.

¶ 116 Accordingly, we must next consider whether the State proved skin-to-skin contact occurred in this case. Defendant maintains that the State failed to prove skin-to-skin contact with respect to the four counts of predatory criminal sexual assault of a child involving T.K. and L.K. The State argues that, when viewing the evidence in a light most favorable to the State, there was sufficient evidence to prove beyond a reasonable doubt that skin-to-skin contact occurred. We agree with the State.

¶ 117 Count III alleged that defendant touched T.K.'s penis with his hand. All of the trial evidence consistently demonstrated that defendant touched T.K.'s penis with his hand. T.K. testified at trial that defendant "touched [T.K.'s] pee-pee," which T.K. identified as his penis. Whitney K. also testified that T.K. stated that defendant touched his "pee-pee." We acknowledge that neither T.K. nor Whitney K.'s trial testimony specified whether the touching occurred over or under clothing. We also acknowledge that T.K. indicated during the CAC interview that his clothes were on when the touching occurred. Specifically, during the interview, T.K. responded in the negative when Carr asked if the skin of defendant's hand touched the skin of T.K.'s "pee-pee." However, defendant admitted to adjusting the children's penises during nap time when interviewed by Webb. The jury could have reasonably inferred that defendant touched the children's penises underneath their clothing when adjusting them. Viewing this evidence in a light most favorable to the State, we conclude that a rational juror could have found that skin-to-skin contact occurred when defendant touched T.K.'s penis with his hand.

¶ 118 Count IV alleged that defendant had T.K. touch defendant's penis with T.K.'s hand. We acknowledge that T.K. denied touching defendant's "pee-pee" when he testified at trial. We also acknowledge that T.K. denied touching defendant in his CAC interview. However, Whitney K. testified that T.K. stated that he touched defendant on "his pee-pee." While defendant maintains that T.K. only admitted he touched defendant's penis after repeated questioning by Whitney K., we note that the jury heard and considered the evidence and could have found Whitney K.'s testimony persuasive. This is especially true where T.K. may have felt more comfortable disclosing defendant's actions to his mother. T.K. also may have felt as though he did something wrong by touching defendant's penis, which may have made him more reluctant to disclose the touching to his mother. In addition, defendant specifically stated in his interview with Webb that T.K. touched defendant's penis in the bathroom within a week of the interview. Defendant made this statement after initially denying that any child recently touched his penis. The fact that T.K. put his hand on defendant's penis while defendant was using the bathroom could lead a reasonable juror to conclude that skin-to-skin contact occurred. Viewing the evidence in a light most favorable to the State, we conclude a rational juror could have found that T.K. touched defendant's penis with his hand and that skin-to-skin contact occurred.

¶ 119 Count VII alleged that defendant touched L.K.'s penis with his hand. All of the evidence consistently demonstrated that defendant touched L.K.'s private area, which L.K. identified as his penis. Christy K. testified that she asked L.K. if defendant touched L.K.'s penis, and L.K. responded, "oh yeah, we do that in the blue chair. He does that all the time. I like it. He likes wee-wees." Christy K. testified that L.K. called his penis a "wee-wee." Christy K. also observed L.K. "exploring his body" in the bathtub the following day. Christy K. specifically observed L.K. "grabbing his penis." When Christy K. asked L.K. what he was doing, L.K. stated, "well papa boy

does that at Martin's." Christy K. clarified that L.K. referred to defendant as "papa boy." Moreover, as previously noted, defendant admitted during his interview with Webb that he adjusted the children's penises at nap time. Defendant specifically described an incident where L.K. had an erection in the morning hours. Defendant described tucking L.K.'s penis up against his stomach. Viewing this evidence in a light most favorable to the State, we conclude that a rational juror could have found that skin-to-skin contact occurred when defendant touched L.K.'s penis with his hand.

¶ 120 Count VIII alleged that defendant had L.K. touch defendant's penis with L.K.'s hand. We acknowledge that L.K. testified that the touching occurred over the clothing at trial; however, the jury was also presented with L.K.'s CAC interview. During the interview, L.K. shook his head in the affirmative when asked if the skin of his hand touched the skin of defendant's penis. Moreover, Christy K. testified that L.K. began crying hysterically and stated that he was scared he would go to jail for touching defendant's private parts. Viewing this evidence in a light most favorable to the State, we conclude that a rational juror could have found that skin-to-skin contact occurred when L.K. touched defendant's penis.

¶ 121 As a final point, defendant maintains that the State failed to prove that the touching occurred with the purpose of his own sexual gratification or arousal. We disagree.

¶ 122 "The intent to arouse or satisfy sexual desires can be established by circumstantial evidence, and the trier of fact may infer a defendant's intent from his conduct." *People v. Burton*, 399 Ill. App. 3d 809, 813 (2010). Several factors that may be considered in determining whether a defendant acted with the intent of sexual gratification or arousal include: the relationship between the defendant and the victim; if anyone else was present; the length of the contact; the purposefulness of the contact; whether there was a legitimate, nonsexual purpose for the contact;

when and where the contact occurred; and the conduct of the defendant and the victim after the contact. *People v. Ostrowski*, 394 Ill. App. 3d 82, 92 (2009).

¶ 123 In the present case, the evidence demonstrated that defendant touched the children's penises and that the children touched defendant's penis. Several children made jerking motions with their hands when demonstrating how the touching occurred. The evidence showed that the touching occurred in the bathroom or in the nap room at the daycare when no other adults were present. While there were some inconsistencies in the children's testimonies, we note that a victim's account "need not be unimpeached, uncontradicted, crystal clear, or perfect in order to sustain a conviction for sexual abuse" or assault. *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 84. While defendant stated during his interview with Webb that he occasionally adjusted the male children's erections and changed their diapers, the jury did not find his explanations credible. See *People v. Baker*, 2022 IL App (4th) 210713, ¶ 35 ("A trier of fact's credibility determinations are entitled to great weight."). Moreover, defendant admitted that he occasionally had erections when the children were on his lap during nap time, and law enforcement found defendant's semen on chairs in the daycare where the children indicated the touching occurred. Defendant initially denied that his semen would be found on the chairs during his interview with Webb but later indicated that he may have masturbated in the chairs. Given the inconsistency in defendant's statements, the jury may have found he lacked credibility. See *id.* This evidence, taken together, was sufficient to establish that defendant touched the children, and had the children touch him, with the purpose of his own sexual arousal or gratification.

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

that the evidence, although conflicting on some points, was sufficient to support defendant's convictions for predatory criminal sexual assault of a child.

¶ 125 III. Conclusion

¶ 126 For the reasons stated, we affirm the judgment of the circuit court of Effingham County.

¶ 127 Affirmed.