

the Juvenile Court Act of 1987 (705 ILCS 405/5-105(3) (West 2008)). Count I of the petition charged Tyler W. with aggravated criminal sexual assault in violation of section 12-14(b)(i) of the Criminal Code of 1961 (the Code) (720 ILCS 5/12-14(b)(i) (West 2008)) in that "defendant placed her tongue in the vagina of K.B." The State filed an amended petition for adjudication of wardship on February 10, 2009, changing count I to "defendant placed her finger in the vagina of K.B." The State also added count III charging that "defendant knowingly touched the vagina of K.B. for the purpose of the sexual arousal of the defendant" in violation of 12-16(c)(2) of the Code (720 ILCS 5/12-16(c)(2) (West 2008)).

¶ 4 On January 15, 2009, the State filed a motion to admit hearsay evidence pursuant to section 115-10(b)(1) of the Criminal Code of 1963 (Criminal Code) (725 ILCS 5/115-10(b)(1) (West 2008)) seeking to introduce into evidence K.B.'s disclosures during an interview with a forensic interviewer, Cheryl Woodham, regarding the sexual conduct committed against her by Tyler W. The defendant filed a response to the State's motion on February 3, 2009, arguing that the disclosures did not fall under any hearsay exceptions.

¶ 5 A bench trial was held on February 10, 2009. At the beginning of the hearing, the trial court addressed the State's motion to admit hearsay evidence and explained that section 115-10 of the Criminal Code allows for a separate hearing held outside the presence of the jury on the admissibility of the testimony. However, the court explained that the parties had agreed to forego a separate hearing and allow the court to conduct the hearing on the motion during the bench trial.

¶ 6 During the bench trial, K.B. testified that she knew Tyler W. because Tyler W. had been at her house with her aunt, Kathryn Acord, to babysit her. When asked whether she and Tyler W. played together, K.B. responded that she did not remember. K.B. testified that she and Tyler W. were alone in the toy room together while Kathryn and K.B.'s brother were in another room. K.B. testified that Tyler W. had touched her "privacy" area. K.B. also

testified that she thought that Tyler W. had touched her inside her clothing. When the State asked K.B. what Tyler W. did with her hand, K.B. responded that she did not know. The State also questioned K.B. whether anything else had happened, and K.B. responded, "I don't know" and "I don't remember." On cross-examination, K.B. testified that Tyler W. had also kissed her on the mouth. On redirect, the State pressed whether Tyler W. had kissed her on the mouth and touched her, and K.B. responded that Tyler W. had done both.

¶ 7 Christine Acord, K.B.'s mother, testified that her sister, Kathryn Acord, dated Tyler W.'s older brother, John. She explained that Tyler W. would come over to her house with Kathryn to help babysit K.B. and K.B.'s brother. She estimated that Tyler W. had helped Kathryn babysit the kids "a handful of times" in the summer of 2007. Christine testified that K.B. had enjoyed being around Tyler W. However, shortly after the last time Tyler W. had babysat K.B., K.B. said that she did not want Tyler W. to babysit her anymore. Christine assumed that K.B. had gotten in trouble and that it was not "fun anymore" to have Tyler W. babysit. She also testified that K.B. did not report the incident to her until a few days before Christmas 2007.

¶ 8 Kathryn Acord, K.B.'s aunt, testified that she knew Tyler W. because she was dating Tyler W.'s older brother, John. She testified that Tyler W. had accompanied her to babysit K.B. and her brother about three times. On one occasion, Tyler W. and K.B. were alone in K.B.'s room, which is also the toy room. Kathryn, her daughter, and John were in another room watching a movie. K.B.'s brother came into the room and Kathryn asked why he was not playing with K.B. and Tyler W. Kathryn then went to the toy room to check on K.B. and Tyler W., and she observed them both on the top bunk bed. K.B. was lying down on the bed and Tyler W. was sitting at the end of K.B.'s legs. As Kathryn walked in, K.B. sat up really fast and Kathryn asked what they were doing and K.B. responded that they were playing a game. According to Kathryn, K.B. was wearing only a t-shirt and underwear and Tyler W.

was fully clothed. Kathryn testified that K.B. had been wearing pants and she did not see K.B. take off her pants. Kathryn felt that what she had observed was "weird."

¶ 9 Cheryl Woodham, executive director of the Guardian Center at the Children's Advocacy Center, testified that she also worked as a forensic interviewer. She had been trained to interview children and had conducted over 1,000 interviews. Her extensive training had taught her to examine the developmental levels at different ages of children, the appropriate types of questions to ask in interviews, to avoid using leading questions during interviews, and to identify "coaching."

¶ 10 Woodham testified that she had interviewed K.B. on January 4, 2008. Woodham explained that prior to the interview, she had attempted to videotape-record the interview. She testified that she had checked the equipment to make sure that it was functioning properly and had checked that the record light and amplifier were turned on.

¶ 11 Woodham then began the interview by developing a rapport with K.B. to ensure that K.B. felt comfortable speaking with her. Woodham then learned the language that K.B. used to identify the various parts of the body using a body chart. When Woodham asked about the incident, K.B. initially indicated that no one had touched her on her private parts. However, K.B. later stated that Tyler W. had touched her, kissed her on the lips, licked her on her "pee-pee," and put her fingers inside her "pee-pee." K.B. also indicated that Tyler W. had taken off her clothing and she was lying down with Tyler W. K.B. also indicated that she was wearing clothes, but her underpants "probably came down." K.B. told her that the incident occurred in her room, which she also called the "toy room," while Kathryn and John were in the computer room. K.B. further indicated that similar incidents with Tyler W. had occurred "a lot of times and on different nights," but K.B. only discussed this one particular incident.

¶ 12 According to Woodham, K.B.'s answers to her questions were spontaneous and she

did not appear to be "coached." Woodham testified that K.B. had no incentive to fabricate the sexual assault. She also explained that children generally wait to tell about these types of incidents. Finally, Woodham testified that when she went to review the tape-recorded interview, she discovered that there had been a recording malfunction and the interview had not been recorded. Therefore, Woodham used her notes that she had taken during the interview to prepare her report.

¶ 13 Donna Hesterly testified that she is employed by the Department of Children and Family Services (DCFS) as a child protection specialist. On March 13, 2008, she interviewed K.B. at K.B.'s school. K.B. told her that Tyler W. was at her house and had kissed her on the mouth. Hesterly then asked whether anything else happened and K.B. responded that nothing else had happened. K.B. then said that she could not remember if anything else had happened and that she did not want to talk about what else had happened. Hesterly then ended the interview with K.B.

¶ 14 At the conclusion of the bench trial, the trial court ruled that K.B.'s disclosures to Woodham would be admitted into evidence. According to the trial court, the time, content, and circumstances of the statement provided sufficient safeguards of reliability for the hearsay evidence to be admitted into evidence as an exception to the hearsay rule. The trial court noted that Woodham had sufficient training and experience with interviewing and had followed a protocol. The trial court accepted Woodham's assessment that K.B.'s statements appeared to be spontaneous. The trial court also found K.B.'s terminology to be "unexpected" for a child of her age.

¶ 15 The court also addressed other cases in which the courts refused to allow a statement into evidence because there was no videotape recording of the interview. The court felt the instant case was different from those cases because Woodham had intended to record the interview and believed the videotape recorder was operating properly. Therefore, this case

was different from situations where a videotape recording was not used at all. The trial court noted that Woodham believed that the interview had been recorded and only discovered that it had not been recorded when she went to review the taped interview.

¶ 16 The trial court rendered its verdict and found Tyler W. guilty of aggravated criminal sexual assault. On April 28, 2009, Tyler W. was sentenced to five years' probation. The defendant filed a timely notice of appeal on May 12, 2009.

¶ 17 On appeal, the defendant first argues that the trial court improperly admitted hearsay evidence. The admission of evidence is within the sound discretion of the trial court, and its ruling should not be reversed absent a clear showing of abuse of that discretion. *People v. Ward*, 101 Ill. 2d 443, 455-56 (1984). Section 115-10 of the Criminal Code (725 ILCS 5/115-10 (West 2008)) provides that a trial court may admit into evidence an out-of-court statement made by a victim under the age of 13 to another person regarding a sexual assault perpetrated against the victim. Furthermore, section 115-10 of the Criminal Code provides that the trial court must conduct a hearing that determines whether the time, content, and circumstances of the victim's statement provide sufficient safeguards of reliability. In regard to the factor of time, the failure of a young sexual assault victim to make a prompt complaint is easily understandable because of the natural sense of shame, fear, revulsion, and embarrassment felt by children under such circumstances. *People v. Deavers*, 220 Ill. App. 3d 1057, 1070 (1991).

¶ 18 In the instant case, as to the time of the hearsay statement, the defendant argues that there was a significant time delay between the time the sexual assault occurred, the time that it was reported by K.B., and when K.B. was interviewed. The incident occurred as early as July 2007. However, K.B.'s mother testified that K.B. did not report the sexual assault to her until a few days before Christmas 2007, and Woodham did not interview K.B. until January 4, 2008. Accordingly, there was possibly a six-month delay from the time the sexual assault

occurred and the time that it was reported by K.B. Multiple Illinois courts have admitted the hearsay statements of children who were sexually assaulted, even after lengthy delays of reporting the crime. See *People v. Jahn*, 246 Ill. App. 3d 689, 703-04 (1993); *People v. Anderson*, 225 Ill. App. 3d 636, 649 (1992); *People v. Booker*, 224 Ill. App. 3d 542, 545 (1992); *In re M.M.*, 171 Ill. App. 3d 334, 343 (1988). The delay in the instant case was no longer than the delays in these cases, and the defendant cites no case which would indicate that a six-month delay makes a victim's statement inherently unreliable. Furthermore, Woodham indicated at trial that children generally wait to tell someone regarding sexual assault.

¶ 19 In regard to the content of the hearsay statement, the defendant argues the following: (1) the trial court was unclear whether K.B.'s terminology describing the sexual assault was consistent with her age group, (2) Woodham's testimony regarding K.B.'s hearsay statement was not credible, and (3) Woodham's testimony was inconsistent with K.B. and her mother's testimony.

¶ 20 We first turn to the defendant's claim that the trial court was unclear whether K.B.'s terminology describing the sexual assault was consistent with her age group. Woodham testified that K.B. indicated to her that the defendant had "kissed her on the mouth," "licked her pee-pee," and "put her fingers inside her pee-pee." The court stated the following:

"THE COURT: *** I would have to say the terminology was unexpected for a child of this age, which by my calculations would be somewhere around 6 years old at the time this statement was made. And statements with regard to inserting finger into the pee-pee, licking her pee-pee, and kissing on the mouth would not—might be something that that child that age [*sic*] would be familiar with, but the others would find that to be terminology that I would not expect for them to be aware of."

¶ 21 The trial court reasoned that K.B.'s understanding of oral sex and digital penetration

would not be common to children among her age group. However, the terminology K.B. used to describe specific body parts were certainly common terminology for her age group. For the defendant to have this court believe that the trial court "was not entirely clear whether he meant that the terminology was or was not expected by a child of the alleged victim's age" is simply unsupported by the record.

¶ 22 We turn next to the defendant's argument that Woodham's testimony regarding K.B.'s statement was not credible. Specifically, the defendant argues that "a review of the interviewer's testimony reveals a lack of compelling details that would lend to corroboration." First, the defendant fails to cite any analogous case law or examples from the record to support her claim. To the contrary, a review of the record shows that Woodham's testimony corroborated K.B.'s testimony, included the identification of the defendant, the room where the assault occurred, the parties inside the home at the time the assault occurred, and K.B.'s testimony that the defendant touched her vagina. Although K.B.'s testimony at trial was not as detailed as her interview with Woodham, she explained that it is essential to establish a rapport with the child so that she feels comfortable talking to her. Accordingly, it is very likely K.B. felt uncomfortable testifying in court but was more open and comfortable talking with Woodham. We therefore reject the defendant's argument.

¶ 23 Finally, the defendant's contention that Woodham's testimony was inconsistent with K.B. and her mother's testimony is also unsupported. The defendant argues that K.B. and her mother testified that the sexual assault occurred at K.B.'s father's house, whereas Woodham testified that she thought the assault occurred at the defendant's house. After a thorough review of the record, the testimony from the witnesses reveals that they were all describing the same house. Their testimony uniformly indicated that the sexual assault occurred in the toy room, the layout of the house had a computer room nearby, and the toy room had bunk beds.

¶ 24 Next, the defendant asserts that the trial court failed to properly consider the circumstances of K.B.'s statement. Specifically, the defendant notes that the interview was not videotape-recorded and Woodham's interviewing techniques were "questionable."

¶ 25 In the instant case, Woodham attempted to and intended to videotape-record the interview with K.B. Woodham testified that prior to the interview, she made sure to check the equipment and check that the record button and amplifier were turned on. Because the equipment malfunctioned, Woodham was not able to review the video. The record reveals that the trial court noted, "I think that even though the tape didn't work, Ms. Woodham was under the impression it was going to work, that what she was doing would be reviewed at a later date by attorneys and judges." The trial court also noted that this case was different from other cases where no videotape recording was provided. We also note that courts have held that while taping an interview of a child sexual assault victim is recommended, the failure to do so will not automatically make the victim's statement inadmissible. See *People v. Cookson*, 335 Ill. App. 3d 786 (2002), *aff'd*, 215 Ill. 2d 194 (2005). Accordingly, we conclude that under the circumstances, the lack of a videotape recording of the interview does not make K.B.'s statements inherently unreliable.

¶ 26 As to whether Woodham's interviewing techniques were "questionable," the record reveals that Woodham had substantial training in forensic interviewing techniques with children and had conducted more than 1,000 interviews. Woodham was trained to differentiate the developmental levels of different ages of children and the appropriate types of questions to ask. She was also trained to detect "coaching" and was trained to avoid using "leading questions." Woodham was both knowledgeable and experienced in child victim interviews. Woodham testified that K.B.'s responses were spontaneous, K.B. did not appear to be coached, and K.B. had no incentive to fabricate the sexual assault. We therefore reject the defendant's argument that Woodham's interviewing techniques were "questionable." We

conclude that the trial court did not abuse its discretion by admitting K.B.'s statement into evidence because the trial court properly considered the time, content, and circumstances surrounding it.

¶27 Next on appeal, the defendant argues that the State failed to meet its burden and prove her guilty of aggravated sexual assault beyond a reasonable doubt. The defendant contends that K.B.'s testimony was so inconsistent that it should have been granted very little weight, Woodham's testimony was not credible because it was based on K.B.'s untrustworthy statements, and Woodham knew the defendant was accused of sexually assaulting K.B. before interviewing her.

¶28 Pursuant to section 12-14(b)(i) of the Code (720 ILCS 5/12-14(b)(i) (West 2008)), to sustain a conviction of aggravated criminal sexual assault, the State must prove that the defendant was under 17 years of age and that the defendant committed an act of sexual penetration with a victim who was under 9 years of age when the act was committed. Whether a defendant has been proven guilty beyond a reasonable doubt is determined after considering the evidence in a light most favorable to the prosecution. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). If the evidence is not sufficient, the conviction must be reversed. *People v. Campbell*, 146 Ill. 2d 363, 374 (1992). A reviewing court's function is not to "retry the defendant." *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, it is the trier of fact who assesses the credibility of the witnesses, determines the appropriate weight of the testimony, and resolves conflicts or inconsistencies in the evidence. *People v. Graham*, 392 Ill. App. 3d 1001, 1009 (2009).

¶29 The defendant asserts that K.B.'s testimony was so inconsistent that it should be granted little weight. According to the defendant, K.B. could not "hold to one version of events" and K.B.'s initial denial given to Woodham and Hesterly weakened her subsequent statements. However, Woodham testified at trial that "children generally wait to tell"

someone regarding sexual assault and that a rapport is needed to be built with a child victim before the child typically reveals that a sexual assault occurred. Illinois courts have recognized this notion and supported convictions where the child victim initially denies that a sexual assault occurred. See *People v. Anderson*, 225 Ill. App. 3d 636 (1992); *People v. Turner*, 241 Ill. App. 3d 236 (1993).

¶ 30 The defendant also argues that K.B.'s statements made to Woodham and Hesterly differed from her testimony at trial. In response, the State argues that K.B.'s statements merely provided different levels of detail regarding the sexual assault. Thus, the inconsistencies between K.B.'s statements to Woodham and Hesterly and her testimony at trial do little to discredit whether the sexual assault occurred. Her statement to Woodham provided the most detail of the sexual assault, indicating that the defendant had "kissed her on the lips, "licked her pee-pee," and "put her fingers inside her pee-pee." K.B.'s testimony during the bench trial corroborated the kissing and digital sexual assault. While K.B. did not testify to the oral sexual assault, she specifically stated "I don't remember" when prompted by the prosecutor. Accordingly, K.B. did not recant the oral sexual assault, but rather, she stated she did not remember.

¶ 31 The trial court was in the best position to view K.B. when she was testifying and determine whether K.B. actually did not remember the oral sexual assault or whether she was too uncomfortable to testify in depth. In any event, the trial court found the defendant guilty of count I in that she "placed her finger in the vagina of [K.B.]" K.B. specifically corroborated this fact in her testimony at trial and in her previous statement to Woodham. Furthermore, K.B. told Hesterly that Tyler had kissed her on the mouth, but she did not want to talk about what happened further. Hesterly ended the interview after K.B. indicated that she did not want to talk about the incident. The record indicates that K.B. had more to say regarding the sexual assault, but was unwilling to talk to Hesterly. Certainly, K.B. provided

more detail about the sexual assault to Woodham. The differing levels of details in her statements to Woodham and Hesterly did not make her statements less credible or unbelievable.

¶ 32 Ultimately the trial court found K.B. credible, despite any discrepancies between her previous statements and her testimony at trial. The trial court noted that when K.B. hesitated in her answers, it was clear she was processing information rather than fabricating a response, whereas when K.B. was not hesitating, it showed her willingness to answer questions. The trial court therefore acknowledged the totality of the facts before finding the defendant guilty beyond a reasonable doubt. The trial court heard the evidence, viewed the witnesses, and was in the best position to determine K.B.'s credibility.

¶ 33 The defendant also asserts that Woodham's testimony was not credible because her testimony was based on K.B.'s untrustworthy statements and Woodham knew the defendant was accused of sexually assaulting K.B. prior to interviewing K.B. Again, the law is clear that the trier of fact "assess[es] the credibility of the witnesses, determine[s] the appropriate weight of the testimony, and resolve[s] conflicts or inconsistencies in the evidence." *People v. Graham*, 392 Ill. App. 3d 1001, 1009 (2009).

¶ 34 The trial court was presented with substantial evidence that K.B.'s statement was credible. Woodham testified that K.B. had no motive to fabricate the sexual assault, and there is nothing in the record to indicate that Woodham would lie under oath or improperly question K.B. To the contrary, the record indicates that Woodham had conducted over 1,000 interviews, had extensive training, was specifically trained to avoid using "leading questions," and was trained to detect "coaching." Woodham testified that K.B. did not appear to be coached, her answers were spontaneous, and she had no motive to lie. Although the interview was not recorded, Woodham's belief that it was being recorded and would be reviewed bolstered the reliability of her questioning. Accordingly, we conclude that the State

met its burden and proved the defendant guilty of aggravated criminal sexual assault beyond a reasonable doubt.

¶ 35 Finally on appeal, the defendant argues that she received ineffective assistance of counsel for two reasons: (1) her trial attorney did not effectively cross-examine K.B., and (2) her trial counsel did not object to the victim's competency to testify.

¶ 36 The standard of review for assessing ineffective assistance of counsel claims is set out in the two-pronged test enunciated in *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Under the first prong in *Strickland*, the defendant must show that counsel's performance was deficient in that it fell below an objective standard of reasonableness. *People v. Evans*, 209 Ill. 2d 194, 219-20 (2004). The defendant must overcome a strong presumption that, under the circumstances, counsel's conduct might be considered sound trial strategy. *People v. Peebles*, 205 Ill. 2d 480, 512 (2002). Under the second prong, the defendant must show that she suffered prejudice in that but for counsel's deficient performance, there was reasonable probability that the result of the proceeding would have been different. *Evans*, 209 Ill. 2d 219-20. In order to prevail on a claim of ineffective assistance of counsel, a defendant must satisfy both prongs of *Strickland*. *Evans*, 209 Ill. 2d at 220.

¶ 37 The defendant argues that her trial counsel was ineffective because his cross-examination of K.B. went into substantially more detail than the State's direct examination and spans over 10 pages. Specifically, the defendant argues that her defense counsel's line of questioning regarding K.B.'s television viewing was not part of an objectively reasonable strategy and that the substandard performance resulted in prejudice to her.

¶ 38 It is well-settled that the decision whether to call a particular witness and the manner and extent of cross-examination is a matter of trial strategy and thus will not ordinarily support an ineffective assistance of counsel claim. *People v. Ramey*, 152 Ill. 2d 41, 53-54 (1992). An attorney's chosen trial strategy must be "so unsound that counsel completely fails

to conduct any meaningful adversarial testing." *People v. Leeper*, 317 Ill. App. 3d 475, 482 (2000). Our supreme court has held, "[E]ffective advocacy is not measured by the number of objections raised or the number of pages of cross-examination." *People v. Williams*, 139 Ill. 2d 1, 19 (1990). Furthermore, effective assistance of counsel refers to competent, not perfect, representation. *People v. Palmer*, 162 Ill. 2d 465, 476 (1994).

¶ 39 The record reveals that defense counsel's line of questioning regarding K.B.'s television viewing was a tactic used to discover whether K.B. had been exposed to sexually explicit images on television, which could have influenced or exaggerated her statements made against the defendant. We cannot conclude that the defendant's counsel rendered deficient assistance by questioning K.B. regarding her exposure to television. The testimony elicited from K.B. during the cross-examination did not prove any essential element of the defendant's charge of aggravated sexual assault. See *People v. Bailey*, 374 Ill. App. 3d 608 (2007). The testimony at most helped bolster K.B.'s credibility that she was not unduly influenced by outside sources.

¶ 40 The defendant also argues that her trial counsel elicited information that corroborated K.B.'s previous statements to Woodham. The defendant contends that her attorney should have impeached K.B. because "there is a possibility for exaggeration or embellishment the longer the time between the incident and the complaint." We reject this argument. The record reveals that the defendant's counsel conducted a thorough cross-examination that emphasized K.B.'s delay in reporting the sexual assault to her mother and K.B.'s less detailed prior statements to Hesterly, the DCFS investigator.

¶ 41 The defendant also argues that her counsel was ineffective for failing to object to K.B.'s competency to testify. The defendant's argument belies the record. The defendant's counsel stated in court, "[T]he child is under 13 years of age and I would ask the Court to conduct a competency hearing to make sure the witness understands the nature of the oath."

The court responded, "I'll give [the defendant's trial attorney] an opportunity to ask any additional questions and allow that to take place" during the initial questioning of K.B. Once K.B. took the stand, the defendant's counsel had an opportunity to question K.B.'s competency. It was only after K.B. showed that she was capable to testify that the defendant's counsel opted not to object to her competency. Under these circumstances, we cannot conclude that the defendant's counsel provided her with ineffective assistance of counsel.

¶ 42 For the foregoing reasons, the judgment entered by the circuit court of White County is hereby affirmed.

¶ 43 Affirmed.