

The defendant did not charge Durham for his babysitting services. The defendant gave D.B. gifts on a regular basis.

¶ 5 After 18 months, D.B.'s mother noticed that D.B. was masturbating on a regular basis. When questioned about why she was masturbating, D.B. explained that she had been touched inappropriately by the defendant's daughter, K.B., while they were showering at the defendant's home. After learning this, Durham no longer had the defendant babysit D.B. Despite the discontinuation of the relationship between D.B. and the defendant, D.B. continued masturbating. After many months of this behavior, D.B. finally told her mother that she had not been touched by the defendant's daughter, but by the defendant himself. Specifically, she told her mother that the defendant placed his "private" body part in her buttocks (butt) and in her vagina (hoo-hoo). Durham contacted the Department of Children and Family Services with this information.

¶ 6 Gwendolyn Basinger, an Illinois State Police special agent, interviewed D.B. on March 7, 2008, as a part of the police investigation of allegations that the defendant sexually abused D.B. The interview occurred at a child advocacy center in Harrisburg and was recorded. The recording was played for the court. In the recording, D.B. tells Officer Basinger about sexual assaults she had experienced. During the interview, D.B. clearly describes in her own terms that the defendant assaulted her with penetration both vaginally and anally. She explained that the defendant would do these acts to her after his children left for the day to go to school. Regarding oral contact, D.B. states on the recording that the defendant put his "private" in her mouth sometimes when she was sleeping, and she told Officer Basinger that she would not wake up when he did this.

¶ 7 Ginger Myer, a medical social worker who works for the Southern Illinois University School of Medicine, was present at D.B.'s medical examination. She took a medical history from D.B. and wrote up a report that became a part of D.B.'s medical record. Myer asked

D.B. what, if anything, on her body hurt. D.B. indicated that her "private" area hurt, and when pressed for elaboration, D.B. told Myer that a boy put his "private" in her "private." D.B. further explained, telling Myer that the boy touched her "pee-pee" with his "pee-pee" and that he had touched her "butt" with his "pee-pee." When asked if there had been oral contact, D.B. said no, but then went on to report that the boy put his "pee-pee" in her mouth while she was sleeping. When asked how she would know that the boy did this if D.B. was sleeping, D.B. told Myer that she knew because the boy's actions caused her to choke—that she would "wake up" choking.

¶ 8 Toni Anderson, a youth therapist at Egyptian Health Department, testified that D.B. had become one of her patients. D.B. told Anderson, in the course of her treatment, that the defendant put his "privates" on her "privates" and that he put his "privates" in her mouth.

¶ 9 D.B. testified at trial. She was seven years old at the time of trial. The defendant was her former babysitter. The defendant's children were present at times when he babysat her. She would spend the night at the defendant's home occasionally. The sexual assaults occurred in three parts of the defendant's home—in his daughter's bedroom on her bed, in the living room on the couch, and in the basement. D.B. testified that the defendant placed his "private" in her "private" and in her "butt." She also testified that the defendant tried to put his "private" in her mouth. She testified that she knew he had tried to do so because she felt his penis touching her chin. She described the oral contact as occurring in the living room. D.B. was not able to provide details about the frequency of the assaults or information about the dates of the assaults.

¶ 10 The defendant did not testify at trial.

¶ 11 At the end of the trial, the trial judge stated that he found D.B.'s prior, out-of-court statements reliable and further found D.B.'s trial testimony to be credible. The trial judge convicted the defendant of three of the four counts—count I (the defendant touched D.B.'s

vagina with his penis), count III (the defendant placed his penis in D.B.'s mouth), and count IV (the defendant placed his penis in D.B.'s anus). The defendant was acquitted of count II (the defendant placed his finger in D.B.'s vagina).

¶ 12 At sentencing, the defendant received consecutive 12-year sentences on each of the three convictions.

¶ 13 The defendant appeals from his conviction for the oral predatory sexual assault. He does not contest his convictions for the vaginal and anal sexual assaults.

¶ 14 **LAW AND ANALYSIS**

¶ 15 The defendant's conviction must be reversed if the State failed to prove the defendant guilty of predatory criminal sexual assault beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276-77 (1985); *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). On appeal, the question to be resolved is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) On appeal, the reviewing court defers to the trier of fact on all issues related to the weight of the evidence and/or the credibility of the witnesses. *People v. Castillo*, 372 Ill. App. 3d 11, 20, 865 N.E.2d 208, 217 (2007).

¶ 16 The defendant asks this court to reverse his conviction, arguing that D.B.'s testimony was insufficient to support an element of the predatory criminal sexual assault offense beyond a reasonable doubt—that there was penile-oral contact. The State is required to prove each element of predatory sexual criminal assault beyond a reasonable doubt. *In re Winship*, 397 U.S. 358, 364 (1970).

¶ 17 Predatory criminal sexual assault occurs when "(1) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of

age when the act was committed." 730 ILCS 5/12-14.1(a)(1) (West 2008). The term "sexual penetration" is statutorily defined as "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person ***." 720 ILCS 5/12-12(f) (West 2008).

¶ 18 At trial, D.B. testified in court. Her in-court testimony about penile-oral contact was minimal. She testified that while she was lying on a couch in the defendant's living room, he tried to put his penis in her mouth. She explained that she knew that he tried to do so, because she "felt it." She clarified that his penis was touching her chin. The defendant argues that this testimony fell short of proof that the penis actually made oral contact with D.B., and that at best, it could serve to prove a lesser attempt-based offense.

¶ 19 The defendant's argument may have merit if the only evidence before the court was D.B.'s in-court testimony. However, the trial judge specifically found that D.B.'s out-of-court statements, including the videotaped interview of D.B. conducted shortly after she revealed the sexual assaults, were credible. In the videotape, which we have reviewed, D.B. further details the penile-oral contact. She told the investigator that the defendant put his penis in her mouth on more than one occasion. She provided the time-line of when these events occurred—corresponding with when the defendant's children left the home to go to school. She also provided the location of these acts—in the defendant's bedroom and on his couch in the living room. D.B. stated that she was asleep when these penile-oral contacts occurred. D.B. explained to social worker Ginger Myer that when the defendant put his penis in her mouth while she was asleep, she would start choking. Whether D.B. was really asleep and woke up choking and discovered that the defendant's penis was in her mouth, pretending to be asleep, or engaging in some self-protective act during the assaults, was all within the trial court's consideration. The trial court was able to assess the credibility and demeanor of D.B.—not only during her videotaped statements but also during her testimony during trial.

The testimony and videotaped statements were considered by the trial judge in light of D.B.'s age, maturity, and circumstances in which her testimony and statement were given.

¶ 20 Although D.B.'s in-court testimony was potentially deficient in establishing that the defendant put his penis in her mouth, D.B.'s out-of-court specific and graphic descriptions adequately established that element of the charge. We conclude that a rational trier of fact could have found that the State proved the element of penile-oral contact in count III beyond a reasonable doubt, and we affirm that conviction.

¶ 21 CONCLUSION

¶ 22 For the foregoing reasons, the judgment of the circuit court of Saline County is hereby affirmed.

¶ 23 Affirmed.