

2014 IL App (2d) 130289-U
No. 2-13-0289
Order filed February 18, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the Circuit Court of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 12-CM-1661
)	
LYNN SMART,)	Honorable
)	George D. Strickland,
Defendant-Appellant.)	Judge, Presiding.

PRESIDING JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Schostok concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in admitting evidence of certain bad acts by defendant, the court did not consider evidence outside the record, and defense counsel was not ineffective for stipulating to certain witnesses' testimony regarding the charged offense and defendant's prior bad acts.

¶ 2 Following a bench trial, defendant, Lynn Smart, was convicted of two counts of domestic battery (720 ILCS 5/12-3.2(a)(1), (a)(2) (West 2012)) for striking her daughter, Audrey, in the face. The trial court merged the convictions and imposed a sentence of one year conditional discharge. On appeal, defendant argues that (1) the court abused its discretion in considering

certain bad acts of discipline by defendant; (2) the court considered evidence of those bad acts that was outside the record, and (3) defense counsel was ineffective for stipulating to certain witnesses' testimony regarding the charged offense and the prior bad acts. We affirm.

¶ 3

I. BACKGROUND

¶ 4 Defendant and her husband, Brian Smart, adopted Audrey and her twin sister, Isabelle, from another country when they were one year old. The girls' brother, Zachary, was born a few years later. The incident occurred when Audrey and Isabelle were eight years old and experiencing problems with bedwetting, biting their fingernails, and picking their cuticles until they bled.

¶ 5 To prevent bedwetting, defendant woke Audrey and Isabelle nightly to use the bathroom. The State presented evidence that, about 10:30 p.m. on Monday, April 9, 2012, defendant woke the girls and led them to their bathroom to use the toilet. Defendant placed Audrey on the toilet and left to gather the household trash for collection the next morning. When defendant returned, Audrey still was on the toilet. According to the State, defendant became angry with Audrey for dawdling and punched Audrey in the face below her right eye, causing a bruise. Defendant was charged with two counts of domestic battery in that she knowingly, without legal justification, caused bodily harm (720 ILCS 5/12-3.2(a)(1) (West 2012)) and made contact of an insulting nature (720 ILCS 5/12-3.2(a)(2) (West 2012)) with Audrey, a family or household member, by striking Audrey in the face.

¶ 6 The next morning, Audrey's bruise was observed at home and school, and defendant was removed from the home two days later. Soon thereafter, defendant and Brian began marriage dissolution proceedings. Each petitioned for custody of the children.

¶ 7 Before trial, the parties filed opposing motions *in limine* regarding prior bad acts of excessive discipline by defendant. Specifically, the State submitted evidence that (1) defendant applied to the girls' fingernails an over-the-counter fingernail polish with a distinctly bitter taste designed to discourage nail biting; (2) defendant forced the girls to wear winter gloves in the house and stand under cold showers as punishment for nail biting; and (3) defendant engaged in other acts of excessive discipline by striking the girls. The court ruled the evidence admissible, with the exception of the nail polish, which the court deemed "prophylactic" rather than punitive.

¶ 8 A. Stipulations

¶ 9 The parties stipulated to the testimony of certain witnesses. Brian is a physician with a background in pediatrics who practices as an allergist immunologist. The parties stipulated that Brian would testify that, on the morning of April 10, 2012, he asked Audrey how she bruised her face, and she replied that she "didn't know."

¶ 10 Bonnie Bodenheimer, a social worker at Audrey's school, would testify that she observed a bruise on Audrey's face on the morning of April 10, 2012. Audrey told Bodenheimer that her mother sometimes pinches and hits Audrey. When asked how she received the bruise under her eye, Audrey replied that she "forgot." Audrey then said that she "waked up" at 12 a.m. to use the bathroom, and that her mom hit her because she was not quick enough and wanted her to get off the toilet. Audrey further stated that she received a bruise on February 9, 2012, from falling.

¶ 11 Nurse Callaghan at Audrey's school would testify that she observed the bruise under Audrey's eye on the morning of April 10, 2012. Audrey said that "she fell and hit the wood on her bed."

¶ 12 Jane Postlewait, a caseworker with the Department of Children and Family Services (DCFS), would testify that she interviewed Audrey at 9:45 a.m. on April 11, 2012. At that time,

Audrey said that defendant pinches her all the time. Audrey said that she is afraid of defendant and that defendant hits, kicks, and pinches her. Regarding the bruise under her eye, Audrey stated that she used to wake up at 6 a.m. to use the bathroom. Audrey explained that defendant does not trust Audrey and Isabelle not to make a mess. Audrey reported that defendant punched her in the face pretty hard. Audrey stated that she had fallen out of bed before.

¶ 13 Postlewait also would testify that, on or about April 11, 2012, she spoke with defendant, who denied hitting the children but admitted spanking them with her hand. Postlewait would further testify that, on April 12, 2012, she again spoke with defendant, who admitted that she can be mean and strict with the children. Defendant again denied hitting the children but admitted pushing and shoving them. Defendant also told Postlewait that she did not mean to make her children afraid of her.

¶ 14 Postlewait and Principal Schneider of Audrey's school would testify that, on April 11, 2012, they interviewed Isabelle, who stated that defendant would use her hand to hit the girls on their arms. Isabelle said these incidents resulted in bruising on prior occasions. Isabelle indicated that defendant had also used a slipper to hit her and Audrey on prior occasions. Isabelle stated that defendant often disciplines her and her sister by forcing them to take "cold showers with the faucet handle being turned all the way to cold."

¶ 15 Dr. Madhuri Thota would testify that he examined Audrey at 11:09 p.m. on April 11, 2012. When Dr. Thota asked how she received the bruise, Audrey said "my mother, she hit me." Audrey also stated that she usually gets hit in her shoulders and back. Dr. Thota did not see any marks on Audrey's back or shoulders.

¶ 16 Margaret Kuczek, the children's nanny, would testify that she was interviewed on April 11, 2012. Kuczek did not see defendant hit the girls, but she saw one of the girls' slippers with

dried blood, and Audrey said that defendant hit her in the nose with the slipper a couple of months ago, causing her nose to bleed.

¶ 17 Brian would testify that he found Audrey's slipper with blood on it. Brian placed it in a brown evidence bag provided by Detective Wendell Russell of the Lake County sheriff's department and delivered the bag to his divorce attorney's office.

¶ 18 Detective Russell would testify that he came into possession of the slipper either by collecting it from Brian's divorce attorney or having it delivered to the sheriff's department, where the slipper was mistakenly misplaced or destroyed before trial. Detective Russell would testify that he spoke with Audrey and Isabelle in a way that was consistent with the video-recorded interviews admitted into evidence.

¶ 19 The court admitted by stipulation the State's undated photographs of Audrey taken after the incident. One of the photographs depicts a small red mark below Audrey's right eye.

¶ 20 The parties also stipulated to the admissibility of the video recording of Detective Russell's interviews of Audrey and Isabelle on April 13, 2012. Audrey's interview was 15 minutes and began with small talk about school and her life at home with her parents, siblings, and dog. Audrey said that defendant no longer lived in the house. Audrey described how she and Isabelle fight, wrestle, and hit each other, which angers their dad. Otherwise, life at home was "ok."

¶ 21 When asked what happened to her eye, Audrey said it had been bruised. Audrey described how defendant woke her to use the bathroom. While Audrey was still sitting down, defendant told her to get up and "got mad." Detective Russell asked whether defendant struck Audrey, and Audrey responded "with her fist" and clenched her fist to demonstrate. Audrey said that Isabelle was present to see the punch, and defendant did not apologize. Audrey said

defendant punched her on “Monday.” Audrey did not tell anyone about the incident but her teacher noticed her eye.

¶ 22 Audrey described a household punishment of paying five cents each time she forgot to pick up her socks. Defendant also made Audrey and Isabelle stand under cold showers or wear winter gloves in the house for picking the skin on their fingers. Zachary was not subject to the same punishments, but when he misbehaved defendant would “shake him a little bit.” Audrey demonstrated by holding out her arms and moving them as if she were shaking someone by the shoulders. Defendant yelled at the kids when they misbehaved.

¶ 23 When asked whether defendant had punched her before the charged incident, Audrey said at first that she could not recall. Audrey once had a bruise on her arm, but that was caused by wrestling with Isabelle. Audrey then recalled an incident one night where defendant punched her in the nose with a closed fist because Audrey did not put away her notebook. Some of Audrey’s blood got on her slipper. Audrey told her father. He was upset, but she could not recall exactly what he said.

¶ 24 Audrey told Detective Russell that Margaret comes to the house when defendant is at “grown up” school. Neither Margaret nor Brian ever struck Audrey, but defendant occasionally spanked Audrey’s rear with a slipper when Audrey was younger.

¶ 25 Following Audrey’s interview, Detective Russell spoke with Isabelle for 10 minutes. Isabelle told Detective Russell that defendant had to “go away” because she was “too mean” to the girls and “made a bruise” under Audrey’s eye. Isabelle said she did not see what happened, and Audrey did not tell her. Isabelle noticed Audrey’s bruise on the afternoon following the incident. Isabelle also said that defendant made the girls take cold showers as punishment. The cold showers were of normal duration. Audrey and Isabelle were allowed to take warm showers

when defendant was not angry with them. Defendant spanked Isabelle's back and bottom when she was about seven years old. Defendant restricted the girls' play as a form of punishment. If the girls picked their "boo-boos," defendant made them wear gloves in the house. Isabelle once had a bruise on her cheek but could not recall what caused it. Isabelle could not recall defendant ever punching or bruising her. Isabelle reported that she was not in the bathroom when defendant struck Audrey and did not hear Audrey cry.

¶ 26

B. Trial Testimony

¶ 27

1. Audrey

¶ 28 The trial court determined that Audrey, who was nine years old at the time of trial, was competent to testify. One night, Audrey woke up on her own in the middle of the night to use the bathroom, which was next to her bedroom. At Audrey's request, defendant entered the bathroom too. Audrey testified that defendant, with a closed fist, "hit" her under the right eye. The strike was painful and created a bruise. Audrey cried and returned to bed. Defendant did not say why she struck Audrey. Audrey did not tell her father that night what had happened.

¶ 29 The next morning, Audrey went to school and told her teacher what had happened. Audrey spoke with someone named Jane and a detective named Wendell. Audrey also testified that defendant had forced her and Isabelle to take cold showers and wear winter gloves inside. Defendant told Audrey that the showers and gloves were necessary because the girls picked their fingers.

¶ 30 Audrey testified that, in another incident, defendant was "mad at [her]" and struck her nose, which started bleeding. The blood dripped on one of Audrey's slippers. Audrey also saw defendant do "the same things" to Isabelle, including making her take cold showers, wear winter gloves in the house, and put bitter nail polish on her fingernails. Audrey testified that defendant

struck Isabelle too, but she could not remember a specific incident. Apparently referring to Audrey's testimony about the nail polish, the court commented that it would not consider testimony that had been deemed inadmissible.

¶ 31 On cross-examination, Audrey testified that defendant usually woke her in the middle of the night to use the bathroom to prevent bedwetting incidents. Audrey testified that, when defendant struck her, Isabelle also was in the bathroom and facing them. Isabelle saw Audrey cry.

¶ 32 Audrey recalled that, on the morning after the incident, defendant asked what caused the bruise under her eye and that Audrey responded that she did not know. Audrey's father also asked, and Audrey again said she did not know. Audrey recalled that, when the school nurse asked about the bruise on her eye, she responded that she fell out of bed and struck her face on some wood. Audrey admitted that when someone else asked her what happened, she said she forgot.

¶ 33 Audrey explained that when she picks her fingers, she picks at the skin and bites her nails. Biting her nails hurts and sometimes causes bleeding, but Audrey does it anyway. Defendant had forced Audrey to wear winter gloves indoors but switched to plastic gloves.

¶ 34 Audrey denied ever sleepwalking, including to her brother's room at night. Audrey and Isabelle took karate lessons together, but they did not spar or practice against each other. Audrey admitted that the sisters wrestled and argued frequently, but they did not fight when they used the bathroom late at night. Isabelle sometimes bruised Audrey, who admitted that she told Wendell that a bruise she had on her arm was caused by Isabelle.

¶ 35 Audrey denied falling out of bed or running into anything when she used the bathroom at night. Audrey and Isabelle roughhoused often, and the girls' father, but not defendant, usually told them to stop.

¶ 36 On redirect examination, Audrey testified that she did not bump into any furniture on the night of the incident. Audrey acknowledged that, on the day after the incident, she told her parents she did not know how she got the mark under her eye, but she testified that was not truthful. Audrey stated that her testimony in court that defendant struck her in the eye was truthful. Audrey stated that she did not answer truthfully before because she was nervous. Audrey denied that fighting with Isabelle caused the mark under her eye.

¶ 37 2. Defendant

¶ 38 Defendant testified that, around the time of the incident, Isabelle had urinary problems. Audrey and Isabelle shared a bedroom, and each slept in a twin bed on the ground. Defendant would wake both girls around 10:30 p.m. each night to use the bathroom. Using a dimmer switch, defendant would keep the lights low. Defendant would stand behind Audrey, lift her under her shoulders, guide her to the bathroom, direct her to pull down her pants, and sit her on the toilet. Defendant would repeat the process for Isabelle, who usually waited in the bathroom with Audrey and defendant. Each girl then walked herself back to bed. Sometimes Zachary would wake up at night. Defendant would enter his room and find Audrey, who would have no recollection the next day of why she had woken up.

¶ 39 Defendant also testified that she forced Audrey to wear latex gloves because Audrey would pick and bite her nails and the skin around them, which caused bleeding. On the night of the incident, defendant guided Audrey and Isabelle to the bathroom and got Audrey situated on the toilet. Defendant emptied the trash, left the bathroom, and gathered the remaining trash in

the house for collection the next day. The girls went back to bed on their own. When defendant checked on them, they were asleep. Defendant denied striking Audrey that night.

¶ 40 Defendant testified that she did not notice anything unusual about Audrey's appearance that evening. The next morning, the entire family was sitting at the table when Audrey's father asked her what had happened to her face. Audrey replied that she did not know. Audrey went upstairs with defendant to brush her teeth, and defendant asked her what happened to her face. Audrey again replied that she did not know. Defendant denied telling Audrey, "I need you to keep quiet" about anything.

¶ 41 The night after the incident, Brian began "acting funny" in that he did not want to talk about an upcoming vacation because he had something on his mind. Two days after the incident, in the evening, Brian removed the children from the house, and defendant followed them. Around 9 p.m., defendant called the police because Brian did not say where they were going. Defendant was served with an order of protection and ordered to leave the family home the next day.

¶ 42 Defendant denied punching Audrey or Isabelle. Defendant denied striking Audrey's face with a slipper. Defendant admitted spanking the girls by lightly tapping their hands or their behinds when they put their fingers in electrical outlets. Defendant also admitted "yank[ing]" her children when they ran toward the street. Sometimes defendant would "push their back[s] along saying 'come on' " when they dawdled. Defendant testified that Audrey and Isabelle roughhoused by wrestling and pinching, and sometimes "it got ugly."

¶ 43 Defendant admitted giving the girls cold showers up to three times a week to stop them from picking their fingers. The girls "didn't like it" and stopped picking their fingers, but only for a while.

¶ 44 On cross-examination, defendant denied turning the shower faucet all the way to cold during the showers. Defendant began waking the girls at night to use the bathroom because Isabelle had bedwetting accidents four to five times per week, but Audrey would have fewer accidents.

¶ 45 Defendant again testified that, about 10:30 p.m. on the night of the incident, after returning home from night school, defendant woke Audrey and guided her to the bathroom. Defendant returned to the bedroom to get Isabelle, and when they entered the bathroom, Audrey still was sitting on the toilet. After directing Isabelle to stand across from Audrey, defendant left the bathroom to gather the household trash for collection. When she returned to check on the girls 10 to 15 minutes later, they were in bed.

¶ 46 Defendant testified that she asked Brian about how to prevent the girls from biting and picking their fingernails, but Brian had no suggestions. Defendant searched the internet and found that other parents had used gloves and 90-second cold showers. Defendant asked Brian his opinion on the measures, and he responded, “I don’t know.”

¶ 47 Defendant admitted that when DCFS called to inform defendant of the investigation, she described herself as “strict” because she had the girls wear gloves and use the bitter fingernail polish. Defendant admitted to DCFS that she pushed and shoved the girls when they dawdled or were in danger, but she denied striking them. Defendant told DCFS that she never meant to scare the girls.

¶ 48 Defendant said that she did not give Zachary cold showers because he is only four years old. Defendant also did not make Zachary wear latex gloves because he did not pick his fingers. Defendant began giving the girls cold showers after they turned seven years old.

¶ 49

3. Brian

¶ 50 Brian testified for the State in rebuttal. Brian testified that, during the past three years, Isabelle and Audrey experienced bedwetting problems once every six months or so. Isabelle's problem was far worse than Audrey's.

¶ 51 The girls currently did not have problems with biting their fingernails, but they previously did. The biting or picking would cause bleeding only occasionally. Brian and defendant discussed the problem at length. Without consulting Brian, defendant began putting gloves on the girls' hands. Brian insisted that defendant stop the practice, but she refused.

¶ 52 In addition to using gloves, defendant would use "freezing cold showers" as a form of punishment for biting the nails and picking at the cuticles. Brian stated that he never was in the bathroom to witness any of the cold showers "because [he] is a male." Defendant never asked Brian's permission to give the showers. Defendant never asked Brian whether they should consult a doctor. Brian was never concerned that the girls' habit would lead to a serious infection or loss of use of their fingers. Brian testified that his work schedule causes him to be home during sleeping hours. Brian never saw Audrey sleepwalking.

¶ 53 On cross-examination, Brian testified that, on April 11, 2012, he told Detective John Vincent that he was unaware of any physical abuse between defendant and their children. At night, the children usually guided themselves to the bathroom, but sometimes defendant helped them. Brian and defendant were contesting custody in their divorce proceedings. The children had been residing with Brian since the incident. Brian admitted that he never tried to enter the bathroom and turn off the nozzle to physically intervene with defendant giving the girls cold showers.

¶ 54 The trial court found defendant guilty of both counts of domestic battery, merged the convictions, and entered judgment on the charge based on contact causing bodily harm. See 720

ILCS 5/12-3.2(a)(1) (West 2012). The court imposed a sentence of one year conditional discharge. Defendant's posttrial motion was denied, and this timely appeal followed.

¶ 55

II. ANALYSIS

¶ 56 Defendant appeals, arguing that (1) the trial court abused its discretion by admitting and relying upon evidence of defendant's prior bad acts of discipline; (2) the court erred by relying on facts not in evidence; and (3) defense counsel rendered ineffective assistance in stipulating to the witnesses' testimony without defendant's informed consent.

¶ 57

A. Admissibility of Other Bad Acts

¶ 58 Before trial, the State moved to introduce evidence of other domestic violence incidents against Audrey and Isabelle to be considered for their bearing on any relevant matter, including the propensity to commit the charged domestic battery. The trial court barred evidence that defendant put the foul tasting nail polish on the girls' fingernails to discourage them from biting and picking their nails. However, the court ruled admissible the evidence of defendant's use of cold showers and winter gloves as discipline as well as prior instances of defendant striking the girls. In denying defendant's motion for a new trial, the court emphasized that it had considered the evidence of prior bad acts for their bearing on defendant's intent and motive for committing the charged domestic battery.

¶ 59 The common-law rule is that other-crimes evidence is not admissible to show a defendant's propensity to commit crimes. *People v. Dabbs*, 239 Ill. 2d 277, 283 (2010); see Ill. R. Evid. 404(b) (eff. Jan. 1, 2011). However, by statute, the legislature has made exceptions to that rule in a few specific areas, such as domestic batteries (725 ILCS 5/115-7.4, 115-20 (West 2012)). *Dabbs*, 239 Ill. 2d at 291; see Ill. R. Evid. 404(b) (recognizing statutory exceptions to the general rule of inadmissibility). In those instances, the trial court may, in its discretion,

admit evidence of a defendant's commission of a prior qualifying offense to show his propensity to commit the charged offense if, after weighing certain statutory factors, the court determines that the probative value of the evidence is not substantially outweighed by the risk of undue prejudice. See 725 ILCS 5/115-7.4 (West 2012); *Dabbs*, 239 Ill. 2d at 291; see also Ill. R. Evid. 403 (eff. Jan. 1, 2011). A trial court's decision to admit evidence under section 115-7.4 will not be reversed absent an abuse of that discretion. *People v. Peterson*, 2011 IL App (3d) 100513, ¶ 64.

¶ 60 Section 115-7.4 provides that, in weighing the probative value of the evidence against the prejudice to the defendant, the trial court may consider (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; and (3) other relevant facts and circumstances. 725 ILCS 5/115-7.4(b) (West 2012).

¶ 61 Defendant argues that the trial court committed reversible error in allowing the evidence of cold showers and instances of uncharged striking of Audrey and Isabelle. We disagree. Section 115-7.4 permits the prior bad acts to be considered for their bearing on any relevant matter, including defendant's intent and motive. The trial court found that the prior incidents were proximate in time in that they occurred within about one year of the charged offense. The court also found that the acts were factually similar to the charged offense in that each involved defendant's attempt to discipline her children by causing physical discomfort. The court distinguished defendant's punitive measures from those intended to prevent the girls from biting and scratching their fingernails and barred evidence about those acts. Defendant allegedly administered the cold showers and struck the girls in the family home, which is also the location of the charged offense.

¶ 62 Defendant cites *People v. Green*, 2011 IL App (2d) 091123, in arguing that the cold showers, spanking, and other hitting were merely lawful corporal discipline and therefore inadmissible prior bad acts. Defendant argues in particular that the cold showers were inadmissible under section 115-7.4 because “[t]here was no evidence that the showers were in fact painful or injurious.” The trial court determined that the cold showers constituted a battery and could be introduced to show a propensity to discipline inappropriately and to cause physical discomfort as a result of anger.

¶ 63 In *Green*, we explained that a parent’s right to corporally punish his or her child, which is derived from the right to privacy implicit in the United States Constitution, encompasses the right to care for, control, and discipline one’s own children. *Green*, 2011 IL App (2d) 091123, ¶ 14. While parents have a general right to privacy in the manner in which they raise their children, this right must be balanced against the State’s legitimate interest in preventing and deterring the mistreatment of children. *Green*, 2011 IL App (2d) 091123, ¶ 14. A parent who inflicts corporal punishment “exceeding the boundaries of reasonableness” may, depending on the circumstances, be subject to prosecution for cruelty to children. *Green*, 2011 IL App (2d) 091123, ¶ 14.

¶ 64 In this case, the trial court implicitly determined that defendant’s use of cold showers and hitting to punish her children exceeded the bounds of reasonableness and constituted domestic battery by making physical contact of an insulting or provoking nature. See 720 ILCS 5/12-3.2(a)(2) (West 2012). The plain language of the domestic battery statute defines the offense in terms of contact that insults or provokes the victim. Contrary to defendant’s assertion, the contact need not cause physical injury. *Green*, 2011 IL App (2d) 091123, ¶ 23.

¶ 65 Moreover, the degree of injury inflicted upon the child is not the exclusive or determinative factor in evaluating whether the discipline exceeded the bounds of reasonableness. *Green*, 2011 IL App (2d) 091123, ¶ 24. Other factors include the likelihood of future punishment that might be more injurious, the psychological effects of the discipline on the child, and whether the parent was calmly attempting to discipline the child or whether the parent was lashing out in anger. *Green*, 2011 IL App (2d) 091123, ¶ 24. When corporal punishment is administered, there is no assurance that a child will not suffer psychological effects or that the discipline will be inflicted moderately or responsibly. In the heat of anger, some parents are likely to exceed the bounds of reasonableness despite the lack of physical harm. However, both the reasonableness of, and the necessity for, the punishment is to be determined by the finder of fact, under the circumstances of each case. *Green*, 2011 IL App (2d) 091123, ¶ 24.

¶ 66 These prior acts led to more injurious discipline, the charged conduct of striking Audrey in the face with defendant's fist. Defendant's use of unreasonable discipline also led Audrey to tell Postlewait that she was afraid of defendant. Under the facts of this case, we conclude that the trial court did not abuse its discretion in ruling the cold showers and striking admissible under section 115-7.4 to show defendant's intent and motive.

¶ 67 B. Facts not in Evidence

¶ 68 Defendant next argues that the trial court erred by relying on facts not in evidence relating to defendant's prior bad acts of striking Audrey with a slipper, administering cold showers, and pushing and shoving. Defendant's claim that the court considered facts not in evidence amounts to little more than a strained parsing of the court's oral findings to fabricate false distinctions with the stipulated testimony.

¶ 69 First, the parties stipulated that Margaret, the nanny, would testify that “Audrey stated that mom hit her in the nose with the slipper, causing her nose to bleed a couple of months ago.” Noting this stipulation, the trial court found that defendant had “hit [Audrey] in the past with slippers which caused her nose to bleed a couple of months ago.” Defendant contends that the court “converted one alleged blow without any details into a regular activity of hitting with slippers.” We disagree. The isolated comment does not suggest that the court found a pattern of defendant abusing Audrey with slippers. In fact, the court specifically mentioned the single incident of a nose bleed. The court could reasonably infer from Margaret’s stipulated testimony that defendant once struck Audrey with a slipper, causing her nose to bleed.

¶ 70 In any event, the record also supports an inference that defendant struck Audrey and Isabelle with slippers more than once. The parties stipulated that Postlewait and Audrey’s principal would testify that Isabelle indicated that defendant used a slipper to hit her and Audrey on “prior occasions.” They also would testify that Isabelle stated that defendant would use her hand to hit the girls on their arms. Isabelle said these incidents resulted in bruising on prior occasions. Contrary to defendant’s assertion that the stipulated testimony had little to no evidentiary value, the court could rely on it to reasonably infer that defendant struck Audrey with a slipper more than once.

¶ 71 Second, the court noted that Audrey told Detective Russell that defendant forced her to take “extremely cold” showers. Defendant argues that, because Audrey did not use the word “extremely” in the interview, the court was relying on facts not in evidence. We disagree. The parties stipulated that Postlewait and Audrey’s principal would testify that Isabelle stated that defendant often disciplined the girls by forcing them to take “cold showers with the faucet handle being turned all the way to cold.” The court could reasonably infer from Audrey’s

interview and the stipulated testimony that defendant forced Audrey to take extremely cold showers.

¶ 72 Third, the parties stipulated that Postlewait would testify that she interviewed defendant, who admitted that she can be mean and strict with the children. Defendant denied hitting the children but admitted pushing and shoving them. Based in part on this stipulation, the trial court commented that “defendant’s testimony explains the passage about pushing and shoving the children as gently shoving them into a room to move them along as a parent might do with a child and perhaps shoving the child out of traffic. The court does not find that particular explanation of this makes a lot of sense in that it came right after she had told DCFS that she can be mean and strict with the children. I don’t think that after saying that, admitting to pushing and shoving the children is consistent with doing so to move a child out of traffic, which of course, any human being would do, much less any parent.” Defendant argues that the court illogically linked the admission of being mean and strict with the pushing and shoving because “without a live witness or a more detailed account, everything is left to the imagination.” We disagree. The court reasonably could make the inference from the stipulation as well as Audrey’s statement in her video-recorded interview that defendant shook Zachary when he misbehaved. The court did not consider evidence outside the record, but rather harmlessly paraphrased the properly admitted evidence.

¶ 73

C. Stipulations

¶ 74 Much of the State’s evidence regarding the prior statements of the girls and defendant was admitted by way of stipulated testimony. Defendant did not object to the stipulations at trial, and defense counsel and defendant signed the two exhibits containing the stipulated testimony. Defendant argues on appeal that trial counsel rendered ineffective assistance for stipulating to the

testimony of the State's witnesses without defendant's "informed and intelligent approval." Defendant also contends that the trial court abused its discretion in accepting the stipulations.

¶ 75

1. Ineffective Assistance

¶ 76 We conclude that defense counsel was employing trial strategy by agreeing to the stipulated testimony, and therefore, he did not render ineffective assistance. Both the United States and Illinois Constitutions guarantee a defendant the right to effective assistance of counsel. See U.S. Const., amend. VI; Ill. Const. 1970, art. I, § 8. The purpose of this guarantee is to ensure that the defendant receives a fair trial. *Strickland v. Washington*, 466 U.S. 668, 684-85 (1984). The ultimate focus of the inquiry is on the fundamental fairness of the challenged proceedings. *Strickland*, 466 U.S. at 696. However, there is a strong presumption of outcome reliability, so to prevail, a defendant must show that counsel's conduct "so undermined the proper functioning of the adversarial process that the trial cannot be relied on as having produced a just result." *Strickland*, 466 U.S. at 686.

¶ 77 Under *Strickland*, defense counsel is ineffective only if (1) counsel's performance fell below an objective standard of reasonableness; and (2) counsel's error prejudiced the defendant. Failure to establish either prong defeats the claim. *Strickland*, 466 U.S. at 687. We assess counsel's performance using an objective standard of competence under prevailing professional norms. *People v. Ramsey*, 239 Ill. 2d 342, 433 (2010). To establish deficient performance, the defendant must overcome the strong presumption that counsel's action or inaction was the result of sound trial strategy. *Ramsey*, 239 Ill. 2d at 433. Counsel's strategic choices that are made after investigation of the law and the facts are virtually unassailable. *Ramsey*, 239 Ill. 2d at 433.

¶ 78 In considering a stipulation, the supreme court has noted "defense counsel may waive a defendant's right of confrontation as long as the defendant does not object and the decision to

stipulate is a matter of trial tactics and strategy.” *People v. Campbell*, 208 Ill. 2d 203, 217 (2003). The court “carved a limited exception to this general rule, however, where a stipulation is the practical equivalent of a plea of guilty, holding that ‘defense counsel cannot stipulate to facts which establish the guilt of the accused because the constitutional right implicated in that situation is the right of a defendant in a criminal case to plead not guilty.’ ” *People v. Clendenin*, 238 Ill. 2d 302, 319 (2010) (quoting *Campbell*, 208 Ill. 2d at 219). “[D]eparture from the general rule that defense counsel may waive a defendant’s right of confrontation is warranted *only* in those instances where: (1) the State’s entire case is presented by stipulation and defendant fails to preserve a defense; or (2) the stipulation concedes the sufficiency of the evidence to support a conviction.” (Emphasis in original.) *Clendenin*, 238 Ill. 2d at 319 (citing *Campbell*, 208 Ill.2d at 218). Defendant concedes on appeal that the stipulations were not the practical equivalent of a plea of guilty.

¶ 79 However, defendant argues that, by agreeing to the stipulations without informing her of the right to object, counsel’s performance fell below an objective standard of reasonableness. In the absence of an objection from the defendant “*Campbell* ‘impose[s] no obligations on the trial court or counsel to admonish the defendant and ensure that the advisement is made a part of the record.’ ” *Clendenin*, 238 Ill. 2d at 325 (citing *People v. Phillips*, 217 Ill. 2d 270, 283 (2005)). At no time did defendant express disapproval, concern, or confusion when the stipulations were discussed during the court proceedings. Accordingly, we conclude that defendant did not object to the entry of the stipulations. Without an objection from defendant, counsel could make the strategic decision to waive defendant’s right of confrontation regarding the witnesses’ stipulated testimony. See *Campbell*, 208 Ill. 2d at 217. We note that defendant does not contend on appeal

that counsel's strategic decision fell below an objective standard of reasonableness, only that counsel should have informed her of the right to object.

¶ 80 2. Admissibility of Stipulations

¶ 81 Finally, defendant argues that the trial court abused its discretion in accepting the stipulations. A stipulation is "nothing more" than an acknowledgment of what a witness would testify to if called and the concomitant decision not to challenge the testimony the witness would give. *Phillips*, 217 Ill. 2d at 284. The trial court has the discretion to determine the validity and reasonableness of a stipulation and will not enforce a stipulation if it is unreasonable, the result of fraud, or a violation of public policy. *Wright v. County of Du Page*, 316 Ill. App. 3d 28, 40 (2000). Defendant cites nothing in the record to suggest that the stipulations were unreasonable, the result of fraud, or a violation of public policy.

¶ 82 Defendant relies on *Campbell* in arguing that the trial court owed and breached a duty to personally admonish defendant before accepting the stipulations. According to defendant, the court should have advised her that, by agreeing to the stipulations, she was waiving the right to require the State's witnesses to testify at trial. *Campbell* stands for the proposition that a defendant has the right to reject counsel's decision to stipulate if a timely objection is made. As discussed, neither the trial court nor counsel must admonish the defendant and ensure that the advisement is made a part of the record. *Clendenin*, 238 Ill. 2d at 325. Even if defendant had reservations about the decision to stipulate, she did not make her objection known at the time and counsel was free to make that strategic decision.

¶ 83 III. CONCLUSION

¶ 84 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 85 Affirmed.