2019 IL App (3d) 160480-U

Order filed March 29, 2019

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2019

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the 9th Judicial Circuit, Knox County, Illinois,
Plaintiff-Appellee,	)	
v.	)	Appeal No. 3-16-0480 Circuit No. 15-CF-295
BOBBY JO JENKINS,	)	Honorable Paul L. Mangieri,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Evidence was sufficient to sustain convictions on four of five charges of predatory criminal sexual assault of a child; (2) evidence was sufficient to sustain conviction for child pornography; and (3) defense counsel did not provide ineffective assistance.

¶ 2 Defendant, Bobby Jo Jenkins, appeals from his convictions on five counts of predatory criminal sexual assault of a child and one count of child pornography. He argues the State's evidence as to four of the five charges of predatory criminal sexual assault of a child was insufficient. He also contends defense counsel rendered ineffective assistance related to the

introduction of evidence of defendant's prior bad acts. Based on the State's confession of error, we reverse count V, predatory criminal sexual assault. We affirm all of the other convictions.

¶ 3 I. BACKGROUND

¶ 4 The State charged defendant by information with five counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) and a single count of child pornography (*id.* § 11-20.1(a)(1)(i)).[1] Each of the six counts alleged the victim was N.J., a minor under the age of 13 years and the conduct occurred between May 17 and May 21, 2015. The charges of predatory criminal sexual assault were contained in the first five counts of the State's information. Counts I and III each alleged defendant "placed his finger(s) on and in the vagina of N.J." Counts II and IV each alleged defendant "placed his penis on and in the vagina of N.J." Count V alleged defendant "fondled [N.J.'s] buttocks and anus."

¶ 5 Prior to trial, the State filed notice of its intent to introduce into evidence statements N.J. made during an interview at the Knox County Children's Advocacy Center (CAC). At a subsequent hearing, defense counsel stated he would not oppose the State's introduction of that evidence. Defendant elected to proceed via bench trial.

¶ 6 At trial, N.J. testified that she was nine years old and was in court because defendant "violated" her. She testified that defendant is her father. N.J. stated that the events in question happened in June when her mother, Chareena J., was in Las Vegas and N.J. was at home with

[1]The State's charging instrument actually references the offense of "aggravated child pornography," with a statutory citation to section 11-20.1B of the Criminal Code of 1961 (720 ILCS 5/11-20.1B (West 2010)), which established as a Class X felony the creation of child pornography involving a child under the age of 13 years. That statute, however, was repealed—and the separate offense of aggravated child pornography abolished—effective January 1, 2013, before the conduct that gave rise to the present charges occurred. The substance of the aggravated child pornography offense was inserted into subsection (c-5) of the child pornography statute, still providing that the offense is a Class X felony when involving a child under the age of 13 years. 720 ILCS 5/11-20.1(c-5) (West 2014). The circuit court included the proper statutory citation on the sentencing judgment. Defendant raises no issues on appeal relating to the charging instrument.

defendant, her two brothers, and her sister. N.J. testified that after her sister and older brother went to bed around 8:30 p.m., defendant, N.J., and N.J.'s younger brother remained in the living room to watch a movie. Eventually, defendant, N.J., and N.J.'s younger brother went to the same bedroom.

¶ 7 N.J. testified that she fell asleep in the bed positioned between her younger brother and defendant. N.J. fell asleep, then woke up to find defendant "rubbing" her. She testified that defendant was rubbing her back and vagina with his hand. N.J. had been wearing a nightgown when she went to bed, but was naked when she woke up. When asked by the prosecutor whether defendant touched "anywhere else on [her] body with anything of his," N.J. responded: "No."

¶ 8 On cross-examination, N.J. testified that defendant had been "touching" her earlier that evening in the living room. Defense counsel asked N.J. how many times defendant touched her between 11 p.m. and 3 a.m. on the night in question. N.J. replied: "Constant." N.J. also testified that she knew the word "violated" because defendant asked her that night if she felt violated.

¶ 9 N.J. also explained on cross-examination that she refers to defendant as "Bobby" because Chareena's friend, John Marshall, was going to adopt N.J. Chareena told N.J. that Marshall was going to be her father. Marshall moved into their house "[a] couple weeks" after the incident with defendant. In response to a question from defense counsel, N.J. affirmed that she did not see defendant "for a while" after the incident because an order of protection had been put in place. N.J. testified that Chareena kicked defendant out of the house after he threatened to shoot Chareena.

¶ 10 On redirect examination, the prosecutor asked N.J. where defendant had touched her while they were in the living room. N.J. pointed to a spot on a diagram. The prosecutor asked if that was a place called a vagina, and N.J. responded: "Yes." When asked with what defendant

had touched her, N.J. again pointed to the diagram, and confirmed that she was pointing to a hand.

¶ 11 Judy Guenseth testified that she performed the CAC interview of N.J. After Guenseth answered a series of foundational questions, the CAC interview was played in court. At the beginning of the interview, Guenseth asks N.J. if she knows why she is there, to which N.J. replies: "I think my mom said violations." N.J. further explains that something happened in May when Chareena was in Las Vegas. N.J. asked if she could sleep with defendant, and N.J. and defendant both slept in Chareena's bed. N.J. initially tells Guenseth she does not remember what happened when she woke up. N.J. then tells Guenseth she is afraid of defendant because he is mean and has "anger issues." N.J. states defendant told her that he would kill her if she told anyone what happened on the night in question. He told N.J. if she told anyone he would go to jail and she would get taken away.

¶ 12 Guenseth produces a diagram of a male and female body and asks N.J. to identify a number of body parts. When Guenseth points to the vagina on the diagram, N.J. indicates that she does not know what that part is called, but that her mother refers to it as a "woo-boo." N.J. would continue to refer to the vagina as a "woo-boo" for the remainder of the interview. N.J. continually refers to the penis as "I don't know."

¶ 13 N.J. tells Guenseth she was wearing a nightgown, underwear, and shorts. At one point, defendant made her remove her clothes. Defendant was not wearing any clothes. N.J. recalls waking up in Chareena's bedroom. Defendant and her younger brother were also in the bed. N.J. tells Guenseth: "I was sleeping. When I woke up, my dad's I don't know what it is was in between my legs." N.J. points to the body part that was in between her legs, the same part that Guenseth had labeled on the diagram as "I don't know." N.J.'s clothes were off at the time, but

she did not remember how they came off. Defendant asked her if she felt violated. Defendant touched the outside of her "woo-boo." Then he made her hold his "I don't know." N.J. tells Guenseth that it felt hairy and wet.

¶ 14 Guenseth asks N.J. if defendant has ever done "this" to anyone else. N.J. replies: "I think he did it to my sister, like, the day after. But I *** didn't know but my sister won't tell my mom." When asked why she thinks it happened to her sister, N.J. tells Guenseth: "My mom asked if anything happened to her and she said 'yes' but she thought it was a dream."

¶ 15 N.J. tells Guenseth defendant touched her "woo-boo" with his hands. When Guenseth asks if defendant touched her "woo-boo" with anything else, N.J. replies: "He had this watermelon stuff." Of the "watermelon stuff," N.J. tells Guenseth: "I believe it has an L, looberee [phonetic] something."[2] Defendant made N.J. lick his finger to taste it. Defendant "used it" on N.J.'s "woo-boo." He also used spit on her "woo-boo," then rubbed the outside of her "woo-boo" with his hand. N.J. states that it hurt a little bit when defendant was rubbing her. Defendant made N.J. touch him before they went to bed, while they were sitting on the couch in the living room. Guenseth asks if defendant "touch[ed]" N.J. while they were on the couch. N.J. replies: "No."

¶ 16 N.J. explains to Guenseth that when she first woke up in the bed, she noticed defendant between her legs. She asked him to "please don't do that." She fell asleep again, and when she woke up later defendant "did it again." N.J. explains that the second time was "after the watermelon stuff."

¶ 17 After Guenseth tells N.J. that the interview is over, N.J. spontaneously tells her that defendant had a gun and "he decided that if he couldn't have my mom he'd rather have her

[2]In closing arguments, both parties would refer to the "watermelon stuff" as lubricant.

dead." "The only reason he didn't shoot her and kill her" was because N.J. and her siblings were present. N.J. explains that defendant did not say that to her, but Chareena "just knew that." Guenseth then asks N.J. about security cameras, which N.J. had referenced earlier in the interview. "That was because my brother and sister were stealing and was blaming it on me."

¶ 18 Chareena testified that she travelled to Las Vegas from May 17 through May 21, 2015. That June, Chareena received information from her two daughters that resulted in each of them being interviewed by the CAC. Chareena testified that her home was equipped with four interior surveillance cameras which recorded onto a digital video recorder (DVR). According to Chareena, it was defendant's idea to install the surveillance system so that he "would know what the children were doing at all times." Chareena further stated: "I thought it was just in our closet is where he kept the DVR system with the TV but it was also mobile. You could watch it on any mobile device." Chareena eventually turned the DVR over to the police.

¶ 19 On cross-examination, Chareena testified she was in Las Vegas for a court proceeding involving defendant's adoption of her two older children. While Chareena was away, she stayed with a man named John Marshall. Chareena returned to the area at 10 p.m. on May 21. She immediately went to the police station "[b]ecause [defendant] on the phone the entire time [she] was on the trip was very rude and it just—it wasn't right. There was something going on." Chareena explained that defendant was upset about the adoption proceedings and also that she was not talking to him enough. Chareena eventually returned to her house that night. However, following an argument, defendant choked her. She reported that incident to the police the next day.

¶ 20 When confronted by defense counsel with a printout of her Facebook page, Chareena agreed that it indicated that she began a relationship with Marshall on May 21, 2015. The day

after, Chareena sought and obtained an order of protection against defendant. Chareena also agreed that, on May 22, she told police defendant was using narcotics. At that point, the State objected to defense counsel's line of questions as irrelevant. After defense counsel explained the questions went to Chareena's bias against defendant, the court overruled the objection.

¶ 21 Chareena testified that she invited the police to search her home for narcotics. She assisted in the search by turning over alleged narcotics she had found in a dresser. Police officers also removed two weapons from the house. Defendant was arrested a week later for violating the order of protection. Chareena could not recall telling her children that defendant had pulled a gun on her. She did not recall telling N.J. that defendant would rather shoot her than have her be with someone else.

¶ 22 Marshall moved in with Chareena on June 3, 2015. They had been friends for more than 20 years, but had entered into a romantic relationship on May 21, 2015. Chareena testified that her previous husband was angry when she moved from Nevada to Illinois without court permission. Around that time, Chareena made an allegation of sexual abuse against that previous husband. Though Chareena made a complaint to the police, no charges related to that complaint were ever filed, and Chareena's previous husband has seen their shared children numerous times since.

¶ 23 On redirect examination, Chareena testified that her previous husband is a convicted sex offender, though that status was unrelated to her allegations discussed on cross-examination. Chareena denied telling N.J. what to say to the police or during the CAC interview. She also explained that defendant installed the surveillance system in their house six to eight months prior to the events in question. The cameras could be monitored from a "little TV" in her and defendant's bedroom closet. Chareena testified that she did not "understand electronics very

well," and had to consult the owner's manual or call the company that made the surveillance system in order to operate it.

¶ 24 Jared McDermet of the Knox County Sheriff's Department testified that he spoke with Chareena the day after N.J.'s CAC interview. McDermet noted that "Chareena was concerned about other cameras being in the house and [the surveillance system] still being activated." With Chareena's consent, McDermet took the DVR from the surveillance system into evidence. After obtaining a search warrant, McDermet turned the DVR over to Zeus Flores, a forensic examiner. Charges were filed against defendant after McDermet reviewed the files that Flores procured.

¶ 25 Flores testified that the DVR contained footage from four separate cameras. The cameras were motion-activated. Flores was able to extract 58 video files from the dates and times that were requested. He testified that videos were accurately time-stamped. The court admitted the DVR and video files into evidence, then reviewed the videos in chambers.

¶ 26 The videos show recorded footage of defendant with a young girl in a living room during the late night hours of May 17 and May 18, 2015. The videos depict defendant and the girl on a couch, often under a blanket. At one point, the girl is wearing only underwear. At another point, defendant places his hands into the back of the girl's pants and onto her buttocks. His hands remain in that position for about 10 seconds. The circuit court at sentencing described the videos as inconsistent with parental affection, and rather showing "perverted sexual conduct towards a child." The parties on appeal do not dispute the accuracy of the circuit court's description of the video footage.

¶ 27 In closing arguments, the prosecutor asserted that it had offered evidence of "two different times of [defendant] using his penis on the vagina of the victim *** while in the bedroom," corresponding to counts II and IV of the information. The State also pointed out that

N.J. testified that defendant touched her vagina with his fingers while in the living room, and told Guenseth he did the same while in the bedroom, satisfying counts I and III of the information. With regard to count V, which alleged fondling of the buttocks and anus, the prosecutor argued that the video evidence from the living room surveillance camera proved that charge.

¶ 28 Defense counsel argued that N.J.'s testimony had lacked many of the details she provided in the CAC interview. Counsel also argued at length regarding Chareena's conduct. He noted that she had returned from Las Vegas in a relationship with another man, gotten an order of protection, and turned defendant's narcotics over to police. Counsel also pointed out that Chareena had falsely accused a previous husband of sexual misconduct. Counsel urged that this pattern of conduct should "give this Court pause."

¶ 29 The circuit court found defendant guilty on all counts. The court found N.J.'s credibility was "high." It noted that N.J.'s CAC interview was "more expansive than her direct in-court testimony." However, the court stated that it drew no negative inference from that, because testifying in court is "more daunting and more stressful and more burdensome." The court concluded that neither N.J.'s testimony nor N.J.'s interview statements appeared to be coached. Finally, the court found the surveillance videos corroborated N.J.'s account. The court opined that the conduct displayed in the videos was inconsistent with parental affection, and showed "perverted sexual conduct towards a child."

¶ 30 The circuit court sentenced defendant to terms of seven years' imprisonment on each of the five counts of predatory criminal sexual assault and six years' imprisonment for child pornography, with all sentences running consecutively.

¶ 31 II. ANALYSIS

¶ 32 On appeal, defendant argues the evidence presented at trial was insufficient to establish his guilt beyond a reasonable doubt with respect to four of five charges of predatory criminal sexual assault, as well as the charge of child pornography. Further, defendant also contends defense counsel rendered ineffective assistance related to evidence of other crimes or bad acts. We address each argument in turn.

¶ 33 A. Predatory Criminal Sexual Assault

¶ 34 The offense of predatory criminal sexual assault is committed where a person 17 years of age or older "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," where the victim is under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2014). Two of the State's five predatory criminal sexual assault charges alleged contact between defendant's fingers and N.J.'s vagina (counts I and III). Two alleged contact between defendant's penis and N.J.'s vagina (counts II and IV). One alleged that defendant "fondled" N.J.'s buttocks and anus (count V).

¶ 35 When a challenge is made to the sufficiency of the evidence at trial, we review to determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Baskerville*, 2012 IL 111056, ¶ 31; *People v. Collins*, 106 Ill. 2d 237, 261 (1985). In making this determination, we review the evidence in the light most favorable to the prosecution. *Baskerville*, 2012 IL 111056, ¶ 31. All reasonable inferences from the record in favor of the prosecution will be allowed. *People v. Bush*, 214 Ill. 2d 318, 327 (2005). The relevant question is whether any rational trier of fact could have found the elements

of the crime proven beyond a reasonable doubt. See *People v. Pintos*, 133 Ill. 2d 286, 292 (1989).

¶ 36 It is not the purpose of a reviewing court to retry a defendant. *People v. Milka*, 211 Ill. 2d 150, 178 (2004). Instead, great deference is given to the trier of fact. See, *e.g.*, *People v. Saxon*, 374 Ill. App. 3d 409, 416-17 (2007). Resolution of any conflicts or inconsistencies in the evidence is the responsibility of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006).

¶ 37 1. Counts I and III

¶ 38 The two alleged instances of defendant touching N.J.'s vagina with his fingers occurred in separate locations—once in the bedroom and once in the living room. As defendant points out on appeal, the State did not include such differentiation in the charging instrument, as counts I and III are identical. Defendant does not raise this as an issue on appeal. However, for the sake of simplicity and to aid the discussion, defendant has opted to refer to the alleged contact in the bedroom as count I, and the alleged contact in the living room as count III. The State has followed defendant's lead in labeling the offenses as such, as we will do so as well.

¶ 39 Defendant does not challenge the sufficiency of the evidence with respect to count I, the digital-vaginal contact that occurred in the bedroom. N.J. told Guenseth that defendant rubbed her vagina using "watermelon stuff" while in the bedroom, and that statement was not contradicted or otherwise undermined by N.J.'s testimony or any other evidence at trial.

¶ 40 Defendant argues, however, that N.J. was contradictory in her statements regarding whether defendant touched her vagina while in the living room. At trial, N.J. testified on cross-examination that defendant began "touching" her while they were in the living room, then indicated that he had touched her vagina. However, in the CAC interview, N.J. replied "No"

when asked if defendant had "touch[ed]" her while on the living room couch. Defendant asserts that the circuit court "had no basis to credit one set of [N.J.'s] statements over the other" when reaching its verdict. Defendant argues in support of this assertion that the court "viewed N.J. as highly credible without limitation," there was no evidence corroborating either version of events, and there was no evidence suggesting N.J.'s denial of the sexual contact was due to lack of memory.

¶ 41 Defendant asserts that the circuit court improperly "viewed N.J. as highly credible without limitation." We disagree. The court found N.J.'s trial testimony and CAC interview were "largely consistent," not perfectly consistent. The court pointed out that N.J.'s trial testimony was less detailed than the statements she made in the CAC interview. Even the State conceded that N.J.'s testimony was imperfect, as she testified that the events in question occurred in June, when it was undisputed that Chareena's trip to Las Vegas occurred in May.

¶ 42 The circuit court, as the trier of fact, was responsible for resolving the conflict in the evidence, that is, the conflict between N.J.'s testimony and her CAC statement. The circuit court put great weight on the living room surveillance footage, describing it in great detail. The court summarized the video as showing inappropriate contact indicative of "perverted sexual conduct towards a child." After undertaking our own review of that video evidence, the court's description is not contrary to the manifest weight of the evidence. More specifically, the video shows defendant engaging in this conduct in the living room for a number of hours. During much of that time, defendant and N.J. are under a blanket. During certain portions, N.J. is wearing nothing but her underwear. N.J. specifically testified at trial that defendant touched her vagina with his hand while in the living room. A rational trier of fact could find the surveillance video

partially corroborative of that statement, and find it more credible than N.J.'s earlier denial of the same conduct.

¶ 43 In short, N.J.'s statement in her CAC interview and her testimony at trial regarding defendant's contact with her while in the living room were potentially contradictory. However, it is the job of the trier of fact to resolve such contradictions after considering all the evidence of record. Accordingly, a rational trier of fact could conclude that defendant did touch N.J.'s vagina while they were in the living room.

¶ 44 2. Counts II and IV

¶ 45 Defendant challenges his convictions on counts II and IV—alleging contact between defendant's penis and N.J.'s vagina—on grounds similar to his argument above. Namely, defendant again argues there was an irresolvable contradiction between N.J.'s CAC statement and her trial testimony. In his brief, defendant writes:

> "During her CAC interview, N.J. said that defendant touched her 'woo-boo' (vagina) twice with his penis, before and after using the 'watermelon stuff.' At trial, however, N.J. testified that defendant only touched her with his hand. She denied that he touched her with any other part of his body."

¶ 46 Defendant's argument rests on a mischaracterization of N.J.'s trial testimony. At trial, N.J. indicated that defendant touched her vagina with his hand, once in the living room and once in the bedroom. The prosecutor then asked the following question: "Now, did he touch anywhere else on your body with anything of his?" To that question, N.J. replied: "No." N.J.'s response was not, as defendant asserts, a denial that defendant had touched her vagina with any other of *his* body parts other than his hand. It was, instead, a denial that defendant had touched any other places on *her* body, aside from her vagina.

¶ 47 Defendant's confusion may stem from the fact section of his own brief. There, in summarizing N.J.'s testimony, defendant writes: "Defendant did not touch her anywhere else on her body with anything else of his." The second appearance of the word "else" in that sentence is improper, as it is not supported by the trial record. Again, N.J. did not testify that defendant had not touched her "with anything else of his." Rather, she testified that defendant did not touch "anywhere else on [her] body."

¶ 48 N.J.'s statement in her CAC interview that defendant twice touched her vagina with his penis was uncontradicted by her trial testimony. While N.J. did not testify to any contact between defendant's penis and her vagina, the circuit court did not hold that against her credibility. Indeed, the court explicitly found it was reasonable that N.J. would be more expansive in the CAC interview than in her testimony, due to the stress of a child appearing in court. A rational trier of fact could similarly credit the evidence from the CAC interview and find defendant guilty beyond a reasonable doubt on counts II and IV.

¶ 49 3. Count V

¶ 50 Count V of the State's information alleged defendant "fondled [N.J.'s] buttocks and anus." Defendant argues there was simply no evidence indicating that he made any contact with N.J.'s anus. The State confesses error, conceding that the evidence was insufficient as to count V, and agrees that the conviction should be reversed.

¶ 51 The offense of predatory criminal sexual assault requires, in part, contact "between the sex organ or anus of one person and the part of the body of another." 720 ILCS 5/11-1.40(a)(1) (West 2014). By the statute's plain language, the "fondling" of a buttock is insufficient contact to sustain a charge of predatory criminal sexual assault. The parties agree defendant's conviction under count V turns on whether the State proved contact between defendant and N.J.'s anus.

¶ 52 While the surveillance video in this case shows defendant placing his hands on N.J.'s buttocks, no contact with her anus can be directly discerned or inferred. Moreover, as discussed above, N.J. denied at trial that defendant touched her "anywhere else on [her] body" other than her vagina. Accordingly, we accept the State's concession and find that no rational trier of fact could find defendant guilty beyond a reasonable doubt of predatory criminal sexual assault as charged in count V. We reverse that conviction and vacate the sentence of seven years' imprisonment imposed by the circuit court.

¶ 53 B. Child Pornography

¶ 54 Defendant next contends the evidence at trial was insufficient with respect to the charge of child pornography. Importantly, defendant does not challenge the sufficiency of the evidence with respect to the substantive elements of the offense. That is, he does not dispute that the evidence showed he filmed a child he knew to be under 13 years of age engage in sexual conduct. See *id.* § 11-20.1(a)(1)(i), (c-5). Instead, defendant argues the State failed to prove the requisite mental state. While the required mental state is not explicitly set forth in the child pornography statute, defendant argues that a knowing or intentional act must be required.

¶ 55 For its part, the State agrees that the act of filming that constitutes the basis for the offense of child pornography must be committed either knowingly or intentionally. It argues, however, that the evidence adduced at trial established beyond a reasonable doubt that defendant acted knowingly.

¶ 56 For purposes of criminal liability, "[a] person intends, or acts intentionally *** to accomplish a result or engage in conduct described by the statute defining the offense, when his conscious objective or purpose is to accomplish that result or engage in that conduct." *Id.* § 4-4. A person acts with knowledge of "[t]he nature or attendant circumstances of his or her conduct,

described by the statute defining the offense, when he or she is consciously aware that his or her conduct is of that nature or that those circumstances exist." *Id.* § 4-5(a). Relatedly, a person acts with knowledge of "[t]he result of his or her conduct *** when he or she is consciously aware that that result is practically certain to be caused by his conduct." *Id.* § 4-5(b).

¶ 57 The evidence at trial showed that defendant installed the surveillance cameras in his and Chareena's home six to eight months prior to the events in question, for the stated purpose of monitoring the children. There was no evidence, either directly or by inference, that defendant acted with the conscious objective of filming child pornography, either when the cameras were first installed or when he committed the acts in question. The State does not dispute that defendant did not act intentionally. We next consider whether the evidence was sufficient to show that defendant acted knowingly.

¶ 58 Defendant argues the evidence was insufficient to show that he was "consciously aware that [his conduct with N.J.] was either being filmed or practically certain to be filmed," (emphasis omitted) in part because there was no evidence to show that defendant took any action to ensure the surveillance cameras were working. We find this argument unavailing.

¶ 59 Direct proof of knowledge is rare, and the mental state must often be proven through a defendant's conduct, statements, or inferences drawn therefrom. See *Pintos*, 133 Ill. 2d at 292-93. Here, defendant installed the cameras in his own home, just months before the events in question. Defendant maintained the ability to monitor the surveillance footage, both from his cell phone and from the television in his closet. The surveillance system was plainly operational during the time period in question. A rational trier of fact could infer from these facts that defendant knew his conduct was being filmed on the night in question.

¶ 60 C. Ineffective Assistance of Counsel

¶ 61 Finally, defendant argues defense counsel rendered ineffective assistance for failing to object to or actually eliciting evidence of defendant's prior bad acts.

¶ 62 The evidence to which defendant refers in making his arguments included portions of N.J.'s and Chareena's testimony, as well as portions of N.J.'s CAC interview. The majority of the evidence related to Chareena's relationship with defendant includes: N.J.'s statement in the CAC interview that defendant had a gun and threatened to kill Chareena, N.J.'s testimony regarding an order of protection against defendant, and Chareena's detailed cross-examination testimony concerning defendant's history of violence, threats, and drug use. See *supra* ¶¶ 19-21. Defendant also argues N.J.'s statement in the CAC interview regarding the possibility that defendant had done "this" to her sister as well should not have been admitted. Defendant argues defense counsel's performance was constitutionally deficient for either eliciting or failing to object to the above evidence. In the case of statements made in the CAC interview, defendant asserts defense counsel should have moved to have the video redacted to exclude the inadmissible portions.

¶ 63 To succeed on a claim of ineffective assistance of counsel, a defendant must show (1) that counsel's performance was deficient and (2) that the deficient performance prejudiced the defendant. *Strickland v. Washington*, 466 U.S. 668, 687-89 (1984). In order to demonstrate that counsel's performance was deficient, a defendant must overcome the "strong presumption that the challenged action of counsel was the product of sound trial strategy and not of incompetence." *People v. Barrow*, 133 Ill. 2d 226, 247 (1989). Matters of trial strategy are generally immune from claims of deficient performance. *People v. West*, 187 Ill. 2d 418, 432 (1999).

¶ 64 With respect to the evidence concerning defendant's prior bad acts toward Chareena, defendant is unable to overcome the strong presumption that defense counsel's actions were a product of sound trial strategy. As laid out at trial and in defense counsel's closing arguments, the defense's theory at trial was that Chareena had found a new man, wanted defendant out of her life, and coached N.J. to make an accusation of abuse in order to effectuate that goal. Defendant argues on appeal he "is not questioning the reasonableness of this strategy." Yet, he argues the "evidence of prior bad acts did not further this strategy." We disagree.

¶ 65 The defense's argument that Chareena fabricated N.J.'s claims was meritless unless put into proper context. A theory that Chareena simply found a new man and therefore framed defendant for predatory criminal sexual assault is incredible. By eliciting details of defendant's history of threats and violence toward Chareena, counsel illustrated an additional, potentially stronger motive Chareena might have for framing defendant. Counsel was thus able to present Chareena as a tormented wife looking for a way out, and perhaps willing to take extreme measures to separate herself from defendant. Where counsel's strategy was to argue that Chareena coached N.J. to make false claims against defendant, establishing Chareena's motive for doing so was indispensable to that strategy.

¶ 66 Counsel's decision to leave the CAC interview video unredacted, and thus to include N.J.'s statement regarding her sister, was also a matter of sound trial strategy. To review, N.J. told Guenseth that "I think [defendant] did it to my sister, like, the day after. But I *** didn't know but my sister won't tell my mom." When Guenseth asked N.J. why she thought that, N.J. replied: "My mom asked if anything happened to her and she said 'yes' but she thought it was a dream." The topic was never broached again in the interview.

¶ 67 N.J.'s statement was internally contradictory and equivocal. Defense counsel could reasonably have determined that the inherently inconsistent and confusing statement from N.J. did far more to undermine N.J.'s credibility by painting her as imaginative without implying defendant committed any other offense.

¶ 68 Our conclusion that counsel's choices were a matter of sound trial strategy is bolstered by the fact that those choices were made at a bench trial. The prohibition of other-crimes or bad-acts evidence is premised on the belief that such evidence may overpersuade a jury to convict a defendant simply because the jury believes defendant is a bad person deserving punishment. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). "In a bench trial, this fear is assuaged; it is presumed that the trial court considered the other-crimes evidence only for the limited purpose for which it was introduced." *People v. Nash*, 2013 IL App (1st) 113366, ¶ 24. In other words, a trial judge is far less likely to convict a defendant based on inflamed passions and improper considerations than a jury. Defense counsel's trial strategy is considerably more sound where the potential pitfalls of that strategy are significantly reduced in the bench trial setting.

¶ 69 III. CONCLUSION

¶ 70 The judgment of the circuit court of Knox County is affirmed in part and reversed in part.

¶ 71 Affirmed in part, reversed in part.