2019 IL App (5th) 140185-U

NO. 5-14-0185

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Williamson County.
	)	
v.	)	No. 10-CF-228
	)	
NATHAN E. HOPKINS,	)	Honorable
	)	John A. Speroni,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE WELCH delivered the judgment of the court.
Justices Chapman and Cates concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's trial counsel was not ineffective for failing to object to purported hearsay testimony about defendant's making sexual remarks to a minor and about his reputation where some of the statements did not qualify as hearsay, where it was counsel's trial strategy to use those statements to cast doubt on the State's witnesses' credibility, and even if counsel erred in not objecting to this testimony, the defendant suffered no prejudice as a result of such error. Also, a rational trier of fact could have found the essential elements of disorderly conduct and official misconduct beyond a reasonable doubt where the evidence showed that the defendant made unwelcome and offensive sexual remarks to a 16-year-old girl while employed by the Illinois Secretary of State's office. Thus, his convictions for aggravated criminal sexual abuse, official misconduct, and disorderly conduct are affirmed.

¶ 2 The defendant, Nathan Hopkins, appeals from his convictions for aggravated criminal sexual abuse, official misconduct, and disorderly conduct after a jury found him guilty in the

circuit court of Williamson County. On appeal, he argues that his trial counsel was ineffective in that counsel repeatedly failed to object to purported hearsay testimony and also elicited improper hearsay evidence during the trial and that he was not proven guilty beyond a reasonable doubt of disorderly conduct and official misconduct. For the reasons that follow, we affirm.

¶ 3 On June 15, 2010, the State charged the defendant with two counts of aggravated criminal sexual abuse for knowingly committing an act of sexual conduct with Misty S., who was at least 13 years old but under 17 years of age; two counts of official misconduct for placing his hand on Misty's breast while administering a driving test in his official capacity as an employee of the Illinois Secretary of State's office and for asking Mariah R. to go parking with him and making other alarming and disturbing comments while administering her driving test; and one count of disorderly conduct for provoking a breach of the peace by making personal comments to Mariah, causing her to become alarmed and disturbed, while administering her driving test. The defendant entered a plea of not guilty and demanded a jury trial.

¶ 4 The following testimony was elicited at the December 2013 jury trial. Brittney Winstead, Mariah's friend, testified that she went with her mother and Mariah to the Marion, Illinois, Secretary of State (SOS) facility so that Mariah could obtain her driver's license. The defendant was working that day, and he administered Mariah's driving test. Brittney's mother knew the defendant, and they were glad that he was Mariah's driving examiner because they thought he would be more lenient, which would lessen Mariah's nervousness. Brittney testified that she and her mother waited at the SOS facility while Mariah took her

driving test and estimated that the test took approximately 20 to 25 minutes, which she thought was a long time for a driving test. When Mariah returned from the test, Brittney noticed that Mariah looked scared and "shook up", in that her eyes were big, and she was shaky. Mariah gave her a look, said that she needed to tell her something, and said that she was freaked out, but she would not say why until after they left the driving facility. She also noticed that the defendant appeared anxious to get Mariah out of there. After Mariah received her license, they exited the facility and went to their vehicle. Mariah then told them that, during the driving test, the defendant had touched her, patted her back, told her that he wanted a side girlfriend, and told her to pull the vehicle over so that they could make out. He also told her that he could pretend that she failed the test so that they could stay out longer and pull over in a car dealership parking lot to mess around. Brittney testified that Mariah was shaking while relaying the incident.

¶ 5 On cross-examination, Brittney acknowledged that her mother had told her and Mariah before the test that the defendant had slept with one of Brittney's cousins, who was not a minor, and had given her herpes. She also acknowledged that, although her mother had said that the defendant had a reputation for being a pervert, she let Mariah get into a car alone with him for the driving test and thought he would be more lenient with Mariah.

¶ 6 Carol Mocaby, Brittney's mother, testified that she took Mariah to get her driver's license. She noticed that the defendant, whom she had known for approximately 14 or 15 years, was working that day. She and Brittney waited at the facility while the defendant took Mariah on the driving test; she testified that the test took a lot longer than she expected. She testified that, when they returned from the test, Mariah looked at her, opened her eyes really

big, and appeared shaken up. Carol explained that, when they first arrived at the facility, Mariah was really excited and was smiling, but when she returned from the test, she was no longer smiling and kept looking at Carol. Carol was at the counter when the defendant finished up Mariah's paperwork and noticed that everyone seemed more distant than when they first arrived, that the defendant was not as friendly, and that he was in a rush to get them out of there. At some point, Mariah looked over at her and whispered that they needed to talk later. As soon as they exited the building, Mariah told them that the defendant had freaked her out; that he was trying to hit on her; that he told her that he was not happy with his girlfriend, wanted a side girlfriend, and wanted to make out with her; that he had her driving down side streets and alleys; and that he said that if she failed her test, they could go back out and have time to fool around. Carol observed that Mariah was very upset when she described what happened.

¶ 7 On cross-examination, Carol acknowledged that she wanted the defendant to administer Mariah's driving test because she knew him and thought he would not be as strict, and she thought that Mariah would be more comfortable with him because he was talkative and younger. She also acknowledged that she let Mariah get in a vehicle with the defendant even though she knew he had a reputation for being a pervert, and she had previously told the girls that he slept with her niece and had given the niece herpes. However, she explained that she did not think that he would behave inappropriately with a minor in a professional setting.

¶ 8 Mariah testified that her aunt initially took her to the Marion SOS facility, but she could not move forward with getting her license because the required paperwork from her

high school had not been transferred to the SOS. Mariah testified that while there, the defendant handed her aunt a note asking if her aunt would be his mistress.

¶ 9 After the paperwork was properly transferred, Mariah returned to the SOS with Carol and Brittney. The defendant was working that day. She and the defendant were alone in the vehicle during the driving test. Initially, their conversation was normal, and Mariah told him that she had a daughter. She was nervous at this time, but only about the test. She started to get concerned about being in the vehicle with him when he said that he was married but that he needed a side girlfriend. He also said that she was too young to be his girlfriend. She explained that she kept putting the fact that her mother and aunt were single into the conversation to take the focus off of her. As they headed back to the SOS facility, the defendant asked if she wanted to go left to the car dealership or right to the SOS. He said that they could go to the car dealership and "make out" and no one would see them. She told him no and drove back to the SOS. As they were pulling into the parking lot, he told her not to say anything about what happened because he could get in trouble. She testified that she was really scared because she did not know what was going to happen and whether she would get her license.

¶ 10 After returning to the SOS facility, Mariah told Brittney and Carol that she needed to talk to them in the car or when they got home. While in the car driving back to school, Mariah told them what happened during the driving test. She went back to school but was really scared and shocked, so she told a teacher about what had happened and received permission to leave school early. When she got home, she talked to her mother about the incident, and her mother called the Marion SOS facility to report it. Her boyfriend then

picked her up and took her to the police station so she could make a report there. She made a voluntary statement at the police department that day. She testified that she never met Misty S., Tessie B., or Roxanne R.

¶ 11 Mariah acknowledged that she gave two statements about the incident; the first statement was given the day the incident occurred and the second statement was taken almost one month later by a Secretary of State police officer. The first statement was approximately 1½ pages while the second statement was almost four pages. She acknowledged that she left a lot of things out of her first statement but explained that she did not feel like the police officer took her seriously, and she was only there for approximately 20 or 30 minutes. For the second statement, an officer with the Secretary of State's office sat down with her and told her to write down everything that had happened.

¶ 12 Mariah acknowledged that Carol thought it would be good if the defendant administered the driving test because Carol believed that he would be lenient with her. She further acknowledged that, even though Carol told her before the test that the defendant had slept with Brittney's cousin and that he had a reputation for being a pervert, she still got into the vehicle alone with him and did not ask for another examiner. However, she explained that she did not think he would do anything to a minor and while he was working. She further acknowledged that she was not nervous initially when he asked her personal questions, but she became nervous when they were heading back toward the SOS facility and he mentioned going to the car dealership. He did not touch her during the exam. Although she was smiling in her driver's license picture and did not look upset in the picture, she was upset.

¶ 13 Misty S. testified that the defendant administered her driving examination in March 2010. During the examination, the defendant asked her if she wanted to do the short and easy route or the long and hard one. She responded that she wanted to do the short and easy route. At one point, she thought the exam was over and that they were heading back to the SOS facility, but he told her that he had "switched it" and that they were doing the long and hard route and made her complete the same route again. While doing the same route the second time, he instructed her to pull into an alley and put the vehicle in park. He then proceeded to take off his seatbelt, leaned over the seat, grabbed her face, and started kissing her. In response, Misty pushed him off of her. He then put his left hand down her shirt, touched her entire breast, and asked her if that was okay. She could not remember if she pushed him away at this time or if he just stopped. He then took her hand and put it on top of his pants directly above his penis. She jerked away, and he responded, "Well, I guess it seems like no one wants their license today." He then asked her if she was on her period, and when she responded in the affirmative, he said, "Well, that's a shame because I would take you in the back seat and screw you right now." Misty testified that she did not say anything in response to that because she was stunned and was not sure how to respond.

¶ 14 Misty then drove out of the alley and headed back toward the SOS facility. On the way back, he again took her hand and put it on his penis and remarked that "I guess somebody wants their driver's license." When they pulled into the SOS facility parking lot, her mother was waiting outside because the test had taken so long. Misty's mother asked why the examination had taken so long, and the defendant responded, "Well, she failed," noting that she had turned her steering wheel in the wrong direction when parking uphill,

which was an automatic fail. Then, they went inside, and the defendant took the paper that he had filled out and put it through the shredder and filled out another form saying that she had passed the examination. Misty testified that she was terrified and felt like she did not earn her license. She did not know Mariah R., Tessie G., or Roxanne R.

¶ 15 On cross-examination, Misty acknowledged that she received her driver's license and identified her driver's license picture from that day. She agreed that her makeup was intact, and she had not been crying in the picture. She also acknowledged that she lied to the police when they initially questioned her about the incident and told them that the defendant had done nothing inappropriate during the driving test but explained that she lied because she was scared. The police had come to her school to question her about the incident, and she was called to the principal's office and did not know why she was being taken out of class. When she entered the principal's office and saw a man and woman with badges, she immediately thought something had happened to her family. She was terrified to tell the police officers what had happened during the driving test because she was afraid of how the defendant would react, and she was afraid that her license would be taken away. She further acknowledged that she initially did not tell her mother about the incident and did not tell anyone until May 2010. She testified that she was shy and did not like talking about the incident; however, she acknowledged that she posted a link to a news report about the incident on her private Facebook page and that her post identified the unnamed minor as herself.

¶ 16 Defense counsel then questioned Misty about her position in the car when the defendant started kissing her. According to Misty, the defendant used his left hand as

leverage on the car console and then twisted around to face her while she was facing forward. Then, he grabbed her face and kissed her and reached under her seatbelt and clothing to touch her left breast. She agreed that the alley where this occurred was not secluded and was in the middle of town. She confirmed that the defendant was taking notes on a clipboard but could not remember where the clipboard was when he grabbed her hand and put it on his penis.

¶ 17 Roxanne R. testified that on November 10, 2009, she went to the Marion SOS facility to obtain an Illinois driver's license. The defendant administered her driving test that day. She testified that, during the driving test, the defendant made some inappropriate comments about how she was really pretty and about her butt. At one point, he had her pull into an alley and put the vehicle in park. He then got out of his seat, turned toward her, touched her thigh, and asked her some personal questions. Specifically, he asked whether she had a boyfriend, he asked for her phone number, and he asked her breast size. She was very uncomfortable and afraid during the encounter. His attitude toward her changed when she refused to give him her phone number. She testified that he became "very short," and they drove back to the SOS facility in silence. He did not make her do uphill, downhill, or parallel parking during the test. As they entered the SOS facility, he told her that she had a "really big butt." She told her mother what had happened when they left the SOS facility, but she did not report the defendant until April 23, 2010, because she was afraid her license would be taken away. She reported the incident to the Secretary of State's office after receiving a letter asking if anything unusual had happened during her visit to the SOS facility. She was not sure if she would have said anything had she not received the letter.

¶ 18 Tessie G. testified that on March 4, 2010, she went to the Marion SOS facility to obtain her driver's license, and the defendant administered her driving test. She testified that during the test, the defendant began making friendly conversation but then started making her uncomfortable by commenting on how pretty she was and on how she had a gorgeous smile. He also told her that if he was not married, he would want to be with her and asked if she thought he was attractive. She ignored the comments even though he made her uncomfortable. She received her driver's license that day, did not make any mistakes on her driving test, and agreed that she looked happy in her picture. She also agreed that the only touching that occurred was when the defendant patted her on the back at the SOS facility after her drive. She testified that she knew Misty but had not seen her since high school. She did not know Roxanne, and she had not discussed her encounter with the defendant with either of them.

¶ 19 Phillip Webb, the manager at the SOS office in Marion, testified that the defendant worked at the facility for approximately two years. He testified that the driving examiner would never have a reason to instruct the applicant to put the vehicle in park during the driving test or have the applicant sit in an alley for any period of time. He also testified that, if the applicant fails the driving test, the protocol is to return to the facility and have the applicant get back in line to retake the test; it is not protocol for the same examiner to take the applicant back through a second route without first returning to the facility. He explained that the applicant cannot request a particular person to conduct the driving exam; however, he would assign a different examiner if the applicant expressed that they were uncomfortable with their assigned examiner.

¶ 20 The defendant testified that he was married and was employed at the Marion SOS facility for approximately two years, from February 2009 through March 2010, as a customer service representative. As part of his job duties, he was required to administer driving tests; during this time, he had given hundreds of driving tests. He did not recall a policy against conversing with the applicants during the driving test; he explained that he always tried to talk to the applicants during the exam because he knew that they were nervous. It was policy that if an applicant failed their driving test, the examiner would not tell them until they returned to the SOS facility and then the applicant was permitted to retake the exam but had to wait in line for the next available customer service representative. Despite its being against policy, he would occasionally allow an applicant to immediately retake the driving test without going back inside the facility to process the paperwork. He explained that this was somewhat commonplace and would happen without Phillip's knowledge. When this was done, he would create a second score sheet when they returned from the drive.

¶ 21 The defendant denied making any inappropriate comments to Mariah and explained that he only made small talk with her in the vehicle. He did not say anything to her of a sexual or provoking nature, and he did not place his hands on her during the drive. He also denied saying anything of a sexually provoking nature to Misty. He did have her pull into the alley as part of the test, but he did not make her stop in that alley, did not touch her breasts, and did not kiss her. He also denied making any inappropriate comments to Roxanne and Tessie during their driving examinations, and he denied touching Roxanne's leg. He testified that he cooperated with the investigations conducted by the Secretary of State police and the inspector general; he waived his *Miranda* rights and voluntarily spoke

with a Secretary of State police officer and the inspector general, and he consented to a taped statement. He acknowledged that he told the Secretary of State police officer that he had been diagnosed with a mental illness, and his mental condition may possibly cause him to do the things that he was accused of and that it was possible that his mental illness made him say things that he would not normally say. He also explained that he would not have shredded Misty's first score sheet because there were two score sheets for her in the file. The first score sheet indicated that she failed the driving test because she hit the curb on her uphill park. The second score sheet indicated that she passed the driving test.

¶ 22 Following deliberations, the jury found the defendant guilty of two counts of aggravated criminal sexual abuse, two counts of official misconduct, and one count of disorderly conduct. Thereafter, the defendant was sentenced to four years' imprisonment to be followed by two years of mandatory supervised release. He was also ordered to register as a sex offender for the remainder of his life. The defendant appeals.

¶ 23 The defendant first argues that his trial counsel was ineffective in that he repeatedly failed to object to hearsay testimony and also elicited improper hearsay testimony during the jury trial. He further argues that he was prejudiced by counsel's performance.

¶ 24 Our review of ineffective assistance of counsel claims is guided by the standards set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), and adopted by our supreme court in *People v. Albanese*, 104 Ill. 2d 504 (1984). To succeed on a claim of ineffective assistance of counsel under the *Strickland* standard, one must both show that (1) counsel's representation fell below an objective standard of reasonableness (deficient performance prong); and (2) a reasonable probability exists that, but for the error, the result would have

been different (prejudice prong). *People v. Manning*, 241 Ill. 2d 319, 326 (2011). A defendant must satisfy both prongs of the *Strickland* test to succeed on a claim of ineffective assistance of counsel. *People v. Evans*, 209 Ill. 2d 194, 220 (2004). Thus, the defendant's failure to establish either deficient performance or prejudice will be fatal to the claim. *People v. Richardson*, 189 Ill. 2d 401, 411 (2000).

¶ 25 To establish deficiency under the first prong of the *Strickland* test, one must overcome the strong presumption that the challenged action or inaction might have been the product of sound trial strategy. *People v. Moore*, 2012 IL App (1st) 100857, ¶ 43. The reviewing court must evaluate counsel's performance from his perspective at the time rather than "through the lens of hindsight." *People v. Perry*, 224 Ill. 2d 312, 344 (2007). An evaluation of counsel's conduct cannot extend into matters involving the exercise of judgment, trial tactics, or strategy. *People v. Penrod*, 316 Ill. App. 3d 713, 722 (2000). A defense counsel's decision not to object to purported hearsay testimony involves a matter of trial strategy that will typically not support an ineffective assistance of counsel claim. *People v. Theis*, 2011 IL App (2d) 091080, ¶ 40. "Reviewing courts should hesitate to second-guess counsel's strategic decisions, even where those decisions seem questionable." *Manning*, 241 Ill. 2d at 335.

¶ 26 In this case, the defendant identifies the following testimony as inadmissible hearsay: (1) Brittney's testimony about Mariah's recitation of her encounter with the defendant during the driving test, which included the statements that the defendant touched Mariah, said that he wanted a side girlfriend, and said that he wanted to make out; (2) testimony about the conversation between Carol, Brittney, and Mariah where Carol relayed that the defendant

was a known pervert and had given Brittney's cousin herpes; and (3) Carol's testimony about Mariah's recitation of the encounter with the defendant, which included the statements that the defendant had hit on Mariah, that he said he wanted a side girlfriend, that he said that he wanted to make out with her, and that he suggested that he fail her so they would have time to fool around. The defendant argues that his trial counsel should have objected to these out-of-court statements as inadmissible hearsay. In response, the State argues that some of the statements fell within the spontaneous declarations hearsay exception to the hearsay rule; that defense counsel's decision not to object to other potential hearsay was valid trial strategy; and even if defense counsel was deficient under the first prong of the *Strickland* test, the defendant has failed to establish that he was prejudiced by this deficiency.

¶ 27 For a hearsay statement to be admissible under the "spontaneous declarations" hearsay exception, the following elements must be met: (1) there must have been an occurrence that was sufficiently startling to produce a spontaneous and unreflecting statement; (2) there must have been an absence of time between the occurrence and the statement for the declarant to fabricate the statement; and (3) the statement must relate to the circumstances of the occurrence. *People v. Robinson*, 217 Ill. 2d 43, 62 (2005). When applying these elements, the court should consider the totality of the circumstances, which includes the nature of the event, the declarant's mental and physical condition, and the presence or absence of self-interest. *Id.* In his position as an employee of the Marion SOS facility, the defendant administered Mariah's driving test−a test that she was required to pass to obtain her driver's license. Mariah, who was 16 years old at that time, testified that while she was alone in the vehicle with the defendant, he made several inappropriate comments and suggestions to her,

including asking her if she wanted to make out with him. She testified that his behavior scared her. These events are sufficiently startling. Immediately after leaving the examination facility, she told Carol and Brittney about what happened during the test. There was an absence of time between the occurrence and Mariah's statements. Also, there is no indication in the record that Mariah had any motive to falsely accuse the defendant of this behavior. Thus, all of the elements to the spontaneous declarations hearsay exception are met here, and defense counsel's failure to object to these statements was not an error. See *Moore*, 2012 IL App (1st) 100857, ¶ 45 (defense counsel is not required to make losing motions or objections to provide effective assistance of counsel).

¶ 28 Moreover, defense counsel's decision to not object to Carol's statements about the defendant's reputation as hearsay was also not error as the record indicates that defense counsel used these purported hearsay statements as part of his trial strategy. Specifically, defense counsel used these statements to cast doubt on the witnesses' credibility, asking why all the witnesses, including Mariah, had no issue with Mariah getting into a vehicle alone with a man who was a known pervert or a man who had given Brittney's cousin herpes. In closing arguments, defense counsel discussed the inconsistencies in the witnesses' testimony, which included the fact that Carol took Mariah to the driving facility on the day of the test, knew that the defendant was a known pervert and womanizer, told Mariah all about his reputation before the test, and then had no issue with putting her in a car alone with him. He also discussed the fact that each witness wanted the defendant to administer Mariah's driving test because they believed that he would be more lenient with her. This was consistent with his strategy of impeaching the three witnesses with Carol's comments on the defendant's

reputation. The fact that defense counsel's trial strategy was unsuccessful does not render it unreasonable. See *Theis*, 2011 IL App (2d) 091080, ¶ 40.

¶ 29 However, even assuming that counsel's strategy was faulty, the admission of the purported hearsay testimony was not prejudicial to the defendant. To establish prejudice, the defendant must show that counsel's deficient performance rendered the result of the trial unreliable or the proceeding fundamentally unfair. *Richardson*, 189 Ill. 2d at 411. Mariah testified about the inappropriate comments that the defendant made to her while he administered her driving test. Specifically, she testified that the defendant said that he needed a side girlfriend and suggested that they go to the car dealership to "make out." There was also further testimony offered from other witnesses who had similar encounters with the defendant. Misty testified that during her driving examination with the defendant, he made improper comments to her, tried to "make out with" her, touched her breast, and placed her hand on his penis. Roxanne and Tessie both testified about their similar experiences with the defendant during their driving tests. Roxanne testified that the defendant repeatedly told her that she was pretty, made a comment about her butt, asked her breast size, put his hand on her leg, and asked her personal, intimate questions. Tessie testified that the defendant told her that she was pretty, that he would be with her if he was not married, and he asked her inappropriate questions. Given Mariah's account of the incident, as well as the other witnesses' testimony about their own experiences with the defendant, we conclude that the admission of the purported hearsay testimony did not prejudice the defendant.

¶ 30 The defendant next argues that the State failed to prove him guilty beyond a reasonable doubt of disorderly conduct and official misconduct.

¶ 31 As a preliminary matter, we note that the defendant did not file a posttrial motion on this issue. The failure to raise an issue in a written posttrial motion in the trial court usually results in forfeiture of the issue on appeal. *People v. Allen*, 288 Ill. App. 3d 502, 505 (1997). However, an exception to this forfeiture rule exists for challenges to the sufficiency of the evidence. *Id.*

¶ 32 Where a criminal conviction is challenged based on the sufficiency of the evidence, the relevant inquiry 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. *People v. Pence*, 2018 IL App (2d) 151102, ¶ 16. The reviewing court may not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence, the credibility of the witnesses, or the resolution of conflicting testimony. *People v. Dereadt*, 2013 IL App (2d) 120323, ¶ 22.

¶ 33 A person commits the offense of official misconduct when, in his official capacity, he knowingly performs an act which he knows is forbidden by law to perform. 720 ILCS 5/33-3(a)(2) (West 2014). A person commits disorderly conduct when he knowingly does any act in such unreasonable manner as to alarm or disturb another and to provoke a breach of the peace. *Id.* § 26-1(a)(1). The purpose of the disorderly-conduct statute is to protect individuals from being molested or harassed, either mentally or physically, without justification. *Pence*, 2018 IL App (2d) 151102, ¶ 17. The determination of the type of conduct that constitutes disorderly conduct is a highly fact-specific inquiry, embraces a wide

variety of conduct serving to destroy or menace the public order and tranquility, and is dependent upon the surrounding circumstances. *Id.* In general, to breach the peace, a defendant's conduct must threaten another or have an effect on the surrounding crowd; however, a breach of the peace can occur without overt threats or profane and abusive language and it need not happen in public. *Id.*

¶ 34 In *Pence*, a defendant was convicted of disorderly conduct after he sent an innocuous greeting to a minor via Facebook, causing the minor to be alarmed and disturbed. *Id.* ¶ 3. Although the Facebook message alone did not appear threatening, there was history between defendant and the minor in that defendant (when he was 19 years old) had previously sent inappropriate sexual text messages to the minor when she was 12 years old, which resulted in their eventually meeting in person, and defendant's being convicted of traveling to meet a minor and grooming. *Id.* ¶ 18. In determining that defendant's attempt to reconnect with his victim was unreasonable and threatening, the appellate court found the previous history between defendant and the minor particularly relevant and noted that defendant's contact with the minor was threatening to her. *Id*. ¶ 20. Looking at the evidence in the light most favorable to the State, the court found that a rational trier of fact could have found that defendant's conduct was unreasonable, threatening, and invaded the minor's right to not be mentally harassed. *Id.*

¶ 35 Similarly, in *Allen*, the appellate court found that unwelcome and offensive sexual remarks directed toward a minor constituted disorderly conduct. *Allen*, 288 Ill. App. 3d at 508. In that case, the court noted that vulgar or offensive language does not necessarily breach the peace but that lewd conduct may constitute disorderly conduct depending on the

surrounding circumstances. *Id.* at 506-08. In determining whether the conduct provokes a breach of the peace, it is appropriate to consider the young age and status of the victim. *Id*. at 508. "Sexual remarks that an adult might find annoying may become alarming and disruptive when directed at minors." *Id.* The court noted that, although defendant's remarks did not incite violence, it was clear that they disturbed the public order in that the minors avoided further contact with defendant and their ability to work and appear in public was infringed upon by defendant's pattern of harassment. *Id.* at 508-09. Accordingly, the court found the evidence sufficient to support the disorderly-conduct conviction. *Id.*

¶ 36 Here, the defendant was convicted of one count of disorderly conduct and one count of official misconduct based on unwelcome and offensive sexual remarks he directed toward Mariah during her driving examination. Like *Pence*, the context is extremely relevant here; Mariah, a 16-year-old girl, was alone in a vehicle with the defendant, an employee of the Marion SOS facility, who was in a position of authority over her in that he had complete control over whether she received her driver's license. Mariah was visibly upset about the defendant's behavior, and both Carol and Brittney immediately discerned that something was wrong. She was also scared that she would not obtain her license as a result of the encounter with the defendant. There was also additional evidence offered from other witnesses who experienced similar behavior from the defendant during their driving tests.

¶ 37 The defendant's attempt to analogize this case to *People v. Slaton*, 24 Ill. App. 3d 1062 (1974), is unpersuasive. In *Slaton*, defendant told a police officer, while working under the officer's supervision, " 'the son of a bitches are picking on me and I have done enough work for today and I'm not going to do any more work and you can go *** yourself and

everybody else on the property and *** (I am) *** getting sick and tired of it.' " *Id.* at 1064. This complaint was made outside the immediate presence of others, defendant displayed no physical conduct threatening a breach of the peace, and the officer testified that he was not provoked to such a breach. *Id.* The court noted that offensive or vulgar words cannot be prohibited unless they by their very utterance inflict injury or tend to incite an immediate breach of the peace and found that the record indicated that the words spoken under this particular set of circumstances were not of the nature to evoke a violent response, especially from a police officer presumably trained to preserve the public order. *Id.* Accordingly, the court concluded that there was no proof that the words uttered by defendant inflicted injury or intended to invite an immediate breach of the peace, and, thus, the State failed to prove defendant guilty of disorderly conduct beyond a reasonable doubt. *Id.*

¶ 38 The present case is readily distinguishable given that the defendant took advantage of his position of authority as an employee of the Marion SOS facility in that he was alone in a vehicle with a minor, administering her driving test, when he made offensive sexual remarks to her that caused her to be scared and visibly disturbed. Viewing the evidence in the light most favorable to the State, a rational trier of fact could have found that the defendant's unwelcome and offensive sexual remarks were unreasonable and threatening. Accordingly, we affirm the defendant's convictions for aggravated criminal sexual abuse, disorderly conduct, and official misconduct.

¶ 39 Affirmed.