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2013 IL App (3d) 110452-U

Order filed May 16, 2013

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2013

PEOPLE OF THE STATE OF ILLINOIS	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Plaintiff-Appellee,	)	Fulton County, Illinois,
	)	
v.	)	Appeal No. 3-11-0452
	)	Circuit No. 10-CF-75
	)	
JASON A. PHILLIPS,	)	Honorable
	)	William C. Davis,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE McDADE delivered the judgment of the court.  
Presiding Justice Wright and Justice Carter concurred in the judgment.

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**ORDER**

¶ 1 *Held:* Text message testimony, a demonstrative exhibit and defendant's recorded statement were properly admitted into evidence. The State's closing argument was not improper. The jury's verdict does not contradict the manifest weight of the evidence.

¶ 2 A jury convicted defendant, Jason Phillips, of criminal sexual assault (720 ILCS 5/11-1.20(4) (West 2012)). The trial court sentenced defendant to four years' imprisonment.

Defendant now appeals his conviction. We affirm.

¶ 3

## FACTS

¶ 4 On May 20, 2010, defendant was charged with criminal sexual assault, in that he was over the age of 17 when he sexually penetrated K.E., who was 15 years old at the time of the offense, by inserting his finger into K.E.'s vagina, and that he occupied a position of trust, authority or supervision over K.E. The following evidence was adduced at defendant's trial.

¶ 5 K.E. lived with her mother and her twin sister, Nicci. K.E.'s mother is disabled and confined to a wheelchair. K.E. has no relationship with her father.

¶ 6 K.E. met defendant through Covenant Community Church (Covenant) in 2008. Defendant was a youth pastor at Covenant. K.E. regularly attended youth ministry services at Covenant. K.E. also met defendant's wife, Ashley Phillips, through youth ministry. K.E. participated in youth ministry trips to California and Tennessee with defendant and his family.

¶ 7 Defendant hired K.E. and Nicci to babysit his two children on a regular basis. Occasionally, the girls would spend the night at defendant's house, in the guest bedroom located in the basement. K.E. considered defendant's family to be "like her second family" and defendant and Ashley to be her "spiritual parents." K.E. would call defendant "Dad" and Ashley "Mama Ash." K.E. also became involved with defendant's extended family, including defendant's parents and siblings.

¶ 8 The first incident of sexual contact between defendant and K.E. occurred during the summer of 2009. K.E. was at defendant's house babysitting his children. Defendant came home for lunch around noon. At that time, the children were taking a nap in their bedrooms, and K.E. was watching a movie while laying on the bed in a different bedroom. Defendant came into the room K.E. was in and laid next to her on the bed. While they were lying on the bed, defendant

and K.E. were talking, with their heads turned towards each other. Defendant then kissed K.E. It started as a closed mouth kiss and progressed to defendant kissing K.E. "with some tongue."

¶ 9 While the two were kissing, defendant put his hand inside of K.E.'s underwear on her bare skin. He put his fingers inside of her vagina and moved them in a thrusting motion. K.E. was shocked and confused. Defendant stopped when the kids woke up from their nap. K.E. and defendant then got the kids out of bed. Before defendant went back to work, he told K.E. that he was sorry and said "it shouldn't have happened." He sounded sincere and K.E. did not think it would happen again. Defendant then went back to church, and K.E. fed the children. K.E. did not tell anybody what happened because she "didn't know what to do."

¶ 10 That incident was the first of approximately ten such incidents. The second incident occurred at defendant's house in the basement. Nicci was asleep on a love seat while defendant and K.E. were on the couch. Defendant's children were in bed, and his wife was upstairs working on homework. Defendant and K.E. were watching the movie "My Sister's Keeper." K.E. was laying on the couch, under a blanket, with her head facing away from where defendant was sitting on the couch. Defendant put his hand up K.E.'s sweatpants and put his fingers in her vagina. Nicci did not wake up. After the movie was over, K.E. and defendant were talking and defendant was sitting on the floor. He was wearing sweatpants. Defendant took K.E.'s hand and put it in his pants so that she was touching his penis.

¶ 11 K.E. also specifically recalled an incident in October 2009, around Halloween. Nicci, defendant and defendant's brother, Johnny Phillips, went to a haunted house. The four of them were walking through a dark maze, and Nicci and Johnny had gotten separated from K.E. and defendant. The maze was completely dark and did not have people in it. Defendant and K.E.

were looking for Nicci and Johnny and trying to get out of the maze. Defendant stood behind K.E., reached down the front of her pants, and touched her vagina. Defendant stopped when they heard Nicci and Johnny coming around the corner.

¶ 12 In April 2010, defendant told K.E. that he loved her and that he and K.E. should "start over" with their relationship. K.E. was confused, and had "feelings" for defendant, "kind of like a boyfriend." On April 1, 2010, (April Fool's Day), K.E. jokingly sent defendant a text telling him she was gay. Defendant texted her back that he had told Ashley about their relationship.

¶ 13 While K.E. worried about Nicci continuing to visit the family, she never said anything to Nicci about her concerns. However, K.E. did tell her friend, Sarah Wills, about her relationship with defendant. K.E. was embarrassed, upset, and crying when she told Sarah. Sarah suggested she text defendant to see if he would say anything.

¶ 14 K.E. and defendant sent several text messages to one another on May 10, 2010. K.E.'s phone was capable of saving and emailing texts to her email address. K.E. saved and emailed all of the texts sent on May 10 except for two or three texts at the beginning of their conversation. The unsaved texts involved K.E. telling defendant that she told her friend, Tara Hardesty, and that Tara was not impressed. Defendant responded by asking K.E. who else she spoke with. At this point in the conversation, K.E. began saving the texts that she was receiving from defendant. She saved and emailed every text that she received after that point. K.E. printed the texts out from her email. Defendant's phone number was 309-303-1631. The printouts had K.E.'s email address at the top, and said "text" from 309-303-1631, and the date and time each text was sent.

¶ 15 Defendant objected to the admission of K.E.'s printed text messages. The trial court sustained defendant's objection and the actual printouts were not admitted into evidence. The

court, however, allowed the State to continue to question K.E. regarding the text messages. K.E. subsequently testified about the contents of some of the printouts as well as testifying generally about the text conversation.

¶ 16 K.E. testified about the content of the saved texts as follows. After defendant's "Who else have you talked with?" text, K.E. received a text that said: "Okay. I'll talk to Kevin then." K.E. responded: "why him." Defendant said: "Because he's the senior pastor." Defendant asked K.E. to wait to tell people until Ashley was done with her week of finals for school, and because it was his daughter's birthday around that time. K.E. texted defendant: "So now you're concerned about Ashley's feelings." Defendant said he's never been in a situation like that before. Defendant texted K.E. that he wasn't sure what to do, and K.E. responded "And you think I do." At some point in the conversation, K.E. said she felt like it was both of their faults, and defendant said he didn't want things to go too far. Defendant asked: "Do I need to call Robin<sup>1</sup>?" to which K.E. responded it was K.E.'s job to tell her. K.E. then received texts from defendant stating: "I just don't know whether I should talk to Kevin and Ashley tonight" and "Why are you so hateful towards me anyways." Defendant asked K.E. if she was concerned with Ashley's feelings. K.E. responded: "Yes. That's why I'm saying something." Defendant responded: "I can't argue with that." That was the last text in the conversation.

¶ 17 In addition to testifying about the content of the text messages, K.E. testified about how she knew they came from defendant and about who else had viewed the texts. K.E. had sent the first text which started the May 10 text message conversation. K.E. had saved defendant's phone number in her phone as "Jason." K.E. knew she sent the texts to defendant because she knows

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<sup>1</sup> K.E.'s mother.

his phone number and his name is "Jason" on her cell phone. She sent the texts to and received the replies from his number, 303-1631. She had previously used that number every time she had contacted defendant by cell phone. K.E. had previously had a lot of contact with defendant via calls and texts. K.E. explained that only defendant would have been able to carry on the conversation since it entailed information only defendant was aware of.

¶ 18 K.E. testified that she was with Sarah Wills, at Wills' house, during the text message conversation. Wills was sitting next to K.E. as K.E. was sending and receiving texts. K.E. was showing Wills the texts. Wills testified that she was with K.E. as defendant was texting K.E. Wills knew it was defendant because the phone would beep when K.E. got a text, then K.E. would show Wills the phone's screen and the text said "from Jason" at the top. Wills personally observed the texts defendant sent K.E. as well as the texts K.E. sent to defendant. Wills told K.E. to save the texts "because she might end up needing them." Wills witnessed K.E. save the texts on her phone. Tara Hardesty testified that she saw some text messages between K.E. and defendant sometime in May 2010. Hardesty testified that she knew that the texts had come from defendant because the phone displayed his name.

¶ 19 K.E. testified that she met with Sergeant Brad Ward of the Fulton County Sheriff's Department and showed him the text messages, both ones she had received and ones she had sent during the May 10 conversation. She testified that Ward wrote down the content of the messages, alongside the date and time of each message. Defendant argued that Ward should not be allowed to testify regarding the text messages recovered from K.E.'s phone. The trial court overruled defendant's objection.

¶ 20 Ward testified that on May 12, 2010, he personally examined K.E.'s cell phone and

observed a series of text messages on it.<sup>2</sup> Ward wrote down every message and the date and time it was received, and put the transcript in a report. He personally observed the date on each message as May 10, 2010. The texts were "documented under Jason Phillips" which indicated to him that the messages had come from defendant.

¶ 21 A demonstrative exhibit (four poster-boards) was admitted, which showed the texts received by K.E. in red and the texts sent by K.E. in blue. The texts were taken from Ward's police report and transcribed onto the poster-boards. The exhibit was not admitted for substantive purposes. Ward subsequently read the texts into the record as follows:

J: Can you call me?

K: Nope

J: Okay, I will talk to Kevin then.

K: Why him?

J: He is senior pastor.

K: Oh, you're going to tell him.

J: And Camri's birthday is this weekend.

J: I don't know what to do.

K: You think I do?

J: Well, you talked to Tara about it.

K: I'm not just going to keep it in. I've done it long enough.

J: I feel like you're saying you haven't done anything wrong here.

K: What do you think I did wrong?

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<sup>2</sup> Ward's memory was refreshed by his report.

J: Come on.

J: What did I do?

K: Its both our faults. I just didn't know what to do.

J: That's why I didn't want it to go too far because what could have happened.

J: I've never been in a place like that ever.

K: Neither have I.

J: Who else have you talked with?

J: ??

J: Do I need to call Robin?

K: I'm pretty sure that's my job not your's.

J: I just need to know where to go from here.

K: I'm still deciding at this point.

J: I just don't know if I should talk to Kevin and Ashley tonight.

K: I'd be more worried about my mom, actually.

J: Ok

J: Why are you so hateful towards me anyway?

J: Can we let Ashley get through this week of finals?

K: Hmm I wonder

J: What?

J: What does that mean?

K: I wonder.



J: Wonder what? I'm still lost.

K: Just forget it.

J: Kevin tried calling me.

K: So now you're worried about Ashley's feelings?

J: I've always been concerned about her feelings.

K: Whatev [*sic*]

J: Seriously.

K: Yep.

J: Have you?

K: Have I what?

J: Worried about Ashley's feelings?

K: Yeah. That's why I'm saying something.

J: I don't argue with that."

¶ 22 Ward testified the texts came in between 5:56 and 7:56 p.m. on May 10, 2010. Ward did not check to see if any messages came in before 5:56 and he did not know if any messages had been omitted or deleted.

¶ 23 During the investigation, defendant voluntarily gave a recorded statement. Ward and Darold Richardson, another sheriff's deputy, were present during defendant's statement. The first few minutes of the recording consisted of defendant waiving his *Miranda* rights. Defendant then stated he was "lost" and he asked why he was being questioned. Richardson stated: "K.E. made some sexual allegations and if they're true, and I'm almost 100% certain that something happened here that was inappropriate." Defendant asked: "What are her accusations?" Richardson

responded: "Okay, have you had any sexual relations, any sexual contact with K.E.?" Defendant responded: "Number one, I know what I know, okay, and I don't feel comfortable answering any questions, and I appreciate you guys and I respect you guys, but there again you said anything you say can and will be held against you right." Robinson responded: "[If you don't] take advantage of the opportunity, it's just gonna weigh on what she says and what you're not saying." Robinson also stated: "If you're charged out on this, how do you want to go over to the courthouse with this answering these charges? \*\*\* You can go over there right now saying \*\*\* [you] didn't do it, [you] deny completely, but I'm telling you right now[,] you go over there looking that way they're gonna look at you like you're a liar." Defendant then described himself as "mad" and "hurt." Robinson again asked: "Did you guys have \*\*\* a relationship of some kind?" Defendant laughed and said: "What? What are you talking about? You know I have a relationship with a lot of people." Ward asked: "Almost like a boyfriend or girlfriend?" Defendant responded: "I don't think so." Defendant then invoked his right to counsel and the interrogation was stopped.

¶ 24 Defendant moved to exclude the recorded statement. Defendant argued that the statement was prejudicial because it consisted of the deputies vouching for the strength of their case against defendant. Upon hearing argument, the court found the recording was admissible. After the jury heard the recording, the court provided a verbal limiting instruction, asking the jury to disregard the deputies' statements regarding the strength of their case, and only to focus upon the responses and actions of defendant.

¶ 25 Defendant's wife, Ashley, never observed any inappropriate contact between defendant and K.E. Ashley and defendant decided that K.E. and Nicci could not attend a youth ministry

trip to Florida because they had not met their financial goals. At one point, Ashley stated that K.E. and two of K.E.'s friends flipped her off while driving by her on the road. Ashley was positive K.E. was driving.

¶ 26 K.E.'s mother, Robin Evans, acknowledged that K.E. and Nicci were very close to defendant and his family. Robin occasionally argued with K.E. and Nicci about the amount of time the girls were spending at defendant's home. Robin testified that the girls were upset that they were not allowed to go to Florida with the Phillips family. After K.E. told Robin what had happened, Robin contacted the Fulton County Sheriff's Department.

¶ 27 During deliberations, the jury requested to see the demonstrative exhibit of the text messages. The trial court denied this request. Ultimately, the jury found defendant guilty of criminal sexual assault. Defendant was sentenced to four years' imprisonment.

¶ 28 ANALYSIS

¶ 29 Defendant presents the following issues on appeal: (1) whether the trial court erred in allowing the testimony about text messages between K.E. and defendant, (2) whether the trial court erred in admitting the four poster-boards as a demonstrative exhibit, (3) whether the trial court erred in admitting defendant's recorded statement, (4) whether the State's closing argument was improper, and (5) whether the State's evidence failed to establish defendant's guilt beyond a reasonable doubt.

¶ 30 Text Testimony

¶ 31 Testimony regarding the content of the text messages was presented by four different witnesses: K.E., Sarah Willis, Tara Hardesty and Brad Ward. Defendant argues the trial court erroneously admitted this testimony into evidence. He claims that the testimony was unreliable,

cumulative and unduly prejudicial.

¶ 32 Relevant evidence is admissible as long as "its probative value is not substantially outweighed by its prejudicial effect." *People v. Gonzalez*, 142 Ill. 2d 481, 487 (1991). Evidence is relevant if it has any tendency to make the existence of a fact in consequence to the determination of the action more or less probable than it would be without the evidence. *People v. Hope*, 168 Ill. 2d 1, 23 (1995). We will not reverse a judge's decision to admit evidence absent a clear abuse of discretion. *People v. Case*, 246 Ill. App. 3d 566, 575 (1993).

¶ 33 The text message testimony was relevant as it corroborated K.E.'s testimony about the sexual relationship and contained incriminating statements by defendant. In the texts, defendant says that he does not know what to do and is concerned for his wife's feelings. Defendant inquires as to who else K.E. spoke with and whether he needs to talk to K.E.'s mother or his supervising pastor. After defendant accuses K.E. of not accepting responsibility for any wrongdoing, K.E. responds: "Its both our faults. I just didn't know what to do." Defendant follows: "That's why I didn't want it to go too far because what could have happened."

¶ 34 Clearly, the text message testimony was relevant as it rendered more probable the inference that defendant sexually assaulted K.E. While defendant alleges that Willis, Hardesty and Ward "lacked personal knowledge that the texts were authored by defendant," we note that Willis, Hardesty and Ward merely testified to what they saw on K.E.'s phone. Under Illinois law, a lay witness may testify to his observations or sensory perceptions. *People v. McCarter*, 385 Ill. App. 3d 919, 934 (2008). Willis, Hardesty and Ward's observations were probative in that they assisted in establishing that the texts actually existed. It was for the jury then to decide, based on the evidence presented, whether defendant actually authored the texts.

¶ 35 We also reject defendant's claim that the text message testimony was unreliable cumulative, or unduly prejudicial. While we acknowledge that K.E. did not save all the text messages, she testified that the two or three unsaved messages at the beginning of the conversation merely involved K.E. telling defendant that she told Tara and that Tara was not impressed. Defendant responded by asking K.E. who else she spoke with. K.E.'s failure to save these text messages does not render the remaining text message testimony unreliable. Moreover, K.E., Willis, Hardesty and Ward each testified to uniquely probative facts. Finally, we find that the probative value of the text message testimony was not substantially outweighed by its prejudicial effect. Accordingly, the trial court did not abuse its discretion in allowing the text message testimony.

¶ 36 Demonstrative Exhibit

¶ 37 The demonstrative exhibit consisted of four poster-boards showing the May 10 text message conversation. The conversation was taken from Ward's police report and transcribed onto the poster-boards. Defendant contends the trial court erred in admitting the four poster-boards as demonstrative evidence.

¶ 38 "Courts look favorably upon the use of demonstrative evidence, because it helps the jury understand the issues raised at trial." *People v. Burrows*, 148 Ill. 2d 196, 252 (1992). "The overriding considerations in admitting demonstrative evidence are relevancy and fairness." *Burrows*, 148 Ill. 2d at 252. The question of the admissibility of such exhibits is a matter within the trial court's discretion and will be disturbed only on a showing of clear abuse. *Burke v. Toledo, Peoria & Western Railroad Co.*, 148 Ill. App. 3d 208, 213 (1986).

¶ 39 Defendant has failed to demonstrate that the use of the four poster-boards depicting the

May 10 text message conversation between defendant and K.E. was clearly irrelevant and unfair given the facts presented at trial. Ward testified that he personally examined K.E.'s cell phone and wrote down every text in his police report. The texts on Ward's police report were then transcribed onto the poster-boards. Ward could only provide a monologue of the conversation. It was important for the jury, however, to be able to keep track of who said what during the conversation. The demonstrative exhibit allowed for this because it was color-coded – texts sent from defendant to K.E. were in red and texts sent from K.E. to defendant were in blue. We find the demonstrative exhibit assisted the jurors in understanding Ward's testimonial evidence. Accordingly, the trial court did not abuse its discretion in allowing the demonstrative exhibit.

¶ 40 In coming to this conclusion, we reject defendant's reliance on *People v. Williams*, 161 Ill. 2d 1 (1994). *Williams* involved the construction and use of a chart during a hearing to determine whether the defendant should be sentenced to death. The chart, which showed the defendant's criminal background, was constructed during the hearing by the taping of placards onto the chart after each witness testified. The placards restated testimonies. The chart was left up throughout the State's case-in-chief.

¶ 41 In the instant case, the poster-boards merely accompanied the testimony rather than summarized it after the fact. Demonstrative exhibits are proper if they assist the jury in understanding testimonial evidence, however, they should be disallowed if they merely summarize understandable testimony. *Williams*, 161 Ill. 2d at 67-68. The lines of dialogue were not individually written on the poster-boards after Ward testified, unlike in *Williams*. Nor were the poster-boards left up throughout the entirety of the State's case-in-chief. The poster-boards merely accompanied and accurately reflected Ward's testimony about the content of the

messages.

¶ 42 We also reject defendant's allegation that the poster-boards constituted substantive evidence. Initially, we note that this allegation conflicts with the majority of defendant's initial brief, which presents law and argument in the context of a demonstrative exhibit. More importantly, however, the record is devoid of any evidence supporting this particular claim. In fact, the record confirms that the poster-boards were admitted solely as a demonstrative exhibit. The scope of their admission is consistent with the fact that the parties both referred to the poster-boards as a demonstrative exhibit throughout the proceedings and trial court denied the jury's request to see the poster-boards during deliberations.

¶ 43 Recorded Statement

¶ 44 Defendant asserts that the trial court erred in admitting defendant's recorded statement. Specifically, defendant argues that the statement was inadmissible on two grounds: (1) its probative value was substantially outweighed by its prejudicial effect, and (2) it contained hearsay statements. We begin with the latter argument. Defendant's initial brief states:

"[T]he admission of the recording presented a constitutional infirmity in that Richardson – who conducted the bulk of the interrogation – was not called as a witness at trial. Therefore, his comments were the out-of-court testimonial statements of an unsworn witness who was unavailable for cross-examination, which denied defendant his constitutional right to confront a witness against him."

¶ 45 Richardson's statements on the recording were not hearsay. The holding in *People v.*

*Theis*, 2011 IL App (2d) 091080 is dispositive. The defendant in *Theis* argued that the videotape of his interview was inadmissible because it contained a detective's hearsay assertions. In rejecting this claim the court stated:

"[D]efendant's argument that [the] detective's statements were hearsay is incorrect. 'It is well established that a taped conversation or recording, which is otherwise competent, material and relevant, is admissible so long as it is authenticated and shown to be reliable through proper foundation.' [Citation.] A taped conversation is not hearsay; rather, it is a 'mechanical eavesdropper with an identity of its own, separate and apart from the voices recorded.' [Citation.] In this case, defendant does not argue that the State failed to lay a proper foundation for the admission of the videotaped interrogation. Therefore, Detective Nachman's alleged hearsay statements during defendant's videotaped interview were admissible.

Further, hearsay is an out-of-court statement offered to establish the truth of the matter asserted. [Citation.] Thus, an out-of-court statement that is necessary to show its effect on the listener's mind or explain the listener's subsequent actions is not hearsay. [Citation.] In this case, absent [the] detective's statements, defendant's answers would have been nonsensical. Thus, for the two reasons stated above, [the] detective's statements



were not hearsay and the trial court did not err in failing to, *sua sponte*, redact his statements from the videotaped interview."

*Theis*, 2011 IL App (2d) 091080 § 32-33.

¶ 46 Defendant's remaining argument asserts that the probative value of the recording was substantially outweighed by its prejudicial effect. Specifically, defendant alleges that the statement is inadmissible because it contains no "implicit or explicit admissions" and instead consists merely of the deputies statements "exaggerating the strength of the State's case."

¶ 47 The question before us is not whether we would have admitted the statement. Instead, the question is whether the trial court abused its discretion in admitting the statement. *People v. Moore*, 171 Ill. 2d 74, 114 (1996). After reviewing the recorded statement, we are unable to say that no reasonable person would take the position adopted by the trial court. Defendant's behavior and answers to the deputies questions did hold some probative value. Moreover, any *potential* prejudice was minimized by the fact that the trial court issued a verbal limiting instruction, asking the jury to disregard the deputies' statements regarding the strength of their case, and only to focus upon the responses and actions of defendant. Accordingly, the trial court did not abuse its discretion in allowing the recorded statement.

¶ 48 Closing Argument

¶ 49 Defendant argues that he was denied a fair trial when the State impermissibly drew attention to the fact that defendant did not testify. Defendant's initial brief states:

"The State argued, '[h]e never once, during the course of the text message[s], denied that something had happened between them.' The State also argued that one of the 'more important'

questions the defendant was asked in the recording was:

'[D]o you have a boyfriend/girlfriend type of relationship with K.E. and his response was I don't think so. I don't think so? You're being asked if you have a boyfriend/girlfriend relationship with a 15-year-old girl. You are a 35-year-old man. You are her youth pastor. You are her surrogate father. And you don't think that you have a boyfriend/girlfriend relationship with this little girl?'

In rebuttal, following defense counsel's assertion that this was not a case of 'he said/she said,' but rather 'she said and he denied,' the State argued 'Where in text messages did [the defendant] deny that something had gone on between he and [K.E.]? Where in the interview with Brad Ward and Richardson did [he] deny that something had been going on with [K.E.]?' "

¶ 50 Defendant failed object to the above referenced comments at trial, and he thus waived any claim of error. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). Regardless, of defendant's waiver, his argument lacks merit. The record is simply devoid of any evidence that the State drew attention to the fact that defendant did not testify. The record, however does establish that defendant, in his texts and during his statement, did not deny having a sexual relationship with K.E. Therefore, the State was allowed to draw attention to that fact during closing argument.

¶ 51 Reasonable Doubt

¶ 52 Defendant contends that the State's evidence failed to establish defendant's guilt beyond a reasonable doubt. The State was required to prove the following elements beyond a reasonable doubt: (1) defendant committed an act of sexual penetration with K.E., (2) defendant holds a position of trust authority, or supervision in relation to K.E., (3) defendant is 17 years of age or over, and (4) K.E. is at least 13 years of age but under 18 years of age. 720 ILCS 5/11-1.20(4) (West 2012).

¶ 53 Defendant does not challenge that the State established the second, third or fourth elements. The record illustrates these elements were proven beyond a reasonable doubt. Instead, defendant argues that the State failed to establish beyond a reasonable doubt that he committed an act of sexual penetration with K.E. When a defendant challenges the sufficiency of the evidence, it is not the function of a reviewing court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, a reviewing court must consider 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. Ward*, 215 Ill. 2d 317, 322 (2005).

¶ 54 Defendant calls our attention to the following facts: (1) that the State failed to present any physical evidence connecting defendant to the offense, (2) there was no corroborating eyewitness testimony of the offense, and (3) defendant did not make any incriminating statements. None of these were needed, however, to establish defendant's guilt. K.E. testified to three specific instances of sexual penetration. K.E.'s testimony alone was enough to establish the element of penetration beyond a reasonable doubt. Significantly, the text message testimony and defendant's recorded statement corroborated K.E.'s testimony. While defendant argues that K.E.'s testimony

was "weak," "improbable" and "unbelievable," we refuse to assess the credibility of K.E. on appeal. *People v. Taylor*, 381 Ill. App. 3d 251, 257 (2008). We leave that determination to the jury. *Taylor*, 381 Ill. App. 3d at 257. Accordingly, we find the evidence sufficient to support defendant's conviction.

¶ 55 For the foregoing reasons, we affirm defendant's conviction.

¶ 56 Affirmed.