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FOURTH DISTRICT

4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,) Appeal from
Plaintiff-Appellee,) Circuit Court of
v.) McLean County
EDWARD L. JONES,) No. 08CF984
Defendant-Appellant.)
) Honorable
) Robert L. Freitag,
) Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Turner and Justice Cook concurred in the judgment.

¶ 1 *Held:* The evidence presented at defendant's bench trial was sufficient to support his convictions of predatory criminal sexual assault of a child and aggravated criminal sexual abuse. The child victim's testimony was believable, not improbable or contradicted by other evidence, as claimed by defendant.

¶ 2 After a bench trial, defendant, Edward L. Jones, was found guilty of one count of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2006), now 720 ILCS 5/11-1.40 (West 2010)) and one count of aggravated criminal sexual abuse (720 ILCS 5/12-16(b) (West 2006), now 720 ILCS 5/11-1.60(b) (West 2010)) against his six-year-old daughter. The trial court sentenced him to consecutive terms of eight years and six years, respectively. In this direct appeal, defendant claims the State failed to prove him guilty beyond a reasonable doubt, arguing the victim's testimony was insufficient, improbable, and contradicted by other evidence. We affirm.

¶ 3

I. BACKGROUND

¶ 4

Defendant and his wife, Kami Bricknell Jones, remained married but lived separately. Their daughter, the victim in this case, lived with Kami during the week and with defendant on the weekends. On Sunday, August 24, 2008, after Kami picked up her daughter from defendant, she learned that defendant had "touched" her daughter inappropriately while playing a board game the day before. According to the child, defendant had removed her underwear, pulled her leg up, and touched her vaginal area on the outside with his hand and on the inside with his finger.

¶ 5

Kami took her daughter to the police station and then later to the hospital for an examination. A few days later, her daughter was interviewed at the McLean County Children's Advocacy Center (Advocacy Center). As a result of these interviews, the State charged defendant as noted. In October 2010, defendant's bench trial commenced.

¶ 6

A. The Victim's Testimony

¶ 7

The victim in this case testified she was currently in the third grade. She said the last time she played Chutes and Ladders with her father, he had "touched" her with his hands on the inside of her "private"—the place on her body where she goes "pee pee." She told him to stop, but he did not. She told her mother when she got home and they "went to the hospital." After the hospital, she talked to somebody else about the incident, but she could not remember who.

¶ 8

On cross-examination, the child admitted that she told "stories sometimes," but she never got in trouble for it. Her mother had told her to always tell the truth. When discussing the night of the incident, the child said her father gave her a bath, as he usually did. He put lotion on her after the bath and dressed her. She answered "yes" to counsel's question whether her father "touched" her six times on the same day. She said it hurt. This was the first time anyone had

touched her private areas. She does not remember what happened after he touched her. However, later in the questioning, she said her mother picked her up after the touching.

¶ 9 On redirect examination, the child said she loved and missed her father and she did not want him to get in trouble for touching her.

¶ 10 B. Officer's Testimony

¶ 11 Michael C. Burns, a child-sex-abuse investigator for the Bloomington police department, testified he was present for the victim's interview with Mary Whitaker of the Advocacy Center on August 26, 2008. He reviewed the transcript from the child's recorded interview and testified the transcript accurately reflected the interview. After the conclusion of the interview at the Advocacy Center, Burns executed a search warrant for defendant's apartment. After the execution of the warrant, Burns interviewed defendant and arrested him.

¶ 12 C. Mother's Testimony

¶ 13 Kami Bicknell Jones testified she had picked up her daughter from defendant's house around 5:30 p.m. on August 24, 2008. When they arrived home, she made dinner and the two sat down to eat together. The child said she had something to tell her mother that might make her mad. She said: " 'My daddy touched me.' " Kami asked where she had been touched and she pointed to her "vagina area." Kami asked if it occurred during her bath, and the child said it happened while they were playing Chutes and Ladders. Kami said: "[S]he told me that he took her skirt off that she had on. She had no panties on and ask[ed] her to put her leg up in the air and was touching her and she told him to stop because it hurt and that was basically it." Kami asked her if this had happened before and she said it had. Kami said her daughter's demeanor was "calm, but you could tell she was a little scared to say something, like she might have been in trouble."

¶ 14 After her daughter told her about the incident, Kami asked her friend Demetria to come over. Her daughter repeated for Demetria what she had just told Kami. Kami and Demetria then took the child to the police station to make a police report. A few days later, they took her to the Advocacy Center for an interview.

¶ 15 On cross-examination, Kami testified her daughter does not have any behavioral issues. However, she admitted her daughter has fibbed, but, in her opinion, not more than any other child.

¶ 16 D. Physician's Testimony

¶ 17 Vanessa Pitts, an emergency room physician at BroMenn Regional Medical Center, testified that on August 24, 2008, she examined the child in relation to the allegations of sexual abuse. Dr. Pitts did not observe any signs of trauma to the child's vaginal area. Upon conducting a urinalysis, it was discovered that the child had a urinary tract infection. Dr. Pitts acknowledged the child had reported that her vaginal area had been rubbed six times. When asked of the possible physical effects of rubbing a child's vaginal area six times, the doctor testified: "I don't know that I would see anything." On cross-examination, Dr. Pitts acknowledged that a urinary tract infection could be a symptom of sexual abuse.

¶ 18 E. Child's Recorded Interview with Advocate

¶ 19 On August 26, 2008, the child responded as follows to questions from Mary Whitaker, a child advocate at the Advocacy Center. The child said she was six years old, in the first grade, and lived with her mother. She said she did not know why she was being interviewed. After identifying various body parts on a drawn picture of a female, the child pointed to areas where "people shouldn't touch," identified as her "front" or her vaginal area, her "butt," and "boobs." The

following exchange occurred:

"Q. Yeah. Has anybody ever touched you on the boobs?

A. No.

Q. Okay. How 'bout on the front?

A. Yes.

Q. Well tell me about that. Who did that?

A. My daddy.

Q. Well tell me what happened?

A. I was over there and then he touch me right there, and then we was playing a game and then, and then he touched me right there and I was laying on him he touched me right there and I, and then I went to the hospital and then, and then they looked the, the doctor and then, then we, we didn't, then I have to go potty and put it in a cup.

Q. Yeah.

A. And then I, then I have to put my clothes on, and then my shoes on and then I was done and then, and then I took my [], and then after we went home this morning, today I took my medicine.

Q. Okay well you said, where did that happen at when daddy touched you there?

A. Um.

Q. Where were you at?

A. At my dad's.

* * *

A. In his room.

Q. Okay.

A. And we was playing Chutes and Ladders and then, and then he did this (Holds up her right leg).

Q. Pulled your leg up like that?

A. Um huh.

Q. Okay, eh, and what did you have on when you were playing Chutes and Ladders?

A. Um, I had, this skirt, all pink skirt it's kinda like pajama skirt but it's not and I had no underwear on he tooked it off and then that's and I took, and then—

Q. Did um, did daddy say why he took your underwear off?

A. (Nods head yes).

Q. What'd he say?

A. He said, I forgot.

Q. That's okay if I ask you any questions that you don't know the answer too [*sic*] it's okay. Alright? Um so when he touched you there on the front what did he touch you with?

A. With his hand."

¶ 20 The child further explained that her father touched her directly on her skin, in a rubbing motion. Without being asked, she said she did not like it and she told him to stop. He said

he would. She said this incident occurred last Saturday, the last time she was at her father's house. She also said her father had touched her before in the same manner. The previous time, it occurred soon after they woke up, as they were laying in bed watching television. She said her father picked her up and then she forgot what she was going to say. She then corrected herself and said the only touching that occurred was last Saturday, but it happened six times on that day.

¶ 21 The child told Whitaker that she had told her mother what happened and her mother started crying. She said: "That's where I had to, I had to go to the hospital because he touched me right there, cuz and there, that's wrong." Whitaker asked her if daddy touched her "front" on the outside or the inside. She answered as follows:

"A. In.

Q. Okay and then how did that feel?

A. Not good.

Q. Not good, when you say not good what do you mean?

A. Um—

Q. Like did that ever hurt when he did that or did it just not feel good?

A. It hurt.

Q. Okay, okay. And when it hurt what was he doing?

A. Um, he was still touching it.

Q. And what was he touching it with when it hurt?

A. That hand.

Q. With his hand? Okay was it like with his whole hand?

A. No just one—

Q. Just one hand.

A. His finger."

¶ 22 F. Defendant's Sisters' Testimony

¶ 23 Defendant's two sisters provided character evidence. Joyce Marian Jones testified that defendant lived with her from September 2006 through March 2008. She described defendant as a "wonderful father." Jones recalled several occasions when the child would complain that her "private area" hurt, and she did not want anyone to wipe her. Kami had sent with the child the prescribed antibiotic for a bacterial infection. Defendant's older sister, Felicia Montrice Martin, characterized defendant as a "pretty good father."

¶ 24 G. Defendant's Testimony

¶ 25 Defendant said, as his daughter got older, she started telling "little fibs here and there." He said on the day in question, Kami had dropped off their daughter at his apartment at approximately 9:30 a.m. Soon thereafter, he took her to his sister's house because he had to help his father. He arrived home around 6 p.m. and his daughter arrived home around 9 p.m. She played on the computer, ate a snack, and went to bed. The next morning, after they went to breakfast, she played again on the computer while defendant watched a football game on television. Later in the day, they played Chutes and Ladders in the living room, while defendant's roommate continued watching the football game.

¶ 26 Defendant said he would "never, ever" do anything to hurt his daughter. He said: "[She] is my life. She's my oxygen when I breathe." He said he never removed his daughter's underwear. He helped her with a bath before Kami picked her up, but the child undressed herself

and for the most part, was alone in the bathroom. He said he "assisted her when needed." After she dried herself off, defendant put lotion on her arms, back, chest, and legs. She dressed herself in the bathroom. Defendant's attorney asked him if it was possible that he may have rubbed against her private area when he was applying the lotion. He responded: "It's possible, but, you know, just put the lotion on her and that was about it, but it's possible that I might have bumped into her and that's, yeah, that's about it that I can recall." He said his daughter never asked him to stop or said that he was hurting her. He denied ever touching inside her vagina.

¶ 27 Defendant's attorney asked defendant why, in his opinion, would his daughter say he touched her when he did not. Defendant replied:

"Well, she—I don't know if she got things mixed or twisted up or misunderstood. I don't know if anybody put her up to it. I don't know if her mother ever said anything to her to make her want to say anything like that. But I just don't believe that you would say anything like that."

¶ 28 After considering the testimony and other evidence presented, the trial court found defendant guilty on both counts. The court later denied defendant's posttrial motion and sentenced him to consecutive prison terms of eight years for predatory criminal sexual assault and six years for aggravated criminal sexual abuse. This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 Defendant contends the State failed to prove him guilty beyond a reasonable doubt when its case in chief rested solely on the accusations of the victim, who had a history of fibbing and telling stories. He claims her accusations were unsubstantiated, improbable, insufficient, and

contradicted by other evidence.

¶ 31 When evaluating a challenge to the sufficiency of evidence, the relevant question is "whether, 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." *In re Jonathon C.B.*, 2011 IL 107750, ¶ 47. Generally, the trier of fact has had the opportunity to hear and see the witnesses and, for that reason, is in the best position to judge credibility. *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007). It is not the function of a reviewing court to retry the defendant. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). Instead, the reviewing court "must allow all reasonable inferences from the record in favor of the prosecution" (*People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)) and reverse a conviction only if the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of defendant's guilt (*People v. Collins*, 214 Ill. 2d 206, 217 (2005)).

¶ 32 In order to prove a defendant guilty of predatory criminal sexual assault of a child, the State must prove the offender committed an act of sexual penetration, either intentionally or knowingly. *People v. Douglas*, 381 Ill. App. 3d 1067, 1085 (2008). An act of penetration of a finger into the sex organ of the victim qualifies as an act of sexual penetration for the purposes of this offense. See *People v. Jackson*, 2012 IL App (1st) 092833, ¶ 31. "Sexual penetration means *** any intrusion, however slight, of any part of the body of one person *** into the sex organ or anus of another person." 720 ILCS 5/12-12(f) (West 2006). In this case, the victim testified defendant touched her "front," her vaginal area, with his hand. She said he touched it inside with one hand, clarifying later that he had used one finger. She said it hurt, leading a reasonable person to believe defendant had used one finger to penetrate the victim's vagina, rather than just rubbing the skin on

the outside.

¶ 33 Defendant was also convicted of aggravated criminal sexual abuse. In order to prove defendant guilty of this offense, the State was required to prove defendant committed an act of sexual conduct with the victim, who was under 18 years of age and a family member. 720 ILCS 5/12-16(b) (West 2006), now 720 ILCS 5/11-1.60(b) (West 2010)). " 'Sexual conduct' means any intentional or knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, ***, for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/12-12(e) (West 2000), see also *People v. Kolton*, 219 Ill. 2d 353, 369 (2006). Here, the child testified defendant removed her underwear, put her leg up, and rubbed her "front." This conduct describes an intentional act of a sexual nature and, thus, sufficiently satisfies the elements of the charged offense.

¶ 34 Based on our review of the record, we find the evidence not so improbable, unsatisfactory, or inconclusive so as to reverse the judgment of conviction. Indeed, this trial constituted a battle of credibility. When weighing the credibility, the trial court found the victim's account more credible for several reasons. First, there was no evidence to suggest that Kami had prompted the child to make these allegations. Second, the child did not seem to be confused regarding the touching between the alleged incident and that touching which took place when her father helped her during a bath or while putting lotion on her. Third, the child stated her allegations in a narrative form, rather than answering specific questions, and she recounted the incident in detail. And fourth, she indicated her father touched her with his hand, using one hand to touch inside her. When Whitaker attempted to clarify this issue, the child corrected herself to say that her father used

one finger. The court noted that word had not been used in the interview previously. The court also noted it was "struck" by the credibility of the child. According to the court, she had "been significantly consistent throughout three times that she's repeated this, and the court believes that that evidence is credible."

¶ 35 We disagree with defendant as to the significance of the testimony suggesting the child had told fibs in the past. Contrary to defendant's position, the evidence did not establish that the child had a so-called history of fibbing or lying. The evidence suggested she may have told a story or two, but no more than a typical child of her age. Such evidence did not destroy her credibility. Further, we do not place any significance on the fact that Demetria, who was apparently sexually abused as a child, spoke with the child for 20 to 35 minutes prior to going to the police. In fact, the trial court specifically noted that the child's statements, both during her interview and on the witness stand, did not appear to be the product of coaching, suggestion, or encouragement, as she did not seem to be "parroting something." Rather, the child described the details of an event, in narrative form, that she had endured. Further, there was no reason to believe Kami would have prompted the child to make such allegations or encouraged Demetria to prompt the child, since the custodial arrangement with defendant was operating as a benefit to her and there was no evidence of an acrimonious relationship between the two. It seemed Kami had no reason to sabotage the current arrangement.

¶ 36 Given our deferential standard of review, we find the State sufficiently proved defendant guilty of the charged offenses. As noted above, the trial court is in a much better position to judge the credibility of witnesses, and we must give due consideration to the court's credibility determination. On this record, we find no reason to reverse the court's decision.

¶ 37

III. CONCLUSION

¶ 38 For the foregoing reasons, we affirm defendant's convictions. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 39 Affirmed.