2017 IL App (4th) 160511-U

NO. 4-16-0511

FILED
April 5, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
CHAS K. REAVILL,	)	No. 13CF188
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) defendant had no right to have the trial court inquire as to guilty-plea negotiations, particularly where defendant did not claim his counsel rendered him ineffective assistance; (2) the court did not err in excluding hearsay evidence, and no cumulative error warranted a new trial; (3) counsel did not render ineffective assistance during sentencing; and (4) defendant's sentence was not excessive.

¶ 2 In August 2015, a jury convicted defendant, Chas K. Reavill, of one count of aggravated criminal sexual abuse of a family member, a Class 2 felony (720 ILCS 5/11-1.60(b) (West 2012)), and one count of predatory criminal sexual assault of a child, a Class X felony (720 ILCS 5/11-1.40(a)(1) (West 2012)), based on incidents of sexual abuse involving defendant and his minor daughter, L.R. (born July 3, 2002). The trial court sentenced defendant to concurrent terms of 20 years' imprisonment for his predatory-criminal-sexual-assault conviction and 5 years' imprisonment for his aggravated-criminal-sexual-abuse conviction.

¶ 3 Defendant appeals, arguing (1) the trial court erred in not inquiring of the State in open court as to any plea offers that had been tendered; (2) the court erred in excluding evidence of the custody proceedings between defendant and L.R.'s mother; (3) second trial counsel, Kevin Sanborn, was ineffective in advising the court prior to sentencing that defendant was "in danger of violent acts"; and (4) his 20-year sentence was excessive in light of his lack of prior criminal history and the short duration of the sexual abuse. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In April 2013, the State charged defendant by information with aggravated criminal sexual abuse of a family member (L.R.) (count I), predatory criminal sexual assault of a child (L.R.) (count II), and aggravated criminal sexual abuse of a family member (C.F.) (born May 13, 1996) (count III). We summarize only the facts and testimony necessary for purposes of this appeal.

¶ 6 A. Trial

¶ 7 Prior to proceeding to trial, the trial court did not ask whether any plea offers had been made. In August 2015, the matter proceeded to trial, during which the jury heard the following evidence.

¶ 8 1. *Troy Hogren*

¶ 9 Troy Hogren, a former Danville police officer, testified he received a call from Liya Hussman-Rogers on February 28, 2013. Hussman-Rogers stated Jodie Reavill called her because her daughter, L.R., had disclosed defendant was sexually assaulting her. Hussman-Rogers also mentioned C.F. may have been victimized. Hogren took Jodie's information and called her that same day to confirm Hussman-Rogers' information. Hogren testified Jodie first found out about the abuse on February 20, 2013. Jodie told Hogren C.F. and defendant went to a

basketball game the following day and she took L.R. to the Rape Crisis Center on February 22, 2013. Jodie reported she had a conversation with defendant, during which he claimed he only gave L.R. a piggyback ride and rubbed her back. During the same conversation, Jodie reported defendant apologized and stated he never meant to hurt his daughters. Hogren testified he interviewed both L.R. and C.F. alone in March 2013.

¶ 10 2. *C.F.*

¶ 11 C.F. testified, in December 2012 and January 2013, she was 16 years old. At that time, C.F. lived in Danville with her mother (Jodie), her stepfather (defendant), and her little sister (L.R.). C.F. testified she had Christmas break from school from approximately December 14, 2012, to January 6, 2013. According to C.F., one day over Christmas break, she was on her bed playing an Xbox game when defendant came into her room, lay down next to her, and began rubbing her back. According to C.F., defendant placed his hand under her shirt, then moved his hand down into C.F.'s shorts and massaged her buttocks. Defendant then began rubbing C.F.'s vagina, which C.F. estimated lasted for 10 minutes.

¶ 12 C.F. testified defendant removed his belt and lowered his pants, exposing his penis. According to C.F., defendant lowered C.F.'s shorts and underwear and penetrated her vagina with his penis. C.F. estimated this continued for 10 to 15 minutes before defendant got up, put on his pants, and left.

¶ 13 C.F. went to the bathroom to take a bath. While she was in the bathtub, defendant came into the room. C.F. testified, "He apologized for the way he behaved, said it wasn't father-like and that he would be more of a father to me and that it wouldn't happen again."

¶ 14 C.F. testified she worried about L.R. and kept an eye on her. In February 2013, C.F. saw defendant and L.R. on L.R.'s bed and L.R. told C.F. defendant was giving her a back rub. C.F. testified this alarmed her "because it always started out as a back rub."

¶ 15 According to C.F., she attended a basketball game at the University of Illinois with defendant. The day after the basketball game, C.F., her mother, and L.R. moved out of the family's home.

¶ 16 3. *L.R.*

¶ 17 L.R. testified she was 10 years old in February 2013 and lived in Danville with her mother, defendant, and C.F. According to L.R., February 3, 2013, was Super Bowl Sunday. L.R. testified her mother and C.F. were upstairs getting ready for bed and L.R. and defendant were watching the end of the Super Bowl. L.R. was wearing pajama shorts and a Danville High School jersey and she and defendant were both lying on their sides on the living room couch, with defendant behind L.R. According to L.R., defendant began tickling her back under her shirt and then began rubbing her buttocks under her clothes. L.R. testified defendant then began to rub her vagina. L.R. did not tell anyone what happened because she feared no one would believe her.

¶ 18 L.R. testified defendant touched her again approximately five times. The last time, L.R. was in bed, about to go to sleep. Defendant asked her if she wanted him to tickle her back and L.R. agreed. Defendant began tickling her back and then proceeded to rub her buttocks and vagina. According to L.R., defendant put his finger inside her vagina. L.R. testified the other occasions occurred in her bedroom, and defendant would rub her buttocks and vagina and put his finger inside her vagina.

¶ 19 L.R. testified she eventually told her friend, S.H., that defendant had touched her. S.H. told L.R. she had to tell her mother, so L.R. did. The night L.R. told her mother, C.F. and defendant were attending a game. According to L.R., the day after she told her mother about the abuse, she, C.F., and her mother moved out.

¶ 20 4. *Jodie Reavill*

¶ 21 Jodie testified, on February 21, 2013, defendant and C.F. were at a basketball game in Champaign. That night, L.R. told Jodie defendant was molesting her. According to Jodie, she immediately called her sister, Kimberly Ellison, to come over. Jodie testified defendant and C.F. returned from the game around midnight and Jodie, C.F., and L.R. all spent the night together in C.F.'s room. The next day, a Friday, the children went to school as normal and Jodie called the Rape Crisis Center, found a new house to rent, and got a U-Haul. That same day, Jodie called Liya Rogers, an attorney and family friend, who called the police for Jodie.

¶ 22 On Saturday, Jodie, L.R., and C.F. moved out while defendant was at work. Defendant called Jodie when he got home because he thought the house had been robbed. According to Jodie, she stated, "You know what you did to our daughters." Defendant responded, saying, "What are you talking about, Jo?" Jodie testified defendant indicated the girls were confused and told Jodie "to tell his daughters that he was very sorry."

¶ 23 According to Jodie, Friday, February 22, 2013, was the first time she began making plans to move out. Jodie did not recall having an argument with defendant in February 2013 regarding divorce or custody of L.R. Jodie testified she found out defendant had a girlfriend in late 2013. Jodie further testified she was in a relationship with Dale Ghibaudy from July 2013 to October 2013. Jodie denied having a conversation with Ghibaudy regarding when she made plans to move out or when she found out defendant had a girlfriend.

¶ 24 5. *Dale Ghibaudy*

¶ 25 Dale Ghibaudy testified he was in a relationship with Jodie from June 2013 to December 2013. In August 2013, Jodie told Ghibaudy she found out defendant had a girlfriend a few weeks before she moved out. During that same conversation, Jodie told Ghibaudy she planned to move out a few days before she actually moved out. Defense counsel made the following offer of proof:

> "[I]f Dale Ghibaudy were called to testify, he would testify that during the second week of September, 2013, he was asked to pick up [L.R.] by Jodie, and when he did, [L.R.] seemed sad and stated to him, 'Why do we have to do this to my dad?' Mr. Ghibaudy would also testify that around Christmas of 2013, Jodie stated that she wished she and Chas could be back together, like it all was before all this happened. Mr. Ghibaudy would also testify that Jodie told him [C.F.] made these allegations first, then [L.R.] made the allegations."

¶ 26 6. *Kimberly Ellison*

¶ 27 Kimberly Ellison testified, on February 21, 2013, her sister Jodie called and asked Ellison to come over. Ellison did not recall a conversation with her sister at her sister's house. According to Ellison, she never told anyone that she had knowledge of L.R. or C.F. being sexually molested by defendant. Defense counsel made an offer of proof regarding testimony that would impeach both Ellison's and Jodie's testimony as follows:

> "I would make an offer of proof, Judge, that if called to testify, Shanon McMasters, Vermilion County attorney, would

testify that on or about October 16, 2013, at her office, she met with Jodie, and Jodie told her that she called Kim Ellison over to her house, and that—this was on or about February 21st, according to Jodie, and that Jodie told her that when she advised Kim of the allegation Jodie [*sic*] had made, Kim told her that [C.F.] had made similar allegations previously to Ms. Ellison, but that Ms. Ellison promised [C.F] she wouldn't say anything and keep it a secret, and she never told anybody about it. ***

Mrs. McMasters would also testify that she met with Kim Ellison on or about November 5, [2013] ***. She met with Kim Ellison, and Kim Ellison told her she never had any concerns about [defendant] until the night Jodie called her over and advised her [L.R.] had made these allegations and that would be contrary to what Jodie told Shanon McMasters."

¶ 28 7. *Julie Reavill*

¶ 29 Julie Reavill testified she was married to defendant at the time of the trial. In April 2013, Julie was at home with defendant when defendant received a phone call from Jodie. The State objected to testimony about what Jodie said during the phone call on hearsay grounds and the trial court sustained the objection. Defense counsel made the following offer of proof regarding this phone call:

"[I]f called to testify, Julie [Reavill] would testify that she was present with [defendant] in her home in April of 2013, in her sunroom around 2:00 or 3:00 p.m., and that she was present when

> [defendant] received a phone call from Jodie, and Jodie identified herself, and she told [defendant] that she was sorry, she did not mean for this to happen, she wanted the upper hand for once, and she was not going to let him take [L.R.] She heard defendant respond, 'You need to tell the truth, and you need to make this stop, if it's untrue,' and Jodie responded that she can't. When her friend Liya got ahold of it, it spiraled out of control, and Jodie also said, 'I'm not going to make the girls and myself out to be liars; better you have these problems than me.' "

¶ 30 8. *Defendant*

¶ 31 Defendant testified on his own behalf and stated he resided in Danville with Jodie, L.R., and C.F. in December 2012 and February 2013. Defendant acknowledged L.R. was his biological daughter and C.F. was his stepdaughter. Defendant testified he loved C.F. and considered her to be his own child. According to defendant, February 3, 2013, was Super Bowl Sunday and he watched the game with L.R., C.F., and, occasionally, Jodie. Eventually, C.F. and Jodie went to bed and he and L.R. finished watching the game. After the game ended, defendant testified he gave L.R., a piggyback ride upstairs, tucked her into bed, and went to the garage to work on his vehicles.

¶ 32 Defendant testified, about a week before the Super Bowl, he and Jodie got into an argument after she found out defendant had a girlfriend. According to defendant, they argued about divorce and custody of L.R.. and defendant told Jodie, "over my dead body she would get [L.R.]"

¶ 33 Defendant testified he was often alone with the girls, taking them to appointments, movies, and out to lunch. According to defendant, neither girl ever objected to being alone with him. Defendant testified, on February 20, 2013, he got home around 5:30 or 6 p.m., and only C.F. and L.R. were home that night. On February 21, 2013, defendant got tickets for a basketball game at the University of Illinois. Jodie was busy with a dance or pageant for L.R., so she told defendant to take C.F. to the game.

¶ 34 According to defendant, he and C.F. left for the game around 6 p.m. and returned home around 11:30 p.m. When they got home, defendant testified C.F. went to bed in her room and he saw L.R. in her room. Defendant testified neither girl had a door on the doorway to each bedroom. Defendant then went to bed in his room with Jodie. Defendant testified, on February 22, 2013, C.F. and L.R. were home when he got home from work, and Jodie was still at work. According to defendant, that night Jodie went to bed before anyone else. Defendant testified he gave L.R. a piggyback ride like he did every night and put her to bed.

¶ 35 Defendant testified he went to work the next day, which was a Saturday. C.F. came to defendant's work to get keys to her car because she got her driver's license that day. When he got home from work, everything in the house was gone. Defendant testified he called Jodie and asked if the house was robbed. According to defendant, he asked Jodie what happened and Jodie responded, "You know what happened" and accused him of touching L.R. and C.F. Defendant testified he had no idea what Jodie was talking about. Defendant denied ever touching C.F. or L.R. in an inappropriate, sexual way and denied having intercourse with C.F.

¶ 36 9. *Robert Malivuk*

¶ 37 Robert Malivuk testified he had been friends with defendant since the late 1990s and socialized with defendant, Jodie, C.F., and L.R. regularly. He helped defendant install

hardwood floors upstairs and the doorways into C.F.'s and L.R.'s bedrooms had no doors. According to Malivuk, he went to defendant's house once or twice in the week before Jodie and the girls moved out and the family was acting normally.

¶ 38 10. *Verdict*

¶ 39 The jury returned guilty verdicts on one count of aggravated criminal sexual abuse of a family member and one count of predatory criminal sexual assault of a child based on incidents of sexual abuse involving defendant and L.R. The jury acquitted defendant on one count of aggravated criminal sexual abuse of a family member based on an alleged incident of sexual conduct involving defendant and C.F.

¶ 40 B. Sentencing

¶ 41 In October 2015, the trial court held a sentencing hearing, during which the court considered the following evidence.

¶ 42 1. *C.F.*

¶ 43 C.F. testified defendant began sexually abusing her when she was six or seven years old. According to C.F., defendant would use his hands to touch her chest, buttocks, and vagina. As C.F. got older, the abuse progressed from touching to penetration. C.F. acknowledged she testified at defendant's trial regarding only one incident, which occurred in December 2012 or January 2013, because she was not allowed to testify about earlier incidents. C.F. then read a statement she had written, expressing her fear and the lasting impact the abuse had on her life.

¶ 44 2. *L.R.*

¶ 45 L.R. testified defendant sexually abused her for approximately one month until she revealed what happened. L.R. read a statement she wrote, detailing her feelings of betrayal and being violated. L.R. further testified she remained in counseling to address the sexual abuse.

¶ 46 3. *Jodie*

¶ 47 Jodie testified she and defendant were together for 17 years and were married for 10 of those years. At the time of sentencing, her divorce from defendant had been finalized. Over defendant's objection, the trial court allowed Jodie to read her victim-impact statement and specifically stated it would give no weight to any references to other possible victims contained in the statement. Jodie's victim-impact statement expressed her anger and anguish for her daughters.

¶ 48 4. *Mitigation Evidence*

¶ 49 Defense counsel offered a number of letters written on defendant's behalf and presented no further evidence. The trial court indicated it needed some time to read the character letters, at which point defense counsel interrupted to request a sidebar. The following exchange occurred:

> "MR. SANBORN: For the record, Your Honor, my client has advised me that he does not feel fit—
>
> THE COURT: He what?
>
> MR. SANBORN: Does not feel like I'm representing him properly and he will start making a commotion or scene in this case.
>
> THE COURT: You [*sic*] does not feel what?

MR. SANBORN: That I am fit to proceed with his sentencing."

The court took a recess to give defense counsel an opportunity to speak with defendant. Following the recess, defense counsel informed the court, "[defendant] didn't say he would make a disturbance, he said, 'I don't want to make a disturbance because of my anger.' " Counsel apologized and reiterated it was his misunderstanding and defendant never threatened an outburst.

¶ 50 5. *Sentence*

¶ 51 The State recommended a term of 7 years' imprisonment for defendant's conviction of aggravated criminal sexual abuse of a family member and a term of 30 years' imprisonment for the conviction of predatory criminal sexual assault of a child. Defendant also made a statement in allocution, maintaining his innocence and expressing his love for his family.

¶ 52 The trial court noted, as an aside, defendant's demeanor was at times disrespectful to the court and the justice system, and further that defendant's smirks and smiles during the proceedings indicated he was taking the situation lightly. The court then proceeded to indicate defendant's lack of prior criminal history, his military service, and the fact he had, up until this point, lived a law abiding life were factors in mitigation. In aggravation, the court noted defendant's conduct caused or threatened serious harm and he held a position of trust or supervision. The court found a sentence necessary to deter others from committing the same crime and acknowledged the predatory-criminal-sexual-assault conviction as nonprobationable. The court sentenced defendant to concurrent terms of 20 years' imprisonment for his predatory-criminal-sexual-assault conviction and 5 years' imprisonment for his aggravated-criminal-sexual-abuse conviction.

¶ 53 C. Posttrial Motions

¶ 54 Defendant points to his motion for bond on appeal as evidence in the record of a plea offer. The motion contained the following paragraph:

> "7. Pursuant to the aforesaid [Illinois] Supreme Court Rule [(605(a)(3) (eff. Oct. 1, 2001))], the [d]efendant asserts the following errors occurred in his sentencing:
>
> (a) The trial court at no time discussed on the record the history of plea negotiations (presuming they existed) for had the court done so pursuant to *Missouri v. Frye*, No.10-444, 2012 US. Supreme Court [*sic*] and Fourth District trial judge practices in the thirty county district."

Defendant's amended motion to reconsider contains verbatim language, but goes on to list six trial court judges. His motion to substitute judge for cause also contained verbatim language plus the list of six judges. The motion contained this additional allegation: "Judge Fahey presided over the sentencing of the [d]efendant and failed to inquire of the State as to whether there had been any plea offers made to defense counsel and if so what those proposals consisted [*sic*]."

¶ 55 This appeal followed.

¶ 56 II. ANALYSIS

¶ 57 On appeal, defendant argues (1) the trial court erred in not inquiring of the State in open court as to any plea offers that had been tendered; (2) the court erred in excluding evidence of the custody proceedings between defendant and L.R.'s mother; (3) second trial counsel, Kevin Sanborn, was ineffective in advising the court prior to sentencing that defendant

was "in danger of violent acts"; and (4) his 20-year sentence was excessive in light of his lack of prior criminal history and the short duration of the sexual abuse. We turn first to defendant's claim of error in the court's failure to inquire as to any tendered plea offer.

¶ 58 A. Inquiry as to Plea Offers

¶ 59 Defendant argues the trial court erred in failing to inquire as to any plea offers tendered by the State. Specifically, defendant argues his sentence would not have been as harsh had the court known the State offered defendant probation for a plea to a felony count. Defendant does not claim counsel failed to convey a plea offer, nor does defendant contend he would have accepted an offer.

¶ 60 It is undisputed that the trial court failed to inquire as to any plea offers tendered by the State, and nothing in the record demonstrates such an offer existed. The question of whether defendant has the right to have the trial court inquire as to the terms of any offered plea presents a question of law, which we review *de novo*. *People v. Taylor*, 237 Ill. 2d 68, 75, 927 N.E.2d 1172, 1176 (2010).

¶ 61 In support of his argument, defendant relies on *Missouri v. Frye*, 566 U.S. 133 (2012); *Lafler v. Cooper*, 566 U.S. 156, 132 S. Ct. 1376 (2012); and *People v. Williams*, 2016 IL App (4th) 140502, 54 N.E.3d 934. *Frye* and *Cooper* relate to ineffective-assistance-of-counsel claims in the context of plea negotiations and elaborate on the second prong of the *Strickland* analysis. *Strickland v. Washington*, 466 U.S. 668 (1984). However, defendant does not raise an argument regarding ineffective assistance of counsel during plea negotiations. As such, *Frye* and *Cooper* are inapplicable to defendant's claim the court erred in failing to inquire as to the terms of the plea offer the State rendered defendant.

¶ 62 Defendant appears to argue *Williams* requires a trial court to inquire as to plea negotiations and the absence of this inquiry is reversible error. Defendant's reliance is misplaced.

¶ 63 In *Williams*, the defendant filed a postconviction petition alleging ineffective assistance of counsel during guilty-plea negotiations. *Williams*, 2016 IL App (4th) 140502, ¶ 6, 54 N.E.3d 934. The defendant alleged in his affidavit his attorney did not inform him he could be sentenced to consecutive sentences and, had the defendant known this, he would have taken the State's guilty-plea offer. *Id.* The trial court dismissed the petition at the second stage of postconviction proceedings, finding the defendant failed to demonstrate his counsel's performance (1) fell below an objective standard of reasonableness and (2) prejudiced him. *Id.* ¶ 8.

¶ 64 This court acknowledged this common problem of a record being silent as to what advice a defendant received (or did not receive) from counsel with respect to ineffective-assistance-of-counsel claims. *Id.* ¶¶ 30-34.

> "We note that a criminal defendant personally possesses a constitutional right to elect what plea to enter. [Citation.] As we previously mentioned, underlying a defendant's constitutional right to either plead guilty or not guilty is the constitutional right to be reasonably informed with respect to the direct consequences of accepting or rejecting a guilty-plea offer from the State. The consequences of a defendant not being so informed could be the reversal of an otherwise error-free trial when the record is silent (as

> is typically the case) as to what defendant was told about rejecting or accepting a guilty-plea offer from the State." *Id.* ¶ 33.

This court went on to detail a "preflight checklist" that would enable a trial court to insulate the record in a case from postconviction attacks. *Id.* ¶ 36. This checklist includes inquiring as to guilty-plea negotiations. *Id.* The checklist addresses "problems that might later arise *** from a defendant's (or defense counsel's) alleged confusion or uncertainty about the consequences of the defendant's standing trial and rejecting a negotiated guilty plea the State offered." *Id.* By inquiring as to the guilty-plea negotiations, a record can be made that would positively rebut later claims of ineffective assistance of counsel. *Id.*

¶ 65 While this checklist is certainly useful in creating a record that may positively rebut a later claim of ineffective assistance of counsel, it in no way requires the trial court to inquire as to guilty-plea offers by the State. It also helps ensure a defendant has received the effective assistance of counsel during guilty-plea negotiations. However, *Williams* does not stand for the proposition that a court's failure to so inquire is reversible error. Moreover, defendant in this case *does not claim* he received ineffective assistance of counsel during guilty plea negotiations. Rather, defendant argues the court would have given him a more lenient sentence had the court known the State offered defendant probation in exchange for a guilty plea on a felony count. *Williams* does not address such a claim. In the absence of an ineffective-assistance-of-counsel claim, we do not find the authority cited by defendant persuasive and, therefore, we reject this claim of error.

¶ 66 B. Evidence of Custody Proceedings

¶ 67 Defendant further argues the trial court erred in excluding evidence of the custody proceedings between defendant and L.R.'s mother.

¶ 68 A trial court's evidentiary rulings are within the sound discretion of the court, and we will reverse only if the court has abused its discretion. *People v. Jackson*, 2012 IL App (1st) 100398, ¶ 28, 965 N.E.2d 623. An abuse of discretion occurs where a ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would take the same view. *People v. Sharp*, 391 Ill. App. 3d 947, 955, 909 N.E.2d 971, 978 (2009).

¶ 69 Defendant's brief outlines the offer of proof defense counsel made regarding (1) Ghibaudy's testimony of statements made to him by L.R. and Jodie; (2) McMasters' testimony regarding statements made to her by Jodie and Ellison; and (3) Julie Reavill's testimony regarding statements made by Jodie during a phone conversation with defendant that she overheard. Defendant theorizes Jodie was motivated to lie about the sexual abuse because of defendant's extramarital relationship and his threat to seek custody of L.R. Defendant appears to argue the hearsay testimony the trial court excluded tended to show Jodie's motivation to lie and the exclusion of this evidence was error. Defendant contends the cumulative effect of these errors created a pervasive pattern of unfair prejudice to his case. We disagree.

¶ 70 Out-of-court statements offered to prove the truth of the matter asserted are hearsay and are generally inadmissible. *People v. Caffey*, 205 Ill. 2d 52, 88, 792 N.E.2d 1163, 1187 (2001). However, there are many exceptions to the hearsay doctrine, including evidence that shows a declarant's state of mind, such as intent, plan, motive, or design. *People v. Hansen*, 327 Ill. App. 3d 1012, 1022, 765 N.E.2d 1033, 1042 (2002).

¶ 71 Defendant asserts this evidence showed Jodie's motive. However, defendant failed to cite any relevant authority regarding the motive exception to the hearsay doctrine. Nor does defendant make an adequate argument as to *how* this evidence shows Jodie's motive to encourage C.F. and L.R. to lie. Additionally, defendant never asserts (nor was there evidence

introduced) that Jodie's alleged motivation to lie actually induced C.F. or L.R. to lie. The girls consistently maintained their versions of events, testified they knew the difference between the truth and a lie, and asserted their testimony was truthful.

¶ 72 Even if we assume the trial court's evidentiary rulings were error, we do not think defendant's case was unfairly prejudiced by the exclusion of this evidence. As stated, defendant sought to defend himself against these charges by showing Jodie's motivation to encourage the girls to lie about the abuse. Defendant introduced evidence of Jodie's motivation to lie through his own testimony regarding the argument over (1) his girlfriend, (2) the possibility of divorce, and (3) custody of L.R. The jury also heard Ghibaudy's testimony that Jodie learned of defendant's girlfriend a few weeks prior to moving the girls out of the house. Ghibaudy also testified that Jodie planned to move out of the house a few days before she actually did so, which conflicted with Jodie's testimony that she made arrangements to move out the day before doing so. Defendant had the opportunity to cross-examine L.R. regarding the statements she made to Ghibaudy, as alleged in the offer of proof, and defendant failed to do so. See *Jackson*, 2012 IL App (1st) 100398, ¶ 31, 965 N.E.2d 623 (no error where the court allowed evidence of motive directly from the person with the alleged bad motive and not through inadmissible hearsay).

¶ 73 Regarding the offer of proof related to Julie Reavill and the phone conversation between defendant and Jodie she would have testified to, we do not think the trial court's ruling in excluding this evidence was arbitrary or unreasonable, given the multiple layers of hearsay. The offer of proof regarding McMasters suffers from the same problem. Her testimony involved multiple layers of hearsay as she would have related what Jodie said Ellison said C.F. said about abuse allegations. Unless each level of hearsay falls within an exception to the hearsay rule, the testimony would have been inadmissible hearsay. See *People v. Munoz*, 348 Ill. App. 3d 423,

439, 810 N.E.2d 65, 78 (2004). Defendant makes no argument whatsoever as to what exceptions to the hearsay doctrine apply to the many layers of hearsay in McMasters' or Julie Reavill's testimony. We therefore find the court did not err in excluding this testimony.

¶ 74 The trial court did not abuse its discretion in excluding the complained of testimony and did not preclude defendant from putting forth his defense regarding Jodie's motives. The jury heard evidence of defendant's girlfriend, disagreements regarding custody and divorce, and the inconsistencies in Jodie's testimony. We therefore conclude, even if we were to find error occurred, defendant suffered no prejudice.

¶ 75 C. Ineffective Assistance of Counsel

¶ 76 Defendant next argues his second trial counsel, Kevin Sanborn, was ineffective in advising the court prior to sentencing that defendant was "in danger of violent acts."

¶ 77 To prevail on a claim of ineffective assistance of counsel, "the defendant must show that counsel's representation fell below an objective standard of reasonableness." *Strickland*, 466 U.S. at 688. The defendant must also show a reasonable probability the outcome of the proceeding would have been different but for counsel's deficient representation. *Id.* at 694. "A defendant is entitled to reasonable, not perfect, representation, and mistakes in strategy or in judgment do not, of themselves, render the representation incompetent." *People v. Fuller*, 205 Ill. 2d 308, 331, 793 N.E.2d 526, 542 (2002).

¶ 78 During the sentencing hearing, counsel asked the trial court for a sidebar and informed the court defendant no longer wanted his representation and that his continued representation might cause a commotion from defendant. Particularly given defendant's constitutionally protected right to counsel, we do not think it was unreasonable for defense counsel to inform the court he thought defendant would cause a disturbance if counsel continued

to represent him. After taking a brief recess, defense counsel informed the court there had been a misunderstanding and stated defendant never threatened a commotion or disturbance. Counsel took full responsibility for the mistake and reiterated several times that defendant never threatened to cause a disturbance. We conclude defense counsel's misunderstanding of defendant's whispers and his multiple statements as to the fact do not fall below an objective standard of reasonableness.

¶ 79 Moreover, the record does not show this incident prejudiced defendant. Defendant argues the trial court's comments regarding his demeanor show prejudice. We disagree. The court's comments regarding defendant's demeanor were brief and noted defendant was, at times, disrespectful to the court. The court went on to point out defendant smirked and smiled during the trial and appeared to take the proceedings lightly, but the court at no time mentioned threats of a disturbance. Moreover, the court went on to address specific factors in mitigation and aggravation that it considered, and defendant's demeanor was not mentioned again. Rather, as discussed further below, the court specifically mentioned in aggravation the seriousness of the harm caused by defendant's conduct and that fact he was in a position of trust or supervision.

¶ 80 Because we conclude defense counsel's representation did not fall below an objective standard of reasonableness and, further, defendant was not prejudiced by counsel's representation, we conclude defendant's ineffective-assistance-of-counsel claim fails. See *People v. Cherry*, 2016 IL 118728, ¶ 31, 63 N.E.3d 871 ("[T]o prevail on an ineffective assistance claim under *Strickland*, a defendant must establish both prongs of the *Strickland* test.").

¶ 81 D. Excessive Sentence

¶ 82 Finally, defendant argues his 20-year sentence was excessive in light of his lack of prior criminal history and the short duration of the sexual abuse. Defendant also suggests the trial court improperly allowed C.F. and Jodie to testify as victims at the sentencing hearing because the jury convicted defendant only on the charges involving L.R. We first address whether the court erred in allowing Jodie and C.F. to testify as victims.

¶ 83 "[T]he rigid rules of evidence applicable during trial are not required at sentencing." *People v. Jackson*, 149 Ill. 2d 540, 547-48, 599 N.E.2d 926, 929 (1992). A court must have the fullest information possible regarding a defendant's life and characteristics when selecting an appropriate sentence. *Id.*

> "While evidence of past criminal conduct is often not admissible at trial, it is relevant information at sentencing. Previous convictions are routinely considered. In addition, outstanding indictments or other criminal conduct for which there has been no prosecution or conviction may be considered in sentencing. Such evidence, however, should be presented by witnesses who can be confronted and cross-examined, rather than by hearsay allegations in the presentence report, and the defendant should have an opportunity to rebut the testimony." *Id.* at 548, 599 N.E.2d at 930.

Evidence of prior conduct must be relevant and reliable, and the burden of proof at sentencing is lower than proof beyond a reasonable doubt. *Id.* at 549, 599 N.E.2d at 930. The court has broad discretion in hearing evidence and selecting an appropriate sentence. *Id.* Evidence of prior

criminal conduct can be considered at sentencing even if the defendant had been acquitted of the conduct. *Id.*

¶ 84 C.F. testified and read from her victim-impact statement, which contained a statement indicating defendant began abusing her at age three. Jodie also testified and read from her statement, which included an allegation that defendant abused another family member. We note the trial court specifically stated it would give no weight to the portions of Jodie's statement regarding other possible victims. As stated, evidence of prior criminal conduct is admissible and "should be presented by witnesses who can be confronted and cross-examined *** and the defendant should have an opportunity to rebut the testimony." *Id.* at 548, 599, N.E.2d at 930. C.F. and Jodie testified and counsel had the opportunity to cross-examine both of them. Counsel also had the opportunity to rebut this evidence and, although he chose not to call any witnesses, he submitted approximately 30 letters written on defendant's behalf to rebut C.F.'s and Jodie's testimony regarding his character. Accordingly, we conclude the court did not abuse its discretion in allowing C.F. and Jodie to testify at sentencing. *Id.* We turn now to defendant's claim of an excessive sentence.

¶ 85 We afford a trial court's sentencing decision substantial deference. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. A reviewing court will disturb a sentence within the statutory limits for the offense only if the trial court abused its discretion. *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010). A trial court abuses its discretion only when imposing a sentence "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000).

¶ 86 The Illinois Constitution of 1970 mandates, "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. Sentencing decisions must be based on a consideration of all relevant factors and the specific circumstances of each case. *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The court must not ignore relevant mitigating factors. *Flores*, 404 Ill. App. 3d at 157, 935 N.E.2d at 1154. The trial court, having observed the defendant and the proceedings, is better able to consider these factors, and a reviewing court must not reweigh the factors or substitute its judgment for that of the trial court. *People v. Little*, 2011 IL App (4th) 090787, ¶ 24, 957 N.E.2d 102.

¶ 87 Defendant's conviction for predatory criminal sexual assault of a child, a Class X felony, carried a possible sentencing range of 6 to 60 years' imprisonment. 720 ILCS 5/11-1.40(b)(1) (West 2012). The conviction for aggravated criminal sexual abuse, a Class 2 felony, carried a possible sentencing range of three to seven years' imprisonment. 730 ILCS 5/5-4.5-35(a) (West 2012). The trial court sentenced defendant to 20 years' imprisonment on the Class X felony and 5 years' imprisonment on the Class 2 felony, with the sentences to run concurrently.

¶ 88 Defendant's sentence of 20 years is within the statutory range for the offense. Additionally, the trial court expressly considered defendant's military service and lack of criminal history in determining the appropriate sentence. The court also noted the factors in aggravation, including the fact defendant was in a position of trust or supervision over the victim. Defendant contends the sentence was excessive in light of the "short duration" of the sexual abuse. We do not find this contention persuasive. The trial court expressly noted defendant's conduct caused or threatened serious harm, particularly as to L.R.'s emotional well-

being. Given these circumstances, we cannot say the court abused its discretion in sentencing defendant to 20 years' imprisonment.

¶ 89 III. CONCLUSION

¶ 90 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $75 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 91 Affirmed.