2022 IL App (4th) 200413-U

NO. 4-20-0413

FILED
March 31, 2022
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Livingston County
WILLIAM MITCHELL,	)	No. 18CF258
Defendant-Appellant.	)	
	)	Honorable
	)	Jennifer H. Bauknecht,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to prove defendant guilty beyond a reasonable doubt of two counts of predatory criminal sexual assault of a child, but defendant's conviction for a third count must be reversed for insufficient evidence.

(2) Defendant's claim that his counsel was ineffective for failing to introduce certain medical records at his trial is without merit, and the record is inadequate for resolving defendant's remaining ineffective-assistance claim—based on his counsel's failure to complete the impeachment of a State witness.

(3) Defendant did not raise *pro se* ineffective-assistance claims that were sufficient to trigger a *Krankel* inquiry by the trial court.

¶ 2 Following a bench trial, defendant, William Mitchell, was found guilty of three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)) and sentenced to three consecutive six-year prison terms. He appeals, arguing (1) the State failed to prove his guilt beyond a reasonable doubt, (2) his defense counsel provided ineffective assistance

by failing to introduce defendant's medical records at trial and complete the impeachment of a key State witness, and (3) the trial court improperly failed to conduct a *Krankel* inquiry (see *People v. Krankel*, 102 Ill. 2d 181, 464 N.E.2d 1045 (1984)) into his *pro se* posttrial ineffective-assistance claims. We affirm in part and reverse in part.

¶ 3 I. BACKGROUND

¶ 4 In September 2018, the State charged defendant with three counts of predatory criminal sexual assault of a child (*id.* § 11-1.40(a)(1)). It alleged that between June and September 2015, defendant, who was over 17 years of age, committed acts of sexual penetration with R.G., who was under the age of 13, by placing his penis in R.G.'s vagina (count I), his fingers in R.G.'s vagina (count II), and his penis in R.G.'s anus (count III).

¶ 5 Defendant's bench trial was conducted on three separate days in October 2019, January 2020, and March 2020. The State's evidence included testimony from R.G. and her younger sister, A.G. R.G. testified she was born in October 2003, making her almost 16 years old at the time of her testimony. She recalled camping at the Bayou Bluffs campground near Cornell, Illinois. She last visited that campground in 2015 after the death of her father on June 7, 2015. R.G. believed the camping season at Bayou Bluffs ended in mid-October.

¶ 6 According to R.G., defendant also camped at Bayou Bluffs. She testified she knew defendant through her friend Jazminna Herrera. She believed defendant was Herrera's "adopted grandfather." R.G. maintained that during the summer of 2015, she and A.G. had a sleepover with Herrera in defendant's camper at Bayou Bluffs. Besides R.G., A.G., and Herrera, defendant was the only other person in the camper.

¶ 7 R.G. testified she was on the couch in the camper with A.G. and Herrera, watching television. A.G. and Herrera were falling asleep, and defendant called R.G. into his bedroom. Once

in the bedroom, defendant pushed R.G. onto the bed and "forced [her] clothes off of [her]." R.G. testified defendant held her hands above her head with his hands and she could not move. Defendant was positioned "pretty much on top of [her], like holding [her] hands down" and "crouching up." She stated defendant touched her breasts with his hands and mouth. According to R.G., defendant was wearing a t-shirt and flannel pants. At some point, he took his pants "halfway off," and R.G. saw his penis, which was "[s]oft at first." R.G. testified defendant put his penis in her vagina "and started thrusting" while she cried or whimpered. The following colloquy then occurred:

> "Q. Was there any other part of his body that touched your groin area?
>
> A. Yes, sir.
>
> Q. Okay. What was that?
>
> A. His hand—
>
> MR. RIPLEY [(DEFENSE ATTORNEY)]: I'm sorry. I couldn't hear, Judge?
>
> THE WITNESS: —I believe. I don't remember clearly.
>
> THE COURT: Okay. I believe she said his hand.
>
> MR. RIPLEY: Okay. Thank you.
>
> MR. REGNIER [(ASSISTANT STATE'S ATTORNEY)]: Q. Well, can you describe what you mean by his hand?
>
> A. Okay. Can you clarify something for me, please?
>
> Q. Sure.
>
> A. What do you mean by groin area?
>
> Q. Okay. So you indicated that his penis had touched your vagina?

A. Yes, sir.

Q. And that it had thrust inside?

A. Yes, sir.

Q. Did any other part of his hand—Or I'm sorry. Did any other part of his body touch your vagina?

A. His penis.

Q. Any other part besides the penis?

A. No, sir. Sorry. I didn't know what you meant earlier. My bad."

¶ 8 R.G. testified she was alone in the bedroom with defendant during the incident but, at some point, A.G. walked in the room. When that occurred, defendant "was kind of on the side of [R.G.] a little bit" and the two were covered by blankets. According to R.G., A.G. asked, "what was wrong" and defendant responded that he and R.G. were "just talking." A.G. then left the room and defendant continued to assault her. R.G. testified that, "[a]fter like an hour or two," defendant stopped "thrusting" and "ejaculated inside of [her]." Afterwards, defendant told her "[g]ood girl." R.G. testified she stayed in the room with defendant and "couldn't go anywhere." She felt "terrified, upset, and *** disgusting." The next morning, R.G. woke up and put her clothes back on. She stated she did not get dressed the night before because she "was scared to move," "numb," and "couldn't feel anything." After getting dressed, R.G. spent time with A.G. and Herrera. She then returned to her family's camper but did not tell anyone what had happened, stating defendant told her not to tell.

¶ 9 R.G. spent the following day in her family's camper with A.G. and Herrera. That night, Herrera asked her to have another sleepover. R.G. stated she did not tell Herrera what had happened to her because she did not want to ruin their relationship and she did not know if Herrera

would believe her. She also did not tell A.G. because she did not know if A.G. would understand. Additionally, R.G. feared A.G. would tell someone else and "then something would happen to [her] family."

¶ 10 Around 6 or 7 p.m., R.G. returned to defendant's camper with A.G. and Herrera. She estimated that around 8 p.m., A.G. and Herrera were falling asleep on the couch while they were watching television. R.G. stated defendant took her by her wrist and led her to his bedroom. Once in the bedroom, defendant "pushed" R.G. "over his bed." R.G. stated she was positioned on her stomach with only her top half on the bed and her "legs and stuff *** off the bed standing." She stated defendant crossed her wrists and held her down using one hand. R.G. testified defendant "moved to [her] side" and had her touch his penis with her hand. He then put his hand over hers and moved her hand up and down. R.G. was wearing pajamas, and defendant pulled her pants down to her ankles. He also pulled his pants down to his ankles and then "thrusted inside [R.G.'s] butt" with his penis. Ultimately, defendant "just stopped." R.G. testified defendant "was huffing a little bit" and "it looked like it was hard to breathe for him so he stopped."

¶ 11 R.G. asserted she did not cry the second night and "was just numb." She stated she "didn't think it was going to happen again." She did not recall anyone else entering the bedroom that night. After defendant stopped what he was doing, they both laid down. Around 4 a.m., R.G. woke up and went back to her family's camper.

¶ 12 On cross-examination, R.G. testified she was about 11 years old when the incidents at issue occurred. She estimated that on the night of the first incident, she arrived at defendant's camper around 6 p.m. and watched television for about an hour until 7 p.m. She stated everyone fell asleep and it was darkish outside but not pitch black.

¶ 13 R.G. further estimated that the bed in defendant's bedroom was approximately a

foot off of the floor. She stated that during the first incident, she ended up with her back on the bed. Defendant held her hands above her head with his left hand. She stated he pulled or forced her clothing off while she was lying on the bed and he was on top of her.

¶ 14 R.G. reiterated that, at some point, A.G. entered the room and observed her and defendant in bed. R.G. acknowledged she "didn't call out for" A.G., stating she "couldn't" because defendant was on top of her and she couldn't breathe very well. She also testified that when A.G. walked into the room, defendant "moved to the side." R.G. stated she did not know what prevented her from breathing while defendant was at her side. She asserted she was crying or whimpering but did not "cry out" because she was scared.

¶ 15 R.G. further testified that there was a clock in defendant's bedroom. She estimated the first incident started around 9 p.m. and that it ended at 11 p.m. She acknowledged that she testified she watched television in defendant's camper until around 7 p.m. and did not know what occurred between 7 p.m. and 9 p.m.

¶ 16 R.G. additionally recalled being previously interviewed by a person named Jo Sipes. She believed the interview was audio and video recorded and asserted she told Sipes the truth. R.G. stated she did not remember telling Sipes that she got up and left defendant's bedroom on the night of the first incident. She also did not remember telling Sipes that she had taken sleeping medication or that she "passed out" after taking that medication. The State then raised an objection based on hearsay, and the following colloquy occurred:

> "MR. RIPLEY: It's her statement. I expect we're going to be playing the statement as well.
>
> THE COURT: Well, we haven't played it yet.
>
> MR. RIPLEY: I understand that, but I'm allowed to perfect in my cross-

examination.

THE COURT: Right. But you can perfect—

MR. REGNIER: If he wants to ask her questions, he is free to do so. But he's referencing back to a recorded statement which would not be admissible and then phrasing his question around that. If he wants to ask the minor questions, I'm not preventing him from doing so; but the form of the question is calling for hearsay. It's calling for what she told Jo Sipes in the recorded statement so it's hearsay."

The trial court sustained the State's objection.

¶ 17 On cross-examination, R.G. further testified that when Herrera asked her to spend the night in defendant's camper a second time, she suggested that they sleep in R.G.'s camper instead. However, R.G. returned to defendant's camper because Herrera wanted her to, and she "didn't want to let [Herrera] down as a friend." R.G. maintained that during the second incident with defendant, her hands were above her head, defendant was pushing down on her hands, and her feet were on the floor.

¶ 18 On redirect examination, R.G. explained that when defendant removed her clothing the first night, he "took one hand off" from where he was holding her hands above her head and removed her shirt and bra. He also used one of his hands to remove her pants. On recross-examination, she testified defendant "started out with two hands on [her] hands" and "would change and switch hands." She agreed defendant was also "always pushing [her] against the bed." R.G. testified she spent the night in defendant's camper before the two incidents at issue. On those occasions, her grandmother would sometimes come check on her but "[n]ot all the time." R.G.'s grandmother would bring her "sleeping medicine" that made her drowsy. When asked

whether she took her medicine on the two nights at issue, R.G. stated: "I don't recall. I believe I might have."

¶ 19 A.G. testified for the State that she was born in July 2005, and 14 years old at the time of trial. She recalled attending a sleepover in defendant's camper in 2015 and observing defendant and R.G. in the same bed. On that occasion, A.G. was in defendant's camper with defendant, R.G., and Herrera. She stated she and Herrera "were both sleeping on the couch" and, at first, R.G. "was sleeping in the bunk bed in the back." A.G. saw R.G. go to defendant's room and then "dozed back off." She woke up again because she "heard the rustle of the camper" and R.G. "crying." A.G. opened the door to a bedroom in the camper and saw R.G. and defendant "under the covers." She stated she "saw [R.G.] under the covers with blankets to the beginning of her chest and [defendant] next to her without his shirt as well." A.G. did not remember defendant saying anything to her. Ultimately, she "didn't think anything of" what she observed and went back to bed.

¶ 20 On cross-examination, A.G. recalled that the incident she described occurred sometime after her father passed away in June 2015. Additionally, she remembered seeing defendant "come out of his room" and stated he "motioned [R.G.] over." A.G. then saw R.G. get up and go into defendant's room. When A.G. entered defendant's bedroom after hearing R.G. cry, she did not say anything to either R.G. or defendant and did not hear defendant say anything to her. A.G. also testified that she was not concerned and reiterated that she "didn't think much of it."

¶ 21 As part of his case, defendant also presented the testimony of two witnesses, Herrera and his wife, Myra Mitchell. Herrera testified she was 19 years old and that defendant was her grandfather. She stated she camped with defendant and Myra at Bayou Bluffs. R.G. and A.G.

were her "friends at the campground," and there were times they stayed the night in each other's campers. She testified R.G. and A.G. stayed in her camper twice but she did not remember the dates. On both occasions, Herrera slept on the couch with A.G., and R.G. slept "on the bunk bed." Defendant slept in his own bedroom. Herrera stated nothing unusual happened during the sleepovers, she did not wake up at any time, and she did not hear anybody moving around the camper. When she woke up both mornings, everyone was "still in the same spots."

¶ 22 Herrera further testified that after the sleepovers, she continued to have contact with R.G. and A.G. She denied that either of the sisters was ever hesitant to spend the night in her camper and testified there was never a time that she invited them to spend the night and they refused. R.G. also never complained to her about anything that happened in the camper. After the two times R.G. and A.G. slept over, a third sleepover was planned but did not happen because Herrera had to leave. Herrera denied that R.G. and A.G. expressed any reluctance regarding that planned sleepover.

¶ 23 On cross-examination, Herrera testified that during a sleepover, she did see R.G. leave the bunk bed and go to the restroom. She denied seeing R.G. go anywhere else. However, Herrera also recalled that in August 2018, she spoke with Lieutenant Jeffrey Hamilton of the Livingston County Sheriff's Department. She acknowledged that, in response to a question from Hamilton regarding whether she remembered anything weird or odd taking place during a sleepover in defendant's camper, she reported that R.G. "slept in the same bed as [defendant]." She also reported to Hamilton that A.G. heard noises, but that she did not.

¶ 24 On redirect examination, Herrera asserted that during the second sleepover, she saw R.G. go into defendant's bedroom. The bedroom door remained open, but she could not see either R.G. or defendant. According to Herrera, R.G. was in the bedroom for less than five minutes before

coming back out and sitting with A.G. and Herrera. Herrera maintained R.G. was not acting unusual or crying. On recross-examination, Herrera agreed that she told Hamilton that she and A.G. "slept on the couch" while R.G. and defendant "were in the bedroom bed." She testified that when R.G. left the bedroom, they talked and watched television. Herrera stated R.G. ate a bunch of food that she "ended up regurgitating *** and then that's whenever she went home later that night." She also testified it was "late at night" when R.G. and defendant were in the bedroom together.

¶ 25 Finally, Myra testified that she and defendant were married in 1966. They divorced in 1985 but remarried in 1996 and had been together continuously since that time. Between June and September 2015, she and defendant had a camper located at the Bayou Bluffs campground. Myra further testified that during that same time frame, defendant "was impotent," meaning he was unable to have an erection. She asserted "that situation started for [defendant]" in the late 1990's or early 2000's "and then [defendant] had [a] complete prostatectomy in 2005." Myra testified defendant was prescribed medications to alleviate his "problem." He took the medications "for a short while," but they did not work.

¶ 26 Myra further testified that her grandchildren stayed in her and defendant's camper. She was not aware of "any problems when anyone else was in the camper," and no one ever reported any problems or complaints about defendant to her.

¶ 27 The parties presented closing arguments to the trial court, following which the court asked whether the prosecutor had made a specific argument as to count II, alleging defendant penetrated R.G.'s vagina with his fingers. The prosecutor responded that he had, stating as follows: "And my notes from the October [trial] date were that [defendant] moved his hand down there, Judge. And I would just rely on *** Your Honor's notes. Obviously[,] there's a discrepancy

between [defense counsel] and I on that."

¶ 28 The record shows the trial court went on to find defendant guilty of each charged offense. In setting forth its decision, the court stated it determined R.G. was a credible witness. It noted R.G. was 11 years old at the time of the alleged offenses and pointed out that she became visibly upset and appeared "somewhat embarrassed" when discussing the sexual encounters with defendant. It further noted that R.G. provided details regarding defendant's camper, where others in the camper were located, and the alleged sexual acts. The court acknowledged that R.G. was "a little bit confused" regarding the "specific time of day or what the clock read" but stated that "overall she was very credible" and "held up pretty good" on cross-examination. The court also found R.G.'s testimony was corroborated by testimony from both A.G. and Herrera that placed R.G. in defendant's bed. Finally, the trial court stated it did not find Myra's testimony "to be particularly helpful," stating as follows:

> "Perhaps [defendant] did suffer from some type of impotence during that time, but that doesn't mean that he wasn't using those pills at this time or that, you know, she gave a rough time period. *** But obviously she has a very real stake in the outcome of this case, and I just can't say that her testimony alone is enough to raise any doubt about the testimony of [R.G.] and the girls who all testified that [R.G.] was in the [d]efendant's bedroom, which in and of itself certainly raises concerns and then strengthens I think the credibility of [R.G.]."

¶ 29 The trial court also found that R.G. provided specific testimony to support each specific sexual act alleged by the State. Regarding count II, the court stated its notes reflected that R.G. testified defendant's "hand moved down" and "he put his hands in her vagina."

¶ 30 On June 8, 2020, the trial court conducted defendant's sentencing hearing. Defense

counsel, Scott Ripley, submitted defendant's medical records from Riverside Medical Center, dated June 20, 2005. Those records showed defendant was diagnosed with "[b]enign prostatic hypertrophy with urinary retention" and, at age 65, underwent a "[s]uprapubic prostatectomy," which removed "prostatic adenoma." At his sentencing, defendant also gave a statement in allocution. He noted R.G.'s claims that he ejaculated during the commission of the charged offenses and stated as follows:

> "That whole thing that *** Ripley just gave you is a blow[-]by[-]blow description from Riverside Hospital of an operation performed on me in 2005, a complete prostatectomy. Someone who's had a complete prostatectomy cannot ejaculate in any form whatsoever.
>
> This was given to *** Ripley who gave it to the prosecution, yet this testimony was allowed that I did this when it is a complete falsehood."

Following defendant's statement, the court sentenced him to three consecutive six-year prison terms.

¶ 31 On July 1, 2020, defendant filed a "Motion for New Trial and Other Post-Trial Relief." He argued he was innocent of the charges against him and the State's evidence was insufficient to prove his guilt beyond a reasonable doubt. On August 27, 2020, the trial court conducted a hearing and denied the motion. Following the court's ruling, defendant made the following statement: "At my sentencing, there was another piece of evidence put in that was never put in during the trial that proved that [R.G.] lied to the police and lied during her testimony about me ejaculating." The court responded that the State had met its burden of proof at defendant's trial and defendant could raise his claims of error on appeal.

¶ 32 In October 2020, this court allowed defendant's motion for leave to file a late notice

of appeal, and this appeal followed.

¶ 33 II. ANALYSIS

¶ 34 A. Sufficiency of the Evidence

¶ 35 On appeal, defendant first argues the State failed to prove him guilty of each charged offense beyond a reasonable doubt. He contends that with respect to count II, alleging he penetrated R.G.'s vagina with his fingers, no evidence was offered showing he committed the specific act alleged. As to counts I and III, alleging that he penetrated R.G.'s vagina and anus with his penis, defendant asserts R.G.'s testimony was both (1) directly contradicted by Myra and (2) fatally implausible and inconsistent.

¶ 36 "When a defendant challenges the sufficiency of the evidence, a reviewing court must determine 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. Jackson*, 2020 IL 124112, ¶ 64, 162 N.E.3d 223. "The trier of fact remains responsible for resolving conflicts in the testimony, weighing the evidence, and drawing reasonable inferences from the facts." *People v. Harris*, 2018 IL 121932, ¶ 26, 120 N.E.3d 900. "The reviewing court does not retry the defendant and must draw all reasonable inferences in favor of the prosecution." *Id.* On review, "[a] criminal conviction will not be set aside on a challenge to the sufficiency of the evidence unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Jackson*, 2020 IL 124112, ¶ 64.

¶ 37 Additionally, while a fact finder's decision to accept a witness's testimony is not conclusive or binding on a reviewing court, it is entitled to great deference. *People v. Cunningham*, 212 Ill. 2d 274, 280, 818 N.E.2d 304, 308 (2004). "The reviewing court must carefully examine the record evidence while bearing in mind that it was the fact finder who saw and heard the

witness." *Id.* "Testimony may be found insufficient *** only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt." *Id.* "A conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible." *People v. Gray*, 2017 IL 120958, ¶ 36, 91 N.E.3d 876.

¶ 38 As charged in this case, "[a] person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits *** an act of sexual penetration" with a victim who is under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2014). Additionally, "sexual penetration" is defined to mean "any contact, however slight, between the sex organ *** of one person and *** the sex organ *** or anus of another person, or any intrusion, however slight, of any part of the body of one person *** into the sex organ *** of another person." *Id.* § 11-0.1.

¶ 39 1. *Count II*

¶ 40 Initially, defendant argues the State failed to present evidence establishing the specific sexual act alleged in count II—penetration of R.G.'s vagina with defendant's fingers. Moreover, he contends that R.G. explicitly denied that the specific act alleged in count II occurred. To support his argument, defendant relies on the following colloquy, which occurred during the State's questioning of R.G.:

> "Q. Was there any other part of his body that touched your groin area?
>
> A. Yes, sir.
>
> Q. Okay. What was that?
>
> A. His hand—
>
> MR. RIPLEY: I'm sorry. I couldn't hear, Judge?

THE WITNESS: —I believe. I don't remember clearly.

THE COURT: Okay. I believe she said his hand.

MR. RIPLEY: Okay. Thank you.

MR. REGNIER: Well, can you describe what you mean by his hand?

A. Okay. Can you clarify something for me, please?

Q. Sure.

A. What do you mean by groin area?

Q. Okay. So you indicated that his penis had touched your vagina?

A. Yes, sir.

Q. And that it had thrust inside?

A. Yes, sir.

Q. Did any other part of his hand—Or I'm sorry. Did any other part of his body touch your vagina?

A. His penis.

Q. Any other part besides the penis?

A. No, sir. Sorry. I didn't know what you meant earlier. My bad."

¶ 41 The State responds that the trial court could reasonably infer penetration of R.G.'s vagina by defendant's fingers occurred based on R.G.'s testimony that defendant's hand touched her groin. It notes such testimony was given directly following testimony in which R.G. described "penetration [of her vagina] by defendant's penis." Further, it argues "R.G.'s last 'No' answer" could have resulted from her construing "the prosecutor's question as 'any body part besides the penis *and the hand*.' " (Emphasis in original.) It asserts R.G. had already testified "that defendant's hand touched her groin," and during the "confusing line of questions" that followed, the State

"mention[ed] defendant's hand again." The State maintains that "R.G. interpreting the prosecutor's question as including the hand, which was just discussed, and the penis, which is what he specifically asked, was logical" particularly given R.G.'s youth and the difficult subject matter.

¶ 42 Here, we agree with defendant that the State's evidence was insufficient to establish an act of sexual penetration as alleged in count II. The record reflects that the only evidence presented at defendant's trial to establish the specific sexual acts alleged by the State was R.G.'s testimony. R.G. provided details regarding encounters she had with defendant on two occasions. However, the above colloquy was the only testimony she provided that pertained to contact between defendant's hand or fingers and her vagina. We find that testimony falls short of establishing the occurrence of the specific act alleged in count II—contact, however slight, between defendant's fingers and R.G.'s vagina.

¶ 43 R.G.'s statements during the above colloquy indicate she expressed uncertainty regarding whether defendant's hand touched her "groin area" or even the meaning of the term as used by the State. When initially asked by the State whether any other part of defendant's body touched her "groin area," R.G. responded: "His hand *** I believe. I don't remember clearly." Following an interruption by defense counsel, R.G. then asked the State to clarify what it meant by "groin area." Further, as argued by defendant, testimony that defendant's hand touched R.G.'s "groin area" was not necessarily the equivalent of a statement that his hand or fingers came into contact with her vagina.

¶ 44 Moreover, on further examination by the State, R.G. ultimately denied that defendant touched her vagina with any part of his body other than his penis. Although the State suggests R.G. may have been confused regarding what body parts the State was referring to during its questioning, the record clearly reflects that R.G. only identified defendant's penis as touching

her "vagina" and that she answered "[n]o" when asked whether he touched her vagina with "[a]ny other part besides the penis." The State's assertions that R.G. may have interpreted the prosecutor's questions differently than they were plainly stated is speculative.

¶ 45 In this case, given R.G.'s initial uncertain testimony regarding whether defendant's hand touched her "groin area," her apparent confusion regarding the meaning of that term, and her ultimate denial that defendant touched her vagina with any body part other than his penis, we cannot find the State proved beyond a reasonable doubt the essential elements of predatory criminal sexual assault of a child as alleged in count II. The trial court's factual findings as to that count, which were made several months after R.G.'s actual trial testimony, were not supported by the record. Accordingly, defendant's conviction and sentence on count II must be reversed.

¶ 46 2. *Counts I and III*

¶ 47 Defendant next challenges the sufficiency of the evidence as to counts I and III, alleging he penetrated R.G.'s vagina and anus with his penis. He contends R.G.'s testimony that he sexually assaulted her was completely rebutted by Myra, who testified defendant had health issues and underwent medical procedures that rendered him impotent and made it physically impossible for him to engage in the sexual acts described by R.G. Additionally, defendant argues R.G.'s testimony was factually implausible, inconsistent with other evidence, and simply not credible. We disagree.

¶ 48 As stated, "[a] conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible." *Gray*, 2017 IL 120958, ¶ 36. Here, Myra provided testimony that defendant was "impotent" following a "complete prostatectomy" he underwent in 2005. She testified he tried to "alleviate that problem" with medications but the medications did not work. Although Myra offered testimony that

conflicted with R.G.'s testimony regarding defendant's physical abilities, her testimony was vague, both regarding when defendant took medication to alleviate his purported impotence, as well as the basis for her knowledge of his physical limitations at the time of the alleged offenses in 2015—10 years after his prostatectomy.

¶ 49 Notably, no medical evidence was presented at trial establishing that erectile dysfunction or an inability to ejaculate were unavoidable or life-long side effects of defendant's specific procedure. On appeal, defendant cites to a study published on a website for the National Institution of Health, which he contends supports a finding that "nearly all men over 60 years of age who undergo a prostatectomy are unable to maintain an erection sufficient enough for sexual intercourse after the procedure." He asks this court to take judicial notice of that information. However, we note the information cited is aimed at impeaching the trial court's factual determinations on review but was not presented to, or considered by, the court. Under such circumstances, the material is not appropriate for our consideration, and we decline to consider it. See *In re R.M.*, 2022 IL App (4th) 210426, ¶ 46 (declining to give any weight to scientific articles cited on appeal because they involved "evidentiary matters not considered by the trial court but which [were] aimed at impeaching its factual determinations").

¶ 50 Here, in finding Myra's testimony was not "particularly helpful," the trial court noted she provided only "a rough time period" of when defendant was taking medication for his alleged impotence. It also found she "obviously" had "a very real stake in the outcome of [defendant's] case" and determined "her testimony alone [was not] enough to raise any doubt about the testimony of [R.G.] and the girls who all testified that [R.G.] was in *** [d]efendant's bedroom." We find no error in the court's determination.

¶ 51 As for R.G.'s testimony, the trial court found her credible based on her demeanor

when testifying, the details she provided regarding the alleged offenses, and the corroboration of her testimony by A.G. and Herrera. Despite defendant's arguments to the contrary, the record evidence does not compel a different conclusion. The trial court, which acted as the trier of fact and had the opportunity to observe each witness at trial, was in the best position to make determinations regarding R.G.'s demeanor. Additionally, as noted by the court, R.G. provided detailed accounts of the alleged offenses and her testimony was corroborated in several respects by A.G. and Herrera, both of whom reported observing R.G. in defendant's bed during a sleepover.

¶ 52 Defendant asserts R.G.'s credibility is called into question because she failed to call out for help at the time of the alleged assaults, she did not report the assaults until several years later, and she presented a "wide range of dates more than three years after the offenses allegedly occurred." However, there was essentially no dispute that two sleepovers occurred in defendant's camper during the summer of 2015. Both R.G. and A.G. recalled that they camped at Bayou Bluffs following the death of their father in June 2015, and all three girls—R.G., A.G., and Herrera—testified consistently that they attended sleepovers in defendant's camper during the alleged time frame.

¶ 53 Additionally, we agree with the trial court that the lack of an immediate outcry by R.G. does not destroy her credibility. The court found R.G.'s failure to call for help or immediately report the assaults could reasonably be explained by her youth and the position of authority held by defendant. Defendant was much older than R.G. and, as stated by the court, "definitely way bigger physically and exerting that physical control." Also, at trial, R.G. explained that defendant told her not to tell anyone about what had occurred. She indicated that during the acts, she did not "cry out" because she was scared. Further, R.G. testified she did not tell Herrera what happened because she did not want to ruin their friendship and did not know if Herrera would believe her.

She did not tell A.G. because she did not know if A.G. would understand and feared A.G. might tell someone else and "then something would happen to [her] family."

¶ 54 Defendant also argues R.G. was not credible because she provided unbelievable timelines and descriptions of the assaults that did not "make sense." He asserts R.G. testified inconsistently or implausibly regarding his removal of her clothing and the placement of his hands, the positioning of his body and whether that prevented her from calling for help, whether he removed his shirt during the first encounter, and his positioning during the second encounter.

¶ 55 Here, any inconsistencies in R.G.'s testimony were insignificant and did not render her testimony unworthy of belief. As noted by the trial court, R.G. appeared to exhibit some confusion regarding the precise timing of events. However, given her young age, the difficult subject matter, and the period of time that had elapsed between the alleged offenses and her trial testimony, such confusion does not warrant a finding that she was not credible.

¶ 56 Additionally, defendant exaggerates or overstates the deficiencies in R.G.'s account of the assaults. For example, defendant argues that according to R.G., he "took off R.G.'s clothes including her shirt and bra while simultaneously using both of his hands to *** hold her hands above her head." However, at trial, R.G. explained that defendant "started out" by holding her down "with two hands on [her] hands" but "would change and switch hands" when removing her clothing. Defendant also contends R.G. implausibly testified that, during the second encounter, defendant "was able to thrust inside her while standing and holding her hands down, despite the bed only being one foot off the ground." However, the record reflects R.G. described herself as being "bent over the bed," which she estimated as being a foot off the ground, with her wrists crossed and defendant holding her wrists with one hand before he "thrusted inside [her] butt." R.G. did not specifically describe defendant as "standing," and we otherwise find nothing in her

description of the act that would make it physically implausible.

¶ 57 Defendant further contends R.G. lacked credibility based on evidence showing she (1) could have been taking medication that made her drowsy and possibly impaired her ability to recall events and (2) returned to the camper after the first assault. Again, we disagree that either factor renders R.G. an incredible witness. First, the record does not support a finding that R.G. had any difficulty recalling the pertinent facts at issue. As noted by the trial court, she provided a detailed account of the alleged offenses. Even if she had taken some type of "sleeping medicine" prior to the offenses, there is nothing in the record to suggest that such medications would have caused her to hallucinate the two instances of sexual assault. Moreover, as noted by the trial court, R.G.'s testimony was supported by testimony from A.G. and Herrera, both of whom also placed R.G. in defendant's bedroom. In particular, A.G. testified that after hearing R.G. crying, she observed R.G. and defendant lying under the covers in defendant's bed.

¶ 58 Second, R.G. testified that after the first assault by defendant, she suggested that the second planned sleepover take place in her family's camper. Ultimately, however, she returned to defendant's camper because Herrera wanted her to, and she "didn't want to let [Herrera] down as a friend." The trial court addressed R.G.'s return to defendant's camper and its effect on her credibility, stating as follows:

> "I think [R.G.'s] explanation for why she went back the second night was pretty reasonable of what you would expect from an 11[-]year[-]old[,] who has a friend, wants to spend time with that friend, doesn't want to upset that friend, tried to get the friend to stay at her house. I mean, we're talking about 11[-]year[-]old kids here. We're not talking about grown adults that perhaps, not necessarily, but perhaps would handle the situation differently."

Again, we agree with the court's reasoning and find no error in its determination.

¶ 59 Here, the trial court, as the fact finder, was in the best position to determine the credibility of the witnesses. It found R.G. credible and accepted her testimony. Nothing in the record requires a finding that no reasonable person could have accepted R.G.'s testimony beyond a reasonable doubt. Accordingly, under the circumstances presented, we find the State presented sufficient evidence to establish the essential elements of both counts I and III and defendant's arguments are without merit.

¶ 60 B. Ineffective Assistance of Counsel

¶ 61 On appeal, defendant next argues his defense counsel provided him with ineffective assistance. Specifically, he contends his counsel improperly failed to (1) introduce his medical records into evidence at his trial and (2) complete the impeachment of R.G., the State's key witness.

¶ 62 Ineffective-assistance-of-counsel claims are evaluated under the two-prong test described by the Supreme Court in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Gayden*, 2020 IL 123505, ¶ 27, 161 N.E.3d 911. Under *Strickland*, a defendant must establish both that (1) counsel's performance fell below an objective standard of reasonableness and (2) a reasonable probability exists that, but for defense counsel's unprofessional errors, the result of the proceeding would have been different. *Id.* "[A] 'reasonable probability' is defined as a showing sufficient to undermine confidence in the outcome, rendering the result unreliable or fundamentally unfair." *People v. Patterson*, 2014 IL 115102, ¶ 81, 25 N.E.3d 526. The failure to establish either *Strickland* prong "precludes a finding of ineffective assistance of counsel. *Gayden*, 2020 IL 123505, ¶ 27.

¶ 63 1. *Defendant's Riverside Medical Center Records*

¶ 64 Defendant first argues Ripley was ineffective for failing to present at his trial the Riverside Medical Center records that were presented at his sentencing hearing. He contends Myra's trial testimony showed he underwent a prostatectomy and suffered from erectile dysfunction, which rendered him incapable of committing the offenses charged in counts I and III—penetration of R.G.'s vagina and anus with his penis. Defendant asserts the trial court found Myra's testimony was unhelpful because she "gave too rough a time period with respect to the surgery and *** did not testify with great detail." He maintains his Riverside Medical Center records provided details regarding his prostatectomy, were available to his defense counsel at the time of his trial, and would have bolstered Myra's claims regarding both his surgery and his impotence.

¶ 65 Here, we find defendant cannot establish prejudice. First, although the trial court did find Myra's testimony was not "particularly helpful," the record does not support a finding that it found her assertions about the timing of defendant's prostatectomy procedure to be "too rough." Rather, it was Myra's testimony regarding defendant's alleged impotence, and his use of medication to alleviate that condition, which the court found indefinite or unclear. The court stated as follows:

> "In regards to the testimony of [Myra], I just don't find her testimony to be particularly helpful. Perhaps [defendant] did suffer from some type of impotence during that time, but that doesn't mean that he wasn't using those pills at this time or that, you know, she gave a rough time period. I just, I suppose they were talking June to September which is the time period that this would have been [*sic*] happened. But obviously she has a very real stake in the outcome of this case, and I just can't say that her testimony alone is enough to raise any doubt about the

> testimony of [R.G., A.G., and Herrera,] who all testified that [R.G.] was in the [d]efendant's bedroom."

Because the court appeared to accept Myra's testimony that defendant underwent a prostatectomy in 2005, it is doubtful that the submission of medical records establishing the precise date of that procedure would have changed the result of defendant's trial.

¶ 66 Second, the medical records at issue established only the performance of a "[s]uprapubic prostatectomy" on defendant in June 2005, not his condition immediately following that procedure, much less his condition 10 years later when the offenses at issue were alleged to have occurred. Moreover, the medical records do not discuss the potential side effects or actual consequences of the specific procedure performed on defendant. Nothing in the records establish that defendant was impotent following his surgery or that the surgery would have rendered him permanently unable to either obtain an erection or ejaculate. Accordingly, the Riverside Medical Center records would not have bolstered Myra's trial testimony that defendant was impotent and physically incapable of committing the charged offenses, and defendant cannot establish prejudice from Ripley's failure introduce them into evidence at his trial.

¶ 67 2. *Defense Counsel's Impeachment of R.G.*

¶ 68 Defendant next argues Ripley was ineffective for failing to complete his impeachment of R.G. with her alleged prior inconsistent statements. He notes that during cross-examination of R.G., Ripley questioned her about a previous interview she had with a person named Jo Sipes regarding the underlying events. R.G. testified she believed the interview was recorded. She also stated she did not remember telling Sipes that she "got up and left the room" after the first encounter with defendant or that, at the time of the alleged offenses, she "had taken medication that makes [her] sleep" and "passed out." The record shows the State objected to

Ripley's line of questioning on hearsay grounds. The trial court sustained its objection, and the alleged recording of the interview was never played at trial. Defendant argues Ripley failed to properly respond to the State's objection by asserting "the prior inconsistent statement exception to the hearsay rule" and seeking to admit the relevant portions of R.G.'s recorded interview.

¶ 69 As defendant argues on appeal, section 115-10.1 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10.1 (West 2018)) provides that evidence of a witness's prior inconsistent statement is admissible and not hearsay when the witness is subject to cross-examination concerning the statement, the statement pertains to an event or condition within the witness's personal knowledge, and the statement is recorded. "[I]f the witness denies making such a prior statement, it is incumbent upon the examiner to offer evidence of that statement." *People v. Vinson*, 90 Ill. App. 3d 6, 9, 412 N.E.2d 1062, 1065 (1980). "Failure to complete the impeachment of an important witness may constitute reversible error and require a new trial." *Id.*

¶ 70 Ultimately, we find the record on appeal in this case is inadequate for resolving defendant's specific claims. See *People v. Veach*, 2017 IL 120649, ¶ 46, 89 N.E.3d 366 (stating that when the appellate record is incomplete or inadequate, "ineffective assistance of counsel claims may sometimes be better suited to collateral proceedings"). As noted by the State, the record does not contain R.G.'s alleged recorded interview with Sipes. Even assuming that a recording of the interview exists, defendant cannot show what R.G. actually reported to Sipes or that she made any statements that were inconsistent with her trial testimony. Thus, we decline to address defendant's claim.

¶ 71 3. *Cumulative Error*

¶ 72 Regarding his ineffective-assistance claims, defendant further argues that the cumulative effect of Ripley's errors rendered his conviction unreliable. Given our finding that

defendant cannot establish any prejudice from Ripley's failure to present the Riverside Medical Center records at trial and because the record is otherwise inadequate for evaluating his claim that Ripley failed to complete his impeachment of R.G., we find no merit to defendant's claim of cumulative error.

¶ 73 C. *Krankel* Inquiry

¶ 74 Finally, on appeal, defendant argues the trial court improperly failed to conduct a *Krankel* inquiry into his *pro se* posttrial ineffective-assistance claim. He maintains such an inquiry was triggered by statements he made to the court at his sentencing and at the hearing on his posttrial motion, complaining that the Riverside Medical Center records were not presented at his trial.

¶ 75 A *Krankel* inquiry is triggered "when a defendant brings a clear claim asserting ineffective assistance of counsel, either orally or in writing." *People v. Ayres*, 2017 IL 120071, ¶ 18, 88 N.E.3d 732. "[A] defendant need only bring his claim to the [trial] court's attention," and "a claim need not be supported by facts or specific examples." *Id.* ¶ 19. At a minimum, the defendant must represent to the court that "(1) he has a complaint about trial proceedings and (2) that complaint involves something his attorney did or failed to do." *People v. Schnoor*, 2019 IL App (4th) 170571, ¶ 69, 145 N.E.3d 544.

¶ 76 "[T]he goal of any *Krankel* proceeding is to facilitate the trial court's full consideration of a defendant's *pro se* claim and thereby potentially limit issues on appeal." *Ayres*, 2017 IL 120071, ¶ 13. When a *pro se* posttrial ineffective-assistance claim is made, the following procedure is required:

> "[T]he trial court should first examine the factual basis of the defendant's claim. If the trial court determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se*

motion. However, if the allegations show possible neglect of the case, new counsel should be appointed." *People v. Moore*, 207 Ill. 2d 68, 77-78, 797 N.E.2d 631, 637 (2003).

¶ 77 Here, at his sentencing, defendant provided a statement in allocution. He noted testimony from R.G. that he ejaculated during the commission of the alleged offenses and argued his surgical record from Riverside Medical Center established that as an impossibility. Defendant further asserted as follows: "This [medical record] was given to *** Ripley who gave it to the prosecution, yet [R.G.'s testimony] was allowed that I did this when it is a complete falsehood." Later, at a hearing on his motion for a new trial, defendant made the following statement: "At my sentencing, there was another piece of evidence put in that was never put in during the trial that proved that [R.G.] lied to the police and lied during her testimony about me ejaculating."

¶ 78 We agree with the State and find defendant's statements were not sufficient to trigger a *Krankel* inquiry. Here, defendant did not explicitly assert that Ripley was ineffective, nor did he expressly complain about something Ripley did or failed to do. Rather, defendant's comments most obviously reflect protestations of his innocence, which were based on a claim that his medical records proved R.G.'s testimony was false. Under these circumstances, no clear *pro se* ineffective assistance claim was brought to the trial court's attention, and thus, the court was not required to inquire further into defendant's assertions.

¶ 79 III. CONCLUSION

¶ 80 For the reasons stated, we reverse defendant's conviction and sentence for predatory criminal sexual assault of a child as alleged in count II but otherwise affirm the trial court's judgment.

¶ 81 Affirmed in part and reversed in part.