2022 IL App (5th) 180378-U

NO. 5-18-0378

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Madison County.
	)	
v.	)	No. 11-CF-660
	)	
MICHAEL S. BURGUND,	)	Honorable
	)	Kyle A. Napp,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE MOORE delivered the judgment of the court.
Justices Wharton and Vaughan concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions and sentence are affirmed, except that we vacate the portion of the trial judge's sentencing order that ordered restitution. We find that the defendant is not entitled to outright reversal, or to reversal with remand for a new trial, because (1) there was sufficient evidence presented at trial to support the defendant's convictions with regard to victim K.B., (2) the purported errors made by the trial judge with regard to the admission of testimony either were not erroneous or caused no manifest prejudice to the defendant, and (3) the defendant received effective assistance of counsel at trial where the decisions with which the defendant takes issue on appeal were either matters of sound trial strategy or did not result in prejudice to the defendant.

¶ 2 In this direct appeal, the defendant, Michael S. Burgund, challenges his convictions, and his mandatory sentence of natural life in prison, after a trial by jury in the circuit court of Madison County. For the following reasons, we affirm the defendant's convictions and sentence, except that we vacate the portion of the trial judge's sentencing order that ordered restitution.

¶ 3 I. BACKGROUND

¶ 4 This appeal involves the defendant's second trial for the offenses of which he was convicted. Following the defendant's first trial, this court reversed the defendant's convictions and remanded for a new trial. See *People v. Burgund*, 2016 IL App (5th) 130119. Because all of the issues raised by the defendant in this appeal relate to his second trial, we confine our discussion to the facts of relevance to the second trial, except where necessary to provide context for the present issues.

¶ 5 The defendant was tried at his second trial on five counts of predatory criminal sexual assault of a child. Count I alleged that between June 1, 2008, and April 1, 2011, the defendant committed an act of sexual penetration upon M.B., by placing his finger in the vagina of M.B. Count II alleged that during that same timeframe, the defendant committed an act of sexual penetration upon M.B., by placing his finger in the anus of M.B. Count III alleged that during that same timeframe, the defendant committed an act of sexual penetration upon M.B., by placing his penis in the mouth of M.B. Count IV alleged that between January 1, 2010, and April 1, 2011, the defendant committed an act of sexual penetration upon K.B., by placing his finger in the vagina of K.B. Count V alleged that between January 1, 2010, and April 1, 2011, the defendant committed an act of sexual penetration upon K.B., by placing his finger in the anus of K.B. The counts alleged that M.B. and K.B. were both under the age of 13 years when the alleged offenses occurred.

¶ 6 On May 9, 2018, testimony in the defendant's second jury trial—which lasted a total of eight days, including *voir dire*—began. The first witness to testify was Officer Michael Beaber of the Alton Police Department. He testified that at approximately 3 p.m. on April 4, 2011, while he was working at the police station, the defendant came to the station and told Beaber that the defendant was "there to confess for molesting his daughters." Beaber testified that this was very unusual, and that he advised a member of the department's detective division, who instructed him

to speak to the defendant to see what the defendant had to say. Beaber identified the defendant as the person with whom he spoke that day. He testified that the defendant was accompanied by the defendant's mother-in-law, Mary Buttry, as well as by Mary Buttry's son. He testified that the defendant was "calm," and that Beaber spoke to the defendant without anyone else present. He testified that the defendant told him that "over the last two years," with regard to "his three year old daughter [M.B.]," the defendant had "on 30 different occasions stuck his fingers in her vagina and anus and on two different occasions had her perform oral sex on him." Beaber testified that the defendant told him that with regard to "his two year old daughter [K.B.], he on 15 different occasions stuck his fingers in her vagina and anus but ha[d] not had her perform oral sex on him." He testified that he then took the defendant into custody. On cross-examination, Beaber reiterated his testimony that the defendant's "confession" was highly unusual, and his testimony that the defendant was accompanied by two individuals when he first announced why he was at the station. He testified that after he took the defendant's statement, he also took a statement from Mary Buttry.

¶ 7 Detective Sergeant Mike O'Neill of the Alton Police Department testified that on April 4, 2011, after Beaber's interview with the defendant, O'Neill arranged separate interviews of M.B. and K.B. at the Child Advocacy Center (CAC) in Madison County. He testified that he contacted their mother, Melissa Burgund, to arrange the interviews, and that he had never met Melissa, M.B., or K.B. prior to that day. He testified that he observed the CAC interviews from outside the room. He testified that following the CAC interviews, and a brief discussion with Melissa, he conducted a formal interview with the defendant, at approximately 6:30 p.m., which was about 3.5 hours after the defendant came to the station. He testified that the interview was video and audio recorded. He identified the defendant as the person he interviewed on April 4, 2011, and authenticated a copy of the recorded interview, which was admitted into evidence. O'Neill testified that during the interview, the defendant told him that the defendant had a bachelor's degree, could read, write,

and understand English, was not under the influence of any substances, and was not ill or in need of medical attention. He testified that he advised the defendant of his *Miranda* rights, using a written form. Thereafter, the recording of O'Neill's interview with the defendant was played for the jury.

¶ 8 After the recording was played, O'Neill testified that the interview with the defendant lasted "about an hour and ten minutes," and he described the defendant's demeanor during the interview as "very mild as far as cooperative interview goes," noting that the defendant "was tearful, appeared to be remorseful, but very cooperative and voluntary." He testified that the defendant never denied abusing his daughters, did not tell O'Neill that he had been coerced into reporting his abuse of his daughters, and did not tell O'Neill that he had been forced to come to the police station that day. He testified that the defendant spoke "very highly" of his wife Melissa, stating "that she was a good mother" to the girls, and stating that Melissa did not want the defendant to go to jail. He testified that the defendant admitted to hitting M.B. on at least two occasions with a pillow and calling her "dumb" and "stupid." O'Neill testified that during the interview, the defendant admitted to placing his fingers into the vaginas and anuses of both M.B. and K.B., and to placing his penis into the mouths of both M.B. and K.B., as well as to ejaculating into M.B.'s mouth, all of which the defendant told O'Neill excited the defendant and was done for the defendant's sexual gratification. He testified that this was not the first time someone accused of sexual or physical abuse against children had confessed to O'Neill, but that "the percentage is very limited and small for that to happen."

¶ 9 O'Neill testified that on April 5, 2011, the day after his interview with the defendant, O'Neill took formal statements from Mary Buttry and from Melissa. He testified that during their statements, they relayed to O'Neill statements that M.B. had made to them about the defendant's abuse, and statements that the defendant had made about his abuse of his daughters. He testified

that Melissa asked to speak to the defendant after she gave her statement, and that with the defendant's permission, O'Neill arranged a video and audio taped meeting between them, at which O'Neill also was present. He authenticated a recording of the meeting, which was then admitted into evidence and played for the jury.

¶ 10 On cross-examination, O'Neill testified that Melissa told him that the defendant first denied abusing the girls, then "confessed" to her on April 2, 2011, a Saturday, two days prior to appearing at the police station. He testified that at times during his interview with the defendant, O'Neill would suggest a possible reason for the defendant's behavior, and the defendant would agree with him. O'Neill testified that the defendant also was free to deny O'Neill's suggestions, and sometimes did so. He agreed that the defendant told him that the defendant was sexually abused by the defendant's mother, and that the defendant told him that the defendant could not remember details of that sexual abuse. He testified that he did not believe this was unusual in these types of cases. He testified that after charges were filed against the defendant in this case, the defendant stated that he wished to "retract" his "confession." O'Neill testified that subsequently he learned that the defendant had also discussed the alleged offenses with the defendant's uncle, Mark Burgund, and so, in November 2012, O'Neill interviewed Mark.

¶ 11 On redirect examination, O'Neill testified that over the course of his career involving "seven to eight hundred cases of crimes against children," he has encountered abusers who were victims of previous abuse, and who could not recall or explain the details of that abuse. He testified that when, during the interview with the defendant, the defendant was asked how many times he committed the offenses against his daughters, the defendant "seemed very thoughtful," put "some thought into each answer that he gave," and that the defendant's answers did not appear to O'Neill to be "just quickly popped off." He agreed that the defendant did not simply agree to numbers

provided by O'Neill, but instead corrected O'Neill, and stated to O'Neill that he "wanted to be accurate."

¶ 12 M.B. testified that at the time of the trial she was 10 years old, and that she was born on June 19, 2007. She identified the defendant as her father. She testified that she "[k]ind of" remembered the defendant hurting her, and agreed that it was fair to say that she remembered "some stuff but not everything" because she was "little" when it happened. She testified that she remembered a time that the defendant made her touch his "pee pee" with her hand, a time that he touched her "pee pee," and a time that he touched her "butt." She testified that she remembered being scared for her sister, and remembered "[a] little" seeing the defendant do things to her sister. She testified that sometimes the defendant was "nice" to her when he was doing these things to her, and sometimes he was "mean" to her. She testified that sometimes when the defendant touched her "pee pee," her clothes would be off. She testified that she remembered a time the defendant made her "drink his pee." She testified that it tasted "[s]alty" and was "yellow." She testified that she did not remember how many times the defendant did these things to her, but that it happened a lot. M.B. testified that she finally told her grandmother about what the defendant was doing, because she felt safe telling her grandmother, and "felt like [she] needed to tell someone." She testified that she has nightmares about the defendant, and feels scared when she thinks about the house she used to live in with the defendant. She testified that her mother, Melissa, did not tell her that the defendant did things to M.B., and that M.B. was testifying truthfully about what the defendant did to her. She also testified that her grandmother, Mary Buttry, did not tell her what to say in court.

¶ 13 On cross-examination, M.B. testified that she thought she was around 3½ years old when she told her grandmother about what the defendant was doing to her. She did not remember being interviewed at the CAC at that time. She testified that she did not remember testifying at a previous

hearing about whether she talked to her grandmother about bad touches. M.B. was asked, "Do you have—do you have any of your own memories of your dad touching you or is this something that you recall from what people have told you?" She answered, "I remember some." When asked if she remembered "some because of what people have told you," she answered, "No." At the conclusion of M.B.'s testimony, the State asked, in the presence of the jurors, for the record to reflect the date of the "previous hearing" referred to in M.B.'s cross-examination testimony. The trial judge stated that the date of that hearing was December 4, 2012.

¶ 14 Kim Mangiaracino testified that she was presently the executive director of Child Advocacy Centers of Illinois, and that she previously worked as a forensic interviewer at the Madison County CAC. She testified extensively about her background and training as a forensic interviewer. At the request of the State, and without objection from the defendant, the trial judge certified her as an expert in the field of forensic interviews. Mangiaracino then testified extensively about general principles and techniques of forensic interviewing. She thereafter testified that on April 4, 2011, she conducted separate interviews with M.B. and K.B. at the CAC, both of which were audio and video taped. She testified that K.B. had just turned two years old at the time of the interviews, and that because of her limited verbal communication skills at that time, her interview lasted less than five minutes. She testified that M.B. was a little over 3½ years old at the time of her interview, and that M.B. exhibited appropriate communication skills for a child of that age. She testified that M.B.'s interview lasted 16 minutes, which was appropriate for a child of that age. She authenticated a copy of M.B.'s interview, which was admitted into evidence and played for the jury.

¶ 15 Thereafter, Mangiaracino testified that during the interview, M.B. used an anatomical drawing of a female to identify her "pee pee" as her vaginal area, and used an anatomical drawing of a male to identify the defendant's "pee pee" as his penis. She testified that during the interview,

M.B. almost immediately began talking about a "froggy" game and stated "that daddy touched her pee pee with the froggy and that the froggy bit her pee pee." She testified that at that point, she did not know what M.B. was talking about. She testified that M.B. also said that the defendant hit her with a pillow and called her dumb, that M.B. saw the defendant touch K.B.'s "pee pee," and that the defendant placed his "pee pee" in M.B.'s mouth. She testified that she considered M.B.'s statements in the interview to be spontaneous. She testified that M.B. stated that the touching by the defendant hurt. On cross-examination, Mangiaracino agreed that at one point during the interview, M.B. stated that she had not seen the defendant's "pee pee." She agreed that if a three-year-old child "was given suggestions repeatedly over six weeks," that could "result in false reporting during [a] forensic interview."

¶ 16 Dr. Laura Hill testified that she was a general pediatrician who was board certified in general pediatrics and, counting her residency, had been practicing since 2002. At the request of the State, and without objection from the defendant, the trial judge certified her as an expert in the field of pediatric medicine. Dr. Hill testified that she began seeing M.B. and K.B. as patients soon after each was born, and continued to see them as their pediatrician as of the date of the trial. She testified that on October 18, 2007, M.B. presented to her "with greenish vaginal discharge," and that on February 4, 2008, M.B. presented "with stringy white thin material in her stool." Dr. Hill testified that on March 23, 2009, just before M.B.'s second birthday, M.B. presented with "ongoing vaginal itchiness" for a period of two weeks. She testified that the medical records indicated "that the vaginal area was red," with pain in the pubic bone area, and with M.B. saying "ow" when the area was touched. Dr. Hill testified that K.B. presented to her on April 27, 2009, with a bruise that "resembled where and how an adult hand would look." She testified that on June 20, 2009, M.B. presented with blood in her urine, that on February 18, 2010, M.B. presented with concerns "there had been a urinary accident," and that on April 20, 2010, M.B. presented with continuing

complaints of pain with urination. She testified that on January 3, 2011, K.B. presented with complaints "about her bottom hurting for about a month," and refusing to wear a diaper. K.B. also complained of pain when sitting down and riding a bike, and the medical records indicated the presence of occasional blood in her stool. Dr. Hill testified that it was unusual for a child to complain about pain for that length of time, so she asked Melissa "if there had been any concern for inappropriate touch." She described Melissa's response as a "[q]uick and adamant" denial of any concern about that. Dr. Hill testified that on January 19, 2011, K.B. presented again, this time with "oral lesions," which Dr. Hill described as being "a rash on her face" and which she noted "looked like they might be herpes but it was too late to diagnose them." She testified that on March 3, 2011, M.B. presented with abdominal pain, tremendous fatigue, and "a very strong urination" all over herself the previous night.

¶ 17 Dr. Hill testified that on April 4, 2011, she saw both K.B. and M.B. She testified that they were brought by "[t]heir mom, their maternal grandmother, and their maternal aunt." She testified that the visit stood out "[v]ery strongly" in her memory, and that Melissa seemed "shattered," and "was recurrently tearful, rocking, would compose herself to answer my questions, and then again begin silently crying." She described Melissa as "probably the most broken human being I've ever seen." She testified that she had interacted with Melissa on many previous visits, and that Melissa's demeanor on April 4, 2011, was "[a]bsolutely abnormal" for Melissa, and not at all like her usual demeanor. Although she was told that "the children had made an accusation of sexual assault," she did not direct them to go to the emergency room, "because the alleged assault had occurred more than three days previous," and she believed she was "unlikely to see any physical findings." Dr. Hill testified that her examinations of K.B. and M.B. did not reveal any signs of trauma to their vaginal areas, but that "no finding" was the most common finding in these types of cases, and was what she expected to find.

¶ 18 With regard to the medical visits described above, Dr. Hill opined, within a reasonable degree of medical certainty, that the green vaginal discharge could have been caused by sexual abuse, that "continued vaginal itchiness, redness, and pain could be caused by child sexual abuse or digital penetration," that "pain to the anal area could be a result of child sexual abuse or digital penetration," that "pain and scratching to the pubic bone area could be a result of child sexual abuse," that "frequent urinary accidents, blood in urine, blood in stool, and urinary tract infections," also "could be as a result of child sexual abuse and digital penetration."

¶ 19 Dr. Hill thereafter testified that in retrospect, she saw the girls "a large number of times" early in their lives, which she described as "a big problem." She testified that it was "absolutely devastating" to her that she might "have missed subtle signs of abuse going on." She added, "if that is what went on here, then I am disappointed that I could have contributed to an ongoing problem when it could have been stopped earlier." When asked if it was the cumulative effect of the girls' problems that was "the real issue," Dr. Hill testified, "The cumulative effect is staggering."

¶ 20 On cross-examination, Dr. Hill agreed that although she could say, within a reasonable degree of medical certainty, that the ailments described above *could* have been caused by sexual abuse, she could not say that they *were in fact* caused by sexual abuse. She also agreed that, with regard to K.B.'s bottom hurting for a month, the medical records indicated that Melissa had suggested that K.B. might have fallen on the edge of her potty chair approximately one month before the visit, and that other possible explanations for some of the ailments were found in some of the medical records. She testified that she did not have the complete medical records before her at that time.

¶ 21 Mary Buttry testified that she was Melissa's mother, and the grandmother of M.B. and K.B. She testified that she had a "very good" relationship with Melissa, and with all of her

grandchildren. She identified the defendant in court as the father of M.B. and K.B. She testified that she met the defendant when he was four or five years old, and that sometimes he played in the neighborhood along with Melissa and the other children. She testified that Melissa and the defendant got married in November 2006, and lived with Buttry and her husband for 2.5 years after that. She described Melissa and the defendant's relationship during that time as "pretty good," despite there being some "battles" between them. Buttry testified that although she never witnessed physical altercations between Melissa and the defendant, she saw both with bruises, and heard what she thought was fighting. She testified that this concerned her, and that eventually she told them that if they did not stop fighting, she would call the police. She testified that they moved to their own place not long after that.

¶ 22 Buttry testified that she "always had a good relationship with" M.B., and that she believed M.B. was comfortable talking to her and coming to her if she needed something. She testified that when M.B. was approximately one year old, M.B. would take bath toys, during her bath, and push and pull them against her genital area, which Buttry characterized as not "right" and not "normal." She testified that on one occasion, when M.B. was "12, 15 months old," M.B. pointed to her own genital area during a diaper change and said "[d]ada." Buttry testified that when she and her husband asked the defendant about it, "[h]e said that there was no way that he would do anything like that." She testified that when she spoke to Melissa about it, Melissa also believed that the defendant would not do anything like that to M.B. She testified that she did not go to the police because the defendant "was very convincing," she trusted the defendant, and she "thought the world of him."

¶ 23 Buttry testified that when M.B. was approximately 3.5 years old, Buttry was interacting with her on a daily basis, and M.B. kept repeating phrases such as "it's all my fault" and "I'll never see my family again." She testified that M.B. had "a bothered look on her face" when she said

these things and seemed distressed. She testified that she asked M.B. why she kept repeating these things, and if anyone was saying these things to M.B., and that M.B. told her that the defendant was saying those things to her. Buttry testified that M.B. looked "very nervous and frightened" and Buttry asked M.B. if anyone had ever touched M.B. "in any way that they shouldn't." She testified that M.B. told her the defendant had, and that when Buttry asked M.B. where she had been touched, M.B. "touched her head and her shoulders and her torso and her legs and then she touched her genital area." Buttry testified that this "brought everything full circle and just right back to the same concerns" Buttry "had years back." She testified that at some point, M.B. told her that the defendant placed his "pee pee" on M.B.'s head, and that M.B. told her that the defendant said he did these things to M.B. because he loved her.

¶ 24 Buttry testified that she was not sure what to do, so she told M.B. that if the defendant ever touched her like that again, she should tell the defendant that she had told Buttry about it. She testified that, at that point, she hoped M.B. was wrong about the defendant touching her inappropriately. She testified that several weeks later, M.B. told her that "nobody can touch my pee pee." She testified that when she asked M.B. why she was saying that, and if something had happened, M.B. said, " 'Yes, but daddy is very sorry and he'll never do it again.' " She testified that M.B. initiated the conversation, that Buttry never suggested that the defendant was doing anything bad to M.B., and that Buttry still hoped the defendant was not. She testified that around this same time, she began to have concerns about some of the defendant's behavior with M.B., such as the fact that he often took her outside to play in areas where no one else could see them, that he gave M.B. her baths "a lot" and always shut the door to the bathroom when doing so, and that on one occasion, when the family had dressed M.B. in a princess outfit, the defendant looked at M.B. with a "weird" look on his face, "staring at her with a look like, you know, a guy looks at

a woman when he thinks that she is hot." She testified that "[i]t wasn't like a father looks at their child."

¶ 25 Buttry testified that on March 30, 2011, she went to pick up M.B. She testified that in the car, M.B. told Buttry that "nobody can ever touch my pee pee." Buttry testified that M.B. first denied that the defendant had touched her "pee pee," then admitted that he had, but again stated that the defendant was very sorry. She testified that M.B. told her that M.B. was not allowed to tell anyone once she started preschool that fall. She testified that she told M.B. that "this has to stop," and asked M.B. if it had been a long time or a short time since it happened. She testified that M.B. told her it had been a short time. Buttry testified that M.B. agreed to tell Melissa what had happened. She testified that she and M.B. returned to Melissa's house and that M.B. asked Buttry if the defendant was going to be in trouble and if Melissa was going to be mad. She testified that M.B. told Melissa what happened and agreed that M.B. "was unprompted at that point." She testified that Melissa called the defendant at work and asked him to come home, without telling him that it involved M.B. She testified that once the defendant got home, Melissa told the defendant it was about M.B., and that M.B. had made accusations against him. Buttry testified that the defendant "just kept saying 'if [M.B.] says I did it, then I guess I did. But I don't remember,' and just kind of repeating that over and over again." She testified that Melissa subsequently left, and that while she was alone with the defendant, the defendant "kept saying that he kind of remembered something happening upstairs in the loft," and that when she and the defendant went up to the loft, the defendant "kept pointing to this one spot on the floor and saying he kind of remember[ed] something right there." She testified that the defendant then "started saying something about he thinks he's blacking out about it, but he thinks it's something right there, but he's blacking out."

¶ 26 Buttry testified that the defendant was again "very convincing," and that she thought "maybe he was having troubles." She testified that she left the defendant alone in the loft, and that when he came back downstairs, 5 or 10 minutes later, he told her that he remembered putting his penis on M.B.'s head in the loft. She testified that thereafter, when the defendant "got relaxed," he told her that he knew he should have told her what happened, but that he knew that meant he would go to jail. Buttry testified that she felt "lied to" by the defendant, and began to think that he was not the person she thought he was. She testified that M.B. and K.B. came to stay with her, and she believed "they were relieved it was over." She testified that at that point, she still had not thought about contacting the police, because she "didn't know how to handle it," still loved the defendant, and thought of the defendant as "like a son to us." She testified that she was also dealing with the fact that her brother was hospitalized with a serious illness that eventually took his life.

¶ 27 Buttry testified that the defendant, who still had a key to her home, thereafter came there and stayed in the office, which had a futon in it. Buttry testified that on the evening of April 2, 2011, following dinner, she told the defendant that "he really need[ed] to let us know what happened," and "that the girls would need counseling." She testified that the defendant's demeanor was "[l]ow" and that he was spending most of his time in the office with the futon. She testified that after she told him that he needed to be honest, the defendant "called Melissa and divulged more of what had happened." She testified that on Sunday, April 3, 2011, she met with the pastor of her church, Pastor Mark, because she "didn't know what to do," and felt like she needed "to decide how to handle this." She testified that she did not remember the defendant being hesitant to attend the meeting, and that at the meeting, the defendant, whose demeanor she described as "[f]orthright," immediately "told Pastor Mark directly what had happened." She testified that on the way to the meeting, she did not make any accusations to the defendant. She testified that Pastor

Mark told them he would contact them to tell them what to do, and that thereafter, Pastor Mark called her and told her she "had 24 hours to take [the defendant] to the police."

¶ 28 Buttry testified that after taking the girls to be examined by Dr. Hill the next morning, she arranged to pick up the defendant at his place of work, along with her son, who worked at the same place. She testified that the three of them went to the police station together, that she did not yell at the defendant, and that although she told the defendant, "I'm sorry, but this is something we have to do," she did not speak loudly or forcefully. She testified that the defendant told her son that her son was a good man, and asked her son to take good care of the defendant's children. She testified that when they arrived at the police station, they "walked in and [the defendant] went to the window and said that he was turning himself in for abusing his children." She testified that the defendant then "handed [her] his wallet and keys" and went with the police officer to make a statement. Buttry testified that on a subsequent day, she returned to the police station and gave a formal statement to Detective O'Neill. She testified that the girls moved in with her, and seemed "very happy and relieved." She also testified about health problems that she was having during the same timeframe.

¶ 29 On cross-examination, Buttry agreed with defense counsel that the defendant "had some issues with lust during the course of the marriage." She testified that as a result, Melissa asked Buttry to remove "some angel figurines on the fireplace[,] *** pictures in the house, like of our old babysitter on the refrigerator, *** some story books of [M.B.'s,] *** Barbie dolls," and "[t]hings like that." She testified that Melissa asked her to remove the items because the defendant "claimed that they—he had a fancy to them." She testified about her involvement in her church, including that she and her husband "le[d] a small group," but when asked, she testified that the members of the small group did not come to them for advice, and that nobody came to her for spiritual advice, although a family had recently asked her to pray for them, which was something

that sometimes happened in her church. She testified that at her previous church, some people referred to her as "Pastor Mary," and agreed with defense counsel that she had "a good relationship with the Lord."

¶ 30 With regard to the earlier incidents that aroused her suspicions about the defendant, she agreed that she had previously stated that she "tried to embrace his denial," but also agreed that "deep down" she probably had still remained suspicious of the defendant after that. She testified that she did not remember telling O'Neill about a time when the defendant had M.B. on his lap and the way the defendant was hugging M.B. and "rubbing his cheek on" M.B. "didn't make [Buttry] feel right." After being shown documentation of her statement to O'Neill, she agreed that she had made the statement, which defense counsel stated included her telling O'Neill that it was "just an intuition type thing, just like a quick flash of light," and that she did not feel right about it, but she reiterated that she did not remember making the statement. She agreed with defense counsel that she relied "heavily" upon her intuition and testified that she was "careful." She testified again about the princess costume episode, and her concern that no one else seemed to notice what she believed was strange behavior on the defendant's part. She agreed that after the episode, she stated that she was "on a mission in [her] heart to find out if this is right," and that she stated that she was not going to accept his denials, but instead was going to keep a "strong" eye on him because she believed "[s]omething wasn't right."

¶ 31 With regard to M.B.'s repetition of the phrases "it's all my fault" and "I'll never see my family again," Buttry agreed that she had told O'Neill that she eventually concluded the first phrase came from one of M.B.'s favorite movies, which M.B. watched a lot, but Buttry did not remember telling O'Neill that people told her the second phrase also might have come from a movie M.B. watched a lot. After being shown documentation of her statement to O'Neill, she agreed that she had made the statement. When asked if she was not "satisfied" that the second statement might be

from a movie as well, Buttry testified as follows: "It's not that I wasn't satisfied. I mean, her demeanor spoke volumes. I wasn't trying to accomplish something like that. I was concerned about [M.B.]." She agreed that M.B. had "an imaginary friend" at that time, and that M.B. sometimes attributed the phrases to her imaginary friend. She testified that she "didn't ever start a conversation" with M.B. about her concerns about the defendant, only that she reacted to the phrases, and to statements from M.B. about her "pee pee" being touched or not being touched, by asking M.B. if anyone had said the phrases to her or touched her inappropriately.

¶ 32 Buttry testified that she did not remember the defendant ever denying the allegations against him, but she acknowledged that at some point she may have said that he first denied the allegations, although she did not remember saying that. She noted that the allegations surfaced in 2011, which was seven years prior to the 2018 trial. She testified that she told the defendant that he had "to get to the truth of this," so that they would "know how to help" M.B., but she testified that she did not remember the exact date when she told the defendant that. She agreed that she did not immediately go to the police once the defendant "confessed" to her with regard to some of the abuse. She repeatedly denied that she ever coerced or manipulated the defendant to get him to confess to her. She testified that she was deposed in 2012 in the defendant's divorce case with Melissa, and that during the deposition she "must have" stated that the defendant "just started divulging his heart" to her, although she did not remember that. She testified that she did not remember other statements she made to O'Neill about what she said to the defendant at the time of his confession, but agreed that she "might have said" some of the things, because they sounded like things she would have said to convince the defendant to tell her what happened, and to think about the impact of what happened on the girls.

¶ 33 Buttry testified again that she did not remember telling O'Neill that the defendant "started to revert" on his confession prior to going to visit Pastor Mark, and that she did not remember the

defendant doing so. She denied defense counsel's suggestion that visiting Pastor Mark was motivated by a desire to "have a confession to the pastor as well." She agreed that it was possible that she told O'Neill that she told the defendant that he was not going to recant his confession, but was going to "continue in this direction and love [his] children," but testified that she did not remember stating that to O'Neill. She also agreed that it was possible that she told O'Neill that she sat with the defendant during his conversation with Pastor Mark because she wanted to make sure the defendant "stayed in the right place," but testified she did not remember stating that to O'Neill. She testified that she could see herself saying that, because she wanted to make sure the defendant told the truth. Buttry testified that if Pastor Mark had asked to speak briefly to the defendant alone, "that would have been fine."

¶ 34 Buttry denied that she tried to prevent the defendant from having contact with his parents at that time. She testified as follows: "He is an adult. He had his truck, his keys, his personal cellphone, work cellphone. I mean, it was up to him what he did." She testified that it was the defendant's and Melissa's decision for the defendant not to go to his parents. She agreed that she told O'Neill that the defendant's mother was "a very difficult person," but reiterated that she played no part in the decision for the defendant not to go home, and she agreed that she told O'Neill that the defendant did not want to go home.

¶ 35 When asked what the term "discernment" means, Buttry testified that "[n]ormal discernment is just to be able to see something past just the surface." She added, "Like if you have a child and maybe they're embarrassed in front of their friends and they try to act like they're not embarrassed, but you can tell that your child is embarrassed." She then testified, "You see past their behavior that they're hiding; that they're embarrassed." When asked if there was a "different" type of discernment, Buttry testified as follows: "There is a spiritual gift of discernment. Where like—it's just something that God gives to a select few. They are able to see like if this is a good,

something of God, or if it's something that's evil." When asked if she was "a discerning person," Buttry testified as follows: "I don't have that gift of discernment, no. I'm a mom and grandma. And I can see if my child is embarrassed in front of their friends when they're acting like they're not." She denied that her suspicions that something was wrong with the defendant's relationship with M.B. were based on discernment, testifying that they were based on "parental intuition," not on "discernment, spiritual discernment." She denied that she ever told anyone, including the defendant, that she "had the power to discern things."

¶ 36 Over the State's hearsay objection, Buttry testified that Melissa had told her that the defendant believed that the defendant was molested as a child. When defense counsel asked Buttry if Melissa told Buttry that the defendant said he may have been molested by the defendant's mother, Donna, the State objected on the basis of "double hearsay." The objection was sustained. Buttry testified that she once believed that her ex-husband might have molested Melissa when Melissa was around 2½ years old, and that she told a doctor of her concerns. She testified that Melissa came home from the park with her ex-husband and told her that the ex-husband "pinched" her privates. She subsequently testified that the doctor who examined Melissa told Buttry that based upon Melissa's description and demeanor, he believed something had happened at the park, but that there was no physical evidence. She testified that because of Melissa's youth, and because Melissa would not be allowed to be around the man again, the doctor advised her to let Melissa forget about it.

¶ 37 Lieutenant Anthony Court of the Madison County Sheriff's Department testified that he was a shift supervisor at the jail, and that the defendant was visited at the jail by Mark Burgund on April 7, 2011, by an attorney on April 12, 2011, by Wanda Burgund on April 14, 2011, by Steven Burgund and Donna Burgund on April 17, 2011, and by Mark Burgund and Donna Burgund on April 28, 2011.

¶ 38 Pastor Mark Church testified that he had been the lead pastor at his church since 2002, but had been a pastor at the church for a total of over 30 years. He testified that he knew the defendant, because the defendant had visited the church for a period of several months, along with Melissa. He testified that he also knew Mary Buttry and her husband, who had attended much longer and continued to attend. He testified that at about 2:15 p.m. on Sunday, April 3, 2011, Buttry called him, told him she wanted to meet with him, and that it was important, but did not tell him any additional details. He testified that he, Buttry, Buttry's husband, and the defendant met at the church's coffee shop approximately one hour later. He testified that the defendant told him, " 'since my daughters were very young, I have been abusing them in the worst possible way.' " When asked what he thought the defendant meant, Pastor Mark testified "that it was sexual abuse is the impression I held when he said it." He testified that the defendant did not divulge more details, and that he counseled the defendant "to draw close to the Lord." He testified that the meeting was not a long one, and that it ended with prayer. He testified that later he "was thinking about [his] legal obligation in the situation," so he "called Mary back and said, 'you know, you came to me as a spiritual person, but I know this requires more and I wanted to make sure that you were going to go to the proper authorities with that, because if you don't, I have to.' " He testified that he told Mary that they needed to act within 24 hours, and that he later confirmed that they did so. He testified that he later spoke to Detective O'Neill about the meeting. When asked if his church frowned upon divorce, Pastor Mark testified as follows: "We encourage people to stay together. We're not the type of church that if you get divorced that you're not allowed to come. We have a lot of divorced people in our church." He testified that the defendant's demeanor at their meeting was "[s]olemn, broken."

¶ 39 On cross-examination, Pastor Mark testified that he knew "of the Burgund family," and that they were a "ministry family," with "pastors in that family." He testified that he knew that

Maurice Burgund was a pastor. He testified that he believed there were biblical justifications for divorce in some circumstances. He agreed that his church "believe[d] in the gifts of the Holy Spirit," which he agreed included the "gift" of discernment. On redirect examination, he testified that "discernment" was not a term that was "used commonly" at his church, and that he "would use that term in being able to discern between right and wrong."

¶ 40 Mark Burgund testified that he was the defendant's uncle, and that he was the pastor of a church in Naperville. He testified that he knew Melissa, M.B., and K.B., and communicated with them at times during the defendant's marriage to Melissa. He testified that there was a period of time when the defendant did not communicate with Donna, but still communicated with him. He testified that on April 7, 2011, he visited the defendant in jail, and that the defendant was "very emotional *** very tearful *** almost beside himself." He testified that they spoke for approximately "a half hour." He testified that the defendant "said that he could not believe he had done something like that. He was very sorry. Over and over, he kept saying 'I'm so sorry, I'm sorry.' " He testified that he took the defendant's words to mean that the defendant "was still thinking that he had done that, and he was very remorseful." He testified that when he visited the defendant again on April 28, 2011, the defendant's demeanor was much different, and he denied that he had abused his daughters. On cross-examination, he testified that when he observed the defendant interacting with M.B. and K.B. in the past, they did not appear to be afraid of the defendant.

¶ 41 Melissa Burgund testified that she was married to the defendant—who she identified in court—for a little over five years, and that they had two daughters together, M.B. and K.B., as well as a son who was six years old at the time of the May 2018 trial. She testified that she filed for divorce shortly after the allegations of abuse were made, and that she and the defendant were presently divorced. Melissa testified that Mary Buttry was her mother. She testified that she first

met the defendant when they were in elementary school, but that they did not begin dating until 2006, when they "re-met." She testified that she and the defendant got married in late 2006, after she learned that she was pregnant with M.B. She testified that her parents were "[o]verjoyed" at the news of her pregnancy and marriage, but that the defendant's father "put it as doomed, couldn't think of anything worse." She testified that the defendant's mother, Donna, told Melissa that Melissa had "ripped away her dreams of a wedding," and that they needed to get married right away because Donna "had a reputation to uphold." She testified that they had a small wedding approximately one week later, but did not invite either set of parents because she "just felt it was best to not have any dramatic responses from his family."

¶ 42 Melissa testified consistently with Buttry with regard to the living arrangements after the marriage. She testified that in 2011, she and the defendant attended church sporadically, and that it was the defendant's choice to switch from his church to the one Melissa and her parents attended. She testified that she knew Pastor Mark as the pastor of her church, and that her church did not teach "discernment." She testified that she did not believe she had the gift of discernment, but that Donna sometimes stated that Melissa did.

¶ 43 Melissa testified that she once attended a "revival" at the defendant's brother's church, and that "[a] lot of jumping and hollering was going on." She testified that she did not participate in that, because it was "just not [her] feel for church," and that the defendant's brother later told the defendant that he was upset that Melissa did not participate, and that he did not believe that Melissa fit the defendant's "destiny." She testified that when the defendant had the opportunity to participate in a church internship, she did not tell him not to, even though Donna asked her to ask him not to do it. She testified that when the defendant returned from the internship, which lasted approximately two months, he was very upset and very emotional about his time there, and felt like Melissa did not contact him enough while he was there.

¶ 44 When asked to describe her marriage to the defendant, Melissa testified, "Exhausting. Weird." She testified that she and the defendant fought, both verbally and physically, that sometimes the defendant would "headbutt" her, and that he did so more frequently during her pregnancies. She testified that the defendant would sometimes physically restrain her, and that she sometimes had bruises as a result of the physical confrontations. She testified that she sometimes punched the defendant, and headbutted him. She testified that at times she did that when the defendant was restraining her. When asked to describe her sexual relationship with the defendant, Melissa testified, "Awful. Confusing. Weird to say the least." She testified that the defendant "was unable to perform," that he blamed her, and that he told her "that he did not feel sexual towards [her]." She testified that they attended counseling, and also saw a physician, who did tests on the defendant and prescribed Viagra. She testified that the defendant was still unable to perform, and had a medical reaction to the Viagra.

¶ 45 Melissa testified that the defendant described to her some things that were attractive to him. She testified that these included "a cartoonish character of sorts," and that there was a children's book that the defendant claimed he could not read to his daughters because the pictures of a little girl in the book "gave him bad thoughts." She testified that once when they were watching Veggie Tales and the movie The Wizard of Oz, the defendant "was acting extremely odd," and told her "that the Devil was putting bad thoughts in [his] head." She testified that on another occasion, when the defendant heard a school bus approaching, he became "flustered" and stated that it "was starting to bother [his] head." Melissa testified that when these things happened, she told him to "snap out of it," and that he had "a choice to make" and could either "be normal with his children or" he could "go off in some weird land that [he] fantasize[d] about." She testified consistently with Buttry with regard to the defendant requesting that angel figurines and other objects be removed because they gave him "bad thoughts."

¶ 46 Melissa testified that after the defendant told her that he was not attracted to her, she had an extramarital affair. She testified that the defendant was aware of the affair, and often encouraged her "to go over there," while he remained home alone with the girls. She testified that during marriage counseling sessions, prior to April 2011, the defendant stated "that he was having thoughts of putting [M.B.'s] bottle or her binky in her private parts," which was very disturbing for Melissa to hear. She testified that she did not go to the police at that time because the defendant told her that "it was just a thought and he would never act on it." She testified that she wanted to believe the defendant. She testified about her relationship with the defendant's family, and that she tried "to make it work" with them. She testified that she never told the defendant that he could not talk to his parents, and that it was his decision when he did not talk to them. She testified that the defendant "made reference to" being molested by his mother, Donna. She testified that she did not ask him questions about it, and that she never suggested to the defendant that he was molested by Donna. She testified that after the defendant told their marriage counselor that the defendant was molested by Donna, the counselor recommended that Donna not be around M.B. and K.B.

¶ 47 Melissa testified that she and the defendant made the joint decision to not be in contact with the defendant's parents, which lasted a period of 18 months. She testified that she did not forbid the defendant from contacting them. She testified that eventually she concluded that it was "so absurd to have division in family and not knowing really how to fix the issues that led to but hopeful for resolve," so she reached out to Donna and asked if she and the girls could visit Donna, to which Donna said yes. She testified that they visited, and communication with Donna resumed. She again testified that she never forbid the defendant from having contact with his family, and that in fact they visited with Mark Burgund and his wife, Wanda, during the time that they did not have contact with Donna.

¶ 48 Melissa testified that in March 2011, M.B. was able to speak, and that M.B. would wake up with nightmares, and say that Melissa was going to be hurt and it would all be M.B.'s fault. She testified that M.B. also "[q]uite often" said that she was going to lose her family, and that when the girls returned from Buttry's house, M.B. would say that she did not want to go back to her "scary" house with the defendant and Melissa. She testified about taking the girls to Dr. Hill for their various complaints. Her testimony was consistent with that of Dr. Hill, described above. She testified that when Dr. Hill asked her if there could be abuse going on, she told Dr. Hill "no" because she trusted the defendant and "couldn't imagine" him doing bad things to the girls. She testified that even though the defendant had told her about his bad thoughts, she could not believe that he might do things to his own children.

¶ 49 Melissa testified that on Wednesday, March 30, 2011, Buttry brought M.B. home and told Melissa about Buttry's concerns. Melissa testified that she called M.B. into the room, that M.B. looked "hesitant, fearful," but that after Melissa reassured M.B. that M.B. could trust Melissa, M.B. revealed to Melissa "that Daddy had been touching her." She testified that when she asked M.B. where the defendant had touched her, M.B. pointed to the top of her head, her mouth, her vaginal area, and her "bottom." Melissa testified that she believed M.B., and that she called the defendant and asked him to come home, which he did. She testified that when he got home, she told the defendant that she needed him to be honest with her, and then told him that M.B. had told her that the defendant had been "touching her." When asked how the defendant reacted to this, Melissa testified as follows: "Oddly. He said that it must have happened—um, it wasn't an outright 'I didn't do it.' It was just an 'evidence is there, [M.B.'s] not lying, I just must not remember.' " She testified that the defendant was "[v]ery nervous" and was "rubbing his chest."

¶ 50 Melissa testified that she did not immediately call the police because she did not know how to process what had happened and did not know what to do. She added, "I mean this is the man

I'm married to, I'm carrying his child. My child's telling me—introducing me to this monster, this beast, and I—that was—it was overwhelming. I don't—I couldn't put together a thought to think of what to do, was not even there." She testified that beginning that night, and through the weekend, the defendant "repeatedly" asked her what she was going to do, and that she told him she did not know. She testified that on Friday morning, the defendant "was extremely anxious and back to that chest rubbing," and that the defendant ended up not going to work that day. She testified that she wanted to be with her girls, who had been with Buttry since M.B.'s disclosure of the abuse, so she went and got them after she and the defendant decided that he would go to Buttry's house, because she did not want the defendant around the girls. She testified that she did not know if the defendant had been in contact with his parents.

¶ 51 Melissa testified that on Saturday evening, she received a phone call from the defendant, who was still at Buttry's house. She testified that the defendant told her "he wanted to be honest, that he had been touching both the girls." She testified that she believed this was the first time she had learned that the defendant was also abusing K.B. She testified that the defendant then explained "the froggy game," and that the girls would have to give "[o]ral" pleasure to him, and that he would use his finger "on their vaginal parts," meaning "he would use his finger in their vagina and elsewhere." She testified that the defendant told her it happened "every chance he had." She testified that she was still trying to process the information, and still unable to think about calling the police.

¶ 52 Melissa testified that on Sunday, April 3, 2011, she learned that the defendant had gone to the church to speak to Pastor Mark, but testified that she was not part of the decision for him to go, did not tell him to go, and did not go with him, because he was still staying with Buttry at that time. She testified that that night, M.B. woke up "hysterical," and eventually disclosed to Melissa that the defendant had pushed M.B. down in a tent in M.B.'s room, and used a pillow to keep

pushing her down, called her names like "dumb, stupid, ugly." Melissa testified that she called the defendant and confronted him about what M.B. had said, and that the defendant told her "that it did happen and that by doing those things, by calling her names and humiliating her that way, it turned him on."

¶ 53 Melissa testified that on Monday, after she took the girls to Dr. Hill, Dr. Hill informed her that she was going to immediately report the abuse. Melissa testified that she was worried about the defendant being arrested at his workplace, so she asked Dr. Hill if Buttry could go pick up the defendant and take him to the police station instead. She testified that Dr. Hill did not agree with that plan, but that Buttry left and picked up the defendant anyway, while Melissa took the girls back home. She testified that thereafter, she received a phone call from Detective O'Neill, who instructed her to take the girls to the CAC. She testified that the following day, she sat down for a formal interview with O'Neill, and that at the end of the interview, she asked to see the defendant. She testified that she was "[s]till in that place of here's the man I love, but coming to understanding that he's not that man and just wanting to I guess have a closure of goodbye."

¶ 54 Melissa authenticated a letter that she found that was written by the defendant. The letter, which was dated April 2, 2011, was admitted into evidence, and Melissa was asked to read it aloud. In the letter, the defendant stated, *inter alia*, the following: "I do not want to continue in my sexual addiction. I do not want to destroy my marriage with lust and deception. I do not want to destroy my children. I do not want to continue the same behaviors that—sins and strongholds that I brought into my home." Thereafter, he stated, *inter alia*, the following: "Success is the healing of my family forever, to live with them as their husband and daddy. It is living a life of freedom from sexual sin and deceit." He also stated that he wanted his children "to know that I am sorry for my sins against them and I will never be that way again," and stated, "I'm going to live for the welfare of my children, especially after I've harmed them so extremely."

¶ 55 Melissa testified that she responded to the defendant's letter, and received another letter from him that was dated April 12, 2011. She authenticated the letter as being in the defendant's handwriting. The letter was admitted into evidence, and at the request of the State, she read a portion of the letter aloud. In the letter, the defendant stated, *inter alia*, "I'm so sorry for everything," and "I want to redeem myself to [M.B. and K.B.] and let them know that their dad can love them with all his heart." She testified that the defendant sent additional letters, in which his "tone drastically change[d]," and in which he told Melissa that "he was brainwashed into confessing and no longer believed he did it."

¶ 56 Melissa testified about her financial struggles after she left the defendant, and testified that she no longer speaks to Donna. She testified that since April 2011, K.B. and M.B. have not suffered pain in their vaginal areas, or their "bottoms," and that both are doing well physically now. She testified that they still do not sleep well, that they have anxiety and nightmares, and that M.B. often stays up at night, not wanting to go to sleep. Melissa testified that she has not enjoyed going to court, because it seems like a continuation of the abuse, and that the whole process has been embarrassing for her and the girls.

¶ 57 On cross-examination, Melissa testified that after the defendant suggested that he might have been sexually abused by his mother, she told the defendant that it was possible that when she was approximately three years old, the man her mother was married to at that time sexually abused her. She testified that she did not "have a specific detail of a recollection" of actually being abused by the man and did not know where he presently was. She denied that she had told anyone that the man went to jail for abusing her. She testified that she took "several" psychology classes in college, but testified that she did not recall how many, and did not recall an answer she gave to the question of how many while providing testimony in 2012.

¶ 58 Melissa agreed that she and the defendant's mother had their "differences," but denied that she ever told the defendant that he could not speak to his mother on the phone unless Melissa was also on the phone. She testified that she and the defendant decided together that they did not want the girls around Donna, and that the defendant "often referred to not trusting his mother, described her as very weird." She testified that they agreed not to leave the children alone in a room with Donna. Melissa testified in more detail as to her extramarital affair, denying that she did not tell the defendant who the affair was with. She testified that she did not ask the defendant to tell her "when he started lusting after an item," but that the defendant "insisted that he had to tell [her]" when that happened, even though she told him that she did not "want to hear these things," which to her "were beyond upsetting."

¶ 59 Melissa denied that she accused the defendant of "looking at pornography," denied that she told Donna that the defendant was addicted to pornography, and denied that she accused the defendant of masturbating. She agreed that sometimes she started the physical altercations with the defendant, but denied that she ever threatened him with a knife, ever cut him on the arm with a knife, ever destroyed his property, or ever attempted to run him over with a vehicle. She testified that she did not recall ever breaking the defendant's cellphone, but agreed that in earlier testimony, she had stated that she did. She testified in detail as to some of the verbal arguments and physical altercations she had with the defendant. She agreed that in early 2011, she told the defendant that she "wasn't going to put up with it" anymore. She testified that she did not state that she was going to leave, but that the defendant must have believed she meant she was going to, because he told her not to go. When asked if she then "walked upstairs to pack a bag and leave," she testified that she did not recall. She testified that she did not remember the defendant telling her that she could leave, but that she could not take their daughters. She testified that she did not recall throwing a

ladle of spaghetti in the defendant's face during an argument, but did recall throwing the bowl of spaghetti in the kitchen sink.

¶ 60 Melissa agreed that in 2012, she gave testimony that she never told the marriage counselor about her extramarital affair. She agreed that the transcript of her recorded interview with O'Neill showed that when discussing with O'Neill what happened on Wednesday, March 30, 2011, she told O'Neill that she did not know "where to put" the defendant until she "had his confession," but she attributed her words to "poor choice of wording." She agreed that she told O'Neill that the defendant was admitting to things that she brought to the defendant's attention. She testified that she did not remember if she knew before her conversation with Pastor Mark that he was required to report the abuse, but she testified that he told her that when she spoke to him, and so she knew when she spoke to O'Neill that Pastor Mark was required to report it. She agreed that it was comforting to her to know that the defendant told someone other than only her about the abuse, and testified that she did not want it to be "just my word against his." She testified that on Sunday night, after speaking to Pastor Mark, the defendant, in a "brief moment" when he referenced a television show he and Melissa had watched a week before, again began to state that he did not believe he had committed the acts against the girls. She agreed that she was a stay-at-home mom in 2011, but testified that there were times that the defendant was alone with the girls.

¶ 61 Melissa denied that she ever accused the defendant of "lusting after" a woman in a television commercial, denied that she accused him of lusting after a woman driving in another car, and denied that she told him that staring at another woman was the same thing as adultery. She further denied that she told the defendant that the defendant was sinning against her, or was sinning against God, when the defendant had lustful thoughts, and denied that she ever made "rules" for how the defendant had to behave. Melissa testified that she did not know if she had ever told anyone she had the gift of discernment, and denied that she ever told anyone that God

had shown her things that other people might not know, denied that she told the defendant that she was able to discern things, and denied that she told the defendant that God had shown her things. She further denied that she had ever told Ed Huebner that she was able to discern things, that God had shown her things, that her boyfriend was "sexually wicked," or that when a man touched her shoulder while she was praying, she could tell that he was "sexually evil." Melissa agreed that she "basically" told O'Neill that she believed the defendant used brainwashing tactics with the girls, when he told them that he loved them after he abused them. On redirect examination, Melissa agreed that she had given statements and testimony in the case on multiple occasions in 2011 and 2012, and agreed that it was sometimes hard to remember what she said, "[t]hrough the years and emotions."

¶ 62 Patricia Borko testified that she was a therapist who worked primarily with children and adults who have been impacted by interpersonal violence, which includes sexual abuse. She testified about her background and training. At the request of the State, and without objection from the defendant, the trial judge certified her as an expert in the area of child development and children's responses to sexual abuse. Borko testified about behavioral indicators of sexual abuse of children, and about the difficulty children may experience when contemplating whether and how to disclose abuse. She testified that disclosure is often a process that develops over time, and testified about some of the ways that perpetrators manipulate victims to prevent the victims from disclosing the abuse, as well as about the "grooming" process in general.

¶ 63 Borko testified that she reviewed much of the evidence in this case, from the case files and previous proceedings. She testified that she was not surprised that K.B. was unable to articulate much in her CAC interview, based upon K.B.'s age and development, and testified that she found M.B.'s interview to be "pretty consistent with what you would expect from a child her age to be able to talk about." She testified that what "stuck out" to her about the defendant's interview with

police was how "detailed" the defendant's description of his abuse of his daughters was, and how his description showed how the abuse progressed and escalated. She testified that she also noticed how the defendant described telling his daughters not to tell their mother, because the defendant would get in trouble if they did. Borko testified that it is "absolutely true" that not every child who is sexually abused will grow up to be an abuser, but that "about 70 percent of the sexual offenders will say that they have a history that included some interpersonal violence as a child; physical abuse, sexual abuse, domestic violence, neglect." She testified that "[a]bout 12 percent of the children who are sexually abused as a child will grow up to be a sexual offender." On cross-examination, Borko agreed that young people can be very vulnerable to suggestion, and agreed that "if a parent heard a stranger or somebody known to the family talking about wanting to abuse their child, they should step forward and not allow access."

¶ 64 Following Borko's testimony, the State rested. The defendant moved for a directed verdict, contending that "the evidence is insufficient to support a finding or verdicts of guilty on all counts, particularly the counts relating however to [K.B.]." The defendant's motion was denied.

¶ 65 The defense began its case by calling Melissa. Defense counsel asked that she be treated as an adverse witness, but the State objected, and the trial judge agreed that defense counsel's request was premature. When questioned, Melissa agreed that her extramarital affair involved both a man, and that man's wife, and agreed that she told the defendant about the affair. She was not asked any additional questions.

¶ 66 Dana McKee testified that he was married to Mary Buttry for "four months, five months" in 1984, and that Melissa was with him and Buttry together in Spain for a period of approximately two months. He testified that he never took Melissa to a park, never had "any alone time with Melissa," and never sexually assaulted her. He testified that he was never accused of assaulting Melissa, and has never been to jail for any offense. He testified that he had never met the defendant,

or Donna, although he had spoken on the phone with Donna. On cross-examination, McKee was asked if he saw the defendant "put his fingers inside the vagina of his oldest daughter?" He testified, "No, I did not." He subsequently testified that he was not present for any of the other alleged offenses. He agreed that he was accused by Buttry of domestic assault in Spain, but testified that he was not charged, and that an investigation by his employer found that the accusation was not substantiated. He testified that he was reimbursed by the defendant's attorney in the amount of $209.60. On redirect examination, he testified that he did not "batter" Buttry, and that his check from the defendant's attorney was for witness fees and mileage.

¶ 67 The defendant was then called to testify. He testified about his religious upbringing, and what he was taught about, and that his church believed in "gifts of the spirit." He testified that he was familiar with the term "discernment," which he testified was "referring to any kind of message that God has given the person for either a group of people or for an individual." He testified that when he and Melissa attended the event at his brother's church, Melissa was "very reserved," which led his brother to question whether the defendant and Melissa shared "the same values." With regard to the internship opportunity that followed the event, he testified that there was "conflict" with Melissa about him taking the opportunity, and that "Melissa told [him] that she had actually discerned—or used the gift of discernment," and "had discerned that [the man who offered the internship] was actually a fraud and kind of like maybe a televangelist that we've seen." He testified that he went on the internship—which was supposed to last nine months—anyway, and that he returned after two months because he missed Melissa. He testified that Melissa "was very happy" to have him back home, but "was also very bitter" that he had taken his "brother's advice over her discernment."

¶ 68 The defendant testified, "That statement that I believed my brother over her was kind of a recurring theme in our marriage, that there was ever a time that I didn't believe her." He testified

that on one occasion before he and Melissa married, he received a phone call from an unknown woman who was being "very, very flirtatious with" him, which alarmed him, so as "a desperate act of transparency," he gave the phone to Melissa, who argued with the woman, then hung up on her. He testified that Melissa accused him of being unfaithful, and that he attempted to alleviate her concerns but that both Melissa and Buttry (who had come into the room at that time) continued to accuse him of wrongdoing. He testified that later that evening, the continuing argument escalated into physical violence, with Melissa punching him repeatedly, then him attempting to restrain her, and eventually more physical violence by both of them. He testified that he felt "devastated about this physical confrontation," which was the first physical violence between them.

¶ 69 The defendant testified that he had conflict with Melissa over a subsequent "mission" trip he took. He testified that following the trip there were "pretty strict guidelines that [he] couldn't leave anymore." He testified that when his parents learned of Melissa's pregnancy, they were "disappointed" in him, and he was disappointed with himself, because of his church's teachings regarding premarital sex. He testified that his mother wanted he and Melissa to get married "the sooner the better," which caused conflict with Melissa, who the defendant testified was upset that the defendant's mother wanted to continue to have such "influence" over his life. He testified that this conflict caused "a division" in his family, and that it was "just frowned upon that [he] would have any time with [his parents] alone." He testified, "If I was going to spend any time with them, Melissa requested that she be present." He testified as to other occasions where he alleged that Melissa was upset by him spending time with his family, and the conflicts that ensued if he chose to spend time with them instead of Melissa.

¶ 70 With regard to his relationship with Buttry, during the first year of his marriage to Melissa, he testified as follows: "[Buttry] at that time was just a sweet woman and very committed

Christian, very loving person, soft spoken, that kind of thing, and I really—and because Melissa had told me that she had also had the gift of discernment, I had a really high respect for [Buttry]." He testified that Melissa only attended his church on one occasion, and that afterwards, she told him that she had discerned that the lead pastor "was sexually immoral in secret." He testified that he did not believe her, because he had known the pastor "for years." He testified that at around the one-year point, his marriage became "slippery." He testified that Melissa accused him of "trying to lust or trying to have a wandering eye" with regard to other women, and that after one particular argument, the "physical abuse really started." He testified that Melissa accused him of masturbating, that his social life was virtually nonexistent, and that he was isolated from his family. He testified that at one point, Melissa "demanded" that he end a friendship that he believed Melissa viewed "as a threat to her." He testified that the rules against "lusting" that he was required to follow prevented him from looking women in the eye, and that he "couldn't look at billboards, couldn't watch certain TV shows or channels anymore." When asked if he followed these rules, the defendant testified that he did. When asked why, he did not directly answer, but instead gave more examples of rules he was required to follow. He then testified in more detail about the physical abuse that he alleged Melissa inflicted upon him, and about Melissa destroying some of his property.

¶ 71 The defendant testified that he did not go to the hospital for some of the injuries he received from Melissa because he did not want Melissa to get into trouble. On one occasion he went to the hospital, but "made up a story" that did not involve Melissa to explain the injury. He testified that he would "make up a story" on other occasions too, to hide the abuse, and that Melissa often punched him "in the throat" because he would not develop visible bruises there. He testified that Melissa told him he was a terrible husband and father, and encouraged him to commit suicide. He testified that Melissa told him of her extramarital affair, but would not tell him who it was with,

and blamed him for the affair. He testified that Melissa accused him of "lust" so often that he began to believe her, and that he tried so hard to not think of anything that Melissa might consider lustful that he began to have anxiety attacks. The defendant testified that he eventually saw a psychiatrist and was prescribed medication for his anxiety. He testified about the marriage counseling that he and Melissa received. He testified that he did not tell the counselor that he "had thoughts about [M.B.'s] binky or bottle."

¶ 72 The defendant testified that he and Melissa discussed divorce a lot, and that they eventually came "to a conclusion that Melissa would have main custody of the children but [the defendant] would have the freedom to come and go any time *** and to have as much time with them as [he] wanted." He testified that for "a couple years" he and Melissa had no contact with the defendant's parents. He testified that when Melissa became pregnant with their third child, she told him that the child might not be the defendant's, due to her extramarital affair. The defendant testified that he told Melissa that he was not sure he could stay in the marriage if the child was not his, and that she was "desperate" for him to stay. He testified that he tentatively decided to stay, which led to "about a two-week period of bliss, marital love, and acceptance," with no accusations and no fighting. He testified that the relationship changed again when he made a mistake while making spaghetti. He testified that Melissa "slapped" pasta sauce in his face, and that he then "restrained her in the arms and *** pushed her against the wall," which led to a violent physical altercation between them. He testified that at one point, he told Melissa he "had the power to hurt her," but added that he "didn't threaten her." He testified that eventually Melissa went upstairs and began to pack a bag to leave, and that he told her she could leave but that she could not take the girls. He testified that he and Melissa eventually "worked things out."

¶ 73 With regard to the allegations against him, the defendant testified that when M.B. was one year old, Buttry confronted him over the diaper-changing incident, and that he denied that he had

done anything to M.B. He testified that approximately six weeks after "the spaghetti thing," the 2011 allegations surfaced. He testified that he attended some of M.B.'s appointments with Dr. Hill, and that M.B. had a "legitimate" urinary tract problem. He testified that K.B. fell from her potty chair, and also fell while trying to climb on M.B.'s bike, shortly before K.B. began complaining of pain "in her private areas."

¶ 74 The defendant testified that on March 30, 2011, he was at work when Melissa called him and asked him to come home, due to her "having pregnancy complications." He testified that when he arrived home, "they confronted me with some strong allegations," which he testified he denied. The defendant testified that Melissa and Buttry confronted him for "more than two hours probably," and that they wanted him "to get honest and confess." When asked if they were offering him "any inducements to be honest," the defendant testified as follows: "They were telling me that I had to save my family and get counseling for my children, counseling for myself, healing from God." He testified that they told him he "couldn't use blackouts as an excuse," and that he did in fact remember abusing the girls. He testified that he had not experienced blackouts before, and that he did not believe at the time that he had experienced blackouts before. He testified that he made a "clear and repeated denial" of the allegations and did not agree to them.

¶ 75 The defendant further testified, "Part of the accusations against me was that [Buttry] and Melissa claimed that they had discerned that my mother had molested me and that's why I had done these things." He testified that Melissa had suggested in the past that the defendant's mother had molested him. He testified that he did not believe that his mother had molested him, but that after Melissa's suggestions, he "started to at least consider that maybe that was why [he] had a lust problem, but [he] never did fully say that or believe that." He testified that he came to believe it after March 30, 2011. When asked if he believed Buttry "was a discerning person," the defendant

testified as follows: "Because I had been told that and because I had seen her relationship with the Lord, I thought, yes, she was absolutely a discerned person."

¶ 76 The defendant testified that on Thursday night, Melissa continued to tell him he needed to "confess" in order to help the girls, help his marriage, and "be restored in our relationship with the Lord." When asked what he was thinking at this time, he testified that his mind was "becoming a little insecure," and that "[b]ecause of the nature of the accusations, they were so specific, [he] could not reconcile how [M.B.] could say something so specific at such a young age." He testified that he did not remember doing any of those things to M.B., and that he never heard the accusations from M.B., only from Buttry and Melissa. He testified that on Friday, Buttry and Melissa continued to pressure him, and that when he was alone with Buttry, he told her that he "was having trouble remembering anything like" the allegations. He testified that Buttry told him that maybe to help him remember, he should go into the loft, where the abuse was alleged to have taken place. He testified that he did so, along with Buttry, and that he "was kind of stumbling just in [his] mind and *** had been replaying these accusations *** a million times." He testified that he "told [Buttry] that maybe [he] had remembered something in the middle of the floor," to which she responded, " 'you're finally getting honest, you're taking good steps.' " He testified that he told her that he "wasn't sure if it was a memory or kind of an implanted thought," but he thought that he "might have put [his] penis on [M.B.'s] head and *** told [M.B.] not to tell anyone at school."

¶ 77 The defendant testified that Buttry was at this point "very encouraging and very warm," and that as he went back downstairs, he "was struggling with the memory because [he] didn't know if it was a memory or not," and that Buttry told him that she "bore witness that it was indeed a memory, and it was indeed [he] had abused [M.B.]." He testified that in his church, "bore witness" has "the identical meaning of discernment," which he testified led him to have "a confidence because she was saying that God had showed her this and God had told her this." He added, "And

because, like I said, I was becoming insecure, I felt like that was a bit of concrete ground that I could stand on." The defendant testified that when he expressed to Buttry that he "didn't know if [he] did this," Buttry "told [him] stop flip-flopping and to stop saying no, and to stop saying 'I don't remember,' and to start saying yes." The defendant testified that he did not believe he ever said "the evidence is there." When asked why he would have said that if he did say it, the defendant testified as follows: "I was torn with the fact that [M.B.] was saying these specific things that no little girl should know, and if she was saying them, I thought that maybe it had actually happened, because that was the only explanation that I could come up with." The defendant testified that he "had come to believe on that Friday that maybe [he] did do these things."

¶ 78 The defendant testified that on Saturday night, Buttry confronted him with accusations that he had also abused K.B. He testified that thereafter, he called Melissa, who confronted him with new allegations. He testified that he "stopped saying no and *** just started saying yes, because [he] thought it was honest." He thereafter testified as follows: "There was occasions when I would try to deny something but I'd quickly be subdued, because she would say that I wasn't being honest, and so I just stopped saying, you know." He testified that his "mind was spinning," and that he was conflicted between what he thought he knew and what he knew. He testified that Melissa called him back "in the middle of the night," told him that M.B. had awoken from a nightmare, and accused him of hitting M.B. with a pillow and calling her names. He testified that he was not allowed to be alone on Sunday and was given specific instructions as to what he could do.

¶ 79 With regard to the meeting with Pastor Mark that afternoon, the defendant testified that prior to the meeting, he again told Buttry he "didn't think [he] did this," but that she told him he was "not going back," but was "going to stay the course." He testified that because he "had gone to school to be a teacher," he knew that Pastor Mark was "a mandated reporter," so "in a way" he

"was alarmed," but in "another way" he "was okay with it" because Pastor Mark was their pastor. He testified that he told Pastor Mark "in a very general sense that [he] had been molesting [the] girls since they were one-year old." He testified that there was a discussion about getting counseling, and that Buttry had assured him that he could get counseling and not get the police involved. He testified that he later went to work and called Melissa from there to again tell her that he did not think he "did these things." He testified that Melissa "was pretty forceful that [he] wasn't going to revert."

¶ 80 The defendant testified that he went to the police station on Monday voluntarily. When asked why, he testified as follows: "Because at this point, I truly believed that I had done these things. It became a reality for me, and because I had done them, I had to help undo them, and the only way I saw that that could happen is if I got my children the help they needed." He agreed that the video and audio recording of his meeting with O'Neill—which the jury had viewed—showed him telling O'Neill that he had done "these horrendous things to" M.B. and K.B., but he testified that he had not done these things. He testified that at the time of the meeting, he believed he "was guilty of those things." He testified that when he wrote his first letter from jail to Melissa, he still believed he had committed the offenses against M.B. and K.B. He testified that when he wrote the subsequent letters, he "knew with certainty that [he] didn't do these things." He testified that he later believed that Melissa "was still a great mother," but that she had "manipulated" and "falsely accused" him.

¶ 81 On cross-examination, the defendant agreed that he had confessed to many people, and he testified that he "would have confessed to a hundred more." He testified that at the time of his confessions, he believed he had committed the offenses. He agreed that Melissa and Buttry were not present when he confessed to O'Neill, and that Melissa was not present at the police station at all. He agreed that he confessed to, *inter alia*, (1) placing his finger in M.B.'s vagina 30 times,

(2) placing his finger in K.B.'s vagina 15 times, and (3) placing his penis into M.B.'s mouth on at least one occasion. When asked to explain how these things were "implanted" into his mind, the defendant testified, *inter alia*, as follows: "Well the accusations create a mental image and after days of trying to figure out why it was being said in such a specific manner, I thought it was maybe actually a memory and not just a—you know, kind of the details of what they are saying." He testified that he took other people's reality as "more trustworthy" than his own reality. The defendant was asked if he wished the jury to believe that "Mary Buttry called you on the phone and said that, 'hey, you put your penis in your daughter's mouth,' and that somehow then became your truth?" He answered, "Not in the moment. It was over a process of time." He thereafter testified that it was "a process where [his] mind started to erode."

¶ 82 The defendant agreed that he had testified in previous matters that he thought someone who was guilty would deny it, and he agreed that he had stated in the past that he had lied to get out of trouble before in his life. He agreed that prior to being on trial for molesting his daughters, he had not described in a prior court hearing Melissa as "controlling." When asked why he did not leave Melissa if his marriage was so awful, he testified that he now wished he had left. He thereafter agreed that the timeframe in his marriage during which he began to view Melissa as "controlling" was the same timeframe in which—according to his admissions in his interview with O'Neill—he began to molest M.B. He agreed that he "might have" told a counselor that it was possible that his mother molested him, and agreed that it was a "possibility" that he had stated, years before Melissa mentioned it, that he believed his mother might have molested him.

¶ 83 The defendant agreed that when Melissa allegedly told him that she had "discerned" that a pastor at his church was immoral, he did not believe her, and agreed that even when she used the term discernment, he "still had the option to believe her or not." He claimed that he could resist Melissa's ideas early in the marriage, but not later. He testified that he acted violently with Melissa

at times, including when she was pregnant, but that Melissa always started the violence. He denied that he "had sexual thoughts or temptations about dolls or angel figurines," and denied that he asked Melissa to take a picture of a babysitter off of the refrigerator. He agreed that in an earlier deposition, he stated that he had told the marriage counselor that "Satan was putting thoughts in [his] head of doing things to [M.B.]." He agreed that it was a mutual decision between him and Melissa to cease contact with his parents and agreed that it was actually Melissa who "healed" that relationship by reaching out to the defendant's mother. He agreed that he told O'Neill that when Melissa left the house, he would "violate" his daughters every chance he got. He agreed that he went to work on Thursday, March 31, 2011, and had his cellphone with him, but did not call his mother or any friends to tell them that he did not do the things he was being accused of doing. He agreed that M.B. was a truthful person. He thereafter testified that he believed that Buttry created the accusations against him so that he "would be removed from the family and have no contact with the children." He agreed that he told Officer Beaber that he (1) stuck his finger in M.B.'s vagina and anus over 30 times, (2) stuck his finger in K.B.'s vagina and anus over 15 times, and (3) engaged in oral sex with M.B. He further agreed that he explained in detail to O'Neill what he did to the girls. He agreed that he came up with some of the details of his confession on his own, notwithstanding the general allegations made to him by Melissa and Buttry. He agreed that he only began to think the accusations against him were not true after he had been in jail for several days and had been visited by an attorney, and by Donna.

¶ 84 Dr. Richard Leo testified that he was a professor of law, and a professor of psychology, at the University of San Francisco. He testified as to his responsibilities related thereto, as well as to his academic credentials and background, publications, the citation of his work by various courts of review, and his presentation of his work to various groups and in various settings, including as an expert witness. At the request of defense counsel, and without objection from the State, the trial

judge certified Dr. Leo as an expert "in the general sciences and social psychology and criminology, psychological coercion, and making a false statement, admission and confessions."

¶ 85 Dr. Leo testified as to the general manner in which researchers study interrogations and confessions, and as to how interrogation works "as a psychological process." He then testified in general as to the "steps or phases of interrogation," and as to legal inducements and scenarios related to interrogations. He testified that there is "no dispute" among researchers that false confessions occur, and testified that "[h]undreds" have been documented. He agreed with defense counsel that it is "a myth that innocent people do not confess to crimes they did not commit." He testified that "the main situational risk factors for eliciting false confessions" included the length of the interrogation, sleep deprivation, false evidence ploys, and minimization by the interrogator, and that individual risk factors included age (with juveniles at higher risk), mental capacity, and "some people with forms of mental illness," because "people from these groups are more typically easily led, [or] easily manipulated into making or agreeing to false statements under pressure from an authority figure." He testified that of significance, "people who are highly suggestible or highly compliant tend to be more vulnerable to making or agreeing to a false statement, an admission, or false confession." He testified that such people often "have weak or poor memory[,] *** high anxiety, [and] they are often [deferential] to authority figures." He testified that it is problematic when "feeding of facts" occurs because that can lead such people to confess in detail. Dr. Leo testified that in some cases of false confessions, "the interrogation process causes the suspect or subject to doubt their memory, lose confidence in their memory, and come to the belief that they did something, committed a crime that they have no memory of doing, but that if they try hard enough, they will find the memory and the person ends up confessing hypothetically, speculatively ***."

¶ 86 Dr. Leo testified that in this case, he had reviewed the defendant's interview with O'Neill, the defendant's deposition testimony in his divorce case, video of the defendant and Melissa during a meeting at the jail, and other materials. He testified extensively as to parallels he saw between this case and cases of interrogation as discussed generally above, and testified that there were many examples in this case that were consistent with techniques and factors involved in cases with false confessions.

¶ 87 On cross-examination, Dr. Leo agreed that he was not saying that the defendant actually "falsely confessed" in this case, because that would be "outside of the scope of [his] opinion and not [his] responsibility here." He added that he was making "no factual judgment." When asked about the police interrogation in this case, as opposed to the questioning of the defendant by Melissa and Buttry, he testified: "I don't think Detective O'Neill did anything wrong," and added, "It was really more of an interview than an interrogation." He testified that "the conventional wisdom" in his field was that "false confessions are the exception," but that they do occur. He added, "Nobody is claiming that false confessions are the norm or the normal outcome of an interrogation." He testified that regarding false confessions, "the vast majority, 95—99 percent are typically the statements and admissions elicited through police interrogation," rather than through a third party, and agreed that this case did not involve such a police interrogation. When asked if he was hired by the defense to "come here and say that Mary Buttry and Melissa Burgund caused the defendant to confess," Dr. Leo testified "it's for the jury, not for me, to decide what caused him to confess and whether that confession is false." He testified that he was being paid to testify at the trial, and estimated that his total cost would be "around $15,000." He subsequently agreed that he could not remember "any situations where a layperson interrogated somebody, got them to confess, and then they went in and gave a voluntary statement to the police."

¶ 88 Dr. Kamala Newton testified that she was a professor of psychology at the University of Toledo. She testified extensively as to her duties and responsibilities at the university, her academic and professional background, and her professional achievements, including her experience studying memory development and forensic interviewing of children. At the request of the defendant, and without objection from the State, the trial judge certified Dr. Newton as an expert "in the field of developmental psychology generally and autobiographical memory and suggestibility in children." Dr. Newton testified that although she was being paid by the defense, that did not influence her views of the case, and that she was hired to provide "an objective analysis," and not "any particular sort of opinion." She testified in general regarding child development, autobiographical memory development, and suggestibility in children, in terms of how they are questioned. She testified that she reviewed materials in this case provided to her by the defense.

¶ 89 Dr. Newton testified that in her opinion, it was "problematic *** for a number of reasons" to conclude that a 12- or 15-month-old child would attempt to communicate about sexual abuse by saying "dada" and pointing to the child's genital area, and explained why she found it problematic, based upon principles of child development. She also testified, *inter alia*, that "[m]emory for events is most reliable closest in time to the event in question that we are trying to remember," and that "[y]ounger kids are generally more open to suggestion, particularly in the form of forced choice questions" about what happened to them. She testified that children are, however, "capable of giving accurate reports" if an interview is conducted appropriately. She testified that she saw examples in this case, with M.B., where M.B. spoke with family members before giving her forensic interview.

¶ 90 When thereafter asked if there were "any concerning factors" in the way this case was handled, Dr. Newton testified that she believed there were. She testified that she was concerned

by (1) the fact that Buttry developed a belief that there was sexual abuse based upon the diaper-changing incident when M.B. was 12 to 15 months old, which created "a high level of *** pre-existing beliefs"; (2) Buttry's suspicion that the defendant gazed inappropriately at M.B. when she wore a certain dress, when the defendant's behavior "could have a million other explanations"; and (3) Buttry's worry over M.B.'s repetition of two phrases, which also showed the existence of a preexisting belief on Buttry's part. When asked if she had an opinion on M.B.'s CAC interview statements, Dr. Newton testified, over the State's objection, as follows:

> "My opinion regarding the reliability of the statements made at the CAC Center are that they are rendered unreliable due to the questioning that occurred beforehand. So due to the fact that she had been talked to by Mary Buttry, as well as her mother over time and repeatedly under this atmosphere of accusation, that even with an interview that's well conducted, that all of the questioning that occurred beforehand, that this is an unreliable context again given the earlier questioning that took place."

On cross-examination, Dr. Newton estimated that she would be paid "about $12,000 for the work" she had done in this case.

¶ 91 Donna Burgund testified that she was the defendant's mother. She testified that prior to the defendant's marriage to Melissa, she was close to the defendant, but that afterward, she "never heard from him" and "never saw him." She testified that soon after the marriage, Melissa announced that the defendant was no longer allowed to visit Donna's home without Melissa present, or to talk on the phone to Donna unless Melissa was on the phone too. She testified regarding other problems with her relationship with Melissa, including occasions where Donna thought the interactions between them went well, but later learned that Melissa did not. She testified that prior to his marriage to Melissa, the defendant was "fun loving" and full of laughter,

but that after he married Melissa, the defendant became "very, very quiet" and "very solemn." She testified that Melissa was often angry when interacting with Donna.

¶ 92 On cross-examination, Donna testified that churches she had attended taught "about the gifts of the Holy Spirit," and "about discernment." Donna testified that she was aware that the defendant told O'Neill that Donna molested the defendant, but was not aware that the defendant told a counselor that Donna molested the defendant. She agreed that the defendant currently lived with her, did not have a job, was being supported by her, and that she was paying for the defense's expert witnesses. She denied that she sought out other witnesses to provide "dirt" on Melissa, but testified that she asked other people if they had "any information about Melissa and abuse or mistreatment or how she treats others." She testified that she had reached out to "ten" such witnesses, including David Van Hoesen, Dana McKee, Kharissa Gus, and Ed Huebner, and was paying the travel expenses for some of them to come and testify. She agreed that she had watched "[o]nly part" of the defendant's confession, had not watched M.B.'s CAC interview, and had not reviewed any of M.B.'s or K.B.'s medical records.

¶ 93 Kharissa Gus testified that she met the defendant through church and had known him for approximately 20 years. She testified that she met Melissa separately, and later learned that the defendant and Melissa were dating. She testified that she and Melissa became "close friends." She testified that "several times" Melissa told her that Dana McKee molested Melissa and "was now in jail."

¶ 94 Ed Huebner testified that he was a trainer at a health club, that he knew Donna and her husband, and that he had a son who was about the same age as the defendant and played soccer with the defendant when younger. He testified that he also knew Mary Buttry and her husband, as well as Melissa, and that they attended the same church for a time. He testified that during a conversation in his kitchen, during approximately the summer of 2002, Melissa told him that once,

while praying at church, "she felt someone's hand on her shoulder, and when that person touched her, she said that she could sense the sexual impurity within that person." On cross-examination, Huebner testified that he was asked to testify in this case because Donna asked him if he "had ever heard of Melissa talking about discernment." On redirect examination, he testified that he considered his conversation with Melissa to be "[v]ery odd."

¶ 95 David Van Hoesen testified that he was a youth pastor at a church in Colorado, and that he and Melissa were "high school sweethearts" who began "going to school together in seventh or eighth grade." He testified that they became engaged, and that during the course of their relationship, she disclosed to him "that she had trust issues with men" because she had been sexually abused. He testified that he transferred colleges because Melissa told him that he "had to" so that she could "keep an eye on" him. He described the environment as "a pretty controlled environment" in terms of who he could be friends with. He testified that after a chapel service, Melissa "basically told [him] that God told her that there were things about [him] that [he] needed to confess to her and things [he] needed to change" if their relationship was to work out. He testified that Melissa gave him "a list of things to do," and told him he had "lust issues." When asked if he changed his behavior, he testified as follows: "Yes, if I walked on sidewalks, I had to walk with my head down. I couldn't really look up and around. I had a hat that I wore all the time. She took that hat and wrote, 'your eyes are mine' so that everywhere I looked I would know that my eyes were hers." He testified that when driving, he had to keep his eyes forward, so that he could not see billboards or anything else that might remind him of his alleged "lust" issues. He testified that Melissa also restricted what movies he could watch, and what he could do on his computer. With regard to other issues, he testified as follows: "She told me that I masturbated all the time. She knows it. God told her that I did it, and that I had a severe problem with it." He testified that because he was in love with Melissa, he was willing to accept her demands, until they

became so restrictive that he felt the need to confess to her everything bad he had ever done. He testified that this did not satisfy her, and that she told him that God told her there was "more." After he refused to admit to some of the things Melissa alleged about him, she asked him to leave and broke off their engagement. He testified that they continued to try to have a relationship, and testified about more incidents in which Melissa acted in a very controlling manner toward him.

¶ 96 With regard to one incident, he testified as follows: "She told me that God told her that on the way to her house that I stopped at an intersection and I looked in my rearview mirror at a woman in a green car and proceeded to have sexual thoughts about her, and I was struggling with it even as I came to her house because I was thinking about having sex with this woman in a green car that I saw in my rear view mirror." Van Hoesen testified that no such incident occurred on his way to Melissa's house that day, and that Melissa was "infuriated" when he told her the same. He testified that when she continuously told him to admit to it, he told her that he could not admit to it without lying to her. He testified that as a result, Melissa punched him repeatedly, and that after that, they agreed to break up.

¶ 97 On cross-examination, Van Hoesen testified that he had never met M.B. or K.B. When asked what information he had for the jury about the defendant sexually assaulting M.B. or K.B., he answered, "I heard that after a long night of counseling with Melissa that [the defendant] turned himself in." He testified that his mother asked him if he had "heard about" what happened to Melissa, and that eventually he was contacted by Donna Burgund. He agreed that he and Melissa had not "been together in 17 years," and denied that he was attempting to "unload" on her. He testified that he "[a]bsolutely" believed in discernment. When asked if he believed that Donna Burgund had "the power of discernment," he testified as follows: "Anybody has the power of discernment in my personal belief if you are willing to live a life according to the way that God tells us to, to love others." He testified that he had previously discussed his story in detail with

defense counsel, and that Donna Burgund had paid his travel expenses to come to the trial. When asked about his motive for traveling, he testified as follows: "I believe in the truth and I believe that what I know is the truth in my personal relationship with Melissa that I had to tell it." On redirect examination, he agreed with defense counsel that defense counsel did not ever tell him what to say at the trial.

¶ 98 Dr. Clarence Ronald Huff testified by video evidence deposition, with the parties and the trial judge present by video at the deposition, so that the trial judge could rule on objections before the video was presented to the jury. In the video thereafter presented to the jury, Dr. Huff testified about his academic training and academic experience, clinical experience, professional recognitions, publications, and organizational affiliations. At the request of the defense, and without objection from the State, the trial judge certified him "as an expert in the field of sociology with a specialization in criminology." Dr. Huff testified about the concepts of confirmation bias, "false accusations," and "false confessions" in general, as well as how factors involved with these concepts influenced his view of this case. He testified that he believed that the defendant could have been influenced by Melissa and Buttry in this case, particularly in light of the defendant's belief in discernment and his other religious beliefs. He testified that in his opinion, the defendant's confessions to people in this case "were very likely influenced by the influences brought to bear on him by his wife and his mother-in-law." With regard "to the suggestibility of children," Dr. Huff testified that he believed that there was "a significant possibility" of "coaching and suggestibility" with the victims in this case.

¶ 99 Dr. Daniel Cuneo testified that he was a clinical psychologist. He testified about his education, experience, and professional achievements. At the request of the defense, and without objection from the State, the trial judge certified him "as an expert in the field of clinical psychology." He testified that he personally evaluated the defendant, meeting with him on more

than one occasion. He testified that the defendant denied ever having hallucinations, which Dr. Cuneo characterized as "false sense or perceptions." He testified that the defendant was not psychotic, but that his thought processes "were extremely obsessive," he was very conscious of details, and he would "repeat things over and over." Dr. Cuneo testified that the defendant appeared to be functioning in the normal range of intelligence, and "[h]is memory abilities were fine." He again described the defendant as "extremely obsessive," as well as "anxious" and as suffering from "panic attacks." He testified that his diagnosis of the defendant was "general panic disorder by history, generalized anxiety disorder, and other specified personality with mixed features of obsessive and compulsive dependents." He described the defendant's "dependent personality" as "an excessive need to be taken care of." When asked if the defendant's "psychological characteristics [would] have an impact on his giving a confession," Dr. Cuneo testified as follows: "I cannot tell you if [the defendant] gave a false confession. That's out of my area of expertise. What I can tell you, that his personality characteristics could very well influence his need to confess." He thereafter added that the defendant was, *inter alia*, "easily led[,] *** passive, dependent[,] *** quick to acquiesce to the demands and suggestions of others, especially if God is involved[,] *** easily manipulated," and possessed "low self-esteem."

¶ 100 On cross-examination, Dr. Cuneo agreed that the defendant's "desire to please" would also make it possible for him to be more likely than others to give a truthful confession. He reiterated that the defendant denied having hallucinations, and that he could not identify any "breaks with reality" on the part of the defendant. He agreed that the defendant's "memory appeared to be fine" during their meetings. Dr. Cuneo testified that in his opinion the defendant was "not malingering" because, *inter alia*, he did not claim to have hallucinations, which Dr. Cuneo testified are different from implanted memories. He testified that in his opinion, the defendant did not "have a dissociative reaction," which meant that the defendant was "not a Stockholm Syndrome"

individual who "ended up taking the aspect of the captors." He testified that in his 40 years as a clinical psychologist, he had seen "[m]aybe five, six" individuals "with implanted memories" who were subsequently exonerated of their crimes.

¶ 101 Following Dr. Cuneo's testimony, the defense rested, and the State rested again, declining to offer evidence in rebuttal. The parties provided extensive closing arguments, each emphasizing the evidence that they believed supported their respective positions. Following deliberations that the record indicates lasted approximately half a day, the jury found the defendant guilty of all five counts of predatory criminal sexual assault of a child. The defendant thereafter filed a posttrial motion, requesting a new trial.

¶ 102 On August 1, 2018, more than two months after the conclusion of the trial, a hearing was held on the defendant's motion. Following argument by the parties, the motion was denied. Because the defendant was convicted of predatory criminal sexual assault of a child with regard to two different victims, rather than only one victim, the defendant was sentenced to a mandatory sentence of natural life in prison. In addition, the State requested restitution, for the purpose of M.B. and K.B. receiving counseling. The defense objected to this request on the basis that no restitution was requested following the defendant's prior convictions for these offenses, which meant that ordering restitution now would, under existing precedent, be the equivalent of increasing the defendant's sentence and punishing him for his successful prior appeal, which was not permissible. The trial judge explained why she disagreed with the defense position, and ordered that the defendant was required to pay restitution in the amount remaining on his bond. In a subsequent written order, she ordered the restitution to be in the amount of $61,293.44, with the restitution to be held pending appeal. Thereafter, this timely appeal was filed. Additional facts will be presented as necessary throughout the remainder of this order.

¶ 103 II. ANALYSIS

¶ 104 On appeal, the defendant first contends that there was not sufficient evidence presented at trial to support either of the defendant's two convictions regarding K.B. When a defendant challenges the sufficiency of the evidence, this court reviews the evidence presented at trial in the light most favorable to the prosecution to determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime or crimes of which the defendant was convicted. See, *e.g.*, *People v. Gordon*, 2019 IL App (5th) 160455, ¶ 14. We will not reverse a criminal conviction unless the evidence presented at trial is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt as to the guilt of the defendant. *Id.* We allow all reasonable inferences from the record in favor of the prosecution, whether the evidence in the case is direct or circumstantial. *Id.* ¶ 15. There is no requirement that this court disregard inferences that flow from the evidence, or that this court search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt. *Id.* We do not retry the defendant, instead leaving it to the trier of fact to judge the credibility of witnesses, resolve conflicts in the evidence, and draw conclusions based on all the evidence properly before the trier of fact. *Id.* As we undertake our review of the evidence under the above standard, we are mindful of the fact that it is axiomatic in Illinois that the testimony of a single witness, if positive and credible, is sufficient to sustain a criminal conviction, even if the testimony is disputed by the defendant. See, *e.g.*, *People v. Loferski*, 235 Ill. App. 3d 675, 682 (1992).

¶ 105 In support of his position in this case, the defendant points to another important general principle of law: that a defendant's confession must be supported by some independent corroborating evidence. See, *e.g.*, *People v. Lara*, 2012 IL 112370, ¶ 17. The defendant contends that in this case, the defendant's "confessions were due to psychological pressure and his personality type," and that because "[t]here was no evidence K.B. disclosed any abuse, and no one

testified at trial that [the defendant] touched K.B.'s anus or vagina," the defendant's convictions regarding K.B. "rest almost entirely on [the defendant's] since-recanted confessions." He contends that M.B.'s testimony as to the abuse of K.B. was too "ambiguous" to support the defendant's convictions.

¶ 106 However, we agree with the State that established precedent holds that although independent corroborating evidence is required in cases involving a confession, the independent corroborating evidence alone need not establish beyond a reasonable doubt that the offenses in question occurred. See *id.* ¶ 18. It is sufficient if the independent corroborating evidence, or the reasonable inferences that flow therefrom, tend to prove that the offenses occurred and corroborate some of the circumstances contained in the defendant's confessions or admissions. *Id*. ¶ 45. The independent corroborating evidence need only "correspond" with the confession or admission; there is no requirement that it affirmatively verifies every element of the charged offenses. *Id*. In fact, "[t]he independent evidence need not precisely align with the details of the confession on each element of the charged offense, or indeed to any particular element of the charged offense." *Id*. ¶ 51.

¶ 107 Although the defendant contends, in his reply brief, that "neither M.B.'s statements, nor the medical testimony corroborate the type of touch, the body parts involved, the location of the abuse, the timing of the abuse, or whether there were multiple touches," we agree with the State that under the principles reiterated by the Illinois Supreme Court in *Lara* and discussed above, M.B.'s CAC interview statement and her in-court testimony at the defendant's second trial, along with Dr. Hill's testimony about K.B.'s medical issues, all of which are discussed in detail above, provide sufficient independent corroborating evidence of the defendant's confessions and admissions that he violated K.B. both by inserting his finger into her anus, and by inserting his finger into her vagina, on 15 different occasions. In particular, we conclude that in accordance with

Lara, M.B.'s CAC statement and in-court testimony, as well as the reasonable inferences that flow therefrom, (1) tend to prove that the offenses against K.B. occurred, (2) corroborate some of the circumstances contained in the defendant's confessions and admissions, and (3) "correspond" with the confessions and admissions. Accordingly, we conclude that sufficient evidence was adduced to sustain both of the defendant's convictions with regard to K.B.[1] Moreover, we reject the defendant's assertions that his confessions and other statements were unreliable. As described in great detail above, the defense was permitted at the defendant's second trial to present to the jury voluminous expert and lay witness testimony in support of its contention that the defendant's psychological makeup, the personalities and actions of Melissa and Buttry, and the circumstances surrounding the defendant's disclosures, all demonstrate that his confessions and admissions were unreliable, and perhaps even completely false. That voluminous evidence notwithstanding, the jury clearly rejected the defendant's theory that he did not commit the charged offenses against K.B. and M.B., and we decline to usurp the province of the jury regarding that decision.

¶ 108 The defendant's second contention on appeal is that the trial judge erred by "barring evidence relevant to the defense theory on hearsay grounds." Specifically, the defendant posits that the trial judge erred (1) when she "barred [Buttry] from testifying about the more severe accusations she leveled against [the defendant] during Melissa and [the defendant's] divorce proceedings," and (2) when she "barred Donna from testifying that Melissa told her Dana McKee

[1]We note that even if we were to conclude that because M.B. did not distinguish between the touching by the defendant of K.B.'s anus and the touching by the defendant of K.B.'s vagina, the evidence was sufficient to support only one of the counts against K.B., we would not conclude that it was not sufficient enough to support either count. Thus, even if we therefore vacated one of the defendant's convictions with regard to K.B., the defendant's mandatory sentence of natural life in prison would remain undisturbed, because there would still be two victims in this case: M.B. and K.B. See 720 ILCS 5/11-1.40(b)(1.2) (West 2018) ("[a] person who has attained the age of 18 years at the time of the commission of the offense and convicted of predatory criminal sexual assault of a child committed against 2 or more persons *** shall be sentenced to a term of natural life imprisonment"). This provision was in effect at the time of the offenses in this case.

had molested her as a child and that [the defendant] was addicted to pornography." The defendant contends that "the evidence in this case was close," and that accordingly, "these errors deprived [the defendant] of a fair trial." Both of these alleged errors involve the trial judge's decision to admit evidence. Accordingly, we begin by noting that in *People v. Chambers*, 2016 IL 117911, ¶ 75, the Illinois Supreme Court reiterated the longstanding rule that "because the admissibility of evidence rests within the discretion of the trial court, its decision will not be disturbed absent an abuse of that discretion." Regarding the related question of evidence sought to be adduced on cross-examination, the *Chambers* court noted that "the extent of cross-examination with respect to an appropriate subject of inquiry rests in the sound discretion of the trial court." *Id.* The court further noted the longstanding principle that "[o]nly in the case of a clear abuse of discretion, resulting in manifest prejudice to the defendant, will a reviewing court interfere" with a trial court's ruling on the admission of evidence. *Id.* That is true because "[i]n these contexts, the trial court's familiarity with the facts and circumstances of the case and the progress of the litigation give it particular insight into the admissibility of evidence or the scope of permissible cross-examination." *Id*. "A clear abuse of discretion occurs when 'the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *Blum v. Koster*, 235 Ill. 2d 21, 36 (2009) (quoting *People v. Hall*, 195 Ill. 2d 1, 20 (2000)).

¶ 109 In this case, the first incident to which the defendant objects on appeal occurred as defense counsel cross-examined Buttry, and thus implicates the trial judge's sound discretion to regulate cross-examination, discussed above. The defendant contends that when defense counsel attempted to ask Buttry about Buttry's testimony, in her deposition during the divorce proceedings between the defendant and Melissa, that M.B. had, after her initial March 30, 2011, disclosures of the abuse, made additional allegations of abuse against the defendant that were more severe, the State objected, and "the court sustained a hearsay objection." In fact, the record on appeal, at the page

in the trial transcript cited to by the defendant in support of his argument, reveals that following an off-the-record side bar that was not included in the record on appeal, the trial judge stated, "The objection is overruled. I'll ask [defense counsel] to rephrase the question if he chooses." Defense counsel did not rephrase the question. Instead, he moved on to other points he apparently wished to raise with Buttry, then completed his cross-examination.

¶ 110 Nevertheless, it is true that the defendant raised this matter in a posttrial motion, and that during the discussion of the point at the hearing on the motion—which, as noted above, was held more than two months after the trial ended—the trial judge stated that her memory of the side bar was as follows:

> "And the Court indicated that it was hearsay. And indicated however—and that [M.B.] had not been asked about that at all. And I did allow and indicated to the defense that I would allow them to recall [M.B.] if they wished to—to get into that particular issue because it would be hearsay from Mary Buttry that was not contemplated or discussed during a 115-10 hearing that I'm aware of."

The trial judge added that the way she remembered the side bar,

> "the way the question was phrased was, it was whether or not [Buttry] made a statement at a prior deposition about something that [M.B.] had said. So you're getting into double hearsay. So I did not allow them to ask Mary Buttry about that, the defense to ask that question. But I did allow them the opportunity, with my recollection, at a side bar if they wished to recall [M.B.]. I don't—in any way am I trying to get into trial strategy with why they didn't call [M.B.] again. She's a child and it's very possible that they didn't want to take that opportunity to do damage, either to their case by calling the child to the stand again or by calling her and her making statements that could be damaging. Who knows. But that's not something for this court to question. I simply offered them the opportunity."

¶ 111 Thus, it is within this context that the defendant's argument on appeal must be viewed. The defendant contends that the testimony it sought to adduce on cross-examination would not have been hearsay, because "the defense was not offering [Buttry's] statements to show that the events M.B. purportedly described had occurred," but to show "how [Buttry's] bias, motive, or interest in accusing [the defendant] may have influenced her accounts of the abuse," which the defendant claims became inflated with time. The defendant also claims that Buttry had a motive to implicate the defendant in abuse because Buttry wanted Melissa to gain custody of the girls if there was a divorce. The defendant argues that "[t]he deposition answers showed [Buttry] had previously increased the accusations when it supported her daughter's interests in the divorce proceedings," which, "in turn, made it more likely that she was clinging to false accusations at the criminal trial due to hostility against [the defendant] or a desire to further benefit her and her daughter's interests in the children." The defendant reiterates that "the court erred by barring evidence relevant to [Buttry's] credibility and motivations in accusing [the defendant]."

¶ 112 First, as noted above, the trial judge did not "bar" the evidence. The transcript prepared directly from the trial shows that the trial judge stated that the objection was overruled, and that defense counsel could rephrase his question, which he chose not to do. The trial judge's posttrial hearing memory of the incident, more than two months after the trial, was that during the side bar, she told the parties the proposed testimony was hearsay, but told the defense that it could recall M.B. to the stand if it wished to do so. Thus, defense counsel was not left without options if he deemed this testimony to be vital to his case, and it is not accurate to claim that the evidence was barred.

¶ 113 Second, the State is correct that at the trial court level, the defendant did not claim the testimony was admissible to show bias or motive to fabricate, but instead defense counsel claimed that the testimony was admissible to show that Buttry made "wild accusations" about the abuse. It

is within this context that the trial judge explained her ruling, finding that such testimony would be double hearsay, because it involved statements Buttry made in a deposition about statements that M.B. allegedly made to Buttry, in what the State characterizes on appeal as an attempt by the defense to relay to the jury the impression that M.B. made "increasingly dramatic claims against" the defendant, all without the defense ever asking M.B. herself about the details of the statements she was alleged to have made to Buttry, despite their repeated opportunities to ask M.B. about this.

¶ 114 Third, as explained above, pursuant to the decision of the Illinois Supreme Court in *Chambers*, 2016 IL 117911, ¶ 75, "[o]nly in the case of a clear abuse of discretion, resulting in manifest prejudice to the defendant, will a reviewing court interfere" with a trial court's ruling on the admission of evidence. Also as explained above, that is true because "[i]n these contexts, the trial court's familiarity with the facts and circumstances of the case and the progress of the litigation give it particular insight into the admissibility of evidence or the scope of permissible cross-examination." *Id*. In this case, we find no clear abuse of the trial judge's discretion, and we find no resulting manifest prejudice to the defendant. Although the defendant claims in his reply brief that Buttry's "credibility and possible bias were central to the issues before the jury," and therefore the cross-examination on this particular point should have been allowed, Buttry's credibility and possible bias were in fact subject to intense and protracted scrutiny and questioning on cross-examination, and as part of the defense's presentation of its case.

¶ 115 During her extensive cross-examination, described in detail above, when Buttry was asked difficult questions, she was repeatedly—indeed, on a nearly constant basis—forced to admit that she did not remember key details relevant to this case and to her earlier testimony in other proceedings. In fact, at one point during her cross-examination, when defense counsel questioned her about statements she made previously while under an oath that defense counsel stated required her "to tell the truth," Buttry stated that she was telling the truth, and added the following: "Part

of my stroke damage is to recall and retain all these things. So it's hard. I'm doing my best to tell you everything I remember, but it's been seven years and to retain all this is, it's hard." She thereafter continued to state that she did not remember making certain statements that were attributed to her, and because of her lack of memory, was at times reduced to testifying that certain statements sounded like things she would say, but that she could not recall saying them. She was repeatedly confronted with documentation of her previous statements, and she repeatedly agreed that she must have made the statements, even though she did not remember doing so.

¶ 116 In addition to the scrutiny she faced on cross-examination, Buttry was repeatedly attacked by defense witnesses such as her ex-husband McKee (who not only testified that he never took Melissa to a park, never had "any alone time with Melissa," and never sexually assaulted her, but also testified that he was never even accused of assaulting Melissa, and has never been to jail for any offense), the defendant (who provided, *inter alia*, extensive and detailed accounts of incidents that depicted Buttry as attempting to manipulate and coerce him into confessing, even when he told her that he was not certain he had done anything wrong, and attempting to use her alleged powers of "discernment" to convince him that he was guilty), Dr. Leo (who testified extensively with regard to parallels between the behavior of both Buttry and Melissa and the behavior of law enforcement authorities he had seen in cases of false confessions), Dr. Newton (who called into question the reliability of M.B.'s CAC interview as a result of prior "questioning" of M.B. by Buttry and Melissa, and who testified extensively about the "problematic" aspects of many of Buttry's professed beliefs about this case, which Dr. Newton believed caused Buttry to have many illogical preconceived notions about the defendant's guilt), Dr. Huff (who testified that he believed that the defendant could have been influenced by Buttry and Melissa, particularly in light of the defendant's belief in discernment and his other religious beliefs, and who testified specifically that in his opinion, the defendant's confessions to people in this case "were very likely influenced by

the influences brought to bear on him by [Melissa] and [Buttry]," and that with regard "to the suggestibility of children," he believed that there was "a significant possibility" of "coaching and suggestibility" with the victims in this case—testimony that also implied that Buttry and Melissa had acted wrongfully in this case), and Dr. Cuneo (who testified as to the defendant's "personality characteristics [that] could very well influence his need to confess," such as the fact that the defendant was, *inter alia*, "easily led[,] *** passive, dependent[,] *** quick to acquiesce to the demands and suggestions of others, especially if God is involved[,] *** easily manipulated," and possessed "low self-esteem"—testimony that also implied, although not as strongly as the testimony of Dr. Huff, that Buttry and Melissa acted wrongfully in this case). As described extensively above, defense counsel also used his cross-examination of some of the State's witnesses—specifically, M.B., Kim Mangiaracino, Dr. Hill, Mark Burgund, and Patricia Borko—to attempt to call into question Buttry's credibility, motive, bias, and interest.

¶ 117 In light of the foregoing, we conclude that the trial judge did not clearly abuse her sound discretion to manage cross-examination when she ruled that the defense could not ask Buttry about her deposition statements about M.B.'s alleged later accusations, and we further conclude that in light of defense counsel's extensive cross-examination of Buttry and his use of other witnesses to probe Buttry's possible bias, motive, or interest, as well as to question Buttry's credibility and to attempt to impugn Buttry's character, no manifest prejudice resulted for the defendant as a result of the trial judge's ruling. See *id.* Accordingly, we decline to find reversible error with regard to this point.

¶ 118 We turn now to the second part of the defendant's second contention on appeal, which is that the trial judge erred when she "barred Donna from testifying that Melissa told her Dana McKee had molested her as a child and that [the defendant] was addicted to pornography." The defendant asserts that the trial judge "barred" the testimony as hearsay, but that it was not hearsay, because

it was not elicited to prove the truth of the matter asserted, but was instead elicited because it was "relevant to [the defendant's] explanation for why he falsely confessed." The crux of the defendant's argument regarding this testimony is that the defense theory of the case "hinged on showing the jury that Melissa used claims of a sexual nature to gain sympathy for herself and to manipulate and control" the defendant. The defendant posits that, with regard to the testimony in question, "[t]he jury could have viewed both these statements as examples of an attempt to control Donna's reentry into [the defendant's] life." The defendant concedes that both McKee and Melissa testified about the allegations of abuse related to McKee, with Melissa denying that she told anyone other than Buttry and the defendant about it, but contends that "[i]f Donna had been allowed to testify that Melissa also told her about the molestation, the jury could have viewed it as an example of Melissa using her past claims of molestation to get sympathy from" Donna, and adds that Melissa's accusations about the defendant and pornography "could be seen as a further attempt to manipulate Donna's relationship with [the defendant] once Melissa reinitiated contact between the two." The defendant further posits that "the accusation of a pornography addiction was relevant to the lust accusations at the heart of the coercive environment that led to [the defendant's] false confession."

¶ 119 The State responds by contending, *inter alia*, that the trial judge did not err regarding the McKee allegations, because she correctly ruled that defense counsel failed to perfect his impeachment of Melissa—which in turn would have made Donna's hearsay testimony admissible—because counsel failed to ask Melissa if she ever told Donna of the alleged abuse by McKee. Accordingly, the State argues, "counsel had no right to introduce as substantive evidence Melissa[']s alleged accusation about McKee that might have been made to Donna Burgund, where defense counsel never confronted Melissa with the chance to acknowledge or deny making such a statement." Regarding the pornography testimony, the State agrees with the defendant that defense

counsel perfected his impeachment of Melissa with regard to this testimony, because Melissa denied ever telling Donna that the defendant had a pornography addiction, and therefore Donna's testimony on this point should have been allowed. The State argues, however, that "[t]he probative value of this evidence is slender at best," and that it "only nominally advances the defense theory that Melissa, in conjunction with her mother Mary Buttry, had hexed defendant into falsely confessing to sexually abusing" M.B. and K.B. Thus, the State contends, there was no prejudice to the defendant in this case due to any error, and "it can hardly be maintained this was error of such magnitude that a new trial is warranted."

¶ 120 In his reply brief, the defendant contends, *inter alia*, that pursuant to our previous ruling in this case (see *Burgund*, 2016 IL App (5th) 130119) as well as other case law, the purported failure to properly impeach Melissa should not have prevented the admission of Donna's testimony about the McKee allegations, because that testimony simply was not hearsay, and was instead offered as to Melissa's bias, motive, and interest. The defendant also contends that in light of the State's concession as to the pornography testimony, reversible error occurred.

¶ 121 We first note that the attempts to adduce from Donna the testimony in question came during defense counsel's direct examination of Donna as part of the defense's case. Accordingly, this contention on appeal, like the immediately-previous one, implicates the trial judge's sound discretion to rule on the admission of evidence, and is governed by the standards discussed above. See *Chambers*, 2016 IL 117911, ¶ 75. It is true that in our first decision in this case, we ruled that on retrial the defense should be allowed to question the bias, motive, and interest of Melissa and Buttry. See *Burgund*, 2016 IL App (5th) 130119. It is equally true that defense counsel took full advantage of our ruling (as he had every right to, and indeed had the obligation to), and presented to the jury a veritable parade of witnesses—expert and lay—to not only probe the possible bias, motive, and interest of the two, but also to assail their overall credibility, and impugn their

characters. Indeed, outside of the presence of the jury, the trial judge mentioned to the parties on multiple occasions that because of our previous ruling, she was allowing defense counsel wide latitude and was permitting inquiry that she believed would otherwise be, at best, questionable.

¶ 122 The cross-examination that was permitted during the State's case, and the direct examination that was permitted during the defense's case, is recounted in exhaustive detail above. It was voluminous. In addition to the testimony used to attack Buttry, described above, Melissa was attacked with, *inter alia*, cross-examination that forced her, like Buttry, to repeatedly admit that she did not remember key details relevant to this case and to her earlier testimony in other proceedings, although Melissa was forced to make these admissions less often than Buttry was. Melissa was also repeatedly forced to agree on cross-examination that in earlier proceedings, she made statements that were different than what she could presently recall. Melissa was also attacked with extensive testimony from defense witnesses that depicted her as extremely controlling, if not downright disturbed. These attacks included the extensive testimony of the defendant (who provided detailed accounts of incidents that depicted Melissa as controlling, manipulative, unreasonable, irrational, dishonest, and as the sole initiator of physical violence in their relationship), Melissa's former fiancé David Van Hoesen (whose detailed testimony about the negative aspects of his relationship with Melissa approximately 17 years before the trial corroborated many of the defendant's negative depictions of his later relationship with Melissa, including those of Melissa as extremely controlling, irrational, a professed possessor of powers of "discernment," and the initiator of physical violence in the relationship), Dr. Leo (who testified extensively with regard to parallels between the behavior of both Melissa and Buttry and the behavior of law enforcement authorities he had seen in cases of false confessions), Dr. Newton (who called into question the reliability of M.B.'s CAC interview as a result of prior "questioning" of M.B. by Melissa and Buttry), Donna Burgund (who, notwithstanding the testimony she was not

allowed to give, nevertheless testified extensively about incidents that depicted Melissa as attempting to control the defendant and prevent Donna from having a relationship with the defendant, depicted Melissa as being often angry and irrational, and also testified about how dejected and defeated the defendant became as a result of being married to Melissa), former family and church acquaintance Ed Huebner (who testified about what he characterized as a "[v]ery odd" conversation about "discernment" in his kitchen, during approximately the summer of 2002, during which Melissa told him that once, while praying at church, "she felt someone's hand on her shoulder, and when that person touched her, she said that she could sense the sexual impurity within that person"), Dr. Huff (who testified that he believed that the defendant could have been influenced by Melissa and Buttry, particularly in light of the defendant's belief in discernment and his other religious beliefs, and who testified specifically that in his opinion, the defendant's confessions and admissions to people in this case "were very likely influenced by the influences brought to bear on him by [Melissa] and [Buttry]," and that with regard "to the suggestibility of children," he believed that there was "a significant possibility" of "coaching and suggestibility" with the victims in this case—testimony that also implied Melissa and Buttry had acted wrongfully in this case), and Dr. Cuneo (who testified as to the defendant's "personality characteristics [that] could very well influence his need to confess," such as the fact that the defendant was, *inter alia*, "easily led[,] *** passive, dependent[,] *** quick to acquiesce to the demands and suggestions of others, especially if God is involved[,] *** easily manipulated," and possessed "low self-esteem"—testimony that also implied, although not as strongly as the testimony of Dr. Huff, that Melissa and Buttry acted wrongfully in this case). As described extensively above, defense counsel also used his cross-examination of some of the State's witnesses—specifically, Detective O'Neill, M.B., Kim Mangiaracino, Dr. Hill, Mark Burgund, and Patricia Borko—to attempt to call into question Melissa's credibility, motive, interest, and bias.

¶ 123 The jury—which was charged as the finders of fact with determining which theory of the case was correct—heard all of the voluminous testimony described above, and because the jury was present to see and hear each witness testify, the jury had the opportunity to evaluate the demeanor and credibility of each witness. Ultimately, the jury agreed with the State that the defendant was guilty of the five offenses with which he was charged. We do not believe that the admission of the testimony raised by the defendant as part of his second contention on appeal would have provided even a remote chance of a different result at his trial. Thus, even if this court were to assume, *arguendo*, that the trial judge erred in denying the admission of Donna's direct examination testimony as to the McKee allegations and as to the allegations of the defendant's addiction to pornography, and in denying the cross-examination of Buttry as to M.B.'s purported later statements alleging more severe abuse, we would conclude that there was no manifest prejudice to the defendant as a result of the trial judge's rulings. See *Chambers*, 2016 IL 117911, ¶ 75. Accordingly, we again decline to find reversible error.

¶ 124 The defendant's third contention on appeal is that he received ineffective assistance of trial counsel because defense counsel failed "to use readily available evidence to undermine Dr. Hill's testimony which suggested that a wide variety of doctor's appointments and ailments were suggestive of ongoing abuse." The defendant argues that M.B.'s and K.B.'s "medical records listed innocent reasons for the visits and ailments, often identified by Dr. Hill herself," and that defense counsel should have questioned Dr. Hill about this in greater detail. The defendant concedes that defense counsel was able to get Dr. Hill to admit that abuse was only a "possible" cause of the girls' ailments, and that defense counsel pointed to some of the other possible causes listed in the records, but contends that "was simply no justification to not ask Dr. Hill herself about the other details about the visits listed within the medical records." The defendant claims that he was prejudiced by this "because it let the State cherry-pick details from more than three years' worth

of records for two girls to insinuate growing medical evidence of abuse despite a lack of actual physical evidence." He also contends that defense "counsel failed to preserve the objection to testimony that a rash on K.B.'s face could be caused by herpes was speculative and far more prejudicial than probative," which he claims also caused prejudice to him.

¶ 125 The State counters that the "defendant overstates the medical reports' contents in terms of opposing Dr. Hill's testimony," and that the defendant relies to some extent on citation to a medical journal that is not part of the record to make his points. The State also argues that the medical records themselves are not as clear as the defendant alleges them to be, and notes that even if there were other conditions that may have contributed to, or coexisted with, the symptoms, that does not mean that the sexual abuse was not coincidental to the other conditions and did not contribute to the symptoms as well. Accordingly, the State characterizes the defendant's contentions as highly "speculative," and suggests that "[p]ointed cross-examination here in the manner suggested by defendant would have only allowed Dr. Hill to emphasize that the symptoms were more likely associated with sexual abuse, much to defendant's detriment." With regard to Dr. Hill's testimony about "herpes," the State contends that even if one were to assume, *arguendo*, that counsel should have objected to this testimony, the "defendant cannot show prejudice," because the "evidence was but a minuscule component of the State's case, and it was never again referenced at the time of the closing arguments."

¶ 126 In his reply brief, the defendant emphasizes that his quarrel with the manner in which defense counsel cross-examined Dr. Hill is also related to her testimony that in retrospect, she saw the girls "a large number of times" early in their lives, which she described as "a big problem." The defendant notes that when asked if it was the cumulative effect of the girls' problems that was "the real issue," Dr. Hill testified, "The cumulative effect is staggering."

¶ 127 This court evaluates claims of ineffective assistance of counsel in accordance with the two-prong test established in *Strickland v. Washington*, 466 U.S. 668 (1984). *People v. Pecoraro*, 175 Ill. 2d 294, 319 (1997). Pursuant to the first prong, a defendant must show deficient performance, which requires a showing that defense counsel made errors that were so serious that they prevented counsel from functioning as the counsel guaranteed to criminal defendants by the sixth amendment to the United States Constitution. *Id*. This requires a defendant to show that defense counsel's performance fell below an objective standard of reasonableness. *Id*. This court's scrutiny of counsel's performance is highly deferential, and we indulge a strong presumption that counsel's performance did in fact fall within the wide range of reasonable professional assistance. *Id*. Because we do so, the defendant must rebut the presumption that, under the particular circumstances of the case in question, the challenged action might have been the product of sound trial strategy. *Id*. at 319-20. Pursuant to the second prong of the test established in *Strickland*, "[e]ven where deficient performance is shown, the defendant must also show prejudice in order to establish an ineffective-assistance claim." *Id*. at 320.

¶ 128 Generally, decisions regarding cross-examination of witnesses and with regard to impeachment of witnesses are matters of trial strategy that will not support claims of ineffective assistance of counsel. *Id*. at 326. "The manner in which to cross-examine a particular witness involves the exercise of professional judgment which is entitled to substantial deference from a reviewing court." *Id*. at 326-27. A defendant will prevail on such an ineffectiveness claim only "by showing that counsel's approach to cross-examination was objectively unreasonable." *Id*. at 327. Likewise, "trial strategy ordinarily encompasses decisions such as what matters to object to and when to object." *Id.*

¶ 129 In this case, as explained above, on cross-examination Dr. Hill agreed that although she could say, within a reasonable degree of medical certainty, that the ailments described above *could*

have been caused by sexual abuse, she could not say that they *were in fact* caused by sexual abuse. She also agreed that, with regard to K.B.'s "bottom" hurting for a month, the medical records indicated that Melissa had suggested that K.B. might have fallen on the edge of her potty chair approximately one month before the visit, and that other possible explanations for some of the ailments were found in some of the medical records. She testified that she did not have the complete medical records before her at that time. In light of (1) her admission with regard to causation, (2) the fact that she conceded other possible explanations for the ailments about which she was asked, and (3) the fact that she did not have the complete medical records with her, we do not believe it was unreasonable for defense counsel to cease his cross-examination without going through each ailment and the possible other causes for it. This is particularly true when his cross-examination of Dr. Hill is viewed within the strategic context of the ongoing trial: the defense had not even begun to put on its own case, and defense counsel knew that the jurors still had several more days of testimony through which to sit, including substantial testimony from his own expert witnesses. With the admission of Dr. Hill—the State's expert witness and the treating pediatrician of the girls—as to causation in hand, it was a perfectly reasonable strategy to move on. Moreover, when viewed within the context of the overall trial, described in extensive detail above, we do not believe that the testimony of Dr. Hill that although she could say, within a reasonable degree of medical certainty, that the ailments described above *could* have been caused by sexual abuse, she could not say that they *were in fact* caused by sexual abuse, could have been as prejudicial to the defendant as he alleges on appeal. Her testimony was far too inconclusive for the defendant's claim of prejudice to be sustainable.

¶ 130 Regarding the defendant's emphasis on Dr. Hill's testimony that there was "a big problem" and that it was "staggering," we believe that this testimony must be viewed in its proper context as well. Near the end of her direct examination testimony, Dr. Hill testified that in retrospect, she

saw the girls "a large number of times" early in their lives, which she described as "a big problem." She testified that it was "absolutely devastating" to her that she might "have missed subtle signs of abuse going on." She added, "if that is what went on here, then I am disappointed that I could have contributed to an ongoing problem when it could have been stopped earlier." When thereafter asked if it was the cumulative effect of the girls' problems that was "the real issue," Dr. Hill testified, "The cumulative effect is staggering." Thus, this context makes it clear that Dr. Hill's reference to "a big problem" and to the cumulative effect being "staggering" was directly related to what she had just testified about: her feelings of devastation and disappointment *with herself* for failing to recognize sexual abuse "*if* that is what went on here." (Emphases added.) Indeed, it was almost immediately after this testimony that Dr. Hill admitted on cross-examination that although she could say, within a reasonable degree of medical certainty, that the ailments described above *could* have been caused by sexual abuse, she could not say that they *were in fact* caused by sexual abuse, which is not consistent with the defendant's insinuation on appeal that Dr. Hill's "big problem" and "staggering" testimony suggests that she was certain that there was in fact sexual abuse in this case and wanted the jury to believe that as well. Again, Dr. Hill's testimony was too inconclusive to support the defendant's claim of ineffective assistance of counsel to the extent necessary for the defendant to rebut the strong presumption that counsel's performance with regard to his cross-examination of Dr. Hill did in fact fall within the wide range of reasonable professional assistance. See *Pecoraro*, 175 Ill. 2d at 319-20, 326-27.

¶ 131 Moreover, to the extent that Dr. Hill professed to be upset with herself for failing to notice the signs of potential abuse sooner—testifying that it was "absolutely devastating" to her that she might "have missed *subtle* signs of abuse going on" (emphasis added)—the jury, having thereafter heard Dr. Hill admit that she could not say for certain that any abuse even occurred, could draw its own conclusions as to whether it was reasonable for Dr. Hill to be upset about something she

could not even say for certain had happened, as well as its own conclusions as to how her purported angst as to possible events, rather than actual events, reflected on her temperament and her credibility as a witness.

¶ 132 With regard to failing to preserve the objection to Dr. Hill's testimony that on January 19, 2011, K.B. presented with "oral lesions,"—which Dr. Hill described as being "a rash on her face" and which she noted "looked like they might be herpes but it was too late to diagnose them"—we agree with the State that the defendant could not have suffered prejudice as a result of this remark, which, as the State notes, "was but a minuscule component of the State's case," and was not brought up again or mentioned at all in closing argument. In the alternative, we note that not overemphasizing Dr. Hill's use of the word "herpes" also would have been a viable trial strategy on the part of defense counsel, as we believe it is common knowledge that "herpes" also is transmitted in ways other than by sexual contact, particularly in children, and therefore overemphasizing Dr. Hill's use of the word could have caused the jury to give undue attention to it, and to assume there was a sexual connotation to the word even though there was no such testimony from Dr. Hill. Moreover, Dr. Hill testified that the lesions "looked like they *might be* herpes but it was too late to diagnose them" (emphasis added), not that they were in fact herpes. The speculative nature of her testimony spoke for itself, which is an additional reason that not bringing further attention to it could have served as a viable trial strategy for defense counsel.

¶ 133 In sum, none of the defendant's contentions of ineffective assistance of counsel are sustainable to the extent necessary for the defendant to rebut the strong presumption that defense counsel's performance at trial did in fact fall within the wide range of reasonable professional assistance (see *id.*), or to the extent necessary to show prejudice to the defendant. See *id.* at 320. To the contrary, the defendant received vigorous, thorough, and competent assistance throughout

the course of his lengthy trial, described in great detail above. Accordingly, the defendant's arguments fail.

¶ 134 The defendant's final contention on appeal is that the restitution order entered as part of his sentence must be vacated because, as he alleged in the trial court, no restitution was ordered following his first trial in this case, so ordering restitution after the second trial amounts to increasing the defendant's punishment, thereby punishing him for availing himself of his constitutional right to appeal following his first trial. The defendant cites various cases in support of his position, including cases holding that errors related to restitution may be raised for the first time on appeal as plain error. Regarding possible forfeiture, the defendant also notes that this issue was clearly raised with the trial judge at the sentencing hearing, even if it was not raised in a postsentencing motion. The State does not disagree with the defendant as to the merits of the claim, and indeed states in its brief that "[s]hould this Court deem that plain error review is appropriate, then the weight of authority supports the argument that the imposition of restitution upon defendant's second conviction, where none was imposed subsequent to defendant's initial conviction, was an increase in the sentence that was not" permissible under the circumstances of this case. In his reply brief, the defendant points out the "[m]ultiple courts have found the improper imposition of restitution should be reviewed under the second prong of plain error." We agree with the defendant as to the latter point, and with both parties as to the impermissibility of restitution following the defendant's second trial under the circumstances in this case. Accordingly, we vacate the portion of the trial judge's sentencing order that ordered restitution.

¶ 135 III. CONCLUSION

¶ 136 For the foregoing reasons, we affirm the defendant's convictions and his mandatory sentence of natural life in prison, except that we vacate the portion of the trial judge's sentencing order that ordered restitution.

¶ 137 Affirmed; restitution portion of sentencing order vacated.