

No. 10-0931

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IN THE
APPELLATE COURT OF ILLINOIS
FIRST DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	No. 09-5002570
)	
ROBERT GARNER,)	The Honorable
)	Terrence Blair Smith,
Defendant-Appellant.)	Judge Presiding.

PRESIDING JUSTICE SALONE delivered the judgment of the court.
Justices Neville and Steele concurred in the judgment.

ORDER

Held: Where the credibility determination of the witnesses was for the trial court to make, and although each witness offered a different version of the events in question, any purported inconsistency in the complainant's testimony failed to create reasonable doubt. Accordingly, the evidence, when viewed in the light most favorable to the State, supports the trial court's finding of guilt. Further, based on the record before us, we are unpersuaded trial counsel or posttrial counsel's representation was ineffective where trial counsel chose to proceed to trial without first obtaining certain relevant records, a decision that may properly be considered one of trial strategy. Lastly, the trial court properly protected defendant's due process interest throughout the entire proceeding and, therefore, defendant's claim to the contrary fails.

¶ 1 Defendant Robert Garner appeals his conviction, following a bench trial, on one count of sexual exploitation of a child. Defendant contends the State failed to prove him guilty beyond a reasonable doubt where its main witness, the complainant, testified inconsistently and unbelievably about the alleged offense. Defendant contends his trial counsel was ineffective for failing to investigate relevant records from the Illinois Department of Children and Family Services (DCFS), impeach the complainant with her past inconsistent statements to the police, and by failing to call a potential witness who could have corroborated his testimony. Defendant further contends the trial court violated his Due Process rights by failing to review the DCFS records, evidence he claims was essential to one of his claims of ineffective assistance of trial counsel, and by failing to tender the relevant portions of those records to his posttrial counsel. Lastly, defendant claims he received ineffective assistance from his posttrial counsel by counsel's failure to obtain the DCFS records or provide any detail in the arguments he did present.

¶ 2 **BACKGROUND**

¶ 3 Defendant was tried at a bench trial on two counts of sexual exploitation of a child and convicted on the first count. 720 ILCS 5/11-9.1(a-5) (West 2010). Following his conviction, the trial court sentenced him to 180 days' imprisonment and required he register as a sex offender. Through new counsel, defendant filed a posttrial motion, claiming his trial counsel was ineffective for failing to investigate evidence relevant to his case. The trial court denied defendant's posttrial motion and defendant timely appealed.

¶ 4 At the bench trial, defendant and the complainant, E.C., were the main witnesses. Their testimony concerned their living arrangement from January to March 2009, during which, E.C.

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temporarily lived with defendant and, more specifically, the events that occurred during the last two days she was there. Both witnesses testified that defendant and his family had been involved in E.C.'s life several years prior to the incidents involved in this case.

¶ 5 Defendant lived in a four-bedroom house in Evergreen Park. His adult daughter, Kelly Garner, lived next door. Defendant and E.C. were introduced through his daughter. In 2006, E.C. was thirteen years old and pregnant. E.C. was looking for a place to live because her mother told her she was not allowed to come home with her baby. Defendant's ex-wife, Kelly's mother, was the principal at E.C.'s school. Kelly met E.C. through her mother and agreed to let E.C. and her baby move in to her home. E.C. gave birth to her son, Aaron, on July 31, 2006, just after she turned fourteen years old. She and Aaron moved in to Kelly's home two days later.

¶ 6 E.C. lived with Kelly from August 2, 2006, through February 2007. Defendant and E.C. met when E.C. moved in with Kelly. While E.C. lived with Kelly, defendant saw E.C. and Aaron at Kelly's home and sometimes E.C. would visit him at his home. During this time, Kelly was the primary caretaker of E.C. and Aaron.

¶ 7 In February 2007, E.C. and Aaron moved from Kelly's home in to her aunt's home. However, a month or two later, Aaron moved back in with Kelly, where he remained throughout the trial. In June 2007, E.C.'s aunt asked her to move out of her home because E.C. was involved in a fight in front of the house and the neighbors complained. E.C. moved back in with her mother.

¶ 8 In January 2009, when E.C. was sixteen years old, she was again looking for a place to live. Defendant claimed he allowed her to move in to his home because she had nowhere else to

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go. E.C. lived with defendant from January to March 2009. Their relationship and living arrangements were central to defendant's trial.

¶ 9 At the time of his trial, defendant was a sixty-one year old retired U.S. postal worker. He had served as a reverend for ten years, and a pastor for the past two. Defendant has four children and six grandchildren. Defendant actively volunteered in his community.

¶ 10 Pretrial Proceedings

¶ 11 Prior to trial, the contents of certain DCFS records related to this case emerged as a potential issue. On March 24, 2009, the Evergreen Park Police Department received a fax from DCFS concerning E.C. and began an investigation. That day, Detective Daniel McKeown, a second police officer, and a DCFS investigator conducted an interview of E.C. at her school. On April 8, 2009, Detective McKeown filed a misdemeanor complaint alleging defendant knowingly persuaded E.C. to remove her clothing on or about March 18, 2009 and March 19, 2009.

¶ 12 At a hearing on June 2, 2009, defendant's counsel, Steven Watkins, noted that the State's discovery responses referenced DCFS records he would need prior to trial. On July 9, 2009, the parties continued the case to obtain the records via subpoena. At the August 14, 2009, court date, the State had subpoenaed the records, but had yet to receive them. The court ordered the State to tender the records to the defense by September 14, 2009. On September 22, 2009, the court received unredacted copies of the DCFS records.

¶ 13 The parties scheduled a discovery conference for November 5, 2009. Defendant's attorney failed to appear. The court stated that because defense counsel failed to appear or call to explain his absence, the court would "assume *** that he doesn't need the discovery conference

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and we can set this matter for trial again ***." The State answered ready for trial. Defendant, addressed the court on his own behalf, informing the court he had spoken with counsel and counsel was on his way to the courthouse. The court noted that defense counsel had requested the hearing for that day and, therefore, based on his absence, "I'm assuming all the discovery is ready." The court set the trial date for December 9, 2009.

¶ 14 On December 9, 2009, both parties and counsel appeared. The State moved for a continuance because a police witness was absent. Defense counsel did not raise the issue of the untendered DCFS records. He objected to the State's continuance and answered ready for trial. The trial court granted the continuance. On January 27, 2010, the State requested a second continuance because E.C. failed to appear. Defense counsel again failed to raise the issue of the untendered DCFS records and "strenuously" objected to the continuance.

¶ 15 On March 9, 2010, prior to the start of trial, the court raised the issue of the DCFS records. The court noted that it had yet to review the records and "assume[d] that neither party had been tendered anything[.]" Defense counsel explained that the matter had been before the court on several dates, but "it kind of got off course." The court stated,

"I did quickly peruse the records, and there are some things in there that I believe that Defense Counsel and the State are entitled to. There's also other things, I think, that are relevant, but without going through it page by page, I would not be able to tender anything today.

If you want those records, I will give you a date on it. If

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you don't want those records that would be up to both sides, and I will proceed without tendering those records."

¶ 16 Defense counsel asked if an *in camera* inspection of the records would be possible. The court stated that would take "hours" and, therefore, was not feasible. The court proposed taking a short date to bring the parties in and tender the records it felt were appropriate. The court noted that the records contained "interviews of witnesses that I expect to be called during this trial that talked to DCFS personnel regarding this specific matter[.]" The court then passed the matter for counsel to consider the options. When the matter was recalled, defense counsel answered that he was ready to proceed to trial.

¶ 17 Trial

¶ 18 The State presented the testimony of two witnesses at trial: E.C. and Detective McKeown. When the State rested, the court granted defendant's motion for a directed verdict on the second count, but denied the motion as to the first count. Defendant then testified on his own behalf.

¶ 19 E.C. testified she moved in to defendant's home on January 6, 2009, and attended Evergreen Park High School. E.C. testified she moved in with defendant "[t]o go to a better school and get a better household," and "[b]ecause I trusted him at that time[.]" She testified that prior to moving in with defendant, she informed him she had previously been sexually assaulted and "would never let it happen again." She testified she told defendant, "I will kill him if he tried to do something to me[.]" E.C. testified that before she moved in, defendant made her sign a written agreement stating, "I, [E.C.] am married to Pastor Garner." She testified defendant "kept

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it in his blue folder that he always carries around." She further testified that prior to moving in with defendant, Kelly would take her to his church every Sunday, and he would ask her to marry him. E.C. testified she believed defendant's comments were jokes until she was asked to sign the agreement. Defendant denied any such agreement existed and the State did not produce a copy of the alleged document.

¶ 20 Regarding their living arrangement from January to March 1999, E.C. testified that defendant was her caretaker while she stayed at his house. Defendant provided her food, clothing, lunch money, and an allowance. She had her own bedroom, which was across from defendant's bedroom. E.C. testified she did well in school while living with defendant and joined the school track team. She testified defendant would drop her off at school in the morning and pick her up after track practice. E.C. testified defendant took her to church with him.

¶ 21 E.C. and defendant both testified that during the time E.C. lived with defendant, she spent a lot of her time at Kelly's house next door, where her son lived. E.C. testified she had a room at Kelly's house that she shared with Kelly's sister and spent "a couple nights" there. She testified she visited her son at Kelly's house whenever she wanted and would do her homework there. Defendant testified that E.C. did not really live at his house, but would merely sleep there, only on weekdays, not on weekends.

¶ 22 E.C. testified defendant required her to follow strict rules and keep a daily schedule of activities and chores while she was at his house. She was required to wake up by 5 a.m., get dressed and make breakfast for defendant by 6, read four sections of Bible scripture by 6:15, clean the kitchen by 6:30, clean the bathroom by 7, and make sure everything else was clean by

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7:30 a.m. E.C. testified that because she was not accustomed to such a structured lifestyle, she was "very tired all the time." E.C. testified she did very well in school during this time.

¶ 23 Defendant denied all of the allegations E.C. made against him. He testified E.C. was a troubled teenage mother and that he agreed to let her move in with him because "[s]he didn't have anywhere else to stay."

¶ 24 Defendant testified he enacted rules for E.C. to follow while she lived with him. He required her to wake up at a certain time because "she needed to be able to come home and go to bed," and without such a rule, "[s]he won't do that." Defendant testified E.C. had a written list of chores she was to do each morning before school because "she wanted to have some chores to do." Defendant testified that even though he expected her to comply with the house rules, she never did. Defendant denied he required E.C. to make him breakfast in the mornings, and testified that on the rare occasion she did, he "wouldn't eat the food because I thought she'd poison me."

¶ 25 Defendant testified that E.C. had many behavioral problems while staying at his house. He testified he suspected she had naked photographs of herself and others on her cellular telephone, so he asked Kelly to look at the phone while E.C. was at her house. He testified that after Kelly confirmed his suspicions, he no longer allowed E.C. to keep her phone in his house. Defendant testified money went missing from his home several times when E.C. was the only person there. He did not call the police because he "was trying to help her" and "give her time to adjust" to her new living situation. Defendant testified he gave E.C. a celibate ring.

¶ 26 E.C. testified that defendant "tried to put me out over my phone" in February 2009. She

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claimed that after the incident, defendant had her sign a second agreement, which stated, "I, [E.C.] will do what [defendant] tells me to do. If I don't, he is not putting me out I am putting myself out." She testified the alleged agreement included other terms, but she could not remember what they were. She testified it also stated she had to do what defendant told her to, including "[k]iss him on his mouth," and "sleep in the same bed with him." However, she then confirmed the agreement did not specifically state in detail what defendant said she had to do, rather, defendant would tell her what to do. The State did not produce the agreement. On cross-examination, E.C. testified defendant told her to rip up the only copy of the agreement.

Defendant denied there were any agreements between E.C. and him.

¶ 27 Both defendant and E.C. testified concerning how she entered and exited his house. E.C. testified she was only able to enter and exit the house by defendant letting her in and out of the back door with his key. E.C. testified she had no key to the house. She testified defendant told her she could not live at his house if she tried to exit through the front door. She further testified he built "a wall with blankets and sticks" to block access to the front door. On cross-examination, E.C. testified she was able to leave defendant's house and visit Aaron next door whenever she wanted. She testified she was never prevented by defendant from visiting Aaron, but "I was locked in when he wanted to leave and go places that I couldn't go." Defendant testified E.C. was never locked or barricaded within the house. He stated that although she did not have a key to the back door, only the storm door was kept locked and it could be unlocked from the inside.

¶ 28 At the beginning of her testimony, E.C. stated that defendant and she were the only two

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people living at the house at that time. Later, she testified that two other people moved in to defendant's house while she was there: her "best friend" Shamada and another women, in her twenties, who she could not identify. E.C. testified Shamada, seventeen at the time, lived at defendant's house in February and slept in defendant's bed with him while she was there.

Defendant testified Shamada spent three non-consecutive nights at his house, but claimed she did not live with him. Defendant stated that when Shamada stayed at his house, he slept in an upstairs bedroom and Shamada slept alone in his bedroom across from E.C.'s room.

¶ 29 E.C. testified that while at his house, she saw defendant wearing only a towel on three or four occasions and that "[m]ost of the times he was aroused." E.C. testified she had never seen defendant "completely without clothes." Defendant denied these allegations.

¶ 30 Allegations Concerning March 18 and 19, 2009

¶ 31 E.C. testified concerning the sexual exploitation she claimed occurred on the Wednesday and Thursday before she left defendant's house. Throughout her testimony, E.C. referred to these days as March 17 and 18, 2009, when the corresponding dates were in fact the 18th and 19th.

¶ 32 E.C. testified defendant became upset with her on Wednesday after he picked her up from school because she had not cleaned the kitchen for several days. She testified that after he dropped her at the house, he stated, "he hoped that his house was cleaned" when he came back. Defendant left and did not return until later that night, at which time, they drove to a McDonald's restaurant to eat. When they arrived home, she asked to use defendant's phone. When she returned the phone, defendant asked her to get in his bed with him; she did. E.C. testified defendant then "wrapped his arms around me and whispered in my ear to let him suck on me[.]"

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She then "snatched away from him, and [] went back in my room." She testified that inside her bedroom, "I kind of sort of pushed my dresser on my door, and I attempted to go to sleep." E.C. testified that during this incident, she was fully clothed. She had no further contact with defendant that night.

¶ 33 E.C. testified the next morning defendant came to her room and woke her. E.C. did not have school that day because it was the day report cards were being distributed. E.C. testified that after dropping his granddaughter off at school, defendant drove her to track practice at 10 a.m. Defendant returned to pick her up after practice, took her to eat at a McDonald's, and then drove her to school to pick up her report card. E.C. testified that after picking up her report card, defendant went to speak with one of her teachers about a grade.

¶ 34 They returned home at 1 p.m. and defendant told E.C. to go to his bedroom. Defendant stopped in the kitchen for two to three minutes before he joined E.C. in the bedroom. When defendant walked in, he asked E.C., "to get in his bed underneath the covers." E.C. testified defendant then left the room for several minutes before walking back in and asking her "to take off my pants and my panties." E.C. testified she was "upset," but "did it to see what he was going to do." She claimed that because of her past history of sexual abuse, "at this point I had an intention on hurting him because he tried to put me in that situation again." E.C. testified she took off her pants and panties and then got in the bed. Defendant was not in the room at the time, but returned shortly after. Defendant "walked up to the side of the bed and asked [E.C.] to marry him;" E.C. did not respond. Defendant told E.C., "if [she] didn't answer he was going to take it as a yes," and he walked out of the room. E.C. testified she "[s]at there and waited until

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he walked back in the room." E.C. testified that when defendant returned, he told her,

"he sacrificed a lot of stuff. He sacrificed his house, his food, his money, and he was basically saying what am I going to give him. And I told him, what did he want, and he told me he wanted me to sacrifice everything, and I told him that was not the agreement when I moved in, and it escalated into an argument, and we was just yelling at each other."

E.C. testified the argument lasted about five minutes and then defendant walked out of the room and made a phone call.

¶ 35 E.C. testified that in response, she "[p]ut her clothes back on and went to get his attention." Defendant ignored E.C.'s attempts to speak with him in the kitchen, she returned to his bedroom and sat down. When defendant returned to his bedroom, E.C.

"asked him could I go to my mother's house, and he was telling me that since I told him, no, that he was going to tell me, no, and that the agreement was that I was supposed to do what he told me to do, and I explained to him that you asked me something. You didn't tell me to do something. I have a right to tell you, no, if you ask me. That's two different things."

E.C. testified defendant responded, "well, if I tell you to do something—if I tell you to let me suck on you, will you[?]" E.C. testified she didn't respond. Defendant walked out of the room and got back on the telephone. E.C. testified she remained at defendant's house for another thirty

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minutes to an hour.

¶ 36 Within that same hour, E.C. testified that defendant asked her to take off all of her clothes, which included "a jacket, a hoodie, two shirts, my shorts, and my shoes." E.C. testified she cried and removed all of her clothing. E.C. testified she felt "belittled" when defendant asked her to remove her clothes. Defendant was present in the bedroom when E.C. removed all of her clothing and "tried to approach her." E.C. testified that when defendant tried to approach, she "jumped at him. It was a motion like I was going to hit him because I didn't want him to touch me." E.C. testified defendant "backed up" in response and "said he didn't want to touch me. He asked me to get in the bed." On cross-examination, E.C. testified that before she got in to his bed, defendant asked her to spin around slowly. She stated that she "didn't catch on to what he was saying" at first. She testified, she eventually "realized" that he was "looking at my body *** so I quickly turned around after I realized what he was saying to me." E.C. testified she got in the bed and "wrapped [herself] in all the covers." At that point, defendant got in to the bed with E.C. She testified defendant was "hovering over" her, but did not touch her. E.C. asked defendant if she could put her clothes back on. She testified he said, "no, he might not never get a chance to see this again." E.C. testified defendant and her were in the bed for five to seven minutes, during which she kept asking him if she could put her clothes back on. E.C. testified defendant told her, "the only way he was going to take me to my mama's house was if I stop crying, and like, he told me, to put my clothes on, and he was going to take me to my mother's house if I was to stop crying, and I stopped crying." E.C. put her clothes back on. Defendant was not present in the room at the time. E.C. testified that after she put her clothes back on, she

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"packed some clothes and waited on him to get to the car to get ready to drop me off at my mom's house." Defendant dropped E.C. off at her mother's house and she slept there that night.

¶ 37 E.C. testified that the two incidents—the one involving her removing her pants and panties and the second, involving her removing all of her clothes—occurred over the course of one hour, between 1 and 2 p.m. on March 18th.

¶ 38 E.C. testified she told no one what had happened until she told her oldest brother two days later. When counsel asked E.C. whether she told anyone else, she responded, "No, because word had already got out." E.C. testified that the Monday after, she talked with the school nurse. She testified "[t]he nurse knew everything that happened from the first day I moved in until the 18th." On cross-examination, E.C. testified she told "a boy on the track team" about the events of March 18th.

¶ 39 Detective Daniel McKeown testified that on March 24, 2009, a fax from DCFS was brought to his attention. The case was then assigned to two patrol officers for an initial report. Later that day, Detective McKeown reported to Evergreen Park High School, with another detective, to meet with DCFS Investigator Malbea and speak with E.C. Detective McKeown was present during an interview between the DCFS investigator and E.C. During the interview, Detective McKeown took notes. Based on the interview, a criminal investigation of defendant was initiated. Detective McKeown arrested defendant on April 8, 2009.

¶ 40 Defendant testified that on March 17th, E.C. spent the evening at Kelly's house and only came to his house when it was time for her to go to bed. Defendant testified that on the 18th, E.C. was sick. He testified,

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"she didn't want to go over to Kelly's house, and so she got sick, and she threw a tantrum, and I was supposed to go to church, so she begged me to let her stay there, and so I let her stay there. When I got back, everything that was on the list was done. She had never done that before."

Defendant testified that because everything was clean, he knew "something is wrong."

Defendant testified that on March 19th, E.C. demanded a large sum of money. Defendant claimed E.C. told him that if he gave her the money, she would "take off all her clothes, stand in front of me, spin around, and get in my bed." Defendant refused to give E.C. the money. Defendant testified he never asked E.C. to take off her clothes, nor did he ever take his off in her presence.

Defendant testified he was "not sexually attracted to any woman."

¶ 41 Motion for Directed Finding

¶ 42 At the close of the State's case, defense counsel made a request for a Directed Finding on both counts. Counsel argued that regarding the March 19th allegation, the State did not meet its burden. E.C. testified clearly that nothing occurred on March 19th. The State attempted to rehabilitate her by making reference to a day and week, but E.C. adamantly testified she never returned to defendant's house after March 18th. The court granted defense's counsel's Motion for a Directed Finding as to count 2 only.

¶ 43 Defendant was convicted on the first count and sentenced to 180 days' imprisonment and required to register as a sex offender. In holding as it did, the trial court stated,

"I do find [the complainant's] testimony to [be] credible. In fact, I

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find it to be highly credible. She testified consistently. I believe she had an incredible memory of the events. She testified in great detail. I believe what she said happened, did happen. Whether she had a date wrong that may have been possible. The fact of the matter is I do believe her testimony. I did reject the Defendant's testimony. His testimony was a little bit confusing, but I think what he said was that [the complainant] had created this mess because she wanted to do some chores in the morning. A thirteen year old girl that wants to get up at 5:00 A.M., ***do chores *** is just not reasonable and not common, and I don't believe that testimony."

The trial court stated, "this is a very sad situation." It found the complainant was "troubled" and "looking for someone to help her" after having a baby at such a young age. The court held "[defendant] took advantage of her, in my opinion, and did commit sexual exploitation of a child."

¶ 44 On March 23, 2010, Steven Greenberg, as new counsel for defendant, asked for leave to file a posttrial motion. In doing so, counsel stated to the court, "I notice in the transcript there were DCFS records that the Court had not reviewed; that the Court may have materials that would be relevant in trying to determine whether or not counsel was effective or missed potential cross-examination." Counsel asked the court to review the records to determine if anything should be tendered to the parties. The court held the matter over to April 7, 2010.

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¶ 45 On April 7, 2010, defense counsel filed a motion for a new trial, as well as a motion to reduce or reconsider defendant's sentence. Regarding posttrial counsel's request that the court review the DCFS records, the court stated, "the issue is whether [trial counsel's] failure to obtain those records prior to trial was ineffective assistance of counsel—therefore, I don't believe I need to review those records." Posttrial counsel responded, "in deciding whether or not the result may have been different, I think we have to know what the record said[.]" Posttrial counsel went on to argue trial counsel was ineffective for failing to use the police reports to impeach the complainant. Posttrial counsel detailed some of the inconsistencies between the complainant's trial testimony and her memorialized statement in the police report. Posttrial counsel further argued "no questions were asked about what she had told the police or any of the inconsistencies."

¶ 46 The court denied defendant's posttrial motions. In doing so, the court stated,

"I believe after listening to the evidence that the proof of the offense was overwhelming in this case. The victim was credible. Her memory of the events was nothing short of remarkable in my opinion. ***

As for the charge or indication that [trial counsel] was ineffective, I believe [counsel] did conduct a rigorous cross-examination of the complaining witness. It went on for well over an hour, and I believe she was sufficiently cross-examined in my opinion.

As for the DCFS reports, I did tell counsel prior to trial, on the day of trial, that I would continue the case to give him a chance—I would review the records, come back to court, give him a chance to obtain—in fact, I pretty much told him I was inclined to give him some of the interviews with the DCFS workers indicating that some of the witnesses I expected to be testifying at trial would be in those reports, including his own client, [defendant.]

He at that point asked me to pass the case to speak to his client. The case was passed, and when the case was recalled, he indicated that they were ready to proceed.

This was, I believe, was sound trial strategy on his part, and also that the State was also unaware of what was in the records and obviously still is at this point since I have sealed those records.

I would have given him an opportunity to look at those records after they would have been redacted by the Court, however, he chose not to, and that could have been because he didn't want the State to find out what other witnesses there were. He didn't want the State to obtain another statement of his client, [defendant]. There are many reasons he could have decided not to have the State obtain what ever records I was going to give them.

I believe his performance was not deficient. I believe it was strategy on his part to not obtain those records, and as I indicated I believe he did sufficiently cross-examine the complaining witness[.]"

Defendant timely filed his notice of appeal.

¶ 47 On May 6, 2011, defense counsel filed a Motion to Impound, Prepare, and Transmit to this Court the Supplemental Record Under Seal. The motion was denied.

¶ 48 ANALYSIS

¶ 49 Sufficiency of the Evidence

¶ 50 On appeal, defendant challenges his conviction for sexual exploitation of a child.

Defendant contends the State failed to prove him guilty beyond a reasonable doubt where the complainant's testimony was inconsistent and unbelievable and the State failed to offer any evidence or witnesses to corroborate her version of the events. Defendant maintains the complaining witness's testimony was incredible, in that it was contradictory. Specifically, defendant contends that his version of the events was more likely than those offered by the complaining witness.

¶ 51 In reviewing a sufficiency of evidence claim, the question is whether, after viewing the evidence in the light most favorable to the State, any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305, 330 (2000). Applying this standard, as a reviewing court, we will not substitute our judgment for that of the trier of fact on issues relating to the weight of evidence or the credibility of the

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witnesses. *People v. Braddock*, 348 Ill. App. 3d 115, 124 (2004). Additionally, Illinois courts have found that minor inconsistencies in testimony do not alone create reasonable doubt. *People v. Adams*, 109 Ill. 2d 102, 115 (1985).

¶ 52 To establish the offense of misdemeanor sexual exploitation of a child, the State must prove, in relevant part, that defendant knowingly enticed, coerced or persuaded a child, a person under the age of 17 years old, to remove her clothing for his sexual gratification. 720 ILCS 5/11-9.1(a-5),(b) (West 2010). Here, a rational trier of fact could have found that the essential elements were met because E.C. testified that defendant persuaded her to remove her clothing and stand naked in his bedroom for his sexual gratification.

¶ 53 Defendant contends that inconsistencies in E.C.'s testimony created reasonable doubt as to his guilt. Defendant finds it significant that E.C. testified that she expressed her fear of suffering another sexual assault to him, including threatening him, prior to moving in with him, but then claimed he required her to sign a marriage agreement before moving in with him, which he argues is an incredible claim in light of her testimony that she willingly moved in with him because she trusted him. Defendant argues E.C. lacked credibility because originally she testified no other individuals lived at defendant's house when she did and then changed her testimony to say that two other young women lived in the house with them, describing one of those women as her "best friend." Defendant further argues E.C.'s testimony was incredible because she claimed to first react very strongly to defendant's sexual requests by barricading her bedroom door with a dresser, but then acted submissive and claimed to actually pursue defendant during their second encounter. Lastly, defendant argues E.C.'s version of the events lacked

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credibility because she failed to report defendant's actions until two days later, despite having numerous opportunities to do so, and no other evidence or witnesses corroborated her testimony, even though she testified others were privy to her relationship with defendant and their living arrangements.

¶ 54 However, the trial court found E.C.'s testimony to be "highly credible." The court found she testified "consistently" and "had an incredible memory of the events." E.C. testified in detail about the circumstances leading to her reliance on defendant as her caretaker. E.C. testified she depended solely on defendant for all of her basic needs. E.C. testified defendant imposed a structured routine on her, which included her cooking and cleaning for him, and his monitoring of her whereabouts. E.C. testified defendant threatened that she would no longer be able to live with him if she tried to exit out of the front door and that she thought if she disobeyed him, he would also force her to leave his home. E.C. testified that on March 17, 2009, defendant wrapped his arms around her and asked her to let him "suck on" her. She testified she went back to her bedroom and pushed the dresser against her door. E.C. testified that the following day, there were two incidents: one where defendant asked her to remove her pants and panties and the other where he asked her to remove all of her clothing, stand naked in front of him and then get in to his bed, where he "hovered" over her. The court found E.C.'s testimony about defendant's sexual directives to be "highly credible" and to include "great detail." The court acknowledged E.C. may have had a date wrong, but found that insignificant particularly in light of its findings that defendant's account of the events was unreasonable, and his testimony "confusing."

¶ 55 We find that any purported inconsistency in E.C.'s testimony fails to create reasonable

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doubt in the case before us. See *Adams*, 109 Ill. 2d at 115. The credibility determination of the witnesses was for the trial court to make and although each witness offered a different version of the events in question, we do not find E.C.'s testimony to be so incredible that reasonable doubt as to defendant's guilt is justified. The trial court believed E.C.'s testimony over that of defendant and we see no reason to disturb its finding.

¶ 56 Based on our review of the record, we find that the evidence, when viewed in the light most favorable to the State, supports the trial court's finding of guilt.

¶ 57 Ineffective Assistance of Counsel

¶ 58 Defendant claims he was denied effective assistance of both his trial counsel and posttrial counsel. Defendant contends his trial counsel failed to investigate the relevant DCFS records, failed to impeach E.C. with her past inconsistent statement to the police, and failed to call his daughter Kelly as a witness to corroborate his testimony and discredit the complainant. Defendant claims he was denied effective assistance of counsel by his posttrial counsel for counsel's failure to provide details to the arguments he presented and his failure to obtain the DCFS records, which were necessary to litigate defendant's ineffective assistance of trial counsel claim. Defendant asks this court to grant him a new trial based on the alleged deficiencies "because the evidence was closely balanced and the case ultimately turned on a credibility contest[.]" In the alternative, defendant asks that the matter be remanded for a review of the DCFS records and a determination that he was prejudiced by trial counsel's alleged errors, including his failure to investigate.

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¶ 59 To prove ineffective assistance of counsel, the defendant must allege facts showing counsel's representation was both objectively unreasonable and counsel's deficiency prejudiced him. *Strickland v. Washington*, 466 U.S. 668, 80 L. Ed. 2d 674, 104 S. Ct. 2052 (1984). The defendant bears the burden of demonstrating he received ineffective assistance of counsel. *People v. Burks*, 343 Ill. App. 3d 765, 774 (2003). To do so, the defendant must overcome a strong presumption that counsel's performance fell within a wide range of reasonable professional assistance. *People v. Pecoraro*, 175 Ill. 2d 294, 319-20 (1997). In determining the adequacy of the defendant's legal representation, we consider the totality of the circumstances. See *People v. Long*, 208 Ill. App. 3d 627, 640 (1990). In doing so, we recognize that the right to effective assistance of counsel refers to "competent, not perfect representation." *People v. Stewart*, 104 Ill. 2d 463, 492 (1984). "Mistakes in trial strategy or tactics or in judgment do not of themselves render the representation incompetent." *People v. Hillenbrand*, 121 Ill. 2d 537, 548 (1988).

¶ 60 Failure to Investigate

¶ 61 Turning to defendant's first claim of ineffective assistance, defendant argues trial counsel performed deficiently by proceeding to trial without first properly investigating the DCFS records. Defendant argues counsel had a "duty" to review the records to determine if they contained exculpatory evidence or other avenues for investigation. By failing to do so, defendant argues his counsel did not meet his "obligation, both legal and ethical, to explore and investigate [his] client's case." *People v. Makiel*, 358 Ill. App. 3d 102, 107 (2005). Defendant further argues the trial court erred in finding trial counsel's failure to review the records was a sound strategic

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decision, arguing instead, it was the result of a series of unprofessional errors.

¶ 62 The DCFS records are not a part of the appellate record. The trial court denied posttrial counsel's request to have them tendered. On May 26, 2011, this court denied defendant's motion to have them prepared and transmitted as a sealed supplemental record.

¶ 63 Review of the record makes clear trial counsel knew of the existence of the DCFS records because he requested continuances to subpoena the documents before trial. On the trial date, the trial judge quickly reviewed the records and stated his belief that the parties were entitled to portions of the documents containing interviews of possible trial witnesses, including defendant. The trial judge offered a short court date, so he could thoroughly review the records *in camera* and tender the relevant portions to the parties. With this background, trial counsel asked to have the case passed and when the trial judge recalled the case, counsel answered ready for the defendant. With the option of a short date on the table, defense counsel chose to proceed to trial without reviewing the DCFS records. There is a strong presumption that trial counsel's actions were the result of trial strategy rather than incompetence. See *People v. Cunningham*, 376 Ill. App. 3d 298, 301 (2007) ("counsel is afforded wide latitude in making tactical decisions").

¶ 64 Defendant argues that counsel's decision to proceed without review of the record cannot be considered sound trial strategy where "the record shows counsel's actual strategy was to obtain and review the records, but he failed to execute this strategy."

¶ 65 The record makes clear counsel deliberately proceeded to trial without review of the records after the trial court indicated that the records contained statements from potential

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witnesses, including the defendant himself. Defendant argues his trial counsel decision not to review the records only after the court indicated a review would be time-consuming and would require the trial to be rescheduled for a later date. Defendant argues that in light of trial counsel's suggestion that the parties be permitted an *in camera* review of the record that day, which the court dismissed as too cumbersome, it is clear counsel's decision was not a matter of trial strategy. Defendant implies that by finding trial counsel's decision to be a matter of trial strategy as a means of preventing the State from also accessing the records, the trial court improperly created a trial strategy that was not actually considered by counsel. Defendant argues trial counsel's decision was not an informed departure from the trial strategy he had been pursuing for months, but "a rash decision" based on time pressure. Defendant contends in his reply brief, "[t]his fabricated reasoning fails because 'just as a reviewing court should not second-guess the strategic decisions of counsel with the benefit of hindsight, it should also not construct strategic defenses which counsel does not offer.' *People v. Popoca*, 245 Ill. App. 3d 948, 959 (1993)." However, in so arguing, defendant fails to offer any authority holding that counsel may not change trial strategy.

¶ 66 In ruling on defendant's amended motion for a new trial, the trial court acknowledged trial counsel chose to proceed without the DCFS documents despite the availability of taking a short date to review a redacted copy. The court noted that trial counsel's decision precluded the State from receiving the records as well. The court speculated, "that could have been because [defense counsel] didn't want the State to find out what other witnesses there were. [Counsel] didn't want the State to obtain another statement of his client, [defendant.] There are many reasons he could

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have decided not to have the State obtain whatever records I was going to give them."

¶ 67 During closing argument defense counsel used the fact that the DCFS records were not tendered to the parties to argue the State failed to meet its burden of proof. Counsel argued,

"The State hasn't proved their case. Now, could they have presented some more credible evidence or substantiating evidence? Sure they could have. They could have filed a 115-10 Motion, your Honor, to try and bring in this testimony of what she told DCFS—[State Objection; Overruled]—of what she told DCFS. I'm not exactly sure why the detective testified whatsoever, and I'm sure your Honor won't allow your decision to be prejudiced by the simple fact that he did an investigation, but if they want to substantiate her charge, your Honor, there's a way to do it, and it wasn't done. Not only wasn't it done with some possible DCFS testimony or evidence. It wasn't done by her own best friend, your Honor, who goes to school with her who she alleged lived there. That's how you substantiate these allegations and it wasn't done, fabricated allegations of him sleeping with her and her best friend in a four bedroom house, and is it substantiated? No. Why, your Honor, because it didn't happen, and I don't know why she's up here saying this, nor does the Defense have to prove it, but they haven't proven their case beyond a reasonable doubt, and it's not

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that there wasn't an opportunity to do so, and they didn't do it.

Here's a man, a Christian man, he is a pastor doing good things for the community, honorably retired from the Postal Service, simply to do some good things and put some structure in this young lady's life where structure was needed. Now, he has been falsely accused, and they haven't proven their case, your Honor."

¶ 68 We cannot conclusively determine from the record whether counsel's decision to abandon his earlier requests to review the DCFS record was due to sound trial strategy or incompetence. We are not privy to discussions between defendant and his counsel during the recess just prior to trial counsel answering ready for trial. Therefore, we must presume it was the result of trial strategy. See *Strickland*, 466 U.S. at 690-91, 104 S.Ct. at 2066, 80 L.Ed.2d at 695 ("In any ineffectiveness case, a particular decision not to investigate must be directly assessed for reasonableness in all the circumstances, *applying a heavy measure of deference to counsel's judgments.*") (Emphasis added.)

¶ 69 The decision to pursue a certain defense at trial is a tactical one. In hindsight, we cannot find that counsel's decision to pursue a line of defense was ineffective simply because it ultimately proved unsuccessful. Rather, we review counsel's decision at the time it was made, considering what possible defense theories were available and the risks associated with each of those. Here, based on defense counsel's closing arguments, we cannot say it was unreasonable for trial counsel to abandon his earlier requests for the DCFS records, which could have been

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favorable or harmful to his client, to argue the State failed to meet its burden of proof without offering the DCFS records to corroborate the complainant's version of the events. We find trial counsel followed a strategy consistent with a viable defense of reasonable doubt. Trial counsel's decision not to review the DCFS records did not fall below an objective standard of reasonableness nor outside the wide range of professionally competent assistance, particularly in light of counsel's closing argument that the State failed to meet their burden of proof.

¶ 70 Defendant further asserts that posttrial counsel was ineffective for his failure "to raise the issue of reviewing the DCFS records again or request that they be impounded so that they could be included in the record on appeal" Defendant argues his posttrial counsel could not effectively represent him on his failure to investigate claim against his trial counsel without review of the DCFS records. Defendant claims that after the trial court refused posttrial counsel's request to review the DCFS records, posttrial counsel should have requested that the court impound the records to ensure that defendant's claims could be fully litigated on appeal.

¶ 71 On March 23, 2010, after filing his appearance and a posttrial motion, posttrial counsel asked the trial court to review the DCFS records. The court informed the parties the records were sealed and had been sent to the Clerk's office. On April 7, 2010, posttrial counsel filed an amended motion for a new trial, alleging among others, that "[t]rial counsel was ineffective for proceeding without DCFS reports of interviews." In arguing the motion, posttrial counsel requested to review the DCFS records. The trial court refused, finding, "the issue is whether his failure to obtain those records prior to trial was ineffective assistance of counsel[.]" Posttrial counsel responded, "For the purpose of the record, I think in my view in deciding—not that I want

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to delay anything, but in deciding whether or not the result may have been different, I think we have to know what the record said[.]" Posttrial counsel then went on to argue alternate avenues for posttrial relief.

¶ 72 Posttrial counsel is not obliged to raise every conceivable issue and it is not incompetence for counsel to refrain from raising issues which, in counsel's professional judgment, lack merit, unless counsel's appraisal of the merits is patently wrong. See *People v. Smith*, 195 Ill. 2d 179, 190 (2000); *People v. Easley*, 192 Ill. 2d 307, 329 (2000). Substantial deference is given to counsel's choices concerning which issues to pursue. *People v. Rogers*, 197 Ill. 2d 216, 223 (2001).

¶ 73 Here, posttrial counsel assessed the record and raised the issue of the untendered DCFS records. Although defendant challenges posttrial counsel's performance during the posttrial hearing, our reading of the record shows no deficiencies.

¶ 74 Impeachment with Inconsistent Statements

¶ 75 Defendant's next claim concerns his allegation that trial counsel was ineffective for failing to impeach the complainant with her prior inconsistent statement to the police to show her story changed in at least three significant ways. Defendant argues the error was particularly prejudicial to defendant because the court's judgment rested heavily on its conclusion that E.C. was "highly credible."

¶ 76 Whether, and how, to cross-examine a witness is an exercise of professional judgment, of which we grant substantial deference to on review. *Pecoraro*, 175 Ill. 2d at 326-27. Moreover,

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in assessing the importance of the failure to impeach for purposes of a *Strickland* claim, "[t]he value of the potentially impeaching material must be placed in perspective." *People v. Jimerson*, 127 Ill. 2d 12, 33 (1989). For the defendant to prevail on his ineffectiveness claim, he must show "that counsel's approach to cross-examination was objectively unreasonable." *Pecoraro*, 175 Ill. 2d at 327.

¶ 77 Defendant argues trial counsel failed to conduct any meaningful cross-examination of the complainant by failing to impeach her with her prior inconsistent statement to the police.¹ Defendant claims counsel was ineffective for failing to expose the difference in times between the first and second incidents. E.C. stated in her pretrial interview that the first occurrence happened at night and the second, the next day, whereas at trial, she testified both occurred on the same day. Defendant claims counsel was ineffective for failing to impeach E.C. on the difference between her statement and trial testimony regarding her departure from defendant's home. At trial, E.C. testified defendant drove her to her mother's house, which defendant claims contrasts her claims in her pretrial statement that she left defendant's house on her own. Defendant's third contention concerns E.C.'s trial testimony that Shamada slept in defendant's bed during her stay, in contrast to her pretrial statement in which she claimed, she slept in the same bed as Shamada and defendant.

¶ 78 Defendant relies on *People v. Garza*, 180 Ill. App. 3d 263 (1989), *People v. Williams*,

¹ The record shows the State did not tender all of the police reports to defendant's counsel until the day of trial. However, counsel indicated on the record that he "was reviewing them" as the court was going through its call.

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329 Ill. App. 3d 846 (2002), and *People v. Skinner*, 220 Ill. App. 3d 479 (1991), which hold trial counsel was ineffective for failing to confront witnesses with prior inconsistent statements.

Defendant argues trial counsel's failure "is even more glaring because, unlike in *Williams* and *Skinner*, E.C. was the only State witness who testified substantively about the alleged offense."

However, in all three of those cases, trial counsel made numerous errors, only one of which was the failure to impeach a witness. The cumulative effect of the errors was what led the reviewing court to find counsel ineffective in each case.

¶ 79 Defendant argues that "[b]ecause the State's case rested solely on E.C.'s credibility, counsel's primary duty at trial was to discredit her testimony." Based on the record before us, we find that was the exact strategy trial counsel utilized. Trial counsel vigorously cross-examined the complainant. Trial counsel was also able to elicit from E.C.'s numerous conflicting statements. E.C. testified that she willingly moved in with defendant and that despite her claims that he required to comply with a rigorous schedule, she was doing well in school and participating on the track team. Defense counsel brought out that despite her claims that she was barricaded in defendant's home and could only leave when he allowed her to, she was able to visit her son next door whenever she wanted. E.C. acknowledged that she did not have a copy of either agreement that defendant asked her to sign and that even after allegedly signing the first agreement, she willingly moved in to defendant's home. Counsel questioned E.C. about her "best friend" Shamada. Defense counsel committed E.C. to the dates of the incidents as March 17 and March 18, which were incorrect, and resulted in a directed finding on count 2. Defense counsel brought out that E.C. failed to tell anyone about the incidents with defendant until two days later,

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despite having the opportunity to do so and in light of her claims that she threatened defendant prior to moving in that if he sexually assaulted her, she would kill him. Defense counsel further elicited that defendant remained fully clothed during the incidents, left the room numerous times, and never asked E.C. to touch him or herself. Moreover, in denying defendant's amended motion for a new trial, the trial court found trial counsel rigorously cross-examined E.C. "for well over an hour." In light of such cross-examination, trial counsel's alleged failure to elicit E.C.'s prior inconsistent statement does not constitute the sort of error that would deprive defendant of his constitutional right to effective assistance of counsel.

¶ 80 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. Despite defendant's argument that E.C.'s cross-examination should have been handled differently, we cannot say that trial counsel's approach fell outside the wide range of reasonable professional assistance. Defendant can only prevail on an ineffectiveness claim by showing that counsel's approach to cross-examination was objectively unreasonable; we find he has failed to do so.

¶ 81 Defendant alleges that posttrial counsel was ineffective for "simply" attaching the police report to the amended motion for a new trial to show the inconsistencies in E.C.'s testimony rather than specifically elaborating on each inconsistency. However, the record makes clear that not only did posttrial counsel include this claim in the amended motion for a new trial, but he addressed the issue during arguments on the motion, highlighting E.C.'s testimony regarding the incorrect dates and arguing that there were inconsistencies between her statement to the police and her trial testimony.

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¶ 82 Again, despite defendant's challenge to posttrial counsel's performance, our reading of the record shows no deficiencies.

¶ 83 Failure to Call a Witness

¶ 84 Lastly, defendant claims trial counsel performed deficiently by failing to call his daughter, Kelly Garner, as a trial witness. Defendant contends Kelly would have testified "she believed that E.C. was pursuing the allegations against her father in order to extort money from him."

¶ 85 Trial counsel's decision concerning whether to call a certain witness on behalf of the defendant is a matter of trial strategy, reserved to the discretion of trial counsel. *People v. Enis*, 194 Ill. 2d 361, 378 (2000) (citing *People v. West*, 187 Ill. 2d 418, 432 (1999)). Because such a decision enjoys a strong presumption that it reflects sound trial strategy, rather than counsel's incompetence, the decision is generally immune from claims of ineffective assistance of counsel. *Enis*, 194 Ill. 2d at 378 (citing *People v. Reid*, 179 Ill. 2d 297, 310 (1997)). Although this court will generally not review a claim of ineffective assistance of counsel based on inadequate trial strategy, Illinois courts have recognized an exception, "where counsel entirely fails to conduct any meaningful adversarial testing." *People v. Guest*, 166 Ill. 2d 381, 394 (1995) (citing *People v. Hattery*, 109 Ill. 2d 449, 464(1985)) (citing *United States v. Cronin*, 466 U.S. 648, 656, 104 S. Ct. 2039, 2045, 80 L. Ed. 2d 657, 666 (1984)).

¶ 86 It is clear from the record, trial counsel knew of Kelly's existence. Defendant does not claim his trial counsel refused his request to have his daughter testify on his behalf. It is not even clear that he indicated to his counsel that he wanted her to testify on his behalf. We fail to see

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how the decision not to call defendant's daughter to testify prejudiced him.

¶ 87 Contrary to defendant's position, trial counsel's decision not to call defendant's daughter as a witness cannot be considered so unsound that he did not fulfill his constitutional obligation to provide a meaningful adversarial testing of the State's case. Under these circumstances, the trial court's conclusion that the defendant received effective assistance of counsel was not improper.

¶ 88 Our review of the records show that trial counsel presented a plausible, consistent defense and acted as a strong advocate on defendant's behalf throughout the proceedings. Trial counsel investigated the case, presented defendant's defense, and vigorously cross-examined the complainant, including highlighting points of inconsistency. Further, defense counsel successfully argued for a directed finding on one of the two counts. Although trial counsel's strategy was ultimately unsuccessful, the record makes clear trial counsel subjected the State's case to meaningful adversarial testing.

¶ 89 We further find no merit to defendant's accusation that posttrial counsel raised his claims in a "perfunctory manner." We find posttrial counsel vigorously represented defendant on his motion for a new trial. Posttrial requested that the trial judge review and tender the relevant DCFS records on two separate occasions, filed an original, and then amended, motion for a new trial, raising the relevant issues, and then argued those wholeheartedly before the court. Posttrial also filed a motion to reduce defendant' sentence. Because defendant has failed to show that the pursued trial strategy was unreasonable, we need not consider the second prong of the *Strickland* standard, prejudice. See *People v. Bannister*, 232 Ill. 2d 52, 80 (2008) (because a defendant must

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establish both prongs of *Strickland*, the failure to establish either prong is fatal to the defendant's ineffective assistance claim).

¶ 90 Based on the record before us, we are unpersuaded that trial counsel or posttrial counsel's representation was ineffective.

¶ 91 Due Process

¶ 92 Lastly, defendant contends the trial court violated his due process rights to a fair trial by failing to review the DCFS records and tender the relevant portions to his posttrial counsel. Defendant contends the trial court could not properly evaluate his failure-to-investigate claim without review of those records.

¶ 93 Defendant relies on *Pennsylvania v. Ritchie*, 480 U.S. 39 (1987), to support his request that the matter be remanded to the trial court for review of the DCFS records. In *Ritchie*, the Supreme Court considered "whether a defendant has a constitutional right to review statutorily privileged information about a witness so he can argue the relevancy and admissibility of the information to the court." *People v. Bean*, 137 Ill. 2d 65, 97 (1990). In *Ritchie*, the defendant subpoenaed a state welfare agency's records concerning his daughter, whom he was accused of sexually abusing. Based on confidentiality, the agency refused the defendant's request. The defendant was convicted. The Supreme Court held that under the due process clause of the fourteenth amendment, the defendant was entitled to an *in camera* review of the records by the trial court to determine whether they contained evidence that probably would have changed the outcome of the case. *Ritchie*, 480 U.S. at 43-44, 58.

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¶ 94 In the case before us, the trial judge made clear that before trial he would review the DCFS records at the parties' request and tender redacted portions to them. That defendant demanded trial without receipt of those records has no due process implications under *Ritchie*.

¶ 95 We further reject defendant's contention that the trial court's actions in this case were inconsistent with the requirements of *People v. Krankel*, 102 Ill. 2d 181 (1984), and its progeny. *Krankel* is not implicated where defendant retained his own counsel to present his posttrial ineffective assistance of counsel claims.

¶ 96 The actions of the trial court in this case properly protected defendant's due process interest throughout the entire proceeding. Accordingly, we find defendant's due process rights were not violated.

¶ 97 **CONCLUSION**

¶ 98 The evidence, when viewed in the light most favorable to the State, supports the trial court's finding of guilt. The credibility determination of the witnesses was for the trial court to make, and despite each witness offering a different version of the events in question, any purported inconsistency in the complainant's testimony failed to create reasonable doubt where the trial court believed the complainant's version over that offered by defendant. Further, based on a thorough review of the record, we are unpersuaded trial counsel or posttrial counsel's representation was ineffective where trial counsel chose to proceed to trial without first obtaining certain relevant records, a decision properly considered by the trial court to be one of trial strategy. Lastly, we hold the trial court properly protected defendant's due process interest

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throughout the entire proceeding and, therefore, defendant's claim to the contrary has no merit.

For the foregoing reasons, we affirm the trial court's judgment.

¶ 99 Affirmed.