

2014 IL App (2d) 121316-U
No. 2-12-1316
Order filed December 29, 2014

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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Winnebago County.
)	
Plaintiff-Appellee,)	
)	No. 12-CF-857
v.)	
)	
DENNIS RAHN,)	Honorable
)	Fernando L. Engelsma,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justice Birkett concurred in the judgment.
Justice Hutchinson dissented.

ORDER

¶ 1 *Held:* While there were shortcomings in the victim's testimony to be considered by the jury, these shortcomings did not render his testimony unreasonable or improbable; the evidence was sufficient to support defendant's conviction of predatory criminal sexual assault of a child beyond a reasonable doubt; affirmed.

¶ 2 Following a jury trial, defendant, Dennis Rahn, was found guilty of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)), and was sentenced to 13 years' imprisonment. On appeal, defendant contends that the evidence is insufficient to support his conviction because the victim failed to adequately identify defendant as his abuser and the

victim's testimony included several "significant" inconsistencies regarding the details of defendant's sexual assault. We affirm.

¶ 3

I. BACKGROUND

¶ 4 The predatory criminal sexual assault occurred between January 1, 2010, and June 30, 2010, when the victim, O.M., was between the ages of two and a half to three years old. While defendant resided with O.M.'s family from January to July 2010, he babysat for O.M. and his brother, T.M. O.M. was four years old when he reported the abuse.

¶ 5 Dawn, O.M.'s mother, was discussing cartoons with her children when her older son, T.M., mentioned that defendant used to let them watch Daffy Duck. O.M. then stated that defendant "used to put his pee-pee in my mouth." T.M. argued "that [the abuse] never happened." O.M. claimed, however, that T.M. was not present at the time. Dawn later questioned O.M. about the abuse and he insisted that he was being truthful. He also told Dawn that, if he tried to get up while defendant was abusing him, defendant would hit him in the head.

¶ 6 On January 31, 2012, Dawn took O.M. to the Carrie Lynn Children's Center for a videotaped interview with forensic interviewer, Marisol Tischman. Tischman explained to O.M. the importance of being truthful, and O.M. interjected that "Dennis (defendant) put his pee-pee in my mouth." Tischman asked for more details about the abuse, and O.M. said that it happened "a long time ago" at his other home. He also indicated that he was one years old when it happened. O.M. additionally claimed that defendant "put me in the freezer when he would do that." O.M. explained that it was cold in the freezer and he would try to get out so that he could tell his mom and dad. O.M. described the freezer as being on the "top" and that it was in the kitchen.

¶ 7 When asked about his family, O.M. told Tischman that he lived with his mother, two brothers, and Darryl, whom he described as “the mean one.” When Tischman questioned O.M. further about who the “mean one” was, O.M. responded, “Dennis and Gary, I mean, Darryl and one more, Gary.”

¶ 8 Tischman questioned O.M. about defendant, and O.M. again stated that defendant put him in the freezer and put his “pee-pee” in his mouth. He indicated that this occurred on the couch in the living room. During the abuse, O.M. said T.M. was in his room and his younger brother, G.M., was sleeping (G.M. however had not been born yet). O.M. also told Tischman that defendant would “take out his pee-pee” and would ask O.M. to “put it back in.” Tischman asked, “Where did he say to put it?” O.M. responded, “Everywhere.”

¶ 9 Tischman provided O.M. with an anatomical drawing to identify what he meant by “pee-pee” and O.M. correctly identified the area. She asked if anything came out of defendant’s “pee-pee” and O.M. stated, “I think he peed in my mouth.” However, when Tischman asked him how this felt, he said, “He didn’t even do that.”

¶ 10 Tischman asked if defendant ever put his “pee-pee” in anyone else’s mouth, and O.M. responded, “He did it to T.M. and T.M. said ‘no no.’ ” However, O.M. later stated that T.M. did not see this occur because he was in another room. He also indicated that T.M. did not believe O.M. had been abused by defendant.

¶ 11 Before ending the interview, Tischman discussed Darryl and Gary with O.M. O.M. told Tischman that Darryl was his father, and that Gary was a friend who would sometimes hit him. When asked where Gary would hit him, O.M. responded by touching his face. Because of O.M.’s increased hyperactivity throughout the second half of the interview, Tischman stopped questioning him after approximately 25 minutes.

¶ 12 On June 27, 2012, the trial court conducted a competency hearing to determine if O.M.'s statements were fit for trial. O.M. had just turned five at the time of the hearing. He correctly answered questions as to the difference between a truth and a lie, but he could not remember his last name. On cross-examination, he incorrectly stated that his brother, T.M., was 10 years old, when in actuality he was 6 years old at the time. He also was unable to recall his birthday. Nonetheless, the trial court found O.M. competent enough to express himself.

¶ 13 The court next conducted a hearing to determine whether evidence of O.M.'s out-of-court statements would be admitted during the trial pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-10 (West 2012)). The court heard testimony from O.M.'s mother, Dawn, as well as Tischman, and then watched the videotaped interview. The court found that there were sufficient safeguards of reliability pertaining to the time and manner in which O.M.'s statements were made. The court acknowledged the validity of defendant's arguments about O.M.'s reliability but stated that these concerns would be more appropriately addressed to the trier of fact. Defendant does not challenge the trial court's section 115-10 ruling.

¶ 14 At trial, the State's first witness, Detective Alan Semenchuk of the Rockford Police Department, testified that he had a phone conversation with defendant, in which he made defendant aware of O.M.'s accusations and asked him to come to the public safety building for an interview.

¶ 15 The State called O.M. as its second witness. After initial questions about his family and the difference between a truth and a lie, the State asked O.M. if he knew someone named Dennis. O.M. answered affirmatively, and he was asked "Who's Dennis." O.M. replied that he "used to be my babysitter." The State asked O.M. to look around the "whole courtroom" and to identify

defendant. O.M. could not. The State asked O.M. to step down so he could get a better view of the courtroom, and O.M. answered twice more that he did not see defendant.

¶ 16 After returning to the stand, O.M. was questioned further about what happened with defendant. O.M. said that defendant never lived with him. He also stated that defendant “put his pee-pee in my mouth.” He said the abuse occurred in the living room of the home he currently lived in, and only defendant and T.M. were home at the time. When asked to further explain the abuse, O.M. said that defendant “unzipped his pants and he just put his pee-pee in my mouth. That’s all what he did.” According to O.M., he was on his knees and defendant was sitting on the couch. O.M. said he felt bad when it happened and that it happened “like a lot,” and that he was four years old at the time. O.M. remembered telling his mother about what had happened, but he did not remember the interview with Tischman.

¶ 17 O.M. did not repeat the accusations regarding T.M. or the freezer at trial and he did not remember the videotaped interview. Defense counsel did not cross-examine O.M.

¶ 18 The State called Dawn as its third witness, who testified that defendant was a “friend” whom she had met in the fall of 2009. He had moved in with Dawn, Darryl, T.M., and O.M. in December 2009. Defendant continued living there until July 2010. Dawn testified that defendant babysat T.M. and O.M. about four or five times a week during this time period while she and Darryl worked. The family moved in September 2010, and defendant moved into the new residence with them in October 2010 and continued living there through the end of December 2010. Dawn testified that defendant was never alone with T.M. and O.M. at the second residence because the children were attending day care.

¶ 19 Dawn described her January 20, 2013, conversation with O.M. and T.M. about “Looney Tunes” cartoons, T.M.’s comment that defendant used to let the boys watch Daffy Duck, and

O.M.'s accusation. She stated that T.M. and O.M. began to argue. T.M. accused O.M. of lying. Dawn said that later, she and Darryl talked to O.M., who explained that defendant "used to put his pee-pee in my mouth. He would sit on the couch, take his underwear and pants down, and if I tried to get up, he would hit me in the head." Dawn also mentioned that O.M. said defendant, "didn't pee in my mouth[;] he used a towel." Dawn emphasized the importance of being truthful, explaining that she was going to call the police and defendant would likely "go to jail." O.M. insisted he was being truthful with her.

¶ 20 On cross-examination, Dawn testified that her children had no contact with defendant from the time he moved out of their residence around Christmas 2010 to the time of O.M.'s outcry statements. She also explained that O.M. did not mention defendant during this period. While defendant lived with the family, Dawn testified that O.M. would sometimes tell her that "Dennis was mean to me," but neither he nor T.M. mentioned sexual abuse. Dawn stated that she understood O.M.'s statements about defendant being mean to refer to unwanted punishment, and mentioned that, "[O.M.] doesn't like to be punished at all." Dawn testified that defendant never lived with the family after they moved in September 2011, and that a friend named Gary Chisholm lived with them from January 31, 2012, to February or March.

¶ 21 Loves Park Police Officer Ronald McFarland testified that he attempted to arrest defendant on March 26, 2012, but could not find him. Defendant voluntarily surrendered to the Winnebago County Sheriff's Department on April 8, 2012.

¶ 22 The State called Tischman as its final witness and played her videotaped interview with O.M. to the jury. She explained the process of interviewing children, and testified that children of O.M.'s age (four at the time of their interview) are not able to give a timeline of events. She

further explained that, until children are about seven or eight, they usually are not able to properly reference time in terms of dates, months, or seasons.

¶ 23 On cross-examination, defendant questioned Tischman about the interview. Tischman admitted that O.M. blurted out his initial accusation against defendant during the “rapport” section of their interview, while Tischman was explaining the importance of telling the truth. Tischman also said that she had no way of telling whether or not O.M. had been “coached” for their interview. Lastly, she explained her use of “focus recall questions,” during later parts of the interview, where she asked O.M. questions like: “Well, when he put his pee-pee in your mouth, tell me then what happened next.”

¶ 24 During defendant’s case-in-chief, Winnebago County Sheriff’s Deputy Fred Jones testified that defendant voluntarily surrendered to the Winnebago County Sheriff’s Department on April 8, 2012. Defendant’s sister, Denise Rahn, testified that, in late January 2012, Dawn approached her at a Wal-Mart and asked her “how [her] brother was doing?”

¶ 25 Following defendant’s case-in-chief and closing arguments, the jury began deliberations. About three hours after deliberations began, the jury sent a message to the judge indicating that they could not reach a unanimous verdict. After conferring with counsel, the judge returned a note to the jury telling them that they had to “continue to deliberate.” An hour later, the judge called a recess for the evening and told the jury to return the next morning. The jury deliberated about an hour the next morning before finding defendant guilty.

¶ 26 Defendant filed a motion for judgment notwithstanding the verdict and, alternatively, for a new trial, arguing in part that the State failed to prove defendant guilty beyond a reasonable doubt. The court denied the motions and subsequently sentenced defendant to 13 years’ imprisonment. Defendant timely appeals.

¶ 27

II. ANALYSIS

¶ 28 Defendant contends on appeal that he was not proved guilty beyond a reasonable doubt because the victim failed to adequately identify defendant as his abuser and the victim's testimony included several "significant" inconsistencies regarding the details of defendant's actions.¹

¶ 29 A reviewing court will not set aside a conviction on the basis of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). It is the jury's function to determine the guilt or innocence of defendant. *People v. Eycler*, 133 Ill. 2d 173, 191 (1989). "[The] relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' *** 'Once a defendant has been found guilty of the crime charged, the factfinder's [*sic*] role as weigher of the evidence is preserved through a legal conclusion that upon judicial review *all of the evidence* is to be considered in the light most favorable to the prosecution.' " (Emphases in original.) *Collins*, 106 Ill. 2d at 261 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)).

¶ 30 Further, it is the jury's function to weigh the credibility of the witnesses and to resolve conflicts or inconsistencies in their testimony. *People v. Enis*, 163 Ill. 2d 367, 393 (1994)). A reviewing court will not reweigh the evidence or substitute its judgment on these matters for that of the trier of fact who heard the evidence and had the opportunity to observe the demeanor of the witnesses unless the evidence is so palpably contrary to the verdict or so unreasonable,

¹ The dissent posits that the victim's competency to testify was never clearly established.

Defendant did not challenge the trial court's competency determination on appeal.

improbable, or unsatisfactory as to cause a reasonable doubt of defendant's guilt. *People v. Tenney*, 205 Ill. 2d 411, 428 (2002); *People v. McGill*, 264 Ill. App. 3d 451, 459 (1992). Because it is the function of the trier of fact, and not the court of review, to determine the credibility of the witnesses, where evidence is merely conflicting, the trier of fact's judgment will stand. *People v. Cooper*, 164 Ill. App. 3d 734, 737 (1987).

¶ 31 A reviewing court will not reverse a conviction because the evidence is contrary or because the defendant claims that a witness was not credible. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). “[C]ontradictory testimony of a witness does not *per se* destroy [his credibility], and it remains for the trier of fact to decide when, if at all, he testified truthfully.” *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004) (citing *Sparling v. Peabody Coal Co.*, 59 Ill. 2d 491, 498-99 (1974)). It is for the trier of fact to determine how flaws in parts of the testimony affect the credibility of the testimony as a whole. *Cunningham*, 212 Ill. 2d at 283.

¶ 32 Defendant first argues that O.M. failed to adequately identify defendant as his abuser. In support, defendant notes that O.M. was unable to make an in-court identification, he could only describe defendant as “white,” and he appeared to confuse defendant with Gary Chisholm who was living with O.M.'s family during the time O.M. was interviewed at the Carrie Lynn Center. Defendant maintains that the allegations against Chisholm should have been construed to a “higher degree of credibility” than those against defendant because his allegation against Chisholm related to events that necessarily would have occurred far more recently.

¶ 33 Despite O.M.'s failure to identify defendant in court, when O.M. was asked to identify defendant during the trial, the time had increased to over 18 months since O.M. last had seen defendant. Furthermore, even though O.M. failed to identify defendant at trial, O.M. had consistently accused defendant of sexual assault and had done so throughout his outcry

statements, the interview, the section 115-10 hearing, and at trial. Under these circumstances, the jury could reasonably infer that it was natural for such a young child to forget what his abuser looked like but still credibly remember the material facts about the sexual assault.

¶ 34 Additionally, the jury was able to compare the videotaped interview with the trial testimony and resolve any confusion O.M. might have had regarding Chisholm. As stated, it is the responsibility of the jury to assess the credibility of witnesses, weigh the evidence presented, resolve conflicts in the evidence, and draw reasonable inferences therefrom. See *People v. Williams*, 193 Ill. 2d 306, 338 (2000).

¶ 35 Defendant next contends that O.M.'s testimony included several "significant" inconsistencies regarding the details of defendant's actions which weighed against the reliability of O.M.'s allegations. Defendant points to inconsistencies regarding the time, location, and details of the accusations, such as: (1) when and where the abuse took place; (2) where defendant lived at the time; (3) where O.M. was at the time of the abuse; (4) whether defendant "peed" in O.M.'s mouth, a towel, or not at all; and, (5) whether defendant put his penis in T.M.'s mouth. Defendant asserts that, because O.M. consistently connected his memories of the alleged abuse to being placed in the freezer, it is also likely that his memories of the abuse are similarly unreliable.

¶ 36 Several possibilities exist regarding O.M.'s testimony about the freezer. First, it could have actually happened but, as defendant points out, the victim did not report this allegation at trial. Second, as the State argues, O.M.'s testimony about the freezer could have been a coping mechanism or, as defendant claims, "the product of [a] four-year-old child's imagination or distorted version of reality."

¶ 37 All of the inconsistencies of which defendant complains could be explained by O.M.'s confusion as to adult concepts, memory loss, and inability to verbalize or conceptualize details. The inability to recall certain events or to testify consistently to the facts could also be explained by O.M.'s age and inability to pinpoint accurate timelines. The failure of a young sexual assault victim to make a prompt complaint also is understandable because of the natural sense of shame, fear, revulsion, and embarrassment felt by children under such circumstances. See *People v. Priola*, 203 Ill. App. 3d 401, 414 (1990).

¶ 38 Moreover, as defendant concedes, a four-year-old cannot be expected to conceptualize the precise timing of events that occurred nearly two years earlier. Tischman believed that a child is unable to give an accurate timeline until around 7 or 8 years of age, and she opined that O.M. was the typical four-year-old when he was interviewed. A jury could reasonably infer that O.M. might have lost track of which residence the abuse actually occurred considering that he had lived in three different homes between the time of the abuse and the outcry statements. The jury also was permitted to consider the videotaped interview as more credible because it occurred closer in time to the abuse than the trial.

¶ 39 Defendant relies on *People v. Schott*, 145 Ill. 2d 188, 206-07 (1991)), where the purported victim's testimony was "fraught with inconsistencies and contradictions." In *Schott*, the defendant's conviction for aggravated indecent liberties with a child was reversed because the complainant was impeached to such a degree that the evidence did not establish the defendant's guilt beyond a reasonable doubt. *Id.* at 209. The supreme court noted that the complainant testified inconsistently about the location and time of year of the alleged offense. *Id.* at 189-90, 192, 207. The complainant also admitted lying "a lot." She previously had falsely accused her uncle of sexual assault. She also was sexually aberrant, had knowledge of the sex

act previous to meeting the defendant, had seen her uncle having sex, admitted to several people that she had lied about the defendant abusing her, and she had a motive to lie about the defendant. *Id.* at 193-94, 196-97, 205. In addition, a reasonable doubt existed as to whether the damage to her vaginal region had been caused by the defendant. *Id.* at 208. Here, unlike in *Schott*, the record does not show that O.M. had previous sexual knowledge, witnessed other adults engaging in sexual acts, had a history of lying, or admitted that he had lied about defendant. Also, there was no evidence presented concerning any animosity between Dawn, O.M., and defendant.

¶ 40 We have considered all of the alleged shortcomings in O.M.'s testimony cited by defendant and conclude that these presented credibility questions to be resolved by the jury. O.M. consistently maintained in his testimony and his conversation with Tischman that defendant was the person who babysat for him and lived in his home, which was confirmed by his mother. O.M. consistently told both his mother and Tischman and testified at trial that defendant put his "pee pee" in his mouth, that the abuse occurred in the living room, and that defendant was on the couch and O.M. was on the floor on his knees. While there were shortcomings in his testimony to be considered by the jury, these shortcomings did not render his testimony unreasonable or improbable as was the case in *Schott*. The evidence was sufficient to support defendant's conviction beyond a reasonable doubt. See *People v. Grano*, 286 Ill. App. 3d 278, 290 (1996) (jury, as trier of fact, was fully aware of inconsistencies in and contradictions to victim's testimony, the only eyewitness to offense, but nevertheless chose to believe her version of events).

¶ 41 Defendant cites case law relating to the admissibility of hearsay outcry statements pursuant to section 115-10 (725 ILCS 5/115-10 (West 2012)), and that, in the context of the

sufficiency of the evidence, his argument is “relevant because it [is] ultimately focused on the reliability of a young child’s out-of-court statements.” See, e.g., *People v. Bowen*, 183 Ill. 2d 103 (1998); *In re E.H.*, 377 Ill. App. 3d 406 (2007). However, defendant has not challenged on appeal the admissibility of O.M.’s statements pursuant to section 115-10. Nor does he challenge the trial court’s admission of the videotaped interview with Tischman or the statements O.M. made to his mother. Furthermore, the cases defendant relies on are not instructive because they focus solely on the admissibility, not the weight, of the evidence.

¶ 42 Defendant argues there were no eyewitnesses to support the allegations of abuse. Most child sexual abuse cases occur where there are no third-party eyewitnesses. See *People v. Cookson*, 215 Ill. 2d 194, 215 (2005). Also, there frequently is no physical evidence linking a defendant to the alleged abuse. See, e.g., *Id.* at 215; *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 89. Such physical evidence is not necessary for a conviction of predatory criminal sexual assault because the statute considers penetration to have occurred as a result of “*any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person.*” (Emphasis added.) 720 ILCS 5/12-12(f) (West 2010); 720 ILCS 5/12-14.1(a)(1) (West 2010); see *Garcia*, 2012 IL App (1st) 103590, ¶ 89.

¶ 43 Defendant further asserts that, because the jury deliberated five hours, it shows that the jury acted unreasonably and thus, rendered the verdict unreliable and inaccurate. Defendant does not point to any facts other than the length of deliberation to substantiate his claim. Accordingly, we find this argument speculative at best.

¶ 44 III. CONCLUSION

¶ 45 For the preceding reasons, we affirm the judgment of the circuit court of Winnebago County is affirmed.

¶ 46 Affirmed.

¶ 47 JUSTICE HUTCHINSON, dissenting:

¶ 48 I must respectfully dissent. While I am well aware of the *Collins* standard (*People v. Collins*, 106 Ill. 2d 237, 261 (1985)) and the jury's function to determine the guilt or innocence of a defendant (*People v. Eyer*, 133 Ill. 2d 173, 191 (1989), and *People v. Enis*, 163 Ill. 2d 367, 393 (1994)), all cited by the majority, after that boilerplate in the disposition, the majority spends a great deal of time explaining away the numerous inconsistencies and problems that peppered this trial.

¶ 49 The problems include the inability of the victim, that is, the only witness to testify about the alleged sexual contact, to identify the defendant in the courtroom. Another perplexing problem is that the young victim appeared to confuse the defendant with another man who had lived with the family who the victim described as "mean." Maybe the most difficult problem is the omission from the trial testimony of the young victim of a most remarkable detail of the contact--the fact that the young victim would be placed in the freezer during or after the contact.

¶ 50 The described problems also highlight the testimonial inconsistencies of the young victim. His age at which the alleged sexual contact occurred changed several times. The presence or absence of other people in the house at the time of the alleged sexual contact changed from accounts given at the Children's Center and to his mother. The young victim identified two different homes where the alleged sexual contact occurred.

¶ 51 The majority relies upon the testimony of the Children's Center interviewer, who testified that children of the victim's age often have trouble with timelines. The majority also uses her testimony to describe the expected difficulties of interviewing and focusing a child of the victim's age. Despite the absence of testimony from any medical expert about why children of

the victim's age are often confused or have a difficult time in court, the majority devotes an entire paragraph speculating why the problems and inconsistencies described probably occurred.

¶ 52 Having identified the problems and inconsistencies, I can now identify my specific issue with this disposition. Our young victim was anywhere between one and one-half and two years of age when the alleged sexual contact occurred. He reported the contact when he was four years old. Our young victim was interviewed at the Children's Center when he was five years old, and the trial commenced when our young victim was about five and one-half years old. While the requirement that corroborating evidence must be present to convict when the victim is a child of tender years has been supplanted by *Collins* (see *People v. Johnson*, 298 Ill. 52 (1921)), the concerns about the reliability of the testimony of young witnesses still exists. "The competency of a child to testify depends on his or her intelligence, understanding, and moral sense. If the preliminary examination shows that the child understands the nature and meaning of an oath, and is of sufficient intelligence and understanding to comprehend the things about which [he] is called upon to testify, it is not error to admit [his] testimony." *Johnson*, 298 Ill. at 54-55; see also 725 ILCS 5/115-14 (West 2012).

¶ 53 At the competency hearing, the young victim did not know his last name, and it appears that he had a difficult time paying attention because he was playing with the microphone. He was asked about telling the truth and telling a lie, but there was no inquiry about school attendance or why the truth is important. When asked his age, he could hold up the appropriate number of fingers, but he did not respond when asked what age that was. At the time of the trial, our young victim was asked about school attendance and what he liked and disliked about school. His favorite activity was playground, and he did not like numbers because they were hard. He could tell the court that he had an older brother and a younger brother, but he could not

identify the age of his older brother. Our young victim could answer simple questions, but he could not identify the defendant even after walking about the courtroom. In my view, the young victim's testimony indicated that he did not possess sufficient intellect to relate transactions about which he was questioned when placed under oath.

¶ 54 Despite finding our young victim competent to testify, the court making the finding did not address the young victim's intelligence, did not address whether the young victim understood the concept of an oath, and seemed to disregard the young victim's inability to state his last name or say how old he was. At trial, the difference between a lie and the truth was again explored, but details about where the alleged sexual contact occurred and certain questions that involved numbers were inconsistent.

¶ 55 While the jury sat and listened to the evidence in this case, the competency of the young victim, who was the only witness to the alleged sexual contact, was never clearly established. See *People v. Ash*, 102 Ill.2d 485, 494 (1984) (noting that a conviction cannot stand when a witness' identification of the accused as the criminal perpetrator is vague and doubtful). Without competency clearly established, the problems and inconsistencies identified above and created by our young victim create a reasonable doubt of defendant's guilt in my opinion.

¶ 56 For these reasons, I respectfully dissent.