[Cite as *State v. Dandridge*, 2021-Ohio-3355.]

COURT OF APPEALS OF OHIO

EIGHTH APPELLATE DISTRICT
COUNTY OF CUYAHOGA

STATE OF OHIO,	:	
Plaintiff-Appellee,	:	No. 109608
v.	:	
SAMUEL A. DANDRIDGE,	:	
Defendant-Appellant.	:	

JOURNAL ENTRY AND OPINION

JUDGMENT: AFFIRMED
RELEASED AND JOURNALIZED: September 23, 2021

Criminal Appeal from the Cuyahoga County Court of Common Pleas
Case No. CR-19-636076-A

Appearances:

Michael C. O'Malley, Cuyahoga County Prosecuting Attorney, and Fallon Radigan, Ben McNair, and Alaina Hagans, Assistant Prosecuting Attorneys, *for appellee.*

Joseph V. Pagano, *for appellant*.

LISA B. FORBES, J.:

{¶ 1} Samuel A. Dandridge ("Dandridge") appeals his convictions for multiple sexual offenses. After reviewing the facts of the case and pertinent law, we affirm.

I. Facts and Procedural History

{¶ 2} This case stems from accusations that Dandridge sexually abused M.T. from 2006 to 2016, beginning when M.T. was five years old. Dandridge, M.T.'s mother's boyfriend, was living with M.T. and her mother ("J.H.") during this time. Ultimately, in 2018, M.T. disclosed the abuse to a school counselor because she believed Dandridge would start abusing her younger sister when M.T. left for college.

{¶ 3} On March 25, 2019, Dandridge was charged with four counts of rape in violation of R.C. 2907.02(A)(1)(b), a first-degree felony; gross sexual imposition in violation of R.C. 2907.05(A)(4), a third-degree felony; two counts of kidnapping in violation of R.C. 2905.01(A)(4), a first-degree felony; disseminating matter harmful to juveniles in violation of R.C. 2907.31(A)(1), a fourth-degree felony; and intimidation of a crime victim or witness in violation of R.C. 2921.04(A), a first-degree misdemeanor.

{¶ 4} On January 17, 2020, a jury found Dandridge guilty of two counts of rape, gross sexual imposition, two counts of kidnapping, and disseminating matter harmful to juveniles. On February 14, 2020, the court sentenced Dandridge to an aggregate of 15-years-to-life in prison. It is from these convictions that Dandridge appeals.

II. Trial Testimony

A. Officer Gilmer

{¶ 5} Euclid Police Officer Matthew Gilmer ("Officer Gilmer") testified that on November 5, 2018, he spoke with Salethia King ("King") from the Cuyahoga County Division of Children and Family Services ("CCDCFS"), who brought a "potential rape case" to the police's attention. Officer Gilmer testified that "it's very common" for initial complaints to come from social workers, rather than victims, when the victim is a juvenile. "Juveniles tend to feel like they've done something wrong or they might not be comfortable contacting the police."

{¶ 6} On November 7, 2018, Officer Gilmer interviewed M.T. at her house. Officer Gilmer testified that M.T. was uncomfortable during their interview, which was ultimately cut short.

{¶ 7} Officer Gilmer set up another interview with M.T. at the police station for November 8, 2018, at 3:00 p.m. M.T. did not appear for this interview. Officer Gilmer testified that "[i]t should be noted that this is not uncommon in this kind of case because, again, especially with juveniles, they feel like they may have done something wrong if they're coming into a police station, but I was not able to hear from her that day." At this point, the investigation was given to Lieutenant Detective Michael Knack ("Lieut. Knack").

B. M.T.

{¶ 8} M.T. testified that she is 18 years old and graduated from Euclid High School in 2019. When she graduated, she was living at home with her mom, J.H.,

her "stepdad" Dandridge, her brother, and her half-sister. M.T.'s half-sister was 12 years old at the time M.T. testified. M.T. testified that Dandridge has been in her life since she was four years old and she referred to him as "Dad." M.T. currently lives with her boyfriend's family because she "feel[s] more safer there than anywhere else." At the time of the trial, M.T. had no relationship with her mother, because J.H. "doesn't have my back."

{¶ 9} In November 2018, M.T. was filling out college applications with a school counselor Stacey Taylor ("Taylor") when M.T. disclosed that she had been abused. According to M.T., Dandridge

> would touch me and make me do certain things that wasn't right I guess. It made me feel nasty. * * * He would touch me and make me do certain things and I didn't want to. And then growing up, I forgot about it because he would always buy me things that made me forget, but it hit me when I started talking to [Taylor], and I just had to talk to somebody.

{¶ 10} M.T. was feeling "very depressed" at the time because she was concerned that Dandridge would start to abuse her half-sister. "I didn't know if he touched her or tried or made her do certain things. I mean, I don't know, but she was my main concern."

{¶ 11} According to M.T., Taylor asked her if she wanted to take her allegations "further." King at CCDCFS was contacted, and eventually the Euclid Police Department became involved. Asked why she chose to report the allegations, M.T. replied, "I thought that was the only way to get help because I didn't have help

for a long time. I didn't know how to get help." According to M.T., prior to disclosing to Taylor, she told J.H. about Dandridge's abuse, but nothing happened.

{¶ 12} M.T. testified that she could not make a statement to the police officer who came to her home, because she was not able to "speak freely" when Dandridge was still living there. M.T. eventually went to the police department and spoke with Lieut. Knack.

{¶ 13} M.T. testified that Dandridge began touching her when she was eight years old. However, she also testified that when she was five years old, in 2006, she used to lay in bed with J.H. and Dandridge, and "he would wrap his leg around my leg and his arm around my waist." When she was six or seven years old, "he tried to slip his hand down my pants. I remember me moving his arm or his hand and I got out of the bed and went in my bed." According to M.T., Dandridge's hand went underneath her underwear and he touched the "top of my vagina * * *." M.T. told her mom what happened, and J.H. said she would talk to Dandridge. Nothing came of this.

{¶ 14} When M.T. was eight years old, she was in J.H. and Dandridge's bed again when the following occurred: "He had his arm on my waist still and this time he went down in my pants, under the underwear, and started penetrating me with his fingers — or finger." M.T. testified that "[i]t hurt" and she felt "[d]isgusted, nasty." M.T. tried to stop Dandridge by moving his hand and telling him "it hurt." Dandridge told her to "go pee."

{¶ 15} M.T. testified that when she was 11 or 12 years old another incident occurred:

> I was upstairs in my room, and I think I was laying down, and he came upstairs and he asked me, "Do you want to go to Fun & Stuff?" And I said yes. And he said, "Okay. You're going to have to basically give me oral sex." So I did. He didn't ejaculate or anything like that. He told me to think of it as a lollipop. Afterwards, when he finished, he told me not to say anything.

{¶ 16} Asked what she meant by "oral sex," M.T. replied, "My mouth on his penis. * * * I felt awkward, weird. I didn't know what I was doing, so I think I just went with it." According to M.T., Fun & Stuff was closed when they got there, so Dandridge took her, J.H., her sister, and her brother "out to eat at Golden Corral I think, or maybe it was somewhere else." She did not tell anyone about the incident because she "felt like it was embarrassing."

{¶ 17} M.T. testified about another incident:

> I was in the living room with [my family] and I was about the same age, 11 or 12, and I had got something on my hands. I went into their bathroom in their room and I was washing my hands and he came in, closed the door, and just started jacking off, telling me to have my hand out so he can ejaculate on my hand. It was my right hand. And he did. He told me to quickly wash it off.

{¶ 18} Asked to explain "jacking off," M.T. answered, "[p]laying with his penis." Asked to explain "ejaculated," M.T. stated, "[s]ome sperm, white substance." Asked if she knew what that was at the time, she answered, "Not really, no, I didn't know. I didn't know what it was." M.T. testified that she did not tell anyone what happened, but she felt "disgusted."

{¶ 19} M.T. testified that when she was 14 or 15 years old, the following incident occurred:

> There was a time when we were all in the kitchen. * * * I think my mom was cooking and [Dandridge] told me to come in the room and they had a white vibrator, just a toy, and closed the door, and tried to use it on me — yeah, tried to use it on me and I remember my mom knocking on the door asking, "What's going on?" And he was saying, "Nothing * * *, nothing," and I kept trying to get up. He was like, "No, no, lay down." And I got up and walked out, walked out of the room.

{¶ 20} M.T. testified further about this incident. Dandridge "tells me to sit down and I think he asked me if I ever used it." According to M.T., by "it" she meant the vibrator. "I think he said, 'I'm going to use it on you to help you sleep.' I wasn't getting enough sleep and I guess he thought that was a good idea to get sleep." Dandridge told her to "lay down" on the bed, and he pulled out "this vibrator." M.T. testified that Dandridge "[p]ushed me down, and he had me — so I was helpless. He had me not pinned down, but pinned down, and he told me to put a pillow over my face, and he turned it on and afterwards I got up." M.T. had shorts on during this incident. The following testimony describes how the incident ended:

> A: I moved the pillow. I think I rolled or I probably moved him. Not probably. I moved him and I walked out and he told me, "Come here." I unlocked the door, opened the door, walked out. My mom was right there.
>
> Q: So was she outside the door?
>
> A: Yeah. She didn't go anywhere. She was standing right there.
>
> Q: Did she try to open the door when you were in there?
>
> A: Yes.

Q: And did he say anything to your mom when she was trying to open the door?

A: Told her to stop.

Q: He told her to stop? And did she?

A: No. She was — she kept asking what was going on.

Q: And did you tell her what was going on?

A: No.

Q: Why not?

A: I don't know — I don't know how to say it.

{¶ 21} M.T. then identified the state's exhibit No. 18, which is a picture of the white vibrator recovered from J.H. and Dandridge's house, and the state's exhibit No. 62, which was the actual vibrator recovered from the house, as the same white vibrator that Dandridge "attempted to use on" her during this incident. M.T. testified that this was not the only vibrator that Dandridge tried to use on her. Dandridge provided M.T. with her own vibrator. Asked why Dandridge did this, M.T. testified that "[h]is favorite line was so I can get sleep." In court, M.T. identified this vibrator, and pictures of this vibrator, as the one Dandridge bought for her.

{¶ 22} According to M.T., she witnessed Dandridge using yet another vibrator on J.H.

There was — not that specific one, but there was a pink one, like longer. It was more of a penis — a penis-looking one. I can explain that. * * * So [I] was probably — I want to say 8 or 9, probably 10, and I had this game I always used to play, and we was going out to eat. I missed school. And my mom and stepdad was nowhere to be found, so I went to the back where their room is located and I was knocking on their door, you know: "Mom, dad, what are you all doing?" And I was sitting

> — I had my back against the door and I was playing my game and he told me to come in.
>
> So I came in and I seen him using it on my mom, the vibrator, on my mom, and immediately my mom said, "No, she can't be in here, she has to get out," and he was saying, "No, she can be in here, she can sit over here and watch." So my mom was still saying no, and he was still saying yeah, so he was basically telling me, "Come over here and watch; sit down and watch." I had my game, so I went over and sat down and was just playing my game.

{¶ 23} M.T. testified that Dandridge continued to use the vibrator "[i]n [J.H.'s] vagina." Asked if she later discussed this with J.H., M.T. testified that "[s]he didn't say anything to me, so I didn't say anything to her."

{¶ 24} M.T. testified that when she was "probably 13 or 14," the following incident occurred:

> [M]y nipples were peeling off, like my skin, and I didn't know what it was, if it was my bra or the soap I was using or lotion or anything, and he wanted to see what it was doing and what it looked like and my mom was right next to him and he flashed a flashlight. We was in the room, in my mom and [Dandridge's] room, and he flashed a flashlight on it and was just looking at it I guess to see what it was, or what he think it was, and he said somebody is sucking my nipples too hard.

{¶ 25} M.T. testified that Dandridge would talk to her about sex "every day," in particular, "everything" about sex, including "oral sex, penetration with penis, fingers, a toy, anything." Dandridge "always used to say" that he "needed me to be prepared or learning I guess." According to M.T., J.H. never had these conversations about sex with her, and M.T. thought this was "odd" or "weird." Dandridge would "always buy" her "underwear and * * * bras," including "lingerie, so like thongs, like lingerie-type of underwear." M.T. would have to "[t]ry them on and show" Dandridge the lingerie. "I would try them on in the bathroom and come

out. He wanted to see how it fits." Asked how often this happened, M.T. testified, "A lot," starting at age ten or 11. Dandridge would comment, "I like those"; or "Those fit your body nice and snug"; or "Fits your shape well." Sometimes Dandridge had M.T. pose for photographs. M.T. identified in court several pieces of underwear and lingerie that Dandridge bought for her and made her model for him. M.T. testified that all of this made her feel "[a]wkward."

{¶ 26} M.T. testified that Dandridge had her send him many pictures of herself in various poses. Asked why she sent them after Dandridge "had done these things to" her, M.T. replied, "In the midst of me doing all that, like I said, I forgot a lot of stuff that happened because he would buy me materialistic things, make me kind of forget about a lot of stuff, as I did." Asked what Dandridge would buy her, M.T. testified, "The new iPhone. I always got my hair done. My nails would always be done. Always get new clothes. Always had new shoes. New everything." M.T. testified that she and her sister "got a lot of stuff," but not her brother. In 2016, Dandridge bought M.T. a car in anticipation of her getting her driver's license. M.T. testified that after she reported Dandridge's abuse, she had to give the car back. Later in her testimony, M.T. agreed that she "never actually received the car."

{¶ 27} According to M.T., Dandridge made many comments on her breasts.

> He would always say I have nice boobs, like they sit up nice, I guess, they're nice. He would always say that. * * * So one being bigger than the other, I didn't know it was natural for that to be — well, I didn't know it was natural, as a woman, that one breast could be bigger than the other. So he would always tell me to lift it up, "Let me see what's wrong," and he would always compliment how they looked.

{¶ 28} M.T. testified that this made her feel "[v]ery uncomfortable."

{¶ 29} M.T. testified on direct examination about an issue involving her boyfriend Antonio and the concept of making money from social media videos. According to M.T., she, Antonio, Dandridge, and J.H. talked about "how much money we could make on YouTube" by posting videos that go "viral." M.T. testified that Dandridge said, "he needs to see it to make sure it's not dirty money, and he needs proof." M.T. further testified, however, that this was just a conversation. Asked if Antonio ever posted "a photograph with regards to this cash," M.T. answered, "No." M.T. additionally testified that Dandridge's "concerns about illegal activities from that money" including him not wanting Antonio in the car he anticipated buying for M.T. when she got her license. Asked if this made her angry, M.T. answered, "Yes."

C. High School Social Worker

{¶ 30} Elizabeth Russo testified that she is a licensed social worker at Euclid High School, and Stacey Taylor is a school-based therapist at Euclid High School. In November 2018, Taylor informed Russo that there was a "situation" with M.T. Russo spoke with M.T. and, as a result, Russo "followed school policy" and reported the situation to her superiors and CCDCFS.

D. High School Therapist

{¶ 31} Stacey Taylor ("Taylor") testified that she is a therapist at Euclid High School. In November 2018, M.T. spoke with Taylor regarding college applications "but then started to tell me about what was going on at home." Taylor explained

that M.T. "became very serious" and told her about "[h]er family, stepdad specifically." M.T. reported "ongoing sexual abuse since the age of 5 with stepdad."

> She had told me that she was told to watch mom and stepdad have sexual intercourse and another instance when she was going to go to Fun & Stuff, or was — that she had to do something to stepdad in order to be able to go to Fun & Stuff and then she had to expose herself on other occasions in order to obtain material items.

{¶ 32} Asked what M.T. had to do to her stepdad, Taylor replied, "[p]ut his penis in her mouth." According to Taylor, this behavior is "classified" as "[s]exual abuse." Taylor followed protocol, contacting Russo and reporting the abuse to CCDCFS. At this time, Dandridge and M.T. were living in the same house, and safety was a concern. Taylor continued therapy sessions with M.T., ultimately diagnosing her with depressive disorder not otherwise specified, trauma stressor-related disorder not otherwise specified, and posttraumatic stress disorder. Specifically, M.T. "reported that she had wanted to harm herself in the past. She had a lot of anger. She was having a hard time sleeping at night and wanted the lights on. There was conflict in the home."

E. CCDCFS Social Worker

{¶ 33} Salethia King ("King") testified that in November 2018, she was a social worker in the sex abuse unit of CCDCFS. Her job was to investigate sexual abuse allegations to determine if they are substantiated, indicated, or unsubstantiated. She was assigned to investigate M.T.'s allegations against Dandridge. The case was considered an emergency because "the alleged perpetrator was living in the home." From her initial interview with M.T., King "gleaned" the

following: "That sexual abused may have happened to her, that there is a perpetrator in the home, the person that she feels — well, the person that she's alleging is the perpetrator is living in the home." M.T. indicated that the perpetrator was Dandridge.

{¶ 34} King went to M.T.'s home and spoke with M.T.'s mother and sister. She also waited for Dandridge to get home, and she spoke with him. King testified that her conversation with Dandridge went as follows:

> Okay. When Mr. Dandridge came in, I explained — I introduced myself. I explained why I was there. I explained that the agency received a sexual abuse allegation where he was named the alleged perpetrator. I explained that he would have to leave the home in order to maintain safety for both children in the home.
>
> After I explained that to him, he said he thought the victim was okay and he wanted to leave the home a year ago but was asked to stay by the victim. He said he made a mistake, but the child was so close to him, and that's when the mother cut him off * * * and he walked into the bedroom and packed his bag, so I just waited for him to leave the home.

{¶ 35} Three days later, on November 5, 2018, King met with M.T., J.H., and Dandridge again at CCDCFS to talk "about the allegations and the safety risk and the solutions." King testified that Dandridge "apologized once again. He said he couldn't remember the details of the sexual abuse or what age the victim was." Asked if Dandridge ever denied the allegations, King answered, "No." On cross-examination, King was asked if Dandridge ever said, "Yes, I did it." King answered, "No."

{¶ 36} As to the solutions, King and CCDCFS created a case plan under which Dandridge was to remain out of the home, and he was not allowed to have

unsupervised visits with M.T. or her younger sister. Dandridge signed the case plan and said, "Y'all have brought the beast out now." King eventually reported the abuse to the police.

{¶ 37} King testified that M.T. did not want to report the matter to the police because she "didn't want her little sister to be without a father." King also testified that J.H. is on disability and Dandridge "helps out with a lot of the bills at home." According to King, when Dandridge was packing his things to leave the house on November 2, 2018, he made the following comment: "You know, that iPhone might not be able to stay around since I have to pay bills here and pay bills somewhere else if I leave."

{¶ 38} After interviewing J.H. and Dandridge, King determined that M.T.'s allegations against Dandridge were substantiated, which means that "there is evidence to support that the allegation happened."

F. Lieut. Knack

{¶ 39} Lieut. Knack testified that he is a lieutenant in the Euclid Police Department Detective Bureau. He investigated M.T.'s allegations against Dandridge. "This case was * * * allegations of a rape involving a juvenile with what would be considered a late disclosure, meaning it didn't just happen. This happened over a prolonged period of time, and it happened in the past." M.T. did not show up for her first interview with Lieut. Knack. Asked why, Lieut. Knack testified,

> A level of being uncomfortable, disclosing, and actually sitting down with a law enforcement officer without the support and network available to her to sit down in an interview and disclose what happened. From my experience it's kind of scary stuff as we've learned in training.

> She was able to bring her boyfriend in for an initial interview and the two of them were in the interview with me.

{¶ 40} Lieut. Knack eventually interviewed M.T. on November 17, 2018. According to Lieut. Knack, M.T. reported that the abuse began when she was five years old, "continued on until she was 11 or 12" years old, "and she made the disclosure at the age of 17."

{¶ 41} Lieut. Knack interviewed J.H. to "establish a timeline" regarding M.T.'s allegations and to "offer credibility" to M.T.'s statement. Knack testified as follows about this interview:

> I found the interview to be very labored. In her answers, she was not forthcoming. As a detective, I like to — I don't know if the word control is the proper word — but I like to be in control of the atmosphere and dynamics of an interview and I believe an individual's kitchen with people moving about the house was not a good place. So when I saw that the interview really wasn't going anywhere — she did disclose some things to me — but I wanted a more formal setting, which was the Euclid Police Department Detective Bureau interview room. I asked her at that time if she would be willing to come in for a more formal interview at a future time.

{¶ 42} As to J.H's second interview, at which Dandridge was present, Lieut. Knack testified as follows: "Her responses to my questions were very labored and it was a very difficult interview to conduct. She was not forthcoming with answers to questions that were very simple questions. I, as an investigator, got the feeling that she was trying to be very cautious with her answers so as not to get herself or [Dandridge] in trouble."

{¶ 43} That same day, December 28, 2018, Lieut. Knack interviewed Dandridge. Dandridge said, "I work seven days. I'm never with her. I'm like a

mother figure to her. She discloses and talks to me about her sexual activity." Lieut. Knack testified that he found Dandridge's statements to contain "a lot of contradiction" in that "he's never with the family but that he's always with them." Asked whether he conditioned going to Fun & Stuff on oral sex with M.T., Dandridge responded to Lieut. Knack "What is Fun & Stuff?" Dandridge admitted to looking at M.T.'s breasts. Dandridge did not admit to any of the other allegations.

{¶ 44} Lieut. Knack testified that he recovered Dandridge's cell phone from Dandridge during his arrest. Another trained detective downloaded the digital information from Dandridge's phone and prepared a report using this information. Lieut. Knack "reviewed the report with knowledge of this case." Pertinent to this case, Dandridge's phone contained multiple pictures of M.T. Additionally, the police searched Dandridge's home in association with his arrest, and Lieut. Knack recovered various items, including "a pair of female panties," a "pink vibrator," and "a white and blue * * * vibrator." Lieut. Knack testified that "[t]hese were items that were disclosed [by M.T.] that may have some evidentiary value."

G. J.H.

{¶ 45} J.H., who testified for the defense, stated that she and Dandridge have been together for "about 17" years and have lived together "[m]aybe 15 years." According to J.H., M.T. was "about 6" years old when Dandridge moved in with her and her children. In 2017, M.T. told J.H. that Dandridge had sexually abused her. "She said [Dandridge] touched her. * * * She said * * * something about his private part. That's all she said."

H. Tenisha Dandridge

{¶ 46} Tenisha Dandridge ("Tenisha") testified that she is Dandridge's sister, and she considers M.T. to be her niece. Tenisha has "no knowledge" of Dandridge ever breaking the law. According to Tenisha, M.T. is Dandridge's stepdaughter and, when Dandridge "was in they life, they was happy." Tenisha has four daughters, and she has no concerns about Dandridge being around her children.

I. Ja.H.

{¶ 47} Ja.H. testified that he is J.H.'s brother. Over the last ten years, he would see J.H., Dandridge, and their children "[m]aybe at least twice or three times a week, probably a little more, you know, on the holidays or the weekends." Ja.H. testified that he is a minister, and he has been "[p]retty much like a uncle/father figure" to M.T. while she was growing up, talking to her "very, very regularly, very, very often." It was not until the "end of 2018" that M.T. told Ja.H. that Dandridge molested her.

J. Dandridge

{¶ 48} Dandridge testified in his own defense. Dandridge began dating J.H. in 2005. At first, J.H.'s children were "scared" of Dandridge. It took them "a long time," but "not a year" to "get adjusted" to him. According to Dandridge, he first learned about M.T.'s allegations against him in 2017, when J.H. "said something" to him. Dandridge admitted that M.T. used to come into bed with him and J.H., but denied that this started when M.T. was five years old. Dandridge testified that this

did not start until "probably 2008, 2009, somewhere around in there." M.T. was between six and eight years old during that time.

{¶ 49} Dandridge denied that he "would wrap [his] leg around her leg and [his] arm around her arm." Rather, he testified, he "did roll over on her when I be sleep. I work seven days a week and I be tired. I don't know she in the bed with me." As to M.T.'s other allegations, Dandridge testified as follows:

> Q: She also said while in bed with you and [J.H.], that you tried to put your hand in her pants.
>
> A: Not true.
>
> A: Didn't happen?
>
> A: No.
>
> Q: Not even in your sleep?
>
> A: No.
>
> Q: She says — I believe her testimony was that you tried to touch the top of her vagina and she pushed your arm away.
>
> A: No.

{¶ 50} Dandridge denied each instance of abuse that his counsel asked him about. Dandridge denied going to Fun & Stuff and denied even knowing what Fun & Stuff is. Dandridge testified that his and J.H.'s daughter, S.M., also came into bed with him and J.H. "[a]ll the time" including with M.T. According to Dandridge, he never used a vibrator on M.T. "It's the other way around. She used it. [J.H.] told me she used it. * * * She used it. Herself. [J.H.] told me that. * * * Right. It's twisted. She used it." Dandridge testified that he "bought a whole lot of [vibrators],

but I kept them in the top drawer. That's where they all stayed." He bought them for J.H. Dandridge denied that M.T. ever came into the bedroom while he and J.H. were having sex.

{¶ 51} Dandridge admitted that M.T. had "issues with her breasts," because they were

> peeling, sticking to her bra. I took my flashlight and looked at it. On my phone. I called my mother right away. My mother took up the medical field but she never pursued it and she said it could be something irritating it like the washing powder or something, so we took her to the doctor again, but we called somebody else that's in the medical field that said she could be pregnant.

{¶ 52} Dandridge testified that he talked with M.T. about sex, "[n]ot all the time. Just when she started dating. * * * Could have been like 15, 14, 15 years old I think." He denied talking about anything "too graphic" or anything other than "the birds and the bees talk." He denied buying M.T. any type of underwear or lingerie, although he testified that he may have paid for things that M.T. and J.H. picked out. He denied that M.T. "modelled" lingerie for him, although he testified that M.T. and J.H. "tried the clothes on when I bought they clothes * * *. I make sure they try they clothes on. That's it. Make sure it fit."

{¶ 53} Dandridge testified about various pictures of M.T. that were on his cell phone. One of them was a picture of M.T. in a sports bra and another picture showed M.T.'s belly piercing. Dandridge testified that he took these pictures and posted some of them on his Instagram account.

{¶ 54} Dandridge testified that he bought M.T. a car in 2016, because he "was just getting tired" of driving her around. Dandridge testified as follows about the "$10,000 in cash incident" involving Antonio that led to M.T. starting to "disrespect" him.

> A: I came home from work and her and — [J.H.] and [M.T.] told me that — [J.H.] told me that they FaceTimed it, the money. I said, "Well, let me see it." They never showed me. But [J.H.] the one that told me they cash the check —
>
> PROSECUTOR: Objection.
>
> THE COURT: Sustained.
>
> Q: So they said they had $10,000 in cash, or there was $10,000 in cash?
>
> A: Yes.
>
> Q: And did you ask where that money came from?
>
> A: Said YouTube video.
>
> * * *
>
> Q: And did you get an answer that made sense to you?
>
> A: Nope.
>
> * * *
>
> Q: Did you tell [J.H.] — I'm sorry, [M.T.], at some point that she could not have her boyfriend in the car?
>
> A: Yes.
>
> Q: Why?
>
> A: Said they cash the check at Wal*mart. A 17-year-old not going to cash no check at Wal*Mart.
>
> * * *

Q: Why didn't you want Antonio in the car?

A: Because of the money.

Q: I don't understand. Explain that.

A: Didn't know where the money come from, so I said, "He's not getting in that car." She said she didn't want the car anymore. That's when she started disrespecting me. After all this time.

{¶ 55} Dandridge further testified that the "money issue" was "around 2017" and M.T.'s disrespect of him continued into 2018 when she disclosed the abuse.

III. Law and Analysis

A. Standard of Review for Assignments of Error One Through Three

1. Admissibility of Evidence

{¶ 56} "The admission or exclusion of relevant evidence rests within the sound discretion of the trial court." *State v. Sage*, 31 Ohio St.3d 173, 180, 510 N.E.2d 343 (1987). Pursuant to Evid.R. 401, relevant evidence is "evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Relevant evidence is not admissible, however, "if its probative value is substantially outweighed by the danger of unfair prejudice, of confusion of the issues, or of misleading the jury." Evid.R. 403(A). "Where evidence has been improperly admitted in derogation of a criminal defendant's constitutional rights, the admission is harmless 'beyond a reasonable doubt' if the remaining evidence alone comprises 'overwhelming' proof of defendant's guilt." *State v. Williams*, 6 Ohio St.3d 281, 290, 452 N.E.2d 1323 (1983).

2. Ineffective Assistance of Counsel

{¶ 57} To succeed on a claim of ineffective assistance of counsel, a defendant must establish that his or her attorney's performance was deficient and that the defendant was prejudiced by the deficient performance. *Strickland v. Washington*, 466 U.S. 668, 104 S.Ct. 2052, 80 L.Ed.2d 674 (1984). However, "a court need not determine whether counsel's performance was deficient before examining the prejudice suffered by the defendant as a result of the alleged deficiencies. The object of an ineffectiveness claim is not to grade counsel's performance." *Id*. at 697. *See also State v. Bradley*, 42 Ohio St.3d 136, 538 N.E.2d 3743 (1989).

3. Plain Error

{¶ 58} Failure to object at trial waives all but plain error. *State v. Sutton*, 8th Dist. Cuyahoga No. 90172, 2008-Ohio-3677, ¶ 35. Pursuant to Crim.R. 52(B), "[p]lain errors or defects affecting substantial rights may be noticed although they were not brought to the attention of the court."

> By its very terms, the rule places three limitations on a reviewing court's decision to correct an error despite the absence of a timely objection at trial. First, there must be an error, i.e., a deviation from a legal rule. Second, the error must be plain. To be "plain" within the meaning of Crim.R. 52(B), an error must be an "obvious" defect in the trial proceedings. Third, the error must have affected "substantial rights." We have interpreted this aspect of the rule to mean that the trial court's error must have affected the outcome of the trial.

(Citations omitted.) *State v. Barnes*, 94 Ohio St.3d 21, 27, 759 N.E.2d 1240 (2002).

B. Lay Witness Opinion Testimony

{¶ 59} Dandridge argues in his first assignment of error that "numerous instances of lay witnesses providing opinion testimony throughout the trial violated

[his] Constitutional rights." Specifically, Dandridge takes issue with Officer Gilmore's testimony regarding M.T.'s credibility and Lieut. Knack's testimony regarding J.H.'s and Dandridge's credibility. Dandridge argues that the admission of this testimony was plain error, and if not, counsel's failure to object constituted ineffective assistance.

{¶ 60} In his appellate brief, Dandridge argues that the testimony he takes issue with is as follows.

{¶ 61} Officer Gilmer "tried to account for M.T.'s initial refusal to speak to him by saying she was 'uncomfortable' but later admitted he was just 'reading her body language." Officer Gilmer "informed the jury 'it should be noted that this is not uncommon in this kind of case because, again, especially with juveniles, they feel like they may have done something wrong if they're coming into a police station, but I was not able to hear from her that day." Officer Gilmer "speculated without objection to the jury that people often act nervous because he is a police officer, 'in cases of sexual assault, especially with juveniles, like I said before, juveniles can feel like they're the party that did something wrong.'"

{¶ 62} Lieut. Knack "stated he spoke to J.H. to get a timeline and '*to just offer credibility to* [MT's] statement.'" Lieut. Knack stated "'I found the interview [with JH] to be very labored. In her answers, she was not forthcoming.'" Lieut. Knack testified, "'[JH] was not forthcoming with answers to questions that were very simple questions. I, as an investigator, got the feeling that she was trying to be very cautious with her answers so as not to get herself or [Dandridge] in trouble'" Lieut.

Knack testified that his interview with Dandridge was "very difficult" and "there was a lot of contradiction in [Dandridge's] statement that he's never with the family but that he's always with them. [Dandridge] would not answer the questions directly." (Emphasis sic.)

{¶ 63} During Lieut. Knack's testimony, the court stated, "Detective, just answer the question as to what he told you" and instructed the jury as follows:

> Ladies and gentlemen, the rules of evidence allow you to hear testimony in the form of statements from the defendant made to another. However, you cannot consider opinion testimony from any nonexpert witness, so I would ask that you disregard any statements of opinion that you may have heard regarding demeanors of individuals made by Lieutenant Detective Knack.

{¶ 64} It is undisputed that defense counsel did not object to the specific testimony Dandridge identifies under this assignment of error.[1] Therefore, we review this testimony for plain error.

{¶ 65} In *State v. Davis*, 116 Ohio St.3d 404, 2008-Ohio-2, 88 N.E.2d 31, ¶ 122, the Ohio Supreme Court held that a "police officer's opinion that an accused is being untruthful is inadmissible." In *Davis*, at issue was a detective's testimony that the defendant "was being very deceptive." *Id.* at ¶ 123. The court held that the statement was "erroneously admitted," because it "expressed [the detective's] opinion that Davis was being untruthful * * *. Nevertheless, [the detective's] isolated

[1] During Officer Gilmer's redirect examination, the prosecutor asked him, "In what sense was it possible that the victim felt guilty?" Defense counsel objected to this question, and the court sustained the objection.

comment did not result in plain error. There was overwhelming evidence of Davis's guilt." *Id*.

{¶ 66} In *State v. Black*, 8th Dist. Cuyahoga No. 92806, 2010-Ohio-660, this court reviewed a claim similar to the claim in the instant appeal. A detective testified that "appellant's statement was inconsistent with those offered by other witnesses," and the defendant alleged error under *Davis*. *Id*. at ¶ 31. However, this court determined that the appellant mischaracterized the detective's testimony. *Id*. "This testimony in no way indicates [the detective's] opinion with regard to the truthfulness of the statements. He merely made a factual statement that, in comparing appellant's statements to those made by other witnesses, the statements were inconsistent. We find no error with this testimony." *Id*. at ¶ 32.

{¶ 67} Upon review, we find that the reasoning in *Black* applies to Officer Gilmer's testimony about M.T. In other words, Dandridge mischaracterizes this testimony as vouching for the victim's credibility. Rather, we find that Officer Gilmer is explaining that M.T. was nervous and reluctant to report, as are many victims of sexual abuse, and this explains why she was hesitant to speak with him. Officer Gilmer's testimony does not render an opinion about the truthfulness of M.T.'s allegations.

{¶ 68} Turning to Lieut. Knack, we find that the reasoning in *Black* also applies to his testimony about Dandridge. Lieut. Knack testified that some of Dandridge's statements during the investigation were inconsistent, when, in fact,

some of Dandridge's statements during the investigation were inconsistent. We find no error with this testimony.

{¶ 69} Lieut. Knack's testimony about J.H. is slightly different. Lieut. Knack testified that "she was not forthcoming with answers to questions that were very simple questions. I, as an investigator, got the feeling that she was trying to be very cautious with her answers so as not to get herself or [Dandridge] in trouble."

{¶ 70} "Forthcoming" is defined as follows: "1: being about to appear or to be produced or made available. 2a: responsive, outgoing. 2b: characterized by openness, candidness, and forthrightness." *Merriam-Webster Online*, https://www.merriam-webster.com/dictionary/forthcoming (accessed Aug. 10, 2021). Apropos to this appeal, we focus on the definition in "2b."

{¶ 71} Arguably, Lieut. Knack's testimony could be heard by the jury as offering an opinion regarding J.H.'s credibility based on what he observed during his interviews. However, upon review, we find any error to be harmless.

{¶ 72} Crim.R. 52(A) defines "harmless error," and it states that "[a]ny error, defect, irregularity, or variance which does not affect substantial rights shall be disregarded." Lieut. Knack's testimony about his interview with J.H. did not affect Dandridge's substantial rights.

{¶ 73} J.H.'s testimony at trial showed that she was not forthcoming concerning this entire case. The state did not call her as a witness, and in fact, she testified for the defense. J.H. did testify that M.T. disclosed Dandridge's abuse, along with a timeline, to her. However, J.H. did not directly answer many of the

questions Dandridge's attorney posed on direct examination. For example, asked what she thought when M.T. made the disclosure to her, J.H. answered, "I didn't know what to think. I have to go back a little bit now. Now, far as Tone —. * * * Now Antonio, we was okay with Tone. We had no problems with him." The prosecutor objected stating, "This isn't the question that was asked." Furthermore, on cross-examination, J.H. testified that at the time of trial, she did not "really have a relationship" with her daughter, M.T.

{¶ 74} Another example of J.H. not being forthcoming is found in the following testimony:

> Q: And you did admit to the detective that [M.T.] walked in on you and the defendant having sex, correct?
>
> A: Yeah, she walked in on us, yes.
>
> Q: And you told her to leave, and the defendant told her to stay, correct?
>
> A: Yeah. We wasn't doing anything.
>
> Q: I asked you a simple question, ma'am, so please listen to my question. You told the detective that [M.T.] walked in on you and the defendant having sex. You told her to leave and he told her to say. Correct?
>
> A: Yes, that's correct.

{¶ 75} J.H.'s hesitancy to be involved in this case was apparent to the jury through her own testimony, and the jury did not need to hear Lieut. Knack's testimony that J.H. was not forthcoming to reach this conclusion. Additionally, the court gave the following curative instruction to the jury: "so I would ask that you disregard any statements of opinion that you may have heard regarding demeanors

of individuals made by Lieutenant Detective Knack." This court has held that "[c]urative instructions are presumed to be an effective way to remedy errors that occur during trial." *Parma Hts. v. Owca*, 8th Dist. Cuyahoga No. 103606, 2013-Ohio-179, ¶ 37.

{¶ 76} Accordingly, we find that any error the court committed is harmless. We further find that Dandridge failed to show that he was prejudiced by his counsel's failure to object to the testimony at issue.

{¶ 77} Dandridge's first assignment of error is overruled.

C. Exclusion of Testimony and the Rape Shield Law

{¶ 78} In his second assignment of error, Dandridge argues that "the trial court erred by excluding [M.T.'s] past unsubstantiated allegations * * *."

{¶ 79} "[T]he Ohio Supreme Court has made it clear that both prior nonconsensual and consensual sexual activity of the victim are protected by the rape shield statute." *State v. Jeffries*, 2018-Ohio-162, 104 N.E.3d 900 (8th Dist.). *See also* R.C. 2907.02(D). However, "[b]ecause prior false accusations of rape do not constitute 'sexual activity' of the victim, the rape shield law does not exclude such evidence." *State v. Boggs*, 63 Ohio St.3d 418, 423, 588 N.E.2d 813 (1992). The defense bears the burden "to demonstrate that the accusations were totally false and unfounded." *Id*.

{¶ 80} The *Boggs* court also held that "before cross-examination of a rape victim as to prior false rape accusations may proceed, the trial court shall hold an *in camera* hearing to ascertain whether such testimony involves sexual activity and

thus is inadmissible under R.C. 2907.02(D), or is totally unfounded and admissible for impeachment of the victim." (Emphasis sic.) *Id*. at 424.

{¶ 81} In the instant case, the state made an oral motion at a pretrial hearing to preclude anticipated testimony that the "defense is going to try to elicit" from M.T. regarding "two prior incidents that were reported." The following colloquy took place:

> THE STATE: There was a prior incident on July 27, 2005 that was unsubstantiated with regards to our victim and her brother. There was no police investigation with regards to this matter.
>
> And then there is an incident with a neighbor across the street that no one did investigate that was mentioned in the defendant's statement and the victim was asked about it with the detective after the defendant's statement was made.
>
> THE COURT: These are prior allegations — the defense claims that the complaining witness made prior false claims?
>
> THE STATE: He didn't say that they were false. I'm just saying that he's trying to elicit that testimony with cross and that's protected under the rape shield. There's no evidence that they are false allegations and there's no *Boggs* motion filed.
>
> THE COURT: Okay. [Defense counsel], you intend to produce this type of testimony?
>
> DEFENSE COUNSEL: Well, the first one she was talking about from 2005 is the JFS[2] records, so it was part of a JFS investigation. Just asking about the records, Your Honor. Not the witness themselves and not the victim herself.
>
> THE COURT: What do you intend to ask?
>
> DEFENSE COUNSEL: Just what JFS did as far as their investigation went.

---

[2] Ohio Department of Jobs and Family Services.

THE COURT: Of a different incident?

DEFENSE COUNSEL: No, that incident from 2005. JFS, in their records —

THE COURT: Involving a different individual, different perpetrator?

DEFENSE COUNSEL: Yes.

* * *

THE COURT: How is it relevant and not violative of rape shield?

DEFENSE COUNSEL: The victim wasn't the complainer.

* * *

THE COURT: I find that to be not relevant. You won't be able to examine on that because it will probably violate rape shield protections.

DEFENSE COUNSEL: The second one was disclosed during the interview with the detective, and the victim — it sounded like the victim considered it a consensual act and I just want to ask —

THE COURT: Consensual with whom?

DEFENSE COUNSEL: Another individual, a different perpetrator.

THE COURT: Well, again, consensual sex with a different individual is exactly what the rape shield is designed to protect.

{¶ 82} On appeal, Dandridge argues that "[f]ollowing *Boggs*, there is not enough evidence in this record to establish that the trial court erred by prohibiting the defense from engaging in cross-examination on these topics. The convictions should be vacated and the matter should be reversed and remanded to make these necessary determinations."

{¶ 83} Upon review, we find that the court acted within its discretion by prohibiting defense counsel from questioning M.T. about these incidents. The trial

court did not invoke the rape shield law concerning the first incident. According to the record, M.T. was not the "complainer" of the 2005 incident, and the court found that this incident was irrelevant to whether Dandridge sexually abused M.T. in the case at hand. We find no error here.

{¶ 84} As to the second incident concerning the neighbor, it does not appear that Dandridge is arguing that M.T. made a false allegation of sexual activity. As noted in *Boggs*, 63 Ohio St.3d 418, 588 N.E.2d 813, the defendant has the burden to show that the victim's prior allegation was false, and in this case not only did Dandridge fail to meet the burden, he failed to proffer the evidence or make the argument. We note that, on appeal, Dandridge still does not assert that either of the two incidents involved M.T. making false allegations. There is nothing in the record that would alert the trial court to hold a *Boggs* in camera hearing, and we cannot say that the trial court abused its discretion. Accordingly, Dandridge's second assignment of error is overruled.

D. Admission of Other Acts Testimony in Violation of Evid.R. 401, 402, 403, and 404.

{¶ 85} In his third assignment of error, Dandridge argues that evidence of his prior "bad acts" was improperly admitted at trial under a plain error analysis or, in the alternative, his attorney's failure to object resulted in ineffective assistance of counsel. Specifically, Dandridge argues that it was

> improper and prejudicial to admit the following irrelevant other acts evidence at the trial: testimony regarding the alleged purchase of underwear to M.T., the photos and items of underwear that were admitted, the testimony regarding the alleged purchase of vibrators and the admission of vibrators, the testimony and evidence regarding

> [M.T.'s] alleged discussions with [Dandridge] about medical issues involving her breasts, and alleged discussions between [M.T. and Dandridge] about sex, the photos taken of [M.T.] unrelated to any charges in the indictment, and allegations that [Dandridge] offered to perform oral sex when they were visiting a nursing home.

{¶ 86} Pursuant to Evid.R. 404(B), "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith." The Ohio Supreme Court recently reiterated that "[t]his type of evidence is commonly referred to as 'propensity' evidence because its purpose is to demonstrate that the accused has a propensity or proclivity to commit the crime in question. * * * Evid.R. 404(B) categorically bars the use of other-acts evidence to show propensity." *State v. Hartman*, 161 Ohio St.3d 214, 2020-Ohio-4440, 161 N.E.3d 651, ¶ 21.

> Evid.R. 404(B) does, however, allow evidence of the defendant's other crimes, wrongs, or acts to be admitted "for other purposes, such as proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." (Emphasis added.) The key is that the evidence must prove something other than the defendant's disposition to commit certain acts. Thus, while evidence showing the defendant's character or propensity to commit crimes or acts is forbidden, evidence of other acts is admissible when the evidence is probative of a separate, nonpropensity-based issue. The admissibility of other-acts evidence pursuant to Evid.R. 404(B) is a question of law.

Id. at ¶ 22.

{¶ 87} To determine whether other-acts evidence is admissible, "trial courts should conduct a three-step analysis."

> The first step is to consider whether the other acts evidence is relevant to making any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Evid.R. 401. The next step is to consider whether evidence of the other

> crimes, wrongs, or acts is presented to prove the character of the accused in order to show activity in conformity therewith or whether the other acts evidence is presented for a legitimate purpose, such as those stated in Evid.R. 404(B). The third step is to consider whether the probative value of the other acts evidence is substantially outweighed by the danger of unfair prejudice. *See* Evid.R 403.

State v. Williams, 134 Ohio St.3d 521, 2012-Ohio-5695, 983 N.E.2d 1278, ¶ 20.

{¶ 88} The Ohio Supreme Court has defined "grooming" as '"deliberate actions taken by a defendant to expose a child to sexual material; the ultimate goal of grooming is the formation of an emotional connection with the child and a reduction of the child's inhibitions in order to prepare the child for sexual activity.'" *Williams* at ¶ 21, quoting *United States v. Chambers*, 642 F.3d 588, 593 (7th Cir.2011). In *Williams*, the court held that "[e]vidence that Williams had targeted teenage males who had no father figure to gain their trust and confidence and groom them for sexual activity with the intent of sexual gratification may be admitted to show the plan of the accused and the intent for sexual gratification" under Evid.R. 404(B).

{¶ 89} In *Jeffries*, 2018-Ohio-162, 104 N.E.3d 900, this court reached the same conclusion under facts similar to the facts of the instant case. The "other acts evidence was relevant because it tended to show Jeffries's plan for grooming [the victim] for sexual activity." *Id*. at ¶ 27. The other acts evidence

> established that the grooming started at six years of age when Jeffries held [the victim] and touched her buttocks; progressed through the years to Jeffries having her take her clothes off and sit naked on his lap; escalated to Jeffries touching her breasts and vagina, and finally culminated in incidents when Jeffries would insert his penis in [her] vagina.

Id.

{¶ 90} Under *Williams* and *Jeffries*, we find that the evidence in question in the case at hand is relevant to show grooming and that evidence of grooming is admissible to show the accused's plan and scheme to molest a vulnerable child and the accused's intent of sexual gratification. This meets the first and second prongs of the *Williams* test.

{¶ 91} We turn to whether this evidence is substantially outweighed by the danger of unfair prejudice. In *Jeffries*, this court held the following:

> And the probative value of the evidence was not outweighed by the danger of unfair prejudice. Rather than inflaming the jury and appealing only to its emotions (the general test for unfairly prejudicial evidence), the evidence of Jeffries's grooming of [the victim] provided a basis for the jury to recognize his ongoing scheme for sexual activity with [her]. And although the trial court did not give a limiting instruction regarding the other acts evidence, [the victim] was subject to cross-examination, and defense counsel challenged her credibility and testimony regarding Jeffries's sexual motives and actions. Likewise, Jeffries testified in his own defense that [the victim] was lying. The jury was free to judge the credibility of the witnesses.

Id. at ¶ 29.

{¶ 92} In following *Jeffries*, we reach the same conclusion. The evidence of Dandridge's conduct towards M.T. starting when she was five years old "provided a basis for the jury to recognize his ongoing scheme for sexual activity * * *." M.T. and Dandridge both testified at trial, and both were subject to cross-examination. This court has consistently held that "determinations regarding the credibility of witnesses and the weight of the testimony are primarily for the trier of fact." *State v. Washington*, 8th Dist. Cuyahoga No. 107286, 2019-Ohio-2215, ¶ 30. "A jury, as

finder of fact, may believe all, part, or none of a witness's testimony." *State v. Raver*, 10th Dist. Franklin No. 02AP-604, 2003-Ohio-958, ¶ 21. Dandridge has failed to show that the "other acts" evidence was unfairly prejudicial. Furthermore, because he failed to show unfair prejudice, his ineffective assistance of counsel allegation also necessarily fails.

{¶ 93} Accordingly, Dandridge's third assignment of error is overruled.

E. Sufficiency of the Evidence

{¶ 94} In his fourth assignment of error, Dandridge argues that his convictions were not supported by sufficient evidence. Specifically, Dandridge argues that there was no evidence of force to support the kidnapping convictions; the only evidence to support Dandridge's convictions for rape, gross sexual imposition, and disseminating matter harmful to juveniles is M.T.'s uncorroborated testimony; and the testimony regarding the dates of the offenses was inconsistent with the dates of the offenses included in the indictment.

{¶ 95} "[A]n appellate court's function when reviewing the sufficiency of the evidence to support a criminal conviction is to examine the evidence admitted at trial to determine whether such evidence, if believed, would convince the average mind of defendant's guilt beyond a reasonable doubt." *State v. Jenks*, 61 Ohio St.3d 259, 273, 574 N.E.2d 492 (1991). "In essence, sufficiency is a test of adequacy. Whether the evidence is legally sufficient to sustain a verdict is a question of law." *State v. Thompkins*, 78 Ohio St.3d 380, 386, 678 N.E.2d 541 (1997).

1. Force

{¶ 96} Dandridge was convicted of two counts of kidnapping in violation of R.C. 2905.01(A)(4), which states as follows:

> No person, by force, threat, or deception, or in the case of a victim under the age of thirteen or mentally incompetent, by any means, shall remove another from the place where the other person is found or restrain the liberty of the other person * * * [t]o engage in sexual activity * * * with the victim against the victim's will * * *.

R.C. 2901.01(A)(1) defines force as "any violence, compulsion, or constraint physically exerted by any means upon or against a person or thing." In *State v. Labus*, 102 Ohio St. 26, 38-39, 130 N.E. 161 (1921), the Ohio Supreme Court explained that

> [t]he force and violence necessary in rape is naturally a relative term, depending upon the age, size and strength of the parties and their relation to each other; as the relation between father and daughter under twelve years of age. With the filial obligation of obedience to the parent, the same degree of force and violence would not be required upon a person of such tender years, as would be required were the parties more nearly equal in age, size and strength.

{¶ 97} The first kidnapping conviction in question is based on M.T.'s testimony that in 2012 or 2013, when she was 11 or 12 years old, Dandridge came into the bathroom when she was there washing her hands, closed the door, masturbated, and told her to put her hand out so he could ejaculate on it.

{¶ 98} The second kidnapping conviction in question is based on M.T.'s testimony discussed previously in this opinion that in 2015 or 2016, when she was 14 or 15 years old, Dandridge told her to come into the bedroom and he "had a white vibrator, just a toy, and closed the door, and tried to use it on me * * *." M.T. "kept

trying to get up. He was like, 'No, no, lay down.'" M.T.'s testimony continued about how Dandridge made her lay down:

> Pushed me down, and he had me — so I was helpless. He had me not pinned down, but pinned down, and he told me to put a pillow over my face, and he turned it on and afterwards I got up. * * * I moved the pillow. I think I rolled or I probably moved him. Not probably. I moved him and I walked out and he told me, "Come here." I unlocked the door, opened the door, walked out. My mom was right there.

{¶ 99} Upon review, we find that M.T.'s testimony, if believed, presents sufficient evidence that Dandridge used force in restraining M.T.'s liberty to engage in sexual activity, particularly in light of the age difference and familial relationship between Dandridge and M.T. Dandridge does not dispute that sufficient evidence was presented concerning the remaining elements of kidnapping.

2. Uncorroborated Testimony

{¶ 100} Dandridge next argues that his convictions for rape, gross sexual imposition, and disseminating matter harmful to juveniles are not supported by sufficient evidence because they are based solely on M.T.'s uncorroborated testimony. We note that this argument challenges the weight of the evidence, rather than the sufficiency, because Dandridge is challenging M.T.'s uncorroborated testimony as not being credible.

{¶ 101} "Ohio courts have consistently held that a victim's testimony, if believed, is sufficient to support a rape conviction. 'There is no requirement that a rape victim's testimony be corroborated as a condition precedent to conviction.'" *State v. Williams*, 8th Dist. Cuyahoga No. 92714, 2010-Ohio-70, ¶ 32, quoting *State v. Lewis*, 70 Ohio App.3d 624, 638, 591 N.E.2d 854 (4th Dist.1990). Accordingly,

we find that M.T.'s testimony alone presents sufficient evidence to support Dandridge's convictions.

3. Inconsistent Dates of Offenses

{¶ 102} Dandridge disputes that sufficient evidence was presented to support his convictions of two counts of rape of M.T., "whose age at the time of the said sexual conduct was less than thirteen years * * *." M.T.'s date of birth is May 21, 2001. The dates of the rapes in the indictment are between May 21, 2006, and May 21, 2009, when M.T. was between five and eight years old. Prior to trial, the state amended the date of the second rape count to between May 21, 2006, and May 21, 2013, when M.T. was between five and 12 years old.

{¶ 103} The first rape count was based on the incident when Dandridge digitally penetrated M.T.'s vagina. M.T. testified that she was eight years old when this occurred. The second rape count was based on the incident when Dandridge made M.T. perform fellatio on him under the guise he would take her to Fun & Stuff. M.T. testified that she was 11 or 12 years old when this occurred.

{¶ 104} This court has previously held that "[a]lthough the victim's age is an essential element of rape under R.C. 2907.02(A)(1)(b), the state need not establish precise dates of when the offense occurred, as long as a rational trier of fact could find that the victim was less than 13 years of age at the time of the offense." *State v. Schwarzman*, 8th Dist. Cuyahoga No. 100337, 2014-Ohio-2393, ¶ 16. Furthermore, "many child victims are unable to remember exact dates and times, particularly

where the crimes involved a repeated course of conduct over an extended period of time." *State v. Yaacov*, 8th Dist. Cuyahoga No. 86674, 2006-Ohio-5321, ¶ 17.

{¶ 105} Upon review, we find that the evidence in the record, particularly M.T.'s testimony, if believed, is sufficient to sustain Dandridge's convictions. Accordingly, his fourth assignment of error is overruled.

F. Manifest Weight of the Evidence

{¶ 106} In his fifth assignment of error, Dandridge argues that his convictions were against the manifest weight of the evidence.

{¶ 107} A manifest weight of the evidence challenge "addresses the evidence's effect of inducing belief. * * * In other words, a reviewing court asks whose evidence is more persuasive — the state's or the defendant's?" *State v. Wilson*, 113 Ohio St.3d 382, 2007-Ohio-2202, 865 N.E.2d 1264, ¶ 25. "When a court of appeals reverses a judgment of a trial court on the basis that the verdict is against the weight of the evidence, the appellate court sits as the 'thirteenth juror' and disagrees with the factfinder's resolution of the conflicting testimony." *Thompkins*, 78 Ohio St.3d at 387, 678 N.E.2d 541. Reversing a conviction under a manifest weight theory "should be exercised only in the exceptional case in which the evidence weighs heavily against the conviction." *State v. Martin*, 20 Ohio App.3d 172, 175, 485 N.E.2d 717 (1st Dist.1983).

{¶ 108} Dandridge argues that M.T.'s testimony was not credible. He argues she leveled the accusations against him because she was angry with him. Dandridge argues that he "was restricting [M.T.'s] boyfriend from being in the car and was

questioning the source of the $10,000 [M.T.'s boyfriend] had." Dandridge further argues that "[a]fter making the accusations at school, [M.T.] avoided the police repeatedly. She only pursued her accusations when [her boyfriend] accompanied her. It is plausible that [M.T.] felt she had to pursue the allegations because she did not know how to stop the investigation without getting into trouble herself."

{¶ 109} Dandridge's arguments are not supported by the record. As addressed earlier, M.T.'s testimony alone is sufficient to support Dandridge's convictions, and whether her testimony was credible was in the hands of the jury. She was subject to cross-examination, and defense counsel questioned her credibility. Dandridge testified in his own defense, and the jury found his testimony lacked credibility. J.H. also testified, and it was apparent that she was concerned about incriminating herself and Dandridge. This also weighed in favor of Dandridge's convictions.

{¶ 110} Upon review, we cannot say that this is an exceptional case where the jury lost its way in resolving inconsistencies and conflicts in the evidence presented. This court affords great deference to the jury's determination of witness credibility. *State v. DeHass*, 10 Ohio St.2d 230, 231, 227 N.E.2d 212 (1967). The finder of fact "is best able to view the witnesses and observe their demeanor, gestures and voice inflections, and use these observations in weighing the credibility of the proffered testimony." *Seasons Coal Co. v. Cleveland*, 10 Ohio St.3d 77, 80, 461 N.E.2d 1273 (1984). Accordingly, Dandridge's fifth assignment of error is overruled.

G. Improper Comments by the State During Closing Arguments

{¶ 111} In his sixth assignment of error, Dandridge argues that the prosecutor made improper comments during closing arguments and this amounted to plain error, or, in the alternative, his attorney was ineffective for failing to object. Specifically, Dandridge challenges the prosecutor's comments expressing personal belief regarding witness credibility and Dandridge's guilt.

{¶ 112} "The test for prosecutorial misconduct is whether the prosecutor's remarks were improper and, if so, whether they prejudicially affected the substantial rights of the accused. The touchstone of analysis is the fairness of the trial, not the culpability of the prosecutor." (Citations omitted.) *State v. Eisermann*, 8th Dist. Cuyahoga No. 100967, 2015-Ohio-591, ¶ 43. Prosecutorial misconduct constitutes reversible error only in rare cases. *State v. Keenan*, 66 Ohio St.3d 402, 405, 613 N.E.2d 203 (1993). When there was no objection, "the prosecutor's remarks cannot be grounds for error unless they served to deny appellant a fair trial." *State v. Jackson*, 107 Ohio St.3d 53, 2005-Ohio-5981, 836 N.E.2d 1173, ¶ 112.

{¶ 113} During closing argument, the state told the jury that Dandridge's testimony

> is simply not credible. * * * Here's just another example of how not credible the defendant's testimony is. He would have you believe that he does not even know what Fun & Stuff is; they have never been there. He doesn't even know what that place is, where according to the victim's mother, they did go there; they all know what that is.

{¶ 114} The Ohio Supreme Court has held that a "prosecutor's reference to [the defendant] as a sociopath or psychopath was a fair inference based on the

evidence" presented at trial. "Prosecutors are entitled to latitude as to what the evidence has shown and what inferences can be drawn therefrom." *State v. Richey*, 64 Ohio St.3d 353, 362, 595 N.E.2d 915 (1992). *See also State v. Cramer*, 8th Dist. Cuyahoga Nos. 76663 and 76664, 2000 Ohio App. LEXIS 3623 (Aug. 10, 2000) (prosecutor referring to the defendant as a pedophile on five occasions during closing argument was not prosecutorial misconduct because "the characterization is not improper and therefore did not affect the rights of the accused").

{¶ 115} Dandridge further argues that the prosecutor "mischaracterized" J.H.'s and King's testimony, telling the jury that these witnesses corroborated M.T.'s version of events. The alleged mischaracterization is so subtle that we will let Dandridge's brief speak for itself:

> In the state's final close, the prosecutor misstated [J.H.'s] testimony by claiming it corroborated [M.T.'s] version of events. In particular, the state said [J.H.] confirmed that "[M.T.] did walk in on us. I told her to leave. He told her to stay." In fact, what [J.H.] actually said was that [Dandridge] told her to stay because they weren't engaging in any sexual activity at the time. ([Dandridge] told her to stay because they weren't doing anything.) Although [J.H.'s] testimony contradicted, rather than corroborated [M.T.'s] testimony, there was no defense objection.

{¶ 116} As stated earlier in this opinion, J.H.'s testimony about the incident follows:

> Q: And you did admit to the detective that [M.T.] walked in on you and the defendant having sex, correct?
>
> A: Yeah, she walked in on us, yes.
>
> Q: And you told her to leave, and the defendant told her to stay, correct?

A: Yeah. We wasn't doing anything.

Q: I asked you a simple question, ma'am, so please listen to my question. You told the detective that [M.T.] walked in on you and the defendant having sex. You told her to leave and he told her to say. Correct?

A: Yes, that's correct.

{¶ 117} Turning to Dandridge's allegation that the state mischaracterized King's testimony, he argues as follows in his brief:

> The State then twice mischaracterized King's testimony by claiming to the jury she had reported [Dandridge] saying, "I'm sorry. I made a mistake. My behavior was bad. I'll leave. I thought she was okay. A year ago I was going to leave." * * * A review of King's testimony reflects that these statements are misleading and inaccurate.

{¶ 118} King's testimony about what Dandridge said to her during their interview follows: "[H]e said he thought the victim was okay and he wanted to leave the home a year ago but was asked to stay by the victim. He said he made a mistake, but the child was so close to him, and that's when the mother cut him off."

{¶ 119} Upon review, we disagree with Dandridge's assertion that the prosecutor mischaracterized J.H.'s and King's testimony. The prosecutor's closing remarks reiterated the substance of these two witnesses' testimony. Given the latitude prosecutors are entitled to in closing arguments, we do not find that the isolated comments were improper, let alone that they denied Dandridge a fair trial. We also do not find that Dandridge's counsel was ineffective for failing to object to the prosecutor's closing arguments.

{¶ 120} Dandridge's sixth assignment of error is overruled.

H. Court Admonishing Witness of Her Fifth Amendment Right Against Self Incrimination in the Presence of the Jury

{¶ 121} In his seventh and final assignment of error, Dandridge argues that "the trial court erred by admonishing [J.H.] of her Fifth Amendment right against self-incrimination in the presence of the jury."

{¶ 122} The court appointed J.H. an attorney after the prosecutor indicated, outside of the jury's presence, that the evidence "tends to show that [J.H.] has significant exposure to charges of, at a minimum, child endangering." After discussing the issue with her court-appointed attorney, the court put J.H. on the stand and asked her questions about her self-incrimination rights, again outside of the jury's presence. J.H. decided to testify.

{¶ 123} During her testimony in the jury's presence, the court stated the following: "At this time I'm going to reiterate my admonition to you that you have a right not to self-incriminate and any answers to questions you give can be used against you in a criminal proceeding. You may answer if you wish."

{¶ 124} On appeal, Dandridge argues that the court suggested to the jury that it felt J.H. had committed a crime and this tainted J.H.'s credibility.

> It is well-settled that a trial judge is not precluded from making comments during trial and, in fact, must do so at times to control the proceedings. However, a trial judge should be cognizant of the influence his or her statements have over the jury and, therefore, a trial judge must remain impartial and avoid making comments that might influence the jury. When a judge's comments express his or her opinion of the case or of a witness's credibility, prejudicial error results.

J. Norman Stark Co., L.P.A. v. Santora, 8th Dist. Cuyahoga No. 81543, 2004-Ohio-5960, ¶ 19.

{¶ 125} The Ohio Supreme Court set forth a five-part test to determine whether a trial judge's remarks were prejudicial:

> (1) The burden of proof is placed upon the defendant to demonstrate prejudice, (2) it is presumed that the trial judge is in the best position to decide when a breach is committed and what corrective measures are called for, (3) the remarks are to be considered in light of the circumstances under which they are made, (4) consideration is to be given to their possible effect upon the jury, and (5) to their possible impairment of the effectiveness of counsel.

State v. Wade, 53 Ohio St.2d 182, 188, 373 N.E.2d 1244 (1978).

{¶ 126} We are mindful that this assignment of error is not about the assertion of the Fifth Amendment right against self-incrimination. The right was not invoked in this case. Rather, the court warned a witness about this right. Furthermore, a defendant has no standing regarding a trial witness's right against self-incrimination. *See State v. Arnold*, 147 Ohio St.3d 138, 2016-Ohio-1595, 62 N.E.3d 153, ¶ 35 (a "'defendant can neither assert the Fifth Amendment right against self-incrimination on behalf of a witness nor, if the witness himself asserts his privilege, take advantage of an error of the court in overruling it. The party, as contrasted to the witness, simply lacks standing"') (Citations omitted.). Accordingly, we review this assignment of error under guidelines set forth in *Santora* and *Wade*.

{¶ 127} In the instant case, Dandridge has failed to demonstrate prejudice resulting from the trial judge's warning to J.H. about her right against self-incrimination. In light of the circumstance that this issue was raised prior to J.H. testifying, it appears that the court was concerned a breach may be committed. The

possible effect that the judge's remarks may have had on the jury was that the jury may have considered that J.H. was complicit in the allegations against Dandridge. The judge's remarks did not express his opinion about the case or about J.H.'s credibility, and we do not find them to have prejudiced Dandridge. Therefore, we cannot say that defense counsel was ineffective for failing to object, and Dandridge's seventh and final assignment of error is overruled.

{¶ 128} Judgment affirmed.

It is ordered that appellee recover from appellant costs herein taxed.

The court finds there were reasonable grounds for this appeal.

It is ordered that a special mandate issue out of this court directing the common pleas court to carry this judgment into execution. The defendant's conviction having been affirmed, any bail pending is terminated. Case remanded to the trial court for execution of sentence.

A certified copy of this entry shall constitute the mandate pursuant to Rule 27 of the Rules of Appellate Procedure.

LISA B. FORBES, JUDGE

SEAN C. GALLAGHER, P.J., and
MICHELLE J. SHEEHAN, J., CONCUR