

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 8, 2016

Diane M. Fremgen
Clerk of Court of Appeals

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Appeal No. 2013AP2738-CR

Cir. Ct. No. 2010CF1632

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT I**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

BEVERLY RESHALL HOLT, A/K/A BEVERLY R. MARSH,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Milwaukee County: RICHARD J. SANKOVITZ, Judge. *Affirmed.*

Before Curley, P.J., Brennan and Brash, JJ.

¶1 CURLEY, P.J. Beverly Reshall Holt appeals the judgment of conviction for two counts of first-degree child sexual assault (intercourse with a child under twelve years of age), contrary to WIS. STAT. §§ 948.02(1)(b) (2007-08; 2009-10) and 939.50(3)(b) (2007-08; 2009-10), two counts of first-degree

child sexual assault (sexual contact with a child under thirteen years of age), contrary to WIS. STAT. §§ 948.02(1)(e) (2007-08; 2009-10) and 939.50(3)(b) (2007-08; 2009-10), and one count of trafficking of a child contrary to WIS. STAT. §§ 948.051(1) and 939.50(3)(c) (2007-08; 2009-10).¹ On appeal, Holt argues that: (1) the trial court erroneously admitted the audiovisual recording of Caleb's forensic interview and Caleb's testimony into evidence; and (2) that the evidence was insufficient to support the verdict reached on each of the five counts.² We disagree and affirm.

BACKGROUND

¶2 This is a criminal case in which Beverley Reshall Holt³ was charged with two counts of first-degree sexual assault of a child (sexual intercourse, child less than twelve years of age), two counts of first-degree sexual assault of a child (sexual contact with a child less than thirteen years of age), and one count of trafficking of a child (count five).⁴ Count one pertained to an alleged sexual assault of Caleb, and the remaining counts related to the alleged sexual assault and child trafficking of Marcus. A jury found Holt guilty on all five counts.

¹ WISCONSIN STAT. § 948.051 was created by 2007 Wis. Act 116, § 37. The effective date of § 948.051 was April 3, 2008. All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

² The victims have been assigned pseudonyms in accordance with WIS. STAT. RULE § 809.19(1)(g). We have also assigned their mother a pseudonym.

³ Beverly Reshall Holt is also known as Beverly R. Marsh. In this appeal, we refer to her as "Holt" or "Ms. Holt."

⁴ An amended information filed on January 9, 2012, added the trafficking of a child charge.

¶3 Per testimony adduced at trial, Holt had been a close friend of Claire, the victims' mother, for many years and was "like a sister" to her. Holt was the only person Claire left her children with for extended time periods, and Holt watched Marcus and Caleb at the Holt home approximately eight to ten times, sometimes overnight. Claire testified that on one occasion in September or October of 2008, Holt watched only Caleb at Claire's home. Claire recalled that the last time Holt watched Marcus and Caleb was late 2009 or early 2010.

¶4 In March 2010, when Caleb was four years old, he informed his mother "out of the clear blue sky" that "TT Bev, her nasty" and that Holt had "put [his] wee wee in her mouth."⁵ Claire contacted the police and arranged for an officer to conduct a taped forensic interview of Caleb.⁶

¶5 Claire also testified that after Caleb's revelation, she questioned Marcus, who was six at the time, about whether Holt had ever done anything to him. Marcus initially denied that Holt had done anything, but he then told her that Holt had "put her mouth on [his] private area" and that Holt had gotten on top of him and that she was heavy. Marcus also told her that a lady had given Holt money and that the woman then got on top of him. Claire again contacted the

⁵ The children referred to Ms. Holt as "Beverly" or "TT Bev."

⁶ In her testimony, Officer Colleen Sturma explained that a forensic interview is a type of interview in which the individual conducting the interview seeks to obtain as much information from the person being interviewed without using leading questions or contaminating the interview in any other way. The goal is to receive information through open-ended questions. The steps involved in conducting a forensic interview of a child include: (1) the rapport phase, which involves getting to know the child—for example, assessing the child's developmental ability and suggestibility; (2) the rules phase, where the interviewer explains the rules of the interview, e.g. the importance of truth-telling and confirming that the child understands that it is okay to correct the interviewer; (3) the disclosure phase, which begins with open-ended, non-leading questions that later become more focused as the child discloses information; and (4) the closure phase. Officer Sturma also explained that forensic interviews of children are recorded.

police and was told to bring Marcus in for a taped forensic interview at the same time already scheduled for Caleb's interview.

¶6 Marcus and Caleb were interviewed by Officers Colleen Sturma and Trisha Klauser, respectively, on March 25, 2010. The officers are employed by the City of Milwaukee Police Department and assigned to the Sensitive Crimes Division.

¶7 During his forensic interview, Marcus stated that it is important to tell the truth and that he promised to tell the truth. He described what happened to him at Holt's house, beginning by stating that a "grown-up went on top" of him and that Holt was "all over" him. He also said that Holt was "on his butt" and that she "licked it" and then she licked his private. He said it felt "bad." He also described how Holt kissed his lips, took off his clothes, took off her own clothes, touched his private with her mouth while he was lying down on her bed, and how she was on top of him and moved her body up and down. Marcus said this happened at Holt's house more than once. He also described an occasion where two adult women "got in line" and gave Holt money and then they kissed him and got on top of him and moved their bodies. He stated that the women also sucked on his private.

¶8 During the interview, Marcus used dolls to demonstrate how Holt had placed his hand on Holt's breast and on her pubic area. He began by taking the clothes off of the dolls, leaving the underwear on the female doll, and then placed the male doll on its back and sat the female doll on the male doll's pubic area and rubbed the female doll back and forth. He then placed the male doll facedown and sat the female doll on top. He also used the doll to demonstrate how Holt kissed him by placing the female doll's head on the male doll's head and

then placed the female doll's hand on the male doll's buttocks. He then demonstrated the female doll placing the male doll's hand on the female doll's breast and pubic area. When asked how Holt had used her mouth on his private, Marcus placed the female doll's head in the male doll's pubic area.

¶9 During his forensic interview, Caleb began by almost immediately telling Officer Klauser that "TT Bev sucked my wee wee." He stated this occurred at his house in the living room, and he clarified that it was not the house he currently lived in at the time but one he had previously lived in. He told Officer Klauser that it only happened one time, that no one else was in the house, and that it was cold outside when this happened.

¶10 Officer Klauser showed Caleb a blank drawing of the front and back of a boy and then pointed to various body parts, which Caleb identified. When Officer Klauser pointed to the chest area, Caleb identified the area as "private." Officer Klauser then pointed to the pubic area, which Caleb identified as the "wee wee," and after flipping the page over, he identified the buttocks as the "booty." When asked to point where Holt had sucked, he pointed to the pubic area. Officer Klauser also asked Caleb to demonstrate what occurred using dolls. Caleb began by taking the pants off the male doll, and he then removed the underwear. He then said that Holt "suck[ed] it," and he demonstrated mouth to penis oral sex.

¶11 Both audiovisual recordings were introduced at trial and played for the jury. Marcus was called as a witness shortly after the jury viewed the videotape of his interview, and Caleb was called as a witness shortly after the jury

viewed the videotape of his interview.⁷ At the time of trial, Marcus was seven years old and Caleb was six years old.

¶12 Prior to swearing Marcus in, the trial court confirmed that Marcus understood the importance of telling the truth and swearing to tell the truth under oath. Marcus then testified that Holt had been his babysitter when he was younger and that one time Holt had touched his privates with her hand while he was at her house. He also testified that Holt grabbed his hand and placed it on her breast and that Holt had “humped” him while he was lying on her bed. He initially did not recall whether Holt had placed his hand on any other body part; however, he then stated he remembered telling Officer Sturma that Holt grabbed his hand and put it on her private and that it “made [him] feel nasty.” When asked if Holt had ever done anything with her mouth, Marcus stated that she had kissed him on his cheek and lips while he was in Holt’s bedroom. While describing how Holt had “humped” him, Marcus also testified that before she “humped” him, Holt “did suck [his] private part” with her mouth. He further testified that Holt took his clothes off and threw them on the floor and that she also took her clothes off. Marcus also identified pictures of Holt’s bedroom.

¶13 The State asked Marcus to use dolls to demonstrate what he described Holt as having done. He first took the dolls’ clothes off and threw the clothes on the floor. He was very specific, showing and stating that Holt first took his clothes off but left his underwear on, that she then took off her own clothes but

⁷ The recording of Marcus’s forensic interview was introduced and shown during Officer Sturma’s testimony, and Marcus was called as a witness at the conclusion of her testimony. The recording of Caleb’s testimony was introduced and shown during Officer Klauser’s testimony, and Caleb was called as a witness at the conclusion of her testimony.

left her undergarments on, and that she then removed his underwear. When asked to use the dolls to demonstrate what had happened to his private part, Marcus placed the female doll's face by the male doll's pubic area. He then stated that after Holt put her mouth on his private, she began kissing his stomach and his lips. He also testified that Holt took him into the living room and sucked on his private part again, and that she "humped" him in the living room as well. Additionally, Marcus stated that Holt tied him up to the bed on one of the occasions she "humped" him. Marcus used the dolls to demonstrate what "humping" looked like—he put the male doll on its back and then put the female doll on top of the male doll and moved the female doll back and forth so that it was rubbing on the male doll.

¶14 When asked if people other than Holt had ever done anything to him that he did not like, Marcus stated yes and then described how Holt had put him on the bed in her bedroom and how two women in a line in the bedroom "humped" him. He testified that the two women—he described them as adult girls—took his clothes off and then took their clothes off and that they took him off the bed and put him on the floor. He used the dolls again to demonstrate how the first woman "humped" him, and he put the pubic area of the female doll up against the pubic area of the male doll and moved the female doll up and down on the male doll. When asked about the second woman, Marcus stated that she did not have clothes on and that she sucked on his "private part" and "humped" him. Marcus stated that Holt received money from the two women before they took their clothes off and that Holt had placed the money in her closet.

¶15 Marcus testified that Holt told him not to tell his mom and that she would mess his mom up if he said anything. He believed that "mess [her] up"

meant that Holt would kill her. He confirmed that he did not tell his mom right away but that when he did tell her, it felt good.

¶16 As with Marcus, the trial court had a discussion concerning the importance of telling the truth with Caleb prior to swearing Caleb in. Caleb stated that he remembered talking to a police officer about how it was important to tell the truth. However, he also indicated that he did not know how to describe what a promise is. Caleb told the court that he would tell the truth, but when asked if he knew the difference between the truth and a lie, he told the court he did not.

¶17 After conferring with counsel, the court allowed the State to ask Caleb a few questions to determine whether Caleb understood the difference between the truth and a lie. For example, the prosecutor asked Caleb what color jacket she was wearing and he correctly responded “red.” When asked if it would be the truth or a lie to tell him that her jacket was red, Caleb stated that it would be the truth. After showing Caleb a green marker, she asked if it would be the truth or a lie if she told him the marker was pink and Caleb said it would be a lie. Caleb also stated that it would be a lie if someone told him he was a girl and that God wants us to tell the truth. Additionally, when asked what happens to kids who are caught telling lies, Caleb stated that they get in trouble and then explained that when kids tell lies at school, they are sent to the office and that getting sent to the office is bad. Caleb stated that telling the truth is a good thing and that telling a lie is a bad thing. The prosecutor then asked if he had ever done a pinky promise, and after Caleb responded that he had, Caleb and the prosecutor performed a pinky

promise that Caleb would only tell the truth in court.⁸ Following this exchange, the court indicated it was satisfied that Caleb understood the difference between the truth and a lie, and when the court asked Caleb if he would only tell things that were true, Caleb responded “yes.”

¶18 During his trial testimony, Caleb confirmed that he knew Holt and that he referred to her as “TT Bev.” When asked if “TT Bev” had ever done anything to him that he did not like, Caleb said that she had. He initially shrugged when asked what he did not like, but he then testified that Holt had used her hands to touch his “middle part.” The prosecutor then gave Caleb a drawing of a boy without clothes so that they could “talk all about body parts.” Caleb put a green “X” on the part where Holt had touched him with her hand, and he placed a “J” on the back side of the paper, indicating that Holt had touched him in a second location. He identified the body part marked with the “X” as his “wee wee” and the body part marked with a “J” as his buttocks.

¶19 The State also questioned Caleb about whether Holt had ever done anything to him with her mouth and he said that she had not. Caleb later testified that he remembered telling his mom that “TT Bev” had done something to his “wee wee” with her mouth, but he then said that her mouth had not touched his “wee wee.” However, when asked if he had told his mom the truth about what Holt had done with her mouth to his “wee wee,” he said “yes,” and he also stated that he did not lie to his mom about what “TT Bev” had done to his “wee wee.”

⁸ Marcus also performed a pinky promise with the prosecutor after stating that a pinky promise is “[w]hen you swear not to lie” and confirmed that a pinky promise was serious. When performing the pinky promise, Marcus promised that everything he testified about was true.

At trial, Caleb testified that when Holt had done things to him that he did not like, it had been at Holt's house.

¶20 Ken Holt, Ms. Holt's husband, also testified at trial. He testified that he had never seen Holt assault either Marcus or Caleb, that he was not always home while Marcus and Caleb were at the Holt home, that Holt had watched the children approximately "less than 10, more than five, eight" times, and that Holt first watched Marcus and Caleb around "the summer of '08 or maybe after the summer of '08."

¶21 The jury returned guilty verdicts on all five counts, and the trial court entered judgments of conviction as to each. Holt now appeals the judgment of conviction on each of the five counts, arguing that: (1) the trial court erred in admitting the video recording of Caleb's forensic interview and testimony into evidence; and (2) that the evidence admitted at trial was insufficient to support the verdict rendered on each of the five counts.

ANALYSIS

¶22 On appeal, Holt argues that the trial court erred in admitting the videotape of Caleb's forensic interview and Caleb's trial testimony into evidence and that the evidence introduced at trial was insufficient to support a guilty verdict on any of the five charges.⁹ We address each argument in turn.

⁹ In the heading of section one of her moving brief, Holt argues that "the trial court erroneously admitted the audiovisual recording of [Caleb's] statement and [Caleb's] testimony into evidence." (Capitalization omitted.) It is not entirely clear whether Holt argues only that Caleb's statement and testimony *in the video* were incorrectly admitted into evidence or whether she argues that Caleb's testimony as recorded in the video recording *and* his trial testimony were admitted in error. To the extent Holt suggests the trial court erred in admitting Caleb's trial testimony into evidence, we do not consider that argument, as Holt's brief addresses only the

(continued)

I. The trial court did not err in admitting the audiovisual recording of Caleb’s forensic interview into evidence.

¶23 Holt first argues that the trial court erred in admitting the videotape of Caleb’s forensic interview into evidence at trial. Specifically, she argues that: (1) the videotape is inadmissible because Caleb did not demonstrate that he had the ability to understand the importance of telling the truth; (2) that the videotape of Caleb’s forensic interview did not contain the necessary indicia to support its trustworthiness; and (3) that Caleb was not available to testify at trial. She also argues that the trial court erred in not requiring the videotape of Caleb’s forensic interview to be transcribed.

¶24 The admissibility of evidence generally falls within the trial court’s discretion. *See State v. Mares*, 149 Wis. 2d 519, 525, 439 N.W.2d 146 (Ct. App. 1989). An erroneous exercise of discretion occurs if a trial court’s decision is based on an improper application of the law to the facts of the case. *See Thorpe v. Thorpe*, 108 Wis. 2d 189, 195, 321 N.W.2d 237 (1982). Whether an audiovisual recording introduced at trial falls within WIS. STAT. § 908.08 presents a question of statutory interpretation that we review independently. *See State v. Tarantino*, 157 Wis. 2d 199, 208, 458 N.W.2d 582 (Ct. App. 1990). Because the audiovisual recording is part of the record, we will review the questions of whether Caleb understood the importance of telling the truth and that false statements are punishable, and whether his statements during the forensic interview provide the necessary indicia of trustworthiness *de novo*.

alleged errors related to the admissibility of the videotaped statement. *See State v. Pettit*, 171 Wis. 2d 627, 646, 492 N.W.2d 633 (Ct. App. 1992) (stating that the court “may decline to review issues inadequately briefed.”).

1. WISCONSIN STAT. § 908.08.

¶25 WISCONSIN STAT. § 908.08 allows for videotaped statements of children to be used at trial where certain safeguards are met. *See State v. Williquette*, 180 Wis. 2d 589, 603, 510 N.W.2d 708 (Ct. App. 1993). The legislature enacted § 908.08 “to make it easier, not harder, to employ videotaped statements of children in criminal trials and related hearings.” *See State v. Snider*, 2003 WI App 172, ¶13, 266 Wis. 2d 830, 668 N.W.2d 784 (footnote omitted). Thus, a trial court “may admit into evidence the audiovisual recording of an oral statement of a child who is available to testify” in any criminal trial. WIS. STAT. § 908.08(1). Additionally, WIS. STAT. § 908.08(3) provides:

(3) The court or hearing examiner shall admit the recording upon finding all of the following:

(a) That the trial or hearing in which the recording is offered will commence:

1. Before the child’s 12th birthday; or
2. Before the child’s 16th birthday and the interests of justice warrant its admission under sub. (4).

(b) That the recording is accurate and free from excision, alteration and visual or audio distortion.

(c) That the child’s statement was made upon oath or affirmation or, if the child’s developmental level is inappropriate for the administration of an oath or affirmation in the usual form, upon the child’s understanding that false statements are punishable and of the importance of telling the truth.

(d) That the time, content and circumstances of the statement provide indicia of its trustworthiness.

(e) That the admission of the statement will not unfairly surprise any party or deprive any party of a fair opportunity to meet allegations made in the statement.

¶26 Prior to trial, the State moved to enter the recorded forensic interviews of both Marcus and Caleb into evidence. Holt objected to the introduction of Caleb’s forensic interview, arguing that Caleb “had difficulty affirming to tell the truth” and that he was therefore not competent to testify. After reviewing the forensic interview videos, the trial court was satisfied that the testimony in the audiovisual recordings was “reliable enough that the jury can decide what weight to put on it.” The trial court noted that although Caleb was not the most “intelligent historian” and that he made some errors in the truth-telling portion of the forensic interview, it believed that it “had to do with the poise of somebody that young” and was not indicative of Caleb’s willingness to tell the truth. Specifically, the court pointed to Caleb’s ability to explain to Officer Klauser what happens to kids at school when they do not tell the truth. The trial court also indicated that it would reconsider its ruling as to the video of Caleb’s forensic interview if there were any lingering issues or refusals to tell the truth during his trial testimony.

¶27 As to the required findings a trial court must make pursuant to WIS. STAT. § 908.08(3), Holt argues only that Caleb did not demonstrate his ability to understand the importance of telling the truth (subsection 3(c)) and that Caleb’s videotaped statement did not contain the necessary indicia of its trustworthiness (subsection 3(d)); accordingly, we consider only these two required findings under § 908.08(3). We also address Holt’s argument that Caleb was not available to testify at trial within the meaning of WIS. STAT. § 908.08(1).

2. Caleb demonstrated his ability to understand the importance of telling the truth and the consequences of not telling the truth.

¶28 Holt first challenges the admissibility of Caleb’s videotaped forensic interview by asserting that Caleb did not demonstrate that he had the ability to

understand the importance of telling the truth. Although the determination of whether a child understands the importance of telling the truth is generally a question of fact, we will review this issue *de novo* since we are in as good of a position as the trial court to make a determination. *See State v. Jimmie R.R.*, 2000 WI App 5, ¶39, 232 Wis. 2d 138, 606 N.W.2d 196.

¶29 Where a child’s videotaped statement is not made upon oath or affirmation because of the child’s age, the requirement under WIS. STAT. § 908.08(3)(c) is met if it is shown that the child understands that false statements are punishable *and* that telling the truth is important. *See Jimmie R.R.*, 232 Wis. 2d 138, ¶¶41-45. These two concepts—the importance of telling the truth and understanding the consequences of making false statements—are related and may not be viewed in isolation. *See id.*, ¶42.

¶30 In *Jimmie R.R.*, the defendant, while effectively conceding that the child understood the importance of telling the truth, challenged the admissibility of a videotaped recording of the child’s interview on the grounds that the child did not understand that false statements are punishable as required by WIS. STAT. § 908.08(3)(c). *See Jimmie R.R.*, 232 Wis. 2d 138, ¶¶37-42. While we recognized in *Jimmie R.R.* that it was necessary to satisfy both prongs of the statute, we confirmed that the two prongs are not “discrete and unrelated concepts” but instead are “very much interrelated.” *Id.*, ¶42. Specifically, we stated that “in most instances, a reasonable child would associate a warning about the importance of telling the truth with the related concept of untruthfulness and the consequences that might flow from such deceit.” *Id.* (footnote omitted). We concluded in *Jimmie R.R.* that, based on the totality of the circumstances of the interview and the language employed, the “punishment” prong had been satisfied. *See id.*, ¶45. This case presents the opposite scenario from *Jimmie R.R.* in that

Holt challenges only whether Caleb understood the importance of telling the truth but not whether Caleb understood that false statements are punishable.

¶31 We have reviewed the challenged audiovisual recording. Shortly after the interview began, Caleb told Officer Klauser that “TT Bev sucked my wee wee.” This occurred prior to the “rapport building and rules stage” that typically begins a forensic interview, as explained by Officers Sturma and Klauser. However, Officer Klauser also explained that in such circumstances, she was trained to allow the child to continue disclosing the events in question and to then go back later in the interview to discuss the concepts of truth and the consequences of not telling the truth. After Caleb disclosed what had happened while in Holt’s care, Officer Klauser asked Caleb if he understood the difference between the truth and a lie. Caleb shook his head back and forth, and Officer Klauser then gave examples by asking if it was the truth or a lie that Caleb was a boy and whether it was the truth or a lie that Officer Klauser’s pants were black. Caleb correctly confirmed that both statements were the truth. Officer Klauser also asked Caleb if it was the truth or a lie that the carpet was red, and Caleb incorrectly stated that it was the truth. However, he then corrected himself and said that it was a lie.

¶32 Officer Klauser also asked Caleb what happens when a kid gets caught telling a lie and Caleb responded they “get put on the wall” or “put in the chair” like at school. When asked what it meant to “get put on the wall,” Caleb said it meant that the kid “be bad.” Caleb also agreed that it is important to tell the truth, although when asked if he promised to tell the truth, he alternated shaking his head no and nodding yes. However, when Officer Klauser again asked Caleb if he promised to tell her “the right thing,” Caleb immediately and emphatically responded “I did.” When asked what he did, he said “tell you the right thing.”

¶33 We agree with the trial court that Caleb made some “obvious errors” during the truth-telling protocol with Officer Klauser. We also agree with the trial court’s recognition that Caleb understood the importance of telling the truth based on his understanding that a child gets in trouble when caught lying. Importantly, Caleb’s recognition during the forensic interview that lying is bad and results in punishment is both apparent and consistent. Moreover, despite alternating between nodding his head “yes” and shaking his head “no” when asked if he promised to tell the truth, he was adamant that he had told Officer Klauser “the right thing.” As in *Jimmie R.R.*, we believe that a reasonable child who understands the negative consequences associated with telling a lie would associate that concept with the importance of telling the truth. *See id.*, ¶42 n.7. Accordingly, based on the totality of the circumstances surrounding Caleb’s forensic interview, we conclude that the “truthfulness” prong was satisfied.

3. Caleb’s videotaped statement provides the necessary indicia of trustworthiness.

¶34 An indicia of trustworthiness is also required before a trial court may find a child’s videotaped statement admissible as evidence. *See* WIS. STAT. § 908.08(3)(d). Holt, relying on *State v. Sorenson*, 143 Wis. 2d 226, 421 N.W.2d 77 (1988), argues that there was no indicia of trustworthiness as to Caleb’s videotaped interview because of: (1) Caleb’s young age; (2) the approximately eighteen month delay between the alleged sexual assault and the videotaped interview; and (3) the lack of corroborating evidence. We disagree.

¶35 In *Sorenson*, our supreme court considered the admissibility of a child’s videotaped statements under the residual hearsay exception, WIS. STAT. § 908.03(24), which allows for admission of hearsay evidence that “possesses ‘comparable circumstantial guarantees of the trustworthiness.’” *Sorenson*,

143 Wis. 2d at 242 (citation omitted). The court enumerated the following factors to consider in determining whether a statement has circumstantial guarantees of trustworthiness under the residual hearsay exception: (1) the child's age, ability to communicate, and familial relationship with the defendant; (2) the person to whom the child made the statement and that person's relationship to the child; (3) the circumstances under which the child made the statement, including length of time elapsed since the alleged assault; (4) the content of the statement itself, including any signs of deceit or falsity; and (5) the existence of other corroborating evidence. *See id.* at 245-46; *see also Snider*, 266 Wis. 2d 830, ¶17. These factors are not exclusive, the weight given each factor may vary in each case, and no factor is dispositive of a statement's trustworthiness. *Sorenson*, 143 Wis. 2d at 245-46. Rather, the court considers the totality of the factors to determine whether the statement possesses guarantees of trustworthiness. *See id.* at 246.

¶36 We conclude that based on the totality of the factors, Caleb's videotaped statement possesses the necessary indicia of trustworthiness. First, although Caleb was only four at the time of the forensic interview, this alone does not render his statement untrustworthy. To the contrary, his age, combined with the context of his statement, supports a finding of trustworthiness. Caleb described Holt as having sucked on his "wee wee" and used dolls to demonstrate mouth to penis oral sex. When Officer Klauser asked Caleb to use the dolls to demonstrate what had happened, rather than using both dolls, Caleb brought the male doll's pubic area to his own mouth. That a child so young was able to demonstrate mouth to penis oral sex so vividly is unusual and supports a finding of trustworthiness. *See Sorenson*, 143 Wis. 2d at 249 ("A young child is unlikely to fabricate a graphic account of sexual activity because it is beyond the realm of his or her experience.").

¶37 Next, Officer Klauser, an individual previously unknown to Caleb, conducted the forensic interview. Officer Klauser testified that she had extensive training and experience interviewing young children concerning allegations of sexual abuse, and we find no evidence in the record suggesting that Officer Klauser had any motive to encourage Caleb to fabricate his statement. In fact, as we have already explained, Caleb told Officer Klauser that Holt had sucked his “wee wee” almost as soon as they had settled into the interview room.

¶38 Third, Claire testified that Holt had been “like a sister” until the allegations were disclosed, which may have impacted Caleb’s willingness to confide in another adult concerning the alleged abuse. And while a significant amount of time elapsed between the time of the alleged assault and when Caleb told his mother, that alone is not sufficient to render Caleb’s statement untrustworthy, particularly in light of the close relationship between Holt and Caleb’s family. *See State v. Fawcett*, 145 Wis. 2d 244, 249, 426 N.W.2d 91 (Ct. App. 1988) (being assaulted by a close friend may deter a child from reporting abuse immediately). Additionally, Liz Ghilardi, the State’s expert, testified that “[c]hildren almost never tell immediately after something happens. A delay can be a week, a delay can be a month, a delay can be several months, a delay can be several years.”

¶39 Finally, despite Holt’s repeated attack on the lack of corroborating evidence, this factor carries little weight in this case. As to the lack of physical evidence, an expert witness testified that where there is a delayed reporting of alleged sexual abuse, it is unlikely that physical evidence will be found. Moreover, in a case where the only potential witnesses to the alleged sexual assault are the perpetrator and victim, it is not surprising that there would be no corroborating testimony. *See Fawcett*, 145 Wis. 2d at 249 (“Often there are no

witnesses except the victim.”). Here, however, there was trial testimony that corroborated aspects of Caleb’s statement to Officer Klauser: during his forensic interview, Caleb was adamant that the alleged sexual assault occurred at *his* house—not at Holt’s house—and that there was no one else present, and his mother testified that there was one occasion that Holt watched only Caleb at Caleb’s house.

¶40 While there may ultimately have been discrepancies between Caleb’s videotaped statement and his trial testimony—which occurred almost two years after the forensic interview—resolution of those discrepancies was for the jury and has little bearing as to the trustworthiness of the videotaped forensic interview. Whether Caleb’s videotaped statement has the necessary indicia of trustworthiness is dependent upon the totality of the factors and circumstances and not just a subset of those factors in isolation. As a whole, we conclude that Caleb’s videotaped forensic interview statement contains the necessary indicia of trustworthiness for the purpose of WIS. STAT. § 908.08(3)(d).

4. Holt abandoned her argument that Caleb was not available to testify at trial within the meaning of WIS. STAT. § 908.08(1).

¶41 Finally, Holt, relying on the meaning of “unavailable” in WIS. STAT. § 908.04(1)(c), argues that Caleb was not available to testify at trial within the meaning of WIS. STAT. § 908.08(1). WISCONSIN STAT. § 908.04(1)(c) states that being “[u]navailabl[e] as a witness” includes a situation in which the declarant “[t]estifies to a lack of memory of the subject matter of the declarant’s statement.” Holt argues that Caleb was not available at trial within the meaning of § 908.08(1) because he was unable to answer questions about his statements at the forensic interview, because he was unable to recall ever having been at Holt’s house, and because some of the statements he made during his trial testimony conflicted with

his statements during the forensic interview. The problems with Holt's argument are two-fold.

¶42 First, the State points out that Holt failed to properly preserve this claim for appeal because she did not raise the issue of whether Caleb was unavailable to testify with the trial court, and Holt fails to point to any part of the record indicating that she did preserve this claim.¹⁰ See *State v. Huebner*, 2000 WI 59, ¶10, 235 Wis. 2d 486, 611 N.W.2d 727 (issues not preserved at the trial court are generally not considered on appeal). Second, Holt fails to respond to the State's argument concerning *State v. Rockette*, 2006 WI App 103, 294 Wis. 2d 611, 718 N.W.2d 269, a case in which we considered whether a witness's claimed inability to remember prior statements while testifying at trial violated the Confrontation Clause and concluded that "despite [the witness's] purported memory loss, he appeared at trial, thus removing any issue under the Confrontation Clause." See *id.*, ¶¶5-15, 26-27. Because Holt failed to respond to the State's argument concerning the preservation of this claim for appeal and the applicability of *Rockette*, we deem Holt's argument concerning Caleb's availability within the meaning of WIS. STAT. § 908.08(1) abandoned. See

¹⁰ Holt filed a postconviction motion with the trial court on August 19, 2013, seeking a new trial and asserting that trial counsel was ineffective for failing to object to Claire's testimony and for failing to call additional witnesses. In the motion, Holt also stated that "[a] number of evidentiary decisions have already been fully briefed and argued before the circuit court. The defendant specifically reserves her right to appellate review of those decisions." Whether Caleb was available as a witness is *not* an issue that was previously briefed or argued before the trial court, and, moreover, in her postconviction motion, Holt, in arguing why Claire's testimony was inadmissible hearsay, stated that "[a]s the declarants [Marcus and Caleb] were, by the State's own offering, 'available' as witnesses, the mother's statements ... were clearly not admissible under any hearsay exception." The trial court's decision denying the postconviction motion is not at issue on appeal.

Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp., 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979) (unrefuted arguments deemed admitted).¹¹

5. *The trial court did not err by not requiring the transcription of Caleb’s audiovisual forensic interview.*

¶43 As part of her argument that the trial court erred in admitting the audiovisual recording of Caleb’s forensic interview into evidence, Holt interjects an argument that the trial court also erred in “failing to transcribe the audiovisual recording of [Caleb’s] statement to the official court record as requested by the defendant.” (Capitalization altered.) Somewhat inexplicably, Holt suggests that this alleged error was not “harmless” and that we should vacate the conviction and remand for a new trial. We disagree.

¶44 Holt relies on *State v. Ruiz-Velez*, 2008 WI App 169, 314 Wis. 2d 724, 762 N.W.2d 449, to support her contention that an audiovisual recording entered into evidence pursuant to WIS. STAT. § 908.08 and published to the jury “must be transcribed for the official court record.” In response, the State points out that changes in the Wisconsin Supreme Court Rules since *Ruiz-Velez* no longer require that audiovisual recordings such as Caleb’s interview be transcribed. Holt fails to respond to the State’s argument concerning the applicability of *Ruiz-Velez* and the subsequent changes to the relevant Wisconsin Supreme Court Rules, and we therefore deem this argument abandoned. *See Charolais*, 90 Wis. 2d at 109 (unrefuted arguments deemed admitted).

¹¹ In her reply brief, Holt states that her reply “is aimed at specific issues raised by the Plaintiff-Respondent, seeks to avoid making arguments previously raised, and is [in] no way intended as a waiver of any arguments made in Defendant-Appellant’s principal brief and not raised here.” Nevertheless, arguments unrefuted in a reply brief are deemed admitted. *See Charolais Breeding Ranches, Ltd. v. FPC Secs. Corp.*, 90 Wis. 2d 97, 109, 279 N.W.2d 493 (Ct. App. 1979).

¶45 Nevertheless, we comment briefly on the changes to the Supreme Court rules since *Ruiz-Velez*. In *Ruiz-Velez*, we concluded that an audiovisual recording of a child's statement that was introduced at trial was to be transcribed by the official court reporter pursuant to WIS. STAT. § 885.42(4) (2008-09) and SCR 71.01. See *Ruiz-Velez*, 314 Wis. 2d 724, ¶¶1, 4-6. In response to *Ruiz-Velez*, our supreme court amended WIS. STAT. § 885.42 and SCR 71.01(2), which no longer requires that video statements played during trial be recorded. See *State v. Martinez*, 2010 WI App 34, ¶19 n.4., 324 Wis. 2d 282, 781 N.W.2d 511.¹² Accordingly, the trial court did not err when it did not require that the audiovisual recordings of Marcus and Caleb be transcribed.

II. The evidence is sufficient to support the verdicts rendered on each of the five charges.

¶46 Holt's next argument on appeal is that the evidence presented at trial was not sufficient to support the verdicts rendered on each of the five counts charged because: (1) the evidence relied upon to reach each guilty verdict was

¹² Supreme Court Rule 71.01(2)(e) now provides that:

All proceedings in the circuit court shall be reported, except for the following:

....

(e) Audio and audiovisual recordings of any type, if not submitted under par. (d), that are played during the proceeding, marked as an exhibit, and offered into evidence. If only part of the recording is played in court, the part played shall be precisely identified in the record. The court may direct a party or the court reporter to prepare the transcript of a recording submitted under this paragraph.

This version of SCR 71.01(2)(e) was created by S. CT. ORDER 10-06, 2010 WI 128, which became effective on January 1, 2011.

inherently and patently incredible; and (2) even if the evidence is given weight and credibility, the evidence does not establish every element of the crimes charged beyond a reasonable doubt. We disagree.

¶47 The standard for reviewing the sufficiency of the evidence “is whether the evidence was sufficient to prove the defendant’s guilt beyond a reasonable doubt.” *State v. Sharp*, 180 Wis. 2d 640, 658-59, 511 N.W.2d 316 (Ct. App. 1993). If there is any possibility the trier of fact “could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt,” we may not overturn the verdict even if we believe “that the trier of fact should not have found guilt based on the evidence before it.” *State v. Poellinger*, 153 Wis. 2d 493, 507, 451 N.W.2d 752 (1990). The jury determines the credibility of witnesses and the weight of the evidence, and we will not substitute our judgment for the trier of fact’s “unless the evidence supporting the jury’s verdict conflicts with nature or the fully established facts, or unless the testimony supporting and essential to the verdict is inherently and patently incredible.” *Sharp*, 180 Wis. 2d at 659; *see also Poellinger*, 153 Wis. 2d at 507 (“[A]ppellate court may not substitute its judgment for that of the trier of fact unless the evidence, viewed most favorably to the state and the conviction, is so lacking in probative value and force that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt.”). This standard applies regardless of whether the evidence is direct or circumstantial. *See Poellinger*, 153 Wis. 2d at 501.

¶48 Moreover, on review of the sufficiency of circumstantial evidence to support a conviction, an appellate court decides only “whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence to sustain the verdict rendered,” and the appellate court “need not concern itself in any way with evidence which might support other theories of the crime.” *Id.* at 507-508

¶49 The State charged Holt with two counts of first-degree sexual assault of a child (sexual intercourse), two counts of first-degree sexual assault of a child (sexual contact), and one count of trafficking of a child. Holt concedes that both victims are under the age of 12 and 13 but maintains that the State failed to produce sufficient evidence as to the second element (sexual intercourse and sexual contact) beyond a reasonable doubt.¹³ We note that while Holt argues that the evidence was insufficient to establish all of the required elements on counts one through four, she focuses primarily on the alleged deficiencies as to Caleb’s testimony, and there is almost no mention of any alleged deficiency as to Marcus’s testimony. This is an important distinction, as only count one relates to Caleb. Regardless, Holt’s sufficiency of the evidence argument as a whole is, in large part, conclusory.

1. Counts one through four

¶50 Holt first challenges the sufficiency of the evidence to find her guilty beyond a reasonable doubt of violating WIS. STAT. § 948.02(1)(b) (2007-08; 2009-10). Count one charged that Holt had sexual intercourse with Caleb between September 1, 2008, and October 31, 2008, and count two charged that Holt had sexual intercourse with Marcus between January 1, 2008, and January 31, 2010. In order to establish a violation of § 948.02(1)(b) (2007-08; 2009-10), the State must establish that Holt had sexual intercourse with a person who has not reached twelve years of age. “Sexual intercourse” is defined as:

¹³ Violation of WIS. STAT. § 948.02(1)(b) (2007-08; 2009-10) (counts one and two) requires a finding that the victim “has not attained the age of 12 years.” Violation of WIS. STAT. § 948.02(1)(e) (2007-08; 2009-10) (counts three and four) requires a finding that the victim “has not attained the age of 13 years.” Violation of WIS. STAT. § 948.051(1) (2007-08; 2009-10) also requires an age-based finding that is not at issue here. *See id.*; WIS. STAT. § 948.01.

[V]ulvar penetration as well as cunnilingus, fellatio or anal intercourse between persons or any other intrusion, however slight, of any part of a person's body or of any object into the genital or anal opening either by the defendant or upon the defendant's instruction. The emission of semen is not required.

WIS. STAT. § 948.01(6) (2007-08; 2009-10).

¶51 Holt's argument focuses almost entirely on the charge related to Caleb. It is undisputed that there were inconsistencies between Caleb's trial testimony and his statement during the forensic interview. For example, during his forensic interview, he told Officer Klauser that Holt had "sucked [his] wee wee" at his house, whereas at trial, he testified that Holt had touched him at Holt's house but that she had not done anything to him with her mouth. Caleb also told Officer Klauser that it happened at a house he had previously lived in and not the house he lived in at the time of the forensic interview, and he also told her that no one else was in the house when it occurred. At trial, Claire testified that there was an occasion that Holt had watched only Caleb at Claire's house and that she had moved into a new house approximately two-and-one half years prior to the trial.¹⁴ Claire also confirmed that if she had told Officer Klauser when she first contacted the police in 2010 that Holt had watched Caleb at Claire's house on one occasion in September or October of 2008 then what she told Officer Klauser earlier would have been accurate.

¶52 Where there are inconsistencies in a witness's testimony, such as was the case with Caleb's testimony, the factfinder can accept portions of the witness's testimony while rejecting other portions. See *Ruiz v. State*, 75 Wis. 2d

¹⁴ The trial occurred in January 2012, almost two years after the March 25, 2010 forensic interview.

230, 232, 249 N.W.2d 277 (1977) (Even where there are obvious discrepancies in a witness's trial testimony or even between the trial testimony and earlier statements, "that fact in itself does not result in concluding as a matter of law that the witness is wholly incredible."). In such cases, the jury must determine the proper weight and credibility to give the witness's testimony. See *Kohlhoff v. State*, 85 Wis. 2d 148, 154, 270 N.W.2d 63 (1978) ("Inconsistencies and contradictions in a witness' testimony are for the jury to consider in judging credibility and the relative credibility of the witnesses is a decision for the jury.").

¶53 On appeal, we look only to whether there is sufficient evidence to support the inferences possible from the testimony, and we may not reverse Holt's conviction "unless the evidence, viewed most favorably to the state and the conviction, is so insufficient in probative value and force that it can be said as a matter of law that no trier of fact, acting reasonably, could have found guilt beyond a reasonable doubt." See *Poellinger*, 153 Wis. 2d at 501, 507. Here, the jury was presented with Caleb's statement to Officer Klauser in March 2010 and his trial testimony in January 2012. While multiple inferences from Caleb's testimony were plausible in light of the inconsistencies, we cannot say that a reasonable jury could not conclude that Holt engaged in the conduct charged in count one, particularly if the jury gave greater weight to Caleb's statement to Officer Klauser than to his trial testimony, which was not only closer in time to the sexual assault, but also involved telling just one person rather than an entire room full of strangers. Accordingly, the evidence is not insufficient to sustain a guilty verdict on count one.

¶54 Holt also argues that there was insufficient evidence to establish guilt beyond a reasonable doubt as to count two, which alleged sexual intercourse with Marcus. Holt provides no argument as to what was insufficient about the

evidence admitted as to count two and instead surmises only that Marcus's testimony was "inherently and patently incredible."

¶55 Marcus testified extensively as to the conduct Holt engaged in, and as it relates to count two, he specifically explained how Holt removed their clothes and then put her mouth on his private. He also testified that Holt placed her mouth on his private a second time in the living room. Marcus's trial testimony regarding how Holt used her mouth on his private area was consistent with his statement to Officer Sturma during the forensic interview. Based on this testimony, we conclude that a reasonable jury could readily find that Holt had engaged in sexual intercourse with Marcus.

¶56 Holt next argues that the evidence was insufficient to support a finding of guilt beyond a reasonable doubt on counts three and four, which alleged sexual assault of Marcus in violation of WIS. STAT. § 948.02(1)(e) (2007-08; 2009-10). In order to establish a violation of § 948.02(1)(e) (2007-08; 2009-10), the State must establish that Holt engaged in sexual contact with a person who has not attained thirteen years of age. As relevant here, "sexual contact" is defined as:

(a) Any of the following types of intentional touching, whether direct or through clothing, if that intentional touching is either for the purpose of sexually degrading or sexually humiliating the complainant or sexually arousing or gratifying the defendant:

1. Intentional touching by the defendant or, upon the defendant's instruction, by another person, by the use of any body part or object, of the complainant's intimate parts.

2. Intentional touching by the complainant, by the use of any body part or object, of the defendant's intimate parts or, if done upon the defendant's instructions, the intimate parts of another person.

WIS. STAT. § 948.01(5)(a) (2007-08, 2009-10).

¶57 Holt presents two arguments in this regard. First, she argues that even if Marcus’s testimony is given weight and credibility, there was insufficient evidence to show that the second element of sexual assault (sexual contact) was satisfied. Second, she argues that there was no evidence produced to prove the intent requirement of counts three and four, “that the touching was done with the intent to either degrade [Marcus] or sexually gratify Holt.” Holt is wrong.

¶58 In order to prove Holt guilty of count three, the State was required to prove that Holt placed Marcus’s hand on her breast, and in order to prove Holt guilty of count four, the State was required to prove Holt placed Marcus’s hand on her pubic area. At trial, Marcus testified that Holt placed his hand on her breast and that he remembered telling Officer Sturma that Holt had placed his hand on her pubic area. As we have already noted, Marcus’s trial testimony was consistent with the statement he provided to Officer Sturma during the March 2010 forensic interview. Moreover, Marcus used anatomically correct dolls during both his trial testimony and the forensic interview to demonstrate how this conduct occurred. We see nothing “inherently and patently incredible” about Marcus’s testimony, and Holt points to no contradiction. We conclude that this evidence was sufficient to allow a reasonable jury to conclude that Holt engaged in the conduct charged in counts three and four.

¶59 We next consider whether Holt placed Marcus’s hand on her breast and pubic area to either sexually degrade or humiliate Marcus or whether she did so for her own sexual arousal or gratification. *See* WIS. STAT. §§ 948.01(5)(a) and 948.02(1)(e) (2007-08; 2009-10). Holt argues that there was no evidence produced to establish that the intentional conduct, even if it did occur, was done to degrade or humiliate Marcus or was for her own sexual arousal or gratification. We disagree.

¶160 “Intent to become sexually aroused or gratified, like other forms of intent, may be inferred from the defendant’s conduct and from the general circumstances of the case.” *State v. Drusch*, 139 Wis. 2d 312, 326, 407 N.W.2d 328 (Ct. App. 1987). Evidence of intent may be circumstantial, and “circumstantial evidence can be as probative and sometimes more probative than direct evidence.” *Id.* (citation omitted). The trial court properly instructed the jury that “when deciding about knowledge and purpose ... you can’t look into a person’s mind to find out about those things.” Rather, “[k]nowledge and purpose must be found, if it is to be found at all, from the defendant’s acts, words and statements, if any, and from all the facts and circumstances in this case bearing upon knowledge and purpose.” This comports with WIS JI—CRIMINAL 2101A, “Sexual Contact—§ 948.01(5),” which states the following in regard to deciding intent: “You cannot look into a person’s mind to find intent. Intent must be found, if found at all, from the defendant’s acts, words, and statements, if any, and from all the facts and circumstances bearing upon intent.”

¶161 Based on Marcus’s testimony and his demonstration with dolls that Holt grabbed his wrist and placed his hand on her breast and pubic area, the jury could reasonably infer that this was done for Holt’s sexual arousal or gratification. It is difficult to conceive of any other reason that an adult woman would engage in such conduct with a young boy. We therefore conclude that based on this evidence, the jury could reasonably find that the State established that Holt’s sexual contact with Marcus was for her own sexual arousal or gratification.

¶162 Holt’s last-ditch attempt to challenge the sufficiency of the evidence on counts one through four is her assertion that “there is no possible way to determine beyond a reasonable doubt *when* the alleged conduct occurred from the testimony given at trial.” (Emphasis added.) Because it is not necessary to

establish the exact date upon which a crime was committed contrary to WIS. STAT. §§ 948.02(1)(b) and 948.02(1)(e) (2007-08; 2009-10), we need not further address this aspect of Holt's argument.

¶63 As we have explained, the weight and credibility of the evidence adduced at trial is a question for the jury, and we may not overturn the jury's verdict "[i]f *any possibility* exists that the trier of fact could have drawn the appropriate inferences from the evidence adduced at trial to find the requisite guilt." See *Poellinger*, 153 Wis. 2d at 507 (emphasis added). We have reviewed the record and conclude that, for the reasons set forth above, the evidence is sufficient to support the guilty verdicts rendered on counts one through four.

2. *Count five*

¶64 Holt also argues that the evidence was insufficient to support the conviction on count five, trafficking of a child contrary to WIS. STAT. § 948.051(1) (2007-08; 2009-10). The elements for establishing a violation of this statute are: (1) that Holt knowingly provided Marcus; (2) who was under age eighteen at the time; (3) for the purposes of a commercial sex act. "Commercial sex act" is defined as "sexual contact for which anything of value is given to, promised, or received, directly or indirectly, by any person." WIS. STAT. § 940.302(1)(a) (2007-08; 2009-10). Additionally, the violation must have occurred on or after April 3, 2008, the effective date of § 948.051(1) (2007-08). As with counts one through four, Holt concedes that the State established the age element.

¶65 Holt's contention that the evidence was insufficient to support a guilty verdict on count five is conclusory: "the only evidence regarding the actual alleged conduct consisted entirely of [Marcus's] testimony, which was inherently

incredible.” She points to nothing in the record that suggests Marcus’s testimony was “inherently incredible,” let alone provides any explanation as to what was “inherently incredible” about Marcus’s testimony.

¶66 Our review of the record confirms that a reasonable jury could conclude, based on the evidence presented at trial, that Holt committed the crime charged in count five. It is undisputed that Marcus testified that Holt accepted money from two women who then removed Marcus’s clothes and their own clothes and began “humping” him. This testimony was generally consistent with the conduct Marcus described to Officer Sturma during his forensic interview.

¶67 Holt also contends that the State failed to present any credible evidence as to *when* the alleged conduct charged in count five actually occurred. Again, we disagree. While there is no doubt Holt could not be convicted on count five unless the jury found that the alleged act or acts occurred on or after April 3, 2008, there is evidence in the record to support the jury’s conclusion that the act or acts did occur after that date. Specifically, Holt’s husband testified that his wife first began watching Marcus and Caleb in or around the summer of 2008. This testimony provides sufficient evidence that the conduct in question occurred on or after April 3, 2008, and the jury was entitled to believe the testimony presented. Because it was reasonable for the jury to believe Ken Holt’s testimony concerning when Holt first watched Marcus, we conclude the evidence is sufficient to establish that the conduct alleged in count five occurred on or after April 3, 2008.

¶68 In summary, the crux of Holt’s argument as to counts one through five is that witness testimony provided by a young child, without more, cannot establish the required elements of a crime beyond a reasonable doubt. However, a child’s testimony, without more, is legally sufficient to satisfy each element and

support the jury's verdict. See *Sharp*, 180 Wis. 2d at 659. Moreover, our consideration of the sufficiency of the evidence on appeal is limited to determining “whether the theory of guilt accepted by the trier of fact is supported by sufficient evidence.” See *Poellinger*, 153 Wis. 2d at 508.

¶169 Here, the record establishes that evidence was presented as to all elements of the crimes charged, and the jury was charged with considering the weight and credibility of the evidence presented. The jury performed its task and returned guilty verdicts on all five counts. While Holt disagrees with the verdicts and believes that Marcus's and Caleb's testimony was “inherently and patently unreliable evidence,” her belief does not make it so. Based on our review of the record, we affirm.

By the Court.—Judgment affirmed.

Not recommended for publication in the official reports.

