

**COURT OF APPEALS
DECISION
DATED AND FILED**

April 3, 2003

Cornelia G. Clark
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

**Appeal No. 02-0802-CR
STATE OF WISCONSIN**

Cir. Ct. No. 00-CF-1188

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

JEFFREY S. FREEMAN,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for Dane County:
STEVEN D. EBERT, Judge. *Affirmed.*

Before Dykman, Roggensack and Deininger, JJ.

¶1 PER CURIAM. Jeffrey Freeman appeals a judgment convicting him of first-degree sexual assault of a child, his eleven-year-old cousin, A.D. Freeman argues that the circuit court erred in allowing Patrice D. to testify that she was told to “watch Jeff” by A.D.’s older sister, Eveatt, before Eveatt went to bed.

We conclude that if the admission of the testimony was error, it is harmless. Therefore, we affirm.

¶2 “The test for harmless error is whether there is a reasonable possibility that the error contributed to the conviction.” *State v. Thoms*, 228 Wis. 2d 868, 873, 599 N.W.2d 84 (Ct. App. 1999). The State has the burden of proving that the error was harmless. *Id.* “The conviction must be reversed unless the court is certain that the error did not influence the jury, or had such slight effect as to be de minimus.” *Id.* (quotation omitted). “[W]e must consider the error in the context of the entire trial and consider the strength of untainted evidence.” *Id.*

¶3 Freeman argues that the circuit court erred in allowing Patrice D. to testify that she was told to “watch Jeff,” implying that Freeman needed to be watched around children. Assuming that the circuit court erred in allowing the testimony, an issue we do not reach, we conclude that there is no reasonable possibility the testimony contributed to the conviction because there was overwhelming evidence of Freeman’s guilt. A.D. testified that she had been asleep in her bedroom when she woke to find Freeman in her bed, touching her chest, butt and “private” with his hand. She also testified that he touched her butt through her clothes with his “private,” which she could feel through his clothes, and that he was pushing against her and it hurt.

¶4 Beyond A.D.’s testimony, several other witnesses testified about A.D.’s actions after the assault, and their testimony about her behavior was consistent with the assault having occurred. A.D.’s fourteen-year-old brother, Maurice, testified that A.D. told him what happened and that her eyes were red and she was sniffing. He also testified that A.D. ran when she saw Freeman and

looked scared. Starlett, A.D.'s ten-year-old sister, testified that she saw Freeman in the bed with A.D. Starlett also testified that, after Starlett had seen Freeman in A.D.'s bed, A.D. came into the room where Starlett was and hid under the futon when Freeman came into the room. A.D.'s cousin, fifteen-year-old Patrice, testified that she went to look for A.D. after Maurice told Patrice that Freeman had done something to A.D. Patrice further testified that she found A.D. in the basement, scared and crying, and that A.D. told Patrice that Jeff had done something to her. A.D.'s sister Gwendolyn, who is an adult and lived next door to A.D. in her own apartment, testified that A.D. was scared, shaking and crying, and didn't want anyone to touch her. Gwendolyn also testified that A.D. hid under the bed when Freeman came to Gwendolyn's apartment looking for A.D.

¶5 A.D.'s testimony, when coupled with the testimony of the other witnesses, provided overwhelming evidence that Freeman had sexual contact with a child under the age of thirteen. Any error in admitting Patrice's statement that she was told to "watch Jeff," especially because the testimony was made without any context about why Jeff should be watched, was harmless error. We are certain, after having read the trial transcript, that the statement, if error, either did not influence the jury or had "such slight effect as to be de minimus." *See id.*

By the Court.—Judgment affirmed.

This opinion will not be published. WIS. STAT. RULE 809.23(1)(b)5 (2001-02).

