

IN THE NEBRASKA COURT OF APPEALS

**MEMORANDUM OPINION AND JUDGMENT ON APPEAL
(Memorandum Web Opinion)**

IN RE INTEREST OF AUTUMN A.

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IN RE INTEREST OF AUTUMN A., A CHILD UNDER 18 YEARS OF AGE.

STATE OF NEBRASKA, APPELLEE,

V.

AUTUMN A., APPELLANT.

Filed October 27, 2026. No. A-25-927.

Appeal from the Separate Juvenile Court of Lancaster County: ROGER J. HEIDEMAN, Judge.
Affirmed.

Courtney B. Shanahan, of McHenry, Haszard, Roth, Hupp, Burkholder & Blumenberg,
P.C., for appellant.

Pat Condon, Lancaster County Attorney, and Alisha D. Jimenez for appellee.

BISHOP, WELCH, and FREEMAN, Judges.

BISHOP, Judge.

I. INTRODUCTION

The separate juvenile court of Lancaster County adjudicated Autumn A. to be a juvenile within the meaning of Neb. Rev. Stat. § 43-247(1) (Cum. Supp. 2024) because she subjected a female roommate to sexual contact, an act that would constitute the misdemeanor offense of third degree sexual assault. Autumn appeals, claiming the State failed to prove sexual contact beyond a reasonable doubt. She also contends that her trial counsel was ineffective for failing to object to certain testimony. Upon our de novo review, we affirm.

II. BACKGROUND

On the evening of August 14, 2025, law enforcement was dispatched to an all-female group home in Lincoln, Nebraska, after a resident at the facility, K.D. (age 15), disclosed to staff that she was “inappropriately touched and potentially sexually assaulted” by her roommate, Autumn (age 15). Officers conducted several interviews that night as part of an investigation, and two other residents, P.G. (age 15) and A.P. (age 16), made similar allegations against Autumn.

The following day, the State filed a three-count petition alleging that Autumn was a juvenile within the meaning of § 43-247(1) because she had subjected K.D., P.G., and A.P. to sexual contact, separate acts that would each constitute the misdemeanor offense of third degree sexual assault in violation of Neb. Rev. Stat. § 28-320(1) and (3) (Reissue 2016). Autumn entered a denial to all allegations in the petition.

The juvenile court ultimately dismissed the allegations related to P.G. and A.P. for insufficient evidence. However, the court found that the State proved the allegations related to K.D. beyond a reasonable doubt. It is from this finding that Autumn appeals. We limit our discussion of the evidence accordingly.

1. ADJUDICATION HEARING

An adjudication hearing on the State’s petition took place over several partial days in November 2025. Both parties presented evidence, and testimony was elicited from law enforcement officers, each of the alleged victims listed in the petition, and Autumn. We recount the relevant evidence below.

(a) K.D.’s Testimony

K.D. moved into the group home “halfway through July” 2025. Upon completing “orientation,” she became roommates with Autumn. When asked to describe her relationship with Autumn, K.D. stated, “In the most respectful way, I do not like her.”

During her testimony, K.D. described numerous encounters where Autumn subjected her to nonconsensual physical contact. She testified that after “two to three weeks” of arriving at the group home, Autumn “slapped” her “butt out of nowhere” as the two walked past each other. K.D. “awkwardly laughed” and told Autumn not to touch her. A “couple days to a week later,” Autumn “milkshaked” K.D. by “flip[ping] [her] boobs up.” K.D. could not recall whether this second incident occurred in the group home’s dining hall or in the bedroom she shared with Autumn.

K.D. recounted three separate incidents of unwanted contact occurring in her shared bedroom with Autumn. K.D. indicated that the door to her and Autumn’s bedroom was open per group home rules during each of the incidents. As for the first incident, K.D. “woke up” to another resident saying, “‘Why are you in [K.D.]’s bed?’” According to K.D., Autumn was “on top of [her],” “straddling” her body. K.D. “was on [her] back,” and Autumn “had her knees” “wrapped around [K.D.’s] stomach.” Autumn was initially “sitting upright,” but when K.D. asked her to “get off,” Autumn “laid forward and started cuddling [K.D.]” She used her arms and legs to “rock[] [K.D.’s] body back and forth.” Despite K.D.’s protest to “get off,” Autumn did not comply for “another five minutes.” The ordeal made K.D. “uncomfortable.” K.D. discussed this incident with P.G. and A.P. but did not tell group home staff because she “cared” about Autumn and “didn’t want to get her in trouble.”

Another incident occurred approximately “a week” later at “[n]ighttime.” Autumn invited K.D. to her bed “over and over again.” She told K.D. that she “‘want[ed] to talk’” but did not “‘want to get in trouble for being too loud.’” On cross-examination, K.D. explained that residents had to be “kind of quiet” at night so group home staff would not hear. K.D. testified that she refused Autumn’s invitations at first. However, Autumn “kept asking,” and K.D. eventually acquiesced. K.D. initially “sat down on the bed across and then [she] moved over and sat down on [Autumn’s] bed.” Autumn then “pulled [K.D.’s] body down and cuddled [her].” K.D. “‘tried getting up,’” but Autumn “‘stopped [her].” After “a minute or so,” K.D. got up, went back to her bed, and went to sleep. She explained that the incident made her feel “disgusting and uncomfortable.” K.D. did not report Autumn’s conduct; she was “scared” of “[g]etting in trouble.”

The final incident occurred on a morning “a week or a week and a half later.” K.D. testified: I woke up with [Autumn] on my bed and then [Autumn] climbed onto the side of me because I was laying on my side and [Autumn], like, started poking my side and I was obviously laughing because I’m very ticklish. And then, I told her to get off and she got off.

K.D. told Autumn to “‘[s]top’” “‘[o]ver and over.” She indicated that the third incident lasted only “[a] couple minutes.”

As a result of Autumn’s advances, K.D. “got depressed and was hurting [herself].”

K.D. described another unrelated incident where Autumn was showering and forgot to grab a towel. K.D. brought a towel to Autumn at her request, and when Autumn opened the shower curtain to grab the towel, she “‘flashed” “her whole body” to K.D. However, K.D. testified that she did not know if Autumn meant to expose herself; according to K.D., Autumn told her, “Sorry, I didn’t mean to[.]”

“[A] couple days to a week” after the third bedroom encounter, a group home staff member asked K.D. why she was “arguing” with Autumn. During this conversation, K.D. told the staff member “[p]retty much everything.” Law enforcement was contacted, and K.D. told police “[e]verything that had happened.”

K.D. also provided insight into her relationship with P.G. and A.P. She testified that she “‘didn’t really like [P.G.]” at the group home but that she and P.G. were “‘friends now.” K.D. “‘love[d]” A.P., stating she was “‘one of [her] best friends.” On cross-examination, K.D. indicated that she had not talked with P.G. or A.P. about the allegations against Autumn since her initial police interview at the group home.

(b) P.G.’s and A.P.’s Testimony

Both P.G. and A.P. provided testimony about the allegations related to K.D.

P.G. testified that one morning, she saw Autumn “‘spooning [K.D.] on [K.D.]’s bed.” K.D. was “‘laying down on her side,” and Autumn “‘was right behind her.” P.G. “‘thought” that she heard K.D. tell Autumn to “‘[s]top’” and “‘[g]et off.” P.G. was unsure if there was space between K.D.’s and Autumn’s bodies. She did not report the incident because she “‘didn’t want the conflict.”

P.G. indicated that her relationship with Autumn was “‘pretty rocky” when they first met; the pair’s relationship never improved.

A.P. testified that one morning “close to ten,” she saw “Autumn in [K.D.’s] bed,” “cuddling” K.D. When asked by the State to “describe what Autumn was doing,” A.P. responded that Autumn was “really touchy.” She elaborated, “Like [Autumn] was on [K.D.], [Autumn] wouldn’t, like, let go. [Autumn] was, like, hugging her.” She did not report this incident because “it wasn’t [her] business to tell” and she “didn’t want [K.D.] to get mad at [her].” A.P. noted that she saw K.D. later that morning, and “she seemed normal.” However, A.P. had a conversation with K.D. that night, and K.D. was “in shock” and “started crying.” According to A.P., K.D. “just couldn’t believe” that “she was getting touched.” After group home staff contacted law enforcement, A.P. told an officer that she saw “Autumn on top of [K.D.]”

A.P. described her relationship with Autumn as “on and off,” testifying that they “would argue and then some days [] get along.” A.P. thought Autumn was “pretty nice” when they first met at the group home, but her opinion changed over time because Autumn “started being more rude and started” “doing the sexual stuff.” A.P. did not consider Autumn a friend.

(c) Officer’s Testimony

Officer Jeff Hawken of the Lincoln Police Department was dispatched to the group home at approximately 8:30 p.m. on August 14, 2025, after K.D. disclosed to a staff member that she was “inappropriately touched.” He conducted interviews with K.D., P.G., A.P., and Autumn. The bulk of the officer’s testimony concerned his interview with Autumn.

Upon entering the group home, Officer Hawken noticed an individual, later identified as Autumn, standing in the lobby “speaking on the phone to someone.” He eventually determined that Autumn was speaking with her father. Autumn’s parents were present for Officer Hawken’s interview of their daughter. The officer testified that when Autumn’s father arrived, he indicated that “he assumed he was going to have to come,” based on the previous conversation he had with Autumn on the phone. Autumn denied all allegations of sexual misconduct during the interview. She told Officer Hawken that she “may have hugged [K.D.] once but wasn’t certain on that.” Autumn indicated that she and the other group home residents “got along well.” At some point, Autumn’s father requested legal counsel and terminated the interview. Officer Hawken did not recall Autumn “ever expressing that she was the victim of any inappropriate contact.”

On cross-examination, Autumn’s counsel elicited testimony from the officer that P.G. and A.P. engaged in “nervous laughter” during their interviews. In response, the State asked the following questions:

[Counsel:] Um, in your experience, Officer Hawken -- in your experience in, um, speaking with victims of, um, of crimes, is nervous laughter, um, unusual?

[Officer Hawken:] Not at all, no. People respond to stressful situations like that quite frequently. I’ve been on traumatic death calls where family members will, will laugh, um, it’s a very well documented method to reduce stress in human beings.

[Counsel:] And if you did observe any nervous laughter that that’d make you, um - - give you any hesitation, um, in terms of the validity of what was shared with you?

[Officer Hawken:] No. Um, their statements, based on my training and experience, were consistent enough and also not perfectly consistent that they appeared rehearsed. Likewise, with [Autumn]’s statement that everyone got along in the house and there would

be no reason for those other roommates to lie about her, I was inclined to take that at face value.

Autumn's counsel made no objection to this line of questioning.

(d) Autumn's Evidence

Autumn testified in her defense at the adjudication hearing. She indicated that she had no desire to be in a romantic relationship with K.D. or any of the other girls at the group home. She denied touching K.D.'s breasts, being in K.D.'s bed, cuddling K.D., straddling K.D., wrapping her body around K.D., and giving K.D. a "milkshake." According to Autumn, K.D. would "milkshake" her, P.G., and A.P. by "flap[ping]" their "breasts up." K.D.'s conduct "would kind of catch [Autumn] by surprise," but "it didn't really bother [her] to the point where [she] needed to say anything about it." Autumn eventually disclosed K.D.'s actions to her mother; she did not discuss it during her interview with Officer Hawken.

Autumn also called Sgt. Alexander Salcedo of the Lincoln Police Department to cast doubt on A.P.'s testimony. Sergeant Salcedo testified that he conducted an interview of A.P. on the night of August 14, 2025. According to the sergeant, A.P. reported that she saw Autumn and K.D. in the same bed together on a single occasion. Sergeant Salcedo also indicated that A.P. was "calm" and "conversational" during the interview. This contradicted A.P.'s testimony where she stated that she observed Autumn in K.D.'s bed on two occasions and that she cried during her police interview.

2. JUVENILE COURT'S DECISION

In a journal entry and order entered on November 21, 2025, the juvenile court adjudicated Autumn as a juvenile within the meaning of § 43-247(1). The court specifically found that the State proved Autumn "intentionally touched [K.D.]'s clothing covering the immediate area of [K.D.]'s sexual or intimate parts, and further that [Autumn]'s conduct [could] be reasonably construed [as being] for the purpose of sexual arousal." As explained previously, the court dismissed the remaining allegations in the petition related to P.G. and A.P. for insufficient evidence.

Autumn, through different counsel, appeals.

III. ASSIGNMENTS OF ERROR

Autumn assigns that (1) the juvenile court erred in finding sufficient evidence to adjudicate her as a juvenile within the meaning of § 43-247(1) because the State failed to prove sexual contact beyond a reasonable doubt. She also assigns that (2) she received ineffective assistance of counsel at the adjudication hearing because trial counsel "[f]ailed to [o]bject to Officer Hawken's [i]mproper [t]estimony [r]egarding Autumn's and [o]ther [w]itnesses' credibility."

IV. STANDARD OF REVIEW

An appellate court reviews juvenile delinquency cases de novo on the record and reaches its conclusions independently of the juvenile court's findings. *In re Interest of Jerel S.*, 320 Neb. 526, 28 N.W.3d 824 (2025). When the evidence is in conflict, however, an appellate court may

give weight to the fact that the lower court observed the witnesses and accepted one version of the facts over the other. *Id.*

V. ANALYSIS

1. SUFFICIENCY OF EVIDENCE

Pursuant to § 43-247(1), the juvenile court in each county shall have jurisdiction of any juvenile who has committed an act other than a traffic offense which would constitute a misdemeanor or an infraction under the laws of this state, or violation of a city or village ordinance, and who was 11 years of age or older at the time the act was committed. When an adjudication is based upon § 43-247(1), the allegations must be proven beyond a reasonable doubt. See Neb. Rev. Stat. § 43-279(2) (Cum. Supp. 2024).

In this case, Autumn was 15 years old at the time she was alleged to have subjected K.D. to sexual contact, an act that would constitute the misdemeanor offense of third degree sexual assault in violation of § 28-320(1) and (3). Autumn argues that the State did not present sufficient evidence to prove sexual contact, a material element of third degree sexual assault, and therefore failed to prove beyond a reasonable doubt that she was a juvenile as described in § 43-247(1).

Section 28-320 states:

(1) Any person who subjects another person to sexual contact (a) without consent of the victim, or (b) who knew or should have known that the victim was physically or mentally incapable of resisting or appraising the nature of his or her conduct is guilty of sexual assault in either the second degree or third degree.

....

(3) Sexual assault shall be in the third degree and is a Class I misdemeanor if the actor shall not have caused serious personal injury to the victim.

Pursuant to Neb. Rev. Stat. § 28-318(5) (Cum. Supp. 2024):

Sexual contact means the intentional touching of the victim's sexual or intimate parts or the intentional touching of the victim's clothing covering the immediate area of the victim's sexual or intimate parts. Sexual contact also means the touching by the victim of the actor's sexual or intimate parts or the clothing covering the immediate area of the actor's sexual or intimate parts when such touching is intentionally caused by the actor. Sexual contact includes only such conduct which can be reasonably construed as being for the purpose of sexual arousal or gratification of either party. Sexual contact also includes the touching of a child with the actor's sexual or intimate parts on any part of the child's body for purposes of sexual abuse by a school employee under section 28-316.01 or sexual assault of a child under sections 28-319.01 and 28-320.01[.]

Intimate parts means the genital area, groin, inner thighs, buttocks, or breasts. § 28-318(2).

At the adjudication hearing, K.D. identified five separate instances where Autumn touched her without consent. In her appellate brief, Autumn scrutinizes each incident individually and separates the touches into two broad categories: (1) the "buttocks slapping and 'milkshake' incidents" and (2) the three "hugging/cuddling incidents" that occurred in the shared bedroom. Brief for appellant at 13. As to the first category, Autumn argues that the State failed to adduce

any evidence showing that those touches were for the purpose of sexual arousal or gratification. She claims that the “contacts were brief in nature” and otherwise innocuous. *Id.* at 16. As to the second category, Autumn asserts that while the State adduced evidence showing physical contact occurred between her and K.D., it failed to “demonstrate physical contact of sexual or intimate parts.” *Id.* at 18. She also argues that even if she intentionally touched K.D.’s sexual or intimate parts, there was no evidence showing it was for the purpose of sexual arousal or gratification.

K.D. testified that shortly after moving to the group home, Autumn “slapped” her “butt out of nowhere” as they walked past each other. Despite telling Autumn not to touch her after this first incident, Autumn “milkshaked” K.D. by “flip[ping]” her breasts up “a couple days to a week later.” In each of these incidents, Autumn intentionally touched the clothing covering the immediate area of K.D.’s intimate parts, see § 28-318(2) (intimate parts includes buttocks and breasts), separate acts each constituting sexual contact under the first sentence of § 28-318(5). K.D. also described three separate times where Autumn made physical contact with her in their shared bedroom. During one of these incidents, K.D. woke up in her bed to Autumn “straddling” the front of her body. Autumn was “sitting upright” and had her “knees” “wrapped around [K.D.’s] stomach.” After K.D. told her to “get off,” Autumn “laid forward and started cuddling [K.D.]” She “rock[ed] [K.D.’s] body back and forth” with her arms and legs. By “straddling” K.D., Autumn intentionally caused the clothing covering the immediate area of her intimate parts (buttocks) to make physical contact with the front of K.D.’s body, an act constituting sexual contact under the second sentence of § 28-318(5). See *State v. Fuller*, 279 Neb. 568, 779 N.W.2d 112 (2010). We also note that other witnesses corroborated K.D.’s testimony. P.G. testified that she observed Autumn “spooning” K.D. on one occasion, and A.P. indicated that she saw Autumn in K.D.’s bed two separate times.

While Autumn denied any physical contact at the hearing, the juvenile court, by adjudicating her as a juvenile within the meaning of § 43-247(1), implicitly found the other witnesses more credible. In our de novo review, we give weight to that assessment. See *In re Interest of Jerel S.*, 320 Neb. 526, 28 N.W.3d 824 (2025) (when evidence is in conflict, appellate court may give weight to fact that lower court observed witnesses and accepted one version of facts over other).

We also conclude that the evidence presented at the adjudication hearing showed that the touches outlined above were for the purpose of sexual arousal or gratification. The issue of intent of sexual gratification in minors must be determined on a case-by-case basis; there is not a bright-line test. See *In re Interest of Kyle O.*, 14 Neb. App. 61, 703 N.W.2d 909 (2005). Some factors to be considered are whether the contact occurred in public, whether others were present for the contact, and the length of the contact. See *id.* Sexual contact done for the purpose of humiliating, bullying, or annoying another is not proscribed under § 28-320. See *In re Interest of Kyle O.*, *supra*. Despite numerous requests to stop, Autumn repeatedly subjected K.D. to unwanted physical contact over the course of approximately 1 month. Autumn’s continued initiation of intimate contact with K.D., including crawling into K.D.’s bed and “cuddling” her when no one else was around, provides sufficient evidence to reasonably infer that the sexual contact in this case was for the purpose of Autumn’s sexual gratification.

Accordingly, upon our de novo review, we find that the evidence was sufficient to prove that Autumn subjected K.D. to sexual contact, and, therefore, the evidence was sufficient to support the adjudication.

2. INEFFECTIVE ASSISTANCE OF COUNSEL

We next address Autumn's assignment of error claiming that she received ineffective assistance of counsel.

Over 50 years ago, the U.S. Supreme Court held that the 14th Amendment right to due process of law guarantees a juvenile offender a right to counsel in a delinquency adjudication in which the juvenile's freedom could be curtailed. *In re Gault*, 387 U.S. 1, 87 S. Ct. 1428, 18 L. Ed. 2d 527 (1967). In reaching this conclusion, the Court noted that a juvenile offender could potentially face a "loss of his [or her] liberty . . . comparable in seriousness to a felony prosecution" and therefore "needs the assistance of counsel to cope with problems of law, to make skilled inquiry into the facts, to insist upon regularity of the proceedings, and to ascertain whether he [or she] has a defense and to prepare and submit it." *In re Gault*, 387 U.S. at 36 (footnote omitted).

It remains an open question, however, whether the 14th Amendment confers a corresponding right to the *effective* assistance of counsel in juvenile delinquency proceedings. While courts in other jurisdictions have concluded that a juvenile has a due process right to effective counsel in such cases, see *In re Interest of Jerel S.*, *supra* (collecting authorities), neither this court nor the Nebraska Supreme Court has expressly held that a juvenile possesses such a right. See, *id.* (assuming without deciding that juvenile had right to effective counsel in delinquency adjudication); *In re Interest of Nyreko W.*, No. A-24-789, 2025 WL 1806407 (Neb. App. July 1, 2025) (selected for posting to court website) (same).

Autumn urges this court to "follow suit of other jurisdictions" and definitively hold that a juvenile has a 14th Amendment right to effective counsel in delinquency adjudications. Brief for appellant at 21. In support of this request, she quotes from a decision of the Missouri Supreme Court: "The due process right to counsel 'would be hollow were there no accompanying requirement counsel be effective.'" *D.C.M. v. Pemiscot County Juvenile Office*, 578 S.W.3d 776, 782 (Mo. 2019) (quoting *Grado v. State*, 559 S.W.3d 888 (Mo. 2018)).

Because it is unnecessary for us to engage in an act of constitutional interpretation to resolve Autumn's claim, we decline to decide the issue in this case. See *In re Interest of Jordan B.*, 316 Neb. 974, 7 N.W.3d 894 (2024) (appellate court is not obligated to engage in analysis not necessary to adjudicate case and controversy before it). Even if we assume that Autumn had a due process right to effective counsel at her adjudication hearing, we are able to conclude on the record before us that her counsel was not ineffective in the way alleged.

Before addressing the merits of Autumn's claim, we note that both parties ask us to apply the two-prong test first set forth in *Strickland v. Washington*, 466 U.S. 668, 104 S. Ct. 2052, 80 L. Ed. 2d 674 (1984), that is applied when assessing ineffective assistance of counsel claims in criminal proceedings. However, the Nebraska Supreme Court recently "question[ed]" whether the *Strickland* framework would be appropriate for analyzing claims of ineffective assistance of counsel in juvenile delinquency proceedings. *In re Interest of Jerel S.*, 320 Neb. at 538, 28 N.W.3d at 834. The court explained:

Strickland held that its two-prong test should be applied to determine whether a criminal defendant's Sixth Amendment right to counsel was violated. But the Sixth Amendment applies to criminal prosecutions. [Citation omitted.] And juvenile delinquency proceedings are not criminal prosecutions. [Citation omitted.] Rights to counsel in a juvenile

delinquency proceeding have a different constitutional source—the 14th Amendment right to due process. [Citation omitted.]

In re Interest of Jerel S., 320 Neb. at 538-39, 28 N.W.3d at 834-35.

In the present case, since neither party proposes a different analytical framework, we resolve Autumn's claim under the two-prong *Strickland* test. Further, we view the *Strickland* test to provide greater protection to the juvenile than the alternative standards used in other jurisdictions as discussed in *In re Interest of Jerel S.*, 320 Neb. at 541, 28 N.W.2d at 836 (applying *Strickland*, and also applying alternative standard of "whether the hearing was fundamentally fair and whether the outcome was appropriate considering the child's best interests," and "minimal procedural due process standard focused solely on fundamental fairness"). Thus, if Autumn's claim of ineffective assistance of counsel fails under the *Strickland* test, we conclude that it would likewise fail under the alternative fundamental fairness standards considered in *In re Interest of Jerel S.*, *supra*.

Generally, to prevail on a claim of ineffective assistance of counsel under *Strickland*, the defendant must show that his or her counsel's performance was deficient and that this deficient performance actually prejudiced the defendant's defense. *State v. Hagens*, 320 Neb. 65, 26 N.W.3d 174 (2025). To show that counsel's performance was deficient, a defendant must show that counsel's performance did not equal that of a lawyer with ordinary training and skill in criminal law. *Id.* To show prejudice in a claim of ineffective assistance of counsel, the defendant must demonstrate a reasonable probability that but for counsel's deficient performance, the result of the proceeding would have been different. *Id.* A reasonable probability of prejudice from ineffective assistance of counsel is a probability sufficient to undermine confidence in the outcome. *Id.*

Autumn argues that her trial counsel was ineffective for failing to object to Officer Hawken's "improper testimony regarding the credibility of [her], A.P., P.G., and K.D." Brief for appellant at 23. On cross-examination by Autumn's counsel, Officer Hawken was asked whether he recalled "giggling or joking" during his interviews with P.G. and A.P. The officer responded that he "maybe" observed "some nervous laughter" from the two. The State subsequently asked Officer Hawken, without objection, if the girls' "nervous laughter" gave him "any hesitation . . . in terms of the validity of what was shared." He responded:

No. Um, their statements, based on my training and experience, were consistent enough and also not perfectly consistent that they appeared rehearsed. Likewise, with [Autumn]'s statement that everyone got along in the house and there would be no reason for those other roommates to lie about her, I was inclined to take that at face value.

Autumn asserts that the State's question was improper because "[i]t is the fact finder's province to determine a witness's credibility." Brief for appellant at 23.

Autumn is correct that it is generally improper for a witness to testify as to the credibility of another witness. See *State v. Wilson*, 320 Neb. 728, 30 N.W.3d 165 (2026). See, also, *State v. Vazquez*, 319 Neb. 192, 21 N.W.3d 615 (2025) (improper for prosecutor to inquire of witness whether another person may or may not have been telling truth). However, as observed by the State, the officer's testimony in this instance "was limited to whether the demeanor of any of the girls were concerning to the point that it caused him hesitation during his investigation." Brief for

appellee at 23. Further, the officer did not “directly comment on the substantive content of the girls’ statements” but “instead commented on the impact of their demeanor on his own investigative process.” *Id.* We agree with the State’s observation.

Nevertheless, even if we assume Autumn’s counsel was deficient in failing to object to the State’s question, Autumn cannot demonstrate such failure prejudiced her defense. As the State also points out in its brief, in a case tried to a court without a jury, there is a presumption that the trial court, in reaching its decision, considered only evidence that is competent and relevant. See *State v. Smith*, 269 Neb. 773, 696 N.W.2d 871 (2005). In the absence of evidence to the contrary, the presumption is that a judge will disregard evidence that should not have been admitted. *Id.* Here, the adjudication hearing was conducted by the juvenile court without a jury, see § 43-279(1) (adjudication portion of hearings shall be conducted before court without jury), and there is no indication that the court relied on Officer Hawken’s testimony in assessing witness credibility. In fact, there is evidence to the contrary.

Prior to the second partial day of the adjudication hearing, Autumn filed a motion in limine to prevent the State from calling an expert witness to discuss the impact “that trauma may have on the recall ability of witnesses.” The juvenile court granted Autumn’s motion, explaining:

All right. The Court has considered the arguments. At this time, the Court is going to sustain the Motion in Limine. At the end of the day, in these juvenile proceedings, the Court is the trier of fact. And since we are separate courts, uh, of juvenile court jurisdiction -- I’ve been on the bench 20 years, I’ve got special training and expertise in adolescent brain development and, uh, I’ve seen some of the concerns about recall of events and those sorts of things.

And at the end of the day, the Court’s still charged with making a determination of the reliability and credibility of the witnesses that are before the Court which I think I’m clearly able to do without, uh, the need of any expert testimony in regard to trauma and, um, things like that.

The above statement shows that the juvenile court understood its role as the fact finder and recognized that it was responsible for making its own determinations about each witness’ credibility. Considering that the court expressed its duty to independently assess the credibility of the witnesses, there is no basis to conclude that it abdicated its role as the trier of fact and substituted Officer Hawken’s judgment for its own. Autumn cannot show a reasonable probability that but for counsel’s alleged deficient performance, the result of the proceeding would have been different; therefore, her claim of ineffective assistance of counsel fails.

VI. CONCLUSION

For the foregoing reasons, we affirm the juvenile court’s November 21, 2025, journal entry and order adjudicating Autumn as a juvenile within the meaning of § 43-247(1).

AFFIRMED.