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2012 IL App (3d) 100800-U

Order filed August 7, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF  
ILLINOIS,

Plaintiff-Appellee,

v.

AARON SCURLOCK,

Defendant-Appellant.

) Appeal from the Circuit Court  
) of the 12th Judicial Circuit,  
) Will County, Illinois,  
)  
) Appeal No. 3-10-0800  
) Circuit No. 07-CF-1742  
)  
) Honorable  
) Edward A. Burmila, Jr.,  
) Judge, Presiding.

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JUSTICE WRIGHT delivered the judgment of the court.  
Presiding Justice Schmidt and Justice Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion by excluding expert testimony regarding coerced false confessions. The evidence presented at trial was sufficient to prove defendant guilty beyond a reasonable doubt of three counts of predatory criminal sexual assault of a child and four counts of criminal sexual assault.

¶ 2 Following a jury trial, defendant, Aaron Scurlock, was found guilty of three counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2000)) and four counts of criminal sexual assault (720 ILCS 5/12-13(a)(3) (West 2002)). Defendant was

sentenced to consecutive terms of imprisonment totaling 44 years. Defendant appeals, arguing the trial court erroneously denied defendant's motion *in limine* to admit expert testimony regarding coerced false confessions and the evidence was insufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3

### FACTS

¶ 4 On November 20, 2008, defendant was charged by superceding indictment with various sexual offenses against his stepdaughter V.W. Counts I through III alleged predatory criminal sexual assault of a child, counts IV through VII alleged criminal sexual assault, and count VIII alleged aggravated criminal sexual abuse.<sup>1</sup>

¶ 5 Counts I and II alleged that when V.W. was 10 years old, defendant placed his penis in the mouth of V.W. and his finger in the vagina of V.W. Counts III through VII alleged that defendant placed his penis in the vagina of V.W. Count III alleged V.W. was between 11 and 12 years old, count IV alleged that V.W. was 13 years old, count V alleged V.W. was 14 years old, count VI alleged V.W. was between 15 and 16 years old (June 28, 2005, through December 1, 2006), and count VII alleged V.W. was 16 years old (December 1 through December 31, 2006).

¶ 6 Prior to trial, defendant filed a motion *in limine*, seeking to admit the expert testimony of Dr. Richard Ofshe, a social psychologist, regarding coerced false confessions. At the hearing on the motion, Ofshe testified he had conducted research concerning police interrogation techniques and resulting false confessions.

¶ 7 The trial court found defendant did not establish Ofshe's research and opinion reflected

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<sup>1</sup> Count VIII was dismissed at trial by the State as duplicative of count VII.

generally accepted scientific or technical principles in the community of social psychology. The court further found that coerced false confessions were not beyond the understanding of ordinary jurors, and the reasons for defendant's confession were to be determined by the jury. The court denied defendant's motion *in limine* but noted defendant would be allowed to present evidence regarding the credibility of his confession.

¶ 8 At trial, V.W. testified that she was 19 years old, and was born on June 27, 1990. Defendant was her stepfather, and she met him when she was approximately six years old. After meeting defendant, V.W. and her mother moved in with defendant, who was a good father figure, until she was approximately eight years old in 1999, when defendant first inappropriately touched her. According to V.W., she had a nightmare while her mother was hospitalized for the impending birth of her brother. After the dream, V.W. went to defendant's room where he comforted her and then touched her over her clothes near her chest and vaginal area.

¶ 9 V.W. testified that shortly thereafter, another incident occurred after defendant called V.W. into his bedroom. Defendant was lying on the bed with his shorts pulled down to mid-thigh. Defendant asked V.W. to put her mouth on his penis, and he put his hand on top of her head in a bobbing motion. V.W. did not tell anyone because she thought it was normal.

¶ 10 Another incident occurred a few months later, when V.W. stayed home from school, when she was around 10 years old, because she had head lice. Defendant placed himself next to V.W. and began touching her while masturbating before leaving the room. When defendant returned, he pulled down V.W.'s pants, put his mouth on her vagina, and penetrated her with his fingers for the first time, causing her to bleed.

¶ 11 Defendant had intercourse with V.W. when she was almost 11 years old. Her siblings

were in the bathtub, and she was with defendant in his bedroom. V.W. was positioned on the bed while defendant had sex with her. Defendant told V.W. not to tell anyone. V.W. testified that after this first instance of sexual intercourse, it became "pretty routine" and she could not recount each incident. The sexual contact took place at least once a month and usually occurred in defendant's bedroom. V.W. stated she would perform sex acts with defendant to get out of punishment. V.W. testified that when she was caught sneaking out of the house, defendant forced her to perform 10 acts of oral sex on him. V.W. also stated that oral sex would occur more often than sexual intercourse.

¶ 12 The sexual contact with defendant continued when she was 12 years old. V.W. could not remember specific instances when she was 12 or 13 years old because the sexual contact was so routine. V.W. testified that at the age of 14, there was also no change in the frequency of the occurrences. When V.W. was 13 or 14 years old, she began picking up her siblings after school. V.W. had about 15 to 20 minutes from the time she got off the school bus until she had to pick up her siblings. During that time, she often had sexual contact with defendant. The sexual contact varied, but occurred over 20 times. V.W. also testified that at the age of 14, there was no change in the frequency of the sexual intercourse with defendant.

¶ 13 The second to last incident of sexual intercourse with defendant occurred during the fall track season, which lasted from September through early December of 2006. V.W. pulled a hamstring, and defendant offered to help stretch her leg. As defendant was stretching her, he took off her pants and began having sex with her.

¶ 14 V.W. testified that the last sexual encounter with defendant was in December 2006, when V.W. was 16 years old. It was during the day, and defendant had sex with V.W. while she held a

pillow over her face. Afterward, V.W. told defendant she wanted the sexual contact to end.

¶ 15 V.W. further testified that on August 19, 2007, she told her biological father about the sexual incidents, because otherwise her boyfriend was going to tell him. V.W.'s biological father called the police. After reporting the incidents, V.W. moved in with her grandparents, but continued to have some contact with defendant. V.W. testified it was normal for her to separate her abuse life from her normal life. In the fall of 2009, V.W. met defendant at the gym to train with him, because her mother told her defendant was looking for workout advice, and V.W. was a personal trainer. After the training session, defendant asked her to meet him at his shop so they could talk. Defendant told V.W. that if she would say she lied about the allegations, they could make a lot of money.

¶ 16 Deputy Brian O'Leary and Detective Denise Powers testified they interviewed defendant on August 21, 2007, at the Will County sheriff's office. Defendant initially denied the allegations, but after about 10 minutes, he admitted to inappropriate contact with V.W. and gave a recorded statement after one hour of questioning. Defendant did not request an attorney during the interview process.

¶ 17 The officers testified that the interview room at the police station was approximately 10 feet by 15 feet. Due to safety concerns, defendant was required to empty his pockets before entering the room, and each time the officers left the interview room, they locked the door. The officers testified they did not tell defendant what to say on the videotape and denied making any promises or threats to defendant in return for his statement.

¶ 18 The videotape of defendant's confession was played for the jury. In the video, defendant admitted that when V.W. was about 13 years old and he was about 31 years old, he began to

inappropriately touch her, which occurred more than 50 times. Defendant described their relationship as consensual, and it progressed from V.W. jumping on his lap, to touching outside the clothing, to oral sex, and ultimately intercourse when V.W. was 15 or 16 years old. The intercourse occurred less than 30 times. The sexual contact stopped in December 2006 when, following a discussion, V.W. and defendant decided the behavior was wrong.

¶ 19 At the end of defendant's recorded statement, Powers asked if defendant had been treated fairly. Defendant responded, "[t]he one that's been treated unfairly here is [V.W.]." O'Leary then told defendant he would get him a cigarette, to which defendant responded, "[a]nd some cuffs?" O'Leary said, "[n]o, like I said, we don't know what's going to happen."

¶ 20 Defendant testified he had a great relationship with V.W. When V.W. was around 13 years old, her relationship with her mother gradually deteriorated, because her mother required V.W. to do many household chores. During his testimony, defendant denied any sexual contact with V.W. Defendant confirmed he met with V.W. and discussed recanting her statement but V.W. could not admit she lied.

¶ 21 Defendant testified he was interviewed by O'Leary and Powers regarding allegations of inappropriate touching. Defendant asked for an attorney immediately, and the officers left the room. When the officers returned, they told defendant the allegations were more than mere touching, and included fellatio, cunnilingus, and full intercourse. Defendant requested an attorney again, and the officers again left the room. When they returned, the officers told defendant they knew the inappropriate contact was consensual, and that defendant was not a bad guy. The officers told defendant if he gave them a statement, they would let him out on bond tonight, and he would get reduced charges. If defendant did not cooperate, they would put him in

handcuffs, and he would "rot" in jail forever. Defendant testified he asked for an attorney four times during the interview. Defendant testified he was scared, and after realizing he had too much responsibility waiting for him at home, he agreed to provide a statement so he would not go to jail. Defendant further testified he made the statement about getting the "cuffs" in the video because O'Leary told him he either had to make a statement or he was getting put in handcuffs.

¶ 22 The jury found defendant guilty on all counts. Defendant's motion for a new trial and judgment notwithstanding the verdict was denied by the trial court. Defendant was ultimately sentenced to consecutive terms of imprisonment totaling 44 years. Defendant appeals.

¶ 23

## ANALYSIS

¶ 24

### I. Expert Testimony on False Confessions

¶ 25 On appeal, defendant argues the court erred when it denied his motion *in limine* to allow expert testimony regarding the phenomenon of coerced false confessions. Expert testimony is admissible if: (1) the proffered expert's experience and qualifications afford him knowledge not common to laypersons; (2) such testimony would aid the fact finder in reaching its decision; and (3) the testimony reflects generally accepted scientific or technical principles. *People v.*

*Williams*, 332 Ill. App. 3d 693 (2002). The burden of establishing the qualifications of an expert witness is on the proponent of his testimony. *People v. Henney*, 334 Ill. App. 3d 175 (2002).

¶ 26 We review a trial court's decision regarding whether to admit expert testimony for an abuse of discretion. *People v. Becker*, 239 Ill. 2d 215 (2010). An abuse of discretion occurs when the trial court's decision is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the court. *Id.*

¶ 27 Defendant relies most heavily on *People v. Cardamone*, 381 Ill. App. 3d 462 (2008), to

support the use of expert testimony on interrogation techniques. However, the decision in *Cardamone* is distinguishable because that case involves expert testimony regarding how certain investigative techniques may distort children's memories in sexual assault cases. See *Cardamone*, 381 Ill. App. 3d 462. In that case, the court held that the concepts of reconstructive retrieval, infantile amnesia, and mass suggestion, in addition to forensic interviewing techniques for child victims, were not within common knowledge. *Id.*

¶ 28 In contrast, defendant in this case testified he gave an inaccurate statement to the police because he had too many responsibilities and could not go to jail. This explanation involves circumstances which were familiar to the average juror and would not be difficult to understand. Cf. *Becker*, 239 Ill. 2d 215 (holding that an expert's observation that a young child might be influenced by suggestive questioning and improper investigative techniques is not a matter beyond the ken of the average juror); *People v. Gilliam*, 172 Ill. 2d 484 (1996) (holding that whether defendant falsely confessed to protect his family was not a concept beyond the understanding of ordinary citizens). Therefore, we conclude the trial court's decision to exclude Ofshe's testimony was not arbitrary or unreasonable and did not constitute an abuse of discretion. See *Becker*, 239 Ill. 2d 215.

¶ 29 II. Reasonable Doubt

¶ 30 In addition, defendant argues on appeal that V.W.'s testimony was insufficient to convict him as to each count of predatory criminal sexual assault of a child and criminal sexual assault. When defendant challenges the sufficiency of the evidence, we view the evidence in the light most favorable to the State and determine whether any rational trier of fact could have found the essential elements of the crime proven beyond a reasonable doubt. *People v. Jackson*, 232 Ill. 2d

246 (2009); *People v. Collins*, 106 Ill. 2d 237 (1985).

¶ 31 It is not this court's function to retry a defendant who challenges the sufficiency of the evidence. *People v. Ross*, 229 Ill. 2d 255 (2008). The trier of fact remains responsible for making determinations regarding the credibility of witnesses, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence. *Id.* We will set aside a defendant's conviction only when we find the evidence was insufficient or so improbable or unsatisfactory that a reasonable doubt exists as to the defendant's guilt. *Jackson*, 232 Ill. 2d 246.

¶ 32 To prove criminal sexual assault, the State needed to show defendant committed an act of sexual penetration with a victim under 18 years of age, and defendant was a family member of the victim. 720 ILCS 5/12-13(a)(3) (West 2002). Predatory criminal sexual assault of a child requires that defendant was 17 years of age or older and committed an act of sexual penetration with a victim who was under 13 years of age. 720 ILCS 5/12-14.1(a)(1) (West 2000). Sexual penetration means any contact between the sex organ of one person and sex organ, mouth, or anus of another, or actual intrusion into the sexual organ or anus of victim. 720 ILCS 5/12-12(f) (West 2000).

¶ 33 We acknowledge that while V.W.'s testimony was somewhat unclear concerning the minute details of every incident and conflicted with defendant's testimony at trial, the case law provides that the testimony of even one witness, including the victim, is sufficient to convict. See *People v. Brink*, 294 Ill. App. 3d 295 (1998). Moreover, defendant first admitted to police that some consensual sexual contact with V.W. occurred, but later recanted his statement during his testimony at trial. Under these circumstances, it was for the jury to weigh the credibility of the witnesses when resolving conflicting evidence and any inconsistencies in their testimony. *Id.*

After reviewing the evidence in the light most favorable to the State, we conclude the evidence was sufficient for a rational trier of fact to find defendant guilty beyond a reasonable doubt on all counts of predatory criminal sexual assault of a child and criminal sexual assault.

¶ 34

#### CONCLUSION

¶ 35 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 36 Affirmed.