



¶ 3 BACKGROUND

¶ 4 On February 24, 2009, the defendant was charged with one count of predatory criminal sexual assault of a child for allegedly sexually penetrating the genitalia of his girlfriend's daughter, A.A., with his hand, and one count of aggravated criminal sexual abuse for allegedly touching A.A.'s genitalia. A.A. was born on February 1, 1997, and was 11 years old at the time of the incident.

¶ 5 At trial, A.A. testified that she resided with her grandparents, Linda and James Armer, and that she had been living with them for the past three to four years. She stated that in 2008, her mother, Billie, lived with the defendant at the Village Apartments in Nashville, Illinois. She stated that she would visit her mother approximately every other weekend.

¶ 6 A.A. testified that one weekend in 2008, when she was at her mother's apartment watching television in her mother's bedroom, the defendant came into the bedroom and shut the door. Her mother was not home. A.A. stated that the defendant placed his hands on her shoulders and pushed her down on the bed. He then pulled down her pants and underwear and touched between the lips of her vagina. She said she was wearing black shorts and a white and pink shirt with a unicorn on the back. A.A. testified that the defendant said "he would finger" her. She stated that he did not place his finger inside her vaginal canal. The defendant also told A.A. that "he was going to kiss [her], but it wasn't on the lips." A.A. testified that she struggled and that the defendant put his hand over her mouth and instructed her not to scream. The defendant dragged A.A. to the bathroom by her arm and shut the door. He told her to stop screaming or he would kill her. The defendant told A.A. that if she told anyone about what happened, he would kill her. She stated that she was afraid of the defendant. A.A. testified that, after the defendant walked out of the bathroom, she

"took a wash cloth and tried to wash [herself] off because [she] felt dirty." She said that she was crying.

¶ 7 Kelsey Sutton testified that she was 17 years old. In the summer of 2008, she was visiting a friend at the Village Apartments. She stated that when she "was in the restroom and through the other side of the wall [she] heard a little girl crying and yelling." She said that the bathroom in the apartment she was in shares a wall with the apartment from which she heard the sounds. Kelsey testified that the apartment walls are paper thin. She stated she could not hear anything very well other than the screaming, but she did hear "little things like no." She also stated that she heard splashing. When asked to estimate the age of the voice she heard, she stated eight or nine years old. She testified that she was "100 percent sure" that she heard a little girl crying. Kelsey stated that she was alarmed by the sounds so she telephoned her mother, who was the manager of the apartment building, and "told her that something was happening."

¶ 8 Kimberly Sutton testified that she was Kelsey Sutton's mother. In 2008 she managed the Village Apartments. Kimberly testified that after receiving a telephone call from Kelsey, she went to the apartment building to investigate. She knocked on the door of the apartment from which Kelsey heard sounds, and after several knocks, the defendant opened the door. Kimberly testified that she asked where Billie was, and the defendant told her that it "was none of [her] business." She put her foot in the door and entered the apartment to look around. Kimberly stated that the only people in the apartment were the defendant and A.A. Kimberly testified that A.A. was sitting on the couch and looked "extremely distressed." Kimberly testified: "It looked like she had been crying for a long, long time. She had the hiccups. She was still crying. She had her hands over her eyes." Kimberly stated that A.A. had wet hair and looked

like she had had a bath and had gotten dressed without toweling off. Kimberly testified that A.A. knew her and typically would come give her a hug or would speak to her, but this time she did not get off the couch or even speak to Kimberly. Kimberly stated that she demanded that the defendant find a cell phone to telephone Billie to instruct her to return home. The defendant complied, and Kimberly was there when Billie returned.

¶ 9 Ramona Miller testified that in 2008 she was living in the Village Apartments. Ms. Miller stated that Kimberly Sutton phoned her about "some generic deal with the apartments." During the conversation, Kimberly mentioned that Kelsey told her that she was visiting a friend in the apartment next to Billie's apartment and when she was in the bathroom, she heard an adult yelling at a child. Ms. Miller thought that the conversation took place in the summer of 2008, but was not sure. Based on her conversation with Kimberly, Ms. Miller stated that she thought the defendant was molesting A.A. She testified that Kimberly never told her that Kelsey said she thought that the defendant was molesting A.A. Ms. Miller came to that conclusion on her own. She testified that she felt it was molestation because A.A. was saying: "I am sorry, was going please don't do that to me, I am sorry, I will be good, I am sorry, please don't do that to me and that she kept repeating that, and I said, Kim did Kelsey hear any slapping noises, any bumping against the wall or anything to that effect, and she said she didn't say that."

Ms. Miller testified that she had been molested and that is why she felt she could surmise that the defendant molested A.A.

¶ 10 Ms. Miller testified that, about four days after Kimberly told her what Kelsey heard, A.A.'s grandfather, James Armer, phoned her trying to reach Billie, who did not have a phone. She testified that she told Mr. Armer what Kimberly told her

Kelsey heard in the bathroom. She testified, "I might have said I believe [the defendant] is molesting [A.A.]" Ms. Miller stated that Mr. Armer thanked her for telling him and said he would "get down to the nitty gritty and find out what is going on." Ms. Miller testified that she suffers from uncontrolled diabetes, chronic pain due to fibromyalgia, and muscle spasms due to a neck fusion. She takes about 20 medications per day for these ailments.

¶ 11 Mr. Armer testified that he resided in Addieville, Illinois, with his wife and his granddaughter, A.A. He stated that in the summer of 2008, he telephoned Ms. Miller to try to reach Billie. Ms. Miller asked Mr. Armer if A.A. had told him about an incident at the apartment complex. Mr. Armer testified that Ms. Miller told him that someone in another apartment heard A.A. screaming and saying, "I won't tell." Mr. Armer testified that Ms. Miller did not say that she thought A.A. had been physically assaulted, "she just wanted to know if [A.A.] had told us anything." Mr. Armer replied that A.A. had not mentioned anything, but that he would ask her about it. He approached A.A. in their home and asked if anything happened at her mother's apartment that she needed to tell him about. He did not mention a specific offense. A.A. stated that nothing had happened. Mr. Armer then told A.A. that if something did happen, she should not be afraid to tell him. Mr. Armer testified that A.A. told him that "he said she was dead meat if she said anything." He told her not to be afraid and asked who told her she would be dead meat. A.A. stated that it was the defendant who threatened her. Mr. Armer testified that A.A. was nervous and scared to tell him anything. A.A. finally told him that the defendant grabbed her hair, started kissing her, and pulled down her pants. At that point Mr. Armer told her that he had heard enough and that he "didn't need to hear anymore." Mr. Armer said he telephoned his wife to tell her what had happened. When his wife came home she spoke to A.A.

about what had happened. He explained: "I was pretty angry about it. I let her take care of that part because I am an exploding person sometimes."

¶ 12 Linda Armer testified that she is A.A.'s grandmother. In the summer of 2008, her husband telephoned her to tell her to come home because A.A. was reporting something that she needed to hear. She stated that she did not discuss the specifics of what A.A. told her husband prior to her conversation with A.A. Mrs. Armer testified that she went into A.A.'s bedroom and asked A.A. to tell her what she had told her grandfather earlier that day. A.A. told her that the defendant "pulled her pants down and touched her private and pointed down like this." She testified that A.A. told her that the defendant pulled her hair and that he pulled her out of the bedroom and into the bathroom. Mrs. Armer comforted A.A. Later she took her to the doctor, and DCFS was contacted.

¶ 13 Kimberly testified that several of Billie's neighbors approached her, asking questions about the incident. She said that she "felt like it was in the interest and the privacy of the child not to answer any questions specifically other than to state to everybody that [the defendant] was a squatter and he [had] been removed from the building." Kimberly testified that a couple of weeks after the incident or at the latest, in July 2008, Mrs. Armer came to her house, asking advice. Kimberly told Mrs. Armer to take A.A. to counseling services.

¶ 14 A.A. testified that her grandfather was the first person she told about the defendant touching her, and she did not tell him until some time after the incident. She stated that, after a telephone conversation with Ms. Miller, her grandfather asked her if there was anything she needed to tell him. She originally told her grandfather that there was nothing to tell him because she was scared that the defendant would kill her. Eventually, she told him what had happened. She said that she did not tell her

grandfather that the defendant pulled her hair. She told her grandmother the same day as she spoke to her grandfather. A.A. testified that sometime after telling her grandparents, she was interviewed at the Amy Center.

¶ 15 Jamie Fitzjerrells testified that in 2008 she worked as an advocate caseworker/forensic interviewer at the Amy Center and that she interviewed A.A. on July 23, 2008, about "allegations that she had been touched." A DCFS investigator watched via closed-circuit television, but in accordance with center policy, the family was not allowed to watch the interview. Ms. Fitzjerrells testified that A.A. told her that on the day of the incident, she was wearing black shorts and a horse/unicorn t-shirt. Ms. Fitzjerrells stated that A.A. told her that she was at her mother's apartment watching a movie in her mother's bedroom when the defendant came into the room, pushed her backwards on the bed, pulled down her shorts and underwear, and touched her vagina with his fingers. The defendant told A.A. that "he was going to finger her and had wanted to kiss her." Ms. Fitzjerrells stated that A.A. told her that the defendant kissed her on the lips after he was done touching her with his fingers. Ms. Fitzjerrells said that A.A. told her that she started to scream when the defendant pushed her back on the bed, then he covered her mouth. A.A. told Ms. Fitzjerrells that the defendant dragged her by the arm into the bathroom, locked the door, and told her that if she told anyone, he would kill her. A.A. told her that the incident took place a couple of months prior to the interview and that she did not report it because she was afraid. Ms. Fitzjerrells testified that A.A. first reported the incident after her grandfather spoke to one of her mother's neighbors and was told that yelling and words like "I won't" or "I won't tell anyone" had been heard coming from the apartment.

¶ 16 A.A. testified that she knew the difference between the truth and a lie. She stated she was "100 percent sure" that the defendant placed his hand on her vagina.

She stated that, prior to this incident, she got along with the defendant. She testified that, prior to this incident, her grandparents never stated that they did not like the defendant. She testified that no one told her to tell people that the defendant molested her.

¶ 17 The defendant did not testify.

¶ 18 Following closing arguments, the jury was instructed:

"Under the law a person charged with predatory criminal sexual assault of a child may be found not guilty of predatory criminal sexual assault of a child and not guilty of aggravated criminal sexual abuse, or two, guilty of predatory criminal assault of a child, or three, guilty of aggravated criminal sexual abuse."

The trial court told the jury that it would be given three verdict forms and that it should select one. The jury found the defendant guilty of aggravated criminal sexual abuse. On February 4, 2010, the defendant filed a motion for a new trial. On February 25, 2010, the trial court denied the motion and sentenced the defendant to seven years' imprisonment in the Department of Corrections. The defendant filed a motion to reconsider, which was denied. The defendant filed a timely notice of appeal.

¶ 19 ANALYSIS

¶ 20 The defendant argues that the State failed to prove beyond a reasonable doubt that he was guilty of aggravated criminal sexual abuse. When reviewing the sufficiency of the evidence in a criminal case, the reviewing court's inquiry is " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 391 (1979)). The reviewing court does not retry the defendant and must allow all reasonable inferences from the record

in favor of the prosecution. *People v. Beauchamp*, 241 Ill. 2d 1, 8 (2011). It is the trier of fact's responsibility to determine the credibility of witnesses and the weight to be given their testimony, and great deference should be given to its determinations. *People v. Kolton*, 347 Ill. App. 3d 142, 153 (2004), *aff'd*, 219 Ill. 2d 353 (2006). A conviction will not be reversed unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Id.* Thus, a reviewing court may overturn a jury's finding only by concluding that no reasonable trier of fact could have found the requisite elements of the offense proven beyond a reasonable doubt. *People v. Amigon*, 239 Ill. 2d 71, 78 (2010).

¶ 21 The State had the burden of proving the elements of aggravated criminal sexual abuse by showing: (1) that the defendant was 17 years of age or over and (2) that he committed an act of sexual conduct with a victim who was under 13 years of age when the act was committed. 720 ILCS 5/12-16(c)(1) (West 2008). Sexual conduct is defined as any intentional or knowing touching or fondling by the accused, either directly or through clothing, of the sex organs or any part of the body of a child under 13 years of age, for the purpose of sexual gratification or arousal of the victim or the accused. 720 ILCS 5/12-12(e) (West 2008).

¶ 22 The evidence demonstrated that A.A. was born February 1, 1997, and was 11 years old at the time in question, and the defendant was born September 20, 1984, and was over 17 years old at the time in question. The defendant argues that the State failed to prove that he committed an act of sexual conduct with A.A. He argues that the only evidence of sexual abuse are the statements that A.A. made. He asserts that the circumstantial evidence supports the belief that A.A. was "loudly reprimanded and disciplined for some reasons, but nothing more."

¶ 23 A.A. testified that in 2008 she was at the Village Apartments spending the

weekend with her mother. One day when her mother was not home, she was watching television in her mother's bedroom when the defendant came into the bedroom and shut the door. A.A. testified that the defendant pushed her down on the bed and pulled down her shorts and underwear. A.A. testified that the defendant put his hand on her vagina and touched between the lips of her vagina. She stated that he told her "he would finger" her and he was going to kiss [her], but it wasn't on the lips." A.A. testified that she struggled and the defendant put his hand over her mouth and told her not to scream. He dragged A.A., by the wrist, to the bathroom. She testified that she screamed and he threatened to kill her if she did not stop or if she told anyone about what happened. A.A. stated that she was crying in the bathroom and that once the defendant exited the bathroom she washed herself off with a wet cloth. A.A. identified the defendant in the courtroom and stated that she was "100 percent sure" that the defendant touched her vagina.

¶ 24 Mr. Armer testified that after speaking to Ms. Miller, he asked A.A. if anything had happened at her mother's apartment that she wanted to tell him about. He did not mention a specific person or incident. A.A. told Mr. Armer that the defendant kissed her and pulled down her pants. Mr. Armer testified that he did not find out any more details, but telephoned Mrs. Armer to tell her what had happened. Mrs. Armer testified that A.A. told her that the defendant pulled down her pants and touched her "private."

¶ 25 Ms. Fitzjerrells testified that A.A. told her that, on one occasion while she was watching television in her mother's bedroom, the defendant came into the room, pushed her back on the bed, pulled down her pants, and touched her vagina with his fingers. Ms. Fitzjerrells said that A.A. told her that the defendant said "he was going to finger her and had wanted to kiss her." A.A. started to scream, but the defendant

put his hand over her mouth. The defendant told A.A. to pull up her pants, and he dragged A.A. into the bathroom where he threatened to kill her if she told anyone what happened.

¶ 26 Kelsey Sutton testified that in the summer of 2008, she was visiting a friend in the apartment adjacent to the apartment where A.A.'s mother lived. When she was in the bathroom she heard a little girl crying and yelling. She could not hear what the girl was yelling because the sound was muffled by running water. She testified that she became alarmed when suddenly everything went silent. She then telephoned her mother to tell her something was happening in the next apartment. Kelsey's testimony corroborated A.A.'s testimony that she screamed, cried, and ran water to wash up after the defendant touched her. Kelsey's testimony also corroborated A.A.'s testimony that she stopped screaming after the defendant threatened to kill her if she did not stop.

¶ 27 Kimberly Sutton testified that after Kelsey telephoned her, she went to the apartment and the only people home were A.A. and the defendant. A.A. was sitting on the couch crying, had the hiccups, and looked as though she had been crying for a long time. Kimberly testified that A.A.'s hair was wet and it appeared as if she had dressed without drying off. Kimberly's testimony corroborated A.A.'s testimony that she had been crying and that she washed off.

¶ 28 The defendant argues that A.A.'s testimony was inconsistent with Kimberly's testimony because A.A.'s "testimony that she was only wet to the extent that she washed off with a washcloth was contrary to the evidence that she was soaking wet. Human experience informs us that washing off with a wash cloth does not leave one soaking wet." A.A. testified, "I wetted a wash rag and started to wash my body off because I felt really nasty and disgusting." Kelsey testified that she heard splashing water. Kimberly testified that when she saw A.A. crying, her hair was wet and she

appeared to have dressed without towelng off. It was not unreasonable for a jury to conclude that an 11-year-old child who has just been sexually abused and is distraught got her clothes wet when washing off and splashed her hair when washing her tear-stained face.

¶ 29 "Where minor inconsistencies or discrepancies exist in a complainant's testimony but do not detract from the reasonableness of her story as a whole, the complainant's testimony may be found to be adequate to support a conviction for sexual abuse." *People v. Soler*, 228 Ill. App. 3d 183, 200 (1992). Credible testimony from a single witness is sufficient to convict. *People v. Delgado*, 376 Ill. App. 3d 307, 311 (2007).

¶ 30 The defendant argues that A.A.'s "apology to [the defendant], and her promise to 'be good' are evidence of some kind of disciplinary action, not sexual abuse." Kelsey testified that the screaming she heard was "basically yelling bloody murder" and not the sound of someone yelling because she did not want to take a bath. Kelsey did not testify that she heard A.A. apologize or promise to be good. She stated that she could only hear "little things like no." Ms. Miller testified that Kimberly told her that Kelsey heard A.A. say "I am sorry, I will be good." Ms. Miller testified that she currently takes 20 medications per day for her various illnesses. The jury presumably rejected Ms. Miller's thirdhand account in favor of Kelsey's first-person testimony.

¶ 31 The defendant argues that A.A.'s credibility was weakened because she did not tell Kimberly, Billie, Mr. Armer, or Mrs. Armer that the defendant touched her inappropriately on the day of the alleged incident. He further argues that A.A.'s credibility was weakened because she did not say anything until asked about molestation by people who had no reason to believe she had been molested. The

complaint by a victim of a sex offense need not be made within a definite time limit. *Soler*, 228 Ill. App. 3d at 199. It may be reasonable to delay in reporting incidents of sexual abuse where the victim's silence can be attributed to fear of the offender, or to shame, guilt, or embarrassment felt by the victim. *Id.* "Under such circumstances, a delay of several months in reporting incidents of sexual abuse will not detract from the reasonableness of a complainant's testimony." *Id.*

¶ 32 A.A. testified that she was afraid of the defendant and that he threatened to kill her if she told anyone about what happened. Mr. Armer testified that when he asked A.A. if there was anything she wanted to tell him, she was afraid and stated that she was "dead meat" if she said anything. Mr. Armer then told her not to be afraid and asked who threatened her. A.A. told Mr. Armer that it was the defendant. Given that the defendant threatened to kill A.A. if she told anyone what happened, it was not unreasonable for her to delay reporting the sexual abuse, and the delay does not detract from the reasonableness of her testimony.

¶ 33 Based on our review of the record, we believe that there was sufficient evidence for a rational trier of fact to find the defendant guilty of aggravated criminal sexual abuse beyond a reasonable doubt. A.A. clearly and unequivocally testified that the defendant touched her vagina. Mr. Armer, Mrs. Armer, and Ms. Fitzjerrells all stated that A.A. told them that the defendant pulled down her pants. Mrs. Armer and Ms. Fitzjerrells testified that A.A. told them that the defendant touched her vagina. Whether the defendant's acts were done for the purpose of sexual arousal can be inferred from the sexual conduct itself. *Kolton*, 347 Ill. App. 3d at 153 (jury could infer from evidence that the defendant coaxed the victim into a secluded area and, against her protestations, told her to sit on a blanket where he touched and fondled her vagina that the acts were done for the purpose of sexual arousal); *People v. Bailey*,

311 Ill. App. 3d 265, 269 (2000) (the jury could reasonably infer from evidence that the defendant rubbed the victim's vagina through her jeans that the conduct was engaged in for the purpose of sexual arousal). In the present case, the jury could reasonably infer that when the defendant pulled down A.A.'s shorts and underwear and touched her vagina, he did so for purposes of sexual arousal.

¶ 34 The defendant argues that the judgment should be modified to reflect an acquittal of predatory criminal sexual assault of a child. The State concedes this point. The defendant was charged with predatory criminal sexual assault of a child and aggravated criminal sexual abuse. The two charges pertained to the same event, and as charged, aggravated criminal sexual abuse could be considered a lesser-included offense of predatory criminal sexual assault of a child. *Kolton*, 347 Ill. App. 3d at 150 (aggravated criminal sexual abuse can be considered a lesser-included offense of predatory criminal sexual assault, even when sexual gratification was not spelled out with greater particularity in the indictment).

¶ 35 At the conclusion of the presentation of evidence and oral arguments, the trial court instructed the jury that it would be given three verdict forms from which to select. The options were: (1) not guilty of predatory criminal sexual assault of a child and not guilty of aggravated criminal sexual abuse, (2) guilty of predatory criminal sexual assault of a child, and (3) guilty of aggravated criminal sexual abuse. The jury was not given a separate verdict form that permitted it to find the defendant not guilty of only predatory criminal sexual assault of a child. The jury was instructed, "Under the law a person charged with predatory criminal sexual assault of a child may be found not guilty of predatory criminal sexual assault of a child and not guilty of aggravated criminal sexual abuse, or two, guilty of predatory criminal assault of a child, or three, guilty of aggravated criminal sexual abuse." The jury chose one of the

three verdict forms, finding the defendant guilty of aggravated criminal sexual abuse. Because the two charges arose out of the same incident, and given the evidence presented at trial and the jury instructions given, the jury's choice of verdict was an implied acquittal on the predatory-criminal-sexual-assault-of-a-child count. Accordingly, we remand to the trial court with directions to enter a judgment of acquittal on count I, predatory criminal sexual assault of a child.

¶ 36

#### CONCLUSION

¶ 37

For the foregoing reasons, the judgment of the circuit court of Washington County is affirmed and remanded to the trial court with directions.

¶ 38

Affirmed and remanded with directions.