

Nos. 1-11-1565, 1-11-1814; 1-11-1799 (Consolidated)

NOTICE: This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e).

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	Cook County.
)	
v.)	Nos. 09CR21033
)	09CR21034
)	09CR21035
)	
JOSEPH FULTZ,)	Honorable
)	James B. Linn,
Defendant-Appellant.)	Judge Presiding.

JUSTICE PUCINSKI delivered the judgment of the court.
Presiding Justice Lavin and Justice Fitzgerald Smith concurred in the judgment.

ORDER

HELD: Defendant's conviction for aggravated criminal sexual abuse upheld where the State proved his guilt beyond a reasonable doubt and where the trial court's admonishments to prospective jurors accorded with the requirements set forth in Supreme Court Rule 431(b).

¶ 1 Following a jury trial, defendant Joseph Fultz was convicted of eight counts of aggravated criminal sexual abuse. On appeal, Fultz challenges his convictions and the sentences imposed thereon, arguing: (1) the State failed to establish his guilt beyond a reasonable doubt; and (2) the

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

trial court deprived him of his constitutional right to a fair and impartial jury when it failed to comply with the mandates of amended Illinois Supreme Court Rule 431(b) (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)). For the reasons explained herein, we affirm the judgment of the circuit court.

¶ 2

I. BACKGROUND

¶ 3 In November 2009, defendant was indicted and charged with multiple counts of predatory criminal sexual assault of a child (720ILCS 5/12-14.1(a)(1) (West 2008)) and criminal sexual assault (720 ILCS 5/12-13(a)(1) (West 2008)). The victims identified in the indictments were defendant's three nieces: Shunyce T., Diamond T., and Syarah T. The abuse was alleged to have been systemic, taking place between March 1999 to October 2009. Defendant filed a motion for joinder and the three cases were tried jointly before a jury.

¶ 4 The trial judge presided over the jury selection process and commenced the *voir dire* by swearing in the venire and advising the potential jurors of the rules of law applicable to the trial, including the four *Zehr* principles (*People v. Zehr*, 103 Ill. 2d 472 (1984)) enumerated in Illinois Supreme Court Rule 431(b) as amended in 2007 (Ill. S. Ct. R. 431(b) (eff. May 1, 2007)). Specifically, in accordance with Rule 431(b), the trial judge informed the entire group of prospective jurors that: every criminal defendant is presumed innocent of the charges against him; the State bears the burden of proving the defendant guilty of the charged offenses beyond a reasonable doubt; the defendant is not required to prove his innocence and is not required to testify or present evidence on his behalf; and a defendant's decision not to testify may not be considered evidence against him. The judge inquired whether any of the prospective jurors had

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

"problem[s]" or "concerns" with each of the principles. After the jury was selected, the State proceeded with its case-in-chief

¶ 5 At trial, Tunysha Fultz, defendant's sister and mother of the three victims, testified that from late 1998 to 2004, she lived with her four children (Shunyce, born 3/18/92; Diamond, born 11/26/93; Genard, born 1/9/96; and Syarah, born 2/7/98) and her husband in an apartment on the south side of Chicago, and worked as a server and bartender. In 1999, defendant also lived with Tunysha and her family. When he lived with her, defendant frequently watched Tunysha's children while she was at work. After living with Tunysha for about a year, defendant moved into his own apartment located in the same apartment complex. He continued babysitting his nieces and nephew.

¶ 6 About a year after that, defendant subsequently moved into a house with their mother and began living in her basement. During that time, Tunysha's mother and brother routinely babysat her children while she was at work.

¶ 7 During the time that defendant lived with her, Tunysha did not suspect that defendant was engaging in any inappropriate sexual activity with her daughters. She did not notice any change in her daughters' behaviors or observe any physical signs of abuse. Tunysha, however, did testify that her daughters complained that their uncle "played too rough" and "wrestled all the time." As a result, Tunysha told her brother to be more careful when playing with her children because they were so little. It did not occur to Tunysha that the wrestling behavior of which her daughters complained involved any inappropriate touching or sexual contact.

¶ 8 Tunysha was aware that her younger brother had learning disabilities but explained that

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

he was "not crazy." Although he never had any children of his own, Tunysha thought her brother was always good with her kids and never suspected any abuse occurring when defendant had his own residence or when he later moved in with their mother. In addition to watching her children, Tunysha was aware that defendant also watched the children of a woman named Tanya. Tanya had seven children and Tunysha had no knowledge of any abuse allegations made against her brother regarding his behavior around Tanya's kids.

¶ 9 Sometime around Shunyce's eighth grade graduation, Tunysha noticed that her daughter had hickeys on her neck. Tunysha asked her daughter if she was having sexual intercourse. In response, Shunyce told her that "she ha[d]n't had sex with anybody but Uncle Joe-Joe." She did not specifically tell her mother that defendant was responsible for the marks. Tunysha immediately called her mother and relayed what Shunyce had said. She heard defendant screaming in the background, saying: "Why she lying on me? I didn't do that. This didn't happen." Shunyce recanted her allegation against defendant "maybe three days later." Shunyce first recanted to her grandmother. While she was at her grandmother's house, Shunyce called her mother and told her that the allegations against defendant were false. Tunysha explained that her daughter was "going through stuff like teenage stuff" and believed that she was just acting out at the time.

¶ 10 On October 13, 2009, Tunysha's son, Genard, called her from his grandmother's house and told her about defendant's abuse toward his sisters. Tunysha subsequently spoke to her daughters. They were all crying as they recounted their allegations of abuse. Diamond relayed what defendant had done to Syarah and broke down and told her mother: "I felt bad because he

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

did it to me and I felt like I didn't protect my sister." After speaking to her daughters Tunysha called the police.

¶ 11 On cross-examination, Tunysha acknowledged that defendant receives social security benefits and that he had designated her to be his payee. Tunysha further acknowledged that she routinely helped defendant cash his social security checks at the currency exchange. She denied, however, that she charged defendant any money in exchange for helping him cash his social security checks. Tunysha further denied that defendant informed her that he no longer wanted her to be his payee shortly before she called the police to report his abuse in October 1999.

¶ 12 Shunyce T., defendant's eldest niece, born March 18, 1992, was 18-years-old at the time of trial. She testified that defendant had "touched [her] in many inappropriate ways" over the years when she was between the ages of 6 to 14 years old. She confirmed that defendant routinely babysat her and her siblings four to five times a week when her mother was working. Over the years, defendant babysat them at their apartment, at his own apartment and the house he later shared with their grandmother. Sometimes other adults were present, but sometimes defendant babysat Shunyce and her siblings alone.

¶ 13 In response to questions about the "inappropriate" contact, Shunyce clarified that defendant touched her vagina, breasts, and butt. Defendant touched her vagina with both his fingers and his penis. He touched both the outside and inside of her vagina with his fingers. Shunyce also testified that defendant inserted his penis into her mouth and did so repeatedly until "white and creamy" "sperm" came out. She estimated that defendant put his penis into her mouth "more than 20, 40 times." He did not "place" his penis into her vagina as often. Shunyce's

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

siblings were usually awake and present when defendant touched her inappropriately, but he usually took her into the bathroom to do so. When defendant babysat her at the house he shared with her grandmother, the contact was "mostly attempted anal and oral" and occurred most often in the basement. Shunyce explained that defendant "never put his penis into [her] rectum, but he would like put it between [her] butt cheeks and move around until he ejaculated." He touched her "[m]ore than 75 times" at her grandmother's house. Shunyce was under the age of 15 when these instances of abuse took place.

¶ 14 Shunyce further testified that she had also seen defendant touch her sister, Diamond, "at times" but that she had "never" seen him touch Syarah. Defendant would instruct her and Diamond to "touch[] each other and touch[] him as well and giv[e] him oral and giv[e] each other oral." This forced contact between her and her sister occurred more than once, but less than five times. Shunyce explained that she never told anybody about the abuse because defendant "threatened to kill [her] on more than one occasion" if she did so.

¶ 15 On cross-examination, Shunyce acknowledged that when she was in eighth grade she told her mother that defendant had been touching her inappropriately, but that she later recanted her allegation a few days later and apologized to defendant. Shunyce explained that she apologized to defendant, not because her allegations were untrue, but because her grandmother "made [her]" apologize and deny the sexual abuse. Shunyce further acknowledged that although instances of sexual abuse took place on over 100 occasions, she could not recall a specific date on which the abuse occurred or detail what specific acts took place on specific dates. She confirmed that no other adults walked in on and saw defendant engaging any of these acts with Shunyce and her

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

sisters over the years.

¶ 16 Syarah T., born February 7, 1998, was 12-years-old at the time of trial. She testified that during the week of October 3, 2009, through October 11, 2009, she and her brother Genard were staying at her grandmother's house. They both attended Dixon Elementary School and were on fall break that week. Defendant was living with her grandmother at the time. One day during that week, Syarah was alone with her uncle in the living room and he touched her "lower area," specifically her vagina and butt. Defendant put his finger inside her vagina and touched her butt with his penis. When defendant touched her butt with his penis, "sperm" came out of his penis. Another time that week, Syarah and her brother were in defendant's bedroom when defendant touched her again in the "same area" and then put his penis in her mouth until sperm came out. Syarah testified that she "spit it out." Genard was asleep when this incident occurred.

Altogether, Syarah testified that defendant touched her three times that week. She did not tell her grandmother or mother what had happened, but talked to her sister Diamond about the abuse because Diamond revealed that defendant had done the same thing to her on previous occasions.

¶ 17 On cross-examination, Syarah acknowledged that she spoke to police officers when everything "came out." She did not recall providing them with exact dates and times that defendant touched her inappropriately. She simply recalled that the contact occurred during her fall break. Syarah was also unable to recall what she or her uncle were wearing when the contact took place or the length of time each encounter lasted.

¶ 18 Diamond T., born November 26, 1993, was 17-years-old at the time of trial. She confirmed that defendant regularly babysat for her and her siblings. Diamond recounted the first

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

time that defendant touched her inappropriately. She testified that she was in the living room of the apartment she shared with her mother, father and siblings with her uncle and they were watching a movie. During the movie, defendant had her remove her underwear and lift up her nightgown and then he "touched [her] private parts." Diamond explained that defendant used his hand to touch the outside of her vagina. Defendant touched her vagina more than 50 times over the years. Although defendant did not put his penis in her vagina, he did insert his fingers into her vagina. Defendant, did however, use his penis to touch her rectum. On those occasions, "sometimes" something "slimy" would come out of his penis.

¶ 19 Diamond also saw defendant touch her older sister, Shunyce, inappropriately. Diamond explained that she and her sister were in his room and defendant "made" Shunyce "give him oral sex." Then he ordered Diamond to do the same thing and she put her mouth on his penis. Afterwards, defendant had the sisters give each other oral sex while he watched. Defendant threatened to hurt Diamond if she ever told anybody what he did to her.

¶ 20 On cross-examination, Diamond acknowledged that she could not provide specific dates as to when any of the instances of inappropriate sexual contact with her uncle occurred or recall the exact number of times that defendant subjected her to sexual abuse. However, the abuse happened sometime between 1999 to the mid-2000's. She confirmed that in October 2009 she asked her younger sister Syarah whether defendant had touched her inappropriately after Syarah had spent the week at their grandmother's house during fall break and that Syarah initially denied that any wrongdoing had taken place.

¶ 21 Doctor Norell Rosado, an attending physician for the Division of Child Protective

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

Services at Stroger Hospital, testified that he conducted physical examinations on Shunyce and Diamond on October 28, 2009. He examined both the external and internal parts of their genitals. After examining Shunyce, Doctor Rosado concluded that the findings of her physical exam were "consistent with vaginal penetration." When he examined Diamond, Doctor Rosado discovered that there "was a rupture of [Diamond's] hymen," which was a finding consistent with sexual penetration. The exams of both girls were "normal" and the results were what he would expect to find in normal sexually active teenagers.

¶ 22 The parties stipulated that Doctor Veena Ramiah, a physician employed by the University of Chicago Hospital, examined Syarah on October 13, 2009. Pursuant to the stipulation, Doctor Ramiah, if called to testify, would state that Syarah came to the emergency room of the hospital for a sexual assault evaluation. Syarah described multiple sexual encounters that she had with her uncle. A physical examination of Syarah established that her "hymenal tissue was present but very thickened and redundant with pulls, no tears or notches were detected." In addition, "[t]he rectum had normal tone with no scarring or lesions." Doctor Ramiah would further testify that "the physical exam of Syarah was normal and that a normal physical exam [did] not rule out [the possibility] of sexual abuse."

¶ 23 Chicago Police Detective Charles Morris testified that on October 13, 2009, he received an assignment to investigate allegations of sexual abuse after a call had been placed to the Child Abuse Hotline. He contacted Tunysha Fultz and arranged to interview Shunyce, Diamond, and Syarah. On October 28, 2009, Detective Morris spoke with each of the girls individually and prepared a report. Defendant was arrested the next day.

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

¶ 24 On cross-examination, Detective Morris testified that neither Shunyce nor Diamond told him that defendant forced them to perform oral sex on each other. In addition, Diamond told him that defendant initiated inappropriate sexual contact with her on only 5 to 10 occasions over the years. Detective Morris acknowledged that defendant was cooperative when he came to the police department for questioning prior to being arrested.

¶ 25 After the State rested its case-in-chief, defendant moved for a directed verdict on all counts. The motion was denied.

¶ 26 Belma Fultz, defendant's mother, testified on her son's behalf. She acknowledged that her grandchildren regularly came to the house that she shared with defendant. At no point in time did Belma see anything that would indicate that any type of abuse was inflicted on any of her granddaughters. Whenever her grandchildren came to stay at her house, her three granddaughters slept in her room and her grandson, Genard, slept with defendant. In October 2009, when Syarah and Genard stayed at her house during their fall break, Syarah slept in her grandmother's room "every night" and Genard slept in the basement with defendant. Although Syarah wanted to spend time in the basement, Belma did not allow her to do so because "it [was] boys down there." During that week, there was never a time that Belma was not in the house, and she never saw defendant alone with Syarah. Moreover, she was awake most nights because she suffers from insomnia. Her grandchildren were "happy" when they were around defendant, but she acknowledged that Syarah appeared quiet and distant when she stayed at her house during the week of fall break.

¶ 27 Belma confirmed that defendant received social security benefits. At one point, she was

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

defendant's payee and helped him cash his checks and pay his bills. In 1999, her daughter Tunysha became defendant's payee. She denied that Shunyce ever made an accusation against defendant near the time of her eighth-grade graduation. Belma acknowledged that defendant's disability checks are used to pay the utilities for her residence as well as groceries and other necessities.

¶ 28 Defendant, 32-years-old at the time of the 2011 trial, chose to exercise his right to testify. He testified that he has a learning disability and receives social security benefits. Since 1999, his sister Tunysha has been his payee and has cashed his social security checks on his behalf. He testified that Tunysha picked him up every month to cash his check and charged him \$50 per month for her help. In September 2009, Tunysha told him that there had been a problem with his check and he did not receive benefits that month. As a result, defendant told his sister that he did no longer wanted her help and changed her status as payee. Tunysha subsequently asked him for a loan in October 2009, and although he had loaned his sister money in the past, he denied her request.

¶ 29 Defendant acknowledged spending time with and babysitting his nieces and nephews but denied that he ever touched Shunyce, Diamond or Syarah in an inappropriate sexual nature. When Syarah and Genard stayed with his mother during the week of their fall break in October 2009, defendant slept in his own room and was never alone with Syarah at any time anywhere in the apartment. He explained that his mother was "kind of old-fashioned" and "did not allow girls to sleep in the same room with boys."

¶ 30 The State called Genard T. as a rebuttal witness. Genard testified that defendant routinely

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

watched him and his sisters when their mother was at work. He and his sisters spent the night at the home defendant shared with their grandmother "plenty of times." When he stayed the night, Genard usually slept in defendant's room or in the living room. When he slept in defendant's room, his sisters "usually" slept there too. He confirmed that during October 2009, he and Syarah had a week off of school for their school break and they went to stay at their grandmother's house. During that week, Genard and his sister both spent time in defendant's room. There were occasions where Genard fell asleep on the floor of defendant's room and Syarah slept in the bed with defendant.

¶ 31 On cross-examination, Genard acknowledged that he knew the difference between a "good" touch and a "bad" touch. Although his sisters spent time in defendant's room, Genard never actually saw his uncle touch any of his sisters inappropriately. More specifically, during the week that he and Syarah stayed at his grandmother's house during fall break in October 2009, he did not see defendant behave inappropriately towards Syarah.

¶ 32 After hearing closing arguments, the jury commenced deliberations. After deliberating for approximately four hours, the jury submitted a note to the trial court indicating that it was having difficulties reaching a unanimous decision. After receiving additional instructions, the jury continued deliberating and returned with a verdict finding defendant guilty of nine counts of predatory criminal sexual assault.

¶ 33 Defendant filed a motion for a judgment of acquittal notwithstanding the verdict. Upon reviewing the motion, the court acknowledged that there had been inconsistencies in the victims' testimony at trial, but concluded that it was "persuaded, along with the jury, that there was

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

absolutely criminal conduct that occurred between [defendant] and all three of the complainants." Nonetheless, the court elected to "grant some relief over the government's very strong objection" and reduced the nine predatory criminal sexual assault convictions to eight counts of aggravated criminal sexual abuse. At the sentencing hearing that followed, after hearing the arguments advanced in aggravation and mitigation, the court sentenced defendant to concurrent six years prison terms for each count, but ordered that the sentences imposed for each victim were to be served consecutively.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 A. Sufficiency of the Evidence

¶ 37 On appeal, defendant first challenges the sufficiency of the evidence. He argues that the State's case against him "was based almost exclusively on the unconvincing, conflicting, and highly suspect testimony" of his nieces "all of whom had a motive to falsely accuse [him] of sexual abuse shortly after [he] removed their mother, Tunysha Fultz, as his payee for his SSI benefits." Because the testimony of his nieces lacked credibility and the State failed to present any additional evidence to corroborate their otherwise suspect testimony, defendant argues that his convictions should be reversed for lack of evidence.

¶ 38 The State, in turn, responds that defendant was proven guilty of eight counts of aggravated criminal sexual abuse beyond a reasonable doubt. The State observes that the jury heard compelling testimony from each of defendant's three nieces about the incidences of sexual abuse that defendant subjected them to over the years. Although defendant suggested that his

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

nieces were falsely accusing him because he changed their mother's status as the payee for his social security benefits, the jury found the testimony of his nieces to be credible and rejected his theory of defense. The State argues that the jury's credibility determinations should not be disturbed on appeal.

¶ 39 Due process requires proof beyond a reasonable doubt to convict a criminal defendant. *People v. Ross*, 229 Ill. 2d 255, 272 (2008). In reviewing a challenge to the sufficiency of the evidence, it is not a reviewing court's role to retry the defendant; rather, we must view the evidence in the light most favorable to the prosecution and determine whether any rational trier of fact could have found each of the essential elements of the crime beyond a reasonable doubt. *People v. Ward*, 215 Ill. 2d 317, 322 (2005); *People v. Hayashi*, 386 Ill. App. 3d 113, 122 (2008). The trier of fact is responsible for evaluating the credibility of the witnesses, drawing reasonable inferences from the evidence, and resolving any inconsistencies in the evidence (*People v. Bannister*, 378 Ill. App. 3d 19, 39 (2007)), and a reviewing court should not substitute its judgment for that of the trier of fact (*People v. Sutherland*, 223 Ill. 2d 187, 242 (2006)). Ultimately, a reviewing court will not reverse a defendant's conviction unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt as to his guilt. *People v. Carodine*, 374 Ill. App. 3d 16, 24 (2007).

¶ 40 Here, defendant was convicted of eight counts of aggravated criminal sexual abuse. Pursuant to statute, a person is guilty of aggravated criminal sexual abuse if he engages in "sexual conduct" with the victim and one or more aggravating factors are present. 720 ILCS 5/11-1.60 (West 2008). In the indictment, the aggravating factor was the age discrepancy

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

between defendant and his nieces at the time he initiated sexual contact. Specifically, the indictment alleged that defendant engaged in sexual conduct with his nieces when he was over the age of 17 and when his nieces were under the age of 13. Section 11-1.60(c)(1) of the Illinois Criminal Code of 2012 sets forth this aggravating factor as follows:

"(c) A person commits aggravated criminal sexual abuse if:

(1) that person is 17 years of age or over and: (i) commits an act of sexual conduct with a victim who is under 13 years of age." 720 ILCS 5/11-1.60 (West 2008).

¶ 41 The purpose of section (c)(1) of the Illinois aggravated criminal sexual abuse statute is to protect young children from premature sexual experiences with an " 'unscrupulous elder.' " *People v. Borash*, 354 Ill. App. 3d 70, 78 (2004), quoting *People v. Gann*, 141 Ill. App. 3d 34, 35 (1986). The term "sexual conduct" includes "any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age, or any transfer of semen by the accused upon any part of the clothed or unclothed body of the victim, for the purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/11-0.1 (West 2008). Whether a defendant engaged in conduct for the purpose of achieving sexual arousal or gratification may be inferred from the nature of the conduct itself and proven by circumstantial evidence. *People v. Kolton*, 219 Ill. 2d 353, 369-71 (2006).

¶ 42 Here, there is no dispute that defendant was over the age of 17 when the sexual acts described by his nieces allegedly occurred. Shunyce, defendant's oldest niece, testified that defendant subjected her to sexual abuse for ten years. Born March 18, 1992, she testified that

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

defendant touched her in an inappropriate sexual manner from the time she was 4-years-old to the time she was 14-years of age at various locations. She explained that defendant touched the outside of her vagina with his fingers and subsequently described multiple acts of digital and penile penetration. Defendant also inserted his penis into her mouth on 20 to 40 different occasions until he ejaculated. Shunyce further testified that in addition to forcing her to engage in sexual acts with him, defendant also forced her to engage in sexual acts with her younger sister, Diamond. Shunyce recalled that defendant forced them to perform oral sex on each other while he watched.

¶ 43 Diamond, born November 26, 1993, provided a similar account of the behavior that defendant subjected to while she was under 13-years of age. She testified defendant "touched [her] private parts" for the first time in the living room of the apartment she lived in with her mother and siblings. Defendant used his hands and touched the outside of her vagina and inserted his fingers into her vagina. She estimated that defendant did so on at least 50 occasions. Diamond further testified that he rubbed his penis against her buttocks until he ejaculated. Such contact occurred "more than ten times." He also forced Diamond to give him oral sex. Diamond confirmed that defendant forced her to engage in oral sex with her sister Shunyce while he watched.

¶ 44 Syarah testified that she was subjected to abuse on multiple occasions when she and her brother Genard spent their fall break at the house defendant shared with their grandmother in October 2009. Born on February 7, 1998, Syarah was 11 years-old at the time that the abuse occurred. She testified that her uncle touched her "lower area," specifically her vagina and butt.

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

The contact occurred in her grandmother's living room as well as defendant's room located in the basement of the building. Defendant inserted his finger into her vagina and rubbed his penis against her buttocks. Syarah explained that defendant rubbed his penis against her "butt" until "sperm" came out. In addition to the aforementioned acts, Syarah testified that her uncle forced her to engage in oral sex and put his penis into her mouth until he ejaculated.

¶ 45 Based on the aforementioned testimony, we find that the evidence supports defendant's aggravated criminal sexual abuse convictions. Defendant touched each of his nieces in a sexual manner while they were under 13-years of age and while he was over the age of 17. The victims described multiple acts of penile and digital penetration and indicated that defendant repeatedly ejaculated into their mouths and onto the anuses. The record thus supports a finding that the conduct that defendant subjected his nieces to was "sexual conduct" as defined by the Criminal Code.

¶ 46 Defendant, however, suggests that the aforementioned testimony was insufficient to convict him because his nieces had a motive to incriminate him and because the State failed to corroborate their testimony. Initially, we note that Illinois law no longer requires that the testimony of victims of sex crimes be corroborated by physical or medical evidence in order to uphold a sex offense conviction. *See, e.g., People v. Le*, 346 Ill. App. 3d 41, 50 (2004); *People v. Hermosillo*, 256 Ill. App. 3d 1020, 1030 (1993); *People v. Roy*, 201 Ill. App. 3d 166, 185 (1990). Moreover, even though corroboration is not required, the State did present additional evidence to corroborate the testimony of the victims. In its case-in-chief, the State called Doctor Rosado, who performed physical examinations on Shunyce and Diamond. At trial, he opined that the

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

results of those exams were consistent with the victims claims of vaginal penetration. The State also presented the testimony of Doctor Veena Ramiah, the doctor who performed Syarah's physical examination. Doctor Ramiah found Syarah's hymenal tissue to be present and described the results of her physical exam to be "normal." Doctor Ramiah clarified, that the presence of hymenal tissue and a normal physical exam, did not however, rule out the possibility of sexual abuse, especially given the type of abuse that Syarah described: digital vaginal penetration, oral sex, and rectal-penile contact. In addition to the medical testimony, the State called Genard to testify as a rebuttal witness. Although Genard's uncle and grandmother testified that defendant was never alone with any of his sisters and that none of his sisters ever slept in the same room as defendant when they stayed overnight, Genard confirmed that during the week of his fall break in October 2009, there were occasions when Syarah slept in defendant's bed. Accordingly, we reject defendant's argument that the lack of corroboration warrants reversal of his convictions.

¶ 47 We similarly find defendant's assertion that reversal is warranted because each of his nieces had a motive to lie to be similarly without merit. The jury heard defendant's argument that his nieces were falsely accusing him of inappropriate sexual contact because he removed their mother as his designated payee of his social security benefits. Based on the verdict, the jury was not persuaded by his arguments that the testimony provided by his nieces was false and was motivated by a dispute between their mother and their uncle. In fact, the jury found defendant guilty of the greater offense of predatory criminal sexual assault. Although the trial court reduced the charges to aggravated criminal sexual abuse, it did so not because it disbelieved the testimony of defendant's three nieces, but simply because the State had not proven the element of

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

"penetration" needed to satisfy the elements of the greater offense.¹ In announcing its ruling, the court specifically found that based on the trial testimony it "believe[d] the children were molested."

¶ 48 Although defendant is correct that the testimony of the victims lacked specificity regarding the number and locations of the alleged abuse as well as specific dates on which specific acts of abuse took place, any shortcomings in the witnesses testimony merely affects the weight to give to their testimony and does not automatically create reasonable doubt as to the defendant's guilt. See, e.g., *People v. Whittenmyer*, 216 Ill. App. 3d 1042 (1991), *rev'd on other grounds*, *People v. Whittenmyer*, 151 Ill. 2d 175 (1992) (the defendant's conviction for aggravated criminal sexual assault affirmed even though there were discrepancies in the testimony of the victims regarding the number of incidents and the location of the abuse because the minor discrepancies did not render the testimony of the two victims wholly incredible). Here, the jury found the testimony of Shunyce, Diamond and Syarah to be credible and rejected defendant's theory of defense that his nieces had a motive to lie in retaliation for removing their mother as payee of his social security benefits. We reiterate that credibility determinations fall within the province of the trier of fact and we will not substitute our judgment for that of the jury. Viewing the record in the light most favorable to the prosecution, we are unable to agree that the alleged shortcomings of the victims' testimony or that their alleged motive to fabricate creates

¹ Predatory criminal sexual assault differs from aggravated criminal sexual abuse in that it requires an overt act of "penetration" and not simply "sexual conduct." 720 ILCS 5/11-1.40 (West 2008).

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

reasonable doubt as to defendant's guilt. Accordingly, we affirm his conviction for aggravated criminal sexual abuse. See, e.g., *People v. Maxwell*, 346 Ill. App. 3d 41 (2004) (upholding the defendant's conviction for sex crimes notwithstanding the defendant's assertion that the victim had a motive to falsely incriminate him where the jury found the victim credible and the alleged motivation for falsely accusing the defendant was not "very compelling").

¶ 49

B. Rule 431(b) Violation

¶ 50 Defendant next argues that he was denied his right to a fair trial when the trial court failed to abide by the requirements of Illinois Supreme Court Rule 431(b). Although the court informed potential jurors of the four *Zehr* principles contained in Rule 431(b) during the *voir dire* process, defendant argues that the court failed to properly question the prospective jurors to ascertain whether they understood and accepted those principles. He acknowledges that he failed to properly preserve this claim, but argues that the court's error constituted plain error under the first-prong of plain error review because the evidence against him was so "closely balanced."

¶ 51 The State, in turn, argues that the admonishments provided by the court to the prospective jurors during the *voir dire* process, complied with the requirements of Rule 431(b). Although the court did not use specific language set forth in the rule, the court informed the venire about each of the four *Zehr* principles and provided the venire members with an opportunity to express any objection to those principles. Moreover, even if the procedure utilized by the trial court constituted error, the State argues that defendant is not entitled to relief under the plain error doctrine because the evidence was not closely balanced.

¶ 52 To properly preserve an issue for appeal, a defendant must object to the purported error at

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

trial and specify the error in a posttrial motion. *People v. Enoch*, 122 Ill. 2d 176, 186 (1988); *People v. Bannister*, 232 Ill. 2d 52, 65 (2008). A defendant's failure to abide by both requirements results in forfeiture of appellate review of his claim. *Enoch*, 122 Ill. 2d at 186; *People v. Piatkowski*, 225 Ill. 2d 551, 564 (2007). Because defendant never raised any objection to the trial court's admonishments and failed to properly preserve this claim, we will review this issue for plain error.

¶ 53 The plain error doctrine provides a limited exception to the forfeiture rule. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *Bannister*, 232 Ill. 2d at 65. It permits review of otherwise improperly preserved issues on appeal if the evidence is closely balanced or the error is of such a serious magnitude that it affected the integrity of the judicial process and deprived the defendant of his right to a fair trial. Ill. S. Ct. R. 615(a) (eff. Jan. 1, 1967); *Bannister*, 232 Ill. 2d at 65. Here, defendant claims plain error under the first-prong, arguing that the court's error prejudiced him because the evidence against him was closely balanced. Before determining whether defendant can establish plain error under the first-prong, we must first determine whether any error actually occurred. *People v. Walker*, 232 Ill. 2d 113, 24-25 (2009).

¶ 54 Defendant's claim of error concerns the trial court's compliance with a supreme court rule, which is subject to *de novo* review. *People v. Suarez*, 224 Ill. 2d 37, 41-42 (2007); *People v. Haynes*, 399 Ill. App. 3d 903 (2010). To determine whether an error occurred in this case, we examine amended Rule 431(b), which provides:

“The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that the defendant's failure to testify cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's failure to testify when the defendant objects.

The court's method of inquiry shall provide each juror an opportunity to respond to the specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. May 1, 2007).

¶ 55 The amendment's use of the term "shall" created a mandatory question and response process to address a jury's acceptance of each of the four enumerated principles. *People v. Thompson*, 238 Ill. 2d 598, 607 (2010); see also *Haynes*, 399 Ill. App. 3d at 912. A trial court's failure to inquire as to a potential juror's acceptance and understanding of all four principles constitutes error. See *Thompson*, 238 Ill. 2d at 607; *Haynes*, 399 Ill. App. 3d at 912; *People v. Magallanes*, 397 Ill. App. 3d 83, 72 (2009). In *Thompson*, our supreme court advised:

"Rule 431(b), therefore, mandates a specific question and response process. The trial court must ask each potential juror whether he or she understands and accepts each of the principles in the rule. The questioning may be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on his or her understanding of those principles." *Thompson*, 238 Ill. 2d at 607.

¶ 56 Here, at the beginning of the jury selection process, the trial court admonished the

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

prospective jurors as follows:

"We begin the proceedings with the accused presumed to be innocent. And is there anyone here who has a problem with that most fundamental proposition of American justice, that when a criminal trial begins, the accused walks into court presumed to be innocent? If you have a problem with that, please raise your hand. No hands are raised.

* * *

In a criminal case, the government has the burden of proof. They have to prove the case beyond a reasonable doubt. It is the only way someone can ever be found guilty. It has to run through the government. They have to prove guilt beyond a reasonable doubt. *** Is there anybody who has a problem with that proposition, that the only way someone can be found guilty is if the government who brought the charge against the accused in a criminal case can prove guilt beyond a reasonable doubt[?] If you have a problem with that, please raise your hand. No hands are raised.

* * *

The last proposition I will discuss with you is this: In a criminal case, the person accused of a crime does not have to prove their innocence. An accused does not have to testify. They don't have to call any witnesses on their own behalf. They have no responsibility to prove anything. *** [I]s there anybody here who would hold it against an accused if they did not testify, which is their perfect right, or didn't call witnesses in their own behalf? *** If you have concerns like that, please raise your hand. No hands are

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

raised."

¶ 57 Although defendant takes issue with the trial court's phraseology, this court has observed that Rule 431(b) "does not dictate a particular methodology for establishing the venire's understanding or acceptance of those principles" and has repeatedly found that trial courts have met the requirements of the rule when they have utilized similar terminology that deviated slightly from the precise language contained in the rule. *See e.g., People v. Ware*, 407 Ill. App. 3d 315, 318-19 (2011) (trial court inquiry as to whether the prospective jurors "ha[d] any difficulty" with any of the *Zehr* principles did not amount to error); *People v. Digby*, 405 Ill. App. 3d 544, 548-49 (2010) (trial court's use of the phrase "have a problem with" did not constitute error); *People v. Ingram*, 401 Ill. App. 3d 382, 393 (2010) (trial court's inquiry as to whether the venire had any "difficulty or quarrel" with the principles did not constitute error). Here, the court explicitly advised the venire about each of the four principles and subsequently inquired whether any potential juror had "problem[s]" or "concerns" with the principles. We find that the trial court's failure to strictly adhere to Rule 431(b)'s language does not amount to error. The court's methodology sufficiently ascertained the venire's understanding and acceptance of the defendant's presumption of innocence, the prosecution's burden of persuasion, the right of a defendant not to call witnesses or present evidence on his behalf, and the right of the defendant not to testify and not to have that decision be used against him.

¶ 58 Moreover, even if the court's methodology could be deemed erroneous, we do not find that the error amounts to plain error because the evidence against defendant was not closely balanced. Each of defendant's three victims testified about the acts defendant subjected them to

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)

over the years. Their testimony was supported by medical evidence and was corroborated, in part, by the testimony of their mother and brother. Tunysha provided details about defendant's accessibility to her daughters and testified that defendant frequently babysat them over the years while she was at work. Genard, in turn, confirmed that Syarah had slept with defendant in his bed notwithstanding defendant and Belma's assertions that defendant never spent time alone with any of his sisters. Ultimately, we conclude that any perceived deficiencies in the trial court's Rule 431(b) admonishments do not rise to the level of plain error warranting reversal of the judgment on appeal.

¶ 59

III. CONCLUSION

¶ 60 For the reasons stated in this disposition, we reject defendant's contentions of error and affirm the judgment of the circuit court.

¶ 61 Affirmed.

1-11-1565, 1-11-1814, 1-11-1799 (Consolidated)