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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of McHenry County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 09-CF-0852
	)	
RICARDO RODRIQUEZ,	)	Honorable
	)	Joseph P. Condon,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE ZENOFF delivered the judgment of the court.  
Justices Schostok and Hudson concurred in the judgment.

**ORDER**

¶ 1 *Held:* The trial court did not abuse its discretion in denying defendant's motion for a bill of particulars; defendant's argument that the trial court erred in admitting evidence of other crimes pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 was forfeited; and the evidence proved defendant guilty beyond a reasonable doubt.

¶ 2 Defendant, Ricardo Rodriquez, appeals from his convictions of aggravated criminal sexual abuse and criminal sexual assault entered by the circuit court of McHenry County on March 22, 2012, following a bench trial. We affirm.

¶ 3 BACKGROUND

¶ 4 On January 6, 2010, the grand jury indicted defendant on six counts of aggravated criminal sexual abuse and six counts of criminal sexual assault. The alleged victim was defendant's biological niece, N.R., who was living with defendant and his wife in their residence in Woodstock, Illinois. Counts I and II alleged that an act of penetration occurred between January 1, 2009 through July 8, 2009; counts III and IV alleged that an act of penetration occurred between January 1, 2008, through December 31, 2008; counts V and VI alleged that an act of penetration occurred between January 1, 2007, through December 31, 2007; counts VII and VIII alleged that an act of penetration occurred between January 1, 2006, through December 31, 2006; counts IX and X alleged that an act of penetration occurred between January 1, 2005, through December 31, 2005; and counts XI and XII alleged that an act of penetration occurred between January 1, 2004, through December 31, 2004.

¶ 5 Defendant filed a motion for a bill of particulars in which he requested that the State "specify the particulars of the offenses charged more specifically as to date, time[,] and place." In its response to the motion, the State revealed that N.R. was 18 years old and that the acts alleged in the indictment occurred between the ages of 12 and 17 while N.R. was living with defendant. The State further revealed that "after the intercourse started," defendant "had intercourse with [N.R.] everyday with the exception of when she was menstruating, at which time he would just make her touch him." At the hearing on the motion, the State furnished further details: N.R. arrived at defendant's home in December 2003 and the abuse started in January 2004. According to the State, the acts occurred almost every single day during the entire time frame that N.R. lived with defendant. The State contended that the frequency of the alleged abuse was contained in the police reports, statements, and a videotaped statement that had been furnished to defendant in discovery. The trial court denied the motion.

¶ 6 At trial, the following evidence was adduced. N.R. testified that her birthday was August 6, 1991. Defendant was N.R.'s paternal uncle whom she called "papi." When N.R. was 12, she began living with defendant and his wife at their home on Northampton in Woodstock. N.R. testified that the first sexual encounter occurred in the kitchen when she was standing on defendant's feet and he "pulled [her] into him into his crotch area." After that, defendant began coming into her bedroom at night and touching her over her clothes. Some three weeks later, defendant started touching her under her clothes and telling her to kiss his penis. Then in the summer before her eighth grade year, N.R. recalled that defendant "raped" her. According to N.R., she was lying in bed and defendant was standing. She testified that defendant "took [her] pants off and then he went inside [her]." At that time, it was during the day and no one else was home. After that first time, defendant told N.R. about a dream he had in which she told her sister about the abuse and defendant killed N.R. and then himself, which made N.R. "really, really scared."

¶ 7 N.R. testified that defendant would rape her during the day while her aunt was at work, but when her aunt stopped working, the abuse would occur whenever her aunt "would go to church or go on errands and stuff." The State inquired: "Was there ever a time that [defendant] wouldn't have sex with you in the house?" N.R. responded: "If I was on my period or said I was on my period." During those times, N.R. testified that defendant had her take his penis in her mouth.

¶ 8 When N.R. was 14 and a freshman in high school, her younger siblings, I.R., R.R., and T.R., came to live with her at defendant's house. At that time, defendant built an addition onto the house, and N.R. changed bedrooms. Then, as N.R. described it, "it would be at night when my aunt was smoking her cigarette in the bathroom and she would turn the fan on and [defendant] would come into my room." To alert N.R. that he would be coming to her room at night, defendant would put

a napkin in her room or tell her to get a napkin “so that he could clean himself up afterward.” Between 9 p.m. and 9:30 p.m., according to N.R., defendant would come into her bedroom wearing pajama bottoms. He would lie on top of her either on the bed or on a blanket on the floor. N.R. testified that defendant would stay in her room “as long as it took [her] aunt to smoke her cigarette, like five—less than 10 minutes.” N.R. testified that when she was 16 or 17, defendant ejaculated inside her and they went to Walgreens to buy a pregnancy test but told her aunt they were going to buy a posterboard.

¶ 9 At age 17, N.R. ran away from home. N.R. testified that she left because defendant had found a picture of her with a boy on her Facebook page, and defendant told her he would kill her if she was ever with a boy.

¶ 10 N.R. graduated from high school and went to Blackburn College. After she ran away, she did not tell anyone about the abuse until her eighteenth birthday in August 2009, because she feared that, until that date, she could be forced to go back to live with defendant. In November 2009, at a police station in Litchfield, Illinois, which is south of Springfield, Illinois, N.R. placed telephone calls to defendant in northern Illinois. A state trooper was present. The audio of the phone calls was played for the court.<sup>1</sup> Following are relevant excerpts.

¶ 11 The first telephone call was placed on the morning of November 5, 2009. At the beginning of the conversation, N.R. told defendant she was scared because defendant had said in their last conversation that he was going to kill her. When N.R. reiterated that she was scared, defendant said, “You should be.” Defendant accused N.R. of telling lies about him. Defendant said, “They are

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<sup>1</sup>The State had obtained a court order for the overhears. Transcripts of the phone calls are in evidence.

telling me everything. Everybody tells me everything. You seem to forget who I am.” Speaking about an order of protection that N.R. pursued and then dropped, defendant said, “I couldn’t wait to see you in court. You disappointed me. I had the best people there.” Defendant told N.R., “[Y]ou will pay for what you lie about.” N.R. said, “I told you I didn’t want you to touch me anymore. I didn’t want you to have sex with me anymore. I didn’t want you to do any of that, and you got mad at me.” Defendant then said, “You shut up, you shut your face because you’re the one that didn’t want me to stop. \*\*\* You’re the one that woke me up at night.” Defendant then ended the phone call.

¶ 12 N.R. almost immediately placed another call to defendant. When defendant answered, N.R. told him she missed him. Then she said she wanted to make sure defendant would not hurt her because she was scared. Defendant said, “You have every reason to be.” N.R. asked why defendant “did that to [her].” Defendant said, “What did I do? Yeah, it was your fault. Who kept coming in my bedroom and waking me up? Who kept saying that they didn’t want to stop? Who? Who?” Defendant continued, “And we stopped, we stopped. And you wanted to continue.” N.R. asked, “Why did you have sex with me all those times?” Defendant replied, “I didn’t do anything \*\*\*. You’re the one that did it. I didn’t do nothing. \*\*\* Because you are the one that did it. You tell me why you did it. \*\*\* I’m not gonna [*sic*] blame you, but you did initiate it. And you continue to do it.”

¶ 13 The next morning, November 6, 2009, N.R. placed another call to defendant from the state police office in Litchfield. In this recording, N.R. and defendant argued over what N.R. had told certain Facebook friends about defendant. Defendant said, “Just keep your mouth shut. Quit

spreading your fuckin [*sic*] rumors, and leave me the fuck alone. I will deal with you if you do not stop.”

¶ 14 After the recordings were played for the court, N.R. resumed her testimony. N.R. testified that defendant always told her and her siblings that he knew all of the lawyers and judges and local police, “so he was untouchable basically.”

¶ 15 N.R. testified that defendant had sex with her almost every day from the time she was 12 until she was 17. According to N.R., when the abuse started, it was once a day, but then defendant started coming to her room twice a day, at night and early in the morning.

¶ 16 In April 2009, N.R.’s younger sister I.R. ran away. N.R. testified that defendant took her and her brothers to the Child Advocacy Center in response to what defendant said was I.R. “spreading lies about him.” According to N.R., defendant instructed her and her brothers to make eye contact with the people who were going to question them and to stress that they had a very good relationship with defendant and his wife. N.R. testified that defendant told her and her brothers to say that I.R. really meant that it was their biological father who had done something to her and that I.R. was lying about defendant. At the meeting at the Child Advocacy Center, N.R. was asked if anyone had ever touched her and she said no, her parents (meaning defendant) did not touch her. She testified that her denial was not true.

¶ 17 On cross-examination, N.R. testified that she had filed an order of protection against defendant in Lake County, but that she “took a lot of pills because she was afraid to see [defendant] that day.” She did not go to court. N.R. recalled that on April 7, 2008, she told a DCFS investigator who had come to their house that it was her real father who had done something to her and I.R., not defendant. N.R. testified that, when I.R. attempted suicide, defendant told her “every single day”

to lie and say it was their real father who did things. N.R. said that she did not tell the police, who were present at the Child Advocacy Center, about the abuse because defendant had told her that “he knew all the police officers, he knew everyone, that no one would believe [her].” She testified that, because she was afraid no one would believe her, she told nobody about the abuse.

¶ 18 Defense counsel asked N.R. if she had sexual intercourse with defendant “each and every day” from November 23, 2003, to July 8, 2009. N.R. responded:

“I said almost every day as soon as he started. Whenever the exact day is, November 23rd I’m sure is the day that I started staying with him, but I don’t know the exact day. Soon after that, yes, is whenever he started to rape me and it was almost every day after that.”

N.R. explained that defendant would not rape her if she was “on [her] period.” She testified that she would pretend or lie “to make it last as long as [she] could.” The longest she could make it last was a week. N.R. testified that defendant raped her “a lot” of times in his office, which was in the front of the house “right by the driveway, so he could see if anyone was coming.” According to N.R., from April 2009 until she ran away in July 2009, defendant raped her twice a day.

¶ 19 N.R. testified that there were times when defendant did not rape her. She was away from home twice at school or Rotary-sponsored events, and she lived with defendant’s son in McHenry around the time that I.R. attempted suicide.

¶ 20 On redirect, N.R. said that she would go into defendant’s bedroom to say goodnight to him and her aunt, but she never went in there to wake defendant. N.R. testified that I.R. drank toilet bowl cleaner in April 2008. Defendant told N.R. at that time that I.R. was accusing him of abusing her (I.R.), and that if anyone believed I.R. defendant would kill I.R. N.R. said that she passed the message on to I.R. while I.R. was in the hospital.

¶ 21 R.R., N.R.'s brother, testified that he lived at defendant's house with N.R. for six years. During that time, R.R. saw defendant beat N.R. for talking to a boy. R.R. testified that defendant pulled N.R.'s hair and "hit her, threw her around."

¶ 22 Over defendant's objection, the State was allowed to call I.R. pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code), which permits evidence of other crimes in prosecutions for aggravated criminal sexual abuse. 725 ILCS 5/115-7.3 (West 2010). The State proffered I.R.'s testimony to show propensity and absence of mistake.

¶ 23 I.R. testified that she lived with defendant in the Woodstock house beginning at age 12. Approximately a month after she moved in, defendant started touching I.R. "in [her] private areas." At first, the touching was over her clothes, but gradually defendant began touching her under her clothes and telling her he was the only man who was ever going to be in her life. I.R. testified that after she came home from the hospital, defendant began raping her "really early" in the mornings before anyone else was awake. According to I.R., this occurred in her bedroom. I.R. testified that she ran away on July 6, 2009, because she was scared of defendant.

¶ 24 The State next called Woodstock police Detective Frederick Spitzer. Detective Spitzer testified that defendant's birthday was May 29, 1952. Detective Spitzer arrested defendant on November 19, 2009, pursuant to a warrant. When the detective placed defendant in handcuffs, defendant stated, "I hope this isn't about what I said to the chief at breakfast the other day." Defendant waived his *Miranda* rights and spoke with the detective. According to the detective, defendant stated that he had an affectionate and loving relationship with N.R. When the detective asked defendant about the telephone calls N.R. had placed from southern Illinois, defendant denied

that he threatened N.R. during those calls or that he told her she should be scared. On cross-examination, Detective Spitzer agreed that defendant denied any inappropriate touching.

¶ 25 Following the court's denial of defendant's motion for a directed finding, defendant presented his case in chief. T.R., N.R.'s younger brother, testified that he came to live with defendant, defendant's wife, and N.R. when he was in fifth grade. T.R. testified that he never saw any inappropriate contact between defendant and N.R. According to T.R., N.R. never informed him of any inappropriate contact.

¶ 26 Defendant next called his wife, Mary. Mary testified that N.R.'s biological father died in 2000. N.R. and her siblings were living with defendant's mother, but when defendant's mother became ill with cancer, Mary and defendant discussed taking in the children. They took in N.R. first. Mary testified that defendant did not leave their bedroom in the early morning hours to go somewhere else in the house. After the other children moved in, they put an addition onto the house. N.R.'s bedroom was moved downstairs next to Mary's and defendant's, and, according to Mary, she could hear any activity that went on in N.R.'s room. According to Mary, N.R. came into their bedroom every night to say goodnight to defendant. Mary testified that she had a good relationship with N.R.

¶ 27 Mary testified that when I.R. came home from the hospital, she had a feeding tube and that both Mary and defendant cared for I.R. during her recuperation. I.R. never made any complaints to Mary about defendant. Mary testified that they were a happy family and that nothing unusual had occurred, except that I.R. drank toilet bowl cleaner.

¶ 28 According to Mary, when they took the children to the Child Advocacy Center, defendant told them to tell the truth. Mary stated that defendant spoiled N.R. and that N.R. was "very happy."

Mary testified that when N.R. was younger, she would sit on defendant's lap, and Mary saw nothing wrong with that. "It was like a father/daughter relationship," Mary said. N.R. made greeting cards for her and defendant for various occasions.

¶ 29 Mary testified that defendant was a cabinet maker and would be away from home two or three days a week, and when he was home he would be working in his home workshop eight hours a day, six days a week.

¶ 30 According to Mary, there was a time when defendant had a cast on his wrist for two weeks. Mary also testified that defendant was diabetic, which interfered with his ability to achieve an erection.

¶ 31 Defendant's next witness was his adult son, Nicholas, who lived in McHenry, Illinois. Nicholas testified that in April or May 2008, N.R. and her siblings lived with his family for two weeks because defendant was the subject of a DCFS investigation, after which the children went back to live with defendant. According to Nicholas, he never observed anything unusual about defendant's interaction with N.R.

¶ 32 Defendant testified in his own behalf. During the five-year period from July 2004 to July 2009, defendant had a number of employees working for him. They did installations at various locations, and defendant estimated that he would spend "maybe half an hour" in the house proper as opposed to in his workshop, which was located in a converted garage on his property. Defendant testified that his diabetes made it difficult for him to get an erection.

¶ 33 According to defendant, during the five years that N.R. lived in his home she was gone twice on trips in her junior and senior years and for two weeks when she lived with Nicholas in McHenry.

Defendant testified that he told the children to tell the truth when they were summoned to the Child Advocacy Center.

¶ 34 Defendant testified that when I.R. drank toilet bowl cleaner she was hospitalized in Rockford, Illinois. When I.R. came home, she had a feeding tube for five weeks. According to defendant, he was trained to care for I.R. following her hospitalization. Defendant denied that he had any inappropriate sexual contact with I.R. Defendant also denied any inappropriate sexual contact with N.R.

¶ 35 Defendant testified that he would go into N.R.'s bedroom if he had to repair a closet or for other maintenance, but he denied that he ever went into her bedroom after she had retired for the night. Defendant clarified that when N.R.'s bedroom was upstairs, there was a time when she had nightmares and he went into her bedroom to console her. According to defendant, there was no sexual contact when he consoled her.

¶ 36 Defendant testified that five days after N.R. ran away in July 2009, he contacted the Woodstock police department and reported her missing. Defendant next heard from N.R. when she made the recorded telephone calls from the police station in Litchfield. Defendant testified that during those conversations he was "very, very angry." Defendant stated that he felt he was a failure after he and his wife had put in all their time with N.R. Defendant said that what N.R. did caused "an anger that stayed in me on a daily basis." Defendant denied that any of N.R.'s allegations were true. According to defendant, he "never" had any inappropriate sexual contact with either N.R. or I.R.

¶ 37 Defendant rested, and the State presented no rebuttal. Following closing arguments, the court stated: "Based on everything I've seen and heard in this courtroom, I accept the testimony of [N.R.]."

I find [defendant] guilty of every allegation in the bill of indictment beyond a reasonable doubt.”

The court denied defendant’s posttrial motion and sentenced defendant to six consecutive four-year terms in the Illinois Department of Corrections. Defendant filed a timely appeal.

¶ 38

ANALYSIS

¶ 39 Defendant’s first contention is that the trial court erred in denying his motion for a bill of particulars. When an indictment fails to specify the particulars of the offenses charged sufficiently to allow the defendant to prepare a defense, the court may require the State to furnish a bill of particulars. *People v. Woodrum*, 223 Ill. 2d 286, 301 (2006). The purpose of a bill of particulars is to give the defendant notice of the charge and to inform him or her of the particular transactions in question. *Woodrum*, 223 Ill. 2d at 301. There is no need for a bill of particulars when the indictment sufficiently informs the defendant of the charged offense. *Woodrum*, 223 Ill. 2d at 302. The trial court’s grant or denial of a bill of particulars is reviewed for an abuse of discretion. *Woodrum*, 223 Ill. 2d at 302.

¶ 40 Here, the indictment alleged an offense of vaginal penetration in each of the years 2004 through 2009. In response to defendant’s motion for a bill of particulars, the State informed defendant that the acts occurred when N.R. was between the ages of 12 and 17 and was living with defendant. The State further informed defendant that the acts occurred every day except those days that N.R. was menstruating. At the hearing on the motion, the State revealed that the abuse began in January 2004 and that the frequency of the abuse was detailed in the discovery the State had furnished to defendant. This court may consider any discovery the State furnishes when determining the necessity of a bill of particulars. *People v. Lindmark*, 381 Ill. App. 3d 638, 663 (2008). Defendant did not make the discovery part of the record in the instant case, nor did he complain to

the trial court that the discovery was inadequate to inform him of the nature and frequency of the offenses. Defendant's motion for a bill of particulars merely asserted the conclusion that defendant was unable to prepare a defense without a specification of "a particular time or date" when the "alleged offense would have occurred."

¶ 41 The precise date the offense was allegedly committed is not an element of a sex offense. *People v. Burton*, 201 Ill. App. 3d 116, 123 (1990). As long as the crime charged occurred within the statute of limitations and prior to the return of the indictment, the State is required to do no more than provide defendant with the best information it has regarding when the offense took place. *People v. Guerrero*, 356 Ill. App. 3d 22, 27 (2005). Here, the State provided defendant the information that it had: that the abuse occurred almost every single day between January 2004 and December 31, 2007. Defendant argues that at trial it became clear that N.R. was not abused every single day, because N.R. went on two school or Rotary-sponsored trips away from home and was at Nicholas's house in McHenry for two weeks. From this, defendant concludes that, if the abuse did not happen every single day, maybe it did not happen at all, for instance, in 2009. This argument is meritless. The indictment charged one act per year from 2004 through 2009, and N.R. clearly and unambiguously testified to multiple acts in each of those years. There was nothing inconsistent in the State's representations and N.R.'s testimony.

¶ 42 The trial court relied on *Guerrero* in denying the motion for a bill of particulars. Defendant argues that *Guerrero* is inapposite, because it is factually distinguishable. In *Guerrero*, the complainants were children of tender years when the sex abuse began. *Guerrero*, 356 Ill. App. 3d at 24. The court in *Guerrero* observed that flexibility is permitted regarding the date requirement in a charging instrument in the sexual abuse of a child. *Guerrero*, 356 Ill. App. 3d at 27. Defendant

maintains that such leeway should not be permitted here, where N.R. was 20 when she testified, and that she should not have been treated with the same leniency as a very young child. Moreover, argues defendant, the State did not provide him with the best information it had as to when the offenses occurred, because the evidence at trial “did not square” with the State’s representations. *Guerrero* is not inapposite based on the difference in ages of the children in that case and N.R. in the present case. N.R. was 12 years old when the abuse began. She was not a very young child, but neither was she an adult. As we observed above, the State’s representations in response to the motion for a bill of particulars and the evidence adduced at trial were not inconsistent. N.R. testified that the abuse occurred daily except when she was “on her period.” As the evidence developed, there were three other times when the abuse did not happen: on two occasions when N.R. was away for school or Rotary-sponsored trips, and for two weeks when N.R. and her siblings lived with Nicholas in McHenry while DCFS investigated I.R.’s allegations of abuse. These three occasions out of five years do not render the State’s disclosures inaccurate. Accordingly, we cannot say that the trial court abused its discretion in denying the motion for a bill of particulars.

¶ 43 Defendant’s second contention is that the trial court erred in admitting I.R.’s testimony. Section 115-7.3 of the Code enables courts to admit evidence of other crimes to show a defendant’s propensity to commit sex offenses if the requirements of the statute are met. *People v. Donoho*, 204 Ill. 2d 159, 176 (2003). The court considers three factors in balancing the probative and prejudicial value of other crimes evidence: (1) proximity in time; (2) degree of factual similarity; and (3) and other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2010); *People v. Raymond*, 404 Ill. App. 3d 1028, 1046 (2010). The decision whether to admit or exclude other-crimes evidence

is within the sound discretion of the trial court and will not be disturbed absent an abuse of discretion. *Raymond*, 404 Ill. App. 3d at 1044.

¶ 44 Here, defendant concedes that factors (1) and (2) are resolved in the State's favor. Defendant argues that factor (3) is dispositive in his favor and requires reversal, because I.R. recanted her accusations and because "she was found by investigators to be not credible."<sup>2</sup> From this, defendant concludes that "accusations that have been recanted should not be admitted, as they are inherently unreliable and serve only to unduly prejudice [defendant]." Defendant cites no authority for this proposition. Contentions that are supported by some argument but absolutely no authority do not meet the requirements of Illinois Supreme Court Rule 341(h)(7) (eff. July 1, 2008) and are forfeited. *People v. Pickens*, 354 Ill. App. 3d 904, 916 (2005). Accordingly, this argument is forfeited.

¶ 45 Defendant's last contention is that he was not proved guilty beyond a reasonable doubt. A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of a defendant's guilt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985). When presented with a challenge to the sufficiency of the evidence, it is not the function of the appellate court to retry the defendant, but, rather, the relevant question 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 offense beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *Collins*, 106 Ill. 2d at 261.

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<sup>2</sup>The trial court sustained objections to questions defense counsel asked of Detective Spitzer as to whether the police department concluded that I.R. was deceitful and whether any charges were filed on behalf of I.R.

¶ 46 Here, defendant raises six challenges to the sufficiency of the evidence: (1) there was no physical evidence; (2) N.R. denied that defendant had abused her; (3) N.R.'s story was not consistent; (4) N.R. had opportunities to extricate herself from the situation; (5) N.R.'s testimony as to the frequency of the abuse was incredible; and (6) there was no proof that an act occurred every year as alleged in the indictment. Defendant's argument is, essentially, an attack on N.R.'s credibility. The resolution of factual disputes and the assessment of a witness's credibility are for the trier of fact, and this court will not substitute its judgment for that of the fact finder. *People v. Bowen*, 241 Ill. App. 3d 608, 619 (1993). At the conclusion of the evidence and closing arguments, the trial court stated that it "accepted" N.R.'s testimony. At the hearing on the posttrial motion, the court stated, "I believed N.R. then, I believe her now."

¶ 47 That there is no physical evidence and no outcry can be explained rationally by defendant's threats to kill N.R. and himself if she told anyone. These threats were corroborated by defendant's own words in the recordings of the telephone conversations between himself and N.R. in which defendant told N.R. she should be afraid of him. N.R. testified that she feared no one would believe her if she told about the abuse, because defendant knew everyone, all the police, judges, and lawyers. This testimony was corroborated by Detective Spitzer, who testified that defendant invoked the fact that defendant had breakfasted with the police chief when Spitzer arrested him. Defendant told N.R. he was disappointed that she did not show up in court for the order of protection, because he had his best people there. Again, the recordings of the telephone conversation corroborate defendant's intimidation of N.R. Defendant told N.R. in one conversation, "You seem to forget who I am." In the same conversation, defendant threatened, "You will pay for what you lie about." In another conversation, defendant said, "I will deal with you if you do not stop." Delay in reporting an incident

of sexual abuse can be legitimately explained by the complainant's fear. *People v. Delgado*, 376 Ill. App. 3d 307, 311 (2007).

¶ 48 Defendant's argument that N.R. could have extricated herself from the situation but did not is not entirely accurate. The abuse started when she was 12. She had no other family with whom she could live. Although defendant allowed N.R. to use a car when she got her driver's license at age 16, the permission was circumscribed. N.R. ran away at age 17, as soon as she was out of high school and in college.

¶ 49 N.R. testified that defendant would rape her in the 5 to 10 minutes it took her aunt to smoke a cigarette in the bathroom at night. Defendant and his wife both testified that he had difficulty getting an erection because of his diabetes. However, defendant presented no medical evidence of impairment, and the trial court obviously believed N.R. The trial court had the duty to assess the credibility of the witnesses and to resolve the inconsistencies and conflicts in the evidence, and was free to disbelieve all or part of defendant's testimony. *Bowen*, 241 Ill. App. 3d at 619.

¶ 50 Nor was N.R.'s testimony internally inconsistent or inconsistent with the indictment. On direct examination, N.R. testified that the first time defendant raped her was in the summer before her eighth grade year, when she was 12. When asked how frequently it happened after that, N.R. responded, "It was almost every day." N.R. testified that she was raped at ages 12, 13, 14, 15, 16, and 17 by defendant, the last time occurring in July 2009. On cross-examination, defense counsel asked N.R. if it was her testimony that she and defendant had sexual intercourse "each and every day" from November 23, 2003, to July 8, 2009. N.R. responded, "I said almost every day as soon as he started." She clarified that she moved into defendant's household on November 23, 2003, and that the abuse started "soon after that." N.R. testified that there were exceptions, such as when she

had her period, which she would lie about to extend the time. N.R. testified to other exceptions, when she was away for school or Rotary trips for two days, and when she lived with Nicholas during the DCFS investigation. N.R. testified that she did not remember the exact days it happened in all of the years, “I just know that they happened. I remember them happening.” We do not believe that these exceptions are inconsistent with N.R.’s testimony that the abuse occurred “almost” every day. N.R.’s birthdate was August 6, 1991. Her testimony that the abuse occurred multiple times in the years between ages 12 and 17 corresponded to the dates alleged in the indictment.

¶ 51 Viewed as a whole, N.R.’s testimony was not so improbable, unconvincing, or contrary to experience that we can say, as a matter of law, that no rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt.

¶ 52 For the foregoing reasons, the judgment of the circuit court of McHenry County is affirmed.

¶ 53 Affirmed.