

¶ 5 In May 1994, defendant was tried *in absentia* on the charges in two separate cases, and the jury found him guilty of two counts of criminal sexual assault and criminal sexual abuse in case No. 93-CF-405 (hereinafter case 405) and aggravated criminal sexual assault and two counts of aggravated criminal sexual abuse in case No. 91-CF-213 (hereinafter case 213). In August 1994, the Vermilion County circuit court sentenced defendant *in absentia* to a 12-year prison term for criminal sexual assault in case 405 to run concurrent to the consecutive prison terms in case 213 of 6 years for one count of aggravated criminal sexual abuse, 25 years for aggravated criminal sexual assault, and 5 years for the second count of aggravated criminal sexual abuse.

¶ 6 In July 2011, defendant appeared in Vermilion County circuit court. In September 2011, defendant requested a hearing under section 115-4.1(e) of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(e)), claiming his failure to appear at his trial and sentencing hearing was not his fault and seeking a new trial or, in the alternative, a sentencing hearing. Over the State's objection, the court held a section 115-4.1(e) hearing in November 2011 and denied defendant's request for a new trial or sentencing hearing.

¶ 7 Defendant appeals, asserting (1) he is entitled to a new trial because the notice of his trial *in absentia* was not sent by the circuit clerk as required by section 115-4.1(a) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(a)); (2) the trial court erred by refusing to suppress a manila folder seized from defendant's residence; and (3) the court erred by allowing (a) Dr. Mary Buetow to testify, or in the alternative, (b) Dr. Buetow's hearsay testimony about statements made by the victim, S.A., that were unrelated to her diagnosis or treatment of

S.A. We affirm.

¶ 8

I. BACKGROUND

¶ 9

A. Champaign County Charges (No. 4-11-1116)

¶ 10

Case 405 was originally brought in Champaign County and was docketed case No. 91-CF-1184. In July 1991, a grand jury indicted defendant with the following: one count of aggravated criminal sexual abuse (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-16(c)(1)(i)) of M.H., one count of criminal sexual abuse (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-15(a)(2)) of S.A., and one count of criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-13(a)(2)) of S.A. The aggravated-criminal-sexual-abuse count was tried separately in March 1992, and a jury found defendant not guilty of that charge. In April 1992, a grand jury indicted defendant with a second count of criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-13(a)(4)) of S.A. The charges against defendant with S.A. as the victim were all based on defendant's actions between November 1990 and June 24, 1991.

¶ 11

In August 1992, the parties entered into an agreement, under which a stipulated bench trial on a new count of aggravated criminal sexual abuse (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-16(d)) of S.A would be held, the other counts would be dismissed, and defendant would receive a prison term of five years. However, the trial court denied the parties' request for a stipulated bench trial.

¶ 12

On August 19, 1992, the State filed a motion to consolidate the Champaign County case with defendant's pending case in Vermilion County and to have all of the charges tried in Vermilion County. At an August 19, 1992, hearing, defendant did not object to the State's motion, and the Champaign County circuit court granted the motion. When the case was

transferred to Vermilion County, it became Vermilion County case No. 93-CF-405.

¶ 13 B. Vermilion County Charges (No. 4-11-1071)

¶ 14 In case 213, the State charged defendant by information with one count of aggravated criminal sexual assault (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-14(b)(1)) and two counts of aggravated criminal sexual abuse (Ill. Rev. Stat. 1989, ch. 38, ¶ 12-16(d)). S.A. was the victim in all of the charges. The aggravated-criminal-sexual-assault charge was based on defendant's alleged actions between January 1, 1990, and December 31, 1990. One count of aggravated criminal sexual abuse was based on defendant's alleged actions between June 24 and 25, 1991, and the other one was based on defendant's alleged actions between January 1, 1991, and June 23, 1991. The information was amended twice but the charges remained the same.

¶ 15 In September 1991, defendant filed a motion to suppress, seeking to suppress a list of items the police seized from defendant's residence because they were beyond the scope of the search warrant. A manila folder was not included on the list. On July 24, 1992, defendant was present in court (for the last time before his July 2011 return), and his trial was set for September 22, 1992. Defendant did not appear on September 22, 1992, and the court continued the case and issued a warrant for his arrest. On December 8, 1992, defendant again failed to appear for his jury trial, and the matter was continued. On June 14, 1993, defendant again failed to appear, and the case was continued on the State's motion. In September 1993, the State filed a notice of intent to present evidence under section 115-10 of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-10) of S.A.'s out-of-court statements to several individuals, including Dr. Buetow.

¶ 16 On October 4, 1993, the trial court called case 213 for a jury trial, and defendant

again failed to appear. Defense counsel filed a motion to strike the trial based on the State's noncompliance with section 115-4.1(a) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(a)); specifically, the State failed to mail the notice of the trial by certified mail. The court granted defense counsel's motion. The court also granted the State's motion to consolidate case 213 with case 405. Last, the court set a jury trial in both cases for January 10, 1994.

¶ 17 C. Joint Proceedings

¶ 18 Then Vermilion County circuit court judge Rita Garman presided over the joint proceedings. In January 1994, defense counsel filed three motions *in limine* and an objection to the State's presentation of evidence under section 115-10 of the Criminal Procedure Code. On January 12, 1994, the trial court held a hearing on the motions *in limine*, the motion to suppress, and the objection to section 115-10 evidence. The court heard testimony on the motion to suppress and the section 115-10 evidence. As to the motion to suppress, the court granted the motion in part, suppressing the following: (1) a jar of Vaseline, (2) condoms, (3) two telephone bills, and (4) a cassette tape. The court allowed the State's section 115-10 testimony as to statements S.A. made about crimes committed against him before his thirteenth birthday. Further, defense counsel objected to the jury trial without defendant, asserting the State had failed to present substantial evidence that it was entitled to try defendant *in absentia*. The court disagreed, finding the State had met the statutory requirements. The court set defendant's trial for January 19, 1994.

¶ 19 On January 19, 1994, defense counsel filed (1) a motion for change of venue; (2) a motion to reconsider the ruling on the motion to suppress; (3) a supplemental motion to suppress

that sought to suppress the manila folder; (4) two additional motions *in limine*; and (5) a motion to strike the January 19, 1994, trial date because the State failed to send defendant notice of it. The trial court granted the motion to strike the January 19, 1994, trial date and reset the trial for February 22, 1994.

¶ 20 On February 14, 1994, the trial court held a motions hearing and heard evidence on the motion to reconsider the original motion to suppress and the supplemental motion to suppress. The evidence presented at the hearing relevant to the issues on appeal is set forth in the analysis section. On reconsideration, the court suppressed a magazine and playing cards. As to the supplemental motion, the court denied it, finding the officers had a right to examine the manila folder as it was in plain view and "[t]hey were looking for videotape, video, photographs."

¶ 21 On defendant's motion, the trial court struck the February 22, 1994, trial date because the envelope containing the State's trial notice was addressed to defendant's brother. The court then set defendant's trial for May 2, 1994. On March 3, 1994, the State's Attorney sent defendant a notice of the May 2, 1994, trial date by certified mail to three different addresses connected to defendant.

¶ 22 On May 2, 1994, defense counsel again objected to the trial *in absentia*, asserting the statute had not been complied with because the State's Attorney sent the notice and not the circuit clerk. The trial court overruled the objection, noting the State's Attorney was the legal advisor of the circuit clerk, and thus had the authority to prepare the notices required by the statute. The court then commenced defendant's jury trial *in absentia*.

¶ 23 The State presented the testimony of Gary Miller, chief investigator with the

Vermilion County sheriff's department; Lonnie A., the victim's father; Hoopeston police officer, Charles Moyer; Dr. Buetow, the pediatrician that examined and interviewed S.A.; Charlotte Craft, GTE employee; Craig Gocken, Watska National Bank employee; Tim Voges, Champaign County detective; and S.A., the victim. Defendant presented the testimony of Detective Voges; Officer Moyer; Kitty Moll, an investigator with the Department of Children and Family Services (DCFS); and Danny Danner, Hoopeston police officer. A brief summary of the evidence relevant to the issues on appeal is set forth below.

¶ 24 S.A. testified that, during the 1990-91 school year, he was a seventh-grader at Ludlow Grade School where defendant was the principal and superintendent. In November 1990, defendant began taking S.A. out to dinner and spending time with him. A month later, in December 1990, defendant began to touch S.A. The first time it happened, they were in defendant's parked car in rural Rantoul, Illinois, and defendant pulled down S.A.'s pants and touched S.A. Defendant also touched S.A. at defendant's residence the night before they went to a Chicago Bulls game. S.A. testified defendant touched him a total of 10 to 15 times. He also stated defendant had touched S.A.'s penis with his hand or mouth at defendant's residence at least 10 times. S.A. stated he never touched defendant's penis, but defendant sometimes would touch himself while touching S.A. On some occasions, defendant would give S.A. beer, liquor, or "whip it's," an intoxicating inhalant.

¶ 25 S.A. testified that, on June 24, 1991, defendant picked up S.A. at S.A.'s mother's home, and they eventually went to defendant's residence. Lonnie A. testified he had followed S.A. and defendant most of the night until he lost defendant's car in Hoopeston, Illinois, where defendant lived. After losing them, Lonnie A. went to the Hoopeston police department. S.A.

testified that, at defendant's residence, they watched television and inhaled gas from balloons filled by cartridges (whip it's). After S.A. became high, defendant pulled S.A.'s pants down and touched S.A.'s penis with his hands and mouth. Defendant's actions were interrupted by a knock at the door, and defendant told S.A. to go to the bedroom, which he did. After a couple of minutes, defendant told S.A. to come out. When S.A. came out, he observed police officers in defendant's living room and left with them. Officer Moyer testified that, when S.A. was coming out of the bedroom, he observed a small bulge in S.A.'s underwear, which he believed was an erection. At the police station, S.A. talked with the police, who then obtained a search warrant for defendant's residence. Officer Moyer testified about the items seized during the search and explained whip it's.

¶ 26 S.A. also testified defendant gave him gifts such as a leather coat, necklace, warm-up suit, and shoes. Defendant also took S.A. on trips to Florida, Chicago, and Indianapolis. They went to dinner, basketball games, and concerts together. S.A. further testified defendant told him that, if he talked about their activities, defendant could get S.A. in trouble at school and make bad reports to S.A.'s probation officer. During his testimony, the prosecutor showed S.A. the manila folder, and S.A. explained the meaning behind many of the 35 notations on the folder. The notations referred to things defendant and S.A. had done together.

¶ 27 Dr. Buetow testified she was a board-certified pediatrician and the leader of a multidisciplinary group that evaluated alleged victims of sexual abuse. In late June 1991, she interviewed S.A., and Moll, a DCFS investigator, was present. Dr. Buetow then gave S.A. a physical exam after the interview. Dr. Buetow testified to S.A.'s statements during her interview of him. She noted he did not volunteer information during the interview. Dr. Buetow testified

S.A. told her his school superintendent, who S.A. identified as defendant, had taken him to a number of places and had eventually touched him. S.A. explained defendant had massaged S.A.'s penis and performed oral sex on S.A. S.A. also stated defendant exposed his own penis to S.A., but S.A. did not touch defendant's penis. S.A. also mentioned watching pornographic films in defendant's residence. He also told Dr. Buetow about the gifts and trips.

¶ 28 Dr. Buetow further testified her physical examination of S.A. revealed no abnormalities and no evidence of sexual abuse. Given the acts that S.A. had described, she expected that result. Over defendant's objection, Dr. Buetow opined S.A. was a victim of sexual abuse by defendant. Dr. Buetow testified her opinion was primarily based on the history provided by S.A.

¶ 29 At the conclusion of the trial, the jury found defendant guilty of all six counts. Defense counsel filed a lengthy posttrial motion, asserting, *inter alia*, the trial court erred by denying defendant's motion to strike the trial date due to the notice being sent by the State's Attorney. In August 1994, defendant filed a supplement to his posttrial motion, contending the court erred by denying his request to suppress the manila folder. On August 24, 1994, the court held a joint hearing on defendant's posttrial motions and sentencing. Defendant was again absent from the proceeding. The court denied defendant's posttrial motions. In case 405, the court found the three counts merged into one criminal-sexual-assault conviction and sentenced defendant to a 12-year prison term for criminal sexual assault to run concurrent with the sentences in case 213. In case 213, the court sentenced defendant to consecutive prison terms of 6 years for one count of aggravated criminal sexual abuse, 25 years for aggravated criminal sexual assault, and 5 years for one count of aggravated criminal sexual abuse. Defendant did not

file a direct appeal of his convictions and sentences.

¶ 30 D. Defendant Returns to Vermilion County Circuit Court

¶ 31 On July 25, 2011, defendant was arrested on the September 1992 warrant. Two days later, without counsel, defendant was brought before Vermilion County circuit court Judge Derek J. Girton. The court informed defendant of his right to a hearing under section 115-4.1(e) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(e)) and asked defendant if he would like a hearing. Defendant indicated he had not yet met with counsel on the matter. The court responded defendant did not have a right to counsel at this point and again asked if defendant wanted a hearing. Defendant then declined a hearing.

¶ 32 The State sought to correct the mittimus because of issues with the Department of Corrections, and defendant's trial counsel was appointed to represent him on the matter. On September 14, 2011, Judge Claudia Anderson held a status hearing on the mittimus issue, at which defendant appeared with counsel. At the hearing, defense counsel sought to contest defendant's alleged waiver of the section 115-4.1(e) hearing. The court declined to address the issue at that hearing and gave defense counsel two weeks to file any motions. On September 22, 2011, defense counsel filed a request for a section 115-4.1(e) hearing, alleging he was entitled to a new trial and/or a sentencing hearing because his absence from his trial and sentencing was not due to circumstances within his control. The State filed an objection, asserting defendant had waived his right to request a section 115-4.1(e) hearing. Defendant filed a response. On November 15, 2011, Judge Anderson held a hearing on whether defendant was entitled to a section 115-4.1(e) hearing. She found the case law was not clear on the issue and allowed defendant's request for a section 115-4.1(e) hearing.

¶ 33 On November 22, 2011, Judge Anderson held the section 115-4.1(e) hearing. Defendant testified he left the country and went to Bangkok, Thailand, because he believed he had already lost his trial before it started due to all of the collateral consequences from his arrest. He admitted not leaving a forwarding address and noted his intent was to avoid going to trial. Defendant also testified he never received any notices of his trial date. The court denied defendant's request for a new trial and/or sentencing hearing under section 115-4.1(e). On November 29, 2011, the court entered amended sentencing judgments in both cases using the current sentencing judgment form.

¶ 34 On December 2, 2011, defendant filed a timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 606(c) (eff. Mar. 20, 2009), which listed only the denial of defendant's request for a new trial under section 115-4.1(e) of the Criminal Procedure Code as the judgment being appealed. On February 9, 2012, in this court, defendant filed motions for leave to file late notices of appeal in both cases, noting the original notices of appeal failed to include defendant's convictions and sentences. This court granted defendant leave to file the late notices of appeal, and he did so. In December 2012, we consolidated the two appeals at defendant's request. This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 A. Jurisdiction

¶ 37 The State questions our jurisdiction over this appeal, noting (1) defendant's motion seeking relief under section 115-4.1(e) of the Criminal Procedure Code was untimely and (2) defendant's December 2011 notice of appeal did not state defendant was appealing his convictions and sentences. Since a reviewing court must first ascertain its jurisdiction before

analyzing the merits of the appeal (see *Secura Insurance Co. v. Illinois Farmers Insurance Co.*, 232 Ill. 2d 209, 213, 902 N.E.2d 662, 664 (2009)), we begin by addressing the State's jurisdiction arguments.

¶ 38 Generally, in criminal cases, a trial court loses subject-matter jurisdiction of the case 30 days after it imposes the defendant's sentence. *People v. Flaughner*, 396 Ill. App. 3d 673, 680, 920 N.E.2d 1262, 1269 (2009). However, collateral attacks on final criminal judgments are permitted under several statutes, including section 115-4.1(e) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(e)). See *People v. Partee*, 125 Ill. 2d 24, 35-36, 530 N.E.2d 460, 465 (1988). Section 115-4.1(e) provides the following:

"When a defendant who in his absence has been either convicted or sentenced or both convicted and sentenced appears before the court, he must be granted a new trial or new sentencing hearing if the defendant can establish that his failure to appear in court was both without his fault and due to circumstances beyond his control. A hearing with notice to the State's Attorney on the defendant's request for a new trial or a new sentencing hearing must be held before any such request may be granted. At any such hearing both the defendant and the State may present evidence." Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(e).

Unlike other statutory provisions providing for collateral attacks of final judgments (see 725 ILCS 5/122-1 (West 2012); 735 ILCS 5/2-1401(a)-(c) (West 2012)), section 115-4.1(e) neither sets forth how a defendant should request the hearing provided by the section nor the time frame

for making such a request.

¶ 39 Here, the State asserts defendant had to request a hearing under section 115-4.1(e) when he first returned to the trial court on July 27, 2011. In support of its contention, the State cites two cases in which the appellate court noted the time for requesting relief was when the defendant " 'appears before the court.' " See *People v. Laster*, 328 Ill. App. 3d 391, 395, 770 N.E.2d 225, 228 (2002), quoting 725 ILCS 5/115-4.1(e) (West 2000); *People v. Lozada*, 323 Ill. App. 3d 1015, 1021, 753 N.E.2d 383, 388 (2001). However, one case found that time was when the defendant first appeared (*Lozada*, 323 Ill. App. 3d at 1021, 753 N.E.2d at 388), and the other found it was when the defendant first appeared before the judge that had conducted the *in absentia* proceedings (*Laster*, 328 Ill. App. 3d at 395, 770 N.E.2d at 228). Moreover, in both of those cases, the defendant was represented by counsel at the "first" appearance before the court. See *Laster*, 328 Ill. App. 3d at 396, 770 N.E.2d at 228; *Lozada*, 323 Ill. App. 3d at 1021, 753 N.E.2d at 388. Additionally, we note *People v. Manikowski*, 288 Ill. App. 3d 157, 161, 679 N.E.2d 840, 843 (1997), in which the reviewing court found the potential relief provided by section 115-4.1(e) was "not limited by the passage of time."

¶ 40 Regardless of whether a defendant must request the section 115-4.1(e) hearing at "first appearance" or any time after returning to the trial court, defendant's September 22, 2011, request was timely. When he first appeared in court on July 27, 2011, defendant was not represented by counsel and was not before the trial judge that would ultimately handle his case upon his return (we note the original trial judge had become a justice of our supreme court). On September 14, 2011, defendant appeared for the first time with counsel and before the trial judge that handled his case upon his return. At that hearing, defense counsel sought to address a

section 115-4.1(e) hearing, and the trial judge requested a written motion. Eight days later, defense counsel filed the written motion requesting a section 115-4.1(e) hearing as permitted by the trial judge. Thus, we find defendant's request of a section 115-4.1(e) was in accord with the aforementioned cases and thus timely filed.

¶ 41 Citing *People v. Pontillo*, 267 Ill. App. 3d 27, 33-34, 640 N.E.2d 990, 995-96 (1994), the State also contends we lack jurisdiction because defendant's December 2, 2011, notice of appeal failed to list defendant's convictions and sentences and that is all defendant challenges in his briefs. However, the State's argument fails to consider that, on February 9, 2012, defendant filed motions with this court seeking to file late notices of appeal that would include defendant's convictions and sentences. This court allowed both motions without objection from the State, and the subsequent late notices of appeal included defendant's convictions and sentences. Accordingly, *Pontillo* does not apply to this case, and we have jurisdiction of defendant's convictions and sentences under section 115-4.1(g) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(g)), which allows a notice of appeal from the denial of relief under section 115-4.1(e) to "include a request for review of the judgment and sentence not vacated by the trial court."

¶ 42 B. Notice of Trial *In Absentia*

¶ 43 Defendant first argues he is entitled to a new trial because the notice of his trial *in absentia* was not sent by the circuit clerk as required by section 115-4.1(a) of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(a)). The State admits the State's Attorney's office sent the required notice to defendant but asserts compliance with section 115-4.1(a) does exist because the clerk can delegate its duty under section 115-4.1(a) to the State's Attorney.

This issue presents a question of law, and thus our review is *de novo*. *People v. Kelley*, 2013 IL App (4th) 110874, ¶ 16, 986 N.E.2d 770.

¶ 44 Section 115-4.1(a) of the Criminal Procedure Code provides, in pertinent part, the following:

"The court may set the case for a trial which may be conducted under this Section despite the failure of the defendant to appear at the hearing at which the trial date is set. *When such trial date is set the clerk shall send to the defendant, by certified mail at his last known address indicated on his bond slip, notice of the new date which has been set for trial.* Such notification shall be required when the defendant was not personally present in open court at the time when the case was set for trial." (Emphasis added.) Ill. Rev. Stat. 1989, ch. 38, ¶ 115-4.1(a).

In *People v. Ramirez*, 214 Ill. 2d 176, 824 N.E.2d 232 (2005), the supreme court addressed the same sentence of section 115-4.1(a) that is at issue in this case. There, the defendant had argued the clerk's failure to serve him notice by certified mail entitled him to a new trial. *Ramirez*, 214 Ill. 2d at 182, 824 N.E.2d at 236. The State asserted serving the defendant by regular mail and informing defense counsel of the trial date made the failure to use certified mail harmless error. *Ramirez*, 214 Ill. 2d at 182, 824 N.E.2d at 236.

¶ 45 Our supreme court rejected the State's harmless-error argument and concluded the certified-mail requirement of section 115-4.1(a) was mandatory rather than directory. *Ramirez*, 214 Ill. 2d at 182-83, 824 N.E.2d at 236-37. The *Ramirez* court summarized its reasoning as

follows:

"Thus, under the plain language of section 115-4.1(a), the clerk's obligation to send notice by certified mail is *mandatory*, and the requirement that such notice be sent to any defendant who was not personally present in open court when the case was set for trial is *mandatory*. As importantly, section 115-4.1(a) contains no exceptions, whether for knowledge of defense counsel or for anything else. Had the legislature intended such an exception, it easily could have included it in the statutory language. It did not, and we therefore are constrained to apply the plain language as written and without exception. Accordingly, we hold that strict compliance with section 115-4.1(a)'s certified mailing requirement is a mandatory prerequisite to conducting a criminal trial *in absentia*, where the defendant was not personally present in open court when the case was set for trial." (Emphases in original.) *Ramirez*, 214 Ill. 2d at 183, 824 N.E.2d at 237.

Our supreme court also noted that, when defendant is not present in open court, strict compliance with section 115-4.1(a)'s certified-mail requirement allows the State to show the defendant was advised of the trial date, one of the factors necessary for the State to demonstrate defendant's willful avoidance of trial. *Ramirez*, 214 Ill. 2d at 184, 824 N.E.2d at 237. Moreover, "by requiring the State to show strict compliance with the certified mailing requirement, we ensure that the absent defendant's important constitutional rights are afforded all of the necessary

statutory safeguards." *Ramirez*, 214 Ill. 2d at 184, 824 N.E.2d at 237-38. We note our supreme court later reiterated its holding and reasoning in *Ramirez* in explaining why the case before it was consistent with its holding in *Ramirez*. See *People v. Robinson*, 217 Ill. 2d 43, 59-60, 838 N.E.2d 930, 939 (2005).

¶ 46 In support of its assertion the clerk's delegation of its notice obligation to the State's Attorney was proper and not in violation of section 115-4.1(a) and *Ramirez*, the State cites cases in which the reviewing court held it was proper and compliant with the applicable statutes to have a public entity delegate its ministerial duty to another. See *Sarkissian v. Chicago Board of Education*, 201 Ill. 2d 95, 112, 776 N.E.2d 195, 206 (2002) (holding that, "when service of process on a public entity is governed by a statute that designates certain persons who may accept service on behalf of the public entity, a person so designated may, either expressly or by custom, validly delegate his or her authority to accept service of process to another."); *Daleanes v. Board of Education of Benjamin Elementary School District 25*, 120 Ill. App. 3d 505, 513, 457 N.E.2d 1382, 1387 (1983) (finding a school board could delegate the functions of drafting the written notice with the reasons for nonrenewal and delivering that notice because they are ministerial); *Allen v. Thornblad*, 42 Ill. App. 3d 554, 558, 356 N.E.2d 361, 364 (1976) (concluding a school board could delegate the ministerial duty of sending a termination notice). In response, defendant argues the State's cases only show a public entity can delegate a statutory obligation to an employee. He also contends a more analogous situation to the one in this case is the issuance of a summons under section 2-201 of the Code of Civil Procedure (Civil Procedure Code) (735 ILCS 5/2-201 (West 2012)). Defendant cites *Schorsch v. Fireside Chrysler-Plymouth, Mazda, Inc.*, 172 Ill. App. 3d 993, 1001, 527 N.E.2d 693, 699 (1988), where the reviewing court held a

plaintiff's attorney could not issue a summons required by section 2-201 of the Civil Procedure Code (Ill. Rev. Stat. 1985, ch. 110, ¶ 2-201) because it must be issued by the clerk as stated in the statute.

¶ 47 We find the parties' cases provide us little guidance because the State's Attorney and the circuit clerk have a unique relationship. This court has recognized the "State's Attorney has several powers and duties, including acting as an attorney and legal advisor for county officials with respect to all official-business matters." *People v. Savage*, 361 Ill. App. 3d 750, 756, 838 N.E.2d 247, 253 (2005). The clerk is a county official, and thus the State's Attorney is the clerk's attorney and legal advisor on official matters. Since the trial notice at issue must comply with statutory requirements, it logically follows the clerk could delegate its notice obligation to its attorney and legal advisor, the State's Attorney. While *Ramirez* and section 115-4.1(a)'s language indicate the clerk bears the obligation of sending the trial notice, neither *Ramirez* nor the statute prohibit the clerk from delegating that obligation to the State's Attorney. In this case, the trial court took judicial notice of the fact the State's Attorney in Vermilion County sent the notices in all felony, misdemeanor, and juvenile cases and most traffic cases. Thus, the record shows the clerk's delegation of its notice responsibility was not unique to this case and, in fact, an established custom at that time. Moreover, the record shows the notice at issue was not the first one defendant would have received from the State's Attorney. Thus, contrary to his contention, defendant would have known he could not ignore mail from the State's Attorney's office. The trial notice sent by certified mail from the State's Attorney's office in this case still provided the necessary proof defendant was advised of the trial date and ensured defendant's constitutional rights had been afforded all of the necessary statutory safeguards.

Accordingly, we find the State's Attorney's mailing of the trial notice by certified mail complied with section 115-4.1(a) and *Ramirez*, and the trial court did not err by denying defendant's motion to strike the May 1994 jury trial.

¶ 48 C. Manila Folder

¶ 49 Defendant next argues the trial court erred by denying his motion to suppress the manila folder seized from defendant's residence. The State asserts defendant forfeited this issue by failing to raise it in his posttrial motion. However, the record shows defendant did raise it in his supplemental posttrial motion. Thus, we find defendant has not forfeited the issue and will address its merits.

¶ 50 This court reviews a trial court's ruling on a motion to suppress evidence under the two-part test adopted by the United States Supreme Court in *Ornelas v. United States*, 517 U.S. 690, 699 (1996). *People v. Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d 819. Under the *Ornelas* standard, reviewing courts uphold the trial court's factual findings unless they are against the manifest weight of the evidence. *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d 819. "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or if the finding itself is unreasonable, arbitrary, or not based on the evidence presented." *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). "The reviewing court then assesses the established facts in relation to the issues presented and may reach its own conclusions as to what relief, if any, should be allowed." *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d 819. Thus, we review *de novo* the ultimate legal question of whether suppression is warranted. *Hunt*, 2012 IL 111089, ¶ 22, 969 N.E.2d 819.

¶ 51 With a motion to suppress, the defendant bears the burden of proof. *People v.*

Gipson, 203 Ill. 2d 298, 306, 786 N.E.2d 540, 545 (2003). Thus, a defendant must make a *prima facie* case the State obtained the evidence by an illegal search or seizure. *Gipson*, 203 Ill. 2d at 306-07, 786 N.E.2d at 545. If a defendant makes a *prima facie* case, then the State bears the burden of going forward with evidence to counter the defendant's *prima facie* case. *Gipson*, 203 Ill. 2d at 307, 786 N.E.2d at 545. "However, the ultimate burden of proof remains with the defendant." *Gipson*, 203 Ill. 2d at 307, 786 N.E.2d at 545.

¶ 52 Here, the June 25, 1991, search warrant for defendant's residence provided for the seizure of the following: "silver, metal cylinders with some form of intoxicant contained therein, video-tapes of sexual acts." While the State acknowledged the manila folder was not listed in the search warrant, it argued the folder was in plain view during the search of defendant's residence.

¶ 53 The fourth amendment (U.S. Const., amend. IV) protects citizens from the issuance of search warrants that grant the police broad discretion to conduct a "general, exploratory rummaging in a person's belongings." *Coolidge v. New Hampshire*, 403 U.S. 443, 467 (1971). Thus, the scope of a lawful search is defined by both the object of the search and the places in which probable cause exists to believe the object may be found. *People v. Bui*, 381 Ill. App. 3d 397, 411, 885 N.E.2d 506, 519 (2008). Moreover, the plain-view doctrine entitles the police, with prior justification for an intrusion, to seize evidence in plain view as long as "such evidence is of an 'apparently incriminating nature.'" *People v. Dressler*, 317 Ill. App. 3d 379, 385, 739 N.E.2d 630, 635 (2000), quoting *People v. Stewart*, 105 Ill. 2d 22, 52, 473 N.E.2d 840, 855 (1984). Accordingly, "[a]n item is in plain view if it is found during the search of an area that could contain or conceal articles listed on the face of the warrant." *Dressler*, 317 Ill. App. 3d at 385, 739 N.E.2d at 635.

¶ 54 In this case, the trial court found the plain-view doctrine applied. Specifically, it found the police officer had a right to examine the folder in looking for the videotapes, and one could reasonably conclude that by looking at and reading the folder it was connected to the offenses listed in the warrant. Defendant asserts that, assuming the notations on the folder are incriminating, no evidence was presented at the suppression hearing the notations were immediately visible to the searchers. The State disagrees, noting the evidence showed the manila folder was not empty as it contained papers and defendant did not support his assertion the videotape was bulky.

¶ 55 The evidence at the February 14, 1994, suppression hearing was the following. The folder at issue was presented, and it is a standard manila folder with writing all over the front of the folder and inside on the upper part of the right half. The rest of the folder is blank. Sergeant Danner testified he had interviewed S.A. before the search warrant, and S.A. mentioned a videotape involving another Hoopeston resident and his wife that was filmed by the couple. The police never found the videotape. Officer Moyer testified he was looking for the videotape and found the folder on top of a dresser. The manila folder had papers inside of it. Officer Moyer could not recall if the manila folder was in a stack of materials or if it had anything underneath it. Officer Moyer also could not recall if the side with the writing was up or down. Officer Moyer picked up the folder and read it. He could not remember if he read it before or after picking it up.

¶ 56 We find the trial court did not err in concluding the officers had a right to examine the folder in looking for the videotapes. Officer Moyer testified the folder was not empty, and thus it was not flat as suggested by defendant. Since the folder was not a flat manila folder, it

"(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Sargent*, 239 Ill. 2d 166, 189, 940 N.E.2d 1045, 1058 (2010).

We begin our plain-error analysis by first determining whether any error occurred at all. *Sargent*, 239 Ill. 2d at 189, 940 N.E.2d at 1059. If error did occur, this court then considers whether either of the two prongs of the plain-error doctrine has been satisfied. *Sargent*, 239 Ill. 2d at 189-90, 940 N.E.2d at 1059. Under both prongs, the defendant bears the burden of persuasion. *Sargent*, 239 Ill. 2d at 190, 940 N.E.2d at 1059.

¶ 61 1. *Dr. Buetow's Testimony In Toto*

¶ 62 We review a trial court's decision to admit expert testimony under the abuse-of-discretion standard. *People v. Becker*, 239 Ill. 2d 215, 234, 940 N.E.2d 1131, 1142 (2010). "An abuse of discretion occurs only where no reasonable person would take the view adopted by the trial court." *In re Marriage of Price*, 2013 IL App (4th) 120155, ¶ 30, 986 N.E.2d 236.

¶ 63 Trial courts possess broad discretion when determining the admissibility of expert testimony. *People v. Cardamone*, 381 Ill. App. 3d 462, 500, 885 N.E.2d 1159, 1188 (2008).

"Generally, an individual may testify as an expert if his or her qualifications display knowledge that is not common to laypersons

and if the testimony will aid the trier of fact in reaching its conclusion. [Citation.] An expert witness may provide an opinion on the ultimate issue in a case. [Citation.] The test is whether the opinion will assist the trier of fact to understand the evidence or to determine a fact in issue. '[T]he modern standard for the admissibility of expert testimony is not whether the subject is beyond the understanding of the jury, but whether the testimony will aid the jury's understanding. No higher standard applies to opinion testimony on an ultimate issue.' [Citation.] In exercising his or her discretion, the trial judge should carefully consider the necessity and relevance of the expert testimony in light of the facts in the pending case. [Citation.] When considering the reliability of expert testimony, the court should balance its probative value against its prejudicial effect." *Cardamone*, 381 Ill. App. 3d at 500, 885 N.E.2d at 1188-89, quoting *Perschall v. Metropolitan Life Insurance Co.*, 113 Ill. App. 3d 233, 237, 446 N.E.2d 570, 573 (1983).

¶ 64 Defendant contends Dr. Buetow's testimony did not provide the jury with any information that was beyond the knowledge of an average layperson and impinged upon the jury's province to determine credibility and assess the facts of the case. He notes her diagnosis of sexual abuse was based entirely upon her own subjective evaluation of S.A.'s credibility. However, as a board-certified pediatrician, Dr. Buetow was the head of the child-protection team that evaluated 175 to 200 children per year to determine if the children were abused or neglected.

She was qualified as a pediatrician and an expert in child abuse. Dr. Buetow's years of training and experience in diagnosing sexual abuse and working with such victims gave her knowledge that was not common to laypersons. Her testimony about such things as a normal physical exam being consistent with the sexual abuse defendant described and how sexual abuse victims generally act when questioned about the abuse would clearly aid the jury's understanding.

¶ 65 Moreover, as stated, "[a]n expert witness may provide an opinion on the ultimate issue in a case." *Cardamone*, 381 Ill. App. 3d at 500, 885 N.E.2d at 1188-89; see also Ill. R. Evid. 704 (eff. Jan. 1, 2011). Such testimony does not usurp the province of the jury because the trier of fact is not required to accept the expert's conclusion. *Richardson v. Chapman*, 175 Ill. 2d 98, 107, 676 N.E.2d 621, 625 (1997). Moreover, contrary to defendant's assertions, Dr. Buetow's expert opinion was not that S.A. was a credible minor. Her expert opinion was S.A. had been sexually abused, and the basis of her opinion included her belief S.A.'s statements were credible. Thus, Dr. Buetow's testimony about S.A.'s credibility and how she judges credibility were admissible to show the basis of her opinion that S.A. was sexually abused. See *In re Detention of Isbell*, 333 Ill. App. 3d 906, 914, 777 N.E.2d 994, 1000 (2002) (finding it was not improper for a clinical psychologist to testify she found the accusers' allegations credible because that testimony was only admitted to demonstrate the basis of her opinion). Moreover, we note most of Dr. Buetow's testimony about evaluating possible abuse victims in general was elicited on cross-examination by defense counsel, not the State. This case is distinguishable from those cited by defendant where the improper expert testimony was about the credibility of child victims in general and not the basis of an opinion the victim was abused. See *Becker*, 239 Ill. 2d at 235, 940 N.E.2d at 1142-43 (highlighting the fact the expert had never interviewed the child victim);

People v. Simpkins, 297 Ill. App. 3d 668, 683, 697 N.E.2d 302, 312 (1998) (noting the expert's testimony had nothing to do with the actual victim's credibility); *People v. Wilson*, 246 Ill. App. 3d 311, 322, 615 N.E.2d 1283, 1289 (1993) (finding the expert's testimony would have been generalizations that had nothing to do with the credibility of the children that testified).

¶ 66 Accordingly, we find the trial court did not abuse its discretion by allowing Dr. Buetow to testify as an expert witness at defendant's trial. Since no error occurred, defendant cannot establish plain error.

¶ 67 *2. Dr. Buetow's Hearsay Testimony*

¶ 68 In the alternative, defendant argues the trial court erred by allowing Dr. Buetow to testify to hearsay statements made by S.A. that were unrelated to S.A.'s diagnosis and treatment. Specifically, he takes issue with Dr. Buetow's testimony about S.A. stating defendant was the perpetrator and the gifts S.A. received from defendant. The State asserts the testimony was proper.

¶ 69 The hearsay exception at issue is contained in section 115-13 of the Criminal Procedure Code (Ill. Rev. Stat. 1989, ch. 38, ¶ 115-13). Section 115-13 provides the following:

"In a prosecution for violation of Section 12-13, 12-14, 12-15 or 12-16 of the 'Criminal Code of 1961', statements made by the victim to medical personnel for purposes of medical diagnosis or treatment including descriptions of the cause of symptom, pain or sensations, or the inception or general character of the cause or external source thereof insofar as reasonably pertinent to diagnosis or treatment shall be admitted as an exception to the hearsay rule."

Ill. Rev. Stat. 1989, ch. 38, ¶ 115-13.

"A trial court is vested with discretion in determining whether the statements made by the victim were reasonably pertinent to the victim's diagnosis or treatment." *People v. Monroe*, 366 Ill. App. 3d 1080, 1091, 852 N.E.2d 888, 900 (2006). Accordingly, we review the trial court's decision under the abuse-of-discretion standard, which has been previously set forth.

¶ 70 In asserting statements identifying offenders are beyond the scope of section 115-13, defendant cites *People v. Oehrke*, 369 Ill. App. 3d 63, 70, 860 N.E.2d 416, 421-22 (2006), which addressed an adult victim's identification of the offender. This case involves a minor victim. With regard to minors, the cases addressing whether the hearsay identification of the defendant falls within the section 115-13 exception have reached inconsistent conclusions. See *People v. Falaster*, 273 Ill. App. 3d 694, 701, 653 N.E.2d 467, 472 (1995) (setting forth the various holdings). This court has held that, "in examining a child suspected to be a victim of sexual abuse, details of the sexual acts including how, when, and where the act occurred and who was involved are pertinent information allowed under the statute." *People v. March*, 250 Ill. App. 3d 1062, 1076, 620 N.E.2d 424, 435 (1993). In *March*, 250 Ill. App. 3d at 1076, 620 N.E.2d at 435, we found the testimony of the nurse, who was responsible for taking the child's history, was proper under section 115-13 where the victim identified her mother's friend as the perpetrator. In *People v. Roy*, 201 Ill. App. 3d 166, 178, 558 N.E.2d 1208, 1216 (1990), we found the two physicians' testimony about the minor victim's statements his father inflicted the abuse fell under section 115-13. In *Simpkins*, 297 Ill. App. 3d at 680, 697 N.E.2d at 310, this court found the physician's testimony the minor victim identified her father as her abuser when the physician was taking her medical history was proper under section 115-13. We continue to

follow our prior case law that holds statements made by a minor suspected of being a victim of sexual abuse while being examined for sexual abuse, including the identification of the defendant, fall under section 115-13 of the Criminal Procedure Code. Accordingly, the trial court did not err in allowing Dr. Buetow's hearsay testimony about S.A. identifying defendant as his abuser.

¶ 71 Defendant also challenges Dr. Buetow's testimony about S.A. receiving gifts from defendant and taking trips with defendant, claiming such statements were irrelevant to her diagnoses and treatment of S.A. We disagree, as those statements would factor into S.A.'s diagnosis as it is not normal for a nonrelative principal to do such things. Accordingly, we find no error in the admission of Dr. Buetow's hearsay testimony about S.A. receiving gifts from defendant as they also fall under the hearsay exception set forth in section 115-13.

¶ 72 Since we have found no error with the admission of Dr. Buetow's hearsay statements, defendant cannot establish plain error. Moreover, even if the admission of the statements were erroneous, the error would be harmless because Dr. Buetow's hearsay testimony was cumulative of S.A.'s testimony. See *People v. Davis*, 337 Ill. App. 3d 977, 991, 787 N.E.2d 212, 223 (2003).

¶ 73 III. CONCLUSION

¶ 74 For the reasons stated, we affirm the Vermilion County circuit court's judgment. As part of our judgment, we award the State its \$75 statutory assessment against defendant as costs of this appeal.

¶ 75 Affirmed.