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2014 IL App (4th) 130177-U

NO. 4-13-0177

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

**FILED**  
December 10, 2014  
Carla Bender  
4<sup>th</sup> District Appellate  
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
THOMAS W. CAMPBELL,	)	No. 11CF907
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.  
Presiding Justice Pope and Justice Harris concurred in the judgment.

**ORDER**

¶ 1 *Held:* The appellate court affirmed, concluding (1) the State proved defendant guilty beyond a reasonable doubt, and (2) the prosecutor did not err in his rebuttal closing argument by responding to defense counsel's interpretation of defendant's reaction to the police officer's questioning.

¶ 2 Following a jury trial in the circuit court of McLean County, defendant, Thomas W. Campbell, uncle of the complainants herein, was convicted of three counts each of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 2010)) and aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)), and sentenced to natural life in prison. Defendant appeals, claiming (1) the evidence was insufficient to prove him guilty beyond a reasonable doubt, and (2) he was denied a fair trial when the prosecutor misled the jury during closing arguments. We affirm.

¶ 3

## I. BACKGROUND

¶ 4 On October 14, 2011, the State charged defendant with three counts of predatory criminal sexual assault of a child, each a Class X felony (720 ILCS 5/12-14.1(a)(1) (West 2010)), and three counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(c)(1)(i) (West 2010)), each a Class 2 felony. The charges involve three separate victims, B.L., B.P., and A.P., all minors under the age of 12 at the time the offenses were committed. The State's allegations related to the predatory-criminal-sexual-assault charges are as follows: (1) defendant knowingly placed his penis in B.L.'s mouth (count I), (2) defendant knowingly placed his mouth on B.P.'s vagina (count IV), and (3) defendant knowingly placed B.P.'s finger into defendant's anus (count V). The allegations related to the three aggravated-criminal-sexual-abuse charges are as follows: (1) defendant knowingly touched A.P.'s breast (count II) and vagina (count III), and (2) defendant knowingly placed his hand on B.P.'s vagina (count VI). The State alleged defendant did these acts for the purpose of his sexual gratification or arousal. In October 2011, the State filed superseding indictments on all counts.

¶ 5 The following evidence was presented at defendant's jury trial, which began on October 9, 2012. The State first called Sherry L. as a witness. Sherry testified she and her husband, John L., have two children, John Michael, age 20, and B.L., age 16. B.L. attends University High in Normal because of certain physical disabilities. B.L. is hearing impaired, has right facial paralysis with a feeding tube, and is developmentally delayed. She often uses sign language to communicate. John L. has four sisters and three brothers. One of his sisters, Vicki, has four children, including B.P. and A.P. Another of John's sisters, Becky, was

married to defendant. Sherry testified when her daughter, B.L., was approximately three to six years old, Becky and defendant would babysit while Sherry worked.

¶ 6 Sherry said one of B.L.'s teachers called her to say that B.L. had told her she had been sexually abused by defendant. (The record does not indicate when the teacher called Sherry.) When B.L. came home from school that day, Sherry talked to B.L. and B.L. told her the same thing she had told her teacher. Sherry waited for John to get home from work and they then called the police. B.L. was interviewed at the Child Advocacy Center.

¶ 7 B.L. next testified with the assistance of an interpreter. She said when she was a little girl, she would go to her Aunt Becky's house while her parents worked. Defendant was married to Becky at the time. The following exchange occurred:

"Q. Do you remember ever anything that ever happened with [defendant] when you were over at Aunt Becky's house?

A. Yes.

Q. What do you remember?

A. Well, I was at my aunt's house, and I was playing with my cousins, Abby, and [defendant] said to come here. And then he um—then he unzipped his pants and put his penis in my mouth.

Q. Okay. Do you remember how old you were?

A. I was three or four."

She said defendant was sitting in a chair in the living room at the time, while Becky was in the kitchen and her two cousins were in the bedroom playing. She said defendant motioned for B.L. to come to him. She said defendant's pants were not down, just "open." Defendant told

her not to tell anyone. B.L. said she did not tell anyone until she told her teacher when she was 15. She said she told her teacher because her class was learning "about bodies and boy parts and girl parts." The teacher asked if she should call B.L.'s mother, and B.L. agreed. When she got home from school, she told her mother the same story she had told her teacher. Her mother told B.L.'s father when he got home. Both of her parents were very upset. B.L. said she has never spoken to defendant about the incident.

¶ 8 Rebecca "Becky" Dukich testified she was married to defendant from 1992 to 2008. She said she often babysat for her nieces and nephews, including B.L., A.P., and B.P. Often times, B.P. and A.P. would spend the night after playing with her own children. She said she has not spoken to defendant since being made aware of the allegations.

¶ 9 On cross-examination, Becky testified that if something was "going on in the living room," she would have been able to hear it in the kitchen. She never saw defendant act inappropriately with any of the children.

¶ 10 Naomi LeeAnn Rees testified her nieces and nephews refer to her as Aunt Nan but everyone else calls her LeeAnn. She said she has a close relationship with B.P. and A.P., seeing A.P. everyday and B.P. approximately two to three times per week. She sees B.L. only once per month. LeeAnn said she learned of the allegations against defendant in September 2011 when John, her brother, called and told her what B.L. had said. With that information, LeeAnn spoke with A.P., telling her that allegations about a certain family member had been made. LeeAnn did not mention any names to A.P. A.P. said " 'Nan, don't tell me, it was [defendant.]" A.P. suggested LeeAnn call B.P. LeeAnn spoke with B.P. and told her the same thing she had told A.P.: "something terrible was accused that was happening with somebody in the family." B.P. told LeeAnn "something had happened to her." The next

morning, LeeAnn called the police and B.P. and A.P. gave statements to Officer Michael Bennett.

¶ 11 A.P. testified she was currently 20 years old. She recalled going to her Aunt Becky's when she was little to be babysat with her older sister, B.P. She and B.P. frequently stayed overnight until A.P. was approximately 12 years old. She said defendant was there "most of the time." A.P. said her Aunt LeeAnn told her someone in their family had been sexually abused. A.P. guessed the abuser to be defendant. LeeAnn asked how A.P. knew that, and A.P. said it had happened to her and her sister as well. The police were notified and A.P. was interviewed by Officer Bennett.

¶ 12 When asked about her first memory of defendant touching her, A.P. said:

"A. I just remember waking up in the middle of the night to him touching my breasts and my vagina over the clothes. It was never under that I can remember. And I would always pretend like I was sleeping just so that he wouldn't ask me to do anything or just so that it wouldn't get any worse.

Q. Okay. Do you remember how old you were when you first had a memory of that happening?

A. I don't know how old I was.

Q. Do you have a memory of going over to [defendant]'s at a time before he ever did anything like that?

A. No.

Q. When you say you woke up to him touching you in the middle of the night, what would you typically be wearing when you went over there to spend the night?

A. Just pajamas, I mean pants and a shirt.

Q. When you woke up to—what woke you up initially? Was it a sound or a smell or a touch?

A. It was a touch.

Q. And you said you'd be sleeping in the living room?

A. Uh-huh.

Q. Okay. When you felt that—how do you know it was [defendant]?

A. Cause he's the only man that was in the house, and I could tell that it was a man's hands and not a younger boy's hands, and like I said, Ben [Becky's son] was the same age as me.

Q. Okay. And how long did that last each time it happened? How long did it last?

A. Just a few minutes.

Q. And you said you pretended to sleep?

A. Uh-huh.

Q. Did you ever open your eyes at any time?

A. No.

Q. Did you ever experience anything else with your senses, either hearing or smelling or anything like that?

A. Not—not hearing or smelling, no, but he also in one of them ran his penis down my neck.

Q. Can you explain what you mean by that?

A. I mean, I don't know. He just, I guess, took it out and drug it down my neck while I was sleeping. I don't know if he was masturbating or not. Like I said my eyes were closed.

\* \* \*

Q. When you felt—when you felt the penis on your neck, how long did that last?

A. Not very. I don't know, probably about five minutes or so.

Q. Were you pretending to be sleeping at that time?

A. Yes.

Q. Did you ever make any movements or anything like that?

A. No.

Q. How often did this touching occur? You said you would wake up in the middle of the night and feel this touching? How often did that happen?

A. How often in one night, or how often just altogether?

Q. Let's start off with one night.

A. One night, just once.

Q. Okay. Would it happen every time you went over or just sometimes?

A. Just sometimes. It didn't happen every time.

Q. Was [defendant] always over there when you would spend the night?

A. I don't think he was always over there. I mean I remember him going on like hunting trips and stuff every once in awhile when I was staying over there, so I can't say he was there every time.

Q. How many times total do you think it happened?

A. I don't know. I was to say about 10 or 15."

A.P. said she never told her parents because she did not want them to know.

¶ 13 B.P. testified she was currently 21 years old. She said she first remembered Aunt Becky babysitting her when she was approximately six years old. She said she went over to Becky's house "frequently" and spent the night "quite a bit" until she was approximately 12 years old. B.P. said she became aware of the allegations when her Aunt LeeAnn told her that someone in the family had been possibly sexually abused. B.P. told LeeAnn "some stuff had happened." LeeAnn assured B.P. she did not want to know the details, but she wanted B.P. to tell the police. B.P. thought she was approximately six years old when she first remembered "something happening" with defendant. She said she was lying on the floor in her pajamas watching television when defendant used his foot to rub her vagina. She also recalled defendant standing in the doorway of his bedroom with his hand

down his pants looking at her while she was in the living room. As she got older, she realized he was masturbating. She said the "majority" of the abuse incidents happened as she slept. She would wake up to defendant touching her vagina. When asked how she knew it was defendant, she said she "woke up and saw him."

¶ 14 B.P. also described another incident when defendant asked her to rub lotion on his back. He laid on the couch with his shirt off on his stomach while B.P. rubbed the lotion on. Defendant repeatedly asked her to go lower and lower until she was rubbing lotion on his buttocks. He then asked B.P. to stick her finger in his anus. She did so.

¶ 15 B.P. also recalled an incident when she and A.P. went to a nearby park. B.P. ran to Aunt Becky's to see if her cousins could come play at the park. A.P. stayed at the park waiting. Defendant was the only person home. He pulled her to the back of the house toward the bathroom. B.P. said she held onto the wall and told him no. He told her everything would be okay. Once inside the bathroom, defendant pulled down her pants, put chocolate pudding on his tongue, and performed oral sex.

¶ 16 The State next called Officer Mike Bennett. He said on September 21, 2011, he was contacted by Sherry L. about an incident concerning her daughter, B.L. When Bennett arrived at their home, Sherry said B.L. had told her about an incident that happened "some years prior" involving defendant. After leaving their home, Bennett said he contacted the Child Advocacy Center to arrange an interview with B.L. Bennett received a copy of the interview, submitted his police report, and continued his investigation. On October 5, 2011, Bennett interviewed A.P., who was brought to the police station by LeeAnn Rees. On October 6, 2011, Bennett interviewed B.P. with LeeAnn and A.P. present. Bennett said he interviewed other family members before interviewing defendant.

¶ 17 On October 13, 2011, Bennett interviewed defendant at the LeRoy police department in the presence of Jake Harlow from the State's Attorney's office. The interview was video recorded. After the interview with defendant, Bennett placed defendant under arrest, secured him in handcuffs, and transported him to the McLean County jail. The recorded interview was published to the jury with certain portions of the recording redacted from the jury's consideration. The State rested.

¶ 18 Joseph "Ben" Campbell, defendant's 20-year old son, testified on behalf of defendant. He said throughout his childhood, he often played with his cousins, A.P. and B.P., when his mother, Becky, babysat them. When the girls would stay overnight, the three of them slept in the living room in a group. Ben said he never heard anyone come into the living room during the night and he never saw defendant alone with A.P. or B.P. Ben said B.L. also spent time at his house, but she had "special problems," including a feeding tube, hearing issues, and speech issues. He said his mother primarily took care of B.L. when she was over. Ben said he never saw defendant alone with B.L. or communicate with her at all.

¶ 19 Samantha Campbell, defendant's 23-year-old daughter, also testified on defendant's behalf. She said she lived with her mother, Melissa Lee, for most of her childhood. She would see defendant every other weekend. Melissa also testified. She said defendant had a significant gag reflex and a very weak stomach, so he was unable to perform oral sex during their relationship. She recalled that defendant would "gag on drinking a shake."

¶ 20 Defendant also called his ex-wife, Becky, as a witness on his behalf. She said she never left B.L. alone with defendant due to her medical issues. She also said she would have noticed if defendant would have gotten up in the middle of the night because they had a

waterbed. However, it was not unusual for him to get up to go the bathroom. She said B.P. and A.P. were not reluctant to visit. In fact, Becky said, B.P. brought her own children over to visit when she and defendant were still together. Defendant rested.

¶ 21 After considering the evidence, the arguments of counsel, and the jury instructions, the jury returned a verdict of guilty on all charged offenses. Further, the jury found each allegation was committed against a person under the age of 12 years.

¶ 22 On November 13, 2012, defendant filed a motion for a new trial, alleging the State failed to produce sufficient evidence to prove defendant guilty beyond a reasonable doubt. The trial court denied defendant's motion and sentenced defendant as follows: (1) to natural life in prison on count I, one of his predatory-criminal-sexual-assault convictions; (2) two consecutive extended 40-year terms on the remaining predatory-criminal-sexual-assault convictions (counts IV and V) to run consecutively to the natural-life term; and (3) three concurrent 10-year terms on each of his aggravated-criminal-sexual-abuse convictions (counts II, III, and VI) to run consecutively to the natural-life and 40-year terms. By filing a motion to reconsider, defendant challenged his sentences as excessive. However, the court denied defendant's motion. This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Sufficiency of the Evidence

¶ 25 First, defendant challenges the sufficiency of the State's evidence. Defendant claims the "leeway granted the State in identifying the date of the offense hampers defendant." According to defendant, the offenses were alleged to have occurred during a seven-year window to B.P., a two-year window to A.P., and one-year window to B.L. This broad time frame for when the acts allegedly occurred made it difficult for defendant to establish a

defense or, as he put it, an "airtight alibi." Not only was the time frame within which the offenses occurred broad, but they occurred more than 10 years earlier. Defendant claims he could not challenge the credibility of the witnesses regarding the details of the crime because no details were available. The complainants could not pinpoint exactly, either in what year or in which house, the abuse occurred. He also claims the complainants' testimony was unreliable and uncorroborated.

¶ 26 When presented with a challenge to the sufficiency of the evidence, a reviewing court's function is not to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). Rather, we consider " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Davison*, 233 Ill. 2d 30, 43 (2009) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). Under that standard, a reviewing court must draw all reasonable inferences from the record in the prosecution's favor. *Davison*, 233 Ill. 2d at 43. Further, we note a reviewing court will not overturn a criminal conviction "unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334.

¶ 27 The State's evidence in this case, viewed in the light most favorable to the prosecution, allowing for all reasonable inferences, showed that defendant had committed the offenses as alleged. The jury, which was in the best position to judge the credibility of the witnesses (*People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (the trier of fact is in the best position to judge the credibility of the witnesses, and "due consideration must be given to the fact that it was the trial court and jury that saw and heard the witnesses")), could reasonably have believed the testimony of the State's witnesses, including all three victims. Each victim

testified in sufficient detail to the acts of sexual abuse committed against them by defendant. It was up to the jury to determine how much weight should be given to each victims' testimony. Because the jury's function is to resolve conflicts or inconsistencies in the evidence, we will not reverse a defendant's conviction " 'simply because the defendant tells us that a witness was not credible.' " *People v. Tenney*, 205 Ill. 2d 411, 428 (2002) (quoting *People v. Brown*, 185 Ill. 2d 229, 250 (1998), quoting *People v. Bryon*, 164 Ill. 2d 279, 299 (1995)).

¶ 28 Despite the imprecise time frame and the fact the abuse occurred years before trial, we find the State presented competent evidence for the jury to effectively evaluate the credibility of the three victims. The fact that B.L., who suffers physical impairments, did not tell anyone of defendant's sexual conduct toward her until she was learning about the body in school supports the believability of her version of the events. Her mother, Sherry, testified she first learned of the allegations when B.L.'s teacher called to inform her of what B.L. had told her at school. B.L.'s account contained sufficient detail and was consistent from the time of her first report at school to her testimony on the witness stand.

¶ 29 Likewise, the testimony of LeeAnn Reese regarding her independent conversations with A.P. and B.P., wherein they each guessed defendant as the family member accused of misconduct, supports the veracity of their allegations. According to Rees' testimony, she took precautions to protect the name of the accused when explaining to her nieces that allegations had surfaced. A reasonable jury could have found her testimony credible and determined her efforts in being careful not to suggest defendant's name to the girls during their conversation bolstered the testimony of A.P. and B.P. Their testimony was

also detailed in terms of the exact conduct and actions of defendant, even though they were unable to pinpoint exactly when the specific conduct occurred.

¶ 30 Nothing in this record justifies disturbing the jury's verdict. Applying the appropriate standard, we find the "the evidence is [not] so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Givens*, 237 Ill. 2d at 334. Further, nothing in the testimony suggested it was likely the victims spoke with each other and "convinced" each other they had been abused by defendant. No evidence was presented to demonstrate a theory or a motive for fabrication on the victims' part. Each witness testified as to her independent recollection, with no indication of reliance upon the others.

¶ 31 B. Prosecutor's Closing Argument

¶ 32 Defendant next claims the prosecutor improperly argued in closing argument that defendant did not "vehemently" deny the charges against him. Defendant argues the State was aware defendant *had* vehemently denied the charges in portions of the recorded interview that were not played for the jury. To comply with the trial court's finding that A.P. and B.P.'s out-of-court statements were inadmissible, the State skipped certain portions of the recorded interview when playing this exhibit for the jury. During rebuttal closing arguments, the prosecutor stated:

"You saw the defendant's interview, and again, it's my burden. It's not the defendant's burden. He doesn't have to convince you with his innocence. But also again you can look at his reaction in the end.

He's told you're in this interview today, I asked you to come to the police department today because there are strong

accusations that you touched somebody inappropriately sexually. Doesn't ask who, doesn't become animated. Now, I'm uncomfortable making an argument that if somebody was guilty of something you would expect them to react a certain way because everybody is different. Everybody reacts differently. You know that. You're 12 different jurors in the community with your own common experiences and your own different experiences, and you bring your personal experiences to the table to be part of the 12 here. You know everybody doesn't respond the same way. But you also know as a human being if someone says you sexually assaulted one of your family members, [']the hell I did. The hell I did. No way. Stop right now. What are you talking about? Who said that? When? Why? What was I supposed to have done? Are you kidding me?['] We don't see any of that."

¶ 33 Defendant claims it was improper for the State to argue defendant's guilt based upon his failure to emphatically deny his guilt when he, in fact, did deny his guilt on portions of the recording not played for the jury. Defendant concedes he has forfeited this claim but he insists this court should review the claim of error under the plain-error doctrine. He argues the evidence in this case was closely balanced and the error was so serious as to deny him a fair trial. See *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). Defendant further asserts the State's case "depended entirely on the jury's perception of the credibility of the complainants" with no physical evidence to support or contradict the complainants' testimony, making the

evidence "closely balanced." After a review of the closing arguments of both sides in their entirety, we disagree the prosecutor erred in commenting on defendant's conduct.

¶ 34 "A prosecutor has wide latitude in making a closing argument and is permitted to comment on the evidence and any fair, reasonable inferences it yields." *People v. Glasper*, 234 Ill. 2d 173, 204 (2009). A reviewing court "will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error." *People v. Runge*, 234 Ill. 2d 68, 142 (2009). The problem with defendant's argument is defendant opened the door to the State's response. In defendant's closing argument, defense counsel stated:

"Ladies and gentlemen, I don't envy your task. You've already had to sit through testimony of some disgusting things, and now you have to debate the question. Let's say one thing. You're not here to make a statement to the community. You're not here to tell the world at large that child sexual abuse is a bad thing. We know that already. Nobody is arguing it. It's a despicable thing, and it's a disgusting thing. It's also a disgusting thing to be accused of if you haven't done anything, which as you might remember, from the video, is exactly what [defendant] kept saying to Officer Bennett over and over and over. [']I haven't done anything. I didn't do anything to them.['] "

¶ 35 The prosecutor, in response, reiterated to the jury it was the State's burden to prove defendant guilty, not defendant's burden to prove his innocence. Likewise, the prosecutor noted every person reacts differently to particular experiences. However, the

prosecutor asked the jury to evaluate defendant's responses to Officer Bennett's questions relying on their own experiences. In doing so, the prosecutor was responding to defense counsel's interpretation of defendant's denial during the interview. Defense counsel told the jury defendant denied wrongdoing "over and over and over," while the prosecutor asked the jury to view defendant's response with skepticism. The prosecutor merely responded to defense counsel's comments with an invitation for the jury to assign an alternative interpretation of defendant's reaction to Bennett's questioning. "[W]hen defense counsel provokes a response, the defendant cannot complain that the prosecutor's reply denied him a fair trial." *People v. Hudson*, 157 Ill. 2d 401, 445 (1993). This is precisely what defendant is arguing. We find no error.

¶ 36

### III. CONCLUSION

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

¶ 38 Affirmed.