



amended by Pub. Act 96-1551, art. 2, § 5 (eff. July 1, 2011))) against C.S. In March 2013, the court sentenced respondent to 60 months' probation with the condition that he serve a 30-day sentence in juvenile detention. Respondent appeals, arguing that (1) he was not proved guilty beyond a reasonable doubt of committing the alleged sexual act; and (2) his convictions for aggravated criminal sexual abuse and criminal sexual abuse must be vacated under the one-act, one-crime doctrine. We affirm in part and vacate in part.

¶ 3

### I. BACKGROUND

¶ 4 In July 2012, the State filed a petition alleging 14-year-old respondent, Noah B., to be a delinquent minor. According to the petition, respondent committed the offenses of criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse of C.S., a seven-year-old victim. The petition alleged that during a September or October 2011 incident, respondent caused contact between his penis and C.S.'s mouth. Following a November 2012, hearing conducted pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/115-10 (West 2010)), the trial court admitted certain hearsay statements the minor made to his mother and Detective Michael Burns. Upon ruling on the 115-10 motion, the matter proceeded to a bench trial.

¶ 5

#### A. The State's Case

¶ 6 The State called Eric Thacker, a friend of C.S.'s mother, to the stand. Eric testified that C.S.'s mother was serving a 45-day jail sentence and her two boys (C.S. and his brother) were staying with Eric's mother, Karen Thacker. During this time, in September 2011, Eric hosted a family party that 10 to 15 people attended. He recalled seeing C.S. and his brother in the living room while respondent and other people were playing a game on the television. C.S. and respondent had been to his house on prior occasions and were comfortable going to the

basement to play foosball, pool, or arcade games. Eric never went in the basement during the party and at times he was not watching the children. He did not recall being informed of anything untoward happening at the party.

¶ 7 C.S. testified that in September 2011, when he was seven years old, during Eric's party, C.S. was alone in the basement playing with pool balls. While he was playing, respondent came downstairs and pulled him into the bathroom and locked the door. Respondent said, "this is what adults do" and unzipped his pants. He pushed C.S. gently to his knees and said, "open your mouth." C.S. asked, "are you doing what I think you're going to do?" and respondent replied, "you'll find out." While C.S. was on his knees, saying no and pushing away, respondent pulled and held C.S.'s head to respondent's "front private part" (later confirmed by C.S. to mean respondent's penis), causing respondent's front private part to touch C.S. between his lip and chin. Eventually, respondent's front private part entered C.S.'s mouth. Respondent then said, with his lips tight and in a deep voice, "you better not tell anybody." The incident ended when respondent pulled C.S.'s head off his front private part. Respondent pulled up his pants and C.S. unlocked the bathroom door.

¶ 8 After the incident, C.S. immediately told Eric what happened. Eric put his hand on C.S.'s shoulder and said, "I'm sorry that happened to you" and "I'll take care of it." C.S. did not see Eric approach respondent during the party that day. C.S. testified he believed he told Karen Thacker about the incident but was not sure. C.S. eventually told his brother what happened, but not right away because he "might get in trouble."

¶ 9 Brittany S., C.S.'s mother and a friend of the Thackers, recounted how she learned of the abuse. In November 2011, C.S.'s brother told Brittany respondent made C.S. suck his "winkie." Brittany asked if this was true and C.S. became very quiet, looked down, and said in a

subdued voice, "yes." She sat down with C.S. and his brother and asked questions. C.S. answered solemnly, as if he had done something wrong.

¶ 10 C.S. explained to Brittany that he was alone in the basement during Eric's party and that respondent "yanked him into the bathroom, shut and locked the door," unzipped his pants, pushed C.S. down, and told him to open his mouth. C.S. asked, "you're not going to do what I think you're going to do are you?" and respondent replied, "you're going to find out" and "this is what adults do." Respondent took C.S.'s head and caused his penis to enter C.S.'s mouth. He looked at C.S. with an evil, tight-lipped, angry face and said, "you better not tell anybody." C.S. immediately told Eric, and Eric said he was sorry and would take care of it. Brittany further testified C.S. might have told Karen but was unsure.

¶ 11 The State next called Detective Burns, a trained forensic interviewer with the Bloomington police department, to testify about his interview with C.S. During the interview, C.S. stated he was at Eric's house during a family celebration and was playing a game in the basement. No one else was downstairs. Respondent came downstairs and pulled C.S. out of a chair and into the bathroom. Respondent locked the door, pulled his underwear down, pushed C.S. to his knees, and forced C.S. to put his mouth on respondent's front private part. Respondent was sitting on the toilet and C.S. was on his knees. Respondent told C.S. not to tell anyone in a mad, yelling, but calm voice. Respondent pulled C.S. off his front private part, pulled up his pants, and unlocked the door. C.S. told Eric immediately after leaving the bathroom, and Eric assured him he would take care of it. C.S. did not know if Eric did or said anything to respondent. Detective Burns testified that C.S. was specific and gave lots of details about the incident with respondent.

¶ 12 Karen Thacker, respondent's aunt and family friend, testified that she took care of C.S. and his brother while their mother served 45 days in jail. Because Karen worked, respondent's mother, Deborah, would pick C.S. and his brother up from school and take them to her house until Karen left work. C.S. and respondent had frequent contact during this time period. Karen testified she was at Eric's party. She spent most of her time outside and did not have an eye on the children every minute, but she saw them playing games in the living room and playing outside. She was not informed of anything happening that day, nor did she hear C.S. complain about respondent. Karen did not notice any behavioral changes in C.S. following Eric's party. In fact, C.S. and his brother wanted to stay and play with respondent after school and she had to "pry" them away from Deborah's residence.

¶ 13 B. The Defense's Case

¶ 14 The defense called respondent's mother, Deborah B, who is the sister-in-law of Karen Thacker. Deborah testified she was at Eric's party and observed respondent, C.S., and C.S.'s brother playing video games in the living room. She also saw C.S. in the backyard playing ball by himself and also with Karen. She did not notice respondent go downstairs and no one told her about the allegations C.S. made against respondent.

¶ 15 Deborah further testified she helped care for C.S. and his brother while their mother was serving time in jail. She picked them up from school and watched them for one to three hours, until Karen arrived from work. Following Eric's party, C.S. had several weeks of contact with respondent but Deborah did not notice any odd reactions from C.S. while in respondent's presence. She noted C.S. and his brother were very disobedient and knew a lot of "cuss words and sexual things that children that age should not know." The defense rested.

¶ 16 Following closing argument, the trial court found, *inter alia*, C.S.'s "recollection[] of [the sexual assault] remarkably consistent from the time of the interview with Detective Burns to the testimony today." The court noted that "[t]he minor's recollection as to space and time is a little less sure or consistent, but that would be expected of a minor this age." On this evidence, the court found the State met its burden of proving the allegations of criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse, beyond a reasonable doubt. In March 2013, the court sentenced respondent to 60 months' probation and imposed, but stayed, a 30-day sentence in juvenile detention.

¶ 17 This appeal followed.

## ¶ 18 II. ANALYSIS

¶ 19 On appeal, respondent argues that (1) the State failed to prove beyond a reasonable doubt that he committed the alleged sexual act; and (2) under the one-act, one-crime doctrine, his convictions for aggravated criminal sexual abuse and criminal sexual abuse must be vacated.

### ¶ 20 A. Sufficiency of the Evidence To Convict

¶ 21 Respondent first contends he was not proved guilty beyond a reasonable doubt of committing the alleged sexual act. We disagree.

¶ 22 "When a defendant challenges the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Evans*, 209 Ill. 2d 194, 209, 808 N.E.2d 939, 947 (2004). Rather, we review the evidence in the light most favorable to the State to determine whether any rational trier of fact could have found the elements of the crime proved beyond a reasonable doubt. *Id.* The trier of fact's findings are entitled to great weight, given that it is in the best position to judge the credibility and demeanor of the witnesses. *People v.*

*Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007). As such, a reviewing court will not substitute its judgment for that of a trier of fact on issues involving the weight of evidence or the credibility of witnesses. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25, 920 N.E.2d 233, 240 (2009). A reversal is warranted only if the evidence is so improbable or unsatisfactory it leaves produces reasonable doubt regarding defendant's guilt. *Evans*, 209 Ill. 2d at 209, 808 N.E.2d at 947.

¶ 23 In this case, to convict respondent of criminal sexual assault, the State had to prove respondent committed an act of sexual penetration and used force or the threat of force. (720 ILCS 5/11-1.20(a)(1) (West 2010) (as amended by Pub. Act 96-1551, art. 2, § 5 (eff. July 1, 2011))). To convict respondent of aggravated criminal sexual abuse, the State had to prove respondent was under 17 years of age, committed an act of sexual conduct, and the victim was under 9 years of age. (720 ILCS 5/11-1.60(c)(2)(i) (West 2010) (as amended by Pub. act 96-1551, art. 2, § 5, eff. July 1, 2011))). To convict respondent of criminal sexual abuse, the State had to prove that respondent committed "an act of sexual conduct by the use of force or threat of force." (720 ILCS 5/11-1.50(a)(1) (West 2010) (as amended by Pub. Act 96-1551, art. 2, § 5 (eff. July 1, 2011))). Here, the State met its burden of proof on all three offenses. The testimony at trial established respondent was 14 years of age and C.S. was 7 when the offenses occurred. At trial, C.S. testified respondent used force when he pulled him into the bathroom, pushed him to his knees, and pulled his head. Respondent also made a threat when he told C.S. not to tell anyone. Testimony at trial further showed respondent committed an act of sexual conduct and sexual penetration when he forced his penis into C.S.'s mouth. Viewing the evidence in the light most favorable to the State, we conclude the State presented sufficient evidence for the trial court to find, beyond a reasonable doubt, respondent committed the alleged sexual act.

¶ 24 Respondent asserts the State failed to meet its burden due to inconsistencies in C.S.'s testimony. For instance, during C.S.'s interview with Detective Burns, C.S. indicated he told his mother about the sexual abuse over the phone while she was in jail, but C.S. testified at trial that he told his mother in person after she was released from jail. The State argues the detective's question was confusing and C.S. was referring to a separate incident involving respondent slapping C.S., and both C.S. and his mother clarified at trial that, in fact, C.S. told his mother about the abuse in person.

¶ 25 Reasonable testimony as a whole by a complainant may be adequate to support a conviction of sexual abuse, even where there are minor inconsistencies or discrepancies. *People v. Pettit*, 245 Ill. App. 3d 132, 138, 613 N.E.2d 1358, 1364-65 (1993). Here, the trial court addressed the inconsistencies as follows:

"The minor's recollection as to space and time is a little less sure or consistent, but that would be expected of a minor this age. His testimony about when he told his mother, the right question has to be asked. On the review of the tape he was asked [']when did you tell your mother,['] but it wasn't as to the incidents in the basement or the van incident. And that has been explained to the court's satisfaction today."

On balance, the trial court found C.S.'s recollection of the underlying sexual abuse remarkably consistent from the time of the interview with Detective Burns to his testimony at trial. As noted above, we will not substitute our judgment for that of a trier of fact on issues involving weight of the evidence or credibility of witnesses. *Siguenza-Brito*, 235 Ill. 2d at 224-25, 920 N.E.2d at 240. Similarly, any discrepancies between C.S.'s testimony that he immediately told Eric and

"might" have told Karen about the abuse and Eric's and Karen's testimony that C.S. never complained to them are credibility issues for the trier of fact to judge.

¶ 26 Moreover, we are not persuaded by respondent's argument that the State failed to meet its burden because its entire case rested on the word of C.S. In a sexual assault case, the victim's testimony alone, if positive and credible, is sufficient to sustain a conviction. *Id.* at 228, 920 N.E.2d at 242 ("the testimony of a single witness, if positive and credible, is sufficient to convict"). Here, the trial court, as the finder of fact, assessed the credibility of the witnesses, drew reasonable inferences, and resolved the conflicting testimony in favor of the State. It found C.S.'s testimony both positive and credible; thus, his testimony alone is sufficient to support respondent's conviction.

¶ 27 B. One-Act, One-Crime Doctrine

¶ 28 Respondent next contends his adjudications for aggravated criminal sexual abuse and criminal sexual abuse violate the one-act, one-crime doctrine enunciated in *People v. King*, 66 Ill. 2d 551, 566, 363 N.E.2d 838, 844 (1977). The State concedes that respondent's surplus adjudications should be vacated because they are predicated on the same act that formed the basis for the criminal sexual assault adjudication. We review *de novo* the issue of whether the case presents a violation of the one-act, one-crime doctrine. *People v. Millsap*, 2012 IL App (4th) 110668, ¶ 17, 979 N.E.2d 1030.

¶ 29 In *King*, the supreme court held that a criminal defendant may not be convicted of multiple offenses when those offenses are all based on precisely the same physical act. *King*, 66 Ill. 2d at 566, 363 N.E.2d at 844. Decisions following *King* have explained that the one-act, one-crime doctrine involves a two-step analysis. *People v. Rodriguez*, 169 Ill. 2d 183, 186, 661 N.E.2d 305, 306 (1996). First, the court must determine whether the defendant's conduct

involved multiple acts or a single act. "Multiple convictions are improper if they are based on precisely the same physical act." *Id.* Second, if the conduct involved multiple acts, the court must determine whether any of the offenses are lesser-included offenses. If an offense is a lesser-included offense, multiple convictions are improper. *Id.* The present case is concerned solely with the first step of the *King* analysis of whether the criminal-sexual-abuse offenses were based on separate acts, each requiring proof of a different element.

¶ 30 Accordingly, we must determine whether respondent's conduct consisted of separate acts or a single physical act. *Id.* Under *King*, the definition of an "act" is "any overt or outward manifestation which will support a different offense." *King*, 66 Ill. 2d at 566, 363 N.E.2d at 844-45. Here, the criminal-sexual-assault allegation asserted that respondent knowingly committed an act of sexual penetration involving "the penis of respondent minor and the mouth of C.S." The aggravated-criminal-sexual-abuse allegation contended that respondent knowingly committed an act of sexual conduct with C.S. involving "the penis of respondent minor and the mouth of C.S." The criminal-sexual-abuse allegation claimed respondent "knowingly committed act of sexual conduct with C.S. involving the penis of respondent minor and the mouth of C.S."

¶ 31 Applying *King* to the present case, we conclude all three counts were based on the same physical act—respondent placing his penis in C.S.'s mouth. While aggravated sexual abuse requires proof of two additional elements, namely that respondent is under the age of 17 and the victim under the age of 9, these are not separate acts of the respondent. They are merely elements which, when considered with the same physical act, prove an additional offense. See *People v. Harvey*, 211 Ill. 2d 368, 390, 813 N.E.2d 181, 195 (2004). Therefore, respondent's convictions for the less serious offenses of aggravated criminal sexual abuse and criminal sexual

abuse must be vacated pursuant to the one-act, one-crime doctrine. *People v. Artis*, 232 Ill. 2d 156, 170, 902 N.E.2d 677, 686 (2009) (where a violation occurs, sentence should be imposed on the more serious offense and the less serious offense should be vacated).

¶ 32

### III. CONCLUSION

¶ 33 For the reasons stated, we affirm respondent's adjudication for criminal sexual assault and vacate the adjudications for aggravated criminal sexual abuse and criminal sexual abuse.

¶ 34 Affirmed in part and vacated in part.