2016 IL App (2d) 140632-U
No. 2-14-0632
Order filed October 4, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ROBERT DALTON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of De Kalb County. No. 03-CF-638 Honorable Robbin J. Stuckert, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Zenoff and Burke concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The circuit court did not abuse its discretion in allowing the State to impeach defendant with his prior convictions where the record shows that the court applied the *Montgomery* balancing test, defendant's credibility was at issue through his testimony at trial which constituted a substantial and material part of his defense, evidence of the prior offenses was before the jury for an independent reason, and the court provided the jury a limiting instruction; and (2) defendant was entitled to a full credit against his $2,000 fine for time spent in pretrial custody.

¶ 2 Following a jury trial in the circuit court of De Kalb County, defendant, Robert Dalton, was convicted of 10 counts of criminal sexual assault (720 ILCS 5/12-13(a)(3), (a)(4) (West 2002)) and 2 counts of child pornography (720 ILCS 5/11-20.1(a)(1), (a)(2) (West 2002)). The

court merged defendant's 10 criminal-sexual-assault convictions into five counts. The court then sentenced defendant to an aggregate sentence of 34 years' imprisonment, consisting of five consecutive terms of 6 years' imprisonment on the criminal-sexual-assault counts consecutive to two concurrent terms of 4 years' imprisonment on the child-pornography counts. The court also assessed a fine of $2,000. On appeal, defendant raises two distinct issues. First, he argues that the circuit court abused its discretion when it allowed the State to impeach him with his prior convictions of criminal sexual assault involving the same victim. Second, defendant contends that he is entitled to a full credit against his $2,000 fine for time spent in pretrial custody. For the reasons that follow, we reject claimant's former argument, but agree that he is entitled to a full credit against his fine for time spent in pretrial custody. Accordingly, we affirm the judgment of the circuit court as modified.

¶ 3 I. BACKGROUND

¶ 4 In 1998, M.C. resided with her mother, L.C., and her brother, C.C., in Leland, LaSalle County, Illinois. That same year, L.C. met defendant at work. Shortly later, L.C. allowed defendant to move in with her family. In 2002, defendant and L.C. moved to a home in Hinckley, DeKalb County, Illinois. In May 2003, M.C., who was born on July 17, 1985, reported to L.C. that defendant began to engage in a course of sexual conduct with her in 1999, while in Leland, and continued to do so through 2003, while the family resided in Hinckley. In December 2003, the allegations were reported to law enforcement and defendant was arrested.

¶ 5 Charges were filed against defendant in both LaSalle County and DeKalb County. The charges at issue in this appeal concern the period of time L.C. and her family resided with defendant in Hinckley. To this end, on August 26, 2004, defendant was charged by amended indictment in the circuit court of DeKalb County with 10 counts of criminal sexual assault (720

ILCS 5/12-13(a)(3), (a)(4) (West 2002)), 10 counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(d), (f) (West 2002)), and 25 counts of child pornography (720 ILCS 5/11-20.1(a)(1)(i), (a)(1)(vii), (a)(2) (West 2002)). The criminal-sexual-assault and aggravated-criminal-sexual-abuse counts alleged that on five occasions between October 2002 and March 2003, defendant committed an act of sexual penetration with M.C. in that he inserted his penis into M.C.'s vagina and that defendant was either a family member of M.C. or held a position of trust in relation to M.C. The child pornography counts alleged that in December 2002, defendant photographed M.C., who was under the age of 18 at the time, and then between December 2002 and January 2004, he reproduced, disseminated, possessed with the intent to disseminate, and exhibited those photographs.[1] While the instant case was pending, defendant was convicted in LaSalle County of four counts of criminal sexual assault against M.C. while she and her family were living with defendant in Leland.

¶ 6 Prior to trial, the State filed notice of its intent to introduce evidence concerning defendant's commission of criminal sexual assault in LaSalle County pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West 2002) (providing that evidence of certain offenses, including criminal sexual assault, "may be admissible (if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant.")). The State asserted that such evidence was

[1] Prior to trial, on defendant's motion, the court severed counts XIV through XXIX of the indictment. Those counts alleged the offense of child pornography in that defendant disseminated, possessed with the intent to disseminate, and exhibited the photographs of M.C. The State later nol prossed these counts. In addition, the State nol prossed all 10 counts of aggravated criminal sexual abuse before defendant's trial began.

admissible to show defendant's propensity to commit acts of sexual penetration against a minor under his supervision. Defendant, in turn, filed a motion *in limine* seeking to bar the State from using the LaSalle County convictions to impeach him in the event that he testified. The circuit court granted the State's motion to admit evidence pursuant to section 115-7.3, but reserved its ruling on whether the State could impeach defendant with the LaSalle County convictions. The court later ruled that, should defendant testify, the State could use the LaSalle County convictions to impeach defendant. In so ruling, the court reasoned that the prejudicial impact of the conviction would be minimized because the jury would have already heard the State's evidence regarding defendant's commission of the LaSalle County offenses. The court further stated that it would give the jury a limiting instruction which "would diffuse any unfair prejudice."

¶ 7 A jury trial commenced on June 14, 2010, at which the following testimony was presented. M.C. testified that she was born on July 17, 1985, and that defendant was 23 years older than her. In 1998, M.C. was living in Leland with her mother, L.C., and her brother, C.C. At that time, both L.C. and defendant worked at the Dominick's grocery store in Geneva. M.C. met defendant in August 1998 when she 13 years old. L.C. and defendant eventually began dating, and defendant moved in with L.C. and her family in Leland. M.C. testified that when defendant first moved in, she did not like him. After a while, however, M.C. and defendant started talking about her life, they became friends, and defendant assumed the role of a "father figure." M.C. noted that defendant "put[] a roof over [her and C.C.'s] heads," paid bills, took her and C.C. out to eat, and helped them with their homework. In the summer of 2002, the family moved with defendant to Hinckley.

¶ 8 M.C. testified that defendant worked the third shift at Dominick's and L.C. worked the second shift. Because defendant and L.C. worked different shifts, there would be occasions when M.C. would be home with defendant in L.C.'s absence. M.C. testified that defendant first had a conversation of a "sexual nature" with her in June 1999 while residing in Leland. In particular, M.C. recalled a day that month when she was sunbathing with a friend. Defendant told M.C. that she needed to shave her pubic hairs because they were showing outside of her swimsuit. Defendant then offered to shave the hair for M.C. M.C. further recalled that in November 1999, defendant told her that it was time for her to learn how to french kiss. Defendant told M.C. that since they were friends, he would let her practice on him. M.C. initially declined, but defendant persisted, and the next day, M.C. finally agreed. After M.C. kissed defendant, he told her that she "needed to put more emotion behind it."

¶ 9 M.C. testified that one evening in December 1999, she was instructed to wake up defendant at 8 p.m. so that he could go to work. After M.C. woke up defendant, they began to talk. M.C. laid next to defendant in bed. Defendant then rolled over, put his hands underneath M.C.'s sweater, and touched her breasts. M.C. froze, and defendant eventually removed his hands. Defendant then sent M.C. to her room and began yelling that it was her fault and that he was going to go to jail. When L.C. came home from work that night, defendant told her that he had accidentally touched M.C.'s breast, that it was M.C.'s fault, and that it would never happen again. Defendant also drafted a written agreement stating that he would not be held liable for touching M.C. Defendant had both L.C. and M.C. sign the document, which was admitted as People's exhibit 14.[2] The agreement, which was undated, provided in part as follows:

[2] Defendant referred to himself as "Defendant" in the agreement.

> "Defendant from Aug 1 1998 to Aug 1 2003 will not be held responsible for all and any sexual [*sic*] misleading conduct from [M.C.]. Defendant has more than once stated to [M.C.] that he *** cannot preform [*sic*] or partake in any sexual conduct with [M.C.] because it is the law and [M.C.] clearly understands this. Any and all sexual mishaps between Defendant and [M.C.] where [*sic*] clearly a misunderstanding on both parties [*sic*] accounts between Aug 1 1998 to Aug 1 2003, and there will be no more sexual mishaps or misconduct of any kind *** between both parties from here on after this date of [*sic*]. [L.C. and M.C.] have both read and clearly understand there will no fault in and account [*sic*] and there will be no sexual or phisical [*sic*] abuse of any kind between [M.C.] and to Defendant [*sic*] ever. Defendant will not be held accountable for [M.C.] this is [L.C.'s] responsibility."

¶ 10 M.C. recounted that the first time defendant had sex with her was on October 13, 2000, in Leland. M.C. related that it was picture day at school and she came home complaining to defendant about her outfit. Defendant started "horsing around" with M.C. and eventually had sexual intercourse with her. M.C. bled on the sheets, and defendant cleaned them with towels and a blow dryer. M.C. also testified about sexual encounters with defendant in Leland on November 6, 2000, December 24, 2000, February 14, 2001, July 16, 2001, November 7, 2001, and July 12, 2002.

¶ 11 M.C. stated that defendant's conduct continued after the family moved to Hinckley in the summer of 2002. M.C. testified that on October 7, 2002, defendant took her and C.C. out for dinner. When they returned, defendant told M.C. that she had to "earn" her dinner. M.C. understood this to mean that defendant wanted "a sexual favor of some sort." Defendant proceeded to remove M.C.'s pants and insert his penis into her vagina. M.C. further testified that

November 7 is defendant's birthday. On that date in 2002, defendant asked M.C. to wear knee highs and then forced her to have sexual intercourse with him as his birthday present.

¶ 12 M.C. testified that in December 2002, defendant took her shopping at Geneva Commons. During the trip, defendant went into Victoria's Secret while M.C. waited in the car. Defendant exited the store with a shopping bag. Later that night, defendant showed M.C. four sets of lingerie that he had purchased. Defendant told M.C. the lingerie was for her. A few days later, defendant asked M.C. to wear the lingerie. M.C. initially refused, but defendant told her that she "needed to put them on," that he wanted to see her in the lingerie, and that "it was either his way or the hard way." M.C. interpreted defendant's remarks to mean that he was going to hurt her or "do something irate," so M.C. put on the lingerie. Defendant then instructed M.C. to pose in various positions while he photographed her. M.C. testified that after taking the pictures, defendant forced her to have sex with him by inserting his penis in her vagina.

¶ 13 M.C. identified People's Exhibits 2 and 3 as several copies of a collage of photographs defendant had taken of her in the lingerie. M.C. testified that the collage includes photographs of her breasts, vagina, and buttocks. One of the photographs shows a close-up view of a penis penetrating a vagina. M.C. testified that it is defendant's penis and her vagina in the photograph. M.C. also testified that the lingerie she is seen wearing in the photographs was purchased by defendant at Victoria's Secret and that a leopard-print bedspread that is visible in some of the photographs belonged to her mother and defendant.

¶ 14 M.C. testified that in February 2003, defendant forced her to have sexual intercourse with him to celebrate Valentine's Day. M.C. also testified that in March 2003, defendant forced her to have sexual intercourse with him after arguing with her about whether she was sleeping with one of her coworkers at the fast-food restaurant where she worked.

¶ 15 In April or May of 2003, M.C. told her mother that defendant was sexually abusing her. L.C. told M.C. that they needed to get away from defendant. However, they did not move out of the house immediately because they had nowhere to go. In the meantime, M.C. tried to stay away from defendant. One exception to this occurred on July 17, 2003, M.C.'s 18th birthday. M.C. testified that she really wanted to get a tattoo, but L.C. would not take her. As a result, defendant accompanied M.C. to the tattoo parlor. M.C. got a large tattoo of a tiger with a rose on her lower back. M.C. noted that the tattoo was not present in the photographs defendant took of her in December 2002.

¶ 16 On July 18, 2003, the day after M.C.'s 18th birthday, L.C., M.C., and C.C. moved out of the house in Hinckley. They first moved to L.C.'s mother's house, and, later to an apartment complex in Batavia. M.C. originally decided not to report defendant's conduct to the police. However, after defendant moved into the same apartment complex and repeatedly harassed M.C. and L.C. throughout the fall and winter of 2003, M.C. changed her mind. To that end, on December 26, 2003, M.C. reported defendant's conduct to the Leland police department.

¶ 17 On cross-examination, M.C. testified that she told police that defendant had only one testicle and that he had a v-shaped scar on his abdomen. M.C. stated that she never reported to police that defendant had a tattoo on his penis. On redirect-examination, M.C. testified that defendant told her he had only one testicle because he "slammed himself in a drawer" when he was seven years old. Defendant showed her an x-shaped scar on his scrotum related to this incident.

¶ 18 L.C. testified that she met defendant in 1998 when they both worked at Dominick's. L.C. allowed defendant to move into her home in Leland, and, shortly thereafter the two began dating. L.C. worked the second shift at Dominick's, and defendant worked the third shift. Defendant

also took classes and worked part time at an auto-body shop during the mornings. This schedule allowed defendant to watch M.C. and C.C. while L.C. was at work. L.C. testified that she trusted defendant with her children. She described defendant's relationship with her children as "very good," noting that defendant made sure the children had dinner every night, showered, completed their homework, and went to bed on time.

¶ 19 L.C. testified that she, defendant, and her children lived in Leland for about four years. L.C. recalled an incident in December 1999, when defendant told her that he had accidentally touched M.C.'s breasts while wrestling with her. Defendant stated that he was sorry and that he wanted L.C. to know about the incident. In 2002, L.C. and defendant purchased a home in Hinckley and lived there together for approximately one year.

¶ 20 L.C. testified that on May 19, 2003, M.C. told her that defendant "was making her kiss him and have sex with him." L.C. wanted to call the police, but M.C. did not, so L.C. decided against reporting defendant at that time. Although L.C. wanted to move out of the house, she had no place to go at the time. To ensure defendant did not have inappropriate conduct with M.C. again, L.C., M.C., and C.C. "did everything as a unit." For instance, if M.C. did not have to work herself, she and C.C. would accompany L.C. to Dominick's and stay there until the end of L.C.'s shift. L.C. acknowledged that she broke from this policy when she allowed defendant to take M.C. get a tattoo on her 18th birthday.

¶ 21 L.C. testified that she, M.C., and C.C. moved out of the Hinckley residence on July 18, 2003, the day after M.C.'s 18th birthday. After moving out, the family initially resided with L.C.'s mother before moving to an apartment complex in Batavia on August 1. L.C. explained that the family was unable to move in with her mother immediately after M.C. told her about the abuse because other elderly relatives were residing in the home.

¶ 22 L.C. testified that after moving to Batavia, the family continued to have problems with defendant for the rest of the year. L.C. recounted one evening in late July 2003, when defendant came into Dominick's while she was working. Defendant told L.C. that he had placed an envelope on her desk and then he left. L.C. went to her desk and found an envelope containing photographs of M.C. M.C. was naked in some of the pictures and wearing lingerie in others. L.C. noted that M.C. did not have a tattoo "on her backside" in any of the photographs, so she was younger than 18. L.C. eventually turned over the photographs to the police. L.C. identified People's Exhibit 24 as copies of the photographs defendant left for her at work.

¶ 23 L.C. further explained that on or about September 1, 2003, defendant moved into an apartment two buildings away from the family. Defendant would walk past L.C.'s apartment and yell obscenities. He would also engage in telephone harassment. On September 24, 2003, L.C. obtained an emergency order of protection against defendant, and in November 2003, she obtained a plenary order of protection. Nevertheless, defendant continued to harass L.C. and M.C. In December 2003, L.C. and M.C. went to the Leland police department to report defendant's conduct.

¶ 24 L.C. testified that defendant did not have any tattoos when she met him. However, while they were dating, L.C. talked defendant into getting one tattoo on each arm. L.C. further testified that defendant did not have a tattoo on his penis at any time during their dating relationship.

¶ 25 On cross-examination, L.C. acknowledged that sometime in December 2003, before she reported defendant to the police, she was served with a civil complaint defendant had filed seeking damages from her. In addition, L.C. admitted that she did not reference defendant's alleged sexual contact with M.C. in her petition for an order of protection, even though M.C. previously reported it to her. She also testified that defendant had a v-shaped scar on his

abdomen and that defendant told her that he had only one testicle. On redirect-examination, L.C. stated that defendant told her that he lost his testicle as a result of a bicycle accident when he was nine years old. She also explained that she did not mention the sexual contact in the petition for an order of protection because M.C. was not ready to report it to the police.

¶ 26 Judith Ptak testified that she knows defendant because L.C., her friend and former roommate, used to date him. On December 12, 2003, Ptak was working at the Casey's General Store in Leland. Defendant came into the store and told Ptak that he had "dumped" L.C. and had started dating M.C. Defendant then left the store, but returned five minutes later to show Ptak "dirty pictures" of M.C. in lingerie. Ten minutes later, Ptak reported the incident to the Leland police department.

¶ 27 Caryn Stechmuller met L.C., M.C., and defendant when she worked at the Casey's General Store in Leland. On Halloween 2003, Stechmuller was working at a Walmart store when defendant approached and related that he had some pictures to show her. Defendant then left the store, but returned a short time later to show Stechmuller what she described as "porn." Stechmuller recognized that the subject in the pictures was M.C. According to Stechmuller, M.C. "had little outfits on" and had her "legs spread open." Defendant told Stechmuller that he took the pictures and that they looked "cool." Defendant also told Stechmuller that he had been "seeing" M.C. for a couple of years and that M.C. was "very young * * * somewhere about 15, 16 years old." On cross-examination, Stechmuller acknowledged that she did not contact the police regarding the incident, although she did report it to the police when they later came to her.

¶ 28 Jerry Koogler testified that he was one of defendant's neighbors in Hinckley. Koogler recalled a conversation he had with defendant between May and December 2003. Specifically, defendant mentioned that he had a "relationship" with his girlfriend's daughter. Defendant also

talked about how his girlfriend's daughter "pranc[ed] around inside the home in less than normal clothing." On cross-examination, Koogler acknowledged that defendant never showed him any pictures of M.C.

¶ 29 Wilbur Gilland was also one of defendant's neighbors in Hinckley. Gilland, a plumber by trade, recalled going to defendant's home regarding a problem with his sump pump. As Gilland was working, defendant talked about his girlfriend's daughter. Defendant told Gilland that it was "hard for him *** to tolerate *** his girlfriend's daughter running around in *** scantily [*sic*] clothing all the time" and that her behavior was "driving [defendant] crazy." Gilland also testified that defendant visited him in the fall of 2003, after defendant had moved out of the house in Hinckley. At that time, Gilland and defendant had a conversation, during which defendant stated that he was going to "get back at" M.C. and L.C.

¶ 30 Michael Maloney is a tattoo artist and the former owner of a tattoo shop in Earlville. Maloney testified that M.C. came into the shop on the morning of July 17, 2003, to get a tattoo for her 18th birthday. M.C. was accompanied by defendant. Maloney had previously met M.C. because he had applied tattoos to her mother and defendant a few times. Maloney placed what he described as a "tribal" tattoo "on the small of [M.C.'s] back lower than her kidneys at about a little bit above her belt line." Maloney took a photograph of the tattoo he applied to M.C., and the photograph was admitted into evidence. Maloney then examined one of the photographs of M.C. taken in December 2002. He was asked if the tattoo he applied to the small of M.C.'s back would have been visible in that photograph if M.C. had the tattoo at the time the photograph was taken. Maloney stated that the tattoo would have been visible and that no tattoo is seen in the photograph. Maloney further testified that although he has placed tattoos on defendant's body,

he has never applied one to defendant's penis. On cross-examination, Maloney testified that he did not know if defendant had tattoo work done by another artist.

¶ 31 Debby Rosenwinkel owns Sugar Grove Self Storage in Big Rock, Illinois. Rosenwinkel testified that in 2003, defendant was renting multiple storage units from her. Sometime between September 26, 2003, and October 10, 2003, defendant approached Rosenwinkel and asked her to substitute his sister's name for his name on one of the storage units he was renting, which was designated as unit 1. Rosenwinkel told defendant that he could not legally transfer the unit and that his sister would have to come in and sign a contract in person. Defendant told Rosenwinkel that he wanted to effectuate the transfer because his doctor told him he had only six months to live and he wanted to make sure that his sister got his belongings. Rosenwinkel testified that defendant's sister eventually came in and signed a contract. However, defendant never surrendered his key to unit 1, Rosenwinkel did not provide defendant's sister with a key to the unit, and Rosenwinkel did not observe defendant remove his belongings from the unit on the date of the transfer. On cross-examination, Rosenwinkel acknowledged that she is not always present to observe when renters bring in and remove items from their storage units.

¶ 32 Officer Jason Swanson testified that he works full time for the Waterman police department and part time for both the Hinckley and Leland police departments. In December 2003, Swanson had contact with L.C. and M.C. as part of an investigation into allegations of criminal sexual assault. As a result of the investigation, on December 30, 2003, defendant was arrested while he was driving his truck. During the booking process, Swanson asked defendant if he had any tattoos, scars, or other marks on his body. Defendant told Swanson that he had two tattoos, one on his arm and one on his shoulder, but never mentioned that he had a tattoo on his penis. Pursuant to the arrest, the police searched defendant's vehicle and found a purple folder

labeled "The Lieing [*sic*] Bitches X-Files." Inside the folder were several documents, including photographs of a white, two-door car, a mortgage statement, a real-estate contract, and the agreement L.C. and M.C. signed purporting to absolve defendant of any liability for "sexual [*sic*] misleading conduct." Swanson also testified that police searched unit 1 at Sugar Grove Self Storage pursuant to a search warrant. Inside the unit, the police found documents addressed to defendant. Swanson also found several pictures of M.C. concealed inside a picture frame. Swanson testified that the pictures were sexual in nature and showed M.C. in lingerie and in "various states of undress." Swanson further testified that one of the pictures depicted an act of sexual penetration. Swanson also recovered from the storage unit lingerie that appeared to be the same as M.C. was wearing in the photographs taken in December 2002 and a leopard-print comforter that looked like one in the same photographs. Swanson identified People's Exhibits 3 and 24 as some of the photographs found inside the picture frame stored in unit 1.

¶ 33 On cross-examination, Swanson testified that defendant showed him the two tattoos he reported, but Swanson did not examine defendant for any scars. Moreover, Swanson did not examine defendant to determine if he had a tattoo on his penis or if he had only one testicle.

¶ 34 Following Officer Swanson's testimony, the State rested. Defendant then moved for a directed verdict. The court denied the motion following argument.

¶ 35 Don Boldan was the first witness for the defense. Boldan used to teach in the auto-body department at Waubonsee Community College (Waubonsee). In 1999, defendant became a student in a one-year certificate program in paint refinishing and frame repair run by Boldan at Waubonsee. Boldan continued to see defendant after he graduated from the program as defendant would occasionally stop by the classroom and volunteer as a class aid. Boldan testified that he helped defendant secure a job at Neat Street auto body shop. According to

Boldan, during defendant's first week of class in 1999, there was a running joke that defendant had a tattoo on his penis. On cross-examination, Boldan testified that he never saw the alleged tattoo.

¶ 36 Linda Sue Johnson-LaRoche, a registered nurse, testified that she had occasion to examine defendant's genitals on July 7, 2010, pursuant to a court order. Johnson-LaRoche's examination revealed a dollar-sign tattoo on defendant's penis. A visual examination of defendant's scrotum revealed a one-inch scar on the right side. Johnson-LaRoche testified that the scar on defendant's scrotum was not x-shaped. Johnson-LaRoche also conducted a manual examination of defendant's testicles. She testified that defendant's left testicle was of normal shape and suppleness. The right testicle, though of normal size, was harder than normal. Johnson-LaRoche testified that the condition of the right testicle could have been the result of many conditions, including the presence of an implant, or even cancer.

¶ 37 Dr. Liping Zhang testified that on December 22, 2009, she treated defendant for a small laceration to his scrotum. Dr. Zhang testified that the laceration measured 0.3 centimeters, which she described as "a very tiny injury." Dr. Zhang testified that the laceration could leave a small scar. Defendant told Dr. Zhang that the injury occurred when his scrotum got caught in a zipper. In treating defendant, Dr. Zhang learned that he had hernia surgery as a child. Dr. Zhang noted that hernia surgery typically leaves a scar in the lower abdominal region, near where the leg meets the abdomen.

¶ 38 Crystal Harrolle, an investigator with DeKalb County, testified that she viewed and photographed defendant's genitals and abdomen on February 18, 2010. Harrolle observed what appeared to be scarring and a "somewhat faded" dollar-sign tattoo on defendant's penis. Harrolle also noted some scarring on the shaft of defendant's penis as well as a faded tattoo and a

small scar on his abdomen. The photographs Harrolle took were admitted into evidence. On cross-examination, Harrolle stated that she does not know when defendant had his penis tattooed.

¶ 39 The parties then stipulated to the testimony of Diana Hilger (defendant's mother) and Dr. P. Ghosh. Hilger would testify that defendant did not as a child have a testicle removed, although he did undergo surgery for a condition known as hydrocele on his right testicle. Dr. Ghosh would testify that he examined defendant on December 28, 2006, for the purpose of making a referral for an orthopaedic consultation. Dr. Ghosh would further testify that the medical and surgical history given to him by defendant included that at a young age, defendant had surgery on his right testicle and a hernia repair.

¶ 40 Defendant next testified on his own behalf. Defendant confirmed that he met L.C. while the two worked at Dominick's. At some point, L.C. asked defendant to "share space" with her family and he "officially" moved into L.C.'s apartment in Leland early in January 2000. Defendant denied having any contact with M.C. prior to that time. In 2002, he and L.C. purchased a house in Hinckley. Defendant testified that when he first moved in with L.C., their relationship was not sexual. Defendant later acknowledged that at one point, he wrote a letter to L.C. complaining that she got "a friend, sex and a roommate" out of their relationship while he got "used."

¶ 41 Defendant testified that from the time he began living in Leland until he moved out of the house in Hinckley, he worked the overnight shift at Dominick's and the day shift at Neat Street auto body in Aurora. Defendant also took an auto painting class at Waubonsee in the evenings. After defendant completed the class at Waubonsee, he occasionally volunteered at the college. As a result, defendant testified that his time at home was "limited." Moreover, defendant did not consider himself a father figure to L.C.'s children. According to defendant, his relationship with

the children was "non-existent." He stated that he did not discipline the children, and he denied providing the children dinner at night.

¶ 42 Defendant testified that he was diagnosed with herpes in 1987. Defendant also testified that he has had a tattoo of a dollar sign on the top of his penis since 1998 and that he also has a scar on the top of his penis. Defendant got the scar from a drill bit accident. According to defendant, the accident left a piece of metal lodged in his penis which makes it painful for him to have intercourse. Defendant testified that he has two testicles. Moreover, he denied that one of his testicles is an implant. He stated that he was treated for hydrocele and a testicular cyst when he was a child. Defendant testified that he has a circular scar on his abdomen as a result of a burn that occurred in October 2002, when he was working on a car.

¶ 43 Defendant denied the occurrence of the sunbathing incident described by M.C. According to defendant, he was not living with L.C. and her children at the time. Defendant also denied having sexual intercourse with M.C. prior to her 18th birthday. Defendant did recall one incident in which M.C. jumped on him while he was in bed, resulting in defendant accidentally touching M.C.'s breast. Following that incident, M.C. left defendant a "nasty note." As a result, defendant drafted an agreement providing that he would not be held accountable for any sexual contact involving M.C. He had L.C. and M.C. sign the agreement identified as People's exhibit 14. Defendant chose the date range of August 1, 1998, to August 1, 2003, for the agreement because those were his best estimates of his first encounter with L.C. and M.C.'s 18th birthday, respectively.

¶ 44 Defendant denied taking or reproducing the photographs in People's exhibits 2 and 3. According to defendant, the penis visible in one of the photographs could not be his because it does not show a tattoo or scar on the penis or the burn mark on the abdomen. Defendant also

denied showing any photos of M.C. to L.C., Ptak or Stechmuller. Defendant testified that he encountered Ptak at some point and showed her the civil complaint he had filed against L.C. Similarly, defendant encountered Stechmuller at Walmart and showed her the lawsuit when Stechmuller asked him how things were going. Defendant also insisted that he did not tell his neighbors that he was dating M.C.

¶ 45 Defendant acknowledged that he took M.C. to get a tattoo on her 18th birthday. According to defendant, on the ride to the tattoo parlor, M.C. stated that she "liked" him and she hinted that she wanted to live with him. Defendant admitted that he had sex with M.C. on her 18th birthday. According to defendant, however, he did not "finish" because it was too painful. Defendant further stated that he tried to have sex with M.C. a couple of other times "in that time frame," but he "failed."

¶ 46 Defendant testified that L.C. moved her family out of the house in Hinckley on July 21, 2003, and that he began moving out his belongings in July or August. When he was moving out of the house, defendant noted there were still items belonging to M.C. inside, including a dress, high-heel shoes, and a burgundy-colored bra. Defendant testified that he put those items with some of his belongings and placed them in a storage unit he rented from Rosenwinkel. However, defendant denied telling Rosenwinkel that he had only six months to live.

¶ 47 Defendant testified that after L.C. and her family moved out of the house in Hinckley, he continued to make payments on the car that M.C. was driving. Defendant took possession of the car in August or September 2003. At that time, he found a number of items in the trunk of the car, including a picture frame and a red negligee. Defendant testified that when he picked up the frame, the backing fell off and he noticed there were photographs in there, but he did not look at them. Instead, he placed the frame in a storage unit with the other items he found in the trunk.

¶ 48 In rebuttal, the State offered into evidence a certified copy of defendant's convictions of criminal sexual assault in the circuit court of LaSalle County. In addition, the State recalled Officer Swanson. Swanson testified that he interviewed defendant on January 13, 2004, at the LaSalle County jail. During the interview, Swanson showed defendant the photographs contained in People's Exhibit 3. Defendant told Swanson that the photographs belonged to him. Defendant also told Swanson that the items recovered as a result of the search of the storage unit, including the lingerie, were his.

¶ 49 After closing arguments, the court instructed the jury. Among the instructions given to the jury was the following: "Evidence of a defendant's previous conviction of an offense may be considered by you only as it may affect his believability as a witness and must not be considered by you as evidence of his guilt of the offense with which he is charged." Following deliberations, the jury found defendant guilty of 10 counts of criminal sexual assault and 2 counts of child pornography. Defendant filed a motion for judgment notwithstanding verdict or a new trial. Among other things, the motion alleged that the trial court erred in denying his motion *in limine* to exclude evidence of his prior convictions in LaSalle County. Defendant's motion was denied.

¶ 50 At the sentencing hearing, the court merged defendant's 10 criminal-sexual-assault convictions into five counts. The court then sentenced defendant to an aggregate sentence of 34 years' imprisonment, consisting of five consecutive terms of 6 years' imprisonment on the criminal-sexual-assault counts consecutive to two concurrent terms of 4 years' imprisonment on the child-pornography counts. Defendant was credited for 7 years and 118 days of time already served in prison. The court also assessed a $2,000 fine on the child-pornography convictions.

See 720 ILCS 5/11-20.1(c) (West 2002). Defendant then filed a motion to reconsider sentence, which was denied on June 25, 2014. This appeal followed.

¶ 51 II. ANALYSIS

¶ 52 A. Use of Prior Convictions for Impeachment

¶ 53 On appeal, defendant first argues that the trial court abused its discretion in allowing the State to impeach him with evidence of his convictions of criminal sexual assault in LaSalle County. According to defendant, because the LaSalle County convictions stemmed from prior conduct involving the same complainant, the prejudicial effect of those convictions far outweighed their probative value. Defendant further contends that the error was not harmless as the evidence against him was not overwhelming. The State responds that the trial court did not abuse its discretion in admitting evidence of defendant's prior convictions for impeachment purposes because the court properly determined that the probative value of admitting the convictions was not outweighed by the danger of unfair prejudice and the court gave the jury a limiting instruction. To the extent that any error occurred, however, the State asserts that it was harmless because, contrary to defendant's position, the evidence of defendant's guilt *was* overwhelming.

¶ 54 When a defendant testifies on his own behalf, prior convictions are admissible for the sole purpose of discrediting him as a witness and not to determine his guilt or innocence in the pending case. *People v. Naylor*, 229 Ill. 2d 584, 594 (2008). In *People v. Montgomery*, 47 Ill. 2d 510 (1971), our supreme court set forth the test used to determine whether a witness' prior conviction should be admitted for purposes of attacking his credibility. Pursuant to *Montgomery*, evidence of a witness' prior conviction is admissible to attack the witness' credibility where (1) the prior crime was punishable by death or imprisonment in excess of one year, or involved

dishonesty or false statement regardless of punishment; (2) less than 10 years has elapsed since the date of conviction of the prior crime or release of the witness from confinement, whichever is later; and (3) the probative value of admitting the prior conviction is not substantially outweighed by the danger of unfair prejudice. *Montgomery*, 47 Ill. 2d at 516.[3] The third prong of the *Montgomery* test requires the trial court to conduct a balancing test, weighing the prior conviction's probative value against its potential prejudice. *People v. Atkinson*, 186 Ill. 2d 450, 456 (1999). In conducting this balancing test, the trial court should consider, among other things, "the nature of the prior conviction, the nearness or remoteness of that crime to the present charge, the subsequent career of the person, the length of the witness' criminal record, and whether the crime was similar to the one charged." *People v. Mullins*, 242 Ill. 2d 1, 14-15 (2011). The determination whether a prior conviction is admissible for impeachment purposes is within the discretion of the trial court. *Atkinson*, 186 Ill. 2d at 456. A trial court abuses its discretion when it reaches a conclusion that is so arbitrary, capricious, or unreasonable that no reasonable person would take the court's view. *People v. Davis*, 248 Ill. App. 3d 886, 891-92 (1993).

¶ 55 Instructive to our analysis is *Atkinson*, 186 Ill. 2d 450 (1999). In that case, the defendant was charged with burglary. Following the defendant's testimony, the State sought to present, for impeachment purposes, evidence of the defendant's two prior burglary convictions. The trial court allowed the request, and the State informed the jury of the fact of the defendant's two prior burglary convictions, as well as the date and place of the convictions. The jury found defendant guilty. On appeal, the supreme court held that the trial court did not abuse its discretion in

[3] The *Montgomery* test is now codified in Rule 609 of the Illinois Rules of Evidence (eff. Jan. 1, 2011).

admitting evidence of the defendant's prior convictions of burglary for impeachment purposes. *Atkinson*, 186 Ill. 2d at 461. The supreme court explained that in adopting the three-prong analysis in *Montgomery*, it "recognized the importance of balancing a defendant's interest against unfair prejudice with that of the State and the jury to dispose of the charge in accordance with the truth." *Atkinson*, 186 Ill. 2d at 458. The court then remarked that "it is the nature of a past conviction, not merely the fact of it, that aids the jury in assessing a witness' credibility." *Atkinson*, 186 Ill. 2d at 458.

¶ 56 In holding that the trial court did not abuse its discretion in finding that the probative value of admitting the defendant's prior burglary convictions was not outweighed by the danger of unfair prejudice to the defendant, the court noted that the defendant's testimony made up his entire defense. *Atkinson*, 186 Ill. 2d at 461-62. As a result, the court found that defendant's credibility was "a central issue" and that the prior convictions "were crucial in measuring defendant's credibility." *Atkinson*, 186 Ill. 2d at 462. The court allowed that a trial court "should be cautious in admitting prior convictions for the same crime as the crime charged." *Atkinson*, 186 Ill. 2d at 463. Nevertheless, it recognized that "similarity alone does not mandate exclusion of the prior conviction." *Atkinson*, 186 Ill. 2d at 463. This is especially so when the jury is instructed to consider the evidence of the defendant's prior convictions only to assess the defendant's credibility, which ensures that the jury understands the limited purpose for which the convictions were admitted. *Atkinson*, 186 Ill. 2d at 463.

¶ 57 Turning to the facts of this case, the record establishes that prior to trial, the court granted the State's motion to admit evidence of defendant's LaSalle County offenses pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2004) (providing, *inter alia*, that evidence of certain offenses, including criminal sexual assault, "may be admissible (if that evidence is

otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant."). Later, when deciding defendant's motion *in limine* to bar the State from impeaching his potential testimony with the LaSalle County convictions, the trial court indicated that it had delayed its ruling to research the issue whether to admit defendant's LaSalle County convictions. Based on its research, the court noted that the same three-step inquiry under *Montgomery* applied where the prior conviction and the charges before the court were for the same offense. The court noted that the first two prongs of the *Montgomery* test were undisputed, that is, the prior crimes were punishable by more than one year in prison and less than 10 years had elapsed since the date of conviction of the prior crimes. The court then considered the third prong of *Montgomery*, whether the probative value of admitting the prior conviction was not outweighed by the danger of unfair prejudice.

¶ 58 The court initially observed that the fact that the past conviction was the same as or similar to the present offenses did not *per se* bar the admissibility of the past conviction. The court then considered that any undue prejudice from the admission of a prior conviction of the same or similar offense can be diminished by giving a limiting instruction. The court stated that it was not aware of the defense's strategy in this case, but opined that "if a defendant's testimony makes up his entire defense, then a trier of fact certainly has the ability to weigh the credibility and should be able to take all of the information in assessing the credibility." Reasoning that it had already allowed the introduction of substantive evidence of the LaSalle County offenses pursuant to the State's section 115-7.3 motion, the court concluded that "any mention of a conviction to those offenses would not substantially outweigh the danger of unfair prejudice." The court elaborated that the jury would "already *** be hearing much of the evidence and to learn that [defendant], in fact, was convicted of those I don't believe substantially outweighs

when I balance all of the factors and that the trier of fact should have the ability to judge the credibility." The court added that it would also give the jury a limiting instruction to "diffuse any unfair prejudice."

¶ 59 Thus, the trial court concluded that the probative value of admitting evidence of defendant's prior convictions was not outweighed by the danger of unfair prejudice. In so holding, the court, in accordance with *Atkinson*, determined that should defendant testify, the jury should be able to use "all of the information" available to assess his credibility. In fact, defendant testified. The court also noted that it had "balance[d] all of the factors" set forth in *Montgomery* and that the jury was going to hear evidence of the LaSalle County offenses pursuant to the State's section 115-7.3 motion.[4] Finally, the court stated that it would give the jury a limiting instruction to "diffuse any unfair prejudice." The court did so instruct the jury. See *Mullins*, 242 Ill. 2d at 19 (finding that the trial court minimized any potential prejudice to the defendant by giving the jury a limiting instruction regarding the narrow use of the defendant's prior convictions); see also *People v. Taylor*, 166 Ill. 2d 414, 438 (1995) (noting that the jury is presumed to follow the instructions that a court gives it). In short, the trial court conducted the *Montgomery* balancing test, it considered the materiality of defendant's testimony, noted that the jury would already be hearing evidence of the LaSalle County offenses, and instructed the jury of the limited purpose of allowing evidence of defendant's prior convictions. Given the trial court's rationale, we cannot say that the its decision to allow the State to present evidence of defendant's prior convictions of criminal sexual assault in LaSalle County was so arbitrary, capricious, or

[4] We note that defendant does not challenge the trial court's decision to admit substantive evidence of his offenses in LaSalle County under section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2002)).

unreasonable that no reasonable person would take the court's view. Accordingly, the trial court did not abuse its discretion in admitting the prior convictions.

¶ 60 Defendant acknowledges that the trial court "made lengthy comments when ruling on [his] motion *in limine*," but claims that the court "said very little." According to defendant, the only portion of the court's comments that touched on the facts of the case was when the court found that the prejudicial impact of the LaSalle County convictions would be reduced by the fact that the jury was already going to hear evidence of his commission of those offenses. However, the parties extensively argued the *Montgomery* balancing test before the trial court. The trial court then reserved ruling on the matter to conduct additional research. When it did rule, the trial court expressly stated that it had "balance[d] all of the factors." Hence, the record shows that the trial court clearly understood and used the *Montgomery* balancing test. The supreme court has declined to find error when the transcript makes it clear that the court was applying the *Montgomery* test, even if it is not expressly articulated. See *Mullins*, 242 Ill. 2d at 18-19; *People v. Williams*, 173 Ill. 2d 48, 83 (1996); but see *People v. McGee*, 286 Ill. App. 3d 786, 793 (1997) (holding that the trial court failed to conduct a meaningful balancing test pursuant to *Montgomery* where the trial court made comments suggesting that it was admitting the defendant's prior convictions without weighing the potential for unfair prejudice). Thus, it is clear to us that the trial court was aware of the *Montgomery* balancing test and gave proper consideration to the relevant factors in concluding that the impeachment was proper.

¶ 61 Defendant also insists that the evidence of his LaSalle County convictions was even more prejudicial than it would be in most cases because it involved an offense that was part of the same course of conduct and with the same victim as the charged offenses. It is true that our supreme court has cautioned that prior convictions for the same crime for which the defendant is

on trial should be admitted "sparingly." *People v. Cox*, 195 Ill. 2d 378, 384 (2001). However, the court has also recognized that "similarity alone does not mandate exclusion of the prior conviction." *Atkinson*, 186 Ill. 2d at 463. This is especially true where the defendant's credibility was a central issue. In this case, unlike in *Atkinson*, defendant's testimony did not make up his entire defense. However, defendant was the primary witness in his case-in-chief and his testimony constituted a substantial and material portion of the evidence presented by the defense. Thus, as in *Atkinson*, defendant's credibility was "a central issue" in this case and, therefore, his prior convictions "were crucial in measuring defendant's credibility." See also *People v. Clay*, 379 Ill. App. 3d 470, 476 (2008) (noting that, under *Montgomery*, a prior conviction has probative value if it may potentially impair the defendant's credibility). Moreover, the court diffused the possibility of any unfair prejudice by giving the jury a limiting instruction providing that defendant's prior conviction was admitted solely for the purpose of assessing defendant's credibility as a witness and not as evidence of his guilt of the offenses charged.

¶ 62 Even assuming that the trial court erred in admitting for impeachment purposes evidence of defendant's prior convictions in LaSalle County, we find the error to be harmless in light of the overwhelming evidence of defendant's guilt. See *In re Rolandis G.*, 232 Ill. 2d 13, 43 (2008) (noting that error is harmless if properly admitted evidence overwhelmingly supports the conviction).

¶ 63 The criminal-sexual-assault counts charged in this case alleged that defendant knowingly committed an act of sexual penetration with M.C. in that he inserted his penis into M.C.'s vagina on five separate occasions between October 2002 and March 2003. The criminal-sexual-assault counts further alleged that: (1) M.C. was under 18 years of age when the act was committed and

that defendant was a family member of M.C. or (2) defendant was 17 years of age or older when the act was committed and he held a position of trust in relation to M.C., who was at least 13 years of age but under 18 when the act was committed. The relevant child pornography counts alleged that in December 2002, defendant photographed M.C., who was under the age of 18 at the time and then, between December 2002 and January 2004, he reproduced those photographs. After reviewing the record, we find that the evidence overwhelmingly supports defendant's convictions of these offenses.

¶ 64 The evidence presented by the State established that M.C. and her family resided with defendant for several years. M.C. testified that she became friends with defendant, confided in him, and considered him a "father figure." M.C. testified that prior to moving to DeKalb County, defendant began to have conversations of a sexual nature with her in 1999 when the family was living in LaSalle County. For instance, in June 1999, while M.C. was sunbathing, defendant offered to shave her pubic hair because it was protruding from her swimsuit. In November 1999, defendant pressured M.C. into french kissing him. In December 1999, defendant touched M.C.'s breasts without her permission and blamed M.C. for his conduct. Defendant then had M.C. and L.C. sign an agreement attempting to absolve him of his actions toward M.C. M.C. also described several incidents of sexual intercourse between her and defendant while she was living in LaSalle County.

¶ 65 M.C. testified that defendant's misconduct continued after her family and defendant moved to Hinckley in mid-2002. M.C. went on to testify that defendant forced her to have sexual intercourse with him in October 2002 and November 2002. M.C. further testified that in December 2002, defendant purchased lingerie for her at Victoria's Secret. A few days later, defendant had M.C. put on the lingerie and instructed her to pose in various positions while he

photographed her. M.C. testified that after taking the pictures, defendant forced her to have sex with him. M.C. testified that defendant forced her to have sexual intercourse with him on two additional occasions, in February 2003 and March 2003. M.C. testified that she was born on July 17, 1985. Thus, she was 17 years of age when the acts at issue were alleged to have taken place. Defendant was 23 years older than M.C.

¶ 66 M.C. identified People's Exhibits 2 and 3 as several copies of a collage of photographs defendant had taken of her in the lingerie in December 2002. M.C. testified that the collage includes photographs of her breasts, vagina, and buttocks. One of the photographs shows a close-up view of a penis penetrating a vagina. M.C. testified that it is defendant's penis and her vagina in the photograph. M.C. also testified that the lingerie she is seen wearing in the photographs was purchased by defendant at Victoria's Secret and that a leopard-print bedspread that is visible in some of the photographs belonged to her mother and defendant. M.C. got a tattoo on her lower back for her 18th birthday. M.C. noted that the tattoo was neither present nor visible in the photographs defendant took of her in December 2002. L.C. noted that M.C. did not have a tattoo "on her backside" in any of the photographs, so she was younger than 18. Maloney confirmed that he applied a tattoo on M.C.'s lower back on her 18th birthday, that the tattoo would have been visible in one of the photographs, and that no tattoo is visible.

¶ 67 In April or May of 2003, M.C. told L.C. that defendant was sexually abusing her. L.C. wanted to call the police, but M.C. did not, so L.C. decided against reporting defendant at that time. L.C. told M.C. that they needed to get away from defendant. However, they did not move out of the house immediately because they had nowhere to go. In July 2003, L.C. and her family moved to her mother's house. L.C. testified that late in July 2003, defendant left copies of the photos of M.C. at her place of employment. M.C. was naked in some of the photographs and

wearing lingerie in others. In August 2003, L.C. and her family moved to an apartment complex in Batavia. Shortly later, defendant moved into a nearby apartment and began harassing L.C. and her family. L.C. obtained an order of protection against defendant, but the harassment continued. As a result, in December 2003, L.C. and M.C. reported defendant's conduct to the Leland police department. Officer Swanson recovered several pieces of evidence from defendant's vehicle and his storage locker, including the agreement defendant had M.C. and L.C. sign in 1999, photographs of M.C. that were sexual in nature, some of the lingerie depicted in those photographs, and the leopard-print comforter seen in some of the same photographs.

¶ 68 The State's evidence further established that defendant reported his relationship with M.C. to his neighbors and to L.C.'s friends. Ptak and Stechmuller both testified that late in 2003, defendant appeared at their places of employment and showed him pictures of M.C. in lingerie which the witnesses described as "dirty" and "porn." Defendant told Stechmuller that he took the pictures and they looked "cool." Defendant told Ptak that he had "dumped" L.C. and was dating M.C. Similarly, defendant told Stechmuller that he had been "seeing" M.C. for a couple of years, and he told Koogler that he had a "relationship" with M.C.

¶ 69 Defendant disputes that the evidence in this case was overwhelming. According to defendant, the only evidence indicating that he engaged in sexual conduct with M.C. prior to M.C.'s 18th birthday was M.C.'s claim that he did. However, the testimony of a single, credible witness may be sufficient to convict (*People v. Smith*, 185 Ill. 2d 532, 541 (1999)), even if the witness is the victim and the defendant's version of events contradicts the victim's version (*People v. Brink*, 294 Ill. App. 3d 295, 300 (1998)). It is the province of the trier of fact to assess the credibility of the witnesses, and here, the jury clearly found M.C. a more credible witness than defendant. See *People v. Wheeler*, 226 Ill. 2d 92, 114-15 (2007) (noting that credibility

findings are entitled to great weight because the trier of fact is best equipped to judge the credibility of witnesses). Nevertheless, defendant insists that M.C.'s testimony was significantly undermined by the fact that she informed her mother, L.C., of the abuse in May 2003, but M.C. and her family continued to live with him for two more months and L.C. allowed him to take M.C. to the tattoo parlor on her 18th birthday. However, L.C. and M.C. offered reasonable explanations for these alleged weaknesses in the evidence. M.C. explained that she and her family did not immediately move out of the house because they had nowhere to go. L.C. confirmed M.C.'s testimony, noting that she wanted to move in with her mother, but was initially unable to do so because of family issues. Similarly, M.C. explained that she allowed defendant to take her to the tattoo parlor because she really wanted the tattoo. The jury could reasonably believe these explanations, and we do not find these explanations so contradictory as to render M.C.'s account of the offenses improbable or unsatisfactory. See *People v. Foley*, 206 Ill. App. 3d 709, 715 (1990) (finding that minor inconsistencies in complainant's account do not necessarily detract from reasonableness as a whole).

¶ 70 Defendant notes that the State presented witnesses who testified that defendant told them that he was dating M.C. and that he showed them lewd photographs of M.C., but asserts that those statements were made and the photographs exhibited well after M.C. turned 18. The significance of M.C.'s age when defendant made the statements or exhibited the photographs is not clear to us, and defendant does not elaborate. Indeed, any significance is diminished by defendant's concession, set forth in his brief on appeal, that M.C.'s tattoo was not present in the photographs, thereby signifying that at least some of the photos were taken prior to her 18th birthday. To the extent that defendant's "dating" history with M.C. is relevant, we also point out that defendant told Stechmuller in December 2003 that he had been "seeing" M.C. for a couple

of years and that M.C. was "very young *** somewhere about 15, 16 years old." Defendant also insists that there was no evidence that he took those photographs of M.C. other than M.C.'s claim that he did. We disagree. Stechmuller testified that defendant told her that he took the pictures and that they looked "cool." Moreover, multiple copies of the photos were found concealed among defendant's possessions in a storage locker he rented and defendant told Swanson that the pictures were his. Thus, contrary to defendant's claim, there was evidence apart from just M.C.'s testimony, both direct and circumstantial, that he took the photographs.

¶ 71 Defendant also argues that the penis shown in one of the pictures cannot be his because there is no tattoo visible in the photograph. Again, however, the jury was entitled to reject this claim. Both L.C. and M.C. testified they were familiar with defendant's genitals and that he did not have a tattoo on his penis during the time the offenses were committed. Likewise, defendant did not mention he had a tattoo on his penis when he was booked by Officer Swanson. In addition, Harrolle testified the tattoo on defendant's penis appeared "somewhat faded." Based on Harrolle's testimony, the jury could have reasonably concluded that, to the extent that defendant had a tattoo on his penis at the time the photographs were taken, it was not visible in the photograph given its tendency to fade in photos.

¶ 72 In short, M.C.'s testimony along with the testimony of the other witnesses and the circumstantial evidence presented by the State overwhelmingly establishes that defendant committed the offenses of which he was convicted. Accordingly, even if the trial court abused its discretion in allowing the State to impeach him with the LaSalle County criminal sexual assault convictions involving M.C., any error was harmless.

¶ 73 B. Credit for Time Served Against Fine

¶ 74 Defendant also contends that he is entitled to a full credit against his $2,000 fine for time spent in pretrial custody pursuant to section 110-14 of the Code (725 ILCS 5/110-14 (West 2002)). Under that provision, any person incarcerated on a bailable offense who does not supply bail and against whom a fine is levied is entitled, upon application, to a credit of $5 per day of presentencing incarceration, with the credit not to exceed the amount of the fine. We note that effective January 1, 2005, the legislature amended section 110-14 to preclude a defendant who is incarcerated for criminal sexual assault or child pornography from receiving the credit. See P.A. 93-699 (eff. Jan. 1, 2005) (amending 725 ILCS 5/110-14 (West Supp. 2005). Defendant asserts, however, that because the offenses of which he was convicted occurred in 2002 and 2003, prior to the effective date of Public Act 93-699, the amendment does not apply to him. The State concedes that precluding defendant from receiving the credit would violate the *ex post facto* provisions of the United States and Illinois Constitutions (U.S. Const., art. I, § 9; Ill. Const. 1970, art. I, § 16); see also *People v. Prince*, 371 Ill. App. 3d 878, 880 (2007) (holding that a fine is a pecuniary punishment imposed as part of a criminal sentence and is subject to the prohibition against *ex post facto* laws; thus, application of amendment precluding defendants convicted of sexually-related offenses from receiving credit against their fines would not apply retroactively to offenses committed prior to effective date of the amendment). In this case, the record establishes that defendant was in custody for 7 years and 118 days prior to being sentenced. Accordingly, we award defendant a full credit against his $2,000 fine for time spent in pretrial custody.

¶ 75 III. CONCLUSION

¶ 76 For the foregoing reasons, we affirm defendant's convictions of criminal sexual assault and child pornography, but modify the judgment of the circuit court of DeKalb County to reflect

that defendant's $2,000 fine is satisfied by a credit for time spent in pretrial custody. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 77 Affirmed as modified.