2017 IL App (4th) 170539-U

NO. 4-17-0539

FILED
December 11, 2017
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re O.M., a Minor	)	Appeal from
	)	Circuit Court of
(The People of the State of Illinois,	)	Vermilion County
Petitioner-Appellee,	)	No. 16JD231
v.	)	
O.M.,	)	Honorable
Respondent-Appellant).	)	Craig H. DeArmond,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Presiding Justice Turner and Justice Knecht concurred.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion by allowing the child-victim's hearsay statements to be admitted into evidence.

(2) The State's evidence was insufficient to establish respondent's guilt of criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) as charged by the State and the matter must be remanded for sentencing on respondent's adjudication of delinquency for aggravated criminal sexual abuse, an offense for which no sentence was imposed by the trial court in the underlying proceedings.

¶ 2 In February 2017, the trial court adjudicated respondent, O.M. (born December 16, 1999), a delinquent minor, finding he committed the offenses of criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) and aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(1) (West 2014)). The court sentenced respondent to five years' probation and he appeals, arguing (1) the court abused its discretion by allowing the admission of the child-victim's

hearsay statements into evidence; (2) the State's evidence was insufficient to establish that he committed the offense of criminal sexual abuse; (3) conditions of his probation were unreasonable, unrelated to his offenses or rehabilitation, and overly broad; and (4) the court erred in the length of the probationary term it imposed. We affirm in part and vacate in part the court's judgment and remand for further proceedings with directions.

¶ 3 I. BACKGROUND

¶ 4 On October 12, 2016, the State filed a petition for adjudication of wardship, alleging respondent was a delinquent minor, in that he committed the offense of criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)) (count I). Specifically, it asserted that, on or about September 17, 2016, respondent committed an act of sexual penetration with K.B. while knowing K.B. "was unable to understand the nature of the act or was unable to give knowing consent." Later, the State amended its petition by adding a second count, alleging respondent committed the offense of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i) (West 2014)) (count II). It asserted that, on or about September 17, 2016, respondent, who was under the age of 17, committed an act of sexual conduct against K.B., who was under the age of nine when the offense was committed.

¶ 5 On December 16, 2016, the State filed a notice of intent to use corroborative complaint witness testimony under section 115-10 of the Code of Criminal Procedure of 1963 (Criminal Procedure Code) (725 ILCS 5/115-10 (West 2014)). On February 6, 2017, the trial court conducted both a section 115-10 hearing and the adjudicatory hearing.

¶ 6 In connection with the section 115-10 hearing, Ashley P. testified K.B. was her eight-year-old son and respondent was her nephew. On October 2, 2016, Ashley was at home

with her family and some friends. K.B. was playing with his nine-year-old stepsister, V.P., when V.P. reported that she had to talk to Ashley about "something important." V.P. then related information to Ashley that V.P. heard from K.B. When Ashley spoke with K.B., he told her "[t]hat he was touched inappropriately" by respondent. More specifically, K.B. reported that respondent "touched [K.B.'s] bad parts." Ashley testified that when K.B. talked about his "bad parts" or "bad spot" he was referring to his penis. Ashley testified K.B. also told her that respondent put his mouth on K.B.'s penis and attempted to put his penis "in [K.B.'s] butt."

¶ 7 According to Ashley, K.B. reported that the inappropriate touching occurred "once in Georgetown and once *** when they were going to [her] wedding rehearsal." She recalled that her wedding rehearsal was on Friday, September 16, 2016 at a farm in Dana, Indiana. The rehearsal dinner was to be held at the fairgrounds in Georgetown, Illinois. Following the rehearsal, Ashley's sister, Amber P., who was also respondent's mother, went to pick up pizza for the rehearsal dinner. Ashley recalled that K.B. and Amber's son C.C. went with Amber to get the pizza while other family members went to the fairgrounds to "set up" for the dinner. According to Ashley, K.B. told her that an incident of inappropriate touching occurred after the wedding rehearsal and before the rehearsal dinner when K.B. "went with [respondent] in [respondent's] car and they went behind the fairgrounds."

¶ 8 Ashley reiterated that K.B. told her respondent "touched him, his penis, his bad spot, and that [respondent] asked [K.B.] to touch [respondent], and that not to say nothing [*sic*]." She recalled that K.B. described that respondent touched K.B. with his mouth and tried to put his penis into K.B.'s buttocks. The following colloquy occurred between Ashley and the State:

"Q. You said a little bit ago that [K.B.] said that [respondent] tried to put

his penis into [K.B.'s] butt; is that right?

A. Yes.

Q. Did [K.B.] say that actually happened, or he just tried?

A. [K.B.] said that it happened, and that he was trying to do it, and [K.B.] pushed him off him.

Q. Okay. So [K.B.] didn't say that [respondent] actually put his penis into K.B.'s butt?

A. He did at first, and then when I talked to him again, that's when he referred to being—he was trying and it hurt and he pushed him off of him.

Q. So he did say it hurt when he was doing it?

A. Yes."

¶ 9 Ashley testified that K.B. told her respondent offered to buy K.B. a video game or give him money if he did not tell anybody what had happened. Further, she stated that while talking about the incident, K.B. was crying, nervous, and scared that Ashley was upset with him.

¶ 10 On cross-examination, Ashley estimated she talked to K.B. by herself for a few minutes and then with her husband for 30 to 40 minutes. Further, she agreed that K.B. described "another incident" in Georgetown in a playroom at Ashley's mother's house; however, Ashley did not know when that incident occurred. She testified that she and her family lived in southern Illinois and had for some time; however, they made frequent trips to the Georgetown area. Ashley testified K.B. "didn't really seem to complain" about the visits and wanted to see his grandparents. On redirect, she testified that K.B. reported respondent put K.B.'s penis in respondent's mouth during the incident that occurred on September 16, 2016, and that respondent tried to put

his penis in K.B.'s butt during the incident at her mother's house.

¶ 11 V.P. testified K.B. was her stepbrother. She recalled playing with him at home in October 2016, when he told her something that she reported to her stepmother. V.P. testified she and K.B. were playing with Legos when K.B. stated that "he had something to tell [V.P.] that was very important." According to V.P., K.B. reported that "when he was at the wedding, that [respondent] was in the bathroom with him, and [respondent] told [K.B.] to put his private into [respondent's] butt." V.P. recalled that K.B. said the incident occurred "at the dinner." V.P. recalled talking to a police officer but did not remember previously telling the officer that the incident occurred while K.B. and respondent were in a car together.

¶ 12 Ephraim Bolin testified he was a police officer for the city of Georgetown. He stated he was "considered as an investigator" and had received interrogation and interview training, which included training on interviewing victims of sexual abuse. Bolin testified he knew that while interviewing potential sex abuse victims he was supposed to ask open-ended, non-leading questions. On October 5, 2016, Bolin interviewed K.B in an interview room at the Georgetown police department. During the interview, he asked K.B. about whether he liked respondent and K.B. stated that sometimes he did and sometimes he did not. K.B. explained that he liked playing video games and guns with respondent but did not like respondent when respondent "tried having S-E-X *** with him."

¶ 13 Bolin testified K.B. reported that, on the evening of the wedding rehearsal, he rode with Amber to Pizza Hut and then left Pizza Hut in a car, alone, with respondent. K.B. asserted respondent drove "near the fairgrounds" and tried to touch K.B.'s penis, which K.B. referred to as his "bad spot." According to Bolin, K.B. further stated that respondent "stuck his pe-

nis between [K.B.'s] buttocks, and [respondent] also put his mouth on [K.B.'s] penis." Bolin testified his interview with K.B. was audio and video recorded. A disc containing the recording of Bolin's interview with K.B. was admitted into evidence at the hearing and played for the trial court. (We note the disc that is part of the appellate record contains not only Bolin's interview with K.B., but also his interviews of Ashley and V.P. Although only K.B.'s interview was referenced at the hearing, both parties refer to the additional interviews in their briefs.)

¶ 14 On cross-examination, Bolin testified he believed K.B. was discussing only one incident with him, which occurred on the day of the rehearsal dinner on September 16, 2016. He also stated he was familiar with the locations of both the Pizza Hut and the fairgrounds and estimate that they were approximately half a mile apart. Further, he testified K.B. stated respondent parked at the fairgrounds near an area where animals were kept. Bolin stated K.B. was describing a building to the southeast of the fairgrounds banquet hall where cattle were shown and kept. He estimated that building was 200 feet from the banquet hall.

¶ 15 At the conclusion of the evidence at the section 115-10 hearing, respondent's counsel objected to the admission of hearsay testimony under section 115-10, arguing simply that the State had not "complied with the dictates that are necessary" for the admission of such evidence. The trial court disagreed, stating that, "[t]aking into consideration both the video and the statements of the persons who heard the statements, I am of the opinion that in considering the time, content[,] and circumstances of the statement[s], there are sufficient indicia of reliability to allow [their] admission."

¶ 16 The matter next proceeded immediately with the adjudicatory hearing and the record indicates the trial court took judicial notice of the testimony and evidence presented at the

section 115-10 hearing. Again, Ashley testified that, on September 16, 2016, her wedding rehearsal was held at a farm in Indiana with most of her family present, including K.B., respondent, and Amber. After the rehearsal, a dinner was planned at a banquet hall at the Georgetown fairgrounds. Ashley testified K.B. left the farm with Amber and C.C. to pick up pizzas from Pizza Hut for the rehearsal dinner. Ashley thought respondent might have also left with them but she was uncertain.

¶ 17 Ashley further testified that, on October 2, 2016, K.B. disclosed abuse to her. She stated he described the abuse as occurring once at Ashley's mother's house and "once in the car." More specifically, he said the abuse in the car occurred "behind the fairgrounds." After her discussion with K.B., Ashley called her parents, a rape-crisis hotline, the Illinois Department of Children and Family Services (DCFS), and the Georgetown police department. She also scheduled an appointment with K.B.'s doctor. Ashley testified that since K.B.'s disclosure of sexual abuse, he was more easily angered and would get frustrated. She stated he had "no patience with anybody anymore" and stayed in his room more often than he used to.

¶ 18 On cross-examination, Ashley testified that on the day of the rehearsal, she arrived at the banquet hall shortly before Amber. She stated she "just remember[ed] [C.C.] and Amber at that point," noting she was "running around setting up tables, putting all the decorations on the tables." Ashley also recalled that Amber and C.C. had pizzas. She did not remember exactly when she saw K.B., stating there were several children "out in the front running around." Ashley recalled seeing respondent at the banquet hall and stated that he had a cast on as the result of an injury to his finger.

¶ 19 K.B. testified he remembered the weekend of his mother's wedding and the wed-

ding rehearsal at the farm. Upon leaving the farm, he went to Pizza Hut with Amber and C.C. He did not recall anyone else being in the car. K.B. testified he left Pizza Hut with respondent. They were alone in respondent's car and headed to a big building at "the carnival." K.B. stated that, on the way to the carnival, he thought they stopped on the side of a road that was close to the carnival.

¶ 20 When asked what happened when the car was stopped, K.B. stated he did not remember. He testified that respondent was in the driver's seat and he had been in the passenger seat. K.B. stated he remained in his seat the whole time, but stated he did not "remember that part" when asked whether respondent remained in his seat. K.B. did testify that respondent used his hand to touch K.B.'s front "private." He denied ever calling his private his "bad spot" and did not remember what respondent did with his hand when he touched K.B.'s private. K.B. also denied that respondent touched K.B.'s private with anything other than his hand. Further, he did not remember if he took off any of his clothes while in the car and denied that respondent did "anything with his mouth."

¶ 21 On cross-examination, K.B. recalled that they went to Pizza Hut on the day of the rehearsal to pick up pizzas for dinner. He testified they picked up two pizzas and he and respondent took pizzas to the dinner in respondent's car. K.B. did not remember if Amber and C.C. took any pizzas with them. Further, he denied that respondent was wearing a cast. K.B. testified that he did not know how long he and respondent were parked on the side of the road. He also did not remember whether his clothes were on or off when respondent touched his private area.

¶ 22 The State further presented the testimony of Dr. Elizabeth Satterly and the parties agreed that she was an expert in pediatrics. Dr. Satterly testified she saw K.B. on October 3,

2016, due to concerns of possible sexual abuse. She stated K.B. reported the following to her: "[H]e said that [respondent] had, at one point, had touched him in [*sic*] his penis and in his anal area. I remember him saying that at one point he had his pants down and [respondent] had his pants down. He said that it was nasty, and that he kept saying he didn't want to say and he didn't want to talk about it, and that is what he told me." According to Dr. Satterly, K.B. did not specify how respondent had touched him on his penis and anal area. Further, he identified respondent as his cousin and repeatedly described the incident as "nasty." Dr. Satterly described K.B.'s demeanor while disclosing information to her as "[v]ery calm, quiet, [and] shy."

¶ 23 Dr. Satterly physically examined K.B., including his genital and anal areas, and described the examination as yielding "normal" results. She noted that signs or symptoms of sexual abuse included "obvious trauma, tearing, fissures, [and] bruising." However, Dr. Satterly also testified that some abuse, including fondling, touching, and incomplete penetration, does not cause physical trauma. Additionally, she stated minor tears could heal quickly, within one to five weeks, leaving no visible trauma at the time of examination. Dr. Satterly agreed that a lack of physical findings did not mean no abuse occurred.

¶ 24 Dr. Satterly testified that nonphysical signs or symptoms of child sexual abuse include behavior changes. She stated children could become depressed or exhibit aggression. Dr. Satterly noted she saw K.B. again on November 7, 2016, for his yearly checkup. At that time, K.B.'s mother reported behavioral changes in K.B. In particular, K.B. was becoming more defiant and aggressive at home.

¶ 25 On cross-examination, Dr. Satterly testified she had seen K.B. once before she examined him in connection with the report of sexual abuse. She estimated that the previous ex-

amination occurred sometime in 2015. Dr. Satterly stated she did not notice any outward differences in K.B. between the time of his 2015 and 2016 visits. Further, she acknowledged that the behavioral differences in K.B. were reported by his mother and not something that she observed. Dr. Satterly also acknowledged that K.B. reported that a boy who was his father's neighbor had done similar things to him, but he did not go into detail. She testified K.B. did not relay when the incident with his father's neighbor occurred but he did state that the incident with respondent happened "the month before" and "was at the wedding."

¶ 26 Respondent presented the testimony of his mother Amber. Amber stated she lived in Georgetown and had two children, respondent and C.C. On September 16, 2016, she attended Ashley's wedding rehearsal at a farm in Dana, Indiana with her children. Amber testified she left the farm in her vehicle with respondent, C.C., and K.B., intending to pick up pizzas for the rehearsal dinner. Prior to getting the pizzas, Amber stopped by her house so that respondent could get his own car. She then drove to her father's house to pick up cigarettes before travelling with C.C. and K.B. to Pizza Hut in Georgetown where respondent was waiting for them.

¶ 27 Amber testified she picked up 10 pizzas and 5 orders of breadsticks. Pizza Hut allowed her to use its delivery bags to keep the pizzas warm. Amber stated respondent took one bag, K.B. took a bag containing breadsticks, and C.C. took the remaining bag. They then left Pizza Hut to go to the banquet hall building at the fairgrounds for the rehearsal dinner. Amber traveled with C.C. in her vehicle while K.B. traveled with respondent in respondent's vehicle. She testified she followed right behind respondent's vehicle and observed the back of his vehicle all the way to the fairgrounds. Amber denied observing any unusual movements of either the vehicle or the people inside.

¶ 28 Amber agreed that the fairgrounds were approximately half a mile from Pizza Hut and estimated that it took her two minutes to get there. Amber asserted she and respondent parked their vehicles and she and C.C. met respondent and K.B. at the door and walked into the banquet hall at about the same time. Amber further testified that respondent was suffering from a left hand injury at the time of the rehearsal and was wearing a hard cast. She denied noticing anything unusual about K.B.'s behavior on the night of the rehearsal.

¶ 29 On cross-examination, Amber agreed that respondent and K.B. were alone in respondent's car. Further she acknowledged that she was not in the car with them and did not see what occurred.

¶ 30 Respondent testified on his own behalf, stating he was 17 years old. On September 16, 2016, he attended the wedding rehearsal in Dana, Indiana, and left the rehearsal with Amber, C.C., and K.B. Respondent stated Amber dropped him off at his vehicle and he drove to meet her at Pizza Hut. He recalled that they picked up three or four black totes containing pizzas and breadsticks. Respondent testified he took some of the pizzas with him in his car and drove to the fairgrounds with K.B. He asserted they drove directly to the banquet hall without stopping. Upon arriving, he stated he "sat there" and saw his mother get out of her car. Both he and K.B. then grabbed the pizzas and met his mother at the front door. Respondent asserted they all entered the banquet hall together.

¶ 31 Respondent testified he was wearing a cast on his left hand at the time of the rehearsal due to fracturing his pinky finger while playing football. As a result, he was unable to grip his steering wheel with his left hand and had to drive using only his right hand. Respondent denied touching K.B.'s private part in any way. Further, he testified he parked his vehicle by the

front doors of the banquet hall. Respondent denied that he went to any other area or to the rear of that building.

¶ 32 On cross-examination, respondent agreed that he left Pizza Hut alone with K.B. Further he agreed that his mother took some of the pizzas to the fairgrounds in her car.

¶ 33 At the conclusion of the hearing, the trial court took the matter under advisement. On February 10, 2017, it entered a 16-page order, making specific findings relative to both the section 115-10 hearing and the adjudicatory hearing. Ultimately, the court found respondent guilty of both counts against him. On February 27, 2017, respondent filed a posttrial motion, challenging the sufficiency of the evidence against him and arguing the trial court erred in granting the State's motion to permit hearsay testimony pursuant to section 115-10.

¶ 34 On April 26, 2017, the trial court conducted a dispositional hearing in the matter. The record reflects the court reviewed a social history investigation report; a juvenile sex offender evaluation and risk assessment; a juvenile detention center court report; and a victim-impact statement. Those documents showed on September 21, 2015, the State previously filed a petition for adjudication of wardship, alleging respondent committed the offense of aggravated criminal sexual abuse; however, on August 30, 2016, respondent was found not guilty of that offense. Respondent did not have any other significant contacts with law enforcement or criminal history.

¶ 35 The social history investigation further showed that, since November 15, 2016, respondent had been detained at the Vermilion County Juvenile Detention Center. Previously, he lived with his mother and 12-year-old brother in Georgetown. He did not have contact with his father. Additionally, respondent was a junior in high school and had been attending Danville Area Community College "in dual enrollment." Since March 2016, respondent worked at a

McDonald's restaurant in Georgetown. Additionally, respondent's mother reported that, in 2008, respondent was sexually assaulted by his stepbrother and he underwent counseling.

¶ 36 Further, the juvenile sex offender evaluation and risk assessment placed respondent in the low-moderate risk category and found he "seem[e]d to have protective factors present" that could "assist in the potential reduction of recidivistic tendency." The assessment identified those protective factors as a willingness to comply with supervision requirements, being amenable to therapy recommendations and substance abuse/chemical dependency treatment, and support from respondent's family.

¶ 37 No additional evidence was presented during the dispositional hearing. Following the parties' arguments, the trial court sentenced respondent to commitment in the Illinois Department of Juvenile Justice (DOJJ) for an indeterminate period, not to exceed four years. It noted count II merged with count I and it was entering sentence as to only count I. Further, in imposing respondent's sentence, the court stated it had found K.B. and his stepsister were credible but not respondent or his mother. The court relied heavily on its finding that respondent's mother lied for him at trial. As a result, it concluded that, contrary to the findings of the sexual offender evaluation and risk assessment, the support of respondent's mother did not represent a protective factor which would make it less likely for respondent to reoffend.

¶ 38 On May 8, 2017, respondent filed a motion to reconsider his sentence. He argued the trial court erred in sentencing him to DOJJ because he had no prior delinquency adjudications and the imposed sentence was contrary to the findings of the sex offender evaluation; statutory directives that set forth a preference for probation; and respondent's behavior while confined to the Vermilion County Juvenile Detention Center.

¶ 39 On June 26, 2017, the trial court conducted a hearing in the matter. At the outset of the hearing, respondent's counsel drew the court's attention to respondent's posttrial motion, which had been filed on February 27, 2017, but which had not been specifically ruled upon. The court determined, however, that "we did address all those things at the time of both arguing and at the close of the sentencing hearing when I commented. So I'll show that that is preserved for purposes of appeal."

¶ 40 The trial court next addressed respondent's motion to reconsider his sentence. It stated there was a lot about respondent's case that caused it concern, noting it had "no question" that respondent committed the offenses at issue and that his mother was willing to lie to keep him out of trouble. However, the court also noted that respondent had no prior criminal history and had spent 163 days in detention and 2 months in DOJJ. After rereviewing respondent's sex offender evaluation and risk assessment, respondent's social history investigation report, and the requirements for sending a minor to DOJJ, the court stated it believed there were community-based services that would adequately monitor respondent's behavior, protect the public, and address respondent's issues. It then granted the motion to reconsider and resentenced defendant to a period of five years' probation subject to various terms and conditions.

¶ 41 This appeal followed.

¶ 42 II. ANALYSIS

¶ 43 A. Section 115-10 Hearsay Evidence

¶ 44 On appeal, respondent argues the trial court abused its discretion by allowing K.B.'s pretrial hearsay statements to be admitted into evidence at trial pursuant to section 115-10 of the Criminal Procedure Code (725 ILCS 5/115-10 (West 2014)). He argues the State failed to

establish that K.B.'s statements were trustworthy and reliable. In particular, respondent contends the challenged statements were unreliable because they (1) were not spontaneous or consistent, (2) were made over two weeks after the alleged abuse at the fairgrounds occurred and after an unknown period of time following the alleged abuse at his grandmother's home, (3) did not contain terminology that was unexpected of an eight-year-old child, and (4) were similar to allegations that K.B. "lodged against his father's neighbor." Additionally, respondent challenges K.B.'s recorded statement to Bolin on the basis that the State failed to show that other, previous interviews of K.B. did not compromise Bolin's interview.

¶ 45 Section 115-10 of the Criminal Procedure Code provides that in prosecutions involving a physical or sexual act perpetrated upon or against a child under the age of 13, the following evidence may be admitted at trial as an exception to the hearsay rule:

> "(1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and
>
> (2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim." 725 ILCS 5/115-10(a) (West 2014).

For such testimony to be admissible, the trial court must find "that the time, content, and circumstances of the [victim's] statement provide sufficient safeguards of reliability." 725 ILCS 5/115-10(b) (West 2014).

¶ 46 When determining the reliability of a child's hearsay statement, relevant but nonexclusive factors for consideration include "(1) the spontaneity and consistent repetition of the

statement; (2) the mental state of the child in giving the statement; (3) the use of terminology not expected in a child of comparable age; and (4) the lack of a motive to fabricate." *People v. Bowen*, 183 Ill. 2d 103, 120, 699 N.E.2d 577, 586 (1998). As the proponent of the out-of-court statement, the State bears the burden of establishing its reliability and that it was not the result of manipulation or prompting by an adult. *People v. Lara*, 2011 IL App (4th) 080983-B, ¶ 36, 958 N.E.2d 719.

¶ 47 On review, we will not reverse the trial court's decision to admit evidence under section 115-10 of the Criminal Procedure Code unless the record clearly demonstrates that the court abused its discretion. *People v. Williams*, 193 Ill. 2d 306, 343, 739 N.E.2d 455, 474 (2000). "Determinations of the credibility of witnesses, the weight to be given their testimony, and reasonable inferences to be drawn from the evidence lie in the province of the trier of fact." *Lara*, 2011 IL App (4th) 080983-B, ¶ 41, 958 N.E.2d 719. "An abuse of discretion occurs when the trial court's determination is arbitrary, fanciful, or unreasonable or when no reasonable person would agree with the stance adopted by the trial court." *People v. Applewhite*, 2016 IL App (4th) 140558, ¶ 57, 68 N.E.3d 986.

¶ 48 Further, "[u]nder our deferential standard of review, we evaluate the trial court's finding that hearsay statements are sufficiently reliable for admission under section 115-10 of the Criminal Procedure Code by considering the totality of the circumstances surrounding the making of the statements at issue." *People v. Stull*, 2014 IL App (4th) 120704, ¶ 85, 5 N.E.3d 328. "In so doing, we do not focus on the evidence presented at trial, but instead, only on the evidence presented at the pretrial hearing concerning the reliability of the victim's hearsay statements." *Id.*

¶ 49 Here, the trial court's written order contained specific findings with respect to its

section 115-10 determination. The record reflects it considered the nonexclusive factors for consideration set forth in the case authority as well as other relevant factors and determined "there were sufficient safeguards of reliability to allow" the statement to be admitted into evidence. We find no abuse of discretion in the court's decision.

¶ 50 1. *Spontaneous and Consistent Repetition*

¶ 51 First, the trial court found K.B.'s initial disclosure to V.P. was spontaneous and uninvited and "his descriptions thereafter [were] reasonably consistent." The record supports these findings, showing K.B.'s first disclosure of abuse, which he made to V.P., was unprompted and that all of his disclosures were consistent in several significant respects. Specifically, K.B. consistently reported to V.P., Ashley, and Bolin that respondent engaged in acts of sexual conduct with him and indicated that those acts occurred on the day of his mother's wedding rehearsal. Further, he reported to both Ashley and Bolin that the acts occurred while he was alone with respondent in respondent's car and indicated that respondent's car was parked at or near the fairgrounds where the rehearsal dinner was being held. Further, respondent described similar acts of sexual conduct to both Ashley and Bolin.

¶ 52 On appeal, respondent points out various ways in which he believes K.B.'s statements were inconsistent and which he argues warrant a finding of unreliability. We disagree. As stated, K.B. was consistent as to the salient facts. Further, we find the inconsistencies that are present are most likely the result of K.B.'s statements being filtered through and reported by other individuals, *i.e.*, his mother and V.P.; the young age of both V.P. and K.B.; and the sensitive subject matter. Ultimately, we find any inconsistencies in K.B.'s statements do not render them unreliable.

¶ 53 We note respondent also challenges Bolin's interview with K.B. by arguing K.B.'s statements were the product of Bolin's leading questions. Again, we disagree. The trial court expressly addressed the recorded interview, stating as follows:

> "[T]he Court considered the training and experience of *** Bolin, the fact that he understood the limitations on the manner of questioning a child witness and, for the most part, the manner in which he exhibited his understanding and use of proper interviewing techniques when he interviewed K.B. on the video-recording.
>
> In fact, there were several instances where *** Bolin either inadvertently or intentionally misstated or misunderstood what K.B. said and K.B. was quick to correct him."

We find the record supports the court's findings. In particular, it shows that "for the most part" Bolin utilized nonleading, open-ended questions during his interview with K.B. Notably, the recording shows Bolin began his questioning regarding the incident at issue by asking K.B. whether he liked respondent. When K.B. responded that he did "a little bit and a little bit not," Bolin asked him why. K.B. reported he liked when respondent played games with him but not when respondent did "disgusting stuff." When Bolin asked K.B. what he meant, K.B. responded "he wants to have S-E-X with me." Bolin asked K.B. when that happened and K.B. responded, indicating it occurred at his grandmother's house and on the night of the wedding rehearsal.

¶ 54 2. *Mental State of the Child in Giving the Statement*

¶ 55 Here, the trial court also addressed K.B.'s mental state in giving the statements. It noted Ashley testified that when she spoke with K.B. he was crying, nervous, and scared that she was upset with him. The court found these behaviors were "consistent with the circumstances." It

also determined that K.B. "came across as a credible witness" during the recorded interview with Bolin. These findings are supported by the record and we note respondent does not challenge findings related to this particular factor on appeal.

¶ 56 3. *Use of Unexpected Terminology*

¶ 57 On review, respondent does argue that terminology K.B. used when describing what occurred fails to support the reliability of his statements because he used language "with which an eight year old would be familiar," *i.e.*, "bad spot," "S-E-X," and "butt." We disagree and find respondent has misinterpreted the significance of this factor for consideration.

¶ 58 In *In re Brandon P.*, 2013 IL App (4th) 111022, ¶ 40, 992 N.E.2d 651, this court held that a child victim's use of terminology "one would expect from a child of [the victim's] experience" weighed in favor of reliability. There, we specifically noted the three-year-old victim "used the phrase 'pee pee' to describe her private parts." *Id*; see also *People v. Johnson*, 2016 IL App (4th) 150004, ¶ 57, 55 N.E.3d 32 (holding a child-victim's statements were sufficiently reliable where the child "used language, such as 'special spot' and 'my private,' that would be expected of a child of her age"). Similarly, in *People v. Lara*, 2011 IL App (4th) 080983-B, ¶ 39, 958 N.E.2d 719, we held that the child-victim's statements were reliable where the child used age-appropriate language, *i.e.*, " 'pee pee,' " when describing "conduct with which a typical four- or five-year-old child would not and should not be familiar." See also *People v. Burgund*, 2016 IL App (5th) 130119, ¶ 249, 66 N.E.3d 553 (finding the content of a child-victim's statements tended to support their reliability where the child's statements "were stated in age-appropriate terms" but reflected "a knowledge of sexual activity that is unexpected and unusual for a three-year-old child"). Thus, contrary to respondent's contention on appeal, the use of age-

appropriate language by a child victim supports, rather than opposes, a finding of reliability.

¶ 59 We note respondent cites *People v. Cookson*, 335 Ill. App. 3d 786, 780 N.E.2d 807 (2002), to support his argument. There, we held that a child-victim's out-of-court statements were considered reliable, in part, based on her use of "descriptive terminology unexpected from a seven year old." *Id*. at 792, 780 N.E.2d at 811. However, a close review of that case shows the child victim used both age-appropriate terminology, *i.e*., " 'thingy' " and "butt," as well as slang terms to graphically describe sexual activity that should not have been within the knowledge of a seven-year-old child. *Id*. at 790-91, 780 N.E.2d at 810. We find *Cookson* is consistent with the aforementioned cases and does not stand for the proposition that the use of age-appropriate language by a child victim when describing sexual activity weighs in favor of finding the child's statement unreliable.

¶ 60 Here, K.B. used age-appropriate language to describe sex acts that one would not expect to be within the knowledge and understanding of an eight-year-old child. As set forth in the cases above, such circumstances weigh in favor of reliability.

¶ 61 4. *Motive to Fabricate*

¶ 62 On appeal, respondent further suggests that K.B. had a motive to fabricate his allegations against respondent because he also reported that some type of similar conduct occurred with a boy who was a neighbor of his father's. Initially, we note that evidence of K.B.'s allegations against his father's neighbor was presented during Dr. Satterly's trial testimony. Such evidence was not presented at the section 115-10 hearing. As stated, when determining whether hearsay statements are sufficiently reliable under section 115-10, we must only consider the evidence presented at the section 115-10 pretrial hearing and not the evidence presented at trial.

Stull, 2014 IL App (4th) 120704, ¶ 85, 5 N.E.3d 328. Thus, consideration of this additional allegation by K.B. is not appropriate when determining whether the trial court erred in finding K.B.'s hearsay statements admissible under section 115-10. Additionally, even if we were to consider such evidence, we cannot say that it demonstrates a motive by K.B. to fabricate the allegations he made against respondent or that it warrants a finding of unreliability. As discussed, K.B.'s allegations against respondent were detailed, descriptive, and first spontaneously made to his stepsister.

¶ 63 5. *Delay in Reporting*

¶ 64 On appeal, respondent also asks this court to consider K.B.'s delay in accusing him, suggesting the delay supports a finding that K.B.'s statements were unreliable. However, "[d]elays in reporting sexual acts do not automatically render a child victim's statements inadmissible." *Cookson* 335 Ill. App. 3d at 792, 780 N.E.2d at 811. In this case, we find nothing remarkable about the delay that occurred between the time of the alleged abuse and K.B.'s first disclosure—either when considered alone or in relation to other factors. We note, although the record contains little information regarding the incident that reportedly occurred at K.B.'s grandmother's house, this was apparently uncharged conduct. Further, the record does show that K.B. reported the incident on which the charges were based only 16 days after it occurred. As the trial court found, "[t]he delay in reporting was not significant."

¶ 65 6. *Influence of Other Interviews on Recorded Interview*

¶ 66 Finally, respondent additionally challenges K.B.'s recorded statement to Bolin by arguing the State failed to show that other interviews of K.B. by his mother and stepfather did not compromise Bolin's interview.

¶ 67 To support his argument, respondent relies on *People v. Zwart*, 151 Ill. 2d 37, 44-45, 600 N.E.2d 1169, 1172 (1992). In that case, a three-year-old victim made statements to her mother concerning a sexual assault by the defendant, which the trial court found admissible under section 115-10 of the Criminal Procedure Code. *Id*. at 43, 600 N.E.2d at 1171. On review, the supreme court found an abuse of discretion by the trial court on the basis that "the State failed to demonstrate that the circumstances surrounding the victim's statements support[ed] the reliability of those statements." *Id*. at 45, 600 N.E.2d at 1172. It noted that, "[p]rior to making statements implicating the defendant, the victim was interviewed by at least three persons respecting the alleged sexual abuse," including a police officer, a DCFS worker, and a counselor. *Id*. at 44, 600 N.E.2d at 1172. Further, it pointed out that "the State had failed to introduce any evidence regarding the substance of those interviews." *Id*. It stated as follows:

> "Without such evidence, it was impossible for the trial court to determine whether the victim was questioned in a suggestive manner or was encouraged to accuse the defendant of sexual abuse. It was also impossible for the trial court to determine whether the victim's precocious knowledge of sexual activity was due to sexual abuse, as the State claims, or was the result of suggestive interview techniques." *Id*. at 44-45, 600 N.E.2d at 1172.

The court stated it was "particularly troubled by the fact that the victim made her statements only after substantial adult intervention" and emphasized that "the victim was interviewed by at least three persons before she even admitted that she was abused or implicated the defendant." *Id*. at 46, 600 N.E.2d at 1173.

¶ 68 We find *Zwart* factually distinguishable from this case. Notably, although re-

spondent argues the State's evidence was lacking, the record reflects it did present evidence regarding the nature and circumstances of Ashley's discussion of the incident with K.B on the day of his disclosure. K.B. was also significantly older than the three-year-old victim in *Zwart* and his initial report of abuse was made spontaneously and not following "substantial adult intervention." Additionally, in reaching its decision, the trial court in this case found as follows: "There was nothing about the nature or circumstances of subsequent questioning[, *i.e.*, questioning that followed K.B.'s spontaneous report of abuse,] which would appear to lead to unreliable responses. K.B. was very clear about what he was saying happened to him and in none of the circumstances where he was questioned were specific responses suggested to him."

¶ 69 Again, the trial court's findings are supported by the record. Considering the totality of the circumstances in this case, we reject respondent's contention that the State failed to establish that K.B.'s statements to Bolin were uncompromised by previous "interviews." Ultimately, we find no abuse of discretion by the trial court in holding K.B.'s statements to V.P., Ashley, and Bolin were sufficiently reliable and admissible under section 115-10.

¶ 70 B. Sufficiency of the Evidence

¶ 71 On appeal, respondent also argues his adjudication for count I, criminal sexual assault (720 ILCS 5/11-1.20(a)(2) (West 2014)), must be vacated because the State failed to meet its burden of proof. Specifically, he argues the State failed to present sufficient evidence to establish that he (1) committed an act of sexual penetration with K.B. and (2) knew K.B. was unable to understand the nature of the act or was unable to give knowing consent. The State concedes error based on respondent's second contention.

¶ 72 Under section 11-1.20(a)(2) of the Criminal Code of 2012 (720 ILCS 5/11-

1.20(a)(2) (West 2014)), a person commits criminal sexual assault when he commits an act of sexual penetration with the victim and "knows that the victim is unable to understand the nature of the act or is unable to give knowing consent." In *People v. Lloyd*, 2013 IL 113510, ¶ 40, 987 N.E.2d 386, the supreme court held that, for this particular offense, "the State is required to show that the defendant knew that some fact prevented the victim's ability to understand the act, or give knowing consent to it, other than evidence that he knew of the victim's young age." Further, it stated as follows:

> "[T]he State has successfully met this burden in the past by showing the accused knew the victim's state of mind prevented him or her from understanding the nature of the act, or from giving knowing consent, because the accused knew the victim was severely mentally disabled, intoxicated, asleep, or unconscious at the time of the act, and the evidence was not based solely on his or her knowledge of the victim's status as a minor." *Id*.

¶ 73 In this case, the State agrees it "only established that respondent knew K.B.'s age at the time of the offense," which it acknowledges is insufficient to support an adjudication of delinquency under *Lloyd*. It further acknowledges respondent's adjudication for count I, criminal sexual assault must be vacated. We accept the State's concession and vacate respondent's adjudication on count I.

¶ 74 We note that in addition to asserting that his adjudication for count I should be vacated, respondent maintains that his case should be remanded to the trial court for sentencing on count II. Remand for resentencing is unnecessary where "[t]he circuit court sentenced [the] defendant separately on each conviction, and the record does not otherwise show that the court

considered the vacated convictions in imposing sentence on the remaining conviction." *People v. Maggette*, 195 Ill. 2d 336, 354-55, 747 N.E.2d 339, 350 (2001). Additionally, "where the judgment of the reviewing court is an affirmance of a trial court's judgment of conviction, but that judgment remains incomplete because no sentence had been entered thereon, the reviewing court must order the judgment to be made final by the imposition of a sentence." *People v. Dean*, 61 Ill. App. 3d 612, 619-20, 378 N.E.2d 248, 254 (1978).

¶ 75 Here, the record shows the trial court determined respondent's adjudication for count II, aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i) (West 2014)), merged into count I. As a result, it imposed sentence only on count I and no sentence was imposed in connection with count II. On review, we affirm respondent's adjudication of delinquency as to count II, but note that it remains incomplete due the lack of an imposed sentence. At oral argument, the State conceded that remand for sentencing on count II is necessary and we agree. Under the circumstances presented, because we must vacate the court's judgment as to count I, we also must remand the matter to the trial court for sentencing on count II.

¶ 76 C. Sentencing Issues

¶ 77 On appeal, respondent additionally raises two challenges to the sentence imposed by the trial court. However, because we vacate respondent's adjudication in connection with count I and remand the matter to the trial court for sentencing on count II, we find it unnecessary to address these contentions. Further, we note that should similar issues arise on remand, respondent will have the opportunity to address them first with the trial court, which he did not do in the underlying proceedings.

¶ 78 III. CONCLUSION

¶ 79 For the reasons stated, we vacate respondent's adjudication of delinquency for criminal sexual assault (count I), affirm respondent's adjudication of delinquency for aggravated criminal sexual abuse (count II), and remand the matter for sentencing on the latter offense.

¶ 80 Affirmed in part and vacated in part; cause remanded with directions.