

NOTICE
Decision filed 06/29/18. The text of this decision may be changed or corrected prior to the filing of a Petition for Rehearing or the disposition of the same.

2018 IL App (5th) 150501-U

NO. 5-15-0501

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

NOTICE
This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

THE PEOPLE OF THE STATE OF ILLINOIS,)	Appeal from the
)	Circuit Court of
Plaintiff-Appellee,)	St. Clair County.
)	
v.)	No. 13-CF-1587
)	
)	
JONATHAN YON,)	Honorable
)	Robert B. Haida,
Defendant-Appellant.)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Barberis and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held:* The circuit court did not abuse its discretion by allowing out-of-court statements of the victim, who was under the age of 13 at the time of the crime, pursuant to section 115-10 of the Code of Criminal Procedure of 1963, and the defendant was found "not not-guilty" beyond a reasonable doubt. Therefore, the Office of the State Appellate Defender's motion to withdraw is granted, and the decision of the circuit court is affirmed.

¶ 2 The defendant, Jonathon Yon, appeals being found "not not-guilty" on two separate charges: predatory criminal sexual assault and aggravated criminal sexual abuse perpetrated against a minor. The Office of the State Appellate Defender (OSAD) was appointed to represent the defendant. OSAD filed a motion to withdraw as counsel,

alleging that there is no merit to the appeal. See *Anders v. California*, 386 U.S. 738 (1967). The defendant was given proper notice and granted an extension of time to file briefs, objections, or any other document supporting his appeal. The defendant did not file a response. We considered OSAD's motion to withdraw as counsel on appeal. We examined the entire record on appeal and found no error or potential grounds for appeal. For the following reasons, we grant OSAD's motion to withdraw as counsel on appeal and affirm the judgment of the circuit court of St. Clair County.

¶ 3

BACKGROUND

¶ 4 Following an indictment on charges of predatory criminal sexual assault and aggravated criminal sexual abuse, the defendant's attorney indicated that he had a *bona fide* doubt concerning the defendant's fitness to stand trial. Ultimately, the trial court found the defendant unfit to stand trial and scheduled a discharge hearing.

¶ 5 Prior to the discharge hearing, the State filed a motion seeking to admit out-of-court statements made by the victim, E.V., pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2012)).

¶ 6 At the hearing on the motion, the State tendered Lindsey Reichert as an expert "in forensic interviewing." Reichert testified that she had been a forensic interviewer with the St. Clair County Child Advocacy Center (CAC) from October 2012 to February 2015. She had conducted around 750 forensic interviews of children. Reichert holds a master's degree in social work. She is also involved in peer review in her field of work. Reichert was accepted as an expert witness. She explained that, as is proper, she asked E.V. no leading questions. Similarly, Reichert discussed with E.V. the difference between telling

the truth and lying. During the interview, E.V. mentioned abuse suffered by other children in a matter-of-fact manner, but she became much more emotional when asked about her experience with the defendant. E.V.'s statement indicated that the defendant penetrated her digitally and also touched her breast. Reichert also testified that E.V. gave pretty good detail about the event and when it occurred. A video of the interview was entered into evidence.

¶ 7 On cross-examination, Reichert admitted that there were some discrepancies in a couple of reports she made regarding interviews of other children. One such discrepancy was that the report indicated that the child was "88" years old. On cross-examination, the defendant attempted to show that the CAC was in general an unreliable source of information.

¶ 8 The defense presented no witnesses, and the court granted the State's motion to allow the hearsay evidence. In its order, the court indicated that it had reviewed the video of the interview.

¶ 9 At the discharge hearing, E.V. testified and the State entered the video of the interview of E.V. into evidence. E.V. testified that in the summer of 2013, she was living in a house with numerous individuals, including the defendant. One evening around midnight, she awoke to find the defendant had two of his fingers moving back and forth in her vagina. This continued for 10 minutes. During those 10 minutes, the defendant also grabbed one of her breasts. E.V. was not able to leave because the defendant was holding her down. E.V.'s testimony mirrored that given by her in her interview with Reichert. The defendant called one witness, his mother. The defendant's mother testified that the

defendant was living with her from mid-July to around October 2013. But on cross-examination, she admitted that the defendant was living in the same house as E.V. during the first part of July 2013. Additionally, the defendant's mother testified that there was bad blood between the defendant's family and E.V.'s family. Following the discharge hearing, the circuit court found the defendant "not not-guilty" and remanded him to the custody of the Department of Human Services (DHS) for a period of up to two years pursuant to section 104-25 of the Code (725 ILCS 5/104-25 (West 2012)). This appeal followed.

¶ 10

ANALYSIS

¶ 11 OSAD's motion to withdraw presents potential arguments that it believes have no arguable merit. First, did the circuit court allow improper hearsay evidence? Second, was the defendant proven "not not-guilty" beyond a reasonable doubt? OSAD also contends that there are no meritorious procedural or jurisdictional issues that could be raised.

¶ 12 When a defendant is found unfit to stand trial, he is remanded to the care of DHS for a time defined by the legislature. If after that time he is still unfit to stand trial, a discharge hearing is held. 725 ILCS 5/104-23, 104-25 (West 2012). There are two possible outcomes following a discharge hearing: first, the defendant can be acquitted, and second, the defendant can be found "not not guilty." *People v. Olsson*, 2011 IL App (2d) 091351, ¶ 4. If the defendant is not acquitted, he is again remanded to the custody of the DHS for up to a maximum time determined by statute in an attempt to make him fit to stand trial. In this case, the defendant was subject to a two-year term of custody.

¶ 13 The court's decision that the defendant is "not not-guilty" is only proper if the court determines that the defendant was guilty beyond a reasonable doubt; we review the court's determination of this decision in the same manner as we do in a criminal trial—we will only overturn the finding of not not-guilty if no rational trier of fact could have found the defendant "not not-guilty." *People v. Collins*, 106 Ill. 2d 237, 261 (1985); *People v. Mayo*, 2017 IL App (2d) 150390.

¶ 14 We now review whether the court's finding of "not not-guilty" was beyond a reasonable doubt. The State brought two charges: predatory criminal sexual assault and aggravated criminal sexual abuse. We will look at each charge separately.

¶ 15 The elements of predatory criminal sexual assault are: the defendant is over the age of 17; the victim is under 13 years of age; and an act of sexual penetration. 720 ILCS 5/11-1.40(a)(1) (West 2012). A copy of the defendant's birth certificate was entered into evidence leaving no doubt that he was older than 17. E.V.'s testimony made clear that she was under the age of 13 at the time of the attack. E.V. testified that the defendant placed two fingers inside her "girl parts" and moved them back and forth. Additionally, the trial court found that this was done for the purpose of sexual gratification. Based on the evidence presented at the discharge hearing, a rational trier of fact could have found the defendant "not not-guilty."

¶ 16 A person 17 years old or more commits aggravated criminal sexual abuse when he or she commits an act of sexual conduct with a victim under the age of 13. 720 ILCS 5/11-1.60(c)(1)(i) (West 2012). Sexual conduct consists of knowingly touching or fondling by either party directly or through clothing of the sex organs, anus, or breasts for

the purpose of sexual arousal. 720 ILCS 5/11-0.1 (West 2012). It also includes any transmission of semen by the accused upon any part of the victim, whether they are clothed or unclothed, for the purpose of sexual arousal. *Id.* As described above, we find that no reasonable fact finder could find that the elements of this crime were not proven by the State.

¶ 17 We review the issue of whether or not the hearsay evidence was properly admitted using an abuse of discretion standard, that is, the decision of the trial court will not be overturned unless no reasonable person or jury could ever reach the decision under review. *People v. Bowen*, 183 Ill. 2d 103, 120 (1998); *People v. Pollock*, 2014 IL App (3d) 120773.

¶ 18 In addition to the common-law exceptions to the rule that hearsay testimony is not admissible, the legislature has provided certain statutory exceptions. The exception relevant here is found in section 115-10 of the Code. 725 ILCS 5/115-10 (West 2012). Under that section, hearsay evidence of a victim of a sexual crime who was under 13 at the time of the crime is admissible provided that the court finds that "the time, content, and circumstances of the statement provide sufficient safeguards of reliability" (725 ILCS 5/115-10(b)(1) (West 2012)) and, additionally, as is relevant to this case, the victim testifies at the hearing or trial. 725 ILCS 5/115-10(b)(2)(A) (West 2012)).

¶ 19 Reviewing the evidence presented regarding the circumstances of E.V.'s interview, we make special note of the video of the interview of E.V. After viewing that interview, we find it likely would have been an abuse of discretion not to allow hearsay evidence in this case. We also note that the video, which was presented to the court in the discharge

hearing, similarly strengthens our conviction that no reasonable court could have found the defendant other than "not not-guilty."

¶ 20 After reviewing all of the evidence and argument, we see no abuse of discretion. There is no evidence showing a lack of credibility of E.V. and much evidence indicating E.V.'s interview was credible.

¶ 21 Finally, we agree with OSAD that there are no meritorious arguments regarding procedure or jurisdiction that could be raised on appeal.

¶ 22 **CONCLUSION**

¶ 23 The circuit court properly found the defendant "not not-guilty." It did not abuse its discretion in any way. OSAD's motion for leave to withdraw is granted, and the circuit court of St. Clair County's order is affirmed.

¶ 24 Motion granted; judgment affirmed.