NOTICE
Decision filed 10/24/18. 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) 170491-U

NO. 5-17-0491

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,	)	Clinton County.
	)	
v.	)	No. 16-CF-99
	)	
CHARLES H. SHUMARD,	)	Honorable
	)	Stanley M. Brandmeyer,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE OVERSTREET delivered the judgment of the court.
Presiding Justice Barberis and Justice Moore concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant's convictions are affirmed where the evidence adduced at trial supported the jury's finding of guilt, and the defendant's claims of error are without merit.

¶ 2 The defendant, Charles H. Shumard, argues that his convictions for aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2016)) should be vacated because the State failed to prove his guilt beyond a reasonable doubt. He alternatively argues that he should be granted a new trial on the underlying charges. For the reasons that follow, we affirm.

¶ 3 BACKGROUND

¶ 4 On July 6, 2016, the State charged the defendant with two counts of aggravated criminal sexual abuse. The charges alleged that on July 3, 2016, the defendant committed two acts of sexual conduct with his 15-year-old daughter, B.S., by touching her breasts and inserting his finger into her vagina. See 720 ILCS 5/11-0.1 (West 2016) (" 'Sexual conduct' means any knowing touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus, or breast of the victim or the accused ***."). An amended information alleging the same offenses followed. On September 6, 2017, the cause proceeded to a jury trial where the following evidence was adduced.

¶ 5 Detective Sergeant Charlie Becherer of the Clinton County sheriff's department testified that on the afternoon of July 4, 2016, he received a phone call from Sergeant Mark Berndsen of the Breese police department. Mark advised Becherer that B.S.'s mother, Christina, who was a friend of Mark's, had reported that her husband, the defendant, might have sexually assaulted their daughter, B.S. Later that day, Christina and her friend, Diane Coppotelli, who worked for the O'Fallon police department, went to see Becherer at his office.

¶ 6 After speaking with Christina about the incident in question, he later spoke with B.S. Becherer testified that he had determined that it had not been necessary or appropriate for B.S. to undergo a sexual assault examination, which is "obviously an extremely personal exam." Becherer explained that because the reported allegation involved digital penetration without pain, an examination would not have revealed anything of evidentiary value. Becherer testified that he had investigated over 200 sex

offense cases over the course of his 31-year career in law enforcement and that had B.S. indicated that she had experienced any tearing or physical discomfort, he would have considered having her examined.

¶ 7 Becherer later photographed the Shumard residence, where the alleged incident took place, and its detached garage. Becherer noted that the distance from the house to the garage was approximately 35 feet. Becherer also made copies of a series of text messages that Christina and B.S. had exchanged between 9:19 p.m., on July 3, 2016, and 12:31 p.m., on July 4, 2016, and a series of text messages that Christina and Belinda Marshall had exchanged between 9:35 p.m., on July 3, 2016, and 3:57 p.m., on July 4, 2016. The photographs and messages were admitted into evidence without objection.

¶ 8 Becherer acknowledged that he was not familiar with the Department of Children and Family Services' manual for mandated reporters, which "suggests" that sexually inactive girls be physically examined in sexual assault cases involving allegations of digital penetration. He further acknowledged that he could not state with certainty what a physical examination of B.S. might have revealed.

¶ 9 B.S. testified that she was 16 years old. When the incident in question occurred, she was 15 and living with her parents and her twin brother, A.S., at the family's home in Beckemeyer. B.S. testified that on July 3, 2016, she had been at the house with her family and several family friends. The friends were Mark and his wife, Kathy Berndsen; Diane and her son G.C.; and Diane's boyfriend at the time, Dave Potthast.

¶ 10 B.S. testified that at some point that afternoon, she and the defendant had gone to the Walmart in Carlyle to purchase ingredients to make cookies "from scratch." She

stated that Mark and Kathy had left around the same time. B.S. testified that during the trip to Walmart, the defendant had shown her "pictures on his phone of a girl masturbating." B.S. testified that the defendant had never done that before, and she had "let it slide" as a "one[-]time" thing.

¶ 11 After dinner, B.S. and the defendant started making cookies in the kitchen. A.S. and G.C. were upstairs playing video games. Christina, Dave, and Diane were outside in the detached garage. B.S. testified that all of the adults were drinking alcohol.

¶ 12 B.S. testified that while she was standing in front of the oven checking on the cookies, the defendant had approached her from behind and started "grinding his penis on [her] butt." B.S. walked away shocked and sat down on a nearby barstool. The defendant followed her and sat on an adjacent stool. As they were sitting on the barstools, A.S. came downstairs and got a soft drink from the refrigerator in the garage. After A.S. went back upstairs, the defendant then pulled his penis out of his shorts, grabbed B.S.'s hand, and "tried to make [her] touch it." B.S. quickly pulled her hand away. The defendant told her that he knew that she was "cool" and would never "go and say anything." B.S. testified that the defendant had then offered to give her money if she would "let him lick [her] private area" or have sexual intercourse with him. B.S. responded by telling him that she "couldn't do it because it was wrong."

¶ 13 B.S. indicated that she had subsequently moved toward the sink and sat down on the kitchen counter. The defendant followed and began making himself a whiskey drink at the sink. He then slid his left hand up B.S.'s shirt and his right hand down her shorts. B.S. stated that the defendant had used his right middle finger to rub and touch her

vaginal area inside and outside her underwear and had used his left hand to fondle her breasts under her bra. The defendant stopped "in an instant" when he heard Diane come into the house. The defendant licked his finger, "continued to pour his drink," and "acted normal like nothing was going on."

¶ 14 B.S. testified that she had felt scared and "lost" because the defendant had never inappropriately touched her before. She indicated that she had not immediately run to tell someone what had happened because she feared that the defendant might have physically stopped her from doing so. When Diane entered the kitchen, Diane "didn't know what was going on." Diane told the defendant that she wanted him to come back out to the garage. Diane left the kitchen, and the defendant followed her outside. B.S. "bolted out the front door" and ran to her friend Alexis Monken's house. B.S. explained that she had not stayed around to tell Christina what had happened because Christina was in the garage where the defendant had just gone. B.S.'s "first instinct was to get out of the house and get away." B.S. testified that she had not felt safe at the time and that Alexis's house was the "closest place [she] could trust."

¶ 15 B.S. testified that she had called Alexis on the way to her house, crying and advising that she was coming over and needed to talk. B.S. testified that after telling Alexis what had happened, she had told Alexis's mother, Belinda. Belinda comforted B.S. and told her that she had been through a similar experience. B.S. testified that in the meantime, the defendant and Christina had been texting her that she needed to come home. B.S. indicated that her parents had threatened to ground her or call the police if she did not immediately return. B.S. testified that she had not contacted the police at that

point because she had wanted to tell Christina what had happened before any measures were taken. B.S. testified that Belinda had suggested that B.S. tell Christina what had happened "in person." At 9:19 p.m., B.S. texted Christina and asked if she could spend the night at Alexis's. Belinda subsequently texted Christina advising her that B.S. was at the house, was okay, and would talk to her in the morning.

¶ 16 When Christina came to pick B.S. up the next day, B.S. told her "the main part of the story" but did not tell her the "whole story." Christina hugged B.S., cried, and told her that she was sorry. B.S. stayed at Alexis's house while Christina went to see Mark. B.S. returned home after the defendant was gone and spoke with Detective Becherer later that day.

¶ 17 B.S. testified that prior to the incident in question, she and the defendant had always gotten along well. They "hung out together" and "used to do everything together." B.S. testified that there had not been any conflicts between her and her parents on July 3, 2016. She explained that her relationship with her parents had been "very close" and that she had "probably" been closer to the defendant than she had been with Christina. B.S. did not recall getting into a fight with A.S. on July 3, 2016, but she indicated that she and A.S. had frequently fought. B.S. testified that she had not sustained any vaginal injuries as a result of the defendant's conduct and that she had not wanted to undergo a sexual assault examination. B.S. reiterated that the defendant had never previously touched her in an inappropriate manner. B.S. acknowledged that the incident had been a life-changing event. B.S. stated that she had not spoken with the defendant since July 3, 2016, and that Christina had since divorced him.

¶ 18 Alexis testified that she was 16 years old and lived in Beckemeyer with her mother, Belinda. She stated that she and B.S. were best friends and had known each other for years. Alexis estimated that it took 15 minutes to walk from her house to B.S.'s.

¶ 19 Alexis testified that on the night of July 3, 2016, B.S. had called her crying, stating that she was on the way over. When B.S. arrived, she was visibly upset and still crying. Alexis testified that B.S. was a "very tough girl" who did not cry easily and that she had never seen B.S. as upset as B.S. had been that night. Alexis hugged her, and B.S. told Alexis, in Belinda's presence, that the defendant had "tried to rape her." Alexis and B.S. then proceeded upstairs to Alexis's room, where B.S. disclosed the details of the encounter.

¶ 20 Alexis testified that B.S. had reported that the defendant had offered to pay her money if she allowed him to lick her vagina or put his penis in her vagina. B.S. further advised that the defendant had put his hand on her breast and touched her vagina with his fingers. B.S. told Alexis that the defendant had never done anything like that before. Alexis stated that B.S. had also reported that the defendant had tried to get her drunk so that "she could relax more with it." Alexis testified that after the defendant was arrested, B.S. had "felt like it was her fault." Alexis explained that the whole situation "really broke" B.S. because B.S. and the defendant "used to be really best friends."

¶ 21 Belinda testified that she had known B.S. for at least 10 years and that B.S. had always been "a pretty strong girl." On the night of July 3, 2016, when B.S. arrived at Belinda's house, B.S. was shaking and upset. B.S. told Belinda and Alexis that the defendant had inappropriately touched her. She and Alexis then went upstairs. B.S. later

came down and told Belinda that while she was baking cookies, the defendant had put his hands down her pants and touched her breast. B.S. acted like she was afraid to go home. Belinda texted Christina advising that B.S. was upset and could spend the night with Alexis. Belinda testified that she had not told Christina what B.S. had reported because B.S. had indicated that the adults at the house had been drinking, and Belinda did not want Christina to "overreact." Belinda also called the "Beckemeyer policeman," Ken McElroy. He was on vacation, however, so he told her to call another department or the Department of Children and Family Services. Belinda opted to do neither and decided to let Christina address the situation the next day.

¶ 22 Belinda testified that the following morning, she had called Christina and asked her to come over to the house so that they could talk. Belinda explained that "[a]s a mom, [she] could not imagine hearing something of that nature over the phone." When Christina arrived, B.S. nervously told her what had happened. Christina was stunned. Belinda and Alexis were later interviewed at the sheriff's department. Belinda acknowledged that she had told B.S. that a "similar type of thing had happened to [her]."

¶ 23 Dave testified that he and Diane had dated in 2016 and had frequently socialized with the Berndsens and the defendant's family. Dave estimated that he had attended four gatherings at the defendant's house and had gone camping with the defendant's family three or four times. On the night in question, Dave arrived at the house around 7:30 p.m., after receiving a text message from Diane. When he arrived, Diane and Christina were in the garage; the defendant was inside the house; and the Berndsens had already left. Dave

was in the garage having drinks with Christina and Diane when the defendant came out "for just a little bit."

¶ 24 At approximately 8 p.m., Dave and the defendant went inside the house, where Dave made himself a plate of food. Dave went back to the garage, and the defendant stayed inside the house. The defendant briefly returned to the garage 45 minutes to an hour later, stating that he was going to help B.S. make cookies. Dave did not see the defendant after that. Dave testified that he had left when Diane and Christina indicated that they had "laundry and stuff to do." Dave testified that based on the other times he had been there, he had been surprised that the defendant had not spent more time socializing in the garage that night. Dave testified that the defendant had seemed "a little bit drunk."

¶ 25 Diane testified that she had been an officer with the O'Fallon police department for 19 years. On the afternoon of July 3, 2016, Diane, G.C., and the Berndsens decided to visit the defendant's family following a camping trip. Diane testified that the adults had spent most of the day in the garage, while the children had been in the house. Diane testified that the Berndsens had left sometime before 5 p.m.

¶ 26 After eating dinner around 6:30 p.m., Diane, Christina, and the defendant hung out in the garage. Diane testified that Dave had stopped by later on and had also hung out in the garage. At some point, the defendant went back inside to make cookies with B.S. and was away from the garage for an hour or two. Diane testified that she had gone in the house to use the restroom multiple times over the course of the evening and had done so twice while the defendant was inside. On the first occasion, when Diane asked the

defendant to come back out to the garage, he told her that B.S. wanted him to help with the cookies. On the second occasion, when Diane asked him again, the defendant went out and socialized "for a little bit" before going to bed. Diane testified that B.S. and the defendant had been in the kitchen on both occasions. Diane had not noticed any differences in B.S.'s behavior, and both times, the defendant had been sitting on a barstool. Diane explained that on both occasions, her primary focus had been on using the restroom. Diane testified that she had ended up spending the night and that she and Christina had gone to bed after the defendant had.

¶ 27 Diane testified that the following morning, she and G.C. had gone home sometime between 8 a.m. and 9 a.m. Christina later called her at home. Christina was "hysterical" and "distraught." After speaking with Christina, Diane called Mark. Diane then told Christina to meet her at Mark's house. When they met at Mark's, Christina seemed like "she was in a daze." Diane testified that after they spoke with Mark, she and Christina had gone to the Clinton County sheriff's department and spoken with Becherer.

¶ 28 Diane acknowledged that A.S. and B.S. had gotten into a fight earlier in the day. Diane testified that she had "yelled at them to stop" and that the defendant had subsequently addressed the fight with both of them. Diane stated that she and Christina had thought that B.S. had gone to Alexis's house because B.S. had been upset about the fight.

¶ 29 Mark testified that he was a police officer in Breese and had known Christina for several years longer than he had known the defendant. On the afternoon of July 3, 2016, Diane, G.C., Mark, and his family stopped by the defendant's house to visit following a

camping trip at Carlyle Lake. Mark testified that the adults had socialized in the garage while the kids stayed inside the house and played. Mark and his family left around 5 p.m.

¶ 30 Mark testified that the next day, Diane had called him, and she and Christina had later come to his house. When Christina arrived, she was "crying uncontrollably" and could "hardly walk." Christina told Mark that B.S. had reported that the defendant had "fingered" her and fondled her breast. After speaking with Christina, Mark called Becherer and arranged for him to meet with her. Mark acknowledged that after B.S. and A.S. had gotten into a fight, he and the other adults had told B.S. that she "didn't need to take any crap from any man."

¶ 31 Christina testified that prior to the incident in question, she and the defendant had a good marriage. The month before, the family had vacationed in Florida with Diane, G.C., and the Berndsens, and it had been an enjoyable trip. Christina testified that on the afternoon of July 3, 2016, the same group had gathered at her home. The adults were socializing in the garage, and the kids were inside the house. A.S. and G.C. were upstairs playing video games. At some point, A.S. and B.S. got into a fight, and the defendant had gone inside to "handle it." Christina testified that after the Berndsens left around 5 p.m., B.S. and the defendant had gone to Walmart before dinner.

¶ 32 Christina testified that after eating dinner in the kitchen, she and Diane had gone back out to the garage, and the defendant had stayed inside. Dave later stopped by and was also in the garage. When Christina went inside to use the bathroom, B.S. was baking cookies, and the defendant was sitting on a barstool. Christina witnessed nothing unusual. The defendant eventually returned to the garage. Christina estimated that the defendant

had been inside the house with B.S. for approximately two hours. Christina did not see B.S. again that night, but B.S. texted her asking if she could spend the night with Alexis. Belinda later texted Christina advising her that B.S. was upset but okay. Christina thought that B.S. was probably upset and embarrassed about having fought with A.S. while the guests were at the house. After Dave left, Diane and G.C. ended up spending the night.

¶ 33 Christina testified that the following morning, Belinda had called her indicating that B.S. needed to tell her something in person. When Christina advised the defendant that she was going to Belinda's to find out "what was going on," the defendant had not asked to go with her. When Christina arrived, Belinda had her sit down in the living room. When B.S. entered the living room, she "started sobbing." When B.S. told Christina what had happened, Christina was shocked and "didn't want to believe it." Christina then left, called Diane, and eventually went to Mark's house. After speaking with Mark and Diane, Christina spoke with Becherer and told him what B.S. had reported. Christina testified that Diane had recommended that she not confront the defendant.

¶ 34 Christina acknowledged that she had later divorced the defendant without ever having discussed with him what had allegedly happened. She further acknowledged that during their 16-year marriage, the defendant had never done anything that would have led her to believe that he was capable of molesting B.S. Christina indicated that other than "young teenage girl" things that occasionally came up, her relationship with B.S. had been positive prior to the incident and was still positive. Christina testified that B.S. "had nothing to gain by lying about this."

¶ 35 A.S. testified on the defendant's behalf. A.S. stated that Christina had informed him of B.S.'s allegations against the defendant and that he had been present when the defendant was arrested. A.S. testified that he and B.S. had often fought, but he still loved her. He described the fight that they had had on July 3, 2016, and explained that B.S. had seemed upset afterwards. A.S. indicated that the defendant had appropriately dealt with the situation. A.S. stated that he and B.S. had had limited contact with each other the rest of the day. A.S. testified that he and G.C. had hung out and watched movies. A.S. recalled grabbing a soft drink from the garage while the defendant and B.S. were baking cookies.

¶ 36 On July 4, 2016, A.S. and the defendant were watching a movie together but were unable to finish it because the defendant was arrested at their home. A.S. testified that he had not seen the defendant again until "the divorce court ended." A.S. indicated that he had started seeing the defendant again after the divorce and wanted to continue seeing him. A.S. testified that he had never seen the defendant do anything sexually inappropriate with B.S.

¶ 37 The defendant testified that he was 44 years old and was employed as a construction worker. He explained that he had lost his previous job as an assistant manager of a concrete company due to B.S.'s allegations against him. The defendant testified that during the gathering at his home on July 3, 2016, the adults had been drinking in the garage, while the kids played in the house. The defendant indicated that he had not been intoxicated. The defendant testified that he had reprimanded A.S. about fighting with his sister and had tried to console B.S. because the fight had upset her.

¶ 38 The defendant testified that after he and B.S. returned from Walmart, B.S. had wanted him to help her make cookies. The defendant denied B.S.'s allegations that he had shown her a pornographic image on his phone and had molested her while they were alone in the kitchen. The defendant indicated that he had been sitting on a barstool the majority of the time that he had been in the kitchen and had occasionally gone outside to smoke. The defendant recalled that Christina and Diane had come into the house several times to go to the bathroom, which was "right off the kitchen."

¶ 39 The defendant testified that the allegations against him were "sick" and that he would never do anything that would hurt his family. The defendant testified that he and B.S. had been best friends and had participated in a variety of outdoor activities together. The defendant acknowledged that B.S. had not been causing any problems for him or Christina.

¶ 40 The defendant denied seeing Dave on the night in question but acknowledged that he had been at the house. The defendant acknowledged that when Becherer interviewed him on July 4, 2016, he had told Becherer that B.S. was honest. The defendant denied initially telling Becherer that he had only occasionally been in the kitchen with B.S. while she was making the cookies. The defendant denied that his story had changed over the course of the interview. The defendant testified that B.S. had lied about what had happened.

¶ 41 As a rebuttal witness, Becherer testified that the defendant's trial testimony was inconsistent with what he had said when interviewed on July 4, 2016. A recording of the interview was then played for the jury.

¶ 42 At the outset of the interview, Becherer advised the defendant that he was investigating an accusation regarding something that had happened the previous evening. The defendant explained that the adults who had gathered at his house had been drinking out in the garage; A.S. and G.C. had been upstairs or in the living room; and B.S. had been in the kitchen making cookies. When asked if B.S. had been making the cookies by herself, the defendant stated that "every once in a while" he had gone inside to make sure the cookies were not burning. The defendant denied being in the kitchen with B.S. "the whole time" and insisted that he had gone back and forth from the garage to the kitchen all night. The defendant acknowledged that he had been "drinking quite a bit" that day and had been "feeling pretty good."

¶ 43 When asked about B.S., the defendant stated that she was a "great kid" who had occasional issues like any other kid. The defendant agreed that she was honest, but he denied that anything sexual had occurred between them in the kitchen. The defendant stated that he had "no idea" why B.S. might have alleged otherwise. The defendant repeatedly agreed that B.S. had no reason to lie about what she was claiming. The defendant repeatedly denied having done anything inappropriate. He further indicated that nothing could have happened in the kitchen because Christina and Diane had gone back and forth from the garage to the kitchen all evening, as he had.

¶ 44 When Becherer advised the defendant that Christina and Diane had both claimed that he had been in the kitchen with B.S. for "quite a while," the defendant explained that he and B.S. had been making a "double batch" of cookies. The defendant indicated that his visits to the kitchen had been sporadic and relatively brief. The defendant later

acknowledged that he had probably been in the kitchen for "a total of around an hour and a half."

¶ 45 The defendant explained that he and B.S. had a great relationship and that he did not understand why B.S. would falsely accuse him of sexually abusing her. The defendant agreed that he and B.S. had not been experiencing any problems and that she had "no reason whatsoever" to try to "get back at [him]" for anything. The defendant stated that B.S. had no reason to be mad at him.

¶ 46 In his closing argument to the jury, defense counsel maintained that the defendant was credible and that B.S. was not. Counsel emphasized that that B.S. had not undergone a sexual assault examination and that there was no physical evidence supporting her claim that the defendant had digitally penetrated her vagina. Counsel also emphasized that Diane had testified that when she was in the kitchen that night, B.S. "looked fine," and the defendant had been sitting on a barstool.

¶ 47 On September 7, 2017, the jury returned a verdict finding the defendant guilty on both counts of the State's amended information. The defendant did not subsequently file a motion for a new trial. See 725 ILCS 5/116-1 (West 2016).

¶ 48 On December 11, 2017, the trial court ordered the defendant to serve concurrent five-year sentences on his convictions. Pursuant to the Sex Offender Registration Act (730 ILCS 150/1 *et seq*. (West 2016)), the court further ordered him to register as a sex offender upon his release from custody. On December 18, 2017, the defendant filed a timely notice of appeal.

¶ 49 DISCUSSION

¶ 50 On appeal, the defendant argues that we should vacate his convictions because the State failed to prove him guilty beyond a reasonable doubt. He alternatively maintains that his convictions should be reversed and the cause remanded for a new trial because the State withheld evidence in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), and the trial court abused its discretion in limiting defense counsel's cross-examination of B.S. regarding personal matters that the defendant claims were probative of her credibility.

¶ 51 Reasonable Doubt

¶ 52 The defendant's first argument on appeal is that the State failed to prove his guilt beyond a reasonable doubt. The defendant supports this claim by offering numerous reasons why the jury should not have credited B.S.'s testimony. The defendant does not contest that if believed by the jury, B.S.'s testimony sufficiently established the elements of the offenses set forth in the State's amended information.

¶ 53 In response, the State maintains that the defendant is unable to demonstrate that the evidence before the jury was "so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *People v. Brown*, 2013 IL 114196, ¶ 48. We agree with the State.

¶ 54 "A reviewing court will not set aside a criminal conviction on grounds of insufficient evidence unless the proof is so improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt." *People v. Maggette*, 195 Ill. 2d 336, 353 (2001). "When considering the sufficiency of the evidence, it is not the function of a

reviewing court to retry the defendant." *Id.* "Rather, the relevant question is whether, after reviewing all of the evidence in the light most favorable to the prosecution, any rational fact finder could have found beyond a reasonable doubt the essential elements of the crime." *Id.* "Moreover, when the determination of a defendant's guilt or innocence depends upon the credibility of the witnesses and the weight to be given their testimony, it is for the trier of fact to resolve any conflicts in the evidence." *People v. McPherson*, 306 Ill. App. 3d 758, 765-66 (1999). As a reviewing court, we are not to substitute our judgment for that of the trier of fact. *Id*. at 766.

¶ 55 The defendant suggests, as he argued below, that B.S.'s account of what occurred in the kitchen was inconsistent with Diane's testimony. The defendant emphasizes that Diane testified that he had been sitting on a barstool both times she had been in the kitchen. Diane explained, however, that when she entered the house on both occasions, her primary focus had been on going to the bathroom. Additionally, B.S. indicated that when the defendant heard Diane enter the house on the second occasion, he had stopped molesting her, "continued to pour his drink," and "acted normal like nothing was going on." Viewing this evidence in the light most favorable to the State, the jury could have concluded that the defendant finished making his drink and moved to the barstool while Diane was in the bathroom. The defendant also notes that Diane had not noticed any differences in B.S.'s behavior. B.S. indicated, however, that although she had been feeling "scared" and "lost," she had not started crying until she left the house. She also testified that Diane "didn't know what was going on." The jury could have thus concluded that Diane had not noticed any differences in B.S.'s behavior because B.S. had

not exhibited any differences in Diane's presence. In any event, to the extent that Diane's and B.S.'s accounts can be deemed inconsistent, minor discrepancies in testimony are insufficient to create reasonable doubt. *People v. DeLuna*, 334 Ill. App. 3d 1, 24 (2002). Moreover, "a jury need not be satisfied beyond a reasonable doubt of each link in the chain of circumstances." *McPherson*, 306 Ill. App. 3d at 765.

¶ 56 The defendant maintains that B.S. "testified falsely" that after she fled the house, he and Christina had sent her text messages telling her that she needed to come home. The defendant bases this claim solely on the State's failure to produce the messages, however, as there was no evidence that the messages had not been sent. Christina acknowledged that she had communicated with B.S. through text messages after she left the house, but Christina was only asked to identify and discuss the messages that commenced at 9:19 p.m., when B.S. sought permission to spend the night at Alexis's. The defendant was not questioned about any texts that he might have sent.

¶ 57 The defendant suggests that B.S.'s testimony should be discredited because she failed to immediately report the incident to Diane and waited until the following day to report it to Christina. B.S. explained, however, that she had not immediately told Christina what had happened because Christina was in the garage where the defendant had just gone. B.S. testified that she had not felt safe at the house and feared that the defendant might have tried to prevent her from reporting what had occurred. As a result, her "first instinct was to get out of the house and get away." As the State observes on appeal, it was rational that B.S. "chose to flee to the remote safety and security of her best friend's home" rather than follow the defendant to the garage to report, in his presence,

what he had just done to her. Given that the defendant was with B.S. and Diane in the kitchen and then followed Diane outside, it was equally rational that B.S. would not have felt safe to tell Diane what had just occurred, either. We also note that B.S. and Belinda both indicated that after Belinda was informed that McElroy was on vacation, they had decided not to contact the police that night because they wanted to let Christina decide what to do after hearing what had happened in person. Belinda also explained that B.S. had told her that Christina had been drinking, and Belinda had not wanted Christina to "overreact." From these facts, the jury could have determined that B.S. made her disclosures as soon as it was practicable to do so and that the manner in which she and Belinda had proceeded was entirely reasonable under the circumstances.

¶ 58 The defendant suggests, as he argued below, that the State failed to prove that he committed the charged act of vaginal penetration because there was no physical evidence supporting the allegation. The State was not required to present physical evidence, however, and the jury could have readily concluded that a sexual assault examination would not have revealed anything of evidentiary value. See *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 89; *People v. Delgado*, 376 Ill. App. 3d 307, 311 (2007).

¶ 59 The defendant seemingly faults the State for failing to introduce evidence that B.S. required counseling following the incident. It would have been improper to elicit such evidence, however, because it would have been irrelevant to the issue of the defendant's guilt or innocence. *People v. Hodor*, 341 Ill. App. 3d 853, 860 (2003).

¶ 60 Lastly, in his reply brief, the defendant contends that because there were no third-party witnesses to the alleged abuse, his convictions were "based solely on the testimony

of the alleged victim." The jury could have viewed many of the defendant's statements to Becherer as false exculpatory statements evidencing his consciousness of guilt, however, in addition to viewing them as evidence of his lack of credibility. See *People v. Milka*, 211 Ill. 2d 150, 181 (2004); *People v. Miller*, 363 Ill. App. 3d 67, 77 (2005). We further agree with the State's observation that the witnesses "who verified [B.S.'s] mental state immediately after the sexual abuse occurred corroborated B.S.'s testimony that she had just been subjected to a traumatic event."

¶ 61 The corroborating evidence aside, it is well established that "the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). As a reviewing court, we will not overturn a conviction merely because the defendant claims or suggests that the witness was not credible. *Id*. The jury in the present case "was in a superior position to observe the demeanor of the witnesses and judge their credibility" (*People v. Leger*, 149 Ill. 2d 355, 390 (1992)), and it obviously determined that B.S. was credible and that the defendant was not. At the defendant's sentencing hearing, the trial court noted that it had reached the same conclusion. Having thoroughly reviewed the record, we can find no reason to disturb the jury's verdict and accordingly reject the defendant's contention that the State failed to prove his guilt beyond a reasonable doubt.

¶ 62 Alleged *Brady* Violation

¶ 63 The defendant's second argument on appeal is that in violation of *Brady v. Maryland*, 373 U.S. 83 (1963), the State improperly withheld the evidence that he had allegedly shown B.S. pornographic images on his phone. The State argues that the

defendant has forfeited this claim by raising it for the first time on appeal and that, forfeiture aside, he is unable to establish the essential components of a *Brady* violation.

¶ 64 "Generally, to preserve a claimed error, a defendant must both object at trial and include the issue in his posttrial motion." *People v. McDonald,* 2016 IL 118882, ¶ 45. Here, the defendant did not object when B.S. testified that during the trip to Walmart, the defendant had shown her "pictures on his phone of a girl masturbating," and he did not file a posttrial motion. The defendant thereby deprived the trial court of the opportunity to address or explore the alleged impropriety and has thus waived any objection on appeal. *People v. Embry*, 249 Ill. App. 3d 750, 764 (1993).

¶ 65 Waiver aside, a reviewing court may address an unpreserved claim of error under the plain error doctrine. *McDonald,* 2016 IL 118882, ¶ 48. However, the first step in a plain error analysis is to determine whether the alleged error occurred at all. *Id.* Furthermore, it is the defendant's burden to establish that the alleged error occurred. *Id.* Here, the defendant is unable to meet that burden.

¶ 66 Under *Brady* and its progeny, the State has a duty to learn of and disclose to the defense any evidence that is exculpatory or impeaching, material to guilt or punishment, and known by any individuals acting on the State's behalf, including the police. *Strickler v. Greene*, 527 U.S. 263, 280-81 (1999). The suppression of such evidence violates due process. *Brady*, 373 U.S. at 87. To sustain a valid *Brady* claim, a defendant must therefore establish that the evidence in question was "suppressed by the State, either willfully or inadvertently." *Strickler,* 527 U.S. at 282. In the absence of proof that the State was aware of or possessed the evidence, there can be no *Brady* violation. *People v.*

Guest, 115 Ill. 2d 72, 90-91 (1986). Here, keeping in mind that " '[a]ny doubts which may arise from the incompleteness of the record will be resolved against the appellant' " (*People v. Carter*, 2015 IL 117709, ¶ 19 (quoting *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984))), the record belies the defendant's claim that the State withheld B.S.'s testimony regarding the pornographic images.

¶ 67 In its answer to the defendant's request for discovery, the State indicated that it had provided all witness statements that it had in its possession. In its opening statement to the jury, the State did not reference the pornographic images or the trip to Walmart. The topic of the images first arose when B.S. testified that she and the defendant had gone to Walmart "alone," and the State asked her if doing so was a "normal experience" for her. B.S. replied, "Not really," and when asked to explain, she stated, "He showed me pictures on his phone of a girl masturbating." When the State subsequently asked, "Did you tell anybody about that?," she acknowledged that she had not. When subsequently cross-examined, the following colloquy occurred:

"Q. Anyway, you went to Wal-Mart with your dad. You said he showed you pictures on his phone of a girl masturbating?

A. Yes.

Q. This is the first I've heard of that. Did you tell Detective Becherer about this?

A. No, I did not.

Q. You sat down with him. You came to his office. He recorded the interview. You did not mention that to him at any time, is that correct?

A. Yes, it is.

Q. You did not mention it?

A. No, I did not.

Q. It's correct you didn't mention it?

A. It's correct I didn't mention it.

Q. You didn't think that was important to tell the detective?

A. I knew it was important, but the main thing, like him physically doing stuff to me was the biggest thing on my mind.

Q. Do you think that if you had told Detective Becherer about that, it's possible that he would have been able to check into that detail?

A. Yes."

¶ 68 During closing arguments, the prosecutor stated the following:

"[B.S.] also told us about the trip to Wal-Mart when [the defendant] showed her the video [*sic*] on his cellphone of a woman masturbating. And that was news to everybody in the courtroom."

¶ 69 "The State cannot possibly predict everything to which a witness will testify" (*Guest*, 115 Ill. 2d at 87), and "the State cannot be accused of withholding evidence where neither the State nor its agents are in possession of the evidence" (*People v. Molsby*, 66 Ill. App. 3d 647, 655 (1978)). Because the defendant is unable to establish that the testimony in question was suppressed by the State, either willfully or inadvertently, his *Brady* claim necessarily fails. Furthermore, even assuming *arguendo* that the testimony had been improperly suppressed, evidence is "material" for purposes

of *Brady* "only if there is a reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different." *United States v. Bagley*, 473 U.S. 667, 682 (1985); see also *Strickler*, 527 U.S. at 281 (stating that "there is never a real '*Brady* violation' unless the nondisclosure was so serious that there is a reasonable probability that the suppressed evidence would have produced a different verdict"). The defendant suggests that the testimony at issue was potentially impeaching because if Becherer had taken possession of the defendant's phone and not found the pornographic images that B.S. described seeing, her credibility would have undoubtedly been damaged. Not only is this claim entirely speculative, however, it seemingly presumes that if Becherer had been unable to retrieve the images, then they could not have previously been displayed on the phone. Furthermore, in his closing argument to the jury, defense counsel emphasized that the State had failed to corroborate B.S.'s testimony regarding the images. Under the circumstances, any additional evidence on that point would not have been material. Moreover, while a *Brady* claim can stem from the suppression of evidence that might be relevant for impeachment purposes, "the evidence must be truly impeaching." *United States v. Earnest*, 129 F.3d 906, 911 (7th Cir. 1997).

¶ 70 Cross-Examination

¶ 71 The defendant lastly argues that the trial court committed reversible error by denying him the opportunity to question B.S. about personal matters that he contends were probative of her credibility. Again noting that the defendant did not file a posttrial motion, the State argues that the defendant has waived consideration of the issue. The State further maintains that the defendant is unable to establish plain error because the

trial court's ruling on the issue was well within the court's sound discretion. Again, we agree with the State.

¶ 72 "The confrontation clause of the sixth amendment of the United States Constitution (U.S. Const., amend. VI) guarantees a defendant the right to cross-examine a witness against him for the purpose of showing the witness' bias, interest or motive to testify falsely." *People v. Harris*, 123 Ill. 2d 113, 144 (1988). "However, the sixth amendment does not prevent a trial judge from imposing any limits on defense counsel's inquiry into the potential bias of a prosecution witness." *Id*. "It is well established that a trial judge retains wide latitude insofar as the confrontation clause is concerned to impose reasonable limits on such cross-examination based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or of little relevance." *Id*. "Evidence is considered 'relevant' if it has any tendency to make the existence of any fact that is of consequence to the determination of an action more or less probable than it would be without the evidence." *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991).

¶ 73 "The latitude allowed on cross-examination is within the sound discretion of the circuit court, and a reviewing court will not interfere unless there has been a clear abuse of discretion resulting in manifest prejudice to the defendant." *People v. Kirchner*, 194 Ill. 2d 502, 536 (2000). An abuse of discretion will be found where the trial court's ruling is fanciful, arbitrary, or unreasonable or where no reasonable person would take the view adopted by the trial court. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003).

¶ 74 As previously noted, when interviewed by Becherer on July 4, 2016, the defendant stated that B.S. was a "great kid" who had occasional issues like any other kid. The defendant explained that he and B.S. had a great relationship, and he repeatedly indicated that he had no idea why she might falsely accuse him of abusing her. The defendant agreed that he and B.S. had not been experiencing any problems and that she had no reason to be mad at him or to try to "get back at [him]" for anything.

¶ 75 At trial, the defendant acknowledged that prior to the incident in question, B.S. had not been causing any problems for him or Christina and that he and B.S. had been best friends. Alexis likewise indicated that prior to the incident, B.S. and the defendant had been best friends. Christina indicated that other than "young teenage girl" things that occasionally came up, her relationship with B.S. had been positive before the incident and was still positive. Christina testified that B.S. "had nothing to gain by lying about this."

¶ 76 B.S. testified that prior to July 3, 2016, she and the defendant had gotten along "really well." When cross-examined, B.S. stated that there had not been any conflicts between her and her parents when the incident occurred and that her relationship with her parents had been "very close." She further stated that she had "probably" been closer to the defendant than she had been with Christina. B.S. denied that she had been experiencing any "relationship problems," explaining that she had not been in a relationship at the time.

¶ 77 When further cross-examined, B.S. testified that she could not recall that during the family's Florida vacation in June 2016, Christina had found a note that B.S. had

received from "a young lady." B.S. did not recall that Christina had been "unhappy" about the note and had "ended up putting it on the refrigerator for some reason." When counsel subsequently asked B.S. if she had been in the process of identifying her sexual orientation at the time, the State objected and requested a sidebar.

¶ 78 At the sidebar, defense counsel asserted that during the Florida vacation, Christina had confronted B.S. about a "love note" that B.S. had received from a girl. Counsel stated that Christina had put the note on the refrigerator "[i]n an attempt to humiliate" B.S. Counsel maintained that the note had "created an enormous issue" and that B.S. had had discussions with her parents regarding "her proclivity towards lesbian orientation." Counsel further maintained that there were social media posts indicating that B.S. had a girlfriend. Counsel explained that he wanted to explore the apparent conflict that B.S. had had with her parents with regard to her sexual orientation. Counsel argued that the evidence would be relevant to demonstrate that B.S. had a motive to fabricate her allegations against the defendant.

¶ 79 The State objected on the grounds that the proffered evidence was irrelevant and prohibited by the "rape shield statute" (725 ILCS 5/115-7 (West 2016)). The trial court agreed and noted that B.S.'s apparent dispute with respect to her sexual proclivity had been "with both of her parents." The court directed counsel to not ask any additional questions regarding the matter. As an offer of proof, counsel subsequently referenced a social media post suggesting that B.S. had been in a relationship with another female "a month after this incident."

¶ 80 The defendant contends that the trial court erred in precluding him from inquiring into whether B.S. had been in a lesbian relationship in July 2016 and whether the relationship had resulted in a family conflict that might have influenced her to falsely accuse the defendant. The trial court rightfully concluded, however, that the proposed inquiries pertained to personal matters that were irrelevant under the circumstances.

¶ 81 Evidence that a witness had a motive to lie is not relevant if it is remote or uncertain because it must give rise to the inference that the witness had something to gain or lose by his or her testimony. *People v. Frieberg*, 147 Ill. 2d 326, 357 (1992); *People v. Johnson*, 2018 IL App (1st) 140725, ¶ 91. Evidence used to establish a motive to lie must therefore be "timely, unequivocal and directly related." *People v. Sims*, 192 Ill. 2d 592, 625 (2000). Additionally, pursuant to the "rape shield statute" evidence of a victim's sexual activities or preferences is absolutely barred unless the evidence is constitutionally required to be admitted or unless the evidence concerns past sexual conduct between the victim and the accused and is offered as evidence of consent. *People v. Santos*, 211 Ill. 2d 395, 401-02 (2004); *People v. Kemblowski*, 201 Ill. App. 3d 824, 828-29 (1990). Evidence is not constitutionally required to be admitted "unless it would make a meaningful contribution to the fact-finding enterprise." *People v. Maxwell*, 2011 IL App (4th) 100434, ¶ 76.

¶ 82 Here, that B.S. might have had a previous conflict with her parents regarding her sexual orientation or that she might have been in a lesbian relationship around the time of the incident in question were personal matters that had no bearing on whether the defendant had sexually abused her. By all accounts, whatever events or discussions might

have previously taken place, B.S.'s relationship with both of her parents had been positive in July 2016, and she had nothing to gain by falsely accusing the defendant. Moreover, B.S. testified that she had "probably" been closer to the defendant than to Christina, and Christina was apparently the one who had tried to "humiliate" her in June 2016. As the State observes on appeal, because the alleged conflict regarding B.S.'s sexual proclivities had allegedly been with both parents, counsel's proposed inquiry "would have failed to account for why B.S. chose to level serious allegations against her father only." Under the circumstances, any suggestion that B.S. had falsely accused the defendant because he disapproved of her sexual orientation would not have meaningfully contributed to the fact-finding enterprise and would have only served to embarrass and harass B.S. Accordingly, the defendant's waiver of the issue aside, we cannot conclude that the trial court abused its discretion by prohibiting counsel from further exploring the matter.

¶ 83 CONCLUSION

¶ 84 For the foregoing reasons, the defendant's convictions are hereby affirmed.

¶ 85 Affirmed.