2019 IL App (4th) 180114-U

NO. 4-18-0114

FILED
March 5, 2019
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Woodford County
JOHN PRINE,	)	No. 15CF171
Defendant-Appellant.	)	
	)	Honorable
	)	Matthew John Fitton,
	)	Judge Presiding.

JUSTICE CAVANAGH delivered the judgment of the court.
Justices Steigmann and Turner concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not err in allowing the State to present other-crimes evidence.

(2) The prosecutor's remark in his closing argument did not serve to minimize the State's burden of proof.

(3) The trial court did not err in considering defendant's position of trust or supervision over the victim as a factor in aggravation at sentencing, as this factor differed from the inherent element of the crime for which he was convicted.

¶ 2 A jury found defendant, John Prine, guilty of one count of criminal sexual assault by a family member against a child (720 ILCS 5/12-13(a)(3) (West 2010)), and the trial court sentenced him to seven years' imprisonment. Defendant appeals, arguing the court committed reversible error by (1) allowing the State to introduce certain other-crimes evidence, (2) allowing the State's attempt to minimize its burden of proof in closing argument, and (3) considering an

inherent element of the crime as an aggravating factor in sentencing. We disagree with defendant's claims and affirm his conviction and sentence.

¶ 3 I. BACKGROUND

¶ 4 A. The Charging Instrument

¶ 5 In December 2015, defendant was indicted on six counts.

¶ 6 In counts I, II, and III, the State charged defendant with predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2010)), alleging that between June 1, 2008, and May 3, 2009, defendant committed acts of sexual penetration against K.N.P., n/k/a K.H. (born January 4, 1996), his stepdaughter and a minor under the age of 13.

¶ 7 In counts IV, V, and VI, the State charged defendant with criminal sexual assault of K.H., a family member under the age of 18 (720 ILCS 5/12-13(a)(3) (West 2010)), alleging that between June 1, 2008, and August 31, 2010, defendant committed the following acts of sexual penetration: (1) placing his penis in her vagina (count IV); (2) placing his finger in her vagina (count V); and (3) placing his penis in her mouth (count VI).

¶ 8 B. The State's Motion *In Limine*

¶ 9 On September 29, 2016, pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.3 (West 2010)), the State moved for a ruling that certain other-crimes evidence would be admissible in the jury trial, including statements from K.H. that defendant sexually assaulted her in Tazewell County prior to moving to Woodford County. K.H. made such statements in a June 2014 deposition in a family law custody case between her mother and defendant.

¶ 10 On November 3, 2016, the trial court conducted a hearing. Before considering the State's motion *in limine*, it considered the State's motion for a *nolle prosequi* of counts I, II, and

III. The prosecutor indicated that his interview with the victim revealed that she did not meet the statutory age requirements of the offense. The court allowed the motion and dismissed those counts.

¶ 11 Next, the trial court considered the State's motion *in limine*. K.H. provided testimony. She stated she moved from Pekin, Illinois, in Tazewell County to Germantown Hills, Illinois, in Woodford County when she was 13 years old (although the record evidence suggests she was 11 years old). She moved from Germantown Hills after having resided there approximately two years, after her eighth-grade graduation. She testified defendant first made sexual contact with her in Tazewell County when she was approximately seven years old when she lived in a home with her mother, her half-sister, her maternal uncle, and defendant (her stepfather) on Prince Street. She said the first incident occurred while she was in the bathroom, having just taken a shower. The abuse occurred thereafter once per week (although she indicated the frequency was less often later in the proceedings) either in the bathroom or in the master bedroom while her mother was at work. She said, "Only molestation happened in [that] house," explaining that she meant only touching, no penetration. On one occasion, she said it occurred in the swimming pool.

¶ 12 K.H. testified she, her half-sister, and defendant moved from Prince Street into an apartment in Pekin in Tazewell County when she was 10 or 11 years old. The touching incidents continued there, both over and under her clothes. Later, she, her half-sister, and defendant moved into an apartment in Germantown Hills in Woodford County. After two to three months, the sexual contact began there in the bathroom and continued once or twice per week. She said the incidents were "[a]lways in the bathroom or his bedroom." She said the total length of abuse spanning both counties lasted approximately seven years with no long breaks.

¶ 13 After considering the evidence and arguments of counsel, the trial court granted the State's motion *in limine*, finding "there's probative value" to the evidence of alleged abuse incidents that occurred in Tazewell County.

¶ 14 C. The Jury Trial

¶ 15 The jury trial occurred on November 13 and 14, 2017. The witnesses testified substantially as follows.

¶ 16 1. *The Testimony of Jennifer V.*

¶ 17 Jennifer V. testified she and defendant had one daughter together: M.V., born April 23, 2001. Jennifer also had a daughter from a previous relationship: K.H., born May 4, 1996. Jennifer and defendant met in 1998, married in 2000, and divorced in 2003, yet they continued living together in a house on Prince Road in Pekin (Tazewell County). Although the record was not clear on exact dates, it appears that sometime around 2006, defendant moved into an apartment in Pekin. M.V. and K.H. lived with defendant because Jennifer was working and unable to afford child care. Sometime in 2007, defendant and both girls moved into an apartment in Germantown Hills (Woodford County). The record was clear that the girls moved out of defendant's residence in the summer of 2009. K.H. was 13 years old and had recently graduated from eighth grade.

¶ 18 2. *Testimony of M.V.*

¶ 19 M.V. was 16 years old at the time she testified. Her half-sister, K.H., was five years older. She recalled that while living in Germantown Hills, K.H. would "often" stay all night in defendant's bedroom. She said that occurred "most of the nights during the week." She said she saw defendant in the bathroom with K.H. "[a] few times." M.V. said she did not say

anything to anyone because she "didn't think anything of it." However, when K.H. exited the room, she was often crying or would "be really sad."

¶ 20 On cross-examination, M.V. said she first reported the incidents to the authorities during her May 3, 2010, interview at the child advocacy center, which was taken as part of an investigation into an incident (later referred to as the "vaginal exam"). (This incident was the reason the girls left defendant's residence permanently.)

¶ 21 3. *Testimony of K.H.*

¶ 22 K.H. testified that she was 21 years old. She said when she was 15, she discovered defendant was not her biological father. She lived with defendant until she was 13. She committed some misdemeanor crimes at the age of 14 and received court supervision. She committed another misdemeanor, and her supervision was revoked. She enrolled at Arrowhead Youth and Family Services (Arrowhead), a residential facility, for treatment and counseling. When she was 17 years old, she told her counselor that she "was sexually assaulted and raped" by defendant. This was the first time she had told anyone.

¶ 23 K.H. said the first time she was sexually abused by defendant, she was seven years old and living at the house on Prince Drive in Pekin, Tazewell County. She was in the shower, and defendant touched her vagina and breasts with his hands. She said she was confused and scared. The second time occurred in defendant and Jennifer's bedroom while she and defendant were watching a movie. He took off her nightgown and underwear and touched her both inside and outside of her vagina. The third time occurred in their swimming pool. Defendant held a raft in such a way to hide his actions. He digitally penetrated her vagina and forced her hand on his penis. Some form of sexual abuse occurred at both their home and their apartment in Pekin.

¶ 24 K.H. testified the abuse continued and occurred more frequently when they moved to the Germantown Hills apartment. She said defendant would have her sleep in his bedroom. Approximately two to three times per week, he entered the bathroom while she was showering. She said he would remove his pants and touch his penis to her vagina. Sometimes he would bring her out of the shower and lay her on the floor and rub his penis on the outside of her vagina.

¶ 25 K.H. said she, M.V., and defendant would watch movies in defendant's bed. He would send M.H. to bed and then "that stuff would happen." K.H. told him to stop, but he only stopped when he wanted to stop. K.H. would sleep in defendant's bed. Although she was scared, she never told anyone.

¶ 26 K.H. testified that on one occasion, while in defendant's bedroom, he penetrated her vagina with his penis. She said her underwear was off and defendant was naked. She said it hurt and felt "[u]ncomfortable, gross." She said some form of sexual abuse occurred every week, at least two to three times per week.

¶ 27 When K.H. was 14 years old, she had a friend over to their apartment. This friend "happened to be a boy." When defendant arrived home from work and saw the boy, he demanded the boy leave immediately. Defendant ordered K.H. into his bedroom where he demanded she remove her pants "because he needed to check if [she] was pregnant because that boy was there." He "put [her] legs into the air, and he touched [her] vagina and looked at it." (This testimony describes the incident referred to later as the "vaginal exam.") K.H. left the apartment, told Jennifer about the incident, and never lived with defendant again. In fact, she has not had any contact with defendant for seven years. K.H. said she did not tell Jennifer about the other incidents of sexual abuse because she "was scared he was going to come after us." She

acknowledged that M.V. still lived with defendant for a few months after she left. K.H. said she did not tell anyone about the abuse until she told her counselor at Arrowhead when she was 17 years old. She said she "was tired of fighting mentally with it in [her] head, and []—it was finally time to let it out. And also [she] didn't want it to happen again to anyone else." K.H. denied the occurrence of any type of oral penetration, and thus, count VI was dismissed for lack of evidence.

¶ 28 The State rested, and the trial court denied defendant's motion for a directed verdict.

¶ 29 4. *Testimony of Melanie H.*

¶ 30 Melanie H., defendant's sister, said she watched both girls before and after school every day when they lived in Germantown Hills. She said she had a good relationship with them, especially K.H., as they always talked about K.H.'s personal life. Melanie never saw any signs of anything negative happening to K.H., as she never alluded to anything bothering her.

¶ 31 On cross-examination, Melanie said defendant told her about checking K.H. to see if she was pregnant. He told her he used a flashlight to conduct the "vaginal exam" to see if K.H.'s hymen was still intact.

¶ 32 D. The Verdict

¶ 33 The jury found defendant not guilty of count IV (penetration of penis to vagina) but guilty of count V (penetration of finger to vagina).

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 A. The Admissibility of Other-Crimes Evidence

¶ 37 Defendant argues that the trial court's admission of other-crimes evidence caused prejudice to him. He reasons as follows. If the court would have properly considered the other-crimes evidence, section 115-7.3(b) of the Code (725 ILCS 5/115-7.3(b) (West 2010)), which makes propensity evidence admissible only if the probative value outweighs the danger of undue prejudice (see *People v. Donoho*, 204 Ill. 2d 159, 170 (2003)), it would have realized that the incidents (the "vaginal exam" and those that occurred in Tazewell County) had no probative value to the charged offenses. Specifically, defendant argues evidence of the "vaginal exam" lacked factual similarity to all other incidents testified to, in that, according to K.H., it was nonsexual in nature. Further, the sheer number of incidents in Tazewell County constituted unnecessary cumulative evidence. Thus, defendant argues, the admission of this evidence resulted in improper mini-trials of those uncharged offenses.

¶ 38 In general, evidence of other crimes is inadmissible to show propensity. See generally *People v. Smith*, 2015 IL App (4th) 130205, ¶ 21. Section 115-7.3 of the Code, however, provides an exception, permitting other-crimes evidence when the defendant is accused of criminal sexual assault. 725 ILCS 5/115-7.3(a)(1), (b) (West 2010). Such evidence is admissible and "may be considered for its bearing on any matter to which it is relevant." 725 ILCS 5/115-7.3(b) (West 2010). The section further states, "In weighing the probative value of the evidence against undue prejudice to the defendant, the court may consider: (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances." 725 ILCS 5/115-7.3(c) (West 2010). Other-crimes evidence, upon meeting the initial statutory requirements, " 'is admissible if it is relevant and its probative value is not substantially outweighed by its prejudicial effect.' "

Smith, 2015 IL App (4th) 130205, ¶ 21 (quoting *People v. Vannote*, 2012 IL App (4th) 100798, ¶ 38).

¶ 39 This court will not overturn a decision to admit other-crimes evidence absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 182. An abuse of discretion has occurred when the trial court's decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the position adopted by the trial court. *Id.*

¶ 40 We find the evidence related to the "vaginal exam" does not constitute other-crimes evidence and the Tazewell incidents sufficiently satisfy the probative-value test for admissibility. We base our decision on the following. In its motion *in limine*, the State sought to admit evidence that defendant had a long history of sexually abusing K.H. The State anticipated K.H. would testify to numerous incidents that occurred in Tazewell County—incidents that were strikingly similar and preceded those occurring in Woodford County. At the hearing on the State's motion, K.H. indeed described the incidents of abuse that occurred mainly in the bedroom and the bathroom of her respective homes in Tazewell and Woodford Counties. She said the incidents happened "at least once a week" in Tazewell County (though at trial, she said the incidents occurred "a couple times a month") and increased in frequency when they moved to Woodford County. K.H. also testified regarding the "vaginal exam" that occurred after her friend left their apartment in Woodford County. She said defendant touched her only to open her legs to look at her vagina.

¶ 41 On this evidence, the trial court granted the State's motion *in limine*, allowing the introduction of this "other-crimes evidence" due to its probative value. As it turned out, at trial, K.H. testified that defendant put her legs in the air and "he touched my vagina and looked at it." Also at trial, she was confronted with her 2014 deposition testimony from the custody case,

wherein she said, when describing the "vaginal exam," that defendant "put his fingers inside of [her]. That happened for about 10 minutes."

¶ 42 One of the charged offenses considered by the jury was criminal sexual assault. In count V, the State had alleged "defendant committed an act of sexual penetration with [K.H.], a family member and who was under 18 years of age when the act was committed, in that said defendant placed his finger in the vagina of [K.H.]" between June 1, 2008, and August 31, 2010. The evidence presented to the jury indicated the "vaginal exam" occurred sometime between March and May 2010, within the timeframe alleged in the indictment. Although K.H.'s testimony varied about the extent of defendant's touching related to this incident, the jury was free to consider this incident as one of the charged offenses. In fact, defendant's sister testified at trial that defendant acknowledged he checked K.H.'s vagina with a flashlight to see if her hymen was still intact. This evidence pertaining to the "vaginal exam" was precisely the nature of evidence for which defendant was on trial. That is, the evidence related to the "vaginal exam" was not related to an "uncharged" or other crime, as referenced in Illinois Pattern Jury Instructions, Criminal, No. 3.14 (4th ed. 2000) (hereinafter, IPI Criminal 4th No. 3.14). Rather, this substantive evidence related to count V of the charged offenses and not to another act or crime for which defendant was not on trial.

¶ 43 Accordingly, defendant's other-crimes-evidence argument is misplaced as related to the "vaginal-exam" evidence. K.H.'s opinion that this incident did not involve a "sexual-nature type thing" is of no consequence. The elements of the crime required only that defendant commit an act of sexual penetration upon K.H. 720 ILCS 5/12-13(a)(3) (West 2010). " 'Sexual penetration' means any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of

any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/12-12(f) (West 2010). A defendant's mental state is not an element. Whether defendant considered the act sexual in nature was irrelevant to guilt.

¶ 44 With regard to the incidents that occurred in Tazewell County, we agree with the trial court that those events as testified to were sufficiently similar in nature to the charged offenses. Further, those events occurred as the start of a continuous pattern of abuse of K.H. by defendant, also sufficiently satisfying the "proximity-in-time" factor. See 725 ILCS 5/115-7.3(c)(1) (West 2010). As a result, we find the trial court did not abuse its discretion in allowing the admission of the State's "other-crimes evidence."

¶ 45 B. Prosecutorial Misconduct

¶ 46 Defendant next contends the prosecutor committed reversible error resulting in an unfair trial when he improperly minimized the State's burden of proof. Defendant challenges the following exchange, which began with defense counsel arguing that "the essence of reasonable doubt" was evident when K.H.'s version of events "changed over and over again." The prosecutor objected, and the trial court overruled him, explaining he would "get the same opportunity." During the prosecutor's rebuttal closing argument, he stated:

> "MR. MINGER [(ASSISTANT STATE'S ATTORNEY)]: *** If she would have disclosed at the same time that it was happening, things would have been done a little differently. But here we have someone who discloses, and she is an adult at this point in time when she discloses, and physical evidence, it's just

not there. Sometimes there's not physical evidence. Does that change whether it happened or not?

Basically it comes down to did this happen or did it not happen. Take out all the beyond a reasonable doubt. I mean, you have to —

MR. SNYDER [(DEFENSE ATTORNEY)]: I'm going to object to that. You don't take that out. That's paramount.

THE COURT: Overruled. I think you're taking it out of context. I believe he is making—I will let you finish your statement.

MR. MINGER: You have to—beyond a reasonable doubt is our burden. Absolutely. But did it happen or did it not happen? That's really what you have to determine."

¶ 47 When reviewing a prosecutor's comments during closing arguments, this court must consider "whether or not the comments engender substantial prejudice against a defendant such that it is impossible to say whether or not a verdict of guilt resulted from them." *People v. Wheeler*, 226 Ill. 2d 92, 123 (2007). This is a legal question that we review *de novo*. *Id.* at 121.

"Misconduct in closing argument is substantial and warrants reversal and a new trial if the improper remarks constituted a material factor in a defendant's conviction. [Citation.] If the jury could have reached a contrary verdict had the improper remarks not been made, or the reviewing court cannot say that the prosecutor's improper remarks did not contribute to the defendant's conviction, a new trial should be granted." *Id.* at 123.

¶ 48 Here, the prosecutor's remarks were not a material factor in defendant's conviction. The prosecutor neither expressly stated nor implied that reasonable doubt was *pro*

forma or a minor detail. *Cf. People v. Frazier*, 107 Ill. App. 3d 1096, 1101 (1982). He did not try to minimize the concept or suggest that the reasonable-doubt standard was somehow overrated. The prosecutor's challenged comment to "[t]ake out all the beyond a reasonable doubt" cannot reasonably be considered a substantial comment. It does not warrant reversal or a new trial. The prosecutor immediately explained that the State's burden was "[a]bsolutely" beyond a reasonable doubt. As such, the comment did not rise to a level of reversible error.

¶ 49 Considering the prosecutor's remark in the context of his entire rebuttal argument, we find no denial of justice or prejudice to defendant. See *People v. Runge*, 234 Ill. 2d 68, 142 (2009) ("Reviewing courts will consider the closing argument as a whole, rather than focusing on selected phrases or remarks, and will find reversible error only if the defendant demonstrates that the improper remarks were so prejudicial that real justice was denied or that the verdict resulted from the error.") Defendant failed to meet his burden of proving that his right to a fair trial was jeopardized by the prosecutor's isolated comment.

¶ 50 C. Defendant's Sentence

¶ 51 At sentencing, the trial court considered the presentence investigation report (PSI), defendant's statement in allocution, and "the statutory [factors] in aggravation and mitigation, and [gave] due regard for the circumstances of the offense." The court was sentencing defendant on his conviction of criminal sexual assault, a Class 1 felony. 720 ILCS 5/12-13(b)(1) (West 2010). The potential range of punishment was 4 to 15 years' imprisonment. 730 ILCS 5/5-4.5-30 (West 2010).

¶ 52 The trial court sentenced defendant to seven years in prison and explained its reasons, in part, as follows:

"In aggravation Mr. Minger [(Assistant State's Attorney)] does present the People's Exhibit[] [Nos.] 1 through 3 from the victim herself, other family members, a sister and her mother. I do believe that, as Mr. Minger in reading the letters from—Mr. Minger stated that this is in aggravation. It is alarming, it's disturbing that—given the relationship between [defendant] and the victim. She obviously—they had a relationship. As the evidence did play out, she did believe that [defendant] was her father for some time, that there was a bond between the two of them, and that the allegation, the incident and ultimately the crime for which [defendant] was convicted of, the criminal sexual assault, did damage the victim to the point where there was evidence at trial regarding going to—having some problems with school, she testified to, and ultimately going to a school for—a non-traditional school to deal with some of the issues that she would have, some of which the testimony was that brought on by the circumstances on the events that eventually would lead to the charges in this case of criminal sexual assault.

So I do believe that she was a true victim in every sense of the word, and I do believe that [defendant] was in a position of not only of power over her but also was in a position of trust. Also the other letters that I have referred to which follow closely on those of the victim."

¶ 53 When ruling on defendant's motion to reconsider his sentence, the trial court stated:

"Again, the fact—the family relationship was not a determining factor in this case, merely a—something that, obviously, was a factor and was mentioned

> in the [charging instrument]. It was not—it did not give rise to the court giving more or less time based on that factor. It was something that was inherent in the case."

¶ 54 Citing some of the above language, defendant argues that the trial court improperly considered his status as K.H.'s stepfather as an aggravating factor because the familial relationship between defendant and K.H. was an element of the charged offense for which he was convicted. Defendant maintains that the trial court committed the very error the supreme court condemned in *People v. White*, 114 Ill. 2d 61, 66 (1986), wherein the trial court considered the victim's age as an aggravating factor when sentencing the defendant on his aggravated-battery-of-a-child conviction—an offense that required the victim to be under 13 years of age.

¶ 55 The record in this case shows that defendant had been acquainted with K.H. since she was two years old when defendant began dating her mother, Jennifer. When K.H. was four years old, defendant married Jennifer, and along with K.H.'s sister, M.V., the four of them resided together as a family unit. In fact, when defendant and Jennifer separated, K.H. and M.V. lived with defendant. It was not until K.H. was 15 years old that she learned defendant was not her biological father. While K.H. was sexually abused by defendant, she believed him to be her father, not her stepfather.

¶ 56 This case is similar to the decision of the Third District Appellate Court in *People v. King*, 151 Ill. App. 3d 662 (1987). In *King*, the defendant pleaded guilty to two charges of criminal sexual assault, which involved the same statutory provisions (sexual penetration of a child by a "family member") as the charge to which defendant was convicted here. The defendant in *King* was sentenced to 10 years in prison on each charge, with the sentences to run

concurrently. The victims in that case were the defendant's 14-year-old daughter and 15-year-old stepdaughter. He had engaged in sexual intercourse with each of them. *King*, 151 Ill. App. 3d at 663. The defendant in *King* argued on appeal that the trial court had abused its discretion by considering the defendant's position as the victims' father as an aggravating factor. *King*, 151 Ill. App. 3d at 663. The court rejected this argument and wrote the following:

> "In the instant case, the defendant argues that being a family member is an element of his offense. As such, it cannot be used as an aggravating factor. The State contends that there is a difference between merely being a family member and being a father. We agree. A father, by virtue of his position, owes a special duty of protection to his children. The same cannot be said for any person 'who has resided in the household with [the victim] continuously for at least one year.' [Citation.] Accordingly, we find that the trial court did not err in considering the defendant's position as an aggravating factor." *King*, 151 Ill. App. 3d at 663-64.

¶ 57 We agree with the Third District's analysis in *King* and find it disposes of the argument defendant raises here. Contrary to defendant's assertion, defendant's "position of trust or supervision"—a factor in aggravation as set forth in section 3.2(a)(14)—is not an element of the underlying crime. 730 ILCS 5/5-5-3.2(a)(14) (West 2010). Simply because a person is a "family member," he does not necessarily hold a "position of trust or supervision." In light of the trial court's comments, we find that rather than relying on the mere fact of defendant's familial relationship to K.H., the court appropriately considered the nature and degree of defendant's position of authority as a factor in aggravation.

¶ 58 Further, in *People v. Burke*, 226 Ill. App. 3d 798, 799-800 (1992), this court found that the trial court properly considered the nature and degree of defendant's status as a

stepfather where defendant resided "as a family unit" with the victim of the sexual abuse and "had been acquainted with [the victim] since she was two years old." See also *People v. Madura*, 257 Ill. App. 3d 735, 739 (1994) ("It is, therefore, appropriate to consider the nature and degree of a defendant's position of trust or supervision regarding a child/victim, even when the criminal sexual assault charge requires proof of a familial relationship as an element of the crime."). We find these above-cited factually similar cases lend support to our conclusion that the trial court did not err in considering defendant's "position of authority and supervision" as a factor in aggravation.

¶ 59 III. CONCLUSION

¶ 60 For the reasons stated, we affirm defendant's conviction and sentence. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 61 Affirmed.