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IN THE
APPELLATE COURT OF ILLINOIS
SECOND DISTRICT

THE PEOPLE OF THE STATE)	Appeal from the Circuit Court
OF ILLINOIS,)	of Lake County.
)	
Plaintiff-Appellee,)	
)	
v.)	No. 08—CF—292
)	
CARL H. HORAK,)	Honorable
)	Fred L. Foreman,
Defendant-Appellant.)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hudson concurred in the judgment.

ORDER

Held: The evidence was sufficient to support defendant's convictions on the three challenged counts of predatory criminal sexual assault of a child based on mouth-to-vagina contact.

Following a jury trial in the circuit court of Lake County, defendant, Carl H. Horak, was convicted of 13 counts of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2008)). Defendant appeals, contending that the evidence was insufficient to support convictions on three counts based on mouth-to-vagina contact. Specifically, defendant argues that, because the victim did not testify at trial to any mouth-to-

vagina contact, and because the other witnesses' testimony about the acts of mouth-to-vagina contact was vague and imprecise, the convictions on those three counts must be reversed. We disagree and affirm.

On February 13, 2008, defendant was indicted with 13 counts of predatory criminal sexual assault of a child and four counts of aggravated criminal sexual abuse. The predatory criminal sexual assault counts were based on various alleged acts, including three counts based on allegations of mouth-to-vagina contact. Eventually, the State decided to pursue only the predatory criminal sexual assault counts.

The matter proceeded to a jury trial. S.J., the victim, testified that Tiffany Horak was her mother and defendant was her stepfather. S.J. was then questioned about the difference between a truth and a lie, which she demonstrated. The questioning proceeded to the parts of the male and female body, and S.J. indicated what she called the various parts. S.J. also testified about the difference between "good" and "bad" touches. Turning to the subject matter of the trial, S.J. testified that both of her parents had touched her private areas. S.J. testified that she thought the improper touching occurred when she was in third grade and living in Wauconda.

Turning to the first incident, S.J. testified that she was called into her parents' room. S.J. was wearing clothes when she entered the room, but her parents were not wearing clothes. S.J. testified that her parents told her to get comfortable, which she understood to mean that she should take off her clothes. S.J. testified that her parents were laying on a futon on the floor; she climbed into the bed and lay between her parents. S.J. testified that the television was on, and a "nasty" video depicting people touching each other was playing. On that occasion, defendant placed his finger inside S.J.'s vagina. S.J. told defendant that it hurt, and he stopped.

S.J. testified that defendant put his finger in her bottom, and that this act happened more than twice. S.J. testified that defendant touched inside of her bottom with his tongue. She testified that this action also occurred more than two times. S.J. testified that defendant put his penis in her mouth on two occasions. S.J. also testified that her mother demonstrated how she was supposed to perform that act. S.J. testified that sometimes defendant's penis was hard, and other times it was soft.

Next, S.J. testified about items recovered from her parents' bedroom. S.J. testified that four little red balls strung together (identified on the exhibit list as anal beads) had been placed in her bottom by defendant, alone, and by defendant and her mother, together.

S.J. testified that a small black tube (identified on the exhibit list as a "mini-black vibrator") was kept in her parents' bedroom. S.J. testified that both of her parents inserted it into her bottom.

S.J. testified that no one else slept at their house, other than her family, and she denied that defendant's friend, Adam, slept at their house. She explained that there were no extra beds to accommodate anyone else. S.J. testified that her Grandma Betty was the first person she told about the improper touching occurring in her parents' bedroom, explaining that Grandma Betty "was the only one that I could tell."

Andrea Usry, a detective with the Lake County sheriff's office, testified that her responsibilities included cases involving anyone under the age of 17, either as the perpetrator or the victim. Usry testified about her background and training, particularly in conducting interviews of young victims of sexual assault. Usry testified that, in her interviews with this class of victim, she made sure to ask open-ended questions and was careful to avoid any

suggestive questions during an interview. Usry testified that she had conducted approximately 60 interviews of child victims of sexual assaults.

Usry testified that, on January 18, 2008, at about 10 p.m., she, along with Detective Skrypek, conducted an hour-long interview with S.J. Usry testified that she first established that S.J. knew and could articulate the difference between telling the truth and telling a lie. Next, she established that S.J. could identify the various parts of a man and a woman's body, as well as the terms she used for them. For example, S.J. called a vagina "the V", and a penis "the P." As the interview progressed, S.J. related that her parents had touched her in her private areas.

Usry testified that S.J. told her that defendant had touched her vagina with his hand and with his mouth. According to S.J., the most recent occurrence was during the weekend before the interview. Usry testified that she wanted S.J. to give her more details about the incidents, but S.J. said that she was too embarrassed to talk about it in front of a male like Skrypek. Skrypek grabbed a blanket and tossed it over his head, telling S.J. to pretend that he was not there. Usry testified that, when Skrypek did this, S.J. got a big smile on her face and gave her a "thumbs up."

Usry testified that S.J. related that her parents instituted a "special night" with her. The special nights usually occurred on a Friday or a Saturday, and S.J. and her parents would watch a nasty movie together. Usry asked S.J. what she meant by "nasty" movies. S.J. replied that they were "porno" movies (S.J.'s term) where people had sex. S.J. told Usry that, on the "special nights," everyone would be unclothed. Defendant would rub her vagina. S.J. told Usry that, one time, defendant put his finger in her vagina, but S.J. told him that it hurt and he stopped. S.J. also told Usry that defendant would put his finger in her "butt." According to S.J., defendant had put his finger in her butt three times.

Usry testified that S.J. also told her that defendant would lick the crack by her butt. Usry asked S.J. if defendant would also lick in the area of her vagina; S.J. replied, “sometimes a little bit.”

S.J. said that she never touched her mother. Usry testified that S.J. stated that she did stick her finger in defendant’s butt. When she did this, defendant told her that she had hit his “G-spot.” S.J. related that, when defendant said this, she replied, “G-spot? I didn’t know there was a G-spot. I don’t even know what a G-spot is.” Usry testified that S.J. told her that she also rubbed defendant’s penis and put her mouth on defendant’s penis. When Usry asked whether defendant’s penis was hard or soft at those times, S.J. said that sometimes it was hard, sometimes it was soft.

Usry testified that, according to S.J., the encounters occurred while she was in second grade and before third grade began. In addition, the same type of acts had taken place on every weekend since Christmas 2007 and January 18, 2008.

Usry testified that the police obtained a search warrant for defendant’s home, and she participated in executing the search warrant. Usry testified that a number of items were recovered from defendant’s residence. Usry identified State’s Exhibit No. 11 as a CD or DVD case that held several pornographic movie discs, which she also identified. Usry testified that, in the closet of the bedroom, she recovered a case that contained several sex toys, including vibrators and anal beads.

Usry testified that, on January 22, 2008, she again met with S.J. Usry testified that, in the first interview she did not ask S.J. about the color of the vibrators or get any details about how they were used. During this second interview, S.J. informed Usry that the vibrator was white

and was about five or six inches in length. S.J. also told Usry that defendant put the vibrator in her butt once, and her mother and defendant together put the vibrator in her butt once.

Sharon Dimitrijevic, a sexual assault nurse examiner, testified that she was employed as a nurse manager at Cancer Treatment Centers of America at the Midwestern Regional Medical Center in Zion. Dimitrijevic testified that she had been trained and board certified as a sexual assault nurse examiner for both adults and children. The parties agreed that Dimitrijevic was qualified to be an expert witness in examining and collecting forensic evidence from child victims of sexual assault. Dimitrijevic testified that, on January 22, 2008, she examined S.J. Dimitrijevic testified that she found no physical injury to S.J.'s vagina or anus. Dimitrijevic testified that it was possible that a victim of sexual assault would exhibit no physical injuries. She testified that, in 85% to 95% of sexual assault cases involving children, the victims exhibit no evidence of physical injury. Dimitrijevic testified that she had examined about 100 child victims of sexual assault and in those examinations, 10 or fewer victims showed any physical injuries. Dimitrijevic noted that, in her experience, after the passage of 72 hours, about 50% of the any injuries will heal. With the passage of one week since the most recent assault, almost all of the injuries will be healed, and nearly 100% of any physical evidence of injury will be lost.

Dimitrijevic testified that she would not expect to find any injury to a victim where a tongue had been applied to the victim's vagina or anus. If a week had passed, then Dimitrijevic would not expect to find any evidence of injury if a finger had been placed in the victim's vagina or anus.

Tiffany Horak testified that she is defendant's wife and the mother of three children, S.J., T.J., and J.H. Horak testified that she had lived with defendant for about 10 years, but S.J. and defendant had lived together for only a year or two. In 2004, Horak married defendant. Horak

testified that she had entered into an agreement with the State to plead guilty to one count of predatory criminal sexual assault of a child and to testify truthfully against defendant in exchange for a recommendation from the State that she receive a 14-year term of imprisonment.

Horak identified State's exhibits Nos. 8 and 9 as documents she prepared setting forth what her truthful testimony was to be. Horak denied that defendant had ever spoken to her about having sex with both a mother and her young daughter. Horak agreed that State's Exhibit No. 9 indicated that she had mentioned that defendant did speak with her about having sex with a mother and her young daughter. Horak attempted to explain the difference in her written statements versus her live testimony as resulting from memory loss due to her consumption of a large quantity of drugs. The examination continued in a similar vein. The prosecutor would ask a question about information from one of Horak's written statements, Horak would deny or not remember having made the statement, but would acquiesce that it was contained in one of the written statements. For example, information that Horak purported not to remember included: defendant rubbed a vibrator on S.J.'s buttocks; defendant placed his finger in S.J.'s anus; a second incident in which defendant placed his finger in S.J.'s anus; defendant licked S.J.'s anus and vagina; S.J. placed her mouth on defendant's penis; and S.J. placed her finger in defendant's anus. Horak also admitted that, shortly before she made her written statements, she told the prosecutor and Usry all of the things that she had just testified that she could not remember.

On cross-examination, Horak testified that, until October 2007, she did not have contact with S.J. or her other daughters. After she was reunited with her daughters, Adam Hurtado and Richard Stiltner also lived with her and her family. Horak testified that one would sleep in the dining room and the other would sleep in another room. During the time that Hurtado and Stiltner were living with them, defendant did nothing of a sexual nature with her or S.J. Horak

testified that defendant was not home very much because, until December 16, 2007, he was working from 4 a.m. to 7 p.m. Horak testified that, as of December 16, 2007, she and defendant were living at defendant's uncle's house. On that date, she and defendant separated, and she took the children until Christmas Eve, when she and her daughters reunited with defendant.

Horak testified that she did not show S.J. how to perform oral sex with defendant. Horak denied that she told S.J. to stick her finger into defendant's anus. Horak maintained that she did not allow defendant to touch S.J. in a sexual manner. Horak also testified that none of the children were allowed to be in her bedroom. Horak testified that she never watched a pornographic video with defendant and S.J. at the same time.

Horak also testified on cross-examination that she did not write or provide the contents of her written statements. Instead, she maintained that the information had been provided to her. On redirect examination, the prosecutor remarked that her memory appeared to much clearer on cross-examination than it had been on direct examination, and Horak agreed.

The State rested its case, and defendant moved for a directed verdict. The trial court denied the motion for a directed verdict. Defendant presented his case. Adam Hurtado testified that, at the time of trial, he had been living in Island Lake. From November 2007 until January 18, 2008, when the defendant and Horak were arrested, he had been living at their house. Hurtado testified that he slept in the middle room or else he slept on the couch in the living room. Hurtado testified that, while living with defendant and Horak, he never saw or heard anything inappropriate, including sexual conduct.

Anthony Judd testified that he is defendant's uncle. Judd also employed Horak to provide cleaning services in an apartment building in Mundelein for which Judd was the live-in manager. Judd testified that, on several occasions in December 2007 and January 2008, he

visited defendant and Horak at their home. Judd also testified that, in the middle of December 2007, defendant was issued a ticket for drunk driving and lived with him following the ticket. Judd testified that he never observed sexual contact between defendant and Horak and their children.

Jennifer Halvorsen testified that she was S.J.'s third-grade teacher. She taught S.J. from September 2007 until January or February 2008. Halvorsen testified that, in September 2007, she did not notice anything unusual about S.J. Later in the school year, S.J.'s head was shaved due to lice.

Defendant testified on his own behalf. Defendant testified that, in 2004, he married Horak. Late in October 2007, Horak's daughters moved into their home in Wauconda. Before October 2007, the children had been staying with their grandmother, Betty Emerson. Defendant testified that Horak had been in prison before the children moved in with them, and Betty Emerson would not let defendant have anything to do with the children. Eventually, however, Horak and defendant's mother, Rebecca Horak, got the children from Emerson when they visited Emerson's house accompanied by the police. After getting the children, defendant did not want to have any contact with Emerson. Defendant testified that he and Emerson did not get along because Emerson wanted child support money for looking after the children, and she wanted S.J. to remain with her to take care of her house.

Defendant testified that he had heard S.J.'s testimony earlier in the trial. Defendant denied that he had any sexual contact with S.J. Defendant specifically denied that he had invited S.J. to join him and Horak when they were having sex. Defendant also testified that his wife never invited S.J. into their bedroom.

Defendant testified that his wife owned sex toys that she kept in the closet and that they would watch pornographic movies together. Defendant denied, however, that he had any conversations with S.J. about sex. Defendant also denied that he had heard Horak talking to S.J. about sex. Defendant testified that, nevertheless, S.J. was curious about sex.

On cross-examination, defendant testified that Hurtado did not sleep at his house every day from November 2007 to January 2008, but was away from his house approximately one night a week. Defendant further testified about his dispute with Emerson, explaining that the dispute involved child support payments for one of the children from the child's biological father, and Emerson believed that she was entitled to that money. Defendant also explained that Emerson was upset with him because he did not want her to have custody of the children.

Following argument, the jury convicted defendant of each of the 13 counts of predatory criminal sexual assault of a child. Defendant filed a motion for a new trial. The trial court denied the motion and proceeded to sentence defendant to consecutive eight-year terms of imprisonment on each of the 13 convictions for predatory criminal sexual assault of a child. Defendant timely appeals.

On appeal, defendant contends that the evidence was insufficient to support the three counts of predatory criminal sexual assault of a child based on mouth-to-vagina contact. We review a challenge to the sufficiency of the evidence by considering whether, when viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). This standard applies in all criminal cases regardless of the nature of the evidence, direct or circumstantial. *Wheeler*, 226 Ill. 2d at 114, *People v. Cunningham*, 212 Ill. 2d 274, 279 (2004). We will not set aside a criminal conviction unless the evidence is so

improbable or unsatisfactory that there exists a reasonable doubt of the defendant's guilt. *People v. Pollack*, 202 Ill. 2d 189, 217 (2002).

Defendant contends that the evidence is insufficient because S.J. did not testify at trial about the occurrence of any mouth-to-vagina contact. Additionally, defendant argues that Usry's testimony about her interview with S.J. was vague and imprecise concerning the mouth-to-vagina contact because she recounted that, in response to a question of whether defendant licked S.J. "in the area of" her vagina, S.J. replied, "sometimes a little bit." Defendant complains that Usry's testimony about S.J.'s statement is insufficient because her recounting of S.J.'s statements leaves it unclear whether S.J. said that "defendant licked her *on* her vagina and exactly how many times it occurred." (Emphasis in original.)

In support of his contentions, defendant notes that *People v. Letcher*, 386 Ill. App. 3d 327 (2008), dealt with the dilemma posed by the victim's generic testimony about a resident child molester, similar to S.J.'s testimony in this case. Defendant correctly notes that *Letcher* stands for the proposition that, where generic testimony is offered by a victim, that testimony must (1) describe the kind of act or acts committed with sufficient specificity to determine what offense had been committed; (2) describe the number of acts with sufficient clarity to support each count alleged in the complaint or indictment; (3) and describe the general time period during which the acts occurred. *Letcher*, 386 Ill. App. 3d at 334.

Defendant argues that the evidence adduced during trial fails in all three respects when *Letcher* is applied: first, Usry's testimony that defendant licked S.J. "in the area of" the vagina "leaves open the question of whether the vagina itself was licked;" second, defendant asserts that the evidence does not sufficiently establish the number of times mouth-to-vagina contact occurred; and last, defendant asserts that the testimony of Usry and S.J. fails to describe the

general time frame of when the acts occurred. Defendant also makes the same assertions about Horak's written statements. Defendant concludes that the State failed to prove him guilty beyond a reasonable doubt of the three counts charging mouth-to-vagina contact. We disagree.

We turn first to *Letcher*. In *Letcher*, the defendant had been convicted of eight counts of predatory criminal sexual assault of a child, with six of the counts alleging that the defendant had committed an act of sexual penetration against the victim by placing his penis in her vagina or anus. *Letcher*, 386 Ill. App. 3d at 328. The victim testified that, in her old house, and again in her new house, the defendant used his private parts, meaning his penis, on her bottom and her vagina. The victim testified that the acts of sexual penetration occurred “ ‘too many times to remember.’ ” *Letcher*, 386 Ill. App. 3d at 329. The victim also testified about an occurrence in the new house that happened two days before Christmas, in which the defendant used his penis on the victim's bottom and vagina. *Letcher*, 386 Ill. App. 3d at 329.

The court, analyzing several foreign cases, concluded that, where a victim, who has undergone repeated and undifferentiated episodes of sexual assault, offers generic testimony, that testimony must (1) describe the acts or acts with sufficient specificity to identify the offense; (2) describe the number of acts with sufficient certainty to support each of the of the counts contained in the information or the indictment; and (3) describe the general time period during which the act or acts occurred. *Letcher*, 386 Ill. App. 3d at 334. The court noted that the victim's testimony had satisfied the first (identity of offense) and third (time frame) elements, but failed to sufficiently testify about the number of acts. *Letcher*, 386 Ill. App. 3d at 335. The court held that the victims's testimony adequately described four of the six instances of penile penetration of which the defendant had been convicted. The court noted that the descriptions of the penile penetration at the old and new houses, where the victim stated that the defendant used

his penis on her butt and on her vagina, satisfied all of the elements necessary to accept generic testimony. *Letcher*, 386 Ill. App. 3d at 336. The court also noted that the testimony about the Christmas-time occurrence was unclear as to whether that was the same event that the victim testified to occurring in the new house. *Letcher*, 386 Ill. App. 3d at 336. Thus, the evidence supported only four of the six counts, and the trial court reversed the remaining two counts. *Letcher*, 386 Ill. App. 3d at 336-37.

Defendant challenges the evidence adduced at trial on each of the *Letcher* elements. As to the first element, we hold that the evidence is sufficiently specific to support the allegation mouth-to-vagina contact. S.J. did not testify at trial about any incidents that involved mouth-to-vagina contact. Instead, that evidence was provided by the testimony of Usry and Horak. Usry testified about the statement given by S.J. during their interview. Usry testified that S.J. related defendant licked her in the area of her vagina and anus. While defendant complains that “in the area of” begs the question as to whether there was actual contact with S.J.’s vagina, that contention is not well taken. In the first place, our standard of review compels us to view the evidence in the light most favorable to the prosecution. Similarly, Horak’s written statements (introduced as substantive evidence due to Horak’s inconsistent testimony at trial) relate that defendant licked S.J. in the area of her vagina. Parsing Usry and Horak’s testimony so strictly that, if they did not aver that S.J. had personally and directly stated that defendant’s mouth had touched her vagina, then no mouth-to-vagina contact had occurred, is not viewing the evidence in the light most favorable to the prosecution, but rather, would be viewing it in favor of defendant. That is not our standard of review. Instead, when we view the testimony at trial from all the witnesses in the light most favorable to the prosecution, the picture emerges that defendant would regularly engage in sexual contact with S.J., involving various forms of sexual

penetration including oral penetration by defendant against the victim. From these regular occurrences, the finder of fact could reasonably infer that testimony that defendant was licking the victim “in the area of” her vagina constituted that oral penetration as well as mouth-to-vagina contact. Thus, in spite of the lack of direct testimony from S.J. about mouth-to-vagina contact, there is ample evidence in the record, when properly viewed, to support a finding that defendant engaged in mouth-to-vagina contact with S.J.

Second, we note that “sexual penetration” is defined as “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.” 720 ILCS 5/12—12(f) (West 2008). Given the description of the conduct, it is reasonable to infer that defendant’s licking “in the area of” S.J.’s vagina constituted some contact between his tongue and S.J.’s vagina, no matter however slight it might have been.

We note further that Dimitrijevič testified at trial that “vagina” referred to the interior part of the female’s sex organ, and that the outer parts of the female’s sex organ had different specific terms. The phrase, “in the area of” the “vagina,” as Dimitrijevič defined “vagina,” would suggest that defendant’s tongue had necessarily contacted S.J.’s sex organ while attempting to make it into the interior of S.J.’s sex organ. Thus, viewed in the light most favorable to the prosecution and in conjunction with the definition of sexual penetration (which is required to prove the offense of predatory criminal sexual assault) and Dimitrijevič’s definition of “vagina” given at trial, we conclude that the evidence is sufficient to support the

three counts charging mouth-to-vagina contact. Defendant's challenge to the first *Letcher* element fails.

Defendant next challenges the second *Letcher* element, contending that there was insufficient evidence to establish the number of times mouth-to-vagina contact occurred. We disagree. While S.J. did not directly testify to this element during her trial testimony, she covered this element during her interview with Usry. S.J. told Usry that the "special nights" with defendant and her mother had occurred on every weekend since Christmas 2007. Because S.J.'s interview with Usry occurred on January 18, 2008, it meant that three weekends had elapsed since Christmas 2007. In other words, there were at least three episodes of the previously identified sexual penetrations between defendant and S.J. Thus, there was testimony, again, viewed in the light most favorable to the prosecution, which supported each of the three counts based on mouth-to-vagina contact. Defendant's challenge to the second *Letcher* element also fails.

Last, defendant challenges the third *Letcher* element, contending that the evidence did not place the events into a general time frame. Again, we disagree. S.J. testified at trial that the sexual encounters with defendant occurred when she was eight years old, in third grade, and living with defendant and Horak. S.J. told Usry during their interview that the sexual encounters started when she was between second and third grade, which would have been in the summer or fall of 2007. Thus, there is ample evidence to place the offenses into a general time frame, and this satisfies the third *Letcher* element. Defendant's challenge to the final *Letcher* element also fails.

The State argues that *People v. Hillier*, 392 Ill. App. 3d 66 (2009), *aff'd*, 237 Ill. 2d 539 (2010), supports a finding that there is sufficient evidence to support the convictions of predatory

criminal sexual assault of a child based on mouth-to-vagina contact. The State notes that the *Hillier* court determined that, even though the victim did not testify directly or expressly that the defendant committed an act of sexual penetration to her vagina, she did testify that defendant “rubbed,” “felt,” or “handled” her vagina. *Hillier*, 392 Ill. App. 3d at 69. The court held that, even though there was not clear testimony of penetration, the finder of fact could reasonably infer that penetration occurred and that such an inference would not be reasonable only if the victim had expressly denied that penetration occurred. *Hillier*, 392 Ill. App. 3d at 69. The State reasons that, just as in *Hillier*, S.J. did not directly testify to sexual penetration, but she did not deny that penetration occurred, and the jury could reasonably infer that defendant had sexually penetrated S.J. with his tongue. Defendant counters, contending that licking “in the area of” the vagina is “qualitatively different” than rubbing, feeling, or handling. Defendant offers no further authority to support his position that the imprecise testimony in *Hillier* is “qualitatively different” than the imprecise testimony in this case.

We need not resolve the issue of whether *Hillier* provides an alternate rationale for our decision because of our determination that, when viewed in the light most favorable to the prosecution, the evidence of record is sufficient to support the convictions based on mouth-to-vagina contact beyond a reasonable doubt, as we have set forth above.

For the foregoing reasons, the judgment of the circuit court of Lake County is affirmed.

Affirmed.