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IN THE  
APPELLATE COURT OF ILLINOIS  
SECOND DISTRICT

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THE PEOPLE OF THE STATE	)	Appeal from the Circuit Court
OF ILLINOIS,	)	of Du Page County.
	)	
Plaintiff-Appellee,	)	
	)	
v.	)	No. 07—CF—2478
	)	
GERARDO JIMENEZ,	)	Honorable
	)	Perry R. Thompson,
Defendant-Appellant.	)	Judge, Presiding.

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JUSTICE BOWMAN delivered the judgment of the court.  
Justices McLaren and Burke concurred in the judgment.

**ORDER**

*Held:* The trial court properly admitted hearsay statements pursuant to section 115—10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115—10 (West 2008)). Additionally, defendant's insufficiency of the evidence claim failed. The judgment of the circuit court was therefore affirmed.

Defendant, Gerardo Jimenez, appeals his conviction of three counts of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2008)), and one count of aggravated criminal sexual abuse (720 ILCS 5/12—16(b) (West 2008)), for acts committed against his 11-year-old daughter, K.J. Defendant was sentenced to 10 years' imprisonment for the sexual assault offenses and 5 years' imprisonment for the sexual abuse offense, all to be served consecutively. On appeal,

defendant argues (1) that the trial court improperly admitted certain hearsay statements of K.J. under section 115—10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115—10 (West 2008)); and (2) that the evidence was insufficient to sustain his convictions. We affirm.

### I. BACKGROUND

On October 31, 2008, after a bench trial, defendant was found guilty of three counts of predatory criminal sexual assault of K.J. and one count of criminal sexual abuse of K.J. The following facts were adduced at defendant's trial. Rebecca Stone, K.J.'s mother and defendant's ex-wife, testified that she and defendant married in 1993 and had three children together: T.J., born in 1990, B.J., born in 1993, and K.J., born on July 7, 1995. In 1995, they moved to a home in Glendale Heights. In 2002, the couple separated but remained living in the home and attempted to occupy different parts of the house. In 2004, Stone moved out of the home and the children remained with defendant. In 2007, Stone lived at another location in Glendale Heights and would periodically pick up the children in the evenings to spend time with them after school, and they would spend the night with her on the weekends. The couple did not have a set schedule.

On August 8, 2007, Stone had the day off and spent the day with the children. K.J. had tears in her eyes when Stone went to drop the children off at defendant's home. K.J. asked to spend the night with Stone. Stone told K.J. that she had to work in the morning, but she would spend the night over the weekend with her. At that point, Stone had a conversation with B.J. and K.J. Two days later, Stone went to defendant's home and retrieved a green blanket from K.J. and B.J.'s bedroom, which K.J. told her would be in a white cabinet shelf. Stone brought the blanket and K.J. to the Children's Center, and Rachel Reiger took the blanket. Stone described the green "blankey" as a bed sheet that K.J. laid on and played with for the last several years.

On cross-examination, Stone admitted that when she first moved out of the family home in 2004, she rented a place and had K.J. living with her for two months. Stone then moved to Arkansas to care for her mother for a few months, and K.J. lived with defendant since then. When she returned from Arkansas, Stone was living out of her car and stayed with friends. She still saw her kids about four times per week but they remained in defendant's home, and he supported them. She moved into a home in 2006, and then B.J. and K.J. would spend the night with her on the weekends. Stone also spent time with them after school during the week.

K.J. testified that in 2007, she was in sixth grade and resided with defendant, B.J., and T.J. At that time, she was 11 years old. Defendant's home was a two-story home, with the first floor containing a kitchen, dining room, living room, a bathroom, and a back room that was used for storage. The second floor had a bathroom, defendant's bedroom, her sister T.J.'s bedroom, and the bedroom K.J. shared with her brother, B.J. Their bedroom had bunk beds. K.J. usually slept on the bottom bed. She denied that there were occasions when B.J. would sleep on the bottom bed. In April 2007, K.J. recalled going on an overnight school trip to the Atwood camp in Rockford. She recalled having a conversation with some of her friends in the cabin that she stayed in. The friends present were Marisol, Jasmine, and Alexandra. She recalled that the conversation she had involved defendant. Approximately two weeks prior to the Atwood trip, K.J. recalled a weeknight when defendant came home from work with coconuts to have after dinner. K.J. helped defendant prepare dinner. They were alone in the kitchen when K.J. told defendant about a news report involving the rape of one of K.J.'s friends. She stated that, in response, defendant whispered that he was "going to show [her] how it feels when it happens." K.J. felt scared after he said this. The family ate dinner, and K.J. went to bed in the bottom bunk. B.J. was in the top bunk bed.

K.J. wrapped herself in her green blanket and a red and black blanket. The red and black blanket was over her green blanket. She wrapped herself up that night because she was scared defendant was going to come into her room and do something to her. K.J. fell asleep. She woke up to defendant standing by her bed. Defendant took off the red and black blanket and put it aside. He took off the green blanket but K.J. held it next to her. K.J. was laying on her stomach. Defendant was on top of her. He pulled her pajama bottoms down to her thighs and “started to put his penis by [her].” Defendant’s penis first touched the bottom part of K.J.’s butt. His penis then touched by her vagina. K.J. stated that defendant’s penis touched the inside of the skin that surrounded her vaginal opening. She denied that his penis entered her. She stated that this hurt, and defendant’s penis felt “like a stick.” Defendant moved his penis back and forth until he stopped. K.J. could not estimate how long this incident went on. B.J. never woke up. While this was happening, K.J. had her face against her pillow and was crying. Defendant told her to be quiet or he would “do it harder.”

After defendant stopped, K.J. stated that he went to the bathroom. K.J. noticed that her green blanket had “sperm” on it. It felt “like a liquid” that was warm. K.J. then went to the bathroom and used the green blanket to wipe her vagina. She placed the blanket in the corner of a white cubby shelf in her bedroom. She never took the green blanket out of the cubby until the day her mother retrieved it to bring to the Children’s Center. K.J. denied any other contact with defendant’s body, denied that he touched her with his mouth that night, and denied that he asked her to touch him anywhere. She denied that the bed shook at all that night.

After that incident and after her trip to Atwood, K.J. recalled another incident, which occurred in defendant’s bedroom. K.J. was watching television with B.J. on the first floor, T.J. was in her bedroom, and defendant was in his bedroom. Defendant called for K.J. to come upstairs and massage

his back. K.J. would often do this for defendant because he lifted heavy boxes in his job with Federal Express. T.J. would also massage defendant's back sometimes. Defendant was laying on his stomach on his bed, wearing blue shorts and no shirt. K.J. rolled a baseball bat on defendant's back. Defendant told K.J. to lay down on the bed. At first, K.J. said "no." Defendant told her to "stop acting like a bitch." K.J. then sat on the bed, face up, with her back against the bed. K.J. testified that defendant told her to roll over on to her stomach. Defendant then went on top of her, pulled her bottoms down to her thighs, and defendant's penis first touched her butt. Defendant then used his penis to touch the inside skin of her vagina in the same manner as the incident on the night of the coconuts. When defendant stopped, he went to the bathroom. K.J. went to the downstairs bathroom, wiped herself with toilet paper, and flushed it. She felt "sperm" on her when she cleaned herself.

K.J. described a third incident, which occurred in July, the night before defendant took the children to visit his family in Mexico. K.J. went to bed that night, and defendant woke her up to help look for the papers needed to go to Mexico. She looked in the living room, in the van, and in the back room of the house. The back room was a "junk room," which stored a bed, extra clothes, and other items. K.J. recalled that she was wearing "Tweety" pajama bottoms and a shirt. In the back room, defendant told K.J. to bend over the bed. She at first said no, and defendant told her to "shut up." Defendant pulled her Tweety shorts down to her legs, and defendant used his penis to touch her in the same manner as the first two incidents. K.J. asked him to stop, and defendant again told her to shut up and threatened to do it harder if she did not. K.J. testified that defendant's touching hurt her vagina. Again, when he stopped, defendant went to the bathroom on the first floor. K.J. went to the bathroom on the second floor. She cleaned defendant's "sperm" off of her vagina.

K.J. described a fourth incident, a night in which she fell asleep in the television room on the first floor. B.J. was on the couch next to her. K.J. had a bra on underneath her shirt and was wearing bottoms. She woke up to defendant touching her left breast with his mouth. Defendant pushed her bra up over her breast for access.

K.J. did not tell anyone about the first incident, the night of the coconuts, because she was afraid of losing her father. She admitted that she told some friends about the first incident at Atwood but told them not to tell anyone because she was afraid. She admitted that she later told B.J. and Stone. When Stone was taking K.J. and B.J. back to defendant's home one night, K.J. did not want to go back. She told B.J. to tell Stone about the incidents. She recalled telling Stone about the green blanket and told her where it was located. K.J. also recalled telling Reiger from the Children's Center about these incidents. K.J. recalled that Reiger informed her that her statement was recorded.

On cross-examination, K.J. did not recall telling Reiger that on the night of the coconuts, defendant came into the bedroom and told B.J. to go to the upper bunk. She recalled the night of the coconuts was a Wednesday but could not recall when she arrived home that day, what time she went to bed, what time B.J. went to bed, or what time T.J. went to bed. She knew that B.J. was already asleep in the room when she went to bed. She stated that the first incident was approximately one minute in length. The third incident also was one minute. The incident involving the breast, K.J. estimated that incident also took one minute. B.J. was in the room but asleep, and he did not wake up during the incident. The massaging incident took about two minutes and the door was shut to the bedroom. K.J. admitted that she was sad when her parents split up and could not say which parent she preferred living with because she wanted to live with both. She had a better relationship with her brother, B.J., than her sister, T.J. She also admitted having good relationships with her cousins and

aunts and uncles, including her cousin, Jessica. K.J. denied ever telling Jessica or any other cousin, aunt, or uncle about these incidents.

Robert Holguin, a police officer with the Du Page County Children's Center, testified that on August 14, 2007, he and Rachel Reiger went to defendant's home to investigate a report of sexual abuse. Defendant was getting out of his van when they arrived. Defendant agreed to speak with them at the Glendale Heights police department. When asked whether he knew why the officers wanted to speak with him, defendant stated that Stone had told him that T.J. was mistreating the other children. The officers advised him that was not the reason. Defendant then recalled that Stone came into the home one night and confronted him about what he did to K.J., yelling that K.J. told her that he was molesting her. Defendant denied that he molested K.J. to Stone and to Holguin. Defendant admitted that K.J. brought up her friend's rape. He stated that he asked K.J. if she knew what "rape" was, and she said that she did not. Defendant just told K.J. to be careful if an adult ever told her that she was pretty because the person could get her pregnant. Defendant stated that conversation took place months earlier. Defendant described his home and stated that B.J. slept in the bottom bunk, and K.J. slept in the top bunk bed.

Holguin testified that Reiger confronted defendant with the green blanket and told him that K.J. said his "sperm" got on the blanket during one of the alleged incidents. Defendant did not respond other than to say that K.J. also used a red blanket. Defendant denied that K.J. was a "liar," and he did not know why she would make these accusations. Defendant then began to cry during the interview. Holguin asked defendant about massages, and he admitted that he sometimes asked K.J. to massage or walk on his back after work. When Reiger told defendant that K.J. had stated there was an incident of touching during one of those massages, defendant put his hands to his head and

did not respond. Towards the end of the interview, defendant asked Holguin if he could speak to him privately. Holguin testified that he asked defendant to record the conversation if Reiger left the room. Defendant did not want the conversation recorded. Holguin agreed to speak to defendant alone. Defendant then asked Holguin if he were to admit to these things, would Holguin promise him that he would get his kids back. Holguin told defendant that he could not make him any promises relating to custody of the children before, during, or after the investigation. Defendant then said he had an appointment to see an attorney and asked if he could speak to Holguin later after he spoke with his attorney. Holguin gave defendant his business card, and the interview ended. Defendant never called Holguin after that. Holguin obtained court authorization for Stone to wear a wire, but defendant never admitted to any of the allegations.

Jean Kinnane, a forensic biologist with the Du Page County Sheriff's Office Crime Laboratory, testified that she tested the substance on the green blanket. The substance tested positive for the presence of semen.

The parties stipulated to the fact that defendant's DNA matched the DNA recovered from the semen stains on the green blanket. Additionally, the parties entered a stipulation regarding section 115—10 evidence, which stated that the evidence received by the court during the September 8, 2008, section 115—10 hearing, including testimony and exhibits, could be considered by the court as evidence presented by the State in its case in chief at trial only to the extent that the court previously ruled that such evidence was admissible.

The section 115—10 hearing resulted in the following. Jasmaureen Lozano testified that she went on the school trip to Atwood. On one of the three nights Lozano was at the camp, K.J. told her that defendant would come into her room and "try and touch her and try to have sex with her."

K.J. told her that she would always say “no,” but that defendant would continue. Lozano testified that K.J. was crying a lot, nervous to tell, and was playing with her fingernails. Two other girls were also present during this conversation. K.J. kept crying and could not breathe. Lozano and another girl took K.J. to a bathroom to try to help her stop crying. The girls told K.J. to tell the police but K.J. did not want to because she feared her friends would stop talking to her, her family might hate her, and defendant might not talk to her anymore. Lozano did not tell any teacher about the conversation.

B.J. testified that in early August, he and K.J. were watching television at defendant’s home when K.J. told him that defendant touched her at night. He did not believe her at first. K.J. was crying. K.J. said that defendant touched her breasts and “would stick it in.” B.J. told her to go to sleep and that he would stay up all night. B.J. tried to stay up all night but he fell asleep for part of the night. The next day, Stone picked B.J., T.J., and K.J. up for a visit. When Stone went to drop the kids off back at defendant’s, K.J. was crying. She asked B.J. to tell Stone what she told him the night before. B.J. did not want to tell Stone. K.J. kept crying and kept telling B.J. to tell Stone. B.J. finally told Stone what K.J. told him the night before. B.J. acknowledged that he did not want to testify.

Stone testified about the initial conversation with K.J. and B.J. When she dropped the kids off, K.J. had tears in her eyes. K.J. looked at B.J., and K.J. told B.J. to tell. Stone asked K.J. what she was talking about. B.J. started to tell her, and K.J. chimed in that when defendant would ask for a massage or when she was sleeping, he would stick it in her. Stone went into defendant’s home to confront him while K.J. and B.J. stayed in the car. She came back outside, and defendant followed her. Stone got into the back with K.J., and defendant spoke to her through the window. He told K.J.

that what she was saying was very serious and that she should not lie. K.J. said that she was not lying. K.J. was crying the entire time. Defendant went back inside the house. Stone went back into the house. Defendant told Stone to take K.J. to the hospital. Stone took the kids back to her home.

Before going into her home, B.J. told Stone about a green blanket that K.J. said defendant ejaculated on. Stone then spoke to K.J. in Stone's bedroom; T.J. was also present. K.J. told Stone that defendant had touched her breasts and put his mouth on her left breast. K.J. also said that he would "stick it in her." Stone asked K.J. why she did not tell her earlier, and K.J. said that defendant threatened to do it harder and she was scared. Stone asked K.J. when it first started, and she said the night that defendant brought home coconuts. Stone asked when it happened last, and K.J. said the night before they left for Mexico. Stone asked K.J. about the green blanket, and K.J. told her that some "liquidy stuff" got on the blanket and that she put the blanket away in her cubby shelf. Stone asked K.J. how many times this happened, and she said four times. K.J. was crying during this conversation, and T.J. tried to calm her down.

The parties stipulated to the testimony of Rachel Reiger, who was on disability at the time of the hearing. They stipulated that Reiger would testify that she interviewed K.J. on August 10 at the Children's Center, and that the interview was recorded. The video recordings were played in open court.

The court ruled as to the various statements the State sought to admit. Regarding K.J.'s statement to Lozano, the court deemed it a spontaneous conversation without planning among peers. The court was persuaded that there was sufficient reliability as to the statement, and therefore ruled that K.J.'s statement to Lozano was admissible. Next, the court considered K.J.'s statement to B.J. The court deemed that statement sufficiently reliable, given it was another statement made without

police or adults around, and that B.J. was reluctant to repeat what was said. Therefore, the court determined K.J.'s statement to B.J. was admissible. Regarding K.J.'s statements to Stone, the court deemed those statements reliable because Stone was asking a lot of questions but was not getting into specific details. The court did not find that Stone's questioning was akin to an interrogation. K.J.'s statements to Stone were also deemed admissible. Finally, regarding Reiger's interview, the court deemed the interview reliable and admissible. The DVD interview of K.J. was consistent with K.J.'s testimony in court. The court noted that on the video K.J. was crying and appeared uncomfortable discussing the incidents, that she used language appropriate for her age, that she was on the couch holding a cushion to her chest as if to try to protect herself, and that Reiger did not ask leading or suggestive questions.

With this evidence, the State rested. T.J. testified first for the defense. T.J. testified that K.J.'s relationship with defendant was good but she was closer to Stone because Stone let K.J. do whatever she wanted. T.J. would walk into defendant's room at any time to take the phone, or a movie, use the computer, or charge her Ipod. T.J. recalled when K.J. went on the Atwood field trip. She did not notice a change in K.J.'s attitude toward defendant at that time. T.J. recalled the family trip to Mexico. The night before they left, T.J., K.J., and B.J. all helped defendant search for the papers needed to cross the border. This occurred around midnight to 1 a.m. They eventually located the papers in the van. T.J. did not go to sleep that night but did not hear any unusual noises from K.J.'s room. She never heard defendant leave his bedroom. She only heard B.J. and K.J. playing video games. T.J. believed they both stayed up all night. T.J. testified that K.J. was asking to spend more time alone with defendant around summer 2007.

On cross-examination, T.J. admitted that she did not have a good relationship with Stone and that she did not consider Stone a “mother” to her. T.J. denied going to Stone’s home for weekend visits. She admitted she spoke to Reiger about K.J.’s allegations. T.J. thought Reiger attempted to get T.J. to say things that were not true but admitted Reiger did not directly ask her to say anything that was untrue.

Maria Sylvia Garcia (defendant’s sister), Jessica Garcia (defendant’s niece), Andres Jimenez (defendant’s brother), and Celia Romero (defendant’s sister-in-law), all testified that they never observed a change in K.J.’s relationship with defendant, which was a normal, loving relationship, and that K.J. never stated to them that defendant abused her.

Defendant testified in his defense. Defendant and Stone separated in 2001, and defendant told the children in 2006 that he was seeking a divorce. K.J. was the only child who was unhappy about the impending divorce. Defendant recalled that K.J. went to Atwood on a school field trip but did not recall exactly when. He denied ever sexually abusing K.J. He admitted that K.J. would sometimes walk on his back after he got off of work to massage his back. He acknowledged the trip to Mexico and that the entire family helped him search for the paperwork in the early morning hours. He did not know why K.J. alleged that he abused her but thought that maybe she wanted to go live with her mother. Defendant denied asking Holguin about whether he could get his kids back if he admitted to this conduct. Defendant stated that he was afraid, denied doing anything wrong, and told Holguin that he would call him after he spoke to an attorney. Regarding the green blanket, defendant testified that he used that blanket to cover the couch when his friend, Isabel, stayed over. Defendant had sex with Isabel on the couch on that blanket. He used the blanket to clean himself off and then put the blanket in his bedroom. The blanket disappeared before he had a chance to wash it.

Defendant did not look for the blanket; he figured K.J. took it out of the laundry pile. He admitted that he knew that K.J. was attached to the green blanket. He could not recall when his sexual encounter with Isabel was that led to the semen stain on the blanket.

Maria Isabel-Soriano, defendant's girlfriend, testified that she had sex with defendant in his home approximately "a week before he got arrested." They had sex on the sofa in the living room and identified the green blanket as the item that defendant used to wipe himself off after sex. She went to his house that night because defendant was upset that Stone was saying something that he never expected her to say. Soriano testified that defendant did not elaborate on what Stone said. Defendant did not mention K.J.

B.J. was called to testify for defendant. He testified that he normally slept on the bottom bunk but would sometimes sleep on the top bunk. He did not recall defendant ever coming into his bedroom at night. He recalled the night the family searched for the paperwork to get into Mexico. B.J. thought that they found the paperwork in the afternoon, not in the early morning hours before they left. However, he recalled that he went to bed around 1 a.m. the night before they left, and that K.J. was already asleep in the bedroom when he went to sleep. B.J. did not notice any changes in K.J.'s demeanor around defendant. He testified that K.J. preferred to be with Stone. On cross-examination, B.J. admitted that he was a heavy sleeper.

On October 31, 2008, the trial court found defendant guilty on three counts of aggravated criminal sexual assault and one count of criminal sexual abuse. In doing so, it commented that it found the blanket important to its decision. The blanket was special to K.J., and it made more sense that the blanket was in K.J.'s room and not in the living room. The blanket was recovered on August 10, and defendant was not arrested until September. Thus, the court did not find Soriano's testimony

persuasive regarding the semen on the blanket because she stated that they had sex a week prior to defendant's arrest.

After several continuances, the trial court heard defendant's motion for a new trial, based in part, on new evidence. Brigid Duffield was K.J.'s court-appointed guardian *ad litem* in divorce proceedings between defendant and Stone.<sup>1</sup> Duffield testified that K.J. left her a voicemail around Thanksgiving weekend, indicating that she lied during defendant's trial and that she needed to speak to Duffield to straighten it out. On December 10, 2008, Duffield met with K.J., who was brought to her office by her aunt and a cousin named Jessica, and Jessica's boyfriend. Duffield spoke to K.J. privately, and K.J. felt bad about her statements and was nervous about defendant's upcoming sentencing hearing. K.J. told her that she lied, specifically that her statements about vaginal penetration were a lie. K.J. did not discuss anal or oral contact with defendant. K.J. stated that she exaggerated some of the contact and that defendant did not molest her. When Duffield asked K.J. about her motivation in coming forward now, K.J. stated that at the time, her parents were in the process of getting a divorce and that she did not have a relationship with her mother. K.J. thought that if she accused defendant of molesting her, she would have more access to her mother and would be able to see Stone more often.

On July 22, 2009, the trial court denied defendant's motion for a new trial, finding that he did not meet his burden. It was not persuaded by Duffield's testimony because it believed K.J. was getting pressure from all sides, and the court was not persuaded that K.J.'s testimony at trial was fabricated. On July 29, 2009, the trial court sentenced defendant to 10 years' imprisonment on the

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<sup>1</sup> Duffield testified after K.J. waived her attorney-client privilege rights during the hearing.

three sexual assault offenses and 5 years' imprisonment on the sexual abuse offense, all to be served consecutively. Defendant timely appealed.

## II. ANALYSIS

Defendant first argues that the trial court improperly admitted certain hearsay statements of K.J. under section 115—10 of the Code because the State failed to establish the reliability of those statements, thereby failing to meet the requirement of subsection (b)(1) of section 115—10. Under *Crawford v. Washington*, 541 U.S. 36 (2004), the confrontation clause poses no restrictions on the admission of hearsay testimony if the declarant testifies at trial and is present to defend or explain that testimony. *People v. Kitch*, 239 Ill. 2d 452, 467 (2011). Here, K.J. testified at trial, and under *Crawford*, her prior statements are admissible because she was present to defend or explain that testimony. Subsection (b)(1) of section 115—10, however, poses an additional reliability requirement that provides defendant with additional protection above and beyond the confrontation clause. *Id.* at 469; see also *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009) (“Although the ‘reliability’ test established in *Roberts* and *Wright* is defunct as far as the confrontation clause is concerned, it is reflected in the statutory exception to the hearsay rule set forth in section 115—10 of the Code (725 ILCS 5/115—10 (West 2002))”).

When conducting a section 115—10 hearing, a trial court must evaluate the totality of the circumstances surrounding the making of the hearsay statements, including such factors as the child's spontaneity and consistent repetition of the incident, the child's mental state, use of terminology unexpected of a child of a similar age, and the lack of motive to fabricate. *Sharp*, 391 Ill. App. 3d at 955. The State bears the burden of establishing that the statements were reliable and not the result of adult prompting or manipulation. *Id.* A reviewing court will reverse a trial court's determination

pursuant to section 115—10 only when the record demonstrates that it abused its discretion. *Id.* An abuse of discretion occurs when the trial court’s ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Id.*

In this case, the trial court first considered K.J.’s statement to Lozano and noted that her statements were spontaneous to her school friend, without adults around, and similar to other statements that she made. Lozano described K.J. as crying uncontrollably when she made this statement. Defendant argues that because there was no evidence regarding the substance of the girls’ conversation preceding the statements, it was impossible for the trial court to determine the statements were truly spontaneous. Defendant also argues that the other two girls who were present for the conversation were not brought in to corroborate the statements. We disagree with defendant’s arguments. Lozano testified that the girls were talking about “a lot of things” when K.J. made these statements and began to cry. The fact that Lozano was not asked about what “things” they talked about and the fact that the other two girls did not testify did not make K.J.’s statements less spontaneous or less reliable in the sense that she was not being pressured to discuss abuse, and the statements were consistent with other statements K.J. made. Accordingly, we cannot say that the trial court abused its discretion in determining that this statement to Lozano was sufficiently reliable to satisfy the requirement of section 115—10 of the Code.

Regarding K.J.’s statement to B.J., again the court noted that it was spontaneous and made to her brother without any adults or police around. She was also reluctant for B.J. to repeat what she told him. Again, we do not find that the court’s decision was arbitrary, fanciful, unreasonable, or that no other reasonable person would take its view. Regarding K.J.’s statements to Stone, the court noted that although Stone asked K.J. more questions than Lozano or B.J., her questions were

more of a maternal interest and did not get into the specific details that one would expect a police officer to ask. Defendant argues that Stone's questioning was "leading and suggestive" because she asked about ejaculation based on B.J. telling her about the green blanket. We agree with the trial court that Stone was not asking investigatory questions but rather was asking questions as a concerned mother trying to understand when and how many times her daughter was abused and about where the blanket that defendant allegedly ejaculated on was located. Further, like the statements made to Lozano and B.J., K.J. was upset and reluctant to make the statements, and the statements were consistent. Thus, we again do not find that the court's determination that the statements to Stone were reliable was an abuse of discretion. Defendant also argues that Stone's testimony at the section 115—10 hearing that B.J. told her that K.J. mentioned the green blanket was double hearsay, which was not admissible under section 115—10. Even if this statement was admitted in error, it was harmless error as K.J. testified at trial that she told Stone about the green blanket and where it was located in her bedroom.

Finally, we also agree that the trial court did not abuse its discretion in finding the videotaped interview of K.J. was reliable. The court noted that K.J. was reluctant to speak of the incidents on the video, cried when she did, and that her statements were consistent with the other statements that she previously made. Defendant argues that K.J.'s statement to Reiger on the video was not reliable given the timing of the statement, the improbability of K.J.'s allegations, and the delay in reporting the abuse. The factors to be considered in a reliability analysis include the child's spontaneity, the child's consistent repetition of the incident, the child's mental state, use of terminology unexpected of a child of a similar age, and the lack of motive to fabricate. Defendant's arguments against the reliability of K.J.'s statements to Reiger go to the weight to be accorded K.J.'s statements, rather than

the reliability or admissibility of the statements. Based on the reliability of the statements and the fact that K.J. testified in court, we find that the trial court properly admitted the hearsay statements pursuant to section 115—10 of the Code.

Next, we consider defendant’s argument that the evidence was insufficient to sustain his convictions. “When reviewing a challenge to the sufficiency of the evidence, this court considers whether, viewing the evidence in the light most favorable to the State, ‘any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.’ ” (Emphasis in original). *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007), quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). This standard of review applies regardless of whether the evidence presented was direct or circumstantial and regardless of whether the defendant received a bench or jury trial. *Id.* This court will not retry a defendant when considering the sufficiency of the evidence. *Id.* The trier of fact is best equipped to judge the credibility of witnesses, and its findings concerning credibility are entitled to great deference. *Id.* at 115. However, while a fact finder’s decision to accept testimony is entitled to deference, “it is neither conclusive nor binding.” *Id.* “Accordingly, a conviction will be reversed where the evidence is so unreasonable, improbable, or unsatisfactory that it justified a reasonable doubt of defendant’s guilt.” *Id.*

Defendant argues that the evidence was insufficient to sustain his convictions because: (1) there was no medical evidence supporting K.J.’s claims of abuse; (2) there was no prompt for the complaint of abuse and a five-week delay in the report of abuse; and (3) K.J.’s allegations were improbable, inconsistent, and contrary to common sense and life experience. Defendant argues multiple alleged inconsistencies and credibility issues with K.J.’s various statements, such as certain details being left out of certain statements, the fact that B.J. never woke up during the incidents, and

the time of day that the family searched for papers before leaving for Mexico. For instance, defendant points to the fact that K.J. did not tell Reiger about the green blanket during her initial interview but only later that day when Reiger resumed the interview to ask about the blanket. Defendant argues that Soriano explained how and why defendant's semen got onto the green blanket. Defendant also calls K.J.'s credibility into question because her demeanor towards defendant never changed. According to defendant, K.J.'s allegations defy common sense because B.J. and T.J. were either present in the room or somewhere in the home during every alleged assault, and defendant would not have risked being caught by either of them. Finally, defendant argues that there was no reason for K.J. to delay reporting the abuse and that the five-week delay calls into question her credibility.

It is the function of the finder of fact to assess the credibility of the witnesses, to determine the appropriate weight to be given their testimony, and to resolve conflicts or inconsistencies in the evidence. *People v. Evans*, 209 Ill. 2d 194, 211 (2004). While we must consider all of the evidence, the mandate to do so “does not necessitate a point-by-point discussion of every piece of evidence as well as every possible inference that could be drawn therefrom.” *People v. Wheeler*, 226 Ill. 2d 92, 117 (2007). “To engage in such an activity would effectively amount to a retrial on appeal, an improper task expressly inconsistent with past precedent.” *Id.* Reversal is not warranted simply because the defendant argues that a witness was not credible or that the fact finder placed too much weight on a particular piece of evidence. *Evans*, 209 Ill. 2d at 211.

In this case, the bulk of the details of the incidents were consistent in each of K.J.'s statements and her testimony, and any inconsistencies in her statements were to be resolved by the finder of fact. The credibility of K.J. and the weight to be placed on her testimony was also for the finder of fact to assess and determine. Regarding the green blanket, the fact finder was responsible for determining

whether K.J.'s testimony or the testimony of Soriano and defendant should be given more weight. Given that Soriano testified that she had sex with defendant about a week before he was "arrested," and that the blanket was taken into a custody approximately one month prior to defendant's arrest, it was not unreasonable for the finder of fact to place more weight on K.J.'s testimony on this point.

We note that defendant also argues that K.J.'s credibility was further diminished by Duffield's testimony regarding K.J.'s recantation. However, Duffield did not testify during defendant's trial but later during a hearing on defendant's motion for a new trial. Thus, that testimony is not to be considered in determining the sufficiency of the evidence adduced at trial. Defendant does not argue that the trial court erred in denying his motion for a new trial, and we therefore do not address that issue.

In support of his position, defendant relies on *People v. Judge*, 221 Ill. App. 3d 753 (1991), which we find distinguishable. In *Judge*, the State introduced improper testimony to show that the defendant had a propensity to commit the charged crime. *Id.* at 760. The record also raised doubts as to the motives of the mother of the child-victim because she had been a victim of sexual abuse herself and had previously accused another man of abusing a child and that man was later cleared. *Id.* at 761. Additionally, the State's medical expert was severely impeached regarding the child's alleged vaginal injury, which proved to be a pre-existing condition that the medical expert was unaware of. *Id.* at 755-56, 762. The child-victim's testimony that she was thrown to a bed was not supported by any noticeable marks or bruises on the child's body and the alleged violent incident did not awaken the child-victim's younger sister who was in the room at the time. *Id.* at 761. Accordingly, under its facts, the appellate court reversed the defendant's conviction because the

improper prosecutor's remarks and questioning denied the defendant a fair trial, and the evidence presented did not establish the defendant's guilt beyond a reasonable doubt. *Id.* at 762.

We do not find the facts of *Judge* comparable to the facts of this case. In this case, the issue of K.J.'s motive of wanting to live with her mother was raised, there was no medical evidence of injury, and the issue of B.J. being in the room but not waking up was thoroughly raised. However, the court also heard K.J.'s testimony, saw her videotaped statements, and heard the statements she made to other people, and the court noted that K.J.'s statements were consistent and that she was a believable witness. Further, the court had considered the green blanket which contained defendant's semen stain. The court did not consider defendant's explanation of how his semen found its way onto the green blanket as credible, especially given that Soriano testified they had sex a week prior to defendant's arrest which was several weeks after the green blanket was taken into custody. Unlike in *Judge*, we do not have highly prejudicial remarks and questioning by the State to factor into the evidence or medical evidence that was significantly attacked. While K.J.'s testimony that she was assaulted while B.J. was asleep in the room may seem similarly improbable as the child-victim's account in *Judge*, there is a key difference in that the child-victim in *Judge* described a more violent attack involving the defendant throwing the victim to the bed whereas K.J. did not describe such harsh movements that would likely cause another person to awaken. K.J. and B.J. both testified that B.J. was a heavy sleeper, and K.J. testified that she cried into her pillow and that there was no movement or shaking in the bed during the occurrence. Moreover, the massage incident and the incident on the night before the Mexico trip both took place when no one else was in the room. The breast incident took place when both B.J. and K.J. were asleep, and the incident ended when K.J. woke up. We cannot agree that the outcome in *Judge* controls the outcome here when we have such

a different set of facts and different evidence to consider. Based on the evidence of this case, defendant's sufficiency of the evidence claim fails.

### III. CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

Affirmed.

