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2012 IL App (3d) 090385-U

Order filed January 4, 2012

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2012

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
	)	Knox County, Illinois
Plaintiff-Appellee,	)	
	)	Appeal No. 3-09-0385
v.	)	Circuit No. 08-CF-374
	)	
LEONARD SPICHER,	)	
	)	Honorable James B. Stewart,
Defendant-Appellant.	)	Judge, Presiding.

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PRESIDING JUSTICE SCHMIDT delivered the judgment of the court.  
Justice Holdridge concurred in the judgment.  
Justice McDade dissented.

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**ORDER**

¶ 1 *Held:* The State adduced sufficient evidence at trial to convict defendant of aggravated criminal sexual abuse and the State's failure to disclose additional information obtained from a witness did not prejudice defendant.

¶ 2 The State charged defendant, Leonard Spicher, with aggravated criminal sexual abuse (720 ILCS 5/12-16(d) (West 2008)), alleging he placed his penis in the mouth of the victim who was older than 13 years of age but younger than 17 years of age. Following a bench trial, the circuit court of Knox County found defendant guilty as charged and sentenced him to three years' incarceration. Defendant appeals, claiming the evidence adduced at trial was insufficient to prove him guilty of the offense charged beyond a reasonable doubt, and that the State intentionally withheld information obtained from an occurrence witness.

¶ 3 **FACTS**

¶ 4 The single count information filed in this matter alleged that on or about July 22, 2008, defendant placed his penis in the mouth of S.M.P. in violation of section 12-16(d) of the Criminal Code of 1961 (the Code) (720 ILCS 5/12-16(d) (West 2008)). The information further alleged that S.M.P. was between the ages of 13 and 17 when the act was committed and that defendant was more than 5 years older than S.M.P.

¶ 5 The matter proceeded to bench trial during which Christine Harden testified that she formerly resided in a mobile home community where defendant lived next to her. At around 11:30 p.m. on July 22, 2008, she saw the victim, who she knew to be a teenager, seated on a freezer on the enclosed porch of defendant's trailer eating candy.

¶ 6 Harden watched as defendant opened the entrance door and S.M.P. went inside. At that point, Harden walked out of her trailer to investigate and noticed that a light from inside defendant's trailer came on from what she believed to be the bedroom. Due to her concerns of

what could be happening inside, she tried to see inside the bedroom windows, but all she could see was shadows. Harden then went to look through a different window and could see S.M.P. lying on the bed with his pants down, masturbating. Harden could see defendant in the same room watching S.M.P. masturbate. Harden then called the police and stayed on the line while an officer was dispatched to the trailer.

¶ 7 The victim testified that his birthday is October 10, 1992, making him 15 years old on July 22, 2008. That evening, he was riding his bicycle with his 18-year-old friend, J.P. He decided to ride to defendant's trailer to obtain money. When the two arrived at the trailer, the first thing S.M.P. did was knock on the door after which defendant let the two boys inside. The two then went to the back bedroom where they intended to exchange sex for money. S.M.P. stated that he masturbated in front of defendant.

¶ 8 S.M.P. continued his testimony by noting that he and defendant made an agreement that he would receive \$10 for having oral sex with defendant. Defendant put his penis in S.M.P.'s mouth that night and also "was trying to suck my dick" according to S.M.P.

¶ 9 S.M.P. noted that he ate some peanut butter cups while at defendant's trailer. He ate some in the living room and some in the back bedroom. He and J.P. were still in the bedroom when the police knocked on the door and defendant went to answer it.

¶ 10 On cross-examination, S.M.P. testified that he did not give the \$10 received from defendant to the police after being taken to the station for questioning. He further admitted that he and J.P. also planned to try to rob defendant. He confirmed that police asked him some

questions at the station, but that he never told the officer of the intent to rob defendant.

¶ 11 When defense counsel confronted S.M.P. with a taped interview conducted by police, S.M.P. admitted that he told the officer that defendant was in the bedroom when he and J.P. arrived and walked into the trailer. S.M.P. denied that he told the officer that the two went into defendant's bedroom and woke up defendant. S.M.P. further testified on cross-examination that defendant was in his bedroom getting his clothes on when he and J.P. found the peanut butter cups and ate them. This happened after the sex acts had taken place. Finally on cross-examination, S.M.P. noted that J.P. and defendant also engaged in sex acts as J.P. placed his mouth on defendant's penis and S.M.P. informed Officer Luna of this during the interview.

¶ 12 Officer Joe Luna of the Galesburg police department testified that he was dispatched to defendant's trailer shortly after midnight on July 22, 2008. The trailer had a covered patio just outside the entrance where he noticed some candy wrappers lying on the steps. He observed two bicycles near the entrance door. Officer Luna described the general layout of the trailer and also noted that he arrested defendant that night and determined defendant's age to be 73 at the time of his arrest. After Officer Luna's testimony, the State rested.

¶ 13 Defendant recalled Officer Luna as the first defense witness. Officer Luna testified to the interview conducted with S.M.P. He authenticated a copy of a DVD that contained a recording of that interview. He also authenticated a copy of a DVD containing a recording of an interview conducted with J.P. on the night of the incident.

¶ 14 Defendant called J.P. to the stand. J.P. testified that he and S.M.P. were riding bikes

from HyVee to a McDonald's where they talked to one of J.P.'s friends prior to heading to defendant's trailer. J.P. and S.M.P. discussed trying to rob defendant since they were in need of money. They left their bikes near the doorway and S.M.P. walked in after telling J.P. to wait where he was. J.P. could not see defendant. S.M.P. returned five minutes later and told J.P. he could enter.

¶ 15 J.P. noted that once in the living area, S.M.P. told him to have a seat on the couch. Defendant entered the room 20 seconds after J.P. sat down on the couch. After a short time, S.M.P. went to a backroom while J.P. began snooping around the front room and kitchen looking for money. The venture was unsuccessful and S.M.P. told J.P. he did not think he could distract defendant. The boys discussed looking for defendant's wallet but neither could find it. Both times J.P. witnessed S.M.P. leave defendant's bedroom, S.M.P. was wearing clothes. J.P. walked through the hall to use the bathroom once and observed S.M.P. lying on defendant's bed. Soon after J.P. went to the bathroom, the police arrived and were ringing the doorbell.

¶ 16 J.P. eventually testified that defendant did touch J.P.'s penis at some point during the evening. This took place shortly after defendant told J.P. he wanted to see if J.P.'s penis was bigger than S.M.P.'s. Since he "was getting money," J.P. partially removed his pants. J.P. admitted he told the officer during his interview that he never engaged in any sexual activity with defendant. At trial, however, J.P. indicated he was ready to disclose that defendant gave him oral sex. He refused to tell police about that previously as he was not under oath then and he had a reputation he wanted to keep. The following exchange then took place:

"Q. Did you talk to anybody before you came into the courtroom here that made you change your story?

A. No.

Q. Okay.

A. Well, yes. I talked to an attorney (indicating).

Q. Okay. And you talked to the State's Attorney?

A. Yes.

Q. Okay. And you talked to me a little bit before I found out Mr. O'Brien was your attorney, right?

A. Yes.

Q. Did the State's Attorney say anything to you that's making you change your story?

A. No. Well, yeah. He said I could have a felony if I didn't tell everyone the truth.

Q. Okay. So you were told by Mr. Pepmeyer that if you didn't tell everybody the truth here today, you could have a felony?

A. I could.

Q. Okay. Is that why you're changing your story?

A. Yes.

Q. Are you scared that you're going to be charged with a felony?

A. No.

Q. Okay. So as you're sitting here today then, which one is the truth: What you told Officer Luna back on the 23rd, the same day it happened, or what you said here in the courtroom?

A. Both. I told the truth here; but I was also telling some of the truth to Officer Luna, most of it. I just left out that one detail.

Q. What was the one detail, the sex?

A. Yes."

¶ 17 On cross-examination by the State, J.P. acknowledged that he informed the State's Attorney twice, prior to his testimony at trial, that defendant performed sex acts with him. The first instance took place in the State's Attorney's office and the second in the witness room right before trial.

¶ 18 After J.P.'s testimony, the trial court allowed defendant to play the two videos of J.P. and S.M.P.'s interviews. After the court viewed the interviews, defendant took the stand in his own defense.

¶ 19 Defendant testified he became acquainted with S.M.P. after he suffered some health issues as he needed to find someone to mow his lawn. Defendant paid S.M.P. \$10 every time he mowed defendant's lawn. On the night in question, defendant retired no later than 9 p.m. as he had worn himself out with activities during the day. Sometime after 11 p.m., a light came on in his bedroom and he awoke to see S.M.P. standing there. He told S.M.P. to leave and shut the light off but S.M.P. ignored his directive.

¶ 20 Defendant continued his testimony by noting that S.M.P. began shaking the bed and told defendant there was something to see in the living room so defendant relented and followed S.M.P. to the living room. It was in the living room that defendant met J.P. He told the two boys to leave his trailer and then went back to bed. The next thing defendant remembered was the police announcing their presence at the door of the trailer. He admitted giving S.M.P. \$10 to try and get rid of the boys. However, both boys were still in the trailer when the police arrived.

¶ 21 Defendant denied having engaged in any acts of sex with either of the boys. He further denied witnessing S.M.P. masturbating on his bed. Defendant rested after his testimony.

¶ 22 The trial court noted that the "young men" involved in the events of July 22, 2008, were not all that believable. Nevertheless, the court found the State proved all elements of the crime beyond a reasonable doubt and found defendant guilty of aggravated criminal sexual abuse.

Defendant filed a posttrial motion that the trial court denied. The trial court sentenced defendant to three years' incarceration. Defendant filed a timely notice of appeal and this appeal followed.

¶ 23

#### ANALYSIS

¶ 24 Defendant raises two claims of error on appeal. Initially, defendant claims the State failed to adduce sufficient evidence at trial to prove him guilty of aggravated criminal sexual abuse beyond a reasonable doubt. Secondly, defendant asserts that the State violated the rules of discovery, thereby denying him a fair trial when it "intentionally withheld information it acquired from one of the two occurrence witnesses."

¶ 25

#### A. Sufficiency of the Evidence

¶ 26 When reviewing defendant's claim concerning the sufficiency of the evidence, our inquiry is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the elements of the crime proven beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237 (1985); *Schott*, 145 Ill. 2d at 202-03; *People v. McCoy*, 378 Ill. App. 3d 954 (2008).

¶ 27 The State charged and convicted defendant of aggravated criminal sexual abuse in violation of section 12-16(d) of the Code (720 ILCS 5/12-16(d)(West 2008)). One "commits aggravated criminal sexual abuse if he or she commits an act of sexual penetration or sexual conduct with a victim who was at least 13 years of age but under 17 years of age and the accused was at least 5 years older than the victim." 720 ILCS 5/12-16(d) (West 2008). Defendant does not deny that the State adduced sufficient testimony proving the victim was between the ages of

13 and 17 at the time of the offense or that he was more than 5 years older. Defendant disputes whether sufficient testimony existed to find he committed an act of sexual penetration or sexual conduct with S.M.P.

¶ 28 Defendant contends that his conviction is based "almost entirely on the word of the 15-year-old complaining witness" who "could hardly have been more evasive or contradictory." Defendant notes that the trial court specifically called the victim's testimony into question when stating that "I don't particularly think that the young men were all that believable. They certainly had issues." Defendant claims the victim's testimony is so "riddled with inconsistencies, discredited by his own friend's account of what happened and marred by the obvious motivation to steer attention away from his own illegal conduct," that it cannot be believed. Defendant characterizes the victim's testimony as "improbable, unsatisfactory or inconclusive." As such, defendant submits that "this court should reverse defendant's conviction as the evidence, even viewed in a light which favors the State, shows that no sex acts ever occurred in the defendant's trailer on the night" in question. We disagree.

¶ 29 Defendant relies upon, and we acknowledge the line of authority holding that a "judgment of conviction can be sustained only upon credible evidence that removes all reasonable doubt of guilt, and where the evidence of the prosecution is improbable, unconvincing or contrary to human experience, [a court of appeals] will not hesitate to reverse" a conviction. (Internal quotation marks omitted.) *People v. Ortiz*, 196 Ill. 2d 236, 267 (2001) (quoting *People v. Stevenson*, 25 Ill. 2d 361, 365 (1962)); *People v. Bartley*, 25 Ill. 2d 175

(1962). This, however, is not one of those cases.

¶ 30 S.M.P.'s testimony alone, if believed, is sufficient to satisfy the State's burden of proving defendant committed an act of sexual penetration or sexual conduct with a victim between the ages of 13 and 17 years of age. The "testimony of a single witness, if it is positive and the witness credible, is sufficient to convict, even though it is contradicted by the accused." *People v. Anderson*, 325 Ill. App. 3d 624, 634 (2001) (citing *People v. Novotny*, 41 Ill. 2d 401 (1968)); see also *People v. Atherton*, 406 Ill. App. 3d 598 (2010); *People v. Hillier*, 392 Ill. App. 3d 66 (2009). Given all the evidence adduced at trial, when viewed in the light most favorable to the State, we find the State adduced sufficiently credible evidence to prove the element of sexual penetration or sexual conduct between defendant and S.M.P.

¶ 31 S.M.P. testified that he and J.P. rode their bikes to defendant's trailer on the night in question to "get money." S.M.P. noted that, upon arrival, he knocked on the door and defendant came to the door. He further testified that he masturbated in the backroom while defendant watched and that defendant placed defendant's penis inside S.M.P.'s mouth that night in exchange for \$10. S.M.P. noted that he and J.P. ate Reese's peanut butter cups while at the trailer.

¶ 32 Christine Harden corroborated a substantial portion of S.M.P.'s testimony, indicating she observed S.M.P. eating Reese's candy while on defendant's porch, saw defendant come to the entrance door of the trailer and witnessed S.M.P. go inside the trailer with defendant. Based on her concerns, she looked in the trailer through various openings and observed S.M.P. lying on a

bed masturbating. Officer Luna observed the bicycles near the front door of defendant's trailer as well as the Reese's candy wrappers lying around. While there are undoubtedly inconsistencies in the version of the events S.M.P. and J.P. told the police versus the version of events they testified to at trial, we cannot say these inconsistencies render S.M.P.'s testimony so improbable or unconvincing to warrant reversal.

¶ 33 Defendant argues that this case mirrors *People v. Cowan*, 209 Ill. App. 3d 994 (1991), and, therefore, reversal is mandated. In *Cowan*, a divided panel of this court reversed defendant's conviction for criminal sexual assault and battery. *Cowan*, 209 Ill. App. 3d at 998. In doing so, the *Cowan* majority found "the inconsistencies and contradictions involved here can hardly be deemed collateral or minor. Where even the room in which the alleged assault took place changed between the police interview and the trial, we find the very existence of the incident was called into question." *Cowan*, 209 Ill. App. 3d at 997. Justice Barry dissented suggesting the majority merely reweighed the evidence and substituted its judgment for that of the trier of fact. *Cowan*, 209 Ill. App. 3d at 999 (Barry, J. dissenting).

¶ 34 While we acknowledge S.M.P.'s and J.P.'s trial testimony contained statements inconsistent with those made to the police, we do not find as the majority did in *Cowan* that those inconsistencies render the evidence in this case "so unsatisfactory that it creates a reasonable doubt of guilt." *Cowan*, 209 Ill. App. 3d at 997. *Cowan* did not involve a situation where an independent witness corroborated the testimony of the victim.

¶ 35 We hold the State adduced sufficient credible evidence at trial to support each and every

element of the charge of aggravated criminal sexual abuse.

¶ 36 B. Discovery Violation

¶ 37 Defendant's second claim of error is that the State violated his right to a fair trial when it withheld information acquired from J.P. While defendant acknowledges the State produced a DVD containing a recording of J.P.'s interview conducted shortly after the incident, he contends that J.P. "provided a contradictory account of what occurred in the defendant's trailer" during subsequent interviews which the State failed to disclose.

¶ 38 Initially, we note that defendant and the State quarrel over whether the State had a duty to disclose any additional information obtained from subsequent interviews with J.P. Defendant claims the State had such a duty as the State originally subpoenaed J.P. and disclosed his original statements to the police contained on the DVD. The State claims it had no duty as it removed J.P. from its witness list and did not call him as a witness at trial. We find that we need not address the issue as, for reasons noted below, the additional information obtained from J.P. did not sufficiently prejudice defendant to warrant reversal of his conviction.

¶ 39 The assessment of the materiality of undisclosed evidence involves weighing the impact of the undisclosed evidence on the verdict. *Brady v. Maryland*, 373 U.S. 83 (1963).

Accordingly, a *Brady* claim does not present a pure question of law. *People v. Beaman*, 229 Ill. 2d 56 (2008). A successful *Brady* claim requires a showing that: (1) the undisclosed evidence is favorable to the accused because it is either exculpatory or impeaching; (2) the evidence was suppressed by the State either willfully or inadvertently; and (3) the accused was prejudiced

because the evidence is material to guilt or punishment. *Beaman*, 229 Ill. 2d at 73-74. Evidence is material if there is a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed. *People v. Harris*, 206 Ill. 2d 293, 311 (2002). To establish materiality, a defendant must show the favorable evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. *Beaman*, 229 Ill. 2d at 74 (citing *People v. Coleman*, 183 Ill. 2d 366 (1998)).

¶ 40 Defendant notes that in the "two subsequent interviews," taking place after the interview depicted on the DVD given to defendant, J.P. "provided a contradictory account of what occurred in the defendant's trailer \*\*\* admitting that which he had denied during his recorded interview, namely that he had received oral sex from the defendant when he and S.M.P. had visited him on July 22, 2008." We cannot say that the information gleaned from the subsequent interviews with J.P. could reasonably be taken to put the entire case in such a different light as to undermine the confidence of this verdict.

¶ 41 In J.P.'s statement to the police, given the night of the incident, he indicated that nothing of a sexual nature occurred between himself and defendant that evening. He did say he observed defendant and the victim in bed together and believed they had given each other oral sex. When defendant called J.P. to testify, J.P. stated that not only had defendant performed oral sex on J.P. that night, but that J.P. had lied when he told the police during questioning that nothing of a sexual nature had happened between himself and defendant. Defendant vigorously pursued the fact that J.P.'s trial testimony contradicted what he told police during his recorded interview and

very competently brought the contradictions to light. J.P. indicated the reason for lying to the police stemmed from not wanting people to find out about what he did that night and the realization that he could be charged with a felony for failing to tell the truth during his testimony.

¶ 42 In rendering his verdict following this bench trial, the trial judge indicated that neither J.P. nor S.M.P. were the most credible witnesses the judge had ever encountered. The judge noted what influenced him the most was the testimony of Christine Harden and the overall story told by the defendant in his own defense. The trial judge found defendant's version of the events to be unreasonable and not credible. While he did mention that J.P. was not the most truthful witness ever to step into his courtroom, the trial judge gave no indication that the undisclosed evidence played any part whatsoever in this matter. We simply cannot say that the undisclosed evidence could reasonably be taken to put the whole case in such a different light as to undermine confidence in the verdict. As such, defendant's claim that he is entitled to a new trial based upon the State's failure to disclose additional information from J.P. fails. We find the failure to disclose that information did not prejudice defendant nor is there a reasonable probability that the result of the proceeding would have been different had the evidence been disclosed.

¶ 43

#### CONCLUSION

¶ 44 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 45 Affirmed.

¶ 46 JUSTICE McDADE, dissenting:

¶ 47 In challenging the sufficiency of the evidence presented in his bench trial to prove him guilty beyond a reasonable doubt of aggravated criminal sexual abuse, defendant relies on the supreme court case of *People v. Ortiz*, 196 Ill. 2d 236 (2001), wherein the supreme court in turn relied on its two earlier decisions in *People v. Stevenson*, 25 Ill. 2d 361 (1962), and *People v. Bartley*, 25 Ill. 2d 175 (1962). As the majority has stated, those cases stand for the proposition that a "judgment of conviction can be sustained only upon credible evidence that removes all doubt of guilt, and where the evidence of the prosecution is improbable, unconvincing or contrary to human experience, [a court of appeals] will not hesitate to reverse" a conviction. (Internal quotation marks omitted.) *Ortiz*, 196 Ill. 2d at 267 (quoting *Stevenson*, 25 Ill. 2d at 365). The majority acknowledges this authority, but concludes that "[t]his, however, is not one of those cases." *Supra* ¶29. I disagree. This is exactly one of those cases.

¶ 48 Since the majority has articulated the proper standard of review under *Collins*, 106 Ill. 2d 237, and has also set forth the elements of the offense charged, I need not repeat that language here. I do note that in a challenge to the sufficiency of the evidence, an appellate court must view the evidence in the light most favorable to the State and conclude whether any rational trier of fact could have found that the State's evidence sufficiently proved each and every element of the offense charged beyond a reasonable doubt. *People v. Hall*, 194 Ill. 2d 305 (2000); *People v. Maggette*, 195 Ill. 2d 336 (2001).

¶ 49 In this case, even when viewing the evidence in the light most favorable to the State, I do not believe that any rational trier of fact could have found that defendant committed an act of sexual penetration or any sexual conduct with S.M.P. that satisfies the requirements of the statute. Specifically, pursuant to the majority's order, the evidence indicates that the trial court found that it did not "particularly think that the young men [involved in this case] were all that believable." Inasmuch as their testimony and sworn statements to police were rife with inconsistencies and contradictions, this is not an unreasonable assessment by the trial court.

¶ 50 In view of their general unbelievability, the testimony of the State's witness, Christine Harden, which the majority also discussed, looms large. Ms. Harden, defendant's neighbor in the trailer park, became curious when she saw the two boys on the defendant's porch. She asserted that one of them was let into the home by the defendant and at that point she went around defendant's trailer until she found a window she could see through. At trial, she described her observations. At no point during her testimony did she indicate that she saw defendant in an act of sexual penetration or sexual conduct with S.M.P. See 720 ILCS 5/12-12(e) (West 2008) (defines sexual conduct as "any intentional or knowing touching or fondling by the victim or the accused."). Indeed, Ms. Harden testified that she never saw defendant other than fully clothed. When asked by defense counsel if she had seen defendant's penis, she denied such a sighting, immediately and with horror. Thus, not only does Ms. Harden's testimony utterly fail to inculcate defendant – it actually cuts against that of S.M.P. and J.P.

¶ 51 The defendant took the stand and testified in his own defense. His testimony, as

articulated by the majority, neither states nor suggests that an act of sexual penetration or sexual conduct occurred between defendant and S.M.P. In fact, my review of the record indicates that defendant expressly and repeatedly denied that an act of sexual penetration or sexual contact occurred between himself and S.M.P. on the evening in question.

¶ 52 Thus, when viewed in the light most favorable to the State, the evidence indicates that the court convicted defendant, beyond a reasonable doubt, pursuant to the testimony of witnesses it found to be not "all that believable[,]" without an admission by defendant (and indeed in the face of his unequivocal denial), and without the testimony of any witness who saw the defendant engaged in an act of sexual penetration or sexual conduct with S.M.P. Therefore, based on this evidence, I would reverse defendant's conviction, as I do not believe that a rational trier of fact could have found him guilty of the charged offense beyond a reasonable doubt.

¶ 53 While I acknowledge that it is not the duty of a reviewing court to reweigh the evidence or retry the defendant (*People v. Digirolamo*, 179 Ill. 2d 24 (1997)), I must note that my review of the record further supports my belief that the State failed to prove defendant's guilt beyond a reasonable doubt in this case. Specifically, the record also reveals inconsistencies in Harden's testimony with respect to the remainder of the testimony adduced at trial. Here, Harden testified that both boys walked from defendant's trailer in blankets, while S.M.P. testified that neither he nor J.P. left defendant's trailer wearing a blanket. In light of S.M.P.'s general lack of believability, however, it is more significant that the police officers denied that the two boys were removed from the trailer in blankets. Harden also testified that she saw S.M.P. eating

candy on defendant's porch, while S.M.P. testified that he took defendant's candy and ate it in defendant's living room. Although these inconsistencies do not pertain to the elements of the charged offense, to me, they shed unfavorable light on the objectivity of Harden's testimony.

¶ 54 My review of the record also discloses that the majority downplayed the detail that S.M.P. and J.P. both initially told police and also testified at trial that they had gone to defendant's trailer that night with the express purpose of and with a plan to rob defendant (who was 73 years old, had health issues, and lived alone). Specifically, S.M.P. initially told police that the boys planned for S.M.P. to distract defendant to allow J.P. to search defendant's trailer for money and other items of value.. To me, this plan is a telling motive for S.M.P. and J.P.'s presence at defendant's trailer on the night in question.

¶ 55 Even without consideration of these later observations, I would conclude that a review of the evidence in the light most favorable to the State as recounted by the majority still supports defendant's claim that the State's evidence of his commission of the crime charged was improbable, unconvincing and insufficient to establish his guilt beyond a reasonable doubt. Thus, I would reverse the determination of the trial court finding defendant guilty of aggravated criminal sexual abuse, and overturn his conviction outright.