



girls are only included in this order if contextually relevant.

¶4 Background. The alleged victims and the defendant all attended Newton High School. The defendant was accused of sexual improprieties with these three girls in early March 2008. The three victims told a guidance counselor at their high school what had occurred. The guidance counselor brought in the high school principal, who contacted the Newton police chief, Mike Swick. Officer Swick interviewed the girls and the defendant.

¶5 S.B. S.B. was 15 years old on February 29, 2008. S.B. testified that she had worked at a fish fry with her stepfather on February 29, 2008. She got permission to spend the night with Kati McCrary, a classmate, who she saw at the fish fry. S.B. and Kati agreed to meet at the defendant's home that evening. The defendant was Kati's boyfriend.

¶6 At about 8 p.m., Nathan Edwards, a friend, drove S.B. to the defendant's home. Not long after they arrived, Nathan and S.B. walked the short distance to Nathaniel's<sup>1</sup> home, where she saw Morgan Collins, another classmate. About one hour later, Morgan, Nathan, and S.B. returned to the defendant's home. Nathan left and went home. Morgan stayed for only a short period of time and then left. S.B. stayed at the defendant's home. Upon arriving at the defendant's home, S.B. borrowed a pair of shorts from the defendant's brother because her jeans were wet. S.B., Kati, and the defendant played a card game that involved removing an article of clothing or drinking alcohol if dealt a losing hand. As a part of the game, S.B. kissed Kati and Kati kissed the defendant.

¶7 Kati left the home to go get food. S.B. stayed with the defendant. The defendant attempted to get S.B. to kiss him, but she declined. Upon Kati's return, the defendant and Kati began kissing, and Kati performed oral sex on the defendant in S.B.'s presence. The defendant persistently asked S.B. to kiss him, and she relented and kissed him one time. The defendant then asked S.B. to perform oral sex on him, which she refused. The defendant got

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<sup>1</sup>Nathaniel is not identified in the record other than by his first name.

mad and went into the bedroom. Kati told S.B. that the defendant would be upset if S.B. did not do as he asked. Kati and S.B. entered the bedroom. Kati told S.B. to perform oral sex on the defendant, and eventually she did make limited oral contact with his penis. The defendant tried to remove S.B.'s shorts. S.B. struggled and the defendant ceased his efforts to remove the shorts, but he moved her onto the bed and had her lie down. The defendant returned his attention to Kati and had sexual intercourse with Kati during which he placed fingers up S.B.'s shorts and into her vagina. S.B. testified that she did not know what to do when this happened, and she "froze." The defendant then got on top of S.B. and engaged in sexual intercourse with her. She tried to move, but testified that her arms were pinned to her sides as the defendant was holding them down. While she did not want to have sex with the defendant, she admitted in her testimony that she did not tell him so. After some time passed, the defendant resumed having sexual intercourse with Kati. S.B. got up, redressed herself, and left the bedroom.

¶ 8 S.B. did not know what to do and where to go. She returned to the bedroom with the intent of retrieving her jeans. While in the bedroom, the defendant again grabbed her, bent her forward over the bed, and inserted his penis into her vagina. S.B. experienced pain and began crying, which caused Kati to tell the defendant to stop because he was hurting her. The defendant eventually stopped and returned to sexual activity with Kati, and S.B. ran out of the room.

¶ 9 S.B. left the defendant's home and walked over to Nathaniel's home, where she remained for one hour. She told no one what had occurred because she was fearful that her parents would find out that she had not actually spent the night at Kati's home. Nathaniel told S.B., Morgan, and Darren Reynolds (Morgan's friend) that they could not spend the night at his home. The three then walked back over to the defendant's home to see if they could stay there. S.B. asked Morgan to take her elsewhere. The defendant came out of the

bedroom and told Darren that he had to leave. S.B., Morgan, and Darren left the defendant's home and ended up spending the night in Morgan's car.

¶ 10 The next day, S.B. went to Morgan's home. Morgan heard S.B. crying and asked her what was wrong. S.B. told Morgan that the defendant had sexually assaulted her. Morgan did not respond. S.B. also told Morgan's brother, Jordan, about the assault and asked him what to do. Jordan told S.B. that she needed to tell someone. Later that day, S.B. called N.K. and asked her to come get her from Morgan's home. S.B. told N.K. that she spent much of the previous night at the defendant's home. N.K. asked S.B. if anything happened at the defendant's home, but S.B. told her that she did not want to talk about the events of the evening.

¶ 11 A couple of days later, S.B. told N.K. what happened. N.K. told S.B. that a similar situation had happened to her when she was with the defendant. The two girls decided to go see their school guidance counselor to detail the attacks.

¶ 12 Morgan Collins. Morgan Collins testified that she had become friends with the defendant in the fall of 2007. On the evening of February 29, 2008, she was at the home of her friend, Nathaniel. S.B. walked to Nathaniel's home from the defendant's home. Morgan and S.B. left Nathaniel's home to go to the defendant's home. When they arrived at the defendant's house, the defendant, his girlfriend Kati, and his brother Cody were in the living room. After talking briefly with Kati, Morgan left and went back to Nathaniel's home. S.B. stayed at the defendant's home. Later that evening, S.B. left the defendant's home and returned to Nathaniel's home. Morgan, S.B., and Darren Reynolds left Nathaniel's home in order to go hang out at the defendant's home. This time they stayed at the defendant's home for about one hour. The defendant and his girlfriend, Kati, were in the bedroom during a part of this time. When Morgan got ready to leave, S.B. said that she wanted to leave as well—that she no longer wanted to spend the night with Kati. Morgan, S.B., and Darren Reynolds

ended up spending the night in Morgan's car because it was past curfew, and Morgan could not drive the car home that night. At about 6 a.m., they were awakened by a police officer. They drove to S.B.'s home to get clothes and then returned to Morgan's house. When S.B. and Morgan were driving back to her home, S.B. told Morgan that the defendant had "done stuff to her." Morgan testified that S.B. was upset when she told her what happened with the defendant. S.B. told Morgan this again when they got back to the house. Morgan told no one what S.B. told her.

¶ 13 Kati McCrary. Kati McCrary testified that she and the defendant were engaged. She met S.B. at a fish fry on February 29, 2008. Kati went to the defendant's home that evening. S.B. came to the defendant's house that evening with Morgan Collins and Nathan Edwards. They stayed at the house for about one hour and then left. At about 10 that evening, S.B. and Morgan Collins returned to the defendant's home and left about 30 minutes later when the defendant asked everyone to leave. Kati testified that the defendant did not kiss or touch S.B.; that she did not kiss S.B.; that she, S.B., and the defendant did not remove their clothing that night; and that she and the defendant did not have sexual intercourse while S.B. observed. After midnight, she and the defendant consumed alcoholic beverages.

¶ 14 The parties stipulated to testimony that would have been given if witnesses Police Chief Swick and defense investigator Steve Bone were called as rebuttal witnesses to the testimony given by Kati. Chief Swick would have testified that he interviewed Kati on March 7, 2008, and she told him that the defendant left to go purchase sodas at 8:30 p.m. Morgan Collins came over to the house right after that, but did not stay. S.B. and Nathan Edwards also came to the house, but left as soon as the defendant returned to the house with the sodas. Kati told Chief Swick that S.B. did not return to the house that night. Steve Bone would have testified that he interviewed Kati on July 13, 2008, and she told him that when the defendant was not at his home, Morgan Collins, S.B., and Nathan Edwards arrived. At

about 8:30 p.m., S.B., Nathan, and Morgan left and went to Nathaniel's home. After they left, the defendant locked the door.

¶ 15 The Defendant's Version of the Events. The defendant told Officer Swick that during the evening of February 29, 2008, S.B. came to his house with Nathan Edwards and left at approximately 9 p.m. S.B. then returned to the defendant's home on her own and stayed for a short time before departing for the evening. After S.B. left his home, the defendant and his girlfriend, Kati McCrary, may have consumed alcoholic beverages.

¶ 16 At trial, the defendant testified that he did not sexually assault S.B. His parents were out of town that evening. He was home with his two brothers, a girlfriend of one of his brothers, his girlfriend Kati, and two other friends—Morgan Collins and Darren Reynolds. S.B. and Nathan Edwards arrived at about 8 p.m. that night. After one hour, they left. From what others told him, the defendant learned that S.B. returned to his home with Morgan and Darren, but he did not see S.B. upon her return. The defendant testified that these three wanted to spend the night at his home, but he told them that they could not do so. He denied playing any sort of drinking or card games with S.B.

¶ 17 Trial Conclusion and Sentencing. The defendant was convicted of the sexual assault of S.B. At sentencing, a school counselor and the defendant's grandfather testified on his behalf. The school counselor helped the defendant graduate from school when he was unable to complete classes after his arrest. While on bail, the defendant was living with his grandfather in Mulberry Grove. He worked four days each week at a warehouse facility in Breese. The defendant informed the court that he had been dishonorably discharged from the Illinois Army National Guard because of the charges filed against him.

¶ 18 Criminal sexual assault is a Class 1 felony in Illinois, and it is a nonprobationable offense. 720 ILCS 5/12-13(b)(1) (West 2008). The penalty range for a criminal sexual assault conviction is 4 to 15 years in the Department of Corrections. 730 ILCS 5/5-4.5-30(a),

(d) (West 2008). The State sought a 10-year sentence, while the defendant's attorney asked for the 4-year minimum sentence. The court found three factors in aggravation. First, the court commented upon the emotional harm done to S.B. as indicated in her victim impact statement. The court concluded that the sentence should be sufficient to deter others from committing similar crimes. Finally, the court looked at a period of time in 2006 when the defendant had a series of charges—one of which was a felony that was ultimately reduced to a misdemeanor—when he lived in Madison County. The court found that this series of crimes in 2006, which caused his family to move the defendant from that environment, established that the defendant had a propensity to commit crimes. The court concluded that the propensity to commit crime was established by the defendant's 2008 criminal sexual assault conviction. In consideration of those factors in aggravation, the trial court sentenced the defendant to a term of eight years' imprisonment.

¶ 19 The defendant's motion to reduce the sentence was denied. The defendant appeals from his conviction and from the sentence.

¶ 20 **LAW AND ANALYSIS**

¶ 21 Proof Beyond a Reasonable Doubt That the Defendant Used Force or Threat of Force

¶ 22 If the State failed to prove the defendant guilty of criminal sexual assault beyond a reasonable doubt, his conviction must be overturned. *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 276-77 (1985); *People v. Pollock*, 202 Ill. 2d 189, 217, 780 N.E.2d 669, 685 (2002). The relevant question on appeal is "whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." (Emphasis in original.) *Jackson v. Virginia*, 443 U.S. 307, 319 (1979). On appeal, the reviewing court defers to the trier of fact on all issues related to the weight of the evidence and/or the credibility of the witnesses. *People v. Castillo*, 372 Ill. App. 3d 11, 20, 865 N.E.2d 208, 217 (2007).

¶ 23 The defendant asks this court to reverse his conviction arguing that S.B.'s testimony was insufficient to support an element of the criminal sexual assault offense—that he used force or the threat of force to commit the offense.

¶ 24 Criminal sexual assault occurs when the accused causes bodily harm by committing "an act of sexual penetration by the use of force or threat of force." 720 ILCS 5/12-13(a)(1) (West 2008). The amount or type of force required in order to establish that element of the offense is not standardized in Illinois. The amount of force used by a defendant depends upon the facts and circumstances of each case. *People v. Taylor*, 48 Ill. 2d 91, 98, 268 N.E.2d 865, 868 (1971). Generally speaking, force implies the exertion of power in order to make a victim comply against her will. See *People v. Vasquez*, 233 Ill. App. 3d 517, 523-24, 599 N.E.2d 523, 527 (1992). The acts of sexual intercourse necessarily involve a degree of force, "but it cannot be said that every act of sexual intercourse involves force that will unlawfully 'overcome' the other participant." *People v. Kinney*, 294 Ill. App. 3d 903, 908, 691 N.E.2d 867, 870 (1998). The unlawful force needs to be enough to suggest that the sexual penetration was involuntary. *People v. Denbo*, 372 Ill. App. 3d 994, 1005, 868 N.E.2d 347, 355 (2007). "[T]here is no requirement that a victim of sexual assault attempt to escape or to cry out where she is restrained by fear or where to do so would endanger her life." *People v. Gramc*, 181 Ill. App. 3d 729, 735, 537 N.E.2d 447, 451 (1989). By the use of force, the acts that follow are necessarily nonconsensual. *Denbo*, 372 Ill. App. 3d at 1005-06, 868 N.E.2d at 356.

¶ 25 The defendant argues that S.B. did not resist, and therefore she was not forced to have sexual intercourse. We find that S.B.'s testimony contradicts this argument. The defendant and his girlfriend exerted pressure on S.B. to kiss him and to perform an act of oral sex on the defendant. S.B. resisted, but ultimately followed the couple to the bedroom. In the bedroom, the defendant tried to remove her shorts. S.B. resisted his efforts. The defendant

stopped trying to remove her shorts, but had her lie on the bed, and proceeded to insert his fingers into her vagina. S.B. testified that she had no desire or intentions of engaging in sexual activity with the defendant. She testified that she did not know what to do when he put his fingers inside her vagina, and she testified that she "froze." S.B. testified that when the defendant inserted his penis in her vagina the first time, his actions physically hurt her but that she was unable to move because the defendant had pinned her arms to her sides. When S.B. had an opportunity, she fled the bedroom, but then realized that her jeans were still in there. She went back to retrieve her jeans, only to be assaulted again when the defendant bent her over the bed. With this penetration, she cried. The defendant's girlfriend told him to stop because he was hurting S.B.

¶ 26 The defendant points to the fact that S.B. did not immediately leave his house as support for his contention that her actions were consensual. S.B. was 15 years old and had no driver's license. The assault occurred at 2:30 a.m. S.B. had told her parents that she was spending the night at Kati's house, but she was not at Kati's house. She testified that she was fearful that she would get in trouble with her parents because she was not where she said she would be. She did, however, go to Nathaniel's house, where she met back up with Darren and Morgan. When they were told that they could not spend the night at Nathaniel's home, they all three went back to the defendant's home. S.B. told Morgan that she did not want to stay in that house, and eventually the three did end up leaving and spending the night in Morgan's car. Viewing this evidence in the light most favorable to the State, we are unable to conclude that S.B.'s actions that evening signified that she had consented to the intercourse, but were consistent with the actions of a young, frightened teenager.

¶ 27 The cases cited by the defendant in support of his position that the facts of this case do not support a conclusion that he used force are distinguishable because the victims in those cases made no effort at resistance. See *People v. Taylor*, 48 Ill. 2d 91, 268 N.E.2d 865

(1971) (although the victim stated that she believed her attacker had a gun, her actions in casually conversing with him in the car for over two hours, then engaging in sexual intercourse, and concluding the evening with a kiss goodbye, were insufficient to establish that the contact was forced); *People v. Denbo*, 372 Ill. App. 3d 994, 868 N.E.2d 347 (2007) (holding that the victim implicitly consented to intercourse by allowing the accused to undress her and spread her legs apart, and while the actual sexual activities were "too rough" according to the accused, the victim's consent to the activity meant that the actions did not constitute an assault); *People v. Warren*, 113 Ill. App. 3d 1, 446 N.E.2d 591 (1983) (where the victim voluntarily removed her clothing at the accused's request, did not attempt to flee or resist, and testified that no force was used, the actions did not constitute a sexual assault).

¶ 28 In this case, S.B. resisted contact from the defendant that evening. S.B. did not want to kiss the defendant or engage in more sexual contact. She resisted the defendant's efforts to remove her clothing. Her arms were held to her sides during the first act of intercourse, and in the second act of intercourse, the defendant bent S.B. over the bed. She cried, and her pain was readily apparent to the defendant's girlfriend who told him to stop, but the defendant continued on with the assault.

¶ 29 The jury was able to assess the credibility of the witnesses at trial. The defendant himself testified, and he denied engaging in intercourse with S.B. His fiancée, Kati, also denied any sexual contact with S.B., but her testimony was riddled with inconsistencies with prior versions she gave law enforcement about the activities of that evening. Kati's testimony was also inconsistent with the testimony of her friend, Morgan Collins, about who was present in the house at various times. Morgan's testimony supported the comings and goings of the various teenagers between the defendant's and Nathaniel's home. Morgan's testimony also supported the fact that S.B. reported the sexual assault to her the very next morning, and that S.B. was upset about the attack. S.B. testified and told her story to the jury. The jury

then had the opportunity to assess the credibility of all of the witnesses in an effort to determine what transpired that evening. We must defer to the jury relative to those credibility issues. ¶30 We conclude that a rational trier of fact could have found that the defendant used force in his sexual assault of S.B., and we affirm the conviction.

¶31 Sentencing

¶32 The defendant argues that the sentence is excessive because of the factual nature of this case and because he has a strong potential to be rehabilitated.

¶33 The conviction was of a Class 1 felony, and probation was not an option. The minimum sentence the defendant could have received was four years. The State asked for 10 years. The court sentenced the defendant to eight years.

¶34 On appeal from a sentence, the court has the authority to reduce a trial court's sentence if that sentence constitutes an abuse of discretion. Ill. S. Ct. R. 615(b)(4) (eff. Aug. 27, 1999); *People v. O'Neal*, 125 Ill. 2d 291, 300, 531 N.E.2d 366, 370 (1988). Even if the sentence is within the guidelines, the reviewing court can find that the trial court abused its discretion if the sentence is contrary to the purpose and spirit of the law. *People v. Center*, 198 Ill. App. 3d 1025, 1033, 556 N.E.2d 724, 729 (1990).

¶35 In aggravation, this court considered the emotional harm to S.B. and the need to deter others from committing a similar crime. The defendant argues that neither was an appropriate factor for the court to consider because he does not believe that he should have been convicted—that he did not know that he was sexually assaulting her. The court also considered the defendant's criminal history and found that his pattern of behavior established a propensity to commit crime. The defendant argues that his past crimes were all negligible and therefore should not have been considered.

¶36 Emotional Harm. Victims of sexual assaults almost certainly will suffer from emotional harm due to the violation of their personal integrity and right "to decide with

whom they will establish intimate relationships." *People v. M.D.*, 231 Ill. App. 3d 176, 188, 595 N.E.2d 702, 709-10 (1992).

¶ 37 We reviewed the victim impact statement completed by S.B. and considered by the trial judge at sentencing. S.B. stated that since the assault, she has trust issues and a lack of self-confidence. She stated that no matter how much of a sentence he received, her injuries would never be fixed. Consideration of emotional harm to the victim as an aggravating factor was not an abuse of the trial court's discretion.

¶ 38 Deterrence of Crime. Deterrence of crime is an established consideration in Illinois in determining sentence. Illinois courts have upheld lengthy sentences for criminal sexual assaults for the purpose of deterring others. See *People v. Perruquet*, 118 Ill. App. 3d 339, 344, 454 N.E.2d 1051, 1054 (1983) (20-year sentence); *People v. Quintana*, 332 Ill. App. 3d 96, 109, 772 N.E.2d 833, 846 (2002) (20-year sentence); *People v. Hestand*, 362 Ill. App. 3d 272, 281-82, 838 N.E.2d 318, 326 (2005) (15-year sentence).

¶ 39 We find that the trial court did not abuse its discretion in considering deterrence of others as an aggravating factor.

¶ 40 Criminal Propensity. The defendant argues that his criminal history is negligible and therefore not supportive as an aggravating factor. The court clearly stated that the offenses were not major offenses, but determined that their existence, coupled with this conviction, supported the fact that the defendant had a criminal propensity. We do not find that the trial court abused its discretion in considering the defendant's criminal history and propensity.

¶ 41 Rehabilitative Potential. The defendant states that the sentence is not reflective of his rehabilitative potential and that the minimum four-year sentence would have imposed sufficient retribution. He makes no further statement or argument in support of this theory.

¶ 42 Having reviewed the sentencing hearing, we find no basis to conclude that the trial court abused its discretion in sentencing the defendant to more than the four-year minimum

term. The conviction of criminal sexual assault is serious. The victim was 15 years of age. His victim will live with the consequences of his actions for the remainder of her life. While the defendant argues that he did not understand that his actions amounted to an assault, and therefore his sentence should be reduced, we find his argument to be disingenuous in light of the facts. We affirm the defendant's sentence of eight years.

¶ 43

#### CONCLUSION

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

¶ 45 Affirmed.