



¶ 3 When the victim was five years old, the victim's mother and defendant began living together. Sometime after the victim turned 13, defendant started making comments to her about her "chest size." Soon he was coming into her bedroom in the early morning hours and would get in bed with her. He then progressed to touching the victim's breasts over her clothing, soon followed by touching them underneath her garments. In the following weeks, he began fondling her vagina. He eventually turned to having sexual intercourse with her and performing oral sex on her. There were also times when defendant had sexual intercourse with the victim outside of the home when they were alone together. According to the victim, these acts occurred once or twice a week until 2000 when she turned 16 years old. The assaults stopped after that time. The victim did not tell her mother about defendant's actions until she was 19 years old, however, and did not report defendant to law enforcement until December 2007. In January of 2008, the victim sought an order of protection. By this time, the victim's mother had started divorce proceedings against defendant.

¶ 4 The victim's mattress was turned over to law enforcement for analysis. No semen or other evidence of sexual intercourse was found on the mattress, however. The victim testified defendant put a towel under her most of the time. Defendant denied ever having sexual intercourse with the victim or committing any sexual act with her. Defendant also testified he had genital warts since he was 18 years old and had passed them on to the victim's mother. The victim did not have genital warts, and the victim's mother denied ever having them also.

¶ 5 After finding the victim's testimony more credible than defendant's, the court found defendant guilty of criminal sexual assault and aggravated criminal sexual abuse. At the sentencing hearing, the court determined that the counts should be merged and only imposed a sentence for criminal sexual assault. The written order, however, shows a sentence of eight

years' imprisonment for both convictions.

¶ 6 Defendant first argues on appeal that the State failed to prove him guilty beyond a reasonable doubt. Defendant points out that the victim did not bring any allegations of sexual abuse against defendant until some nine years after the alleged sexual acts, that there was no corroborating evidence of any sexual acts, and that there was no evidence that defendant transmitted his disease to the victim.

¶ 7 When reviewing a challenge to the sufficiency of the evidence, we consider, after viewing the evidence in the light most favorable to the prosecution, whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Cunningham*, 212 Ill. 2d 274, 278, 818 N.E.2d 304, 307 (2004); *People v. Collins*, 106 Ill. 2d 237, 261, 478 N.E.2d 267, 277 (1985). It is the trier of fact's responsibility, not ours, to resolve any conflicts in the testimony, to weigh the evidence, and to draw all reasonable inferences. *People v. Howery*, 178 Ill. 2d 1, 38, 687 N.E.2d 836, 854 (1997). Consequently, a criminal conviction will not be set aside on appeal unless the evidence is so unreasonable, improbable, or unsatisfactory that it creates a reasonable doubt as to the defendant's guilt. *People v. Hall*, 194 Ill. 2d 305, 330, 743 N.E.2d 521, 536 (2000). A rational trier of fact could have found that here the essential elements of the crimes were proved beyond a reasonable doubt. We therefore see no reason to overturn defendant's conviction in this instance.

¶ 8 The State proved that defendant, a family member of the victim, committed an act of sexual penetration against the victim who was under the age of 18 at the time. Defendant claims that the victim brought charges of criminal sexual assault and aggravated criminal sexual abuse against defendant to help her mother get a divorce from defendant. As the State points out, the divorce had already been finalized and custody of the mother's other two children had been awarded to the mother before defendant's trial had even begun. More

importantly, the lack of corroborating evidence was brought out and the victim was thoroughly questioned on cross-examination about any potential motive to falsely accuse defendant, yet her testimony did not waiver. She testified she did not report defendant sooner because she was scared she was going to be taken away from her mother or that defendant would hurt her. She finally moved out of the house, told her mother about the abuse, and eventually sought counseling. The trial court had the benefit and opportunity to hear both the victim and defendant testify. The trial court was in the best position to consider the respective demeanor of each and weigh which one was more credible. The court, after carefully considering the evidence, found the victim's testimony sufficiently persuasive to find defendant guilty. It is not for us to retry defendant or substitute our judgment for that of the trier of fact. *People v. Sutherland*, 223 Ill. 2d 187, 272, 860 N.E.2d 178, 233 (2006); *Hall*, 194 Ill. 2d at 330, 743 N.E.2d at 536 (2000).

¶ 9 Defendant next asserts on appeal that, although he was convicted of both criminal sexual assault and aggravated criminal sexual abuse, the State and the court agreed that the convictions were to be merged and that defendant was to be sentenced only on the criminal sexual assault charge. Defendant therefore contends that the mittimus must be corrected to reflect the proper sentence. The State concedes that the mittimus must be corrected but further points out the judgment order must be corrected as well. The judgment order reflects that defendant was sentenced to eight years' imprisonment for aggravated criminal sexual abuse as well. When the common law record conflicts with the report of proceedings, the report of proceedings controls and the common law record must be corrected. *People v. Peoples*, 155 Ill. 2d 422, 496, 616 N.E.2d 294, 329 (1993). Given that we have the authority to reverse, affirm, or modify the judgment from which an appeal is taken (Supreme Court Rule 615(b)(1) (eff. Aug. 27, 1999)), we therefore modify both the mittimus and the judgment order to vacate the sentence for aggravated criminal sexual abuse. See *People v. Pahlman*,

51 Ill. App. 3d 879, 885-86, 366 N.E.2d 1090, 1095 (1977). Furthermore, as we are vacating defendant's sentence for aggravated criminal sexual abuse, we also agree that defendant is not subject to extended-term sentencing.

¶ 10 Defendant also argues on appeal that he is entitled to 87 days of credit toward his sentence for time spent in custody before being sentenced to the Department of Corrections. The State concedes this issue as well. A defendant has a right to credit against his or her sentence for all of the time spent in custody on an offense. 730 ILCS 5/5-8-7(b) (West 2000). We therefore correct the mittimus to also reflect 87 days of total credit.

¶ 11 The State also suggests that the trial court ordered defendant to serve 75%, not 85%, of his sentence as stated at the sentencing hearing. The State believes we must correct the judgment order to reflect this fact as well. It is true that at sentencing the State and the court did initially state that defendant was subject to sentencing at 75%. Both the State and the court, however, later realized the error, with the court clarifying on the record that defendant would be serving 85% of his sentence. Defendant stated that he so understood. We therefore see no reason, under these circumstances, to correct the judgment order and mittimus to reflect that defendant is to serve only 75% of his sentence for criminal sexual assault.

¶ 12 For the foregoing reasons, we affirm the judgment of the circuit court of Fayette County, but modify the judgment order and mittimus as necessary to be consistent with our disposition of the appeal.

¶ 13 Affirmed in part; modified and vacated in part.