

occurred between March 1, 2007, and March 12, 2008. Just prior to his jury trial on the charges, the defendant filed a fourth supplemental answer to the State's motion for discovery, in which the defendant listed as an additional potential witness Dr. Naeem Qureshi, who had prepared a psychiatric report detailing his February 2006 examination of A.L. In response to the defendant's filing, the State filed a motion *in limine* to bar the defendant from introducing Dr. Qureshi's report, claiming that introduction of the report was prohibited under the Mental Health and Developmental Disabilities Confidentiality Act (Act) (740 ILCS 110/5 (West 2010)) and that no exceptions to the Act were present. The trial judge agreed, and the State's motion was granted.

¶ 5 At the defendant's subsequent jury trial, A.L. testified about multiple occasions on which the defendant forced her to touch his penis and to "suck on it and lick it and stuff, and rub it up and down" until the defendant ejaculated. She also testified about one occasion in which the defendant forcefully inserted his fingers into her vagina. A.L. testified that the defendant threatened her if she ever reported the abuse. She testified that on March 14, 2008—two days after she did finally report the abuse—it was her mother's birthday, and her mother was upset and crying and told A.L. that A.L. "broke the family apart" by reporting the defendant. A.L. testified that because she wanted her mother to stop crying, she told her mother that her allegations against the defendant were a lie. She testified that her mother subsequently took her back to the authorities, and A.L. told them that she had lied to them. A.L. testified, however, that she had not lied to the police and that her initial allegations against the defendant were all true.

¶ 6 Two police officers and an investigator from the Department of Children and Family Services (DCFS) testified about the interview they conducted with the defendant on March 12, 2008. All three testified that the defendant initially denied the allegations against him, but when told repeatedly that A.L.'s version of events was much more credible than his, the

defendant stated that A.L. might have accidentally "brushed his penis" while they were lying in bed together watching a movie. All three testified that the defendant subsequently admitted that sexual contact with A.L. occurred, but that the defendant blamed it on A.L., who "wanted" it. According to the testimony of the three officials, the defendant admitted that on more than one occasion, A.L. rubbed his penis until he became aroused and ejaculated, but the defendant continued to deny that he ever placed his fingers in A.L.'s vagina. A statement written and signed by the defendant at the conclusion of the interview was also admitted into evidence. In it, the defendant stated that he had "had unwanted approaches" by A.L. and had "eventually succumbed" to them, allowing her to "touch" and "play" with his genitals until he ejaculated. The defendant stated that it "[h]appened twice."

¶ 7 With regard to A.L.'s second interview with authorities, in which she initially claimed to have lied to them in her first interview, the DCFS investigator testified: "[A.L.'s] recanting lasted all of maybe one minute. She basically had told us that she was sad. It had been her mother's birthday. She didn't want to see her mother sad and that she was feeling responsible for her mom being sad." According to the investigator, A.L. then began to cry and told the authorities that the abuse "really did happen." A.L.'s last statement apparently upset her mother, who left the interview without A.L., telling authorities to "keep her."

¶ 8 The defendant testified on his own behalf. He denied making incriminating statements to the three authorities who interviewed him and claimed to have written the statement only because he had been "worn down" by the fact the authorities did not find his version of events very credible, and only because he feared his children would be placed in foster care. He admitted, however, that he left the site of the interview after giving his statement and was not placed under arrest until approximately one week later.

¶ 9 After deliberating for approximately 2½ hours, the jury found the defendant guilty of the count of predatory criminal sexual assault of a child that alleged he had placed his penis

into A.L.'s mouth, and guilty of the count of aggravated criminal sexual abuse, which related to the defendant forcing A.L. to touch and rub his penis. The jury found the defendant not guilty of the count of predatory criminal sexual assault of a child that alleged he had placed his fingers into A.L.'s vagina. The defendant was sentenced to a term of imprisonment of six years on the count of predatory criminal sexual assault of a child and a term of four years on the count of aggravated criminal sexual abuse, to be served concurrently. His posttrial motion was denied, and this timely appeal followed.

¶ 10

ANALYSIS

¶ 11 On appeal, the defendant first contends he was denied a fair trial because the judge who presided over his jury trial prevented him from presenting evidence attacking the credibility of the complaining witness, A.L. Specifically, he alleges that he should have been allowed to present Dr. Qureshi's psychiatric report, because, according to his reading of the report, it would have "proven" that an allegation of sexual abuse made by A.L. against the defendant when A.L. was four years old was "false." He contends that a line in the report, under the section "Social and Personal History," that states "[t]he patient denies any history of sexual or physical abuse during the session" in fact "proves" that a 2001 allegation made by A.L. against the defendant was false, because the line follows an earlier statement in the report that the defendant "was accused of sexual abuse and he had to go through some assessment before he was allowed back in the house."

¶ 12 With regard to the admission or exclusion of evidence, a reviewing court must not substitute its judgment for that of the trial court, and may only reverse the decision of the trial court if "the record clearly shows the trial court abused its discretion." *People v. Cookson*, 215 Ill. 2d 194, 213 (2005). As the State aptly notes, the abuse of discretion standard is one of great deference and, with the exception of no review at all, is the most deferential standard available. See *People v. Coleman*, 183 Ill. 2d 366, 387 (1998). Accordingly, we will find

an abuse of the trial court's discretion "only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court." *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 13 As noted above, in the case at bar, the trial judge found that the introduction of Dr. Qureshi's report was prohibited under the Act (740 ILCS 110/5 (West 2010)). The defendant contends, however, that "the trial court erred by subordinating [the defendant's] fundamental rights to confrontation and due process to A.L.'s statutory right to confidentiality of her mental health records." Under the Act, there is "a strong public policy in maintaining the confidentiality of" mental health records, and both the "public interest[] and the individual recipient's interest" in maintaining the integrity of the records and assisting the individual recipient's recovery justify the protection of mental health records "from the unlimited scrutiny of a criminal defendant or defense counsel wielding the sixth amendment as a weapon before which all other interests must fall." *People v. Bean*, 137 Ill. 2d 65, 100 (1990). Accordingly, limitations may be placed on "a defendant's access to statutorily privileged information" without running afoul of the sixth amendment. *Id.* at 100-01. Moreover, a trial judge "may exclude evidence when its relevancy is so speculative that it is of little probative value." *People v. Gorney*, 107 Ill. 2d 53, 60 (1985).

¶ 14 The question before this court, then, is whether the trial court's decision to exclude the report, and thus to protect the strong public policy favoring the confidentiality of mental health records, was "arbitrary, fanciful, unreasonable," or was a view "no reasonable person would take," in which case the decision would constitute an abuse of the trial judge's discretion and would require reversal. See *People v. Hall*, 195 Ill. 2d 1, 20 (2000). Based upon the evidence before us, we can make no such finding. First, we agree with the State that a finding by the trial judge that Dr. Qureshi's report was so remote and speculative that it would be of little probative value would not be arbitrary, fanciful, or unreasonable, nor

would it be a view no reasonable person would take. As the State points out, A.L. was only four years old in 2001, when she initially accused the defendant of sexually abusing her. Dr. Qureshi's report was not made until five years later and was the result of a visit to his office at which A.L. was accompanied not only by her mother, but by the defendant. Thus, the trial court could have concluded that there were multiple reasons the report was too remote and speculative to be of any probative value and could not be construed reasonably as "proof" that A.L. had made a prior "false" report against the defendant. These reasons include the fact that five years after the first abuse, A.L. may have blocked out the abuse or forgotten about it as a normal result of her brain's pruning and developmental process, as well as the fact that the abuser, the defendant, was one of the people who had brought her to Dr. Qureshi's office, and thus A.L. (who testified that the defendant had threatened her if she ever reported his abuse of her) would have been too intimidated to report the abuse to Dr. Qureshi even if she did still remember it.

¶ 15 Moreover, the trial judge's *in camera* inspection of the report would have revealed to him the disturbing sloppiness with which the report was compiled, which would have supported the conclusion that not only was the report too remote and speculative to be of any probative value, but it was unreliable as well. First of all, the report is internally inconsistent, listing the date on which A.L. was seen by Dr. Qureshi as March 22, 2006, and her date of birth as June 7, 1997 (which, we note, is incorrect), and yet nevertheless describing her as a "9-year-old" female, when in fact she would have been only eight years old at the time of the visit if the other information within the report was correct. Second, the report describes A.L. as being "from Carbondale," when the trial testimony of A.L., A.L.'s mother, and the defendant makes it clear that the three lived in Murphysboro, and had done so continuously since May 2004. Attention to detail is apparently not Dr. Qureshi's strongest point, a fact that weighs against his credibility and the credibility of his report.

¶ 16 In short, the trial judge reasonably could conclude that Dr. Qureshi's report was too remote and speculative to be of use, and the judge's decision to exclude the report was not arbitrary, fanciful, or unreasonable, nor was it a view "no reasonable person would take." See *People v. Hall*, 195 Ill. 2d 1, 20 (2000). With regard to the defendant's claim that the exclusion of the report deprived him of a fair trial, we note that the trial judge did not rule that the defendant could not bring up the 2001 allegation and the fact that no prosecution resulted from the four-year-old A.L.'s sexual abuse claims; in fact, when asked by counsel for the defendant if his ruling meant the defense could not "go into" the 2001 complaint, the judge stated for the record that he was "making no ruling concerning what the defendant may present in his case." Accordingly, defense counsel could have asked the defendant, and/or A.L., and/or A.L.'s mother, about the 2001 complaint, and about the fact that no criminal prosecution resulted from the complaint, but chose not to do so. The defendant claims that without Dr. Qureshi's report to "prove" the prior allegations were false, he was hampered in his ability to refute the allegations and thus was not in a reasonable position to query other witnesses about the allegations. However, as explained above, Dr. Qureshi's report does not "prove" anything about the prior allegations, and the defendant's position is unpersuasive.

¶ 17 The defendant next contends he was not proven guilty beyond a reasonable doubt. Where, as here, a defendant challenges the sufficiency of the evidence used to convict that defendant, it is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine 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." *Id.* at 209. After so doing, we will not reverse a conviction unless we conclude that the evidence against the defendant "is so unreasonable, improbable or unsatisfactory that it raises a reasonable doubt of [the] defendant's guilt." *Id.* at 209. For evidence to be sufficient to sustain a criminal conviction,

the trier of fact need not find, beyond a reasonable doubt, as to each link on the chain of circumstances surrounding an offense; to the contrary, "the trier of fact must find only that the evidence taken together supports a finding of the defendant's guilt beyond a reasonable doubt." *Id.* at 209. It is axiomatic "that the testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 18 In the case at bar, the defendant contends the State failed to prove him guilty beyond a reasonable doubt because A.L.'s depiction of the abuse was "not credible and highly improbable." To support this proposition, the defendant points to the age and size of the home where the abuse occurred and thin walls and lack of soundproofing in the home, as well as the purported vigilance of A.L.'s mother who was at times playing video games near the location where the abuse occurred, as proof that it could not have occurred in the manner described by A.L. Strikingly absent from the defendant's theory are a number of important facts, including the fact that two police officers and a DCFS investigator testified that the defendant confessed to them, at least with regard to the penis touching and rubbing that formed the basis of the aggravated criminal sexual abuse charge, that the abuse occurred almost exactly as A.L. described it, the defendant's present contention that such would be impossible notwithstanding. Absent as well is the fact that the defendant wrote and signed a statement corroborating the account he gave the three authorities who interviewed him. We note as well that the video game-playing mother to whom the defendant now ascribes such vigilance is the same mother who told authorities to "keep" A.L., and left an interview without A.L., after A.L. refused to recant her allegation that the mother's husband abused A.L.

¶ 19 It is true, as the defendant suggests, that with regard to the defendant's conviction for forcing his penis into the mouth of A.L., the evidence supporting that conviction consists

solely of the testimony of A.L., as the defendant did not confess to that behavior. Because we find A.L.'s testimony to have been both positive and credible, however, it was sufficient to sustain the defendant's conviction. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). With regard to how the physical features of the defendant's home affect the credibility of A.L.'s testimony, we find the defendant's theory just as unconvincing with regard to his forcing his penis into the mouth of A.L. as it is with regard to his forcing her to touch and rub his penis. Likewise, with regard to all the charges, we find unpersuasive the defendant's contention that A.L. "recanted" her allegations several days after making them. As noted above, A.L. testified that on March 14, 2008—two days after reporting the abuse to authorities—it was her mother's birthday, and her mother was upset and crying and told A.L. that A.L. "broke the family apart" by reporting the defendant. A.L. testified that because she wanted her mother to stop crying, she told her mother that her allegations against the defendant were a lie. She testified that her mother subsequently took her back to the authorities, and A.L. told them that she had lied to them. A.L. testified, however, that she had not lied to the police and that her initial allegations against the defendant were all true. A.L.'s testimony is corroborated by that of the DCFS investigator who testified: "[A.L.'s] recanting lasted all of maybe one minute. She basically had told us that she was sad. It had been her mother's birthday. She didn't want to see her mother sad and that she was feeling responsible for her mom being sad." According to the investigator, A.L. then began to cry and told the authorities that the abuse "really did happen." A police officer who was present for the second interview also corroborated the testimony of A.L. and the DCFS investigator.

¶ 20 The defendant also takes issue with the testimony of A.L. about the color and smell of the defendant's semen, pointing out that both the defendant and A.L.'s mother described the semen differently than did A.L. The defendant also contends that A.L.'s "lack of clarity" about the frequency of abuse and the times during which the abuse occurred somehow render

her testimony not credible, and that she had a motive to lie: her desire to live with her biological father in Nebraska, rather than with her mother and the defendant. The defendant suggests that the fact that A.L. did not report the abuse immediately after it occurred means she fabricated her allegations of abuse and also renders her not credible, and that the State should have been required to present physical evidence of the abuse. All of the information the defendant uses to attack A.L. was before the jury. We reiterate that it is not the function of this court to retry the defendant. *People v. Evans*, 209 Ill. 2d 194, 209 (2004). Rather, we "must determine 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." *Id.* at 209. Our review of the evidence before the trial court convinces us that a rational jury could have found the essential elements of the charges against the defendant beyond a reasonable doubt. The insinuations and accusations of the defendant on appeal do not create for us reasonable doubt as to his guilt.

¶ 21

CONCLUSION

¶ 22 For the foregoing reasons, we affirm the defendant's convictions.

¶ 23 Affirmed.