



of the genitals) against E.R. The following evidence was adduced at the defendant's bench trial. We will set forth only those facts pertinent to our disposition of the specific issues on appeal.

¶ 4 Monica R., E.R.'s mother, testified that Travis R., E.R.'s father, resided with the defendant in the summer of 2009. Monica had been married to Travis, but had divorced him because he was physically abusive. Travis had a relationship with E.R. after he was born, but that relationship had ended because Travis had a problem with drugs. Travis resided with the defendant in the summer of 2009. In March 2009, Monica allowed Travis to have supervised visitation with E.R. because Travis had quit using drugs and wanted to have a relationship with his son. After a period of supervised visitation, Travis was allowed unsupervised visitation with E.R. at the defendant's home, where Travis was living. This occurred from May 2009 until September 2009. During that period of time, Monica noticed unusual changes in E.R.'s behavior. According to Monica, E.R. would crawl in her bed, urinate in her bed, would rub stuffed animals on his penis, made humping motions on his stuffed animals, and used a pencil to poke his toy dolls in their private areas. This behavior began in May 2009 and increased over time. Monica sought counseling for E.R. in July 2010 as a result of these behavioral changes. E.R. attended three sessions with the children's counselor at the Language and Learning Center in Carbondale. However, Monica had to terminate the sessions because she could not afford to continue with the counseling appointments. When Monica informed E.R. on July 6, 2010, that she could no longer afford his counseling sessions, he became upset and told her that his father had "hugged him from behind naked and hurt [him] and Terry [(the defendant)] took his turn." Monica asked E.R. what he meant, and E.R. explained that Travis had hugged him from behind and put his "pee-pee in his butt." He said that the defendant had also taken his turn "doing that" and that it had hurt. E.R. also stated that Travis and the defendant made him "put their pee-pees in his

mouth" and that they had "peed in his mouth." Monica testified that E.R. demonstrated what had happened, and that he was visibly upset throughout the conversation. Shortly thereafter, Monica went to the Carbondale police station and reported the conversation to Detective Brooke Hammel. The following day, Monica took E.R. to the Child Advocacy Center in Pinckneyville, Illinois, to be interviewed.

¶ 5 Monica further testified that she had considered the defendant a friend and had several phone conversations with him during the time period that Travis was living with him. During the phone conversations, the defendant never told her that Travis was forcing him to perform sexual acts on E.R. or that he did not want E.R. to visit anymore. Monica did not observe any evidence of physical injury to E.R. between May 2009 and September 2009, and E.R. never complained of any injuries to his anal area during this time period.

¶ 6 Michelle L., Monica's partner, had resided in the same house with Monica and E.R. during this time period. Michelle had observed E.R. rubbing stuffed animals on his penis and also humping his stuffed animals. She also had observed E.R. poke a toy doll in the rear with a pencil. She believed that E.R. had displayed this behavior from the end of 2008 and the beginning of 2009. Monica found E.R.'s change in behavior alarming.

¶ 7 E.R., who was five years old at the time of the trial, testified at the trial. He explained the difference between a good touch and a bad touch, indicating that a bad touch was any touching to his buttocks and private areas. He recalled visiting his father at the defendant's house. He testified that his father and the defendant took turns "doing bad stuff" to him. He explained that they touched his private parts. When asked what kind of touches were given, he simulated oral sex. He explained that they put their "winkies" (penises) in his mouth and also touched his private parts and buttocks with their hands. He further explained that they also touched him with "their winkie." He recalled that Travis and the defendant were both naked, and the incidents occurred at the defendant's house.

¶ 8 Betti Mucha, the director of the Perry-Jackson County Child Advocacy Center, performed a forensic interview of E.R. on July 7, 2010. During the interview, E.R. said that his father was "bad" and that monsters lived in his father's basement. Mucha showed E.R. anatomical drawings to determine whether he could correctly identify various parts of the human body. He identified the penis and the buttocks on the drawings and called the penis a "winkie." Mucha asked E.R. if anyone had ever touched his private parts, and he indicated that Travis had touched his "winkie and his butt." He explained that Travis had put "a knife in his butt and that it cut him." Mucha gave E.R. two anatomically correct dolls (one male adult and one male child) and requested that E.R. show what happened to him using the dolls. E.R. removed the dolls' clothing and placed the adult male behind the child. He said that Travis was standing behind him and put his "winkie in his butt." He demonstrated this action with the dolls. He explained that Travis "peed in his mouth and on his hair."

¶ 9 E.R. then took the adult male doll and slapped the face of the child doll and explained that Travis had slapped him. E.R. said that the defendant was present during this incident and that the defendant was on the phone with the police. Mucha asked whether the defendant had touched him, and E.R. indicated that the defendant "gave good touches" on his forehead. E.R. became withdrawn and uncommunicative when the defendant's name was mentioned. He then asked for his mother and attempted to leave the room. Mucha ended the interview because she believed that it would have been too traumatic for E.R. if he was forced to stay in the room. She opined that it was unusual that E.R. did not ask for his mother until the end of the interview when she began discussing the defendant. Until she mentioned the defendant's name, E.R. was very open and answered her questions.

¶ 10 Brooke Hammel, a juvenile detective at the Carbondale police department, met with Monica R. on July 6, 2010, to arrange a forensic interview of E.R. with the Child Advocacy Center. The interview with E.R. occurred the following day, and Hammel observed the

interview by watching a television outside the interview room. On July 8, 2010, Hammel went to the defendant's residence and requested that he come to the police department for an interview. The defendant went to the police station later that day, and Hammel interviewed him regarding the allegations of sexual abuse.

¶ 11 During the interview, the defendant described his relationship with Travis, indicating that Travis was his ex-boyfriend and that Travis had moved in with him in January 2009. The relationship ended in October 2009 when the defendant obtained an order of protection against Travis. He described Travis as very controlling, demanding, manipulative, emotionally abusive, and physically abusive. He described incidents in which Travis had beaten him, slapped him across the face, and "head-butted" him.

¶ 12 The defendant explained that E.R. was Travis's biological son, and that E.R. was allowed to spend the night at their house approximately one night per week from May 2009 until late September 2009 or early October 2009. He indicated that his house had an unfinished basement, but explained that they did not spend any time in the basement. When asked whether there had been any inappropriate touching from him or Travis toward E.R., he became very silent and requested a break. The defendant became visibly upset and admitted that inappropriate touching of E.R. had occurred. Hammel noticed that the defendant was shaking, sweating, and appeared nervous. Before taking a break, Hammel asked the defendant if the interview could continue and whether he would consent to an audio- and video-recorded interview. The defendant agreed. After a short break, the interview resumed. The recorded interview was played for the court.

¶ 13 Following the break, the defendant described the nature of his relationship with Travis, stating that Travis had isolated him from his family and friends and had been physically abusive. He stated that on one occasion, Travis had "head-butted" him and busted his head open. Travis had also slapped him across the face causing his nose to bleed and had

also "strangled" him in E.R.'s presence. The defendant testified that Travis used crack cocaine and marijuana. He explained that Travis had demanded that he touch E.R.'s penis and testicles on two or three occasions. He believed that he would face "serious danger" if he did not do what Travis demanded. Travis had also encouraged E.R. to do the same to the defendant by telling E.R. that "it was okay," it was their secret, and they "wouldn't tell mommy." Travis would watch and masturbate during these encounters. The defendant revealed that Travis had rubbed E.R.'s buttocks with his hands and claimed that it helped E.R. sleep. On two or three occasions, Travis demanded that the defendant perform oral sex on E.R. and that E.R. do the same to the defendant. The defendant recalled that Travis would become angry with him because he was not aroused and was instead disgusted. The defendant indicated that he had never ejaculated during these incidents, and he was not aroused by the physical contact with E.R.

¶ 14 The defendant had "qualms about it" and "didn't want to do it," but he was "petrified of the consequences of not doing it." He explained that he did not want to hurt E.R., but he was scared of the consequences if he did not comply with Travis's demands. He stated that Travis had threatened to "beat the shit out" of him if he did not do as requested. He also stated that Travis had threatened to kill him if he told anyone. During an incident in the bathroom, E.R. was in the bathtub and Travis demanded that the defendant "soap up and rub [E.R.'s] privates real good." E.R. had already been bathed when Travis gave this instruction. The defendant explained that Travis was "the initiator" of the inappropriate touching. Travis did not threaten E.R., but he did threaten the defendant. On one occasion, Travis had "strangled" him in front of E.R.

¶ 15 Carolyn Carsrud, the defendant's older sister, described the defendant as a shy, nonassertive person who was easily taken advantage of. During the period of time that the defendant was involved in a romantic relationship with Travis, Carsrud found it hard to

contact her brother. He would never answer or return her phone calls. She would call him on a weekly basis and leave him voicemail messages, but he rarely returned her calls. She believed that the defendant was mad at her and did not want to talk to her. She had no reason to be concerned that something else was wrong. On the few occasions that she did speak with the defendant, he never revealed that he was being forced to have inappropriate physical contact with a minor child.

¶ 16 Connie Harrison, the defendant's cousin, testified that the defendant was difficult to contact during the summer of 2009. She called him a couple times per week, but he never answered or returned her phone calls. She believed that this was very unusual, but she had assumed that he was busy or was visiting his sisters. She also went to the defendant's house every other Sunday to check on him, but he never answered the door.

¶ 17 After hearing the evidence, the trial court found the defendant guilty of two counts of predatory criminal sexual assault and two counts of aggravated criminal sexual abuse. The court rejected the defendant's argument that the State had not proven the *corpus delicti* of the offenses. The court found E.R.'s testimony "very believable" and concluded that E.R. "provided the necessary *corpus delicti* to tie the specific admissions by the defendant as to each of the four counts" raised by the charging instrument. The court also rejected the defendant's argument that the State failed to present evidence that indicated that he had committed the sexual acts for the purpose of his arousal or sexual gratification, as required for a conviction for aggravated criminal sexual abuse. The court found that the defendant's purpose in committing the sexual acts was his arousal or sexual gratification and that this had been shown by the nature of the act itself.

¶ 18 Further, the court rejected the affirmative defenses of necessity and compulsion that were raised by the defendant. The court concluded that these defenses were not available because the defendant did not have a reasonable belief that he would suffer death or great

bodily harm. The court acknowledged that the defendant was afraid of Travis because of past experiences, but concluded that the fear did not constitute an immediate threat of death or great bodily harm. The court further noted that the defendant had the opportunity to leave the situation or dissuade Travis from the conduct, but no evidence was presented showing that the defendant had taken any action to withdraw from the situation. As support for this observation, the court pointed out that the defendant had eventually obtained an order of protection against Travis. The court concluded that, where the choices were to either commit a sexual assault on a three-year-old or suffer a beating, it was not the reasonable choice to sexually assault a three-year-old. Consequently, the trial court found that the State proved the defendant guilty beyond a reasonable doubt of two counts of predatory criminal sexual assault and two counts of aggravated criminal sexual abuse and that the defenses of necessity and compulsion were not satisfied by the evidence.

¶ 19 On August 3, 2011, the defendant filed a motion to vacate or modify judgment, arguing, in pertinent part, that the State had not proven the *corpus delicti* of the offenses, that the State failed to prove that he had committed the sexual acts for the purpose of his arousal or sexual gratification, as required for a conviction for aggravated criminal sexual abuse, and that the affirmative defenses of necessity and compulsion had been proven. On September 29, 2011, the court denied the defendant's motion to vacate. The court noted that corroboration of the act itself rather than corroboration of the actual person who committed the act was required to prove the *corpus delicti* of an offense. The court concluded that the testimony of Monica R., Michelle L., and Mucha had bolstered E.R.'s testimony that acts of sexual abuse and sexual assault were committed against him. The court again concluded that the defendant's purpose in committing the sexual acts was his arousal or sexual gratification and this was proven by the nature of the act itself. Further, the court concluded that necessity and compulsion were not shown in the evidence in this case. Specifically, the court stated

as follows with regard to the defenses: "For the life of me, I can't understand how a person, even accepting [the defendant's] version of what Travis [R.] did to him, why he can't walk out. He's got a choice of either getting hit, beat up, or committing a Class X felony on a five year old child. That's the choice." The court concluded that "a head-butting and a bloodied nose [did not] amount to great bodily harm as it relates to a reasonable belief that this defendant had." Consequently, the court denied the defendant's motion to vacate or modify the judgment.

¶ 20 On October 3, 2011, the trial court sentenced the defendant to 10 years' imprisonment for the conviction on count I (predatory criminal sexual assault) and 8 years' imprisonment for the conviction on count II (predatory criminal sexual assault) to be served consecutively. The court sentenced the defendant to three years' imprisonment on counts III and IV (aggravated criminal sexual abuse) to be served concurrent with one another and concurrent with the sentences imposed on the convictions for counts I and II. The court further sentenced the defendant to a 10-year term of mandatory supervised release (MSR). The defendant appeals his convictions.

¶ 21 The defendant argues that the State failed to prove him guilty beyond a reasonable doubt. Specifically, the defendant argues that the State failed to disprove beyond a reasonable doubt that he had acted under necessity and compulsion, and that the State had failed to prove beyond a reasonable doubt an element of the offense of aggravated criminal sexual abuse: that he had performed the acts for the purpose of his sexual gratification or arousal. In response, the State argues that the defendant was proven guilty beyond a reasonable doubt and that necessity and compulsion were not available to the defendant because they were not properly raised where he had challenged the *corpus delicti* of the offenses and did not admit that the criminal acts had occurred. Alternatively, the State argues that even if the defendant had properly raised the affirmative defenses, the trial court properly

rejected them.

¶ 22 In addition to responding to the defendant's arguments, the State argues that the defendant's sentences are void because they fail to comply with the mandatory consecutive sentencing statute, section 5-8-4(d)(2) of the Unified Code of Corrections (the Code) (730 ILCS 5-8-4(d)(2) (West 2010)). Specifically, the State notes that the supreme court in *People v. Curry*, 178 Ill. 2d 509 (1997), concluded that certain triggering offenses listed in section 5-8-4 of the Code, which includes predatory criminal sexual assault, must be served before and independent of any sentences imposed on nontriggering offenses. Consequently, the State requests that this court remand for resentencing. The State also argues that the defendant's 10-year MSR term should be corrected on remand to a term of 3 years to natural life pursuant to *People v. Rinehart*, 2012 IL 111719. In response, the defendant concedes that *Curry* stands for the proposition that sentences for triggering offenses must be served before any sentences imposed for nontriggering offenses. However, the defendant requests that if this court remands for resentencing, we instruct the circuit court that the previously imposed sentences may be modified so that the total aggregate sentences remain the same length as the term currently being served.

¶ 23 When considering a challenge to the sufficiency of the evidence, the relevant question for the reviewing court 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 beyond a reasonable doubt. *People v. Williams*, 193 Ill. 2d 306, 338 (2000). It is the trier of fact's responsibility to determine the credibility of witnesses, to weigh the witnesses testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *Id.*

¶ 24 The affirmative defense of necessity involves the choice between two admitted evils where other optional courses of action are unavailable. *People v. Gibson*, 403 Ill. App. 3d 942, 952 (2010). The necessity defense is available to a defendant if the following statutory

requirements are met: (1) the person claiming the defense was without blame in occasioning or developing the situation, and (2) the person reasonably believed that his conduct was necessary to avoid a public or private injury greater than the injury that might have resulted from his conduct. 720 ILCS 5/7-13 (West 2010); *Gibson*, 403 Ill. App. 3d at 951. "Illegal conduct is justified by necessity only if the defendant's conduct was the only reasonable alternative available under the circumstances." *Gibson*, 403 Ill. App. 3d at 952. Further, proof of a specific and immediate threat is the threshold requirement for the establishment of the necessity defense. *People v. Kite*, 153 Ill. 2d 40, 47 (1992).

¶ 25 In contrast, the affirmative defense of compulsion implies a complete deprivation of free will and the absence of choice. *People v. Roberson*, 335 Ill. App. 3d 798, 801 (2002). Compulsion is available as a defense for a defendant if the following statutory requirements are met: (1) the conduct was performed under the threat or menace of the imminent infliction of death or great bodily harm, and (2) the person reasonably believes that death or great bodily harm will be inflicted on him if the conduct is not performed. 720 ILCS 5/7-11(a) (West 2010); *Roberson*, 335 Ill. App. 3d at 801-02. This defense requires an impending imminent threat of great bodily harm and a demand that a defendant perform a specific criminal act for which he is eventually charged. *Roberson*, 335 Ill. App. 3d at 802. A threat of future injury is not sufficient to raise compulsion as a defense. *People v. Humphries*, 257 Ill. App. 3d 1034, 1044 (1994).

¶ 26 In the present case, the trial court concluded that necessity and compulsion were not available to the defendant because he did not have a reasonable belief that he would suffer death or great bodily harm. The court recognized that the defendant was afraid of Travis because of past experiences, but it concluded that this fear was not an immediate threat of death or great bodily harm. The court further concluded that a "head-butting and a bloodied nose [did not] amount to great bodily harm as it relates to a reasonable belief that this

defendant had." The court noted that the defendant had an opportunity to escape the situation and expressed confusion as to why the defendant did not "walk out." Further, the court explained that the defendant had a choice of either "getting hit, beat up, or committing a Class X felony" on a minor child and that the defendant's choice to sexually assault a three-year-old child was not a reasonable choice.

¶ 27 Assuming *arguendo* that the defendant properly raised the affirmative defenses of necessity and compulsion, we agree with the trial court that these defenses were not shown by the evidence. The trial court heard the defendant's explanation as to why he had committed the criminal acts against E.R. and was entitled to reject this explanation. The court was also entitled to conclude that the defendant did not have a reasonable belief that he would suffer death or great bodily harm and that the defendant had not established that a specific and immediate threat had been made. As stated above, it is the trier of fact's responsibility to determine the credibility of witnesses, to weigh the witnesses' testimony, to resolve conflicts in the evidence, and to draw reasonable inferences from the evidence. *Williams*, 193 Ill. 2d at 338. Consequently, we agree with the trial court's reasoning and conclude that the court did not err in rejecting the defendant's affirmative defenses of necessity and compulsion.

¶ 28 The defendant next argues that the State failed to prove beyond a reasonable doubt an element of the offense of aggravated criminal sexual abuse: that he had performed the acts for the purpose of his sexual gratification or arousal.

¶ 29 The defendant was convicted of two counts of aggravated criminal sexual abuse for committing acts of sexual conduct against E.R., who was under nine years of age when the acts were committed. Sexual conduct is defined as follows: "any intentional or knowing touching or fondling by the victim or the accused \*\*\* of the sex organs, anus or breast of the victim or the accused, or any part of the body of a child under 13 years of age \*\*\* for the

purpose of sexual gratification or arousal of the victim or the accused." 720 ILCS 5/12-12(e) (West 2010); *People v. Ostrowski*, 394 Ill. App. 3d 82, 91 (2009). "The intent to arouse or satisfy sexual desires can be established by circumstantial evidence, and the trier of fact may infer a defendant's intent from his conduct." *People v. Burton*, 399 Ill. App. 3d 809, 813 (2010). A defendant's intent to commit the act of sexual conduct for the purpose of arousal or sexual gratification can be inferred solely from the nature of the act. *Id.*

¶ 30 In the present case, the defendant argues that the State had failed to establish that he had touched E.R. for either his or E.R.'s sexual gratification. Instead, the defendant argues that the evidence revealed that the acts of sexual conduct committed against E.R. were compelled by Travis and for Travis's sexual gratification. The defendant notes that the evidence did not indicate that he had been sexually excited by the touching. Instead, the evidence indicated that he had been disgusted and sickened by his actions. The trial court rejected the defendant's argument and noted that this element could be inferred from the nature of the act itself. During the hearing on the defendant's motion to vacate or modify judgment, the defendant's counsel argued that the defendant had repeatedly indicated that he had not been aroused and was instead disgusted during these encounters with E.R. The court responded: "[A]s it relates to the believability of what was said on the [interview] tapes, that comes solely from [the defendant]. This court may choose to believe what was said or not believe what was said." Shortly thereafter, the court denied the defendant's motion. As previously explained, determinations of witness credibility are the responsibility of the trial court. Therefore, we conclude that the trial court did not err in finding that the defendant's touching of E.R. was performed for the purpose of his sexual gratification or arousal.

¶ 31 Finally, the State argues that the defendant's sentences are void because they fail to comply with the mandatory-consecutive-sentencing statute. The State also argues that the defendant's MSR term should be corrected on remand pursuant to *People v. Rinehart*, 2012

IL 111719. Consequently, the State asks this court to remand for resentencing.

¶ 32 A sentence which does not conform to a statutory requirement is void. *People v. Arna*, 168 Ill. 2d 107, 113 (1995). The determination of whether a judgment entered by the trial court is void is a question of law subject to *de novo* review. *People v. Sweeney*, 2012 IL App (3d) 100781, ¶ 23. Section 5-8-4(d)(2) of the Code (730 ILCS 5/5-8-4(d)(2) (West 2010)) instructs the court to impose consecutive sentences when a defendant is convicted of certain offenses, including predatory criminal sexual assault. "When a defendant's convictions bring him within the purview of section 5-8-4, the mandatory sentencing requirement is triggered and consecutive sentences must be imposed." *People v. Stanford*, 2011 IL App (2d) 090420, ¶ 47. Further, the consecutive sentences imposed for triggering offenses must be served prior to, and independent of, any sentences imposed for nontriggering offenses. *Curry*, 178 Ill. 2d at 539. Sentences for multiple nontriggering offenses may then be served concurrently with one another after the consecutive sentences for the triggering offenses have been completed. *Id.*

¶ 33 In the present case, the defendant was convicted of two counts of predatory criminal sexual assault (counts I and II) and two counts of aggravated criminal sexual abuse (counts III and IV). The trial court ordered that the sentences imposed on counts I and II be served consecutively and that the sentences imposed on counts III and IV be served concurrent with one another and *concurrent* with counts I and II. This was not proper under section 5-8-4 because the sentences for aggravated criminal sexual abuse (nontriggering offense) must run consecutively and subsequent to the sentences for predatory criminal sexual assault (triggering offense). Therefore, the defendant's sentences are void and the cause must be remanded for resentencing. Accordingly, we vacate the defendant's sentences, and we remand to the trial court for resentencing. On remand, the trial court must order that the defendant's sentences for aggravated criminal sexual abuse run consecutively to the sentences

for predatory criminal sexual assault. Further, we note that the sentences for the triggering offenses should run consecutively to each other and that the sentences for the nontriggering offenses may run concurrent with each other.

¶ 34 The State further argues that the defendant's MSR term should be corrected on remand pursuant to *People v. Rinehart*, 2012 IL 111719, a case decided by our supreme court after the defendant was sentenced. Section 5-8-1(d)(4) of the Code (730 ILCS 5/5-8-1(d)(4) (West 2010)) instructs that a MSR term of three years to natural life shall be imposed for certain sex offenses, including predatory criminal sexual assault of a child. In *Rinehart*, 2012 IL 111719, ¶ 29-30, our supreme court concluded that the language of section 5-8-1(d)(4) contemplated an indeterminate MSR term of three years to natural life for the listed offenses. In the present case, the trial court imposed a 10-year MSR term on the predatory-criminal-sexual-assault convictions, a result prohibited by *Rinehart*. Therefore, an indeterminate MSR term of three years to natural life must be imposed by the trial court on remand.

¶ 35 For the reasons stated, we affirm the defendant's convictions, vacate the defendant's sentences as void, and remand to the circuit court of Jackson County for further proceedings not inconsistent with this disposition.

¶ 36 Convictions affirmed; sentences vacated; cause remanded for resentencing.