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2015 IL App (3d) 140813-U

Order filed February 26, 2015

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IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2015

<i>In re</i> Z.J.C.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Plaintiff-Appellee,	)	Appeal No. 3-14-0813
	)	Circuit No. 14-JD-98
v.	)	
	)	
Z.J.C.,	)	Honorable
	)	Albert L. Purham, Jr.,
Defendant-Appellant).	)	Judge, Presiding.

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JUSTICE O'BRIEN delivered the judgment of the court.  
Justices Holdridge and Lytton concurred in the judgment.

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**ORDER**

¶ 1 *Held:* The evidence at trial was sufficient to prove beyond a reasonable doubt that the respondent minor was guilty of aggravated criminal sexual assault and aggravated criminal sexual abuse.

¶ 2 The respondent minor, Z.J.C., was adjudicated delinquent after being found guilty of two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(b)(i) (West 2012)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i) (West 2012)). One of

the aggravated criminal sexual abuse counts merged with one of the aggravated criminal sexual assault counts because they were based on the same act. Z.J.C. was sentenced to five years' probation for the aggravated criminal sexual assault counts and four years' probation for the remaining aggravated criminal sexual abuse count. Z.J.C. appeals, arguing that the evidence at trial was not sufficient to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3

### FACTS

¶ 4

On March 27, 2014, Z.J.C., a minor, was charged in a delinquency petition with two counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(b)(i) (West 2012)) and two counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i) (West 2012)) as a result of conduct that allegedly occurred between Z.J.C. and his sister, A.C., between January 1, 2012, and September 18, 2013. At the time of the alleged conduct, Z.J.C. was 11 years old and A.C. was 6 years old. The petition alleged Z.J.C. committed aggravated criminal sexual assault when he placed his penis in the vagina of A.C (count I), and on the tongue of A.C (count II). The petition alleged Z.J.C. committed aggravated criminal sexual abuse when he placed his penis on the vagina of A.C. for the purpose of his sexual arousal (count III) and when he knowingly rubbed the vagina of A.C. for the purpose of his sexual arousal (count IV).

¶ 5

Z.J.C. denied the allegations in the petition. The State filed a notice of intent to introduce hearsay statements made by A.C. to Andrea Stringer and Craig Johnson pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2012)). A trial was held on July 1, 2014. The court stated that it would make a ruling as to the admissibility of A.C.'s hearsay statements on the first day of trial.

¶ 6

At trial, Stringer testified that she was A.C.'s foster parent. Stringer was also a foster parent to A.C.'s two younger brothers. Stringer was not a foster parent to A.C.'s older brothers,

I.C. and Z.J.C. When A.C. first moved in with the Stringers, she was having frequent urination accidents, touching her vaginal area, and rubbing her vaginal area against various objects in the home. On January 1, 2014, Stringer noticed a discharge in A.C.'s underwear while doing laundry. Stringer asked A.C. if her vaginal area itched; A.C. replied that it did not. Stringer told A.C. that touching her vaginal area was a private thing to do by herself and should not be done in public. Stringer told A.C. that no one else should touch her vaginal area either. A.C. began to cry. Stringer asked A.C. if anyone had touched her vaginal area, and A.C. stated that Z.J.C. had touched her there. Stringer then brought her husband into the conversation.

¶ 7 A.C. told the Stringers that Z.J.C. would take her up to her room at her biological parents' residence, shut the door, move a television set in front of the door, and put her inside the closet. Z.J.C. asked A.C. to put his penis in her mouth, which she did. Z.J.C. also "connected" his penis inside A.C.'s vagina. A.C. stated that it hurt. A.C. asked him to stop, and he would not stop. Z.J.C. also made A.C. touch his penis with her hand, and Z.J.C. touched A.C.'s vagina. A.C. did not tell her biological parents because Z.J.C. told A.C. not to tell anyone. A.C. said that Z.J.C. would become angry with her if she told anyone. A.C. was afraid to come home from school because it had been happening frequently. A.C. was very upset and crying as she was describing these events.

¶ 8 Stringer asked A.C. when these things happened, but A.C. did not give her a time frame. A.C. just said it happened at her house. Stringer did not ask A.C. specific questions about what acts Z.J.C. did; rather, she asked general questions like where and when the acts occurred. Stringer stated that A.C. "pretty much just opened up right away" and that she and her husband "really didn't have to ask any questions." After A.C. reported the incident to Stringer, Stringer contacted Katie Lynch, A.C.'s caseworker. In February 2014, after A.C. had begun seeing a

counselor, A.C. told Stringer about another incident in which she was in the bathtub at her biological parents' residence and Z.J.C. placed his penis in her mouth.

¶ 9 Johnson, a Peoria police officer, testified that he interviewed A.C. at the Child Advocacy Center after he was contacted by a Department of Child and Family Services investigator about her situation. He first asked A.C. questions to determine if she knew the difference between the truth and a lie; she did not have any problems telling the difference. He then used male and female anatomical charts to verify that she knew various body parts and to determine what names she called the body parts. Johnson asked A.C. about good and bad touches. A.C. said hugs were an example of good touches.

¶ 10 A.C. said that her brother, Z.J.C., gave her bad touches in the closet in her room at her biological parents' house. Z.J.C. put a television in front of the door because he did not want anyone to come in. Z.J.C. and A.C. then went into the closet. Z.J.C. asked A.C. to pull her pants down and then "connected" his penis to her vagina. Z.J.C.'s penis touched the inside of A.C.'s vagina. A.C. said that it hurt. Z.J.C. also rubbed A.C.'s vagina with his hand, and his fingers went inside her vagina. Z.J.C. told A.C. to lick his penis, which she did. A.C. said that "icky white stuff" came out of Z.J.C.'s penis.

¶ 11 A.C. told Johnson that she did not tell anyone what happened because Z.J.C. told her not to. She eventually told her foster mother. Johnson had the impression that the conduct described by A.C. occurred as part of a single incident. A.C. told Johnson that it happened more than once. Johnson was not aware of any medical evidence that would corroborate A.C.'s allegations.

¶ 12 Lynch testified that she worked for Lutheran Social Services and that she was the caseworker for A.C. In September 2013, A.C. and all of her siblings were removed from their biological parents' home and placed in foster care.

¶ 13 A.C. testified that she was seven years old and would be starting first grade in the fall. She stated that she knew the difference between telling the truth and telling a lie. She promised to tell the truth because she said she would get in trouble if she did not. At the time of trial, A.C. lived with her foster parents. She previously lived with her biological parents and her four brothers. Z.J.C. is one of A.C.'s brothers. A.C. stated that an example of a good touch is when her mother gave her hugs or tickled her. A.C. stated that "[a] bad touch is when you don't feel like it and like kids can't do it but just moms and dads."

¶ 14 Z.J.C. gave A.C. bad touches in her closet at her biological parents' house. Z.J.C. shut the door and blocked it with a television set. They went into A.C.'s closet, which Z.J.C. blocked with a board. He told A.C. to pull down her pants and underwear a few times. She eventually did. Z.J.C.'s shorts and underwear were off. Z.J.C.'s penis touched A.C.'s vagina for about 10 minutes. It hurt when he touched her vagina with his penis. Then, "white stuff" came out of Z.J.C.'s penis and went onto the floor. A.C. stated that it happened more than one time, but always in the closet. Z.J.C.'s penis touched A.C.'s vagina approximately 12 times, but all on the same day. Z.J.C. told A.C. to touch his penis with her hand, which she did. His did not touch her in any other way with any other body parts.

¶ 15 After the incident, A.C. followed Z.J.C. next door to his room. Z.J.C. told A.C. not to tell anyone what happened, but he did not give her a reason. A.C. eventually told her foster parents. A.C. did not tell her biological parents because she was afraid they would spank her. A.C.'s biological parents used to spank her when she told lies and she was afraid they would think she was lying even though she was not.

¶ 16 A.C. had a television set in her room. A.C. stated it was broken now because her father had knocked it over while fighting with her mother. Someone had moved it to her room. A.C.

stated that she had two rooms at her biological parents' house; she slept in her parents' room downstairs but kept her clothing in a different bedroom upstairs. She shared her bedroom upstairs with one of her younger brothers, J.C. Z.J.C. and I.C. shared a bedroom upstairs too.

¶ 17 After A.C.'s testimony, the State rested. The trial court ruled that the hearsay statements A.C. made to Stringer and Johnson contained sufficient safeguards of reliability to be admitted in their entirety. Z.J.C. then presented his case.

¶ 18 Z.J.C. testified that he was twelve years old and in sixth grade. He had been living with a foster family since September 2013. He previously lived with his biological parents, aunt, three brothers, and his sister, A.C. Z.J.C. denied having had any sexual contact with A.C.; Z.J.C. said he would have been punished by his parents had he done so. Z.J.C. stated that white stuff had never discharged from his penis. Z.J.C. loved A.C. "as a sister." Sometimes Z.J.C. and A.C. got along, and other times they did not. A.C. sometimes told lies about Z.J.C. to their parents.

¶ 19 At their biological parents' house, A.C. had her own room downstairs. Z.J.C.'s youngest brother slept in his parents' room downstairs. Z.J.C. and his other two brothers, I.C. and J.C., had bedrooms upstairs. Z.J.C. never tried to move a television set to block a door. Z.J.C. stated that there was a television set in A.C.'s room but it could not be used to block a door because it was too heavy.

¶ 20 Lee C. testified that he was Z.J.C. and A.C.'s biological father. Lee had lived with his wife and five children until September 2013 when his children went into foster care. While Lee was living with his wife and children, several other friends and family members lived with them off and on for various periods of time. There were four bedrooms in the house including the living room, which was used as a bedroom. A.C. had a bed in the living room because she did not sleep in her room, which was downstairs. No one used A.C.'s bedroom; there were clothes

everywhere. Z.J.C., I.C., and J.C. had the two bedrooms upstairs.

¶ 21 All of the bedrooms had televisions, but none of the televisions were broken. All the televisions in the house had large backs and were heavy. One time when Lee was upset, he knocked over a crate that a television was sitting on, and the television fell over and broke. Lee threw it away. There was no piece of wood that was used to block a closet. The only doors in the house that would stay shut were the front and back door and the living room door; the rest were broken and would not stay shut.

¶ 22 Neither A.C. nor any of the other children complained to Lee about anything going on between Z.J.C. and A.C. Lee never saw any unusual behavior by Z.J.C. toward A.C. Z.J.C. did not tell his father that he had begun ejaculating. The children were never left unsupervised because I.C. had special needs with regard to his motor skills and Z.J.C. had anger issues. When Lee punished his children, he talked to them, took away television privileges, or spanked them.

¶ 23 After Lee's testimony, the defense rested. The trial court found Z.J.C. guilty of all four counts. The trial court noted that A.C. was seven years old at the time of trial and would have been six years old when the incident occurred. The trial court reasoned that A.C. was a more credible witness than Z.J.C. A.C. did not hesitate when answering questions, and the court did not believe she was trying to fabricate. A.C. knew what the body parts were and indicated that it hurt when Z.J.C. placed his penis in her vagina. The trial court noted that A.C.'s statement to Stringer encompassed more incidents than A.C. testified to at trial, but A.C.'s statements to Stringer did include the conduct A.C. testified to at trial. The trial court found it unsurprising that A.C. left out some details of the sexual assault incident in her trial testimony that she had told her foster parents a few months earlier. The court reasoned that when people are young, they try to forget things that hurt them.

¶ 24 At sentencing, the trial court did not impose a sentence on count III because it was based on the same act as count I. Z.J.C. was sentenced to five years' probation for the aggravated criminal sexual assault counts (count I and count II) and four years' probation for the aggravated criminal sexual abuse count (count IV).

¶ 25 Z.J.C. appeals.

¶ 26 ANALYSIS

¶ 27 On appeal, Z.J.C. asks us to reverse the trial court's finding of delinquency, arguing that the evidence presented at trial was insufficient to prove him guilty beyond a reasonable doubt of aggravated criminal sexual assault and aggravated criminal sexual abuse. When presented with a challenge to the sufficiency of the evidence, we ask 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 charged beyond a reasonable doubt. *People v. Collins*, 106 Ill. 2d 237, 261 (1985).

¶ 28 "Where findings of fact depend on the credibility of witnesses, a reviewing court will defer to the findings of the trial court unless they are against the manifest weight of the evidence." *People v. Clark*, 2014 IL App (1st) 130222, ¶ 26. A trial court's finding is against the manifest weight of the evidence "only when an opposite conclusion is apparent or when the findings appear to be unreasonable, arbitrary, or not based on the evidence." *Id.* "It is for the trier of fact to resolve any inconsistencies in the testimony, and the trier of fact is free to accept or reject as much or as little as it pleases of a witness's testimony." *People v. Logan*, 352 Ill. App. 3d 73, 80-81 (2004). It is not the function of this court to retry the defendant. *People v. Givens*, 237 Ill. 2d 311, 334 (2010). When a challenge to the sufficiency of the evidence is presented, all reasonable inferences from the record are drawn in favor of the prosecution. *Id.*

¶ 29 To convict Z.J.C. of aggravated criminal sexual assault (720 ILCS 5/11-1.30(b)(i) (West 2012)), the State was required to prove that Z.J.C. committed an act of sexual penetration with A.C. The petition alleged that Z.J.C. committed an act of sexual penetration by placing his penis in the vagina of A.C (count I) and by placing his penis on the tongue of A.C. (count II).

¶ 30 To convict Z.J.C. of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(2)(i) (West 2012)), the State was required to prove that Z.J.C. committed an act of sexual conduct with A.C. The petition alleged that Z.J.C. committed an act of sexual conduct by knowingly placing his penis on the vagina of A.C. for the purpose of his sexual arousal (count III) and by knowingly rubbing the vagina of A.C. with his hand for the purpose of his sexual arousal (count IV).

¶ 31 The evidence at trial was sufficient to prove Z.J.C. guilty of aggravated criminal sexual assault and aggravated criminal sexual abuse. The trial court, after observing the demeanor of the witnesses, found that A.C. was more credible than Z.J.C. and that her statements to third parties were reliable. The trial court's findings were supported by the evidence. A.C. testified at trial and told both Stringer and Johnson that Z.J.C. moved a television set in front of the door to her room at her biological parents' house, took her into the closet, and put his penis in her vagina and it hurt. A.C. told Stringer and Johnson that Z.J.C. placed his penis in her mouth and rubbed her vagina with his hand during the same incident, but she did not testify about these contacts at trial. A.C. told Stringer that Z.J.C. placed his penis in her mouth while she was taking a bath at her biological parents' house but did not testify about that incident at trial. As the trial court found that A.C.'s hearsay statements were sufficiently reliable to be admitted for their substance under section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)), the court could rely on said statements to find Z.J.C. guilty.

¶ 32 Z.J.C. argues that A.C.'s testimony and out-of-court statements were too inconsistent to support a finding of delinquency. Z.J.C. first argues that A.C. gave inconsistent accounts as to the number of times the sexual abuse occurred; she told Stringer and Johnson that it occurred more than once but testified at trial that Z.J.C. touched her multiple times but all on the same day. Z.J.C. further argues that A.C. gave inconsistent accounts of what sexual contact had occurred. A.C. testified at trial that Z.J.C. did not touch her in any way other than putting his penis in her vagina and asking her to touch his penis with her hand, but she told Stringer and Johnson that he also rubbed her vagina with his hand and placed his penis in her mouth. Because of A.C.'s conflicting accounts, Z.J.C. argues, the evidence at trial was insufficient to prove him guilty beyond a reasonable doubt of the offenses charged. We disagree.

¶ 33 It is the function of the trier of fact to weigh the credibility of the witnesses and to resolve conflicts or inconsistencies in their testimony. *People v. Kelchner*, 221 Ill. App. 3d 25, 30 (1991). The trial court found A.C. to be a credible witness and found that her out-of-court statements were substantively admissible. The court reasoned that A.C.'s young age, the amount of time that had passed since the abuse, and the traumatic nature of the abuse accounted for her earlier statements containing more detail than her trial testimony. Although A.C. did not testify at trial that Z.J.C. put his penis in her mouth or rubbed her vagina with his hand, the accounts she gave to Stringer and Johnson was still very consistent with her trial testimony. A.C. told Stringer and Johnson and testified at trial that Z.J.C. closed the door to her room and blocked it with a television set, took her into the closet, and put his penis in her vagina. The discrepancies were not so large that a rational trier of fact could not have adjudicated Z.J.C. delinquent. See *People v. Soler*, 228 Ill. App. 3d 183, 200 (1992) ("Where minor inconsistencies or discrepancies exist in a complainant's testimony but do not detract from the reasonableness of her story as a whole,

the complainant's testimony may be found to be adequate to support a conviction for sexual abuse."); see also *People v. Pettitt*, 245 Ill. App. 3d 132, 138-39 (1993) (holding that there was sufficient evidence to convict the defendant of aggravated criminal sexual abuse where there were discrepancies in the minor victim's trial testimony and prior statements regarding when and where the abuse occurred and the victim had a motive to fabricate).

¶ 34 Thus, the evidence was sufficient to convict Z.J.C. of aggravated criminal sexual assault and aggravated criminal sexual abuse, and we will not reverse the trial court's finding of delinquency.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Peoria County is affirmed.

¶ 37 Affirmed.