2016 IL App (1st) 142344-U

FIRST DIVISION
October 24, 2016

No. 1-14-2344

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 11 CR 09022
	)	
KEVIN SKARITKA,	)	Honorable
	)	John Joseph Hynes,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Justice Harris and Justice Simon concurred in the judgment.

O R D E R

¶ 1 *HELD*: Defendant's conviction for criminal sexual assault is affirmed. Defendant failed to show that he was not proven guilty beyond a reasonable doubt. Defendant's substantive and procedural due process rights are not violated by the Sex Offender Registration Act and related statutes to which he is subject as a collateral consequence of his conviction.

¶ 2 Following a bench trial, defendant Kevin Skaritka was found guilty of criminal sexual assault and sentenced to 10 years' imprisonment. On appeal, Mr. Skaritka contends that (1) no rational trier of fact could have concluded that the State proved his guilt beyond a reasonable

doubt, and (2) the Sex Offender Registration Act and related statutes violate substantive and procedural due process rights by infringing on registrants' fundamental liberty interests. For the reasons that follow, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 Kevin Skaritka was charged with six counts of criminal sexual assault (720 ILCS 5/12-13(a)(2)-(4) (West 2010)), six counts of aggravated criminal sexual abuse (720 ILCS 5/12-16(b), (d), (f) (West 2010)), and two counts of criminal sexual abuse (720 ILCS 5/12-15(a)(2) (West 2010)). The State alleged, under varying legal theories, that between March 17, 2011 and May 2, 2011, Mr. Skaritka knowingly penetrated or made sexual contact with the vagina of O.V., his live-in girlfriend's 16-year-old daughter. Mr. Skaritka waived his right to a jury and, after a bench trial held on March 26, 2014, was convicted of count 4: criminal sexual assault through an act of penetration from March 17, 2011 to May 2, 2011 (720 ILCS 5/12-13)(a)(2) (West 2010)).

¶ 5 The State's case consisted of two witnesses: O.V. and O.V.'s mother Sharla. O.V. identified Mr. Skaritka in court and testified that he had been in a relationship with Sharla, had started living with O.V.'s family in 2005 or 2006, and continued to live with them when the family moved to Orland Park in January 2011. The house they moved into was a split-level. O.V's bedroom was in the basement and Mr. Skaritka and the rest of her family, including her mother, brother, and grandmother, occupied bedrooms on the upper level.

¶ 6 O.V. testified about two incidents that occurred in the spring of 2011. The first was on or about March 16, 2011. She went to a St. Patrick's Day party at her friend's house where she consumed alcohol—less than five shots of Jack Daniels, by her estimation. When she returned home, she was confronted by her mother and grandmother and was then scolded by her mother

in the basement. O.V. stated that her grandmother might have still been in the basement with her when she fell asleep, but she was probably alone.

¶ 7 O.V. testified that, at some time during the middle of that night, she woke up and saw Mr. Skaritka standing above her by the foot of her bed and rubbing his exposed penis. O.V. first stated that she "had woken up with [Mr. Skaritka's] face in [her] vagina," but when asked whether that happened on the night of March 16, she said she could not remember. She testified that Mr. Skaritka was the only other person in the room and she was not sure how long he had been there before she woke up. When she woke up, O.V. was still wearing underwear, but her pajama bottoms, which she had been wearing when she went to sleep, had been pulled down without her knowledge. She immediately pulled her pants up, then started screaming and kicking Mr. Skaritka, telling him to get away from her. O.V. testified that she screamed in a way "to not wake up [her] mom." According to O.V., at that point, Mr. Skaritka ran up the stairs, told her not to tell anyone what had happened, and said he would buy her a bottle of Jack Daniels. After he went upstairs, O.V. stated, she sat on her couch and cried.

¶ 8 O.V. also testified about another incident that happened in early May 2011. At around 8 p.m., she went out with Mr. Skaritka to certain areas in the city where they would occasionally look for car parts and other scrap metal. O.V. testified that, when she accompanied him, Mr. Skaritka would smoke marijuana with her and would buy her "little pints of Jack Daniels." That evening they were out for about one-and-a-half or two hours, and "whenever [they] stopped, [they] would drink."

¶ 9 O.V. testified that, when she and Mr. Skaritka returned home that evening, she went straight to her room. She did not remember whether her mother was still awake. About five minutes later, Mr. Skaritka came down the stairs into O.V.'s room and sat on her bed with her,

about two feet from where she was sitting. O.V. stated that Mr. Skaritka smoked marijuana with her and gave her pills—"his mother's medication, her Klonopin." O.V. said that he gave her those pills because she "used to have a lot of anxiety" and when she was little, she ate them "like they were candy" because she thought they would help her, "and [she and Mr. Skaritka] would just smoke and hang out, and that's when [she] would fall asleep and wake up to being unclothed."

¶ 10 According to O.V., when she fell asleep that night in early May, she was wearing pants and Mr. Skaritka was still in her room. O.V. initially testified that, when she woke up, she was no longer wearing pants and did not see anyone in the room. She then stated that she was awakened up by Mr. Skaritka inserting his penis into her vagina. O.V. stated that she was able to see what he was doing and could tell that he was attempting to have sex with her. She also described the physical position Mr. Skaritka was in relative to her when this was happening. O.V. testified that she did not consent to Mr. Skaritka doing this to her. She kicked him in the face, and "he freak[ed] out and [ran] away because he [saw] [her] just laying there crying."

¶ 11 O.V. testified that she did not scream that night because she was "too afraid" that if anyone found out, her family "would be on the street." This is the same reason, she stated, that she did not scream loudly during the March incident, and that she did not tell her mother or grandmother what happened immediately after either incident. It was also why O.V. felt pressured to go with Mr. Skaritka to look for scrap metal and to "do what he want[ed] [her] to do." She explained that her mother was in school and her grandmother worked "here and there," but that Mr. Skaritka paid the family's bills. O.V. stated that, on two prior occasions, Mr. Skaritka threatened her that, "if anybody [found] out," she and her family would be "on the street" because he was their only source of income. That is what did happen, O.V. said, when he

went to prison—her family has no money and "barely [has] a house to live in." O.V. told the circuit court that this is not what she wanted, she regrets not keeping the secret, and she "feel[s] like this is all [her] fault."

¶ 12 O.V. testified that she felt "terrible" after each of the two incidents and things were going poorly for her at school; even though she loved school, she could not focus and her grades suffered. She resented Sharla "because she let [Mr. Skaritka] in," but at the same time acknowledged that this was not fair and did not blame her mother for what happened to her because she was not aware it was happening.

¶ 13 On the evening of May 18, 2011, O.V. was detained by the Orland Park Police Department after they discovered her drinking beer in the woods. The police contacted her mother, who came to pick her up and drove her back home. O.V. testified that when they returned home, her grandmother and her brother were home, but Mr. Skaritka was not. Sharla and O.V.'s grandmother sat O.V. down in the basement and Sharla started asking "what's wrong with [her]" and "what's going on with [her]," saying that she has "nothing difficult that [she] [has] to go through on a daily basis" and has "no stress." O.V. testified that was when she "exploded" and finally told Sharla "about everything that was going on because little [did] she know [that O.V.] had a whole lot more stress than she could hardly imagine." O.V. testified that her exact words to her mother were: "Your boyfriend is a f*** creep, and he molests me all the time." She later explained the incidents in further detail in a private conversation with Sharla.

¶ 14 On cross-examination, O.V. was asked about the statement she gave to Detective Dawn Gorman-Kenny on May 20, 2011. When she spoke to the detective, O.V. was asked for the date in March when the first incident occurred; O.V. said she did not remember the exact dates, but provided her best estimate as she was instructed to do. O.V. was also not sure whether, when she

spoke to the detective about the March incident, she made any mention of Mr. Skaritka standing over her and masturbating that night. O.V. stated, for the first time on cross-examination, that Mr. Skaritka touched her vagina during the March incident, and she repeated this answer several times as defense counsel questioned her to determine if she was confusing the two incidents. When asked if she told the detective about Mr. Skaritka giving her Klonopin, O.V. stated that she was "pretty sure [she] told [the detective] he gave [her] his mom's drugs" and drank Jack Daniels with her "to get [her] to pass out." O.V. clarified that she did not take the Klonopin until they were in her bedroom after having returned from scrapping; she took "about four" pills, and they also smoked marijuana.

¶ 15 O.V. also acknowledged on cross-examination that there were times that Mr. Skaritka attempted to act like a parent with her and would sometimes ground her. For example, O.V. testified that she drove a Chevy Blazer purchased for her by her uncle and Sharla, with the insurance paid for by Mr. Skaritka and O.V.'s grandmother. Sometime before she told Sharla about the incidents with Mr. Skaritka, Sharla found her passed out inside the car, and as a result, Sharla and Mr. Skaritka stopped allowing O.V. to drive the vehicle.

¶ 16 O.V.'s mother, Sharla, testified that she was in a relationship with Mr. Skaritka for about seven years, beginning in 2005. In January 2011, she and her family and Mr. Skaritka moved to Orland Park; Mr. Skaritka paid the rent. Sharla explained how O.V. began having "a little trouble" in the spring of 2011, and Sharla could not understand why her daughter was not listening to her or following her rules. She noticed that O.V. had "dropped weight dramatically" and could tell that "there was something seriously bothering her." Sharla saw that Mr. Skaritka's relationship with O.V. was "on and off good," that he attempted to be a "father figure" to her, but that it "started to switch" and in May 2011 they were "at each other [*sic*] throats."

¶ 17 Sharla testified about receiving a phone call informing her that O.V. was caught drinking in the woods and that she needed to pick her up from police custody. When they returned home, she was angry with O.V. and yelling at her. O.V. was "crying her eyes out and pulling at her hair and punching herself in the head." Sharla knew that "something was seriously wrong" and, at that point, O.V. said that "[Sharla's] boyfriend [was] a pervert" and told her about the incidents involving Mr. Skaritka.

¶ 18 Sharla testified that when she heard what O.V. told her, she drove to Chicago Truck where Mr. Skaritka worked as a mechanic. He worked from 11:00 p.m. to 7:00 a.m., and it generally took about 15 minutes to drive from her house to his work. Sharla entered the building, went up to Mr. Skaritka, and punched him in the back of the head. According to Sharla, Mr. Skaritka dropped the tool he was holding, turned around, and said "I swear to God I'm not cheating on you," to which she responded, "do you think I would be here if you were cheating on me? [O.V.] told me everything." Sharla testified that, when he heard that, Mr. Skaritka's "mouth hit the floor, and he turned white." He did not say anything at that point, and she continued hitting him. She grabbed his keys and removed the keys to her house.

¶ 19 Sharla stated that Mr. Skaritka then walked outside into the parking lot, and she followed him. She started crying and asked him how he could do this to them, "why would he ruin [their] lives," but he still did not respond. She continued to hit him until the foreman came outside and asked what was going on; Sharla told him that Mr. Skaritka "put his hands on [her] daughter," and the foreman went back into the shop.

¶ 20 On cross-examination, Sharla acknowledged that, while the foreman was outside, Mr. Skaritka stated that he did not know what she was talking about. Although he apologized to her, he did not specify what he was apologizing for. After being outside for about three to five

minutes, Sharla got back in her car and left. She returned home around 2 a.m. to find O.V.'s grandmother still consoling O.V. On May 20, 2011, Sharla took O.V. to the police to report what happened.

¶ 21 Sharla further testified that she spoke with Mr. Skaritka over the phone the next day. Sharla asked how he could do this to O.V. and he told her that O.V. "wanted it," and he could tell that "by the way she looked at [him]." Sharla admitted on cross-examination that, during the conversation the day after she confronted him at his job, she also told Mr. Skaritka that she "want[ed] money, and [she was] going to the police with this." Sharla admitted that she waited one day before going to the police to see if she would get the money first.

¶ 22 Sharla testified that Mr. Skaritka had been working the night shift for "a couple years," and that she went to school during the day. She would sometimes see him at their house at night during his work shift, "to pick up lunch, to check on this, to get that, you know, just stopping at home," sometimes saying that he was on a "test drive" from work. On cross-examination, Sharla confirmed that Mr. Skaritka only had "thirty minutes for lunch," and that their house was eight miles away from where he worked, which was about a thirty-minute drive round-trip. When she drove there the night she confronted him about O.V., it took her "[t]welve minutes exactly." Sharla stated that sometimes he would eat at home, sometimes he would take lunch back with him, and sometimes he would stay at their house for an hour.

¶ 23 At the time she testified, Sharla was on probation from an August 2012 conviction for forgery and possession of a controlled substance. Sharla was arrested for falsifying a prescription for Norco. She explained that she was facing financial hardship and sold Norco to pay her bills, but that she did not take and was never addicted to it. Sharla testified that this arrest "was after the second time [O.V.] was in a mental institution for attempting to kill herself." Sharla stated

that when she was arrested, she falsely told the detective that she was addicted to Norco because she thought she would receive less punishment if she were viewed as an addict, rather than a drug dealer.

¶ 24 Sharla was also asked about the details O.V. told her regarding the two incidents with Mr. Skaritka. She acknowledged that O.V. did not tell her what happened right away, and did not give her a detailed account of exactly what had happened until after Sharla had spoken to the police. O.V. told Sharla that when she woke up during the March incident, Mr. Skaritka was performing oral sex on her. Sharla spoke with the detective on multiple occasions, but did not recall exactly when she learned information from O.V., or when she conveyed that information to the detective.

¶ 25 After the State rested, defense counsel moved for a judgment of acquittal arguing that, taking the evidence the State put forth in the light most favorable to the State, it could not prove its case beyond a reasonable doubt. The circuit court denied the motion.

¶ 26 The defense called one witness: Detective Gorman-Kenny. Detective Gorman-Kenny testified that at 10:30 a.m. on May 20, 2011, she had a conversation with O.V. in which O.V. told her that she had been sexually assaulted by Mr. Skaritka. O.V. told the detective that she was at a friend's birthday on March 16, 2011, had a few beers, and that Mr. Skaritka came into her room the next day and sexually assaulted her. Detective Gorman-Kenny stated that O.V. provided specific details with regard to that sexual assault, and that there were other occasions where Mr. Skaritka came into her room and sat on her bed prior to assaulting her.

¶ 27 After reviewing her report to refresh her recollection, Detective Gorman-Kenny testified that O.V. reported that she woke up on March 17 and "felt something down by her crouch [*sic*] area," and that Mr. Skaritka was performing oral sex on her. The detective stated that O.V. did

not mention anything about Mr. Skaritka masturbating above her on that specific occasion and if she had, the detective would have included it in her report. She testified that O.V. also did not mention Mr. Skaritka running upstairs after masturbating over her during the March incident.

¶ 28 Detective Gorman-Kenny testified that O.V. also reported a sexual assault that happened on the night of May 1 or 2, 2011. Detective Gorman-Kenny also stated that she did not recall O.V. mentioning that Mr. Skaritka gave her Klonopin or drugs in pill form while they were out looking for scrap metal that evening, or that he sometimes gave her his mother's medication. O.V. did not tell Detective Gorman-Kenny that, prior to assaulting her that evening, Mr. Skaritka sat on her bed and smoked marijuana with her or gave her four Klonopin. If she had, Detective Gorman-Kenny testified that she would have included that in her report.

¶ 29 On cross-examination, Detective Gorman-Kenny explained that when she was first interviewed, O.V. did not immediately recall the dates of the incidents, but that Detective Gorman-Kenny engaged in a process to help her remember, such as relating the incidents to holidays or other memorable dates. She testified that O.V. told her about Mr. Skaritka giving her alcoholic beverages during the May incident and smoking marijuana with her "during the course of May."

¶ 30 At the close of evidence, the circuit court confirmed that Mr. Skaritka did not wish to testify, then took a short recess and returned to deliver the verdict.

¶ 31 The court explained how this case involved "an issue of credibility as to whether or not [O.V.'s] testimony [was] believable and whether or not her memory of the incident [was] fresh and whether under the totality of the circumstances her testimony [was] believable." The court stated that O.V. acted "as you would believe someone who had gone through these type [*sic*] of incidents would act," was "obviously traumatized," and "had the demeanor of someone who has

been sexually assaulted." The court noted, however, that O.V.'s testimony regarding the incident that occurred between March 16-17 (which the court incorrectly referenced as the "May 16th, May 17th incident" according to the transcript) was different than what was charged in the indictment and from what O.V. had told to Detective Gorman-Kenny, which was that Mr. Skaritka placed his mouth on her vagina.

¶ 32 With respect to the early May incident, the circuit court found that O.V.'s testimony was consistent with what was alleged in count 4 and with what she had told the police, except for the issue of whether Mr. Skaritka had given her any pills. The court found that O.V.'s testimony was credible and, other than that detail, "unimpeached." While her retelling of some of the events was not in chronological order, the court found that O.V.'s testimony was "believable," that O.V. was "clear as to what occurred" during the early May incident, and that "her reactions afterward were consistent" with someone who was being threatened by a person in a position of authority. The court also found that O.V.'s testimony about her "outcry" when she told Sharla about the incidents to be substantiated by Sharla's testimony. The court found that O.V.'s testimony regarding why "everything came out" the way it did after O.V. had been detained by the police, and how O.V. had not told anyone because of her fear that her family would lose their house, was "credible and compelling." The court further found that Sharla's descriptions of O.V.'s actions and how O.V. had to be hospitalized were "consistent with someone who would have gone through something like this. It is not consistent with someone who would keep a lie going for years and years just to get back at somebody who would discipline her."

¶ 33 The circuit court found Mr. Skaritka guilty on count 4, criminal sexual assault, that on or about March 17, 2011 and continuing to May 2, 2011, Mr. Skaritka committed the act of sexual penetration upon O.V. knowing she was unable to give knowing consent. The court found Mr.

Skaritka not guilty on all other of the 13 counts, either on the basis that they were lesser included offenses or that the testimony was inconsistent with the specific allegations. The court denied Mr. Skaritka's motion for a new trial and sentenced him to ten years' incarceration.

¶ 34 JURISDICTION

¶ 35 After being given leave to file late notice of appeal, Mr. Skaritka filed his notice of appeal on August 19, 2014. Accordingly, this court has jurisdiction pursuant to article VI, section 6, of the Illinois Constitution (Ill. Const. 1970, art. VI, § 6), and Illinois Supreme Court Rules 603 and 606, governing appeals from a final judgment of conviction in a criminal case. (Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013)).

¶ 36 ANALYSIS

¶ 37 I. Sufficiency of the Evidence

¶ 38 The role of an appellate court in reviewing the evidence used to convict a criminal defendant is limited. A criminal conviction is "not to be overturned on review unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *People v. Schott*, 145 Ill. 2d 188, 203 (1991). The relevant question 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.) *Id.* (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979))).

¶ 39 Although we give great deference on appeal to the fact finder's assessment of witness credibility and view the evidence in the light most favorable to the prosecution, we cannot accept testimony that is "so lacking in credibility that a reasonable doubt of defendant's guilt remains." *Schott*, 145 Ill. 2d at 207. A conviction based upon testimony that is "improbable, unconvincing,

and contrary to human experience requires reversal." *People v. Vasquez*, 233 Ill. App. 3d 517, 527 (1992).

¶ 40 Mr. Skaritka argues that the circumstances surrounding O.V.'s "outcry" when she first told her mother about the incidents with Mr. Skaritka make her testimony unreliable. He asserts that it is "highly suspicious" that O.V. suddenly accused Mr. Skaritka right after being detained by the police for drinking alcohol, and suggests it was merely a way to "cast attention away from O.V.'s own delinquent behavior and encounter with the police." The circuit court judge witnessed O.V. testify in person. The court explained that it found O.V.'s testimony about why she initially kept these experiences "pent up," and why the "outcry" happened in the way it did, to be "credible and compelling." We defer to the circuit court's finding that the circumstances surrounding the outcry are understandable and do not make O.V.'s testimony too unreliable to support this conviction.

¶ 41 As an additional reason to find her testimony incredible, Mr. Skaritka points to O.V.'s long-standing issues with him and how he, with the support of Sharla, assumed the role of a parent with O.V. Although tension may have existed between O.V. and her mother's live-in boyfriend, the notion that this tension caused O.V. to make up multiple detailed incidents of sexual assault is undermined by the parallel testimony of O.V. and Sharla who both reported that the relationship between O.V. and Mr. Skaritka changed for the worse in early 2011, around the times of these incidents. At any rate, the circuit court explicitly considered whether O.V. was telling a false story for years just to "get back" at Mr. Skaritka or her mother but, after considering the testimony and assessing the witnesses' credibility, determined that this was not the case.

¶ 42 Mr. Skaritka also argues that inconsistencies in O.V.'s testimony and between that testimony and her pretrial statements undermine her credibility. O.V. initially reported that during the March incident, she woke up to find Mr. Skaritka performing oral sex on her, but testified at trial that he was standing over her and masturbating. Mr. Skaritka also points to O.V.'s testimony that Mr. Skaritka gave her Klonopin before the May incident, but completely omitted this fact when reporting the incident to the police.

¶ 43 We do not find the inconsistencies in O.V.'s testimony to undermine her credibility such that Mr. Skaritka's conviction must be overturned. The circuit court specifically recognized the inconsistencies relating to the March incident and found Mr. Skaritka not guilty on many of the charges. However, after considering O.V.'s demeanor and her testimony as a whole, the court did not find that these inconsistencies damaged her credibility so gravely that her account of other events was not believable. We give "great deference" to the circuit court's assessment of witness credibility, and we do not find O.V.'s testimony to be so "improbable, unconvincing, and contrary to human experience" that it would preclude the court from accepting her testimony about the May incident. *Vasquez*, 233 Ill. App. 3d at 527.

¶ 44 The circuit court described O.V.'s failure to mention Klonopin to the police when describing the early May incident as "collateral impeachment" and noted that besides this one omission, her testimony regarding this incident was unimpeached. O.V.'s use of this drug is not an essential fact of the case and therefore did not need to be proven beyond a reasonable doubt.

¶ 45 The cases cited by Mr. Skaritka in support of his argument that inconsistent witness testimony cannot sustain a conviction are distinguishable because they involved far more pervasive inconsistencies in far weaker cases. See *People v. Smith*, 185 Ill. 2d 532, 545 (1999) (finding "serious inconsistencies in, and the repeated impeachment of" a witness's testimony,

only circumstantial evidence linked the defendant to the crime, and other witnesses were unable to identify the defendant); *People v. Herman*, 407 Ill. App. 3d 688, 705 (2011) (where the victim's testimony "entirely lacked credibility, and contrary to the trial court's finding, was riddled with inconsistencies and contradictions and was completely uncorroboratred").

¶ 46 Mr. Skaritka argues that the circuit court improperly considered O.V.'s hospitalization when there was no testimony directly tying that to the alleged molestation. However, the court simply mentioned in passing that O.V.'s hospitalization after this incident was "consistent with someone who would have gone through something like this." The court did not say that it considered O.V.'s hospitalization to be corroboration of her testimony as to what had occurred. Moreover, the only evidence of hospitalization came during defense counsel's cross-examination of Sharla and it was never relied on by the prosecution to support the charges against Mr. Skaritka.

¶ 47 Additionally, Mr. Skaritka contends that no testimony sufficiently explains how he committed these acts during the middle of the night, when he worked from 11 p.m. until 7 a.m. He argues that Sharla stated without explanation that he would sometimes be home for "an hour" during work, but she also recognized that he had only a 30-minute lunch break, and it took about 15 minutes to drive from their house to his work. Mr. Skaritka insists that O.V.'s testimony that he was "late for work" to explain why he was home the night of the March incident was an insufficient explanation for how he could be there at the time he was alleged to have molested her, hours after she went to bed.

¶ 48 The logistical difficulties that Mr. Skaritka notes are not so problematic that they make O.V.'s version of events wholly improbable. The circuit court did not hear testimony regarding whether Mr. Skaritka was actually at work on the night of either of the incidents or whether his

30-minute lunch breaks were strictly enforced. The court was not obligated to discard victim testimony simply because there is an unexplained but surmountable impediment in the victim's version of events. Even if we assume that Mr. Skaritka was at work the nights in question, which was never established, Sharla's testimony that Mr. Skaritka would sometimes be at home for an hour during work hours, and how he would sometimes leave the shop during work to take a truck on a "test drive," are sufficient for the circuit court to reasonably find that Mr. Skaritka was able to be at home long enough to commit the act alleged in count 4.

¶ 49 Mr. Skaritka also argues that there was insufficient evidence to sustain his conviction due to the lack of physical, medical, or forensic evidence linking him to the crime. Mr. Skaritka's reliance on *People v. Rivera*, 2011 IL App (2d) 091060, and *People v. Yeargan*, 229 Ill. App. 3d 219 (1992), to support this point is misplaced. In those cases, such evidence was collected and tested, making the absence of evidence linking the defendant to the crime relevant. *Rivera*, 2011 IL App (2d) 091060, ¶¶ 29-31; *Yeargan*, 229 Ill. App. 3d at 230-31. Here, however, neither party presented evidence of any tests ever having been conducted, likely because the incidents were reported at least several weeks after they allegedly occurred.

¶ 50 Mr. Skaritka further argues that the only evidence corroborating O.V.'s testimony was Sharla's testimony which, he contends, is of minimal value. Mr. Skaritka points to Sharla's reasons to be biased against Mr. Skaritka, the fact that she initially omitted in her direct testimony Mr. Skaritka's statement to her when she confronted him that he did not know what she was talking about, and that she lied to authorities about why she had Norco.

¶ 51 First, even if there were no corroboration, O.V.'s testimony alone could be sufficient to sustain this conviction. There is no requirement in this case that O.V.'s testimony must be corroborated. *Schott*, 145 Ill. 2d at 202, 206 (1991) (rejecting the old "sex-offense" standard

where the testimony of the victim of a sex crime was deemed insufficient to sustain a conviction unless it was clear and convincing or substantially corroborated).

¶ 52 Moreover, the circuit court was entitled to find Sharla's testimony to be credible corroboration of her daughter. The court was aware of all the facts that Mr. Skaritka claims undermined Sharla's credibility. Being aware of these things, the court was in the best position to consider her testimony in light of any bias she may have had against Mr. Skaritka or anything else undermining her credibility. We cannot find that the circuit court erred in finding that Sharla's testimony was additional evidentiary support for Mr. Skaritka's conviction.

¶ 53 Finding sufficient evidence to sustain Mr. Skaritka's conviction, we turn to the issue of whether the Illinois Sex Offender Registration Act and other related statutes are constitutional.

¶ 54 II. Constitutionality of the Sex Offender Registration Act

¶ 55 Mr. Skaritka's conviction for criminal sexual assault qualifies him as a "sexual predator" under the Illinois Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2014)). 730 ILCS 150/2(E)(1) (West 2014). Mr. Skaritka argues that SORA, the Sex Offender Community Notification Law (Notification Law) (730 ILCS 152/101 *et seq.* (West 2014)), and other related statutes applicable to sex offenders (collectively, the "SORA Statutory Scheme") violate registrants' procedural and substantive due process rights through severe restrictions, intrusive monitoring, and burdensome registration requirements. He contends that applying the factors set out in *Kennedy v. Mendoza-Martinez*, 372 U.S. 144 (1963), the SORA Statutory Scheme has become punitive rather than regulatory, that the lifetime regulations imposed by the SORA Statutory Scheme violate a fundamental liberty interest without safeguards to ensure that only those who pose an actual risk of reoffending are subject to those restrictions, and that the

burdens and restrictions the SORA Statutory Scheme places on registrants' fundamental rights do not survive strict scrutiny or, if strict scrutiny is not applicable, rational basis review.

¶ 56 We reject the State's argument that Mr. Skaritka lacks standing to make some of his objections to the SORA Statutory Scheme. However, we also reject Mr. Skaritka's constitutional claims. In rejecting those arguments, we follow binding precedent from the Illinois Supreme Court as well as recent decisions by this court which have analyzed the amendments to the SORA Statutory Scheme in light of the constitutional concerns raised by Mr. Skaritka and found that the statutes continue to meet constitutional criteria.

¶ 57 A. Standing to Challenge the Penalty Provision of the SORA Statutory Scheme

¶ 58 The State argues that Mr. Skaritka lacks standing to challenge subsection 10 of SORA, which makes it a felony for any person who is required to register under SORA to violate any of its requirements (730 ILCS 150/10(a) (West 2012)) because this provision is not triggered by his registration under SORA, but by a violation of SORA, and he has not yet been charged with any such violation.

¶ 59 We agree with Mr. Skaritka and the court's recent opinion in *People v. Avila-Briones,* 2015 IL App (1st) 132221, as well as the dissent in *In re A.C.*, 2016 IL App (1st) 153047, that a defendant who is subject to SORA has a right to challenge the penalty provision without having first committed a SORA violation. As those justices noted, the fact that Mr. Skaritka has not violated these statutes "does not mean that defendant will not be affected by the laws." *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 42. Moreover, "[b]ut for the penalty provision, [Mr. Skaritka] would have lacked any incentive" to comply with the requirements of the SORA Statutory Scheme. *A.C.*, 2016 IL App (1st) 153047, ¶¶ 85-86 (Gordon, J., concurring in part and

dissenting in part). Accordingly, Mr. Skaritka has standing to raise his constitutional challenge to the SORA Statutory Scheme, including the penalty provision.

¶ 60 B. Merits of Mr. Skaritka's Constitutional Challenge

¶ 61 The constitutionality of a statute is a question of law which is reviewed by the appellate court *de novo*. *People v. Molnar*, 222 Ill. 2d 495, 508 (2006). Statutes are afforded a presumption of constitutionality, and this court has an obligation to construe a statute in a manner that would uphold its constitutionality if reasonably possible. *Id.* The burden is on the party challenging the validity of a statute to establish its constitutional infirmity. *Id.* at 509.

¶ 62 SORA "was passed by the General Assembly 'in response to concern over the proliferation of sex offenses against children.' " *People v. Cornelius*, 213 Ill. 2d 178, 194 (2004) (quoting *People v. Adams*, 144 Ill. 2d 381, 386 (1991)). "By requiring sex offenders to register with local law enforcement agencies, 'the legislature sought to create an additional method of protection for children from the increasing incidence of sexual assault and sexual abuse.' " *Id.* (quoting *Adams*, 144 Ill. 2d at 387). The Illinois Supreme Court has previously upheld the constitutionality of earlier versions of the sex registration and notification statutes against constitutional challenges. See, *e.g.*, *Cornelius*, 213 Ill. 2d 178; *People v. Malchow*, 193 Ill. 2d 413 (2000); *Adams*, 144 Ill. 2d 381. Mr. Skaritka's argument is based on what he refers to as the "2014 version of SORA," which includes substantive amendments to the SORA Statutory Scheme passed by the legislature within the last several years.

¶ 63 There can be no dispute that the current version of the SORA Statutory Scheme has become "more onerous with regard to the amount of information a sex offender must disclose, the number of agencies to which the offender must disclose that information, and how often a sex offender must register." *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 51.

¶ 64 Mr. Skaritka's argument is that the additional burdens imposed by amendments to the SORA Statutory Scheme are so significant that the statutes are in fact punitive, under the factors set out in *Kennedy v. Mendoza-Martinez*, 372 U.S. at 168-69, regardless of the fact that the legislature's intent was not to create a punitive scheme. Although the supreme court in *Cornelius* and *Malchow* examined whether the SORA Statutory Scheme was "punitive" in response to an argument that the statutes imposed impermissible *ex post facto* criminal penalties, Mr. Skaritka does not make an *ex post facto* claim. Rather, he argues that the additional burdens created by recent amendments require a reexamination of whether imposing those burdens violates Mr. Skaritka's right to substantive and procedural due process.

¶ 65 Shortly after Mr. Skaritka filed his opening brief on December 10, 2015, another division of this court issued its decision in *People v. Avila-Briones*, 2015 IL App (1st) 132221, *appeal denied*, No. 120381 (Mar. 30, 2016). In that case, the court examined and rejected the constitutional arguments that Mr. Skaritka makes here. These arguments have also been rejected by other districts and divisions of the Illinois appellate court. See, *e.g.*, *A.C.*, 2016 IL App (1st) 153047 (rejecting due process and eighth amendment challenges to the SORA Statutory Scheme as applied to a juvenile offender); *People v. Pollard*, 2016 IL App (5th) 130514, ¶ 23 (following the "persuasive reasoning" articulated in *Avila-Briones* and rejecting procedural and substantive due process claims and eighth amendment proportionate penalties challenges to the SORA Statutory Scheme). Having considered Mr. Skaritka's arguments, we agree with the conclusion reached in these decisions**.**

¶ 66 In *A.C.*, the court held that the evolution of the SORA Statutory Scheme reflects "social changes and [does] not manifest a punitive bent," and since the respondent in that case failed to demonstrate a punitive intent behind the challenged provisions, the court found he was not

subjected to cruel and unusual and grossly disproportionate punishment. *A.C.*, 2016 IL App (1st) 153047, ¶¶ 77-79 (citing *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 46). However, the real question raised by Mr. Skaritka's arguments is whether the greater burdens now imposed by the SORA Statutory Scheme violate the constitutional due process requirements.

¶ 67 The *Avila-Briones* court addressed substantive due process issues, examining arguments that there is a fundamental right "to be free from a lifetime of burdensome, intrusive monitoring and restrictions," and that the SORA Statutory Scheme infringes on that right, or that in any event the provisions do not pass rational basis review. *Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 69-71. After analyzing the prohibitions, obligations, and mandatory dissemination of information required by the SORA Statutory Scheme, the court determined that the provisions did not infringe on any fundamental right. *Id.* ¶¶ 72-76 (citing *Doe v. City of Lafayette*, 377 F.3d 757, 770-71 (7th Cir. 2004); *Cornelius*, 213 Ill. 2d at 203-04; *J.W.*, 204 Ill. 2d at 67; *Rodrigues v. Quinn*, 2013 IL App (1st) 121196, ¶¶ 1-2, 7; *In re Marriage of Charnogorsky*, 302 Ill. App. 3d 649, 660 (1998); *Guerrero v. Ryan*, 272 Ill. App. 3d 945, 951 (1995)). The court then determined that the SORA Statutory Scheme passes rational basis review because it serves the legitimate state interest of protecting the public from sex offenders, and is rationally related to that interest despite the possibility that it may be over-inclusive. *Id.* ¶¶ 82-84 (citing *Maddux v. Blagojevich*, 233 Ill. 2d 508, 547 (2009); *Cornelius*, 213 Ill. 2d at 205; *J.W.*, 204 Ill. 2d at 67-68; *Adams*, 144 Ill. 2d at 390; *Harris v. Manor Healthcare Corp.*, 111 Ill. 2d 350, 369 (1986)).

¶ 68 In his reply brief, Mr. Skaritka respectfully urges this court to disagree with the *Avila-Briones* court's conclusion that none of the SORA monitoring requirements or restrictions infringe on a fundamental right. However, in reference to the registration requirement itself, the court in *Avila-Briones* relied on binding Illinois Supreme Court precedent. *Avila-Briones*, 2015

IL App (1st) 132221, ¶ 74 (citing *J.W.*, 204 Ill. 2d at 66, which held that requiring juveniles to register as a sexual offender for the rest of their natural life does not implicate a fundamental right and *Cornelius*, 213 Ill. 2d at 204, which held that dissemination of sex offenders' personal information does not impact fundamental rights). The court then analyzed each of the restrictions on where a registered sex offender could work, live, or be present, the license requirement, and the prohibition on a registered sex offender changing his or her name, and declined to recognize any of them as implicating what would clearly be a new fundamental right. *Id.* ¶¶ 75-76. We agree with that court that these burdens and restrictions, while not insignificant, simply do not rise to the level of infringement on a fundamental right.

¶ 69 In reference to the *Avila-Briones* court's rational basis review, Mr. Skaritka contends that the court's reading of *Maddux v. Blagojevich* was in error and that over-inclusiveness is actually "an important factor[ ] to consider." Mr. Skaritka argues that there are individuals "who will never recidivate and pose no risk to their community" who are nonetheless subject to those restrictions. The rational basis test requires only that the statute "bears a rational relationship to a legitimate legislative purpose and is neither arbitrary nor unreasonable." *People v. Hollins*, 2012 IL 112754, ¶ 15. "As long as there is a conceivable basis for finding a rational relationship, the law will be upheld." *Harris*, 111 Ill. 2d at 368. While not every offender is necessarily inclined to commit another sex offense, subjecting that group as a whole to certain restrictions does serve a legitimate state purpose which the SORA Statutory Scheme is rationally related to achieving, even though it may not be "finely-tuned" to do so. *Avila-Briones*, 2015 IL App (1st) 132221, ¶ 84.

¶ 70 The *Avila-Briones* court also rejected the defendant's argument that the SORA Statutory Scheme violates procedural due process by failing to include a mechanism by which the state

would ensure that only "those who actually pose a risk of committing additional sex crimes" would be subject to the burdensome restrictions of those laws. *Id.* ¶ 90. The court held, relying on *Connecticut Dep't of Public Safety v. Doe*, 538 U.S. 1, 4, 7-8 (2003), that no such additional procedures would be necessary to satisfy due process because the SORA Statutory Scheme is based entirely upon the convicted offense, which the offender received "a procedurally safeguarded opportunity to contest," and the offender's likelihood to reoffend is not relevant to determining whether he committed the charged crime. (Internal quotation marks omitted.) *Id.* ¶¶ 88-92.

¶ 71 Mr. Skaritka argues that defending himself against the charged criminal offenses is quite different from the case he would make in an attempt to disprove the likelihood that he would reoffend. This may well be true. However, as the court recognized in *Avila-Briones*, once it has been determined that the SORA Statutory Scheme is not unconstitutional, despite the fact that it may be over-inclusive, there is no constitutional mandate for procedures that would allow a convicted defendant to demonstrate that he or she is not likely to reoffend. *Id.* Thus, there is no basis for finding that the SORA Statutory Scheme violates procedural due process requirements.

¶ 72 CONCLUSION

¶ 73 For the foregoing reasons, we affirm the judgment of the circuit court.

¶ 74 Affirmed.