2016 IL App (4th) 140286-U

NO. 4-14-0286

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
February 26, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	McLean County
ALEXANDER V. BEARD,	)	No. 13CF1263
Defendant-Appellant.	)	
	)	Honorable
	)	Robert L. Freitag,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The evidence was sufficient to allow a rational jury to find defendant guilty of the charged offenses beyond a reasonable doubt.

(2) The trial court did not abuse its discretion in admitting hearsay statements of the child victim, as the statements bore sufficient indicia of reliability.

(3) After inquiring into the factual bases of defendant's *pro se* claims of ineffective assistance of counsel, the trial court found no possible neglect of the case and accordingly declined to appoint new counsel; that decision is not manifestly erroneous, and thus it is affirmed.

¶ 2 A jury convicted defendant, Alexander V. Beard, of three counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)), and one count of predatory criminal sexual assault (720 ILCS 5/11-1.40(a)(1) (West 2012)). The trial court sentenced defendant to 12 years in prison for predatory criminal sexual assault and ordered the term to run consecutively to the three concurrent 6-year terms imposed on the three aggravated-criminal-sexual-abuse convictions.

¶ 3 Defendant appeals, claiming (1) the evidence was insufficient to convict him beyond a reasonable doubt because the complainant's testimony was "incredible," (2) the trial court erred in admitting into evidence the unreliable hearsay statements from the child complainant, and (3) the trial court erred by failing to appoint different counsel upon consideration of his posttrial claims of ineffective assistance of counsel. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2013, a grand jury indicted defendant, age 33, on four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)) and one count of predatory criminal sexual abuse (720 ILCS 5/11-1.40(a)(1) (West 2012)). Count I alleged defendant committed aggravated criminal sexual abuse, sometime between April 1 and July 1, 2013, when he knowingly committed an act of sexual conduct with S.W. involving his penis and S.W.'s vagina for the purpose of his sexual gratification or arousal (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). Count II alleged defendant, during the same time frame, committed an additional act of aggravated criminal sexual abuse when he knowingly committed an act of sexual conduct with S.W. also involving his penis and her vagina for his sexual gratification or arousal (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). Count III alleged defendant, during the same time frame, committed the act of predatory criminal sexual assault when he knowingly committed an act of sexual penetration with S.W. involving his penis and her vagina (720 ILCS 5/11-1.40(a)(1) (West 2012)). Count IV alleged defendant, during the same time frame, committed an additional act of aggravated criminal sexual abuse when he knowingly committed an act of sexual conduct with S.W. also involving his penis and her vagina for his sexual gratification or arousal (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). Count V alleged defendant, during the same time frame, committed an additional act of aggravated criminal sexual abuse when he knowingly committed

an act of sexual conduct with S.W. also involving his penis and her vagina for his sexual gratification or arousal (720 ILCS 5/11-1.60(c)(1)(i) (West 2012)). Before trial, the State agreed to nol-pros Count II.

¶ 6 On December 16, 2013, the parties convened for a hearing on the State's notice of intent to use hearsay evidence pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2012)). The trial court noted it had reviewed People's exhibit No. 1, the videotaped recording of S.W.'s interview at the McLean County Children's Advocacy Center (CAC). Both sides stipulated to the admission of the recording into evidence. (This court reviewed the exhibit as well.)

¶ 7 The State also presented the testimony of three witnesses. First, Jacob Walters, the CAC employee who conducted S.W.'s interview, testified. Walters, who had worked for CAC for approximately five years, testified as to his training and expertise as a social worker and a certified forensic interviewer. He said Bloomington police officer Matt Dick asked him to interview S.W.

¶ 8 Next, the State called Luke Peterson. (During her CAC interview, S.W. stated Peterson, who is her sister's boyfriend, was the first person she told about defendant's inappropriate sexual behavior.) On the witness stand, Peterson testified regarding the conversation he had on July 27, 2013, with S.W. Peterson said, because he had concerns about defendant's relationship with S.W., he wanted to find out from S.W. if anything had happened. He said to S.W.: "I know what happened." However, he said on the witness stand: "I didn't really know what happened but I asked anyways." According to Peterson, S.W. told him only that defendant "put his hands down her pants and asked her to suck his penis." Peterson said he told S.W. to tell her sister, which, according to Peterson, she did.

¶ 9 The State also called N.S., S.W.'s sister and Peterson's girlfriend, who testified she had a conversation with Peterson on July 27, 2013. Based on that conversation, N.S. asked S.W. if defendant had touched her. S.W. told her he had. N.S. said S.W. told her "he had put his hands down her pants on a couple different occasions and he had asked her to give him oral sex." N.S. told S.W. she needed to tell their mother. Between July 27 and July 31, 2013, N.S. asked S.W. more questions about the abuse, but S.W. did not discuss it further.

¶ 10 After the presentation of this testimony and the admission of the videotaped interview, the trial court found (1) S.W.'s initial disclosure of the abuse to Peterson was not suggestive or leading; (2) S.W.'s recorded interview was conducted properly, with S.W. providing details in narrative form; and (3) Walters did not ask S.W. leading questions. The court held the evidence met the time, content, and circumstances requirements for reliability, and was therefore admissible, assuming S.W. was available for cross-examination.

¶ 11 The jury trial commenced with the testimony of the 11-year-old victim, S.W. She said defendant lived with Candace, a neighbor. Defendant would take S.W., along with Candace's son (Esteban) and defendant's girlfriend's (Amanda Harris) sons to the park to play basketball or to the fair, *et cetera*. When S.W. went to Candace's apartment to play, she and the boys would play video games or wrestle. The prosecutor asked S.W. if there came a time "when something happened that—with [defendant] that made [her] uncomfortable." S.W. answered "yes" and described the "first time that happened." She said she was in Esteban's room, wrestling with Esteban and defendant. Esteban left the room to use the restroom. When he left, defendant lay on top of her and would not let her up. He "started to rub his private part" on her. She clarified, stating defendant rubbed his penis on her vagina. They were both clothed. When asked what it felt like when he was rubbing on her, she stated: "Like it was poking me, and it

hurt." She asked him to get off of her, but he did not. He stopped when she pushed him off. She then went downstairs. She said she did not tell anyone about the incident.

¶ 12 The second incident also occurred at Candace's apartment while S.W. was there with Esteban, the other boys, and defendant. S.W. was "lining" defendant's hair with clippers in the upstairs bathroom. She asked him to leave, so she could use the bathroom. She said he left but then reentered while she was on the toilet. She said he pulled his pants down and "just started to wash his body up." S.W. asked him to leave, but he did not. He pulled her pants down and forced her to lie on the floor. He rubbed his penis on the outside of her vagina. She said his penis was "hard and pointy." She asked defendant to get off of her. He did not stop until she "kind of kicked him in his balls." She did not tell anyone about this incident.

¶ 13 S.W. said she continued to have contact with defendant. A third incident of abuse occurred when she and defendant were at O'Neil Park. They played basketball and then went to the dugout at the softball field. Defendant "tried to make [her] touch on his penis." He told her nothing bad would happen. She told him she did not "think [she] should do that cause that's inappropriate for [her] to do that to a grown man." She said she did not touch him. Instead, they went back to playing basketball.

¶ 14 S.W. testified about a fourth incident of abuse. One evening, S.W. asked defendant to take her to Circle K, a convenience store. Defendant agreed and they got into Amanda's van. Instead of driving S.W. to Circle K, defendant drove to Family Dollar and parked behind the store. Defendant touched her leg as she sat in the front passenger seat. She asked him to stop. He complied. S.W. asked defendant if he could help her move a spare tire that was in the backseat. She wanted to recline her seat because she was tired and the tire prevented her from doing so. When they were moving the tire, defendant "put his hand on [her]

butt." He then pulled her pants down, pulled his pants down, and "started to rub his penis on [her] vagina again" outside of her underwear. He also touched her with his hand outside of her underwear. He pulled her underwear down and rubbed his penis on her vagina. She asked him to stop but he did not stop until she pushed him away. He drove her to Circle K, she got a slushy, and they went home. Her mother was waiting and asked where they had been. S.W. told her mother they went to Circle K, but she did not mention the abuse. Her mother grounded her for not asking before leaving.

¶ 15 S.W. said, during the summer, defendant, his daughter, Amanda, Amanda's two sons, and S.W. went to Fun World. When they returned, S.W. went to Chicago to visit her father for several weeks.

¶ 16 S.W. testified she knew Peterson before he dated N.S. She, Peterson, and defendant used to play basketball together at O'Neil Park. When S.W. returned from her father's house, Peterson asked S.W. if defendant "had ever touched [her] in an inappropriate place." She told him he had, although she did not provide him with details.

¶ 17 The State also called Peterson as a witness. He testified he had been dating N.S. for approximately seven months, but he had met S.W. before prior to dating N.S. He met S.W. at O'Neil Park. She was with defendant, playing basketball. Peterson had a conversation with S.W. about defendant's inappropriate behavior because Peterson said he "felt something *** wasn't right." Peterson started the conversation telling S.W. he knew what happened, "and then that's when she just said everything." Peterson said S.W. told him defendant stuck his hands down her pants and "tried to make her suck his penis." Peterson said he "didn't want to press the issue" and advised S.W. to tell N.S.

¶ 18 N.S. testified on July 27, 2013, in response to a phone conversation with Peterson, she asked S.W. if defendant had touched her. S.W. told her "he had tried to get her to give him oral sex and that he stuck his hands down her pants." She told S.W. to tell their mother.

¶ 19 T.T., S.W.'s mother, testified. She said N.S. informed her about S.W.'s allegations. She tried to talk to S.W., but S.W. would not talk about it. She called the police.

¶ 20 Lastly, Walters, the CAC employee who interviewed S.W., described his credentials and how he generally conducts his interviews. He testified People's exhibit No. 1 was a true and correct copy of his interview of S.W. The State published the recorded interview to the jury.

¶ 21 In her interview, S.W. relayed the incidents in similar fashion as in her testimony on the witness stand. She described four incidents of abuse. First, she recounted the incident during a play-wrestling session with Esteban and defendant. She said after Esteban had left the room to use the restroom, defendant lay on top of her as she lay on the mattress. In the interview, she said defendant stopped "rubbing his private part on [her] private part" when Esteban came back into the room, which differed from her trial testimony that defendant stopped when she pushed him off her.

¶ 22 She next described for Walters the trip to Circle K. She described the incident similarly to how she described it on the witness stand except, in her interview, she said once defendant parked behind Family Dollar, he rubbed his hand on her private area on top of her clothes. She said he wanted her to touch him but she refused. She said she told him to stop touching her but he would not stop, so she exited the van. On the witness stand, she said he rubbed her leg, she asked him to stop, and he did.

¶ 23 In her interview, S.W. told Walters defendant asked her to move a tire from the back of the van. As she bent over the backseat, he pulled her pants down to her knees. She said her underwear almost came down but she grabbed it. Defendant touched her vagina on top of her underwear with his hand. She said he took his shirt and pants off. She told defendant she wanted to go home. She said he grabbed her arm and said, " 'you know you like it.' " She said he drove her to Circle K to get a slushy and chips and then drove home. In this interview, she did not mention him rubbing his penis on her vagina, as she did on the witness stand.

¶ 24 S.W. then described the incident that occurred in the bathroom after she trimmed defendant's hair. She said she told defendant to leave the restroom because she had to go to the bathroom. He refused and locked the door. She said he took her off the toilet and started rubbing his private on her private. He then grabbed her by her arms and laid her on the floor on her back. She said her pants were down around her ankles. She said his pants and underwear were off. He lay on top of her, rubbing his penis on the outside of her vagina. She said he stopped and got up when someone knocked on the door. She stood up, pulled her pants up, and left the bathroom. This statement differed from her testimony on the witness stand only with the addition of her description of his penis as "hard and pointy" at the time he was rubbing it on her. And, on the witness stand, she testified defendant stopped rubbing on her only after she "kind of kicked him in his balls."

¶ 25 As her interview was coming to a close, as Walters was asking follow-up questions, S.W. stated there was also a time when defendant "tried making [her] touch him" at O'Neil Park. She refused. On the witness stand, S.W. provided more detail in terms of where this occurred and their conversation during this incident of abuse. After publishing the recorded interview to the jury, the State rested.

¶ 26 Defendant presented the testimony of Candace, S.W.'s neighbor and defendant's roommate at the time of the abuse incidents. Candace testified S.W. came to her apartment "almost every day" to play with her son, Esteban. Candace said defendant, Amanda, and her two sons lived with her for approximately two months, from February to April 2013.

¶ 27 Amanda testified, corroborating Candace's testimony that she, defendant, and her two sons lived with Candace from February 23, 2013, until April 18, 2013. Amanda said on May 23, 2013, S.W.'s mother called asking if she knew where defendant and S.W. were because she could not find S.W. Harris later learned defendant had delivered movies to S.W.'s mother and then had taken S.W. to Circle K. On cross-examination, Amanda said she had warned defendant about spending so much time with S.W., telling him it was not a good idea.

¶ 28 Defendant testified that S.W. came to Candace's "all the time" after school. However, if no one else was home, he would tell her to come back later, when other kids were around. He said he did not recall being upstairs in Esteban's room with Esteban and S.W. He said he and S.W. "were never alone" in Esteban's room. Defendant denied ever making sexual contact with S.W. He also said S.W. never lined his hair. He recalled Amanda's son trimming his hair once in the bathroom with S.W. present but, he said, he was never alone with S.W. in the bathroom. Defendant admitted taking the children, including S.W., to O'Neil Park but, he said, he and S.W. were never alone near the softball diamonds or the dugouts. He said they "would always be playing basketball in the basketball area or the skate park."

¶ 29 Defendant recalled the time, after he had moved out of Candace's apartment, when he dropped off movies to S.W.'s mother. S.W. asked defendant to take her to Circle K. Defendant told her to ask her mother. He said S.W. asked, her mother said it was okay, and she gave S.W. money. They drove in Harris's van to Circle K, not to Family Dollar. He said neither

he nor S.W. got into the back of the van. They both went into Circle K. Defendant did not buy anything but S.W. bought a drink and chips. Defendant drove S.W. home. He said there was a fight at Circle K, which delayed their trip, but they were only gone 10 to 15 minutes.

¶ 30 Defendant said he never had inappropriate contact with S.W. and he had "no idea why she would even make any type of accusations." He said he treated her like a daughter. He said: "I believe she was coerced into it."

¶ 31 On cross-examination, defendant described an incident when S.W.'s mother called him because S.W. was missing. Defendant said he found her at Miller Park with Peterson. He also said, when the police were searching for him to arrest him regarding S.W.'s allegations, they found him hiding in a back bedroom under some covers.

¶ 32 The jury found defendant guilty of all counts as charged. Defendant filed a motion for a judgment notwithstanding the verdict (JNOV). At the scheduled sentencing hearing, the trial court indicated it had received a *pro se* pleading from defendant complaining his trial counsel had rendered ineffective assistance. The court addressed each of defendant's allegations, allowing defendant to thoroughly explain and describe his complaints. The court also allowed defendant's counsel the opportunity to respond. After considering defendant's allegations and counsel's explanations, the court found it unnecessary to appoint different counsel. The court noted trial counsel's complained-of conduct involved trial strategy and did not constitute ineffective assistance. The court also denied defendant's motion for JNOV.

¶ 33 The trial court proceeded to sentencing. After considering the presentence investigation report, defendant's evidence in mitigation in the form of two letters of character reference, and counsels' recommendations, the court sentenced defendant to 12 years in prison on the predatory-criminal-sexual-assault conviction. The court ordered the 12-year prison term to

be served consecutively to three concurrent 6-year terms imposed on the aggravated-criminal-sexual-abuse convictions. Defendant filed a motion to reconsider his sentences, claiming the sentences were excessive. The trial court denied his motion.

¶ 34 This appeal followed.

¶ 35 II. ANALYSIS

¶ 36 Defendant raises three contentions of error on appeal. First, he claims the State failed to prove him guilty of the charged offenses beyond a reasonable doubt when S.W.'s testimony was not credible. Second, he contends the trial court abused its discretion by allowing S.W.'s hearsay statements into evidence. Finally, defendant claims the court erred by failing to appoint different counsel to represent him in his ineffective-assistance-of-counsel claims after the *Krankel* inquiry. We address each contention in turn.

¶ 37 A. Sufficiency of the Evidence

¶ 38 In a challenge to the sufficiency of the evidence, we view the evidence in a light most favorable to the State, and determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). "The *Wheeler* standard 'gives full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *People v. Hadden*, 2015 IL App (4th) 140226, ¶ 25 (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). "Accordingly, a jury's findings concerning credibility are entitled to great weight." *Wheeler*, 226 Ill. 2d at 115.

¶ 39 To prove aggravated criminal sexual abuse (counts I, IV, and V), the State needed to show (1) defendant was 17 years of age or older when he (2) committed "an act of sexual conduct" with (3) a victim under the age of 13. 720 ILCS 5/11-1.60(c)(1)(i) (West 2012).

"Sexual conduct" is "any knowing touching or fondling by the victim or the accused, either directly or through clothing, of *** 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 5/11-0.1 (West 2012). To prove predatory criminal sexual assault of a child (count III), the State needed to show (1) defendant was 17 years of age or order when he (2) committed "an act of sexual penetration" with (3) a victim under the age of 13. 720 ILCS 5/11-1.40(a)(1) (West 2012). " 'Sexual penetration' means any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person ***. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/11-0.1 (West 2012).

¶ 40 It is undisputed defendant was over the age of 17 and the victim was under the age of 13 when the offenses occurred. The question, then, is whether the State, through the victim's direct testimony, proved "an act of sexual penetration" with regard to count III, and "an act of sexual conduct" with regard to counts I, IV, and V.

¶ 41 In her CAC interview, S.W. spoke of four incidents of abuse: (1) in Esteban's bedroom, (2) in Amanda's van, (3) in the bathroom at Candace's apartment, and (4) at O'Neil Park. On the witness stand, S.W. spoke of the same four incidents of abuse. Defendant argues however, S.W.'s initial outcry to Peterson consisted of very different allegations from any of those mentioned in either her CAC interview or on the witness stand. According to Peterson and N.S., S.W. told them both that defendant put his hands down her pants and asked her to suck his penis. S.W. never again mentioned these allegations.

¶ 42 During our summation of the evidence above, we noted the discrepancies between S.W.'s interview and her trial testimony. With regard to the incident occurring in Esteban's room, S.W. stated in her interview and at trial that (1) she, Esteban, and defendant were

wrestling on Esteban's bed in his bedroom; (2) Esteban left the room; (3) defendant lay on top of her; and (4) he rubbed his penis on her vagina over their clothes. The discrepancy between the two accounts was the description of what had occurred to make defendant stop. In her interview, she said Esteban came back into the bedroom. At trial, she said defendant stopped when she pushed him off.

¶ 43 With regard to the incident occurring in the van, there were two discrepancies between S.W.'s interview and her trial testimony. In her interview and at trial, S.W. said defendant rubbed her leg as she sat in the front seat. In her interview, she said defendant would not stop when she asked, so she exited the van. At trial, she said defendant stopped when she asked. Further, S.W. did not mention in her interview that defendant had rubbed his penis on her vagina, skin on skin, as she testified at trial.

¶ 44 With regard to the incident in the bathroom, S.W.'s interview differed from her testimony at trial by (1) the addition of her description of defendant's penis as "hard and pointy" at the time he was rubbing it on her, (2) stating at trial that defendant stopped rubbing on her only after she "kind of kicked him in his balls," and (3) stating in her interview that defendant stopped when someone knocked on the door.

¶ 45 With regard to the incident occurring at O'Neil Park, there were no real discrepancies between S.W.'s interview and her trial testimony. She went into slightly more detail at trial, explaining what defendant said to her and what she said to him. However, S.W.'s account of the incident was consistent. He asked her to touch him and she refused.

¶ 46 Defendant relies on these discrepancies to argue S.W.'s testimony was inconsistent and not credible. Given S.W.'s age, it is reasonable for the jury to characterize these discrepancies as minor or slight when considering the ultimate issue of whether defendant

committed the offenses. S.W.'s timeline of the incidents was not clear or consistent, but she knew the incidents occurred toward the end of the school year. It is not unreasonable for an 11-year-old child to not clearly and completely grasp the concept of how much time passed between incidents of abuse. The testimony of the victim need not be crystal clear and perfect as far as memory is concerned in order for her testimony to be sufficient to prove defendant guilty beyond a reasonable doubt. See *People v. Allison,* 115 Ill. App. 3d 1038, 1041 (1983). That is, slight discrepancies in a victim's testimony do not necessarily destroy her credibility. Those discrepancies merely go to the weight of the evidence as determined by the trier of fact. *Allison*, 115 Ill. App. 3d at 1042.

> "Criminal convictions are not to be overturned on review unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. The relevant question is whether, after considering the evidence in the light most favorable to the prosecution, any rational trier of fact could find the essential elements of the offense beyond a reasonable doubt. [Citations.] The issue of the witnesses' credibility is reserved for the trier of fact ***. [Citation.] The intent to gratify sexual desires for purposes of the sex offense statutes may be established by circumstantial evidence. [Citations.]" *People v. C.H.*, 237 Ill. App. 3d 462, 472 (1992).

¶ 47 S.W. clearly testified about four incidents of abuse. While she was unable to clearly and definitely state when exactly each incident occurred, S.W. nevertheless established the four incidents occurred between April and July 2013. Her statements in her interview and

her testimony at trial were, for the most part, consistent. She described the incidents in her own words, without being prompted by leading questions. Further, there is no evidence S.W. had any motive to lie. *Cf. People v. Schott*, 145 Ill. 2d 188, 206 (1991) (complaining witness admitted she is a person who lies "a lot" and admitted she had falsely accused her uncle of the same act of which the defendant stood accused because she was angry with him). After considering the evidence in a light most favorable to the State, we find a rational jury could have found the evidence was sufficient to prove beyond a reasonable doubt defendant committed acts of sexual conduct for the purpose of his sexual gratification and sexual penetration with S.W. within the meaning of the statutes.

¶ 48 B. Admission of Child Victim Hearsay Statements

¶ 49 Defendant contends the trial court abused its discretion in admitting into evidence S.W.'s statements to Peterson and N.S. because they lacked sufficient safeguards of reliability, as required for the admission of such hearsay. Initially, we note defendant has admitted he has forfeited this argument for purposes of this appeal by not raising it in a posttrial motion. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988). However, he requests we review his contention of error under the plain-error doctrine because the evidence was closely balance and the error was substantial. See *People v. Herron*, 215 Ill. 2d 167, 178 (2005). "As a matter of convention, [a reviewing] court typically undertakes plain-error analysis by first determining whether error occurred at all." *People v. Sargent*, 239 Ill. 2d 166, 189 (2010).

¶ 50 The trial court admitted the statements pursuant to section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)). Section 115-10 of the Code provides, in pertinent part, as follows:

"(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13 ***, the following evidence shall be admitted as an exception to the hearsay rule:

> (1) testimony by the victim of an out of court statement made by the victim that he or she complained of such act to another; and
>
> (2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.

(b) Such testimony shall only be admitted if:

> (1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
>
> (2) The child *** either:
>
> (A) testifies at the proceeding; or
>
> (B) is unavailable as a witness and there is corroborative

> evidence of the act which is the subject of the statement; and
>
> (3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding.
>
> (c) If a statement is admitted pursuant to this section, the court shall instruct the jury that it is for the jury to determine the weight and credibility to be given the statement and that, in making the determination, it shall consider the age and maturity of the child, *** the nature of the statement, the circumstances under which the statement was made, and any other relevant factor." 725 ILCS 5/115-10 (West 2012).

¶ 51 The State bears the burden of establishing the statements it seeks to admit pursuant to section 115-10 were reliable and not the result of adult prompting or manipulation. *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009). The trial court's reliability determination will not be reversed unless the record shows that the trial court abused its discretion. *Sharp*, 391 Ill. App. 3d at 955. " 'An abuse of discretion occurs when the [court's] ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view.' " *Sharp*, 391 Ill. App. 3d at 955 (quoting *People v. Robertson*, 312 Ill. App. 3d 467, 469 (2000)).

¶ 52 When reviewing the trial court's decision to admit out-of-court statements under section 115-10, we consider the totality of the circumstances. *People v. Stull*, 2014 IL App (4th) 120704, ¶ 85. We also consider the following factors: "(1) the child's spontaneity and consistent repetition of the incident; (2) the child's mental state; (3) use of terminology unexpected of a child of similar age; and (4) the lack of motive to fabricate" (hereinafter *West* factors). *People v. Cookson*, 335 Ill. App. 3d 786, 791 (2002) (citing *People v. West*, 158 Ill. 2d 155, 164 (1994)). This court has also indicated the trial court should examine whether the child's statement was the product of possible suggestive interview techniques. See *People v. Simpkins*, 297 Ill. App. 3d 668, 677 (1998).

¶ 53 At a hearing outside the presence of the jury, prior to trial, Peterson testified he was concerned about S.W.'s relationship with defendant. He testified he told S.W. he "knew what happened" between her and defendant. S.W. told him defendant put his hands down her pants and asked her to suck his penis. Peterson testified he did not really know what happened when he questioned S.W., but he phrased it as such so S.W. would be more likely to disclose the abuse.

¶ 54 N.S. testified that, after a conversation with Peterson, she asked S.W. about defendant as well. S.W. told her the same thing she told Peterson, but she would not provide further details.

¶ 55 Applying the *West* factors, defendant argues S.W.'s statements "fell far short of meeting" the applicable evidentiary burden. First, defendant claims S.W.'s statements were neither spontaneous nor consistent. He argues that, because S.W. did not approach an adult on her own to report the abuse, her statements fail to meet this spontaneity requirement. Further, he

claims, both Peterson and N.S. asked leading and suggestive questions of S.W. before she revealed the abuse to them.

¶ 56 The trial court agreed Peterson used "some sort of deception" in obtaining the statements from S.W. but, because Peterson did not suggest any particular conduct to S.W., the question was not "inherently suggestive." Peterson, by stating he knew what happened, did not lead S.W. into her statement that defendant put his hands down her pants and asked her to suck his penis. The court said: "He didn't give her any suggestion as to what it is he thought she should say." The court found the same to be true with S.W.'s statement to N.S. Although N.S.'s question to S.W. was "more leading" ("Did defendant touch you?"), it did not suggest any particular type of touch. S.W.'s response to N.S. was consistent with her disclosure to Peterson. N.S. testified she attempted to gather more information from S.W. over the next few days but S.W. would not discuss it further. Thus, the evidence demonstrated nothing further was suggested to S.W. in that no further conversations took place that could possibly be deemed suggestive.

¶ 57 Defendant further contends S.W.'s delay in reporting the abuse renders her subsequent statements unreliable. Defendant notes S.W. told Peterson about the abuse "about two months" after it happened. However, courts have repeatedly held that a relatively slight delay in reporting abuse does not render subsequent statements unreliable. See *People v. Edwards*, 224 Ill. App. 3d 1017, 1031 (1992) (three-month delay "insignificant"); *People v. Anderson*, 225 Ill. App. 3d 636, 646 (1992) (one-month delay was "understandable given the child's natural sense of shame, fear, guilt and embarrassment"); *People v. Deavers*, 220 Ill. App. 3d 1057, 1069 (1991) (victim's failure to complain earlier does not necessarily diminish the reliability of her later statements). Under the particular circumstances of this case, such as the

notable consistency of S.W.'s statements and the fact S.W. spent a month or so after the abuse incidents away at her father's residence in Aurora, Illinois, we do not consider the two-month delay to be significant.

¶ 58 In our consideration of the *West* factors as they relate to S.W.'s outcry statements, we find the State demonstrated sufficient indicia of reliability. S.W. was not prompted, manipulated, or lead into recounting the various instances of abuse. After her initial disclosure to Peterson and her sister, she detailed the encounters during her CAC interview and then in consistent fashion again on the witness stand at trial. We find the trial court did not abuse its discretion in admitting S.W.'s out-of-court statements at trial. Because we find the trial court did not err in admitting S.W.'s hearsay statements, defendant cannot demonstrate prejudice for the purposes of either the plain-error doctrine or under his alternate theory of ineffective assistance of counsel.

¶ 59 C. *Krankel* Inquiry

¶ 60 Defendant further claims the trial court erred by failing to (1) conduct an adequate *Krankel* inquiry (see *People v. Krankel*, 102 Ill. 2d 181 (1984)) into his posttrial allegations of ineffective assistance of counsel and (2) appoint new counsel to represent defendant in his claims. On the day of his sentencing hearing, defendant filed a *pro se* pleading requesting the trial court "dismiss the charges" against him or grant him a new trial. Defendant began his pleading claiming his trial counsel was ineffective, alleging counsel (1) "excluded witnesses," (2) "did not sit down with [his] witnesses," (3) "only sat down with [him] once during the month" preceding the trial to go over the recorded interview, and (4) failed to "develop questions" for all witnesses.

¶ 61 The law requires a trial court to conduct some type of inquiry into a defendant's *pro se* claim of ineffective assistance of counsel. *People v. Moore*, 207 Ill. 2d 68, 78 (2003). *Krankel* and its progeny do not require the automatic appointment of new counsel whenever a defendant makes a claim of ineffective assistance. *Moore*, 207 Ill. 2d at 77. Instead, the court should "first examine the factual basis of the defendant's claim," and if the court "determines that the claim lacks merit or pertains only to matters of trial strategy, then the court need not appoint new counsel and may deny the *pro se* motion." *Moore*, 207 Ill. 2d at 77-78. If, on the other hand, "the allegations show possible neglect of the case, new counsel should be appointed." *Moore*, 207 Ill. 2d at 78. The concern is " 'whether the trial court conducted an adequate inquiry' into the allegations." *People v. Peacock*, 359 Ill. App. 3d 326, 339 (2005) (quoting *Moore*, 207 Ill. 2d at 78). We review the trial court's decision on the merits of defendant's claim of ineffective assistance of counsel for manifest error; that is, error which is clear and indisputable. *People v. Sims*, 2014 IL App (4th) 130568, ¶ 142.

¶ 62 Prior to sentencing, the trial court conducted a hearing concerning defendant's allegations of ineffective assistance of counsel. The court thoroughly questioned defendant about each allegation stated in his *pro se* filing to ensure the court understood defendant's various complaints. In turn, defendant had ample opportunity to explain to the court the bases for his allegations. Thereafter, the court questioned defense counsel about the complained-of conduct. After considering defendant's allegations and counsel's explanations, the court determined defendant was not entitled to the appointment of new counsel and accordingly, denied defendant's motion. The court found defendant's complaints either involved matters of trial strategy or did not rise to the level of ineffective assistance. We find the court satisfied the inquiry requirement set forth in *Moore*. Because the court questioned defendant and trial counsel

and adequately inquired into and considered defendant's allegations stated in his filings with the court (*cf. Peacock*, 359 Ill. App. 3d at 339-40), we find no manifest error.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 65 Affirmed.