2018 IL App (1st) 152322-U

FIRST DIVISION
June 11, 2018

No. 1-15-2322

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 14507
	)	
JUAN REYNOSO,	)	Honorable
	)	Domenica A. Stephenson,
Defendant-Appellant.	)	Judge Presiding.

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

O R D E R

¶ 1 *Held*: (1) victim's testimony and Defendant's statement were a sufficient basis on which to sustain convictions, despite inconsistencies; (2) one of Defendant's convictions for criminal sexual assault must be reduced to aggravated criminal sexual abuse; (3) the State proved the *corpus delicti* of all counts; (4) none of defendant's convictions violate the one-act, one-crime rule; (5) the State failed to prove elements of sexual relations within families; and (6) the Illinois Sex Offender Registration Act does not violate procedural or substantive due process. This case is remanded for resentencing.

¶ 2 Defendant, Juan Reynoso, was convicted of multiple counts of criminal sexual misconduct. He was sentenced to 20 years in prison, with a three-years-to-natural-life term of

mandatory supervised release. The case against Mr. Reynoso rested on the testimony of his minor daughter, A.R., who testified that Mr. Reynoso sexually abused her repeatedly over nearly a decade. Upon his arrest, Mr. Reynoso gave a statement to Chicago police officers admitting to the abuse. Mr. Reynoso's signed written account largely mirrored A.R.'s testimony at trial. Although Mr. Reynoso moved to suppress that statement, the trial court denied his motion, and he does not appeal that ruling. The case proceeded to a bench trial, and Mr. Reynoso's statement was admitted as evidence against him.

¶ 3 Mr. Reynoso raises five issues on appeal. He asks us to reverse all of his convictions, arguing that the State's evidence was insufficient for a finding of guilt beyond a reasonable doubt because of inconsistencies between A.R.'s account and his own statement to police. Mr. Reynoso challenges his convictions on counts 7 and 42, because both charges require proof of penetration and there was no evidence of penetration during the period of those charges. He challenges his convictions for two other counts that allege sexual abuse, but not penetration, on the basis of the *corpus delicti* rule, arguing that his statement to police formed the only evidence to support those convictions. Mr. Reynoso also attacks certain of his convictions as violating the one-act, one-crime rule. Finally, he argues the Illinois Sex Offender Registration Act violates procedural and substantive due process. For the reasons that follow, we reduce Mr. Reynoso's conviction on count 7 from criminal sexual assault to aggravated criminal sexual abuse, reverse and vacate Mr. Reynoso's convictions on counts 41 and 42, affirm his other convictions, and remand for resentencing.

¶ 4 I. BACKGOUND

¶ 5 Police officers arrested Juan Reynoso on August 16, 2011, after his daughter, A.R., reported that he had been sexually abusing her for almost ten years. A grand jury indicted Mr.

Reynoso on 66 counts, including predatory criminal sexual assault of a child, criminal sexual assault, aggravated criminal sexual abuse, criminal sexual abuse, and sexual relations within families. Charges were brought for different and sometimes overlapping time periods, some charges ending when A.R. reached the age of 13 on June 19, 2010, and others ending when the last instance of abuse was alleged to have occurred, which the indictment alleged was sometime between July 1, 2011, and August 12, 2011. The State proceeded to trial on only 18 of these counts, Mr. Reynoso waived his right to a jury trial, and a bench trial was held on April 7, 2015.

¶ 6 A.R. testified that she was born on June 20, 1997, and that she started living with her father, Mr. Reynoso, at the age of five. Her mother and two siblings also lived at the same address, near 48th Street and Damen Avenue in Chicago, Illinois. A.R. testified that her father abused her for the first time, at that address, when she was five years old. She said that he took her into her parent's bedroom and, when no one else was home, "put his hand on [her] vagina," touching and penetrating her one time. When A.R. was seven, the family moved to another address, 4856 South Paulina Street, also in Chicago. There, during the weekends, when Mr. Reynoso did not go to work, he would get drunk and would go into A.R.'s room at night, which she shared with her younger sister. A.R. said Mr. Reynoso would tell her to be quiet, he would get on top of her, and he would touch her vagina with his hand, both penetrating her and touching the exterior, while his other hand covered her mouth. A.R. said she would tell her father to stop but he did not. She also said she would try and push him away and he would leave. A.R. testified that this would happen "every two weeks," from the time she was 7 until she was 14. In May of 2011, A.R. told her mother that her father was abusing her, but later recanted out of fear of her father.

¶ 7 A.R. testified that the last time Mr. Reynoso touched her was in July of 2011. She was in

the kitchen when he got home from work and, in her words, he "got behind me and he went under—his hand went under my clothes. He touched my vagina, *** but his fingers didn't go nowhere, just touching it." A.R. testified that "it wasn't a long time because I backed away."

¶ 8 A.R. testified that she tried overdosing on drugs in the summer of 2011 because she thought it was her only way to be free of the abuse. She said that, after the attempted overdose, she told her mother again about the abuse in August of 2011. She never told anyone else because she was afraid, given that "every time [Mr. Reynoso would] get drunk, he would try to get violent with [her] mother," A.R. would "get in between," and he would end up hitting A.R. She testified that "[o]nce—sometimes he [would] end up like hitting [her] brother, abusing him." A.R. testified that she was afraid of her father. She said that in August of 2011 she and her mother went to the police to report what her father had done to her.

¶ 9 Manuel de La Torre testified that he had been a detective for 35 years, and that he worked at the special investigations unit for 15 years, which investigates the sexual abuse of children. Detective de La Torre testified that he conducted several interviews of A.R. and her mother. He also interviewed Mr. Reynoso on August 17, 2011, the day after Mr. Reynoso was arrested. Detective de La Torre testified that he interviewed Mr. Reynoso and read him his Miranda rights in Spanish, which is the detective's primary language.

¶ 10 Detective de La Torre testified that Mr. Reynoso admitted to touching A.R., starting when she was seven years old, that "[t]here was a lot of fondling going on, rubbing of the breast, vagina area over and under the clothes," including penetration. He testified that Mr. Reynoso said that the abuse occurred at least two times per week, sometimes more.

¶ 11 Detective de La Torre testified that his partner called the assistant state's attorney, Daryl Jones, to further interview Mr. Reynoso, with Detective de La Torre translating questions into

Spanish and translating Mr. Reynoso's answers back into English for Mr. Jones. He testified that Mr. Reynoso repeated his earlier admission to Mr. Jones, that Mr. Reynoso agreed to give a written statement, and that Mr. Jones typed out the statement. Mr. Jones read the statement, with Detective de La Torre translating, and all three men—Mr. Reynoso, Mr. Jones, and Detective de La Torre—signed each page of the statement. The State introduced Mr. Reynoso's written statement into the record at trial.

¶ 12 Daryl Jones confirmed much of Detective de La Torre's testimony. The State then published the contents of Mr. Reynoso's statement which reads, in relevant part:

> "This statement is regarding the inappropriate touching between Juan Reynoso and [A.R.], which occurred between January 1, 2003 and August 12, 2011 at 4856 S. Paulina St., Apt. 1R, and the 5000 block of South Winchester, Chicago, Illinois, Cook County.
>
> * * *
>
> Juan states that he can read, write, speak and understand Spanish. Juan states that he understands some English but can not [*sic*] speak English. * * *
>
> Juan Reynoso states that he is 34 years old and his birthday is February 24, 1977. Juan states that he lives at 4856 S. Paulina St., 1R, Chicago, Cook County, Illinois. Juan states that he lives there with his wife ***; his daughters *** [including A.R.]; and his sons ***. Juan states that he attended school in Mexico for about 3 years. Juan states that he currently works as a maintenance person *** for eight years.
>
> Juan states that [A.R.] is his daughter. Juan states that [A.R.] is currently 14 years old. Juan states that [A.R.] is pictured in Exhibit #1 [attached to the statement]. Juan states that his daughter [A.R.] moved from Mexico to the United States, to live with him,

in the year 2003. Juan states that when she initially moved with him, they lived in an apartment on the 5000 block of South Winchester, Chicago, Cook County, Illinois. ***

Juan states that within months after [A.R.] moved to the United States he started inappropriately touching [A.R.]. Juan states that after 2 years his family moved to 4856 S. Paulina St., 1R, Chicago, Cook County, Illinois. Juan states that he continued inappropriately touching [A.R] at the new address. Juan states that when he started touching [A.R.] she was 7 years old. Juan states that he would touch [A.R.'s] breasts and her vagina. Juan states that he would touch [her] breasts and vagina both over the clothes and under the clothes.

Juan states that when he would touch [A.R.'s] vagina under her clothes, he would rub between the lips of her vagina. Juan states that when he first started touching [A.R.'s] breasts, she was not old enough to wear a bra and he would touch the skin of her breasts. Juan states that when [A.R.] grew older, he would touch her breasts under the bra. Juan states that when he would touch [A.R.], he always did it in the living room of the apartment. Juan states that he touched [A.R.'s] breasts and vagina, over and under the clothes, about 2 to 3 times a week for the last 7 years.

Juan states that the last time he touched [A.R.] was about 15 days ago. Juan states that on that occasion, [A.R.] was sitting next to him on the couch in the living room. Juan states that [A.R.] was talking on the telephone. Juan states that he believes she was talking to her boyfriend. Juan states that as [A.R.] was talking on the telephone, he reached over to her and rubbed both of her breasts and her vagina, over the clothes. Juan states that he touched [A.R.'s] breasts and vagina for seconds each. Juan states that [A.R.] yelled 'stop.' After she yelled 'stop,' Juan stopped touching her.

> Juan states that as he touched [A.R.] on the last occasion, his penis had an erection. Juan states that he usually gets [an] erection whenever he is touching [A.R.] Juan states that each time he has touch[ed] [A.R.], it has been under similar circumstances as the last time. Juan states that the reason he was touching [A.R.] is because he was curious.
>
> Juan states that about 3 months ago, [A.R.] told his wife that he had been touching her. Juan states that his wife got upset but nothing else happened. Juan states that after that happened, he continued to touch [A.R.] inappropriately, however, he did not do it as often as he previously did. ***"

¶ 13 Both sides stipulated to read into the record the written testimony of Dr. Marjorie Fujara, who took a medical history of A.R. on August 24, 2011. According to Dr. Fujara, A.R. stated that her father "touched her breasts and the lower parts," and then A.R. "gestured to her crotch." A.R. "told Dr. Fujara that this happened more than one time and that the abuse started when she was seven years old." The State then rested its case-in-chief and the trial court denied Mr. Reynoso's motion for a directed finding.

¶ 14 Mr. Reynoso testified in his own defense through a translator. He said that he was 38 years old, that he was A.R.'s father, and that he had three other children. He did not know A.R.'s birthday or the year that she was born. Mr. Reynoso testified that he had a third-grade education and that he only went to school for three years in Mexico. He said that he had a conversation with detectives at the police station but he denied making any statement that he had done anything to A.R. Mr. Reynoso said that he gave a statement to Detective de La Torre and Mr. Jones and signed the written statement. However, Mr. Reynoso claimed he told the detective that A.R. was upset because he refused to buy a cellular phone for her. Mr. Reynoso testified that

A.R. got mad at him "about 15 days before" in early August, and that he described that incident to the detective. When asked why he signed the incriminating statement, Mr. Reynoso said that he did not know what was on it. Mr. Reynoso testified that he "thought it was the other things that [he] told the gentlemen, the things that [he] mentioned that she was upset because [he] did not want to buy a cellular phone." When asked if he ever touched A.R. inappropriately, Mr. Reynoso said no.

¶ 15 On cross-examination, Mr. Reynoso said that he did not know that the two detectives—Detective de La Torre and his partner—who conducted his initial interview were police officers because they were in plain clothes. Mr. Reynoso denied that Detective de La Torre told him that he was at the police station due to A.R.'s accusations. He testified that Detective de La Torre told him that "they were in the process of reunifying families." Mr. Reynoso said that the assistant state's attorney, Mr. Jones, never spoke directly to him, that he (Mr. Reynoso) only spoke to Detective de La Torre. Mr. Reynoso testified that he told the detective to tell Mr. Jones what he said earlier—that A.R. made up the accusations in anger because he did not purchase a cellular phone for her. Mr. Reynoso admitted that he signed the statement, but said "I don't know if [Detective de La Torre] lied because everything is wrong." Mr. Reynoso rested his case-in-chief.

¶ 16 Detective de La Torre and Mr. Jones were called as rebuttal witnesses. They denied telling Mr. Reynoso that he was in police custody in order to be reunited with his family. They also denied that Mr. Reynoso said A.R. was making the accusations up because he would not buy her a cellular phone.

¶ 17 After hearing closing arguments, the trial court noted that it "didn't hear anybody argue *** about the use of force or threat of force," and asked if the parties wished to address that. In response, the State acknowledged there was "no argument as to Count 7," or the other counts that

charged conduct during the period July 1, 2011, through August 12, 2011. The court acquitted Mr. Reynoso on counts 53, 56, 59, and 62, which charged him with criminal sexual abuse during that last time period.

¶ 18 The State argued that there was evidence that Mr. Reynoso used force between January 1, 2003, and June 30, 2011—the time period prior to the last act of abuse—because "the testimony of [A.R.] was that when they moved to the house on Paulina, *** while she was sleeping in her bed, [Mr. Reynoso] got on top of her, put his hand over her mouth, and penetrated her vagina. *** That is our argument that we believe is the force that was used" for that time period.

¶ 19 Reviewing the evidence, the trial court determined that "it comes down to who do you believe, [A.R.] and the state's attorney or detective who took his statement from the defendant or are you to believe the defendant in this case? I find that the defendant's testimony is not credible." The trial court found that "[i]t is just not believable that he is down at the police station for over a day and he tells them that he is there *** to be reunited with his family when he was living with his family at the time and that the complaining witness in this case made up the statement because of a cell phone ***. That is just not believable." Conversely, the trial court found "that [A.R.] was a credible witness as were the other witnesses in the State's case."

¶ 20 The trial court found Mr. Reynoso guilty on the following 14 counts charged against him: 1 and 2 (predatory criminal sexual assault of a child); 3, 6, 7, and 10 (criminal sexual assault); 11 and 12 (aggravated criminal sexual abuse); 41 and 42 (sexual relations within families); 44, 47, 50, and 65 (criminal sexual abuse). The trial court merged count 1 into count 2, count 3 into count 6, and count 10 into count 7. For the sexual misconduct that occurred between January 1, 2003, and to June 30, 2011 (all but counts 7, 10, and 42), the trial court explicitly found that "the force or threat of force that is used is she said that he did this when he was drunk. That he used to

be violent when he was drunk. He told her to be quiet. He put his hand over her mouth, and he was on top of her when these incidents happened."

¶ 21 Notwithstanding the State's concession that no force had been used in the last instance of abuse, the trial court found Mr. Reynoso guilty on count 7—criminal sexual assault based on his penetration of A.R. "by the use of force or threat of force" sometime during July 1 to August 12, 2011. The trial court also found him guilty on count 10, which was criminal sexual assault for this same time period predicated on penetration, A.R.'s status as a minor, and the fact that Mr. Reynoso was family member. Finally, it found him guilty on count 42—sexual relations within families—which alleged that he penetrated A.R. between July 1 and August 12, 2011.

¶ 22 The trial court held a sentencing hearing and entertained post-trial motions on July 16, 2015. After denying Mr. Reynoso's motion for a new trial, the court sentenced him to a total of 20 years of imprisonment, plus a term of three-years-to-natural-life of mandatory supervised release. The court sentenced Mr. Reynoso to an extended term of 10 years for count 2 (predatory criminal sexual assault of a child), and 5 years each for counts 3 and 7 (criminal sexual assault), to be served consecutively. On counts 11 and 12 (aggravated criminal sexual abuse), the trial court sentenced Mr. Reynoso to concurrent terms of 7 years each. On counts 41 and 42 (sexual relations within families), it sentenced him to concurrent terms of 5 years each. For counts 44, 47, 50, and 65 (criminal sexual abuse), the trial court sentenced Mr. Reynoso to concurrent terms of 3 years each.

¶ 23 The trial court further ordered Mr. Reynoso to register as a sex offender upon his release, to undergo testing for HIV and STDs, and for his DNA to be indexed. After his motion to reconsider the sentence was denied, Mr. Reynoso filed this appeal.

¶ 24 II. JURISDICTION

¶ 25 Mr. Reynoso timely filed his notice of appeal in this matter on July 16, 2015. We therefore have jurisdiction pursuant to article VI, section 6, of the Illinois Constitution and Illinois Supreme Court Rules 603 and 606, governing appeals from final judgments of conviction in criminal cases. Ill. Const. 1970, art. VI, § 6; Ill. S. Ct. Rs. 603, 606 (eff. Feb. 6, 2013).

¶ 26 III. ANALYSIS

¶ 27 On appeal, Mr. Reynoso presents five arguments in support of reversal of some or all of his convictions: (1) insufficiency of the evidence against him; (2) the conviction for count 7 must be vacated and cannot be reduced to a lesser-included offense; (3) *corpus delicti* violations for counts 12 and 47; (4) one-act, one-crime violations for certain counts; and (5) facial challenges to the Illinois Sex Offender Registration Act (730 ILCS 150/1 *et seq.* (West 2014)) on both procedural and substantive due process grounds. We address each argument in turn.

¶ 28 A. Sufficiency of the Evidence

¶ 29 In reviewing the sufficiency of the evidence to sustain a conviction, we ask whether, considering the evidence in the light most favorable to the prosecution, "any rational trier of fact could have found the essential elements of the offense beyond a reasonable doubt." *People v. Brown*, 2013 IL 114196, ¶ 48. It is for the trier of fact to assess the credibility of witnesses, weigh evidence presented, resolve conflicts in evidence, and draw reasonable inferences. *People v. Ward*, 2011 IL 108690, ¶ 48. The positive and credible testimony of a single witness is sufficient to convict a defendant. *People v. Siguenza-Brito*, 235 Ill. 2d. 213 229 (2009). We will not overturn a conviction 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). Moreover, the State has no added burden in a sexual assault case to demonstrate that the

complainant's testimony is substantially corroborated. *Id*. at 202-03. Minor inconsistencies in the testimony of a witness do not render the testimony unworthy of belief and affect only the weight to be given the testimony. *People v. Roper*, 116 Ill. App. 3d 821, 824 (1983).

¶ 30 A person commits criminal sexual assault if he commits an act of sexual penetration, he is a family member of the victim, and the victim is under 18 years of age. 720 ILCS 5/12-13(a)(3) (West 2010). He commits predatory criminal sexual assault of a child if he commits an act of sexual penetration, he is 17 years of age or older and the victim is under 13 years of age. 720 ILCS 5/12-14.1(a)(1) (West 2010).

¶ 31 A person commits criminal sexual abuse if he commits an act of sexual conduct by the use of force or threat of force. 720 ILCS 5/12-15(a)(1) (West 2010). He commits aggravated criminal sexual abuse if he commits an act of sexual conduct with a victim who is under 18 years of age and he is a family member. 720 ILCS 5/12-16(b) (West 2010).

¶ 32 Mr. Reynoso argues that A.R.'s testimony and his own statement to the police are insufficient to convict him on any charges because "the two accounts are so contradictory that at least one of the two *** must be false." He draws our attention to five inconsistencies that he claims render the evidence against him insufficient.

¶ 33 First, Mr. Reynoso argues that A.R.'s testimony and his statement differ in their account of where the various acts of abuse took place. In his statement to police, he said that "when he would touch [A.R.], he always did it in the living room of the apartment." However, A.R. testified at trial that the abuse took place initially in her parent's bedroom at the first home, and later in the bedroom that she shared with her sister at the second home, with the final instance occurring in the kitchen of the later residence. Second, Mr. Reynoso argues that A.R.'s testimony and his statement differ in the frequency with which he purportedly abused her. She testified that

he would touch her "every two weeks," during the weekend when he did not work. He stated to police that he touched her "2 to 3 times a week."

¶ 34 Finally, Mr. Reynoso notes inconsistencies as to when the abuse began. A.R. testified at trial that her father abused her once when she was five, before her family moved to their second home in Chicago two years later. However, when A.R. met Dr. Fujara, she stated that the abuse started when she was seven years old. Mr. Reynoso was likewise inconsistent in his statement as to when the abuse began. In one portion of the statement, he said that he started touching A.R. "within months after [A.R.] moved to the United States," which is consistent with A.R.'s account of the abuse starting at the age of five. Later, he stated that he started touching A.R when she was 7 years old.

¶ 35 In a similar case of sexual abuse of a minor, our supreme court affirmed the defendant's convictions, emphasizing that "discrepancies in the details described by [the minor victim] and defendant constitute disputed facts to be resolved by the fact finder, who has exclusive responsibility for determining the credibility of the witnesses, evaluating conflicts in the evidence, and drawing reasonable inferences from that evidence." *People v. Lara*, 2012 IL 112370, ¶ 63. Here, the trial court, sitting as fact-finder, found that A.R.'s testimony was credible and Mr. Reynoso's attempt to recant his admission to police and replace it with a story about a dispute over a cellular phone was incredible. A.R. provided specific details about where she was in the various locations where her father touched her, what she said, who else, if anyone, was present, and whether she struggled or attempted to push him away. She testified that the abuse happened in multiple places in two residences over many years. Her estimation as to the frequency of the abuse is more conservative than the account Mr. Reynoso gave to police. Furthermore, A.R. was a young child when this abuse began and still several years from

adulthood when it ended. It would be extraordinary if she gave, with pinpoint accuracy, the details of numerous traumatic events stretching back to when she was five or even seven years old. Construing the evidence in the light most favorable to the prosecution (*Brown*, 2013 IL 114196, ¶ 48), we certainly cannot say that these relatively minor discrepancies make her testimony incredible or render the evidence less than sufficient to sustain these convictions.

¶ 36 Mr. Reynoso also insists that, in his statement, "he touched A.R.'s breast and vagina, over and under [her] clothes, and would rub between her labia," whereas A.R. "testified that Reynoso did only one thing: put his hand inside her vagina." This is a selective reading of A.R.'s testimony, and one that omits other relevant evidence. She testified that her father would climb on top of her, cover her mouth, touch the outside of her vagina and penetrate her. And while Mr. Reynoso is correct that A.R. did not testify that her father touched her breasts, the stipulated testimony of Dr. Fujara indicates that when the doctor performed the medical examination, A.R. told her that Mr. Reynoso "touched her breasts and the lower parts." There is simply no inconsistency here.

¶ 37 The case relied upon by Mr. Reynoso in which a conviction was overturned because of insufficient evidence is very different. In *People v. Judge*, 221 Ill. App. 3d 753, 760 (1991), we reversed a conviction for aggravated criminal sexual assault of a minor girl primarily because the defendant was denied a fair trial when the prosecution used inflammatory rhetoric and the trial court allowed improper propensity evidence. As an additional basis for reversal, we found that the complainant's account of the sexual misconduct could not be squared with the other evidence at trial, which showed that multiple people were in or near the room in which the allegedly violent attack happened without overhearing it. *Id.* at 762. There was neither improper evidence nor inflammatory remarks in this case, and the evidence of sexual misconduct is far stronger in

this case than existed in *Judge*.

¶ 38 Mr. Reynoso cites *People v. Jendras*, 216 Ill. App.3d 149, 157 (1991) for its statement that "[i]f the complaining witness's testimony is vague and unconvincing or uncorroborated the defendant's denial of any crime should be given the benefit of the doubt." As stated above, the trial court found that A.R.'s testimony was neither vague nor unconvincing. Indeed, in *Jendras* we affirmed the defendant's conviction following a bench trial because the minor complainant's testimony "standing alone [was] sufficient to support a finding of guilty" where it was "utterly credible." *Id.* at 158.

¶ 39 Mr. Reynoso also cites *People v. Herman*, 407 Ill. App. 3d 688 (2011), in which we cautioned that "the fact that a judge accepted the truth of certain testimony does not guarantee its reasonableness," and ultimately reversed because the evidence was too attenuated to support the conviction. *Id.* at 704, 709. This case is markedly different than *Herman*. A.R.'s account of the prolonged abuse was largely consistent in its timeline and included specific details as to the circumstances of that abuse. Unlike the complainant in *Herman*, A.R.'s testimony in this case was not so "fraught with inconsistencies and contradictions" that it was "impossible for any fact finder reasonably to accept any part of it." *Id*. at 705, 709.

¶ 40 The State presented more than sufficient evidence from which a rational trier of fact could find Mr. Reynoso guilty beyond a reasonable doubt of predatory criminal sexual assault, criminal sexual assault, aggravated criminal sexual abuse, and criminal sexual abuse. Viewed in the light most favorable to the prosecution (*Brown*, 2013 IL 114196, ¶ 48), the evidence was clearly sufficient to support these convictions.

¶ 41 B. Counts 7 and 42

¶ 42 Mr. Reynoso challenges his convictions on counts 7 and 42—which address the last

instance of his abuse of A.R., alleged to have occurred between July 1 and August 12, 2011. As Mr. Reynoso points out and the State concedes, there was no evidence of either penetration or force during this period. The State agrees that Mr. Reynoso's conviction on count 42 (for sexual relations within families which requires proof of penetration, 720 ILCS 5/11-11(a)(1) (West 2012)) must be vacated, but on count 7 asks that we reduce Mr. Reynoso's conviction from criminal sexual assault to criminal sexual abuse, as a lesser-included offense.

¶ 43 The State cites subsection (a)(2) of the criminal sexual abuse statute (720 ILCS 5/11-1.50(a)(2) (West 2012)), which requires proof that "the victim is unable to know or give knowing consent." *Id.* We agree with Mr. Reynoso, that there was no evidence or finding by the trial court as to that element. Criminal sexual abuse can also be based on a showing that the defendant used force or a threat of force. 720 ILCS 5/11-1.50(a)(1) (West 2012). However, the State conceded that it had no evidence of force during the period of July 1 through August 12, 2011, and the court's finding that force was used was expressly made as to the counts that predated that period. Thus, we cannot sustain the conviction on count 7 for criminal sexual abuse as a lesser included offense of criminal sexual assault.

¶ 44 Although the State does not argue for this, we have also examined whether the conviction on Count 7 could be sustained as one for aggravated criminal sexual abuse. Supreme Court Rule 615(b)(3) provides that "[o]n appeal the reviewing court may *** reduce the degree of the offense of which the appellant was convicted." Ill. S.Ct. R. 615(b)(3) (eff. Jan. 1, 1967). Under Rule 615(b)(3), "[a] reviewing court has the authority to reduce the degree of the offense of which a defendant was convicted when the evidence fails to prove beyond a reasonable doubt an element of the greater offense." *People v. Kennebrew*, 2013 IL 113998, ¶ 21 (affirming appellate court's application of Rule 615(b)(3) to reduce a conviction for predatory criminal sexual assault

to a lesser-included offense of aggravated criminal sexual abuse). We may exercise this discretion "to reduce the degree of a defendant's conviction on appeal even when the State did not charge the defendant with the lesser offense at trial." *Id.* This is appropriate for Mr. Reynoso's case, provided that aggravated criminal sexual abuse can be considered a lesser-included offense of criminal sexual assault.

¶ 45 Illinois law provides three methods for determining whether an offense is a lesser-included offense of another: (1) the "abstract elements" approach; (2) the "charging instrument" approach; and (3) the "factual" or "evidence" adduced at trial approach. *Id.*, ¶ 28. The charging instrument approach applies when the defendant has not been charged with the potential lesser-included offense. *People v. Miller*, 238 Ill. 2d 161, 166 (2010).

¶ 46 We note that Mr. Reynoso was initially charged with aggravated criminal sexual abuse for the applicable time period in count 18, but the State *nolle prossed* this count before trial. A *nolle prosequi*, "leaves the matter in the same condition in which it was before the commencement of the prosecution." (Internal quotation marks omitted.) *People v. Norris*, 214 Ill. 2d 92, 104, (2005). The appropriate test is therefore the charging instrument approach. *Kennebrew*, 2013 IL 113998, ¶ 32. See also *People v. Knaff*, 196 Ill. 2d 460, 473-74 (2001) ("The State's request to dismiss the lesser charges prior to jeopardy attaching was of no import" and the jury was properly charged on the lesser-included offense.).

¶ 47 Under the charging instrument approach, the charging instrument need only contain a broad foundation or main outline of the lesser offense. *Kennebrew*, 2013 IL 113998, ¶ 30. "The indictment need not explicitly state all of the elements of the lesser offense as long as any missing element can be reasonably inferred from the indictment allegations." *Id.* A person commits aggravated criminal sexual abuse if he commits an act of sexual conduct with a victim

who is under 18 years of age and the person is a family member. 720 ILCS 5/11-1.60(b) (West 2012). Thus there are three elements that must be present or inferred: sexual conduct, the victim's age, and the defendant's relation to her.

¶ 48 Count 7 of the indictment alleged that, between July 1, 2011, and August 12, 2011, Mr. Reynoso "knowingly committed an act of sexual penetration upon [A.R.], to wit: an intrusion in that Juan Reynoso inserted his finger into [A.R.'s] vagina, by the use of force or threat of force." Our supreme court confirmed that "sexual conduct" may be inferred from "sexual penetration" in *People v. Kolton*, 219 Ill. 2d 353, 369 (2006). Under *Kolton*, therefore, the indictment contained the "broad foundation" or "main outline" of sexual conduct. *Kennebrew*, 2013 IL 113998, ¶¶ 30, 36.The indictment also clearly contained the other elements of aggravated sexual abuse—A.R.'s minor status and her relation to her father. Thus, under the charging instrument approach, aggravated sexual abuse is a lesser included offense of the sexual assault charged in Count 7.

¶ 49 Furthermore, the evidence was sufficient to support a conviction for aggravated criminal sexual abuse during the July 1 through August 12 time period. A.R. testified that her father touched her vagina under the clothes without penetrating her. Both A.R. and Mr. Reynoso testified that they were father and daughter and that A.R. was 14 years old during the last instance of abuse. Mr. Reynoso had ample notice and a full opportunity to defend against these accusations.

¶ 50 A reduction to the lesser included offense is clearly the proper outcome here. As our supreme court has noted, "the State clearly has no legitimate interest in obtaining a conviction for a crime greater than that warranted by the evidence, but neither does the defendant have a right to an acquittal when the evidence, although not sufficient to establish the greater crime, is sufficient to establish a lesser included offense." *Id*, ¶ 24.

¶ 51 *C. Corpus Delicti*

¶ 52 Mr. Reynoso argues that the State failed to prove the *corpus delicti* of the two of the convictions against him that he claims rest entirely upon his own statement. These are aggravated criminal sexual abuse (count 12) and criminal sexual abuse (count 47), in which he was alleged to have touched A.R.'s vagina over her clothes. As Mr. Reynoso points out, "proof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement." *Sargent*, 239 Ill. 2d at 183. Rather, "[t]here must be either some independent evidence or corroborating evidence outside of the confession which tends to establish that a crime occurred." *People v. Lambert*, 104 Ill. 2d 375, 378-79 (1984). However, "that evidence need not, by itself, prove the existence of the crime beyond a reasonable doubt" (*Sargent*, 239 Ill. 2d at 183); rather, the independent evidence "need only *tend to show* the commission of a crime." (Emphasis in original.) *Lara*, 2012 IL 112370, ¶ 18. Finally, it is not a requirement that every element of a charged offense be independently corroborated in order to sustain a conviction. *Lara*, 2012 IL 112370, ¶ 30.

¶ 53 Mr. Reynoso contends that "A.R. gave three separate accounts of sexual abuse, all involving penetration by Reynoso's hand into her vagina," and that A.R. "did not testify that Reynoso touched her vagina over her clothes." He argues that the State relied solely on his confession to show that he touched A.R. in this way. He cites to *Lambert*, 104 Ill. 2d at 376-77, in which our supreme court reversed a conviction for indecent liberties with a child, where the defendant allegedly "placed his mouth upon the sex organ" of the child. The only evidence corroborating the defendant's confession came from two witnesses who examined the young boy and noted that "the boy's rectum appeared pinkish and swollen." *Id*. at 379-80. This did not provide an independent basis for the specific act charged, and so the court reversed. *Id*. at 381.

¶ 54 *Lambert* is nothing like this case. Rather, this is the kind of case our supreme court contemplated in *Sargent*, where "criminal activity of one type is so closely related to criminal activity of another type that corroboration of one may suffice to corroborate the other." *Sargent*, 239 Ill. 2d at 185. A.R. testified that, at numerous times and in multiple locations, her father would commit variations of the same act—touching her vagina with his hand. Sometimes the two of them were alone; sometimes he did it in her bedroom with her younger sister present. Likewise, sometimes he only touched the outside of her vagina, while other times he penetrated her with his hand. This was ample corroboration of Mr. Reynoso's admission of touching A.R. over her clothing.

¶ 55 D. One-Act, One-Crime

¶ 56 Mr. Reynoso argues that two pairs of convictions—counts 2 (predatory criminal sexual assault of a child) and 3 (criminal sexual assault), as well as counts 11 (aggravated criminal sexual abuse) and 44 (criminal sexual abuse),—violate the one-act, one-crime doctrine. He claims the first pair "charge[d] that Reynoso committed sexual penetration in the same manner," by inserting his finger in A. R.'s vagina and the second pair "also charge[d] identical sexual conduct, that Reynoso touched his hand to A.R.'s breast under her clothes," all within the same broad period of 2003 to 2011. Because "the State did not differentiate or apportion these multiple acts among various counts," he asks us to vacate one conviction out of each pair.

¶ 57 Mr. Reynoso acknowledges that he did not preserve this issue, but asks us to review it for plain error. However, we need not apply the plain error doctrine because we find that there is no one-act, one crime error to review. See *People v. Poe*, 385 Ill. App. 3d 763, 765 (2008).

¶ 58 One-act, one-crime violations occur "where more than one offense is carved from the same physical act." *People v. King*, 66 Ill. 2d 551, 566 (1977). Multiple convictions are proper

"where a defendant has committed several acts, despite the interrelationship of those acts." *Id*. This doctrine requires a two-step analysis: first, the court must determine whether the defendant's conduct involved multiple acts or a single act; and second whether any of the offenses are lesser-included offenses. *Id*.

¶ 59 The evidence presented in this case included biweekly (at least) acts of abuse involving penetrating A.R.'s vagina and groping her breasts, under various circumstances and across several years, with some instances involving force and others not. Both in the indictment and at trial, the State treated these as separate acts requiring individualized proof, not merely as different theories of guilt for the same act. There can be no question that Mr. Reynoso's conduct involved multiple acts.

¶ 60 It is also clear that counts 3 and 44 are not lesser-included offenses of counts 2 and 11, respectively. When determining if a charged offense is a lesser-included of another charged offense for one-act one crime purposes, courts use the "abstract elements" approach to make sure that it is not "impossible to commit the greater offense without necessarily committing the lesser offense." *Miller*, 238 Ill. 2d at 166. Count 2 charges predatory criminal sexual assault of a child, which requires that the victim be under 13 years of age but contains no requirement that force or threat of force be used (720 ILCS 5/12-14.1(a)(1) (West 2010)); Count 3 charges criminal sexual assault which does require force or threat of force. (720 ILCS 5/12-13(a)(1) (West 2010)). Count 11 charges aggravated criminal sexual abuse, which requires proof that Mr. Reynoso was a family member but not that he used force to commit the abuse ((720 ILCS 5/12-16(b) (West 2010)). Count 44 charges criminal sexual abuse which does require proof of force or threat of force. ((720 ILCS 5/12-15(a)(1) (West 2010))). Criminal sexual assault and criminal sexual abuse are not lesser-included offenses of the greater felonies. Thus, there is no one-act one crime

violation here.

¶ 61 Mr. Reynoso's reliance on *People v. Crespo*, 203 Ill. 2d 335 (2001), is misplaced. In that case, the arguments at trial revealed that "the intent of the prosecution was to portray defendant's conduct as a single attack" (*id*. at 344). In contrast, both the indictment and the evidence at trial in this case articulated numerous instances of sexual misconduct spread over an extended time period. This case is much closer to *People v. Segara*, 126 Ill. 2d 70 (1988), where the defendant was found guilty of eight counts of aggravated criminal sexual assault, one count of aggravated battery, and one count of unlawful restraint. *Id*. at 72. The defendant forcibly opened the victim's door at night, physically attacked her, then threw her onto her bed and threatened her with a pair of scissors. *Id*. at 72-73. He first vaginally raped her, then performed fellatio, finally permitting her to leave the next morning for work. *Id*. The appellate court vacated all but one of his convictions, but our supreme court reversed and concluded that the defendant in that case "committed two acts of criminal sexual assault" over an extended time; and to claim that "only one rape occurred demeans the dignity of the human personality and individuality" because "[t]o the victim, each rape was readily divisible and intensely personal." *Id*. So too with the abuse of A.R., who testified to several instances of her father's sexual misconduct. The convictions for counts 2, 3, 11, and 44 do not violate the one-act, one-crime doctrine and we affirm them.

¶ 62 E. Sexual Relations Within Families

¶ 63 Mr. Reynoso was convicted on two counts of sexual relations within families (counts 41 and 42), the latter of which we have already vacated, based on the State's concession that there was no proof of penetration during the period alleged in the indictment for that count. However, although Mr. Reyonoso does not raise this issue and the sentence on this conviction was concurrent, it is clear that his conviction on count 41 must also be vacated.

¶ 64 A person violates this specific statute where a father commits an act of sexual penetration on a child 18 years of age or over. 720 ILCS 5/11-11 (West 2010). While other provisions criminalize sexual penetration of younger children, this statute cannot be applied here where it is undisputed that A.R. was no more than 14 years old when her father sexually abused her.

¶ 65 F. Remand for Resentencing

¶ 66 Our vacating the convictions on 41 and 42 should not matter since the sentence on those counts was concurrent. But we also reduced the conviction on count 7 to a lesser offense. Therefore, we remand for a new sentencing hearing on count 7.

¶ 67 G. Constitutionality of the Illinois Sex Offender Registration Act

¶ 68 Mr. Reynoso makes two facial challenges to several provisions of the Illinois Sex Offender Registration Act (SORA) (730 ILCS 150/1 *et seq.* (West 2014) and accompanying portions of the Criminal Code, alleging they violate his procedural and substantive due process rights. The constitutionality of a statute is a question of law which we review *de novo*. *People v. Parker*, 2016 IL App (1st) 141597, ¶ 56. Statues are afforded a presumption of constitutionality; we have an obligation to construe a statute in a manner that will uphold its constitutionality if reasonably possible. *Id*. (citing *People v. Molnar*, 222 Ill. 2d 495, 508 (2006)). The burden is on the party challenging the validity of the statute to establish its constitutional infirmity. *Id*.

¶ 69 Mr. Reynoso argues that his designation as a "sexual predator" and a "child sex offender" under SORA imposes "affirmative disabilities and restraints that touch on nearly every aspect of his life," citing 730 ILCS 150/2, 150/3 (West 2014) (designating him as a "sexual predator" and requiring registration for his permanent domicile, temporary domicile, employment, and travel, with itinerary for travel and extensive documentation provided to government agencies on an abbreviated timeframe); 730 ILCS 150/7, 150/10 (West 2014) (requiring registration for his

natural life, with criminal penalties for violations); 720 ILCS 5/11-9.3 (West 2014) (limiting child sex offenders' presence in areas frequented by children); and 720 ILCS 5/11-9.4-1 (West 2014) (making it unlawful for a child sex offender to be present in or loiter within 500 feet of a public park or park building). He argues these restrictions, imposed for life without any procedural mechanism for reevaluation or removal, intrude upon his protected liberty interests and violate both procedural and substantive due process.

¶ 70 Mr. Reynoso is correct that SORA has been refined and expanded since our supreme court upheld the constitutionality of the 1998 version of the statute in *People v. Malchow*, 193 Ill. 2d 416 (2000). However, we recently upheld as constitutional the very provisions challenged in this case in *People v. Rodriguez*, 2018 IL App (1st) 151938, ¶¶ 23-29, *Parker*, 2016 IL App (1st) 141597, ¶¶ 59-61, 77, 84, and *People v. Avila-Briones*, 2015 IL App (1st) 132221, ¶¶ 17-22, 94, against such due process challenges. We see no reason to deviate from those decisions.

¶ 71 IV. CONCLUSION

¶ 72 For the above reasons, we vacate Mr. Reynoso's convictions on counts 41 and 42, reduce his conviction on count 7 to aggravated criminal sexual abuse, affirm the remaining convictions, and remand for resentencing on count 7.

¶ 73 Affirmed in part, reversed in part, remanded with instructions.