2018 IL App (2d) 170248-U
No. 2-17-0248
Order filed February 20, 2018

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. C.A. BARNETT, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of DeKalb County. No. 12-CF-664 Honorable Robbin J. Stuckert, Judge, Presiding.

JUSTICE SPENCE delivered the judgment of the court.
Presiding Justice Hudson and Justice Schostok concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court acted within its discretion in admitting other-crimes evidence to show defendant's propensity to commit the charged crime. There was also sufficient evidence to prove defendant guilty beyond a reasonable doubt. Therefore, we affirmed.

¶ 2 Following a jury trial, defendant, C.A. Barnett, was found guilty of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1(a)(1) (West 1998)) and sentenced to 12 years' imprisonment. On appeal, he argues that: (1) the trial court abused its discretion in allowing other-crimes evidence; and (2) there was insufficient evidence to prove him guilty beyond a reasonable doubt. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 11, 2013, a grand jury indicted defendant on two counts of predatory criminal sexual assault of a child. Count I alleged that between January 1, 1999, and December 31, 2001, defendant committed an act of sexual penetration with a minor in that he placed his penis in the hand of K.F. Count II alleged the same as to another minor, S.F. In a separate case, defendant was charged with criminal sexual abuse against M.F., a third minor, in that he rubbed her vagina.

¶ 5 Defendant successfully sought to sever the two counts in this case, and the State elected to proceed with count I. The morning that jury selection was to begin, the State moved to amend count I to allege that defendant placed his fingers in K.F.'s sex organ. The trial court granted the motion over defendant's objection, but it continued the trial date.

¶ 6 On March 22, 2016, the State filed a motion requesting the admission of the testimony of S.F. and M.F. as other crimes evidence under section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2016)). A hearing on the section 115-7.3 motion occurred on July 26, 2016. The State proffered that K.F. would testify at trial that defendant was her grandfather. When she was between the ages of three to seven, she often spent the night at his house, and he would touch her vagina with his fingers. This took place between 1999 and "2006."[1] The State proffered that M.F. would testify that defendant was also her grandfather. In 2012, when she was five years old, he similarly touched her vagina when she spent the night at his house.[2] The State argued that: the ages of the girls when the touching occurred were similar;

[1] The State's reference to 2006 appears to be in error, as based on K.F.'s date of birth, she was ages three to seven between 1999 and 2003, which is what she testified to at trial.

[2] The State's motion stated that M.F. would testify that the touching took place in 2011,

they had a similar relationship with defendant; and the location of the incidents was similar because they occurred at defendant's house. The State argued that although there was a lapse of 8 to 12 years between when the two girls were abused,[3] it was attributable to the girls' age difference.[4]

¶ 7 Defendant argued that the other crimes evidence should be excluded because he was not claiming a lack of intent, but rather that no touching occurred. Defendant noted that whether to allow the evidence was within the trial court's discretion, and he argued that the evidence was prejudicial and could result in mini-trials. He also argued that a significant amount of time had passed between the incidents and that the charges against M.F. alleged abuse rather than penetration.

¶ 8 The trial court granted the State's motion on August 23, 2016. It stated that there was no bright line rule regarding the passage of time between the charged offense and the other crimes evidence, and that reviewing courts had upheld allowing evidence where 20 years had passed between offenses. Therefore, the fact that there was approximately "eight to 12 years" between the incidents with K.F. and M.F. did not make the evidence inadmissible. The allegations regarding M.F. did not involve penetration, but that incident also involved improper sexual conduct that took place when M.F. was a similar age to K.F. The trial court stated that after

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when she was four years old. The State further referenced a videotaped interview of M.F.

[3] The span between 2003, when the alleged touching with K.F. ended, and 2011, when the touching with M.F. began, is eight years. However, the span between 1999, when the alleged touching with K.F. began, and 2012, when the touching of M.F. may have ended, is 13 years.

[4] We do not discuss S.F.'s anticipated testimony, as she did not ultimately testify at trial.

weighing the probative value of the other crimes evidence against the danger of undue prejudice against defendant, the evidence was admissible. However, it stated that there should not be a mini-trial of the other crimes evidence and that the jury should be properly admonished.

¶ 9 Defendant's trial began on January 10, 2017. K.F. testified as follows. She was born on January 14, 1996. She was currently married and had one child. Her mother's name was Christina Schultz, and her father's name was David F. Sheila F. was David's mother, and defendant was David's stepfather, making defendant her "grandpa."

¶ 10 K.F.'s parents divorced when she was two or three years old. She then lived with Christina in Genoa. Between 1999 and 2003, she would have been ages three to seven. David had visitation with her every other weekend, and during those weekends she would stay at defendant's and Sheila's house on Fridays nights. While she was there, defendant touched her vagina with his hand on the inside and the outside, under her clothing. Defendant also made her put her hand on his penis and move it up and down. His penis would get hard, and he would ejaculate. The touching occurred in the basement, the living room, and David's old bedroom, where K.F. would sleep. That bedroom was on the right as one walked up the stairs. K.F. later testified that she slept in the third bedroom and not in David's old room.

¶ 11 The abuse mostly occurred when she was sleeping or trying to sleep. David would be sleeping upstairs, and Sheila would be upstairs or in the kitchen. Defendant would tell her that she was his favorite and that they were going to play a game. Afterwards, he would say that she could not tell anyone because it would ruin their family. K.F. did not report the abuse because she did not think that anyone would believe a little girl. During those years, K.F. hated going to defendant's house if she knew defendant was going to be there; she would kick and scream and not want to go. However, she did not mind being there if defendant had to work. The abuse

strained her relationship with David because she blamed him for making her go to defendant's house even when it was obvious that she hated going there. K.F. felt that during David's weekends, he did not want her to stay with her mom.

¶ 12 Defendant later married a woman named Darla F., and they had a daughter, M.F. When K.F. found out that Darla was going to have a girl, she told defendant that "if he ever touched her *** [she'd] rip his balls off." Defendant said that she did not have to worry because she was his favorite.

¶ 13 In 2012, David told K.F. that M.F. had told him and Darla that defendant was touching her. He wanted to know if that had happened to her. K.F. denied any abuse because she did not think that anyone would believe her after remaining silent for so long. However, she eventually spoke about the abuse because she remembered that when it happened, she felt lonely and misunderstood, and she did not want her sister to feel that way.

¶ 14 In October 2012, when K.F. was 16, she was interviewed by a woman from the Department of Children and Family Services (DCFS). K.F. said that she did not feel safe sleeping at defendant's house, but she did not tell the interviewer about the abuse; she said that she remembered very little from the past. However, eight days later she told the DCFS interviewer that when she was three to five years old, the same thing had happened to her as had happened to M.F. At trial, K.F. admitted that at that time, no one had told her what had happened to M.F. Also, she was now saying that the abuse happened until age seven because after the interview, she thought about the dates more.

¶ 15 K.F. later testified that when she began staying at defendant's house, David was living there too, "[f]or like a year, if that." K.F. testified that the abuse occurred after David moved out of the house and lived in Malta and Dixon. She stayed at defendant's house every other Friday

night when David had custody because she had soccer in Genoa on Saturdays, so it saved him from driving as much. After soccer, David would take her to his house. K.F. stopped playing soccer when she was seven so that she would not have to stay at defendant's house anymore. K.F. subsequently testified that the abuse also occurred when she was three and David was still living in the house. She testified that she would stay at the house the weekends that David had visitation.

¶ 16 K.F. also testified that the downstairs floors creaked, but the upstairs ones did not. She agreed that she told the DCFS worker that defendant did not get caught because the floors creaked anytime someone approached, and he would stop. The abuse occurred at least 20 times.

¶ 17 Christina testified that she and David divorced in 1998, when K.F. was about three. On David's visitation weekends, he would take K.F. to defendant's house, where David lived until he found an apartment in Malta. After that, he would have Sheila or defendant pick up K.F. on Fridays and keep her overnight, and David would pick her up from soccer on Saturdays. On those Friday nights, K.F. would protest and "throw a fit" about going to defendant's house; K.F. told Christina that it was "Dad's weekend," "not theirs."

¶ 18 M.F. testified that she was born on March 13, 2007, and was nine years old. Defendant was her grandpa, and she used to go over to his house. There were times that defendant would touch her "private" with his hand, both under and over her clothing. This occurred in the living room, when her grandmother and brother were in the kitchen and would not have been able to see into the room. M.F. stopped going to defendant's house when she was five years old.

¶ 19 Defendant moved for a directed verdict, and the trial court denied the motion. Defendant then provided the following testimony. He was 67 years old. He never touched K.F.'s or M.F.'s

vaginas, nor did he ever have K.F. touch his penis. Defendant never had a conversation with K.F. about not molesting M.F.

¶ 20 Defendant's home was about 1,400 square feet. The main floor had a living room, kitchen, dining room, bathroom, and one bedroom. There was a doorway between the kitchen and living room, but no door. The upstairs had three bedrooms that were four or five feet apart. The first bedroom was where David slept when he was living there. The second bedroom belonged to defendant and Sheila. The third bedroom had a daybed but no door. The home also had a basement. All of the floors in the house creaked.

¶ 21 Defendant married Sheila when David was about 12 years old, and David lived with them. David joined the military after high school, but he asked to move back into defendant's house in 1998, after David and Christina broke up. David slept in his old bedroom, which was the first one on the right at the top of the stairs. David moved out in May 2001. During the time David was living at defendant's house, David would have visitation with K.F. at the house every other weekend from Friday to Sunday. K.F. would sleep with David, in his bed. Defendant was working nights and would not have been around when K.F. was sleeping. After David moved out, K.F. did not stay at the house on Friday nights. Sometimes K.F. would forget something she needed for a soccer game, and Christina would drop it off at defendant's house. K.F. would then get the item from the house on Saturday morning, before the game.

¶ 22 Sheila testified consistently with defendant regarding David's visitation schedule with K.F. at the house and their sleeping arrangement. Sheila was a light sleeper and the floors creaked, but she never heard defendant leave the bed when K.F. was in the house. Sheila also testified consistently with defendant that K.F. did not sleep over at the house after David moved out, and that Christina would sometimes drop off a soccer item for K.F. Sheila did not believe

that defendant had the propensity for performing sexual acts with young girls. Sheila moved out of the house when K.F. and M.F. came forward with their accusations because she "needed time to sort things out and *** find out what was going on." She moved back into the home about 4½ months later because she did not believe the allegations.

¶ 23 James Barnett testified that defendant was his younger brother. James had been living in Tennessee for a little over 50 years but had kept in contact with defendant. During the time period of 1999 to 2004, he saw defendant three or four times a year, and they talked on the phone every couple of weeks. He opined that defendant was not the type of person who would sexually touch children. James agreed that he did not have knowledge of defendant's sex life.

¶ 24 Harold Ledford testified that he hired defendant in 2000 for a second shift position at Greelee Textron, a company that made electrical equipment. From that time until 2010 they worked the same shift together, which went from 2:30 or 3:30 a.m. to 11:30 a.m. Defendant never showed any kind of unusual sexual behavior, and it was Harold's opinion that defendant did not have a sexual interest in young children. However, Harold did not discuss defendant's sex life with him.

¶ 25 Cheryl Ledford, Harold's wife, testified that she also worked with defendant during the night shift at Greelee, until the shift was discontinued in 2008 or 2009. Cheryl opined that defendant was a chaste person and did not have a sexual interest in young children. She did not think that "he would hurt a fly." Cheryl never discussed defendant's sex life with him, and she agreed that Greelee workers had days off.

¶ 26 David testified as a rebuttal witness for the State. He lived at defendant's house from June 1998 until June 2001 and used his old bedroom at the top of the stairs. When K.F. came for visitation during that time, she stayed in the third room in the house that contained a daybed and

did not have a door; she did not sleep with him. After David moved out, K.F. would stay at defendant's house on Friday nights when she had visitation with David so that he would not have to drive back and forth between Malta and Genoa to be able to take K.F. to her Saturday morning soccer games.

¶ 27 The jury found defendant guilty on January 12, 2017. Defendant filed a motion for a new trial/judgment *n.o.v.* on February 14, 2017, which the trial court denied on April 3, 2017. Before sentencing, the State nolle prossed the count relating to S.F. and the case involving M.F. The trial court sentenced defendant to 12 years' imprisonment. Defendant immediately moved to reconsider his sentence, and the trial court denied his motion. Defendant timely appealed.

¶ 28 II. ANALYSIS

¶ 29 We first address defendant's second argument, that the trial court erred in admitting M.F.'s testimony. Traditionally, evidence related to a defendant's propensity for crime is excluded from criminal trials because it tends to overly persuade a jury, which may convict him on the basis that he is a bad person deserving punishment rather than based on a determination of guilt of the crime charged. *People v. Ward*, 2011 IL 108690, ¶ 24. However, section 115-7.3 provides an exception to this rule for sexual offenses. 725 ILCS 5/115-7.3 (West 2016). Where a defendant is charged with a sexual offense, section 115-7.3 allows the admission of evidence of prior sexual offenses for any relevant purpose, including to show a defendant's propensity to commit sex crimes. *Id.*; *Ward*, 2011 IL 108690, ¶ 25. As with all evidence (see Ill. R. Evid. 403 (eff. Jan. 1, 2011)) the trial court must still conduct a balancing test and weigh the evidence's probative value against possible unfair prejudice. *Ward*, 2011 IL 108690, ¶ 26. Section 115-7.3(c) provides that in conducting this test, the trial court may consider: (1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or

predicate offense; and (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2016). Whether to admit other crimes evidence is within the trial court's discretion. *People v. Lobdell*, 2017 IL App (3d) 150074, ¶ 20. A trial court abuses its discretion where its decision was arbitrary, fanciful, or unreasonable. *Id.*

¶ 30 Defendant notes that K.F. testified that between 1999 and 2003, he touched the inside and outside of her vagina and forced her to touch his penis. She testified that the encounters took place mostly at night in a bedroom, but they also occurred in the living room and basement. Defendant argues that, in contrast, M.F. testified that he touched the outside of her vagina when she was about four years old, which would have been in 2011, in the living room of defendant's home. Defendant argues that M.F.'s allegations took place 8 to 12 years after the last acts alleged by K.F. Defendant maintains that the allegations did not bear "striking" factual similarity because M.F.'s accusations did not include penetration and did not include forcing her to touch his penis. Also, M.F. testified that the conduct took place in the living room, as opposed to in her bed at night. Defendant argues that, essentially, M.F.'s testimony was not factually similar and did not show a consistent *modus operandi*.

¶ 31 Defendant argues that in contrast to the minimal probative value of M.F.'s testimony, the prejudicial effect was great, and therefore the trial court should have excluded it. Defendant notes that in closing argument, the State argued that M.F.'s testimony showed his propensity to touch the vaginas of little girls at his house. Defendant maintains that the jury was not persuaded beyond a reasonable doubt by K.F.'s "unconvincing testimony," but rather by M.F.'s unimpeached testimony. Defendant argues that relying on the sum of M.F.'s and K.F.'s testimony, the jury likely concluded that he was a bad man deserving of punishment and improperly convicted him for this reason. Defendant cites *People v. Donoho*, 204 Ill. 2d 159,

186 (2003), where our supreme court stated: "[W]e urge trial judges to be cautious in considering the admissibility of other-crimes evidence to show propensity by engaging in a meaningful assessment of the probative value versus the prejudicial impact of the evidence."

¶ 32 Looking at the considerations enumerated in section 115-7.3(c), the first factor listed, being the proximity of time between the charged offense and the other crimes evidence, is considered on a case-by-case basis. *Lobdell*, 2017 IL App (3d) 150074, ¶ 21. Here, around 8 to 13 years had passed between the allegations of K.F. and M.F. However, as the trial court noted, courts have found other-crimes evidence that was over 20 years old admissible. *Id.* The abuse against K.F. began when she was three and ended when she was seven, and the abuse against M.F. occurred when she was about four or five years old. Therefore, the girls were of similar ages during the incidents, and the span of time between the incidents is attributable to the approximately 11-year age difference between them. Accordingly, although the passage of time between the accounts may lessen the probative value of the other-crimes evidence, it does not defeat its relevance here. See *Donoho*, 204 Ill. 2d at 184.

¶ 33 We next consider the degree of factual similarity between the offenses. Defendant points out that M.F.'s allegations did not include penetration or forcing her to touch her penis, and that she testified that the abuse took place in the living room, as opposed to a bedroom. However, both cases share several significant similarities. As stated, both girls were around the same age during the abuse. They were also both defendant's step-granddaughters, and the incidents occurred when they were visiting him at his home, with other family members present. K.F. testified that the abuse mostly occurred while she was sleeping, but she also testified that the touching occurred in the basement and living room; the latter location is consistent with M.F.'s account. K.F. testified that defendant touched her vagina under her clothing, which was the

offense defendant was ultimately charged with, and M.F. testified to this same conduct. K.F. frequently spent the night at defendant's house and never reported the abuse, and this greater and longer-term access could account for defendant additionally having her touch his penis. *Cf. id.* at 186 (differences between the abuse of the victims resulted from the defendant's differing access to them). Moreover, "[t]he existence of some differences between the prior offense and the current charge does not defeat admissibility because no two independent crimes are identical." *Id.* at 185.

¶ 34 Based on the similarity of the offenses, the probative value of M.F.'s testimony was heightened. See *id.* at 184 ("As factual similarities increase, so does the relevance, or probative value, of the other-crimes evidence.") Therefore, we conclude that the trial court acted within its discretion in allowing M.F.'s testimony, despite the prejudicial impact of the jury hearing evidence of a separate crime. The prejudicial impact was lessened, to the extent possible, by the briefness of M.F.'s testimony and the fact that the trial court admonished the jury that M.F.'s testimony was to be used only to determine defendant's propensity to commit sexual offenses. Relatedly, as the evidence was properly admitted to show propensity (*Ward*, 2011 IL 108690, ¶ 25), the State was free to argue in closing that M.F.'s testimony showed defendant's propensity to touch the vaginas of little girls.

¶ 35 We now turn to defendant's remaining argument, that the State failed to prove him guilty beyond a reasonable doubt. When examining the sufficiency of the evidence, we must determine 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. *Jackson v. Virginia*, 443 U.S. 307, 319 (1979); *People v. Collins*, 106 Ill. 2d 237, 261 (1985). The trier of fact has the responsibility to assess witnesses' credibility, weigh their testimony,

resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences from the evidence. *People v. Sutherland*, 223 Ill. 2d 187, 242 (2006). "Where the finding of the defendant's guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt." *People v. Gray*, 2017 IL 120958 ¶ 36. We will not reverse a criminal conviction based on insufficient evidence unless the evidence is so improbable, unsatisfactory, or inconclusive that it creates a reasonable doubt of the defendant's guilt. *Id.* ¶ 35.

¶ 36 Defendant notes that the State's case relied almost entirely on K.F.'s testimony. He argues that, however, her testimony was so unreasonable that no rational jury could have found him guilty beyond a reasonable doubt. Defendant notes that K.F. admitted that she previously lied about the allegations, in that she initially denied to David that defendant abused her and initially told the DCFS interviewer that she had very little memory of her childhood. Defendant argues that even though she subsequently told the interviewer that he abused her, she said that the same thing happened to her as M.F., even though she admitted at trial that she did not know what M.F. had alleged.

¶ 37 Defendant argues that K.F.'s story was further compromised by a shifting timeline of abuse. In the second interview, she said that defendant abused her when she was three to five years old. At trial, she testified that it occurred from ages three to seven. She then testified that the abuse did not begin until David moved to Malta, which was in 2001, but later testified that it did occur when David lived in the house if "no one else was in the room." Defendant argues that because abuse would always occur if no one was in the room, the peculiarity of this last statement betrays its falsity.

¶ 38 Defendant maintains that K.F. also changed her story about where the abuse occurred. On direct examination, she testified that it occurred in the living room, David's old bedroom, and the basement. However, she testified on cross-examination that the abuse occurred at night when she slept in the third upstairs bedroom while David was sleeping in another bedroom.

¶ 39 Defendant argues that the veracity of K.F.'s version of events was further undermined by her testimony of when she stayed at defendant's house. On direct examination, she testified that he assaulted her from ages three to seven on Friday nights before her Saturday morning soccer games. Defendant points out that according to all of her family members, she spent both Friday and Saturday nights at defendant's house when David had visitation from June 1998 to June 2001. Defendant argues that this discrepancy demonstrates, at a minimum, K.F.'s faulty memory.

¶ 40 Defendant argues that there are additional facts that call into question K.F.'s veracity, namely that: no one witnessed him assaulting her in the doorless living room or the doorless upstairs bedroom, and it is unbelievable that he would have her touch his penis to the point of ejaculation in such rooms; K.F. never described where he ejaculated or how it was cleaned up; and even though K.F. testified that the assaults mostly occurred at night, Sheila never noticed defendant missing from the bed. Defendant contends that K.F.'s testimony about warning him not to touch M.F. was also unbelievable, as it seems unlikely that a 10-year-old would use such crude language, or that K.F. would be able to confront her abuser but not tell other adults.

¶ 41 Defendant asserts that K.F. had a motive to lie because M.F. alleged abuse at his hands. Defendant argues that several facts support this scenario, as K.F. told the interviewer that the same thing happened to her as M.F., even when she did not know the details, and K.F. testified that she did not want M.F. to think that she was the only person who "ever had to go through it."

¶ 42 Defendant further argues that K.F.'s and David's testimony about where and when K.F. slept at his house undercut their entire testimony. First, K.F. and David testified that she slept in the third bedroom when David was living at the house, whereas defendant and Sheila testified that K.F. slept with David during this time. Defendant argues that it is absurd to think that a 2½-year-old was sleeping on a daybed in a doorless room on a second floor, whereas it makes complete sense that such a young child would sleep with her father. Second, K.F. and David testified that after David moved out of the house, K.F. would spend Friday nights at the house, and David would pick her up for Saturday morning soccer games. In contrast, defendant and Sheila testified that K.F. did not spend nights at the house after defendant moved out. Defendant argues that it did not make sense for K.F. to spend Friday nights at his house, as she could have stayed at home at Christina's house until Saturday morning. Defendant argues that the motive for fabrication on that point is to show that he had more of an opportunity to abuse her. He argues that to accept K.F.'s and David's testimony, one would also have to believe that Sheila lied. Defendant maintains that Sheila would have little motive to lie because she would be covering up abuse against her granddaughter, and Sheila had already demonstrated that she was not blindly loyal to defendant, as she moved out of the house temporarily when she learned of the abuse allegations.

¶ 43 Defendant argues that in contrast to K.F.'s testimony, he provided as clear and credible testimony as possible considering he was facing nebulous allegations of sexual abuse from more than 14 years prior. Defendant points out that he denied inappropriately touching K.F. He argues that he also presented evidence that he worked the night shift from 2000 until at least 2010 and therefore was not even home after 2:30 or 3:30 a.m. on Friday nights/Saturday mornings.

¶ 44 Defendant argues that reviewing courts have reversed a defendant's conviction where the testimony was inconsistent, contradicted, and uncorroborated, as was K.F.'s testimony. He cites *People v. Herman*, 407 Ill. App. 3d 688 (2011), *People v. Yeargan*, 229 Ill. App. 3d 219 (1992), and *People v. Schott*, 145 Ill. 2d 188 (1991).

¶ 45 We conclude that, viewing the evidence in the light most favorable to the prosecution, there was sufficient evidence to prove defendant guilty beyond a reasonable doubt. Defendant rightly points out that the State's case rested primarily on K.F.'s testimony, with no physical or direct corroborating evidence, but the "testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where it is contradicted by the defendant." *Gray*, 2017 IL 120958, ¶ 36. An eyewitness's testimony will be found insufficient only where no reasonable person would accept it beyond a reasonable doubt; we will not reverse a conviction just because the evidence is contradictory or because the defendant claims the witness was incredible. *Id.*

¶ 46 Regarding K.F.'s initial denials of the abuse, an "initial denial or reluctance to discuss sexual abuse is common in child victims." *People v. C.H.*, 225 Ill. App. 3d 315, 323 (1993). Moreover, K.F. explained why she first denied the abuse, stating that she did not think that anyone would believe her after staying silent for so long. As far as K.F. later telling the interviewer that the same thing happened to her as to M.F., although K.F. did not know exactly what had happened to M.F., David had already told her that M.F. had said that defendant was touching her.

¶ 47 On the subject of when the abuse occurred, we note that the State is not required to prove that an allegation of predatory criminal sexual assault was committed on a particular date, as it is not an essential element of the offense when the statute of limitations is not questioned. See *People v. Letcher*, 386 Ill. App. 3d 327, 331 (2008). Dates can, however, be relevant in calling

the complainant's basic credibility into doubt. See *People v. Martin*, 115 Ill. App. 3d 103, 108 (1983) (witness's testimony about the date of the crime raised an issue as to his credibility, which the jury could properly consider). K.F. agreed that she told the interviewer that the abuse occurred from ages three to five but testified at trial that the abuse occurred from ages three to seven. She explained that it was difficult to remember dates from her childhood. She also explained that she had thought about the dates more after the interview and realized that she stopped playing soccer because of the abuse, and that occurred at age seven. We recognize that K.F. initially testified that the abuse occurred after David moved out of the house and then testified that it also occurred when he was still living there. However, she remained consistent in her testimony that the abuse occurred between 1999 and 2003, when she was ages three to seven, which would have been both before and after David moved out. In any event, regardless of whether the abuse occurred before or after David moved out, or the entire time, a determination by the jury that it occurred even once was sufficient to convict defendant of the crime as charged.

¶ 48 There were also inconsistencies in K.F.'s testimony regarding in which bedroom the abuse occurred. Still, the confusion regarding the bedrooms could have been due to K.F. having slept in more than one room during the years she stayed at the house, with her staying in the third bedroom while David was living there and David's old room when he moved out. Moreover, K.F. testified that the abuse also occurred in the living room and basement. Again, a finding by the jury that the abuse occurred once would have been sufficient to convict defendent. K.F.'s statement that defendant abused her if "no one else was in the room" does not undermine her testimony, as it can be understood to mean that defendant would use the opportunity of being alone with K.F. to touch her. Even though K.F. did not describe what happened to the ejaculate, she was not asked to do so either on direct or cross-examination, and it was not directly relevant

to the crime as ultimately charged. Some of the conflicting testimony K.F. provided could be due to the fact that the abuse occurred many years before trial, when K.F. was quite young.

¶ 49 Although defendant claims that K.F. had a motive to lie to support M.F.'s claim of abuse, K.F. initially denied the abuse and did not speak to M.F. about what happened to her. Moreover, a desire to support M.F. would also provide K.F. with a motive to speak out about what had happened to her. Indeed, K.F. testified that she eventually came forward because she did not want M.F. to feel lonely and misunderstood, as K.F. had felt. Whether K.F. actually confronted defendant before M.F. was born and used the language she testified to was for the jury to determine.

¶ 50 Regarding the discrepancies between K.F.'s and David's testimony that she slept in the third bedroom, and defendant and Sheila's testimony that K.F. slept with David, these were conflicts in the evidence for the jury to resolve. Similarly, the fact that K.F. and David testified that K.F. slept there Friday nights after David moved out, as opposed to defendant and Sheila's testimony that she did not sleep over after David left, was a conflict for the jury. The jury could have determined that Sheila was lying to protect defendant, that she was mistaken in her testimony, or that confusion about this issue did not undermine K.F.'s claims of abuse. We do note that Christina also testified that K.F. slept at defendant's house on Friday nights after David moved out, and that K.F. would "throw a fit" about going there if Sheila or defendant picked her up. Although defendant argues that such a schedule is not logical, K.F. testified that during David's visitation weekends, David did not want her to stay with Christina. Christina testified that K.F. would complain that it was "Dad's weekend," "not theirs."

¶ 51 Defendant emphasizes his own unequivocal denials of touching, but the jury had to make its own assessment of witness credibility. See *Sutherland*, 212 Ill. 2d at 279. Similarly, it was

up to the jury to determine how evidence that defendant worked the night shift should be weighed. The jury could have determined that defendant did not work the night shift every time K.F. was over; that the abuse took place earlier in the night, before the 2:30 to 3:30 a.m. shift began; and/or that the abuse took place at other times and in other locations in the house, which also would have been consistent with testimony provided by K.F.

¶ 52 We find the cases cited by defendant to be distinguishable. In *Herman*, the complainant was an admitted crack addict who was high during the night of the encounter, and the reviewing court stated that her testimony was subject to suspicion because narcotics addicts often lie. *Herman*, 407 Ill. App. 3d at 705. She further kept changing the timeline of the incident, which was significant because the defendant police officer had an alibi for part of that time; said that the officer's car had a cage, which it did not; testified that she did not see a boombox on the driver's side of the car, which was present when the car was sequestered that morning; said that the officer had a gun in an ankle holster, but no such holster was recovered; and made numerous other inconsistent and contradictory statements. *Id.* at 705-707. Moreover, another officer testified that the complainant offered to make the case " 'go away' " if the defendant paid her $5,000. *Id.* at 698. In this case, K.F. was not an addict, the inconsistencies in her testimony were minor compared to those in *Herman*, and there was no evidence of an attempted bribe.

¶ 53 In *Yeargan*, 229 Ill. App. 3d 219, 230-32, the physical evidence contradicted the complainant's version of events and more closely aligned with the defendants' version. Here, physical evidence was not at issue.

¶ 54 In *Schott*, the complainant: admitted that she lied a lot, including lying to a judge when falsely accusing an uncle of sexually abusing her; was repeatedly impeached and repeatedly offered conflicting testimony about various sexual incidents involving several other people; and

had a motive to falsely accuse the defendant because she wanted him to leave the house. *Schott*, 145 Ill. 2d at 206-208. Conflicts in the evidence here were not close to the level found to be reversible in *Schott*.

¶ 55 In sum, defendant has largely highlighted various inconsistencies in K.F.'s testimony, but it was ultimately up to the jury to resolve the inconsistencies and conflicts in the evidence. See *Sutherland*, 212 Ill. 2d at 279. Moreover, most of the conflicts relate to collateral matters, meaning that "they need not render the testimony of the witness as to material questions incredible or improbable." *Gray*, 2017 IL 120958, ¶ 47. K.F. consistently testified that defendant touched her vagina when she was a child and staying at his house, and M.F.'s testimony provided evidence of defendant's propensity to touch his young step-granddaughters' vaginas at his home. " 'Where minor inconsistencies or discrepancies exist in a complainant's testimony but do not detract from the reasonableness of her story as a whole, the complainant's testimony may be found to be adequate to support a conviction for sexual abuse.' " *People v. Garcia*, 2012 IL App (1st) 103590, ¶ 84 (quoting *People v. Soler*, 228 Ill. App. 3d 183, 200 (1992)). Viewing the evidence in the light most favorable to the State, the jury could have reasonably accepted K.F.'s testimony and found defendant guilty beyond a reasonable doubt of predatory criminal sexual assault of a child.

¶ 56 III. CONCLUSION

¶ 57 For the reasons stated, we affirm the judgment of the DeKalb County circuit court. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2016); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 58 Affirmed.