No. 2—10—0253
Order filed April 12, 2011



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IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

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| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Appeal from the Circuit Court of Kendall County. |
| Plaintiff-Appellee, | ) | |
| v. | ) | No. 08—CF—409 |
| DENNIS SEWELL, | ) | Honorable T. Clint Hull, |
| Defendant-Appellant. | ) | Judge, Presiding. |

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JUSTICE ZENOFF delivered the judgment of the court.
Justices Schostok and Birkett concurred in the judgment.

**ORDER**

*Held*: Where hearsay statements of the 12-year-old victim alleging sexual abuse were the product of some prompting and repetitive questioning, but the questioning was not unduly suggestive, the statements were sufficiently reliable, and the trial court did not abuse its discretion in admitting them into evidence pursuant to section 115—10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115—10 (West 2008)).

Following a bench trial, defendant, Dennis Sewell, was convicted of three counts of aggravated criminal sexual abuse (720 ILCS 5/12—16(b) and (c)(1)(i) (West 2008)). He was sentenced to 48 months' probation and 60 days in the county jail. On appeal, defendant argues that the trial court erred in admitting into evidence the victim's hearsay statements pursuant to section

115—10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115—10 (West 2008)). For the following reasons, we affirm.

BACKGROUND

The grand jury returned a four-count bill of indictment on November 20, 2008, alleging that defendant perpetrated the offense of aggravated criminal sexual abuse against his 12-year-old stepdaughter, S.M. Count I alleged that on or between March 1 and March 31, 2008, defendant committed an act of sexual conduct with S.M., who was a family member under the age of 18 years, in that defendant knowingly touched or fondled S.M.'s sex organ with his forearm for the purpose of the sexual arousal or gratification of defendant in violation of 720 ILCS 5/12—16(b) (West 2008). Count II alleged that on or between April 1 and May 31, 2008, defendant, who was over the age of 17 years, committed an act of sexual conduct with S.M., who was under 13 years of age in that defendant knowingly touched or fondled S.M.'s sex organ for the purpose of defendant's sexual arousal or gratification in violation of 720 ILCS 5/12—16(c)(1)(i) (West 2008). Count III alleged another incident of the same conduct as count I occurring between April 1 and May 31, 2008. Count IV was identical to count II.

The State filed a motion *in limine* pursuant to section 115—10 of the Code to admit certain hearsay statements of the victim to her mother, her grandmother, and a forensic interviewer. The court conducted a hearing on the motion on April 2, 2009.

At the hearing, Suzanne Sewell, defendant's wife and S.M.'s mother, testified as follows. Suzanne and defendant were married on February 13, 1999. They had two sons together, J.S. and D.S. One day in the middle of April 2008, Suzanne went shopping at Wal-Mart, leaving defendant and S.M. inside the family residence while J.S. and D.S. played outside. S.M. was 12 years old at

the time. While at Wal-Mart, Suzanne received a call on her cell phone from S.M., who was crying and sounded upset. S.M. told Suzanne that she wanted Suzanne to come pick her up and that she wanted to move in with her grandmother, Arnita M. Suzanne went home and found S.M. in her bedroom crying. When Suzanne asked S.M. what was wrong, S.M. would not respond. Suzanne collected S.M.'s bags and took her to S.M.'s grandmother's house. At Arnita's later that evening, Suzanne and S.M. were in Arnita's bedroom. S.M. was crying with her head on a pillow. Suzanne asked S.M. if she had been touched inappropriately. At first, S.M. did not respond. Suzanne asked if defendant had touched her inappropriately. According to Suzanne, S.M. "just stuck her head in her pillow and she cried harder." S.M. then told Suzanne that defendant " 'touched her private' " while S.M. was in her bedroom after taking a shower.

Immediately after S.M. told her this, Suzanne did not ask any further questions, but drove home to confront defendant. Defendant denied touching S.M. Suzanne went back to Arnita's house and told S.M. that defendant had denied touching her. Suzanne said that S.M. "stuck her head in the pillow and started crying." Suzanne did not question S.M. anymore. Suzanne did not go to the police because she "didn't want to believe that the father of [her] boys could do something like that."

Suzanne testified that she did not believe S.M. and therefore did nothing more about the allegation at the time. She eventually told a counselor in early July 2008 because S.M. was "showing some problems" and Suzanne felt like she needed to tell someone. S.M. was not present when Suzanne told the counselor. At that time, the police and DCFS became involved.

Suzanne was aware of only one alleged incident. She never spoke with S.M. about the abuse again and did not know any of the details. Suzanne did not know why the subject of inappropriate touching had come to her mind; she could not think of anything else that might have been upsetting

S.M. S.M. had never before reported being touched inappropriately. Suzanne specifically asked about defendant because he was the only one in the house with S.M. when Suzanne left for the store.

Suzanne filed for divorce in early August 2008. She and defendant had been having marital problems prior to S.M.'s disclosure. They had stopped sleeping together and were discussing divorce. Suzanne also obtained an order of protection against defendant on behalf of S.M. and her two sons.

Arnita M., Suzanne's mother and S.M.'s grandmother, testified as follows. One early evening in the beginning of April 2008, Suzanne and S.M. came over to her house. S.M. was crying and went straight to Arnita's bedroom. Suzanne and S.M. talked in Arnita's bedroom. Suzanne left the house and Arnita went into her bedroom to see what was happening. S.M. was crying with her head down. She "just was not herself" and did not want to talk. Arnita asked S.M. what happened and S.M. told her that defendant had touched her in the wrong place. S.M. told Arnita that she would not go back home and wanted to live with her.

Arnita testified that about two weeks later, Suzanne brought S.M. to her house again. S.M. was crying. Arnita had not talked with S.M. about defendant since the night in April 2008, but S.M. had frequently been at Arnita's house since then. Suzanne told Arnita that S.M. was going to stay with her; Suzanne left. When Arnita asked S.M. what was wrong, S.M. told her that defendant had come home one night, lay on top of her, and kissed her neck. S.M. told Arnita that when defendant left her bedroom, he told her that he loved her. S.M. provided no more details and Arnita did not ask for any because she thought it was Suzanne's place to ask for details.

Arnita testified that she did not talk with Suzanne about S.M.'s allegations. Arnita did not go to the police because she was "so shook up and really didn't know what to think." S.M. told her

that she did not want everyone to know about it. Arnita was aware that defendant and Suzanne were having marital difficulties. S.M. had never before expressed displeasure that defendant was her stepfather except to say once that he was not her dad, and she also questioned Arnita about her biological father. Following S.M.'s second disclosure to Arnita, S.M. never went home to stay alone and "didn't really spend the nights there."

Jason Andrade, the mental health director of the Kendall County Health Department, testified that he conducted a forensic interview of S.M. on July 31, 2008. The entire interview was videotaped. The 40-minute videotape was admitted and played for the court. Andrade said that S.M. was "nervous [and] somewhat embarrassed" during the interview, but gave appropriate responses.

On cross-examination, Andrade stated that he had conducted approximately 75 child-sensitive interviews since 2007. He said that inconsistencies in a child's story may indicate that the child is not telling the truth. He acknowledged that S.M. repeatedly stated that the second incident of abuse was "like the first time." He agreed that, after more questioning, S.M. disclosed details of the second incident that differed from the first. He also acknowledged that, after he asked S.M. if anything else happened after defendant was on top of her kissing her, S.M. said, " 'I don't think so.' " He agreed that he prompted her by asking if any part of defendant's body touched her private parts. Andrade said that he also prompted S.M., after she indicated that defendant's arm touched her private area, as to whether defendant's arm was moving or rubbing on her. Andrade did not conclude that S.M. was being dishonest, but rather that she was very embarrassed and nervous.

The trial court found that S.M.'s statements were sufficiently reliable under section 115—10 and ruled that her four statements (one to Suzanne, two to Arnita, and the interview with Andrade) would be admissible at defendant's trial.

On May 19, 2009, a two-day bench trial commenced. S.M. testified that her birthday was October 21, 1995, and she was 13 years old at the time of trial. She described the first incident as follows. At approximately 1:00 or 2:00 a.m. one morning in March 2008, S.M. was in her bedroom trying to go to sleep when defendant came home late as he sometimes did. Her mother and two brothers were sleeping in their bedrooms. Defendant went to the bathroom next to S.M.'s room, then left the bathroom light on and entered S.M.'s bedroom. Defendant got on top of S.M., who was lying on her back. She could not tell if he had been drinking alcohol. Defendant was wearing jeans and a t-shirt. Defendant pulled off S.M.'s pajama pants and underwear, leaving her completely exposed from the waist down. Defendant began kissing S.M. on her face with one of his arms behind her head. Defendant's other forearm came into contact with S.M.'s "private in between [her] legs." S.M. identified the pubic region on an anatomical drawing of a female as the "private." S.M. said that defendant's arm touched her private with a "back and forth movement." She stood up and demonstrated by moving her arm "in an up and down fashion vertically." The touching lasted for two or three minutes as defendant continued to kiss her. S.M. tried to get defendant off of her. Defendant then got off of S.M. and said, " '[S.M.], I love you, please don't'—and 'please don't tell.' " Defendant had not said anything until he got off of her. S.M. did not tell anyone about this incident at the time; she did not know why she did not tell anyone.

S.M. further testified that a second incident occurred about one month later. S.M. was home one afternoon with defendant while her brothers were outside. Her mother had gone to her grandmother's or to the store. S.M. had taken a shower and was listening to music in her bedroom, wearing pajama pants and a t-shirt. Defendant entered her bedroom. He was wearing jeans and a t-shirt. Defendant pulled S.M. to the floor, on her back, pulled down her pants and underwear to her

ankles, and got on top of her. Defendant began kissing S.M.'s face. His forearm came into contact with her "private," but did not move. He stayed in that position, kissing her for two or three minutes. S.M. tried to get him to stop. He eventually stopped and got up and started to fix the lock on her bedroom door, acting calmly.

S.M. testified that, after the second incident, she called her mother on her cell phone and asked if she could live with her grandmother. Her mother came home and took S.M. and her brothers to her grandmother's because they had been planning on spending the night there. That evening, while at her grandmother's house, S.M. told her mother what happened after her shower that day. S.M. did not recall telling her grandmother about the incident then. S.M.'s mother told her not to tell her grandmother, but S.M. eventually did.

S.M. testified that, later that summer, Andrade interviewed her on videotape at the health department. That was the first time she talked to anyone about the incidents since her initial disclosures to her mother and grandmother. S.M. explained that on the video she had demonstrated the movement of defendant's arm as horizontal because she was sitting down at the time, but said that her demonstration of vertical movement in court, while standing, was the correct one.

S.M. stated that, before the incidents, she was aware that her mother and defendant had not been getting along. She did not like defendant much then and was spending a lot of time at her grandmother's house, where she preferred to live, but S.M. testified that she was not making up the allegations.

Suzanne Sewell, defendant's wife and S.M.'s mother, testified substantially the same as she had at the section 115—10 hearing, with the following additions. When Suzanne confronted defendant with S.M.'s accusation in April 2008, defendant denied it and said that "he might as well

go kill hisself [*sic*]." Prior to April 2008, S.M. never said that she wanted to live with her grandmother. Suzanne never viewed Andrade's interview with S.M.

Arnita M., S.M.'s grandmother and Suzanne's mother, testified essentially as she had at the section 115—10 hearing. She also testified that she believed S.M.'s disclosures.

Jason Andrade testified the same as he had at the section 115—10 hearing. The videotape of his interview with S.M. was played for the court.

Jeremy Littlejohn testified that he had been friends with defendant for about two years. Littlejohn acknowledged his previous felony convictions. On October 27, 2008, Littlejohn had a conversation with Detective Gene Morton of the Plano police department. Approximately one week before that, Littlejohn had a conversation with defendant about the charges against defendant and defendant's pending divorce. Defendant told Littlejohn that he had been using cocaine the night of the first incident with S.M. Defendant said he came home late, lay down in the wrong bed, and kissed S.M. on the forehead. S.M. kneed him, causing him to realize his mistake, and he left her room. Defendant never said anything to Littlejohn about fondling S.M.

Deanna Munoz testified that she and defendant had been friends since she was 16 years old. On October 27, 2008, Munoz had a conversation with Detective Morton. Two months prior to that, defendant had called Munoz and asked if she knew about S.M.'s accusations. Defendant told Munoz that there was one time when he went into S.M.'s room and kissed her. S.M. woke up and kicked him out of bed and he realized he was in the wrong room. Defendant told Munoz, " 'Dee, you know I would never do something like that.' " Defendant then told Munoz that someone mentioned that defendant was "depantsing" people and that defendant had " 'seen one occasion when that happened.' " Defendant did not mention being under the influence of anything.

The parties stipulated to the written statement of Michael Goldsmith, which was admitted into evidence. In the statement, Goldsmith said that he was friends with defendant and Littlejohn. Goldsmith said that Littlejohn told him that defendant said that he was "coked up" when he got into bed with S.M. Goldsmith said that when Goldsmith confronted defendant, defendant told him he was drunk when he got in S.M.'s bed and thought it was his wife. When defendant was accused, he told Goldsmith that he was "going to put a bullet in [h]is head if he got charged."

Detective Gene Morton of the Plano police department testified that on August 1, 2008, he met with defendant, who voluntarily came to the police department. Defendant waived his *Miranda* rights and agreed to talk with officers about S.M.'s accusations. Defendant said that he and S.M. had a good relationship until the past two or three years, when the "normal problems" of teenage girls arose. Morton asked defendant if he ever "de-pantsed" S.M., and defendant said that he had and that it was a game he played with all of the kids in the house. The last time defendant de-pantsed S.M. was three to four months ago. Morton asked if defendant remembered coming home three or four months ago after drinking and having any kind of interaction with S.M. Initially, defendant denied remembering anything unusual happening. As the interview progressed, Morton repeated the question and asked if something possibly could have happened when defendant was intoxicated. Defendant remembered drinking one night and said that something may have happened with S.M. when he got home, but that he could not really remember. Defendant finally remembered what happened, but was embarrassed about it. Defendant came home after drinking with friends, went to the bathroom, and then to what he thought was his bedroom. He got on top of who he thought was his wife and was kissing her forehead. When he got kicked and punched, he realized that he was actually on top of S.M. in her bedroom. He got up and went to his room and passed out. Defendant

denied touching S.M.'s vaginal area or pulling her pants down. Morton asked defendant about a separate de-pantsing incident; defendant said his arm never touched any part of S.M. The interview lasted about one and one-half hours.

The State rested; defendant rested; and the court heard closing arguments. The court took the case under advisement and rendered its ruling on June 11, 2009. After dismissing count IV as duplicative of count II, the court found that S.M. was substantially consistent in her testimony and that her delay in reporting the first incident did not impact her credibility. The court concluded that defendant's statement to Suzanne that he might as well kill himself supported the State's theory of the case. The court stated that Littlejohn's testimony of what defendant told him about the first incident supported S.M.'s testimony, but was "simply less complete, which is to be expected under the circumstances." Munoz's testimony about depantsing lacked detail but also supported S.M.'s testimony. The court did not believe the theory that defendant was merely mistaken in the first incident and noted that defendant did not raise the affirmative defense of voluntary intoxication. The court found defendant guilty of counts I, II, and III.

On November 21, 2008, the trial court conducted a sentencing hearing and ruled that counts II and III merged. The court sentenced defendant to 48 months' probation, subject to several conditions, including a drug and alcohol evaluation, random alcohol testing, compliance with sex offender treatment, and no unsupervised contact with any minor; and 60 days in the county jail.

Defendant filed a posttrial motion objecting *inter alia* to the court's admission of the hearsay statements and a postsentencing motion, both of which the court denied on February 9, 2010. Defendant timely appealed.

ANALYSIS

Defendant argues that the trial court erred in admitting S.M.'s hearsay statements because they lacked sufficient safeguards of reliability. The State asserts that defendant forfeited several of his arguments because he failed to raise them in the trial court. As an example, the State notes that defendant argues on appeal, but did not argue in the trial court, that S.M.'s delay in reporting the first incident rendered her statements unreliable. The State cites several cases in support of its position. See generally *People v. Naylor*, 229 Ill. 2d 584, 592 (2008) (in order to preserve an issue for review, a defendant must both make an objection at trial and raise the issue in a posttrial motion); *People v. Parchman*, 302 Ill. App. 3d 627, 632 (1998) (general and vague allegations in a posttrial motion are insufficient to overcome forfeiture). While we agree with the State's general proposition that failure to raise an issue in the trial court results in forfeiture on appeal, we also agree with defendant's response that the State has not provided any authority in support of the proposition that in his posttrial motion he was required to identify each and every circumstance bearing on the reliability of the hearsay statements. In his posttrial motion, defendant objected to the admission of the hearsay statements "because the evidence introduced at the section 115—10 [hearing] did not establish the existence of sufficient safeguards of reliability." We believe this was sufficient to preserve generally the issue of reliability. We do note that, at the February 9, 2010, hearing on his posttrial motion, defendant chose to stand on his motion regarding the section 115—10 statements. Nonetheless, even if defendant did forfeit certain specific aspects of his reliability argument, forfeiture is a limitation on the parties, not on this court (*People v. Adams*, 404 Ill. App. 3d 405, 417 (2010)), and we will address all of defendant's argument on the merits.

Section 115—10(a)(2) of the Code provides that in a prosecution of a sexual offense perpetrated against a child under 13 years of age, testimony of the child's out-of-court statements describing any complaint of such an act or matter or detail pertaining to any act that is an element

of the charged offense is admissible as an exception to the rule against hearsay. *People v. Maguire*, 329 Ill. App. 3d 1186, 1195 (2002). Section 115—10(b) provides the conditions of admissibility: "Such testimony shall be admitted only 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 testifies or, if the child is unavailable as a witness, there is corroborative evidence of the act. 725 ILCS 5/115—10(b)(1) and (b)(2) (West 2008).

In making its determination of reliability at the section 115—10 hearing, the trial court is to consider the totality of the circumstances surrounding the making of the hearsay statements. *People v. Johnson*, 363 Ill. App. 3d 1060, 1076 (2005). Relevant factors include: (1) whether the victim made the statements spontaneously and consistently repeated them; (2) the victim's mental state when making the statements; (3) the victim's use of terminology unexpected in a child of comparable age; and (4) the victim's lack of motive to fabricate. *Johnson*, 363 Ill. App. 3d at 1076. The State, as the proponent of the statements, has the burden to show that the statements were reliable and "not the result of adult prompting or manipulation." *Johnson*, 363 Ill. App. 3d at 1076. The trial court enjoys a considerable amount of discretion in deciding whether the statements are admissible. *People v. West*, 158 Ill. 2d 155, 164-65 (1994). We will overturn a trial court's determination only if the record clearly demonstrates that the trial court abused its discretion. *Johnson*, 363 Ill. App. 3d at 1076. A trial court abuses its discretion if its decision is arbitrary or fanciful or when no reasonable person would adopt the same view. *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009).

Here, the trial court found that the surroundings in which S.M. made the statements were comfortable and that, for each of the statements, only the minor and one adult was present. The court found that there was no motive to fabricate because Suzanne did not report the allegation to

the police as would be expected if she intended to use S.M. "as a sword" in the divorce and because there was no evidence that S.M. was aware of the pending divorce. The court found that S.M. was crying, emotional, and upset when she made the statements to Suzanne and Arnita, and that she was embarrassed and nervous during the interview with Andrade. The court found that S.M. reaffirmed the statement made to Suzanne when she talked to Arnita, and that those statements were all reaffirmed to Andrade. With respect to any leading questions, the court stated,

> "The statement or the question made by the mother whether the defendant was touching the minor inappropriately certainly could be considered somewhat leading. Almost might also be considered simply drawing attention to a particular topic. Not giving the basis of how or what occurred.
>
> There was no leading question with respect to the grandmother. She asked open-ended questions.
>
> The questions by Andrade, many were redundant. Some were approaching the leading nature. But again, appears that we're talking about drawing attention to a topic, not eliciting a particular response."

The court concluded that the hearsay statements were sufficiently reliable and granted the State's motion to admit under section 115—10.

Upon reviewing the record and examining the totality of the circumstances surrounding the making of the statements, we cannot say that no reasonable person would adopt the view of the trial court. The nature of the questioning did not render the statements so lacking in spontaneity as to be unreliable. As the trial court noted, S.M. was obviously upset when she made the statements to Suzanne and Arnita. That Suzanne prompted S.M. by asking if defendant had inappropriately touched her does not compel the conclusion that Suzanne "coached" S.M. because, as the trial court

observed, Suzanne neither provided a basis of what actually occurred nor sought to elicit a particular response. Indeed, Suzanne did not even believe S.M. Moreover, the need for such questioning was supported by S.M.'s lack of responsiveness with Suzanne and Arnita, when something was obviously troubling her. See *People v. Priola*, 203 Ill. App. 3d 401, 414 (1990) (noting the "natural sense of shame, fear, revulsion, and embarrassment felt by children under such circumstances" and stating that the failure of young sexual assault victims to make prompt complaints is therefore easily understandable).

Neither are we persuaded by defendant's contention that Andrade's repetitive questioning rendered the statements unreliable. Our review of the videotape reveals that, although sometimes repetitious, Andrade's questioning was not coercive or manipulative. He did not rush or badger S.M. His demeanor was calm and he often paused, allowing S.M. time to reflect and respond. The repetition helped draw out S.M.'s responses given her reluctance and embarrassment at describing the details of the incidents. See *People v. Edwards*, 224 Ill. App. 3d 1017, 1031 (1992) ("It is entirely unrealistic to expect a child to speak about such topics in the course of casual conversation.").

Defendant points out that S.M. was almost 13 years old at the time of the interview with Andrade and therefore was not a "very young complainant with immature conversational skills." Defendant seems to suggest that S.M.'s hesitation must have been because she was lying. We disagree. The trial court's conclusion that S.M. was embarrassed and nervous during that interview was not an unreasonable or arbitrary inference in light of S.M.'s demeanor and the circumstances. See *Priola*, 203 Ill. App. 3d at 414 (noting the "natural sense of shame, fear, revulsion, and embarrassment" of child victims of sexual offenses). We also note that when Andrade asked what happened after defendant pulled off her pants during the first incident, S.M. responded, "It's a little

weird." This suggests that, especially given that S.M. was not a very young complainant, she was more likely aware of the taboo nature of defendant's sexual conduct and therefore, all the more embarrassed.

Defendant next asserts that because S.M. did not repeat her statements, the trial court had no basis upon which to determine that there was consistent repetition. The trial court found that S.M. reaffirmed the statement made to Suzanne when she talked to Arnita, and that those statements were all reaffirmed to Andrade. Defendant does not dispute that finding, but rather seems to be arguing that when S.M. expounded on the details of the two incidents during her interview with Andrade, she was somehow inconsistent with her initial statements to Suzanne and Arnita. Defendant also notes that in the Andrade interview, after describing the first incident, S.M. repeatedly stated that the second incident was "just like the first." Defendant maintains that this reflects an inconsistency because there were differences between the first and second incidents.

We disagree. That S.M. elaborated with Andrade does not make her statements to him inconsistent with those to Suzanne and Arnita. See *People v. C.H.*, 255 Ill. App. 3d 315, 323 (1993) (noting that initial reluctance to discuss sexual abuse is common among child victims and holding that the victim's subsequent statements were not inconsistent with earlier ones, but rather simply disclosed new allegations). Moreover, S.M.'s insistence that the second time was the "same as the first time" does not reflect an inconsistency. The second time was similar to the first time in that defendant entered her bedroom, removed her pants, lay on her, kissed her, and put his arm against her vagina. Differences in the time of day, defendant's demeanor following each incident, whether S.M. was on the floor or the bed, and whether defendant's arm moved or not do not change the fact that the two incidents were similar. Furthermore, given S.M.'s reluctance and embarrassment, it makes sense that she would rather dismiss the second incident as the same as the first rather than put

herself through describing it in detail. See *Priola*, 203 Ill. App. 3d at 414 (noting the "natural sense of shame, fear, revulsion, and embarrassment" of child victims of sexual offenses).

Defendant's relies on *People v. Panier*, 258 Ill. App. 3d 337 (1994), as the "case most closely resembling the present appeal." There, the State brought an interlocutory appeal from the trial court's grant of the defendant's section 115—10 motion to exclude hearsay statements. The appellate court affirmed the trial court's denial of the admission of the hearsay statements of the 4-year-old victim accusing the 16- or 17-year-old defendant of sexual offenses. The trial court found the victim incompetent to testify. *Panier*, 258 Ill. App. 3d at 338. In light of the victim's unavailability to testify, the appellate court held that the trial court properly excluded the hearsay statements due to the State's failure to introduce corroborative evidence as required by section 115—10. *Panier*, 258 Ill. App. 3d at 341.

Because of the interlocutory status of the appeal, the appellate court then addressed the trial court's reliability determination. *Panier*, 258 Ill. App. 3d at 341-42. The victim initially responded to her mother's question about a " 'fuzzy' black hair" on the victim's vagina by saying that " ' Chelsea [an 18-month-old baby] messes with me.' " The mother then asked if the defendant also " 'messed' with her." When the victim replied affirmatively, the mother went to the police. *Panier*, 258 Ill. App. 3d at 339. The next day, a DCFS investigator interviewed the victim. *Panier*, 258 Ill. App. 3d at 338. During that interview the victim said that the defendant touched her " 'boobs,' her 'pee-pee' and her 'butt' with his finger," and pulled down his pants and " 'peed' on the bed." The victim also said that the defendant touched her with a stick, touched the victim's baby sister, and made the victim touch and lick his " 'pee-pee.' " The victim also related that the defendant's sister had licked the victim's " 'pee-pee' " and " 'butt.' " *Panier*, 258 Ill. App. 3d at 339. The next day, when the victim's mother talked to her again, the victim denied the allegations about the defendant's

sister and the stick and told her mother, " 'Maybe I just tell stories.' " *Panier*, 258 Ill. App. 3d at 339. On this record, the appellate court held that the trial court did not abuse its discretion in excluding the statements based on unreliability. *Panier*, 258 Ill. App. 3d at 343.

*Panier* is inapposite. Initially, its discussion of reliability is arguably *dicta* since it affirmed the trial court based on the State's failure to produce corroborative evidence at the section 115—10 hearing. However, even considering its discussion of the reliability issue, *Panier* is so factually distinguishable as to be of no value in the present case. Unlike S.M., the victim there was very young and found incompetent to testify. The victim there also recanted some of her allegations, made fanciful allegations (of abuse by an infant), and said that she might just be telling stories. Here, S.M. never recanted any of her statements and was consistent throughout the Andrade interview and her trial testimony.

We are also unconvinced by defendant's argument that the statements to Arnita were tainted by Suzanne's prompting. First, we have already determined that Suzanne's questioning did not constitute improper prompting. Moreover, defendant's reliance on *Panier* for this proposition is misplaced. The court in *Panier* stated that the trial court could have concluded that the content of the victim's statements was tainted by the mother's initial conversation in which she asked the victim if the defendant had messed with her. *Panier*, 258 Ill. App. 3d at 343. However, *Panier* involved a much younger victim who was incompetent to testify and much more susceptible to suggestion. See *People v. Jahn*, 246 Ill. App. 3d 689, 704 (1993) (noting that a three-year-old victim could be more susceptible to suggestion than a five-year-old victim). Here, S.M. was 12 years old, her allegations were consistent throughout her interview with Andrade, her trial testimony was consistent with her hearsay statements, and as the trial court concluded, her testimony was supported by Littlejohn's and Munoz's testimonies. *West*, 158 Ill. 2d at 165-66 (that the victim testified

consistently with her statements and testimony of other witnesses supported reliability); *C.H.*, 237 Ill. App. 3d 462, 470 (1992) (reliability was supported by the record where the victim made consistent allegations during the interview that were also consistent with her trial testimony). Nothing in the record suggests that S.M. was susceptible to suggestion, and indeed, the record tends to support the inference that she was less susceptible. For example, when Andrade was questioning S.M. about the second incident, he asked if defendant again pulled her pants all the way off and whether defendant's arm was rubbing against her like the first incident; S.M. responded negatively to both questions. Were she susceptible to suggestion, she undoubtedly would have replied affirmatively, or possibly even embellished the second incident.

Defendant relies on *People v. Ware*, 259 Ill. App. 3d 466 (1994), in support of the proposition that Andrade's suggestive and repetitive questioning rendered the statements unreliable. In *Ware*, in relevant part, the appellate court affirmed the trial court's denial of the State's section 115—10 motion and exclusion of the hearsay statements of the three-year-old victim who was found incompetent to testify. *Ware*, 259 Ill. App. 3d at 468-69. The videotaped interview indicated that the victim "obviously did not want to be there" and "kept asking if she could leave." The interviewer told the victim that she could not leave until she told what the defendant did to her. The interviewer repeatedly asked the victim what the defendant did to her, and whether the defendant removed the victim's clothes or pajamas. The interviewer also repeatedly told the victim that what the defendant did was wrong, that the defendant should not have touched the victim, and that " 'we don't want [the defendant] to touch [you] like that anymore.' " Finally, the interviewer said, " '[S]how me what [the defendant] did and we'll leave.' " The victim took an anatomically correct male doll, held it to her genital area, and said that the defendant put his penis there. The interview ended. *Ware*, 259 Ill. App. 3d at 470.

Defendant argues that the *Ware* interviewer's question of whether the defendant had removed the victim's clothing was an "example of an overly suggestive question" and that the repetition weighed against admission. We disagree with defendant's reading of *Ware*. Even beyond the fact that the victim there was barely three years old and found incompetent to testify, the interviewer's manner of questioning was not just repetitive and suggestive, but seemed to cross the line into being coercive and manipulative. Essentially, the three-year-old victim was not permitted to leave until she gave an answer that would satisfy the interviewer. Here, we have already discussed Andrade's manner of questioning, which though sometimes repetitive, was not coercive or manipulative. We also noted that, when the facts differed from what Andrade's questions suggested, S.M. told him that was the case.

Defendant next asserts that S.M.'s motive to fabricate was that she wanted to live with her grandmother and that she got her wish after accusing defendant of sexual abuse. Although the record does indicate that S.M. spent more time with her grandmother after her disclosure, nothing in the record suggests that S.M. had any desire to live with her grandmother prior to defendant's abuse. Suzanne testified that S.M. had never expressed a desire to live with Arnita before April 2008. Therefore, another equally plausible, if not more reasonable, inference is that S.M. wanted to live with Arnita *because* defendant was abusing her, not that she falsely accused defendant so that she could live with her grandmother. We also note that S.M. testified that she was not falsely accusing defendant in order to secure a new living arrangement, and the trial court found her to be a credible witness.

Defendant also contends that S.M.'s one-month delay in reporting the first incident of abuse rendered the statements unreliable. Delay in reporting sexual abuse is common and goes to the weight to be given the statements, not their admissibility. *Jahn*, 246 Ill. App. 3d at 704. Here, S.M.

disclosed the second incident of abuse first, on the same day that it occurred early in April 2008. She disclosed the first incident of abuse, which occurred sometime in March 2008, to Arnita two weeks after the initial disclosure made to both Suzanne and Arnita. The one-month delay does not compel a finding that the statements were unreliable. See *Jahn*, 246 Ill. App. 3d at 704 (affirming admission of statements made about eight months after incident).

Defendant further maintains that the fact that the statements to Andrade were made three or four months after the abuse "makes it difficult to know the impact of the conversations with family members on the contents of the statement to Andrade." Delay can be significant in terms of what might have happened during the delay that could adversely affect the reliability of statements. *People v. Deavers*, 220 Ill. App. 3d 1057, 1069 (1991). However, defendant points to nothing in the record indicating that anything happened that would have adversely affected the reliability of the statements. We note that both Suzanne and Arnita testified that they had no other discussions with S.M. about the allegations after the initial statements, and S.M. testified that she talked to no one about the incidents from the time of her disclosures to Suzanne and Arnita until she was interviewed by Andrade.

Defendant cites *People v. Zwart*, 151 Ill. 2d 37 (1992), in support of the proposition that the one-month delay here rendered the statements unreliable. However, in noting that the four- or five-week delay in *Zwart* was accorded substantial significance because of the circumstances there, defendant provides the basis for distinguishing *Zwart*. In *Zwart*, the three-year-old victim, who was found incompetent to testify, may have been prompted by at least three adults with law enforcement and DCFS before making the statements at issue to her mother, and the State failed to demonstrate the contents of those other conversations. *Zwart*, 151 Ill. 2d at 38, 41, 44 (holding that the trial court abused its discretion in admitting the victim's hearsay statements to the mother). Unlike *Zwart*,

defendant points to nothing in the instant record indicating that S.M.'s one month delay in reporting the first incident, after reporting the second incident on the day that it occurred, should be accorded any additional significance. See *Jahn*, 246 Ill. App. 3d at 704 (concluding that a several-month delay without more does not render statements unreliable); *Deavers*, 220 Ill. App. 3d at 1069 (delay is merely a factor in the totality of the circumstances to be considered).

We are similarly not persuaded by defendant's argument that the lack of detail in the statements to Suzanne and Arnita rendered them unreliable. We discussed above how the addition of detail in subsequent interviews does not render statements unreliable. We further note that neither Suzanne nor Arnita sought any more detail; indeed, neither of them discussed the allegations any more at all. In contrast, Andrade patiently sought additional detail with his nonthreatening, repeated questioning.

Moreover, a review of the totality of the circumstances suggests that S.M.'s statements to Suzanne and Arnita understandably lacked detail given the response S.M. received from her mother. Suzanne testified that upon S.M.'s disclosure of defendant's inappropriate touching, Suzanne immediately left and confronted defendant. S.M. told Andrade that when Suzanne returned to Arnita's, Suzanne told S.M. that defendant denied the accusation, had started piling boxes by the door, and was "freaking out" because he was afraid he was going to be arrested. Suzanne's reaction of concern for defendant likely would have induced S.M. to deliberately refrain from any further discussion. *Cf. Deavers*, 220 Ill. App. 3d at 1070 (victim's delay in reporting could be explained by the fact that the victim knew that her own mother was aware of the defendant's conduct but failed to stop it).

Defendant next contends that the reliability of the statements was undermined by the fact that Suzanne did not believe S.M. However, defendant offers no authority in support of this proposition.

As discussed above, Suzanne's disbelief, if anything, tends to undermine any possible motive for S.M. to fabricate, discount any possibility of adult manipulation or coaching, and explain S.M.'s reluctance to provide detail.

Review of the record in light of the totality of the circumstances surrounding the making of the statements reveals sufficient indicia of reliability. Accordingly, we cannot say that the trial abused its discretion in admitting them. See *Jahn*, 246 Ill. App. 3d at 703 ("The overall operative principle is that the relevant circumstances to be examined are those surrounding the making of the statement and which render the declarant particularly worthy of belief."); *C.H.*, 237 Ill. App. 3d at 469-70 (affirming the trial court's admission of the 10-year-old victim's hearsay statements because the use of some leading questioning was understandable in light of the victim's age and "the need to focus the interview"; the victim had no motive to lie; and the victim's allegations were consistent throughout her interview and with her trial testimony).

Defendant finally contends that the trial court erred in denying his posttrial motion. The judge who presided over the pretrial proceedings and trial retired after sentencing defendant. According to defendant, in order to consider his posttrial motion, the successor judge was required to review the transcript of the section 115—10 hearing and watch the videotape of Andrade's interview, but failed to do so. We need not address defendant's argument. Given our holding that the trial court did not err in admitting the hearsay statements, the denial of the posttrial motion was not erroneous. Because we review the trial court's judgment, not its reasoning, we may affirm the judgment on any basis supported by record. *People v. Johnson*, 208 Ill. 2d 118, 128-29 (2003).

For the reasons given, we affirm the judgment of the circuit court of Kendall County.

Affirmed.