No. 2—10—0341
Order filed May 24, 2011

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 01—CF—143
MARK J. ANDERSON,	)	Honorable Mark W. Dwyer and Michael J. Burke,
Defendant-Appellant.	)	Judges, Presiding.

JUSTICE BOWMAN delivered the judgment of the court.
Presiding Justice Jorgensen and Justice Hutchinson concurred in the judgment.

ORDER

Held: The trial court properly admitted hearsay statements pursuant to section 115—10 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115—10 (West 2008). Additionally, defendant's *corpus delicti* and excessive sentence arguments failed. The judgment of the circuit court was therefore affirmed.

Defendant, Mark J. Anderson, appeals his convictions of two counts of predatory criminal sexual assault of a child (720 ILCS 5/12—14.1(a)(1) (West 2008)), and one count of aggravated criminal sexual abuse (720 ILCS 5/12—16(b) (West 2008)), for acts committed against his nine-year-old stepdaughter, A.F. Defendant was sentenced to 10 years' imprisonment for the sexual assault offenses and 3 years' imprisonment for the sexual abuse offense, all to be served

consecutively. On appeal, defendant argues (1) that the trial court improperly admitted certain hearsay statements of A.F. under section 115—10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115—10 (West 2008)); (2) that count one must be reversed for lack of a *corpus delicti*; and (3) that the sentence imposed on the sexual assault offenses was excessive. We affirm.

I. BACKGROUND

After a jury trial, defendant was found guilty of counts I and II of the complaint, which alleged predatory criminal sexual assault for the act of penetration in that defendant placed his penis in the mouth of A.F while in the basement of his Downers Grove home (count I) and a bedroom of the same home (count II); and count IV, which alleged aggravated criminal sexual abuse in that defendant knowingly had A.F. fondle his penis for the purpose of sexual arousal. The alleged abuse occurred between September 1, 2000, and December 25, 2000, and defendant was indicted on February 8, 2001.

On August 1, 2001, before the Honorable Mark W. Dwyer, the court conducted a section 115—10 evidentiary hearing to determine the reliability of certain statements made by A.F to her brother, J.F., and Casey Woodham, an investigator with the Du Page County Children's Center. That hearing resulted in the following testimony. J.F. testified that A.F. spoke to him sometime in late 2000 and stated that she had to "rub and suck [defendant's] private part" in the basement and in her bedroom. A.F. stated that it tasted "nasty," and that defendant told her that she would get into trouble for doing this. A.F. told him that a "white ball" would come out of defendant's "private part." J.F. demonstrated a motion with his right hand, moving it back and forth in a fist in front of his body, to describe what A.F. showed him that she did with defendant. A.F. whispered this information to J.F. J.F. also testified that he heard "blurry moans" near his bedroom upstairs when

he was sent to his room for punishment. At that time only defendant, A.F., and he were at home. J.F. told his mother what A.F. told him. J.F. testified that he still liked defendant and did not want to see him get into trouble.

On cross-examination, J.F. admitted that he previously gave information to police officers and Woodham after he spoke to his mother. He spoke to Woodham the same day he told his mother. J.F. admitted he told his mother this information shortly after his mother informed him that she and defendant were breaking up.

Casey Woodham testified that she worked for the Department of Children and Family Services and was assigned to the Du Page County Children's Center. On January 13, 2001, Woodham spoke with J.F., A.F., and their mother, Frances F. When she spoke to A.F., she asked her whether anyone ever touched her "private part in a bad way," and A.F. replied her brother K.A. and defendant. K.A. once kicked her in her front private part area and hurt her. A.F. then explained that she did not like it when defendant rubbed her front private part because it made her feel uncomfortable. A.F. stated that he touched her both under and over her clothes. A.F. stated that defendant touched her private part under the underwear on two occasions, and he touched her once over the clothes. A.F. told her that he rubbed "inside her front private part where the red part is" and that felt uncomfortable. A.F. stated that defendant asked her if it felt good.

Woodham asked A.F. whether anyone ever made her touch their private parts, and she stated defendant made her rub his and that it made him feel good. A.F. stated that defendant took her to the basement the second time this occurred to watch naked boys and girls on the computer. A.F. said that defendant made her rub it and then he made her "suck his front private part." A.F. said that she did not want to do this but he forced her. A.F. told Woodham that defendant made her do this five

or six times. The last time that A.F. was forced to "suck his front private part" was about two weeks prior to the interview and always when she and J.F. were home alone with defendant. A.F. stated that defendant once sent J.F. to bed and then he made A.F. "rub it and suck it" in the basement while watching naked boys and girls on the computer.

When Woodham asked A.F. to describe what occurred in the basement, A.F. stated that defendant would sit in a chair by the computer, and she would get on her knees and face the chair. Defendant's legs would be apart, and she would kneel in between his legs. The bedroom incidents involved defendant sitting in the same manner on the bed. A.F. described defendant's "front private part" as "small, hairy," and that she would have to lick it "like a lollipop" from the "balls to the tip." Defendant told her to do it that way. Woodham asked if defendant's penis was hard or soft, and A.F. described it as "like wood." A.F. said that white stuff came out of it, and it looked like an "unmade kind of food." Defendant told A.F. that girls like the white stuff and drink it. Defendant made A.F. swallow it by squirting it in her mouth though other times he would tell her it was coming. If he told her it was coming, A.F. moved out of the way. A.F. said it looked like "banana juice," and she thought it would taste like banana juice but it did not. Defendant would force his penis all the way in A.F.'s mouth, and A.F. said it would make her cough and gag. During the questioning, Woodham described A.F. as "nervous" but that she openly answered Woodham's questions. Woodham stated that she asked open-ended questions and that she was trained not to ask leading questions.

On cross-examination, Woodham admitted that she did not know whether A.F. spoke to the responding officers that answered Frances's initial call. Woodham admitted that the sheriff's report stated that an officer did speak to A.F. and that she did not question A.F. regarding that prior interview. Woodham also was aware that A.F. spoke to Frances before Frances called police.

Woodham did not ask A.F. about that conversation and did not know what questions Frances asked of A.F. Woodham admitted that she was the only person in the room during her interview with A.F. and that she did not record or videotape the interview. She admitted that although she asked A.F. about "good touches" and "bad touches" and about truth and lies, she did not ask A.F. to provide examples to ensure that A.F. knew the differences.

On August 30, 2001, the court considered the factors set forth in *Idaho v. Wright*, 497 U.S. 805 (1990) and *People v. Jahn*, 246 Ill. App. 3d 689 (1993), and it determined that A.F.'s statements to J.F. and Woodham were reliable under section 115—10 of the Code. The court agreed that admissibility would be determined at the time of trial.

In January 2003, defendant moved to reopen the section 115—10 hearing before the Honorable Michael J. Burke. On February 21, 2003, the following testimony was adduced at the new hearing. Robert Holguin, a criminal investigator with the Du Page County Children's Center, testified that he was involved in defendant's case in 2001 and was involved in defendant's arrest. In December 2002, Holguin was alerted to new statements by A.F. from Assistant State's Attorney Michael Reidy. Holguin arranged for another interview of A.F. at the Children's Center on December 30, 2002. Holguin, Woodham, and A.F. were present in the room; A.F. had just turned 11 years old by this time. He asked if A.F. knew why they were speaking, and A.F. said that she did not want defendant to go to jail for something he did not do. A.F. said a man named "Robert," abused her. She met Robert in the park near her house. Robert approached her and asked her questions about where she lived and what school she went to. J.F. was in the park too but he did not see Robert. A.F. and J.F. then went home. After that, Robert came to A.F.'s home when Frances and defendant left in the morning. A.F. did not want to let Robert into the house but she did anyway.

They then walked into A.F.'s bedroom, and Robert touched her private parts and asked A.F. to suck his private part. A.F. said no, but she stated that Robert made her do it anyway. A.F. indicated that Robert came to her home five times. He always came in the morning. A.F. stated that she told Frances about Robert approximately two weeks earlier while they were driving to Kentucky. Frances asked A.F. if anyone was home, and A.F. said no one was home. Holguin asked A.F. where J.F. was, and she stated that he was asleep. Holguin asked A.F. why she did not implicate Robert from the beginning, and she stated that she did not know.

Holguin asked A.F. to describe Robert, and A.F. stated he was tall, had dark hair, and had a mustache. He was caucasian. She could not remember what Robert's penis looked like although originally A.F. described and drew a picture of defendant's penis when she was asked. On cross-examination, Holguin admitted that he did not interview A.F. until about three weeks after learning about her recantation from ASA Reidy. However, he explained that Frances was not cooperative in scheduling the interview on an earlier date. He admitted that he did not ask A.F. as many specifics regarding the abuse by Robert as A.F. was questioned in 2001. He denied that he attempted to limit the scope of the recantation. He asked A.F. what she told Frances in the car trip to Kentucky to which A.F. stated she said defendant did not abuse her. Holguin did not ask for any further details about their conversation. Holguin asked A.F. when Robert stopped abusing her, and A.F. said after she made the disclosure about defendant.

Woodham testified that during A.F.'s December 30, 2002, interview, A.F. provided very short answers without much details, which was a change in her demeanor from her original interview where she was very open and provided many details. Woodham also spoke with A.F. on February 27, 2001, at her school. Woodham had received two hot line reports that defendant had moved back

into the home of A.F., which was in violation of an order of protection. During the course of that conversation, A.F. stated that J.F. told her to change her story so that defendant would not go to jail. A.F. said that she would not do that. Woodham spoke to J.F. after that to confirm whether he was pressuring A.F. to change her story, and he admitted that he did because he did not believe her. During the December 30, 2002, interview, Woodham asked A.F. about her statements on February 27, 2001. A.F. recalled that J.F. told her twice to change her story. On cross-examination, Woodham admitted that she did not recollect and did not report whether she asked A.F. why she would have lied. She denied that she attempted to control the content and specificity of A.F.'s recantation. Woodham denied that Frances once stopped her in the Du Page County Courthouse on March 5, 2001 and told her about "Rob" and gave her a letter for the ASA, which stated that Frances believed that it was not defendant who abused A.F.

The State requested that the court take judicial notice of the transcripts from the first section 115—10 hearing before Judge Dwyer. The court stated that it reviewed the prior transcripts and a videotaped interview between defendant and Holguin, taken on January 13, 2001.

Frances testified for defendant. A.F. approached Frances in February 2001 and told her that defendant did not abuse her. A.F. stated it was "Rob." Frances did not ask any questions but called A.F.'s psychologist, Sue Yochim. She also informed Woodham on March 5, 2001, at the Du Page County Courthouse. Frances was in the courthouse because she was delivering a letter to ASA Daniel Guerin. Frances allowed Woodham to read the letter and informed her that there was something not contained in the letter, which was A.F.'s statement that Rob abused her. Rob was defendant's brother. Woodham asked why that was not in the letter, and Frances stated that she typed the letter in a hurry. Frances stated that Woodham "yelled at her."

The weekend of December 6, 2002, Frances was taking A.F. to Kentucky to pick up Frances's mother. On the drive, A.F. said that it was not defendant but Rob who abused her. A.F. stated that she met Rob in the park and that she had given Rob her name and address. Rob came to the house when Frances and defendant were gone and J.F. was asleep. Rob took A.F. to her bedroom and made A.F. perform oral sex on him. A.F. said that Rob touched her "private area" too. Frances asked what the man looked like, and A.F. said the man was tall, white, with dark hair and a mustache. Frances went to the courthouse to speak to ASA Reidy or Guerin. This took place around December 8 or 9, 2002. Eventually, Frances and A.F. went to the Children's Center to be interviewed on December 30.

Frances testified that she asked A.F. why she had originally blamed defendant, and A.F. said she wanted somebody to talk to about it so she told J.F., thinking that J.F. would not say anything. Frances believed that A.F. was lying about the abuse; A.F. had lied in the past for attention. Once, A.F. asked Frances how the police knew she was telling the truth but defendant was not. Frances stated that they believed A.F., and they did not know whether defendant was lying but he was willing to take a lie detector test. She asked A.F. if she would take a lie detector test, and A.F. said no. Frances found out later that A.F. was afraid because Rob threatened A.F. and the family.

On cross-examination, Frances testified that she did not believe that defendant abused A.F. Frances knew that defendant confessed on tape but she did not see the tape. She admitted that defendant financially supported her and her children. She acknowledged that she met defendant's brother, Robert, on more than one occasion and that Robert knew where they lived and would not need to ask A.F. A.F. also knew Robert. She acknowledged the letter that she gave ASA Reidy, which pointed out discrepancies that she noted in A.F.'s story. She admitted she failed to include

any reference to A.F.'s naming "Rob." Frances stated that her mind was "boggled" and she left that detail out. She admitted that her mind was not too "boggled" to include in the letter the fact that A.F. once lied about seeing Christmas presents. Frances admitted that she maintains a relationship with defendant because of their son, K.A. Both K.A. and J.F. continued to spend weekends with defendant. She knew that defendant had a new girlfriend and recently had a child with that woman.

The court considered the earlier transcripts from the proceedings before Judge Dwyer and the new testimony. Considering the recantation, the court had to consider the totality of the circumstances to decide whether these recanting statements would be admissible under section 115—10. The court stated that it needed to consider the totality of the facts and circumstances, the entire situation, all the statements made, and whether there was a motivation to lie. The court agreed with Judge Dwyer that there was no motivation to fabricate by A.F. when she made her original statements. Considering the recantation, the trial court noted that J.F. had pressured A.F. to change her story, and the court did not think it was coincidental that A.F.'s recantation came near the eve of trial. Both A.F. and J.F. were upset at the prospect of defendant going to jail, and that was the focus of A.F.'s recantation. The court noted that the investigators noticed a change in A.F.'s demeanor in the recantation, specifically that she was not as open and was not very forthcoming. The court also did not find the details of the recantation very reasonable. Frances's explanation that A.F. made her original statement because she wanted to tell someone so she told J.F. it was defendant was not persuasive to the court. The court noted that even for a nine-year-old's logic it did not make sense to name defendant just because she wanted to discuss the abuse. The court also noted that Frances maintained a relationship with defendant and that J.F. and K.A. continued to

spend weekends with defendant. Frances's letter to the ASA about A.F.'s inconsistencies glaringly omitted the recantation, and she failed to pursue the recantation for months. The trial court found Frances's testimony "incredible at best." Based upon the totality of the circumstances and facts, the court ruled that Judge Dwyer's order finding A.F.'s 2001 statements reliable would stand. The parties agreed that the defense could bring the recantation into evidence.

On June 25, 2003, trial commenced. Anthony Romanelli, a corporal with the Du Page County Sheriff's Office, testified first for the State. Romanelli responded to a report of sexual abuse at defendant's home on January 13, 2001, and spoke with Frances. A.F. confirmed the reason for the call. Romanelli merely asked A.F. whether what Frances had said was true. Romanelli then contacted the Children's Center, and Frances and A.F. proceeded to that facility.

Woodham testified next for the State and did so consistently with her testimony at the previous section 115—10 hearings. A.F.'s drawings of defendant's penis were identified by Woodham and admitted into evidence.

J.F. testified consistently with his testimony during the previous section 115—10 hearing, that A.F. disclosed to him that defendant had abused her. He also admitted that he told A.F. to change her story so that defendant would not go to prison. He recalled that defendant said if he had to go to prison that he would die in prison. J.F. admitted that since defendant's arrest, he continued to spend weekends with him. He admitted that it was possible that Frances stated if defendant went to prison that he would die there. He also stated that he wanted A.F. to change her story because he did not believe her.

Frances testified consistently with her previous testimony during the section 115—10 hearing. In addition, she testified that J.F. informed her of A.F.'s statements about defendant

abusing her. In response, Frances spoke to A.F., contacted the police, and brought A.F. to the Children's Center. That all occurred on the same day. She testified that she did not believe defendant abused A.F. She did not believe her daughter was a liar, but she did not believe that defendant was the perpetrator of the abuse. After the arrest, Frances had no contact with defendant for awhile. However, she resumed frequent contact and accepted gifts and money from defendant. She denied that they were romantically involved any longer. She identified the letter that she wrote to ASA Daniel Guerin, which was admitted into evidence.

Holguin testified that on the night of January 13, 2001, he was called to the Children's Center by Woodham. Holguin decided to interview defendant. Holguin, along with a couple of other investigators, went to defendant's home and began inquiring about the allegations. Defendant showed Holguin where he kept his computer equipment in the basement and told Holguin that was where he would go to watch pornography and masturbate. Defendant said that it was possible A.F. saw him downstairs while he did so and that was how she came up with the allegations. Defendant agreed to go to the police station to be interviewed. He got dressed and asked Holguin if he could call his mother. Holguin said that he could. Defendant called and appeared to be upset. Holguin said that he could speak to his mother if he wanted him to, and defendant handed Holguin the phone. Holguin informed the woman of the nature of the case and that they were simply investigating the allegations made. He did not go into detail about the allegations. She asked if defendant was under arrest, and Holguin said he was not and handed the phone back to defendant, who completed the call.

At the station, Holguin and Detective Tim Garlisch sat with defendant in an interview room. The interview was videotaped, and the tape was played for the jury. On the videotape, defendant initially denied the allegations made by A.F. Defendant acknowledged that he would watch

pornography on the computer in the basement and masturbate, and on one occasion, A.F. came downstairs and caught him. Defendant stated that she later questioned him about what he had been doing. Defendant showed A.F. some websites to teach her about sex but that was the extent of his contact with A.F. He denied ever touching her. Later during the interview, which in total was less than one hour, defendant admitted to some of the allegations. He began to cry and wanted to get "this off his chest." A.F. caught him masturbating in the basement and was curious about what was going on. Defendant admitted then that on two occasions he had A.F. perform oral sex on him and two occasions she used her hand on his penis. He denied ever ejaculating in her mouth or telling her that he was about to ejaculate. He denied making her swallow it. However, he admitted that some pre-ejaculate fluid may have gotten into her mouth. He denied ever touching or rubbing her vagina. He admitted this took place in the basement but on one occasion took place in A.F.'s bedroom. Defendant was remorseful for his conduct but at the same time stated he never forced A.F. to do these things and that she had been willing. Defendant provided the time frame when these events occurred, which was consistent with A.F.'s time frame. After the interview ended, Holguin and Garlisch exited the room, and defendant took a phone call from his mother. Defendant can be heard complaining that Frances had his house, his car, his money, and his son, K.A. Defendant voiced concerns solely about potentially losing his property and K.A. He did not deny or admit anything during the phone call but just said that the situation was "screwed up," and that A.F. described "everything to a T." He stated that A.F. alleged she performed oral sex on him, that he showed her pornographic websites, and explained erections to her.

James Pavelchik, a forensics detective in the Du Page County Sheriff's Office, testified that he took into custody from defendant's home a comforter that appeared soiled with possibly a semen

stain and a carpet sample. Tamara Camp, a forensic scientist with the Du Page County Sheriff's Office Crime Laboratory, testified that the carpet did not contain blood or semen, and the stain on the comforter tested positive for semen. The semen on the comforter did not match defendant's DNA profile.

A.F. testified to the following. At the time of trial, A.F. was 11 years old. In 2001, she resided with Frances, defendant, J.F., and K.A. Prior to defendant getting arrested, A.F. was abused by a man named "Rob." Rob made her "suck his private part." Rob also touched her private part, pointing to her vaginal area. A.F. met Rob in the school park when she was playing there with J.F. She did not know Rob prior to meeting him in the park. Rob asked her a couple of questions, including what her name was, where she lived, and what school she attended. A.F. answered the questions. The next time that A.F. saw Rob was the next day, when he came to her house in the morning. J.F. was home. Frances was dropping defendant off at work, and K.A. was with A.F.'s grandmother. Rob knocked on the door. A.F. answered the door and said hello. Rob wanted to come into the house so A.F. let him in. He said that he needed to speak to her privately and so they went to A.F.'s bedroom. Rob then started touching A.F.'s private part. He asked her to suck his private part. A.F. did and something came out of Rob's private part, which looked "like banana juice." A.F. testified that it tasted "nasty," and she spit it out. Rob touched the inside of her private part, and this made A.F. "uncomfortable." Rob told her that if she told anyone, he would hurt her family. Rob left the house after that. He came back about four or five times, always in the mornings, always when J.F. was sleeping and Frances and defendant were not home. Rob did the same thing each time, and the white stuff would always come out of his private part. A.F. said that the white stuff did not always go in her mouth but sometimes went onto her "covers." Rob always

touched her private part when he came over. Sometimes he had A.F. use her hands on his private part. These occurrences began before the school year started and ended around the time defendant was arrested.

A.F. acknowledged that defendant was arrested and put in jail because of things she had told to the police. She acknowledged that J.F. told her to tell the police that she lied so that defendant would not have to go to prison. A.F. did not want defendant to go to jail. She felt "really bad" that defendant got arrested because of what she said. A.F. was sad that after defendant got arrested, she no longer could see defendant but that her brothers would still see him and get to do things with him. A.F. described Rob as being tall, with dark hair and a moustache, and white. She could not remember what his penis looked like. She identified her earlier drawings of defendant's penis and testified those were pictures of Rob's penis. She identified one picture as being a picture of a "not wood" penis and a "wood" penis. A.F. learned the word "wood" from J.F. She admitted that she told Woodham that the pictures she drew were of defendant's penis. She denied that any abuse by Rob occurred in the basement.

A.F. denied that she demonstrated for Woodham how she would kneel in front of defendant while he sat in a chair and performed oral sex. She did recall speaking to Woodham and telling Woodham that defendant had done this to her. She also acknowledged that she originally told Woodham that the white stuff never got on to her bed. A.F. testified that Rob's white stuff did not get on the bed either. When further questioned, A.F. said it went into her mouth, on her body, or "on my covers." When asked whether her covers were on her bed, she said "sometimes they were, sometimes they weren't, but most of the times they weren't." The covers were usually on the floor. When Rob put his private part in her mouth, sometimes it hit the "bag" in the back of her throat, and

he sometimes would tell her to put it all the way in her mouth but "sometimes he wouldn't." She denied that Rob showed her pornography on the computer. However, A.F. acknowledged walking into the basement one time and seeing pictures of boys and girls on the computer screen. She could not tell what the boys and girls were doing or whether they had clothes on. A.F. did not recall telling Woodham that defendant was watching naked boys and girls, who appeared older, on the computer.

When asked whether she just did not remember the things she told to Woodham, A.F. answered "not really." She did remember that she said defendant did it. A.F. could not remember the date of the first time that she told someone that Rob did this and not defendant. She did recall going to Kentucky but denied that that was the first time she told someone about Rob. The first time was after defendant got arrested and after J.F. told her to lie. A.F. first told Frances when she was in her bed but Frances said that she could not talk about it and for A.F. to get out of her room. She could not recall telling Woodham that the first time she mentioned Rob was during the trip to Kentucky. A.F. admitted that she told J.F. that defendant did these things to her.

On cross-examination, defense counsel asked whether she knew the difference between the truth and a lie. A.F. answered "sometimes." Defense counsel asked "and is this the truth?", to which A.F. responded "yes." Defense counsel did not ask any other questions of A.F.

Defendant testified that he met Frances in 1994 and shortly thereafter began living with her and her two children, A.F. and J.F. In 1997, defendant and Frances had K.A. Defendant financially supported the family, and eventually the family moved to a home in Downers Grove. After his arrest, his relationship with Frances changed but defendant continued to support them financially. He maintained weekly contact with Frances, and he saw K.A. and J.F. on weekends.

Defendant recalled his recorded interview on January 13, 2001. Defendant testified that prior to the commencement of the recording, Holguin told him that they believed A.F.'s allegations and that defendant should come clean to start his life with a clean slate. Initially, defendant denied all allegations of wrongdoing. Defendant explained that he confessed only because it did not seem like the interview would ever end otherwise. Defendant explained that Holguin said he believed A.F. and so it did not seem like Holguin would ever believe him. Contrary to his statements on the videotape, defendant testified that he never had any sexual contact with A.F.

Regarding the cellular phone call to his mother on the video, defendant acknowledged that he stated that he believed Frances was behind this because they recently had been arguing and were planning to separate. Defendant told Frances that he was going to seek custody of K.A. He stated that when his mother asked him whether he did what he was accused of, he answered no.

On cross-examination, defendant admitted that he was not allowed to have contact with A.F. but continued to have contact with J.F. and K.A. and continued to buy things for the boys. He also continued to have contact with Frances, mainly through social activities with the boys. Regarding the confession, defendant told the truth during the first 30 minutes when he denied the allegations. He lied in order to get the questioning to end. The State asked "That was a better option to admit to molesting your nine-year-old daughter by having her perform oral sex on you?". Defendant answered "yes." Defendant acknowledged that Holguin repeatedly asked him if he told the truth in admitting these things and that defendant answered yes. Defendant acknowledged that Holguin specifically asked whether defendant was admitting to things that he did not do merely to end the interview and that defendant denied doing that. He acknowledged that he answered "no, I want it to stop, too, but I'm telling you this. You need to know this. I have to get it off my chest."

Defendant testified that what had actually occurred with A.F. was that she caught him masturbating to pornographic computer videos and later questioned him about what she saw. Defendant proceeded to search for sexual education websites to teach her about sex. He admitted some of the websites dealt with lesbianism and bisexuality.

Detective Garlisch testified for the defense regarding his participation in the investigation, his presence at some of the interviews, and the substance of his reports; his testimony was consistent with that of the other witnesses' testimony.

Arlene Anderson, defendant's mother, testified that she spoke with defendant while he was in the interrogation room on January 14, 2001. Defendant told her that the police were questioning him about abusing A.F. She asked if he abused A.F., and he said "no."

Woodham was recalled to testify about whether A.F. indicated white stuff got onto her bed. Woodham asked her that, and A.F. denied it. She did not inform investigators about a blanket.

Holguin was recalled to testify whether he investigated "Rob," which he did not because A.F. did not provide any details that would have allowed for an investigation. According to Holguin, A.F. simply substituted "Rob" for defendant in her original allegations.

After the jury found defendant guilty of the aforementioned counts, defendant moved for a new trial. Following several continuances due to a change in counsel, the trial court denied defendant's motion for a new trial on October 31, 2003. The matter proceeded to sentencing. Brandy Carlton testified for the State that she dated defendant for approximately 1½ months. They met on the Internet in February 2003. The night before the section 115—10 hearing, Carlton heard defendant speaking on the phone to Frances. She heard defendant discussing dates of certain events, like the trip to Kentucky, with Frances. Defendant was correcting Frances on dates and times. The

next day, Carlton heard a similar conversation. Carlton attended the hearing before Judge Burke that day and heard Frances testify consistently with the information she heard defendant tell Frances on the phone. Carlton admitted that she did not hear defendant telling Frances to lie.

Defendant's mother, Arlene Anderson, testified on his behalf. She did not know her son to get into any kind of trouble from the time he was 17 years old until the time of the sentencing. He did not use drugs and rarely drank. Defendant always maintained a job. Defendant often helped her with her car repairs and sometimes with expenses. He always made sure J.F., A.F., and K.A. had what they needed. He supported them financially whenever Frances needed anything. On cross-examination, Arlene admitted that defendant did not attend Western Illinois University, which he had listed on his resume.

Lois Hogan, defendant's girlfriend, testified that she met defendant in November 2001 on the Internet, and they had a child together. She was living in the apartment above Arlene's apartment. Defendant was a "remarkable father," and supported their child and his other children. He would take the children bowling and help them with model trains and rockets. Hogan was helping defendant with attorney fees and paying Arlene for rent and child care assistance.

In addition to the testimony, the court considered defendant's presentencing investigative report, which included a letter to the court written by defendant. The court stated it had considered all aggravating and mitigating factors but would only discuss a few on the record. The court stated that the criminal sexual assault of a child offenses were punishable by 6 to 30 years' imprisonment. Considering the facts of the case, the court found that A.F. would likely suffer harm from the abuse for the duration of her life, especially at the hands of a man she considered her father. The court also considered what happened to A.F. after defendant was charged and determined what happened to

be "repugnant." From the facts, it appeared that A.F. was being pressured by her family to change her story to aid defendant. The court considered the recantation a "[r]idiculous story made up by a child. And what is the result of extreme pressure being placed upon this extremely young and extremely fragile girl." The court "saw through it," and so did the jury. The court sentenced defendant to 10 years' imprisonment for the sexual assault charges and three years' imprisonment for the sexual abuse charge, to run consecutively as mandated by statute. On February 11, 2004, the trial court denied defendant's motion for reconsideration of his sentence.

On February 2, 2005, this court dismissed defendant's appeal for lack of jurisdiction, after defense counsel had filed a premature notice of appeal and failed to file a new notice of appeal. Defendant subsequently filed a *pro se* postconviction petition, counsel was appointed, and after numerous continuances, the trial court denied defendant's postconviction petition on February 15, 2008, but reserved the issue regarding the motion to suppress decision for a later ruling. The postconviction petition as to the suppression hearing decision was denied on April 4, 2008. Following the supreme court's decision in *People v. Ross*, 229 Ill. 2d 255 (2008), defendant's cause was remanded to the trial court, which determined on March 17, 2010, that under *Ross*, defendant should be permitted to file a late notice of appeal. Therefore, we have jurisdiction to now consider defendant's arguments on direct appeal.

II. ANALYSIS

A. Admissibility of Hearsay Statements Pursuant to Section 115—10

Defendant first argues that the trial court improperly admitted certain hearsay statements of A.F. to Woodham and J.F. under section 115—10 of the Code. Defendant's argument is two-fold; defendant argues: (1) that the State failed to establish the reliability of those statements, thereby

failing to meet the requirement of subsection (b)(1) of section 115—10; and (2) that A.F.'s statements to Woodham were inadmissible because defendant was denied an opportunity to confront A.F. as required under subsection (b)(2)(A) of section 115—10. We disagree with defendant's arguments.

We consider defendant's latter argument first. Defendant argues that A.F. did not confront him within the meaning of the confrontation clause, and therefore there was nothing for defendant to cross-examine and the prior statements to Woodham were inadmissible. Defendant relies upon *People v. Learn*, 396 Ill. App. 3d 891 (2009), for this argument. In *Learn*, the child-victim testified at trial to general information, including that she went to her grandmother's home after school, that her aunt lived in the basement and was married to the defendant, and that she did not like the defendant. *Id.* at 896. The child-victim could not say why she did not like the defendant, and she stated that she went to the police station but did not answer any questions. She stated that she spoke to the assistant State's Attorney the day before, that she was nervous, and wanted her mother. The court recessed, and the child-victim began to cry. When the trial resumed, the ASA asked if she felt better, and the child-victim stated she did not know. The State did not ask any further questions. *Id.* The trial court noted that the witness was crying but that she was competent to testify and would allow cross-examination. *Id.* at 897. Defense counsel asked the child-victim five questions to which she answered "I don't know." This answer was given when asked whether the defendant was mean to her, if she thought the defendant did not like her, and if the defendant told her to go upstairs when she was in the basement, and where the defendant lived. *Id.* When asked whether she ever told her parents a lie about the defendant or if she told her father anything about the defendant, the child-

victim answered "no." *Id.* Pursuant to section 115—10, the State then presented prior statements that the child made to her father and investigators. *Id.*

The majority in *Learn* determined that the trial court erred in ruling that the child-victim was available and testified for purposes of section 115—10. *Id.* at 898. The majority determined that the child did not testify and accuse the defendant and that immaterial or general background "testimony" was insufficient to satisfy section 115—10's requirement that the witness testify at trial. *Id.* at 900. Under its facts, the child did not testify about the charges in its case, and "barely acknowledged the people and places about which she was questioned." *Id.*

We find the facts of *Learn* distinguishable from the facts of this case and accordingly, we find that A.F. did in fact testify at trial and was present to defend or explain her statements. Here, A.F. testified regarding the charges, naming "Rob" as the perpetrator. However, A.F. also acknowledged having named defendant as the perpetrator when she told J.F. and when she spoke to Woodham. She explained that she lied when she named defendant and that she changed her statements because she did not want defendant to go to jail. A.F.'s testimony was far more detailed than the witness in *Learn*. While defense counsel chose to only cross-examine A.F. on the fact that her latest testimony was the truth, we cannot say that A.F. was not present for cross-examination. Sound trial strategy may have caused defense counsel from asking more questions of A.F., but A.F. certainly testified regarding her prior statements. Unlike the child-victim in *Learn*, A.F. testified regarding the actual abuse, provided details about the offenses, and responded to all questions that were posed to her by the prosecutor and defense attorney, including about her prior statements. Therefore, we reject defendant's argument that his right to confront A.F. was denied merely because the State chose to front her recantation on direct examination. Because we determine that A.F.

testified at trial, we need not address defendant's argument pertaining to section 115—10(b)(2)(B), which deals with the admissibility of prior hearsay statements when the witness is unavailable at trial.

Moving on, we next address defendant's argument that the trial court erred in allowing A.F.'s statements to J.F. and Woodham because those statements were not sufficiently reliable. Under *Crawford v. Washington*, 541 U.S. 36 (2004), the confrontation clause poses no restrictions on the admission of hearsay testimony if the declarant testifies at trial and is present to defend or explain that testimony. *People v. Kitch*, 239 Ill. 2d 452, 467 (2011). Here, we determined that A.F. testified at trial, and under *Crawford*, her prior statements were admissible because she was present to defend or explain that testimony. Subsection (b)(1) of section 115—10, however, poses an additional reliability requirement that provides defendant with additional protection above and beyond the confrontation clause. 725 ILCS 5/115—10(b)(1) (West 2008) ("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"); *id.* at 469; see also *People v. Sharp*, 391 Ill. App. 3d 947, 955 (2009) ("Although the 'reliability' test established in *Roberts* and *Wright* is defunct as far as the confrontation clause is concerned, it is reflected in the statutory exception to the hearsay rule set forth in section 115—10 of the Code (725 ILCS 5/115—10 (West 2002))").

When conducting a section 115—10 hearing, a trial court must evaluate the totality of the circumstances surrounding the making of the hearsay statements, including such factors as the child's spontaneity and consistent repetition of the incident, the child's mental state, use of terminology unexpected of a child of a similar age, and the lack of motive to fabricate. *Sharp*, 391 Ill. App. 3d at 955. The State bears the burden of establishing that the statements were reliable and

not the result of adult prompting or manipulation. *Id.* A reviewing court will reverse a trial court's determination pursuant to section 115—10 only when the record demonstrates that it abused its discretion. *Id.* An abuse of discretion occurs when the trial court's ruling is arbitrary, fanciful, or unreasonable, or when no reasonable person would take the same view. *Id.*

Defendant argues that A.F.'s statements to J.F. and Woodham were admitted in error because there was no evidence of what was said to her in prior discussions of sexual abuse. According to defendant, A.F. had at least one discussion with Frances about the abuse before she made statements to Woodham, but no evidence was offered about the substance of the prior discussion. Defendant argues "[w]ithout that evidence, it was impossible for the trial court to determine whether A.F. was questioned by her mother in a suggestive manner or was encouraged to accuse the defendant of sexual abuse." Similarly, regarding A.F.'s statement to J.F., defendant argues that J.F. was "asked nothing at the section 115—10 hearing about what preceded" their conversation. Defendant relies on *People v. Zwart*, 151 Ill. 2d 37 (1992), for this argument.

In *Zwart*, the three-year-old victim made statements to her mother regarding sexual abuse by the defendant. The trial court determined that the victim was not competent to testify, but ruled that the State could have the victim's mother testify at trial concerning the victim's statements made to her on two occasions. The court also allowed in certain statements that the victim made to her therapist. *Zwart*, 151 Ill. 2d at 41. The supreme court held that after reviewing the record, the State did not adequately establish that the victim's hearsay statements were reliable within the meaning of section 115—10. *Id.* at 44. The supreme court explained that the content of the victim's statements tended to support their reliability as they reflected a knowledge of sexual activity which was unexpected and unusual for a three-year-old child. *Id.* The statements were also consistent and

were made spontaneously. *Id.* However, the supreme court held that the timing and circumstances surrounding the victim's allegations failed to provide sufficient safeguards of their reliability. *Id.* Specifically, the court explained that prior to making the statements that implicated the defendant, the victim was interviewed by at least three persons about the alleged abuse: a police officer, a DCFS worker, and a counselor at the hospital where the child was taken. *Id.* The State failed to introduce any evidence regarding the substance of those interviews. *Id.* "Without such evidence, it was impossible for the trial court to determine whether the victim was questioned in a suggestive manner or was encouraged to accuse defendant of sexual abuse." *Id.* at 44-45. The court also noted that it was impossible for the trial court to determine whether the victim's knowledge of sexual activity was due to the sexual abuse or was the result of suggestive interview techniques. *Id.* The *Zwart* court explained that what transpired in those interviews was of particular importance because the victim's age made her susceptible to suggestion from outsiders and because the defendant was unable to question the victim about the interviews at trial because she was deemed incompetent to testify. *Id.* at 45. Regarding the timing of the statements, a delay in reporting abuse or initial denials of abuse "will not automatically render a victim's statements inadmissible under section 115—10." *Id.* at 46. However, under its facts, the supreme court was troubled by the fact that the victim made the statements only after substantial adult intervention. *Id.* Viewing the totality of its facts, the supreme court held that the trial court abused its discretion in admitting the statements under section 115—10. *Id.*

We find *Zwart* distinguishable from the facts of our case. Of utmost significance is the fact that A.F. was available for trial, and defendant was able to question A.F. regarding her testimony and her prior statements which was not the situation in *Zwart*. Since A.F. testified at trial, we find that

the need for " 'particularized guarantees of trustworthiness' is not nearly as compelling as it is in a case where the complainant does not testify." *People v. Jahn*, 246 Ill. App. 3d 689,702 (1993). A.F. was also much older than the victim in *Zwart*, making her less susceptible to adult influence. Additionally, Woodham, J.F., and Frances all testified regarding A.F.'s statements. J.F. testified that A.F. told him about the abuse one day while at home. At the section 115—10 hearing, J.F. stated he was cleaning near the stairs when A.F. came to him and told him what defendant did to her. He stated that defendant was in the basement. A.F. whispered the details to J.F., and J.F. told Frances because he thought what A.F. had told him "seemed nasty." At trial, J.F. testified that A.F. came up the stairs from the basement. He asked her if she had gotten into trouble with defendant, and A.F. said no. She then told him what defendant had done.

We disagree with defendant that there was no evidence of the conversation preceding A.F.'s disclosure to J.F. because J.F. testified that he was cleaning by the stairs when A.F. approached him and told him what defendant made her do. A.F. similarly testified that she told J.F. that defendant did these things. The time, content, and circumstances of A.F.'s disclosure to J.F. demonstrate that A.F.'s statements were sufficiently reliable as there were no adults around, A.F. was whispering, and J.F. was not questioning her about sexual matters. Further, J.F. testified that he did not want defendant to go to jail and did not want to testify at the hearing about what A.F. had told him. We find under these circumstances, the trial court did not abuse its discretion in determining that A.F.'s statements to J.F. were reliable and admissible under section 115—10 where A.F. testified at trial.

Regarding A.F.'s statements to Woodham, we also agree with the trial court that those statements were sufficiently reliable. Defendant argues that A.F.'s statements to Woodham are not reliable because the record does not show what Frances asked of A.F. prior to her interview with

Woodham. While Woodham was aware that A.F. spoke to Frances before Frances called the police, she did not know what questions Frances asked of A.F. Frances testified that J.F. told her what A.F. said that "grossed him out" while she was driving him in her car. J.F. only told Frances that defendant touched A.F. Frances testified that she drove home and spoke to A.F. Frances called the police the same day, and she took A.F. to the Children's Center. While the content of A.F. and Frances's conversation was not thoroughly explored, the record is clear as to what A.F. told J.F. and that Frances did not delay or have extensive or multiple conversations with A.F. Woodham testified that she asked only open-ended questions and was trained not to ask leading questions. She was a DCFS investigator and trained to interview children regarding abuse as she was assigned to the Children's Center. A.F.'s statements to Woodham were consistent with her statements to J.F. and her testimony, with the exception of A.F.'s change in perpetrator.

Unlike in *Zwart*, we again have the relevant persons testifying at trial in this case. There was also no delay or multiple intervening interviews with adults as there were in *Zwart.* In *Zwart,* the child made the allegations only after substantial adult intervention, including three interviews by a police officer, DCFS worker, and a hospital employee. Here, A.F.'s statements were made to her 11 year-old brother and shortly thereafter to her mother and Woodham. A.F. was not questioned as the victim in *Zwart* had been prior to making the actual abuse allegations. See *Jahn*, 246 Ill. App. 3dat 704 (finding the trial court correctly admitted testimony of the child's statements to her therapist and a police officer under section 115—10 and distinguishing its facts from *Zwart* where child was older, testified at trial, made clear and unequivocal statements at trial, was available for cross-examination, and the witnesses that interviewed the child testified at trial and were cross-examined by defendant).

Regarding defendant's argument that he and Frances had broken up, that tensions were high, and that he believed Frances may have influenced A.F.'s allegations, we find this argument speculative at best and there is nothing in the record that indicated Frances encouraged A.F. to make the allegations. To the contrary, there is evidence that Frances and J.F. encouraged A.F. to change her story. Frances's letter to the State's Attorney, and J.F.'s admission that he told A.F. to recant evidenced that A.F. was under familial pressures to recant her statements so that defendant would not have to go to jail. Despite the relevant parties having testified at the section 115—10 hearings and at trial, there was no evidence or testimony that supports defendant's theory that A.F. was originally pressured to accuse him of abuse. Moreover, there was no allegation that A.F. was influenced by Frances *prior* to making the original statement to J.F. The substantive details of the abuse did not significantly change from A.F.'s first statement to J.F. to her statement to Woodham.

Defendant also argues that the trial court should not have sustained the State's objection at the section 115—10 hearing when defense counsel asked Woodham whether A.F. denied abuse at first when Frances asked her whether what she told J.F. was true. Even if that was error, that error was harmless as the trial court was at that point only determining the reliability of A.F.'s statement to Woodham and although A.F. may have initially denied abuse occurred, she had already told J.F. that defendant abused her and within the same conversation with Frances, also complained of abuse, causing Frances to call the police. That A.F. may have initially denied Frances's inquiry would not likely have caused the trial court to determine A.F.'s statements to Woodham, which were consistent with A.F.'s initial statement to J.F., to be unreliable. Furthermore, both A.F. and Frances testified at trial and neither the State nor the defense inquired as to what types of questions Frances asked of A.F. or whether Frances pressured A.F. to accuse defendant. We therefore agree with the trial court

that the timing, content, and circumstances of A.F.'s statements to Woodham were sufficiently reliable to be admitted under section 115—10 where A.F. testified at trial.

B. *Corpus Delicti*

Because we have determined that A.F.'s statements to J.F. and Woodham were properly admitted pursuant to section 115—10, defendant's *corpus delicti* argument fails. Under Illinois law, proof of an offense requires proof of two distinct propositions or facts beyond a reasonable doubt: (1) that a crime occurred (the *corpus delicti*); and (2) that the crime was committed by the person charged. *People v. Sargent*, 239 Ill. 2d 166, 183 (2010). Proof of the *corpus delicti* may not rest exclusively on a defendant's extrajudicial confession, admission, or other statement. *Id.* Where a defendant's confession is part of the proof of the *corpus delicti*, the prosecution must also adduce corroborating evidence independent of the defendant's confession. *Id.* "If a confession is not corroborated in this way, a conviction based on the confession cannot be sustained." *Id.* In this case, the State produced the testimony and prior statements of A.F. into evidence, and thus, defendant's conviction is sustainable.

C. Sentencing

Finally, defendant argues that his sexual assault sentences were excessive because he had a history of steady employment, support of family and friends, and a lengthy term of incarceration would cause a hardship for the family members that he financially supported. It is well-settled that the trial court has broad discretionary powers in imposing a sentence. *People v. Stacey*, 193 Ill. 2d 203, 209 (2000). The trial court's sentencing decision is entitled to great deference because it is generally in a better position than the reviewing court to determine the appropriate sentence. *Id.* The trial judge has the opportunity to weigh such factors as the defendant's credibility, demeanor, general

moral character, mentality, social environment, habits, and age. *Id.* Accordingly, the reviewing court must not substitute its judgment for that of the trial court merely because it would have weighed these factors differently. *Id.* Absent an abuse of discretion by the trial court, a sentence may not be altered on review. *Id.* at 209-10. "[A] sentence within statutory limits will be deemed excessive and the result of an abuse of discretion by the trial court where the sentence is greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *Id.* at 210. Here, defendant was subject to a sentence of 6 to 30 years' imprisonment for each of the sexual assault offenses, which are mandated by statute to be served consecutively. The trial court sentenced defendant to 10 years' imprisonment for each. Defendant argues that he should have received the minimum sentence of six years' imprisonment for each since he had a history of steady employment, financially supported his family, and lacked a significant criminal record. While we agree that these are mitigating factors for defendant, there is no evidence suggesting that the trial court did not consider these factors. Defendant's history was well-documented in the presentencing report, discussed through witnesses' testimony, and argued by defense counsel during the hearing. Defendant disregards the aggravating factors, including the seriousness of the offense. The trial court stated that it found compelling the fact that A.F. considered defendant to be her father and that the abuse was at his hands. It considered the lasting harm on A.F. inherent in defendant forcing her to perform oral sex on him and at times ejaculating in her mouth when A.F. was only nine years old. The trial court further found defendant to lack remorse for his actions while attempting to characterize himself as a decent person who had some "indiscretions." The trial court stated it had considered all of the factors, in aggravation and mitigation, when it determined defendant's sentence, which was within the lower end of the statutory range available to the court. The sentence impose

is not greatly at variance with the spirit and purpose of the law, and is not manifestly disproportionate to the nature of the offense. We therefore find that the trial court did not abuse its discretion, and we have no reason to disturb the sentence imposed.

III. CONCLUSION

For the reasons stated, we affirm the judgment of the circuit court of Du Page County.

Affirmed.