2012 IL App (2d) 110416-U
No. 2-11-0416
Order filed December 6, 2012

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Lake County.
Plaintiff-Appellee,	)	
v.	)	No. 08-CF-4133
ROGER CRUMP,	)	Honorable Theodore S. Potkonjak,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE HUTCHINSON delivered the judgment of the court.
Justices McLaren and Zenoff concurred in the judgment.

ORDER

¶ 1 *Held*: The State proved defendant guilty beyond a reasonable doubt of various sex offenses: despite evidentiary weaknesses, the jury remained entitled to credit the complainant's testimony, which was also supported by DNA evidence.

¶ 2 Defendant, Roger Crump, appeals from 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 criminal sexual assault (sexual penetration where the victim was a family member under the age of 18) (720 ILCS 5/12-13(a)(3) (West 2008)). Defendant contends that the evidence at his jury trial was too flawed

for the State to have sustained its burden of proof. We disagree, and we therefore affirm defendant's convictions.

¶ 3 I. BACKGROUND

¶ 4 At trial, the State's first witness was the victim, O.C., who, at the time of the March 2011 trial, was 15. She testified that she was the oldest of five daughters of defendant and Rebecca Crump. Her sisters were then 13, 11, 10, and 4 years of age. In October 2006, her mother had gastric bypass surgery. The recovery went badly, and she spent approximately two years mostly in bed or in her bedroom. The victim took on many household responsibilities: as she put it, "I had to play mother."

¶ 5 The family lived in an upstairs apartment at Lake Court in Waukegan. At the start of the victim's seventh-grade year, she, her mother, and her sisters went to live with her grandfather in Zion. They moved to the downstairs apartment in the Lake Court building after a year, and defendant began living there too.

¶ 6 In the fall of 2006, defendant started having sex with the victim, "put[ting] his penis in [her] vagina." This occurred "[d]aily." It stopped when she moved to her grandfather's house, but resumed when they moved to the downstairs apartment.

¶ 7 He first had sex with the victim approximately two weeks after her mother had surgery. Late at night, defendant walked into her room naked; his penis had "bumps all over it." He told her not to be afraid. He pulled her pants down, put his penis in her vagina, and told her she "had better not" tell anyone; if she told anyone, he would kill her.

¶ 8 On another occasion, the victim and defendant took a walk though woods late at night. She knew it was 2008 because they were living in the downstairs apartment. She also remembered that

it was warm outside. Defendant pulled down her pants, lay on the ground, unzipped his pants, and pulled her down on top of him, and "made [her] bounce on him." She said that she had seen "sperm," which was white and watery, come out of his penis. They had been on their way to her aunt's house, but defendant was drinking and passed out.

¶ 9 Another specific instance the victim remembered took place when she was living in the upstairs apartment. Defendant told her to go to the basement of the building to get the laundry. He came up behind her, unzipped her pants and pulled them down, and "laid [her] on the ground." He began having sex with her and told her that she "better not get pregnant." He told her that if she moved he would "bang [her] head on the ground." Afterward, he told her to "Go wash off." She took a shower and saw what she identified as sperm come from inside her onto a towel.

¶ 10 Yet another time, the victim was sleeping in her room when defendant called her into his room. The television was on and was showing a man and a woman having sex. She left, and he followed her back to her room. He was angry with her for not staying in the room, but she told him that she did not want to watch "it." He grabbed her by an arm and pulled her into the living room, put her on the couch, and had vaginal sex with her. He told her to go wipe up, that she "better not get pregnant," and that she should sleep in the living room so that she would not wake up her sisters. Again she saw what she identified as sperm when she went to wash up.

¶ 11 At one point, the victim thought that she was pregnant. Defendant told her to tell her mother that she was "experimenting with boys around the neighborhood." Defendant had tried to force her into oral and anal sex when they were living in the upstairs apartment. He told her to bend over. He tried to put his penis "in [her] butt"; she screamed. They had vaginal sex instead. He also

sometimes forced her to put his penis in her mouth. He ejaculated in her mouth, and she "spit it out." One time, defendant covered his penis with a kitchen garbage bag before he penetrated her.

¶ 12 The victim had a pair of gray fleece pajamas with a snowflake pattern. She got them in the summer of 2008, when they were living in the downstairs apartment. Defendant had used them to wipe off his penis after having sex with her. She had last seen them in the apartment.

¶ 13 The victim first told someone about the events when the family—not including defendant—moved in with her grandmother.

¶ 14 On cross-examination, the victim said that she had shared one bedroom in the upstairs apartment with her sisters. She and two sisters usually slept in one bed, but the other two sisters would sleep in her parents' room. In the downstairs apartment, she had different rooms at different times, but shared whatever room she had with her baby sister; both slept on the floor. Two sisters had a bedroom with bunk beds, and the other sister slept in her parents' room.

¶ 15 Her cousin stayed a few days a month to help with her mother. When they were living in the upstairs apartment, her aunt and uncle were living in the lower apartment, so she saw them every day. They had five children living with them.

¶ 16 The first time defendant had sex with the victim, it was night, but none of her sisters were in the room. She said that they "could have been at" her grandfather's house. She was scared and was not paying attention to how what happened felt, but it hurt.

¶ 17 Defendant had once tried to stab her mother, and the victim had called the police. She had also contacted DCFS "[b]ecause [she] didn't feel that the apartment was a safe environment for [her] and [her] sisters or [her] mom." She felt that it was unsafe because defendant "put fear in all our hearts."

¶ 18 The victim agreed that she had told the police that she had kept a diary of the times defendant had sex with her. She knew that the police had never found it. She further agreed that she had told police that she had a less comprehensive log, titled "[*O*]*'s Horrors*," on a computer that the family had when they lived in the downstairs apartment. On July 21, 2007, defendant smashed the monitor for that computer with a hammer because he was angry with his wife. Glass from the monitor got into the victim's eye, and she had to go to the hospital.

¶ 19 The victim first talked to a DCFS worker in August 2008. She had told family members about physical abuse but not the sexual abuse.

¶ 20 The victim admitted that she had called defendant's lawyer (not trial counsel) and left a message saying that the abuse had never happened. She said that her grandmother had "made [her] feel bad about it." However, on redirect, the victim explained that her grandmother had been with her when she made the call and had pressured her to make it. The victim also told a case worker, Emily Husseini, and two others that the abuse had never happened. However, on redirect, the victim testified that her cousins and grandmother had persuaded her that defendant did not deserve to be in jail. This was shortly after she left the message with defendant's lawyer.

¶ 21 The victim had told one of her cousins that she thought that she might be pregnant, but she did not remember which cousin.

¶ 22 The victim often observed bruising on her mother, but had only once seen defendant hit her mother. Her mother and her sisters were always in the apartment at night. She got the gray pajamas in the summer of 2008, but she stopped wearing them. After that, they lay on the floor.

¶ 23 Rebecca Crump, the victim's mother and defendant's ex-wife, testified that, at the time of her gastric bypass surgery in late October 2006, she and her family were living in the upstairs

apartment at Lake Court. After the surgery, she was in a great deal of pain and could not keep food down; she mostly stayed in bed and slept. The victim, who was 11 years old at the time of the surgery, had to take care of her sisters for the next year and a half. Defendant also lived in the upstairs apartment, but "he was gone a lot." In October 2007, Rebecca moved with her daughters to live with her father so that he could help them. They moved back to Lake Court in April 2008, but they were living in the downstairs apartment. The victim was 12 years old when they moved back. Defendant was living with them and Rebecca was out of bed much more of the time.

¶ 24 The victim got the pajamas in June 2008 and wore them often. They were adult-sized. They remained in the "house" when the family left. "Initially," Rebecca and her daughters took "nothing" with them when they left the apartment.

¶ 25 While the family was living in the upstairs apartment, Rebecca and defendant shared a bedroom with the youngest two girls. The older three had the other bedroom with one bed and no other furniture, although there may have been a television. She never heard or saw anything that led her to believe that sexual abuse was occurring. Defendant did hit her; this left holes in the walls. Between April 2008 and August 2008, she thought that the police had come to the apartment 30 or 40 times. She later learned that a relative had given the victim a cell phone, and she thought that the victim was the one who had called the police on some occasions. She thought that the neighbors might also have called them as well. The police never arrested defendant or removed him from the house.

¶ 26 Defendant was drinking every day and sometimes using crack. The children were afraid of him. Rebecca also drank, but less. She and the victim were close; the victim would talk to her every day. The victim never mentioned the sexual abuse, and her accusations surprised Rebecca initially.

On January 12, 2009, Rebecca wrote a letter to defendant in which she said that she did not believe the victim. She was "terrified" of defendant, who had threatened to kill her if she left. She believed that the victim had not talked to anyone about the sexual abuse until after they were out of the Lake Court apartment in August 2008. The victim called DCFS in August 2008, and that was when they left the apartment.

¶ 27 Detective Timothy Ives of the Waukegan police department was the lead investigator on the case. On September 26, 2008, he executed a warrant for the search of the lower level apartment. He found it in disarray. Defendant and Nicole Scott, his girlfriend, were living there along with Scott's two children, who had the second bedroom. Ives and the other officers with him collected a pair of adult-sized pajamas on the floor behind a bedroom door—the victim recognized them as the ones she had worn. This was not the bedroom that the victim had occupied.

¶ 28 The officers also found two computers. The victim had told Ives that she had kept something like a diary on one of them, that it had 40 to 50 entries, and that defendant had smashed the monitor when he saw her typing. She had told him that the diary was created with WordPad.

¶ 29 The victim had further told Ives that she had another diary in a black notebook. Although Ives found notebooks with her writing in them, none of them were black.

¶ 30 Ives also collected samples for DNA testing from the victim, defendant, and Scott. Another officer collected a sample from Rebecca.

¶ 31 Sarah Owen of the Northeastern Illinois Regional Crime Laboratory testified that she tested the pajamas for the presence of semen. The pajamas had "numerous stains." Some of these were positive for "the possible presence of semen." A selection of those tested positive on a confirmatory test for the presence of semen.

¶ 32 Michelle Thomas of the Northeastern Illinois Regional Crime Laboratory testified to her DNA testing of the stains. The DNA in the stains matched that of defendant. Testing of a nonsperm fraction from three stains did not produce a complete profile. However, the result did show contribution from "at least two individuals." The DNA in that fraction was consistent with the DNA of both defendant and the victim and inconsistent with that of Rebecca Crump. Kenneth Pfosser, also of the Northeastern Illinois Regional Crime Laboratory, testified that the results also excluded Nicole Scott as a source of the nonsperm fraction of the stains. With that evidence, the State rested.

¶ 33 The trial court denied defendant's motion for a directed finding.

¶ 34 Defendant's first witness was Dean Kharasch, an investigator for the Lake County State's Attorney's office, in the cybercrimes division. He testified that he had tried to find the WordPad document "[*O*]*'s Horrors*" on the seized computer. He searched for any document with that name, and for documents containing the victim's first name and words such as "horror," "rape," and "sex." On cross-examination, he noted that, because of the computer's small hard drive (10 gigabytes), it was plausible that, had someone deleted the victim's file, newer files would have physically overwritten it in the ordinary use of the computer.

¶ 35 Felicia Paxton, the victim's cousin and defendant's niece, testified that she lived in Tennessee and had visited the victim after the police had become involved in the case. The victim told her that the situation with her father was really bothering her; "she didn't know it was going to be taken this far." When the victim talked about her father, she became "tearful." The victim also told Paxton that "she was going to try to call her case worker and her father's lawyer and the police because she said she was scared to because she didn't want them to call back, and then her mother and grandparents would know that she made a call." She said that she was going to make the calls

because "she started feeling guilty"; "[s]he wants this all to be over." Paxton related the conversation with the victim to defendant's lawyer, apparently on her own initiative.

¶ 36 Brittany Thompson, also the victim's cousin and defendant's niece, had been to the Lake Court apartment once or twice a week from 2006 through 2008. She went as much as she could because she considered herself a "big role model" for the victim and her sisters. In October 2008, the victim called her over to where she was staying with her grandmother and told her that defendant had been raping her. Thompson asked her how long it had been happening and why she had not said anything about it. The victim said at first that it had been happening for a year, and then switched to a year-and-a-half. She had no answer for why she had not said anything.

¶ 37 Thompson described the victim's demeanor as "emotionless." She also testified that the victim had described having been pregnant and having miscarried when defendant punched her in the stomach. Thompson admitted that, when she wrote a statement for the police, they had told her to include everything important, and she had not included the victim's mentioning that she had been pregnant. The first written statement in which she put the victim's pregnancy claim was one she made for defense counsel. However, on redirect examination, she said that she felt that the police had pressured her and had not given her a chance to put everything in her statement.

¶ 38 Thalia Crump, defendant's sister-in-law, had lived in the downstairs apartment at Lake Court. Her five children and defendant's children were in and out of the two apartments all day. The victim had a very close relationship with her and had told her that defendant had been drinking, using drugs, and hitting Rebecca. Thalia had also noted defendant's drinking and drug use and had noticed that Rebecca had bruises sometimes. Until August 2008, the victim never mentioned any sexual abuse. Sometime later, the victim told her that defendant had had sex with her every day for about a year

and had also called her into the room when he was having sex with Rebecca and had "felt [the victim's] chest." Thalia then had spoken to Rebecca, who said, " 'I can't believe [the victim] would tell you something like this.' " She agreed that she knew that defendant was a violent person and that he beat Rebecca. She had gone to police and DCFS about those problems.

¶ 39 Nicole Scott testified that defendant had been her boyfriend for about two years; she knew he was married. She moved into the apartment at Lake Court (this would have been the lower one) and tried to clean it a bit by throwing many items into one bedroom. She had seen defendant use random items of clothing from that bedroom to wipe himself after sex. She had been to prison for felony misuse of a credit card.

¶ 40 Adell Aaron Crump II (Aaron), Thalia's husband, testified that he was aware that defendant was violent. He also had seen that the conditions in the upstairs apartment were unsanitary: dishes were unwashed, the baby did not have her diapers changed, and the other girls smelled bad. He had tried to get the police, DCFS, and the school to intervene. The victim expressed her concern about defendant to Aaron but had not told him about the sexual abuse:

> "She told me she was scared all the time. She told me she thought her dad was going to hurt her mom, and she asked me what I could do. And they would come to me and ask me like when things got violent, they would run downstairs to my apartment, and I would run upstairs to try to calm [defendant] down and calm the situation down."

Further:

> "I realize that we had tried DCFS and nothing happened. We tried the police. The police told us unless Becky came forward and reported the abuse, nothing could be done."

He thought that the victim saw the sexual abuse allegations as a way to protect her mother and sisters. He also stated his belief that Rebecca abused painkillers heavily in the aftermath of her surgery.

¶ 41 Rebecca Singzon, a registered nurse at Midwestern Regional Medical Center, testified that she was trained as a sexual assault nurse examiner and that she did a sexual-abuse examination of the victim. The victim's hymen was intact, with no evidence of tearing or trauma and "[n]o signs of physical abuse that [she] could see." That examination included use of a speculum. On cross-examination, she agreed that lack of damage to the hymen was not inconsistent with penetration. The defense rested after the State's cross-examination. Singzon could not testify until she refreshed her recollection from her notes.

¶ 42 The jury instructions included the legal definition of sexual penetration. Following deliberations, the jury found defendant guilty of criminal sexual assault and two counts of predatory criminal sexual assault of a child (penis in mouth, penis in vagina).

¶ 43 On March 22, 2011, defendant filed a posttrial motion in which he asserted that the State's evidence was insufficient to support the verdicts against him. The trial court denied the motion. It sentenced him to two 25-year terms of imprisonment on the two predatory-criminal-sexual-assault-of-a-child convictions and a 15-year term on the criminal-sexual-assault conviction, the sentences to be served consecutively. Defendant filed a timely motion to reconsider the sentences and, when the trial court denied the motion, filed a timely notice of appeal.

¶ 44 II. ANALYSIS

¶ 45 On appeal, defendant again asserts that the evidence was insufficient to sustain the convictions. He points to the medical examination of the victim, her apparent partial recantations,

her implication that hundreds of assaults had gone unnoticed in a small apartment with seven residents, and the police's inability to corroborate the victim's descriptions of her diaries.

¶ 46 "[T]he State carries the burden of proving beyond a reasonable doubt each element of an offense. [Citations.] Where a criminal conviction is challenged based on insufficient evidence, a reviewing court, considering all of the evidence in the light most favorable to the prosecution, must determine whether any rational trier of fact could have found beyond a reasonable doubt the essential elements of the crime. [Citations.] 'Under this standard of review, it is the responsibility of the trier of fact to "fairly *** resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts." ' [Citations.] Therefore, a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of evidence or the credibility of witnesses. [Citations.] A criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory as to create a reasonable doubt of the defendant's guilt. [Citations.]" *People v. Siguenza-Brito*, 235 Ill. 2d 213, 224-25 (2009).

¶ 47 The jury might have had questions that neither the State nor the defense addressed directly. For example, the jury might have questioned whether an intact hymen was medically consistent not just with some penetration, but with the hundreds of instances of intercourse described by the victim; whether the victim's sisters noticed anything consistent with the abuse; whether the recovered computer contained any files with dates recent enough that they might have overwritten the deleted "[*O*]*'s Horrors*"; or whether any files had been deleted on that computer. Despite any unanswered questions, however, our function is not to retry a defendant when considering a sufficiency of the

evidence challenge. *In re Jonathon C.B.*, 2011 IL 107750 ¶ 59 (citing *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007)).

¶ 48 With respect to the medical evidence, Singzon's testimony that an intact hymen was not inconsistent with penetration did not necessarily address the question of whether the medical finding was consistent with the victim's testimony. Singzon, as the jury learned, was trained as a sexual assault nurse examiner, and thus was someone likely to know the word "penetration" as it is used in the realm of sexual assault. Further, the jury received an instruction containing the definition of "sexual penetration": "[t]he term 'sexual penetration' means any intrusion, however slight, of any part of the body of one person into the sex organ of another person, including but not limited to fellatio." The jury was aware that Singzon's examination of the victim included nonsexual intrusion—penetration—into the vagina with a speculum, evidently with no effect on the hymen's condition. The jury was not instructed that Singzon's testimony was an opinion on the matter of whether a person could have experienced multiple instances of vaginal intercourse and retain an intact hymen.

¶ 49 That is not the fatal flaw in the evidence that defendant suggests it is. It is the province of the jury to resolve conflicting evidence. *People v. Washington*, 2012 IL 110283, ¶ 60. Also, " 'the weight to be assigned to an expert opinion is for the jury to determine in light of the expert's credentials and the factual basis of his opinion.' " *People v. Swart*, 369 Ill. App. 3d 614, 633 (2006) (quoting *Snelson v. Kamm*, 204 Ill. 2d 1, 27 (2003)).

¶ 50 The jury could have concluded that no true conflict existed. See *People v. Jackson*, 2012 IL App (1st) 100398, ¶¶ 40-41 (upholding defendant's convictions of aggravated criminal sexual assault and aggravated criminal sexual abuse in which physician testified that it was "quite normal for a

child sexual assault victim to have an intact hymen because the sexual assault [did] not necessarily involve a finger or penis going into the vagina up through the hymen"). Furthermore, nothing required the jury to treat Singzon's medical observations as infallible. Her description of the victim's hymen as "intact" was opinion based on direct observation. We note that such observations can and do go wrong. In *Miles v. Conway*, 739 F. Supp. 2d 324, 341-42 (W.D.N.Y. 2010), an abuse victim's treating physician and the prosecution's medical expert gave entirely contradictory statements about the condition of the hymen of the victim. The federal court, in the defendant's *habeas corpus* case, noted that this was a conflict in the evidence that was properly submitted to the jury. *Conway*, 739 F. Supp. 2d at 341-42.

¶ 51 Another way to explain this second possibility is to say that Singzon's testimony was not of such necessary weight that the jury would have had no choice but to discount most of the other evidence. A reasonable jury could have found the victim and her testimony highly credible. See *Jackson*, 2012 IL App (1st) 100398, ¶ 41. The DNA evidence corroborated a portion of her testimony as well. Moreover, the other claimed flaws to which defendant points are, in reality, consistent with an opportunity to offend. The evidence reflected that defendant had a general sense of whether a victim would complain. For example, he could beat Rebecca; Rebecca would not make a complaint; and he knew to be unavailable before the police arrived.

¶ 52 That Rebecca was not aware of defendant's abuse of the victim is consistent with this. The victim testified that the sexual abuse began a few weeks after Rebecca had her surgery. Although the jury might have understood the timing to have been in part the result of Rebecca being sexually unavailable to defendant, it could also have reasonably concluded that Rebecca's reduced awareness of what was happening around her might have also been a factor. Rebecca described herself as

sleeping much of the day during her recovery. She also said that she was drinking regularly and was in pain. Aaron, who was living downstairs, believed that she was abusing pain medication. The evidence is consistent with Rebecca having been somewhat less than completely aware when defendant was abusing the victim. The jury could also conclude that such a lack of awareness could explain why Rebecca did not remember the incident in which defendant called the victim into the bedroom when he and Rebecca were having sex and "felt [the victim's chest]." This would imply some limit-testing by defendant, which is not implausible.

¶ 53 That the victim's siblings did not alert anyone to the abuse does not alter our analysis. Defendant frightened the victim; he may have frightened her sisters as well. The sisters may or may not have been aware. The record reflects that no one seemed to have asked them.

¶ 54 The victim's recantation phase is another aspect of the evidence that the jury could reasonably view as of a piece with the rest. The victim's testimony suggested a strong protective feeling toward her family, not excluding her father. She could not protect her mother and sisters without harming her father. Thus, the jury might not have been surprised to see the victim pulled in two directions regarding disclosure. Of course, defendant was not wrong to suggest that the victim's protective feelings might have provided a motive to fabricate a case. But such a motive is merely something for the jury to weigh. Moreover, although the chronology is not completely clear, the evidence reflected that the victim began to tell others of the sexual abuse only after something—DCFS action, by the implication of some testimony—got the victim, her mother, and her sisters away from defendant.

¶ 55 The final discrediting factor that defendant suggests is the inability of the police to find the victim's notebook and computer diaries. This evidence is at least as consistent with the State's

theory that defendant tried to cover his tracks as with defendant's theory that the victim fabricated the story to protect her family. The victim's telling the authorities about diaries that did not exist makes no particular sense. Defendant's getting rid of incriminating evidence does make sense. Moreover, the search of the apartment took place long enough after the victim and her family left that Nicole Scott had already moved in with two of her children. Thus, defendant had some time to look for incriminating evidence. The victim's testimony suggested that defendant had some idea that she had a diary that incriminated him; she testified that defendant broke the computer monitor when he saw her writing. The pajamas were, despite awareness of DNA evidence, a more subtle piece of evidence—and defendant may have assumed that the clothes would have been laundered.

¶ 56 Although the evidence may not have been of the strongest caliber, we decline to say that the State's evidence was so unreasonable, improbable, or unsatisfactory as to support a reversal of defendant's convictions. "[T]he question is not whether a rational jury could have acquitted defendant; the question is whether a rational jury could have convicted him." *People v. Milka*, 336 Ill. App. 3d 206, 230 (2003). When the evidence in this case is viewed in the light most favorable to the prosecution, a rational trier of fact could have found defendant guilty beyond a reasonable doubt of each crime for which he was convicted.

¶ 57 III. CONCLUSION

¶ 58 For the reasons stated, we affirm the judgment of the circuit court of Lake County.

¶ 59 Affirmed.