2013 IL App (2d) 120986-U
No. 2-12-0986
Order filed October 17, 2013

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. TYNELL DIXON, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 08-CF-1067 Honorable Timothy Q. Sheldon, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices Hudson and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence identifying defendant as the perpetrator of the crimes against R.T. was sufficient to sustain those convictions. The trial court did not abuse its discretion in admitting expert testimony concerning child sexual abuse and disclosure. The statute mandating a life sentence does not violate the proportionate penalties clause or constitute cruel and unusual punishment. Affirmed.

¶ 2 Following a jury trial, defendant, Tynell Dixon, was convicted of eight counts of predatory criminal sexual assault of a child, a class X felony, (720 ILCS 5/12-14.1(a)(1) (West 2008))[1] (four involving victim T.T., and four involving victim R.T.) and three counts of aggravated criminal

[1]Renumbered 720 ILCS 5/11-1.40(a)(1) (West 2012).

sexual abuse, a class 2 felony (720 ILCS 5/12-16(c)(1)(i), (g) (West 2008)) (two involving T.T., and one involving R.T.).[2] The trial court denied defendant's post-trial motions, and sentenced him to eight concurrent mandatory terms of natural life for the predatory criminal sexual assault convictions and three concurrent five-year discretionary sentences for the aggravated criminal sexual abuse convictions. 720 ILCS 5/12-14.1(b)(1.2) (West 2008).[3] Defendant moved to reconsider the sentence, and his motion was denied. Defendant appeals, arguing that the: (1) evidence was insufficient to sustain his convictions as to victim R.T. because defendant was not identified as the perpetrator of the sexual offenses against R.T.; (2) trial court abused its discretion in admitting expert testimony concerning child sexual abuse and disclosure; and (3) mandatory natural life sentences for predatory criminal sexual assault of a child involving two victims, as imposed here, are unconstitutional. We affirm.

¶ 3 I. BACKGROUND

¶ 4 At trial, the State first called Laurie Riehm, a licensed clinical social worker, whose testimony concerning child sexual abuse and disclosure is challenged on appeal. Defendant objected to Riehm's testimony. At sidebars, defense counsel argued that Riehm did not interview the alleged victims and that he anticipated that Riehm would testify about child sexual abuse accommodation syndrome, which would invade the jury's province. Defendant further argued that the syndrome is actually a therapeutic tool used with abuse victims and assumes that abuse has already occurred. Defendant noted that the jurors had already been informed that a child victim of sexual abuse may not, due to fear, talk about it right away. Accordingly, in defendant's view, the jury understood the

[2]Renumbered 720 ILCS 5/11-1.60(c)(1)(i), (g) (West 2012).

[3]Renumbered 720 ILCS 5/11-1.40(b)(1.2) (West 2012).

issue and expert testimony was not necessary. Allowing Riehm to testify about the syndrome would effectively have her "vouching for [the victims'] credibility." The State responded that it was not going to question Riehm on the syndrome; rather, the State intended to call her as an expert witness on child abuse. The trial court noted that the syndrome is not commonly known and is "beyond the kin [*sic*] of the average person." Further, the court noted that the fact that Riehm did not interview the alleged victims was a subject for cross-examination. Accordingly, it allowed her to testify as to the syndrome based on her knowledge and expertise in the psychology field.

¶ 5 Continuing, Riehm testified that she has been a social worker for 26 years and works primarily in the area of childhood trauma, most of which involves child sexual abuse. In her practice, she sees about 50 to 75 children per year, about 40 to 60 of whom have issues related to sexual assaults. She has previously been qualified (15 to 20 times) as an expert in the areas of child sexual abuse and child sexual abuse accommodation syndrome (initially described by Roland Summit). Addressing the syndrome, Riehm acknowledged that Summit, the original author, has said that the syndrome has been overused or used incorrectly. The trial court found Riehm to be an expert as to child sexual abuse and child sexual abuse accommodation syndrome issues.

¶ 6 Riehm testified that she did not speak with or meet R.T. or T.T., nor has she read any reports concerning their cases. Her testimony relates to her experience and training. She testified that the factors that prompt a child to disclose sexual abuse or assault include the child's development (*i.e.*, younger children are more likely to make an accidental or vague disclosure), the characteristics of the abuse, the child's support system (or lack thereof), and an escalation or change in the environment. Where the offender is a family member, Riehm's observations (consistent with the research) suggest that this decreases the likelihood of disclosure and might increase the likelihood

of recantation. "Children in those circumstances might be motivated by love, as much as they are motivated by fear." Research shows that 35 to 37% of children will make an outcry after 48 hours after the initial incident of molest, but (presumably other research shows) about 75% "have not made a disclosure up to a year after the initial incident of molest. It is common for a victim in a family setting not to disclose abuse to other family members, siblings, or other people in the home."

¶ 7 According to Riehm, secrecy is involved in family-offender situations. There might be explicit or implicit threats. Because the act takes place in private and there is an imbalance of power between the child and the offender, children have imagined and real fears about what will happen if they disclose the abuse. In cases where the abuse is occurring in conjunction with physical violence, this increases the child's fear of disclosure. If there is a disclosure to a close family member and that disclosure is not believed or acted upon, research (and her observation) suggests that the child is more at risk for recantation or minimizing their disclosure. Riehm explained that the abuse is both a physical and psychological experience for the child and that some children feel confused about who is responsible for the abuse. If they tell another adult about it and the adult does not affirm the experience as abusive, the child becomes more confused and less likely to repeat those disclosures.

¶ 8 Riehm testified that the term "compliance" in these cases refers to a type of learned helplessness, where the child does not fight back when abused because his or her attempts to escape are met with further harm; they come to believe that there is no sense in trying to escape the abuse. This can make the abuse more tolerable. Riehm could not answer whether compliance is the most common behavior in children, but stated that she has often observed it. Children's coping

mechanisms include trying to control different aspects of the abuse or dissociation; that is, trying to concentrate on something else.

¶ 9 Once a victim decides to disclose abuse, it is not uncommon for them to disclose it piecemeal to test the reaction that they get. Children will delay disclosing, in her experience, because they: are afraid that some explicit threats the offender has made could occur; are embarrassed; or do not want the offender to suffer the consequences.

¶ 10 Children with post-traumatic stress disorder avoid reminders of traumatic events and may experience intrusive symptoms, which include nightmares, inability to concentrate, and flashbacks. For example, the pattern or intensity of the dreams may be very unusual for a child, but they might not have the ability to relate the dreams to a real event the way that an adult can. Other symptoms include hyper-arousal or adrenalin rush; for example, some children may respond to every reminder of traumatic events and appear hyperactive. However, others become under-responsive "in order to psychologically survive; they might look unusually spaced out or tuned out to their environment." Riehm testified that most people in her field do not believe that the current diagnostic criteria for post-traumatic stress disorder adequately describe the child's experience of post-traumatic stress; however, the categories "are still broadly recognized, even if they look slightly different for children."

¶ 11 Addressing a scenario where someone else disclosed the child's abuse, Riehm testified that the child could feel that he or she has lost any control they had over their circumstances and resent it. Others might feel relieved. It is not uncommon for a child victim to disclose to one person and then minimize or not disclose to another person. Children who are violated over a longer time have more coping mechanisms that they have practiced to distance themselves from the reality of what

is taking place. "They are more practiced at not telling." But, it depends on the individual child. The longer the time, also, the more difficult it is to recall details. This is also a reason that piecemeal disclosure may occur.

¶ 12 A younger child oftentimes tries to give a clue, such as asking the non-offending caregiver not to leave or go to work. Where there is more than one victim of sexual abuse in a family, the siblings sometimes try to protect one another or believe they have a secrecy pact to keep the family together. Some siblings talk about it with each other, and some do not. Where one sibling has observed another sibling's abuse, it affects his or her disclosure. For example, a younger sibling might observe that the older sibling did not disclose and, so, he or she will not disclose. Addressing an example where there are children ages five and seven at the time of the incidence and they disclose four or five years later, Riehm testified that, in her experience, such children have spent a long time weighing the impact of the event; some may have tried to push away the memories and, later, something happens and the memories return, while others may have been thinking about what will happen if they disclose.

¶ 13 Addressing the absence of some details when a child discloses abuse, Riehm testified that the child might have dissociated the abuse and, thus, cannot recall details. The passage of time can also account for lack of details. Children who have been abused over a prolonged period are not capable, most of the time, of describing all of the details in a single interview. Very young children, further, do not know what constitutes an important detail and will not tell you something unless you ask. These children who have experienced prolonged abuse have "practiced pushing down the memory of those details" and do not recall some of the details immediately. Sometimes, they get a sort of burst of details during an interview.

¶ 14 Riehm stated that it is difficult to predict how children will behave in a courtroom setting, thus, there is no "norm." However, for children who have not seen the offender since the time of their first disclosure, attending court proceedings is "quite complicated" for them; they may believe that they are the ones who "got the offender in trouble."

¶ 15 At the conclusion of Riehm's direct examination, defense counsel moved to strike her testimony, arguing that it invaded the province of the jury because she assessed the victims' credibility and anticipated any discrepancies, forgetfulness, and explanations. Further, counsel argued that the jury would be unduly prejudiced. The State responded that Riehm's testimony addressed issues outside the purview of the general public's knowledge based on her experience as a social worker and further argued that she did not bolster the victims' testimony. The trial court denied defense counsel's request, finding that Riehm testified based on her expertise, how children may react to abuse, and that all children react differently.

¶ 16 On cross-examination, Riehm testified that recantation can occur both when the perpetrator is still abusing the victim and when he or she has stopped engaging in such conduct.

¶ 17 Tabitha Farmer testified that she has six children. R.T. (age 11); T.T. (11); Frederica Perry (10); Takelia Farmer (8); Tyiona Dixon (6); and Tynell Dixon (six weeks). Rorick T. is T.T. and R.T.'s father. Frederick Perry is Frederica Perry's father. Defendant is Takelia, Tyiona, and Tynell's father; he adopted Takelia. Farmer testified that defendant, age 31, has been her boyfriend for nine years.

¶ 18 Farmer is currently unemployed. She lives in a Section 8 (*i.e.*, rent-subsidized) apartment in Carpentersville. She signed her lease in December 10, 2004. The apartment has two levels, with three bedrooms upstairs and a front room and kitchen on the lower level. Takelia and Tyiona's room

contains a futon bed (it was formerly R.T.'s room and contained bunk beds when he slept in it). Frederica sleeps in the back room. T.T. and R.T. lived with Farmer until 2007, when Farmer started working at Walmart; the children went to live with their paternal grandmother, Rorick T. (their father), and Rorick's wife. Farmer is not welcome there; however, she has supervised phone contact with T.T. and R.T.

¶ 19 When all of the children still lived with Farmer, T.T., Frederica, and Takelia slept in the back room in bunk beds. R.T. slept in the room that currently contains the futon bed. When they lived with her, T.T. and R.T. attended Perry Elementary School.

¶ 20 Farmer testified that, when T.T. and R.T. lived with her in Carpentersville, defendant did not live with her. He never helped care for them and never came into the home. "The furthest [defendant] went was to the porch to bring my groceries, and his mom helped me carry them in." He never came to the apartment to care for his two biological children. The only time that defendant entered the Carpentersville apartment was before Farmer permanently moved in in 2004; the apartment contained no furniture at that time and Farmer stayed there during the week while she worked at UPS in Hodgkins so that it would not appear that she had abandoned her apartment. Farmer moved into the Carpentersville apartment in 2006 after Tyiona was born. Farmer and the children lived with Shirley Dixon, defendant's mother, from 2003 to early 2006 (in Chicago); defendant also stayed there. Defendant drove Farmer to the bus stop at Madison and Pulaski in Chicago. Defendant's mother helped babysit the children; defendant did not do so. Defendant never accompanied Farmer to T.T.'s doctor's appointments. She denied that defendant accompanied her and T.T. to a doctor's appointment when defendant was concerned about T.T. having pubic hair at a young age.

¶ 21 Farmer denied that defendant was ever present inside the apartment when she stepped out. She explained that the rules are "strict" at the complex and that visitors must be placed on the lease. Farmer could get evicted if she has someone living with her whose name is not on the apartment lease. Farmer testified that, when defendant drove her, T.T., and R.T. to their visitations with their grandmother and father, there was someone else in the car with them.

¶ 22 Farmer loves defendant and is still in a relationship with him. She does not want to see anything bad happen to him. Since defendant does not come to her apartment, Farmer drives to Chicago and brings all four kids to visit with him. Also, defendant drove Farmer to court and to the train to get home. During the time that T.T. and R.T. lived with her, Farmer took them to stay with Rorick T., their father, when she visited defendant; she brought the other children to see defendant. Farmer denied that she and all of her children did things together with defendant. She explained that defendant was "always working." On holidays, Farmer took her children to defendant's grandmother's house to see her and his mother, but defendant was never present because he "would be out working." She denied that there was ever a holiday that defendant spent with her and her children, including T.T. and R.T. However, Farmer also testified that defendant thought of himself as T.T. and R.T.'s stepfather.

¶ 23 When Farmer first learned of the allegations against defendant, she was "shocked." Farmer was angry at their father, Rorick T. She also accused T.T. of lying. Farmer stated that T.T. told her that Auntie Diane told her to make the accusations. Farmer claims that she told investigators about this in 2007.

¶ 24 Farmer has not seen T.T. and R.T. since the allegations against defendant were first raised. When asked if there is anything prohibiting her from visiting T.T. and R.T., she replied that there

is and that she has to be "cautious." Addressing T.T.'s school registration form, Farmer denied that defendant registered T.T. for school; she explained that his signature was on the form as the stepfather because she had him turn in the paperwork; she had to stop into one of the children's classrooms.

¶ 25 Farmer stated that T.T.'s teacher visited her home several times, bringing gifts for T.T. and R.T. and taking the children to church. She came with her husband. Farmer's friend Mary was present, as was her sister Shannon.

¶ 26 On cross-examination, Farmer testified that she worked at Walmart in 2007 for five months. On Fridays and Saturdays, she worked from 2 to 11 p.m.; Monday through Thursday she worked 5 to 10 p.m. When she was working, Shirley Dixon (defendant's mother) or Mary babysat the kids; defendant did not do so. (Shirley lived in Chicago and Mary lived in an apartment near Farmer's apartment.)

¶ 27 T.T., age 11, testified that she last lived with Farmer, her mother, when she was 6 years old. Farmer's apartment had three bedrooms. T.T. slept with her three sisters (and sometimes her brother) in the room with the futon. The bunk beds were in her brother R.T.'s room. The third bedroom was Farmer's bedroom, where Farmer and "her husband" slept (and sometimes her little sister). Farmer's and T.T.'s rooms contained televisions. Farmer's "husband's" name is "Tyrell," whom she identified in court as defendant (whose legal name is Tynell).

¶ 28 T.T. testified that she stopped living with her mother at age six because she was "raped" by "Tyrell." The rape occurred in Farmer's room. T.T., who was in kindergarten at the time, explained that she was in the bedroom, watching television, when "Tyrell" came in, locked the door, and sat on the edge of the bed. He told T.T. to come over, get on her knees, and "to suck his stuff, and he

said if I didn't he was going to beat me; so I can't really—and then he held my head so I wouldn't move." She explained that "stuff" is also called a penis or a "dick." Her mouth touched defendant's "stuff" and his hands were wrapped around her head. Defendant then told T.T. to get up. He picked her up and laid her down on the bed. (At this time, Farmer was at work and "everybody else" was downstairs.) Defendant, whose pants were off, pulled down T.T.'s pants, got on top of her and put his penis inside her "downstairs," which T.T. identified in an anatomical diagram as her vaginal area. Defendant started going back and forth. He stopped when T.T.'s sister knocked on the bedroom door and told T.T. that he would beat her if she told anyone. T.T. was afraid of defendant. He told her to pull up her pants and he pulled up his own and opened the door.

¶ 29 Addressing another incident that occurred while she was in kindergarten, T.T. testified that she was in her bedroom, laying on her bed. Farmer was downstairs. Defendant entered T.T.'s bedroom, locked the door, got in her futon bed, and started kissing her. T.T. was scared because she did not know what he was going to do next. Defendant left the room.

¶ 30 Another time, when T.T. was seven and before July 2007 (when she went to live with her father), T.T. was in R.T.'s bedroom, jumping on the couch. Defendant came in, grabbed her "butt," and pulled her close. He started speaking to her, and T.T. felt scared because she thought he was going to do something other than that. Defendant then let her go.

¶ 31 Next, T.T. addressed an incident involving defendant and R.T., which she witnessed. T.T. was at the top of the stairs at her home and saw R.T. sitting on the toilet while "Tyrell" was in the shower. (T.T. had opened the door a "little bit" to see who was inside.) R.T. was undressed. T.T. asked R.T. why he was in there. He spoke to her, and she went downstairs.

¶ 32 Addressing another incident, T.T. testified that, one day, she was in the hallway, coming out of Farmer's room and walking towards her room. She observed R.T. on the futon bed in her room with defendant on top of him. R.T. was on his stomach, as was defendant. Defendant wore pants, and the top was undone. T.T. ran downstairs, where Farmer had just arrived from work and where her sisters were. T.T. told Farmer what she had witnessed. According to T.T., Farmer "told me that that man ain't never been close to you and I don't think he ever touched you, and she told me if I ever said that again she'd pop me in the mouth." T.T. did not bring it up again because she believed her mother would carry out her threat.

¶ 33 T.T.'s kindergarten teacher at Perry Elementary School was Mrs. Gonzalez. They had a special relationship because Gonzalez would take T.T. to the movies, church, the beach, or to eat. She also came to T.T.'s home.

¶ 34 R.T., age 11, testified that he has lived with his father, Rorick T., since he was age 7 or 8. His father's wife, T.T., and his three stepsisters also live there. R.T.'s grandmother is called Jeffrey or Jean Taylor, and she is Rorick's mother. R.T. stated that he sees Grandma Jean on weekends. When R.T. lived with Farmer, he went to Perry Elementary from kindergarten through second grade. Mrs. Gonzalez was T.T.'s teacher, and R.T. and T.T. saw her outside of school. When he lived at Farmer's apartment, Farmer's friend, Mary, lived across the hall from them. They saw her often and did things with her, such as playing in her home and eating cookies.

¶ 35 R.T. testified that he had his own bedroom at Farmer's apartment and that it contained a couch and bunk beds. T.T. slept with her three sisters in another room, which contained a futon and a television. Farmer's room also had a bunk bed. When asked why he stopped living with his

mother, R.T. replied, "Because things started happening with her boyfriend." Next, the following colloquy ensued:

"Q Who is her boyfriend?

A Tyrell

Q Tyrell?

A Yes.

Q Do you see Tyrell here today?

A No.

Q No. You said things started happening with Tyrell?

A Yes.

Q What do you mean by that?"

R.T. testified that, on one occasion, "Tyrell" was in the bathroom and called in R.T. R.T. entered and saw "Tyrell" sitting on the toilet. "Tyrell" instructed R.T. to come to him, which he did, and then told him to get on his knees, which he also did. "Tyrell" then "told me to suck on his penis." R.T. stated that, while "Tyrell"'s penis was in his mouth, "Pee" came out of it. It made R.T. feel nasty. "Tyrell" told R.T. to get up and to go into T.T.'s room.

¶ 36 On another occasion, when R.T. was sleeping in T.T.'s room (he had fallen asleep watching television), "Tyrell" entered the room, climbed on top of R.T., who lay on his stomach. R.T. testified that he felt "Tyrell"'s "private" part on his "butt." (On an anatomical diagram, R.T. identified a "private" part as a penis.) His pants were down a little, and R.T.'s pants fell down; he felt "Tyrell"'s penis on the skin of his "butt." "Tyrell"'s penis went inside R.T.'s butt. "Tyrell" did not say anything to R.T. R.T. felt nasty. Nothing came out of "Tyrell"'s penis, and he did not move

when he was on R.T. "Tyrell" left the room. The rest of the family was at "Tyrell"'s mother's (*i.e.*, Grandma Shirley's) house.

¶ 37 Addressing another incident, R.T. testified that "Tyrell" was in the living room. R.T. came downstairs and walked into the kitchen and looked inside the refrigerator. R.T. then went back upstairs. Later, "Tyrell" called R.T. to come downstairs. The lights were off, and "Tyrell" was sitting on the couch. He instructed R.T. to lay on the floor; R.T. complied and laid with his stomach on the floor. "Tyrell," with pants off, climbed on top of R.T., whose pants were also slightly down and who was facing downwards. R.T. felt "Tyrell"'s private part on (the skin of) his "butt." He also felt "Tyrell"'s penis go inside his "butt." "Tyrell" did not say anything. During this incident, "Tyrell"'s friend was outside and Farmer and R.T.'s sisters were at "Tyrell"'s mother's house. R.T. felt nasty. Nothing came out of "Tyrell"'s penis. R.T. never spoke to Farmer about any of the foregoing incidents with "Tyrell."

¶ 38 R.T. also described an incident involving T.T. T.T. was in her room, on the bed. "Tyrell," undressed, walked from Farmer's room to T.T.'s room and got on top of her. T.T.'s clothes were also off. T.T. lay on the bed with her stomach down. R.T. did not observe either "Tyrell" or T.T. move while "Tyrell" was on top of her. This was the only incident involving "Tyrell" and T.T. that R.T. observed. R.T. denied that he told DCFS investigator Kathy Byrne several years before trial that he was able to observe the incident because the door was open and that he also saw "Tyrell" moving. He also denied telling her that: he observed "Tyrell" turn over T.T. and put his "wee-wee" into her mouth; "Tyrell" saw R.T. and did not say anything; "Tyrell" took off both their clothes before he climbed on top of T.T.; and that they were moving.

¶ 39 R.T. identified "Tyrell's" children as "Kiki, Riri, and Tyiona."

¶ 40 Norma Mejia, an administrative assistant at Fox View Apartments, where Farmer's apartment is located, testified that Farmer has resided in her apartment at 15 Oxford, Apartment 2, since 2004. Everyone who lives in the unit must be on the lease and undergo a background check. Overnight visitors need a guest pass, and a visitor may stay up to nine days per month.

¶ 41 Dr. Norell Rosado, a board-certified child abuse pediatrician, testified as an expert in pediatrics and child abuse pediatrics. In July 2007, she interviewed T.T., who was six years old. After having her identify body parts, Dr. Rosado asked T.T. if anyone had ever touched her in her private parts (which she had identified as the genital and vaginal areas). She replied that "Tyrell" had done so. When asked with what, she replied with his "stuff," which she explained was his "dick."

¶ 42 T.T. described an incident to Dr. Rosado. She went into Farmer's bedroom, locked the door, and hid in the closet. "Tyrell", who had a key, unlocked the door and entered. He was undressed. He opened the closet door. "Tyrell" took off T.T.'s panties. T.T. further told Rosado that "Tyrell" touched her with his "dick" in her private parts; he "freaked" her while they were under the blankets. He also touched her in her mouth. Dr. Rosado testified that T.T.'s use of the term "dick" was the first time she had heard it from a child her age.

¶ 43 T.T. also related another incident, wherein T.T. and "Tyrell" were on the couch. "Tyrell" told her that he loved her, and T.T. told him that she did not believe him because, if he did, he would not be doing those things to her and her brother. When Dr. Rosado asked T.T. what things "Tyrell" was doing, she replied that he pinched her in the stomach and "popped our head." Addressing R.T., T.T. also told Dr. Rosado that she had observed "Tyrell" and R.T. in the bathroom on one occasion. At this point in relating the incident, T.T. started daydreaming. Dr. Rosado testified that this

dissociation is common in children who have been traumatized; "[t]hey go to a safer place." Continuing, Dr. Rosado stated that T.T. told her that the only time she had observed "white stuff" come out of "Tyrell"'s "stuff" was when he was doing something to R.T. T.T. told Dr. Rosado that "Tyrell" did this many times. "Tyrell" asked her not to say anything to anyone about it, but T.T. told her father, his wife, her sister, and her grandmother.

¶ 44 Dr. Rosado next interviewed R.T, who told her that he was age seven. He did not talk to her about any sexual abuse. She asked him only once so as not to prompt an unreliable response.

¶ 45 Dr. Rosado examined T.T. She observed tufts of hair in her genital area, which, she explained, some children do have. She said that an injury in that area can heal. Dr. Rosado opined that she could not rule out sexual abuse. T.T. related more oral than vaginal contact and, if the vaginal contact occurred two months earlier, it could have healed. Dr. Rosado also conducted a physical examination of R.T., and the findings were normal. She explained that, after a rectal penetration, there are not necessarily scars or findings. She opined that she could not rule out sexual abuse in R.T.'s case.

¶ 46 Jennifer Gonzalez testified that, during the 2006-2007 school year, she had T.T. as a student in her kindergarten class. She and her husband also befriended T.T.'s family and took them to church and visited the family at their apartment. Around Christmas 2006, Gonzalez and her husband brought gifts for the family to the apartment. Farmer, T.T., R.T., Frederica, and one younger child were present at the apartment. Later, an adult male came to the apartment; Gonzalez believed that he was Farmer's boyfriend. He was African-American and a bit heavy-set.

¶ 47 During the year that T.T. was her student, Gonzalez saw her upset on one occasion. T.T. did not want to go home and would not get on the bus; she appeared scared and was crying. T.T. stated that she was afraid of her mother. Farmer had to come pick her up.

¶ 48 Sharon Dorfman, a DCFS investigator, testified that, on July 3, 2007, in response to a hotline call to her agency, she met with R.T. in Chicago. R.T. whispered to Dorfman that "Tyrell made me suck his stuff." When she asked him what he meant by "stuff," he pointed to his penis.

¶ 49 Dorfman also interviewed T.T., who told her that she lived with her mother, "Tyrell", her brother, and sister. T.T. told her that she does not like "Tyrell" and that he is mean and does mean stuff. He made her "suck on his stuff and then he freaked on me." She explained that he put his "stuff" in her vagina. Dorfman put in place a safety plan.

¶ 50 Rorick T., age 37, testified that he is married to Crystal Hicks and has two children: R.T. and T.T. Their biological mother is Farmer. The children reside with Rorick, and he has sole physical custody of them. Farmer did not appear in the court custody case. The children have lived with Rorick since 2007, when he and Farmer had planned that the children would stay with Rorick's mother (Jennifer Jean Taylor) for the summer.

¶ 51 Rorick testified that, prior to the time the children came to permanently live with him, they lived with Farmer. Rorick saw them during weekends and over the summer. Defendant participated in the pick-ups and drop-offs for the visitations. On more than one occasion, defendant went to Rorick's mother's house to pick up T.T. and R.T. During the week of June 30, 2007, the children were visiting Rorick and his family. R.T. told him that "Tynell had put his stuff in his—made him put his stuff in his mouth." Rorick then spoke to T.T., who was upset and crying. Eventually, she told Rorick that "He made her put his stuff in her mouth." Rorick took the children to the hospital.

When Farmer came to the house to discuss the children's disclosures, she was upset and defensive. The conversation was held in the children's presence.

¶ 52 Jeffrey Jean Taylor, Rorick's father, testified that, in 2007, R.T. and T.T. came to live with him and his wife for the summer. Prior to that, they lived with Farmer. While living with Farmer, the children were picked up at Taylor's house for visitations. Taylor testified that Farmer did not drive at this time. Tynell dropped off the children at Taylor's house and drove. (He also testified that Farmer or "Tyrell" would bring the children.) When asked if he knew Farmer's boyfriend, Taylor responded, "Yeah, Tyrell—Tynell. No, Tyrell." He explained that he called Farmer's boyfriend "Tyrell" because "That's what I thought they were saying."

¶ 53 Kathryn Byrne, a DCFS investigator, testified that she met with Farmer as part of her investigation. Farmer was "extremely hostile." Farmer told Byrne that Rorick's family was making the children lie. At this time, the safety plan was in place and the children lived with Rorick. The plan prohibited "Tyrell" from being at Farmer's residence, but there was no prohibition on Farmer contacting the children.

¶ 54 Byrne met with T.T. on July 9, 2007, at the Kane County Child Advocacy Center.[4] She (and Timothy Bosshart, a police officer) interviewed T.T., using non-leading questions. T.T. told Byrne that she lived with her mother, siblings, and "Tyrell". T.T. identified "Tyrell" as an adult and the father of her three younger sisters. T.T. stated that she now lived with her father because "Tyrell" needed to be checked out because he was doing things he was not supposed to do. T.T. stated that "he put his stuff in her brother [R.T.]'s mouth and her mouth and also put his stuff in her brother's

[4]DCFS received the hotline call on July 1, 2007. Dorfman made contact with the children, and then, on July 9, 2007, Byrne met with them.

butt." T.T. stated that she knew of the incidents involving R.T. because she observed them. The incidents occurred at Farmer's apartment while her mother was at work and when "Tyrell" was babysitting. (T.T. also related that "stuff" meant "dick," which she identified on an anatomical drawing as a penis.)

¶ 55 T.T. also told Byrne that "Tyrell's" penis made contact with her vaginal area. The incident occurred in Farmer's bedroom. "Tyrell" had removed T.T.'s clothing, told her to lay on the bed, removed his clothing, and told her to spread her legs. He got on top of T.T. His "stuff touched her stuff, and he was doing it really hard and she cried because it hurt." She told Byrne that his "stuff" was inside right next to where her "pee" comes out. When Byrne asked T.T. how many times "Tyrell" did these acts, she replied that he put his "stuff" in her mouth a lot of times. His "stuff," which was black, went on her "stuff" a lot of times. The acts she described occurred when T.T. was ages five and six. T.T. stated that she never had to touch "Tyrell"'s "dick," but that R.T. had to touch it. "Tyrell" sometimes touched her "stuff" over her clothing; he did this about 20 times.

¶ 56 Byrne further testified that T.T. told her that she first disclosed the abuse to Farmer, Rorick, and her grandmother. T.T. and R.T. told Farmer the first time it happened after she came home from work. T.T. used the term "freaking" to describe incidents involving "Tyrell" and R.T. Describing "Tyrell", T.T. stated that he would beat her, R.T., and Farmer. During the abuse, he told her not to tell anyone or he would hit her. T.T. stated that "Tyrell Dixon" performed the acts. During Byrne's investigation, she learned that "Tyrell"'s actual name was "Tynell Dixon."

¶ 57 Timothy Bosshart, a police officer assigned as an investigator at the child advocacy center, testified that he (and Byrne) interviewed R.T. on July 9, 2007. Bosshart was in plain clothes. R.T., who was age seven, told him that he lived with his father but still lived with Farmer and his four

sisters. R.T. also stated that Farmer's boyfriend often visited Farmer's apartment. Bosshart could not recall if R.T. used the name "Tyrell" or "Tynell" to refer to Farmer's boyfriend. Tynell would visit and sometimes stay the night. R.T. also told Bosshart that Tynell fathered two children with Farmer.

¶ 58 Addressing the abuse, R.T. told Bosshart that Tynell had been making him "suck his stuff." He identified "stuff" and "wee-wee" on an anatomical drawing as a penis. These incidents occurred while Farmer was at work and while his sisters were playing in their room. Tynell babysat them. R.T. described Tynell's "stuff" as "chocolate." The incidents happened lots of times. R.T. stated that, when he had to suck Tynell's penis, a "funny soap" would come out. It tasted nasty and hot; this came out just one time. R.T. also held up his hands to show that Tynell's "wee-wee" was eight or nine inches long. R.T. had to touch Tynell's penis; he did so with his fingers.

¶ 59 R.T. further told Bosshart that the incidents occurred in his room and his sisters' room at Farmer's apartment. They started when he was five years old and continued the whole time he was six. R.T. stated that Tynell had never taken off R.T.'s clothes and had not touched R.T.'s "wee-wee." After viewing an anatomical drawing, R.T. further told Bosshart that Tynell's penis was bigger than the one in the drawing and did not have hair. R.T. also related that he witnessed an incident involving Tynell and T.T. in T.T.'s bedroom. R.T. observed Tynell undress and then take off T.T.'s clothes. T.T. was on the bed on her face and Tynell was on top of her and they were moving. R.T. then saw Tynell get up, turn over T.T., put his "stuff" in her mouth, and made her suck his "stuff."

¶ 60 Bosshart testified that, after the initial interview with R.T., he and Byrne interviewed T.T. Then, they spoke again to R.T. They informed R.T. that T.T. told the investigators that Tynell had

been "freaking" R.T. R.T. nodded affirmatively and stated that it had happened; "that Tynell had freaked him, and we asked him, what do you mean by freaked, and he then said that Tynell had made him touch his stuff and Tynell also put his stuff in [R.T.]'s butt." It happened lots of times, in both his room and T.T.'s room, and it hurt. Every time that it happened, Farmer was at work. R.T. circled the penis on an anatomical drawing to show the body part Tynell inserted into R.T. and, on another drawing, the buttocks to show the body part into which Tynell put his penis.

¶ 61 On November 21, 2011, Bosshart met again with T.T. and R.T. Due to confusion over the names Tynell and "Tyrell", Bosshart separately showed the children a photograph of defendant. Bosshart asked R.T. who he had been talking to the attorneys about, and R.T. responded that it was Tynell "and then I asked him, do you think you could recognize Tynell from a photograph, and he said yes." R.T. did so. Bosshart later asked T.T. "who have you been talking about, and she said Tynell." She identified defendant from a photograph.

¶ 62 The State rested its case, and defendant moved for a directed verdict, arguing that the State failed to meet its burden as to acts committed against R.T. because R.T. did not identify defendant in open court. The court denied defendant's motion.

¶ 63 Defendant, age 31, testified that he lives in Chicago with his mother, Shirley Dixon, and his uncle. He is self-employed as an auto mechanic. Defendant and Farmer met on February 10, 2003, and had two children together: Tyiona (age 6), Tynell Jr. (1 1/2 months). He also adopted Takelia and Frederica. Between 2004 and 2007, defendant also lived in Chicago.

¶ 64 Farmer's Carpentersville apartment lease started in December 2004, but Farmer did not immediately move into the apartment because defendant did not have money to purchase furniture for her. Farmer worked the night shift at UPS in Hodgkins, and defendant worked near Elgin. He

and his uncle Curtis Dickerson stayed at Farmer's apartment from Monday to Wednesday for four months. After Farmer moved into the apartment, defendant did not stay at the apartment and visited only once or twice per month; he brought her groceries and money. Defendant testified that he never stayed over at the apartment, had dinner there, or babysat the children. He stated that he never spent the night with Farmer at the apartment. Defendant denied that he ever went to T.T. and R.T.'s elementary school.

¶ 65 Defendant denied that he committed any of the acts that T.T. and R.T. alleged he committed. He stated that, since 2004, he has not stepped into the apartment; the farthest he went was taking the groceries to the hallway. When R.T. and T.T. lived with Farmer, defendant bought items for them and "care[d] for them like I cared for my own kids." However, he denied that he ever bathed R.T. or T.T. Defendant denied telling investigators in 2007 that he occasionally bathed the children and that he was surprised that T.T. had genital hair. He explained that Farmer told him and his mother about it. Defendant denied ever going to a doctor's appointment with Farmer and T.T. regarding the pubic hair. He also stated that he never assisted in putting the children down at night to sleep. Defendant denied telling investigators in 2007 that the only time he was alone with R.T. and T.T. was when he put them to bed and that he assisted in registering them for school. He signed a form, but Farmer took it to the school.

¶ 66 Defendant further testified that he treated T.T. and R.T. like he was their stepfather, but denied that he spent time with them or did things with them or went anywhere with them. He works from 8 a.m. to about midnight. T.T. and R.T. spent holidays with Rorick T., and defendant spent it with his biological and adopted children. As to T.T. and R.T., defendant stated that he "only

provided clothes and food and stuff like that. I never been around them, showing general love; love them, hug them. None of that." He continued, "I only did that with my kids."

¶ 67 Curtis Dickerson testified that defendant is his god-nephew. Dickerson lives with Shirley Dixon, defendant's mother. After defendant met Farmer, she and her two or three children lived with defendant, his mother, and Dickerson in Chicago. Later, Dickerson stayed with defendant at Farmer's Carpentersville apartment for a few months after she signed the lease (thus, late 2004 to early 2005); they spent a few days per week there. Defendant and Dickerson worked in the area for a few months. Only the two of them stayed at the apartment at that time. After Farmer moved into the apartment, defendant stopped staying there and resided with Dickerson and Shirley.

¶ 68 While Farmer lived in the apartment, Dickerson would sometimes go there with defendant to take groceries to her. They would drop off the groceries in the kitchen. Dickerson denied telling Bosshart on April 15, 2012, that he stayed at Farmer's apartment for six months in 2007.

¶ 69 Shirley Dixon testified that defendant is her son and has lived with her his entire life. He and Farmer never lived together other than at Shirley's house. Defendant works very long hours as a mechanic. Shirley used to drop off groceries at Farmer's apartment; she and Dickerson would go inside the house. Defendant did not go to the apartment very often. Usually, Farmer came into the city, went to the grocery store, and then returned home on the train. Defendant took groceries to Farmer a "couple of times," but Shirley and Dickerson were with him. Defendant would not go inside the house to see his children; rather, the children ran outside to see him. When Farmer lived with Shirley, they ate meals together, including with defendant and the children.

¶ 70 Defendant rested, and the State called Harry Reed, an investigator with the Illinois State Police. Reed testified that he interviewed defendant on September 10, 2007. Defendant

acknowledged to Reed that he watched his children and T.T. and R.T. while Farmer was gone. He also stated that there were other people in the house on those occasions. Defendant also told Reed that the only time that he was alone with the children was when he put them to bed. Defendant did not clarify if this occurred in Chicago or Carpentersville.

¶ 71 Bosshart was re-called and testified that he spoke to Curtis Dickerson on the phone on April 15, 2012. Dickerson told him that he lived with defendant for a six-month period in 2007 (not 2004 to 2005, as Dickerson testified), but that he was not certain about the time period.

¶ 72 On July 25, 2007, Bosshart spoke to defendant after he *Mirandized* him. Defendant acknowledged that he watched R.T. and T.T., but stated that it was rare. He would do so for an hour or two at a time. Defendant also told Bosshart that he helped bathe them on occasion and was surprised that T.T. already had genital hair. He had asked Farmer if it was normal, and he went to a doctor's appointment with her and T.T. concerning that. He did not tell Bosshart that Farmer told him about T.T. having genital hair.

¶ 73 Defendant denied that he had done anything inappropriate with the children. Bosshart did not clarify with defendant whether the babysitting occurred in Chicago or Carpentersville.

¶ 74 The court admitted into evidence a certified copy of defendant's Cook County conviction for possession of a stolen firearm.

¶ 75 The jury found defendant guilty of eight counts of predatory criminal sexual assault of a child and three counts of aggravated criminal sexual abuse. The trial court denied defendant's post-trial motions, and sentenced defendant to eight concurrent mandatory terms of natural life for the predatory criminal sexual assault convictions and three concurrent five-year terms for the aggravated

criminal sexual abuse convictions. Defendant moved to reconsider the sentence, and his motion was denied. Defendant appeals.

¶ 76 II. ANALYSIS

¶ 77 A. Sufficiency of Evidence as to Counts Relating to R.T.

¶ 78 First, defendant argues that the evidence was insufficient to sustain his convictions as to all counts relating to R.T., where R.T. failed to identify defendant as the perpetrator of the crimes. For the following reasons, we reject this argument.

¶ 79 To be convicted of predatory criminal sexual assault of a child, the accused must be 17 years of age or over, the victim must be under 13 years of age, and the accused must commit "an act of sexual penetration" with the victim. 720 ILCS 5/12-14.1(a)(1) (West 2008). "Sexual penetration" is defined, in part, as "any contact, however, slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person." 720 ILCS 5/12-12(f) (West 2008). A person commits aggravated criminal sexual abuse when he or she is 17 years of age or older and commits an act of sexual conduct with a victim who was under 13 years of age when the act was committed. 720 ILCS 5/12-16(c)(1)(i) (West 2008). "Sexual conduct" is defined, in part, as any intentional or knowing touching or fondling by the victim or the accused, of any part of the body of a child under 13 years of age, for the purpose of sexual gratification or arousal of the victim or the accused. 720 ILCS 5/12-12(e) (West 2008).

¶ 80 When considering a challenge to a criminal conviction based upon the sufficiency of the evidence, a reviewing court will not retry the defendant. *People v. Wittenmyer*, 151 Ill. 2d 175, 191 (1992). Rather, in such cases the relevant question is whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements

of the crime beyond a reasonable doubt. *People v. Young*, 128 Ill. 2d 1, 49 (1989). Thus, we must carefully examine the evidence while giving due consideration to the fact that the trial court and jury saw and heard the witnesses. *People v. Bartall*, 98 Ill. 2d 294, 306 (1983); *Young*, 128 Ill. 2d at 48. If, however, after such consideration we are of the opinion that the evidence is insufficient to establish the defendant's guilt beyond a reasonable doubt, we must reverse the conviction. *Bartall*, 98 Ill. 2d at 306; *Young*, 128 Ill. 2d at 48.

¶ 81 The testimony of a single witness, if it is positive and the witness credible, is sufficient to convict. *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). While the credibility of a witness is within the province of the trier of fact, and the finding of the jury on such matters is entitled to great weight, the jury's determination is not conclusive. *People v. Smith*, 141 Ill. 2d 40, 55 (1990). Rather, we will reverse a conviction where the evidence is so unreasonable, improbable, or unsatisfactory as to justify a reasonable doubt of the defendant's guilt. *Id.*

¶ 82 Defendant argues that R.T.'s testimony showed that defendant was not in the courtroom during trial and, thus, he was not R.T.'s assailant. Defendant notes that R.T. referred to his assailant as "Tyrell," whereas defendant's name is "Tynell." Further, defendant contends that the State did not attempt to elicit from R.T. a description of his assailant. Defendant also asserts that Bosshart's testimony does not warrant an affirmance. He notes that Bosshart testified that, in 2011, he asked R.T. "who he had been talking to the attorneys about" and that R.T. replied "Tynell." This purported identification, defendant argues, was not an identification of himself as the perpetrator of the crimes because it was merely an identification of someone who R.T. had been talking to "attorneys" "about." There is no evidence in the record of R.T. speaking to "attorneys" at any time. Defendant argues that this testimony did not prove beyond a reasonable doubt who the "attorneys" were or what

R.T. was talking "about" with them. Nor did it, according to defendant, prove beyond a reasonable doubt that R.T. identified defendant in 2011 as someone who had sexually violated him when he was five and six years old. The statement, he argues, cannot be considered as substantive evidence as to anything other than its literal content.

¶ 83 We conclude that the evidence was sufficient to sustain defendant's convictions as to the counts relating to R.T. Defendant does not challenge his convictions as to T.T. at the joint trial. Critically, T.T. testified that Farmer's "husband's" name is "Tyrell," that "Tyrell" committed the charged acts, and identified defendant in court as "Tyrell." DCFS investigator Byrne testified that T.T. told her in 2007 that "Tyrell Dixon" performed the acts. Also, Jeffrey Taylor, T.T. and R.T.'s paternal grandfather confused the names, stating that he called defendant "Tyrell."

¶ 84 Further, during her testimony, T.T. described an incident involving defendant and R.T. T.T. testified that she saw R.T. sitting on the toilet while "Tyrell" was in the shower. R.T. was undressed. T.T. also described another incident, where, while walking down the hallway in Farmer's apartment, she saw defendant on top of R.T., on the futon bed in T.T.'s room. R.T. was on his stomach, as was defendant, whose pants were undone.

¶ 85 These incidents corroborated R.T.'s testimony concerning "Tyrell"/defendant. R.T. was 11 years old when he testified concerning events that occurred when he was ages 5 and 6. He stated that he stopped living with Farmer because "things started happening with her boyfriend," whom he identified as "Tyrell." R.T. identified "Tyrell's' children as "Kiki, Riri, and Tyiona," and identified his own sisters as "Kiki, Riri, Tyiona, and [T.T.]." (Defendant testified that his children with Farmer were Takelia/Kiki, Frederica/Riri, Tyiona, and Tynell, Jr.) R.T. then described an incident in T.T.'s room. R.T. was on his stomach, and "Tyrell" climbed on top of R.T. and put his penis into R.T.'s

"butt." Further, R.T. described an incident involving T.T. and "Tyrell" in T.T.'s room, wherein he observed that they were both undressed, T.T. lay face down, and "Tyrell" was on top of her.

¶ 86 It was undisputed that defendant was Farmer's boyfriend at the time the events occurred and thereafter. Farmer testified that defendant was her boyfriend for nine years, and defendant testified that he fathered two children with her and adopted two of her other children. He also stated that he treated T.T. and R.T. like he was their stepfather. Officer Bosshart testified that, when he interviewed R.T. in 2007, R.T., age seven at the time, told him that Farmer's boyfriend fathered two children with Farmer and sometimes stayed the night in the apartment. R.T. related several incidents to Bosshart, including that Tynell/Tyrell would put his penis into R.T.'s mouth and an incident where R.T. witnessed Tynell/Tyrell on top of T.T. in her bedroom with his penis in her mouth. Also, in response to a non-leading question about the term "freaking," R.T. told Bosshart that it referred to Tynell/Tyrell making R.T. suck his penis and him putting his penis into R.T.'s "butt." During another meeting with the children, T.T. and R.T. each separately identified defendant's photograph. T.T. responded that the person she had been talking about was Tynell and identified defendant in the photograph. R.T.'s identification of Tynell/defendant as the person he had been talking to the attorneys about is not problematic, as defendant argues. In light of the foregoing testimony, the identification was not critical to the State's case.

¶ 87 *People v. Bartley*, 25 Ill. 2d 175 (1962), upon which defendant relies, does not warrant a different conclusion. There, the only eyewitness to a shooting could not identify the defendant and admitted that he had previously told an investigator that the defendant was not the man he had observed. *Id.* at 180. The remainder of the State's evidence was circumstantial and unsatisfactory, where much of it was given by a woman who delayed nine years in telling her story to the police.

Id. at 180-81. Here, the evidence against defendant was not unsatisfactory. As noted, T.T.'s testimony significantly corroborated R.T.'s testimony such that the only conclusion that could be drawn, if the jury found both children credible, which it reasonably did, was that Tynell and "Tyrell" were the same person.

¶ 88 In summary, despite the references to "Tyrell" and R.T.'s failure to identify defendant in court several years after the incidents, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found that defendant perpetrated the crimes against R.T. beyond a reasonable doubt.

¶ 89 B. Admission of Expert Testimony

¶ 90 Defendant next argues that the trial court abused its discretion in admitting expert witness testimony by Riehm concerning child sexual abuse and disclosure. He contends that her testimony invaded the jury's province to determine witness credibility and assess the facts of the case. For the following reasons, we reject defendant's argument.

¶ 91 The trial court possesses broad discretion in determining the admission of expert testimony. *People v. Cardamone*, 381 Ill. App. 3d 462, 500 (2008). Its decision will not be reversed absent an abuse of that discretion. *People v. Atherton*, 406 Ill. App. 3d 598, 614 (2010).

> "Generally, an individual may testify as an expert if his or her qualifications display knowledge that is not common to laypersons and if the testimony will aid the trier of fact in reaching its conclusion. [Citation.] An expert witness may provide an opinion on the ultimate issue in a case. [Citation.] The test is whether the opinion will assist the trier of fact to understand the evidence or to determine a fact in issue. '[T]he modern standard for the admissibility of expert testimony is not whether the subject is beyond the understanding of

> the jury, but whether the testimony will aid the jury's understanding. No higher standard applies to opinion testimony on an ultimate issue.' In exercising his or her discretion, the trial judge should carefully consider the necessity and relevance of the expert testimony in light of the facts in the pending case. [Citation.] When considering the reliability of expert testimony, the court should balance its probative value against its prejudicial effect." *Cardamone*, 381 Ill. App. 3d at 500 (quoting *Perschall v. Metropolitan Life Insurance Co.*, 113 Ill. App. 3d 233, 237 (1983)).

¶ 92 All relevant evidence is admissible unless otherwise provided by law. *People v. Dabbs*, 239 Ill. 2d 277, 289 (2010), citing Ill. R. Evid. 402 (eff. Jan. 1, 2011). Relevant evidence is that which has any tendency to make the existence of any fact of consequence to the determination more or less probable than it would be without such evidence. *People v. Illgen*, 145 Ill. 2d 353, 365-66 (1991). Expert testimony may not be employed to bolster or attack witness credibility. *People v. Randall*, 363 Ill. App. 3d 1124, 1131 (2006).

¶ 93 Defendant points to several aspects of Riehm's testimony. He notes that the State elicited on direct examination that: (1) if children disclose to a trusted family member and are not believed, then they are not likely to repeat the disclosure; (2) it is not uncommon to disclose to one person and then not disclose to a second person, because of trauma; (3) children victimized at ages five through seven, who disclose four to five years later, have spent a long time weighing the impact of disclosing and delayed disclosure is common; (4) piecemeal disclosure is the norm in these cases; (5) most of the violence against children occurs at home, and if the offender is a family member, the likelihood of disclosure decreases; (6) dissociation results in not initially describing the abuse or the entire abuse and is why a child cannot account for details in a disclosure; (7) abuse over a long period

results in secrecy, which arises due to threats, and trauma causes children to avoid discussion; (8) siblings abused together protect one another and agree not to disclose; and (9) while presenting in court, some children are fragile and others are not; it is difficult and stressful to confront an offender in court.

¶ 94 Defendant complains that the foregoing testimony is incompatible with the presumption of innocence because it presupposes (as do all social worker theories, according to defendant) that the children have been sexually abused. Thus, as employed here, defendant argues, Riehm's testimony denied him a fair trial. He further argues that the testimony invaded the jury's province to determine witness credibility and assess the facts, where none of the theories involve matters beyond the ken of the average juror and did not involve scientific or technical principles.

¶ 95 It has been noted that the "[b]ehavioral and psychological characteristics of child sexual abuse victims are proper subjects for expert testimony. Few jurors have sufficient familiarity with child sexual abuse to understand the dynamics of a sexually abusive relationship. [Citation.] Additionally, the behavior exhibited by sexually abused children is often contrary to what most adults would expect." *People v. Nelson*, 203 Ill. App. 3d 1038, 1042 (1990); see also *People v. Atherton*, 406 Ill. App. 3d 598, 615-16 (2010).

¶ 96 In *Atherton*, the court held that a child welfare worker was properly qualified to testify as an expert on child sexual abuse accommodation syndrome. *Atherton*, 406 Ill. App. 3d at 614-15. The court noted that there was no need for her to examine the victim because she testified only generally as to how children act when they are sexually abused and to how offenders act when they abuse children. *Id.* at 615. It also noted that, to the extent the expert had any bias against the defendant because of her work on behalf of sexually abused children, defense counsel could have brought this

out on cross-examination or in closing argument. *Id.* The court also held that the trial court did not err in allowing the expert to testify about the syndrome, where: (1) it was relevant because jurors are generally not familiar with the dynamics of abusive relationships and such behavior is not what most adults expect; (2) the post-traumatic stress syndrome evidence is statutorily authorized;[5] (3) any discrepancies in the expert's testimony and the seminal article went to the weight of her testimony and not its admissibility; and (4) if the victim's credibility has been attacked, it need not be limited to rebuttal and could be presented during the State's case-in-chief. *Id.* at 615-17. Finally, re-characterizing the defendant's argument that the expert necessarily operated from an assumption that the victim had been abused, the court held that the prejudicial effect of the expert's testimony did not outweigh its probative value, where evidence concerning how children act after being abused is "very probative." *Id.* at 618 (citing *Nelson*, 203 Ill. App. 3d at 1038). Compare *People v. Becker*, 239 Ill. 2d 215, 236-38 (2010) (no error in excluding expert's testimony where it would have attacked the victim's credibility in that expert believed it would be useless to interview child further and believed that the victim's memory and answers were tainted; further, principles of psychological coercion are within ken of the average juror, including that children are subject to suggestion, that they frequently answer so as to please adults, and are inclined to "integrate fictional notions with reality as we know it.").

¶ 97 When the State called Riehm, a licensed clinical social worker, defendant objected on the basis that he anticipated that she would testify concerning child sexual abuse accommodation

[5]See 725 ILCS 5/115-7.2 (West 2008) ("testimony by an expert, qualified by the court[,] relating to any recognized and accepted form of post-traumatic stress syndrome shall be admissible as evidence.").

syndrome, which would invade the jury's province. At sidebars, the State noted that it was not going to question Riehm on the syndrome; instead, it would call her as an expert on child abuse. The trial court allowed the testimony (based on Riehm's knowledge and expertise in the field), noting that the syndrome is not commonly known and that the fact that she did not interview T.T. and R.T. was a subject for cross-examination. The court rejected defense counsel's argument that the testimony was improper because the theories Riehm would present assumed that abuse had occurred (and, thus, she would be vouching for the children's credibility) and would explain any recantation or change in the children's stories (and, again, bolster their credibility). The court again noted that the testimony addressed matters beyond the ken of an ordinary person and that it was the State's burden to "tie it up" and show the children suffered from the syndrome.

¶ 98 Before the jury, Riehm testified that she has been a social worker for 26 years and sees about 40 to 60 children per year who have issues related to sexual assaults. She clarified that she did not interview T.T. or R.T., but was testifying based on her experience and training counseling sexually abused children. She explained the factors that trigger disclosure and testified that, when the offender is a family member, disclosure is not common. Riehm also testified that recantation or subsequent minimization of the disclosure is more likely when the child discloses to a close family member and that disclosure is not acted upon or is not believed. Children also become confused in these situations as to whom is responsible for the abuse. Compliance (*i.e.*, a learned helplessness) is common in abusive situations, and coping mechanisms include dissociation (*i.e.*, trying to concentrate on something else) or trying to control different aspects of the abuse. Addressing disclosure, Riehm stated that it is not uncommon for it to occur piecemeal, which can occur when the abuse was long-term.

¶ 99 Riehm testified that minimization of a disclosure or recantation is more likely to occur when the offender is familiar to the child. This also can occur when the abuse is still occurring and when the offender has stopped engaging in the conduct. She noted that, in cases where the abuse occurs over a longer time, the child is more "practiced at not telling," but that it depends on the individual child and that the longer the time, the more difficult it is to recall details and explains piecemeal disclosure. She also stated that a child's behavior in a courtroom setting is unpredictable; there is no norm.

¶ 100 We conclude that Riehm's testimony was properly admitted. As the case law instructs, this type of testimony is beyond the knowledge of the average layperson and does not impinge on the jury's province to assess witness credibility or to otherwise assess the facts in this case. The fact that Riehm did not interview T.T. or R.T. was before the jury. She testified that she based her answers on her experience and the research in the field. Her answers appeared to be couched in a neutral fashion, in that she clarified that not all children respond in a typical fashion to sexual abuse. She noted that every child is different. We agree with the State that these statements reflect that she had not predetermined defendant's guilt or innocence and did not comment on T.T. or R.T.'s credibility.

¶ 101 The substance of Riehm's testimony went far beyond statements concerning the immaturity and impressionability of children (see *Becker*, 239 Ill. 2d at 236-38), and her testimony is strikingly similar to that in *Atherton*, where the court upheld the admission of the expert's testimony.[6]

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[6]The trial court found Riehm qualified to testify about child sexual abuse accommodation syndrome. She did not extensively (or at least explicitly) testify about it. To the extent she did, we further conclude that the court did not err in allowing her to do so. *Atherton*, 406 Ill. App. 3d at 614-18.

¶ 102 Finally, we note that defendant also argues that the admission of Riehm's testimony violated the Confrontation Clause. The Sixth Amendment of the United States Constitution provides that "[i]n all criminal prosecutions, the accused shall enjoy the right *** to be confronted with the witnesses against him." U.S. Const., amend. VI. Relying on *Coy v. Iowa*, 487 U.S. 1012, 1020-21 (1988), where the Supreme Court held that a large screen placed between the defendant and child sex abuse victims violated the defendant's right of confrontation, defendant argues that Riehm should not have been allowed to screen and "plug up any perceived holes in the State's case." We reject this argument outright. Nothing in *Coy* suggests that the Court's holding extends to metaphorical screens.

¶ 103 In summary, the trial court did not abuse its discretion in admitting Riehm's testimony.

¶ 104 C. Constitutionality of Statute Mandating Natural Life Sentence

¶ 105 Defendant's final argument is that the statute here mandating a natural life sentence is unconstitutional in that it violates the Eighth Amendment of the United States Constitution and the Proportionate Penalties Clause of the Illinois Constitution. We reject his argument.

¶ 106 We review *de novo* the constitutionality of a statute. *People v. Graves*, 207 Ill. 2d 478, 482 (2003). Sentencing statutes, like other statutes, are presumably constitutional. *People v. Kasp*, 352 Ill. App. 3d 180, 185 (2004). The burden of rebutting that presumption rests on the party challenging the statute's validity. *People v. Greco*, 204 Ill. 2d 400, 406 (2003).

¶ 107 The statute under which defendant was sentenced provides that: "[a] person convicted of predatory criminal sexual assault of a child committed against 2 or more persons regardless of whether the offenses occurred as the result of the same act or of several related or unrelated acts shall

be sentenced to a term of natural life imprisonment." 720 ILCS 5/12-14.1(b)(1.2) (West 2008) (now 720 ILCS 5/11-1.40(b)(1.2) (West 2012)).

¶ 108 The Eighth Amendment of the United States Constitution, applicable to the states through the Fourteenth Amendment, provides that "[e]xcessive bail shall not be required, nor excessive fines imposed, nor cruel and unusual punishments inflicted." *People v. Brown*, 2012 Il App (1st) 091940, ¶ 55 (2012) (citing *Robinson v. California*, 370 U.S. 660, 666 (1962); U.S. Const., amend. VIII). Article I, section 11, of the Illinois Constitution of 1970 provides that: "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." *Id.* (quoting Ill. Const.1970, art. I. § 11). Both the United States and Illinois constitutions incorporate the concept of "proportionality in criminal sentencing." *Id.* at ¶ 56. A proportionality analysis under either constitution involves a consideration of evolving standards of decency and fairness to determine the validity of any particular sentence. *Id.*

¶ 109 Currently, there are two separate tests to determine whether a penalty violates the proportionate penalties clause: (1) whether the penalty is cruel, degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community; and (2) whether offenses with identical elements are given different sentences. *People v. Sharpe*, 216 Ill. 2d 481, 517 (2005); *People v. McCarty*, 223 Ill. 2d 109, 136-37 (2006).[7]

¶ 110 In *People v. Huddleston*, 212 Ill. 2d 107, 132-45, our supreme court held that section 12-14.1(b)(1.2) of the Criminal Code of 1961, the statute at issue here, does not, *on its face*, violate the proportionate penalties clause of the Illinois Constitution under the first test (*i.e.*, it is not cruel,

[7] Our supreme court recently abandoned a third method, the "cross-comparison analysis," because it had proven to be "problematic and unworkable." *Sharpe*, 216 Ill. 2d at 519.

degrading, or so wholly disproportionate to the offense committed as to shock the moral sense of the community). The court noted that the statute "was obviously intended to protect [children] from sexual predation by deterring would-be offenders and ensuring that those who commit sexual acts with multiple victims will not have the opportunity to re-offend." *Id.* at 134. It also noted that child sexual abuse results in "[p]sychopathology and mental disorders [that] often follow the child into adulthood." *Id.* at 136. The court also discussed the high rate of recidivism among offenders and noted that other states have enacted similar sentencing statutes. *Id.* at 138-41.

¶ 111 In *People v. Hernandez*, 382 Ill. App. 3d 726, 728-29 (2008), this court held that the statute did not violate the proportionate penalties clause *as applied* to the defendant in that case. The defendant argued that *Huddleston* was distinguishable because his acts were against only two victims (the minimum required to impose a life sentence under the statute), whereas *Huddleston* involved three victims, that the offenses occurred close in time, and that his acts were unplanned and impulsive. He also noted that he had no prior arrests or criminal background, was educated, served in the military, was employed, and had a caring relationship with his wife and children. The court rejected the defendant's argument, noting the seriousness of his conduct: his victims were only six years old when he molested them, he was a member of one of the victim's extended family and was the victim's babysitter's husband, the young victims were scared during the assaults, and the defendant used force during the assaults and told the victims not to tell their parents. *Id.* at 729.

¶ 112 This case is not distinguishable from *Hernandez* in any significant respect, and defendant's cursory argument does not convince us otherwise. Here, there were two victims, T.T. and R.T., and they were ages five or six when defendant molested them. T.T. told DCFS investigator Byrne that defendant told her not to tell anyone about the abuse. T.T. also testified that she was scared during

the incidents and that defendant threatened to beat her if she disclosed. Both children also told investigators that the abuse was physically painful.

¶ 113 As to defendant's final contention that a mandatory life sentence violates the Eighth Amendment of the United States Constitution as being significantly disproportionate to the crime, we also reject this claim. In *People v. Oats*, 2013 IL App (5th) 110556, ¶ 62, which was issued after the parties filed their briefs in this case, the court rejected this argument, noting that the mandatory life sentence is justified by the penological goals addressed in *Huddleston*.

¶ 114 Defendant's sentence does not violate the proportionate penalties clause of the Illinois Constitution and it does not constitute cruel and unusual punishment under the state or federal constitutions.

¶ 115 III. CONCLUSION

¶ 116 For the foregoing reasons, the judgment of the circuit court of Kane County is affirmed.

¶ 117 Affirmed.