2014 IL App (2d) 121339-U
No. 2-12-1339
Order filed July 1, 2014

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. ADOLFO SANCHEZ, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Lake County. No. 11-CF-2729 Honorable George Bridges, Judge, Presiding.

JUSTICE HUDSON delivered the judgment of the court.
Justices Hutchinson and Jorgensen concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in refusing defendant's tendered jury instructions on battery as a lesser-included offense of aggravated criminal sexual abuse where the evidence would not permit the jury rationally to find defendant guilty of battery and acquit him of aggravated criminal sexual abuse.

¶ 2 Following a jury trial in the circuit court of Lake County, defendant, Adolfo Sanchez, was found guilty of four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(f), 5/12-16(f) (West 2010)) and was sentenced to a 24-month term of probation.[1] On appeal,

[1] Prior to July 1, 2011, aggravated criminal sexual abuse was designated as section 12-16

defendant argues that the trial court erred in refusing to instruct the jury on the offense of battery as a lesser-included offense of aggravated criminal sexual abuse. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record on appeal discloses the following relevant facts. On September 28, 2011, defendant was charged by indictment with four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(f), 5/12-16(f) (West 2010)). The charges stemmed from allegations that defendant touched the breast of Brianna C. on one occasion in June 2011 and on three separate occasions on August 19, 2011. In particular, each count of the indictment alleged that, on the foregoing dates, defendant committed aggravated criminal sexual abuse:

> "in that said defendant, who was 17 years of age or older and held a position of trust, authority or supervision in relation to Brianna *** in that said defendant was a manager of the Taco Bell where Brianna *** worked, committed an act of sexual conduct with Brianna ***, who was at least 13 years of age but under 18 years of age when the act was committed, in that the defendant knowingly touched the breast of Brianna *** for the purpose of sexual gratification."

The matter proceeded to a jury trial at which the following evidence was adduced.

¶ 5 The State's first witness was Brianna. Brianna testified that she was born on September 12, 1993, and therefore was 17 years old in 2011 when the incidents alleged in the indictment

---

of the Criminal Code of 1961 (720 ILCS 5/12-16 (West 2010)). However, effective July 1, 2011, the statute was amended and renumbered as section 11-1.60. See Public Act 96-1551, art. II, § 5 (eff. July 1, 2011). In this case, defendant was charged with conduct occurring both before and after July 1, 2011, thereby necessitating charges under both the pre- and post-amended versions of the statute.

occurred. At the time of trial, Brianna was a student and lived in Fox Lake, Illinois, with her son. In 2010, Brianna applied for a position with Taco Bell, and, in October of that year, she was hired to work at a location in Richmond, Illinois. In December 2010 or January 2011, Brianna was transferred to a Taco Bell restaurant in Antioch, Illinois, where she worked as a drive-through cashier. Defendant, who was the manager at both the Richmond and Antioch Taco Bell locations, set Brianna's hours and was in charge of hiring and firing employees. Generally, Brianna worked the first shift from 10:30 a.m. until 5:30 p.m. with five or six other shift employees.

¶ 6 Brianna testified that during a cigarette break in June 2011, she sat in her vehicle, which was parked in the customer lot, with the car door open. Brianna stated that it was hot outside, so she removed her work shirt and remained sitting in a bra and tank top that she had on underneath her work shirt. Brianna noted that she had a "hickey" on the top part of her left breast. Defendant approached Brianna, noticed the hickey showing above the tank top and bra line, and pulled down the tank top to the point where he saw her breast. Brianna testified that in pulling down her shirt, defendant's fingers also touched her breast. Defendant then let go of the shirt and left without saying anything.

¶ 7 When Brianna reentered the restaurant, defendant asked to give her a hickey. According to Brianna, defendant asked this question in the presence of a coworker as Brianna stood near the drive-through. Brianna testified that defendant also told her that he would cut her hours if she did not allow him to give her a hickey in the same spot. Brianna initially declined defendant's request, but defendant asked for a "maybe answer." To get defendant away from him, Brianna obliged, giving defendant a "maybe answer" before returning to work. Brianna testified that defendant's comment made her feel uncomfortable. Brianna acknowledged that in a statement

she subsequently gave to police, she did not indicate that defendant threatened to cut her hours if she did not allow him to give her a hickey.

¶ 8 Brianna testified that some days after the June incident, she was in the manager's office sitting at a computer to learn the restaurant's inventory process. Defendant was also in the office, standing about four feet from Brianna, when he asked her to "open [her] legs." Brianna further testified that at least once or twice a week, defendant would pull the ponytail she wore in her hat. Brianna stated that she felt violated and uncomfortable when defendant would pull her hair. Brianna also recounted one occasion when she was outside of the restaurant alone with defendant, and defendant told her to come up on the roof with him. In addition, Brianna related that defendant would tell her that she is sexy and he would ask her to set her Facebook account to private. Brianna testified that these remarks also made her feel uncomfortable.

¶ 9 Brianna testified that on August 19, 2011, she entered the manager's office to fax a copy of her paycheck to the public aid office for her son's daycare. At that time, defendant was the only other person in the office. Brianna noted that she was wearing a bra and a tank top underneath her work shirt. Brianna stated that her work shirt had three buttons and that she usually had the top two buttons undone and the bottom button fastened. Brianna testified that while she and defendant were in the office, defendant began to poke her left breast near the top of her tank top. The second time that defendant touched her chest area, Brianna slapped away defendant's hand. Brianna testified that defendant then dropped his keys down her shirt, and in doing so, touched her left breast. Brianna reached in her shirt and removed the keys. However, defendant dropped his keys down her shirt a second time. The keys became stuck inside Brianna's tank top and bra, and defendant inserted his hand down Brianna's shirt and felt around in an attempt to retrieve the keys, touching both of her breasts in the process. Brianna eventually

reached in and removed the keys herself. Brianna testified that although defendant's actions made her feel violated and uncomfortable, she did not leave the office because she "froze." The August 19, 2011, encounter was recorded on the restaurant's security camera and was played for the jury.

¶ 10 When Brianna received the fax confirmation, she left the office, asked a coworker to cover for her, and took a break to her car in the parking lot. There, she called her boyfriend, and upon her explanation, Brianna's boyfriend called her father. Brianna's father arrived at the restaurant 45 minutes later. Brianna then contacted the Antioch police and informed them what happened. That day, Brianna quit Taco Bell and has since filed a federal lawsuit against the restaurant chain. Overall, Brianna testified that she felt violated and believed the touching was disrespectful, childish, embarrassing, and out of line. In addition, Brianna agreed that she felt insulted.

¶ 11 Brianna denied that she ever smacked defendant on his back or rear end. However, she admitted to removing keys from defendant's front pockets when she needed them to assist customers. Brianna stated that she did this so that defendant would not have to remove the food line gloves off his hands. According to Brianna, it was customary for an employee who needed the manager's keys to remove them from his pocket as it saved time by not requiring the manger to wash his hands and put on new gloves.

¶ 12 Officer Colin Shaw of the Antioch police department testified that on the afternoon of August 19, 2011, he and Officer Bill Splitt went to the Antioch Taco Bell in response to a call of an employee being touched by her manager. At the restaurant, Officer Shaw spoke to Brianna and her father in the parking lot for 20 minutes before speaking with defendant for 5 to 10 minutes. Thereafter, Officer Shaw took defendant into custody and transported him to the police

station. Brianna followed the officers to the station, where she again spoke to Officer Shaw. At the police station, Officer Shaw reviewed the restaurant's security footage and then interviewed defendant. Officer Shaw noted that English was not defendant's first language. Consequently, he did not appear to understand all of the questions the first time they were asked. During the interview, defendant admitted that he put his hand down Brianna's shirt in the manager's office. Although he initially denied the incident in the parking lot, defendant admitted that he touched Brianna's breast then, too. Officer Shaw noted that throughout the interview, defendant described his interactions with Brianna as "playing." Officer Shaw testified that although defendant stated that Brianna was pretty, defendant never indicated that he was sexually gratified or aroused by Brianna and he denied touching any other female employees. From the information gathered while booking defendant, Officer Shaw learned that defendant was born on December 11, 1972. Officer Shaw's interview of defendant at the police station was recorded and played for the jury at trial.

¶ 13 After the State rested, the defense moved for a directed verdict. The motion was denied and the defense then presented the testimony of three Taco Bell employees. Brosbelia Brito was hired to work at the Antioch Taco Bell by defendant. Maricela Alviter also worked at the Antioch Taco Bell, although she was not hired by defendant. Defendant managed both Brito and Alviter during their morning shifts. Neither Brito nor Alviter ever observed defendant pull Brianna's hair or touch her chest. However, Brito saw Brianna remove keys from defendant's shirt and pants pockets without defendant's permission.

¶ 14 Alviter explained that the manager's office is located about five feet from the food preparation area and everyone in the restaurant wore a headset and could hear what the other employees said. On the day of defendant's arrest, Alviter saw Brianna enter the office four

times. During the last entry, Alviter was near the sink, which is located six feet from the office. From there, Alviter heard people talking, although she was unable to make out the content of the conversation. Alviter denied hearing any laughter or screaming coming from the office. Alviter testified that when Brianna left the office, she was smiling, but became upset after Alviter sent her to wash dishes. Shortly later, Brianna received a telephone call and went to the parking lot. Ten minutes later, defendant was arrested.

¶ 15 Kayla Garcia manages a Taco Bell restaurant in Gurnee, but she began her career at the Antioch location. During the summer of 2011, Garcia worked at the Antioch restaurant, where defendant was her manager and set her work hours. There, Garcia also worked with Brianna. Garcia explained that the majority of the employees wore headsets, so they all heard what others said. Garcia indicated that if an employee's hair was not in a hairnet or a bun, defendant would tug the hair to indicate that it needed to be put up. Garcia observed defendant pull Brianna's hair on multiple occasions because it would frequently fall out of its bun. Moreover, Garcia noted that employees at the Antioch restaurant often removed keys from the manager's pocket. She explained that this procedure allows the manager to keep his or her work gloves on thereby preventing cross-contamination and allowing the store to meet the time preparation goals of the food line. Garcia testified that she saw Brianna take keys once or twice a day from defendant's upper left shirt pocket. Other employees did the same thing to defendant, and Garcia's own employees take keys from her pocket. Garcia indicated that defendant never touched her breast area or otherwise acted inappropriately towards her.

¶ 16 During the jury instruction conference, defendant tendered seven instructions relating to the uncharged offense of battery based upon physical contact of an insulting or provoking nature (see 720 ILCS 5/12-3(a) (West 2010)) as a lesser-included offense of the charged offense of

aggravated criminal sexual abuse. The State objected to the inclusion of these instructions and argued that "based on the element test, the charge of insulting/provoking battery does not fit inside the aggravated criminal sexual abuse statute." In contrast, defendant asserted "[i]nsulting and provoking contact is *** within the realm of being sexually touched for sexual conduct." Because Brianna indicated she was insulted, defendant averred it was an insulting touch, as set forth within the lesser-included offense of battery. The trial court denied defendant's request for the battery instructions, explaining:

> "First of all, the evidence in this case here that the parties have heard and discussed essentially talks about contact to the breast area of the victim; and the case law is clear that when we talk about sexual gratification or arousal of either the accused or the victim in this case here, that is insulting or provoking in nature; and so that would suggest that the offense of battery is an included offense of the criminal sexual abuse, and the case law also supports that, that battery is an included offense of criminal sexual abuse.
>
> Now, as to whether or not it is a lesser-included offense of the crime, the Court has to look at other factors that were introduced during the trial.
>
> The Court is guided in case law with respect to this issue with *People versus Meor* [233 Ill. 2d 465 (2009)] ***.
>
> In the *Meor* case, the Court addressed the issues presented to this court as to whether or not the battery should have been included in that case; and it is clear that the State had the discretion to choose to charge the Defendant either with the offense of battery or with the offense that they have charged as aggravated criminal sexual abuse, and they elected to charge the Defendant in this case here with the aggravated criminal sexual abuse.

> If, in fact, there is a possibility that the Defendant can be convicted of both the battery and the offense of criminal sexual abuse, the case law indicates that in those situations it is not a lesser-included offense; and I find in this case here that the evidence that has been submitted to this jury is one where a lesser-included offense would not be proper to submit to this jury for the very reasons spelled out in *Meor*, and that is is [*sic*] that because essentially the fact that the Defendant in this case here could be convicted of both based on the evidence that is submitted in this case, and it is not a lesser-included offense for the crimes that are charged here."

¶ 17 Ultimately, the jury found defendant guilty of all four counts of aggravated criminal sexual abuse. In his posttrial motion, defendant argued, *inter alia*, that the trial court erred in refusing to instruct the jury on the offense of battery. The trial court denied defendant's motion, stating that the facts before it did not support a battery instruction. Thereafter, the trial court sentenced defendant to 24 months' probation and ordered him to pay associated fines and fees and to register as a sex offender. Defendant filed a timely notice of appeal.

¶ 18 II. ANALYSIS

¶ 19 On appeal, defendant contends that the trial court erred by refusing to instruct the jury on the offense of battery as a lesser-included offense of aggravated criminal sexual abuse. Defendant argues that a battery instruction was appropriate in this case because the indictment alleged facts that would support a conviction of battery and the evidence could have left the jury with a reasonable doubt as to one of the elements of aggravated criminal sexual abuse, thereby making it possible for the jury to find him guilty of battery without also finding him guilty of aggravated criminal sexual abuse. The State concedes that, as charged in this case, battery is an included offense of aggravated criminal sexual abuse. Nevertheless, the State responds that the

trial court properly refused defendant's request for a battery instruction. According to the State, defendant was not entitled to a lesser-included offense instruction because the evidence did not rationally support a conviction of the lesser offense.

¶ 20 As a general rule, a defendant may not be convicted of an offense for which he has not been charged. *People v. Kolton*, 219 Ill. 2d 353, 359 (2006). In appropriate cases, however, a defendant is entitled to have the judge or jury consider offenses that are "included" in the charged offense. *Meor*, 233 Ill. 2d at 469. An "included offense" is "established by proof of the same or less than all of the facts or a less culpable mental state (or both), than that which is required to establish the commission of the offense charged." 720 ILCS 5/2-9(a) (West 2010); *Meor*, 233 Ill. 2d at 469-70. As our supreme court has noted, a lesser-included offense is a "valuable tool" because it provides "an important third option to the jury," which, "believ[ing] that [the] defendant was guilty of something, but uncertain whether the charged offense had been proved *** might convict [the] defendant of the lesser offense, rather than convict or acquit him of the greater offense." *People v. Novak*, 163 Ill. 2d 93, 105 (1994) (citing *People v. Bryant*, 113 Ill. 2d 497, 502 (1986)), abrogated on other grounds by *Kolton*, 219 Ill. 2d at 364.

¶ 21 Historically, Illinois courts have identified various methods for determining whether a particular offense is a lesser-included offense of a charged crime, including the "abstract-elements" approach, the "charging-instrument" approach, and the "factual or evidence" approach. *Kolton*, 219 Ill. 2d at 360. However, in determining whether an uncharged offense is a lesser-included offense of a charged crime, the supreme court has repeatedly expressed its preference for the charging-instrument approach, concluding that that method best serves the purposes of the lesser-included offense doctrine. See *Meor*, 233 Ill. 2d at 470; *Kolton*, 219 Ill. 2d at 360-61; *People v. Hamilton*, 179 Ill. 2d 319, 327 (1997); *Novak*, 163 Ill. 2d at 112-13.

¶ 22 Under the charging-instrument approach, whether a defendant may be convicted of an uncharged offense involves a two-step analysis. *Kolton*, 219 Ill. 2d at 361, 367. Initially, a court examines the allegations in the charging instrument to determine whether the description of the greater offense contains a "broad foundation" or "main outline" of the lesser offense. *Kolton*, 219 Ill. 2d at 361; *Novak*, 163 Ill. 2d at 107. The parties agree that, whether a charged offense encompasses a lesser-included offense presents a question of law subject to *de novo* review. See *Kolton*, 219 Ill. 2d at 361. If the court determines that a particular offense is an included offense of a charged crime, the court moves to the second step and determines whether the evidence presented at trial rationally supports a conviction of the lesser-included offense. *People v. Ceja*, 204 Ill. 2d 332, 360 (2003). A defendant is entitled to a lesser-included offense instruction only if the evidence would permit a jury rationally to find the defendant guilty of the lesser offense and acquit him of the greater offense. *People v. Medina*, 221 Ill. 2d 394, 405 (2006); *Ceja*, 204 Ill. 2d at 360; *People v. Cardamone*, 381 Ill. App. 3d 462, 508 (2008).

¶ 23 The parties dispute the standard of review applicable to the second-step analysis of the charging-instrument approach. Defendant argues that *de novo* review is proper whereas the State submits that the appropriate standard of review is the abuse-of-discretion standard. In support of his argument that the standard of review applicable to the second-step inquiry is *de novo*, defendant cites to *People v. Washington*, 2012 IL 110283, ¶ 19. The issue in *Washington* was whether an instruction on second-degree murder must be given as a mandatory counterpart when the evidence supports tendering a jury instruction on self defense. *Washington*, 2012 IL 110283, ¶ 56. In addressing this issue, the supreme court noted that the question of whether sufficient evidence exists in the record to support the giving of a jury instruction is a question of law subject to *de novo* review. *Washington*, 2012 IL 110283, ¶ 19. In fact, it is well settled that

whether a defendant has met the evidentiary minimum standard entitling him to a lesser-included offense instruction is a question of law and is reviewed *de novo*. See *People v. Slack*, 2014 IL App (5th) 120216, ¶ 32 ("[W]here the question presented is whether the defendant met 'the evidentiary minimum' for a certain jury instruction, it is best categorized as a question of law and reviewed *de novo*."); *People v. Tijerina*, 381 Ill. App. 3d 1024, 1030 (2008). We do not find *Washington* persuasive as to the standard of review applicable to the second-stage analysis of the charging-instrument approach in this case for two principal reasons. First, *Washington* did not involve the application of the charging-instrument approach, and defendant does not cite any authority for *de novo* review at the second-stage of the charging-instrument approach. Second, and more important, the trial court's decision not to tender the lesser-included offense instruction in the present case was not premised on a finding that defendant failed to meet the evidentiary minimum standard entitling him to a lesser-included offense instruction. Accordingly, we will review the trial court's decision under the second stage of the charging-instrument approach for an abuse of discretion. See *Cardamone*, 381 Ill. App. 3d at 507-08.

¶ 24 Turning to the merits, defendant contends that, under the first stage of the charging-instrument approach, battery is a lesser-included offense of aggravated criminal sexual abuse as the latter offense was charged in this case, because, when read broadly, each count of the indictment described conduct that would support a conviction of battery based upon physical conduct of an insulting or provoking nature. See 720 ILCS 5/12-3(a)(2) (West 2010). The State does not dispute that, as charged in this case, battery was an included offense of aggravated criminal sexual abuse because the indictment, which alleged that defendant knowingly touched Brianna's breasts, broadly alleged a knowing contact of an insulting nature. Accordingly, for

purposes of our analysis we will assume that battery is an included offense of aggravated criminal sexual abuse as charged in this case.

¶ 25 Nevertheless, "[t]he identification of a lesser included offense does not automatically give rise to a correlative right to have the jury instructed on the lesser offense." *Novak*, 163 Ill. 2d at 108. As noted above, in order to be entitled to the instruction, the evidence must permit a jury rationally to find the defendant guilty of the lesser offense and acquit him of the greater offense. *Ceja*, 204 Ill. 2d at 360; *Cardamone*, 381 Ill. App. 3d at 508. Stated differently, the issue is whether the jury could have found defendant guilty of *only* the lesser offense. *People v. Blan*, 392 Ill. App. 3d 453, 460 (2009). The trial court answered this question in the negative, stating that defendant could be convicted of both offenses based on the evidence submitted in this case.

¶ 26 As noted above, defendant argues that a battery instruction was appropriate in this case because the indictment alleged facts that would support a conviction of battery and the evidence could have left the jury with a reasonable doubt as to one of the elements of aggravated criminal sexual abuse, thereby making it possible for the jury to find him guilty of battery without also finding him guilty of aggravated criminal sexual abuse. A person commits aggravated criminal sexual abuse if that person "commits an act of sexual conduct with a victim who is at least 13 years of age but under 18 years of age and the person is 17 years of age or over and holds a position of trust, authority, or supervision in relation to the victim." 720 ILCS 5/11-1.60(f), 5/12-16(f) (West 2010). The term "sexual conduct" means any knowing "touching or fondling by the victim or the accused, either directly or through clothing, of the sex organs, anus or breast of the victim *** for the purpose of sexual gratification or arousal of the victim or the accused."

720 ILCS 5/12-12(e) (West 2010); 720 ILCS 5/11-0.1 (West 2010).[2] Defendant asserts that the disputed element in this case concerned whether he touched Brianna's breasts for the purpose of sexual gratification or arousal. While defendant concedes that the nature of his actions "suggest[]" that they were sexually motivated and "might permit" an inference that he touched Brianna's breasts for his sexual arousal or gratification, it does not compel such an inference. According to defendant, because there is no direct evidence that he made contact with Brianna for the purpose of sexual gratification and the evidence does not otherwise overwhelmingly establish that he made contact with Brianna for such a purpose, the trial court should have tendered his requested instructions on battery.

¶ 27 Although there was no direct evidence that defendant made contact with Brianna for the purpose of sexual gratification, the intent to arouse or satisfy sexual desires can be established by circumstantial evidence. *People v. Burton*, 399 Ill. App. 3d 809, 813 (2010); *People v. Westpfahl*, 295 Ill. App. 3d 327, 334 (1998); *People v. Ikpoh*, 242 Ill. App. 3d 365, 387 (1993). Intent is judged by the totality of the circumstances, including the defendant's actions, words, and other conduct. *People v. Cabrera*, 116 Ill. 2d 474, 492 (1997). In this case, given Brianna's testimony regarding defendant's repeated sexual overtures and the video recording of the August 19, 2011, encounter, we find that the jury could not rationally find defendant guilty of battery and acquit him of aggravated criminal sexual abuse.

[2] Section 12-12 of the Criminal Code of 1961, which contained the definition of "sexual conduct," was repealed by Public Act 96-1551, art. 2, § 6 (eff. July 1, 2011), but a substantially similar definition was added by the same public Act as section 11-0.1 (see Public Act 96-1551, art. 2, § 5 (eff. July 1, 2011)).

¶ 28 In particular, Brianna testified that she was sitting in her car on a cigarette break in June 2011, defendant approached her vehicle, noticed a hickey above her tank top, and while pulling down her shirt, touched her breast. When Brianna returned inside the restaurant, defendant asked if he could give her a hickey and threatened to cut her hours if she did not give him a "maybe answer." Brianna testified that defendant touched her breasts again on August 19, 2011, when she and defendant were in the manager's office. On that date, defendant repeatedly poked Brianna's left breast and dropped his keys down her shirt multiple times. The second time defendant dropped his keys down Brianna's shirt, they became stuck. However, instead of waiting for Brianna to retrieve the keys like she did the first time defendant dropped them down her shirt, defendant inserted his hand in Brianna's shirt and felt around, touching both of Brianna's breasts in the process. Brianna's testimony regarding the encounter on August 19, 2011, is corroborated by the recording from the restaurant's surveillance system. In addition, Brianna testified that in the days that followed the June 2011 encounter, defendant asked her to spread her legs and to go on the restaurant's roof with him. Brianna also stated that defendant repeatedly told her that she was sexy. In short, after examining the totality of the circumstances, including defendant's actions, his comments to Brianna, and his other conduct, we can conceive of no reason why defendant would have touched Brianna's breasts in June 2011 and on August 19, 2011, other than for his own sexual arousal or gratification. See *Burton*, 399 Ill. App. 3d at 815 (finding that touching a female's breast "generally carries a sexual purpose" when not done for a medical reason). Accordingly, we conclude that the evidence would not permit the jury rationally to find defendant guilty of battery and acquit him of aggravated criminal sexual abuse, and the trial court therefore did not abuse its discretion by refusing to instruct the jury on the offense of battery. See *People v. Sandefur*, 378 Ill. App. 3d 133, 142 (2007) (holding that were

the defendant's use of his penis to touch the victim's buttocks was for no purpose other than the defendant's sexual arousal, battery instruction was not warranted).

¶ 29 Prior to concluding, we note that defendant strongly emphasizes that much of Brianna's testimony was not corroborated. However, defendant cites no authority requiring corroboration to sustain a conviction. To the contrary, the supreme court has stated that testimony from a single witness is sufficient to convict if it is positive and credible. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). Here, Brianna's testimony is not contradicted by the record and, in fact, significant portions of Brianna's testimony are supported by the video recording of the August 19, 2011, encounter in the manager's office. Therefore, we reject defendant's suggestion that this lack of corroboration casts doubt on any finding that he touched Brianna's breasts for his sexual arousal or gratification.

¶ 30 III. CONCLUSION

¶ 31 For the reasons set forth above, we affirm the judgment of the circuit court of Lake County.

¶ 32 Affirmed.