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NO. 4-12-1018

FILED
March 31, 2014
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. MICHAEL B. WINFIELD Defendant-Appellant	) Appeal from) Circuit Court of) Brown County) No. 11CF31)) Honorable) Michael Roseberry,) Judge Presiding.

PRESIDING JUSTICE APPLETON delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court did not abuse its discretion by finding a witness qualified to testify as an expert on the subject of child sexual abuse accommodation syndrome.

(2) The trial court cured the error of propensity evidence by promptly sustaining an objection thereto and giving curative instructions.

(3) Defendant has failed to rebut the presumption that the jury received all the necessary verdict forms.

¶ 2 A jury found defendant, Michael B. Winfield, guilty of counts III and IV of the information, which charged him, respectively, with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2010)) and sexual relations within families (720 ILCS 5/11-11 (West 2010)). The trial court sentenced him to imprisonment and probation.

¶ 3 Defendant appeals on three grounds. First, he challenges the qualifications of a witness for the State, Brook Baldwin, to testify as an expert regarding child sexual abuse

accommodation syndrome. We conclude that although the trial court was mistaken about the meaning of the term "expert," the court essentially found Baldwin to be qualified to testify as an expert on child sexual abuse accommodation syndrome. That finding is not an abuse of discretion. The extent of her qualifications as an expert went to the weight of her testimony.

¶ 4 Second, defendant argues that propensity evidence made the trial unfair toward him. We disagree. The trial court sustained defendant's objection to the propensity evidence and immediately gave two curative instructions, thereby curing the error. The propensity evidence was not so inflammatory as to shake our assumption that the jury followed the court's instructions.

¶ 5 Third, defendant argues that the trial court effectively directed a verdict in the State's favor by failing to give the jury not guilty verdict forms for counts III and IV. On the contrary, the report of proceedings indicates that the jury received all the verdict forms and threw away the unused verdict forms, which consequently are missing from the common-law record.

¶ 6 Therefore, we affirm the trial court's judgment.

¶ 7 I. BACKGROUND

¶ 8 A. The Testimony of Mercedes G.

¶ 9 1. *Sexual Touching, Beginning at Age 12*

¶ 10 The jury trial occurred in September 2012. Mercedes G., born on August 26, 1992, was 20 years old at the time of the trial.

¶ 11 Mercedes testified she was 8 or 9 when her mother, Kimberly D. Colgan, married defendant. The attorneys stipulated that "at all times relevant to the charges filed in this case, Mercedes [G.] was a stepdaughter of [defendant]."

¶ 12 The summer before Mercedes began eighth grade, when she was 12, she discovered that the password to her e-mail account had been changed. Suspecting that defendant was the one who had changed the password, she went up to his bedroom, where he was sleeping after working a night shift, and she asked him to tell her the new password. He replied he would do so only if she kissed him on the lips. She declined, telling him it was not worth it, and she went downstairs to the living room. He then came down to the living room and, in her words, "made [her] do it any ways." He "started touching [her], touching [her] breasts, touching [her] vaginal area and [her] butt." All the while, "he was saying[,] ['Y]ou better not tell your mom because she won't believe you. I'll make sure she doesn't believe you. I'll ruin your life just like you're going to ruin mine if you tell her.['] " Afterward, she went upstairs, into her bedroom, and locked her bedroom door until her mother returned home.

¶ 13 Mercedes was "too scared to tell her [mother]," and defendant fondled her on repeated occasions thereafter. Mercedes testified: "It would happen every 2 to 3 days and never go more than a week and he would just do the same things to me. Kissing me, touching my breasts, touching my vaginal area and my butt ***."

¶ 14 2. *Oral Sex, Beginning at Age 13*

¶ 15 When Mercedes was 13 and the family lived in a house on Illinois Route 107 in Brown County, "[i]t progressed to oral sex." He performed oral sex on her, and she performed oral sex on him. She knew what they were doing "wasn't right," and she told him she "didn't want to do this." But he "would threaten [her] life if [she] didn't do it," and he also threatened to "hurt" her mother.

¶ 16 On cross-examination by defense counsel, Richard Scholz, Mercedes admitted that in a previous hearing, on November 11, 2011, she testified that oral sex was part of her first

sexual contact with defendant. This was in contrast to her testimony at trial that oral sex began later, after a period of time during which he merely kissed and fondled her.

¶ 17 Mercedes testified at trial that she and defendant kept engaging periodically in oral sex and this was the only kind of sex she had with him until she was "about age 16." She said: "[It happened] every two to three days. It wouldn't go more than a week or two weeks before it would happen again." (On cross-examination, she admitted that, previously, in a videotaped interview, she told Brook Baldwin of the Advocacy Network for Children that the oral sex "happened everyday or almost everyday or every few days," without telling Baldwin that there was "a week or two weeks break.") If Mercedes's two sisters were home, she and defendant would have oral sex in the garage, and "if it was in the house[,] [her sisters] would be at the Y or the pool or something." As for their mother, "[s]he would be at work and then later on she would be with the girls at the Y or the pool."

¶ 18 The prosecutor, Mark Vincent, asked Mercedes:

> "Q. And was there a reason that you didn't go to the Y or the pool?
>
> A. He told me I had to stay home. He told me to tell my mom I didn't want to go.
>
> Q. And then there would be—that's when those events would happen?
>
> A. Yes."

¶ 19 Vincent asked Mercedes if she could remember any particular incident of oral sex. She answered that in the fall of 2008 she, defendant, and her mother went bowling with her

aunt and uncle at Tangerine Bowl in Quincy. This bowling excursion was defendant's idea. Vincent asked Mercedes:

"Q. So what happened during the bowling and after?

A. He didn't pay attention to my mom at all. He just constantly be [*sic*] paying attention to me and trying to talk to me. Afterward we went to Steak & Shake and he made her sit at a different table right next to us because he didn't want her sitting by him.

Q. And?

A. He said she was too drunk. So he dropped her off at my Aunt Kara's and made her spend the night there and my sisters stayed at my grandma's.

* * *

Q. So what did you do then after that?

A. Went home with him to the house on 107.

Q. And what occurred?

A. He made me stay in his bedroom with him. He kept kissing me and touching me on my breasts. I'm sorry. Vaginal area and butt and made me perform oral sex on him and he did it to me too.

Q. Is that—is that as far as it went?

A. Yes.

Q. Was there any sexual intercourse?

A. Not that time."

¶ 20 3. *Vaginal Intercourse, Beginning at Age 16*

¶ 21 In the winter of her sixteenth year, Mercedes had vaginal intercourse with defendant for the first time. This likewise happened in the house on Route 107. (On cross-examination, however, she testified she could not remember where she first had vaginal intercourse with him; all she knew was that she was 16 or 17 at the time.) Vincent asked her:

"Q. *** After that occurred what was the frequency of these sexual contacts you had with the Defendant after that?

A. It wouldn't go more than a week. Sometimes it would happen every 2 to 3 days.

Q. And what was the nature of the contact that would happen on those occasions?

A. Kissing me, touching my breasts, oral sex.

Q. Was each time did he—every time involve sexual intercourse?

A. Not every time.

Q. Okay. And were there any other locations that these episodes occurred beside the home?

A. Yes.

Q. Can you describe when and where it—if it was somewhere else?

A. In October of my senior year in high school I was 17. We took my mom up to Chicago for her birthday. We were going

to go to Shed[d] [A]quarium. We stayed at a hotel in Romeoville, the suburb of Chicago.

Q. And what happened there?

A. He made my mom take my sisters to the pool and made me stay in the room with him. Said we'd get ready and then come down. He made me have sexual intercourse with him and oral sex occurred.

Q. And can you recall any other times that these events happened? I don't know how clearly you said that was the purpose of that trip?

A. For my mom's birthday.

Q. And when is her birthday?

A. In October, October 10.

Q. Do you recall if you were—it was right on her birthday when that happened or—

A. We left the day before so it was the night before her birthday.

Q. Okay. So the sexual intercourse occurred the night before her birthday. So it would have been October 9?

A. Yes.

Q. And you were 17 you said?

A. Yes.

Q. So that would have been in 2000—

A. 2009."

¶ 22 By contrast, in her videotaped interview with Baldwin, Mercedes never told her any sexual abuse had occurred outside the residences the family occupied during the marriage.

¶ 23 4. *Defendant's Close Control of Mercedes*

¶ 24 Mercedes testified that, throughout her years in junior high school and high school, she was unable to "socialize" much because defendant would not allow her to do so. Vincent asked her:

"Q. And did he ever tell you— what would he say or why would he not let you?

A. Because he couldn't control me there. He wasn't with me to control what I was doing. Control what I was saying. Control who I was talking to."

¶ 25 According to Mercedes, she and defendant argued all the time, and sometimes her mother joined in the argument. Mercedes testified: "I was trying to push him away, make him not want to do these things to me. I was trying to get him to stop."

¶ 26 Vincent asked Mercedes if she could remember any particular occasion when she and defendant got into an argument. She answered that one night in November 2009, when she was 17 and a senior in high school, she had a friend over at the house on Route 107. His name was Lucas Kemp. They merely were sitting on the couch, in the living room, watching television. At midnight or 1 a.m., Mercedes received a call on her cell phone. It was defendant, and he told her that Kemp had to go home. (From her testimony, it is unclear from where defendant was calling and how he knew Kemp was there.) Kemp went over to the door of the

living room, the door leading outside, and began putting on his shoes, getting ready to leave, when defendant "burst in through the door." Mercedes testified:

> "Q. He [(defendant)] wanted to know what the hell was going on. He thought we were up to something, that we were having sex or something and all we were doing was sitting on the couch watching TV.
>
> Q. Then what happened after that?
>
> A. Mike began to scream in my face and said that Lucas needed to go.
>
> Q. And did he leave?
>
> A. Yes.
>
> Q. And then what did you do?
>
> A. Stood there and Mike yelled in my face and then I went upstairs to my bedroom and locked the door because I didn't want to listen to him yell at me any more."

¶ 27 Defendant then came up to her bedroom and ordered her to unlock the door. She opened the door and lay back down on her bed. He demanded her cell phone. She handed it to him. He "ripped it in half and threw it at [her]."

¶ 28 After that episode, Mercedes moved in with her biological father, Richard G., and lived with him for a month.

¶ 29 5. *Christmas 2009*

¶ 30 Mercedes came home for Christmas in 2009 (she still was living with her father). The family celebrated Christmas at her maternal grandmother's house, in Mount Sterling. Mercedes testified:

> "[Defendant] had said that we needed to take a load of presents home before he could take my mom and my sisters home and he demanded that I come with him. I was trying to refuse but then my family just finally said just do it and come back and get your mom and your sisters. It will be fine."

¶ 31 She and defendant left her grandmother's house and drove home, to the house on Route 107. He asked her to carry some presents upstairs and put them away. She did so. While she was upstairs, he grabbed her by the arm and pulled her into his bedroom. She resisted. "He pushed [her] down on to the bed and made [her] have sexual intercourse with him."

¶ 32 After having been gone for 40 or 45 minutes, they arrived back at her grandmother's house and picked up her sisters and her mother.

¶ 33 6. *Moving Back into the House on Route 107*

¶ 34 Around New Year's Eve in 2009, Mercedes moved out of her father's house and back into the house on Route 107. She could not recall whose decision it was that she should return. She denied it was her decision. Vincent asked her:

> "Q. *** So can you describe for the jury whether or not there was any sexual contact after that? After you moved back home with the Defendant?
>
> A. Yes, it went back to the regular routine.
>
> Q. What do you mean by that?

A. It would happen every 2, 3 days. No more than a week.

Q. And where was it happening then?

A. In—at our house on 107."

¶ 35 7. *The Renovation of the House on Camden Road*

¶ 36 Mercedes testified that in June 2010, after she graduated from high school but while she was still 17 years old, the family moved out of the house on Route 107 and into temporary living quarters, a cabin, while renovations were underway at what would be their new residence, a house on Camden Road in Mount Sterling.

¶ 37 Vincent asked Mercedes:

"[Q.] Was there any sexual relations, contact, intercourse of any kind with the Defendant during this period of time?

A. Yes.

Q. Can you describe when or where it would have been happening?

A. My mom and sisters weren't at the cabin. It happened there. And then he told my mom we would go paint the house and it would happen at the house on Camden Road.

Q. You mean paint it before you moved in?

A. Correct.

Q. And what would happen there?

A. He would make me have sexual intercourse with him.

Q. Was there any—was the home furnished at the time?

A. No.

Q. Where would these things happen?

A. On the floor."

¶ 38 The family moved into the Camden Road house around July 2010.

¶ 39 8. *The Celebration of Mercedes's Eighteenth Birthday, Followed, the Next Day, by a Motorcycle Trip to Springfield*

¶ 40 In early August 2010, Mercedes began college, Culver-Stockton College in Canton, Missouri.

¶ 41 On August 26, 2010, she drove from Canton to Quincy to celebrate her eighteenth birthday. The birthday party was at a Mexican restaurant in Quincy. Vincent asked her:

"Q. And do you recall who attended that party?

A. My mom, Mike, my sisters, me, my roommate, my grandma, her husband John, my Aunt Kara and her husband.

* * *

Q. And what—is there anything significant about that birthday party?

A. All of the presents came from him.

Q. What do you mean?

A. The presents that were supposed to be from my mom and him and my sisters, he made sure that I knew that they all came from him.

Q. What do you mean? Can you describe—did he make sure—

A. He just told me[,] ['T]his is from me,['] every time he handed me a present."

¶ 42 Before Mercedes left the Mexican restaurant, defendant pulled her to one side and told her he wanted to take her on a trip to Springfield the next day. She agreed to this idea.

¶ 43 The next day, August 27, 2010, she drove to West Quincy, to the planned meeting place. He arrived at noon on a motorcycle he had borrowed from Bobby Lung, and he took her on the motorcycle to Springfield. In Springfield, they ate at Lone Star Steak House, and then they went to various shops, where he bought shirts for her. Then they went to the Land of Lincoln Motel, a building with a brick front and yellow siding.

¶ 44 Vincent asked her:

> "Q. And what happened at this motel?
>
> A. He got a room and made me have sexual intercourse with him.
>
> Q. What do you mean by he made you have sexual intercourse?
>
> A. He said he would leave me in Springfield if I didn't do it."

¶ 45 She identified the motel in a photograph and pointed to the window of their room. In the photograph, the motel had a sign saying "Lincoln's Lodge," but she thought it "was called Land of Lincoln then." She just knew the name of the motel "had [']Lincoln['] in it."

¶ 46 After they had sex in the motel, defendant took her on the motorcycle back to West Quincy, where her own vehicle was parked. She then drove back to Culver-Stockton College.

¶ 47 Afterward, she stopped taking defendant's phone calls and stopped returning his voice messages. She deleted him from her Facebook account.

¶ 48 She never told Baldwin about the Springfield trip.

¶ 49 9. *The Return Home for Family Pictures*

¶ 50 In mid-September 2010, at her mother's request, Mercedes came home from college for family pictures. When she arrived at the Camden Road house in the evening, only defendant was there. One of her sisters was spending the night at a friend's house, and her mother and her other sister were at the YMCA. Defendant "made [Mercedes] have sexual intercourse with him." Vincent asked her:

> "Q. And again you said [']made.['] Can you describe what he may have done or said to start that contact?
>
> A. Threatened my life. Told me if I didn't he'd tell my mom.
>
> Q. And what was your reaction?
>
> A. That I didn't want to. I didn't know why my mom and my sisters weren't home."

¶ 51 After having sex with Mercedes, defendant left to pick up her mother and her sister from the YMCA. Before leaving, he warned her she "better not tell [her] mom." Mercedes went into her bedroom and shut the door.

¶ 52 Vincent asked her:

> "Q. And was there—what happened between you and your mother for the rest of the evening?
>
> A. She was trying to get me to talk to her and tell her what was going on. She thought something was wrong with me. She didn't know what it was.

Q. Did she ask for anybody else to help or talk to you?

A. My Dad.

Q. And did he come to the residence?

A. He tried.

Q. What do you mean?

A. He got there and Mike said if he didn't leave he'd call the cops."

¶ 53 Ultimately, the family photos were taken, and Mercedes returned to college.

¶ 54 10. *Difficulties at College and Disenrollment*

¶ 55 Mercedes was at Culver-Stockton College only a month and a half. She explained:

"I couldn't talk to anyone. Mike wouldn't let me. He would call my roommate and ask her what I was doing. Wanted to know who I was with at all times. I couldn't focus on classes because I was constantly worried about him. He would come up there and stalk me and want to know where I was."

¶ 56 She never actually saw defendant on the campus, but on September 25 or 26, 2010, two or three days after the college homecoming, he told her on the telephone he had been "spying" on her. She testified:

"A. He had called me off my mom's phone and I didn't know it was him.

Q. And there were references made to this homecoming?

A. Yes.

Q. What did he say to you?

A. He said that he and Bobby Lung had went up there and were spying on me."

¶ 57 For some reason—Mercedes did not say why in her testimony—defendant and her mother came to the college and confiscated her computer, phone, and car.

¶ 58 In the first week of October 2010, defendant and Mercedes's mother picked her up to take her to an interview at a Steak 'n' Shake restaurant. When she climbed into their vehicle, she knew "something was wrong." Defendant was "furious." He "was yelling" and pounding on the steering wheel. He was ranting about her "not doing what [she] was supposed to be doing" at college. After the five-minute interview at Steak 'n' Shake, he gave her an ultimatum: she either had to "move home and go back to Culver and get [her] stuff willingly and move it out," or else "they were going to have [her] admitted into the hospital because [she] was crazy." She disenrolled from Culver-Stockton College and returned home, where all the sexual contact—the vaginal intercourse, the oral sex—resumed as before.

¶ 59 In February 2011, Mercedes enrolled in cosmetology school in Quincy and started working at Steak 'n' Shake. By that time, defendant and her mother had given her back her vehicle.

¶ 60 11. *The Revelation of a Sexual Relationship Between Mercedes and Defendant*

¶ 61 In June 2011, defendant and Mercedes's mother separated. They thereafter lived in separate residences. Mercedes continued living with her mother.

¶ 62 At defendant's request, Mercedes would skip cosmetology classes every couple of days and visit him to have sex with him. She testified:

"Mike would get home from work at 7 in the morning so I would get up and get ready for school and leave my mom's by 7 because she thought I had to be at school at 8. Drive to his house and he would clear out the garage for me to put my car in so no one would know I was there. And then he would make me stay all day until I be [*sic*] home from school."

¶ 63 Vincent asked her:

"Q. Did your relationship [with defendant] in any way change after the Defendant and your mother had separated?

A. We would see each other less frequent[ly].

Q. But did you continue communicating with the Defendant?

A. Yes.

Q. And what would be the nature of the communications?

A. He would want me to come see him.

Q. And how would you respond?

A. That I didn't want to.

Q. Was there ever any talk of a relationship between you and the Defendant—

A. Yes.

Q. —being possible after, during, as a result of his separation?

A. Yes.

Q. Can you describe your responses to that?

A. That I didn't want a relationship with him."

¶ 64 Mercedes admitted that, in Facebook messages, defendant told her he wanted to be with her and she replied she wanted to be with him. But she testified she was only saying what he wanted her to say. He also told her, on Facebook, that he loved her, and she replied that he was handsome and that she loved him. But, again, she insisted those were not her true, unconstrained sentiments. He expected this sweet talk from her. She had been talking that way to him for years.

¶ 65 Mercedes identified defense exhibit No. 2 as a printout of the Facebook messages between defendant and herself, sent on September 14, 2011, after they had sex. In one of the messages, he remarks that he is "going to try to take a nap" because he "used a lot of energy earlier," and then he adds the abbreviation "lol" for laughing out loud. He also tells her: "[U]r my official 18 wheeler lover girl." There are around 150 messages in this exhibit, in which Mercedes and defendant vie with one another in making fervent declarations of love and devotion. He says, for example: "I just don't [want] to lose this GREAT thing we have going." She replies: "ME EITHER!!! I wont let it happen." He says: "I MISS U MORE," to which she replies: "I WANT U MORE." He says: "[L]uv u more," to which she replies: "[N]o . . . not possible." They go on and on in this vein until a note of alarm enters the digital conversation. Mercedes tells defendant that unless he comes over immediately and does something, they will "LOSE EVERYTHING" because her mother "HAS MY PHONE WITH ALL OUR MESSAGES BACK AND FORTH." Then she says: "NO OFFENSE BUT HURRY UR ASS UP[.] SHE HAS LOCKED HER DOOR AND WONT LET ME IN AND SHE HAS MY

PHONE[.] MIKE IM GONNA HAVE A PANIC ATTACK." Then she says: "IM FREAKING OUT[.] WE R OFFICIALLY SCREWED."

¶ 66 Defendant arrived as requested, but her mother would not let him in. Then the police came looking for him, but by that time he no longer was there. After the police left, Mercedes and her mother sat down and had a talk.

¶ 67 Vincent asked Mercedes:

"Q. And what did you do?

A. I told her exactly what he had done to me.

Q. And what did you tell her?

A. That he had been sexually assaulting me since I was 12.

Q. And how did she react to that visually to you?

A. She started crying.

* * *

Q. You had been continuing to see the Defendant even though your mother and he were separated. Is that what you testified to?

A. Correct.

Q. Was he still having any contact with the rest of your family?

A. Yes.

Q. Were you making any observations of his interaction with the rest of your family?

A. Yes.

Q. And what were you observing?

A. The same things were starting to happen to Madison that happened to me."

¶ 68 Scholz objected. The trial court sustained the objection, struck the answer, and instructed the jury to disregard the answer. The court then sent the jury to the jury room for a recess and asked Vincent: "Mr. Vincent[,] are we really going where I think you're wanting to go?" He replied:

> "MR. VINCENT: No, Your Honor. What has been disclosed was that the witness victim had observed some preliminary contact between the Defendant and her youngest sister which she perceived was a lead up to what began happening to her. Just arguing and fighting and that's what—and this was in her interview which the Counsel has seen and she made mention of it. I apologize for the response. It was not expected and I think with clarification she would have expanded on that."

¶ 69 Scholz argued, to the contrary, that Mercedes "knew exactly what she was doing." In his view, she deliberately tried to "poison the jury" with the suggestion that defendant had been sexually abusing her sister Madison. Vincent disputed that Mercedes had any such intent. He argued:

> "I don't think she would have been that sophisticated. I think it wouldn't be difficult to rehabilitate that statement because I think she was referring exactly what she said on previous occasions, that she was beginning to see conduct between the Defendant and her

younger sister. She will not testify that she has any knowledge of any abuse or observed any abuse. It's just that arguing, interactions between the two, and that's what led—that's what preceded the abuse that happened to her."

¶ 70 Scholz moved for a mistrial. The trial court denied the motion for two reasons. First, the court did not believe this was "staged testimony." Second, the court had given a curative instruction. When the jury returned to the courtroom, the court gave the jury the following further instruction, with the attorneys' consent:

"The jury is further instructed that no evidence exists of any sexual conduct or intention of sexual conduct by Michael B. Winfield towards Madison or Macy, actually Madison [G.] or Macy [W.] or any other female. So you are to consider that as a further instruction."

¶ 71 12. *The Medical Examination of Mercedes*

¶ 72 Mercedes testified that on September 15, 2011, she underwent a medical examination at Passavant Hospital in Jacksonville. The trial court admitted a stipulation that saliva was found on her breast and that the DNA (deoxyribonucleic acid) in the saliva matched the DNA of defendant.

¶ 73 13. *Mercedes's Explanation for Not Disclosing the Sexual Abuse Earlier*

¶ 74 On cross-examination by Scholz, Mercedes gave three reasons for not telling anyone, while she was a child, that defendant was sexually abusing her. First, defendant had threatened her life, and she was scared of him. Second, he had told her that her mother would

not believe her and that she would "kick [Mercedes] out." Third, he "was [her] parent too and [she] was supposed to be able to trust him too."

¶ 75 B. The Testimony of Kimberly D. Colgan

¶ 76 1. *Her Marriage to Defendant*

¶ 77 Kimberly D. Colgan testified she married defendant on May 4, 2002, and that their divorce became final in December 2011. Her marriage to him was her second marriage.

¶ 78 2. *Her Three Children*

¶ 79 Colgan had two children by her first marriage: Mercedes G. (age 20) and Madison G. (age 13). By defendant, she had one child, Macy W. (age 9).

¶ 80 3. *A Perceived Change in Defendant's Relationship With Mercedes and Her Father*

¶ 81 In the beginning, according to Colgan, defendant got along fine with Mercedes's father, Richard G., and defendant also had a good relationship with all three of the children. He changed, however, about the time Mercedes began eighth grade. He began regarding Richard as a "bad dad" who was "unfair" toward Mercedes. He did not want Mercedes visiting Richard, although Richard's other daughter, Madison, continued to visit him.

¶ 82 Also about the time Mercedes began eighth grade, defendant began singling her out. He became, in Colgan's opinion, too much of a disciplinarian toward Mercedes and too critical of her. He singled her out in another way, too. He would designate her to help him with chores in the "big garage," or the "shop" as they called it, while telling Colgan she "needed to stay inside with the kids, the little ones."

¶ 83 4. *The Visit to Romeoville*

One year, for Colgan's birthday, the family went to Romeoville to spend the night in a hotel, because the children wanted to go swimming. Colgan testified:

> "And when they got ready, they got their suits on, he told us that—he took me aside, took me outside, and told me that he wanted Cedes [(Mercedes)] to feel like she was surprising me, and I was to take the little girls downstairs and I don't swim. So at hotels that made me very nervous but I did it. And he was going to have Cedes plan the next day's activities. And they came down a good time afterwards because the little girls were tired, and Cedes was [*sic*] blood-shot eyes and she just sat there."

¶ 84 5. *The Bowling Excursion*

¶ 85 Colgan and defendant decided to go bowling one evening with Colgan's sister and brother-in-law, even though Colgan "couldn't bowl." The younger girls, Madison and Macy, wanted to come along, but defendant said no; he insisted they stay with Colgan's mother. He wanted Mercedes to come along, however, and this resulted in "a fight."

¶ 86 Defendant, Colgan, and Mercedes met with Colgan's sister and brother-in-law at a bowling alley in Quincy. Defendant would not allow Colgan to sit in the half-circle where the bowlers sat. He insisted that she sit "behind." She resented that at the time.

¶ 87 After bowling, they all went to Steak 'n' Shake. Colgan sat across from her sister, but defendant told Colgan she "needed to slide down and sit at the other table, that he wanted to make Mercedes feel good about herself." Colgan had consumed only one beer that evening, but she was "on a lot of medication," and she was not a drinker (elsewhere in her testimony, she mentioned undergoing surgery for carpal tunnel syndrome). On the way out of Steak 'n' Shake, Colgan and defendant "had a spat" because she thought he was "treating [her] unfairly"; she "felt he was treating Mercedes like his girlfriend or his wife" while "shun[ing]" her.

¶ 88 Colgan testified:

> "We got in our van and he pulled out and instead of turning left to come home to Mt. Sterling, he turned right and I asked him what was going on. And we pulled into my sister Kara's house and he told her that I was out of control and I needed to stay there."

Although Colgan disagreed, her sister suggested it might indeed be a good idea for Colgan to spend the night there, where "[they] could just talk it out." Defendant left Colgan at her sister's house for the night and picked her up in the morning.

¶ 89 6. *Christmas 2009*

¶ 90 On Christmas Day in 2009, the family went to Colgan's mother's house. Mercedes was present for the festivities. She had been living with her father because of tensions between her and defendant, and defendant wished to speak with her privately.

¶ 91 After the presents were opened and the dinner was over, defendant wanted to take the packages home, and he requested Mercedes to help him. The two of them left. Twenty minutes went by, and Colgan began wondering what was taking them so long. The round-trip should have taken about 15 minutes. She kept calling the home phone and his cell phone, but no one answered. Another 10 minutes went by, and she kept trying to reach them by phone. Finally, they returned. Colgan testified:

> "When they came back, Mercedes had been crying, her eyes were blood shot, and she was all red in the face. And she came in and stood with her back up against mom's cupboard. I had the little girls' shoes on because I was ready to go and find out what the heck had been going on and we left.

Q. (By Mr. Vincent) Well, did anything—did you find out anything more?

A. No. I asked what had happened. I asked, [']Did you fight, what happened, what's going on, what took you so long[?'] And I was stonewalled."

¶ 92 7. *Defendant's Reaction When Mercedes Left for College*

¶ 93 Mercedes left for college around the second week of August 2010. The day after her departure, defendant "left the house on a motorcycle and was crying *** before he left." Colgan did not see him again until late in the evening. "And another time within days he wasn't going to work. He was on [the] couch crying and sobbing uncontrollably until he asked for help." He wanted to speak with a friend. Colgan telephoned the friend, who came over. Defendant "kept saying, 'I've lost her.' "

¶ 94 Defendant communicated with Mercedes by e-mail while she was at college. But he would not let Colgan see the messages he sent her.

¶ 95 8. *Family Pictures*

¶ 96 Shortly before Mercedes's eighteenth birthday, when she was attending Culver-Stockton College, Colgan asked her to come home for family pictures. She did not want to come home, but Colgan prevailed on her to do so.

¶ 97 When Mercedes arrived home in the afternoon, Colgan and the younger girls were away. Colgan and Macy were at the YMCA, and Madison was at a friend's house. When the YMCA closed, Colgan and Macy needed a ride home. Colgan "called and called and called." Finally, defendant picked them up and brought them home.

¶ 98 When Colgan walked into the house, Mercedes "was sitting on the love seat," and she was crying. Colgan testified:

> "I sent Macy to her room and told her to put things away, and I went out and started asking questions. And Mike came out and sat on the couch adjacent and I asked him and I started raising my voice and I wanted to know what in the heck was going on and neither one would talk. Mercedes at that point got very, very upset and went to get her keys and she couldn't find them and Mike had them."

¶ 99 At one point, Mercedes went outside and stood at the end of the driveway, sobbing hysterically. Defendant went outside, picked her up in his arms, carried her back into the house, and set her down on a chair. Colgan telephoned her sister and Richard G., asking them to come over and help solve the mystery of why Mercedes was so distraught. Defendant threatened Colgan that he would have her sister and Richard arrested for trespassing if they came over. Colgan believed this threat. She got hold of her sister and told her not to come, because defendant was going to have her arrested. She could not reach Richard, however, to turn him back. Richard arrived and came to the door. Defendant "met him at the door and told him that he couldn't come in, she didn't want to see him, and Mercedes was bawling." Eventually, Richard left without speaking with Mercedes.

¶ 100 9. *The Motorcycle Trip to Springfield*

¶ 101 On Mercedes' eighteenth birthday, Colgan and defendant went to a birthday party for her at Mi Jalapeno restaurant in Quincy. Mercedes was attending college at this time, and

she drove in for the party. At the restaurant, defendant changed all the tags on the presents so as to indicate they were only from him.

¶ 102 The next morning, defendant got up especially early and shaved. Colgan was bemused by the unaccustomed smell of cologne. Also, he had his new boots on. "[T]his wasn't his typical behavior at all." She asked him where he was going. Evidently, she received no answer.

¶ 103 Later, between 9 and 9:30 p.m., Colgan called defendant's cell phone because he was supposed to go to work and she did not know where he was. At first, he did not answer his phone, but eventually he called back and said he was in west Quincy, at a gas station. He said "[h]e'd taken Mercedes on a bike ride" to Springfield "for a special birthday"—even though she already received her presents, and had a party, the night before. "He told [Colgan] that they'd [gone] to Aeropostale and they couldn't find anything." That was all defendant told her. Suspicious, Colgan went to the bank and found he had withdrawn $250 in cash.

¶ 104 10. *Her Discovery of Amorous Text Messages Between Mercedes and Defendant*

¶ 105 On September 14, 2011, Colgan went to bed. She had been separated from defendant since July. Eighteen-year-old Mercedes was on the couch, next to Colgan's bedroom door, and Colgan could hear her talking on the phone. "[Mercedes] would be crying and then she would be raising her voice, yelling, and then she would be talking normally ***." Colgan "couldn't figure out what was going on." She came out of her bedroom, and Mercedes "had her phone on her shoulder talking and she had the laptop on her lap." Colgan bumped her arm, intentionally, and the phone skittered across the floor. Colgan picked up the phone and said hello. It was defendant. She told him to leave them alone, and she hung up.

¶ 106 Colgan then told Mercedes she "was going to download an app on her phone that would keep her safe," whereupon Colgan went back into her bedroom, locked the door behind her, and began exploring Mercedes's cell phone. "Facebook things were popping up on her phone," and it became evident that "there was a relationship" between Mercedes and defendant. Colgan called her mother, who lived next door. She called 9-1-1. She called her sister and her brother. Then she "went out and talked to [Mercedes]," who was "bawling hysterically."

¶ 107 Defendant "pulled up in the driveway and walked up on the front porch and came to the door and turned on his heel and left." The relatives arrived. The police arrived. Mercedes revealed to Colgan that "things had been going on since she was 12."

¶ 108 Colgan testified that, over the years, she questioned Mercedes "many times" about what was going on between her and defendant, "thinking they were fighting or [that] something wasn't right," but she "could never get anything out of her." "Repeatedly," "[o]ver a period of years," she asked Mercedes, " ['W]hy are you fighting? Is he doing something to you? Do I need to know something?['] " "Numerous" times, "monthly," Colgan specifically asked defendant "if he was sexually abusing Mercedes," and "[e]very time" she asked him that question, "he'd hit [her]." Scholz asked Colgan:

> "Q. (By Mr. Sholz) How often did you—did you ask Mercedes specifically if Mike was in any way sexually abusing her?
>
> A. Yes.
>
> Q. How often did you do that?
>
> A. Same time frame, monthly."

¶ 109 On cross-examination, Colgan admitted she never told any police officers, medical personnel, or counselors of any physical violence by defendant toward her. She admitted that, over the years, Mercedes saw two different counselors and that she mentioned to neither of them that she suspected Mercedes had been sexually abused. Colgan admitted allowing defendant to be alone with Mercedes, even though, according to her testimony, she suspected he was having sexual contact with her.

¶ 110 C. Defendant's Testimony

¶ 111 1. *Denials*

¶ 112 In his testimony, defendant denied ever raising his hand against Colgan or physically abusing her in any way. He noted she never mentioned any physical violence in the divorce papers, which she filed around the time of his arrest. The first time he ever heard any allegation that he had hit her was in her testimony at trial.

¶ 113 He denied ever having any sexual contact with Mercedes before she turned 18.

¶ 114 He denied having her e-mail password when she was 12, let alone using it to extort sexual favors from her.

¶ 115 He denied ever threatening her in any way or keeping her in the garage with him.

¶ 116 He denied he had been a controlling, dominating stepfather toward her. He denied preventing her from going out. Rather, he encouraged her to go places. In fact, he and Colgan bought her a car when she was 15, and upon turning 16, she went places in the car. Also, he set her up with a boy, Lucas Kempf, whom she saw regularly for about a month. (This apparently was the same boy whom Mercedes mentioned in her testimony, but in the transcript of her testimony, his name is spelled "Kemp.")

¶ 117 He denied changing the tags on all the birthday presents in the Mexican restaurant. The first time he heard that allegation was at trial. Only one of the gifts was from him alone, a gag gift.

¶ 118 He denied concealing the motorcycle trip from Colgan. Rather, he told her, the morning he left, that he was taking Mercedes to Springfield so she could spend her birthday money. And contrary to Colgan's testimony, he had worn cologne for years.

¶ 119 He denied having any sexual contact with Mercedes in the motel in Springfield, although they stayed in the motel for a couple of hours because she was feeling sick.

¶ 120 He denied forcing her to withdraw from Culver-Stockton College. Rather, she withdrew because her academic performance was so poor that if she had stayed long enough for her grades to be posted, she would have lost her scholarship and would have been unable to return on the scholarship. (Colgan likewise testified this was the reason for Mercedes's withdrawal from college.)

¶ 121 2. *Counseling for the Three of Them*

¶ 122 For a time, Mercedes lived with her father. Scholz asked why, and defendant answered: "We were having problems with Mercedes playing all three sides, I guess you would say. She was kind of playing all of us against one another." It was at the suggestion of a counselor, Gina Knox, that Mercedes went and lived with her father for a while. Mercedes returned because she was not getting along with her father's girlfriend.

¶ 123 In 2008 or 2009, for a period of four to five months, Knox counseled not only Mercedes but also defendant and Colgan. Knox never made any recommendations as to what the family should do, other than that Mercedes should "try living outside the home." The only time

Knox brought up any sexual topic was when she asked defendant, during an individual counseling session with him, whether Mercedes had been "coming on" to him.

¶ 124 3. *What Happened in Springfield*

¶ 125 According to defendant's testimony, he never suggested the motorcycle ride to Mercedes. Rather, it was she who wanted to go to Springfield so she could spend the money people gave her the day before, for her eighteenth birthday. She wanted to buy some Harley-Davidson clothes.

¶ 126 So, defendant met her at an Ayerco gas station in west Quincy, and they got on the interstate and headed to Springfield. They first stopped at a Lone Star restaurant, and Mercedes acted as if she were ill; she kept going to the restroom. Then they went to Hall's Harley-Davidson, and she still was acting as if she did not feel well; she went to the restroom a few more times. Defendant talked with someone in the parts department, a man named Jim, asking him if there were any place nearby where Mercedes could lie down.

¶ 127 On Jim's recommendation, they went to a hotel, and they got a room. Mercedes "went straight to the bathroom" and then lay down on the bed for "maybe five minutes." Then she returned to the bathroom. He knocked on the bathroom door, asking her if she was all right. She did not undress in the hotel room. He did not get on her bed. There was no sexual touching during the Springfield trip. In fact, defendant insisted there never was any sexual touching between him and Mercedes on any previous occasion, either: not in Romeoville, not during Christmas 2009, not when she came home for family pictures.

¶ 128 After a couple of hours, they left the hotel room. She asked if they could "go to Aeropostale in the mall." They went there, and she bought something. Then they headed back

to Quincy. That was all that happened the day after Mercedes's eighteenth birthday, according to defendant.

¶ 129 4. *The Beginning of the Sexual Relationship*

¶ 130 Defendant testified he had no sexual contact whatsoever with Mercedes before she left Culver-Stockton College at age 18. The duration of their sexual relationship was a mere four months. It began shortly before he separated from Colgan, and it ended on September 14, 2011. He never forced Mercedes, never threatened her. Theirs was an entirely consensual relationship.

¶ 131 5. *September 14, 2011*

¶ 132 Defendant was a correctional officer with the Illinois Department of Corrections, and his shift was from 11 p.m. to 7 a.m. He went to work the evening of September 13, 2011, and during his shift, his blood pressure became extremely high, and he developed a severe headache. A nurse at the correctional center gave him some headache medicine and took his blood pressure. The major in charge of the shift told defendant he needed to go home but that he would not allow him to drive.

¶ 133 Defendant telephoned Colgan (from whom he was separated by this time) and asked her if she would have Mercedes come get him. Mercedes picked him up from the correctional center and brought him to Colgan's house. It was between midnight and 1 a.m. He spent the night on the couch in Colgan's house and woke up in the morning feeling better. He chatted with Colgan in the kitchen, and then Mercedes gave him a ride home.

¶ 134 When they arrived at defendant's house, Mercedes asked him if she could stay. He said she could. Scholz asked:

"Q. What happened while she stayed there?

A. I went to bed. And she was still tired, and she came with me.

Q. Okay. Did you and she have sex that day?

A. Yes, we did."

She left because she had to be at work by 4 p.m.

¶ 135 For a day or two, he and she had been communicating by Facebook and by texting one another on their cell phones. Defendant's exhibit No. 2 was a printout of their Facebook messages back and forth, beginning the evening of September 13, 2011, before he went to work. (According to this exhibit, the messages were printed out on September 15, 2011, at 10:22 a.m. They begin on "Tuesday," September 12, 2011, and end "11 hours ago," that is, 11 hours before the date of the printout.) Defendant admitted these messages were "inappropriate." He admitted that whenever 18-year-old Mercedes came over to his house, he concealed her car in his garage so Colgan would not know what was going on between them.

¶ 136 When Colgan seized Mercedes's phone and Mercedes implored defendant, in a Facebook message from her laptop, to come over and help deal with the worsening situation, he headed over to Colgan's house. Scholz asked him:

"Q. Did you go into the house?

A. No, I did not.

Q. Why not?

A. I got stopped before I ever reached the porch.

Q. And what happened when you got stopped?

A. When I got there, Kim's brother, Jeremy, was there. His truck was pulled up in the yard. As I got out of my truck and

started approaching the house, Kim's mother and stepfather was walking in the front door. And as they walked in, Kim came out and—

Q. Did she say anything to you?

A. Yes.

Q. What did she say to you?

A. [']You've been fucking her this whole time.[']

Q. What did you do?

A. I didn't do anything because she continued to tell me things.

Q. Okay. I assume she was yelling or hollering?

A. Yes, telling me I was a dead man, that I needed to stack [*sic*] up on toilet paper because I was spending the rest of my life in prison, and yada, yada.

Q. After that, what did you do?

A. I turned and got in my truck and left. I never said a word."

¶ 137 He headed for his sister's house in Athens, and on the way, he stopped at the police station in Virginia, Illinois. The police officers there told him they could not help him and that he would have to return to Brown County. After conferring on the phone with his sister and with some friends, including Lucas Kempf, he returned to Mount Sterling, went to the police station there, and gave a videotaped statement, in which he admitted having sex with Mercedes—but only after she turned 18, not before.

¶ 138 Scholz asked defendant:

> "Q. And [in the videotaped interview,] you were asked if you ever had any type of fondling or touching or anything that could be misinterpreted as sexual before Mercedes was 18 or before she got out of high school is the way Chief Wilson phrased it. Do you recall that?
>
> A. Yes.
>
> Q. What did you tell him?
>
> A. No.
>
> Q. Why did you tell him that?
>
> A. Because I didn't.
>
> Q. Because that's the truth?
>
> A. Yes."

¶ 139 D. The Testimony of Khenti Bhakta

¶ 140 Khenti Bhakta testified he was the owner of Lincoln's Lodge in Springfield. He had business records indicating that on August 27, 2010, defendant rented a room there for $60. Bhakta had no idea how long he was in the room that day.

¶ 141 E. The Testimony of Brook Baldwin

¶ 142 Brook Baldwin was the associate director of the Advocacy Network for Children, an organization in Quincy. In an *in camera* conference on September 19, 2012, Scholz said it was his understanding that the State intended to call Baldwin as a witness. Vincent confirmed he intended to call her. Scholz suggested, then, that it would be necessary to first "voir dire

[Baldwin] on her expertise and ability to testify as an expert on the child." The trial court responded:

> "THE COURT: It doesn't need to be voir dire outside the presence of the jury. It's just like any other witness. You ask her—he [*sic*] testifies to her qualifications only, you cross-examine, he offers her as an expert, you object if you do, and then I decide if she's an expert and then so forth, but that's done in front of the jury. They have a right to know her qualifications. We don't have to do that twice."

¶ 143 Scholz reiterated his argument that *voir dire* should occur outside the jury's presence. Again the trial court responded:

> "THE COURT: No. No, no. Because you may still argue in closing argument, [']Ladies and gentlemen, you know, she may be an expert but I asked her this question about where she went to college and she said she didn't go to college.['] You want to save those arguments. You want those to be in front of the jury, I would think, or else you can't make those arguments. If I say that she is an expert, you can still question her experience, not her ability to testify as an expert. So I have always required testimony to establish or to dispute an expert to be in open court as it is required to be, I understand."

¶ 144 The next day, September 20, 2012, in another discussion outside the jury's presence, the trial court ruled that Baldwin could testify regarding the characteristics of child

sexual abuse accommodation syndrome, provided that she did not attempt to connect those characteristics to the facts of this case. Vincent remarked: "I have already admonished her, and she understands, she already knew from her own education and training that it's not used to determine the veracity of a victim's statements."

¶ 145 The jury was brought into the courtroom, and Vincent called Baldwin. He questioned her on her qualifications. She had a bachelor's degree in psychology. She had attended a couple of training seminars in which child sexual abuse accommodation syndrome was one of the subjects taught, and one of the seminars was called "Finding Words." Also, she had read a couple of articles on the subject. When Vincent finished, he stated: "Your Honor, we would be tendering Ms. Baldwin as an expert in her field to testify on the subject of the child abuse, Child Sexual Abuse Accommodation Syndrome."

¶ 146 Scholz then cross-examined Baldwin on her qualifications. When the *voir dire* was concluded, he argued to the trial court that "the requirements for expert qualifications weren't met by the State" and that Baldwin "[could not] testify to this theory, syndrome or pattern." The court overruled the objection. The court said:

> "At this stage, I don't believe that I have to determine whether she's an expert or not an expert in this field. I think the threshold, based upon the evidence that I anticipate being presented, is that she's qualified to testify regarding the Child Sex Abuse Accommodation Syndrome. Based upon her training, I believe she is qualified to testify. I am certifying her as qualified to testify.
>
> You may proceed, Counsel.

MR. SCHOLZ: Judge, if I might. I would ask for a limited instruction to the jury that she is not testifying as an expert.

THE COURT: I didn't say I was reaching that. I'm not saying she is or is not. I'm just saying she's qualified to testify.

You may continue, Counsel."

¶ 147 Baldwin testified that Roland Summit, to whom she otherwise referred as "Dr. Summit," coined the term "Child Sexual Abuse Accommodation Syndrome" in 1983, in an article for the Child Abuse and Neglect Journal. The term, Baldwin explained, actually was a misnomer:

> "It basically is—it's called a syndrome, but it technically is not a syndrome. It's not a medical issue. It's not included in the DSM [(Diagnostic and Statistical Manual of Mental Disorders)]. It's not a mental health condition. It's basically a concept to show how children experience sex abuse. It also helps us to understand how they disclose sex abuse."

¶ 148 According to the child sexual abuse accommodation syndrome, as described by Baldwin in her testimony, five elements "ma[d]e it possible for a child abuse victim to survive within an intact family where the abuser [was] a parental figure or someone within the family structure."

¶ 149 The first element was "secrecy." The sexual abuse typically "happen[ed] when the child [was] alone with the offender." It did not "happen in front of witnesses or other people." Through intimidation juxtaposed with "a promise of safety," the offender dissuaded the child from revealing the sexual abuse: " ['I]f you don't tell, everything will be okay,[’] but ['i]f

you tell, nobody's going to believe you; your mom will hate me; she'll hate you; she'll kill me; she'll kill you.['] " Summit had found that "the majority of adult females who were child victims never did disclose their abuse during their childhood."

¶ 150 The second element was "helplessness." Children lacked "the capability to understand the consequences of the sex abuse." They could not "protect themselves." They could not, or would not, "fight back" against an "authority figure" with whom they otherwise had an affectionate relationship. Baldwin explained:

> "It's a normal child reaction to sex abuse to stay quiet, to cope with it silently. They often will repress what's going on or they'll disassociate. When the abuse is occurring, they often go somewhere else in their mind just to get away from it. They feel that if they didn't tell the very first time that there's no second chance; that the mom or the nonoffending adult may ask you why they didn't tell the first time or why did you keep it a secret. So that just enforces them not being able to tell. They often feel that by not telling they may be a willing participant or they may be judged as a willing participant. There's a lot of guilt and self-blame that goes along with that."

¶ 151 The third element was "entrapment and accommodation." The child felt trapped in the "reality of sex abuse" because he or she "didn't tell the first time." (These elements, as explicated by Baldwin, appear to overlap to some extent.) As the abused child grew older, he or she typically had to "accommodate increased sexual demands." It became more apparent to the offender that the child was too scared or too ashamed to report the sexual abuse, and

consequently the offender was emboldened. The sexual abuse became "more intense," "a compulsive, addictive pattern," which the child gradually learned to accept as "normal."

¶ 152 The fourth element was "delayed, conflicted or unconvincing disclosure." "[T]he majority of victims [did] not tell during childhood," often because the offender was "the major breadwinner" and he had "threaten[ed] to abandon the family." Certain events, however, could "trigger disclosure." If the offender moved out of the home, the child might begin to feel safe enough to talk. An educational program at school might be the trigger, or the child might confide in a classmate. As the child grew older, she might begin wanting "to have [her] own life." She might become angry with the offender if, out of jealousy or possessiveness, he forbade her to go to a dance, for instance, and this anger might move her to break her silence.

¶ 153 The fifth and final element of child sexual abuse accommodation syndrome was "[r]etraction." After disclosing the sexual abuse, the victim might "later take it back and say that it didn't happen," once the consequences of the disclosure became sufficiently clear, that is, the legal consequences for the offender and the economic consequences for the family.

¶ 154 Vincent asked Baldwin:

> "Q. I have just—it may be obvious, but in your studies, or review of this theory, do all of the steps or factors that you've testified to appear in all of the cases?
>
> A. No."

¶ 155 Before cross-examining Baldwin on child sexual abuse accommodation syndrome, Scholz moved to strike her testimony:

> "MR. SCHOLZ: Well, Judge, I'm going to, at this time, ask to strike and ask the jury to disregard any of this testimony

based on previous objections I've made and based on the fact that I don't think this helps him one way or the other, helps the jury to decide any of the issues in the case one way or the other. Sometimes this can happen. Sometimes it doesn't.

THE COURT: Your objection is irrelevancy, correct?

MR. SCHOLZ: Relevancy, inexpertise.

THE COURT: Overruled, based consistent with my previous rulings."

¶ 156 Scholz then proceeded to cross-examine Baldwin on child sexual abuse accommodation syndrome. Baldwin admitted that in 1992 Summit wrote a further article stating that "had he known the legal consequences, he would not have used the word [']syndrome[']; that it [was] not a syndrome." Instead, he would have used the word "pattern." Baldwin acknowledged Summit's disapproval of using his theory as evidence to convict anyone. Summit was concerned that his concept of child sexual abuse accommodation syndrome "ha[d] been misused in court to prove that abuse ha[d] occurred" whereas he never intended the concept to be used for that purpose. It was a "theory," "not proof of anything." It was "not a scientific tool." It was only one way, not the exclusive way, "to describe how children experience[d] abuse." It was "a way to describe things that [could] happen"—but which did not "always happen." "[S]ometimes, depending on all kinds of factors, it [could] exist in a case or not exist in a case."

¶ 157 In other words, Summit's purpose merely was to "provide a vehicle, a way, a theory for a more sensitive therapeutic response to legitimate victims of child sexual abuse." "He talk[ed] about how society as a norm believe[d] that a child should cry out or disclose when abuse occur[red] and how that[] [was] not generally the case in his study."

¶ 158 In Baldwin's opinion, "society still believe[d] that child victims would tell immediately," although she admitted that since 1983, when Summit published his paper, "society's attitudes [had] changed" and "[t]here [was] more awareness of these issues." Scholz asked her:

> "Q. Would you agree with [Summit's] statement [in his 1992 article] that *** CAAS—
>
> A. Child sexual abuse accommodation syndrome.
>
> Q. Reflects pathology, not of a child who can't convince us of his or her experience, but of an adult society which won't be convinced?
>
> A. Do I agree with that statement?
>
> Q. Do you accept that Dr. Summit said it?
>
> A. It would be helpful to read the entire article, but it seems to make sense."

¶ 159 After a brief redirect examination by Vincent, Scholz again moved to strike Baldwin's testimony, for two reasons. First, although the trial court "indicated she was qualified to testify," what came out in her testimony was that she had read only a couple of articles on child sexual abuse accommodation syndrome. Second, "what she testified about was not something that was outside the province of the jury, or outside the knowledge of the jury."

¶ 160 The trial court again denied the motion to strike Baldwin's testimony. The court noted that case law "acknowledg[ed] [child sexual abuse accommodation syndrome] as an accepted theory." Also, the court noted that Baldwin had not actually applied the theory to the facts of defendant's case.

¶ 161 Later, on September 21, 2012, during a jury instruction conference, Scholz tendered a nonpattern instruction on child sexual abuse accommodation syndrome. The trial court refused the nonpattern instruction. In doing so, the court clarified its reasons for previously denying Scholz's objections regarding Baldwin. The court said:

> "THE COURT: And I probably wasn't clear in the past. I did not identify Brook Baldwin as an expert in the field of Criminal Sex Abuse Accommodation Syndrome because in my opinion the only expert in that theory is the person that created that theory. Other people have studied that theory and I believe are able to educate the jury as to that theory. That's why I said she was capable or qualified to testify about that theory. And what I anticipated she did and what she did was educate the jury as to the elements of that theory or to look at that theory and look at the facts of this case and to perhaps provide in [*sic*] some explanation as to how or why things occurred, perhaps in the delay of reporting. That's why I did not have her give her opinion about whether those elements existed in this case because the way she explained the elements, I believe a qualified jury or a layperson could determine whether or not that may have been a reason why she in essence delayed reporting in this case."

¶ 162 Scholz then moved for a declaration of a mistrial because of Baldwin's testimony. He argued that if indeed, as he understood the trial court to have just stated, it had "allowed testimony that [was] in the nature of expert testimony or explanation about something [that was]

within the capability of everyday jurors, normal jurors," then this testimony "prejudice[d] the defendant, confuse[d] the jury, [and did not] aid them." The court denied this motion for a mistrial.

¶ 163 F. Vincent's Discussion of Child Sexual Abuse Accommodation Syndrome in His Closing Argument

¶ 164 In his closing argument, Vincent discussed the five elements of child sexual abuse accommodation syndrome, pointing out the "uncanny" correspondence between most of those elements and the facts of this case.

¶ 165 He told the jury:

> "We had—you heard from Brook Baldwin who testified as to this Child Sexual Abuse Accommodation Syndrome. You heard what the—the five different parts of that syndrome and it was uncanny how it seemed to work with some of this evidence we have here. She said that syndrome normally is applied or it was developed specifically for intact families where there is a father figure in the home, which could certainly apply in this case.
>
> And the first part was the secrecy part which jived completely with what the testimony of Mercedes has been and what you would expect in a case where there was abuse of a younger child; [']Don't tell your mother, I will—it will ruin the family,['] or, [']She won't believe you,['] and exactly what Mercedes was feeling and testified to. The helplessness, the

general assumption that if this is happening, then it must be consensual, the helplessness that the victim feels.

And then next of course is when it happens is that the feeling of entrapment and eventual accommodation that the child will just simply do whatever it is to accommodate the abuser and that's the way of life. And that's what happened in this case for almost six, seven, years from the time she was just before she turned 13 to the time she was after 19. That's what was happening. She accommodated and was trying to live her life.

And number four is that theory of course is the delayed or conflicted or unconvincing disclosure. And there certainly was a delay [in] disclosure here by six or so—more than six years. It was conflicted. There was a family blow-up that day but that's what brought it out. If that's what it took, that's what brought it out, and that's where things went from there.

She testified about recantation. She's certainly not recanting in this case. But I would submit that that is probably more applicable and it's where the family remains intact when the parents are together. In this case the defendant and Kim Colgan had already separated and the divorce was filed. There is no reason to recant for the purpose of keeping the family together and that's not what is happening anyhow."

¶ 166 G. Scholz's Closing Argument

¶ 167 Scholz argued to the jury that there was "no corroboration whatsoever for anything that Mercedes said happened before she was 18." Also, he argued there was no evidence that defendant ever had sexual contact with her without her consent.

¶ 168 As for sexual relations within families, he said: "Count IV, he had sex with her. She was a family member, his stepdaughter. The proposition the State presented evidence on there, we agree they've met their burden on Count IV, Sex Within Families. Don't be confused just because I'm saying that one's true, any of the others are."

¶ 169 H. The Verdicts and the Sentence

¶ 170 On September 21, 2012, after the attorneys made their closing arguments, the trial court read the instructions to the jury. While reading the instructions aloud, the court noticed there were two guilty verdict forms for count IV instead of a guilty verdict form and a not guilty verdict form. Nevertheless, the court read the instructions all the way through and concluded by stating: "Then there are verdict forms for guilty and not guilty of all charges."

¶ 171 Before sending the jury to the jury room, the trial court admonished the jury not to discuss the case yet because the court had not yet given the jury a copy of the instructions. Then, outside the jury's presence, the court remarked that as it was reading the instructions, it noticed there were two guilty verdict forms for count IV. When the jury returned to the courtroom, the court explained: "[T]he problem was a typographical error on one of the verdict forms so I wanted to make sure you all have correct verdict forms." As the court was about to hand the written instructions to the bailiff so that the jury could take them into the jury room for deliberations, Scholz said: "Judge, I am sorry. May I ask Your Honor to check the verdict forms to make sure that there's one of each?" The court responded: "Okay. I will make another review." Scholz said: "I think it's worth taking the second. Thank you." The court stated:

"Upon further review, they are correct. Thank you." Addressing the bailiff, the court said: "You may take those in with the jury."

¶ 172 Later, for the record, the trial court clarified what had happened. The court explained: "[T]here were two guilty forms on Count IV[,] [and] we made that change and the jury stayed in here and nobody talked to them."

¶ 173 The jury was given the case on September 21, 2012, at 2:55 p.m., and it returned its verdicts at 7:48 p.m. The jury found defendant not guilty of counts I and II, the two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(3) (West 2010)). The jury found him guilty, however, of counts III and IV, which charged him, respectively, with aggravated criminal sexual abuse (720 ILCS 5/11-1.60(b) (West 2010)) and sexual relations within families (720 ILCS 5/11-11 (West 2010)).

¶ 174 In his motion for a new trial, defendant alleged, among other things:

> "3. The jury impaneled and rendering a verdict herein failed to return all verdict forms as required and, given the difficulties in compiling and presenting Instructions to the jurors, that failure leads to the conclusion that the jurors did not receive all the required not guilty verdict forms as would be mandated by applicable law.
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> * * *
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> 6. The trial court erred in allowing Brook Baldwin to testify regarding a theory or pattern of Child Sex Abuse Syndrome where Ms. Baldwin was not qualified as an expert and merely testified as a lay person to matters which are not beyond the knowledge or

understanding of a jury and the defendant was greatly prejudiced by the introduction of said testimony where it could not be and was not applied to the alleged victim in this matter."

¶ 175 On October 17, 2012, the trial court held a hearing on defendant's motion for a new trial. At that time, the court informed the parties that in the evening of September 21, 2012, after the jury reached its verdicts, the court discovered that the jury had brought back into the courtroom only two of the verdict forms. The court asked the jury foreperson where the remaining verdict forms were, and the foreperson replied they were in the jury room. The court sent the bailiff to retrieve the remaining verdict forms, but the bailiff could not find them.

¶ 176 So, the following day, September 22, 2012, the trial court directed a clerk, Rhonda Johnson, to telephone the jury foreperson. The court permitted Johnson to report, on the record, what she had learned from her telephone conversation with the jury foreperson. Johnson reported that she had spoken with John Oliver, the foreperson, and he told her he had tossed the unused guilty verdict forms on the floor of the jury room and the unused not guilty verdict forms in the trash. Scholz declined an opportunity to question Johnson.

¶ 177 The trial court reiterated that there had been a problem with the instructions in that the "last two were both guilty." Nevertheless, the court remembered correcting the problem by replacing the duplicate guilty verdict form with a not guilty verdict form in the packet of instructions. The court stated it was "extremely confident" that all the verdict forms had been given to the jury because it had rechecked all eight verdict forms.

¶ 178 Finding no merit in any of defendant's contentions of error, the trial court denied his motion for a new trial and held a sentencing hearing. The court sentenced him to 44 months' imprisonment on count III and 30 months' probation on count IV.

¶ 179 This appeal followed.

¶ 180 II. ANALYSIS

¶ 181 A. Baldwin's Qualifications

¶ 182 If, in the trial court's view, Summit was the sole expert on child sexual abuse accommodation syndrome, it would follow that the court regarded Baldwin as not being an expert on that subject. And yet the court found Baldwin to be qualified, by her education and training, to testify regarding child sexual abuse accommodation syndrome. The question, then, is how should we categorize Baldwin: should we put her in the category of lay opinion witnesses (Ill. R. Evid. 701 (eff. Jan. 1, 2011)), given the court's finding that she was not an expert; or should we put her in the category of expert witnesses (Ill. R. Evid. 702 (eff. Jan. 1, 2011)), given the court's finding that she was qualified, by her education and training, to testify regarding child sexual abuse accommodation syndrome?

¶ 183 In so many words, the trial court found Baldwin to be an expert; the court merely was mistaken about the meaning of the term "expert" and did not want to call her that. While finding Baldwin to be "qualified," the court reserved the designation of "expert" to the preeminent authority on child sexual abuse accommodation syndrome, who the court assumed to be Summit. Actually, however, one need not be the preeminent authority to be an "expert" within the meaning of Illinois Rule of Evidence 702. An "expert" is simply a witness "qualified *** by knowledge, skill, experience, training, or education" to impart "scientific, technical, or other specialized knowledge" to the jury in his or her testimony. Ill. R. Evid. 702 (eff. Jan. 1, 2011). In substance, the court found Baldwin to be an "expert" without applying that word to her. Evidently, Scholz was not misled, considering that he continued to challenge Baldwin's

qualifications. Challenging a witness's qualifications presupposes that the witness is offered as an expert.

¶ 184 Because the trial court found Baldwin to be qualified, by her education and training, to educate the jury on child sexual abuse accommodation syndrome, defendant's citation of Illinois Rule of Evidence 701 is inapposite. Defendant argues that Baldwin's testimony violated Rule 701(a) (Ill. R. Evid. 701(a) (eff. Jan. 1, 2011)) by being based on her reading and training rather than on her "perception" and that her testimony also violated Rule 701(c) (Ill. R. Evid. 701(c) (eff. Jan. 1, 2011)) by being "based on *** specialized knowledge within the scope of Rule 702 [(Ill. R. Evid. 702))]." But Rule 701 is inapplicable because it applies to opinion testimony by lay witnesses. See Ill. R. Evid. 701. Baldwin was not a lay witness but an expert witness. Therefore, her testimony had to satisfy Rule 702, entitled "Testimony by Experts." Ill. R. Evid. 702 (eff. Jan. 1, 2011).

¶ 185 During oral arguments, defense counsel made clear that defendant was not challenging the admissibility of child sexual abuse accommodation syndrome under section 115-7.2 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.2 (West 2012)) but that, instead, he was challenging Baldwin's qualifications to testify as an expert on child sexual abuse accommodation syndrome.

¶ 186 If a trial court finds a witness to be qualified to testify as an expert and if a party challenges that finding on appeal, we ask whether the finding represents an abuse of discretion. *People v. Davis*, 335 Ill. App. 3d 1, 17 (2002). This means we will defer to the finding unless it is "fanciful, arbitrary, or unreasonable to the degree that no reasonable person would agree with it." *People v. Ortega*, 209 Ill. 2d 354, 359 (2004).

¶ 187 Illinois Rule of Evidence 702 provides in part: "If scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education, may testify thereto in the form of an opinion or otherwise." Ill. R. Evid. 702 (eff. Jan. 1, 2011). We are unable to say it was fanciful, arbitrary, or indisputably unreasonable for the trial court to find that someone with a bachelor's degree in psychology, who had 10 years' experience working child abuse cases and conducting forensic interviews as the associate director of the Advocacy Network for Children, who had read two articles on child sexual abuse accommodation syndrome, and who had attended two seminars in which that subject was taught, including "Finding Words," had sufficient knowledge and training to explain that subject to the jury. See *Ortega*, 209 Ill. 2d at 359.

¶ 188 B. Propensity Evidence

¶ 189 Defendant moved for the declaration of a mistrial because of Mercedes's testimony that "[t]he same things were starting to happen to Madison that happened to [her]." This testimony was, of course, inadmissible propensity evidence. See Ill. R. Evid. 404(a) (eff. Jan. 1, 2011). The trial court sustained Scholz's objection to the testimony and gave curative instructions. Believing those measures were sufficient, the court denied the motion for a mistrial. Defendant contends, on appeal, that the court abused its discretion by denying the motion for a mistrial. See *People v. Degorski*, 2013 IL App (1st) 100580, ¶ 72.

¶ 190 The State responds that defendant has forfeited this issue by omitting it from his motion for a new trial. See *People v. Enoch*, 122 Ill. 2d 176, 186 (1988).

¶ 191 Defendant in turn invokes the doctrine of plain error, arguing both that the evidence was closely balanced and that the error was so serious as to deprive him of a fair trial. See *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 40.

¶ 192 If the trial court succeeded in curing the error by sustaining Scholz's objection and giving curative instructions, there was no plain error because the error was eliminated. "If a trial judge properly sustains a timely objection and instructs the jury to disregard the evidence, the error is usually cured." *People v. McDonald*, 322 Ill. App. 3d 244, 250 (2001). In this case, the court not only sustained Scholz's objection and promptly instructed the jury to disregard the answer but, after a short recess, gave the jury a further instruction that "no evidence exist[ed] of any sexual conduct or intention of sexual conduct by Michael B. Winfield towards *** Madison [G.] or Macy [W.] or any other female."

¶ 193 Granted, objectionable testimony can be so inflammatory and prejudicial that sustaining an objection and giving a curative instruction will not cure the error. *People v. Bartall*, 98 Ill. 2d 294, 317 (1983). In this case, though, we do not consider Mercedes's answer to be so inflammatory and prejudicial as to disable the jury from performing its sworn duty to follow the court's instructions. See *id.* Her answer was ambiguous. She did not actually say defendant was sexually abusing Madison. Rather, she seemed to suggest he had been treating Madison in ways that, in her experience, foreshadowed sexual abuse ("The same things were *starting* to happen to Madison that happened to me." (Emphasis added.)). The jury probably realized this perception was interpretive on Mercedes's part, making it all the easier to follow the court's curative instruction. "The jury is presumed to follow the instructions that the court gives it" (*People v. Taylor*, 166 Ill. 2d 414, 438 (1995)), and we see no reason to set aside that presumption in this case. Because the error was cured, we find no plain error.

¶ 194 C. The Lost Verdict Forms

¶ 195 Defendant argues that, on the record, it is unclear the jury received not guilty verdict forms for counts III and IV and that by omitting those not guilty verdict forms, the trial court effectively directed a verdict in the State's favor on counts III and IV. On the authority of *People v. James*, 255 Ill. App. 3d 516 (1993), he requests that we reverse his convictions and sentences and remand this case for a new trial.

¶ 196 *James*, however, tends to undercut defendant's argument because in *James* the appellate court held that the report of proceedings took precedence over the common-law record. *Id.* at 528. The common-law record in *James* indicated the jury had received all four verdict forms, which would have enabled the jury to find the defendant guilty or not guilty of either of the charged offenses, arson and aggravated arson. *Id.* at 528. The report of proceedings, however—the transcript of what the trial court actually told the jury—indicated that the jury had received only three verdict forms: one for " 'not guilty of aggravated arson,' " one for " 'guilty of aggravated arson,' " and one for " 'guilty of arson,' " without one for "not guilty of arson." *Id.* at 528.

¶ 197 In the present case, it is the other way around: the common-law record is incomplete, but the report of proceedings fills the gap. The common-law record might lead one to infer that the jury did not receive all the verdict forms since the common-law record lacks the not guilty verdict forms for counts III and IV (although, under the law, the incompleteness of the common-law record really does not warrant that inference, as we will explain in a moment). The report of proceedings indicates, however, that although two guilty verdict forms for count IV were originally in the packet of instructions, the trial court not only corrected that problem but also ensured that the packet contained all eight of the required verdict forms.

¶ 198 This case is more comparable to *People v. Banks*, 287 Ill. App. 3d 273 (1997), a case the State cites. In *Banks*, the common-law record contained only 8 of the 10 verdict forms. *Id.* at 282. Nevertheless, the appellate court presumed that the jury had received all 10 verdict forms. *Id.* The appellate court relied on the principle that " 'where a record is incomplete, or is silent, a reviewing court will invoke the presumption that the trial court ruled or acted correctly.' " *Id.* (quoting *People v. Jones*, 196 Ill. App. 3d 937, 960 (1990)). In the present case, the record is not even silent; before handing the packet of instructions to the bailiff, the trial court reviewed the verdict forms and then stated, on the record, that they were all in the packet. Even if the court had not so stated, the absence of the not guilty verdict forms in the common-law record would not overcome the presumption that the jury received them. See *id.*

¶ 199 III. CONCLUSION

¶ 200 For the foregoing reasons, we affirm the trial court's judgment, and we assess $75 in costs against defendant as costs of appeal.

¶ 201 Affirmed.