2016 IL App (4th) 130804-U

NO. 4-13-0804

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
January 25, 2016
Carla Bender
4th District Appellate
Court, IL

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Champaign County
DAHINTE T. THOMPSON,	)	No. 12CF1929
Defendant-Appellant.	)	
	)	Honorable
	)	Thomas J. Difanis,
	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Harris and Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding (1) the evidence was sufficient; (2) the trial court did not err in admitting evidence pursuant to sections 115-10 and 115-7.3 of the Code of Criminal Procedure of 1963 or in limiting impeachment testimony; (3) the court properly instructed the jury; and (4) the court did not abuse its discretion in sentencing defendant to 75 years' imprisonment.

¶ 2 In June 2013, a jury convicted defendant, Dahinte T. Thompson, of one count of predatory criminal sexual assault of a child, a Class X felony (720 ILCS 5/11-1.40(a)(1) (West 2010)), and one count of criminal sexual assault, a Class 1 felony (720 ILCS 5/11-1.20(a)(3) (West 2010)), based on incidents of sexual abuse involving defendant and his minor daughter, D.T. (born November 4, 1999). The trial court sentenced defendant to consecutive terms of 60 years' imprisonment for his predatory-criminal-sexual-assault conviction and 15 years' imprisonment for his criminal-sexual-assault conviction.

¶ 3 Defendant appeals, arguing this court should (1) reduce his convictions to two convictions for aggravated criminal sexual abuse because the State failed to prove penetration beyond a reasonable doubt; and (2) reverse and remand for a new trial because the trial court erred in admitting D.T.'s out-of-court statement pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2012)). Defendant further argues this court should reverse and remand for a new trial because the court erred by (1) limiting witness testimony that impeached D.T.'s testimony; (2) improperly instructing the jury on the intrusion clause of the definition of sexual penetration; and (3) admitting evidence of defendant's alleged sexual abuse of his sister pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2012)). Finally, defendant argues his 75-year aggregate sentence (1) is excessive and should be reduced; or (2) was based on an improper factor and this court should remand for resentencing. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In November 2012, the State charged defendant by information with one count of predatory criminal sexual assault of a child and one count of criminal sexual assault. We summarize only the facts and testimony necessary for the purposes of this appeal.

¶ 6 A. Pretrial Matters

¶ 7 Prior to trial, the State filed a motion to admit evidence of D.T.'s out-of-court statements made to Linda Wild, an investigator with the Department of Children and Family Services, pursuant to section 115-10 of the Code. 725 ILCS 5/115-10 (West 2012). The State sought to introduce D.T.'s statements to Wild through a video recording of the interview. In April 2013, the trial court held a hearing on this motion and found "the time[,] content[,] and circumstances of the statement provide[d] sufficient safeguards of reliability assuming the child

testifies at trial." Accordingly, the court admitted the video-recorded out-of-court statements for presentation to the jury.

¶ 8 The State also filed a motion to admit evidence of defendant's alleged sexual abuse of his younger sister, which occurred from 1985 through 1991, and his alleged sexual abuse of D.T., which occurred from 2007 through 2012, pursuant to section 115-7.3 of the Code. (725 ILCS 5/115-7.3 (West 2012). The State sought to introduce this other-crimes evidence through the testimony of defendant's sister, Latera Thompson, and through D.T.'s testimony for the purpose of showing propensity. The trial court admitted this evidence after weighing the factors set forth in section 115-7.3(c) of the Code. 725 ILCS 5/115-7.3(c) (West 2012). The court found the proximity in time problematic but ultimately ruled the probative value of the evidence outweighed its prejudicial effect.

¶ 9 B. Trial

¶ 10 In June 2013, the matter proceeded to a jury trial. The jurors heard the following evidence.

¶ 11 1. *D.T.*

¶ 12 D.T. testified she was 13 years old and was born on November 4, 1999. D.T. stated she spoke to Marcy Nickerson, the school counselor, on November 13, 2012, "[b]ecause there was something bad going on at home." According to D.T., her father, defendant, touched her in inappropriate places, including her breasts, vagina, and buttocks. D.T. stated she told her friends about this conduct prior to speaking with Nickerson. D.T. testified defendant picked her up from school on November 12, 2012. D.T.'s older sister had a basketball game, so defendant did not pick her up from school. D.T.'s younger siblings were still at school when she and defendant got home. She further indicated her mother, Angela Thompson, came straight home

from work and also did not attend her sister's basketball game. D.T. testified as follows about the incidents that occurred that day.

"Q. [Assistant State's Attorney] When you got home what—was anyone else home?

A. No.

Q. What happened?

A. I went upstairs and I was watching [television].

Q. And then what happened next?

A. He comes up the stairs, and he starts messing with me again, picks me up off the—from the couch that I was sitting on, and then he puts me on the bed.

Q. And when he put you on the bed, what did he do next?

A. He took my pants off, and he was touching my butt.

* * *

Q. What part of his body did he touch your butt with?

A. His penis.

Q. Where on your butt did he touch with his penis?

A. Inside my butt cheeks.

Q. Now inside your butt cheeks there's a hole, right?

A. Yes.

Q. Did it touch that?

A. Yes.

Q. How did he move when he was touching you with his penis?

A. Up and down."

This incident occurred on November 12, 2012, shortly after D.T.'s thirteenth birthday.

¶ 13 D.T. testified defendant was "doing the same stuff" a "couple of weeks" before her thirteenth birthday. She also stated the first time defendant touched her inappropriately was when she was in third grade. According to D.T., defendant was sitting on the toilet in the upstairs bathroom at their house. D.T. entered the bathroom to throw something away and defendant pulled her onto his lap, saying, "this is going to be going on for a long time." D.T. further testified defendant touched her inappropriately on a daily basis between the first incident in third grade and the day she told her friends and Nickerson in seventh grade. D.T. stated defendant would most often touch her "[w]ith [his] hands, and his penis in [her] butt." D.T. said she did not tell anyone because she feared defendant would hurt her. She decided to tell her friends because she was "tired of him doing it to me."

¶ 14 On cross-examination, D.T. agreed, on November 13, 2012, she had a conversation with Linda Wild while at the Children's Advocacy Center. She told Wild what happened on November 12, 2012, and incidents on previous dates. D.T. agreed she told Wild her father placed his penis in her vagina one prior time in the basement of the house and he placed his penis in her anus once.

¶ 15 Defense counsel then asked D.T. about her physical exam with Dr. Kathleen Buetow. D.T. agreed she told Dr. Buetow defendant touched her inappropriately, including touching the "outside of [her] butt." D.T. could not recall telling Dr. Buetow (1) defendant touched the "inside of [her] butt," (2) the inappropriate touching happened every day since she

was in sixth grade, (3) the worst thing that happened was defendant tried to place his penis inside her anus, or (4) defendant placed his penis inside her "private part" six to nine times. D.T. told Dr. Buetow sometimes defendant would ejaculate on the floor or bed, he tried to make D.T. touch his penis, and he tried to put his penis in D.T.'s mouth. D.T. denied telling Dr. Buetow defendant tried to make D.T. touch his penis every day, put his penis in D.T.'s "private" once a week, or put his penis in her anus once a week. D.T. described defendant's penis as soft during these incidents.

¶ 16 2. *Marcus Beach*

¶ 17 Rantoul police officer Marcus Beach testified he received a call from D.T.'s school disclosing the allegations of sexual abuse. Beach spoke with Wild and then called D.T.'s mother. When Angela and defendant arrived at the Rantoul police department, Beach asked defendant to wait in the lobby and asked to speak with Angela privately. Beach spoke with Angela for about 10 minutes and informed her of the sexual abuse allegations. When they finished, the lobby of the police station was empty and the vehicle Angela and defendant arrived in was gone.

¶ 18 Angela called defendant and he returned to the police station 10 to 15 minutes later. According to Beach, defendant left the police station because "[h]e needed to use the restroom. It was an emergency." The State introduced into evidence photos of the police station lobby, which had a public restroom just inside the front door. Defendant returned to the police station and Beach informed him of the sexual abuse allegations.

¶ 19 3. *Linda Wild*

¶ 20 A video of Wild's November 13, 2012, interview with D.T. was admitted into evidence. D.T. told Wild she was 13 years old and her best friends were R.T. and M.M. Wild

asked why D.T. was there, and D.T. responded her father had done some bad things to her, most recently the day before. D.T. stated she and defendant arrived home around 3 p.m. and no one else was home. According to D.T., defendant called her upstairs to the bedroom he shared with her mother. D.T. told Wild she went upstairs and defendant pulled down her pants and started touching her. Defendant asked D.T. to lie down on her stomach on the bed. Defendant got on top of D.T. and said, "Your butt is fine." D.T. told Wild defendant was "humping" her and touched her "butt" with his hands and his penis. According to D.T., defendant's penis was soft. The following exchange occurred:

> "Wild: Okay. What part of your body did he touch? Did his penis touch?
>
> D.T.: My butt.
>
> ***
>
> Wild: Was it on the inside or on the outside?
>
> D.T.: Well it was on the inside and outside—both.
>
> Wild: Okay. Did it um…. What do you do with that part of your body?
>
> D.T.: My butt?
>
> Wild: Yeah, was it your butt that it went in?
>
> D.T.: Right.
>
> Wild: He put his penis in your butt?
>
> D.T.: Yeah, but only the butt hole. He just like put it in there though.
>
> Wild: I don't know what that means.

D.T.: But he just like, but he didn't like put like all the way in there, you know, like in a hole, but he just like stick it in between the….

Wild: The cheeks?

D.T.: Yeah.

Wild: Okay. Has he ever stuck…. So has it ever gone inside your butt?

D.T.: Uh huh, it has.

Wild: It has, but not yesterday?

D.T.: No."

¶ 21 D.T. stated she was in third grade the first time defendant touched her inappropriately. Defendant was sitting on the toilet and D.T. went into the bathroom to throw something away. Defendant grabbed her and put her on his lap and said, "Don't worry about it. This is going to be going on for a long time." D.T. also told Wild a month or two earlier, this time in her own bedroom, defendant again pulled D.T.'s pants down, "humped" her buttocks, and ejaculated. D.T. stated defendant once tried to vaginally penetrate her with his penis. According to D.T., defendant also put his penis in her mouth and made her suck his penis.

¶ 22 D.T. stated she told her friends, M.M. and R.T., about defendant's conduct for the first time that day. Her friends encouraged D.T. to speak with the school counselor. D.T. told Wild she had not told anyone about the abuse before because she was scared defendant would hurt her.

¶ 23 On cross-examination, Wild testified she went to the police station before interviewing D.T. When she got there, defendant was running out of the station. Wild crossed

the street and asked to speak to defendant. Defendant refused, stating Wild was destroying his family.

¶ 24 4. *Angela Thompson*

¶ 25 Angela testified defendant called her from jail on November 28, 2012. The State played a recording of that phone call for the jury. In the recording, defendant repeatedly asked Angela to write a statement recanting D.T.'s claims. Defendant instructed Angela to then get the statement notarized. He said, "the same statement that got me up in here [(in jail)] can get me out of here."

¶ 26 5. *Latera Thompson*

¶ 27 Latera Thompson testified defendant, her brother, was seven years her senior. When she was about seven years old, defendant began molesting her. According to Latera, defendant would "take his penis and rub it between [her] butt." Latera testified defendant would do this almost every day until she was 11. Latera further testified defendant would touch her buttocks and her "private" with his penis when no one was home or when they were alone in a room. D.T. and Latera never discussed what happened to Latera as a child.

¶ 28 On cross-examination, Latera testified defendant's abuse came out when she was 13 and her mother read about it in Latera's diary. Latera further testified she was currently incarcerated for obstructing justice and had a 2004 conviction for possession of a controlled substance. Latera began using drugs when she was 13 years old. She began using drugs "to ease the pain from what happened to [her]."

¶ 29 6. *M.M.*

¶ 30 Defendant called M.M. as a witness. M.M. testified she was with D.T. at recess one day when D.T. brought up what happened with her father. Defense counsel asked what D.T.

told M.M. about what happened with her father, and the State objected to the hearsay testimony. Defense counsel indicated she sought the testimony to impeach D.T. Outside the presence of the jury, the following testimony was elicited.

¶ 31 D.T. told M.M. "her dad was making her suck his dick." Defense counsel asked if D.T. told M.M. defendant was not having other types of intercourse with D.T., and M.M. responded affirmatively. Defense counsel asked whether M.M. told D.T. it would be easier to prove the case against defendant if D.T. said defendant actually had sexual intercourse with her, and M.M. again responded affirmatively. On cross-examination, the State asked what M.M. understood sexual intercourse to be, and M.M. responded, "I don't know."

¶ 32 The trial court asked defense counsel how M.M.'s testimony impeached D.T.'s account, given the broad definition of penetration. The court asked, "Isn't this impeachment on a collateral issue, one form of penetration versus another?" Defense counsel argued the testimony that D.T. explicitly denied any form of intercourse other than oral penetration directly contradicted D.T.'s testimony, *i.e.*, defendant anally and vaginally penetrated her. The court stated, "I'll let her testify as to what the victim said to her, but getting into the definition and the issues of criminal sexual assault, predatory criminal sexual assault, where does it say intercourse? It says penetration." Accordingly, the court limited M.M.'s testimony to confirming D.T. told her defendant made D.T. suck his penis because "he would get into more trouble if he had sex with her."

¶ 33 7. *Jury Instructions*

¶ 34 During the jury instruction conference, the following exchange occurred:

"THE COURT: *** People tender their [i]nstruction [n]umber 20, 11.65(E), definition of sexual penetration. Any objection?

[Defense counsel]: No, your Honor."

Accordingly, the trial court instructed the jury, "The term 'sexual penetration' means any contact, however slight, between the sex organ of one person and the anus of another person." The jury returned guilty verdicts on both counts.

¶ 35 C. Sentencing

¶ 36 In July 2013, defendant filed a motion for a new trial. Later that same month, the trial court denied defendant's motion for a new trial and proceeded to sentencing. The State requested mandatory consecutive terms of 60 years' imprisonment for the predatory-criminal-sexual-assault conviction and 15 years' imprisonment for the criminal-sexual-assault conviction. 730 ILCS 5/5-8-4(d)(2) (West 2012). Defense counsel, highlighting defendant's relative lack of a criminal history, requested the minimum consecutive aggregate sentence of 10 years' imprisonment.

¶ 37 Defendant's presentence investigation report showed a criminal history consisting of a 1992 unlawful-use-of-a-weapon charge, a 1996 disorderly-conduct charge, a 2007 driving-under-the-influence-charge, and various traffic-related charges. Prior to his incarceration on the instant charges, defendant was continuously employed and provided for his four minor children. Defendant also made a statement in allocution, maintaining his innocence but indicating his intent to successfully complete any term of incarceration without disruption.

¶ 38 The trial court considered defendant's employment record and relatively young age of 39 years in mitigation. The court did not consider the traffic tickets but acknowledged

defendant's criminal history as an aggravating factor and stated it was "not much of a statutory factor in aggravation." The court also discussed Latera's testimony, calling it "absolutely chilling because it was exactly the same as [D.T.'s] testimony," and defendant's abuse led to Latera's drug abuse and incarceration. Finally, the court stated:

> "The deterrent factor is incredibly important in cases such as this because[,] as I've indicated[,] these cases occur in private. They occur with few witnesses, hardly any witnesses, except the victim.
>
> In order to send the message loudly and clearly to other individuals, other child molesters, that this is not appropriate, society will not and cannot stand for it, I believe an appropriate sentence is one of incarceration to the Illinois Department of Corrections for the offense of predatory criminal sexual assault for 60 years. *** There's a mandatory consecutive 15 year sentence for the offense of criminal sexual assault."

¶ 39 This appeal followed.

¶ 40 II. ANALYSIS

¶ 41 On appeal, defendant argues this court should (1) reduce his convictions to two convictions for aggravated criminal sexual abuse because the State failed to prove penetration beyond a reasonable doubt; and (2) reverse and remand for a new trial because the trial court erred in admitting D.T.'s out-of-court statement pursuant to section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)). Defendant further argues this court should reverse and remand for a new trial because the court erred by (1) limiting witness testimony that impeached D.T.'s

testimony; (2) improperly instructing the jury on the intrusion clause of the definition of sexual penetration; and (3) admitting evidence of defendant's alleged sexual abuse of his sister pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2012)). Finally, defendant argues his 75-year sentence (1) is excessive and should be reduced; or (2) was based on an improper factor and this court should remand for resentencing.

¶ 42 A. Sufficiency of the Evidence

¶ 43 Defendant first claims the State failed to prove him guilty of criminal sexual assault beyond a reasonable doubt because the State failed to show any intrusion into D.T.'s anus. Defendant further claims the State failed to prove him guilty of both charges because the State failed to show any contact between defendant's penis and D.T.'s anus.

¶ 44 1. *Statutory Language*

¶ 45 In pertinent part, section 11-1.20 of the Criminal Code of 1961 (Criminal Code) provides:

> "(a) A person commits criminal sexual assault if that person commits an act of sexual penetration and:
>
> * * *
>
> (3) is a family member of the victim, and the victim is under 18 years of age[.]" 720 ILCS 5/11-1.20(a)(3) (West 2010).

Section 11-1.40 of the Criminal Code provides:

> "(a) A person commits predatory criminal sexual assault of a child if that person is 17 years of age or older, and commits an act of contact, however slight, between the sex organ or anus of one person and the part of the body of another for the purpose of

sexual gratification or arousal of the victim or the accused, or an act of sexual penetration, and:

(1) The victim is under 13 years of age[.]" 720 ILCS 5/11-1.40(a)(1) (West 2010).

Under both section 11-1.20 and 11-1.40, sexual penetration is defined as:

"any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/11-0.1 (West 2010).

The legislature has defined sexual penetration more broadly than its ordinary and common meaning. *People v. Maggette*, 195 Ill. 2d 336, 347, 747 N.E.2d 339, 345 (2001). The definition includes two broad categories of conduct. The contact clause "includes any *contact* between the sex organ or anus of one person by an object, the sex organ, mouth[,] or anus of another person." (Emphasis in original.) *Id.* The intrusion clause "includes any *intrusion* of any part of the body of one person or of any animal or object into the sex organ or anus of another person." (Emphasis in original.) *Id.*

¶ 46 2. *Whether the State Had To Prove Penetration*

¶ 47 Defendant contends the State was required to prove defendant's penis intruded into D.T.'s anus because the information alleged he committed criminal sexual assault on November 12, 2012, in that he "placed his sex organ *in* the anus of [D.T.]," whereas the charge

for predatory criminal sexual assault alleged defendant placed his penis *on* D.T.'s anus. (Emphases added.) Defendant asserts a sufficiency-of-the-evidence argument, claiming the State failed to prove the element of sexual penetration beyond a reasonable doubt. Defendant contends the State's inclusion of a description of the type of sexual penetration—*i.e.*, intrusion versus contact—in the information required the State to prove that particular type of penetration. Defendant further argues the jury instruction on sexual penetration did not include the intrusion clause; therefore, the jury could not have made a finding as to whether defendant's penis intruded into D.T.'s anus. Because the jury could not have made a finding on intrusion (which defendant contends is an essential element), there was insufficient evidence to prove him guilty of criminal sexual assault. We disagree.

¶ 48 To support this claim, defendant erroneously relies on *Maggette*. In *Maggette*, the defendant was charged with criminal sexual assault based on conduct where he placed the victim's hand on his penis and where he rubbed the victim's vagina through her clothing. *Id.* at 347, 747 N.E.2d at 346. In construing the statutory definition of sexual penetration, the supreme court sought to determine whether a hand or finger constituted an "object" under the contact clause. The supreme court held the word "object" in the contact clause was limited to inanimate objects, and hands or fingers were not objects. *Id.* at 349-50, 747 N.E.2d at 347. The decision was supported by the fact the intrusion clause "includes not only the word 'object,' but also expressly includes 'any part of the body of one person or of any animal.' This plainly limits the word 'object' to inanimate objects." *Id.* at 349, 747 N.E.2d at 347. Thus, *Maggette* limited the definition of sexual penetration *with a hand or finger* to situations where actual intrusion occurred, not mere contact.

¶ 49 In the case at bar, sexual penetration may be shown under either clause because the sexual penetration occurred between defendant's penis and D.T.'s anus, not between a hand or finger, which would require actual intrusion. The definition of sexual penetration is met if the evidence shows "any contact, however slight, between the sex organ or anus of one person and an object or the sex organ, mouth, or anus of another person," such as contact between defendant's penis and D.T.'s anus. 720 ILCS 5/11-0.1 (West 2010). The definition of sexual penetration can alternatively be met if the evidence shows "any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio, or anal penetration." 720 ILCS 5/11-0.1 (West 2010).

¶ 50 This court confronted an argument similar to defendant's contention in *People v. Smith*, 209 Ill. App. 3d 1043, 1056-57, 568 N.E.2d 482, 490 (1990). In *Smith*, the defendant was charged with three counts of aggravated criminal sexual assault based on three separate types of sexual acts. *Id.* The defendant appealed his convictions, arguing the trial court erred in giving the jury only one issues instruction on aggravated criminal sexual assault. The defendant contended the court should have given three separate issues instructions for each of the three types of sexual acts. This court rejected this argument, holding the *type* of sexual penetration is not an element of aggravated criminal sexual assault. *Id.*

¶ 51 Although the State included the "in/on" language in the information, it does not follow that intrusion versus contact becomes an essential element. Under these circumstances, the type of penetration in the information is mere surplusage and the State is not required to prove defendant's penis intruded into D.T.'s anus. This is so because the *type* of sexual penetration is not an essential element of the offense of criminal sexual assault. See *People v.*

Giles, 261 Ill. App. 3d 833, 846, 635 N.E.2d 969, 978 (1994); *Smith*, 209 Ill. App. 3d at 1056-57, 568 N.E.2d at 490; *People v. Foley*, 206 Ill. App. 3d 709, 718, 565 N.E.2d 39, 45 (1990); *People v. Tanner*, 142 Ill. App. 3d 165, 168-69, 491 N.E.2d 776, 778 (1986).

¶ 52 3. *Whether the State Proved Contact*

¶ 53 Defendant also contends there was insufficient evidence for both charges to prove there was contact between defendant's penis and D.T.'s anus. Defendant argues, "[t]he only evidence of the specific act alleged in the predatory criminal sexual assault charge committed between September and October 2012 was D.T.'s testimony that [defendant] did the 'same stuff' to her as on November 12, 2012, which did not include an act of sexual penetration."

¶ 54 We disagree the testimony regarding November 12, 2012, did not include testimony regarding an act of sexual penetration. We have already rejected defendant's intrusion-versus-contact argument. However, while there might not be sufficient evidence to show intrusion, there was sufficient evidence to show contact between defendant's penis and D.T.'s anus, which is an act of sexual penetration under the statutory definition. 720 ILCS 5/11-0.1 (West 2010).

¶ 55 When reviewing the sufficiency of the evidence, we view the evidence in the light most favorable to the prosecution in determining whether a rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *People v. Olivieri*, 334 Ill. App. 3d 311, 314, 778 N.E.2d 714, 715 (2002). We will not substitute our judgment for that of the trier of fact, "who is responsible for weighing the evidence, assessing the credibility of the witnesses, resolving conflicts in the evidence, and drawing reasonable inferences and conclusions from the evidence." *People v. Betance-Lopez*, 2015 IL App (2d) 130521, ¶ 40, 38

N.E.2d 36. However, we will reverse a conviction if the evidence is so unreasonable, improbable, or unsatisfactory it creates a reasonable doubt of the defendant's guilt. *Id.*

¶ 56 We note the issue of penetration is a question of fact to be determined by the jury. *People v. Herring*, 324 Ill. App. 3d 458, 464, 754 N.E.2d 385, 390 (2001). Any lack of detail in the victim's testimony affects only the weight of the evidence. *Id.* "[T]he trier of fact is entitled to draw all reasonable inferences from both direct and circumstantial evidence, including an inference of penetration." *People v. Raymond*, 404 Ill. App. 3d 1028, 1041, 938 N.E.2d 131, 144 (2010).

¶ 57 D.T. testified defendant put his penis between her buttocks. When asked if his penis touched her anus, D.T. responded affirmatively. Defendant makes much of D.T.'s testimony defendant's penis went between her buttocks, arguing this was insufficient to show contact. See *People v. Oliver*, 38 Ill. App. 3d 166, 170, 347 N.E.2d 865, 868 (1976). However, D.T. testified defendant's penis touched her anus and he moved his penis up and down when it touched her anus on November 12, 2012. D.T. testified he did the "same stuff" in September or October of 2012. She further testified defendant most often touched her with his hands and "his penis in [her] butt." In the video-recorded interview, D.T. also stated defendant would get on top of her and "hump" her. Based on this testimony, we conclude there was sufficient evidence for a rational trier of fact to find contact between defendant's penis and D.T.'s anus on November 12, 2012, and in September or October of 2012. See, *e.g.*, *Raymond*, 404 Ill. App. 3d at 1041-42, 938 N.E.2d at 144-45; *People v. Atherton*, 406 Ill. App. 3d 598, 609, 940 N.E.2d 775, 786 (2010).

¶ 58 B. Evidence Admitted Pursuant to Section 115-10 of the Code

¶ 59 Defendant next asks this court to reverse and remand for a new trial because the trial court erred in admitting D.T.'s out-of-court statement pursuant to section 115-10 of the Code (725 ILCS 5/115-10 (West 2012)) because D.T. was 13 years old at the time she made the statement and it largely concerned an incident that occurred after D.T.'s thirteenth birthday.

¶ 60 In pertinent part, section 115-10 provides:

> "(a) In a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13 *** at the time the act was committed *** the following evidence shall be admitted as an exception to the hearsay rule:
>
> (1) testimony by the victim of an out of court statement made by the victim that he or she complained of such an act to another; and
>
> (2) testimony of an out of court statement made by the victim describing any complaint of such act or matter or detail pertaining to any act which is an element of an offense which is the subject of a prosecution for a sexual or physical act against that victim.
>
> (b) Such testimony shall only be admitted if:
>
> (1) The court finds in a hearing conducted outside the presence of the jury that the time, content, and circumstances of the statement provide sufficient safeguards of reliability; and
>
> (2) The child *** either:
>
> (A) testifies at the proceeding; or

(B) is unavailable as a witness and there is corroborative evidence of the act which is the subject of the statement; and

(3) In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding." 725 ILCS 5/115-10(a)(b) (West 2012).

Generally, we will reverse the trial court's determination pursuant to section 115-10 of the Code only where the record shows the court abused its discretion. *People v. Bowen*, 183 Ill. 2d 103, 120, 699 N.E.2d 577, 586 (1998). An abuse of discretion occurs where a ruling is arbitrary, fanciful, unreasonable, or when no reasonable person would take the same view. *People v. Sharp*, 391 Ill. App. 3d 947, 955, 909 N.E.2d 971, 978 (2009).

¶ 61 Defendant contends D.T.'s video-recorded interview with Wild is inadmissible in its entirety because the statements were made after D.T. turned 13 and the bulk of her out-of-court statements concerned acts that occurred after her thirteenth birthday. Defendant supports the latter contention by pointing to a 14-second clip from D.T.'s approximately 45-minute interview. The State contends the amended statute clearly allows for the admission of D.T.'s statements related to events that occurred before her thirteenth birthday because she made the statements within three months of the commission of the offense. The State further contends the entirety of the video is admissible because the recorded interview focused largely on conduct that

occurred before her thirteenth birthday and there is a significant interest in presenting the whole video to give context to the interview.

¶ 62 Whether the video-recorded interview is admissible pursuant to section 115-10(b)(3) is a matter of statutory construction. 725 ILCS 5/115-10(b)(3) (West 2012). In construing a statute, we must ascertain and give effect to the legislature's intent. *People v. Johnson*, 363 Ill. App. 3d 1060, 1072, 845 N.E.2d 645, 656 (2005). We determine the legislative intent by first turning to the plain language of the statute. *People v. Holloway*, 177 Ill. 2d 1, 8, 682 N.E.2d 59, 62 (1997). However, if the statute is ambiguous, "it is appropriate to look beyond its plain language to ascertain legislative intent." *Id.* at 8, 682 N.E.2d at 63. The construction of a statute presents a legal question and our review is *de novo*. *Johnson*, 363 Ill. App. 3d at 1073, 845 N.E.2d at 657.

¶ 63 We begin by examining two cases decided before the legislature amended the statute to require the out-of-court statement be made before the victim's thirteenth birthday or within three months of the commission of the offense. 725 ILCS 5/115-10(b)(3) (West 2012). The supreme court addressed the admissibility of hearsay statements made after the victim's thirteenth birthday under section 115-10 in *Holloway*. In *Holloway*, the victim told her cousin about a sexual assault that occurred when she was 11 years old. *Holloway*, 177 Ill. 2d at 3, 682 N.E.2d at 60. However, the victim was 13 years old at the time she made her out-of-court statement. The State argued section 115-10 allowed for the admission of hearsay evidence regarding a child who was under the age of 13 when the sexual act was perpetrated regardless of the child's age when the out-of-court statement was made. *Id.* at 8, 682 N.E.2d at 62. The defendant argued the child "must have been under the age of 13 at the time of the outcry for the statement to be admissible under the hearsay exception." *Id.*

¶ 64 Finding the statute ambiguous, the supreme court turned to the legislative history to determine the legislature's intent in enacting section 115-10. *Id.* at 9-10, 682 N.E.2d at 63. The court observed:

> "It appears that the legislature, in providing for the admission of evidence of outcry statements as exceptions to the hearsay rule in certain cases, was concerned with the ability of the victim to understand and articulate what happened during the incident and the reluctance many victims have relating the details of the incident at trial. Evidence of an outcry statement made to another by a child under the age of 13 would corroborate the testimony of a child who, by reason of age, may be reluctant or unable to clearly express the details of the incident. The State's interpretation would measure the applicability of the statute based solely on the age of the victim at the time of the assault without regard to the age of the child at the time of a subsequent outcry. The importance of allowing hearsay testimony of an outcry, however, is not dictated by the age of the victim when the assault occurs. Instead, it is dictated by the victim's ability to adequately testify to the alleged incident. We believe that the legislature addressed these concerns by limiting the admission of hearsay statements under section 115-10 to those statements made by a child under the age of 13." *Id.*

Accordingly, the court found the out-of-court statement, although regarding an assault that occurred when the victim was 11 years old, was not admissible because the victim did not make the statement until she was 13 years old. *Id.* at 11, 682 N.E.2d at 64.

¶ 65 The Second District addressed the age limitation in section 115-10 in *People v. E.Z.*, 262 Ill. App. 3d 29, 633 N.E.2d 1022 (1994). In *E.Z.*, the Second District held the trial court erred in allowing testimony about hearsay statements the victim made when she was 13 years old. *Id.* at 34, 633 N.E.2d at 1026. The court noted there was also testimony about hearsay statements the victim made before she turned 13. The court held these statements were admissible pursuant to section 115-10, so long as the trial court held a reliability hearing and properly instructed the jury about the factors to consider in determining the weight and credibility of the hearsay statements. *Id.* at 34-35, 633 N.E.2d at 1026.

¶ 66 As noted above, and apparently in response to the supreme court's decision in *Holloway*, the legislature has since amended section 115-10, adding the following language: "In a case involving an offense perpetrated against a child under the age of 13, the out of court statement was made before the victim attained 13 years of age or within 3 months after the commission of the offense, whichever occurs later, but the statement may be admitted regardless of the age of the victim at the time of the proceeding." 725 ILCS 5/115-10(b)(3) (West 2012). We find this language ambiguous. A statute is ambiguous if it can be reasonably interpreted in two different ways. See *Holloway*, 177 Ill. 2d at 8, 682 N.E.2d at 63. On one hand, the clause could be read to apply to statements made (1) before the victim's thirteenth birthday; or (2) up to three months after the victim's thirteenth birthday, if the commission of the offense occurred immediately prior to the victim's thirteenth birthday (or, for example, a statement made two months after the thirteenth birthday if the commission of the offense occurred one month before

the thirteenth birthday). Alternatively, the clause could be read to apply to statements made within three months of the last act of a continuing offense, even if the last act occurs after the thirteenth birthday. See *People v. Rivera*, 409 Ill. App. 3d 122, 145, 947 N.E.2d 819, 841 (2011), *rev'd on other grounds*, 2013 IL 112467, 986 N.E.2d 634 (finding a note written the day after the victim's fourteenth birthday was not admissible because the record did not show the last act of the continuing offense of predatory criminal sexual assault was committed within three months of the date she wrote the note).

¶ 67 We turn to the legislative history of the amendment for guidance as to the legislative intent behind the ambiguous phrase. As Senator Geo-Karis explained when offering the bill for the Senate to vote on, the amendment "adds a three-month window to the child hearsay provisions to permit the introduction of hearsay evidence from a child under the age of thirteen or within three months after the commission of the offense, whichever is later. The reason for this *** change *** is to avoid a situation where the victim is assaulted just before his or her thirteenth birthday and the statements are made shortly thereafter." 90th Gen. Assem., Senate Proceedings, May 19, 1998, at 35 (statements of Senator Geo-Karis). This makes clear the clause applies to statements made (1) before the victim's thirteenth birthday, or (2) up to three months after the victim's thirteenth birthday, if the commission of the offense occurred immediately prior to the victim's thirteenth birthday.

¶ 68 Although the out-of-court statement may be made after the thirteenth birthday, the statement must concern acts that occurred prior to the thirteenth birthday. First, section 115-10, by its terms, involves "a prosecution for a physical or sexual act perpetrated upon or against a child under the age of 13 *** *at the time the act was committed*." 725 ILCS 5/115-10(a) (West 2012). Where, as here, the State charges defendant with a separate crime based upon acts

committed after the victim's thirteenth birthday, the charge does not involve a prosecution for a sexual act perpetrated against a child under the age of 13 and the statute does not apply.

¶ 69 The State complains this construction of the statute would require separate trials for the acts committed before D.T.'s thirteenth birthday and the acts committed after her thirteenth birthday. We disagree. Under the circumstances of the present case, the State could have redacted the portions of the video interview expressly related to the events of November 12, 2012. While the video might not have been seamless, it would have been possible to limit the section 115-10 evidence to those statements regarding acts that occurred before D.T. turned 13.

¶ 70 That being said, to the extent the video contained inadmissible out-of-court statements regarding acts perpetrated after D.T.'s thirteenth birthday, we find the error did not prejudice defendant. *People v. Bridgewater*, 259 Ill. App. 3d 344, 349, 631 N.E.2d 779, 782 (1994) (when hearsay has been erroneously admitted, reversal is mandatory unless the error was not prejudicial). The inadmissible statements did not constitute the bulk of the out-of-court statements made in the video. The properly admitted evidence included D.T.'s testimony, evidence of defendant's flight from the police station, the recording of defendant's phone call to Angela asking her to get D.T. to recant her accusation, and other-crimes testimony from both D.T. and Latera. Based on this overwhelming evidence, we conclude no fair-minded trier of fact could reasonably have acquitted defendant.

¶ 71 C. Miscellaneous Errors

¶ 72 Defendant further argues this court should reverse and remand for a new trial because the court erred by (1) limiting M.M.'s testimony that impeached D.T.'s testimony; (2) improperly instructing the jury on the definition of sexual penetration; and (3) admitting

evidence of defendant's alleged sexual abuse of his sister pursuant to section 115-7.3 of the Code (725 ILCS 5/115-7.3 (West 2012)).

¶ 73 1. *M.M.'s Testimony*

¶ 74 Defendant contends the trial court erred in preventing defense counsel from eliciting M.M.'s testimony that she encouraged D.T. to falsely claim defendant vaginally penetrated D.T. Defendant contends, "a witness may be impeached by a showing of bias, interest, or motive to testify falsely." *People v. Cookson*, 215 Ill. 2d 194, 214, 830 N.E.2d 484, 496 (2005). Defendant argues M.M.'s testimony would impeach D.T.'s credibility by establishing D.T.'s bias, interest, or motive to testify falsely. To support this argument, defendant points to *People v. Howard*, 113 Ill. App. 3d 380, 447 N.E.2d 473 (1983). In *Howard*, the appellate court held the trial court erred in barring testimony the victim told the witness she had lied about previous allegations of sexual abuse by the defendant in order to separate her parents. The witness would have further testified the victim stated she lied because she did not like the defendant because he disciplined the victim too much. *Id.* at 384-84, 447 N.E.2d at 476. The appellate court held this testimony should have been admitted as it "could have been a substantial and important element in proving [the victim's] bias and motive to lie." *Id.* at 386, 447 N.E.2d at 477.

¶ 75 The State contends defendant has forfeited this argument by failing to argue M.M. should be allowed to testify that she told D.T. to lie in order to more easily prove the case against defendant. Instead, defendant argued M.M. should be allowed to testify that D.T. explicitly denied any form of penetration other than oral. Defendant responds, arguing the issue was preserved because the posttrial motion alleged the court erred in limiting M.M.'s testimony, even though the court allowed M.M. to testify that D.T. told her defendant made D.T. suck his penis

and that D.T. "doesn't really have, like[,] sex with her dad, because he knows that he'll get in trouble." Thus, the only remaining piece of testimony the court could have erred in excluding was M.M.'s statement she told D.T. to lie about defendant vaginally penetrating her.

¶ 76 Assuming defendant properly preserved this issue, we are not persuaded by the argument and reject defendant's claim of error. Evidence of bias or a motive to lie must be direct and positive. *Id.* at 385, 447 N.E.2d at 477. During the offer of proof, M.M. testified D.T. told her defendant engaged D.T. in oral sexual penetration. Defense counsel then asked, "And did [D.T.] tell you that her father was not having other types of intercourse with her," to which M.M. responded affirmatively. Defense counsel also asked, "Did you tell [D.T.] that it would be easier to prove the case against her father if she said that he actually had sexual intercourse with her," to which M.M. also responded affirmatively. This statement is not direct and positive evidence of D.T.'s bias or motive to lie. *Howard* involved testimony the victim affirmatively stated she had lied about prior allegations of sexual abuse. *Id.* at 384-85, 447 N.E.2d at 476. Here, M.M. testified only as to what she said to D.T. There is no evidence D.T. lied about the nature of the abuse and the fact D.T. reported the abuse does not show she was influenced by M.M.'s statement. We conclude this testimony was properly excluded.

¶ 77 Defendant also contends the trial court erred in considering the nature of the penetration in ruling this testimony impeached D.T. on a collateral matter—*i.e.*, the testimony impeached D.T. on a collateral matter because either oral or vaginal penetration met the definition of "sexual penetration" for the purposes of the criminal sexual assault charge. Defendant argues the testimony was not collateral where the State specifically alleged the type of penetration at issue and relies on his contact-versus-intrusion argument as set forth in Part A of this disposition. We remain unconvinced by this argument and reject this claim of error.

¶ 78 2. *Jury Instructions*

¶ 79 Defendant further asserts the trial court erred in instructing the jury only as to the contact clause of the definition of sexual penetration. Defendant again argues the "in/on" language in the charging instrument was not surplusage and the jury should have been instructed on the intrusion clause of the definition of sexual penetration. We remain unpersuaded by this argument. Contact between defendant's penis and D.T.'s anus is sufficient to meet the definition of sexual penetration under the contact clause alone. *Maggette*, 195 Ill. 2d at 349, 747 N.E.2d at 347. The State did not need to prove intrusion and there was no error in instructing the jury only as to the contact clause. We also reject defendant's claim this holding renders the intrusion clause superfluous. Pursuant to *Maggette*, in the event the defendant penetrates the victim's sex organ with his hand or finger, the intrusion clause applies. *Id.*

¶ 80 In the alternative, defendant argues counsel was ineffective for failing to object to the jury only being instructed as to the contact clause of the definition of sexual penetration. Given our finding the jury was properly instructed, defendant's ineffective-assistance-of-counsel claim cannot stand and thus is rejected.

¶ 81 3. *Other-Crimes Evidence*

¶ 82 Defendant argues the trial court erred in admitting other-crimes evidence. Other-crimes evidence is generally inadmissible to show a defendant's propensity to commit the charged criminal conduct. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). However, other-crimes evidence demonstrating propensity may be admissible under section 115-7.3. *People v. Ward*, 2011 IL 108690 ¶ 25, 952 N.E.2d 601. "Where other-crimes evidence meets the initial statutory requirements, the evidence is admissible if it is relevant and its probative value is not substantially outweighed by its prejudicial effect." *People v. Vannote*,

2012 IL App (4th) 100798, ¶ 38, 970 N.E.2d 72. When weighing the probative value of the other-crimes evidence against its prejudicial effect, the statute allows courts to consider (1) the proximity in time to the charged offense, (2) the degree of factual similarity to the charged offense, and (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2012).

¶ 83 A court's decision to admit other-crimes evidence will not be reversed absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 182, 788 N.E.2d at 721. " 'An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court.' " *People v. Sutherland*, 223 Ill. 2d 187, 272-73, 860 N.E.2d 178, 233 (2006) (quoting *People v. Hall*, 195 Ill. 2d 1, 20, 743 N.E.2d 126, 138 (2000)).

¶ 84 The other offenses must have a threshold similarity to the charged conduct to be admissible. *People v. Butler*, 377 Ill. App. 3d 1050, 1066, 882 N.E.2d 636, 648 (2007). "[W]here the evidence is not being offered to show a defendant's *modus operandi*, general similarity will be sufficient." *Vannote*, 2012 IL App (4th) 100798 ¶ 41, 970 N.E.2d 72. The probative value of other-crimes evidence increases as the factual similarities increase. *Id.*

¶ 85 D.T. testified defendant would "hump" her buttocks and touch his penis to her anus. The acts always occurred when her mother was out of the house, but often her siblings were home and she and defendant were alone in a room. Latera's testimony regarding the abuse she suffered was remarkably similar to D.T.'s testimony. According to Latera, defendant would wait until they were alone in a room and would touch her buttocks and her "private" with his penis. Latera testified the abuse started when she was seven years old; D.T. testified defendant began abusing her in third grade, when she was about eight years old. These similarities show defendant's fascination with touching a young female relative's anus with his penis. The similar

nature of the abuse is compelling because it is a product of defendant's choice. *Donoho*, 204 Ill. 2d at 185-86, 788 N.E.2d at 723.

¶ 86 The evidence of these other crimes is relevant and probative to show propensity. *Id.* at 170, 788 N.E.2d at 714. We conclude the other-crimes evidence is remarkably similar to the charged conduct at issue here. Given these similarities, we cannot say it was unreasonable, fanciful, or arbitrary for the court to determine the prejudicial effect did not substantially outweigh its probative value. *Id.*

¶ 87 Defendant contends the proximity of the other-crimes evidence is so remote the prejudicial effect outweighs the probative value of Latera's testimony. However, the number of years between the other offense and the charged act do not, standing alone, control whether the other-crimes evidence ought to be admitted. *Id.* at 184, 788 N.E.2d at 722. The supreme court has "decline[d] to adopt a bright-line rule about when prior convictions are *per se* too old to be admitted under section 115-7.3." *Id.* at 183-84, 788 N.E.2d at 722. We evaluate proximity on a case-by-case basis when determining the probative value of other-crimes evidence. *Id.* at 183, 788 N.E.2d at 722. "The appellate court has affirmed admission of other-crimes evidence over 20 years old under the exceptions because the court found it to be sufficiently credible and probative." *Id.* at 184, 788 N.E.2d at 722 (citing *People v. Davis*, 260 Ill. App. 3d 176, 192, 631 N.E.2d 392, 404 (1994)).

¶ 88 Defendant relies on a case in which the Third District found a 25- to 42-year lapse, standing alone, rendered the prior-bad-act evidence prejudicial, and that prejudice was further compounded by factual differences, "especially since the prior offenses involve[d] uncharged and unproven allegations of sexual abuse that [were] even more heinous than the charged offense." *People v. Smith*, 406 Ill. App. 3d 747, 754, 941 N.E.2d 419, 425-26 (2010).

While the passage of time may lessen the probative value of other-crimes evidence, "standing alone it is insufficient to compel a finding that the trial court abused its discretion by admitting evidence about it." *Donoho*, 204 Ill. 2d at 184, 788 N.E.2d at 722. Given the similarities in the substance of the other-crimes evidence, we cannot say the proximity is so far removed that the resulting prejudice substantially outweighed the probative value.

¶ 89 The trial court's balancing of the statutory factors was not unreasonable, arbitrary, or fanciful. *Sutherland*, 223 Ill. 2d at 272-73, 860 N.E.2d at 233. " '[R]easonable minds [can] differ' about whether such evidence is admissible without requiring reversal under the abuse of discretion standard." *Donoho*, 204 Ill. 2d at 186, 788 N.E.2d at 723 (quoting *People v. Illgen*, 145 Ill. 2d 353, 375-76, 583 N.E.2d 515, 524-25 (1991)). Thus, we conclude the trial court did not abuse its discretion in admitting the allegations of prior sexual abuse to demonstrate propensity pursuant to 725 ILCS 5/115-7.3 (West 2012).

¶ 90 D. Sentencing

¶ 91 Defendant next challenges his sentence. A trial court's sentencing decisions are given substantial deference. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. We will disturb a sentence within the statutory limits for the offense only if the trial court abused its discretion. *People v. Flores*, 404 Ill. App. 3d 155, 157, 935 N.E.2d 1151, 1154 (2010). A court abuses its discretion when imposing a sentence "greatly at variance with the spirit and purpose of the law, or manifestly disproportionate to the nature of the offense." *People v. Stacey*, 193 Ill. 2d 203, 210, 737 N.E.2d 626, 629 (2000).

¶ 92 Defendant's conviction for predatory criminal sexual assault of a child carried a possible sentencing range of 6 to 60 years' imprisonment. 720 ILCS 5/11-1.40(b)(1) (West 2010). The conviction for criminal sexual assault carried a possible sentencing range of 4 to 15

years' imprisonment. 720 ILCS 5/11-1.20(a)(3) (West 2010). The sentences are mandatorily consecutive, for a possible aggregate sentence of 10 to 75 years' imprisonment. 730 ILCS 5/5-8-4(d)(2) (West 2012). The trial court sentenced defendant to the aggregate maximum of 75 years' imprisonment.

¶ 93 Defendant contends the trial court did not adequately consider his rehabilitative potential and improperly considered Latera's testimony and the effect defendant's abuse had on her. The court is not required to explicitly outline the factors considered for sentencing and we presume the court considered all mitigating factors absent explicit evidence to the contrary. *People v. Meeks*, 81 Ill. 2d 524, 534, 411 N.E.2d 9, 14 (1980). Each sentencing decision must be based on a consideration of factors including "the defendant's credibility, demeanor, general moral character, mentality, social environment, habits, and age." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). The trial court is better able to weigh these factors, having observed the defendant and proceedings. *Id.* We will not substitute our judgment for that of the trial court merely because we would have balanced the factors differently. *Id.*

¶ 94 In mitigation, the trial court considered defendant's age, rehabilitative potential, and history of employment. The court found defendant's criminal history to be a factor in aggravation but gave it relatively little weight. The court emphasized the pressing need to deter others from committing similar crimes because child sexual abuse occurs in secret and usually without many witnesses. In discussing Latera's testimony, the court stated it was "absolutely chilling because it was exactly the same as [D.T.'s] testimony. The effect that the [d]efendant's actions had on his sister were apparent." The court then reemphasized the importance of the deterrent factor. The court sentenced defendant to an aggregate term of 75 years' imprisonment

"[i]n order to send the message loudly and clearly to other individuals, other child molesters, that this is not appropriate, [and] society will not and cannot stand for it[.]"

¶ 95 The record clearly shows the trial court considered the evidence in mitigation. The record also clearly shows the court's primary concern in sentencing defendant to the maximum aggregate term was to deter other offenders. Moreover, the court did not give Latera's testimony nearly the weight or significance defendant claims in his brief. The court's discussion regarding Latera's testimony was brief and not heavily relied on in making the sentencing determination. The aggregate sentence of 75 years' imprisonment was within the statutory limits. Although a lengthy sentence, we cannot say the court abused its discretion. The court considered all relevant factors and we will not substitute our judgment simply because we might have weighed the factors differently.

¶ 96 III. CONCLUSION

¶ 97 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we grant the State its $50 statutory assessment against defendant as costs of this appeal. 55 ILCS 5/4-2002 (West 2014).

¶ 98 Affirmed.