2025 IL App (5th) 230453-U

NO. 5-23-0453

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Richland County.
	)	
v.	)	No. 18-CF-104
	)	
PHILIP J. McCAFFERTY,	)	Honorable
	)	Ray W. Vaughn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE SHOLAR delivered the judgment of the court.
Justices Moore and Boie concurred in the judgment.

ORDER

¶ 1 *Held*: The evidence was sufficient for a jury to find defendant guilty of six counts of predatory criminal sexual assault of a child and one count of aggravated domestic battery.

¶ 2 The defendant, Philip J. McCafferty, appeals a Richland County jury trial conviction for six counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)) and one count of aggravated domestic battery (*id.* § 12-3.3(a-5)). On appeal, defendant argues that he was not proven guilty beyond a reasonable doubt as to all seven counts. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 On April 12, 2018, the State charged defendant by information with one count of predatory criminal sexual assault of a child, a Class X felony (*id.* § 11-1.40(a)(1)). On September 13, 2021,

the State filed an amended information and charged defendant with six counts of predatory criminal sexual assault of a child, Class X felonies (*id.*), and one count of aggravated domestic battery, a Class 2 felony (*id.* § 12-3.3(a-5)).

¶ 5 Count I alleged that on or about June 2017, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis on the sex organ of A.Z., in violation of 11-1.40(a)(1) of the Criminal Code of 2012 (Code) (*id.* § 11-1.40(a)(1)), a Class X felony.

¶ 6 Count II alleged that on or about June 2017, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis in the mouth of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*), a Class X felony.

¶ 7 Count III alleged that on or about April 2018, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis in the mouth of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*), a Class X felony.

¶ 8 Count IV alleged that on or about July 2016 through August 2016, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual contact with A.Z., who was under 13 years of age when the act was committed, by placing A.Z.'s hand on his penis, for the purpose of his sexual gratification, in violation of section 11-1.40(a)(1) of the Code (*id.*), a Class X felony.

¶ 9 Count V alleged that on or about July 2016 through August 2016, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual contact with A.Z., who was under 13 years of age when the act was committed, by placing his hand on A.Z.'s sex organ, for the purpose of his sexual gratification, in violation of section 11-1.40(a)(1) of the Code (*id.*), a Class X felony.

¶ 10 Count VI alleged that on or about April 8, 2018, defendant committed the offense of predatory criminal sexual assault of child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, by placing his penis on the vagina of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*), a Class X felony.

¶ 11 Count VII alleged that on or about April 8, 2018, defendant committed the offense of aggravated domestic battery in that defendant knowingly caused bodily harm to a family member, in violation of section 12-3.2 of the Code (*id.* § 12-3.2), in that he strangled A.Z. by applying pressure to her neck with his hand and intentionally impeded her normal breathing, in violation of section 12-3.3(a-5) of the Code (*id.* § 12-3.3(a-5)).

¶ 12 The matter proceeded to a jury trial on April 18, 2023. Following its opening statement, the State called A.Z. as its first witness. At the time of trial, A.Z. was 17 years old. A.Z. was born on May 17, 2005. A.Z. testified that at the time of trial, she lived in Olney, Illinois, with her mother, her grandmother, her sister, her uncle, and her cousin.

¶ 13 A.Z. testified that her mother met defendant on the internet and traveled to meet him. Eventually, defendant moved to Olney and stayed with A.Z. and her family on Lafayette Street. A.Z. testified that about a year after defendant moved in with them, when A.Z. was 9 or 10 years old, defendant began touching her sexually. A.Z. stated that defendant would have her lie on top

of him, in his bed, with her clothes on. No one except her uncle, who had mental disabilities, would be home. A.Z. testified that at some point, defendant made her touch him over his clothes and then beneath his clothes; defendant would make her rub his penis over his pants or put her hand down his pants and touch his penis. A.Z. stated that defendant would touch her vagina outside of her clothes and underneath her clothes. When asked if any other part of defendant's body touched A.Z., she answered that defendant made her put his penis in her mouth. A.Z. stated she did not know what to do and defendant would push her "head down to do it."

¶ 14 A.Z. testified her mother worked at the Walmart distribution center in Olney. A.Z. stated she did not tell her mother or anyone else about these events, because she was scared that her mother would not believe her or that defendant would hurt her. A.Z. testified that defendant stated he would hurt her if she told her mother.

¶ 15 A.Z. testified that she, her sister, her mother, and defendant moved to a house on Evergreen Drive. A.Z. believed she was 10 or 11 years old when they moved. A.Z. testified that the touching continued after they moved to the house on Evergreen. She stated defendant touched her "any chance that [her] mom was gone." A.Z. stated "the touching was probably a couple of times a week."

¶ 16 A.Z. testified that when she was 12 years old, defendant took her to Maryland for defendant's family reunion. Testimony at trial established that this trip occurred in June 2017. Her mother and sister stayed home. A.Z. testified that while they were in Maryland, defendant gave her his prescription pills and told her that whenever they returned home, he was going to have sex with her. A.Z. stated that she knew her mother would not be home when they returned, so she texted her mother and asked if she could go to her grandmother's home instead. A.Z. stated defendant saw this text message and made her text her mother "never mind."

¶ 17 A.Z. testified that when they returned from Maryland, defendant told her to meet him in his bedroom. Defendant was in bed with his clothes off and told A.Z. to take hers off and get in bed. A.Z. stated defendant first made her put his penis in her mouth and then made her get on top of him and put his penis in her vagina. A.Z. said defendant held her down by her waist until he finished. She further testified that defendant wore a condom but that it broke. A.Z. testified that defendant always had her put his penis in her mouth first. A.Z. testified that defendant was upset that the condom broke and that he went to CVS to buy an emergency contraceptive. Defendant returned and gave A.Z. the contraceptive.

¶ 18 A.Z. further testified that defendant continued to have sex with her every weekend. She stated "[i]t got to the point where it was three, four times a week" until April 2018. A.Z. stated she did not tell her mother what was happening because defendant told her that her sister would grow up without a dad and that A.Z. would amount to nothing without defendant.

¶ 19 A.Z. testified that defendant became increasingly violent with her and started choking her. She stated that defendant would choke her whenever she would not agree to do something that he wanted her to do. Specifically, she testified that on April 7, 2018, she did not agree to do what defendant wanted. However, she ultimately "just gave in" and allowed him to have sex with her. A.Z. testified that around April 8, 2018, the following day, defendant got physical with her because she disagreed with something he wanted her to do. On the way out of the house to attend softball practice, defendant threw her to the floor in the laundry room. Defendant started choking her and tried to force her to have sex with him. A.Z. stated she could not breathe. When he let her up, A.Z. put her younger sister in the car. As she was doing so, defendant slammed her head into the door leading out of the garage. A.Z. identified a photograph of a mark on her arm that she received from defendant. The photograph was admitted into evidence.

¶ 20 When A.Z. arrived at softball practice, she realized she did not have her softball bag, so they left. A.Z.'s mother, who was at work at the time, called her and stated the softball coach asked why A.Z. left practice. The following day, A.Z. again had softball practice. She testified that defendant told her he would not take her, and he was going to have sex with her instead. A.Z. stated she ran out to her mother's car and told her defendant would not take her to softball. A.Z.'s mother took her and her sister to their grandmother's. A.Z.'s mother picked her up from softball practice. A.Z. told her that defendant had been touching her and having sex with her.

¶ 21 The following day, A.Z. and her mother went to the police station where A.Z. reported what happened. A.Z. stated the conversation with police was short. Some days later, A.Z. had an interview at the child advocacy center (CAC) and a physical exam at the hospital. A.Z. identified the defendant in court.

¶ 22 On cross-examination, A.Z. testified that she could not remember if there was any contact between defendant and herself, when both had their clothing off. She further testified that she could not exactly remember the first time defendant made her put his penis in her mouth, but she stated it was while they lived on Lafayette. A.Z. further testified on cross-examination that regarding the "softball practice incident," defendant was mad because A.Z. would not let him put his penis in her anus.

¶ 23 Further on cross-examination, A.Z. testified that she had bruises on her neck "a couple of times" from defendant choking her. She stated when her mother saw the bruises, she told her they were hickeys. A.Z. stated her friends at school saw the bruises on her neck, and she told her friends they were from defendant. She stated the choking did not give her bruises every time. A.Z. stated she took pregnancy tests three or four times when her period was late. A.Z. stated that since the CAC interview in 2018, she has talked to someone (counselor, friends, her mother, or a teacher)

about the abuse almost every day. She further stated that after five years, she had probably forgotten a lot of details, but she "remember[s] what happened to [her]."

¶ 24 The State called A.Z.'s mother, Felicia McCoy, as a witness. Felicia testified that she was 36 years old at the time of testifying. Felicia testified that she was employed at Champion Laboratories since January 2019. Before that, she was a contractor for the Walmart distribution center from 2005 through the end of 2018. Felicia stated she worked from 5:30 a.m. to 2 p.m. and again from 4 p.m. to 7 p.m., seven days a week, and she would fill in for other employees as needed.

¶ 25 Felicia testified that in the fall of 2013, defendant moved to Olney from Baltimore and moved in with Felicia. Defendant began working Tuesday through Friday, 2 p.m. to 11 p.m., at the Walmart distribution center. Felicia testified that she became pregnant with defendant's child (Zoey) within six months of him moving in. Felicia stated they stayed in the Lafayette Street house until September 2016, two years after Zoey's birth. Felicia, defendant, A.Z., and Zoey moved to the house on Evergreen Drive. Felicia testified that "everything was good" despite a bit of arguing.

¶ 26 Felicia testified that in June of 2017, defendant and A.Z. flew to Maryland to see defendant's brother who was going into the Army. Felicia and Zoey stayed behind. Felicia testified that from June of 2017 to April of 2018, "[t]here was a lot more tension just in general." She stated that she and defendant were not getting along as well. Felicia stated that defendant became withdrawn and slept more.

¶ 27 Felicia testified that with her work schedule, she had to rely on defendant to transport A.Z. to sports. She recalled that around April 8, 2018, defendant was supposed to take A.Z. to softball but he never did. Felicia stated that a parent from the team called and asked why A.Z. was not at practice. The parent stated they thought they saw A.Z. at practice, but she was no longer there.

Felicia called, and A.Z. told her she left her stuff at home. Felicia stated that A.Z. was "really upset" and crying. She tried to talk to defendant, but he became angry and hung up.

¶ 28 The following day, Felicia sent A.Z. into the house to wake defendant so he could take A.Z. to softball. Felicia got in the car to leave for work but A.Z. came out and told her that defendant would not take her to practice. Felicia took Zoey to Felicia's mother's house and took A.Z. to practice. Felicia testified that while she was at work, she received a text message from A.Z. stating they needed to talk. Felicia testified that she picked up A.Z. from practice along with A.Z.'s grandmother and A.Z.'s cousin. When they returned to A.Z.'s grandmother's, Felicia and A.Z. stayed in the car and A.Z. told her defendant had been touching her inappropriately. Felicia inquired how, and A.Z. stated defendant was having sex with her. Felicia became upset, and they drove out to the lake and sat there.

¶ 29 Felicia testified that the next morning, they went to the police station to file a report. A.Z. disclosed what happened to an officer and a detective. Detective Bloomer explained A.Z. needed to be interviewed by the CAC. That interview was set up two days later on Thursday, April 12. Following that interview, Felicia took A.Z. to the hospital for an examination. Felicia testified that she did not talk to A.Z. about the allegations between the initial report and the CAC interview. Felicia stated she was not allowed to watch the CAC interview until "way after" when they watched it in court. Felicia identified defendant in court, and she testified that he was born on March 4, 1990.

¶ 30 The State next called Sheryl Woodham to testify and qualified her as an expert witness. Woodham testified that she was the executive director of the Guardian Center in Carmi. Woodham stated the Guardian Center is part of a network of CACs and accredited by the National Children's Alliance. She stated the Guardian Center provides a variety of services with a mission of reducing

the trauma for children who experience abuse, including a forensic interview, advocacy, emotional support, referrals for counseling, referrals for medical exams, and other needed services. Woodham stated, at the time of her testimony, she was with the Guardian Center for 24 years, as the founding director and forensic interviewer. She testified that she received a bachelor's degree in social work and a master's degree in social work with a specialization in child welfare. She stated she was a licensed clinical social worker.

¶ 31 Woodham testified that the Guardian Center receives referrals from law enforcement and the Illinois Department of Children and Family Services (DCFS). She stated when a report or allegation of abuse is made, a forensic interview is scheduled at the CAC. Woodham testified that she did not conduct a forensic interview nor conduct any counseling with A.Z.

¶ 32 Woodham testified as to the characteristics of child abuse accommodation syndrome. She stated there are five characteristics of children who have been abused: (i) secrecy; (ii) helplessness; (iii) entrapment and accommodation; (iv) delayed, conflicted, or unconvincing disclosures; and (v) recantation.

¶ 33 The trial resumed the following day, and the State called Mary Jo Swain as a witness. Mary Jo stated, at the time of her testimony, she was employed as a registered nurse at the Lawrence County Memorial Hospital emergency room. She completed the intake forms when A.Z. arrived for her exam on April 12, 2018. A.Z. told Swain that her mother's boyfriend was having sex with A.Z. for about six months, and that he touched her and made her touch him. A.Z. also disclosed that defendant was sometimes mean to her, slammed her head, and ejaculated in her mouth. On cross-examination, Swain testified she documented what A.Z. told her.

¶ 34 The State called Dr. Rachel Winters to testify. At the time of trial, Dr. Winters was employed at Lawerence County Memorial Rural Health Clinic as a physician. Dr. Winters testified

that, at the time of testifying, she had been a family medicine physician for 30 years. She testified she performed approximately 150 sexual assault examinations on children or mentally handicapped adults. Dr. Winters was recognized as an expert witness.

¶ 35 Dr. Winters testified that she treated and examined A.Z. at the Lawrence County Memorial Hospital on April 12, 2018. Dr. Winters testified that she found tiny red dots, known as petechiae, in the back of A.Z.'s mouth. She stated petechiae are bright red, little broken blood vessels on the surface of the oral cavity. Dr. Winters testified there was a moderate number of petechiae. Dr. Winters testified that petechiae in that area are not normal. She asked A.Z. if the perpetrator had oral sex with her, which A.Z. confirmed. Dr. Winters stated, "I can't imagine anybody traumatizing their self in that way because it would be very painful."

¶ 36 Dr. Winters further testified that A.Z. had a bruise on her left arm. Dr. Winters opined that A.Z.'s genital exam was "overall normal." She stated A.Z. did have "some hymen all the way around." She stated "if there was no hymen ***, that would indicate that there had been repetitive vagina trauma. However, that heals extremely quickly." Dr. Winters testified that due to the presence of some hymen "there is no evidence that she clearly had been penetrated vaginally, repeatedly, but it doesn't indicate that it hadn't happened."

¶ 37 On cross-examination, Dr. Winters stated she used the terms "petechia-like" and "possible petechia" in her medical charts following A.Z.'s examination. She stated she used those terms because she had not seen petechiae like that before, but she was "quite certain that that's what they were." Dr. Winters testified she conducted 150 sexual assault examinations, including where oral contact had been alleged, but never saw petechiae like that in the posterior pharynx. Dr. Winters further testified that she examined A.Z. four days after the injury. She stated that children typically heal quickly, and that A.Z.'s injury must have been severe, or happened more recently, to still be

present at the time of examination. Dr. Winters testified that hymens are not always symmetrical and that every woman is different.

¶ 38 The State next called Jessica Gray as a witness. She stated, at the time of trial, she was employed by DCFS for almost 15 years. Gray stated that for the last 13 years, she worked as an investigator child protection specialist with DCFS. Gray testified that she obtained a child welfare license and completed Finding Words training and continuing education. Gray stated that she interviewed thousands of children and conducted approximately 20 forensic interviews.

¶ 39 Gray conducted an interview with A.Z. on April 12, 2018, which was video and audio recorded. The interview with A.Z. was admitted into evidence and played for the jury. On cross-examination, Gray testified she did not know how many forensic interviews she had completed at the time of A.Z.'s interview.

¶ 40 The State rested. Defendant moved for a directed verdict "based on the contradictory statements made by [A.Z.] and that there is no other independent corroborating evidence." The trial court denied defendant's motion for a directed verdict and stated, "The Court believes that a reasonable jury could find that there is sufficient evidence to convict the defendant of the offenses."

¶ 41 Defendant testified. Defendant testified that at the time of trial, he lived in Olney with his wife, Tisha. He moved to Olney 10 years prior from Maryland. Defendant denied the allegations made against him and stated they were categorically false. Defendant testified that he and Felicia argued about finances leading up to April 2018, and they felt like they were better off splitting up.

¶ 42 On cross-examination, defendant denied that he ever drove A.Z. to softball practice only to discover she forgot her bag. On redirect, defendant stated the issues in the family were between Felicia and himself, and no one else. The defense rested.

¶ 43 The State called Felicia McCoy for rebuttal testimony. Felicia testified that she and defendant "never had a decision about breaking up or not being together." On recross-examination, Felicia was presented with text messages between herself and defendant. The messages showed a text from her on April 9, 2018, saying, "I don't know what's going on with you, Phil. I really wish you could open up and talk to me and let me know where we stand. Answer please. I can at least come get me and the girls some clothes for tomorrow. Phil, please just let me know you are all right. I am worried about you." Defendant eventually responded, "Not coming home tonight?" He later sent "good night" and "not sure why I can't talk to the kids." The next morning, Felicia sent him a text message that read, "Please, please unlock the door for me. Why can't we just talk—why can't we just talk about this like adults." Felicia stated she did not have a key to the door, and her garage door opener was dead. On redirect, Felicia testified that when she asked defendant to unlock the door, the police were with her as it was immediately following A.Z.'s disclosure. Defendant rested.

¶ 44 Following jury instructions, the jury retired to deliberate at 2:20 p.m. The jury sent a question asking for a calendar of April 2018, a copy of the presentation used by the State in closing argument, the dates of the Baltimore trip, and a definition of the word "euthymic." The trial court provided the jury with a copy of a calendar from April 2018 and advised the jury that no additional information would be provided. At 6:45 p.m., additional communication was received from the jury. The jury requested guidance since it was getting late. The court directed the jury to keep deliberating. At 8:25 p.m., the jury returned a guilty verdict on all counts.

¶ 45 Defendant filed a "motion for judgment notwithstanding the verdict and in the alternative, motion for new trial." Following argument, defendant's motion was denied, and sentencing was

held. On June 15, 2023, the trial court sentenced defendant to six terms of six years' imprisonment to be followed by four years of probation to be served after release.

¶ 46 This timely appeal followed.

¶ 47 II. ANALYSIS

¶ 48 On appeal, defendant argues the evidence was insufficient to find him guilty beyond a reasonable doubt. Specifically, defendant argues he was not proven guilty by a reasonable doubt of the six counts of predatory criminal sexual assault and one count of aggravated domestic battery. The State contends that the evidence presented at trial was sufficient to support defendant's convictions. For the reasons that follow, we agree with the State and affirm. We consider each conviction in turn, along with defendant's specific allegations.

¶ 49 "When considering a challenge to the sufficiency of the evidence, a reviewing court must determine whether, viewing the evidence in the light most favorable to the prosecution, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt." *People v. Sauls*, 2022 IL 127732, ¶ 52. This court will not reverse a conviction on sufficiency grounds unless the evidence was so "unreasonable, improbable, or unsatisfactory" that, even when viewed in the light most favorable to the State, no rational trier of fact could accept it as proof beyond a reasonable doubt. *People v. Ross*, 229 Ill. 2d 255, 272 (2008); see *Jackson v. Virginia*, 443 U.S. 307 (1979). The findings made by the trier of fact regarding the credibility of witnesses, the inferences to be drawn from the evidence, and the resolution of conflicts in the evidence are all entitled to significant deference. *Ross*, 229 Ill. 2d at 272.

¶ 50 In the case before us, defendant was convicted of six counts of predatory criminal sexual assault of a child and one count of aggravated domestic battery. To prove defendant guilty of predatory criminal sexual assault, the State had to prove that defendant was 17 years of age or

older and committed "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 that the victim was under 13 years of age. 720 ILCS 5/11-1.40(a)(1) (West 2016). "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." *Id.* § 11-0.1.

¶ 51 Count I alleged that on or about June 2017, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis on the sex organ of A.Z., in violation of 11-1.40(a)(1) of the Code (*id.* § 11-1.40(a)(1)). A.Z. testified that defendant told her, during the trip to Maryland, that he was going to have sex with her when they returned home. She further testified following their return from Maryland, defendant told her to meet him in his bedroom. Defendant was in bed with his clothes off and told A.Z. to take hers off and get in bed. A.Z. stated defendant first made her put his penis in her mouth and then made her get on top of him and put his penis in her vagina. A.Z. said defendant held her down by her waist until he finished. She further testified that defendant wore a condom but that it broke. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count I, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis on the sex organ of A.Z.

¶ 52 Count II alleged that on or about June 2017, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis in the mouth of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*). As noted above, A.Z. testified that defendant made her put his penis in her mouth upon returning from Maryland. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count II, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis in the mouth of A.Z.

¶ 53 Count III alleged that on or about April 2018, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, in that defendant placed his penis in the mouth of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*). A.Z. testified that on the Saturday of the weekend before she disclosed the abuse, defendant was acting violently toward her. She did not want to have sex with defendant but gave in so she "wouldn't get hurt." Defendant had A.Z. perform oral sex on him and then they had sex, meaning his penis penetrated her vagina. Describing the oral sex, A.Z. testified that defendant was pushing her head down onto his penis and that she was "[c]hoking and gagging and throwing up." Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count III, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis in the mouth of A.Z.

¶ 54 Count IV alleged that on or about July 2016 through August 2016, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual contact with A.Z., who was under 13 years of age when the act was committed, by placing A.Z.'s hand on his penis, for the purpose of his sexual gratification, in violation of section 11-1.40(a)(1) of the Code (*id.*). A.Z. testified that, while living on Lafayette Street, defendant would have her lie on top of him, in his bed, with her clothes on. No one except her uncle, who had mental disabilities, would be home. A.Z. testified that at some point, defendant made her touch him over his clothes and then beneath his clothes; defendant would make her rub his penis over his pants or put her hand down his pants and touch his penis. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count IV, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual contact by placing A.Z.'s hand on his penis.

¶ 55 Count V alleged that on or about July 2016 through August 2016, defendant committed the offense of predatory criminal sexual assault of a child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual contact with A.Z., who was under 13 years of age when the act was committed, by placing his hand on A.Z.'s sex organ, for the purpose of his sexual gratification, in violation of section 11-1.40(a)(1) of the Code (*id.*). A.Z. testified that, while living on Lafayette Street, defendant would touch her vagina outside of her clothes and underneath her clothes. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count V, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual contact by placing his hand on A.Z.'s sex organ.

¶ 56 Count VI alleged that on or about April 8, 2018, defendant committed the offense of predatory criminal sexual assault of child in that defendant, who was 17 years of age or older, knowingly committed an act of sexual penetration with A.Z., who was under 13 years of age when the act was committed, by placing his penis on the vagina of A.Z., in violation of section 11-1.40(a)(1) of the Code (*id.*). As noted above, A.Z. testified that on April 7, 2018, she did not agree to do what defendant wanted. However, she ultimately "just gave in" and allowed him to have sex with her. Specifically, she testified that on April 7, 2018, his penis entered her vagina. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found, as alleged in count VI, that defendant committed the offense of predatory criminal sexual assault of a child where defendant committed an act of sexual penetration by placing his penis on the sex organ of A.Z.

¶ 57 Count VII alleged that on or about April 8, 2018, defendant committed the offense of aggravated domestic battery in that defendant knowingly caused bodily harm to a family member, in violation of section 12-3.2 of the Code (*id.* § 12-3.2), in that he strangled A.Z. by applying pressure to her neck with his hand and intentionally impeded her normal breathing, in violation of section 12-3.3(a-5) of the Code (*id.* § 12-3.3(a-5)). A person commits aggravated domestic battery when he or she commits a domestic battery and, in so doing, strangles another individual. *Id.* § 12-3.3(a-5). For the purposes of subsection (a-5), "strangle" means "intentionally impeding the normal breathing or circulation of the blood of an individual by applying pressure on the throat or neck of that individual or by blocking the nose or mouth of that individual." *Id.*

¶ 58 A.Z. testified that defendant became increasingly violent with her and started choking her. She stated that defendant would choke her whenever she would not agree to do something that he wanted her to do. A.Z. testified that around April 8, 2018, defendant got physical with her because

she disagreed with something he wanted her to do. Defendant grabbed her by the arm, and A.Z.'s arm was scratched as she pulled away from him. Later, on the way out of the house to attend softball practice, defendant got mad at her and threw her to the floor in the laundry room. Defendant started choking her and tried to force her to have sex with him. A.Z. stated she could not breathe. When he let her up, A.Z. put her younger sister in the car. As she was doing so, defendant slammed her head into the door leading out of the garage. Viewing this evidence in the light most favorable to the State, we conclude that a rational juror could have found that defendant committed the offense aggravated domestic battery, as alleged in count VII, where defendant strangled by A.Z. by applying pressure to her neck with his hand and intentionally impeded her normal breathing.

¶ 59 As a whole, defendant argues there was no corroborating evidence, and A.Z.'s testimony was internally contradictory and contradicted by other testimony. Further, defendant argues there was no physical evidence to establish that any sexual assaults or domestic battery incidents occurred. We disagree.

¶ 60 The crux of defendant's argument is simply that A.Z. was not credible. As noted above, when considering such a challenge, a reviewing court must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *People v. Bush*, 2023 IL 128747, ¶ 33 (quoting *People v. Collins*, 106 Ill. 2d 237, 261 (1985)). The standard of reasonable doubt "does not require the court to ' "ask itself whether *it* believes that the evidence at the trial established guilt beyond a reasonable doubt." ' " (Emphasis in original.) *People v. Campbell*, 146 Ill. 2d 363, 374 (1992) (quoting *Jackson*, 443 U.S. at 318-19, quoting *Woodby v. Immigration & Naturalization Service*, 385 U.S. 276, 282 (1966)). Rather, a reviewing

court must determine " 'whether, after viewing the evidence in the light most favorable to the prosecution, *any* rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.' " (Emphasis in original.) *Bush*, 2023 IL 128747, ¶ 33 (quoting *Collins*, 106 Ill. 2d at 261). This "standard gives 'full play to the responsibility of the trier of fact fairly to resolve conflicts in the testimony, to weigh the evidence, and to draw reasonable inferences from basic facts to ultimate facts.' " *Campbell*, 146 Ill. 2d at 375 (quoting *Jackson*, 443 U.S. at 319). For this reason, a reviewing court "will not substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses." *Id.* (citing *People v. Young*, 128 Ill. 2d 1, 51 (1989)). "[T]he testimony of a single witness, if positive and credible, is sufficient to convict, even though it is contradicted by the defendant." *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009). We "will not reverse a criminal conviction unless the evidence is so unreasonable, improbable, or so unsatisfactory as to justify a reasonable doubt of the defendant's guilt." *Campbell*, 146 Ill. 2d at 375 (citing *Collins*, 106 Ill. 2d at 261).

¶ 61 Defendant argues that A.Z. was not credible due to contradictions between her trial testimony and the CAC interview she gave five years prior to trial. A.Z. testified that the first time defendant penetrated her with his penis, after A.Z. and defendant returned home from Maryland, he had her get on top of him and insert his penis "so it would hurt less." Defendant argues that during A.Z.'s recorded statement, she told the interviewer that defendant was on top of her during this first occurrence.[1] Defendant misunderstands the recorded statement.

¶ 62 During the recorded CAC interview, when A.Z. was asked to describe the first time defendant penetrated her vagina with his penis, the conversation quickly changed to the abuse that occurred prior to that incident. Consequently, A.Z. never gave a detailed description of the abuse

[1]The video is a part of the record and has been reviewed by the court.

that occurred immediately after she and defendant returned home from Maryland. A.Z. does discuss, during the CAC interview, defendant getting on top of her. Rather, this is part of the conversation where A.Z. was describing what defendant "usually" did to her. Per A.Z., she and defendant would usually lie side-by-side, then he would have A.Z. perform oral sex on him, and then he would get on top of her and place his penis in her vagina. A.Z. also told the interviewer that defendant would "finish" in her mouth because he never wore a condom and did not want her to get pregnant.

¶ 63 Defendant also argues that A.Z.'s testimony was inconsistent with her CAC interview, because she testified at trial that defendant used a condom the first time, but she previously told the interviewer that defendant "never" used a condom. We note that A.Z.'s trial testimony was that defendant used a condom the first time and that he "maybe" used a condom a "couple of times" before "he started to never use one." During the CAC interview, after A.Z. stated that defendant never used a condom, the following exchange occurred:

> "Interviewer: Okay. And you keep saying he never used condoms, so he put it in your mouth because why?
>
> A.Z.: Because he didn't want me to get pregnant.
>
> Interviewer: Okay, okay.
>
> A.Z.: Well actually—
>
> Interviewer: How do you know that?
>
> A.Z.: Because he told me.
>
> Interviewer: Okay, so tell me what he said?
>
> A.Z.: He didn't want to get me pregnant so he took it out and he would put it in my mouth so it wouldn't go inside me."

A reasonable inference may be drawn from this exchange that A.Z. had something more to say about defendant's condom usage, or lack thereof, when she was cut off by the interviewer. Additionally, as noted, A.Z. testified that defendant used a condom maybe a couple of times before "never" using a condom.

¶ 64 Succinctly stated, in the case before us, by convicting defendant of all seven counts, the jury found A.Z. credible. We defer to these credibility determinations and conclude that the evidence was sufficient to prove defendant's guilt of predatory criminal sexual assault of a child and aggravated domestic battery beyond a reasonable doubt. "When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry the defendant." *People v. Givens*, 237 Ill. 2d 311, 334 (2010) (citing *People v. Schmalz*, 194 Ill. 2d 75, 80 (2000)). "Rather, it is the responsibility of the trier of fact to resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from the facts." *People v. Gray*, 2017 IL 120958, ¶ 35. Accordingly, this court "will not substitute its judgment for that of the trier of fact on questions involving the weight of the evidence or the credibility of the witnesses." *Id.* "Where the finding of the defendant's guilt depends on eyewitness testimony, a reviewing court must decide whether a fact-finder could reasonably accept the testimony as true beyond a reasonable doubt." *Id.* ¶ 36. "Under this standard, the eyewitness testimony may be found insufficient 'only where the record evidence compels the conclusion that no reasonable person could accept it beyond a reasonable doubt.' " *Id.* (quoting *People v. Cunningham*, 212 Ill. 2d 274, 280 (2004)). "A conviction will not be reversed simply because the evidence is contradictory or because the defendant claims that a witness was not credible." *Id.*

¶ 65 The jury was aware of the inconsistencies in the testimony and the CAC interview, and it nevertheless found A.Z.'s account to be sufficiently credible to find defendant guilty. Given that

A.Z. was 11 and 12 years old at the time of the incidents and testified at trial five to six years later, the jury reasonably could have concluded that A.Z. either forgot or was mistaken about some of the details. It was the function of the jury to assess the credibility of the witnesses and resolve discrepancies in the testimony, and we cannot substitute our judgment for that of the jury. *Siguenza-Brito*, 235 Ill. 2d at 229. Having thoroughly reviewed the evidence in this matter in the light most favorable to the State and allowing for reasonable inferences therefrom in favor of the prosecution, we conclude the evidence presented was not so unreasonable, so improbable, or so unsatisfactory that defendant's convictions must be reversed. Stated another way, the jury could have found the essential elements of the offenses beyond a reasonable doubt.

¶ 66 Turning briefly to defendant's claim that there was no corroborating evidence supporting A.Z.'s allegations, we disagree. A.Z.'s testimony was corroborated by testimony from Dr. Winters. Dr. Winters testified that she treated and examined A.Z. at the Lawrence County Memorial Hospital on April 12, 2018. Dr. Winters testified that she found tiny red dots, known as petechiae, in the back of A.Z.'s mouth. She stated petechiae are bright red, little broken blood vessels on the surface of the oral cavity. Dr. Winters testified there was a moderate number of petechiae. Dr. Winters testified that petechiae in that area are not normal. She asked A.Z. if the perpetrator had oral sex with her, which A.Z. confirmed. Dr. Winters stated, "I can't imagine anybody traumatizing their self in that way because it would be very painful." Dr. Winters further testified that A.Z. had a bruise on her left arm. This injury is consistent with A.Z.'s testimony regarding the injury she sustained to her arm on April 8, 2018.

¶ 67 In sum, we cannot say that the evidence presented was so "unreasonable, improbable, or unsatisfactory" that, when viewed in the light most favorable to the State, no rational trier of fact could accept it as proof beyond a reasonable doubt. *Ross*, 229 Ill. 2d at 272. Viewing the evidence

in the light most favorable to the State, a rational trier of fact could have found the required elements of the crime beyond a reasonable doubt. Thus, we find the evidence presented at trial sufficient to convict defendant of predatory criminal sexual assault of a child and aggravated domestic battery.

¶ 68 III. CONCLUSION

¶ 69 For these reasons, we affirm the judgment of the circuit court of Richland County.

¶ 70 Affirmed.