2025 IL App (1st) 241539-U

FIFTH DIVISION
October 17, 2025

No. 1-24-1539

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Cook County.
	)	
v.	)	No. 21 CR 14535
	)	
JAMES EPLEY,	)	Honorable
	)	Thomas J. Byrne,
Defendant-Appellant.	)	Judge Presiding.

JUSTICE MIKVA delivered the judgment of the court.
Presiding Justice Mitchell and Justice Oden Johnson concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm defendant's conviction for aggravated criminal sexual assault over his challenge to the sufficiency of the evidence. Defendant's mandatory life sentences for his second or subsequent convictions of aggravated criminal sexual assault do not violate the proportionate penalties clause or eighth amendment.

¶ 2 Following a bench trial, defendant James Epley was convicted of two counts of aggravated criminal sexual assault, one based on inserting his finger into the victim's sex organ and one based on touching the victim's mouth with his penis. Because he had a prior aggravated criminal sexual assault conviction, Mr. Epley was sentenced to a mandatory term of life in prison on each count.

On appeal, he argues that the first of his convictions must be reversed because the State failed to prove the element of insertion beyond a reasonable doubt. Mr. Epley also argues that, as applied to him, a mandatory life sentence based solely on the commission of a subsequent aggravated criminal sexual assault is unconstitutional under the proportionate penalties clause of the Illinois Constitution (Ill. Const. 1970, art. I, § 11) and the eighth amendment to the United States Constitution (U.S. Const., amend. VIII). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The State charged Mr. Epley with aggravated criminal sexual assault for knowingly committing two acts of sexual penetration upon the victim, K.R., by force or threat or force, and causing K.R. bodily harm through pain and bruising (720 ILCS 5/11-1.30(a)(2) (West 2020)). Count I alleged that Mr. Epley committed an act of sexual penetration by inserting his finger into K.R.'s sex organ, and count II alleged that Mr. Epley committed an act of sexual penetration through contact between his penis and her mouth.

¶ 5 A. Other Crimes Evidence

¶ 6 Before trial, the State filed a motion to allow proof of other crimes by Mr. Epley. This evidence included a 1999 conviction for aggravated criminal sexual assault in case No. 98 CR 17348, and a then-pending charge of aggravated criminal sexual abuse in case No. 21 CR 14534.

¶ 7 As to the prior conviction, the State advised the court that the evidence would be that, on June 10, 1998, Mr. Epley knocked on the window of M.M., who was 26 years old, blind, and the sister of Mr. Epley's friend. Mr. Epley indicated he needed to use M.M.'s bathroom, and M.M. let him in. While inside, Mr. Epley forced M.M. onto a couch, removed her clothes, and forced his penis into her vagina, where he ejaculated. He also attempted to put his penis in M.M.'s mouth. Mr. Epley pleaded guilty and was sentenced to 12 years in prison.

¶ 8 As to the pending case, the State told the court that the evidence would be that between August 2010 and August 2012, when Mr. Epley's niece-in-law C.E. was four or five years old, Mr. Epley spilled a drink on C.E.'s shirt, removed her shirt, and rubbed her chest. She saw his penis becoming erect in his pants. On another occasion around the same time, Mr. Epley took C.E. into the bathroom at her grandmother's house, put his hands under her pants, and "squeezed her butt" over her underwear. Between August 2016 and August 2017, when C.E. was 10 years old, Mr. Epley moved his hands along C.E.'s stomach and breasts over her clothes. On multiple occasions, Mr. Epley threatened to hurt or kill C.E. and her family if she told anyone what he had done. C.E. disclosed his conduct after hearing her father discussing what had happened to K.R., who was related to C.E. and her family.

¶ 9 Following argument, the court ruled that the State could present evidence regarding Mr. Epley's 1999 aggravated criminal sexual assault conviction, but that C.E.'s allegations were too dissimilar from K.R.'s to be introduced at trial.

¶ 10 B. Trial

¶ 11 During the April 1, 2024, trial, K.R. testified that she was 35 years old. She had known Mr. Epley since she was four or five years old. He was the brother of her mother's fiancé, Dennis Epley, and she called him "Uncle Poe."

¶ 12 On August 3, 2021, K.R. lived in the basement of a home where her mother and Dennis Epley lived on the first floor. When K.R. arrived home from work that day, Mr. Epley, Dennis, her mother, and two other men were gathered in the home's yard. K.R. joined them. About an hour later, Mr. Epley asked K.R. if he could use the bathroom and if she could "roll some weed." The two entered the home's basement, and K.R. showed Mr. Epley the bathroom and entered her bedroom. She sat on her bed.

¶ 13 Mr. Epley exited the bathroom and entered K.R.'s bedroom. He grabbed K.R.'s neck with one hand and choked her. She tried to push herself backwards on the bed and raised her leg to keep him away as he moved towards and on top of her. He put his hand in her shorts and underwear. With two fingers, Mr. Epley began "rubbing on [her] clitoris," and "rubbing up and down." The prosecutor asked, "The lines of your vagina?" and K.R. said, "Yeah." The State asked what K.R. felt when Mr. Epley "was putting his hands in [her] vagina," and K.R. responded, "Discomfort. Definitely violated."

¶ 14 K.R. further testified that Mr. Epley then tried to kiss her as she moved "side to side." He released her neck and moved himself further on top of her. She could not retreat any farther, so she closed her eyes. Mr. Epley put his knees onto K.R.'s shoulders, which caused pain from a nerve stimulation device implanted in her chest to treat epilepsy. When she opened her eyes, his penis was exposed and he asked her to "suck it." She moved her face side to side and his penis rubbed on her lips.

¶ 15 K.R.'s phone rang. She did not see who was calling but told Mr. Epley that it was Dennis Epley, and K.R. pretended to answer it. She said Dennis needed her, and Mr. Epley told her to "go f*** handle that." K.R. exited the bedroom, ran towards the yard, and told her mother what had happened, specifically, when asked by the State if this is what occurred, she agreed that she told her mother that Mr. Epley tried to kiss and rape her. Her mother and Dennis ran to the basement while she remained outside.

¶ 16 Mr. Epley left, and the police arrived. When asked by the State if this is what occurred, K.R. agreed that she told the police that Mr. Epley "tried to put his fingers in [her] vagina" and "was trying" to touch her with his penis. She first testified that she did not remember if she told the police Mr. Epley had touched her clitoris, but later in her direct testimony she said that she had

told them that he had done that.

¶ 17 K.R. suffered bruises around her neck but declined an ambulance and did not go to the hospital. She did not see a doctor about the nerve stimulation device implanted in her chest despite the fact that it connected to nerves that ran up both sides of her neck. K.R. confirmed that Mr. Epley was clothed "when [he] put his fingers in [her] vagina," and had his hand on her neck when he "was putting his fingers in [her] vagina."

¶ 18 During cross-examination, K.R. identified a video which she indicated depicted an officer asking if she wanted an ambulance. She agreed that it did not depict her mentioning that Mr. Epley touched her clitoris. K.R. further testified that, on November 8, 2021, she spoke with a police officer and a representative from the State's Attorney's Office. She did not remember whether she mentioned then that Mr. Epley had touched her clitoris and vagina. K.R. identified a video depicting the room where she was interviewed that day, and the State stipulated that, in the video, K.R. did not use the word clitoris but said Mr. Epley "put his fingers in [her] vagina." Neither video is included in the record on appeal.

¶ 19 Dennis Epley testified that, on August 3, 2021, Mr. James Epley and two of James Epley's friends came to Dennis's home. It was Mr. James Epley's birthday. The group gathered in the backyard. At some point, Mr. James Epley asked to use the bathroom and left the yard with K.R. Five to ten minutes later, K.R. ran outside and stated that Mr. James Epley "tried to do something to her." Dennis Epley ran downstairs with K.R.'s mother and saw Mr. James Epley on K.R.'s bed without pants, his penis exposed. Dennis Epley asked what he was doing, and Mr. James Epley said he "thought it was Evea," K.R.'s aunt, who had moved out of the house years prior. Dennis Epley told Mr. James Epley to leave, and Mr. James Epley dressed and left with his friends.

¶ 20 K.R.'s mother Marilyn Maisonet testified that, as she served food to one of Mr. Epley's

friends, she heard K.R. say, "He's trying to rape me." Ms. Maisonet ran downstairs with Dennis Epley and the other men and told K.R. to call the police. She saw Mr. James Epley leaning on K.R.'s bed, naked from the waist down and with his penis visible. Mr. James Epley said, "I thought it was Evelyn," Ms. Maisonet's sister, and Ms. Maisonet responded, "so if it would have been my sister, then you would have raped her, too." K.R. and Ms. Maisonet both called the police, who arrived after Mr. James Epley had left.

¶ 21 The State entered a certified statement of conviction for Mr. Epley's 1999 aggravated criminal sexual assault conviction.

¶ 22 After closing arguments, the court found Mr. Epley guilty on counts I and II. The court stated that K.R.'s testimony was both credible and corroborated by the testimony of Dennis Epley and Ms. Maisonet. Her testimony that Mr. Epley touched her clitoris was not undermined by her pretrial statements failing to specifically mention that fact. The court found "there was contact between [Mr. Epley's] fingers and [K.R.'s] vagina and vaginal area," as well as Mr. Epley's penis and K.R.'s lips and mouth. The court denied Mr. Epley's motion for a new trial, which argued in relevant part that a life sentence for Mr. Epley, which was mandatory due to his prior aggravated criminal sexual assault conviction, violated the eighth amendment and the proportionate penalties clause.

¶ 23 C. Sentencing

¶ 24 Mr. Epley's presentence investigative report indicated that he was born on August 3, 1968, making him 53 years old on the date of these offenses. He reported that "he had to struggle for everything" as a child. When Mr. Epley was 11 years old, his father left the family, and Mr. Epley took odd jobs to help provide. He was in special education classes and left school in ninth grade because he was embarrassed about his writing and reading abilities. He once earned a fork lift

license, and last worked installing windows and doors, which he did full-time for five years. Mr. Epley was a former gang member but "retired from the gang because he got tired of the lifestyle." He had no substance abuse issues. Mr. Epley had been married for 15 years and had a "wonderful relationship" with his wife. He also had four adult daughters, with whom he spoke often. He helped care for his mother, who lived in Florida and had multiple sclerosis. Mr. Epley's wife reported that he was "considered illiterate," and submitted two statements on his behalf that are not included in the record on appeal.

¶ 25 Mr. Epley had a 1999 conviction for aggravated criminal sexual assault, for which he was sentenced to 12 years in prison and released in 2006. Mr. Epley's criminal history also included convictions for unlawful use of a weapon in 1989; mob action in 1993; unlawful use or possession of a firearm by a felon, possession of a controlled substance, and unlawful possession of three or more stolen vehicles or essential parts of different vehicles in 1995; mob action in 1998; two incidents of drinking alcohol on the public way in 2007; obstruction of traffic by a nonmotorist in 2007; "registration expiration more than a year" in 2018; and driving 15-20 miles per hour above the speed limit in 2022. He also had a 1986 juvenile disposition for battery. He reported that his trouble with the law caused his family to distance themselves from him.

¶ 26 Before sentencing in this case, Mr. Epley resolved pending charges against him stemming from his possession of a firearm on July 14, 2020, by pleading guilty to unlawful use or possession of a firearm by a felon in exchange for a sentence of 10 years in prison.

¶ 27 At the sentencing hearing, the State proffered the facts of Mr. Epley's prior conviction for aggravated criminal sexual assault and pending charge for aggravated criminal sexual abuse based on the conduct involving C.E. that it had sought to introduce as other-crimes evidence. Ms. Maisonet presented a victim impact statement and alleged that Mr. Epley threatened K.R.

following her trial testimony. She requested the court impose the maximum sentence, called Mr. Epley a predator, and stated that he had destroyed her, his brother, and K.R. The State also provided victim impact statements from C.E.'s parents. The State noted that a provision of the aggravated criminal sexual assault statute (720 ILCS 5/11-1.30(d)(2) (West 2020)) mandated that Mr. Epley receive a life sentence because of his previous conviction for aggravated criminal sexual assault, and argued Mr. Epley had been a sexual predator for more than 20 years.

¶ 28 Defense counsel argued it was "unfortunate" that the judiciary lacked discretion in imposing its sentence and stated that Mr. Epley denied C.E.'s allegations. According to counsel, mitigating factors included Mr. Epley's limited intellectual ability, as evidenced by his only completing eighth grade, that his father left the family when he was 11 years old, and that he cared for his elderly mother before his arrest. Mr. Epley declined to speak in allocution.

¶ 29 Following argument, the court stated that the victim impact statements indicated that the victims' lives had been destroyed, and Mr. Epley had also victimized their family members. The court acknowledged that a life sentence was required but stated that it had nevertheless considered the PSI, counsels' arguments, the factors in aggravation and mitigation, Mr. Epley's history and character, and the seriousness of the offense. In response to defense counsel's argument that the mandatory life sentence took away the discretion of the court, the trial court agreed but found: "Under the circumstance, however, I think the mandated sentence would be appropriate in looking at the defendant and his history victimizing and being a predator." The court sentenced Mr. Epley to life in prison on counts I and II. After the court imposed the sentence, the State nol-prossed the pending charge for aggravated criminal sexual abuse of C.E.

¶ 30 Mr. Epley filed a motion to reconsider the sentences arguing that the mandatory life sentences violated the eighth amendment and the proportionate penalties clause, which the court

denied. Mr. Epley now appeals.

¶ 31 II. JURISDICTION

¶ 32 The trial court sentenced Mr. Epley on May 6, 2024. He timely filed a motion to reconsider the sentence on May 29, 2024. See 730 ILCS 5/5-4.5-50(d) (West 2024) (defendant may move to reduce a sentence within 30 days after sentence was imposed). The court denied the motion on July 15, 2024, and Mr. Epley filed a notice of appeal on July 19, 2024. We therefore have jurisdiction pursuant to Illinois Supreme Court Rule 606(b) (eff. Apr. 15, 2024).

¶ 33 III. ANALYSIS

¶ 34 On appeal, Mr. Epley first argues that the State failed to prove his guilt of count I beyond a reasonable doubt. Specifically, he claims that there was no evidence that he inserted his finger into K.R.'s sex organ, as charged, and that the State's leading questions simply presupposed that fact. He further argues that the mandatory life sentence he received on each count of aggravated criminal sexual assault violates both the eighth amendment and the proportionate penalties clause.

¶ 35 A. Sufficiency of the Evidence

¶ 36 "When reviewing a challenge to the sufficiency of the evidence, we must determine whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *People v. Harvey*, 2024 IL 129357, ¶ 19. In doing so, we review the evidence in the light most favorable to the State and allow all reasonable inferences from the record in the State's favor. *Id.* It is the fact finder's responsibility to weigh the evidence and draw reasonable inferences from the facts. *People v. Gray*, 2017 IL 120958, ¶ 35. Therefore, we will not substitute our judgment for the fact finder's on questions involving the weight of the evidence or the credibility of witnesses; nor will we retry a defendant. *People v. Jones*, 2023 IL 127810, ¶ 28. We will only reverse a conviction when the evidence is so unreasonable, improbable, or unsatisfactory

as to justify a reasonable doubt of the defendant's guilt. *Id.*

¶ 37 To prove Mr. Epley guilty of aggravated criminal sexual assault as charged in count I, the State had to prove that he committed a criminal sexual assault and caused K.R. bodily harm. 720 ILCS 5/11-1.30(a)(2) (West 2020). A person commits criminal sexual assault when he commits "an act of sexual penetration" and uses force or the threat of force. *Id.* § 11-1.20(a)(1). Pursuant to section 11-0.1 of the Criminal Code of 2012 (Code), sexual penetration means:

> "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.

Mr. Epley argues that, under the "intrusion clause" of section 11-0.1, the State failed to prove that he inserted his finger into K.R.'s sex organ, as charged in count I.

¶ 38 Our supreme court has made it clear that, "[m]ere touching or rubbing of a victim's sex organ or anus with a hand or finger does not prove sexual penetration." (Internal quotation marks omitted.) *People v. Maggette*, 195 Ill. 2d 336, 352 (2001). Whether sexual penetration occurred is a question of fact for the fact finder to determine. *People v. Janusz*, 2020 IL App (2d) 190017, ¶ 71 (citing *People v. Hillier*, 392 Ill. App. 3d 66, 69 (2009)). As we have previously recognized, in interpreting this statute, the female sex organ encompasses not only the vagina but also "the labia majora and labia minora, the outer and inner folds of skin of the external genital organs." *People v. Gonzalez*, 2019 IL App (1st) 152760, ¶ 44. Thus, any intrusion, however slight, into a victim's labia majora or labia minora, even without vaginal penetration, constitutes sexual penetration. *People v. W.T.*, 255 Ill. App. 3d 335, 347 (1994).

¶ 39 Mr. Epley notes that the only explicit references to him committing an act of intrusion into K.R.'s sex organ came nested within questions from the State presupposing that such penetration occurred. Specifically, the State asked K.R. what she felt "when [Mr. Epley] was putting his hands in [her] vagina," whether he was clothed "when [he] put his fingers in [her] vagina," and whether one of his hands remained on her neck when "he was putting his fingers in [her] vagina." However, the State does not contend that these questions, or K.R.'s answers to these questions, support the trial court's finding that Mr. Epley committed sexual penetration as charged in count I. Rather, the evidence of penetration that the State relies on is K.R.'s testimony that when Mr. Epley put his hand under her underwear, he was "rubbing on [her] clitoris" and "rubbing up and down" with two fingers. She also confirmed he rubbed the "lines of [her] vagina."

¶ 40 Mr. Epley contends that that his rubbing on K.R.'s clitoris cannot constitute an intrusion by his fingers into her sex organ. Mr. Epley provides a dictionary definition of "clitoris" as: "a female erogenous organ that consists of an externally visible, highly innervated small conical structure or glans that lies at the anterior junction of the labia minora above the urethral opening ***." Merriam-Webster Online Dictionary, https://www.merriam-webster.com/dictionary/clitoris (last visited Oct. 3, 2025). He asserts that, because at least part of the clitoris is "externally visible," K.R.'s testimony that Mr. Epley rubbed "on" her clitoris does not establish that Mr. Epley inserted his finger into her sex organ. However, while a portion of the clitoris may be externally visible—*i.e.* on the outside of a person's body—that does not mean that it is outside a person's sex organ, which includes exterior genitalia such as the labia majora and labia minora. *Gonzalez*, 2019 IL App (1st) 152760, ¶ 44.

¶ 41 The State provides a more detailed explanation available on a website maintained by the National Center for Biotechnology, National Library of Medicine, and the National Institute of

Health, which states that "[t]he labia majora comprises the folds that cover the labia minora, clitoris, vulva vestibule, vestibular bulbs, Bartholin glands, Skene glands, urethra, and vaginal opening." Nguyen, J. D., Fakoya, A. O., & Duong, H., *Anatomy, Abdomen and Pelvis: Female External Genitalia*, StatPearls Publishing, https://www.ncbi.nlm.nih.gov/books/NBK547703/ (last updated Feb. 15, 2025). The same webpage offers an image of the female external genitalia showing the clitoris at the anterior junction of the labia minora, which is surrounded by the labia majora. As the State's source is maintained on a public website, we may take judicial notice of it. *People v. Vara*, 2016 IL App (2d) 140489, ¶ 37 n.3.

¶ 42 The State argues that because the labia majora covers the labia minora and clitoris, and there was testimony that Mr. Epley rubbed on K.R.'s clitoris, the evidence supported the fact finder's conclusion that Mr. Epley penetrated K.R.'s sex organ. We agree that this was a reasonable conclusion that the judge could have reached from the evidence at trial. See *People v. Hebel*, 174 Ill. App. 3d 1, 31 (1988) (touching the labia minora or the inner surface of the labia majora constitutes an intrusion), *abrogated on other grounds by People v. Lawson*, 163 Ill. 2d 187 (1994). Based on K.R.'s testimony that Mr. Epley rubbed on her clitoris, a rational fact finder could conclude that he committed an intrusion, however slight, into her labia majora or labia minora and therefore her sex organ.

¶ 43 In so holding, we distinguish K.R.'s testimony from those of the victims in the cases that Mr. Epley relies on. For example, in *Maggette*, the victim stated that the defendant was "rubbing and caressing" her "underneath [her] panties and *in* [her] vagina area and through it just right through it and his fingers going underneath it." (Emphasis added in original.) *Maggette*, 195 Ill. 2d at 352. That "brief and vague reference to her vaginal area" could not prove an intrusion, as "[m]ere touching or rubbing of a victim's sex organ or anus with a hand or finger does not prove

sexual penetration." (Internal quotation marks omitted.) *Id.*

¶ 44 K.R.'s testimony that Mr. Epley rubbed on her clitoris is far more specific than the victim in *Maggette*'s reference to her "vaginal area." Because, as discussed, it is reasonable to infer that rubbing K.R.'s clitoris involved an intrusion into her labia majora or labia minora, her testimony is distinguishable from nonspecific testimony that a defendant touched or rubbed a victim's sex organ or anus more generally. It is also distinguishable from the testimony in *People v. Guerrero*, 2018 IL App (2d) 160920, ¶ 54, where the victim testified the defendant touched her vaginal area "by the crack" and pointed to the "crack" or "crevice" between her closed fingers, and *People v. Garrett*, 281 Ill. App. 3d 535, 545 (1996), where the defendant touched "the outside" of the victim's anus.

¶ 45 Mr. Epley further notes that K.R. told Dennis Epley that Mr. Epley "tried to do something to her," Ms. Maisonet that he "tried" or was "trying" to rape her, and the police that he "tried" to put his fingers in her vagina, but never told police or the State's Attorney's office before trial that he touched her clitoris. He argues that this undermines the credibility of her trial testimony that he succeeded in penetrating her sex organ or touched her clitoris. However, there is no reason that K.R., as a layperson, would have understood the significance of where exactly Mr. Epley put his fingers. Moreover, K.R.'s credibility was a matter to be determined by the trial court as the fact finder. *Gray*, 2017 IL 120958, ¶ 35. The trial court believed K.R.'s testimony, and we are unpersuaded by Mr. Epley's argument that K.R.'s pretrial statements require us to set aside that credibility determination.

¶ 46 We also acknowledge that when the trial court found Mr. Epley guilty of count I, it stated only that there had been "contact" between his fingers and K.R.'s vagina. However, we presume that the trial court knew the law (*People v. Robinson*, 368 Ill. App. 3d 963, 976 (2006)) and, as

discussed, the evidence was sufficient for the court to find that Mr. Epley inserted a finger into K.R.'s sex organ.

¶ 47 Finally, we note that, even if we were to reverse Mr. Epley's conviction on count I, he would still face a mandatory life sentence on count II, premised on contact between his penis and K.R.'s mouth. Mr. Epley makes no argument that would call into question his conviction on that count.

¶ 48 B. Sentencing

¶ 49 Mr. Epley next raises an as-applied constitutional challenge, under the eighth amendment and the proportionate penalties clause, to section 11-1.30(d)(2) of the Code (720 ILCS 5/11-1.30(d)(2) (West 2020)), which mandated he be sentenced to life in prison because he was convicted here of a second or subsequent offense of aggravated criminal sexual assault. He argues that applying section 11-1.30(d)(2) here is unconstitutional because it prevented the trial court from exercising any discretion to consider the mitigating factors that were present and avoid punishing Mr. Epley with the most severe sentence possible in Illinois.

¶ 50 Statutes are presumed constitutional, and we must uphold them "whenever reasonably possible." *People v. Huddleston*, 212 Ill. 2d 107, 128-29 (2004). A party raising an as-applied challenge to a statute bears the burden of showing that the statute is unconstitutional when applied to his specific facts and circumstances. *People v. Harris*, 2018 IL 121932, ¶ 38; *Huddleston*, 212 Ill. 2d at 128-29. We review the constitutionality of statutes and sentences *de novo*. *People v. Taylor*, 2015 IL 117267, ¶ 11; *Huddleston*, 212 Ill. 2d at 129.

¶ 51 We begin with Mr. Epley's challenge under the proportionate penalties clause. The proportionate penalties clause provides that "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship."

Ill. Const. 1970, art. I, § 11. A sentence violates the proportionate penalties clause where it is "cruel, degrading, or so wholly disproportionate to the offense as to shock the moral sense of the community." (Internal quotation marks omitted.) *People v. Robinson*, 2021 IL App (1st) 192289, ¶ 46. Whether a penalty meets that standard requires the consideration of objective evidence and "the community's changing standard of moral decency." (Internal quotation marks omitted.) *Id.* That consideration includes weighing the gravity of the offense with the severity of the sentence. *People v. Womack*, 2020 IL App (3d) 170208, ¶ 14 (citing *People v. Leon Miller*, 202 Ill. 2d 328, 340 (2002)). Factors relating to the seriousness of the offense include the degree of harm caused, the frequency of the crime, and the risk of bodily injury associated with the crime. *Robinson*, 2021 IL App (1st) 192289, ¶ 52.

¶ 52 The offense Mr. Epley was convicted of, aggravated criminal sexual assault predicated on causing bodily harm, is normally a Class X felony punishable by 6 to 30 years in prison. 720 ILCS 5/11-1.30(d)(1) (West 2020); 730 ILCS 5/5-4.5-25(a) (West 2020). However, a person who is convicted of a second or subsequent offense of aggravated criminal sexual assault is required to be sentenced to life in prison, no matter the facts of either offense. 720 ILCS 5/11-1.30(d)(2) (West 2020).

¶ 53 Mr. Epley argues, and we agree, that his conduct in this case inflicted a far lesser degree of harm than other conduct that could result in an aggravated criminal sexual assault conviction. The only physical injuries that K.R. suffered were bruises, she did not deem any injury worthy of medical attention, and Mr. Epley's penis never entered K.R.'s vagina. The degree of harm that Mr. Epley committed is, without a doubt, much less than this court has seen in other cases involving aggravated criminal sexual assault. See, *e.g.*, *People v. Walls*, 346 Ill. App. 3d 1154, 1165 (2004) (defendant convicted of aggravated sexual assault "hit the victim in the back of the head with a

hammer, bound her ankles and hands, gagged her mouth, and then raped her"). He also did not injure the victim of his previous conviction of aggravated criminal sexual assault; it appears that crime was elevated to aggravated criminal sexual assault because the victim was blind and therefore disabled. See 720 ILCS 5/11-1.30(a)(6) (West 2020) (a person commits aggravated criminal sexual assault if he commits criminal sexual assault and the victim has a physical disability).

¶ 54 However, the legislature has determined that Mr. Epley should be given a life sentence because he has now been convicted twice of aggravated criminal sexual assault. As noted above, Mr. Epley was convicted of two counts of aggravated criminal sexual assault in this case, and therefore had to be sentenced to life in prison even if he had only been found guilty of count II, on which he offers no sufficiency argument.

¶ 55 Generally, a trial court is recognized to be best suited to determine the punishment appropriate for a given defendant because it can consider the specific facts of the crime, as well as "the defendant's credibility, demeanor, moral character, mentality, social environment, habits, and age." (Internal quotation marks omitted.) *People v. Wade*, 2025 IL App (1st) 231683, ¶ 70. However, our supreme court has made clear that the legislature also has broad discretion in setting criminal penalties. *People v. Parker*, 2016 IL App (1st) 141597, ¶ 69 (citing *People v. Sharpe*, 216 Ill. 2d 481, 487 (2005)). That includes the power to impose mandatory sentences for certain offenses even though doing so strips a trial court of the discretion to consider all of the things that it is normally entitled to. *Robinson*, 2021 IL App (1st) 192289, ¶ 52. The legislature did away with any trial court discretion here and required Mr. Epley to receive the harshest penalty possible in Illinois, with no regard for the specific facts of his case or any other mitigating or aggravating factors.

¶ 56 The proportionate penalties clause and the eighth amendment are constitutional restraints on the legislature's power in setting criminal penalties. *Parker*, 2016 IL App (1st) 141597, ¶ 69. Rarely do Illinois courts apply the proportionate penalties clause to challenge the legislature's decisions, however. In fact, the only Illinois case that Mr. Epley cites in which the court found that a mandatory life sentence violated the proportionate penalties clause as applied is *Leon Miller*.

¶ 57 In *Leon Miller*, our supreme court found that the life sentence mandated by the convergence of three separate statutes for a 15-year-old who was convicted of murder as an accomplice for acting as a lookout was "particularly harsh and unconstitutionally disproportionate." *Miller*, 202 Ill. 2d at 340-41. In that case, the statutes requiring automatic transfer to adult court for 15-year-olds, that all persons who participate in a crime be equally accountable, and that a life sentence for multiple murders was mandatory converged to dictate a life sentence. *Id.* at 340. The trial court refused to impose the required life sentence because it was "blatantly unfair and highly unconscionable" that the defendant was a child who was convicted on a theory of "passive accountability" yet faced the same sentence as a serial killer like John Wayne Gacy. *Id.* at 331-32. Our supreme court agreed that a mandatory life sentence "grossly distort[ed] the factual realities of the case," and did not accurately represent the defendant's personal culpability such that it shocked the moral sense of the community, noting that the defendant had "one minute to contemplate his decision" to act as a lookout and never handled a gun. *Id.* at 341. In that case, the penalty required by the multiple-murder sentencing statute, as applied, violated the proportionate penalties clause. *Id.* at 341, 343.

¶ 58 Clearly, the considerations of the courts in *Leon Miller* are different than they are in this case. Mr. Epley was an adult, the sole offender, and required to serve a life sentence because of a prior conviction and not because of the convergence of three separate statutes or solely because of

actions that he had only "one minute" to contemplate. Significantly, the trial court in *Leon Miller* refused to sentence the defendant before him to life in prison. Here, on the other hand, the trial court believed that a life sentence was appropriate. The trial court specifically found: "Under the circumstance, however, I think the mandated sentence would be appropriate in looking at the defendant and his history victimizing and being a predator."

¶ 59 Of course, we must make our own determination as to whether this sentence violates the proportionate penalties clause, but the trial court's finding that a life sentence was appropriate mitigates strongly against a finding that Mr. Epley's sentence shocks the moral sense of the community. It also mitigates concern that the legislature has unconstitutionally undermined the considerable discretion that trial judges are given when sentencing criminal defendants. We would certainly view this constitutional claim differently if the trial court had expressed the view that, if it had discretion to do so, it would have imposed a lesser sentence.

¶ 60 Further, unlike in *Leon Miller*, where three separate statutes converged to provide a harsh outcome that could well be beyond what the legislature contemplated, Mr. Epley's history of being a sexual predator brings him squarely in line with what it appears the legislature intended to accomplish with this mandatory sentence. On this basis, other courts have rejected the effort that Mr. Epley makes in this case to apply the reasoning of *Leon Miller* to mandatory life sentences for repeat sex offenses. See *e.g.*, *People v. Sanchez*, 344 Ill. App. 3d 74, 85 (2003) (finding that the mandatory life sentence provision in the aggravated criminal sexual assault statute "reflects the legislature's decision to treat severely those who engage in repetitive conduct of sexual assault because it recognizes the harm caused to victims"); *People v. Ross*, 395 Ill. App. 3d 660, 687 (2009) ("Defendant in the instant case, unlike the defendant in *Miller*, is a repeat sex offender. His conduct was not 'grossly distorted' by the [criminal sexual assault] statute; it fit squarely within

the conduct prohibited.")

¶ 61 Despite the obvious differences between Mr. Epley's case and *Leon Miller*, Mr. Epley had little choice but to rely on that case. In 2023, our supreme court noted that "*Leon Miller* is the only case in which this court has found a mandatory minimum penalty unconstitutionally disproportionate as applied to a particular offender." *People v. Hilliard*, 2023 IL 128186, ¶ 33. While our appellate court has found sentences requiring mandatory firearm enhancements unconstitutional as applied under the proportionate penalties clause several times, those cases also involved juvenile offenders and rested heavily on that fact. See *id.* ¶ 35 (citing *Womack*, 2020 IL App (3d) 170208; *People v. Barnes*, 2018 IL App (5th) 140378; *People v. Aikens*, 2016 IL App (1st) 133578; *People v. Gipson*, 2015 IL App (1st) 122451). We are aware of no Illinois case in which a court found a mandatory sentence violated the proportionate penalties clause as applied to a defendant who was not a juvenile or an emerging adult.

¶ 62 Unfortunately, the out-of-state cases that Mr. Epley provides are nearly as distinguishable. See *State v. Rodriguez*, 347 Or. 46, 217 P.3d 659 (2009) (finding mandatory 75-month sentences disproportionate under state constitution for two defendants who separately (1) caused the back of a minor's head to be in contact with her clothed breasts for about a minute, and (2) allowed the back of his hand to remain against a minor's clothed buttocks several times and then wiped dirt off the back of the minor's shorts); *State v. Davis*, 206 Ariz. 377, 79 P.3d 64 (2003) (finding mandatory 52-year sentence disproportionate under the eighth amendment for a 20-year-old who had "voluntary sex with two post-pubescent teenage girls"). As those cases do not involve repeat sex offenses, or the use or threat of force, they do little to further Mr. Epley's claim that his sentence violates evolving standards of decency.

¶ 63 In short, Mr. Epley is asking us, without either precedent or any support for this position

from the trial court judge, to find that the legislature's mandate of a life sentence in this case is "so wholly disproportionate to the offense as to shock the moral sense of the community." (Internal quotation marks omitted.) *Robinson*, 2021 IL App (1st) 192289, ¶ 46 (providing standard for when a sentence violates the proportionate penalties clause). Our supreme court admonishes that "[t]he legislature's determination of a particular punishment for a crime in and of itself is an expression of the general moral ideas of the people." *Hilliard*, 2023 IL 128186, ¶ 38. The legislature may establish mandatory life sentences where it decides that no set of mitigating circumstances could allow for a lesser sentence. *People v. Taylor*, 102 Ill. 2d 201, 206 (1984). We cannot find that this mandatory life sentence as applied in this case violates the proportionate penalties clause.

¶ 64 Mr. Epley's reliance on the eighth amendment fares no better. The eighth amendment bans cruel and unusual punishment based on the principle that punishment should be proportionate to the offender and offense. *People v. Davis*, 2014 IL 115595, ¶ 18. However, for the same reasons that we are unable say the application of section 11-1.30(d)(2) to Mr. Epley violates the proportionate penalties clause, we are unable to say that it violates the eighth amendment, as the proportionate penalties clause has been held to provide greater protection than the eighth amendment. *Robinson*, 2021 IL App (1st) 192289, ¶ 46.

¶ 65 IV. CONCLUSION

¶ 66 The evidence was sufficient to sustain Mr. Epley's conviction on count I, aggravated criminal sexual assault based on the insertion of his finger into the victim's sex organ, and he has not established that the mandatory life sentence provision in section 11-1.30(d)(2) is unconstitutional as applied to him. We therefore affirm his convictions.

¶ 67 Affirmed.