SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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Jared Wade Hinman
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FIRST DISTRICT OFFICE
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September 25, 2024

In re: People State of Illinois, respondent, v. Jared Wade Hinman Sr., petitioner. Leave to appeal, Appellate Court, Fifth District.
130751

The Supreme Court today DENIED the Petition for Leave to Appeal in the above entitled cause.

The mandate of this Court will issue to the Appellate Court on 10/30/2024.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
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CYNTHIA A. GRANT
Clerk of the Court

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January 07, 2025

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In re: People v. Hinman
130751

Today the following order was entered in the captioned case:

Motion by Petitioner, *pro se,* for leave to file a motion for reconsideration of the order denying petition for leave to appeal. Denied.

Order entered by the Court.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
State's Attorney Pulaski County
State's Attorney's Appellate Prosecutor - Fifth District

2024 IL App (5th) 220627-U

NO. 5-22-0627

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JARED WADE HINMAN SR., Defendant-Appellant.	)))))))))	Appeal from the Circuit Court of Pulaski County. No. 21-CF-21 Honorable Jeffery B. Farris, Judge, presiding.

JUSTICE CATES delivered the judgment of the court.
Presiding Justice Vaughan and Justice Welch concurred in the judgment.

ORDER

¶ 1 *Held*: The State presented sufficient evidence for the jury to make reasonable inferences to convict the defendant of predatory criminal sexual assault. The circuit court did not abuse its discretion in allowing testimony of other crimes or bad acts to show the defendant's propensity to commit sex offenses. The circuit court did not err in sentencing the defendant where it considered factors in mitigation for an individual under the age of 18.

¶ 2 A jury found the defendant, Jared Wade Hinman Sr., guilty of two counts of predatory criminal sexual assault of a child and one count of criminal sexual assault. The defendant was sentenced to a total of 55 years in the Illinois Department of Corrections (IDOC) and 3 years to life of mandatory supervised release (MSR). On appeal, the defendant claims insufficient proof to find that the defendant was over 17 years old when the incidents of predatory criminal sexual assault occurred; the trial court erred by allowing several witnesses to provide testimony of overly prejudicial sexual offenses that were unrelated to the charges; and the defendant claims that the

circuit court failed to consider mandatory mitigating sentencing factors as required by section 5-4.5-105(a) of the Unified Code of Corrections (730 ILCS 5/5-4.5-105(a) (West 2020)). For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 The defendant was born on December 27, 1982. His parents divorced when he was a child, and the defendant's mother had additional children after she remarried. The defendant had multiple half-sisters, including J.J., born on October 20, 1989, P.R., born on June 11, 1991, and J.H., born on January 25, 1995. The defendant additionally had older brothers from his mother's first marriage and younger half-brothers, who were J.J., P.R., and J.H.'s siblings. The defendant spent a portion of his childhood in a household with his mother and younger half-siblings. In August of 2002, the defendant married and had multiple children from that marriage, including A.H., born on April 12, 2002.

¶ 5 A.H. was removed from the defendant's care when she was approximately eight years old due to allegations of sexual abuse by the defendant. The defendant was charged with predatory criminal sexual assault pursuant to section 12-14.1(a)(1) of the Criminal Code of 1961 (720 ILCS 5/12-14.1(a)(1) (West 2010)) in *People v. Hinman*, No. 13-CF-94 (Cir. Ct. Pulaski County), for allegations involving sexual acts with his daughter, A.H. The defendant's half-siblings were interviewed regarding sexual abuse by the defendant after A.H. was removed from the defendant's care.

¶ 6 A. Pretrial

¶ 7 The defendant was subsequently charged by information on March 31, 2021, in this case, based on allegations of sexual activity against his half-sister, J.J. The information was subsequently amended, and the defendant was charged with two counts of predatory criminal

sexual assault pursuant to section 11-1.40 of the Criminal Code of 2012 (720 ILCS 5/11-1.40 (West 2020)) and one count of criminal sexual assault pursuant to section 11-1.20(a)(2) of the Criminal Code of 2012 (720 ILCS 5/11-1.20(a)(2) (West 2020)). Count I alleged that the defendant knowingly committed an act of sexual penetration by making contact with his penis and the sex organ of J.J. when she was under 13 years of age and the defendant was over 17 years of age. Count II alleged that the defendant put his penis in the mouth of J.J. when she was under 13 years of age and the defendant was over 17 years of age. Count III alleged that the defendant knowingly committed an act of sexual penetration by putting his penis into the sex organ of J.J. when she was a minor, and the defendant did so with knowledge that J.J. was intoxicated.

¶ 8 The State filed a motion to allow other crimes evidence pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2020)). The State sought to present testimony from the victim, J.J., of approximately six incidents of uncharged sexual acts involving the defendant to show the nature of their relationship. One of the incidents involved the defendant forcing J.J. and her siblings to engage in sexual acts with each other and together with him. The State additionally sought to present evidence of other crimes or bad acts involving the defendant's half-sisters, P.R. and J.H., as well as testimony by the defendant's daughter, A.H., to show the defendant's propensity to commit sex offenses. The State provided descriptions of the allegations of the victim and the corroborating witnesses. The allegations included the defendant forcing his relatives to jointly perform acts of oral sex on him and with each other, as well as incidents of inappropriate touching, forced anal sex, and vaginal sex. The State argued that the probative value of their testimony outweighed the prejudice to the defendant when considering the proximity in time of the allegations and the degree of factual similarity of the allegations to the charged offense, as well as other relevant facts and circumstances.

¶ 9 The defendant filed a response to the State's proffered evidence of other crimes evidence. The defendant requested an opportunity to cross-examine the proposed witnesses regarding the time, content, and circumstances related to their statements.

¶ 10 The circuit court held a hearing on the State's motion to allow other crimes evidence. The State argued that the victim in this case, J.J., was allowed to testify to the entirety of her relationship with the defendant. The defense argued that testimony of J.J. was required before the circuit court could make its determination, and requested a hearing where the State would make a formal offer of proof. The defense additionally argued that the State should not be allowed to present more evidence of other events than the events which were charged. The circuit court found that the State's motion appeared to provide a "very specific" framework of events involving J.J. that would be presented in testimony. The circuit court granted the portion of the motion regarding testimony by J.J. over the defendant's objection. The circuit court additionally stated that the defense may object during the trial, outside of the presence of the jury, if the testimony of uncharged events became excessive. Defense counsel conceded that if the State presented evidence regarding when the sexual abuse started and the frequency of the abuse, she did not anticipate a problem with J.J.'s testimony.

¶ 11 The circuit court addressed the second part of the State's motion regarding other crimes evidence by the three additional victims. The State argued that the incidents involving the additional victims occurred within 15 years. The witnesses were all female family members that were significantly younger than the defendant. The witnesses were in situations where the defendant was a caretaker, either as a father or an older sibling that was babysitting. The incidents involved group sex. The witnesses additionally observed violence and had received threats from the defendant.

¶ 12 The defense argued that the circuit court was required to hear the testimony of the potential witnesses to determine whether they would testify as expected. The defense additionally argued that the similarities were not sufficient to justify the admission of the testimony. The allegations raised by each witness were not similar where some of the allegations involve drugs and alcohol. The defense raised the issue of P.R. potentially testifying that the defendant would have his half-siblings "smoke something on foil." The defense also did not specifically address the potential testimony regarding group sex with the defendant and his siblings. Also, some allegations mention anal sex, but not by all, and that allegation would not relate to the victim's testimony. The defense claimed that the witness testimony would be overwhelmingly more prejudicial than probative.

¶ 13 The circuit court found that there was no requirement for the State to provide live testimony as an offer of proof. The circuit court additionally found that the proposed testimony was not substantially more prejudicial than probative, and the testimony was subject to cross-examination. The circuit court, however, believed that "something wrapped in foil" may provide the wrong impression and admonished the State to "take consideration of things of that nature that are purely inflammatory" or "may be seen as purely inflammatory." The circuit court reserved its ruling on the issue regarding "smoking something in foil" and allowed testimony regarding alcohol.

¶ 14 B. Trial

¶ 15 The jury trial began on May 23, 2022. The State presented its opening argument, while the defendant reserved opening argument for the beginning of his case. The defendant's birth certificate showing that his birth date was December 27, 1982, was admitted into evidence without objection after opening argument.

¶ 16 J.J. testified that her date of birth was October 20, 1989, and she grew up in a house with her siblings and her half-brother, the defendant. J.J. testified that their mother worked often, and

the defendant would babysit daily. J.J. recalled an incident that occurred when she was 5 years old, and the defendant was 12 years old. She was dancing in the kitchen and the defendant asked if she wanted to learn how to dance. J.J. agreed and the defendant took her into his bedroom. J.J. testified that the defendant put her on a bed, fully clothed, and "he was pushing himself onto me like dry humping." The defendant then "stopped and walked off."

¶ 17 J.J. testified to another incident that occurred when she was that same age. The defendant was babysitting, and he gave J.J. and her sister, P.R., a bath together. The defendant took J.J. out of the bathtub and into a bedroom where the defendant made J.J. perform oral sex. J.J. testified that their mother returned home during the incident. The defendant shoved J.J. into a closet but their mother found the defendant with his pants undone and J.J. was not wearing clothes. J.J. testified that she remembered their mother spanking the defendant with a belt. Their mother also spanked J.J. for not telling her what had happened. J.J. testified, "It made me feel like I had done something wrong, and I didn't want to tell her about any of that in the future because I thought I would get in trouble."

¶ 18 J.J. testified that their mother allowed the defendant to continue to babysit after that incident and the abuse continued. J.J. testified that the abuse seemed to occur "all the time" and she lived with "an overall sense of dread and doom." J.J. testified that she avoided being alone with the defendant. The defendant would take J.J. places such as a skating rink or an abandoned building, and "make [her] perform oral on him." J.J. testified that they would visit their grandmother's house on the weekends and the defendant would take her down to the basement. He would also wake J.J. up to make her perform oral sex when they stayed at their grandmother's house. When J.J. was approximately 11 years old, the defendant gave her alcohol for the first time.

J.J. testified that the defendant would have their siblings "take turns doing oral on him," and the defendant would perform oral on J.J. J.J. could not recall specific details of those events.

¶ 19 J.J. then testified to the incidents alleged in count I and count II, which occurred when she was 10 years old and living in Kentucky. Their mother had asked the defendant to pick up dresses from their grandmother's house in Mound City, Illinois, for J.J. and her sisters to wear to a church. J.J. went with the defendant to pick up the dresses because she wanted to visit her grandmother. The defendant made J.J. "perform oral on him for the entire ride from Lovelaceville, Kentucky, all the way to Mound City." J.J. testified that it started when they left the house and then near the halfway point of the drive, the defendant stopped his truck in a wooded area on a back road. J.J. testified that he wanted her to continue when the truck was stopped. She testified that she "had an idea that maybe if I said I had to use the bathroom, I could get out of the truck." The defendant allowed her to use the bathroom and J.J. tried to escape. The defendant chased J.J., "dragged" her back, and "threw" her into the truck. The defendant then said, "if you ever run away from me like that again, I'll kill you." The defendant then put on a flavored condom. J.J. recalled the taste of "fruity rubber." He made her continue until they reached their grandmother's house. J.J. testified that the defendant had shoved and held her face down and she was "gagging and crying and snot."

¶ 20 J.J. then described the incident that occurred after they arrived at their grandmother's house. J.J. ran inside, but their grandmother was not home. The defendant followed J.J. into the house. J.J. testified that "since [J.J.] didn't do what he had asked [her] to do that he was going to put it inside of [her]. And he said that he was either going to put it in my butt or in my vagina." J.J. told the defendant, "please don't put it in my butt" because she remembered something that her brother had told her. J.J. screamed and the defendant put his hand over J.J.'s mouth to quiet her. J.J. was undressed from the waist down. She testified that she "remember[ed] the weight of

his body on top of [her] and him shoving his penis onto my vagina" and that it "felt like a fist just like punching me in the vagina." The defendant stopped after J.J.'s older half-brother arrived, and the defendant had heard a car door closing.

¶ 21 J.J. testified to her age at the time of the incidents described in count I and count II, and the following testimony was provided:

"Q. I think you initially said that you were ten and he was—do you know how old he was?

A. He is seven years older than me.

Q. Okay. So do you believe he was 17?

A. I believe so.

* * *

Q. [J.J.], I'm sorry to ask again. Your date of birth is?

A. 10-20-89.

Q. And so you said this happened when you were ten years old?

A. Yes.

Q. So that would have been 10-20 of '99. That was when you turned ten years old, right?

A. Right.

Q. Okay. And then your eleventh birthday would have been October 19th [*sic*] of 2000. You believe it happened at some point in that year?

A. Yes.

Q. Do you know what grade you were in at that time?

A. When it happened?

Q. Yes.

A. May have been in the fourth grade.

Q. And do you know where you attended fourth grade?

A. Lone Oak Elementary.

Q. So that was still at Lone Oak. Do you recall—well, did you continue at Lone Oak? Or at some point, did you leave Lone Oak school?

A. We left Lone Oak sometime in my fifth-grade year. It was October of 2000.

Q. Okay. Was that right around your eleventh birthday?

A. Correct.

Q. Do you remember what the dresses were for?

A. I don't remember exactly.

Q. Okay. Were there different occasions that you would get dresses?

A. It could have been around Easter.

Q. Okay.

A. But I'm not certain."

J.J. also testified that she was not wearing a winter coat when the incident occurred on the drive to and at her grandmother's house.

¶ 22 J.J. additionally testified that the abuse was "still pretty constant" after that incident until she was 12 years old. J.J. believed that the defendant stopped after she started menstruating, and the defendant had married. J.J. testified that the defendant was inappropriate towards her again when she was alone in a vehicle with the defendant when she was 14 years old. The defendant had offered her "$400.00 for a blow job." J.J. told him "no," and he did not do anything further.

¶ 23 J.J. testified to the incident alleged in count III, which occurred at her grandmother's house when she was 16 years old. J.J. was drinking alcohol with the defendant, his wife, and her sister, P.R., after their grandmother went to sleep. J.J. remembered vomiting in her grandmother's backyard and the defendant had offered to help. The defendant then put J.J. in a vehicle and drove her to a place near an electrical substation. J.J. testified that when they stopped, she opened the car door to vomit. While she was vomiting, she felt the defendant's hands undoing her pants. The defendant removed one of J.J.'s legs from her pants and pulled her on top of him in the driver's seat. J.J. testified that "he put his penis inside of me." She "flung" herself to the car door and vomited again. J.J. testified that when she woke up the following morning, she had remembered what had happened to her and cried. J.J. additionally testified that she had confronted the defendant about that incident approximately a year later. The defendant had told her that "he thought it was mutual, and that he was in love with [J.J.] and he thought that [J.J.] was in love with him." J.J. additionally told the defendant's wife what had happened. She had wanted the defendant's wife to end her relationship with the defendant because of the defendant's violent behavior and he had hit his wife on several occasions.

¶ 24 J.J. testified that she had not spoken to the defendant in years and felt no connection to him. She believed that he was a danger to society. J.J. testified that she did not want to talk to the police about what had happened. She also did not want the defendant to continue to hurt her niece, A.H., or anyone else.

¶ 25 P.R. testified that she lived with the defendant until he turned 18 years old. After that time, the defendant lived with their grandmother. P.R. testified that she was molested by the defendant when she was four or five years old. The abuse occurred in several places, including their grandmother's house and in vehicles. P.R. explained that the defendant would "put our mouth down there," "touch private parts," and "try to put his mouth down there." P.R. additionally testified that the defendant would give his half-siblings alcohol.

¶ 26 The defendant would take P.R. and her siblings to the basement of her grandmother's house in Mound City. P.R. testified to an incident that occurred at their grandmother's house that involved J.J. and the defendant. The defendant gave J.J. and P.R. vodka and orange juice. Then he stripped off their clothing and had "sexual relations" with his sisters and made them interact with each other. P.R. testified that the defendant had threatened to kill them, and they were afraid of the defendant.

¶ 27 P.R. testified that the abuse stopped when she was approximately eight years old. P.R. believed that the defendant stopped molesting her because she had threatened to tell someone about the defendant.

¶ 28 P.R. additionally testified that when she was 18 years old, the Department of Children and Family Services (DCFS) investigated the defendant's family. The defendant had called P.R. for help, and P.R. went to the defendant's home to speak to his daughter, A.H., while the caseworker was present. P.R. promised A.H. that the defendant would never hurt her again if she told her story.

P.R. told the DCFS caseworker about the defendant's history of sexual abuse. DCFS removed the defendant's children from his care.

¶ 29 On cross-examination, the defense counsel questioned P.R. on whether she had reported abuse by the defendant before DCFS involvement. P.R. responded that she was suspicious of sexual abuse to A.H. P.R. had witnessed the defendant pick up A.H. by her neck and throw her across a room. P.R. explained that she was fearful of the defendant when she was a child because he had threatened to kill her. She reported the defendant when she became an adult.

¶ 30 A.H. testified that the defendant was her father and J.J. was her aunt. A.H. testified that the earliest memory of sexual abuse by the defendant was when he touched her in the bathtub. When A.H. was six or seven years old, the defendant penetrated her anally at his grandmother's house in Mound City, Illinois. She described an incident where the defendant gave A.H. a choice of putting his penis in "your butt" or "your front" and proceeded to penetrate her anally. A.H. yelled because it hurt, and the defendant flipped her over and penetrated her vaginally. After that incident, the defendant would penetrate A.H. vaginally.

¶ 31 A.H. testified to an incident where A.H. was asleep at the grandmother's house. A.H.'s mother woke her to join the defendant and her mother in their bedroom. The defendant was naked, and he directed A.H.'s mother to perform oral sex on A.H. A.H. testified that her mother was upset and had been crying. A.H. was directed to perform oral sex on her mother and to assist her mother perform oral sex on the defendant.

¶ 32 When A.H. was eight years old, DCFS investigated her family because her mother had attempted to kill herself. P.R. was present at the house when the DCFS caseworker was investigating. P.R. was the first person that A.H. had spoken to about the sexual abuse by defendant. A.H. was removed from her parents' care at that time.

¶ 33 J.H. testified that the defendant was 12 years older than her and her half-brother. The defendant moved from their household when she was five years old, but he would babysit J.H. at their grandmother's house in Mound City, Illinois. J.H. testified to an incident where the defendant sexually violated her in a car when she was approximately six years old. J.H. additionally testified that the defendant would wake her up in the night to perform sexual acts. He would force her to perform sexual acts in their grandmother's basement and in her bathroom. J.H. testified to a specific incident that occurred when she was 10 to 12 years old. The defendant forced anal sex in their grandmother's bathroom. She testified that the defendant continued to sexually abuse her until she was approximately 13 or 14 years old.

¶ 34 J.H. testified that during a sexual altercation, the defendant "had some form of realization" and he said that "he had to ask himself what the hell is wrong with me." The defendant then admitted to J.H. that he had abused all his half-siblings, except their youngest brother. J.H. additionally testified that the defendant called her when she was 18 years old and asked her for forgiveness. J.H. reported the defendant to the police in 2016, near the time of her twenty-first birthday at the direction of her counselor.

¶ 35 After J.H. testified, the State rested its case. The defense made a motion for a directed verdict and argued that the State was unable to establish that the defendant was over 17 years old for two of the counts. The State responded that the defendant's age was an issue of fact and there was sufficient evidence presented for the jury to find that the defendant was 17 years old. The circuit court denied the motion for directed verdict.

¶ 36 The defendant did not testify or present any evidence. The parties presented closing arguments. The State discussed the charges in its closing argument and explained that they must determine whether the defendant was 17 years old at the time of the incidents for count I and count

II. The State argued that J.J. identified the defendant as being 17 years old at the time of the incidents and his birthday was in December. J.J. testified to the grade school she was attending at that time, it was warm out, and she did not wear a coat on the date of the incidents alleged in count I and count II.

¶ 37 The defendant's closing argument included an argument that the State had not proved beyond a reasonable doubt that the defendant was 17 years old during the time of the incidents alleged in count I and count II. The defense stated that when J.J. turned 10 years old, the defendant was 16 years old. The age of the defendant mattered, and defense counsel questioned J.J.'s credibility.

¶ 38 The jury found the defendant guilty of predatory criminal sexual assault of a child where he touched his penis to J.J.'s sex organ, guilty of predatory criminal sexual assault of a child with regard to the defendant's penis in mouth of J.J., and guilty of criminal sexual assault of J.J.

¶ 39 C. Posttrial and Sentencing

¶ 40 The defendant filed a motion for a new trial and argued that the State did not prove predatory criminal sexual assault beyond a reasonable doubt where it did not prove that the defendant was 17 years old at the time of the incidents charged. The defense claimed that the State did not prove sexual assault beyond a reasonable doubt where the victim could not remember details of the incident and there was no corroborating or physical evidence presented. The defendant additionally claimed that he was denied a fair trial where J.J., A.H., P.R., and J.H. were allowed to testify to other crimes allegedly committed by the defendant where the prejudicial testimony outweighed the probative value of the evidence presented. Additionally, the defendant argued that there was not a substantial degree of similarity between the allegations and the testimony presented.

¶ 41 The circuit court heard the defendant's motion for a new trial prior to the sentencing hearing. The defendant argued the issues raised in his written motion for a new trial. The State responded that the issues regarding the defendant's age and testimony of specific details of sexual assault were issues of fact that the jury decided. The State argued that the issue of other crimes evidence was raised in a pretrial motion and relied on those same arguments. The State additionally argued that the other crimes evidence was not a focal point of the trial. The circuit court found that the probative value of the other crimes evidence outweighed the prejudicial effect and denied the motion for a new trial.

¶ 42 During the sentencing hearing, J.J. and J.H. made victim's impact statements and the State requested that the circuit court consider the testimony presented by the other witnesses at trial. The State requested the maximum sentence of 30 years on count I, consecutive 30 years on count II, and a consecutive 15 years on count III, for a total of 75 years in the IDOC served at 85%. The State additionally requested protective orders for J.J. and J.H., and that the defendant should receive a $12,000 fine.

¶ 43 The defendant argued that the minimum sentence was 6 years on count I, 6 years on count II, and 4 years on count III, for a total of 16 years, and requested a sentence of no more than 20 years in the IDOC. Three letters of support were submitted. The defendant argued that the defendant's conduct did not cause or threaten serious physical harm and he did not contemplate that his criminal conduct would have caused or threatened serious physical harm. The defendant additionally argued that according to the jury, the defendant was 17 years old for two of the charges and a young adult for the third charge and the circuit court should consider his young age when the incidents occurred. The defendant did not have a history of prior delinquency or criminal

activity when the crimes were committed. He also argued that his character and attitude indicated that he was unlikely to commit another crime.

¶ 44 The defendant made a statement in allocution and addressed his siblings. The defendant stated that his siblings' memories were different from his own, and that he did not hold anything against them. He stated that he loved his family.

¶ 45 The circuit court considered the evidence presented at trial, the contents of the presentence investigation (PSI), victim impact statements, the defendant's allocution statement, letters of support, and arguments by counsel. The circuit court additionally referenced *Miller v. Alabama*, 567 U.S. 460 (2012), and considered that the defendant was 17 years old at the time of the incidents. The circuit court sentenced the defendant to 20 years in the IDOC at 85% time with a MSR of 3 years to life on count I. On count II, the circuit court sentenced the defendant to 25 years in the IDOC at 85% time, to run consecutive to count I. On count III, the defendant was sentenced to 10 years in the IDOC at 85% time, followed by MSR of 3 years to life, to be served consecutively. The circuit court additionally imposed a $12,000 fine and entered a protective order.

¶ 46 The defendant filed a motion to reconsider sentence and argued that the circuit court failed to fully consider the defendant's age at the time of the offenses and his sentence was excessive where he lacked a criminal history. The circuit court was required to consider five factors when sentencing a juvenile offender, including age and accompanying immaturity, home environment, degree of participation, incompetence in dealing with the justice system, and any prospects for rehabilitation. The defendant argued that the circuit court did not give enough weight to the defendant's age or his family or home environment when it imposed a 55-year sentence to IDOC.

¶ 47 The circuit court found that during the sentencing hearing that it had sentenced the defendant to a lesser sentence due to the defendant's lack of criminal history. The circuit court

discussed the *Miller* factors and referred to *People v. Holman*, 2017 IL 120655. The circuit court considered that sentencing courts must consider factors associated with youth, including the defendant's age at the time of the offense; evidence that the defendant was particularly immature or unable to appreciate the risks and consequences; the defendant's home environment; the defendant's degree of participation in the offense and any peer pressure; whether the defendant was able to deal with prosecutors, the police, and his capacity to assist his attorneys, and the defendant's potential for rehabilitation.

¶ 48 The circuit court found that the defendant was 17 years old when the offenses occurred. The circuit court considered that it did not have evidence that the defendant was particularly immature and that some people would consider his sexual activity as a sign of maturity while others would consider that sexual activity with younger children as a sign of immaturity or that the defendant was unable to appreciate the risks and consequences of his behavior. The circuit court found that because the defendant acted in secret and attempted to hide his behavior that he was able to appreciate the risks and consequences of his actions. The circuit court considered the defendant's home environment and found that the case was about the defendant's proclivities. No evidence was presented that the defendant was subject to peer pressure and the circuit court found that the defendant had acted on "his own impulses." The defendant was 39 years old at the time of sentencing and the circuit court found that there were no limitations on his ability to interact with police or attorneys based on his age. The circuit court additionally considered the defendant's potential for rehabilitation and found that the defendant demonstrated "zero evidence of remorse."

¶ 49 The defendant's motion to reconsider his sentence was denied. This appeal followed.

¶ 50 II. ANALYSIS

¶ 51 On appeal, the defendant argues that there was insufficient evidence to prove that the defendant was at least 17 years old when the incidents occurred; the circuit court erred in allowing several witnesses to testify to overly prejudicial sexual offenses that were unrelated to the defendant's charges; and the circuit court failed to consider mitigating sentencing factors.

¶ 52 A. Sufficiency of the Evidence

¶ 53 We first address the defendant's challenge to the sufficiency of the evidence. "When considering a challenge to the sufficiency of the evidence, courts of review must consider whether, when viewing all the evidence adduced at trial in a light most favorable to the State, any rational trier of fact could find proof of the essential elements of the charged offense beyond a reasonable doubt." *People v. Edward*, 402 Ill. App. 3d 555, 564 (2010). The State is not required to disprove all possible factual scenarios. *People v. Newton*, 2018 IL 122958, ¶ 27.

¶ 54 "The trier of fact is responsible for determining witness credibility, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence." *People v. Harmon*, 2012 IL App (3d) 110297, ¶ 11. Factual disputes are resolved by the trier of fact where evidence can produce conflicting inferences. *Harmon*, 2012 IL App (3d) 110297, ¶ 12. We do not substitute our judgment for the determination made by the trier of fact. *Newton*, 2018 IL 122958, ¶ 26.

¶ 55 The defendant was charged with two counts of predatory criminal sexual assault of a child (720 ILCS 5/12-14.1 (West 2000)) and one count of criminal sexual assault (720 ILCS 5/12-13(a)(2) (West 2000)). The defendant claims that the State failed to prove, beyond a reasonable doubt, the elements to sustain a conviction for predatory criminal sexual assault of a child based on the version of the statute in effect at the time of the offense.

¶ 56 In order to be convicted of predatory criminal sexual assault, the accused must be 17 years old or older, and must commit an act of sexual penetration with a victim under 13 years old. 720 ILCS 5/12-14.1 (West 2000). The defendant does not dispute that the State proved that he had committing acts of sexual penetration alleged in both counts of predatory criminal sexual assault of a child under 13 years of age. The defendant, however, disputes his age at the time of the offense. J.J. had testified that the incident occurred when she was 10 years old, and the defendant argues that he was 16 years old for a period after J.J.'s tenth birthday. Specifically, he was 16 years old on October 20, 1999, when J.J. turned 10 years old, until his seventeenth birthday on December 27, 1999.

¶ 57 In both counts of predatory criminal sexual assault, the State alleged that the defendant committed the charged acts in April of 2000, in Pulaski County, Illinois, after the defendant's seventeenth birthday. J.J. testified that the defendant forced her to perform oral sex on the drive to her grandmother's house and a separate event that occurred on the same day at her grandmother's house where he attempted to insert his penis into her vagina.

¶ 58 J.J. could not provide the specific date of the events, but she testified that she went to her grandmother's house to pick up dresses for a church holiday, such as Easter. J.J. testified that she was not wearing a winter coat. She recalled the grade school that she was attending at that time and that she had transferred schools the following October. J.J. additionally testified that the defendant continued to sexually abuse her after the date of those incidents until she was approximately 12 years old.

¶ 59 The jury determined the essential element that the defendant was 17 years old at the time of the incidents alleged in count I and count II based on the testimony that was presented. We will not substitute our judgment for reasonable inferences made by the jury. Substantial evidence was

presented for the State to prove beyond a reasonable doubt that the defendant committed two counts of predatory criminal sexual assault.

¶ 60 B. Other Crimes Evidence

¶ 61 In general, evidence of other crimes for the purpose of demonstrating the propensity of the defendant to commit the charged crime is inadmissible. *People v. Manning*, 182 Ill. 2d 193, 213 (1998). The defendant's prior sexual activity with the same child in a sexual offense case is admissible "to show the defendant's intent, design or course of conduct and to corroborate the victim's testimony concerning the charged offense." *People v. Anderson*, 225 Ill. App. 3d 636, 647 (1992). The victim's credibility could face an unfair strain if testimony is limited to make an incident appear isolated. *Anderson*, 225 Ill. App. 3d at 647-48.

¶ 62 Section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) provides an exception for the evidentiary use of the defendant's prior convictions in sexual offense cases, including the crimes of predatory criminal sexual assault of a child and criminal sexual assault. 725 ILCS 5/115-7.3 (West 2020). "Where the other-crimes evidence meets the preliminary statutory requirements, it is admissible if (1) it is relevant; and (2) its probative value is not outweighed by its prejudicial effect." *People v. Cardamone*, 381 Ill. App. 3d 462, 489 (2008).

¶ 63 Section 115-7.3 of the Code specifies that the following factors should be weighed in determining whether the prejudicial effect of admitting other crimes evidence outweighs the probative value:

> "(1) the proximity in time to the charged or predicate offense;
>
> (2) the degree of factual similarity to the charged or predicate offense; or
>
> (3) other relevant facts and circumstances." 725 ILCS 5/115-7.3(c) (West 2020).

Thus, section 115-7.3 "enable[s] courts to admit evidence of other crimes to show defendant's propensity to commit sex offenses" despite the general rule against other-crimes evidence. *People v. Donoho*, 204 Ill. 2d 159, 176 (2003). Relevant other-crime evidence, however, must not become the focal point of a trial. *People v. Boyd*, 366 Ill. App. 3d 84, 94 (2006).

¶ 64 The circuit court's decision to admit other-crimes evidence is reviewed for an abuse of discretion. *Donoho*, 204 Ill. 2d at 182. An abuse of discretion will be found only where the circuit court's decision is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the circuit court. *Donoho*, 204 Ill. 2d at 182. "The actual limits on the trial court's decisions on the quantity of propensity evidence to be admitted under section 115-7.3 are relatively modest, especially when combined with the highly deferential abuse-of-discretion standard that governs review of such trial court decisions." *People v. Walston*, 386 Ill. App. 3d 598, 621 (2008).

¶ 65 There is no bright-line rule regarding the proximity in time between the prior offense and the crime charged. *Donoho*, 204 Ill. 2d at 184. Courts should consider the issue of proximity in time on a case-by-case basis and the reviewing court may not substitute its judgment for that of the circuit court. *People v. Braddy*, 2015 IL App (5th) 130354, ¶ 32. In *Donoho*, the other crime occurred 12 to 15 years prior to the conduct at issue in that case. *Donoho*, 204 Ill. 2d at 184. Our supreme court in *Donoho* considered that the appellate court in *People v. Davis*, 260 Ill. App. 3d 176, 192 (1994), affirmed the admission of other-crimes evidence over 20 years old to be "sufficiently credible and probative." *Donoho*, 204 Ill. 2d at 184.

¶ 66 The allegations charged against the defendant were based on incidents that occurred when J.J. was 10 years old, in 2000, and for an act that occurred when she was 16 years old, on or between October 20, 2005, and October 19, 2006. The defendant began sexually abusing J.J. when

she was approximately five years old, in 1995. A.H., the defendant's daughter, testified to the last incident of the defendant's sexual abuse. The defendant began sexually assaulting A.H. in November of 2009, when she was approximately seven years old, and the abuse continued until she was taken into DCFS custody on September 8, 2010. The allegations of sexual abuse by the defendant spanned approximately 15 years from 1995 through 2010. Witness testimony should not be excluded based on the proximity of time of uncharged testimony to the charged allegations.

¶ 67 Evidence of other crimes must have "some threshold similarity to the crime charged." (Internal quotation marks omitted.) *Braddy*, 2015 IL App (5th) 130354, ¶ 39. Some factual differences will not defeat admissibility. *Braddy*, 2015 IL App (5th) 130354, ¶ 39. General areas of similarities are sufficient to support admissibility. *Donoho*, 204 Ill. 2d at 184. Where the defendant does not have continued access to the victims, the progression of abuse may be different. *Braddy*, 2015 IL App (5th) 130354, ¶ 41.

¶ 68 The charged acts included forcing J.J. to perform oral sex in a vehicle. The defendant also made contact with J.J.'s vaginal area with his penis. During that incident, although it did not include anal penetration, the defendant gave J.J. the option to "put it in [her] butt or in [her] vagina." The defendant additionally was charged with criminal sexual assault where the defendant penetrated the sex organ of J.J. with his penis while she was intoxicated.

¶ 69 The defendant relied on *Cardamone*, 381 Ill. App. 3d 462, to claim that the volume of other-crimes evidence presented made the probative other-crimes evidence overly prejudicial. In *Cardamone*, the circuit court had allowed testimony of 158 to 257 incidents of uncharged conduct. *Cardamone*, 381 Ill. App. 3d at 491. *Cardamone* found that the circuit court did not address the "other relevant facts and circumstances" prong of section 115-7.3 of the Code and stated,

> "We believe that there are several facts and circumstances that weighed against admission. For example, unlike a case where the trial court might admit other-crimes evidence as it

> pertains to 1 or even 2 victims, the court here found admissible numerous acts alleged by 15 victims. In the face of so many allegations of misconduct, there was a great risk that the jury could find that defendant must have done *something*, or that it could find defendant guilty beyond a reasonable doubt not of the charges but, instead, of uncharged acts." (Emphasis in original.) *Cardamone*, 381 Ill. App. 3d at 493-94.

¶ 70 *Walston* considered the *Cardamone* case, and found that,

> "*Cardamone* gives us a start in assessing the limits imposed on section 115-7.3 propensity evidence by the requirement from section 115-7.3(c) that the undue prejudicial effect of such evidence not outweigh its probative value. However, due to the extreme facts in *Cardamone*, the case instructs us only on the outer bounds of the rule; it reveals nothing of the rule's more subtle inner striations." *Walston*, 386 Ill. App. 3d at 619.

"Simply put, *Cardamone* was an extreme case." *People v. Perez*, 2012 IL App (2d) 100865, ¶ 49.

¶ 71 The defendant claims that the jury's decision was based on the testimony of six uncharged acts of sexual misconduct by J.J. where there was an absence of evidence establishing that the defendant was 17 at the time of committing count I and count II. The defendant claims that the circuit court erred by allowing testimony by J.J. of the defendant's conduct including that the defendant "dry hump[ed]" J.J. when she was five years; forced J.J. to perform oral sex on him after giving J.J. and P.R. a bath; forced J.J. to perform oral sex on him at a skating rink and in abandoned building; directed J.J. to participate in acts of oral sex with him and her siblings; and after J.J. had turned 16 years old, the defendant had offered her $400 to perform oral sex on him.

¶ 72 As discussed above, sufficient evidence was presented for the jury to determine the essential element that the defendant was 17 years old at the time of the incidents alleged in count I and count II. J.J.'s testimony referenced six uncharged incidents demonstrating the progression of abuse and history of her relationship with the defendant that led to the charges against the defendant. J.J.'s testimony referencing other events showed the defendant's intent to engage in a variety of sexual acts with his younger half-sibling, and corroborated J.J.'s testimony concerning the charged offenses. J.J.'s testimony focused on the details of the specific charged incidents. The

circuit court did not abuse its discretion in allowing the victim, J.J., to testify to additional acts of sexual misconduct by the defendant that were not charged by the State.

¶ 73 The defendant's behavior towards each victim who testified had general similarities. J.J. testified that she was between the ages of 5 and 12 years old when most of the abuse occurred, and that the defendant committed criminal sexual assault when she was 16 years old. The abuse occurred at their grandmother's house in Mound City, Illinois, when adults were sleeping, or when she was alone with the defendant. J.J. had been intoxicated at times. The defendant had also physically threatened J.J., and she was fearful of the defendant.

¶ 74 P.R. testified that the defendant began to molest her when she was four or five years old. The defendant stopped abusing her when she was eight years old after she threatened to report the defendant. The abuse occurred at their grandmother's house and in vehicles. She testified that the defendant would force oral sex. P.R. testified to a specific event that involved J.J. where the defendant forced J.J. and P.R. to sexually interact with each other after he gave them alcohol. P.R. was afraid of the defendant because he had threatened to kill her.

¶ 75 J.H. was also a half-sibling of the defendant. The defendant moved away when J.H. was five years old. The defendant still had contact with J.H. when he would babysit her at their grandmother's house in Mound City, Illinois. J.H. testified that the defendant sexually violated her in a car when she was approximately six years old. He would wake J.H. in the night and force her to perform sexual acts when she stayed at her grandmother's house. When J.H. was 10 to 12 years old, the defendant forced anal sex. The defendant continued to abuse J.H. until she was 13 or 14 years old.

¶ 76 A.H. was the defendant's daughter. The defendant began to sexually abuse A.H. when she was six or seven years old. The sexual abuse ended when she was eight years old because of DCFS

intervention. The defendant would penetrate her anally when they were staying at his grandmother's house in Mound City, Illinois. A.H. testified to an incident where the defendant gave her an option of penetrating her anally or vaginally. A.H. additionally testified that the defendant directed group oral sex with a relative.

¶ 77 The defendant specifically argued that testimony involving the defendant's sexual misconduct with multiple victims was overly prejudicial where the defendant had not been charged with a similar offense. The State argues that the defendant forfeited this issue for appeal and the defendant did not seek plain error review. The defendant, however, sought plain error review in his reply brief.

¶ 78 To preserve an issue for review in a criminal case, the defendant must raise it in either a motion *in limine* or an objection at trial, and in a posttrial motion. *People v. Denson*, 2014 IL 116231, ¶ 18. "A claim of forfeiture raises a question of law, which we review *de novo*." *People v. Sophanavong*, 2020 IL 124337, ¶ 21.

¶ 79 We may review forfeited errors under the plain error doctrine where (1) the evidence "is so closely balanced that the jury's guilty verdict may have resulted from the error" or (2) "the error is so serious that the defendant was denied a substantial right." *People v. Herron*, 215 Ill. 2d 167, 178-79 (2005). The defendant "argued plain error in his reply brief, which is sufficient to allow us to review the issue for plain error." *People v. Ramsey*, 239 Ill. 2d 342, 412 (2010). Before addressing the defendant's plain-error argument, we must first determine whether error occurred. *People v. Lovejoy*, 235 Ill. 2d 97, 148 (2009).

¶ 80 Testimony regarding sexual misconduct with multiple victims was properly admitted. J.J. testified to incidents where the defendant had forced her to perform oral sex including an incident that involved her sibling, P.R. P.R. additionally testified to this conduct with her siblings while

intoxicated. Although, the charged allegation did not involve multiple victims, the defendant's behavior was generally similar. The charged incidents occurred when the defendant was alone with a half-sibling and forced her to perform oral sex. The defendant additionally committed criminal sexual assault when J.J. was intoxicated. Consequently, we conclude that there was no error in allowing testimony of sexual misconduct by the defendant that involved multiple victims, thus, no plain error can exist.

¶ 81 Overall, the victims who testified were young females and biologically related to the defendant. The defendant sexually abused the children in secret while the defendant had a supervisory role. Most of the abuse occurred at a house in Mound City, Illinois, or in a vehicle. The defendant additionally would force his victims to perform oral sex acts alone with him or at times included oral sex acts with relatives and jointly with him. Although the allegations did not involve anal penetration, J.J. testified that the defendant gave her that option, but penetrated her vaginally. A.H. testified to a similar situation where she was provided with a choice and the defendant began to penetrate her anally before penetrating her vaginally. P.R. and J.J. both testified that the defendant provided them with alcohol before his sexual assaults. The sexual acts described by the corroborating witness were also not identical; however, there were sufficient general similarities for admission of the other crimes evidence.

¶ 82 C. Sentencing

¶ 83 At the sentencing hearing, the circuit court must balance the "retributive and rehabilitative purposes of punishment." *People v. Center*, 198 Ill. App. 3d 1025, 1033 (1990). All factors in aggravation and mitigation must be considered. *People v. Quintana*, 332 Ill. App. 3d 96, 109 (2002). "The seriousness of the crime is the most important factor in determining an appropriate sentence, not the presence of mitigating factors such as the lack of a prior record, and the statute

does not mandate that the absence of aggravating factors requires the minimum sentence be imposed." *Quintana*, 332 Ill. App. 3d at 109. The circuit court is not required to articulate its process or its consideration of mitigating factors regarding its sentencing decision. *Quintana*, 332 Ill. App. 3d at 109.

¶ 84 We will not reverse a sentence unless the circuit court abused its discretion. *People v. Stacey*, 193 Ill. 2d 203, 209-10 (2000). "However, when the issue is whether a sentencing court misapprehended applicable law, our review is *de novo*." *People v. Cavazos*, 2023 IL App (2d) 220066, ¶ 33.

¶ 85 The eighth amendment of the United States Constitution prohibits the infliction of "cruel and unusual punishments" (U.S. Const., amend. VIII) and applies to the states through the fourteenth amendment (U.S. Const., amend. XIV). *People v. Dorsey*, 2021 IL 123010, ¶ 37. "[T]he Eighth Amendment forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller v. Alabama*, 567 U.S. 460, 479 (2012). A prison sentence of more than 40 years imposed on a juvenile offender constitutes a *de facto* life sentence. *Dorsey*, 2021 IL 123010, ¶ 47.

¶ 86 *Miller* did not foreclose the imposition of a life sentence in prison for juvenile offenders, rather it required sentencing courts to " 'take into account how children are different, and how those differences counsel against irrevocably sentencing them to a lifetime in prison.' " *Dorsey*, 2021 IL 123010, ¶ 24 (quoting *Miller*, 567 U.S. at 480). "Neither a finding of permanent incorrigibility nor an on-the-record sentencing explanation is constitutionally required before a juvenile may be sentenced to life without parole." *People v. Wilson*, 2023 IL 127666, ¶ 38.

¶ 87 In 2016, Illinois codified the factors set forth in *Miller* in section 5-4.5-105(a) of the Unified Code of Corrections (730 ILCS 5/5-4.5-105(a) (West 2016)). *People v. Buffer*, 2019 IL

122327, ¶ 36. Pursuant to section 5-4.5-105(a), the circuit court is required to consider the following factors in mitigation before imposing a sentence on an individual under the age of 18:

> "(1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;
>
> (2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;
>
> (3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;
>
> (4) the person's potential for rehabilitation or evidence of rehabilitation, or both;
>
> (5) the circumstances of the offense;
>
> (6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;
>
> (7) whether the person was able to meaningfully participate in his or her defense;
>
> (8) the person's prior juvenile or criminal history; and
>
> (9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor." 730 ILCS 5/5-4.5-105(a) (West 2020).

¶ 88 At the sentencing hearing, the circuit court stated that it considered the evidence presented at trial, the defendant's PSI, the victim impact statements, arguments of counsel, the defendant's statement in allocution and letters of support, and possible sentencing alternatives. The circuit court considered the defendant's childhood and stated, "There's just nothing about it that's normal or has ever been normal or continues to be normal." The circuit court additionally addressed that defense counsel referred to *Miller* in her sentencing recommendation, and the court believed that defendant's sentence "would pass the *Miller* test." The State requested the maximum sentence on each count for a total of 75 years in the IDOC. The defendant requested a sentence closer to the

total minimum sentence of 16 years in the IDOC. The defendant was sentenced to 20 years for count I, 25 years for count II, and 10 years for count III. The sentences were to be served consecutively for a total of 55 years in the IDOC.

¶ 89 The defendant filed a motion to reconsider his sentence and alleged that the circuit court failed to fully consider his age at the time of the offenses and failed to consider the defendant's criminal history at the time the offenses occurred. Although the circuit court considered the defendant's age at the time of the sentencing hearing, the circuit court specifically addressed each of the sentencing factors for individuals under 18 years of age at the time the offenses occurred during the motion to reconsider the defendant's sentence.

¶ 90 The circuit court found that the defendant was 17 years old when the offenses occurred. The circuit court did not believe that the defendant was particularly immature. The defendant acted in secret and attempted to hide his behavior that he was able to appreciate the risks and consequences of his actions and had acted on "his own impulses." The circuit court considered the defendant's home environment and found that the case was about the defendant and his own proclivities. The circuit court additionally considered the defendant's potential for rehabilitation and found that the defendant demonstrated "zero evidence of remorse." The circuit court noted that it had considered the defendant's lack of a criminal history and sentenced the defendant to a lesser sentence based on that factor. The defendant was 39 years old at the time of sentencing and the circuit court found that there were no limitations on his ability to interact with police or attorneys based on his age.

¶ 91 The circuit court considered the defendant's youth and attendant circumstances when making its determination and the defendant received a sentence within the sentencing range. The circuit court did not err when sentencing the defendant.

¶ 92 III. CONCLUSION

¶ 93 For the foregoing reasons, we affirm the judgment of the circuit court of Pulaski County.

¶ 94 Affirmed.

FILED
May 01, 2024
APPELLATE
COURT CLERK

5-22-0627

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JARED WADE HINMAN SR., Defendant-Appellant.	Pulaski County Trial Court/Agency No.: 21CF21

ORDER

This cause coming on to be heard on appellant's petition for rehearing and the court being advised in the premises:

IT IS THEREFORE ORDERED that appellant's petition for rehearing is DENIED.

APPENDIX A

Motion for Leave to File a Motion

Motion to Reconsider Denial of PLA

Denial of Motion to Reconsider Denial of PLA

No. 130751
IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion for leave to file a motion for Reconsideration
	Appeal from the Appellate Court, 5th District No. 5-22-0627
V.	
	Appeal from the Circuit Court of Pulaski County, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris Judge, Presiding

Proof of Service

TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St, Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on 22 November, 2024, I placed copies of the attached MOTION in the prison mail system at Shawnee CC, addressed to the Clerk of the Supreme Court and to each of the above-named opposing councels.

Jared Wade Hinman, #453702
Shawnee CC

Subscribed and sworn to me this 22nd day of November, 2024. NOTARY PUBLIC

Shannon D. Dillard

Notary Public, State of Illinois
Official Seal
Shannon D Dillard
Commission # 850491
My Commission Expires 7/12/2028

No. 130751

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TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle, Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on 22 November, 2024, I placed copies of the attached MOTION in the prison mailing system at Shawnee CC, addressed to the Clerk of the Supreme Court and to each of the above-named opposing councels.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except to matters therein stated to be on information and behalf and as to such matters the undersigned certifies as aforesaid he verily believes the same to be true.

Dated: 22 November 2024 Jared Wade Hinman, #Y53702 SCC

No. 130751

IN THE

Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion for leave to file a motion for Reconsideration
	Appeal from the Appellate Court, 5th District, No. 5-22-0627
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	Appeal from the Circuit Court of Pulaski County, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris Judge, Presiding

Motion for leave to file a motion for Reconsideration

On 25 September 2024, the Supreme Court of Illinois DENIED Petitioner's Petition for leave to Appeal. Petitioner prays this Court ALLOW this MOTION for leave, and grant the hearing of Petitioner's Appeal in the Supreme Court of Illinois, and gives the following extraordinary and compelling reasons:

Insufficient Evidence to Prove Essential Elements of the Charged Crime

"In order to be convicted of predatory criminal sexual assault, the accused must be 17 years old or older, and must commit an act of sexual penetration with a victim under 13 years old." [720 ILCS 5/12-14.1 (West 2000)]. The burden of proof is "beyond a reasonable doubt."

Please take note that the Petitioner's Counsel on Appeal did not dispute the acts themselves, but only when they occurred. The Petitioner does not, personally, agree with that concession, but understands that cannot be addressed at this time, and will proceed accordingly.

Sufficiency of Evidence Continued

"When considering a challenge to the sufficiency of evidence, courts of review must consider whether, when viewing all evidence adduced at trial in a light most favorable to the State, any rational trier of fact could find proof of the essential elements of the charged offense beyond a reasonable doubt." [People v. Edward, 402 Ill. App. 3d 555, 564 (2010)]. "The trier of fact is responsible for determining ... the reasonable inferences to be drawn from the evidence." [People v. Harmon, 2012 IL App (3d) 110297, ¶11.].

The State filed charges, and issued a warrant, for 2 counts of Aggravated Criminal Sexual Assault, on 31 March 2021, with the date range of 1995 to 1999. Petitioner was 12 years old in 1995, and 16 years old for all but 4 days of 1999. The State altered the dates several times, before changing the charges to 2 counts of Predatory Criminal Sexual Assault, with a date range outside of it's original filing with no new evidence to support it.

Counts I and II account for a single day, not "over the course of years." Victim claimed she went with the defendant from Kentucky to Illinois, in a truck, and that the charged offense took place in Illinois. The purpose of the trip was to pick up dresses for church.

"Q. Do you remember what the dresses were for?
A. I don't remember exactly.
Q. OK. Were there different occasions that you would get dresses?
A. It could have been around Easter.
Q. OK.
A. But I'm not certain."

The victim J.J. presented a possibility, that not even she was certain of. Not "it was" or "I believe it to be" but "It could

Sufficiency of Evidence Continued

have been." That is NOT "beyond a reasonable doubt." That is not even "a preponderance of evidence." That is only a possibility, a guess. "Reasonable Inferences to be drawn from the evidence" are that if it "could have been" Easter, it just as likely "could have been" Christmas.

"The State is not required to disprove all possible factual scenarios." [People v. Newton, 2018 IL 122958, ¶27]. There were only 2 scenarios: Easter or Christmas. The evidence only vaguely presented a possibility of Easter.

To this, the 5th District Appellate Court of Illinois stated: "We do not substitute our judgement for the determination made by the trier of fact." [Newton, 2018 IL 122958, ¶36.]. "We will not substitute our judgement for reasonable inferences made by the jury." [People v. Hinman App. Ord. (5d) 220627-U, ¶59].

"Reasonable Inferences made by the jury" were also subject to contradictory instructions given in closing statements, and were not admonished by the trial court as to which set of instructions to follow prior to deliberations. State said during closing, "we don't have to prove WHEN (emphasis made by State) it happened, only THAT (emphasis made by State) it happened." Trial Council for Defense stated, "dates matter." Even if the jurors were rational, they are not - in this instance - legal professionals. The jury was left to determine - on their own - whether or not dates mattered in proving beyond a reasonable doubt essential elements of the charged offense.

If the dresses were for Christmas, the defendant is a 16 year old (not turning 17 until after Christmas, 27 December). Dates do matter. The trier of fact determined they didn't.

To maintain the current standard of evidence - beyond a reasonable doubt - the Court must review and reverse

Sufficiency of Evidence Continued

this decision. To not do so would be equivelent to saying "you are guilty until proven innocent" and that the State must only present the "possibility of a crime being committed."

Count III is Criminal Sexual Assault and suffers an issue regarding jurisdiction. Jurisdiction for count III was raised deering the Preliminary Hearing. T.J. claimed she passed out several times, vomitted out of the window of a moving car several times, and could not remember enough of the drive to discern it's length with any measure of accuracy. During the bond reduction hearing - where defendant's bond was reduced from $300,000 to $150,000 - the court made the statement, "I understand we are in somewhat of a geological oddity, where if you drive more than 15 minutes in any given direction, you're in another state..." (quoted from memory without access to the record - may not be exact verbatim). The defendant, at the time of the charged offense, lived in Barlow, Kentucky (a distance of 20-25 minutes by car). T.J. also lived in a different state (KY or TN). Enough evidence exists to show the incident could have, and very likely did occur in another state. A state where the act wasn't even illegal. Both individuals had lived in Kentucky for 8 years, leading up to the incident, and both were attune to the fact that the age of consent is/was 16 years of age. The incident, transpiring in Kentucky, where both parties were cognizant of it's local laws, was not a crime; Illinois has no jurisdiction, merely because the car-ride originated within it's confines.

Erroneous Admission of Other-Crimes Evidence

The erroneous admission of other-crimes evidence carries a high risk of prejudice and will ordinarily require a reversal. [People v. Cortes,

Other-Crimes Continued

181 Ill.2d 249, 285 (1998)]. This is especially true "[w]here the determination of a defendant's guilt or innocence depends on the credibility of the defendant and the accuser." [People v. Stanbridge, 348 Ill. App. 3d 351, 358 (4th District 2004)]. [See Cardamone, 381 Ill. App. 3d at 494 (finding that improper admission of other-crimes testimony by several witnesses, regarding numerous acts, presented "a great risk that the jury could find that defendant must have done something[.]" (emphasis original)].

Note, the charged offenses dwell within the confines of April, 2000 (counts I & II), and solely rest upon 2 statements: "It could have been around Caster" and "But I'm not certain." Here, Hinman did not confess to any of the charged offenses and his conviction rests entirely on the credibility of J.J. and the other-crimes witnesses. Moreover, J.J. could not recall many details about the charged offenses, including when and how they occurred. (R. 1190-99, 1204-08, 1280-98). On Appeal, the 5th District stated "Substantial evidence was presented for the State to prove beyond a reasonable doubt that the defendant committed two counts of predatory criminal sexual assault." [2024 IL App (5th) 220627-U, ¶59]. Yet, outside of the full description of the charged crime, only the two statements above within April of 2000; proving the previous paragraph "that defendant must have done something[.]" (emphasis original) is only made apparent "that the jury could have used testimony about uncharged conduct to bolster J.J.'s testimony concerning the actual charges", likewise in the 5th District on Appeal.

Ex Post Facto Violation

It is an United States Constitution Art. I sec 10 and Illinois Constitution Art I sec 16 Ex Post Facto violation to apply 730 ILCS 515-8-1(d)(4) (3-Life MSR) to me.

Ex Post Facto Continued

"Retroactive in the laws governing Parole may, in some circumstances, violate the ex post facto Prohibition" [Garner v. Jones 529 US 244, 250 (2000)] and [Barger v. Peters 645 NE 2d 175 (1994)].

730 ILCS 515-8-1(d)(4) reads: "For defendants who committed the offense of Predatory Criminal Sexual Assault of a child, Aggravated Criminal Sexual Assault, or Criminal Sexual Assault on or after December 13, 2005 [...]"

Therefore it is ex post facto violation to apply 730 ILCS 515-8-1(d)(4) to me. 730 ILCS 515-8-1(d)(1) reads: "for first degree murder or for the offenses of Predatory Criminal Sexual Assault [...] if committed on or before December 12, 2005, '3 years'."

Furthermore, the Appellant prays this Honorable Court ALLOW the MOTION, by Petitioner Pro Se, for leave to file a Motion for Reconsideration.

No. 130751
IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion for leave to file a Motion for Reconsideration
	Appeal from the Appellate Court, 5th District, No. 5-22-0627
v.	
	Appeal from the Circuit Court of Pulaski County, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris Judge, Presiding

ORDER

The Motion by Petitioner, Pro Se, for leave to file a Motion for Reconsideration Instanter, is hereby:

ALLOWED / DENIED

No. 130751
IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion for leave to file a motion for Reconsideration
	Appeal from the Appellate Court, 5th District, No. 5-22-0627
v.	
	Appeal from the Circuit Court of Pulaski County, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris Judge, Presiding

ORDER

The Motion, by Petitioner Pro Se, for leave to file a Motion for Reconsideration, is hereby: ALLOWED / DENIED

No. _____

IN THE

Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion to Reconsider DENIAL of PLA from the Appellate Court of Illinois, 5th District, No. 5-22-0627
--VS-	There heard on Appeal from the Court of Pulaski County, Illinois, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris, Judge Presiding

Proof of Service

TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on October, 2024, I placed copies of the attached motion to reconsider DENIAL of PLA in the prison mail system at Shawnee CC, addressed to the Clerk of the Supreme Court and to each of the above-named opposing counsels.

X

Jared Wade Hinman, Y53702
Shawnee Correctional Center

Subscribed and sworn to me
this ___ day of
_____, _____.
_____. NOTARY Public

No. _____

IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion to Reconsider DENIAL of PLA from the Appellate Court of Illinois, 5th District, No. 5-22-0627
	There heard on Appeal from the Court of Pulaski County, Illinois, No. 21-CF-21
-vs-	
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris, Judge Presiding

Proof of Service

TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle, Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on October, 2024, I placed copies of the attached motion to reconsider DENIAL of PLA in the prison mail system at Shawnee CC, addressed to the Clerk of the Supreme Court and to each of the above-named opposing counsels.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid he verily believes the same to be true.

Dated: _____ Jared Wade Hinman, Y53702 SCC

No. _____

IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Motion to Reconsider Denial of Petition for Leave to Appeal from the Appellate Court of Illinois, 5th Judicial District, No. 5-22-0627
-vs-	There heard on Appeal from the Court of Pulaski County, Illinois, No. 21-CF-21
Jarod Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris, Judge Presiding.

Motion to Reconsider Denial of Petition for Leave to Appeal

On 25 September 2024, This Court DENIED Petitioner's PLA. For the following extraordinary and compelling reasons Petitioner makes this Motion to Reconsider, and asks this Honorable Court to hear the above named case:

Sufficiency of Evidence

In response to the Appellant challenging the sufficiency of evidence to prove the defendant was over the age of 17 when the events of PCSA occurred, the Appellate Court states "we do not substitute our judgement for the determination made by the trier of fact." [Appellate Order p.17 ¶54, quoting Newton, 2018 IL 122958]; And in ¶53 quotes Newton again saying, "The State is not required to disprove all possible factual scenarios." The burden of proof put upon the State remains "beyond a reasonable doubt."

Firsts lets review "all possible factual scenarios." There were two. Only two. Christmas or Easter. The witness stated, "It could have been around Easter, but I'm not certain."

Sufficiency Continued

T.J. did NOT say "I'm pretty sure," or "I believe it to be," she said "it could have been." The witness herself wasn't convinced "beyond reasonable doubt," and her statement - the only evidence - neither proved nor disproved EITHER of the two scenarios, but merely suggested the possibility of a timeframe. A rational trier of fact would conclude that it could have been Easter or it could have been Christmas.

Now let's review the extraordinary: Both trial attorneys admonished the trier of fact in their closing statements. Prosecution stated, "we don't have to prove when it happened, only that it happened." [emphasis made by attorney] Defense stated, "dates matter," explaining the above mentionings. These are contradictory instructions, given at a time where objection is out of order. The trier of fact was given two sets of qualifiers and no instruction by the Court as to which is appropriate.

A jury is not comprised of lawyers. Even if rational, they cannot be expected to know law. Just as likely, if it could have been Easter or Christmas, the jury is told Essential Elements of the Charged Crime could matter, or they could not. This is NOT a decision for the layperson. This decision is for the educated lawyers, and the courts themselves.

Finally, in it's refusal to substitute it's judgement, the Appellate Court is thereby removing reasonable doubt from the burden of proof, and not even replacing it with the preponderance of evidence, but creating a precedence where the State only has to present a possibility. While Newton states the State does not have to disprove all possible factual scenarios, it does NOT state that the State is allowed to

Sufficiency Continued

merely present ANY possibility. T.T.'s testimony merely presented a possibility, that she wasn't even certain of. Setting this precedent not only removes "reasonable doubt" and "preponderance of evidence" from burden of proof, it effectively removes "innocent until proven guilty" and replaces it with "guilty until proven innocent."

Jurisdiction of CSA

Clear and concise jurisdiction must be established. In the preliminary hearing this was discussed, and by defense established, that jurisdiction - once again - was only a possibility. Why is this relevant? Because the charged act is not illegal in the adjoining jurisdictions. Those adjoining jurisdictions, via the trial courts own words, are only fifteen minutes away. Both the defendant and T.T. lived in those other jurisdictions, and knew the laws of those jurisdictions for eight years leading up to the charged act. While knowledge of the victims inability to consent is an Essential Element of CSA, THAT is not the argument. Evidence stated that the car-ride took a while, long enough for a lot to happen; long enough to be outside of Illinois (where no crime was being committed). Without reiterating the above argument, clear and concise jurisdiction being replaced by a mere possibility sets the same above precedent, "Guilty until proven innocent."

Other Crimes Evidence

Briefly on this: during trial, defense attorney denoted that T.T.'s testimony was around 200 pages, and that the other witness testimonies were also around 200 pages;

Other Crimes Continued

However failed to denote how many of T.T.'s pages were themselves "Other Crimes Evidence" of uncharged acts. In light of this, the arguement becomes that MOST of all the testimony given was NOT of the charged crimes; leaving a rational trier-of-fact to find "something happened." While other cases present obvious violations in this area, this case provides a unique opportunity to refine that grey area of what is acceptable and - as the defense attourney stated - what is "too much."

Ex Post Facto Violation

The dates are very clear in this record, and argument stands on it's own merits; ignoring the petition would unmake ex post facto law.

Furthermore, petitioner prays this Honorable Court rescind it's DENIAL of his PLA, and hear his case.

APPENDIX B

Denial of PLA

Petition for Leave to Appeal

SUPREME COURT OF ILLINOIS

SUPREME COURT BUILDING
200 East Capitol Avenue
SPRINGFIELD, ILLINOIS 62701-1721

CYNTHIA A. GRANT
Clerk of the Court

(217) 782-2035
TDD: (217) 524-8132

June 04, 2024

FIRST DISTRICT OFFICE
160 North LaSalle Street, 20th Floor
Chicago, IL 60601-3103
(312) 793-1332
TDD: (312) 793-6185

Jared Wade Hinman
Shawnee Correctional Center
6665 State Route 146 East
Vienna, IL 62995

In re: People v. Hinman
130751

Dear Jared Wade Hinman:

This office has timely filed your Petition for Leave to Appeal, styled as set forth above. You are being permitted to proceed as a poor person.

Your petition will be presented to the Court for its consideration, and you will be advised of the Court's action thereon.

Very truly yours,

Cynthia A. Grant

Clerk of the Supreme Court

cc: Attorney General of Illinois - Criminal Division
State's Attorney Pulaski County
State's Attorney's Appellate Prosecutor, Fifth District

No. _____

IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0627
-vs-	There heard on Appeal from the Circuit Court of Pulaski County, Illinois, No. 21-CF-21
Jared Wade Hinman Petitioner-Appellant	Honorable Jeffery B. Ferris, Judge Presiding

Proof of Service

TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on 30th of May, 2024, I placed copies of the attached petition for leave to appeal in the prison mail system at Shawnee Correctional Center, addressed to the Clerk of the Supreme Court and to each of the above-named opposing councels.

X _____
Jared Wade Hinman, Y53702
Shawnee Correctional Center

Subcribed and Sworn to Before Me
this 30th day of May, 2024.
NOTARY PUBLIC Suzie A. Womack

OFFICIAL SEAL
SUZIE A WOMACK
Notary Public, State of Illinois
My Commission Expires 6-04-2025

No. _____

IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee	Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0627
-vs-	There heard on Appeal from the Circuit Court of Pulaski County, Illinois, No. 21-CF-21.
Jared Wade Hinman Petitioner-Appellant.	Honorable Jeffery B. Ferris, Judge Presiding.

Proof of Service

TO: Hon. Cynthia A. Grant, Clerk of the Supreme Court, Supreme Court Building, Springfield, IL 62701

Mr. Kwame Raoul, Attorney General, 115 S. LaSalle St., Chicago, IL 60603

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on 30 May, 2024, I placed copies of the attached petition for leave to appeal in the prison mail system at Shawnee Correctional Center, addressed to the Clerk of the Supreme Court and to each of the above-named opposing counsels.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid he verily believes the same to be true.

Dated: 30 May, 2024

Jared Wade Hinman, Y53702 SCC

No. _____

IN THE
Supreme Court of Illinois

People of the State of Illinois Respondant-Appellee -vs- Jared Wade Hinman Petitioner-Appellant	Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0627 Heard on Appeal from the Circuit Court of Pulaski County, Illinois, No. 21-CF-21 Hon. Jeffery B. Farris Judge Presiding

Petition for Leave to Appeal

To the honorable Justices of the Supreme Court of the State of Illinois:

May it please the Court:

I

Prayer for Leave to Appeal

Now comes, petitioner, Jared Wade Hinman, persuant to Supreme Court Rule 315, and respectfully petitions this court for leave to appeal from the decision of the Appellate Court, Fift Judicial District.

II

Opinions and Proceedings Below

On 04 April, 2024, the Fifth Judicial District [HELD] the Trial Court's ruling. On 16 April, 2024, a Petition for Rehearing was filed; and DENIED on 01 May, 2024.

III

Points Relied Upon for Reversal

1) The State failed to prove, beyond a reasonable doubt, essential elements of the charged crime, Predatory Criminal Sexual Assault of a Child (PCSA), that the Defendant was seventeen years of age at the time of the alleged crime; further compounded by informing the jury to ignore said element; warranting Reversal. Where no Rational Trier-of-Fact could have found the evidence sufficient.

2) The State failed to establish clear jurisdiction for the charge, Criminal Sexual Assault; warranting Reversal.

3) The exorbitent amount of "other bad acts" evidence was overly prejudicial, far outweighing it's probative value; thus warranting Reversal.

4) The constitutionality and appropriateness of the sentencing is directly called into question, and challenged.

IV

Statement of Facts

A jury found the defendant, Jared Wade Hinman, guilty of two counts of PCSA and one count of Criminal Sexual Assault (CSA). The defendant was sentenced to a total of 55 years in the Illinois Department of Corrections (IDOC) and 3 years to life mandatory supervised release (MSR). On appeal, the defendant claims insufficient proof to find the defendant was over 17 years old when the incidents of PCSA occurred; the trial court erred by allowing too much testimony of overly prejudicial sexual offenses that were unrelated to the charges; and the defendant claims that the circuit court failed to consider mandatory mitigating sentencing factors, as well as the constitutionality of the sentence.

V

Argument

As a preemptive note, Appellant asks this court to grant leniency on some references, due to the Appellant not having a copy of the Record on Appeal, nor is he capable of obtaining and perusing one within the allotted 35 day deadline.

Also, pro se understands that he may only bring to this court issues presented through the Appellate Court first, thus is not conceding "sufficient evidence to find the incidents occurred," merely respecting the rules of this court.

I. The Court should reverse Jared Wade Hinman's Convictions for Predatory Criminal Sexual Assault, where No Rational Trier-of-Fact could have found the evidence Sufficient to prove Hinman was 17 years of Age or older when the allegations occurred.

Between 31 March, 2021 (the original filing of 21-CF-21) and the trial in May, 2022, the State amended the information of it's filing four times. The dates for the PCSA charges (including the charges themselves) were changed from a span "1995-1999" to a single month (April) in 2000; all with the same information available (the same evidence presented to the jury at trial). The final change was after jury selection (Day 3 of trial), but before the State called it's first witness. Evidence to support either the State wasn't even able to discern a plausable date for it's allegations, or was relying on an ambush strategy to eliminate affirmative defenses (reasonable hypothesis of innocence). This arguement will only address the former, as the latter cannot be brought forth at this time.

J.J. stated, "I don't recall exactly what the occasion was." (R1278) The only reasonable inference to be drawn from J.J.'s testimony was [...] some holiday celebrated by her Church;

Arguement Continued

one where special dresses would be worn; and did not require a winter coat for the trip, from Lovelaceville, KY to Mound City, IL; and finally, when she was 10 years old.

- Y.J. was born 20 October, 1989.
- Between 20 October, 1999 and April, 2000, lie Easter (23 April, 2000) and Christmas (25 December, 1999)
- Hinman was born 27 December, 1982.
- Hinman was 17 in April, 2000, and 16 per the previous Christmas.
- Per the National Weather Service, in Paducah, KY (the nearest to both locations): the average temperatures for those months were 59°F in October of 1999, 53°F in November of 1999, and 41°F in December of 1999. (https://www.wunderground.com/history/monthly/us/ky/west-paducah) SEE Bank of America, N.A. v Kulesza, 2014 IL App (1st) 132075, ¶21 ("An appellate court may take judicial notice of readily verifiable facts if doing so 'will aid in the efficient disposition of a case,' even if judicial notice was not sought in the trial court.")
  - "It was unlikely J.J. and Hinman would have required winter jackets between 20 October, 1999, and 26 December, 1999, the offences were just as likely to have occurred in that time frame as they were to have occurred sometime after 27 December, 1999." (Def.'s Br. 23-24)

The State, therefore, proved beyond a reasonable doubt that Hinman was 17 years old in April, 2000; however failed to present any evidence to support the allegations transpired in April, 2000. Neither J.J., nor the evidence, chose April, 2000; the State chose April, 2000, with no evidenciary support.

At this point, Defense asked for a ~~Summary Judgement~~ (Directed Verdict), to which the court replied, "We'll let the jury decide."

Argument Continued

On closing, the State stated, "We don't have to prove when it happened, only that it happened;" incorrectly instructing the Trier of Fact unto their duty.

Unable to object to State's closing statement, Defense then tried to rehabilitate the jury to their duty to the court, "ages matter." (R22167) "We know that it wasn't cold. But wouldn't it be cold January, February, March, April, too? We don't know. We don't know. And you cannot say that the State has put on evidence to prove that this allegation, if it happened at all, happened after he turned 17 when there are 67 days, 68 days, in which she was ten years old, and he was 16 years old. And that fact, that element of being more than 17, is required in both Count I and Count II." (R22168)

"Ages Matter" and "We don't have to prove when it happened, only that it happened" are directly contradictory instructions given to the Trier of Facts. Trial court erred in allowing the false statement to go unchecked in front of the jury (where the Defense cannot object). On lieu, the Trial Court failed to clarify which contradictory instructions were correct, leaving "let the jury decide" with an unclear picture of their actual duty, and ignorant to what the laws is.

On appeal, the Appellate Court, Fifth District, ""The trier of fact is responsible for determining witness credibility, the weight to be given to their testimony, and the reasonable inferences to be drawn from the evidence." People v. Harmon, 2012 IL App (3d) 110297, ¶11. Factual disputes are resolved by the trier of fact where evidence can produce conflicting inferences. Harmon, 2012 IL App (3d) 110297, ¶12. We do not substitute our judgement for the determination made by the trier of fact. Newton, 2018 IL 122958, ¶26." Hinman, 2024 IL 220627-U, ¶ 54.

Arguement Continued

However, in this case, where copius amounts of uncharged, unsubstantiated, unrelated "other bad acts" testimony was allowed to be given to the trier of fact (more on this later), compounded by the Courts error in allowing contradictory instructions to be given to the 14 jurors, immediately before deliberation, the trier of fact deviated from lawful instructions. The Higher Courts should substitute their lawful judgement in place of the unlawful (or judgement ignorant of the law), else it denies Due Process.

For these reasons, the Court should reverse the PCSA convictions.

II. The Court should reverse Jared Wade Hinman's conviction for Criminal Sexual Assault, where the State failed to establish clear Jurisdiction over the alleged incident.

It is the pro se's understanding that Jurisdictional disputes may be brought before the court at any time. Therefore brings this issue before the court briefly.

During Preliminary Hearing, Defense brought up the issue of Jurisdiction:

- J.J. originally stated to the investigator that she was so intoxicated that she passed out several times during the drive (from 228 High St, Mound City, IL)
- as well as that "we drove for a while"
- J.J. stated Hinman gave her Brandy
- P.R. stated Hinman gave them "screwdrivers" (a mixture of Vodka and Orange Juice)
- at Hinman's Bond Reduction Hearing, the Court stated "I understand we live in a 'Geological Oddity', where

Argument Continued

if you drive more than 15 minutes in any direction you're in another state"

- Hinman lived in Barlow, KY at the time, where the age of consent is 16 years of age
- J.J. lived in either KY or TN at the time, where the age of consent is 16 years of age
- Barlow, KY is a 20-30 minute drive from Mound City, IL (depending on traffic)

The petitioner is not conceding that any alcohol was involved, as that cannot be disputed at this time; however if the Court knew a 15 minute drive resulted in another state's jurisdiction, and testimony put them driving for an unknown "while," a rational trier of fact (as well as the court) could, and should infer that the incident could've taken place in another State; where the incident was not even against the law. Just because Hinman picked J.J. up in IL does not give IL jurisdiction over actions transpiring in KY (or MO).

For these reasons, the court should Reverse the CSA conviction.

III. Reversal is warranted where the trial court allowed several witnesses to testify about overly prejudicial sexual offenses allegedly committed by Hinman that were unrelated to the two charged acts.

People v. Donoho, 204 Ill. 2d 159 (2003)
People v. Lindgren, 79 Ill. 2d 129 (1980)
725 ILCS 5/115-7.3, (b), (c)
People v Cardamone, 381 Ill. App. 3d 462 (2nd Dist. 2008)
People v Boyd, 366 Ill. App. 3d 84 (2006)

Arguement Continued

A. The trial court erred by admitting J.J.'s testimony about six specific acts of sexual misconduct committed by Hinman against her.

People v. Anderson, 225 Ill. App. 3d 636 (3rd Dist. 1992)
People v. Foster, 195 Ill. App. 3d 926 (5th Dist. 1990)

B. The trial court erred in admitting testimony from J.J. and P.R. about alleged conduct involving multiple victims.

People v. Bartall, 98 Ill. 2d 294 (1983)
725 ILCS 5/115-7.3(c)(2)
People v. Smith, 406 Ill. App. 3d 747 (3rd Dist. 2010)
People v. Herron, 215 Ill. 2d 1167 (2005)
People v. Ramsey, 239 Ill. 2d 342 (2010)
People v. Jackson 2017 IL App (1st) 142879
Strickland v. Washington, 466 U.S. 668 (1984)
People v. Rogers, 172 Ill. App. 3d 471 (2nd Dist. 1988)

C. The trial court erred in admitting testimony, overly prejudicial testimony, about uncharged conduct that lacked temporal proximity to the charged offenses, and was substantially different from them.

1.) A.N. testified about uncharged conduct that lacked temporal proximity to the charged offenses
725 ILCS 5/115-7.3(c)(3)
People v. Monroe, 366 Ill. App. 3d 1080 (2nd Dist. 2006)

2.) A.N. and P.R. testified about uncharged acts that were substantially different than the charged conduct.
People v. Boling, 2014 IL App (4th) 120634

D. The erroneous admission of overly prejudicial other-crimes evidence warrants reversal.

People v. Cortes, 181 Ill. 2d 249 (1998)

Arguement Continued

People v. Stanbridge, 348 Ill. App. 3d 351 (4th Dist. 2004)
People v. Perez, 2012 IL App (2d) 1008165
People v. Ward, 2011 IL 108690
People v. Johnson, 218 Ill. 2d 125 (2005)

The petitioner lacks understanding regarding this point. After thorough review of the Appellate Brief, the State's Brief, the Appellate Reply Brief, and the 5th Districts ORDER, the petitioner pro se lacks the intellectual capacity and legal experience to understand, let alone litigate, this arguement. Petitioner humbly asks this court to review the matter, and appoint council to appropriately represent this arguement effectively.

IV. The constitutionality and appropriateness of the sentencing is directly called into question, and challenged.

A. The application and interpretation of case laws by the Appellate Court is facially unconstitutional.

The ORDER by the Appellate Court, 5th District, reads as follows:

"¶85 The ~~eighth~~ amendment of the United States Constitution prohibits the infliction of "cruel and unusual punishments" (U.S.C.A. VIII) and applies to the states through the fourteenth amendment (U.S.C.A XIV). People v. Dorsey, 2021 IL 123010, ¶37. "[T]he Eighth Amendment forbids a sentence scheme that mandates life in prison without possibility of parole for juvenile offenders." Miller v. Alabama, 567 U.S. 460, 479 (2012). A prison sentence of more than 40 years imposed on a juvenile offender constitutes a de facto life sentence. Dorsey, 2021 IL 123010, ¶47.

¶86 Miller did not foreclose the imposition of a life sentence in prison for juvenile offenders, rather it required

Arguement Continued

sentencing courts to "'take into account how children are different, and how those differences council against irrevocably sentencing them to a lifetime in prison.'" Dorsey, 2021 IL 123010, ¶24 (quoting Miller, 567 U.S. at 480). "Neither a finding of permanent incorrigibility nor an on-the-record sentencing explanation is constitutionally required before a juvenile may be sentenced to life without parole." People v. Wilson, 2023 IL 127Holde, ¶38."

Dorsey plus Wilson being interpreted as the ability to sentence juveniles to life (or de facto life) in prison is facially unconstitutional. Especially in this case, where there is no criminal record whatsoever.

B. It is an United States Constitution Art. I sec. 10 and Illinois Constitution Art. I sec. 11e Ex Post Facto violation to apply 730 ILCS 515-8-1(d)(4) (3 to life MSR) to me.

"Retroactive Changes in the laws governing parole may, in some circumstances, violate the Ex Post Facto prohibition." Garner v. Jones 529 U.S. 244, 250 (2000) and Barger v. Peters 645 NE 2d 175 (1994).

All convictions of PCSA took place prior to December 13, 2005; placing them under 730 ILCS 515-8-1(d)(1) rather than 730 ILCS 515-8-1(d)(4). While the CSA timeframe, per the charged crime, fell under both (even though the incident took place October 20, 2005). Therefore the applicable law is "3 years MSR", not "3 to life MSR."

For these reasons the court should remand for re-sentencing.

VI

Conclusion

Wherefore, your Petitioner respectfully requests

Conclusion Continued

this Honorable court to grant his petition for leave to appeal.

Respectfully Submitted
Jared Wade Hinman
Pro Se

Certificate of Compliance

I, Jared Wade Hinman, certify that this petition conforms to the requirements of Supreme Court Rule 341(a) and 315(d). The length of this petition, excluding pages containing the Rule 341(d) cover, the Rule 341(c) certificate of compliance, and those matters to be appended to the petition under Rule 315(c), is 11 pages.

Appendix

1 copy of the Appellate ORDER, from the 5th District

As previously stated, Petitioner does not have a copy of the Record on Appeal to provide to this court, nor is there enough time to obtain one.

No.

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JARED WADE HINMAN, SR., Petitioner-Appellant.	)	Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0627 There heard on Appeal from the Circuit Court of Pulaski County, Illinois, No. 21-CF-21. Honorable Jeffery B. Farris, Judge Presiding.

ORDER

The Motion by Petitioner, Pro Se, for Leave to File Petition for Leave to Appeal Instanter, is hereby: ALLOWED / DENIED

No.

IN THE

SUPREME COURT OF ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, Respondent-Appellee, -vs- JARED WADE HINMAN, SR., Petitioner-Appellant.	)	Petition for Leave to Appeal from the Appellate Court of Illinois, Fifth Judicial District, No. 5-22-0627 There heard on Appeal from the Circuit Court of Pulaski County, Illinois, No. 21-CF-21. Honorable Jeffery B. Farris, Judge Presiding.

ORDER

The Motion by Petitioner, Pro Se, for Leave to File Petition for Leave to Appeal Instanter, is hereby: ALLOWED / DENIED

[Blank line for Justice's signature]

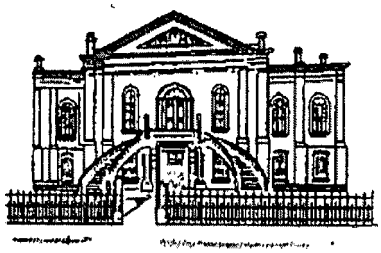
APPENDIX C

Appellate Order

APPENDIX D

Petition for Rehearing

CORTNEY KUNTZE
CLERK
(618) 242-3120



APPELLATE COURT, FIFTH DISTRICT
14TH & MAIN ST., P.O. BOX 867
MT. VERNON, IL 62864-0018

May 1, 2024

Jared Wade Hinman
Shawnee Correctional Center
6665 State Route 146 East
Vienna, IL 62995

RE: People v. Hinman, Jared Wade Sr.
General No.: 5-22-0627
County/Agency: Pulaski County
Trial Court/Agency No: 21CF21

Pursuant to the attached order, the court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

Courtney Kuntze

Clerk of the Appellate Court

c: Hon. Jeffery Blaine Farris
Office of the State Appellate Defender, First District
Pulaski County Circuit Court
State's Attorney Pulaski County
State's Attorney's Appellate Prosecutor, Third District

No. 5-22-0627
IN THE
Appellate Court of Illinois
Fifth Judicial District

People of the State of Illinois -Plaintiff-Apellee-	Appeal from the Circuit Court of Pulaski County, Illinois, First Judicial Circuit
-VS-	No. 21-CF-21
Jared Hinman -Defendant-Appellant-	Hon. Jeffery B. Farris, Judge Presiding

PROOF OF SERVICE

TO: Hon. Cortney Kuntze, Clerk of the Appellate Court, Fifth Judicial District, 14th & Main Street, Mt. Vernon IL 62864

Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350

You are hereby notified that on 16 April, 2024, I placed copies of the attached petition for rehearing in the prison mail system at Shawnee Correctional Center, addressed to the Clerk of the Appellate Court and opposing counsel.

Jared Wade Hinman,
Y53702 Shawnee CC

Subscribed and sworn to before me
this 16 day of April, 2024
Notary Public

OFFICIAL SEAL
SUZIE A WOMACK
Notary Public, State of Illinois
My Commission Expires 6-04-2025

Suzie A. Womack 4/16/24

No. 5-22-0627
IN THE
Appellate Court of Illinois
Fifth Judicial District

People of the State of Illinois -Plaintiff-Appellee-	Appeal from the Circuit Court of Pulaski County, Illinois First Judicial Circuit
-vs-	No. 21-CF-21
Jared Wade Hinman -Defendant-Appellant-	Hon. Jeffery B. Farris Judge Presiding

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Under Penalties as provided by law pursuant to Section 1-109 of Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except to matters therein stated to be on information and belief and as to matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Dated: 16 April, 2024

Jared Wade Hinman
Y53702 Shawnee CC

No. 5-22-0627
IN THE
Appellate Court of Illinois
Fifth Judicial District

People of the State of Illinois -Plaintiff-Appellee-	Appeal from the Circuit Court of the First Judicial Circuit, Pulaski County, Illinois
-vs-	No. 21-CF-21
Jared Wade Hinman -Defendant-Appellant-	Hon. Jeffery B. Farris, Judge Presiding

PETITION FOR REHEARING

Petitioner, Jared Wade Hinman, asks this Court to reconsider its decision for the following reasons:

In ¶54, of the Appellate Order, the court quotes People v Newton, 2018 IL 122958 "¶12 - we do not substitute our judgement for the determination made by the trier of fact." However, in the state's "instructions to the jury" or "closing arguement" (the Appellant does not have a copy of the Record on Appeal to make the accurate reference), the State instructs the TRIER OF FACT "The State doesn't have to prove WHEN it happened, only THAT it happened." This gave the jury instructions to IGNORE "whether or not the defendant was 17 years or older when the incidents occurred." Thus the Appellant is asking this court NOT to "substitute our judgement for the determination made by the trier of fact," but to render its judgement considering what the trier of fact was instructed to ignore. ¶59 of the Appellate Order incorrectly states "the jury determined the essential element that the defendant was 17 years old at the time[...]" as they were instructed otherwise, by the State.

where ¶72 of the Appellate Order reitterates "sufficient evidence was presented for the jurey to determine the essential element that the defendant was 17 years old at the time of the incidents alleged in count I and count II," the Appellant reitterates ¶71 of the Appellate Order "where there was an absence of evidence establishing that the defendant was 17 at the time of committing count I and count II," in light of the jury being instructed by the State that 'WHEN' was not an 'essential element', as stated above. Again, in ¶90 of the Appellate Order, it's stated, "The circuit court found that the defendant was 17 years old when the offenses occurred," when the court's words were "we'll let the jurey decide," upon defense's Motion for summary judgement. The statement "this court is convinced beyond... any doubt," was regarding whether or not the offenses occurred.

¶62 of the Appellate Order quotes: "Section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) provides an exception for the evidentiary use of the DEFENDANT'S PRIOR CONVICTIONS[...]" (Capitolized for emphasis). While the Appellant conceeds the six other incidents were admissable (from JJ), he argues that allowing "just anoy other story, just so long as it's similar" may not fit the intended use of "other crimes" or "prior bad acts." While the similarities of witness testimony is used to establish credibility of statements made bey witnesses, where the witnesses do not know one another or are strangers, this case is different. These witnesses know one another, associate with each other, and have been in constant communication together for decades (up to 27 years). Thus the subtle differences

should bare more weight. JJ, PH, and JH have been in constant communication for their entire lives. P22 of the Appellate Order states JJ says defendant moved out at 19 years of age. P27 and #35 states PR says defendant moved out at 18 years of age. P33 states JH says defendant moved out at 17 years of age, but the abuse continued until defendant was 21 or 22 years of age. Twenty (plus) years is more than enough time to "get their stories straight." The court states that the prior bad acts were substantially similar, but were they similar enough considering all of their contradictory elements. Above only lists a single example. PR states they were given "screwdrivers," while JJ claims "brandy." PR stated "something in foil", only to ammend to "marijuana" at trial (an obvious inflamatory attempt, considering "how articulate" they were). By allowing all of this in (none of which are DEFENDANT'S PRIOR CONVICTIONS), and much more, ignoring the blatant dissimilarities, noting the witnesses ability to corroborate their stories for decades, the court is setting a precedent for allowing mountains of unsubstantiated "evidence", creating the potential for a modern day "Witch Trial." The Illinois Supreme Court has already stated that these cases are "indefensible." Thus the Appellant revisits the issue of admitted evidence being overly prejudicial in value; moreso than probative. Note: the included are not the only dissimilarities.

"[T]he Eighth Amendment FORBIDS a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." Miller v. Alabama, 567 U.S. 460, 479 (2012). Appellant argues and challenges "Neither a finding of permanent incorrigibility nor an on-the-record

Petition for Rehearing Continued

sentencing explanation is constitutionally required before a juvenile may be sentenced to life without parole." People v. Wilson, 2023 IL 127666, P38," being interpreted as a way for juveniles to be sentenced to life without the possibility of parole, is facially unconstitutional in direct violation of this paragraphs openning quotation (Miller, 567 U.S. 460, 479 (2012)), the eigth USCA applied to the states through the fourteenth USCA.

Wherefore, petitioner respectfully requests a reconsideration of the decision, on all points.

Respectfully Submitted
Jared Wade Hinman
Pro Se

Certificate of Compliance

I, Jared Wade Hinman, certify that this petition conforms to the requirements of Supreme Court Rule 341(a) and 367(a) and (c). The length of this petition, excluding pages containing the Rule 341(d) cover and the Rule 367(a) certificate of compliance is 4 pages.

APPENDIX E

Reply Brief for Defendant - Appellant

E-FILED
Transaction ID: 5-22-0627
File Date: 6/23/2023 9:30 AM
John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

No. 5-22-0627

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the First Judicial Circuit, Pulaski County, Illinois
Plaintiff-Appellee,	)	
	)	21-CF-21
-vs-	)	
	)	
JARED WADE HINMAN, SR.,	)	Honorable Jeffery B. Farris,
Defendant-Appellant.	)	Judge Presiding.

REPLY BRIEF FOR DEFENDANT-APPELLANT

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POINTS AND ADDITIONAL AUTHORITIES

ARGUMENTS

I. This Court Should Reverse Jared Hinman's Convictions for Predatory Criminal Sexual Assault, Where No Rational Trier-of-Fact Could Have Found The Evidence Sufficient To Prove Hinman Was 17 Years of Age Or Older When The Incidents Occurred.

The State concedes that J.J. "could not provide an exact date" for the PCSA offenses, testifying only that they occurred sometime between October 20, 1999, and October 20, 2000. (St. Br. 8). The State further concedes that J.J.'s testimony left open the possibility the PCSA offenses occurred between October 20, 1999, and December 26, 1999, when Hinman was only 16 years old. (St. Br. 8). Additionally, the State identifies no fact supporting a reasonable inference the offenses occurred after December 26, 1999. Even so, the State argues that a rational juror could have found the evidence sufficient to prove beyond a reasonable doubt that the PCSA offenses occurred after Hinman turned 17. (St. Br. 8-11).

In an attempt to identify evidence that would have allowed the jurors to rationally infer the PCSA offenses occurred after Hinman turned 17, the State asserts that "J.J. testified that she believed that the dresses she and [Hinman] went to pick up from Evelyn's house" on the day of the PCSA offenses "were for Easter." (St. Br. 8). According to the State, J.J.'s testimony supports a rational inference the offenses occurred in April of 2000, after Hinman turned 17. (St. Br. 8). The State's argument is based on a misreading of the record, which establishes J.J. never testified with any certainty that the dresses were for Easter; instead, she testified that she did not know if the PCSA offenses occurred around Easter.

The following exchange occurred during the State's direct examination of J.J.:

[ASA]: Do you remember what the dresses were for?

[J.J.]: I don't remember exactly.

[ASA]: Okay. Were there different occasions you would get dresses?

[J.J.]: It could have been around Easter.

[ASA]: Okay.

[J.J.]: But I'm not certain.

(R. 1200). J.J. thus explicitly testified she did not remember what occasion the dresses were for, and that she was uncertain if they were for Easter.

Further, on cross-examination, J.J. explained she had merely "assume[d]" the dresses were for "something like Easter," because her family attended church. (R. 1277-78). However, J.J. unambiguously stated, "I don't recall exactly what the occasion was." (R. 1278). J.J.'s testimony shed no light on when the PCSA offenses occurred, and thus failed to support a reasonable inference that they occurred in April of 2000.

In his opening brief, Hinman argued that the only reasonable inference to be drawn from J.J.'s testimony on cross-examination was that the dresses were for some holiday celebrated by her church, and that another Christian holiday, Christmas, occurred before Hinman turned 17. (Def. Br. 23) (citing R. 1278). The State makes no attempt to rebut Hinman's argument that J.J.'s testimony established it was just as likely the dresses were for Christmas as it was that they were for Easter. Instead, the State asserts that Hinman's argument shows that he applied the wrong standard of review where, according to the State, it implies the State was required to rule out every reasonable hypothesis of innocence. (St. Br. 9).

Contrary to the State's assertion, there is no confusion about the applicable standard of review. While the State need not rule out every reasonable hypothesis of innocence, "the State may not leave to conjecture or assumption essential elements of the crime." *People v. Smith,* 2014 IL App (1st) 123094, ¶15. Here, the State has failed to identify any basic fact that

would have allowed the jurors to have rationally inferred beyond a reasonable doubt the ultimate fact sought to have been proven, *i.e.*, that the PCSA offenses occurred after Hinman turned 17. As discussed above and in Hinman's opening brief, J.J.'s testimony established it was equally likely that the dresses were for Christmas – which occurred before Hinman turned 17 – as it was that they were for Easter – which occurred after he turned 17. (Def. Br. 22-23); *see also* page 2, *supra*. As such, it would have been unreasonable for the jury to have inferred that the offenses occurred after Hinman turned 17. *See People v. Jackson*, 232 Ill. 2d 246, 281 (2009) (recognizing that an inference is irrational if there is no basic fact from which the ultimate fact could flow); *see also See People v. Housby,* 84 Ill. 2d 415, 420-23 (1981) (finding that, for an inference to satisfy the due process reasonableness standard, the ultimate fact must more likely than not flow from the basic fact).

In a further attempt to identify evidence supporting a reasonable inference that the offenses occurred in April of 2000, after Hinman turned 17, the State observes that J.J. testified it was warm enough that day that neither she nor Hinman wore a winter coat. (St. Br. 8). The State makes no attempt to rebut the argument in Hinman's opening brief, however, that mild days are not uncommon from October through December in southern Illinois, and thus that it was unlikely J.J. and Hinman would have required winter coats between October 20, 1999, and December 26, 1999. (Def. Br. 23-24). The fact J.J. and Hinman were not wearing coats failed to support a reasonable inference that the PCSA offenses occurred after Hinman turned 17.

The State further argues that it is often difficult for victims of child sexual assault to identify the precise date upon which the offenses occurred. (St. Br. 11). The State overlooks that Hinman conceded in his opening brief that the State was not required to prove the precise date of the charged offenses. (Def. Br. 22) (citing *People v. Guerrero*, 356 Ill. App. 3d 22,

27 (1st Dist. 2005)). However, the State was required to establish the offenses occurred on, or after, Hinman's 17th birthday on December 27, 1999. (C. 199-200); 720 ILCS 5/12-14.1; 720 ILCS 5/11-1.40(a)(1)). It failed to do so. (Def. Br. 20-24); *see also* pages 1-3, *supra*.

Finally, the State argues that the jury below already rejected this argument. (St. Br. 9-11). In so doing, the State ignores that this Court must independently analyze the strength of the evidence, even in cases that turn entirely on the credibility of the witnesses. *People v. Cunningham,* 212 Ill. 2d 274, 279 (2004); *see also People v. Corral*, 2019 IL App (1st) 171501, ¶72 ("The reviewing court must carefully examine the record evidence[.]"). The fact a jury accepted testimony does not guarantee it was reasonable to do so. *Corral*, 2019 IL App (1st) 171501 at ¶72. The jury's decision to accept testimony is not conclusive and does not bind this Court. *See Id.* ("[T]he fact finder's decision to accept testimony is entitled to great deference but is not conclusive and does not bind the reviewing court.").

Where the evidence below established only that the PCSA offenses occurred sometime between October 20, 1999, and October 20, 2000, no rational trier-of-fact could have found the evidence sufficient to prove beyond a reasonable doubt that Hinman was at least 17 years old at the time of the offenses. This Court should, therefore, reverse Hinman's PCSA convictions.

II. Reversal Is Warranted Where The Trial Court Allowed Several Witnesses To Testify About Overly Prejudicial Sexual Offenses Allegedly Committed by Hinman That Were Unrelated To The Two Charged Acts.

A. The trial court erred by admitting J.J.'s testimony about six specific acts of sexual misconduct committed by Hinman against her.

In his opening brief, Hinman argued that he was prejudiced by the improper admission of J.J.'s testimony about six specific acts of sexual misconduct committed by Hinman against her, where the State already presented testimony from J.J. that Hinman regularly abused her

and her siblings. (Def. Br. 26-27). In response, the State concedes that a large volume of evidence of a defendant's prior sexual activity with the same child is overly prejudicial and thus inadmissible. (Def. Br. 19-21) (citing *People v. Cardamone*, 381 Ill. App. 3d 462, 490 (2nd Dist. 2008)). The State argues, however, that the volume of testimony admitted here was not overly prejudicial. (St. Br. 21-24). This Court should reject the State's argument.

In this case, in addition to testifying about the three charged instances of misconduct, J.J. testified that Hinman regularly abused her and her siblings. (R. 1180-89, 1203). This testimony clearly conveyed the nature of J.J.'s relationship with Hinman, and was sufficient to corroborate the testimony of the other-crimes witnesses, rendering J.J.'s further testimony about six specific acts of uncharged misconduct excessive. (Def. Br. 26-27). Prejudice from the improper admission of this evidence was compounded where the improper testimony involved uncharged and unproven allegations of sexual abuse. (Def. Br. 27-28); *see also Cardamone*, 381 Ill. App. 3d at 490 (finding an abundance of other-crimes testimony regarding uncharged conduct overly prejudicial); *People v. Smith*, 406 Ill. App. 3d 747, 754 (3rd Dist. 2010) (finding prejudice from admission of improper other-crimes evidence compounded where improper evidence involved uncharged and unproven allegations of sexual abuse).

The State argues that it was allowed, pursuant to section 115-7.3, to present testimony from J.J. about specific acts of uncharged sexual misconduct by Hinman to establish Hinman's propensity to commit sex offenses. (St. Br. 22). The State ignores, however, that the admission of testimony of uncharged incidents of sexual misconduct was not automatic, even if the requirements of section 115-7.3 are met. *Cardamone*, 381 Ill. App. 3d at 489. In *People v. Donoho*, the Illinois Supreme Court urged caution in considering the admissibility of prior sex-crime evidence to show propensity. 204 Ill. 2d 159, 186 (2003). Thus, even though the

legislature provided for the admission of such evidence to show propensity, the conditions and limitations set forth in the statute for the admission of this evidence also indicate that the legislature did not intend to permit the State to use propensity evidence in cases such as the instant case, where the probative value of the evidence is outweighed by its prejudicial effect. *See Donoho,* 204 Ill. 2d at 182-83 (holding that other-crimes evidence will not be admitted if its prejudicial effect substantially outweighs its probative value).

Finally, the State argues that, even if the trial court erred in admitting J.J.'s aforementioned testimony, the error would have been harmless, where, according to the State, Hinman "fails to explain how J.J.'s testimony regarding these six instances of uncharged conduct tipped the scales in favor of finding that [Hinman] was over the age of 17 at the time of the offense[.]" (St. Br. 24). As discussed above, the evidence was at least close regarding whether the PCSA offenses occurred after Hinman turned 17 years old. *See* pages 1-4, *supra*. The improper evidence thus presented "a great risk" the jury could have found Hinman guilty of the PCSA counts based on the belief he "must have done something," or that it could have found him "guilty beyond a reasonable doubt not of the charges but, instead, of uncharged acts." *See Cardamone*, 381 Ill. App. 3d at 494 ("In the face of so many allegations of misconduct, there was a great risk that the jury could find that defendant must have done something, or that it could find defendant guilty beyond a reasonable doubt not of the charges but, instead, of uncharged acts."). Indeed, the improper admission of J.J.'s testimony about six specific acts of uncharged sexual misconduct committed by Hinman provides an explanation for why the jury found Hinman guilty of both PCSA counts, despite an absence of evidence establishing the PCSA offenses occurred after he turned 17.

B. The trial court erred in admitting testimony from J.J. and P.H. about alleged conduct involving multiple victims.

The State concedes that the trial court admitted testimony from J.J. and P.H. alleging that Hinman committed simultaneous acts of misconduct against them, while forcing them to sexually interact with each other, and does not dispute that none of the charged offenses involved multiple victims. (St. Br. 24-26). The State argues, however, that J.J. and P.H.'s testimony about multiple victims was admissible under section 115-7.3. (St. Br. 25-26). This Court should reject the State's argument.

As discussed above and in Hinman's opening brief, testimony about uncharged sexual conduct by Hinman was not automatically inadmissible under section 115-7.3. (Def. Br. 27-28); *see* also pages 5-6, *supra*. J.J. and P.H.'s allegations about uncharged incidents involving multiple young children related to different, more heinous misconduct than the charged misconduct. As such, it was overly prejudicial and likely to have negatively influenced the jury's verdicts. The State fails to distinguish *People v. Smith*, 406 Ill. App. 3d 747, 754 (3rd Dist. 2010), cited in Hinman's opening brief. (Def. Br. 28).

In *Smith*, the defendant was charged with aggravated criminal sexual abuse of his granddaughter for knowingly fondling her vagina in 2005. *Smith*, 406 Ill. App. 3d at 748. Prior to trial, the State moved to admit certain evidence of the defendant's alleged sexual abuse of other female relatives to show his propensity to commit the charged offense, including: (1) testimony from two of his sisters who claimed he sexually assaulted them many years before the charged offense, (2) testimony from three of the defendant's daughters who claimed that he fondled them and digitally penetrated them years before the charged offense, and (3) testimony from another granddaughter who alleged the defendant rubbed her in her vaginal area outside of her clothing approximately five years before the charged offense. *Id.* The trial court barred the State from introducing testimony from the defendant's sisters and daughters, but allowed

it to present testimony from his granddaughter. *Id.* at 749.

The State filed an interlocutory appeal, arguing that the trial court erred in precluding the other-crimes testimony from the defendant's sisters and daughter, where it failed to recognize that section 115-7.3 creates an exception to the common law rule against the admission of propensity evidence. *Smith*, 406 Ill. App. 3d at 748, 751.

In rejecting the State's argument, *Smith* held that the prejudicial effect of other-crimes testimony from the defendant's sisters and daughter outweighed the probative value to show propensity under section 115-7.3. *Smith*, 406 Ill. App. 3d at 752. In so holding, *Smith* found that testimony from the defendant's sisters and daughter involved incidents too remote in time to have sufficient probative value. *Id.* at 753. *Smith* further found that each of the offenses was factually dissimilar from the charged offense. *Id.* Specifically, the defendant was charged with having rubbed the complainant's vaginal area outside her clothing, but testimony from his sisters involved forced sexual intercourse, and testimony from his daughter involved digital penetration and/or rubbing of the vaginal area under the clothing. *Id.* at 749-50, 753. Given the factual differences, and the substantial gap in time between the alleged prior crimes and the charged offense, *Smith* concluded there was a "very real possibility" testimony about the defendant's sexual abuse of other female relatives "would lead the jury to convict him based upon those other crimes alone[.]" *Id. Smith* thus affirmed the trial court's ruling. *Id.*

Like the properly excluded testimony in *Smith*, testimony from J.J. and P.H. about uncharged incidents of sexual misconduct involving multiple young children was factually dissimilar from the charged offenses, none of which involved multiple victims or acts arising from misconduct committed with more than one person. (C. 199-201). Under *Smith*, this factual dissimilarity between the uncharged, unproven allegations and the charged offenses created

a serious risk the jury would be over persuaded by this part of J.J. and P.H.'s testimony. *See Smith*, 406 Ill. App. 3d at 754 (finding that factual differences between the alleged prior offenses and the charged offense renders other-crimes testimony highly prejudicial, especially where the prior offenses involve uncharged and unproven allegations).

Finally, the State argues that Hinman forfeited review of this issue on appeal, where, according to the State, trial counsel failed to object to this testimony prior to, during, and after trial. (St. Br. 24-25). The State is mistaken. In its pre-trial motion to admit other-crime evidence, the State moved to admit testimony from both J.J. and P.H. about acts involving multiple victims. (C. 167). During the hearing on the State's motion, counsel objected to admission the other-crimes evidence sought to be introduced by the State. (R. 91-97, 110-15). In response to the State's assertion that P.H. would testify about "group sex," (R. 108), counsel asserted that her testimony involved "different things" that were "dissimilar" and would be "overwhelmingly prejudicial ... as compared to the probative value." (R. 111-12).

Additionally, counsel argued in a motion for a new trial that the trial court erred by allowing J.J. "to testify about other crimes allegedly committed against her by [Hinman]," (C. 258), which encompassed the incident involving simultaneous abuse against J.J. and P.H. Similarly, counsel argued that the court below erred by allowing P.H. "to testify to other crimes allegedly committed against her by [Hinman]," (C. 259), which encompassed the incident involving simultaneous abuse of P.H. and J.J. Counsel even alleged that P.H.'s testimony was inadmissible because "there was not a sufficient degree of similarity between the alleged offenses and the prejudice outweighed the probative value of that evidence," (C. 259), which is the precise argument raised on appeal. (Def. Br. 24-26, 27-28). This issue is properly preserved.

If this Court finds that trial counsel's attempt to preserve this issue was somehow deficient,

it may review this issue under either prong of the plain error doctrine. *See People v. Herron*, 215 Ill. 2d 167, 187 (2005) (explaining that the plain-error doctrine allows reviewing courts to consider a forfeited error where (1) "the evidence [was] so closely balanced that the jury's guilty verdict may have resulted from the error and not the evidence," or (2) "the error [was] so serious that the defendant was denied a substantial right, and thus a fair trial"); *see also People v. Ramsey*, 239 Ill. 2d 342, 412 (2010) ("[A]lthough defendant did not argue plain error in his opening brief, he has argued plain error in his reply brief, which is sufficient to allow us to review the issue for plain error.").

This case is reviewable under the first prong of plain error, because the evidence was insufficient to establish that Hinman was at least 17 years old at the time of the PCSA offenses. (Def. Br. 20-24); *see also* pages 1-4, *supra*. At the very least, the evidence of PCSA was close for purposes of plain-error review. Further, this case is reviewable under the second prong of the plain error doctrine, because the erroneous admission of other-crimes evidence affects substantial rights by creating a possibility the jury convicted based on a belief the defendant was a "bad person who deserves punishment" rather than because the elements of the crime have been proven. *See People v. Jackson* 2017 IL App (1st) 142879, ¶71 (noting that courts have held that "erroneous admission of other-crimes evidence could constitute a serious error under the plain error doctrine"). Thus, to the extent this error is not preserved, it is reviewable under both prongs of the plain error doctrine.

Alternatively, defense counsel was ineffective under *Strickland v. Washington*, 466 U.S. 668 (1984), for failing to properly preserve this issue for review. Counsel's failure to do so prejudiced Hinman because it resulted in an improperly preserved, but meritorious, issue on appeal. *See, e.g, People v. Rogers*, 172 Ill. App. 3d 471, 476 (2nd Dist. 1988) (finding trial

counsel ineffective for failing to properly preserve a meritorious issue for appeal where counsel failed to object to repeated instances of prosecutorial misconduct).

Because testimony about alleged incidents involving multiple people involved highly damaging conduct different than that alleged in the charged offenses, it was overly prejudicial and likely to have negatively influenced the jury's verdicts.

C. The trial court erred in admitting overly prejudicial testimony about uncharged conduct that lacked temporal proximity to the charged offenses, and was substantially different than them.

1. A.H. testified about uncharged conduct that lacked temporal proximity to the charged offenses.

The State concedes that acts alleged by A.H. occurred between two and eight years after the offenses charged in the present case, when Hinman was an adult, and that, unlike the other occurrence witnesses, A.H. was Hinman's biological daughter. (St. Br. 27-28). Citing *People v. Donoho,* 204 Ill. 2d 159 (2003), the State argues that the passage of up to eight years was insufficient to warrant the exclusion of A.H.'s testimony that Hinman regularly abused her during her young childhood and threatened to "slit [her] throat open" if she told anyone. (St. Br. 27); (R. 1341-51, 1354-55). The State's reliance upon *Donoho* is misplaced.

In *Donoho*, the Illinois Supreme Court found that the passage of 12 to 15 years was insufficient, on its own, to warrant the exclusion of the other-crimes evidence presented in that case. *Donoho*, 204 Ill. 2d at 184. However, *Donoho* "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. Further, *Donoho* acknowledged that reviewing courts are instructed to consider "other relevant facts and circumstances" when determining whether the probative value of other-crimes evidence is outweighed by its prejudicial effect. *Id.* at 183 (citing 725 ILCS 5/115-7.3(c)(3)). Under the analysis set forth in *Donoho*, the admission of this part of A.H.'s

testimony was an abuse of discretion.

Specifically, while fewer years elapsed between the allegations discussed by A.H. and the charges in this case than the allegations and charge in *Donoho*, this case still involves a significant lapse of time. Further, *Donoho* found that the other-crimes evidence in that case was properly admitted, in large part, because it involved allegations that were significantly similar to the charged offense. *Donoho*, 204 Ill. 2d at 185-86. Here, A.H.'s aforementioned testimony involved allegations that arose from an entirely different set of circumstances and time period than the charged offenses. (R. 1341-51, 1354-55). The State concedes the acts alleged by A.H. occurred when Hinman was an adult and A.H. was a young child, and that, unlike the other occurrence witnesses, A.H. was Hinman's biological daughter. (St. Br. 27-28).

Critically, the State does not dispute that testimony about an adult parent sexually abusing his own infant daughter was highly likely to have led the jury to conclude Hinman was a bad person deserving of punishment. (Def. Br. 29-30) (citing *People v. Monroe*, 366 Ill. App. 3d 1080, 1090 (2nd Dist. 2006)). Indeed, Illinois courts have recognized that the prejudice from the improper admission of other-crimes testimony involving uncharged and unproven allegations of sexual abuse is compounded where, as in this case, the other-crimes testimony is even more heinous than the charged offense. *Smith*, 406 Ill. App. 3d at 754.

Further, A.H. testified about additional acts that were substantially different than the charged acts. (Def. Br. 30-31); *see also* pages 13-14, *infra*. As factual differences increase, the already diminished probative value based on the lapse of time further diminishes. *Donoho*, 204 Ill. 2d at 184; *Smith*, 406 Ill. App. 3d at 754. The trial court thus erred in admitting A.H.'s testimony involving allegations that occurred during a different time frame, and in more prejudicial circumstances, than the charged offenses.

2. A.H. and P.H. testified about uncharged acts that were substantially different than the charged conduct.

In his opening brief, Hinman argued that the testimony of A.H. and P.H. involved highly prejudicial allegations against Hinman that were factually distinct from the conduct underlying the charged offenses. Specifically, A.H. and P.H. testified about numerous acts of anal penetration, but none of the charges alleged sexual contact between Hinman and J.J.'s anus. (Def. Br. 30). In its response brief, the State concedes, "[I]t is true that the charging instrument did not specify anal penetration[.]" (St. Br. 28). The State argues, however, that the testimony of A.H. and P.H. was admissible, where J.J. testified that, during one of the charged incidents, Hinman said "he would either put it in her butt or in her vagina." (St. Br. 28). The State's argument is fatally flawed.

Initially, the State concedes that J.J. offered no testimony indicating Hinman had ever anally penetrated her. Thus, the uncharged acts alleged by A.H. and P.H. were significantly different than the charged acts, despite J.J.'s aforementioned testimony.

Further, the relevant question is whether A.H. and P.H.'s testimony was more prejudicial than probative regarding whether Hinman had the propensity to commit the alleged misconduct (*Donoho*, 204 Ill. 2d at 184), which, in this case, involved sexual contact between Hinman's penis and J.J.'s mouth and vagina. (C. 199-201); *see also Donoho*, 204 Ill. 2d at 184-85 (holding that factual dissimilarities diminish the probative value of other-crimes testimony). Where A.H. and P.H.'s testimony involved substantially different acts than the charged acts, their testimony was overly prejudicial. *See Smith*, 406 Ill. App. 3d at 754 ("[A]s the number of dissimilarities increase, so does the prejudicial effect[.]").

Finally, the State declines to address Hinman's argument that evidence regarding acts of anal penetration were particularly prejudicial, where the testimony of J.J. and P.H. suggested

Hinman committed uncharged acts of anal penetration against J.J.'s brother, Phillip, which the State never sought to admit prior to trial. (Def. Br. 31). In light of A.H.'s and P.H.'s testimony that Hinman anally penetrated them, the jurors were likely to infer from the challenged portions of J.J.'s and P.H.'s testimony that Hinman was also abusing Phillip in a manner inconsistent with the charges, further compounding the prejudice incurred by Hinman.

D. The erroneous admission of overly prejudicial other-crimes evidence warrants reversal.

In his opening brief, Hinman argued that "the jury could have used testimony about uncharged conduct to bolster J.J.'s testimony concerning the actual charges," where Hinman did not confess to any of the charged offenses, his conviction rests entirely on the credibility of J.J. and the other-crimes witnesses, and J.J. could not recall many critical details about the charged offense. (Def. Br. 31-32). In response, the State argues that "concerns of undue prejudice are tempered by the inclusion of specific factors that a trial court should consider in determining whether other-crimes evidence should be admitted in a given case." (St. Br. 29-30). As discussed above and in Hinman's opening brief, the legislature did not intend to permit the State to use propensity evidence, even in cases involving child sexual abuse, where, as here, the probative value of the evidence is outweighed by its prejudicial impact. (Def. Br. 25-26, 31-33); *see also* pages 5-9, *supra*. The improper admission of other-crimes testimony by several witnesses, regarding numerous acts, was highly prejudicial and warrants reversal. *See Cardamone*, 381 Ill. App. 3d at 494 (remanding for a new trial, where other-crimes testimony by several witnesses, regarding numerous acts, presented "a great risk that the jury could find that defendant must have done *something*[.]") (emphasis original).

The State concedes that the jury heard testimony from only one witness who testified about the charged offenses and three witnesses who testified about uncharged conduct. (St.

Br. 31). The State argues, however, that Hinman is "incorrect" that the other-crimes evidence in this case became the focus of the trial, and was thus likely to mislead or confuse the jury. (R. 1310-36, 1337-56, 1360-1406). In so arguing, the State writes, "[T]he charged offenses in this case encompassed conduct that [Hinman] had subjected other members of his family to and, by their testimony, those family members provided evidence that collectively established [Hinman's] propensity to commit the alleged misconduct thereby corroborating J.J.'s testimony." (St. Br. 31). The State's argument is flawed.

Contrary to the State's assertion, the charged offenses did not encompass conduct testified to by J.H., P.H., and A.H. The other-crimes testimony involved different offenses, different time periods, and different circumstances. Where the other-crimes testimony involved so many offensive and outrageous acts different than the charged acts, no juror could have overlooked it. As such, it was more prejudicial than probative regarding whether Hinman had the propensity to commit the alleged misconduct. (Def. Br. 26-33); *see also* pages 4-15, *supra*.

Where the jury was presented with a significant amount of prejudicial evidence regarding Hinman's propensity to commit acts of sexual abuse, the temptation to punish him for uncharged conduct was likely insurmountable. *See People v. Ward*, 2011 IL 108690, ¶24 (holding that evidence relating to a defendant's propensity to commit crimes "tends to be overly persuasive to a jury, who may 'convict the defendant only because it feel he or she is a bad person deserving punishment'"); *see also Cardamone*, 381 Ill. App. 3d at 494 (finding that improper admission of other-crimes testimony by several witnesses, regarding numerous acts, presented "a great risk that the jury could find that defendant must have done *something*[.]") (emphasis original).

Conclusion

The State introduced evidence of numerous uncharged acts of sexual misconduct through

several witnesses who testified about acts temporally and factually different than those underlying the charged offenses. Where the improper other-crimes evidence was likely to have swayed the verdict in the State's favor, this Court should reverse Hinman's convictions and remand his case for a new trial.

III. This Court Should Remand For A New Sentencing Hearing, Where The Trial Court Failed To Consider The Mandatory, Mitigating Sentencing Factors in 730 ILCS 5/5-4.5-105(a).

The State concedes the sentencing court was required to consider the mitigating factors listed in 730 ILCS 5/5-4.5-105(a), including Hinman's young age, his ability to consider the risks and consequences of his behavior, any history of parental neglect, physical abuse, or other childhood trauma, and his potential for rehabilitation. 730 ILCS 5/5-4.5-105(a) (2022 the factors. (St. Br. 34-35). The State argues, however, that the court complied with section 5-4.5-105(a). (St. Br. 33, 41-43). The State's argument is rebutted by the record.

In an attempt to support its argument that the sentencing court adequately considered Hinman's young age and the mitigating characteristics of youth, the State asserts that the court showed consideration of Hinman's age and was not required to find that Hinman was "automatically entitled to a lenient sentence" on the basis that he "was 17 years old." (St. Br. 41). Contrary to the State's insinuation, Hinman never argued that his young age entitled him to a lenient sentence. He argued that the sentencing court's consideration of his young age was insufficient to comply with section 5-4.5-105(a), where the court explicitly concluded, "I can't find that factor in mitigation." (Def. Br. 36); (R. 1638). The court's finding was inconsistent with section 5-4.5-105(a), which explicitly requires the court to consider this information in "mitigation." 730 ILCS 5/5-4.5-105(a).

Regarding Hinman's abnormal childhood, the State argues that "the trial court emphasized in detail how abnormal it found the circumstances of defendant's childhood to be," stating, "There's just nothing about it that's normal or has ever been normal or continues to be normal." (St. Br. 41). The State omits critical language, however, from the court's statement. The court actually said, "But I know this whole situation is not normal. There's just nothing about it that's normal or has ever been normal or continues to be normal." (R. 1631). An examination of the full context of the court's statement establishes the court was not showing consideration of Hinman's childhood as a mitigating circumstance, but was instead commenting that the facts of the case were unusual. Indeed, the only factor found by the court in mitigation was that Hinman's prior record of delinquency was not as bad as some defendants. (R. 1639-40).

The State argues that the sentencing court's statement that Hinman was "intelligent" somehow established that the court considered in mitigation whether Hinman had suffered a cognitive or developmental disability. (St. Br. 41). The State overlooks that the court's passing comment that it believed Hinman was "intelligent" was based solely on its "observations" of him at trial and sentencing. (R. 1632). The State identifies no comment by the court below showing consideration of whether Hinman suffered a cognitive or developmental disability.

The State further argues that the sentencing court properly considered Hinman's prior criminal history, where it found that Hinman had "no recorded criminal history" and that the State presented other-crimes evidence of uncharged prior offenses. (St. Br. 41). The State omits, however, that the sentencing court did not make this finding until the hearing on counsel's motion to reconsider sentence. (R. 1656). As discussed in Hinman's opening brief, the court's *post hoc* rationalization of its own oversight cannot substitute for proper consideration of the section 5-4.5-105(a) factors prior to imposing a sentence. (Def. Br. 38) (citing *People v. Radford*,

2020 IL 123975, ¶140)). Prior to imposing the sentence here, the court erroneously found "The defendant does have a history of prior delinquency[,]" (R. 1639), even though Hinman had no criminal history prior to the commission of the PCSA offenses. (CI. 4-7). The court's erroneous finding failed to evidence compliance with section 5-4.5-105(a).

The State similarly argues that the sentencing court's post-sentencing consideration of several statutory factors – Hinman's appreciation of the risks and consequences of his actions, his rehabilitative potential, and his degree of participation and planning – was sufficient to comply with section 5-4.5-105(a). Like the court's untimely consideration of Hinman's criminal history, its post-sentencing rationalization of its failure to consider the above factors at sentencing fails to evidence compliance with section 5-4.5-105(a). (Def. Br. 38); *see also* page 17, *supra*.

In sum, the sentencing court committed reversible error by failing to consider the statutory mitigating factors listed in 730 ILCS 5/5-4.5-105(a) prior to imposing a sentence. This Court should, therefore, remand Hinman's case for re-sentencing on the PCSA counts.

CONCLUSION

For the foregoing reasons, Jared Wade Hinman, defendant-appellant, respectfully requests that this Court this Court reverse his convictions for PCSA (*see* Argument I, *supra*); reverse his convictions for PCSA and CSA and remand his case for a new trial (*see* Argument II, *supra*); and remand for re-sentencing on the PCSA counts (*see* Argument III, *supra*).

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this reply brief conforms to the requirements of Rules 341(a) and (b). The length of this reply brief, excluding pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, and the certificate of service, is 19 pages.

/s/ Bryon M. Reina
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IN THE

APPELLATE COURT OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of the First Judicial Circuit, Pulaski County, Illinois
Plaintiff-Appellee,	)	
	)	21-CF-21
-vs-	)	
	)	
JARED WADE HINMAN, SR.,	)	Honorable Jeffery B. Farris,
Defendant-Appellant.	)	Judge Presiding.

NOTICE AND PROOF OF SERVICE

TO: Mr. Thomas D. Arado, Deputy Director, State's Attorneys Appellate Prosecutor, 628 Columbus, Suite 300, Ottawa, IL 61350, 3rddistrict@ilsaap.org

Mr. Jared Wade Hinman, Register No. Y53702, Shawnee Correctional Center, 6665 State Route 146 East, Vienna, IL 62995

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct. On June 23, 2023, the Reply Brief was filed with the Clerk of the Appellate Court using the court's electronic filing system in the above-entitled cause. Upon acceptance of the filing from this Court, persons named above with identified email addresses will be served using the court's electronic filing system and one copy is being mailed to the appellant in an envelope deposited in a U.S. mail box in Chicago, Illinois, with proper postage prepaid.

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APPENDIX F

State's Brief

E-FILED
Transaction ID: 5-22-0627
File Date: 6/9/2023 7:43 AM
John J. Flood, Clerk of the Court
APPELLATE COURT 5TH DISTRICT

NO. 5-22-0627

IN THE

APPELLATE COURT OF THE STATE OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JARED WADE HINMAN, SR., Defendant-Appellant.	)	Appeal from the Circuit Court of the 1st Judicial Circuit Pulaski County, Illinois No. 21-CF-21 Honorable Jeffrey B. Farris Judge Presiding

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IN THE

APPELLATE COURT OF THE STATE OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 1st Judicial Circuit
Plaintiff-Appellee,	)	Pulaski County, Illinois
	)	
v.	)	No. 21-CF-21
	)	
JARED WADE HINMAN, SR.,	)	Honorable
	)	Jeffrey B. Farris
Defendant-Appellant.	)	Judge Presiding

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THE OTHER CRIMES EVIDENCE OFFERED AT DEFENDANT'S TRIAL WAS PROPERLY ADMITTED UNDER THE EXCEPTION TO THE GENERAL RULE ALLOWING SUCH EVIDENCE IN SEX OFFENSE CASES 12

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NATURE OF THE CASE

Defendant was convicted on May 26, 2022, following a jury trial on two counts of predatory criminal sexual assault of a child and one count of criminal sexual assault. On August 26, 2022, the trial court sentenced defendant to 20 years in prison on Count I, 25 years in prison on Count II, and 10 years in prison on Count III, to be served consecutively for a total of 55 years in prison. Defendant timely appealed.

No issue is raised regarding the charging instrument.

ISSUES PRESENTED FOR REVIEW

I

WHETHER THE STATE PROVED BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS 17 YEARS OF AGE OR OLDER AT THE TIME OF THE CHARGED OFFENSE?

II

WHETHER THE TRIAL COURT PROPERLY ADMITTED EVIDENCE OF OTHER CRIMES IN PROSECUTION FOR SEX OFFENSES?

III

WHETHER THE TRIAL COURT APPROPRIATELY CONSIDERED THE MITIGATING FACTORS SET FORTH IN *MILLER* AND ITS PROGENY IN IMPOSING DEFENDANT'S SENTENCE?

STATEMENT OF FACTS

Those additional facts necessary for an understanding of the issues raised on this appeal will be included, together with appropriate record references, in the argument portion of this brief.

ARGUMENT

I

THE STATE PROVED BEYOND A REASONABLE DOUBT THAT DEFENDANT WAS 17 YEARS OF AGE OR OLDER AT THE TIME OF THE OFFENSE.

STANDARD OF REVIEW

When a criminal defendant challenges the sufficiency of evidence in a conviction, the applicable standard of review is "'whether ... any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt.'" *People v. Collins*, 106 Ill.2d 237, 261 (1985). The evidence is reviewed in the light most favorable to the prosecution, allowing "all reasonable inferences from that evidence to be drawn in favor of the prosecution." *People v. Martin*, 2011 IL 109102, ¶ 15, citing *People v. Cunningham*, 212 Ill.2d 274, 278 (2004). Therefore, "[a] criminal conviction will not be set aside unless the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill.2d at 261.

ANALYSIS

In his first issue, defendant argues that the State failed to prove beyond a reasonable doubt that defendant was 17 years of age or older at the time of the offenses charged in Counts 1 and 2. The State disagrees. Viewed in the light most favorable to the prosecution, the evidence presented was sufficient to allow the trier of fact to find that defendant was over the age of 17 at the time of the charged offense.

In all criminal cases, challenges to the sufficiency of the evidence are reviewed under the standard set forth in *Collins*, 106 Ill.2d 237 (1985). Under the *Collins* standard, when a criminal defendant challenges the sufficiency of evidence, "'the relevant question is 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.'" *Collins*, 106 Ill.2d at 261 (emphasis in original).

Here, defendant was charged with two counts of predatory criminal sexual assault of a child, 720 ILCS 5/11-1.40 (previously, 720 ILCS 5/12-14.1 (2000)), and one count of criminal sexual assault, 720 ILCS 5/12-13(a)(2). (C. 1242-43) To sustain a conviction for predatory criminal sexual assault of a child (hereafter, "PCSA"), the State was required to prove: 1) that defendant knowingly committed an act of sexual penetration with the victim; 2) that defendant was 17 years old or older at the time he committed the alleged act; and 3) that the victim was under the age of 13 when the act was committed. (Sup. C. 20)

Defendant concedes that the State proved the first and third propositions; that defendant committed an act of sexual penetration upon the victim and that the victim was under the age of 13 at the time. (Def.'s Br. at 21) Defendant, however, contends that no rational trier of fact could have found that the State proved the second proposition, that defendant was over the age of 17 at the time of the offense, beyond a reasonable doubt. (Def.'s Br. at 21)

In both counts of predatory criminal sexual assault of a child, the State alleged that defendant committed the charged acts in April of 2000 in Pulaski County, Illinois. (C. 1242-43) At trial, the State offered a certified copy of defendant's birth certificate into evidence which established that defendant was born on December 27, 1982. (E. 2; R. 1174-75)

The victim, J.J., testified that she was born on October 20, 1989 and that defendant was her half-brother in that she and defendant had the same mother, but different fathers. (1773-75) The victim, defendant, and several other siblings, lived with their mother, Dee. (R. 1774-75) Dee worked a lot and the victim and younger siblings were often left in the care of defendant while Dee was away from the home. (R. 1776)

On a regular basis, while babysitting the children, defendant "would make [them] do things to him and with him." (R. 1777) J.J.'s earliest memory of inappropriate sexual contact by defendant was when she was five years old while they were living in Mounds. (R. 1777) J.J. testified that while she was dancing in the kitchen, defendant told her that she was not dancing correctly and asked her if she wanted him to show her the right way to do it. (R. 1777) J.J. said yes, and defendant then took her to his bedroom, put her on a bed, got on top of her, and while fully clothed, began "dry humping" her. (R. 1777-78) J.J. did not know what defendant was doing, but remembered that it "was very odd." (R. 1778) In another incident within the same time period, J.J. and her younger sister, P.H., were taking a bath when defendant came into the bathroom and got J.J. out of the tub and pulled her into a bedroom. (R. 1778-79) In the bedroom, while J.J. was still wet from the bath and not wearing any clothes defendant made J.J. perform oral sex on him. (R. 1778-79) As this was happening, Dee came home and defendant shoved J.J. into the closet. (R. 1779) Dee found them in the closet, J.J. naked and defendant with his pants undone, and spanked them both. (R. 1779) Defendant was, nonetheless, allowed to continue being the family babysitter and, because J.J. understood the spanking to mean that she had done something wrong, she did not tell her mother about any future abuse because she believed that she would get into trouble. (R. 1779)

Future abuse did not occur every day, but it took place often enough to cause J.J. to live with "an overall sense of dread and doom". (R. 1780) J.J. would often play outside to avoid being alone with defendant and always wanted to stay near other people, "like safety in numbers." (R. 1781) Defendant would, however, take J.J. to various places, such as an abandoned building near their home, and make her perform oral sex on him. (R. 1781-82) The children also spent a lot of time at their grandmother Evelyn's house in Mound City where defendant would take J.J. down to the basement

and engage in inappropriate sexual contact there as well. (R. 1782) Defendant used the "day room" at Evelyn's house as his bedroom and, on many occasions, defendant would wake J.J. up and call her into the day room to make her perform oral sex on him. (R. 1783) J.J. also recalled memories of being in the day room with defendant and her other siblings where defendant would make them take turns performing oral sex on him. (R. 1785) In another instance, defendant performed oral sex on J.J. and put his finger inside her vagina. (R. 1785)

Regarding the incident charged in the two counts of PCSA, J.J. testified that she and her family moved to Lovelaceville, Kentucky, when she was in the second grade and lived there for approximately three years. (R. 1786-87) When J.J. was 10 years old, Dee asked defendant to drive from their home in Lovelaceville to Evelyn's house in Mound City to "pick up some dresses for the girls for church." (R. 1787) J.J. rode with defendant and was forced to perform oral sex on him during the entire one-hour trip. (R. 1788) About halfway through the drive to Mound City, defendant stopped the truck on a back road so J.J. could finish, but J.J. was tired and her jaw hurt. (R. 1789) J.J. testified that defendant was not going to let her stop, so she told defendant that she needed to use the bathroom as a way to get out of the truck. (R. 1789) Once out of the truck, J.J. took off running into the woods, but defendant ran after her and dragged her back to the truck and told her, "If you ever run away from me like that again, I'll kill you." (R. 1789-90) Once back in the truck, defendant told J.J. that he had something "to make it taste better" and put on a flavored condom. (R. 1790) J.J. was crying and wanted to stop, but defendant was "very irritated" with her, so he placed his hand on the back of J.J.'s head and began shoving J.J.'s face down onto his penis, not allowing her to get up. (R. 1790) As they traveled down the road, defendant's penis would "go back further into [her] throat and gag [her]" whenever the truck traveled over bumps in the roadway. (R. 1790) J.J. "was gagging and crying and snot" which

made it difficult for her to breathe, but she could not lift her head because defendant continued to force her head down each time she tried. (R. 1790) This continued for the remainder of the trip to Evelyn's house in Mound City. (R. 1791)

Once at Evelyn's house, J.J. assumed that Evelyn was home so she wiped off her face and ran into the house. (R. 1791) Evelyn, however, was not home and when defendant came into the house and into Evelyn's bedroom, he told J.J. that "since [she] didn't do what he had asked [her] to do that he was going to put it inside of [her]." (R. 1791) Defendant told J.J. that he would either put it in her butt or in her vagina. (R. 1791) Remembering what her younger brother had told her, she told defendant, "Please don't put it in my butt." (R. 1791-92) J.J. began "screaming and flailing and kicking around and being crazy" which got defendant "really pissed off." (R. 1792) Defendant grabbed J.J. and held her down, put his hand over her mouth, and began "shoving his penis onto [her] vagina" which was "very dry" such that "it wasn't going in, but it felt like a fist just like punching [her] in the vagina." (R. 1792) This continued until they heard a car door at which point defendant stopped. (R. 1792-94) The prosecutor questioned J.J. about when this event took place. J.J. testified that she was attending Lone Oak Elementary at that time and that she was a student at Lone Oak until October of 2000. (R. 1796-97) The prosecutor asked J.J. what the dresses were for and J.J. testified that "[i]t could have been around Easter." (R. 1797)

On cross-examination, defense counsel further questioned J.J. about the timing of this incident. J.J. testified that they lived in Lovelaceville from 1998 until October of 2000. (R. 1844; 1848) The purpose of the trip to Evelyn's house was to pick up dresses for J.J. and her sisters to wear to church. (R. 1874) Defense counsel asked J.J. if there was a special occasion for the dresses, and J.J. answered that she did not recall the exact occasion but assumed that it was "something like Easter". (R. 1875) On redirect examination, J.J. was asked if she was wearing a winter coat during the trip

from Lovelaceville to Mound City. (R. 1905) J.J. responded that she was not and that it was warm outside. (R. 1905)

On appeal, defendant contends that the evidence and testimony presented at trial was not sufficient to exclude the possibility that the alleged acts occurred between J.J.'s 10th birthday and defendant's 17th birthday and that, as such, the State failed to prove beyond a reasonable doubt that defendant was 17 years old or older at the time of the offense. (Def.'s Br. at 20) Specifically, defendant's claim is premised on the fact that the victim testified that the incident happened while she was 10 years old but did not provide any specific testimony as to when, during her 10th year, the offense occurred. (Def.'s Br. at 20) J.J.'s 10th birthday was on October 20, 1999, and defendant turned 17 on December 27, 1999 so, defendant argues, because defendant was 16 years old from October 20, 1999 until December 27, 1999, "no rational juror could have reasonably inferred that the offenses occurred after December 26, 1999." (Def.'s Br. at 20)

Defendant's argument is without merit. The State alleged that the incidents charged in the information occurred during April of 2000. (C. 1242-43) J.J. testified that she believed that the dresses she and defendant went to pick up from Evelyn's house were for Easter and, while J.J. could not provide an exact date, she testified that it was warm outside at the time of the incident. (R. 1797, 1875, 1905)

Acknowledging J.J.'s testimony relating the dresses to a church holiday such as Easter, defendant argues that "the dresses just as well could have been for Christmas" and, as to J.J.'s testimony that it was warm outside, defendant argues that, in Mound City, "mild days are not uncommon from October through December." (Def.'s Br. at 23) In support of his argument, defendant asks this court to take judicial notice of the weather records from the National Weather Service forecast office in West Paducah which provide that the average temperature in that area "was about 59 degrees in

October of 1999, 53 degrees in November of 1999, and 41 degrees in December of 1999." (Def.'s Br. at 23) Based on these archived average temperatures, defendant argues that "it was unlikely J.J. and [defendant] would have required winter jackets between October 20, 1999, and December 26, 1999" and, thus, it is just as likely that the offenses occurred prior to defendant's 17th birthday. (Def.'s Br. at 24-25)

Defendant's argument misapprehends the applicable standard in cases raising a challenge to the sufficiency of the evidence. At most, defendant's argument suggests that the State failed to rule out every reasonable hypothesis of innocence in the face of circumstantial evidence; a standard which is no longer applicable in Illinois. See *People v. Pintos*, 133 Ill.2d 286, 291 (1989); *People v. Eyler*, 133 Ill.2d 173, 191-92 (1989); *People v. Linscott*, 114 Ill.2d 340 (1986). Rather, to warrant reversal on grounds of insufficient evidence, the evidence must be "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill.2d at 261. Under this standard, the evidence is reviewed in the light most favorable to the State and where "evidence is capable of producing conflicting inferences, it is best left to the trier of fact for proper resolution." *People v. Harmon*, 2012 IL App (3d) 110297, ¶ 12. The State is not required to "disprove or rule out all possible factual scenarios" in order to support its case. *People v. Newton*, 2018 IL 122958, ¶ 27. Neither is the jury "required to disregard inferences which flow normally from the evidence before it, nor need it search out all possible explanations consistent with innocence and raise them to a level of reasonable doubt." *Id.*, at ¶ 24. Rather, it is the responsibility of the jury, as 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.'" *People v. Jackson*, 232 Ill.2d 246, 281 (2009), quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979).

The theory posited by defendant on appeal was, indeed, argued to the jury at defendant's trial. In closing argument, defense counsel argued in regard to the two

counts of PCSA that "ages matter." (R2267) Elaborating on that theory, counsel argued that "[t]here was a time period when [J.J.] was ten years old" while defendant was 16 years old, which was from October 20, 1989, until December 1999. (R. 2268) Counsel added:

> We know that it wasn't necessarily cold. But wouldn't it be cold January, February, March, April, too? We don't know. We don't know. And you cannot say that the State has put on evidence to prove that this allegation, if it happened at all, happened after he turned 17 when there are 67 days, 68 days, in which she was ten years old, and he was 16 years old. And that fact, that element of being more than 17, is required in both Count I and Count II. [R. 2268]

Counsel further argued that J.J. waffled on the issue of when exactly this incident took place and how many times it occurred, other than to say that it was "almost constant." (R. 2269) Counsel further noted that it had been many years since this incident occurred and that J.J.'s memory could be unclear and that all of the sisters who experienced similar abuse by defendant shared information with one another, "who have undoubtedly discussed this, ad nauseam." (R. 2269) Counsel added that it was uncertain whether these were real memories, and J.J. testified several times that she could not be sure about certain things. (R. 2269-70)

The jury was, therefore, asked to consider the specific theory defendant argues on appeal and, by their verdict, declined to embrace it. Defendant nonetheless asks this court to reweigh the evidence and substitute its judgment for that of the jury, a practice which runs afoul of the standard set forth in *Collins*. See *Jackson*, 232 Ill.2d at 280-81 ("This standard of review does not allow the reviewing court to substitute its judgment for that of the fact finder on questions involving the weight of the evidence or the credibility of the witnesses.")

While it is true that J.J. was not able to provide a specific date and time that this particular offense occurred, it is also true that J.J. was merely 10 years old at the time of the offense and had, by that time, endured several years of near-constant sexual

abuse at the hands of defendant. As our supreme court has keenly recognized, "it is often difficult in the prosecution of child sexual abuse cases to pin down the times, dates, and places of sexual assaults, particularly when the defendant has engaged in a number of acts over a prolonged period of time." *People v. Bishop*, 218 Ill.2d 232, 247 (2006). Any issues with respect to hesitation and uncertainty are matters affecting only the credibility of the witness' testimony and, as such, are for the jury to weigh. *People v. Rush*, 250 Ill.App.3d 530, 535 (1st Dist. 1993), citing *People v. Tannahill*, 152 Ill.App.3d 882, 885 (5th Dist. 1987).

The State submits that the evidence in this case, when viewed in the light most favorable to the prosecution under the *Collins* standard, was not "so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt." *Collins*, 106 Ill.2d at 261. Accordingly, the State requests that this court affirm defendant's conviction.

II

THE OTHER-CRIMES EVIDENCE OFFERED AT DEFENDANT'S TRIAL WAS PROPERLY ADMITTED UNDER THE EXCEPTION TO THE GENERAL RULE ALLOWING SUCH EVIDENCE IN SEX OFFENSE CASES.

STANDARD OF REVIEW

A reviewing court will reverse a trial court's decision to admit other-crimes evidence only if it finds that the trial court abused its discretion. *People v. Donoho*, 204 Ill.2d 159, 182 (2003). "A trial court abuses its discretion only if its ruling is arbitrary, fanciful, or unreasonable, or where no reasonable person would take the view adopted by the court." *People v. Vercolio*, 363 Ill.App.3d 232, 237 (3d Dist. 2006), citing *Donoho*, 204 Ill.2d 159 (2003). "Our supreme court has repeatedly admonished its appellate courts that reasonable minds may differ about whether evidence of other crimes or bad acts is admissible without requiring reversal under an abuse-of-discretion standard of review." *People v. Serritella*, 2022 IL App (1st) 200072, ¶ 87, citing *Donoho*, 204 Ill.2d at 186.

ANALYSIS

In his second issue, defendant contends that the trial court committed reversible error when it allowed the testimony of several witnesses pertaining to sex offenses committed by defendant against them. (Def.'s Br. at 24-25) The State submits that the testimony offered by J.J. was admissible as evidence of defendant's prior sexual activity with the same child; an exception to the general rule barring other-crimes evidence. Further, J.J.'s testimony and that of the three other witnesses was also admissible under section 115-7.3 of the Code of Criminal Procedure, which allows the admission of other-crimes evidence for propensity purposes.

Generally, evidence of other crimes is inadmissible to show propensity to commit the charged offense. *Donoho*, 204 Ill.2d 159; Ill. R. Evid. 404(b) (eff. Jan. 1,

2011). Such evidence tends to be "overly persuasive to a jury" which, in turn, increases the potential that the jury could "'convict the defendant only because it feels he or she is a bad person deserving punishment.'" *People v. Ward*, 2011 IL 108690, ¶ 24, quoting *People v. Lindgren*, 79 Ill.2d 129, 137 (1980). However, *People v. Foster*, 195 Ill.App.3d 926, 949 (5th Dist. 1990), held that it is well settled:

> [I]n a trial for sexual offenses, evidence of a defendant's prior sexual activities with the same child is an exception to the general rule that a defendant's prior bad acts are not admissible, and such evidence is admissible to show the relationship and familiarity of the parties, to show the defendant's intent, to show the defendant's design or course of conduct, and to corroborate the victim's testimony concerning the offense charged.

Further, section 115-7.3 of the Code of Criminal Procedure provides a limited exception to the general rule prohibiting propensity evidence by allowing evidence that the defendant committed other sex offenses such as, for example, predatory criminal sexual assault of a child and criminal sexual assault. *Ward*, 2011 IL 108690, ¶ 25; 725 ILCS 5/115-7.3 (West 2022). "Where the other-crimes evidence meets the preliminary statutory requirements, it is admissible if (1) it is relevant; and (2) its probative value is not outweighed by its prejudicial effect. *People v. Cardamone*, 381 Ill.App.3d 462, 489 (2d Dist. 2008), citing *Donoho*, 204 Ill.2d at 177-78. In weighing the admissibility of the evidence, the trial court may consider the proximity in time between the prior crime and the charged offense, the degree of factual similarity, or other relevant facts and circumstances to determine whether the prejudicial effect of that evidence substantially outweighs its probative value. *Donoho*, 204 Ill.2d at 183; 725 ILCS 5/115-7.3(c) (West 2022). Unlike in cases where other-crimes evidence is offered for impeachment purposes, other-crimes evidence admissible under section 115-7.3 is not subject to "a bright-line rule about when prior convictions are *per se* too old"; the proximity in time between the offenses is, instead, a factor to be considered when weighing the probative value of the evidence. *Donoho*, 204 Ill.2d at 183-84.

Under the degree of factual similarity factor, except in cases where the evidence is offered to establish *modus operandi*, "'mere general areas of similarity will suffice' to support admissibility." *Donoho*, 204 Ill.2d at 184, quoting *People v. Illgen*, 145 Ill.2d 353, 372-73 (1991). "As factual similarities increase, so does the relevance, or probative value, of the other-crimes evidence." *Donoho*, 204 Ill.2d at 184, citing *People v. Bartall*, 98 Ill.2d 294, 310 (1983). Admissibility is not defeated by the existence of some differences between the offenses "because no two independent crimes are identical." *Donoho*, 204 Ill.2d at 185 (2003), citing *Illgen*, 145 Ill.2d at 373. Evidence admitted under section 115-7.3(b) can be offered for any relevant purpose, including "to show defendant's propensity to commit sex offenses" if the statutory requirements are met. *Donoho*, 204 Ill.2d at 176; 725 ILCS 5/115-7.3(b) (West 2022).

Prior to trial, the State moved to allow evidence of other crimes pursuant to section 115-7.3 and for purposes of showing intent and lack of mistake. (C. 167-78) In its motion, the State set forth the pertinent facts regarding the complainant, J.J., as well as defendant's two half-sisters, P.H. and J.H., and defendant's daughter, A.H. (C. 167-70)

As to the complainant, J.J., the State's motion provided that J.J. was born on October 20, 1989 and that defendant, her half-brother, was born on December 27, 1982. (C. 167) Defendant was often left to babysit J.J. and her siblings. (C. 167) Defendant began molesting J.J. when she was approximately 5 years old and continued to do so until she was approximately 12 years old. (C. 167) J.J. believed that the abuse was "almost constant" during that time and consisted of defendant putting his penis in J.J.'s mouth "at least a few times a week", making her engage in sexual acts with her sister, P.H. as well as sexual acts with P.H. and defendant and P.H. together, and putting his mouth on her and P.H.'s vagina. (C. 167) These acts often occurred at her grandmother's house at 228 High Street in Mound City, Illinois. (C. 167)

As to P.H., the State's motion provided that P.H. was born on June 11, 1991 and that defendant was her half-brother. (C. 168) P.H. reported that she and her siblings were sexually abused by defendant and that defendant "would lick her vagina and force her to suck his penis when she was a young child" which often took place at her grandmother's house at 228 High Street in Mound City, Illinois. (C. 168) Defendant would instruct P.H. to engage in sexual acts with her sister, J.J. while he watched and, in some instances, would engage in sexual acts with both J.J. and P.H. at his direction. (C. 168) P.H. further alleged that defendant would give alcoholic drinks to P.H. and her siblings and "have them smoke something on foil." (C. 168)

As to J.H., the State's motion provided that J.H. was born on January 25, 1995 and that defendant was her half-brother. (C. 168) J.H. alleged that defendant "sexually abused her from as early as she can remember until she was approximately thirteen years of age" which consisted of defendant physically touching her, putting his mouth on her vagina, and putting his penis in her mouth. (C. 168-69) When J.H. was between 10 and 12 years old, defendant would put his penis in her anus and told J.H. that if she told anyone that he would kill her. (C. 169) This abuse occurred in the bathroom and basement at her grandmother's house at 228 High Street in Mound City, Illinois. (C. 169)

As to A.H., the State's motion provided that A.H. was born on April 12, 2002 and was defendant's daughter. (C. 169) Defendant had charges pending in Pulaski County for predatory criminal sexual assault against A.H. stemming from events occurring between November of 2009 and September of 2010. (C. 169) A.H. reported that defendant began sexually assaulting her when she was approximately seven years old until she was taken into DCFS custody on September 8, 2010. The abuse, which happened "a lot", occurred primarily at 228 High Street in Mound City, Illinois and consisted of defendant putting his penis in her vagina and in her anus, as well as

making her suck on his penis. (C. 169) A.H. did not report the abuse because of threats by defendant and "fear due to violence by him towards herself and others." (C. 169) A.H. also reported an incident when defendant directed A.H.'s mother, Mindy, to bring A.H. into the bed and "to tell A.H. to put her mouth on [defendant's] penis and then Mindy's vagina." (C. 169) Defendant then told Mindy to put her mouth on A.H.'s vagina before directing both Mindy and A.H. "to jointly perform oral sex on him." (C. 169) This incident was corroborated by Mindy, who was criminally charged in relation to the incident and pled guilty to aggravated battery. (C. 169-70)

At the hearing on the motion, as to the other-crimes evidence from the complainant, J.J., the State argued that the Supreme Court has repeatedly allowed testimony of a minor\victim relaying, in general terms, descriptions of frequently occurring incidents of the same general character. (R. 89-90, 93-94) The Court allowed such testimony because, in the case of a minor, especially in cases involving a family member or someone in the household where the victim is subjected to recurring abuse, "they're not going to a calendar and writing it down." (R. 94) The State further argued that J.J.'s testimony would also be admissible under section 115-7.3 of the Code of Criminal Procedure. (R. 90)

In response, defense counsel raised two objections: first, that live testimony was required to allow the trial court to hear the specific testimony from the witness before it could make a determination as to admissibility; and second, that the testimony that is allowed must be narrowly tailored to serve the purpose of explaining the relationship rather than just "a dump" of all of the incriminating information in the State's possession. (R. 91-93)

The trial court stated that, in its own research, it did not find anything in the statute or relevant case law indicating that a hearing was required to develop specifics regarding the victim and "the historic nature of the allegations and similar

allegations." (R. 95) The trial court further found that the State's motion provided a fairly succinct description of what testimony J.J. would provide and granted the State's motion as to testimony from J.J. (R. 100)

On the issue of other-crimes evidence from defendant's other two half-sisters, the State argued that in weighing the admissibility of the other crimes evidence, the more similarities that exist between the charged offense and the evidence of other crimes, the greater the probative value of that evidence. (R. 107) The State then laid out the following similarities: all of the victims are family members of defendant; all were much younger than defendant; all were females; all were in the care of defendant at the time of the abuse such as a father or father figure or older brother in a babysitting role. (R. 108) They all observed violence, and defendant threatened each victim. (R. 108) There was group sex involved and, specifically, the manner in which the group sex occurred which included defendant directing them to perform sexual acts on each other. (R. 108-09) The State also noted the similarity in the fact that defendant would often wake the children up while they were sleeping and take them to another location where he then assaulted them, and that the majority of the incidents happened at the same location in Mound City. (R. 109-10) Further, many of the victims were actual eyewitnesses to the abuse of the others because they were being abused at the same time. (R. 110)

Defense counsel responded that the court had to first hear testimony to determine if the witnesses would testify as claimed before it could make a determination as to the consistency or similarities of the testimony. (R. 110) Substantively, defense counsel argued that there were a number of dissimilarities in the claims, such as the fact that the victims were all family members which, in approximately 90 percent of cases alleging predatory criminal sexual assault, the victim and the defendant had a familial connection making it "not so much a similarity that

is specific to this case." (R. 111) Similarly, that all of the victims were younger than defendant was an element of the offense and would be found in every case, so that fact should not be deemed a similarity justifying admission. (R. 111) As to the fact that all of the victims were female, defense counsel argued that only two options existed in that regard so it was not a distinctive characteristic as to the charged offense. (R. 111) Regarding observations of violence, counsel argued that not all of the victims made that claim and where one claimed to have been provided with drugs and alcohol, that claim was not made by the others or by the complainant. (R. 111-12)

Defense counsel further argued that some of the victims alleged anal sex, but not all of them and that it was unknown how that might relate to the complainant's testimony. (R. 112) Defense counsel conceded the similarities and their proximity in time but argued that it must be considered how overwhelmingly prejudicial this evidence could be as compared to the probative value because, while the burden to show that it is substantially overwhelming is high, it is a decision that the court must make with live testimony and, without presenting that testimony, it could not be done. (R. 112-13) Overall, counsel argued, while the evidence might appear admissible at first blush, "those similarities are going to exist in any case that is charged with these particular witnesses." (R. 114) While similarities exist, so do differences and "many of those differences are highly prejudicial on their own" such as P.H.'s claim that she and her siblings were given alcoholic beverages and made to smoke something on foil. (R. 114) That allegation was made by only one of the witnesses and could be highly prejudicial if heard by the jury.

The State responded that one of the charged offenses alleged that the complainant was unable to consent due to intoxication even though she was a minor so alcohol consumption was a factor. (R. 115) As to whether live testimony was required, the State noted that nothing in the statute suggests any such requirement. (R. 115-16)

The trial court agreed that testimony regarding something being smoked on foil carried meaning that could be seen to be "purely inflammatory" and, given the vagueness as to what was on the foil , the testimony could be prejudicial. (R. 117-18) While the State charged defendant with one offense involving alcohol, no such charge alleging something being smoked in foil was filed. (R. 120) The trial court found that, as to the testimony from the three other-crimes witnesses, the proposed testimony was not more prejudicial than probative. (R. 121) The court granted the motion as to the testimony as provided in the State's motion but reserved its ruling as to the allegation that defendant made the victims smoke something in foil. (R. 121-22) As to the testimony regarding alcohol, the State would be allowed to elicit the testimony provided it could first lay a proper foundation. (R. 122)

A. J.J.'s testimony about uncharged instances of sexual contact by defendant was properly admitted as an exception to the general rule barring evidence of other crimes which allows evidence of defendant's prior sexual misconduct with the same child. Additionally, J.J.'s testimony was admissible for propensity purposes under section 115-7.3 of the Code of Criminal Procedure.

With regard to the complainant, J.J., defendant acknowledges the exception to the general rule barring evidence of other crimes which allows evidence of defendant's prior sexual activity with the same child but argues that, like in *Cardamone*, 381 Ill.App.3d 462, the extent of other-crimes evidence presented in this case was overly prejudicial. (Def.'s Br. at 26-27)

In *Cardamone*, the defendant, a gymnastics coach, was charged with 8 counts of predatory criminal sexual assault and 18 counts of aggravated criminal sexual abuse against 14 gymnasts. *Cardamone*, 381 Ill.App.3d at 464. The allegations covered a three-year span between 1999 and 2002. *Id.* Prior to trial, the State moved *in limine* to admit other-crimes evidence under section 115-7.3 of the Code of Criminal Procedure

which resulted in the trial court barring the State from presenting some of the proffered evidence, such as incidents involving individuals who were not complainants or taking place outside of the gymnastics setting. *Id.* at 488. The testimony of the 14 complainants was allowed and their testimony discussed "relatively similar acts of charged misconduct." *Id.* at 490. On appeal, the defendant argued that the testimony provided no specific information as to the other crimes and that "the probative value was outweighed by the unfair prejudice, juror confusion, and delay." *Id.* at 489. The appellate court found that the evidence was not properly admitted for purposes of showing intent, innocent state of mind, or absence of mistake, because intent was not at issue in that case. *Id.* at 490. As to course of conduct, the appellate court found that, while "a single girl's testimony as to a single act of misconduct could paint an inaccurate picture of a defendant's conduct as to that girl", the testimony of 14 girls was presented which, on its own, sufficiently explaining defendant's course of conduct and corroborating each other's testimony. *Id.* at 490.

Notwithstanding this finding, the court noted that the evidence was admissible under section 115-7.3 to show the defendant's propensity to commit the charged offenses. *Id.* Thus, because the evidence was admissible, the question on appeal was "whether the trial court abused its discretion by finding that the probative nature of the evidence was not outweighed by its prejudicial effect." *Id.* at 491. In addressing that question, the appellate court first highlighted that, in addition to testimony about the 26 charged acts, the witnesses testified "to *hundreds* of uncharged acts." (Emphasis in original) *Id.* at 491. From seven of the witnesses, whose allegations resulted in conviction, the jury heard testimony "that defendant committed between 158 and 257 uncharged acts" which was a conservative estimate ignoring "the figures summarizing the complainants' testimony on direct or cross-examination" as well as testimony from the other seven witnesses whose allegations did not result in conviction. *Id.* at 491-93.

In assessing whether the trial court erred by allowing this evidence to be admitted, the appellate court noted that the trial court considered the first two statutory factors, proximity and factual similarity, but did not explicitly address the third factor which considers other relevant facts and circumstances. *Id.* at 493-94. Under that factor, where the trial court allowed testimony from 15 victims testifying to numerous acts of misconduct, the appellate court found:

> In the face of so many allegations of misconduct, there was a great risk that the jury could find that defendant must have done *something*, or that it could find defendant guilty beyond a reasonable doubt not of the charges but, instead, of uncharged acts. *Id.* at 494.

The appellate court further found that, given the volume of conduct testified to by the witnesses, the defendant was placed "in the impossible position of accounting for his whereabouts and behavior almost all day, every day, over a three-year period." *Id.*

The appellate court concluded that the trial court abused its discretion in admitting the testimony because "no reasonable person would find that the probative value of the other-crimes evidence was not outweighed by its prejudicial effect." *Id.* at 497. Recognizing that difficulty exists when determining where to draw the line with regard to barring otherwise admissible evidence on such grounds, in that case, establishing propensity or course of conduct "could have easily been established by the 14 complainants' testifying to the charges and perhaps a few instances of uncharged conduct." *Id.* However, the overwhelming volume of the evidence offered there was "undoubtedly more prejudicial than probative." *Id.*

The circumstances of the present case are entirely distinct from those in *Cardamone*. The volume of testimony complained of in this case comes nowhere close to the testimony about "hundreds of uncharged acts" elicited from witnesses in *Cardamone*. *Cardamone*, 381 Ill.App.3d at 491. Defendant, however, points to the following testimony regarding six instances of uncharged conduct as being similarly prejudicial: 1) J.J.'s testimony that defendant "dry hump[ed]" her when she was five

years old; 2) J.J.'s testimony that, around the same time, defendant took her from the bathtub and forced her to perform oral sex on him; 3) J.J.'s testimony that defendant forced her to perform oral sex on him at a skating rink and 4) in an abandoned building; 5) J.J.'s testimony that defendant forced her and her siblings to engage in group sex; and 6) J.J.'s testimony that, when she was 16 years old, defendant offered her $400 for oral sex. (Def.'s Br. at 27) This testimony, defendant argues, was excessive in that J.J.'s testimony regarding the charged offenses along with "other general instances of misconduct" were sufficient to establish defendant's course of conduct without the risk of undue prejudice and the trial court, therefore, erred by allowing it. (Def.'s Br. at 27)

The State submits that there was no abuse of discretion in the trial court's decision to allow J.J. to testify to prior instances of abuse by defendant. The State acknowledges that a trial judge must limit the evidence to that which is necessary to establish the purpose for which the evidence is being offered. *People v. Chromik*, 408 Ill.App.3d 1028, 1041 (3d Dist. 2011). However, despite defendant's contention that J.J.'s other testimony was sufficient to establish defendant's course of conduct, the State was not limited to presenting evidence for that purpose; section 115-7.3 allows the State to offer this evidence for the purpose of establishing a defendant's propensity to commit sex offenses. *Donoho*, 204 Ill.2d at 176; *People v. Boyd*, 366 Ill.App.3d 84, 90 (1st Dist. 2006). The primary concern regarding the admission of other crimes evidence is the danger of unfair prejudice; "the capacity of some concededly relevant evidence to lure the fact finder into declaring guilt on a ground different from proof specific to the offense charged." *Chromik*, 408 Ill.App.3d at 1042. However, in cases involving sexual abuse, "the State has a compelling reason to introduce thorough evidence to establish a defendant's propensity." *People v. Walston*, 386 Ill.App.3d 598, 613 (2d Dist. 2008). An individual's propensity to commit a particular offense "can be shown to be

greater or lesser with more thorough evidence." *Walston*, 386 Ill.App.3d at 612. The "actual limits on the trial court's decisions on the quantity of propensity evidence to be admitted under section 115-7.3 are relatively modest." *Id.* at 621. "While a reviewing court will reverse the trial court's decision to allow too much otherwise relevant propensity evidence under section 115-7.3 in extreme situations such as that presented in *Cardamone*," in most cases, the result of a trial court's decision on the amount of other-crimes testimony to admit will be affirmed. *Id.* at 621-22. In this case, the State moved to admit the evidence for that purpose and, thus, the trial court was not required to limit the State's evidence to only issues regarding defendant's courses of conduct. (C. 167-78)

Further, J.J. was the complaining witness with regard to the charged offenses and, as such, her testimony about prior uncharged sexual acts falls within the scope of the exception to the general rule barring other-crimes evidence against the same child. *Foster*, 195 Ill.App.3d at 949. The State submits that each instance of other-crimes testimony presented in this case was carefully elicited for purposes of establishing propensity as well as "the relationship and familiarity of the parties, to show the defendant's intent, to show the defendant's design or course of conduct, and to corroborate the victim's testimony concerning the offense charged." *Id.*

Even if this court were to conclude that the other-crimes evidence elicited from the complainant in this case was not admissible under any of the aforementioned exceptions, any conceivable error was harmless and unlikely to have influenced the jury. See *Chromik*, 408 Ill.App.3d at 1042, citing *People v. Nieves*, 193 Ill.2d 513 (2000); *People v. Hall*, 194 Ill.2d 305 (2000) ("Our supreme court has repeatedly held that the improper introduction of other-crimes evidence is harmless error when a defendant is neither prejudiced nor denied a fair trial based upon its admission.") Defendant, however, argues that there was a high likelihood of undue prejudice because the

evidence against defendant in Counts I and II was close. (Def.'s Br. at 27) To support his argument, defendant refers to his arguments in Issue I challenging the sufficiency of the evidence regarding whether defendant was over the age of 17 at the time of the offense. (Def.'s Br. at 20-24) Defendant fails to explain how J.J.'s testimony regarding these six instances of uncharged conduct tipped the scales in favor of finding that defendant was over the age of 17 at the time of the offense where J.J.'s testimony on these issues amounted mostly to passing reference to various other experiences J.J. endured and that the specifics of those offenses were not discussed at length or belabored in any manner. In sum, the State submits that the testimony was admissible and that the trial court did not abuse its discretion in allowing the testimony or, in the alternative, any error in its admission was harmless beyond a reasonable doubt.

B. Testimony from J.J. and P.H. regarding sexual misconduct with multiple victims was properly admitted.

Defendant next challenges the admissibility of testimony from J.J. and P.H. regarding sexual misconduct with multiple victims. (Def.'s Br. at 27) As an initial matter, the State notes that defendant did not raise this issue in the court below. "To preserve a purported error for consideration by a reviewing court, a defendant must object to the error at trial and raise the error in a posttrial motion." *People v. Sebby*, 2017 IL 119445, ¶ 48, citing *People v. Belknap*, 2014 IL 117094, ¶ 66, citing *People v. Enoch*, 122 Ill.2d 176, 186 (1988)). "Failure to do either results in forfeiture." *Sebby*, 2017 IL 119445, ¶ 48. As earlier noted, the State moved *in limine* prior to trial to admit other-crimes evidence from the complainant and three additional witnesses. (C. 167-78) In its motion, as to J.J. the State indicated that:

> J.J. also described that [defendant] would make she and P.H. do sexual acts together and sometimes sex acts with her, P.H. and [defendant] together. She also stated that [defendant] would put his mouth on her and P.H.'s vagina.

* * *

> J.J. also described incidents when [defendant] would have her and her siblings engage in sex acts with each other and together with him. When [defendant] was not participating, he would be watching or giving directions for what he wanted them to do. [C. 167-68]

As to P.H. the State's motion provided:

> At times when [defendant] was babysitting, he would instruct [P.H. to] have sexual contact with her sister J.J. while he watched and there would be times where the three of them would have sexual contact together at his direction. [C. 168]

Despite the fact that the State provided details regarding this proposed testimony prior to trial, defendant did not raise this objection in his response to the State's motion *in limine* (C. 225-30), at the hearing on the State's motion (R. 88-106), during J.J.'s or P.H.'s testimony about this incident (R. 1784-85, 1917-20), in his post-trial motion for new trial (C. 1220-23), or at the hearing on his motion for new trial. (R. 2503-42) As such, this court should find that defendant forfeited appellate review of this issue. The State recognizes that "forfeiture is a limitation on the parties and not the court" and that this court may consider the issue despite defendant's failure to raise the issue in the court below. *People v. Sophanavong*, 2020 IL 124337, ¶ 21, reh'g denied (Nov. 16, 2020). However, defendant does not acknowledge his forfeiture or seek review under the plain error doctrine or present any reason for this court to excuse the forfeiture. The State, therefore, urges this court to decline to consider this issue.

If this court declines to find this issue forfeited, the State submits that the complained-of testimony by both J.J. and P.H. was properly admitted. Defendant argues that "P.H.'s testimony merely corroborated an overly prejudicial portion of J.J.'s testimony involving an uncharged offense" and that their respective testimony about the incident was not the same. (Def.'s Br. at 28) Defendant is incorrect. As argued in the first sub-issue, *supra*, as the complaining victim in this case, J.J. was allowed to testify to defendant's prior sexual contact with her even if the acts to which

she testified were not included in the charged offense specifically." *People v. Foster*, 195 Ill.App.3d 926, 949 (5th Dist. 1990). This testimony was also admissible for propensity purposes, as well as for purposes of providing corroborating testimony, under section 115-7.3 of the Code of Criminal Procedure. 725 ILCS 5/115-7.3 (West 2022). As to whether the testimony of the two witnesses was internally consistent, the State submits that such discrepancies were a matter for the jury in weighing the credibility of the witnesses and their testimony and do not affect admissibility. *Donoho*, 204 Ill.2d at 185.

C. The acts alleged by J.J. and A.H. were sufficiently similar to warrant admission under section 115-7.3 and the two-to-eight-year lapse in time between the offenses was not sufficient to render the trial court's decision to allow the testimony an abuse of discretion.

Defendant next contends that the trial court erred by allowing defendant's daughter, A.H., to testify about uncharged conduct lacking temporal proximity to and was substantially different from the charged offenses. (Def.'s Br. at 28-29) Specifically, defendant argues that A.H.'s testimony involved allegations of conduct that happened after the charged offenses and was, therefore, highly prejudicial. (Def.'s Br. at 29)

A.H. testified that she was defendant's daughter and that she was born on April 12, 2002. (R. 1934) A.H.'s first memory of being sexually abused by defendant was when she was "touched vaginally in the bathtub." (R. 1938) One of her next memories was being in her parent's bedroom and defendant penetrating her anally with his penis. (R. 1938) A.H. testified that this incident happened at Evelyn's house in Mound City when she was approximately six or seven years old. (R. 1939) Thus, the acts alleged by A.H. occurred in approximately 2008 and A.H. was removed from her parent's custody by DCFS in 2010 when she was eight years old. Counts I and II in this case alleged acts

occurring during April of 2000 and Count III alleged acts occurring between October of 2005 and October of 2006. (C. 1251-52) The acts alleged by A.H., therefore, occurred between two and eight years after the offenses charged in the present case.

In *Donoho*, the Court addressed the issue of the lapse of time between prior offenses and the charged crime and noted its previous decisions holding that "'admissibility of other-crimes evidence should not, and indeed cannot, be controlled solely by the number of years that have elapsed between the prior offense and the crime charged.'" *Donoho*, 204 Ill.2d at 183. The lapse in time should be considered, instead, on a case-by-case basis and, therefore, the Court "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. Rather, courts should consider the proximity in time when weighing the probative value of the evidence. *Id.* The other-crime evidence at issue in *Donoho* took place 12 to 15 years before the conduct alleged in that case. *Id.* In evaluating whether the trial court abused its discretion by allowing the evidence, the Court found that "while the passage of 12 to 15 years since the prior offense may lessen its probative value, standing alone it is insufficient to compel a finding that the trial court abused its discretion by admitting evidence about it." *Id.* at 184. Thus, under the holding in *Donoho*, that two to eight years lapsed between the other crimes conduct and the alleged offenses is not a sufficient basis to find the trial court's decision to allow A.H.'s testimony an abuse of discretion. *Id.*

Defendant also alleges that the other crimes testimony by A.H. did not possess the necessary threshold similarity to the charged offense to warrant its admission. (Def.'s Br. at 29) Where other-crimes evidence is not being offered as evidence of *modus operandi*, "'mere general areas of similarity will suffice' to support admissibility." *Donoho*, 204 Ill.2d at 184, quoting *Illgen*, 145 Ill.2d at 372-73. "The existence of some differences between the prior offense and the current charge does not

defeat admissibility because no two independent crimes are identical." *Id.*, quoting *Illgen*, 145 Ill.2d at 373.

Defendant argues that A.H.'s testimony was dissimilar to J.J.'s in that defendant, J.J., and P.H. were siblings and grew up in the same home whereas A.H. was defendant's daughter and "did not grow up with any of the other witnesses." (Def.'s Br. at 29) This distinction is utterly meaningless. The fact that A.H. did not grow up with the other witnesses has no bearing whatsoever on whether A.H. and the other witnesses suffered similar abuse at the hands of defendant. Defendant also notes that he was "only 12 years old at the time of the first two incidents [J.J.] described" while he was an adult at the time of the acts alleged by A.H. (Def.'s Br. at 29) This, too, is meaningless given that J.J. and A.H. both testified that defendant began abusing them around the age of four years old; thus, the victims were of the same age at the time the abuse began. See *Donoho*, 204 Ill.2d at 185 (finding sufficient similarity among victims ranging from 7 to 11 years old.) Defendant's own age at the time of the offense does not dispense with the similarities between his victims.

Defendant also argues that, "while A.H. and P.H. testified about numerous acts of anal penetration, none of the charges alleged sexual contact between Hinman and J.J.'s anus." (Def.'s Br. at 30) While it is true that the charging instrument did not specify anal penetration, J.J. testified that during the incident alleged in Count II, defendant told her that "since [she] didn't do what he had asked [her] to do that he was going to put it inside of [her]" and that he would either put it in her butt or in her vagina. (R. 1791) J.J. responded to defendant's statement by saying, "Please don't put it in my butt." (R. 1791-92) A.H. testified that, during one incident, defendant gave her a choice between vaginal or anal penetration. (R. 1942) These instances, while not being perfectly alike, bear sufficient similarities to warrant admission under section 115-7.3. See *Donoho*, 204 Ill.2d at 184.

Additional similarities not discussed in defendant's brief include, for example, that: both victims were in defendant's care at the time of the abuse, J.J. as defendant's younger sister and A.H. as defendant's daughter, (R. 1776-77, 1934, 1936); both victims described instances of group sex at defendant's direction, (R. 1785, 1943-48); both victims described the abuse taking place at Evelyn's house in Mound City, (R. 1782, 1785, 1939, 1943-44); and both victims were blood relatives of defendant.

The State submits that the acts alleged by J.J. and A.H. were sufficiently similar to warrant inclusion under section 115-7.3 and, as such, the trial court did not err in allowing the testimony.

D. The other-crimes evidence offered at defendant's trial was not unfairly prejudicial.

Defendant lastly recapitulates his previous arguments in challenging the other-crimes testimony as a whole on the basis that the evidence was overly prejudicial and its admission at trial was error. (Def.'s Br. at 31) Defendant's argument is without merit. The State notes that the issues raised in defendant's sub-argument (D) touch on many issues already raised and addressed in other portions of defendant's brief. For purposes of brevity, the State incorporates its previous arguments in the three preceding sub-arguments to the extent that the issues have already been discussed.

Defendant argues that, because he did not confess and his conviction rested on the credibility of the witnesses, "the jury could have used testimony about uncharged conduct to bolster J.J.'s testimony concerning the actual charges." (Def.'s Br. at 31-32) These concerns are not uncommon in sex offense cases. Our legislature, in enacting section 115-7.3, acknowledged the serious nature of sex offenses and allowed the use of other-crimes evidence "to protect society against sex offenders who have a propensity to repeat their crimes." *Donoho*, 204 Ill.2d at 174. Stated differently, the need to protect society against recidivism by sex offenders called for a change in the common law

prohibition against the admission of other crimes evidence to specifically allow for its use in establishing propensity. *Id.* The concerns of undue prejudice are tempered by the inclusion of specific factors that a trial court should consider in determining whether other-crimes evidence should be admitted in a given case. 725 ILCS 5/115-7.3(c) (West 2022).

Recognizing the need to protect against the potential for unfair prejudice, the Supreme Court has cautioned trial courts to carefully consider admissibility "by engaging in a meaningful assessment of the probative value versus the prejudicial impact of the evidence." *Donoho*, 204 Ill.2d at 186. Thus, where sex offense cases by their very nature are prone to present credibility contests, the safeguards that attend the procedure for admitting such evidence enable the trial court to carefully consider these concerns and, absent a finding that the trial court abused its discretion in allowing the evidence, the trial court's decision will not be reversed. *Id.*

Here, defendant's claims as to the minor, meaningless differences between some portions of the testimony provided by J.J., J.H., P.H., and A.H. simply do not amount to an abuse of discretion in the trial court's decision to admit the testimony. For example, defendant argues that "J.J. could not recall many details about the charged offenses, including when and how they occurred." (Def.'s Br. at 31) While defendant argues that J.J.'s memory of abuse inflicted on her while she was a young child was less than perfect is grounds to find that the testimony should not have been allowed, the State submits that it is more appropriately viewed as a circumstance common among abused children and a primary motivation behind the passage of the very legislation allowing the State to provide such evidence. That is, our legislature recognized the need for propensity evidence in cases of this kind and, in passing section 115-7.3, allowed such evidence to be offered for that very purpose. *Donoho*, 204 Ill.2d at 174 ("This

acknowledgment of recidivism by sex offenders explains why the legislature chose to change the common law rule in this narrow class of crimes.")

Defendant is also incorrect that the other-crimes evidence in this case became a trial-within-a-trial. Defendant argues that the jury heard testimony from one witness regarding the charged offenses, but three witnesses regarding uncharged conduct. (Def.'s Br. at 32) Defendant's argument states the obvious -- there was only one victim to the charged offenses and, as such, it stands to reason that the jury would only hear from one victim about the acts alleged in the charge. By contrast, the charged offenses in this case encompassed conduct that defendant had subjected other members of his family to and, by their testimony, those family members provided evidence that collectively established defendant's propensity to commit the alleged misconduct thereby corroborating J.J.'s testimony. That is precisely the reason such evidence is allowed; because sex offenders have the propensity to repeat their crimes and the inclusion of evidence of the same "promotes effective prosecution of sex offenses and strengthens evidence in sexual abuse cases." *People v. Dabbs*, 239 Ill.2d 277, 293 (2010), quoting *Donoho*, 204 Ill.2d at 178. Thus, that the testimony of the other-crimes witnesses in this case may have bolstered J.J.'s testimony was one of the very reasons that such evidence is allowed.

The testimony of the other-crimes witnesses in this case also did not rise to the level of undue prejudice and the other-crimes evidence was properly admitted. Accordingly, the State requests that this court affirm the trial court's decision to allow the testimony.

III

THE TRIAL COURT SUFFICIENTLY CONSIDERED THE MITIGATING FACTORS THAT MUST BE CONSIDERED WHEN IMPOSING A SENTENCE ON AN OFFENDER WHO WAS UNDER THE AGE OF 18 AT THE TIME OF THE OFFENSE AND ITS FINDING THAT THOSE FACTORS WERE OUTWEIGHED BY THE FACTS OF THIS CASE DID NOT CONSTITUTE A REFUSAL TO CONSIDER THOSE FACTORS.

STANDARD OF REVIEW

Where a defendant challenges the trial court's assessment of the weight to assign to statutory factors in mitigation and aggravation, the reviewing courts applies a deferential standard of review. *People v. Reyes*, 2023 IL App (2d) 210423, ¶ 37. "A reviewing court will not alter a defendant's sentence without a finding of abuse of discretion by the circuit court." *People v. Marks*, 2023 IL App (3d) 200445, ¶ 56. "There is no abuse of discretion 'unless [the sentence] is manifestly disproportionate to the nature of the offense.'" *Id.*, quoting *People v. Franks*, 292 Ill.App.3d 776, 779 (3d Dist. 1997). A *de novo* standard applies where the issue on appeal questions whether the sentencing court correctly interpreted the statutory factors or relied on improper factors. *Reyes*, 2023 IL App (2d) 210423, ¶ 37.

ANALYSIS

Defendant was convicted on two counts of predatory criminal sexual assault of a child, 720 LCS 5/11-1.40, and one count of criminal sexual assault, 720 ILCS 5/11-1.20. (C. 1240) The trial court sentenced defendant to 20 years in prison on Count I, 25 years in prison on Count II, and 10 years in prison on Count III, all served consecutively for a total of 55 years in prison. (C. 1240) In his third issue, defendant contends that the sentencing court failed to consider the sentencing factors applicable to individuals who were under the age of 18 at the time of the offense when imposing

his sentence. (Def.'s Br. at 33) Defendant's contention is without merit; the record plainly establishes that the trial court considered defendant's age and the applicable sentencing factors when determining an appropriate sentence.

In *Miller v. Alabama*, 567 U.S. 460 (2012), the United States Supreme Court recognized that juvenile offenders "are constitutionally different from adults for purposes of sentencing" and held that the Eighth Amendment to the United States Constitution "forbids a sentencing scheme that mandates life in prison without possibility of parole for juvenile offenders." *Miller*, 567 U.S. at 471, 479 (2012). This is so because a sentencing scheme that imposes a mandatory life sentence prevents a sentencing court from considering youth and its attendant characteristics when fashioning an appropriate sentence and, therefore, "poses too great a risk of disproportionate punishment." *Id.* at 476, 479. In *Montgomery v. Louisiana*, 577 U.S. 190 (2016), the Court reiterated the *Miller* principles and emphasized that sentences of life imprisonment were reserved "the rarest of juvenile offenders, those whose crimes reflect permanent incorrigibility." *Montgomery*, 577 U.S. at 209.

The Illinois Supreme Court recognized that the *Miller* holding "was not a categorical prohibition of life-without-parole sentences" but instead, "required that life-without-parole sentences be based on judicial discretion rather than statutory mandates." *Reyes*, 2016 IL 119271, ¶ 4, citing *Miller*, 567 U.S. at 479-80. There, addressing the question of whether *Miller* also applies to *de facto* life sentences, the Court explained that "[a] mandatory term-of-years sentence that cannot be served in one lifetime has the same practical effect on a juvenile defendant's life as would an actual mandatory sentence of life without parole" and held that such a sentence may not be imposed on a juvenile offender "without first considering in mitigation his youth, immaturity, and potential for rehabilitation." *Reyes*, 2016 IL 119271, ¶ 9. The Court subsequently announced that a sentence of more than 40 years in prison imposed

on a juvenile offender constitutes a *de facto* life sentence and that such a sentence requires the sentencing court to consider the factors set forth in *Miller*. *People v. Buffer*, 2019 IL 122327, ¶ 41.

The features of youth that a sentencing court must consider were codified in the Illinois Code of Corrections in 2016 which provides that when an individual was under the age of 18 at the time of the commission of the offense, the sentencing court must consider additional factors in mitigation in determining an appropriate sentence. 730 ILCS 5/5-4.5-105(a) (West 2022); *Reyes*, 2016 IL 119271, ¶ 11.

> The factors enumerated in the statute are:
>
> (1) the person's age, impetuosity, and level of maturity at the time of the offense, including the ability to consider risks and consequences of behavior, and the presence of cognitive or developmental disability, or both, if any;
>
> (2) whether the person was subjected to outside pressure, including peer pressure, familial pressure, or negative influences;
>
> (3) the person's family, home environment, educational and social background, including any history of parental neglect, physical abuse, or other childhood trauma;
>
> (4) the person's potential for rehabilitation or evidence of rehabilitation, or both;
>
> (5) the circumstances of the offense;
>
> (6) the person's degree of participation and specific role in the offense, including the level of planning by the defendant before the offense;
>
> (7) whether the person was able to meaningfully participate in his or her defense;
>
> (8) the person's prior juvenile or criminal history; and
>
> (9) any other information the court finds relevant and reliable, including an expression of remorse, if appropriate. However, if the person, on advice of counsel chooses not to make a statement, the court shall not consider a lack of an expression of remorse as an aggravating factor. [730 ILCS 5/5-4.5-105(a) (West 2022)].

Under this framework, a defendant alleging that his sentence failed to comply with the requirements of *Miller* and its progeny must show that he was subject to a life sentence,

mandatory or discretionary, natural or *de facto*, and that the sentencing court failed to consider youth and its attendant characteristics in imposing the sentence. *Buffer*, 2019 IL 122327, ¶ 27. No single factor is dispositive; a reviewing court examines the proceedings and considers whether "the trial court made an informed decision based on the totality of the circumstances that the defendant was incorrigible and a life sentence was appropriate." *People v. Lusby*, 2020 IL 124046, ¶ 35. It is important to note that, while such sentences are reserved for only those offenders who are determined to be permanently incorrigible, the trial court is not required to make an explicit finding of incorrigibility or explain its sentencing considerations implicitly finding the defendant permanently incorrigible. *People v. Wilson*, 2023 IL 127666, ¶ 34. Such "on-the-record sentencing explanation was 'not necessary to ensure that a sentencer considers a defendant's youth,'" because "'if the sentencer has discretion to consider the defendant's youth, the sentencer necessaril *will* consider the defendant's youth, especially if defense counsel advances an argument based on the defendant's youth.'" (Emphasis in original.) *Wilson*, 2023 IL 127666, ¶ 36, quoting *Jones v. Mississippi*, 141 S.Ct. 1307, 1319 (Apr. 22, 2021). A state's discretionary sentencing scheme satisfies, on its own, *Miller's* requirement that a sentencing court consider youth and its attendant circumstances "unless a sentencing court 'expressly refuses as a matter of law to consider the defendant's youth (as opposed to, for example, deeming the defendant's youth to be outweighed by other factors or deeming the defendant's youth to be an insufficient reason to support a lesser sentence under the facts of the case)'". *Wilson*, 2023 IL 127666, ¶ 38, quoting *Jones*, 141 S.Ct. at 1320 n.7.

At defendant's sentencing hearing in the present case, the State asked the trial court to take judicial notice of the trial testimony of defendant's two sisters, J.H. and P.H., and defendant's daughter, A.H. (R. 2552) J.J. and J.H. read their victim impact statements in court. (R. 2553-67) The State requested the maximum sentence for each

count, for a total of 75 years in prison. (R. 2574) In addition to a sentence, the State requested orders of protection for J.J. and J.H. and their families allowing protection for their entire households for a period extending until two years after the mandatory supervised release period. (R. 2571-72) The State further requested that the court impose a $12,000 fine plus court costs and mandatory fines. (R. 2572-73)

Defense requested the minimum sentence of 16 years in prison. (R. 2577) In mitigation, counsel argued that defendant's criminal conduct did not cause or threaten serious physical harm in that there was no medical testimony as to physical damage, and that defendant did not contemplate that his conduct would cause or threaten serious physical harm because he was only 17 years old at the time he committed two of the offenses. (R. 2578-79) Counsel further argued that, since *Miller* was decided, a "flurry of scientific evidence" showed that the brains of adolescents are not fully developed and lacks the ability to control impulses or resist the tendency to be persuaded by peers and their surroundings. (R. 2579) Counsel emphasized that while defendant was, at the time of sentencing, 39 years old, he was only 17 at the time of the offense in Counts I and II. (R. 2580)

Counsel also argued that defendant had no felony convictions in his history and that whatever may have happened since that time should not be considered. (R. 2580-81) Counsel referenced defendant's PSI and noted that there was some "pretty rough stuff" such as that defendant was raised by a mother who had been married ten times and was , therefore, not likely "parenting to the top of her ability". (R. 2581-82) Counsel pointed out that defendant was left to care for his siblings which was not his job, that he was placed in foster care and moved a lot even when he was not in foster care, and that these things made it difficult for him to connect with other people. (R. 2582) Counsel also noted that defendant was exposed to domestic violence in that his mother was "beating up on all of her husbands" which was a unique circumstance

given it was a female who was the aggressor in that instance. (R. 2583) Counsel further pointed out the portion of defendant's PSI that indicates one instance in which one of his mother's husbands stabbed himself in the chest in an attempt to kill himself, which would have been traumatic for defendant to witness. (R. 2583) Despite the circumstances, however, defendant considered his upbringing to be normal which, counsel argued, was indicative of his being a victim himself. (R. 2583-84) Counsel added that, despite his upbringing, defendant was a productive member of society, had maintained gainful employment, and obtained his GED after dropping out of high school. (R. 2586) Counsel re-emphasized that defendant was 17 at the time of the offense and that, under *Miller*, he should not be sentenced to life given his upbringing in a culture of multi-general sexual abuse. (R. 2589)

Defendant's PSI included a large volume of case reports from child protective agencies in various states which, in sum, established that defendant had 12 biological children and 2 step children, none of which he had relationships with either due to being absent from their lives or, in the case of the nine youngest children, having his parental rights terminated. (CI. 9, 11, 127-28, 141-42, 178-179, 188-92, 203-04, 209-11, 218-28, 286-96, 299-301) Defendant also admitted to being "mean" and "abusive" toward his children and would leave bruises when "whipping them" as well as "leaving them bloody at times." (CI. 123) Defendant's daughter, A.H., while in protective custody, disclosed that she and her sister, K.H., had been sexually abused by defendant and that defendant forced their mother, Mindy, to participate in the abuse. (CI. 114) On November 15, 2013, in Pulaski County, Illinois, defendant was charged with four counts of predatory criminal sexual assault of a child against his daughter, A.H., in case number 13-CF-94. (CI. 50) Defendant's sex offender evaluation resulted in a finding that he has been a danger to society and that his presence around children was deemed "a dangerous situation." (CI. 13; 125)

Defendant's PSI also included reports of domestic violence and defendant admitted in his interview that when he learned that his wife, Mindy, had an affair with his brother, he choked her until she stopped breathing and defecated on herself. (CI. 117) Mindy was pregnant at the time of the incident. (CI. 117) Defendant's PSI also included case reports involving allegations of sexual abuse against several of his younger siblings in Illinois and in other states and, in his sex offender evaluation, defendant admitted that he had abused each of his sisters and "that when he was 13-15 he 'regularly molested [his] younger sisters.'" (CI. 122)

In announcing defendant's sentence, the trial court stated that it had considered the evidence presented at trial, defendant's PSI, the Victim Impact Statements, arguments of counsel, defendant's statement in allocution and letters of support, and possible sentencing alternatives. (R. 2592) The court indicated that it found defendant to be intelligent and noted that his siblings were as well, but pointed out the differences between the paths victims take, noting that defendant's siblings had "tried to set their compass on a route to normalcy in their li[ves]" which was different than the path than defendant had taken and noted that the very first indication of any emotion from defendant came during sentencing. (R. 2594-95) The court commended defense counsel for addressing *Miller* in giving her sentencing recommendation and respected the argument that counsel made in regard to defendant's age at the time of the offense, and stated that it believed defendant's sentence would pass the *Miller* test. (R. 2598) The court found no factors in mitigation. (R. 2599-2603) In mitigation, the court stated that it would not find the first factor, as to physical harm, in mitigation because even if defendant's conduct did not cause physical harm it did threaten it given that "a 17-year old young man is a lot bigger than a little girl." (R. 2599-2600) The court found that there was no provocation and, as to grounds tending to excuse or justify defendant's conduct, the court stated that the only thing that might come close would be

defendant's age but could not find that as a mitigating factor. (R. 2600) The court found that defendant's conduct was not induced or facilitated by someone else or that defendant compensated his victim for the damage of injury caused by his criminal conduct. (R. 2600) The court could not find that defendant had no criminal background even though there were no felony convictions and could not find that defendant's conduct was the result of circumstances unlikely to recur. (R. 2601-02) As to the factor regarding whether defendant's character and attitude indicated that he is unlikely to re-offend, the court found that defendant did not show remorse and that defendant appeared to believe that he was "the one who's being put upon" and that, being family, "we should all forgive and forget" and just move on. (R. 2603)

In aggravation, the court found that defendant's conduct threatened, if not caused, physical harm and that a sentence was necessary to deter others from committing the same crime. (R. 2604) The court then sentenced defendant to 20 years in prison on Count I, 25 years in prison on Count II, and 10 years in prison on Count III, all to be served consecutively for a total of 55 years in prison. (R. 2605-06)

Defendant filed a motion to reconsider sentence alleging that "the Court failed to fully consider his age at the time of the offenses (17 for Counts I and II and early 20s for Count III), and failed to acknowledge his lack of a criminal history at the time the offenses occurred." (C. 1244) As to defendant's age, because he would be nearly 90 years old when he is eligible for release, his sentence violated *Miller* and, because defendant's criminal history consisted of offenses occurring after the commission of the offenses in the present case, the court should have found a lack of criminal history as a mitigating factor. (C. 1245) At the hearing on defendant's motion, defense counsel argued that the biggest point of contention as to resentencing was the trial court's consideration of defendant's criminal history where, at the time of the offenses, "[h]e had absolutely no criminal history at all." (R. 2614) Defense counsel acknowledged that

the trial court noted that defendant's criminal history was much less than that seen in many cases but "declined to find a factor in mitigation based on criminal history." (R. 2615)

In response, the State argued that the court heard arguments regarding *Miller* and defendant's age at the sentencing hearing and that the court had considered those points in fashioning the sentence. (C. 1261) As to defendant's claim that defendant's criminal history consisted of offenses occurring after the offenses in this case, the State argued that other-crimes testimony was offered to the court where the State requested that the trial court take judicial notice of the testimony from the State's other-crimes witnesses for purposes of sentencing and that those acts could be considered at sentencing despite defendant not being convicted for them. (C. 1261) Included among those acts were sexual offenses against the victim, J.J., as well as P.H. and J.H., who testified that they suffered sexual abuse at the hands of defendant as early as 1994. (R. 2616)

The court indicated that, at the sentencing hearing, it believed that it had actually reduced the sentence it originally intended to impose after arguments on defendant's criminal background. (R. 2619) As to the *Miller* issue, the court stated that *Miller* requires consideration of chronological age "along with any evidence that he was particularly immature, impetuous * * * or unable to appreciate the risks and consequences" and that it found no evidence that defendant was particularly immature. (R. 2620) The court further stated that the proof in this case demonstrated that defendant did appreciate the risks and consequences where he conducted the acts in secret or that he did his best to hide his conduct "and to cause his victims to hide that sexual activity". (R. 2621) The court found that, with regard to the family and home environment, this case involved evidence related to defendant's own proclivities. (R. 2622) As to the degree of defendant's participation in the offense was the result of

pressure from peers of family members, the court found specifically that there was no evidence to support that any peer or familial pressure played a role in defendant's conduct and, instead, that defendant "acted on his own impulses." (R. 2622) As to whether defendant was able to deal with police, prosecutors, and his defense counsel, the court found that it did not apply because defendant was an adult at the time he engaged with the court system in regard to this case. (R. 2622-23) And finally, with regard to defendant's potential for rehabilitation, the court specifically noted that in the decades that passed since the time of this offense, defendant has shown no signs of potential rehabilitation or that any had taken place and that defendant had shown no signs of remorse. (R. 2623-24) Accordingly, the court found that none of the *Miller* factors applied to the degree that it would make a difference in defendant's sentence and denied defendant's motion to reconsider sentence. (R. 2624)

In his argument on appeal, defendant acknowledges that the trial court specifically noted that it had considered defendant's age of 17 at the time of the offense but nonetheless argues that the trial court declined to consider the same because the trial court did not find that his age mitigated his conduct. (Def.'s Br. at 36) Defendant's argument misapprehends what *Miller* requires and, importantly, what it does not. *Miller* requires a sentencing court to consider each factor -- it does not require a sentencing court to find that because an offender was 17 years old he is automatically entitled to a lenient sentence.

Similarly, defendant's argument that "the court showed no consideration of [his] abnormal childhood as a mitigating circumstance" (Def.'s br. at 36) ignores both counsel's extensive argument about defendant's childhood and the following portion of the trial court's pronouncement in which the trial court emphasized in detail how abnormal it found the circumstances of defendant's childhood to be, stating "There's just nothing about it that's normal or has ever been normal or continues to be normal."

(R. 2593) There is no question that the court considered the circumstances of defendant's childhood.

Likewise, defendant's argument that the trial court failed to consider the risks and consequences of his behavior ignores the trial court's explicit pronouncement that, based on the evidence presented in this case, defendant did appreciate the risks and consequences where he both committed his criminal acts in secret and caused his victims to hide the sexual activity. (R. 2621) Defendant's argument that the court failed to consider whether defendant suffered from any cognitive or developmental disabilities ignores, again, the trial court's explicit finding that defendant was an intelligent man. (R. 2595) Defendant's argument that the trial court failed to consider the degree of defendant's participation and planning ignores the trial court's express finding that "there's no evidence to show that any peer pressure or familial pressure played a role" and that defendant "acted on his own impulses." (R. 2622) Defendant is also incorrect that the court did not consider his rehabilitative potential where it found specifically that it did not find any potential for rehabilitation and that, while decades had passed since the time defendant committed the offenses, there was no evidence that any rehabilitation had taken place at all. (R. 2606-07, 2623) The court also specifically noted that it found, "even with the defendant's allocution, zero evidence of remorse." (R. 2623) And finally, defendant's argument that the trial court did not consider defendant's criminal history ignores that: first, the trial court specifically indicated that, while defendant had no "recorded criminal history" there was other-crimes evidence presented in the testimony of defendant's other siblings and daughter (R. 2618); and second, that the court stated that based on defendant's lack of criminal history, it "believe[d] that [it] sentenced him to less than [it] was going to to begin with". (R. 2618-19)

Defendant further argues that the sentencing court declared consideration of the *Miller* factors to be unnecessary. (Def.'s Br. at 38) The trial court stated as follows at the conclusion of defendant's sentencing hearing:

> [COURT]: * * * I want to be clear that I have considered the fact that [defendant] was 17 at the time. And that having heard the trial evidence, reviewed the PSI, the Victim Impact Statement and having considered the factors in aggravation and mitigation, I believe that it overcomes any of what was associated with the new Miller v. Alabama standards. [R. 2606]

As stated above, the United States and Illinois supreme courts have both recognized that the discretionary nature of a sentencing scheme satisfies *Miller's* requirements,

> ...unless a sentencing court "expressly refuses as a matter of law to consider the defendant's youth (as opposed to, for example, deeming the defendant's youth to be outweighed by other factors or deeming the defendant's youth to be an insufficient reason to support a lesser sentence under the facts of the case)". *Wilson*, 2023 IL 127666, ¶ 38, quoting *Jones*, 141 S.Ct. at 1320 n.7.

The State submits that the trial court's finding that defendant's youth and attendant circumstances were outweighed by other factors and insufficient to support a more lenient sentence under the facts of this case does not constitute a refusal to consider the *Miller* factors. The record plainly establishes that the sentencing court gave due consideration of defendant's youth and its attendant circumstances and found that none of defendant's conduct was mitigated by his young age which is all that is required under *Miller*. The State further submits that, based on the information presented to the sentencing court and the testimony and evidence presented at trial, the sentence imposed in this case was appropriate and does not demonstrate an abuse of discretion on the part of the sentencing court. Accordingly, the State requests that this court affirm defendant's sentence.

CONCLUSION

For the foregoing reasons, the People urge that this court affirm defendant's conviction and sentence.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 44 pages.

/s/ Jamie L. Bellah

NO. 5-22-0627

IN THE

APPELLATE COURT OF THE STATE OF ILLINOIS

FIFTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court
	)	of the 1st Judicial Circuit
Plaintiff-Appellee,	)	Pulaski County, Illinois
	)	
v.	)	No. 21-CF-21
	)	
JARED WADE HINMAN, SR.,	)	Honorable
	)	Jeffrey B. Farris
Defendant-Appellant.	)	Judge Presiding

NOTICE OF FILING

TO: Office of the State
Appellate Defender
909 Water Tower Circle
Mt. Vernon, Illinois 62864
5thdistrict.eserve@osad.state.il.us

PLEASE TAKE NOTICE that I have this 9th day of June, 2023, caused to be filed electronically in the office of the Clerk of the Appellate Court of Illinois, Fifth Judicial District, the Plaintiff-Appellee's Brief and Argument in the above-entitled cause and hereby serve defense counsel through e-file service.

/s/ Jamie L. Bellah
For the State's Attorney

STATE OF ILLINOIS)
) SS.
COUNTY OF LASALLE)

CERTIFICATE OF SERVICE

Upon electronic filing of this brief, the undersigned deposes and states that on this 9th day of June, 2023, a copy of the foregoing brief, which complies with the Appellate Court's Electronic Filing User Manual, will be e-served upon the person(s) listed above through the Illinois Court's e-service program.

/s/ Jamie L. Bellah

Additional material from this filing is available in the Clerk's Office.