2017 IL App (2d) 160478-U
No. 2-16-0478
Order filed June 27, 2017

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. LUIS H. REY, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Boone County. No. 12-CF-44 Honorable C. Robert Tobin, III, Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court.
Justices McLaren and Hutchinson concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not err in: (1) denying defendant's motion to declare section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2014)) unconstitutional; (2) admitting other-crimes evidence under section 115-7.3; (3) sustaining the State's objections to certain questions posed during cross-examination; or (4) sentencing defendant. Affirmed.

¶ 2 After a jury trial, defendant, Luis H. Rey, was convicted of three counts of aggravated criminal sexual assault (720 ILCS 5/11-1.30(a)(1), (b)(1) (West 2000)). The trial court sentenced defendant to consecutive terms of 14 years' (count I) and 6 years' (count II) imprisonment (the third count merged with the first).

¶ 3 On appeal, defendant raises four overarching issues. First, defendant contends that the trial court erred in denying his motion, alleging that section 115-7.3 of the Code of Criminal Procedure of 1963 (Code) is unconstitutional (725 ILCS 5/115-7.3 (West 2014)). Second, defendant argues that the court abused its discretion in admitting other-crimes evidence under section 115-7.3 of the Code. Third, defendant argues that the court denied him the right to confront witnesses by sustaining the State's objections to certain questions he posed on cross-examination. Fourth, defendant argues that court improperly considered an aggravating factor in deriving its sentence and, further, that it failed to consider mitigating factors. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 When the initial indictment was filed on March 15, 2012, defendant (born December 9, 1985) was 26 years old. The amended indictment alleged that, between December 10, 2000, and July 21, 2002 (*i.e.*, when defendant was 15 to 16 years old), he displayed a knife and placed his finger into B.C.'s vagina and placed his penis in her mouth. At the time of the indictment, B.C. (born May 3, 1993), was 18 years old. The charges in the indictment reflected her to be seven to nine years old at the time of the offense.

¶ 6 A. Section 115-7.3 Other-Crimes

¶ 7 The State notified defendant that it intended to introduce evidence of other crimes under section 115-7.3 of the Code. On July 20, 2012, defendant moved the court to declare the statute unconstitutional on multiple bases, including that it violated the separation-of-powers doctrine and was vague in its application. The court heard oral argument and on, September 13, 2012, issued a written decision, denying defendant's motion. As to defendant's separation-of-powers argument, the court found that the supreme court expressly granted the legislature the power to

enact evidentiary rules via statute and, further, that section 115-7.3 does not conflict with Illinois Rule of Evidence 404 (eff. Jan. 1, 2011) or a supreme court decision. As to defendant's vagueness argument, the court determined that section 115-7.3 requires that a court weigh the probative value of other-crimes evidence against its prejudicial effect and, further, that the statute provides factors to consider in doing so: the proximity in time to the charged offense; the degree of factual similarity to the charged offense; and any other relevant facts and circumstances. See 725 ILCS 5/115-7.3(c) (West 2012). The court concluded that the balancing test and enumerated factors rendered the statute sufficiently definite so as to preclude arbitrary application.

¶ 8 On March 11, 2013, the court held a section 115-7.3 hearing. R.S., age 21 at the hearing, testified that he was born on June 9, 1991. For two months in the year 2000, when he was around nine years old and in the second grade, he and his mother moved in with defendant's family. R.S. testified that, during that time, defendant touched him inappropriately on two occasions. First, one day in the afternoon, they were home alone and defendant called R.S. into the second-floor bathroom. Defendant was older than R.S. and "much bigger" than him in size. Defendant told R.S. to take off his clothes; when R.S. refused, defendant helped him. Defendant took off his own clothes and, when he and R.S. were both naked, defendant laid down in the tub. Defendant told R.S. to put defendant's penis in his mouth and, when R.S. refused, defendant put his hand behind R.S.'s head and forced R.S.'s head down. He told R.S. he was giving oral sex incorrectly, and defendant put R.S.'s penis into his own mouth to show him how to do it. Defendant got frustrated and turned R.S. over. He placed his penis inside R.S.'s anus. When R.S. said that it hurt, defendant pushed in harder. Defendant's arm was behind R.S.'s head, which rested against the bathtub. R.S. cried, and defendant continued. Eventually, defendant stopped and put on his clothes. Defendant told R.S. not to tell anyone and then he left the

bathroom. R.S. remained lying in the bathtub crying for around one hour. R.S. did not tell his mom what had happened because he was afraid of defendant.

¶ 9 Second, R.S. testified that, around one week later, defendant touched him inappropriately in defendant's bedroom. R.S. described defendant's bedroom and explained that he was sleeping on a blanket on the floor, while the adults in the household were downstairs in the living room. Defendant told R.S. that he wanted to play a game. Although R.S. told defendant that he did not want to play, defendant came up behind him, pulled down his pants, and inserted his penis into R.S.'s anus. R.S. said stop, because it hurt, started crying, and called for his mom. R.S. testified that defendant pushed his head into the pillow, and R.S. tried pulling himself forward, trying to reach for the door handle. Defendant continued. At some point, defendant's mother came into the room. R.S. was still on the floor with defendant on top of him. Defendant ran back to his bed. Defendant's mother picked up R.S., pulled his pants up, and brought him to another room. She asked him what happened. He did not tell her "because she had to see and it was pretty obvious." R.S. said "something happened," but he was crying a lot. Defendant's mother left, and R.S. cried himself to sleep. He did not tell his mother what happened. The first time he ever told anyone was three years later, when, in fourth or fifth grade, he told his counselor. R.S. testified that he first told his mom when he was in fifth grade. "I didn't tell her much though." Finally, he next told his counselor in middle school.

¶ 10 At the hearing, B.C. testified to multiple events that occurred when she was between ages three and seven. B.C. explained that her family was close friends with defendant's family, who lived nearby, and that there were get-togethers between the families "all the time." Her family was also friends with R.S.'s family. Defendant initially lived down the street from B.C. The first sexual encounter that B.C. recalled occurred when she was three or four years old

(depending on the dates, defendant would have been between 10 and 12 years old). She and defendant were both at Gerald Osborn's house. Osborn also lived in B.C.'s neighborhood and was older than her. B.C. was in Osborn's bedroom with defendant and Osborn. They pushed B.C. onto her back on a black futon and blindfolded her with a black bandana. They took off her pants and put their fingers in her vagina. She testified that it hurt, and she tried to get away and told them to stop, but they did not. Afterwards, they made her smell their fingers and they told her that they "smelled like pee." They next put something else inside of her vagina and she recalled "hurting all over." When they later took off the blindfold, she saw a plastic cooking spoon. B.C. was bleeding, and defendant and Osborn put a sanitary pad in her underwear and told her that, when the bleeding stopped, she should throw it away before she went home. They told her not to tell anyone. B.C. threw away the pad before she went home. However, she testified that, when she arrived home, she told her father and showed him her underwear because she was bleeding again. According to B.C., her father said that she was not telling the truth, and he threw away the underwear.

¶ 11 The next encounter B.C. recalled also happened when she was around three or four years old at Osborn's house. This time, Osborn and defendant did not blindfold B.C., but they inserted their fingers and tongues into her vagina. It hurt badly. B.C. tried to get away, but was unable to do so. They told her not to tell anyone. B.C. did not tell anyone because she was afraid that nobody would believe her.

¶ 12 When she was around four or five years old, B.C. recalled an incident that occurred at defendant's house. In addition to defendant and Osborn being present, two of defendant's male friends were there; one had red hair and the other had glasses. They took off B.C.'s pants in an open loft area on the second floor and took turns putting their fingers inside of her vagina.

Afterwards, defendant, Osborn, and the red-headed friend made B.C. perform oral sex on them by grabbing her head and sticking their penises into her mouth. They grabbed the back of her head and moved it back and forth. B.C. gagged and tried to move away. When they stopped, B.C. got dressed and went to the bathroom and cried. She did not tell anyone about the incident.

¶ 13 Next, B.C. recalled incidents that happened at her house. B.C.'s mom ran a daycare business in their home. There was a play area for the daycare children in the basement, but B.C. had her own, separate play area in the basement. There was a door on B.C.'s play room, and the daycare children were not allowed to play in there. B.C. was not sure if defendant was one of the children that her mom would watch, but there were times during that period when he was at her house during the day. B.C. recalled an incident when defendant came into her play room, shut the door, and made her take off her pants. When she said no, he pushed and guided her down and took them off. Defendant put his fingers inside of B.C.'s vagina; he would hold her down with one arm diagonally pressing down against her chest while inserting fingers from his other hand inside of her. When he stopped, he told her to get dressed and not to tell anyone. She did not tell anyone. B.C. testified that this sort of incident occurred multiple times in her house, although she could not remember an exact number. It happened more than five times, but she did not know if it it happened more than 10 times. It was mostly the same event, except sometimes he would also make her perform oral sex and sometimes it would be just oral. B.C. testified that he never ejaculated in her mouth, and she never saw him ejaculate. Further, at some point her play room moved upstairs, as did defendant's conduct. These events all took place before her family moved to another home when she was around age seven or between kindergarten and first grade. She did not tell her parents.

¶ 14 B.C. testified that, around the same time period (*i.e.*, before first grade), defendant would have inappropriate contact with her at his house. "He would put his fingers inside of me or his penis and he also made me drink his cum." This occurred in his bedroom or the open area upstairs on more than one occasion, but she was not sure if it happened more than five times. When he placed his fingers in her vagina, it hurt. She would tell him it hurt, but he did not stop. For oral sex, she would gag and push away, but he would usually keep going. She testified she drank his semen, but he did not ejaculate in her mouth and she did not see him ejaculate in front of her. She did not know where he got the semen that he would have her drink. B.C. would spit out the semen, and defendant would laugh at her. She did not tell anyone about these events because she did not think they would believe her.

¶ 15 In September 2011, B.C. went to the Belvidere police department to make a police report. At that point in time, B.C.'s family was still friends with R.S.'s family. However, her family was no longer friends with defendant's family.

¶ 16 Over the State's objection, defendant offered the testimony of his girlfriend, Heather Hamilton, pursuant to section 115-7.3(b) of the Code ("evidence to rebut that proof [of other-crimes evidence] or an inference from that proof, may be admissible if that evidence is otherwise admissible under the rules of evidence) and may be considered for its bearing on any matter to which it is relevant."). Hamilton testified that she is 22 years old and that she and defendant had been dating almost four years. She testified that defendant listens to her and he respects her wishes and feelings. In their sexual relationship, he respects her and does not insist on sex if she does not consent. He is a gentleman who understands and respects her boundaries. Defendant has never forced his will upon her for a sexual favor or made her do something that she did not want to do.

¶ 17 On June 12, 2013, the trial court issued a written opinion, determining that the State would be allowed to present at trial the testimony of R.S. and B.C. consistent with their testimony at the section 115-7.3 hearing. The court found the evidence probative in that: (1) the incidents were not far removed in time from the charged conduct; (2) the incidents were similar to the charged conduct in that they involved oral sex and/or penetration, an age difference between defendant and the victims, as well as the relationships between families and a position of control; and (3) the sheer number of incidents was not excessive or extreme and defendant could adequately defend against them. The court determined that the probative value was not outweighed by prejudicial effect and that, if evidence on the charged offense is lacking, a factfinder would not be lured to declare guilt based simply on the other-crimes evidence.

¶ 18 In contrast, the court barred Hamilton's testimony, finding it to be of no probative value. Specifically, the court found that her testimony had no relevance to the alleged, but uncharged, conduct that occurred between 1996 and 2000, as she did not even know defendant until 2008.

¶ 19 B. Additional Pretrial Matters

¶ 20 The State moved *in limine* to admit "defendant's written admission and fingerprint evidence." The State alleged that, after R.S.'s mother, Katherine L., learned that defendant sexually assaulted R.S., she received an apology note. The note was tested, and defendant's fingerprint was identified on it. On September 2, 2015, the State produced the handwritten note that said: "Kathy I'm sorry I did that. I didn't know what was happening. I'm so sorry. It will never ever happen again. I will make sure it won't happen again. Will you ever forgive me[?] I'm so sorry it happened. Please forgive me. I'm sorry I hurt you and [R.S.]" The note is not dated.

¶ 21 The State argued that the note corroborated the other-crimes evidence concerning R.S. Defendant argued that the note was a generic apology note and could have referenced any number of events. Further, defendant noted that R.S. testified that he did not inform anyone about the abuse until three years after the events, rendering the relevance and reliability of the note questionable.

¶ 22 The court granted the State's motion to admit the note, conditioned upon the State being able to lay a proper foundation, including that, at a minimum, R.S.'s mother had reason to know that the letter was in response to the bedroom incident that defendant's mother walked in on.

¶ 23 In denying defendant's motion to reconsider, the court commented that the note would not be coming in "for bolstering, it would be coming in as, in essence, in the nature of an admission akin to a plea of guilty. Not quite with the strength as a plea of guilty but again akin to it, and I do think that's proper for purposes of that statute."

¶ 24 C. Trial

¶ 25 A jury trial commenced on September 21, 2015. The evidence reflected that, on September 17, 2011, B.C. went with her mother to the public-safety building in Belvidere and made a report of sexual assault against defendant and Gerry Osborn. B.C. testified at trial to the other-crimes evidence, consistent with her testimony at the section 115-7.3 hearing. Further, B.C. testified to the events that formed the basis of the charges. Specifically, B.C. explained that defendant would sometimes babysit her. On one of those nights, she was sitting in a living room chair watching the movie "The Parent Trap." Defendant picked her up, undressed her, and put a blue and pink sleeping mask on her as a blindfold. Defendant was holding a kitchen knife, and he told her not to tell anyone. As she was lying undressed on the floor on her back, defendant rubbed his penis all over B.C.'s body. Defendant forced his penis into her mouth and grabbed

her head. He moved her head back and forth, ejaculated in her mouth, and made her swallow by holding her mouth shut. Further, defendant put three fingers inside of B.C.'s vagina. After defendant made B.C. perform oral sex, she got dressed and went to her bedroom, "curling up and crying until my mom got home." B.C. testified that she decided in 2011 to make her report because she was reading a Jaycee Dugard book and it sparked memories, and she babysat three younger girls and knew that "things happen." Further, she has known R.S. since she was a child and knew that he was assaulted and had come forward a few years prior. She testified that she "just couldn't keep it in anymore."

¶ 26 B.C. testified that she told her father, Shawn C., twice about the abuse: after the first incident and then again around 2007, when she was a freshman in high school. She testified that she had a good relationship with her mother and that, when she made her report in 2011, her mother accompanied her to the police station for support. Defense counsel asked B.C. why she did not initially tell her mother about the abuse. She explained that she told her father, and then she did not tell her mother because she thought that no one would believe her. Counsel asked B.C. what her relationship was like with her mother, and the State objected based on relevance. After a sidebar discussion, where defense counsel argued that the questioning related to credibility, the court commented that "You can argue that a reasonable person might tell their mom, but I don't think you can infer - - you can't argue that there's a good or bad relationship there. Honestly[,] it's not relevant." B.C. repeated that she did not think that her mother would believe her, noting that her father also told her not to tell anyone. B.C. agreed that, when she did tell someone again, it was her father. At that time, she wanted to know why he did not protect her.

¶ 27 B.C.'s mother, Tina F., testified in part that, for around eight years, she ran a daycare business out of her home. She was licensed to provide daycare for up to 12 children, with one assistant to help her. The play area was in the downstairs level of their home, but B.C. had her own play room. Tina testified that, in 1993, defendant (around age eight) was a child in her daycare. Tina then became friends with defendant's mother and family. The families frequently spent a lot of time together, and they went to each other's houses "all the time." Similarly, Osborn was in Tina's daycare, and their families became friends as well. Osborn was really good friends with B.C.'s brother. Finally, Tina watched R.S. for one summer after meeting him through defendant's mother. She became friends with his family as well.

¶ 28 On cross-examination, Tina testified that she never witnessed any inappropriate contact between defendant and B.C. Tina was not sure whether she noticed B.C. acting oddly when she would come home after B.C. spent time with defendant. She explained there was a period when she was going through a "nasty divorce" and "all kinds of things" were going on. B.C. was sick a lot. Tina let defendant babysit B.C. because he was like family to her and she trusted him. Defense counsel asked Tina if she received any training in order to become a daycare provider, and she stated that she did through KinderCare and DCFS background checks. The State objected to the relevance and asked for a sidebar, asserting that defense counsel was broaching an area that was outside the scope of direct examination because he was trying to get Tina to admit that, through sex abuse training, she would be able to recognize warning signs. The court asked defense counsel for his proffer, and counsel explained:

> "COUNSEL: My proffer is whether she was trained in viewing children and observing any sort of physical or emotional issues. That's part of her training ***.
>
> COURT: That's outside the scope. You're trying to get her as an expert.

COUNSEL: I most certainly am not asking her as an expert. They asked about her daycare training.

COURT: You can ask her about training—

COUNSEL: Right.

COURT: —and you can ask her her opinion as to based on that training—

STATE: That's right, based on that training.

COUNSEL: No.

COURT: I'm going to sustain the objection.

COUNSEL: Just so I can make my complete record. The State asked about daycare provider. They brought up the licensing. Part of that licensing is training. I should be allowed to go into any of that training.

COURT: I don't think you asked anything regarding training.

STATE: No. I asked if she had a license to have a daycare. That's it.

COUNSEL: Right. But in order to get the license, you have to get the training.

COURT: That's a fact assumed.

COUNSEL: So I should be able to ask anything about that training as well. And if part of that training is that they observer—they observe—if part of it is that they are trained to observe for physical, emotional, or other types of abuse, that's fine.

COURT: It's an expert opinion.

STATE: It is.

COUNSEL: I disagree, but I'll abide by the ruling."

¶ 29 R.S. testified consistent with his testimony at the section 115-7.3 hearing. R.S. testified that the incidents happened in 2000, when he was in second grade and around age nine. He did

not tell his mother what had happened after the first incident in the bathroom because defendant said not to tell anyone, and he was afraid of defendant. Further, he testified that he did not tell his mother after the bedroom incident because he thought "it was pretty obvious" and defendant's mother said she was going to tell R.S.'s mother. Defense counsel objected, but the court allowed the testimony not for the truth of the matter asserted, but, rather, as it related to R.S.'s decision not to disclose to his mother. R.S. said that he did not recall having any conversation with his mother about the incidents two weeks after the bedroom incident. He knew his mom was close with defendant's mom, so he thought that they would discuss it, but he did not hear any such conversation. R.S. testified that he first discussed it with his mother in 2003, when he was in the fifth grade. He explained that he discussed the incidents with his counselors in elementary, middle, and high schools, as well as with DCFS, a doctor, and ultimately the police when he was around age 15 or 16.

¶ 30 Katherine L. testified that she is R.S.'s mother. She used to be best friends with defendant's mother, Jill Preihs. In 2000, when she and R.S. briefly lived with defendant's family, there was an occasion where she was in the living room with Jill and defendant's stepfather, Tim, while R.S. and defendant were upstairs. Jill "jumped up" and ran upstairs. When she came back down, she asked Katherine to leave the house with her. Jill later called Katherine at work and said that an incident occurred between defendant and R.S. Katherine and R.S. went to defendant's house the following weekend, and they went into the kitchen. Defendant and Jill were there, and defendant gave an apology note to Katherine and R.S. Katherine kept the note because she believed it had "significant value," and she did not know all the answers about what had happened between defendant and R.S. She did not know why the note had significant value, and no one told her what happened. Katherine identified the State's

exhibit No. 1 as the note she received from defendant. In 2007, Katherine had occasion to speak with detectives in Boone County about R.S. and defendant. She gave the detectives the note. The State presented four witnesses to establish chain of custody of the note and, ultimately, that defendant's fingerprints were found on the note.

¶ 31 Detective Matthew Wallace took B.C.'s statement in 2011. He testified that she was upset, it was a challenging conversation, and that she had a hard time talking about the incidents. In January 2012, Wallace travelled to Yazzo City Federal Prison in Mississippi to meet with Osborn, an inmate there. Wallace brought with him and presented to Osborn an immunity letter that was obtained from the State's Attorney's office.

¶ 32 Osborn was called as a State witness. The court, in the presence of the jury, advised him of the full immunity he received and its implications. Osborn testified that he is 28 years old (born June 27, 1987). He grew up with defendant, who lived in a house right behind Osborn's house, and was friends with him. Osborn testified that he also knew B.C.; her mother used to babysit him, and he was friends with B.C.'s brother. Osborn testified that when he and defendant were around ages 12 to 14, they were at defendant's house smoking marijuana and defendant told Osborn that he thought B.C. was pretty and that he had put his finger inside of her vagina. Osborn testified that, on one occasion, when he was babysitting B.C. at his house, he had her take off her clothes, run around the house naked, and he also touched her in the vaginal area. Osborn testified that he only touched B.C. once, and defendant was not present. Osborn never saw defendant touch B.C. inappropriately, and they were never together touching B.C. inappropriately. Osborn related his criminal history.

¶ 33 After the State rested, defendant called B.C.'s father, Shawn, to the stand. In sum, Shawn testified that B.C. did not tell him between 1993 and 2000 that she had been sexually assaulted

by anyone. She did not ever bring him a pair of bloody underwear and, therefore, he did not dispose of a pair of such underwear. After his divorce, he had off-and-on contact with B.C. and they would get together on holidays, but they quit having contact several years ago. Shawn did not recall B.C. telling him, when she was a freshman in high school, that defendant had sexually assaulted her. Further, he never told B.C. not to tell anyone about a sexual assault.

¶ 34 Defendant's mother, Jill, testified that the incident between defendant and R.S. in the bedroom happened in 1999, before R.S. and Katherine had moved in with them. She recalled going upstairs for a routine check on the kids and found the bedroom door closed. When she opened it, she startled the kids, who jumped up from the floor. Both kids were fully clothed, and she did not see an unusual expression on R.S.'s face. Jill called Tim and Katherine upstairs, and she spoke with defendant, and Katherine spoke to R.S. as well. The kids said they were playing. Jill used to have defendant write apology notes as a means of discipline, and she recalled having defendant write apology notes "more than three times but probably less than seven." After viewing the apology note in evidence, Jill testified that she did not recall ever being present when defendant gave the letter to anyone. Jill testified that, in 2005, she was the maid of honor in Katherine's wedding. They stopped being friends in 2007.

¶ 35 In closing arguments, the State acknowledged to the jury that it "might be a bit overwhelmed at this point with all the evidence." The State explained to the jury that it had heard evidence related to the charges, but that it also heard propensity evidence, consisting of prior sexual assaults by the defendant against B.C., prior sexual assaults by defendant against R.S., and testimony regarding a note given by defendant to R.S.'s mother. The propensity evidence, the State explained, "proves that the defendant has a propensity to commit sexual assaults against children, and you may consider this propensity evidence in deciding whether or

not the State has met its burden regarding the sex offense [charged.]" The State further argued that propensity evidence means that "leopards do not change their spots. He did it before. It's reasonable to believe he will do it again." The propensity evidence, the State explained, was another tool the jury could use in assessing the sufficiency of the evidence on the charges.

¶ 36 The jury found defendant guilty on all three counts.

¶ 37 D. Sentencing

¶ 38 The court denied defendant's amended motion for a new trial. On January 14, 2016, the court held a sentencing hearing. Before the sentencing hearing commenced, the court confirmed that both sides had received the presentence investigation report and asked whether there were any changes. In aggravation, the State presented written victim-impact statements from B.C. and her mother, Tina, and they read their statements into the record. In mitigation, defendant submitted written testimonials from 15 people. In sum, the authors of the letters were friends, family, and co-workers, and they wrote about their admiration and love for defendant, their positive relationship with him, and some expressed disbelief that defendant could have committed the acts for which he was convicted. In addition, defendant presented testimony from 10 witnesses at the hearing. During his statement, defendant's stepfather, Tim Preihs, commented that defendant is a good man and he was a good kid:

> "I'm amazed at how brilliant he must be for never being caught from the time he was 6 until the time he was 14 by an adult allegedly doing these crimes[,] so that amazes me.
>
> And I must applaud you for being such an incredible criminal, alleged criminal, because I've never seen any type of anger or any type of—anyone that's been in fear of him."

¶ 39 In closing arguments to the court, defense counsel emphasized that defendant was allegedly 15 years old when the charged acts were committed and that, although he is being tried and sentenced as an adult, the court should carefully consider his age at the time of the offense when fashioning an appropriate sentence.

¶ 40 The parties agreed that the conviction on count III merged with the conviction on count II. Further, they agreed that mandatory consecutive sentencing applied, with the minimum sentence (on the remaining two counts combined) constituting 12 years' imprisonment and the maximum constituting 60 years' imprisonment, to be served at 85%. Ultimately, the court sentenced defendant to a combined term of 20 years' imprisonment. In announcing the sentence, the court noted that, with one exception, all of defendant's witnesses started out with the premise that defendant is innocent. The court explained that it would give a little more credence to that one witness who did not presume innocence:

> "COURT: *** and I'm not saying that I wouldn't in the same—be in the same place if I were a friend or relative of someone who was convicted of something like this. But we have to remember, this is not an appeal. This is not a trial. The ranges ranged from disbelief to complete and utter sarcasm, and somewhere in between, most of the letters lied.
>
> ***
>
> I understand the disbelief between many of you. I don't understand the sarcasm by Mr. Preihs and the smirking right now either, but again, it doesn't mean I have to let it affect my sentence, and it certainly won't. But the disbelief I understand - -
>
> MR. PREIHS: What sarcasm?
>
> COURT: Sir - - Please remove him.

(Brief pause.)

COURT: Again, [defendant], I can assure you that the comments right now regarding your stepdad have nothing to do with the sentence at all. It has to do with all the factors which I'm going to go through right now."

¶ 41 The court then reviewed statutory factors of aggravation and mitigation. In aggravation, the court applied statutory sections involving emotional harm, deterrence ("obviously we want to keep other people from doing this also"), and that defendant was in a position of trust, including as a babysitter, over a victim under age 18. 730 ILCS 5-5-3.2(a)(1), (a)(7), (a)(14) (West 2014). In mitigation, the court applied the statutory sections involving a lack of serious, lasting physical harm, grounds excusing the conduct (defendant's age), and no history of prior delinquency or criminal activity at the time of the offense. 730 ILCS 5-5-3.1(a)(1), (a)(4), (a)(7) (West 2014). As to whether the conduct resulted from circumstances unlikely to recur (730 ILCS 5-5-3.1(a)(8) (West 2014)), the court noted, "I don't know the answer to that. The reason is is—and I'm not suggesting counsel should have produced one, but there's been no sex offender evaluation." The court noted that it did not know whether this was an unusual situation with B.C. and R.S., or if it was a bigger problem and they were the only two that came forward. "So again, I'm not marking off or giving credit for that. I just don't know." Similarly, the court found that it did not know whether to apply the mitigating factor of "the character and attitudes of the defendant indicates he is unlikely to commit another crime." 730 ILCS 5-5-3.1(a)(9) (West 2014). It noted that, whereas the typical case asks the court to predict the future with this factor, the offense here was committed 15 years ago. Since then, defendant had a class one felony-drug conviction, but the court concluded that it did not know how this factor applies. Citing recent Supreme Court case law, the court noted that the law clearly requires that it consider defendant's youth and the time

of the offense and that minors must be treated differently for sentencing purposes. As to defendant's age at the time of the offense, "I think we have to give a lot of thought to that."

¶ 42 The court denied defendant's motion to reconsider the sentence. It noted that it gave defendant the mandatory minimum sentence on one charge, and a sentence on the lower end of the sentencing range on the other. Further, with respect to factors in aggravation and mitigation, the court noted that the factors are not applied in a mathematical formula.

> "I don't know what the likelihood of recidivism is for you as a sex offender. I don't. Because of that, I don't give points for or take points off because it's not really a point system. Instead it's just something to consider. If I had something that would indicate that you are a high likelihood of recidivism, I would have likely sentenced you higher. If there was something showing that there was a low rate of recidivism based upon things, I don't know what I would have done. It may be less, may be the same, I just don't know. But ultimately I considered the fact that that is a statutory factor for me to look at. I considered what evidence was in front of me, what evidence was not in front of me and tried to assign whatever weight I could to that, and then in that case, basically sort of a neutral, none.
>
> And as far as the likelihood to commit new offenses in the future, sort of the same thing. You know, I had something to work with. From the time that you committed these offenses, subsequent to that you committed I believe it was a Class 1 felony. So there is a chance that you are likely to commit future crimes—future felonies as opposed to having a clean record from the time that you were 15 or so and going forward.
>
> So I considered it. It wasn't a points off, points for, half credit, partial credit. It doesn't end up with any tally at the end multiplying or carrying any numbers over. It's

> just things to consider. *** I think I considered all the factors in aggravation and mitigation, both statutory and nonstatutory, the nature of the offense, cost of incarcerating you for all those years and as well as all other things required, and I do think that that is the proper sentence."

¶ 43 Defendant appeals.

¶ 44 II. ANALYSIS

¶ 45 A. Constitutionality of Section 115-7.3

¶ 46 Defendant argues first that the court erred in denying his motion to declare section 115-7.3 of the Code unconstitutional. He argues that section 115-7.3 violates: (1) the separation-of-powers doctrine; and (2) due process, because it is vague as applied. We review these questions of law *de novo*. *People v. Mosley*, 2015 IL 115872, ¶ 22. In doing so, we are mindful that all statutes carry a strong presumption of constitutionality. *Id.* To overcome this presumption, the party challenging the statute must clearly establish its invalidity. *Id*. If we can reasonably do so, we will find a statute constitutional and valid. *Id*. For the following reasons, we reject defendant's arguments.

¶ 47 The Illinois constitution provides that the three branches of government are separate and that no branch shall exercise powers properly belonging to another. Ill. Const. 1970, art. II, §1. However, the legislature may enact rules of evidence, so long as the enactment does not conflict with a rule of the court. Specifically, our supreme court, on January 1, 2011, codified and adopted the Illinois Rules of Evidence, with Rule 101 stating, in part, that "[a] statutory rule of evidence is effective *unless in conflict with a rule or a decision of the Illinois Supreme Court*." (Emphasis added.) Ill. R. Evid. 101 (eff. Jan. 1, 2011). Defendant's position here is that section 115-7.3 conflicts with supreme court authority holding that character evidence is inadmissible.

¶ 48 However, before it adopted and codified the rules of evidence in 2011, our supreme court found section 115-7.3 constitutional. See *People v. Donoho*, 204 Ill. 2d 159, 177 (2003). Defendant correctly notes that *Donoho* did not do so on separation-of-powers grounds. Nevertheless, the court in *Donoho* found that the General Assembly had enacted section 115-7.3 as a *change*, in sex-offense cases, to the common-law principle that character or other-crimes evidence is inadmissible to establish propensity. See *Donoho*, 204 Ill. 2d at 174-76, 182. The court subsequently specifically incorporated section 115-7.3 into Rule of Evidence 404(b) (eff. Jan. 1, 2011). Rule 404, "Character Evidence not Admissible to Prove Conduct; Exceptions; Other Crimes," provides in sub-section (b) that "[e]vidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith *except as provided by sections 115-7.3* *** of the Code of Criminal Procedure (725 ILCS 5/115-7.3 ***)." (Emphasis added.)

¶ 49 Accordingly, we see no conflict between the legislature's enactment of the statute and a rule or a decision of the supreme court. Indeed, the statute is viewed as a change, in sex-offense cases, to common law principles, and it has *become* a rule of the court. We further note that the committee comment to Rule 101, amended January 6, 2015, and effective immediately, notes that "there is no current statutory rule of evidence that is in conflict with a rule contained in the Illinois Rules of Evidence."[1] Given the foregoing, defendant's argument that there is a separation-of-powers conflict between the statute, rule, and common-law authority must fail.

[1] This is in contrast to Illinois Rule of Evidence 609(d) (eff. Jan. 1, 2011) which, the committee noted, when it was adopted, potentially implicated, but was not trying to resolve, a conflict between the statutory equivalent and supreme court caselaw. See *People v. Villa*, 2011 IL 110777, ¶ 32. (That comment was amended and removed effective January 6, 2015).

¶ 50 Next, defendant argues that section 115-7.3 is unconstitutional because it violates due process. Specifically, defendant argues that the statute is unconstitutionally vague in that it lacks sufficiently definite standards to preclude arbitrary application. He argues that a review of caselaw reflects that the "proximity in time" factor has enjoyed "checkered" application, with courts permitting other crimes committed 20 years prior to the charges as sufficiently proximate for admission. Defendant notes that one court has stated that "the actual limits on the trial court's decision 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). Finally, defendant argues that, as applied to his case, the statute is vague because it provides no guidance on "whether conduct of a 10[ ]year old could be introduced against an adult defendant." Defendant further notes that, had he been charged with the offenses described in B.C. and R.S.'s testimony and adjudicated a delinquent minor, the State "would not have been able to introduce such adjudication as *impeachment* at his trial." (Emphasis added.) See, *e.g.*, *People v. Montgomery*, 47 Ill. 2d 510 (1971). Thus, defendant summarizes, as the statute does not provide courts with any guidance on introduction of evidence of sexual acts committed as a juvenile at the trial of "an adult defendant," the statute is vague as applied.

¶ 51 The State responds that the concerns defendant raises are not present here. For example, although some cases have allowed other-crimes evidence despite significant periods between those offenses and the charged offenses, no similar lapse exists here. The charged offense occurred when defendant was age 15, and the other crimes occurred when he was age 10 or older. Further, despite defendant's claim that the statute does not provide guidance as to whether

the conduct of a 10-year-old child can be presented against an adult defendant, defendant here did not commit the offenses as an adult. We agree.

¶ 52 Again, we must, if possible, find constitutional a statutory provision. *Mosley*, 2015 IL 115872, ¶ 22. Although a statute must provide sufficiently definite standards for its application, such that application does not depend merely on the private conceptions of those who apply it, due process does not mandate absolute standards of mathematical precision or more specificity than is possible under the circumstances. *People v. Izzo*, 195 Ill. 2d 109, 113-14 (2001).

¶ 53 Section 115-7.3 specifies the factors a court must consider when weighing whether the prejudicial effect of admitting other-crimes evidence outweighs its 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 115-7.3(c) (West 2014). Without question, and as noted in *Walston*, the trial court has significant discretion when it applies these factors. *Walston*, 386 Ill. App. 3d at 621. However, broad discretion does not equate to unconstitutional vagueness. The factor proximate time to the charged predicate offense lacks mathematical precision, but we agree with the trial court that, generally and certainly under the facts of this case, it provides a sufficiently definite standard for application. As the State notes, although defendant was an adult when charged, he was being tried for a crime committed at age 15. The other-crimes acts, therefore, were admitted to the extent that they reflected defendant's propensity, at age 15, to commit acts similar to those he committed, at most, five years earlier. The statute is not too vague for the trial court to assess here whether those other crimes were sufficiently proximate and similar to the charged crimes and whether their probative value outweighed their prejudicial effect.

¶ 54 Moreover, although defendant's point regarding *Montgomery* is conceptually interesting, it conflates concepts, as the preclusion against admitting juvenile adjudications as impeachment to attack the credibility of testifying witnesses in adult trials is simply a different issue from the legislature's intent in enacting section 115-7.3. Section 115-7.3 concerns the evidence available to the State to prove its case. See, *e.g.*, *People v. Holmes*, 383 Ill. App. 3d 506, 516 (2007) ("the court must consider these three factors in such a way that allows section 115-7.3 to operate as the legislature intended, which is to permit the State to use evidence of a defendant's other sexual assault crimes as proof of his propensity to commit the crime for which he is charged"). Section 115-7.3 is not (directly) a tool for attacking credibility; rather, it is a tool available to the State in its efforts to prove beyond a reasonable doubt that, because defendant committed certain conduct as a 10-to-15-year old, he also committed the charged conduct. While the arguably unfortunate effect here, an adult defendant being confronted with acts he committed as a 10-year-old child, is not lost on us, it is important to remain mindful that the other crimes were not being admitted against defendant for his conduct *as an adult*; they were admitted to establish his propensity to commit certain conduct *as a minor*. We further note that, in *Donoho*, the court considered *Montgomery* and the bar against admission of prior convictions for impeachment purposes if more than 10 years had elapsed since the prior conviction, but then it *distinguished* that rule from the admission of other-crimes evidence in sexual assault cases for purposes *other* than impeachment. *Donoho*, 204 Ill. 2d at 183-84. This supports our position that the purpose behind the *Montgomery* rule concerning impeachment does not necessarily transfer to the admission of other-crimes committed by a juvenile.

¶ 55 In sum, we reject defendant's argument that section 115-7.3 is unconstitutionally vague.

¶ 56 B. Admission of Other-Crimes Evidence

¶ 57 Defendant argues next that the court abused its discretion in admitting the other-crimes evidence. Defendant asserts that there were not sufficient similarities to admit the other crimes, there was no meaningful balancing of probative value against undue prejudice, and that the error was compounded by the admission of additional evidence to corroborate the other-crimes evidence. We disagree.

¶ 58 Section 115-7.3, again, permits admission of evidence of a defendant's prior sexual activity with a child for any purpose, including the defendant's propensity to commit sex offenses. 725 ILCS 5/115-7.3 (West 2014); *Donoho*, 204 Ill. 2d at 176. Under section 115-7.3, other-crimes evidence may be admissible only if: (1) it is relevant; and (2) its probative value is not outweighed by its prejudicial effect. *Donoho*, 204 Ill. 2d at 177-78. As previously discussed, in weighing probative value against prejudicial effect, a court should consider: "(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 2014).

¶ 59 Generally, the risk associated with the admission of other-crimes evidence is that it might prove "too much," rendering a factfinder inclined to convict the defendant simply because it believes that he or she is a bad person deserving of punishment. *Donoho*, 204 Ill. 2d at 170. Courts should avoid admitting evidence that entices a factfinder "to find defendant guilty *only* because it feels he or she is a bad person deserving punishment, rather than basing its verdict on proof specific to the offense charged." *People v. Smith*, 406 Ill. App. 3d 747, 751 (2010). Accordingly, our supreme court has urged trial courts "to be cautious in considering the admissibility of other-crimes evidence to show propensity by engaging in a meaningful

assessment of the probative value versus the prejudicial impact of the evidence." *Donoho*, 204 Ill. 2d at 178. A trial court's decision to admit other-crimes evidence will not be reversed unless the court abused its discretion. *Id.* at 182. A trial court abuses its discretion if the court's determination is unreasonable, arbitrary, or fanciful. *Id*. For the following reasons, we conclude that the trial court did not abuse its discretion in admitting the other-crimes evidence.

¶ 60 Defendant does not argue that the other-crimes evidence was too remote as compared to the charged conduct. As to factual similarities, defendant argues that the court erred in finding sufficient factual threshold similarities because the uncharged conduct involved a male, no use of a weapon, and, for some of the conduct, the presence of other people, while the charges involved a female, the display of a knife, and the defendant acting alone. However, the existence of some differences between the prior offense and current charge does not defeat admissibility because no two independent crimes are identical. *Id.* at 185. To be admissible, other-crimes evidence must have "some threshold similarity to the crime charged" and, where the evidence is not being offered to establish *modus operandi*, "mere general areas of similarity will suffice" to support admissibility. *Id.* at 184. As factual similarities increase, so does the relevance or probative value of the other crimes evidence. *Id.* As defendant points out, there are dissimilarities between the charged and uncharged conduct, in that R.S. was male and there was anal penetration and that, in the charged conduct involving B.C., there was a knife displayed, whereas in the uncharged conduct there was no knife and allegedly there were other people present during at least two incidents. However, there were also significant similarities. As the trial court noted, B.C. was the same victim of both the other crimes and the charges. Both B.C. and R.S. had families that were close to defendant and his family, and defendant was able to earn the trust of the victims' mothers. Defendant, through that close relationship and trust, was able to have

access to the younger victims, and he used his physical strength to overpower them. Defendant's acts usually involved penetrating the victims in two ways: (1) as to B.C., orally and vaginally; and (2) as to R.S., orally and anally. Although there was a knife involved in the charged conduct, but not the uncharged conduct, we are less concerned with the charged conduct being more egregious (in that regard) than the uncharged conduct, than if the situation were reversed, because our primary concern is to protect against the factfinder convicting the defendant *solely* because the *other-crimes* evidence reflects him or her to be a bad person deserving of punishment. See *People v. Holmes*, 383 Ill. App. 3d 506, 515 (2008).

¶ 61 Defendant's reliance on *Holmes* is misplaced because the appellate court there, applying the abuse-of-discretion standard, *affirmed* the trial court's exclusion of a prior conviction as propensity evidence where it differed from the charged conduct in *several* ways, including that, in the prior conviction, there was no knife and there was another person present. *Holmes*, 383 Ill. App. 3d at 518-19. Here, we are considering, under the abuse-of-discretion standard, whether the trial court reasonably found sufficient similarities to *allow* introduction of the evidence. Although there were differences, the similarities in the context of the incidents—when defendant had access to the younger victims through a trust relationship with their families—as well as the types of oral and other penetrations, were sufficiently similar to render the court's decision to admit the evidence not arbitrary or unreasonable. Similarly, we do not find that *People v. Johnson*, 389 Ill. App. 3d 618 (2009), warrants a different result. There, the court found other-crimes evidence improperly admitted where there were several differences between the charged and uncharged conduct, including that, in the uncharged offense, the defendant allegedly acted in concert with another person and, in the charges, he allegedly acted with no one else even present. *Johnson*, 389 Ill. App. 3d at 625. However, the court notably found that the trial court abused its

discretion because it did not even consider "whether the risk of unfair prejudice substantially outweighed the probative value of the evidence." *Id.* The court here, in contrast, conducted the required analysis.

¶ 62 However, defendant also argues that the court's analysis of the evidence's probative value versus its prejudicial effect was flawed. The court determined that the prejudicial effect did not outweigh the probative value because the factfinder would not be lured into declaring guilt on the basis of the testimony, despite holding a belief that evidence of the charged offense was lacking. It further noted that R.S. and B.C. were the only ones testifying about the other-crimes offenses and, so, the evidence would not cause a "mini-trial." In reality, defendant argues, the State presented more than simply the testimony of R.S. and B.C. Rather, it sought to "prove up" the propensity evidence by introducing the apology letter, fingerprint evidence, and Osborn's testimony. Defendant notes that, in *Donoho*, the court allowed the State's witness to testify that the defendant admitted to the other-crimes offenses, but, to reduce the potential prejudicial effect of the evidence, the court refused to allow the State to quote the defendant's two-page signed statement detailing the incidents or to publish the document to the jury. *Donoho*, 204 Ill. 2d at 186. Defendant argues that the court here, in contrast, *enhanced* the prejudicial effect of the propensity evidence by admitting the apology note.

¶ 63 Defendant is correct that a court should not permit a "mini-trial" of the uncharged offenses. See, *e.g.*, *People v. Bedoya*, 325 Ill. App. 3d 926, 938 (2001). Nevertheless, we conclude that the court did not abuse its discretion in determining that the probative value of the other-crimes evidence was not outweighed by the prejudicial effect. We acknowledge that there was certainly limited testimony about the charged conduct when viewed as compared to the testimony and evidence concerning the uncharged conduct. However, the purpose behind

section 115-7.3 is to allow other-crimes evidence to strengthen evidence in sexual abuse cases and to promote effective prosecution of sex offenses. See *Donoho*, 204 Ill. 2d at 178 (also citing *United States v. Castillo*, 140 F.3d 874, 883 (10th Cir. 1998), which addressed the federal corollary to section 115-7.3, noting it to be responsive to the "greater need for corroborating evidence in cases involving sexual abuse of children given the fact that these cases often involve only the conflicting testimony of the defendant and the victim about crimes usually committed in secret."). As such, although defendant's trial included evidence about the other crimes beyond that offered by R.S. and B.C., that evidence was not more prejudicial than probative. Overall, the evidence beyond R.S. and B.C.'s testimony remained relatively succinct and limited, and the letter was not particularly prejudicial. For example, Osborn's testimony was not excessive. He simply testified that he knew defendant and B.C., that defendant told him he had touched B.C., and that he, too, had touched B.C. Osborn's additional brief testimony favored defendant in the sense that, contrary to B.C.'s testimony, Osborn testified that he never saw defendant touch B.C. inappropriately and that he and defendant never touched B.C. together. Although there were four witnesses that testified concerning chain of custody and that defendant's fingerprints were found on the apology note, that testimony, too, simply established the facts necessary to introduce the evidence. While it was maybe unnecessary for the State to "prove up" the propensity evidence with the letter, we do not think that the letter was particularly prejudicial, as defendant's counsel effectively pointed out to the jury the weaknesses in the letter, the fact that it was not specifically tied to any particular act, and that, despite thinking it was of important value, R.S.'s mother did not know why and held on to it for years.

¶ 64 In sum, the uncharged conduct was not remote, dissimilar, or far more egregious than the charged conduct, and the risk of undue prejudice to defendant did not outweigh the probative

value. Thus, there was not a great risk here that defendant was convicted based on the uncharged allegations, rather than the evidence supporting the charged crime. Because the prejudicial effect of the evidence did not outweigh its probative value, the trial court did not abuse its discretion in admitting the other-crimes evidence.

¶ 65 C. Confrontation of Witnesses

¶ 66 Defendant argues next that the trial court denied him the right to confront witnesses by sustaining the State's objections to questions posed by defense counsel when cross-examining B.C. and her mother, Tina. He argues that he wished to show the jury that the allegations were false and that, when his family was close with B.C., R.S., and their families, no allegations of abuse were made during that association; rather, the allegations surfaced only after "the falling out." Defendant asserts that B.C.'s credibility was crucial and that he wanted to explore the reasons why B.C. allegedly told her father, but not her mother, about the first sexual assault and to explore her relationship with her mother. Moreover, "[p]reventing defense counsel from exploring this issue as to why B.C. would tell a father that she does not live with [*i.e.*, in high school], and not the mother, was denial of his right to confrontation, as it gave the jury an incomplete and inaccurate version of the factual basis of the defendant's case." Further, with respect to Tina, defendant argues that the State on direct examination brought up the issue of her being licensed to run a daycare and, therefore, the court erred in finding defense counsel's questions concerning the training she received in order to become licensed as being beyond the scope of direct examination. "The defense counsel was exploring that area to argue to the jury that if there was any sexual abuse occurring with her daughter, B.C., she, as a trained day care worker, would have picked up on signs of such abuse." We reject defendant's arguments.

¶ 67 The confrontation clause of the sixth amendment of the United States Constitution (U.S. Const., amend. VI) guarantees a defendant the right to cross-examine a witness for the purpose of showing the witness' bias, interest, or motive to testify falsely. *People v. Klepper*, 234 Ill. 2d 337, 355 (2009). However, the "trial judge retains wide latitude to impose reasonable limits based on concerns about harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or *of little relevance*." (Emphasis added.) *Id.* Nevertheless, the trial court's discretionary authority to restrict the scope of cross-examination comes into play after the court has permitted, as a matter of right, sufficient cross-examination to satisfy the confrontation clause. *People v. Averhart*, 311 Ill. App. 3d 492, 497 (1999). "To determine the constitutional sufficiency of cross-examination, a court looks not to what a defendant has been prohibited from doing, but to what he *has* been allowed to do." (Emphasis added.) *Id.* If the entire record shows that the factfinder has been made aware of "adequate factors concerning relevant areas of impeachment of a witness, no constitutional question arises merely because defendant has been prohibited on cross-examination from pursuing other areas of inquiry." *Id.*; see also *Klepper*, 234 Ill. 2d at 355. In sum, "[t]he confrontation clause guarantees an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way and to whatever extent the defense desires." (Emphasis in original.) *Averhart*, 311 Ill. App. 3d at 497.

¶ 68 Here, although defendant argues that he wished to advance his theory that the allegations against him were false and surfaced only after the "falling out" between the three families, lifiting the limitations on cross-examination of which he complains would not have advanced that theory. Moreover, looking at the cross-examination that defendant *was* permitted to pursue, it is clear that the jury was made aware of the relevant points defendant was hoping to make

through cross-examination. Although witness credibility was at issue, defense counsel was able to question the witnesses about relevant information. For example, with respect to B.C. telling her father, but not Tina, about the instances of abuse, counsel was able to confirm that she did not tell Tina and was able to ask her *why* that was the case. Defendant concedes that "the court sustained the [State's] objection, but allowed the defense counsel to ask the witness why it is that she never told her mother of the abuse." B.C. explained that she did not think that Tina would believe her and that her father told her not to tell anyone. Exploring further B.C.'s relationship with Tina at the time would have been either irrelevant or cumulative.

¶ 69 With respect to Tina, counsel was able to establish that she had received training and background checks through DCFS as part of her daycare licensure *and* that she nevertheless did not notice B.C. acting strangely around the time of the alleged abuse, other than often being sick. This evidence was relevant. However, additional, detailed examination about the specific training Tina received for identifying sexual abuse was not. As the jury was adequately made aware of relevant areas that impacted B.C.'s and Tina's credibility, defendant's constitutional right to cross-examination was not violated.

¶ 70 D. Sentence

¶ 71 Defendant's final arguments concern his sentence. First, defendant argues that the court erred as a matter of law where it found applicable the aggravating factor of a need for deterrence, as this crime was committed by a minor. Second, defendant argues that the court abused its discretion where it refused to consider relevant evidence in mitigation. He contends that the presentence investigation report, letters, and witnesses sufficiently established his character, yet the court concluded that he would not get "credit" for: (1) his conduct having been the result of circumstances unlikely to recur; and (2) having an attitude and character reflecting

that he was unlikely to commit another crime. Instead, defendant asserts, the record does not reflect that the trial court considered the presentence report, which showed he had steadily worked in the food-service industry since 1993 and had a close, loving relationship with his parents. Further, defendant notes that the court found, without basis, that the letters from witnesses "lied" and ranged from disbelief to "complete and utter sarcasm." Defendant requests that we reduce his sentence or remand for resentencing. We reject defendant's arguments.

¶ 72 For his first argument, defendant relies primarily on the Supreme Court's decision in *Roper v. Simmons*, 543 U.S. 551, 560 (2005), where the Court held that children are constitutionally different from adults for purposes of sentencing. He asserts that the Court in *Roper* noted that the characteristics that render juveniles less culpable than adults, such as immaturity, recklessness, and impetuosity, make them less likely to consider potential punishment and, therefore, a deterrence rationale for punishment is not effective. See *Roper*, 543 U.S. at 571. This argument must fail. First, *Roper* was discussing the strength of the death penalty's deterrent effect on juveniles. *Id*. at 571-72. It stated that "[o]nce the diminished culpability of juveniles is recognized, it is evident that the penological justifications for the death penalty apply to them *with lesser force* than to adults." *Id.* at 571. The Court did not hold that a trial court may not consider deterrence *at all* in sentencing a juvenile offender. Second, the aggravating factor of deterrence was but one factor the trial court considered alongside numerous factors, including, we note, its thorough consideration of defendant's youth at the time of the offense. As it noted in denying the motion to reconsider the sentence, the court weighed numerous factors collectively and did not rely solely on deterrence when it sentenced defendant.

¶ 73 We also reject defendant's second argument. Again, defendant argues that the court abused its discretion where it refused to consider relevant evidence in mitigation. "A sentence

within the statutory limits for the offense will not be disturbed unless the trial court has abused its discretion." *People v. Flores*, 404 Ill. App. 3d 155, 157 (2010). Further, a trial court has wide latitude in sentencing, so long as it does not ignore relevant mitigating factors or consider improper aggravating factors. *Id.* It is the trial court's responsibility to balance relevant factors, and we will not reweigh the factors that the court considered. *Id.* at 158.

¶ 74 It is clear here that the court did not ignore any mitigating factors. There is a presumption that the court considered all relevant factors in determining a sentence, and that presumption will not be overcome without explicit evidence from the record that the trial court did not consider mitigating factors. *Id.* at 158. Such a showing was not made in this case; to the contrary, the trial court even explicitly stated, on the motion to reconsider, that it reviewed all statutory factors in fashioning defendant's sentence. Although defendant argues that the court had sufficient information from which it could have given him "credit" for: (1) his conduct having been the result of circumstances unlikely to recur; and (2) having an attitude and character reflecting that he was unlikely to commit another crime, the court explained its rationale and approach to those factors. Defendant's issue, therefore, is not whether the court considered the factors, it explicitly did so, but whether the court afforded the factors as much weight as defendant would have liked. Again, we will not reweigh the factors that the court considered. *Id.* at 158.

¶ 75 Defendant asserts that the court ignored mitigating information in the presentence investigation report. However, before the sentencing hearing commenced, the court confirmed that both sides had received the presentence investigation report and asked whether there were any changes. As such, the record reflects that the court was aware of the report, even if it did not explicitly reference it in announcing the sentence. Further, the favorable information that

defendant asserts was contained therein (his close relationship with his family and his employment in the food-service industry) was also present in the letters and testimony presented on defendant's behalf.

¶ 76 Finally, while it is true that the basis for the court's comment that the letters "lied" is unclear, the same is not true with respect to the court's comment concerning "complete and utter sarcasm." The comments by defendant's stepfather, complimenting defendant for being a good criminal (which ultimately led to his removal from the courtroom), were clearly sarcastic. In sum, to the extent that defendant argues that factors in mitigation were ignored or improperly weighed, we disagree. Defendant's sentence fell on the lower end of the sentencing range, after the court explicitly considered mitigating evidence, including his youthfulness at the time of the offense. We find no abuse of discretion.

¶ 77 III. CONCLUSION

¶ 78 For the reasons stated, the judgment of the circuit court of Boone County is affirmed. As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 178 (1978).

¶ 79 Affirmed.