2018 IL App (4th) 150960-U

NO. 4-15-0960

FILED
March 2, 2018
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Coles County
KENNETH D. SIMPSON,	)	No. 15CF207
Defendant-Appellant.	)	
	)	Honorable
	)	Teresa K. Righter,
	)	Judge Presiding.

JUSTICE DeARMOND delivered the judgment of the court.
Presiding Justice Harris and Justice Turner concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed defendant's convictions and sentences, finding the trial court did not err in admitting other-crimes evidence at his trial.

¶ 2 In September 2015, a jury found defendant Kenneth D. Simpson guilty of three counts of predatory criminal sexual assault of a child and two counts of aggravated criminal sexual abuse. The trial court sentenced defendant to 25 years in prison on each of the sexual-assault counts and 5 years on each of the sexual-abuse counts.

¶ 3 On appeal, defendant argues the trial court erred in admitting other-crimes evidence at his trial. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In May 2015, the State charged defendant by information with three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2014)), alleging

defendant, who was 17 years of age or older, committed an act of sexual penetration with K.S., who was under 13 years of age when the act was committed, in that he placed his finger in her sex organ while in a shed (count I), while in defendant's bed (count II), and while K.S. was in a chair in the living room (count III). The State also charged defendant by information with two counts of aggravated criminal sexual abuse (counts IV and V) (720 ILCS 5/11-1.60(c)(1)(i) (West 2014)), alleging he, a person 17 years of age or over, knowingly committed an act of sexual conduct with K.S., who was under 13 years of age, in that he made her touch his penis on two different occasions. Defendant pleaded not guilty.

¶ 6 A. Pretrial Motions

¶ 7 Prior to trial, the State filed a motion *in limine* to admit statements pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Procedure Code) (725 ILCS 5/115-10 (West 2014)). The State alleged K.S. was then five years old and made statements to her mother, a police detective, and a nurse regarding defendant touching her. Following a hearing, the trial court granted the motion.

¶ 8 The State also filed a motion *in limine* pursuant to section 115-7.3 of the Procedure Code (725 ILCS 5/115-7.3 (West 2014)) to admit testimony of other-crimes evidence involving defendant's acts of sexual conduct against three individuals, including C.J., age 11; A.J., defendant's daughter; and another 11-year-old minor. The State later indicated it would only seek to introduce evidence from C.J. and A.J. The motion indicated A.J. was 30 years old and the sex acts took place from her early childhood to approximately age 12.

¶ 9 At the hearing on the State's motion, Mattoon police detective Sam Gaines testified he conducted an interview with C.J. in May 2015. C.J. stated defendant touched her in

her vaginal area, which she called her "taco," when she was in the fourth grade. When defendant reached inside her pants and touched her "taco," it made her feel "uncomfortable."

¶ 10 Gaines also conducted an interview with A.J. in June 2015. A.J. stated her grandmother told her defendant's sexual abuse first started when A.J. was a baby. Her mother also told her defendant would lie in bed with A.J and "she suspected that he was doing something." A.J. stated she first remembered being touched inappropriately by defendant when she was three years old. When she was approximately six years old, A.J. and her four-year-old brother watched pornographic movies and looked at pornographic magazines that defendant had left lying around. Defendant fondled her vagina and "stuck the head of his penis" in her. Defendant also made her "jack him off." A.J. stated defendant once took her "down to the cemetery" and gave her "twenty dollars to see [her] pub's." On one occasion, in a recreational vehicle when A.J. was approximately 11 years old, defendant "stuck his penis" in her while her stepmother Michelle was "coming up the lane." Defendant's conduct continued until A.J. was 12 years old.

¶ 11 The State argued C.J.'s statement showed factual similarities with defendant's touching of K.S. As to A.J., the State contended factual similarities existed with respect to K.S.'s case and the evidence was "not too remote in time to be admissible." Defense counsel argued A.J.'s allegations were too remote and "extraordinarily prejudicial." If the trial court permitted A.J. to testify, defense counsel stated it would change the "whole character of the trial."

¶ 12 At the conclusion of the hearing, the trial court found C.J.'s testimony met the requirements of section 115-7.3 and its probative value outweighed any prejudice that would result from its admission. As to A.J., the court took the matter under advisement. In its written

order, the court noted it had considered the proximity in time and the degree of factual similarity between the charged offenses and A.J.'s testimony. The court concluded the probative value of A.J.'s testimony outweighed its prejudicial effect. However, the court stated A.J. could not testify regarding allegations or statements made by her grandmother or mother, watching pornographic videos or seeing pornographic magazines with defendant, an incident at a cemetery, or "penetration by penis."

¶ 13 B. Jury Trial

¶ 14 In September 2015, defendant's jury trial commenced. Testifying as the State's first witness on closed-circuit television, K.S. stated she was five years old. K.S. referred to a vagina as "monkey" and a penis as "pee pee." While inside defendant's house, he touched her on two occasions. During the daytime incident in defendant's bedroom, defendant touched her "monkey" with his finger while they were on the bed. Defendant's wife, Robyne, was at work at that time. K.S. stated defendant put his finger inside her. During the nighttime incident, defendant touched her "monkey" while Robyne was also in the room. While K.S. remembered going to a shed with defendant to retrieve her bicycle, she indicated nothing happened.

¶ 15 Prior to C.J.'s testimony, the trial court read an instruction to the jury that her testimony was to be considered only for the limited purpose of defendant's propensity to commit a sex offense. C.J. testified via closed-circuit television and stated she was 11 years old. C.J. refers to a vagina as "taco." On one occasion, C.J. and her brothers and sisters spent the night at defendant's house. While her siblings were asleep in another room, C.J. was sitting on defendant's bed in his bedroom when he reached inside her pants and touched her "taco" with his fingers. When her mother asked if defendant had touched her, C.J. reported it to her.

¶ 16 Prior to A.J.'s testimony, the trial court read the limiting instruction to the jury. A.J., age 30, testified defendant is her father and Debra Stewart is her mother. When she was approximately three years old, defendant "used to put his hands down [her] pants and finger [her]" vagina once or twice per week. A.J. stated defendant touched her vaginal area with his fingers "hundreds" of times. Defendant and Stewart separated when A.J. was 4 years old, and A.J. never lived with him between the ages of 4 and 10. A.J. lived with defendant between the ages of 10 and 12. On one occasion, when her stepmother Michelle was in the shower, defendant took A.J. "in the basement and stuck his hands in [her] pants and started fingering [her]." Defendant told her not to tell anyone or she would get into trouble. Defendant would also come into her bedroom at night and "hold [her] face so [she] couldn't scream as he would stick his hands in [her] pants and finger [her]." A.J. stated she "wanted to die because he wouldn't stop" and tried to commit suicide by drinking a cup of bleach, hanging herself with a curling iron, and slitting her wrist. Besides putting his hands in her pants, defendant would also make her stick her hands "around his penis and jack him off." A.J. believed she was 12 or 13 years old when defendant made her fondle him. The last time defendant sexually abused her took place in a recreational vehicle. A.J. testified he was "on" her and she "kept telling him" that his wife "was coming and he better get off [her] because she's going to find out." Defendant "hurried up and did what he was doing," and A.J. "jumped up," "cleaned [herself] up," and "walked out like nothing ever happened."

¶ 17 A.J. testified "there was an incident" related to defendant's sexual abuse where she received money, but she could not talk about it. When Michelle asked where she got the money, A.J. lied and said her mother gave it to her. Feeling guilty about lying, A.J. later told Michelle where she got the money, and Michelle "smacked [her] in the face."

¶ 18 The prosecutor asked A.J. about two letters, which she admitted contained her handwriting but she did not remember writing. In both letters, A.J. stated she was lying when she accused her father of "touching" her and made the allegations because she was mad at Michelle for not letting A.J. live with her mother. A.J. also testified to making a video when she was 11 years old in front of defendant, Michelle, and defendant's sister. Wanting to live with defendant and Michelle, A.J. stated she "had to do the tape" and say defendant did not molest her. The sexual abuse then started "a few months later."

¶ 19 Noelle Cope, a nurse practitioner, testified as an expert in pediatric sexual-abuse examinations. She performed a sexual-abuse examination on K.S. in May 2015. When asked if anyone touched her in a way that made her feel uncomfortable, K.S. stated her grandfather, identified as defendant, touched her "monkey" in the backyard shed. K.S. described it as defendant " 'poking it with his finger' " underneath her underwear. Defendant also touched her "monkey" when she was lying in bed with him and Robyne. K.S. stated defendant " 'touched [her] butt with his wiener' " and told her not to tell or they would get into trouble. When Cope asked K.S. whether she had touched defendant "on his wiener," K.S. responded in the negative. During the physical examination, Cope found "some irritation to the inner part of the labia" and "around the vaginal opening." Cope also found K.S.'s hymen was "intact" and a "normal shape." Cope opined the irritation in K.S.'s vaginal area was consistent with digital penetration.

¶ 20 Rikki Allen, C.J.'s mother, testified defendant was her father's friend. Her four children spent the night at defendant's residence in summer 2012. After defendant was arrested, Allen asked her children about him. C.J. started crying and, after further conversation, Allen called the police. In May 2015, Allen and C.J. met with Mattoon police detective Sam Gaines.

¶ 21 Debra Stewart, defendant's first wife and A.J.'s mother, testified A.J. first made disclosures against him when she was approximately four years old. Stewart took A.J. to the police in 1991 and 1993. When the prosecutor showed her letters dated 1999 and in A.J.'s handwriting, Stewart stated she never received them.

¶ 22 Michelle Simpson, defendant's second wife, testified defendant and his sister made a video with A.J. in 1996, wherein she purportedly stated she "had told untruths about her father" and that she "had lied about him touching her." Simpson also identified a letter defendant made A.J. write to her mother so that A.J. could stay with them. Defendant also directed A.J. to write a letter and address it "to whom it may concern." Simpson never mailed the letters.

¶ 23 Tabitha Tipsword, K.S.'s mother, testified she was at K.S.'s T-ball game in May 2015. Defendant and Robyne, whom Tipsword's children considered grandfather- and grandmother-type figures, respectively, were also at the game. After the game, K.S. went with defendant and Robyne to get ice cream. When K.S. returned home that evening, she had "some irritations in her vaginal area" and complained "it burnt" when she urinated. Tipsword stated K.S. had "many urinary tract infections" before the incident. Tipsword checked K.S. the next day and found her vaginal area "looked really irritated." When asked about it, K.S. started crying and said defendant touched her and would not stop. Tipsword called Robyne and told her she and defendant would never see the children again. Robyne then came over and questioned K.S. about the allegations. K.S. stated the touching occurred in bed, while Robyne was asleep or at work, and in the shed when they went to get her bicycle. K.S. also indicated the touching occurred "inside her underwear on her monkey."

¶ 24 Mattoon police detective Adam Jenkins testified he interviewed defendant on two occasions in May 2015. During the first interview, defendant acknowledged he and his wife had babysat for K.S. on multiple occasions. In both interviews, defendant denied doing anything wrong to K.S. During the second interview, defendant stated K.S. regularly slept in the same bed with him and Robyne. Defendant also acknowledged being in a shed with K.S. but stated he was not out of Robyne's line of sight.

¶ 25 Jenkins testified he received consent from Tipsword to download text messages between her and defendant. In one message, on April 24, 2015, defendant asked if she was home and that "I need a kid fix." The message also stated: "If it's okay, I will take [K.S.] Don't have to change her. LOL."

¶ 26 Detective Sam Gaines testified he conducted an interview with K.S. When he asked if anyone touched her in a bad place, K.S. stated defendant stuck his hand down her underpants. On one occasion, K.S. went outside to get a bicycle from a shed, and defendant touched her in her private area. K.S. also stated defendant touched her when she was in bed with him and Robyne. When Gaines asked her what it felt like when defendant touched her, K.S. stated it "felt weird" and "it hurt" because he "sticks his finger in it."

¶ 27 Gaines testified he asked K.S. whether she ever saw a male's private area, which she called "a wee wee," and she stated she had seen defendant's penis "a couple times." When asked whether she had ever touched defendant's penis, she said "he puts [her] hand on it even though [she said] no." K.S. stated this occurred two times. Once in the shed, K.S. saw defendant's penis when he "pulled it out." When asked if there was a difference between her baby brother's "wee wee" and defendant's, she stated defendant's "is huge and hairy."

¶ 28 In the defense case, April Kimery-Collins, defendant's niece, testified she spent time with her cousin A.J. when they were younger. While in school, Kimery-Collins lived with A.J. She was aware of A.J.'s accusations that defendant sexually abused her, but A.J. told her she lied because she did not want to live with his wife.

¶ 29 Robyne Simpson testified she would often babysit K.S. When K.S. stayed overnight, she would sleep on the loveseat. Simpson stated K.S. did not sleep in the bed with her and defendant. At a prior residence, K.S. would sleep in their bedroom in a toddler bed. The only time K.S. was in the same bed with them, "she slept on the edge of the bed" next to Robyne. Once, after her T-ball game, K.S. asked to go home with Robyne and defendant. When K.S. wanted to get her bicycle out of the shed, Robyne was "right there" with K.S.'s brother. Robyne stated defendant "did not go into the shed to get the bike." Later, K.S. complained that "her bottom hurt." Robyne saw a rash and "put some medicine on there." Robyne stated she was the primary caretaker of K.S. when she came over and K.S. was not left with defendant when Robyne was not there.

¶ 30 Defendant testified he was 51 years old. Between January and May 2015, K.S. and her brother would come over to visit him and Robyne. Defendant stated he "wouldn't allow" being alone with K.S. based on A.J.'s accusations and because he "didn't work [his] entire adult life to retire to a prison cell." In a residence that was once a church, K.S. had a bedroom as well as a toddler bed in the room shared by defendant and Robyne. K.S. might fall asleep in their bed, but defendant would "hardly ever touch her." At a residence in Mattoon, K.S. slept on a loveseat and was never in their bed.

¶ 31 After K.S.'s T-ball game, defendant and Robyne took her to get ice cream and run errands. When they returned home, K.S. stated she wanted to ride her bicycle. Defendant told

Robyne he was going to get the bicycle out of the shed. After K.S. went inside and retrieved her bicycle, she rode it on the sidewalk. Defendant testified he never sexually abused K.S., C.J., or A.J.

¶ 32 On cross-examination, defendant testified he "would not allow eyeballs to be taken off of me any time I was around any child, any minor child." He stated there was never any time during any of K.S.'s visits that she and defendant were in a room without Robyne being present. One of the reasons why defendant and Robyne moved to a smaller house was so he "felt safer" because he "was worried about me." Defendant stated he "may have" told Detective Jenkins that he could not go to K.S.'s T-ball game, but he did go. Defendant acknowledged not wanting to get close to K.S. or "to any child because of shit like this."

¶ 33 Defendant acknowledged making a video with A.J., wherein she "recanted her story just like she did in that letter," before he would let her move back into his home. Defendant also had A.J. write letters to protect himself, although he denied telling her what to write.

¶ 34 In the State's rebuttal, Detective Jenkins testified he asked defendant whether he went to K.S.'s T-ball game, and defendant said "he did not because he was not allowed to be there." Although defendant stated he attempted to get K.S. to sleep in her own bed with little success, he told Jenkins she would sleep in his bed with Robyne "quite a bit."

¶ 35 Following closing arguments and one jury question, the jury found defendant guilty on all counts. In October 2015, defendant filed a motion for acquittal or, in the alternative, a new trial. Therein, defendant argued, *inter alia*, the trial court erred in granting the State's motion *in limine* to admit testimony of other-crimes evidence. The court denied the motion.

¶ 36 In November 2015, the trial court sentenced defendant to consecutive 25-year prison terms on counts I, II, and III. The court also sentenced defendant to five-year terms on counts IV and V, with those counts to run concurrently with each other but consecutively to counts I, II, and III. Defendant filed a motion to reconsider his sentence, which the court denied. This appeal followed.

¶ 37 II. ANALYSIS

¶ 38 Defendant argues the trial court erred in admitting other-crimes evidence concerning A.J., claiming the probative value of admitting the evidence was outweighed by its prejudicial effect and admitting the evidence denied him a fair trial where the State conducted a minitrial on that evidence. We disagree.

¶ 39 Initially, we note the State argues defendant has forfeited review of the other-crimes issue because he only raised a broad and general allegation in his posttrial motion. A defendant must object at trial and raise the issue in a posttrial motion to preserve an issue for review. *People v. Hestand*, 362 Ill. App. 3d 272, 279, 838 N.E.2d 318, 324 (2005). "Broad and general allegations in a post-trial motion are inadequate to advise the court of the challenge being raised, and are inadequate to preserve an issue for appellate review." *People v. Johnson*, 250 Ill. App. 3d 887, 893, 620 N.E.2d 506, 511 (1993). Here, the State filed a pretrial motion pursuant to section 115-7.3 of the Procedure Code (725 ILCS 5/115-7.3 (West 2014)), the trial court conducted a hearing and ruled on the motion, and defendant raised the issue of other-crimes evidence in his posttrial motion. While the better practice would have been to raise specific allegations of error in a posttrial motion for the court's consideration, we are well aware of the other-crimes issue being raised and find it was preserved for our review.

¶ 40 Evidence of other crimes is generally inadmissible to show a defendant's propensity to commit the charged criminal conduct. *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003). Such evidence, while relevant, is excluded because it "has 'too much' probative value." *Donoho*, 204 Ill. 2d at 170, 788 N.E.2d at 714 (quoting *People v. Manning*, 182 Ill. 2d 193, 213-14, 695 N.E.2d 423, 432 (1998)).

¶ 41 "Evidence of other offenses may be admissible to demonstrate 'motive, intent, identity, absence of mistake, *modus operandi*, or any other relevant fact other than propensity.' " *People v. Smith*, 2015 IL App (4th) 130205, ¶ 21, 29 N.E.3d 674 (quoting *People v. Vannote*, 2012 IL App (4th) 100798, ¶ 37, 970 N.E.2d 72). However, other-crimes evidence demonstrating propensity may be admissible under section 115-7.3 of the Procedure Code when a defendant is charged with one of the enumerated sex offenses. *People v. Ward*, 2011 IL 108690, ¶ 25, 952 N.E.2d 601; 725 ILCS 5/115-7.3(a) (West 2014) (listing the offenses of predatory criminal sexual assault of a child and aggravated criminal sexual abuse). "The other offenses must have a threshold similarity to the charged conduct to be admissible." *Smith*, 2015 IL App (4th) 130205, ¶ 23, 29 N.E.3d 674.

¶ 42 " 'Where other-crimes evidence meets the initial statutory requirements, the evidence is admissible if it is relevant and its probative value is not substantially outweighed by its prejudicial effect.' " *Smith*, 2015 IL App (4th) 130205, ¶ 21, 29 N.E.3d 674 (quoting *Vannote*, 2012 IL App (4th) 100798, ¶ 38, 970 N.E.2d 72). When weighing the probative value of the other-crimes evidence against any undue prejudice against the defendant, section 115-7.3(c) permits the trial court to consider (1) the proximity in time to the charged offense, (2) the degree of factual similarity to the charged offense, or (3) other relevant facts and circumstances. 725 ILCS 5/115-7.3(c) (West 2014). The trial court must, however, "engag[e] in

a meaningful assessment of the probative value versus the prejudicial impact of the evidence." *Donoho*, 204 Ill. 2d at 186, 788 N.E.2d at 724.

¶ 43 A "[d]efendant is entitled to have his guilt or innocence evaluated solely on the basis of the charged crime." *Donoho*, 204 Ill. 2d at 170, 788 N.E.2d at 714. "If other crimes evidence is admitted, it should not lead to a mini-trial of the collateral offense; the court should carefully limit the details to what is necessary to illuminate the issue for which the other crime was introduced." *People v. Nunley*, 271 Ill. App. 3d 427, 432, 648 N.E.2d 1015, 1018 (1995); see also *People v. Bedoya*, 325 Ill. App. 3d 926, 938, 758 N.E.2d 366, 377 (2001) (stating the other-crimes evidence "must not become a focal point of the trial").

¶ 44 A trial court's decision to admit other-crimes evidence will not be reversed on appeal absent an abuse of discretion. *Donoho*, 204 Ill. 2d at 182, 788 N.E.2d at 721. "An abuse of discretion has occurred when the trial court's decision is arbitrary, fanciful, or unreasonable or when no reasonable person would take the position adopted by the trial court." *People v. Wilson*, 2015 IL App (4th) 130512, ¶ 75, 44 N.E.3d 632.

¶ 45 In the case *sub judice*, the State sought to introduce other acts of sexual conduct committed by defendant against C.J. and A.J pursuant to section 115-7.3 of the Procedure Code. Now on appeal, defendant does not raise an issue with the evidence pertaining to C.J. Thus, we will confine our analysis to the evidence involving A.J.

¶ 46 At the hearing on the State's motion *in limine*, the trial court admitted a transcript of A.J.'s June 2015 interview with police. In his argument, defense counsel contended admitting A.J.'s testimony would be "extraordinarily prejudicial," in part because the alleged conduct occurred between 17 and 26 years prior to the current offenses. Counsel also argued A.J.'s testimony could become "the focus of the trial."

¶ 47 The trial court took the matter under advisement and issued a written ruling. The court noted it reviewed the transcript of A.J.'s interview and considered "defense counsel's strong argument of the prejudicial effect" of A.J.'s allegations. Taking into consideration the proximity in time and the degree of factual similarity between the charged offenses and A.J.'s allegations, the court found the probative value of her testimony outweighed its prejudicial effect. The court did, however, impose restrictions on A.J.'s testimony and prohibited her from testifying about (1) allegations or statements made by her grandmother or mother, (2) watching pornographic videos or seeing pornographic magazines with defendant, (3) an incident at a cemetery, and (4) "penetration by penis."

¶ 48 Defendant first takes issue with the proximity in time between the alleged abuse against A.J. and the charged offenses against K.S. A.J. alleged she was sexually abused by defendant from the ages of 3 to 12. As A.J. was 30 years old when she testified, the alleged abuse occurred 18 to 27 years before the charged offenses took place.

¶ 49 Our supreme court has stated the " 'admissibility of other-crimes evidence should not, and indeed cannot, be controlled by the number of years that have elapsed between the prior offense and the crime charged.' " *Donoho*, 204 Ill. 2d at 183, 788 N.E.2d at 722 (quoting *People v. Illgen*, 145 Ill. 2d 353, 370, 583 N.E.2d 515, 522 (1991)). Thus, the court declined "to adopt a bright-line rule about when prior convictions are *per se* too old to be admitted under section 115-7.3. Instead, it is a factor to consider when evaluating its probative value." *Donoho*, 204 Ill. 2d at 183-84, 788 N.E.2d at 722. The court also noted "[t]he appellate court has affirmed admission of other-crimes evidence over 20 years old under the exceptions because the court found it to be sufficiently credible and probative." *Donoho*, 204 Ill. 2d at 184, 788 N.E.2d at 722 (citing *People v. Davis*, 260 Ill. App. 3d 176, 192, 631 N.E.2d 392, 404 (1994)).

¶ 50 In *Smith*, 2015 IL App (4th) 130205, ¶ 1, 29 N.E.3d 674, the defendant was convicted of sex offenses based on incidents of sexual abuse against two unrelated children, which occurred in February or March 2012. Pursuant to section 115-7.3 of the Procedure Code, the trial court allowed evidence of the defendant's alleged sexual abuse of his stepdaughter and her cousin, which occurred from approximately 1994 through 2000. *Smith*, 2015 IL App (4th) 130205, ¶ 1, 29 N.E.3d 674.

¶ 51 On appeal, the defendant argued the trial court failed to place enough weight on the lapse of time between the other-crimes evidence and the charged offenses. *Smith*, 2015 IL App (4th) 130205, ¶ 19, 29 N.E.3d 674. This court had to "determine whether a period of 12 to 18 years between the prior offenses and the charged conduct is so unduly prejudicial that it substantially outweighs the probative value of the other-crimes evidence." *Smith*, 2015 IL App (4th) 130205, ¶ 29, 29 N.E.3d 674. We found "[w]hile the passage of many years may lessen the probative value of other-offense evidence, 'standing alone it is insufficient to compel a finding that the trial court abused its discretion by admitting evidence about it.' " *Smith*, 2015 IL App (4th) 130205, ¶ 30, 29 N.E.3d 674. In finding the trial court did not abuse its discretion in allowing the other-crimes evidence, we noted the court engaged in a meaningful assessment of the probative value versus the prejudicial impact, heard the defendant's argument regarding the prejudicial effect of other-crimes evidence, and barred certain evidence. *Smith*, 2015 IL App (4th) 130205, ¶ 33, 29 N.E.3d 674.

¶ 52 In the case *sub judice*, the trial court conducted a meaningful analysis of the issue and heard defense counsel's argument that the evidence was too remote and prejudicial. The time between the other crimes and the current offenses is just one factor to consider in weighing the probative value, and A.J.'s testimony in this case was sufficiently credible and reliable to be

probative. See *People v. Braddy*, 2015 IL App (5th) 130354, ¶ 37, 32 N.E.3d 39 (finding that although the 20-year time lapse between the prior alleged sexual abuse and the charged offenses was "significant," the witness was sufficiently credible and reliable to be probative).

¶ 53 In addition, it is reasonable to conclude there may be circumstances when the evaluation of the length of time between the prior acts and the charged offense are directly related to the second factor—the degree of factual similarity between them. In *Donoho*, 204 Ill. 2d at 184-85, 788 N.E.2d at 722-23, the victims' ages in the case for which the defendant was on trial were 9 and 12, while the ages of the victims of the prior offense were 7 and 11. Although 12 to 15 years elapsed between the offenses, this was simply a factor relating to when the defendant had access to victims of a particular age range. *Donoho*, 204 Ill. 2d at 185, 788 N.E.2d at 723.

¶ 54 In *Smith*, 2015 IL App (4th) 130205, ¶ 5, 29 N.E.3d 674, the nine- and five-year-old victims were daughters of the defendant's girlfriend's friend who stayed over frequently. His victims in the prior incident were stepdaughters from a previous relationship—one of whom said the incidents occurred when she was about four or five and the other said she was approximately five. *Smith*, 2015 IL App (4th) 130205, ¶¶ 12-13, 29 N.E.3d 674. While it is true the prior acts took place anywhere from 12 to 15 years previously, again, it is reasonable to find it to be the result of the defendant's access to victims of a particular age.

¶ 55 In *Vannote*, 2012 IL App (4th) 100798, ¶ 42, 970 N.E.2d 72, the victims in the charged offenses and the prior offense were both nine-year-old boys. This court allowed the admission of a 15-year-old conviction based primarily on the clear similarities of the offenses. *Vannote*, 2012 IL App (4th) 100798, ¶ 42, 970 N.E.2d 72.

¶ 56 In these situations, the similarity of the facts outweigh the length of time between the occurrences. Defendant, however, argues the alleged abuse of A.J. was too dissimilar to the charged offenses to be probative. See 725 ILCS 5/115-7.3(c) (West 2014). "As factual similarities increase, so does the relevance, or probative value, of the other-crimes evidence." *Donoho*, 204 Ill. 2d at 184, 788 N.E.2d at 723.

¶ 57 A number of significant similarities existed between the alleged abuse against A.J. and the charged offenses pertaining to K.S. Both were very young females when the abuse began—three to four years of age for A.J. and four years of age for K.S. Both were children to whom defendant had access either because the victim lived with him or spent significant amounts of time, including overnights, at his residence. The allegations for both children included digital penetration, fondling of their vaginal areas under clothing, and forcing them to touch his penis. Both involved incidents which occurred when the children were in bed—either their own or defendant's. In each case, defendant occupied a position of authority and trust, either as a father or a grandfatherly figure. Some of the incidents of sexual abuse, in both cases, occurred when other family members, although apparently unaware of defendant's conduct, were either in reasonably close proximity or in the area.

¶ 58 Defendant acknowledges "some similarities" between K.S.'s and A.J.'s testimony, but he contends A.J. went beyond those similarities and testified to penile penetration, her suicide attempts, and defendant paying her money to perform a sex act. The trial court prohibited A.J. from testifying to various allegations or statements, including an incident at a cemetery and penile penetration.

¶ 59 We note defense counsel did not object to A.J.'s testimony on these matters. As these specific issues were also not raised in the posttrial motion, defendant's argument is

forfeited. See *People v. Johnson*, 218 Ill. 2d 125, 138, 842 N.E.2d 714, 722 (2005) (noting the failure to object at trial resulted in forfeiture). However, even if we would consider this testimony, we find no error.

¶ 60 While A.J. mentioned a time in the recreational vehicle when defendant was "on" her and kept doing "what he was doing," after which A.J. "cleaned" herself up, her testimony was vague and cannot be said to have improperly influenced the jury. Although she testified "there was an incident" related to defendant's sexual abuse where she received money, she stated she could not talk about it.

¶ 61 Defendant, however, argues he was denied a fair trial where the State conducted a minitrial on the other-crimes evidence, pointing out A.J.'s testimony regarding her suicide attempts and the prosecutor's closing argument. Again, defendant neither objected to this testimony or the prosecutor's argument at trial nor raised these specific issues in his posttrial motion. See *People v. Fretch*, 2017 IL App (2d) 151107, ¶ 86, 75 N.E.3d 329 (stating the defendant's objection to the admission of other-crimes evidence did not relieve him of the responsibility of also objecting when he believed the State was improperly using the evidence at trial and in closing argument). Thus, this argument is forfeited.

¶ 62 Moreover, even if not forfeited, we find no error. While A.J. stated she attempted suicide because defendant would not stop abusing her, she did not dwell on the matter. In his closing argument, the prosecutor focused the bulk of his argument on the specific allegations involving K.S. In rebuttal, the prosecutor stated defendant was "not on trial" for the acts of sexual abuse against C.J. and A.J., but the evidence was presented to show his "propensity to sexually abuse children." The prosecutor also asked the jurors to focus their attention on K.S., as

the acts against her were "the basis of the charges" and were "to be the basis of your deliberations." We find defendant was not denied a fair trial.

¶ 63 III. CONCLUSION

¶ 64 For the reasons stated, we affirm the trial court's judgment. As part of our judgment, we award the State its $50 statutory assessment against defendant as costs of this appeal.

¶ 65 Affirmed.