2021 IL App (4th) 180688-U

NO. 4-18-0688

FILED
January 13, 2021
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
Plaintiff-Appellee,	)	Circuit Court of
v.	)	Vermilion County
RICHARD V. ASHLEY,	)	No. 17CF406
Defendant-Appellant.	)	
	)	Honorable
	)	Nancy S. Fahey,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Cavanagh and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) Defendant failed to establish his trial counsel was ineffective for failing to object to other-crimes testimony from two witnesses on the basis that the evidence was not proffered by the State prior to trial and resulted in an improper mini-trial on a collateral offense.

(2) The trial court complied with Illinois Supreme Court Rule 431(b) (eff. July 1, 2012) when questioning potential jurors during *voir dire*.

(3) Defendant failed to show he was entitled to a new trial based on cumulative error.

(4) The trial court did not abuse its discretion by sentencing defendant to an aggregate 90-year term of imprisonment.

¶ 2 Following a jury trial, defendant, Richard V. Ashley, was convicted of three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)) and sentenced to three consecutive 30-year prison terms. Defendant appeals, arguing (1) his trial

counsel was ineffective for failing to object to inadmissible other-crimes testimony from two witnesses, which resulted in an improper "mini-trial" on a collateral offense; (2) the trial court failed to properly admonish and question potential jurors pursuant to Illinois Supreme Court Rule 431(b) (eff. July 1, 2012); (3) the cumulative effect of error in his case influenced the jury's guilty verdict and denied him his right to a fair trial; and (4) his aggregate 90-year prison sentence was excessive due to the court's failure to consider his rehabilitative potential and mitigating evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2017, the State charged defendant with three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)). It alleged that between June 2016 and May 2017, when defendant was 17 years of age or older, he committed acts of sexual penetration and contact with K.H. (born September 18, 2008), who was under 13 years of age, in that he placed his penis in K.H.'s mouth, his fingers in K.H.'s vagina, and K.H.'s hand on his penis. (The State initially charged defendant with having committed the alleged offenses between June 2016 and March 2017, but amended the charges prior to trial to reflect the above time frame.) The State's theory of the case was that defendant, who had a dating relationship with K.H.'s mother and resided in the same household as K.H., sexually abused K.H. over a period of several months, beginning when they were living in Georgia and continuing after a move to Illinois.

¶ 5 Prior to trial, the State filed a motion pursuant to section 115-10 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-10 (West 2016)) to admit out-of-court statements K.H. made in June 2017 about the alleged abuse to her aunt, to her mother, and during a recorded interview with Danville police detective Danielle Lewallen. Both parties also filed pretrial motions seeking to exclude or admit evidence of the acts allegedly occurring in Georgia.

Defendant filed a motion *in limine* asking the trial court to bar the State from introducing any evidence of alleged uncharged criminal activity in Georgia. Conversely, the State filed a motion under section 115-7.3 of the Code (*id.* § 115-7.3), seeking to admit evidence of defendant's alleged prior acts of sexual abuse in Georgia for the purpose of showing his propensity to commit the charged offenses.

¶ 6 In connection with its section 115-7.3 motion, the State filed a notice of intent, asserting it intended "to offer testimony [of] K.H.'s description of a course of sexual abuse by the Defendant[.]" In its motion, the State alleged K.H. disclosed a pattern and history of sexual abuse by defendant, which began in August 2015, when K.H. and her family resided in Georgia and continued until after they relocated to Illinois. The State described information K.H. provided to Lewallen during her recorded interview in June 2017, regarding abuse that allegedly occurred in both Georgia and Illinois. It also asserted as follows: "The State seeks the admission of the victim's description of the course and details of sexual abuse by the Defendant, beginning in Georgia, and continuing into [Illinois], as disclosed in discovery and incorporated by reference herein, as prior qualifying offenses under [section 115-7.3 of the Code]."

¶ 7 In March 2018, the trial court conducted a hearing on the parties' motions. Initially, it heard evidence and argument on the State's section 115-10 motion to admit K.H.'s out-of-court statements. The court allowed the motion provided K.H. testified at trial.

¶ 8 Next, the trial court addressed both the State's section 115-7.3 motion and defendant's motion *in limine* regarding the alleged Georgia acts. The State noted the court had reviewed K.H.'s recorded interview from June 2017, which was "largely what [the State was] asking permission to admit," and it asked the court to allow K.H.'s recorded interview to be played in its entirety. The State argued K.H. described the same conduct occurring in Georgia as defendant

was charged with committing in Illinois and that there had been a "continuing course of conduct" leading up to K.H.'s disclosures of abuse in 2017. It maintained that not only did evidence of the Georgia acts meet the requirements for admission set forth in section 115-7.3, the evidence also "provide[d] context through the familial relationship between [K.H.] and the Defendant, and explain[ed] motive, opportunity, intent, knowledge, lack of mistake, all of that." The State concluded its argument by asking the court to "allow *** the evidence of other acts of sexual penetration to be admitted at trial."

¶ 9 Defendant's counsel argued that it was "almost impossible to defend the matters that occurred in Georgia." He asked the court to order portions of the recorded interview referencing the Georgia acts to be deleted and not allowed.

¶ 10 Ultimately, the trial court granted the State's motion to admit evidence under section 115-7.3 of the Code and denied defendant's motion *in limine*. The court specifically stated as follows:

> "[The] State's motion to admit evidence under [section 115-7.3 of the Code] will be allowed. The Court is finding that there's proximity in time, that there are factual similarities, and that the probative value outweighs the undue prejudicial effect, and based on that ruling, the Court is denying Defendant's *** motion *in limine*."

¶ 11 In April 2018, defendant's jury trial was conducted. During *voir dire*, potential jurors were questioned in groups of 13 or 14. When questioning the initial group of 14 potential jurors regarding the principles of law set forth in Rule 431(b), the court first stated as follows:

> "All right. I need to ask you a few questions individually. And I'm going to start with these. I need to ask you if you understand and accept the following principles. A person accused of a crime is presumed to be innocent of the charges against him.

> That presumption of innocence stays with the Defendant throughout the trial and is not overcome unless from all the evidence you believe the State proved his guilt beyond a reasonable doubt. The State has the burden of proving the Defendant's guilt beyond a reasonable doubt. Do you understand and accept those principles?"

The court then called each of the 14 potential jurors by name, and each juror responded "Yes." Next, the court stated as follows:

> "Okay. The Defendant does not have to prove his innocence. The Defendant does not have to present any evidence on his own behalf. The Defendant does not have to testify, if he does not wish to. If the Defendant does not testify, this cannot be considered by you in any way in arriving at your verdict. If the Defendant does testify, you should judge his testimony in the same manner as you would judge any other witness. Do you understand and accept those principles[?]"

Again, the court called the name of each of the 14 potential jurors, and each one responded "Yes." The record reflects the court questioned all potential jurors in substantially the same manner.

¶ 12 At trial, the State's evidence showed defendant was born on March 29, 1981. In November 2013, he began dating K.H.'s mother, Ashley. In February 2014, he started living with Ashley; K.H.; and K.H.'s older and younger brothers—D.H. and B.H.

¶ 13 Ashley, who reported being "hard of hearing," testified at trial with the aid of a sign language interpreter. She stated defendant initially resided with her and her children in Danville, Illinois. In approximately August 2015, they moved to Georgia to be near Ashley's father, who had health issues. Throughout her relationship with defendant and while living in both Illinois and Georgia, Ashley worked outside the home while defendant stayed home and watched the children.

¶ 14 Ashley testified that after living in Georgia for about a year, she wanted D.H. and

K.H. to return to live in Illinois. However, defendant "threw a fit, saying that [K.H.] was a little girl, [and] she didn't need to go anywhere." Ashley testified K.H. "ended up staying" in Georgia and D.H. and B.H. returned to Illinois. Eventually, Ashley, defendant, and K.H. also returned to live in Illinois. Upon their return, Ashley, defendant, and all three children stayed with a friend in Catlin, Illinois, for a couple of months. They then moved to a residence on Seminary Street in Danville.

¶ 15 Ashley stated defendant continued to reside with her and the children until the end of March 2017, when she and defendant broke up. After defendant moved out, they remained in contact and, for a period of time, defendant continued to watch K.H. and her brothers while Ashley worked.

¶ 16 At the time of trial, K.H. was nine years old and in second grade. She recalled living in both Georgia and on Seminary Street in Danville with her mother, defendant, and her two brothers. K.H. testified that when her family lived in Georgia, defendant made her "suck his private" by "grab[bing] [her] hair and push[ing]" her head. The act occurred "in [defendant's] room." K.H. testified she did not know another word for the body part that she called a "private" but stated that boys also used their "privates" to "pee." K.H. recalled the first time defendant made her "suck his private" was when defendant "got his PlayStation and TV." According to K.H., the act occurred "[a] lot" in Georgia. Sometimes when it occurred, her brothers would be watching a movie. Other times, she indicated defendant would get her alone by asking her to help him find his lighter.

¶ 17 K.H. testified that when she and her family moved back to Danville, defendant, again, touched her in ways she did not like. She stated he used his fingers to touch "[i]n [her] private" and put his private "[i]n [her] mouth." K.H. stated she also touched defendant's "private"

with her hands. She testified that defendant touched the inside of her "private" with his finger while the family resided "in Georgia, Catlin, [and] Danville." She also described that act as happening "[a] lot." K.H. testified that the acts she described occurred while she lived on Seminary Street both before and after defendant stopped living with her family.

¶ 18 The record shows K.H. indicated through movements how she touched defendant's "private" and how defendant moved his hand when he touched her "private." She testified it "[h]urt" both when defendant touched her body and when he put his "private" in her mouth.

¶ 19 K.H. asserted she did not tell her mother about what was happening with defendant because defendant threatened "to cut [her] mom's throat off" and stated that "[h]e would call DPS [*sic*]." After defendant stopped living with her family, K.H. told her aunt about what had happened. Ashley also found out and K.H. had to talk to a police officer. K.H. denied that anyone else ever touched her as defendant had done or that anyone told her what to say.

¶ 20 Starla Johnson testified that Ashley was her sister and K.H. was her niece. On June 2, 2017, K.H. and her brothers visited Starla's home and played with Starla's children. After the children indicated to Starla that K.H. mentioned the Department of Children and Family Services (DCFS), Starla questioned K.H., who began "crying and shaking." Starla testified K.H. then reported to her that defendant "made [K.H.] put his private in her mouth" and that "he threatened that DCFS would take them away if she told." When Starla asked K.H. when and where the act happened, K.H. stated it occurred at defendant's mother's house, Ashley's friend's house, in Georgia, and on Seminary Street. According to Starla, K.H. denied that defendant "put his private near hers." K.H. also stated she had not told Ashley about what occurred because defendant "threatened to cut [Ashley's] neck off *** and [told K.H.] that DCFS would come and take [K.H.] away."

¶ 21 Ashley testified she observed K.H. at Starla's residence on June 2, 2017, and saw that K.H. was crying, hysterical, and upset. When she asked why K.H. did not tell her sooner about what happened with defendant, K.H. stated she was "scared" and that defendant "threatened" that "DCFS would take [K.H. and her brothers] from [Ashley] and slice [Ashley's] throat." Both Ashley and Starla denied having further discussions with K.H. about the abuse or telling her what to say.

¶ 22 On cross-examination, Ashley agreed that defendant's mother, Nancy Brewer, allowed her to borrow a truck and that, at some point, defendant asked for the truck to be returned. Ashley acknowledged, however, that she did not return the truck and, instead, "[i]t got towed." On redirect examination, Ashley testified that she entered into an agreement with Nancy for the truck and a boat. She stated she paid Nancy $3600 in exchange for both but, after her relationship with defendant ended, Nancy refused to turn over the titles. Ashley agreed she "just walked away from the whole affair" and stated the truck was "in an impound lot."

¶ 23 D.H. testified he was 12 years old and in sixth grade. He described his family's living situation in both Illinois and Georgia, stating he resided with his mother, K.H., B.H., and defendant. D.H. stated Ashley worked outside the home while defendant watched him and his siblings. D.H. recalled occasions in Georgia when defendant and K.H. were alone. He testified defendant would call for K.H. and "say he need[ed] help finding something." K.H. would then go into a room with defendant. On one occasion, D.H. tried to go into the same room that defendant and K.H. were in, but the door was locked. According to D.H., defendant would call K.H. into a room he was in by himself "[p]retty much every day that [Ashley] would be at work."

¶ 24 D.H. further recalled that while living in Georgia, he and K.H. were supposed to return to Illinois during summer break to visit D.H.'s father. However, defendant told K.H. that

they planned to go to Six Flags and a water park in Georgia. According to D.H., defendant "kept" K.H. in Georgia and B.H. returned to Illinois with him instead.

¶ 25 On cross-examination, D.H. testified he remembered speaking to the police and stating that "when [defendant] had [K.H.] in the bedroom, it was only for a couple of minutes." On redirect examination, D.H. agreed he was "just learning now how to *** tell time" and did "[n]ot really" know how to do it when living in Georgia. He testified he did not know the exact amount of time K.H. was alone with defendant.

¶ 26 Lewallen testified she was a juvenile detective with particularized training in juvenile justice issues, including interviewing child sexual assault victims. On June 8, 2017, she interviewed K.H. A recording of the interview was admitted at trial and played for the jury.

¶ 27 The recording showed that during her interview with Lewallen, K.H. provided information that was similar to her trial testimony. She described abuse that started in Georgia and continued in Illinois at the Seminary Street residence. K.H. reported that defendant touched the inside and outside of her vagina, which she described as her "private" or "bad spot"; "made [her] suck on" his penis, which she also referred to as a "private"; and made her "go up and down with his private" using her hand. She asserted that defendant would pull her hair, forcing her to place his penis in her mouth and that the acts she described occurred "a lot." K.H. also reported that defendant would "stop" the acts she described after "yellow stuff" came out of a "cut" on the top of his penis. Finally, she stated that defendant threatened to harm or kill her mother if she told anyone about what occurred.

¶ 28 Defendant presented the testimony of his mother, Nancy, and testified on his own behalf. Nancy asserted defendant, Ashley, and Ashley's children stayed at her residence for short periods of time before their move to Georgia and after they returned to Illinois in June 2016. After

defendant and Ashley broke up, defendant returned to live at her home. Nancy recalled that, at some point, her husband's truck was loaned to Ashley and that Ashley did not return the truck when asked to do so. On cross-examination, Nancy denied that Ashley gave her $3600 in exchange for the truck, stating she only received $3200 from defendant for a boat.

¶ 29 Defendant testified that he was 37 years old. In November 2014, he and Ashley agreed to reside together. In February 2015, they agreed that Ashley would work outside the home and defendant would watch D.H., K.H., and B.H. Defendant stated that if Ashley was working, he would get the children ready for school, help them with homework, and cook dinner.

¶ 30 Defendant further testified that he was a "gamer," which entailed playing games on his PlayStation and broadcasting the games he played to others online. Defendant stated he typically played "war" or "military-based" games that involved "a lot of violence." According to defendant, the children were not allowed in his bedroom where he played his games because he "didn't want them to see the stuff that was going on" or hear adult conversations that he was having with others while playing.

¶ 31 Defendant stated that when he and Ashley were living in Georgia with the children, they initially lived with Ashley's sister and her boyfriend for a period of time. Around November 2015, defendant, Ashley, and the children began living by themselves and defendant resumed his caretaking duties for the children. In January 2016, they received an eviction notice. At some point thereafter, defendant resided with a friend while a church "moved Ashley and [K.H.] into a hotel room." Defendant testified that arrangement lasted for about a month and, in June 2016, they moved back to Illinois and began living with Nancy. Defendant testified he remained in Nancy's home while Ashley and the children moved in with Ashley's grandmother and then to a residence in Catlin. Defendant denied living with Ashley and the children at the Catlin residence. However,

in February 2017, he began living with them at the Seminary Street residence in Danville. At that time, defendant continued his previous duties with respect to watching the children while Ashley worked. He also continued with his gaming.

¶ 32 Defendant reported that in April 2017, he left the Seminary Street residence and moved to his mother's home. However, until May 7, 2017, he continued to watch the children at the Seminary Street residence while Ashley worked. After that date, defendant's interactions with Ashley concerned the vehicle his mother allowed her to use. Further, defendant denied the allegations of sexual abuse against him, asserting he never put his penis in K.H.'s mouth, had K.H. put her hand on his penis, or that he placed his fingers in K.H.'s vagina.

¶ 33 On cross-examination, defendant acknowledged that there were various periods of time when he acted as the primary caregiver for Ashley's children while she worked. Also, there were occasions over the course of his relationship with Ashley when he was alone with K.H. However, defendant maintained the allegations against him were untrue, asserting his belief that K.H. was being told what to say by Starla and Ashley as "a way to get back at [him]." Defendant asserted Starla did not like him and that Ashley was motivated by the truck issue and their break-up.

¶ 34 Ultimately, the jury found defendant guilty of each charged offense. In May 2018, defendant filed a posttrial motion for a new trial. He raised various issues not asserted on appeal.

¶ 35 In July 2018, the trial court conducted a hearing and denied defendant's posttrial motion. It then proceeded with defendant's sentencing. The record reflects the court was presented with defendant's presentence investigation (PSI) report, a victim impact statement from Ashley and K.H., and a letter written by Nancy.

¶ 36 Defendant's PSI report showed he was a high school graduate with three semesters

of college. He had a 14-year-old daughter, who resided in New York with her mother. Defendant's criminal history included convictions for traffic-related offenses and the misdemeanor offenses of larceny (2003) and theft (2005). Further, the report showed defendant underwent an "Illinois LSI-R Assessment" to determine his risk of reoffending. A report of that assessment was attached to his PSI report and showed defendant had a score that indicated a "Low-Medium" risk for reoffending and a 44% "Probability of Recidivism." The assessment further stated as follows regarding defendant's community "Risk Level": "Maximum level of supervision/service is suggested, but consider medium supervision with management and/or treatment of dynamic risk factors."

¶ 37 The victim impact statement from Ashley and K.H. described the emotional toll and effects of defendant's abuse on K.H. and her family. Ashley reported feeling like she had "failed" K.H., while K.H. had difficulty sleeping and knew "things she should not know." According to Ashley, D.H. was also "riddled with guilt and anger for not noticing" what had happened to his sister. In her letter to the trial court, Nancy stated defendant had always been a good son. She reported being in ill health and maintained that defendant had "always been there to help" her and others. Nancy also asserted that defendant had been sexually and physically abused as a young child by a relative.

¶ 38 In presenting its sentencing recommendation to the trial court, the State noted defendant faced a sentencing range of 6 to 60 years in prison with respect to each count and that all three counts were "mandatory consecutive to one another." It asked the court to impose three, consecutive 30-year prison sentences, resulting in a total 90-year sentence. The State argued that as part of defendant's criminal history, the court should consider that K.H. reported multiple and repeated acts of abuse by defendant. In aggravation, it also asked the court to consider that defendant held a position of trust or supervision over K.H. as her babysitter, that defendant's

conduct caused serious harm, and the factor of deterrence.

¶ 39 Defendant's counsel asked the trial court to impose only the minimum sentence. He argued defendant's prior criminal convictions consisted of only "some petty offenses" and "some things involving traffic [offenses]." Counsel also noted that defendant's father and stepfather were deceased and defendant was his mother's "only family." Further, he argued that a 90-year sentence was excessive and essentially a life sentence for defendant, who was 37 years old.

¶ 40 Ultimately, the trial court accepted the State's recommendation and sentenced defendant to three consecutive 30-year prison terms. It described defendant's conduct as despicable, inexcusable, and unacceptable and noted it agreed with the State's arguments as to the factors in aggravation, stating as follows:

> "[Defendant's] conduct caused or threatened serious harm, not just to [K.H.] but to members of her family. [Defendant had] a history of prior delinquency or criminal activity, [defendant] held a position of trust or supervision over [K.H.], and the sentence is necessary to deter others from committing the same crime."

¶ 41 Shortly following his sentencing, defendant filed a motion to reduce his sentence. He argued the trial court failed to consider his age "and the lifetime effect of its sentence" as well as "the mitigating factor that [his] mother was reliant on him due to her significant medical issues and the recent loss of her husband." In October 2018, the court conducted a hearing and denied defendant's motion.

¶ 42 This appeal followed.

¶ 43 II. ANALYSIS

¶ 44 A. Ineffective Assistance of Counsel

¶ 45 On appeal, defendant first argues his trial counsel was ineffective for failing to object to testimony from K.H. and D.H. regarding his uncharged acts of criminal conduct, *i.e.*, the "Georgia incidents." He argues their testimony corroborated and bolstered the State's properly admitted other-crimes evidence—K.H.'s recorded interview, admitted under section 115-7.3 of the Code for the purpose of showing propensity. Defendant concludes that admission of the challenged testimony at trial resulted in an impermissible mini-trial on the Georgia acts. Further, he maintains the State should have been held to its pretrial proffer of evidence regarding the Georgia acts, which was limited to K.H.'s recorded interview and did not include testimony from either K.H. or D.H.

¶ 46 The two-prong standard set forth in *Strickland v. Washington*, 466 U.S. 668 (1984), applies to ineffective-assistance-of-counsel claims and requires a defendant to show that (1) his or her counsel's performance fell below an objective standard of reasonableness and (2) there is a reasonable probability that, but for counsel's unprofessional errors, the result of the proceeding would have been different. *People v. Dupree*, 2018 IL 122307, ¶ 44, 124 N.E.3d 908. "A failure by the defendant to satisfy either prong of the *Strickland* standard precludes a finding of ineffective assistance of counsel." *People v. Peterson*, 2017 IL 120331, ¶ 79, 106 N.E.3d 944.

¶ 47 Initially, the State asserts defendant's ineffective-assistance claim has been forfeited due to his failure to raise it with the trial court, either at trial or in a posttrial motion. However, "[a]ttorneys are not expected to argue their own ineffectiveness, and failure to do so does not result in forfeiture on appeal." *People v. Maggio*, 2017 IL App (4th) 150287, ¶ 19, 80 N.E.3d 72 (citing *People v. Lawton*, 212 Ill. 2d 285, 296, 818 N.E.2d 326, 333 (2004)). In this case, defendant was represented by the same attorney throughout the underlying proceedings, and his counsel was not required to argue his own ineffectiveness. Accordingly, we reject the State's

forfeiture argument and address the merits of defendant's claim.

¶ 48 Generally, evidence of other crimes may be admissible when relevant to show *modus operandi*, intent, motive, identity, or absence of mistake with respect to the crime with which the defendant is charged, *but not* the defendant's propensity to commit a crime. *People v. Pikes*, 2013 IL 115171, ¶ 11, 998 N.E.2d 1247. The basis for the rule against using other-crimes evidence to show propensity is not because it is irrelevant, rather "it is objectionable because such evidence has 'too much' probative value." *People v. Donoho*, 204 Ill. 2d 159, 170, 788 N.E.2d 707, 714 (2003) (quoting *People v. Manning*, 182 Ill. 2d 193, 213, 695 N.E.2d 423, 432 (1998)). However, section 115-7.3 of the Code (725 ILCS 5/115-7.3(b) (West 2016)), sets forth an exception to the general rule and enables "courts to admit evidence of other crimes to show [a] defendant's propensity to commit sex offenses if the requirements of section 115-7.3 are met." *Donoho*, 204 Ill. 2d at 176.

¶ 49 Section 115-7.3 explicitly applies to criminal cases in which "the defendant is accused of predatory criminal sexual assault of a child ***." 725 ILCS 5/115-7.3(a)(1) (West 2016). It provides that other-crimes evidence may be admissible and "may be considered for its bearing on any matter to which it is relevant." *Id.* § 115-7.3(b). Under that section, the trial court weighs the probative value of the evidence against undue prejudice to the defendant and considers the following factors:

> "(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." *Id.* § 115-7.3 (c).

¶ 50 As defendant points out, it is generally held that when other-crimes evidence is allowed, " 'it should not lead to a mini-trial of the collateral offense' " and " 'the court should

carefully limit the details to what is necessary to illuminate the issue for which the other crime was introduced.' " *People v. Walston*, 386 Ill. App. 3d 598, 619, 900 N.E.2d 267, 287 (2008) (quoting *People v. Nunley*, 271 Ill. App. 3d 427, 432, 648 N.E.2d 1015, 1018 (1995)). The "disinclination toward 'mini-trials' of collateral offenses is *** another application of the principle that evidence should not be admitted where it causes unfair prejudice, jury confusion, or delay." *Id.*

¶ 51 Here, defendant argues testimony from K.H. and D.H. regarding the Georgia acts was inadmissible because it served to corroborate and bolster what he asserts was the State's *only* proffered propensity evidence—K.H.'s recorded interview with Lewallen. Further, he maintains that the admission of such evidence resulted in an impermissible mini-trial on the Georgia acts. Defendant asserts a mini-trial could have been avoided if his counsel had objected to the challenged testimony and the State was held to its proffer.

¶ 52 To support his argument on appeal, defendant primarily relies on two cases—*People v. Hale*, 2012 IL App (1st) 103537, 977 N.E.2d 1140, and *People v. Staake*, 2016 IL App (4th) 140638, 78 N.E.3d 388. First, in *Hale*, 2012 IL App (1st) 103537, ¶ 10, the State challenged the trial court's denial of its motion *in limine* to introduce proof of other-crimes evidence against the defendant for multiple purposes other than propensity under common-law principles. On review, the First District determined the trial court abused its discretion and the other-crimes evidence was admissible for the purposes alleged by the State. *Id.* ¶¶ 23-28. In so holding, it also addressed the defendant's concern that the admission of other-crimes evidence could result in the impermissible mini-trial of a collateral offense. *Id.* ¶ 30. The court stated such could be avoided by holding the State to its pretrial proffer of the other-crimes evidence. *Id.*

¶ 53 Second, in *Staake*, 2016 IL App (4th) 140638, ¶ 86, the defendant appealed his second-degree-murder conviction, arguing, in part, "that the trial court abused its discretion by

limiting the corroborating evidence [he] could present to establish [the victim's] propensity for violence." Specifically, prior to his trial, the defendant moved to introduce the testimony of two witnesses who observed the victim hit another person, "an event which [the] defendant also allegedly witnessed." *Id.* The trial court allowed the defendant to testify about his observation of the victim but prohibited him from presenting corroborating witnesses on the issue. *Id.* On appeal, the defendant argued "corroborating witnesses would have bolstered his testimony about [the victim's] propensity for violence" and was relevant to show that the victim, rather than the defendant, was the initial aggressor in the conflict between the two. *Id.*

¶ 54 This court rejected the defendant's challenge. *Id.* ¶ 88. We noted that "a trial court has wide latitude to manage its courtroom," which "includes the ability to limit the amount of corroborating testimony on a given issue." *Id.* ¶ 87. Further, we pointed out that the court explained its ruling was intended "to avoid a mini-trial" on collateral events related to the victim's propensity for violence "so as to avoid confusing the issues for the jury." *Id.* ¶ 88. We concluded the court's ruling was not an abuse of its discretion. *Id.*

¶ 55 Here, we find defendant has not established that his counsel's performance was deficient for failing to object to the challenged testimony. First, we reject defendant's assertion that the testimony from K.H. and D.H. about the Georgia incidents was inadmissible evidence because it was not "proffered" by the State prior to trial.

¶ 56 Section 115-7.3 of the Code provides that when the prosecution intends to offer other-crimes evidence under that section, "it must disclose the evidence, including statements of witnesses or a summary of the substance of any testimony, at a reasonable time in advance of trial, or during trial if the court excuses pretrial notice on good cause shown." 725 ILCS 5/115-7.3(d) (West 2016). Relevant to the facts of this case, the plain language of the statute requires only that

the State disclose other-crimes evidence it intends to offer, prior to trial. It does not require any particular proffer of evidence by the State in the context of a section 115-7.3 filing to establish admissibility. See *People v. Braddy*, 2015 IL App (5th) 130354, ¶ 24, 32 N.E.3d 39 ("We reject outright the defendant's claim that the notice was not adequate merely because the written disclosure [in the form of responses to the defendant's discovery requests provided approximately one year prior to trial] did not cite to section 115-7.3. We find nothing in the statutory language that requires this designation.") Significantly, on appeal, defendant does not argue that the State violated section 115-7.3(d) by failing to disclose the challenged testimony from K.H. and D.H. regarding the Georgia acts.

¶ 57 Further, we disagree with defendant's assertion that the pretrial proceedings in this case, pertaining to section 115-7.3 and evidence of the Georgia acts, were limited to the issue of the admissibility of K.H.'s recorded interview. The record reflects the State filed both a notice of intent and a motion under section 115-7.3. In those filings, the State (1) referenced its intention to "offer testimony [of] K.H.'s description of a course of sexual abuse by the Defendant"; (2) asserted it was moving "the court to rule *** on the admissibility of evidence relating to prior acts of sexual assault committed by *** Defendant"; and (3) stated it sought "admission of the victim's description of the course and details of sexual abuse by the Defendant, beginning in Georgia, and continuing into [Illinois], as disclosed in discovery and incorporated by reference herein[.]" Although its filings contained a description of K.H.'s recorded interview with Lewallen, the record does not support a finding that its request for the admission of other-crimes evidence pertaining to the Georgia acts was limited to solely that recorded interview.

¶ 58 We acknowledge that when arguing its motion to the trial court, the State did assert that K.H.'s recorded interview was "largely" what it was seeking to admit. Again, however, that

statement is not exclusive of any other evidence related to the Georgia acts. Rather, it contemplates the existence of other evidence to which the State's section 115-7.3 motion was directed. Further, the State's oral argument concluded with a more general request that the court "allow *** the evidence of other acts of sexual penetration to be admitted at trial."

¶ 59 Moreover, when ruling on the States section 115-7.3 motion, the trial court also considered defendant's motion *in limine* to bar the State from introducing or presenting "any evidence and/or testimony with regards to any alleged crimes in the [S]tate of Georgia." The court allowed the State's motion and denied defendant's motion without specifying any particular type of evidence to be admitted or to be excluded from its ruling. The clear import of the court's ruling was to allow the State to present testimony and evidence related to the sexual abuse perpetrated on K.H. by defendant in Georgia. Nothing in the record indicates an intention by either the State or the court that such evidence would be limited to only the descriptions of the Georgia acts as contained in K.H.'s recorded interview.

¶ 60 Second, we find no merit to defendant's contention that the other-crimes evidence presented by the State regarding the Georgia acts resulted in an improper mini-trial. Contrary to defendant's arguments on appeal, the case authority he cites—*Hale* and *Staake*—is distinguishable and the fact that those cases involved the admission of other-crimes evidence under common-law principles rather than section 115-7.3 is "of *** consequence."

¶ 61 As stated, the rationale for not permitting a mini-trial on a collateral offense is due to the risk that it will cause unfair prejudice to the defendant, jury confusion, or delay. *Walston*, 386 Ill. App. 3d at 619. In *Walston*, the Second District addressed the issue of mini-trials in the context of section 115-7.3 cases and determined the danger of unfair prejudice to a defendant was not as great as in common-law other-crimes cases. *Id.* at 619-20. Specifically, it stated as follows:

> "[T]he danger of unfair prejudice in the context of a section 115-7.3 case, as opposed to a common-law other-crimes case, is greatly diminished. *** [T]he common-law rule against other-crimes evidence is essentially a *per se* application of the rule that unfairly prejudicial evidence should not be admitted even if probative. [Citation.] When the legislature enacted section 115-7.3, it upended this rule with respect to the types of crimes listed in the section, so that not only is other-crimes evidence offered to show propensity no longer *per se* unfairly prejudicial, it is actually proper. As a result, the danger of unfair prejudice in a section 115-7.3 case may still exist, but it is much less pronounced than in a common-law other-crimes case. [Citation.] Accordingly, while a 'mini-trial' of a collateral offense can cause undue prejudice in a section 115-7.3 case, it is not necessary in such a case that a court 'carefully limit[ ] the details of the other crime to what is necessary to "illuminate the issue for which the other crime was introduced" ' [citations] to the extent required in common-law other-crimes cases." *Id.*

¶ 62 In *People v. Bates*, 2018 IL App (4th) 160255, ¶ 89, 112 N.E.3d 657, this court relied on *Walston* in finding no impermissible mini-trial following the admission of propensity evidence under section 115-7.3. There, the State's other-crimes evidence included testimony from the defendant's alleged victim in another case, testimony from a nurse who evaluated that victim, a forensic scientist who testified the defendant's deoxyribonucleic acid was found on swabs taken from the previous victim, and an interrogation video related to the other crime. *Id.* ¶ 88. We stated the "mini-trial" in that case "was necessary to establish [the] defendant's involvement in the attack on [the other victim]." *Id.* ¶ 89.

¶ 63 Here, we find *Walston* and *Bates* more precisely address the issues presented by the facts of this case than the case authority cited by defendant. Additionally, neither *Hale* nor *Staake* warrants a finding that the challenged testimony in this case was inadmissible.

¶ 64 There is no dispute that evidence of the Georgia acts was highly probative. The acts involved the same victim as the charged offenses, K.H., and were part of a continuing course of months long sexual abuse perpetrated by defendant on K.H. while residing with her family at various locations. To the extent defendant argues corroborating other-crimes evidence is not allowed under section 115-7.3, we disagree. As set forth in *Bates*—where not only the testimony of the alleged other-crime victim was presented, but also evidence corroborating that victim's testimony—such evidence may be necessary to establish the defendant's involvement in the other crime and, thus, the defendant's propensity for committing sex offenses. Additionally, on appeal, defendant has failed to set forth any reasoned argument to support a finding that the challenged testimony from K.H. and D.H., either alone or when coupled with K.H.'s recorded interview, was unduly prejudicial. We find the amount of other-crimes evidence presented by the State was not so great as to warrant such a finding. Additionally, nothing in the record supports a finding of jury confusion or delay from the presentation of such evidence.

¶ 65 Ultimately, we find any objection to the challenged testimony by defendant's counsel would have been without merit. Accordingly, under the circumstances presented, defendant cannot establish ineffective assistance of his trial counsel.

¶ 66 B. Rule 431(b)

¶ 67 Defendant next argues the trial court violated Rule 431(b) when questioning potential jurors during *voir dire*. He contends the court improperly "collapsed" or "combined" the essential principles set out in the rule into two statements on the law. Defendant acknowledges that

he failed to properly preserve this issue for appellate review but argues his forfeiture of the issue may be excused under the plain-error doctrine.

¶ 68 To preserve an alleged error for review, "a defendant must object to the error at trial and raise the error in a posttrial motion." *People v. Sebby*, 2017 IL 119445, ¶ 48, 89 N.E.3d 675. If the defendant fails to do either, the issue is forfeited. *Id.* However, a defendant's forfeiture may be excused under the plain-error doctrine. *Id.* To establish plain error, the defendant must show the occurrence of "a clear or obvious error" and either that (1) "the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the seriousness of the error," or (2) the "error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." (Internal quotation marks omitted.) *Id.* "The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial." *Id.* ¶ 49.

¶ 69 As stated, defendant argues the trial court erred by failing to comply with Rule 431(b). That rule sets forth requirements a court must follow during *voir dire*. It states as follows:

> "The court shall ask each potential juror, individually or in a group, whether that juror understands and accepts the following principles: (1) that the defendant is presumed innocent of the charge(s) against him or her; (2) that before a defendant can be convicted the State must prove the defendant guilty beyond a reasonable doubt; (3) that the defendant is not required to offer any evidence on his or her own behalf; and (4) that if a defendant does not testify it cannot be held against him or her; however, no inquiry of a prospective juror shall be made into the defendant's decision not to testify when the defendant objects.

> The court's method of inquiry shall provide each juror an opportunity to respond to specific questions concerning the principles set out in this section." Ill. S. Ct. R. 431(b) (eff. July 1, 2012).

Whether the trial court complied with Rule 431(b) is subject to *de novo* review. *People v. Wrencher*, 2011 IL App (4th) 080619, ¶ 37, 959 N.E.2d 693.

¶ 70 In *People v. Thompson*, 238 Ill. 2d 598, 607, 939 N.E.2d 403, 409 (2010), the supreme court stated that "Rule 431(b) is clear and unambiguous" and set forth the requirements of the rule as follows:

> "Rule 431(b) *** mandates a specific question and response process. The trial court must ask each potential juror whether he or she understands and accepts each of the principles in the rule. The questioning may be performed either individually or in a group, but the rule requires an opportunity for a response from each prospective juror on their understanding and acceptance of those principles." *Id.*

In *Thompson*, the trial court was found to have violated Rule 431(b) by failing to address one of the four Rule 431(b) principles and inquire whether prospective jurors accepted another principle. *Id.*

¶ 71 To support his contention that the trial court improperly "collapsed" or "combined" the Rule 431(b) principles in this case, defendant cites language in *Thompson*, noting that "[t]he committee comments [to Rule 431(b)] emphasize that trial courts may not simply give 'a broad statement of the applicable law followed by a general question concerning the juror's willingness to follow the law.' " *Id.* (quoting Ill. S. Ct. R. 431, Committee Comments (eff. July 1, 2012)). Here, however, the trial court admonished potential jurors regarding the four principles explicitly set out in Rule 431(b) immediately before asking each individual juror whether he or she

understood and accepted those principles. The court's statement of the principles was not given within "a broad statement of the applicable law," nor did it only generally determine potential jurors' "willingness to follow the law." The record demonstrates "a specific question and response" method of inquiry regarding the Rule 431(b) principles as required by both the rule and *Thompson*.

¶ 72 Further, defendant acknowledges that in *People v. Willhite*, 399 Ill. App. 3d 1191, 1196-97, 927 N.E.2d 1265, 1270 (2010), this court previously held that Rule 431(b) does not require the trial court to "ask separate questions *** about each individual principle." However, he argues that we should no longer follow *Willhite* as it relied on a case authority that was later reversed and vacated. This court has recently rejected the precise arguments raised by defendant regarding both the continued validity of *Willhite* and the improper "collapsing" or "combining" of Rule 431(b) principles. Specifically, in *People v. Kinnerson*, 2020 IL App (4th) 170650, ¶¶ 62-64, under similar circumstances as those presented here, we held that neither Rule 431(b) nor *Thompson* required "a process wherein the court addresses each principle 'separately' " and rejected a challenge to *Willhite*, finding it "was not solely reliant on" subsequently invalidated case authority. For the same reasons expressed in *Kinnerson*, we reject defendant's challenge to the trial court's Rule 431(b) method of inquiry under the facts of this case. Because we find no Rule 431(b) violation, defendant cannot establish the occurrence of plain error.

¶ 73 C. Cumulative Error

¶ 74 On appeal, defendant next argues that errors occurred during his trial, which, when taken cumulatively, denied him his right to a fair trial.

¶ 75 "Individual trial errors may have the cumulative effect of denying a defendant a fair trial." *People v. Hall*, 194 Ill. 2d 305, 350, 743 N.E.2d 521, 547 (2000). Where a defendant's

alleged errors individually cast doubt upon the reliability of the judicial process, a court may find that, cumulatively, "the errors created a pervasive pattern of unfair prejudice to defendant's case." *People v. Blue*, 189 Ill. 2d 99, 139, 724 N.E.2d 920, 941 (2000). Such circumstances warrant a reversal of the defendant's conviction and remand for a new trial. *Id.* at 140.

¶ 76 Here, to support his claim of cumulative error, defendant reasserts (1) his counsel's alleged ineffectiveness for failing to object to other-crimes testimony from K.H. and D.H. and (2) the trial court's alleged Rule 431(b) violation. He further references two "additional errors" the court allegedly made regarding "the relevancy of certain testimony," which he claims resulted in an unfair trial when coupled with the court's Rule 431(b) error. However, as discussed above, there is no merit to either defendant's ineffective-assistance claim or his Rule 431(b) claim. Because we reject defendant's allegations of error on those two points, and because they are central to his assertion of cumulative error, we find defendant's cumulative error claim also lacks merit.

¶ 77 D. Excessive Sentence

¶ 78 Finally, on appeal, defendant argues his aggregate 90-year prison sentence was excessive and an abuse of the trial court's discretion. He contends the court imposed a *de facto* life sentence without considering his rehabilitative potential "or the constitutional directive of restoring offenders to useful citizenship." As evidence of his rehabilitative potential, defendant points to the assessment, contained within his PSI report, that placed him at a low to medium risk of reoffending and his lack of a documented, significant criminal history. He further argues that the court failed to consider, as mitigating evidence, the letter written by his mother

¶ 79 Initially, the State argues defendant forfeited his sentencing claims by failing to raise them with the trial court. See *People v. Hillier*, 237 Ill. 2d 539, 544, 931 N.E.2d 1184, 1187 (2010) ("[T]o preserve a claim of sentencing error, both a contemporaneous objection and a written

postsentencing motion raising the issue are required."). Defendant responds, asserting his postsentencing motion sufficiently raised a challenge to the length of his sentence, resulting in preservation of the issue. Alternatively, he contends we may address any forfeited claims due to the occurrence of plain error. *Id.* at 545 (stating forfeited claims of sentencing error may be reviewed if the defendant establishes plain error).

¶ 80 Here, in connection with his motion to reduce his sentence, defendant argued the trial court "failed to consider" his age, the lifetime effect of its sentence, and "the mitigating factor that [his] mother was reliant on him due to her significant medical issues and the recent loss of her husband." Noticeably, he did not allege a failure by the court to consider his rehabilitative potential. Defendant also made no specific claim related to the court's consideration of his risk-of-reoffending assessment or his criminal history. Accordingly, we find he has at least partially forfeited the claims of sentencing error that he now raises on appeal. Ultimately, however, whether we address defendant's claims outright or under the plain-error doctrine, the result is the same as we find the record fails to show any error or abuse of discretion by the court. See *Sebby*, 2017 IL 119445, ¶ 49 ("The initial analytical step under either prong of the plain error doctrine is determining whether there was a clear or obvious error at trial.").

¶ 81 The Illinois Constitution provides "[a]ll penalties shall be determined both according to the seriousness of the offense and with the objective of restoring the offender to useful citizenship." Ill. Const. 1970, art. I, § 11. "In determining an appropriate sentence, a defendant's history, character, and rehabilitative potential, along with the seriousness of the offense, the need to protect society, and the need for deterrence and punishment, must be equally weighed." (Internal quotation marks omitted.) *People v. Lawson*, 2018 IL App (4th) 170105, ¶ 33, 102 N.E.3d 761.

¶ 82 "In considering the propriety of a sentence, the reviewing court must proceed with

great caution and must not substitute its judgment for that of the trial court merely because it would have weighed the factors differently." *People v. Fern*, 189 Ill. 2d 48, 53, 723 N.E.2d 207, 209 (1999). Accordingly, we give substantial deference to the trial court's sentencing decision and will not modify a defendant's sentence absent an abuse of discretion by the trial court. *People v. Snyder*, 2011 IL 111382, ¶ 36, 959 N.E.2d 656. "A sentence within statutory limits will not be deemed excessive unless it is greatly at variance with the spirit and purpose of the law or manifestly disproportionate to the nature of the offense." *Fern*, 189 Ill. 2d at 54.

¶ 83 Additionally, "a trial court is not required to detail for the record the process it uses in reaching its determination of a proper sentence," and "the requirement that a court set forth its reasons in the record for a particular sentence imposed does not obligate the judge to recite, and assign a value to, each fact presented in evidence at the sentencing hearing." *People v. Centanni*, 164 Ill. App. 3d 480, 487, 517 N.E.2d 1207, 1212 (1987). "[I]f mitigating evidence is presented at the sentencing hearing, this court presumes that the trial court took that evidence into consideration, absent some contrary evidence." *People v. Shaw*, 351 Ill. App. 3d 1087, 1093, 815 N.E.2d 469, 474 (2004). Additionally, we note "a defendant's rehabilitative potential and other mitigating factors are not entitled to greater weight than the seriousness of the offense" (*id.* at 1093-94) and the seriousness of the offense is the most important factor in sentencing (*People v. Wheeler*, 2019 IL App (4th) 160937, ¶ 38, 126 N.E.3d 787).

¶ 84 Here, defendant was convicted of three counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2016)). On appeal, he acknowledges that he faced a maximum aggregate sentence of 180 years in prison in connection with those convictions. His aggregate 90-year sentence was well within the applicable sentencing range.

¶ 85 When imposing defendant's sentence, the trial court noted it agreed with the

arguments presented by the State and set forth the evidence it found most persuasive in fashioning defendant's sentence—that defendant's conduct caused or threatened serious harm to K.H. and her family; defendant's history of delinquency, which included his prior and uncharged abuse of K.H.; that defendant held a position of trust or supervision over K.H.; and the need for deterrence. Each of these was an appropriate consideration for the court. Additionally, the court's comments at sentencing reflect its view that the defendant's offenses were serious. We note defendant's crimes involved his repeated sexual abuse of a young child over a lengthy period of time while living with her family and acting as her caregiver. Defendant's conduct also involved significant threats of violence against the victim's mother designed to prevent the victim from reporting his acts of abuse.

¶ 86 As stated, defendant argues the trial court failed to consider his rehabilitative potential and certain evidence that reflected positively on his rehabilitative potential, *i.e.*, his risk-of-reoffending assessment and his criminal history. The record, however, does not support his argument. The evidence referenced by defendant was contained within his PSI report and presented to the court. Nothing in the court's comments reflects that it neglected or declined to consider that evidence. Instead, the court's comments indicate it rejected defendant's contentions regarding his criminal history and determined other evidence was entitled to greater weight than his rehabilitative potential. Defendant also claims the court erred by failing to consider mitigating evidence in the form of his mother's letter. Again, however, that evidence was presented to the court at sentencing and nothing in the record indicates it was not considered. Accordingly, under the circumstances presented, we find no abuse of discretion by the trial court.

¶ 87 III. CONCLUSION

¶ 88 For the reasons stated, we affirm the trial court's judgment.

¶ 89 Affirmed.