2026 IL App (2d) 250338-U
No. 2-25-0338
Order filed July 10, 2026

NOTICE: This order was filed under Illinois Supreme Court Rule 23(b) and is not precedential except in the limited circumstances allowed under Rule 23(e)(1).

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee,

v.

MICHAEL C. WENBERG, JR., Defendant-Appellant.

Appeal from the Circuit Court of Kane County.
Honorable Julia A. Yetter, Judge, Presiding.
No. 23-CF-2230

JUSTICE MULLEN delivered the judgment of the court.
Justices McLaren and Birkett concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not abuse its discretion (1) by denying defendant's motion for a mistrial, where the prejudice to defendant from the witness's remark upon exiting the courtroom was cured by the trial court's admonishment to the jury; or (2) by admitting defendant's prior act of domestic violence against another victim, where that prior act bore sufficient factual similarity to the charged offense and was not too remote in time.

¶ 2 Defendant, Michael Wenberg, appeals his conviction of domestic battery (720 ILCS 5/12-3.2(a)(1) (West 2022)). He argues that the trial court erred (1) by denying defendant's motion for a mistrial after a witness made a remark upon exiting the courtroom that suggested she feared defendant; and (2) by allowing the State to introduce other-crimes evidence at trial. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On September 6, 2024, defendant was indicted on two counts of domestic battery. Count I alleged that defendant knowingly and without legal justification caused bodily harm to K.F. by striking her about the body. Count II alleged that defendant knowingly and without legal justification made contact of an insulting or provoking nature with K.F. by striking her about the body. Both counts alleged that (1) the conduct occurred "on or about October 16, 2024-October 17, 2024,"[1] (2) K.F. was a family or household member of defendant at the time, and (3) defendant had two prior convictions of domestic battery in Kane County case No. 19-CF-202 and Du Page County case No. 21-DV-1124.

¶ 5 A. Other-Crimes Evidence

¶ 6 On February 3, 2025, the State filed a motion *in limine* under section 115-7.4 of the Code of Criminal Procedure of 1963 (Code) (725 ILCS 5/115-7.4 (West 2022)) to admit evidence of other domestic violence offenses committed by defendant in case Nos. 19-CF-202 and 21-DV-1124.

¶ 7 The State's motion sought admission of three different incidents from case No. 19-CF-202 that involved J.M. First, on April 6, 2018, J.M., defendant's "ex-girlfriend," was in her home when she heard loud banging coming from her daughter's room. When J.M. ran to the bedroom, she saw defendant "hanging from a beam where the ceiling fell through." Defendant had entered J.M.'s house uninvited and fallen through the attic floor.

¶ 8 Second, on May 6, 2018, J.M. was asleep in her bedroom when she heard noises in the attic. Afterward, the electricity in the house "cut off." When officers arrived on the scene, they noticed that an exterior door leading to the garage was broken and pieces of glass were on the

[1]According to the trial evidence, the offense occurred in 2023.

ground. The officers then saw defendant emerge from the side door of the garage and run away. Later, another officer located defendant and arrested him.

¶ 9 Third, on August 14, 2018, defendant went to J.M.'s house to "talk about their relationship." They began to argue, and defendant grabbed J.M. by the neck and "began strangling her until [she] was able to break free." Defendant then told J.M., " 'I didn't choke you; you were trying to hang yourself and I saved you.' "

¶ 10 The State related that, based on the foregoing incidents, defendant was convicted on October 30, 2019, of aggravated domestic battery and stalking.

¶ 11 The State's motion sought admission of one incident from case No. 21-DV-1124. On September 18, 2021, defendant and his girlfriend, B.S., were in a car in the parking lot of a Homewood Suites when an argument ensued. Defendant grabbed B.S.'s head and slammed it against the center console of the car. Defendant then struck B.S. in the face several times. When B.S. attempted to stop defendant, he grabbed her by her throat and started to strangle her. B.S. suffered bruising to her right eye socket and red marks on her neck. Based on this incident, defendant was convicted on February 2, 2022, of domestic battery causing bodily harm.

¶ 12 On May 15, 2025, the trial court conducted a hearing on the State's motion. The State stood on its motion and remarked that it sought to introduce the other-crimes evidence through live testimony and certified copies of convictions. The court noted it was ruling based on "the facts that [were] alleged and the limited amount of information." The court ruled that the incident from case No. 21-DV-1124 was admissible because it was "factually fairly similar" and "relatively speaking recent in time"—the conviction having been entered in February 2022. As to case No. 19-CF-202, the court found the incidents of stalking J.M. in April and May 2018 were so factually dissimilar to the allegations in this case that the danger of unfair prejudice far outweighed the

probative value of those incidents. The court was concerned that the stalking conviction would deny defendant a fair trial if admitted. However, the domestic battery conviction, stemming from the third event with J.M. on August 14, 2018, was admissible because the "facts and circumstances *** alleged [were] not so prejudicial as to outweigh the probative value that they would have."

¶ 13 B. Trial

¶ 14 K.F. testified first as follows. In October 2023, she had been in a four-month relationship with defendant. On October 15 and 16, 2023, she and defendant were at his sister's house. They "were together in the afternoon and then that went into the night." They were playing darts and drinking. At some point, defendant drove them in his car to a bar, but it was closed. On the way back to defendant's sister's house, they stopped for cigarettes at a Speedway. In the car, K.F. lit up a cigarette, and defendant told her "to give him a cigarette." She refused. Defendant then "whacked [K.F.] in the face" with his hand. The cigarette broke, leaving only the butt in her mouth. K.F. was "shocked and surprised" when defendant struck her. She responded by "hit[ting] [defendant] back" in the face. This exchange of blows occurred while they were still on the four-minute route back to the house. To K.F., "it just seemed like it was a struggle, like a brief struggle after [defendant] initially hit [her] and then [she] defended [her]self." When they arrived at the house, defendant "wanted [her] out of the car and started pushing on [her] to get [her] out of the car." He pushed K.F. "[o]n her left side, like rib area." Defendant reached over and opened the passenger door, and K.F. grabbed the steering wheel because she "didn't want to fall out" of the car. Defendant was "[s]till pushing," which felt "like pressure." K.F. was "in shock of what was happening" and was "just trying to focus on not falling out of the car." However, she "ended up falling out of the car." Afterward, the two went into the garage, and defendant "seemed angry and was shouting." He punched holes in the garage wall. The police arrived. At the time, K.F. did not want defendant

charged with a crime because she did not believe that she was "badly hurt at that time." In order to separate defendant and K.F., the police drove K.F. to her friend's house, where she spent the night. At around 9 a.m. the next morning, K.F. "could hardly move." According to K.F., "[i]t hurt really bad in [the] area where [defendant] pushed [her]," *i.e.*, the left side of her ribs.

¶ 15 K.F. decided to go to the emergency room. Afterwards, K.F. went home and saw bruises on "both of [her] arms and [her] back side area." K.F. took photographs of her injuries that day and the next day, and the photos were admitted into evidence. One photo showed a bruise on K.F.'s upper arm area. Another photo showed a bruise on her lower back, "from when [she] fell out of the car." Other photos showed bruising on her other arm, her elbow, and her thigh area.

¶ 16 On cross-examination, K.F. testified that she and defendant had been drinking Miller Lite beers, and she was "definitely tipsy, a little drunk" during the incident. Before the incident, she and defendant had been "verbally arguing on and off throughout the night." She confirmed that, after defendant hit her in the face, she still had the cigarette in her mouth. K.F. took no photos of her face. After defendant hit her, she hit him with an open hand. The "parts" of the incident that were "clear" to K.F. were defendant's "initial hit" and her "initial hit back." She did not recall the "exact details" of what ensued but could "only describe it as a struggle" in which she was "defending [herself]." When defendant told her to get out of the car, she did not refuse; rather, she told him only that she was planning to stay at his sister's. Defendant then started pushing her.

¶ 17 K.F. testified that she did not call the police that night. When they arrived, she told them that she did not wish to press charges. She did not recall telling the police that defendant pushed her out of the vehicle while it was in motion. According to K.F., the vehicle was in park when she was pushed out. She remembered telling the police that defendant moved the vehicle after he

pushed her out. The police did not ask to photograph her but did ask if she wanted to "see the medics." She declined.

¶ 18 K.F. testified that "nothing physical" happened between defendant and her in the garage, though defendant punched the wall. K.F. spent the night of October 16, 2023, at her friend Joe's house, where another friend, Samantha Fuchs, was living. When K.F. woke the next morning, she went upstairs, woke Fuchs, and told her about the incident. K.F. told Fuchs that defendant had asked her for a cigarette and she said no. K.F. denied telling Fuchs that defendant tried to take the cigarette from her and that she thought he was going to hit her. She also denied telling Fuchs that she "started attacking [defendant]." She did recall telling Fuchs that defendant wanted her out of the car. However, she denied telling Fuchs that she "wouldn't get out of the car and [she] still continued to attack [defendant]" or that defendant "tried to get [her] out and [she] began kicking him." K.F. told Fuchs that she held onto the steering wheel so that she would not fall out of the car. K.F. explained that she feared falling out of the vehicle—which was an SUV—even though it was not moving. She told Fuchs that she eventually fell out of the car. She denied telling Fuchs that she was not sure how her ribs got hurt or that she might have hurt them when she would not let go of the steering wheel.

¶ 19 K.F. testified that she went to the emergency room sometime between 10 a.m. and noon on October 17, 2023. Afterward, she followed up with the police, but not "right away." When she spoke with the police on the night of the incident, she told them that defendant reached over and opened the passenger door while trying to get her out of the car. The next time K.F. spoke to the police, she described defendant as her ex-boyfriend. K.F. reaffirmed that the car was parked in the driveway when defendant tried to force her out.

¶ 20 On redirect examination, K.F. testified that she was no longer friends with Fuchs because Fuchs wanted her to be a witness against "a now ex-boyfriend" that Fuchs claimed had abused her.

¶ 21 Officer Smolik-Valles testified that, at around 2:20 a.m. on October 16, 2023, he responded to a domestic disturbance at a residence. When he entered the garage, he saw defendant, who was shirtless, highly agitated, and apparently intoxicated. K.F. "was faced away from" Smolik-Valles and seemed "annoyed with the situation." K.F. was wearing a large parka. She reported no injuries at that time. Officer Reyes interviewed K.F. outside the garage while Smolik-Valles interviewed defendant. Smolik-Valles observed two holes in the garage's back wall. Defendant, who had white dust on his knuckles, admitted punching the holes in the wall. Defendant did not appear injured. Smolik-Valles testified that he asked defendant about K.F.'s allegations. At this point, the State played portions of Smolik-Valles's body-camera video from the night in question. On the video, defendant admitted trying to push K.F. out of the car and punching the garage wall.

¶ 22 On cross-examination, Smolik-Valles testified that, after he and Reyes conducted their interviews, they compared K.F.'s and defendant's statements. Smolik-Valles agreed that both K.F. and defendant were intoxicated and that K.F. did not want to press charges. In addition, neither party appeared injured or requested medical attention. Later that day (October 16, 2023), K.F. contacted Smolik-Valles. When Smolik-Valles followed up with K.F. two days later (October 18, 2023), she wanted to press charges against defendant, whom she called her "ex-boyfriend." K.F. also reported bruising she attributed to defendant. Smolik-Valles then prepared a supplemental report in which he noted bruises on K.F.'s lower left rib area, right elbow, back of her left arm, and above her left buttock. According to Smolik-Valles's report, K.F. stated that the car was in motion when defendant tried to push her out of it. Smolik-Valles testified that he was dispatched to the scene because a neighbor heard yelling and anonymously called the police.

¶ 23 J.M. testified next as follows. On August 14, 2018, she was in an "off and on" relationship with defendant. At around 7 a.m. that day, she and defendant argued. When she told him to leave, he suddenly "grabbed [her] by [her] throat, threw [her] head against the wall in the garage a couple of times[,] and lifted [her] about 2 feet off the ground with both his hands around [her] neck, push[ing] [her] against the wall." J.M. could not breathe. When defendant finally let J.M. go, she fell to the ground. J.M. thought defendant was going to kill her. Later, J.M. drove defendant home because he had no way of getting home and she wanted him "gone from [her] property." On the way to his house, defendant told J.M. that he would kill her. Defendant then "threw [her] car from Drive into Park" and attempted to grab her neck again. J.M. grabbed the mace from her pocket and sprayed him. Defendant stumbled out of the car. J.M. called 911. The police followed up with J.M., but she was not sure if charges were filed against defendant. When J.M. was asked if the incident "impacted [her] life," defense counsel objected, and the objection was sustained.

¶ 24 On cross-examination, J.M. testified that she obtained an order of protection against defendant before the August 2018 incident. According to J.M., defendant showed up at her home many times because he would not "take no for an answer."

¶ 25 After J.M. left the courtroom, defense counsel asked for a sidebar conference. When the parties approached, defense counsel described the manner in which J.M. entered and exited the courtroom. According to defense counsel, J.M. "came in and *** walked past [defendant] without issues and then when she got off the stage," an assistant state's attorney "escorted her back by the jury box, past the chain." Defense counsel argued that this was "very prejudicial" to defendant. When the trial court asked defense counsel "what [she] [was] *** asking for," defense counsel replied that she wanted "[t]he jury to be told to not take that into consideration." The court said that it would not discuss the matter while the jury was in the courtroom but would address the

matter before the jury was excused for the day. The court implied that J.M.'s exit from the courtroom was contrary to security procedures, and the State assured the court that the next witness would "not be a problem."

¶ 26 The next witness was B.S., who testified as follows. On September 18, 2021, she was in a relationship with defendant. That day, she and defendant drove to a hotel because B.S. had just sold her house and they needed a place to stay. After B.S. checked into the hotel and returned to the car, she and defendant began arguing because defendant was sitting in the driver's seat and did not have a driver's license. B.S. told defendant to move, but he would not, so she got into the passenger seat. An argument ensued and defendant "started hitting [her]." He hit her in the face and then grabbed her head and slammed her into the car's console "quite a few" times. B.S. suffered bruises on her cheekbone, eye, neck, and ear.

¶ 27 After the State rested, defendant moved for a directed verdict, which the trial court denied. The court then invited defense counsel to make a record of her concerns about the way J.M. exited the courtroom. Defense counsel argued:

> "Defense feels that [defendant] is prejudiced by the actions of the jury seeing [J.M.] being escorted through a different exit than what she came in, and, specifically, being escorted by the State's Attorneys rather than exiting the well of the courtroom the way that she came past the judge and past the clerk and past the defendant and out of the entrance.
>
> Defense feels this implies that [J.M.] is so afraid of [defendant] that she is not able to be near him or that she needs protection just from being in the same room as him."

¶ 28 When the court asked defense counsel how it wished to handle the situation, defense counsel asked the court to admonish the jury "that if they did make note of [J.M.] being escorted by the [assistant state's attorney] through a separate exit from the well, that they are to disregard

that." The State responded that it was "unfair" to say that the assistant state's attorney "escorted [J.M.] from the witness stand out through this exit." Rather, J.M. "got off the stand and was walking towards the exit the defense [was] talking about and said, 'I'm not going that way,' indicating that she [did not] want to walk past the defendant." Because the State "felt that it would cause more of a scene to try to redirect her and have her go past the defendant," the State "open[ed] the gate entrance and let her pass that way." The State indicated that it would not mention J.M.'s exit in its closing argument. Further, the State asked the court not to admonish the jury, because an admonishment would "mak[e] it a bigger issue than it really is."

¶ 29 After hearing these arguments, the trial court agreed that J.M.'s exit was "not our normal procedure" and "that potentially there [was] the possibility that a juror may have noticed it and thought something of it." Also, although the court did not hear J.M. say anything as she left the courtroom, it accepted the State's representation of what she said. The court also found that the State did not orchestrate J.M.'s exit, and the court appreciated why the State "chose to address the situation in the moment the way it did." The court asked defense counsel how to "address [the] issue without calling more attention to it." Defense counsel suggested "perhaps a blanket statement" in case "one or two jurors saw it." Defense counsel proposed "a general admonishment" such as: "If a person takes a different exit, the jury is not to consider that as a statement of *** guilt or fear."

¶ 30 At this point, the trial court noted that it was 4:10 p.m. and that it had promised the jury it would not keep them past 4:30 p.m. As a result, the court decided to "break for the day" and "send the jurors home." According to the court, postponing the discussion until the next day would give the attorneys "time to consider this over the course of the night." The court intended to address the matter "first thing in the morning" and decide whether or not to admonish the jury.

¶ 31 When trial resumed the next day, defense counsel moved for a mistrial based on J.M.'s conduct. Defense counsel noted that an assistant state's attorney had heard J.M.'s statement and that "counsel table *** was inches from the jury." Defense counsel argued that J.M.'s conduct was "completely prejudicial in terms of the jury hearing [J.M.] saying she is afraid." Defense counsel further argued that the State questioned J.M. regarding "what would [be] the effect [of defendant's behavior] on her life" or "her feelings," and even though this testimony was objected to and sustained on the basis of relevance, "[t]his is a bell that can't be unrung." Defense counsel suggested that if J.M.'s statement was "close enough to be heard by the State's attorney," it was a "logical conclusion" that it was "heard by at least some members of the jury." Defense counsel argued that, by "not bringing [J.M.] through the well of the courtroom, [the State] le[ft] an impression that this defendant is dangerous" and that he would "do something to her" if she walked past him. Defense counsel also noted that she had spoken with "some lawyers from our office," *i.e.*, the public defender's office, and that "they indicated that they heard [the statement] also." Defense counsel was willing to provide an offer of proof as to what her colleagues heard.

¶ 32 The State countered that a mistrial was not "appropriate," because the statement "I'm not going that way" was "said under [J.M.'s] breath." Further, the State did not see how J.M.'s exiting a courtroom "a different way than how she came in" was "so prejudicial to warrant a mistrial." The State suggested that the jury would determine defendant's dangerousness based on the trial testimony, not how J.M. exited the courtroom. The State did not believe an admonishment was necessary, let alone a mistrial. In reply, defense counsel clarified that her colleagues were in the gallery when they heard J.M. say, " 'I'm not walking past him.' "

¶ 33 The trial court denied the motion for a mistrial, reasoning as follows. The court could not "presume that no juror saw or heard what [J.M.] said and ignore it and leave that unaddressed to

the jury." Given that the "jurors had just heard testimony from [J.M.] about a prior violent incident with [defendant]," the court did not "believe that [J.M.] exiting the courtroom in the manner that she did with the statement that she made [was] so prejudicial as to warrant a mistrial." Nevertheless, the court did "believe that an admonishment to the jurors [was] appropriate" and "could and would cure any potential prejudice for what [the jury] may have observed that was not occurring on the witness stand." In order to "address the issue without making it a bigger issue," the court proposed the following admonishment:

> "Members of the jury, what you see and hear from the witness stand is evidence. Exhibits that are accepted by the [c]ourt are evidence. These things should be considered by you when you deliberate. Anything else that you may see or hear is not evidence and may not be considered by you in any way in arriving at your verdict in this case."

¶ 34 In response to the trial court's proposed admonishment, defense counsel suggested asking the jury, "Did you hear anything said to the Assistant ASA by [J.M.]?" Defense counsel noted that "[o]bviously, that [would] involve[ ] *voir dire* if somebody [said] yes." The State rejected defense counsel's suggestion and argued that the court's admonishment would be sufficient. Defense counsel countered that the admonishment took care of "some of the issue" but did not "take care of all of it." Ultimately, the court found it unnecessary to address the individual jurors regarding "what they may or may not have heard." Rather, the court concluded that the admonishment coupled with the standard jury instructions was sufficient to cure any potential prejudice "in a way that [would] not *** draw attention to something by a juror who may not have heard what was said." In sum, the court did not find the "substance of what was said" so prejudicial as to warrant a mistrial, and it did not find it "appropriate to *voir dire* the jurors individually on the issue."

¶ 35 When the trial resumed, the court read its prepared admonishment to the jury.

¶ 36 Defense counsel then called Officer Reyes, who testified as follows. He reported to the scene on the night of the incident. Reyes agreed that K.F. reported that defendant tried to push her out of the car "when the car was moving." Reyes did not recall seeing any injuries on K.F., although Reyes admitted that K.F. was wearing "a long parka coat."

¶ 37 Fuchs testified next as follows. Fuchs knew defendant through K.F., and Fuchs and K.F. had known each other for three years. K.F. stayed at Fuchs's house on the night following the incident. K.F. entered Fuchs's house through the garage because she knew the code. K.F. woke Fuchs at 6 or 7 a.m. At that time, K.F. "seemed a little out of it." K.F. told Fuchs that she and defendant had been "drinking heavily all night." K.F. told Fuchs that they were in defendant's car when he asked her for a cigarette. K.F. refused. After that, defendant "reached over to grab" the cigarette. When asked if K.F. mentioned that defendant also hit her, Fuchs said that K.F. "changed her story a few times." Initially, K.F. said defendant "went to grab her cigarette and hit it out of her mouth." However, K.F. then told Fuchs that, although she had told the police that defendant had slapped her, he actually did not hit her. Instead, it was she who "began to attack" defendant. K.F. told Fuchs that she started hitting defendant and then grabbed the steering wheel because defendant "had asked her multiple times to get out of the car to avoid [a] confrontation." K.F. showed Fuchs how she "had her foot up trying to kick *** and punch" defendant. Defendant had reached over and opened her passenger door and asked her to exit, but K.F. refused. According to Fuchs, K.F. was inconsistent about where the incident occurred: "She first said that it was a moving vehicle, then she said it was at the gas station ***, and then she said that it was at [defendant's] sister's house in the driveway." K.F. said she was pushed out of the car. K.F. showed Fuchs bruises on her ribs and thought she got them from defendant pushing her while she held on to the steering wheel.

¶ 38 Fuchs testified that she was not still friends with K.F.; Fuchs obtained an order of protection against K.F. after she "attacked" Fuchs. Fuchs could not remember when she last saw defendant. They were not friends, and she would not "come [to court] and lie for him."

¶ 39 On cross-examination, Fuchs admitted that the order of protection against K.F. was dismissed; she "dropped it." Fuchs was no longer friends with K.F. as of 2024. Fuchs had communicated with defendant since October 2023 and before trial. Defendant asked Fuchs to come forward and testify "if there was any information that [she] had."

¶ 40 On redirect examination, Fuchs admitted that defendant had asked her to contact his lawyer if she "kn[ew] anything." Fuchs had been "willing to talk" with defendant's lawyer.

¶ 41 Defendant's sister, Theresa Wenberg, testified that K.F. and defendant were shooting darts and drinking at her house on the night of October 15, 2023. At about 7:30 p.m., Theresa was in her garage when K.F. and defendant came in. Defendant complained that K.F. had taken his glasses. Later, Theresa was awakened when defendant punched holes in the garage wall. She came out to the garage. She did not observe any physical contact between defendant and K.F. The police arrived while Theresa was in the garage. Theresa did not go to the bar or the gas station with K.F. and defendant.

¶ 42 Theresa identified two videos from her exterior surveillance camera. The videos were taken at 2:15 and 2:17 a.m. on October 16, 2023. The videos show defendant and K.F. arguing near an SUV parked in Theresa's driveway.

¶ 43 The jury returned guilty verdicts on both domestic violence counts. Defendant filed a motion for a new trial challenging the admission of the other-crimes evidence and the denial of his motion for a mistrial. The court denied the motion. The court merged the two counts and sentenced

defendant to one year of imprisonment and four years of mandatory supervised release. Defendant filed a motion to reconsider sentence, and the court denied that motion as well.

¶ 44 This timely appeal followed.

¶ 45 II. ANALYSIS

¶ 46 A. Mistrial Motion

¶ 47 Defendant's first argument on appeal is that "[t]he trial court abused its discretion where, after a witness outburst in the courtroom, its rationale for denying a mistrial was not properly informed and the curative steps taken were inadequate."

¶ 48 We review the trial court's denial of defendant's motion for a mistrial under the abuse-of-discretion standard. *People v. Bishop*, 218 Ill. 2d 232, 251 (2006). A court does not abuse its discretion unless its decision is arbitrary, fanciful, or unreasonable to the degree that no reasonable person would agree with it. *People v. Massey*, 2019 IL App (1st) 162407, ¶ 42.

¶ 49 As for motions for a mistrial based on courtroom incidents such as stray remarks or gestures, we note that the trial court is in a superior position to gauge the effect of such incidents on the jury. *People v. Howard*, 147 Ill. 2d 103, 145 (1991). Thus, the trial court enjoys wide latitude in dealing with such matters and in determining whether a mistrial is necessary. *People v. Smith*, 253 Ill. App. 3d 443, 454 (1993). "A mistrial should be granted where an error of such gravity has occurred that the defendant has been denied fundamental fairness such that continuation of the proceedings would defeat the ends of justice." *People v. Nelson*, 235 Ill. 2d 386, 435 (2009) (citing *Bishop*, 218 Ill. App. 3d at 251). "Mistrial, for example, is warranted when the jury is apparently so influenced and prejudiced that it could not have been fair and impartial, and the damage could not be cured by admonitions and instructions." *People v. Middleton*, 2018 IL App (1st) 152040, ¶ 29; see also *People v. Zurawski*, 234 Ill. App. 3d 418, 436 (1992) (quoting R. Ruebner, Illinois

Criminal Procedure, at 326-27 (1st ed. 1987)) (" 'The focus of the mistrial motion after a witness has uttered an impropriety is whether the defendant was prejudiced by the remark. If so, what was the degree of prejudice, and can it be cured by special instructions to the jury?' "). In a harmless-error analysis, which applies where, as in the case at bar, the defendant has made a timely objection, it is the State that "bears the burden of persuasion with respect to prejudice." *People v. Thurow*, 203 Ill. 2d 352, 363 (2003).

¶ 50 Defendant advances three reasons why the admonishment the trial court gave lacked curative effect such that the court abused its discretion by refusing to declare a mistrial: (1) the court did not act immediately to cure any prejudice, (2) the admonishment did not specify J.M.'s conduct, and (3) the court refused to poll the jury as to any potential prejudice despite the court's admission that it could not presume what any juror saw and/or heard.

¶ 51 More precisely, defendant argues as follows. J.M. testified regarding defendant's past instances of domestic violence against her. Then, after testifying, J.M. stepped down from the witness stand, stated that she would not walk by defendant, and was escorted out of the well of the courtroom by an assistant state's attorney. However, J.M.'s comment was loud enough to be heard by assistant state's attorneys on the case as well as by members of the public defender's office in the gallery, who were "seated further from [J.M.] *** than the jury was from her." Although defense counsel immediately brought J.M.'s conduct to the trial court's attention, the court did not hold discussion on the issue until after the next State's witness, B.S., testified. Defendant emphasizes that the jury next heard B.S.'s testimony that defendant battered her. The court then postponed any action until the next morning so that the parties could think more about the issue. The next day, the court denied defendant's suggestion to poll each juror to determine any potential prejudice based on J.M.'s conduct. The court also denied defendant's motion for a mistrial.

Although the court opted to admonish the jury, the admonishments did not cure the error. According to defendant, "[t]he court's failure to take remedial action by questioning the jury about the incident before ruling on the motion for a mistrial, and its failure to promptly give a curative instruction[,] was an abuse of discretion."

¶ 52 For the following reasons, we find that the trial court did not abuse its discretion in addressing J.M.'s conduct. First, J.M.'s statement—evidently uttered under her breath, as the State described below—was a brief, isolated remark. Second, J.M.'s statement that she did not want to walk past defendant was consistent with her testimony that defendant had pummeled and strangled her and said he would kill her. Thus, even if we assume that the members of the jury heard her statement, her feelings about defendant would not have been a surprise to the jury and, thus, not overly prejudicial.

¶ 53 Third, the jury was properly admonished, and the timing of the admonishment was not as significant as defendant claims, in that it was provided the next day, after the trial court understandably allowed itself and the parties time to reflect on how to remedy the issue. As for defendant's argument that the admonishment was not curative because it did not specifically refer to J.M.'s conduct, we reiterate that a trial court is afforded much deference in handling such incidents. See *Smith*, 253 Ill. App. 3d at 454. Here, the court could not be sure that all jurors heard what J.M. said. The court understandably chose an admonishment that was (1) specific enough to instruct the jurors who had heard J.M., without unduly emphasizing her conduct; and (2) broad enough not to alert or confuse jurors who had not heard her. The court properly tailored the admonishment to the particular circumstances.

¶ 54 Fourth, defendant is misguided in asserting that, because the trial court did not hear what J.M. said as she left the courtroom and did not poll the jurors as to what they heard, the court was

unable to judge the impact of J.M.'s actions. Defendant asserts that the court "admitted that it did not know and could not presume who had observed the incident and who had not." To the contrary, the court did—prudently—assume that at least some of the jurors heard the remark. The court then fashioned an appropriately general admonishment that did not overly emphasize J.M.'s conduct. Jurors are presumed to follow the trial court's instructions. See *People v. Glasper*, 234 Ill. 2d 173, 201 (2009). Fifth, the State made no attempt to exploit the incident. Cf. *People v. Pinkett*, 2023 IL 127223, ¶ 40 (finding mistrial should have been granted, in part, because of the significance of State's use of improper evidence). The State has met its burden of persuasion here.

¶ 55 Finally, we note that reviewing courts have affirmed the denials of a mistrial after courtroom disruptions equally or more severe than what occurred here, even where the trial court did not admonish the jury. See *People v. Whitehead*, 169 Ill. 2d 355, 402 (1996) ("[I]t is accepted that a genuine emotional outburst by a witness does not require a mistrial. [Citations.] It has even been held that a trial court's decision not to caution the jury against being influenced by a witness' weeping did not constitute prejudice to the defendant."). While some of these cases bear significant factual differences from this case, they highlight the scope of a trial court's discretion in dealing with courtroom incidents. See *People v. Randall*, 363 Ill. App. 3d 1124, 1130-31 (2006) (where the victim, after testifying, began " 'wailing' " outside the courtroom, within earshot of the trial judge, the denial of a mistrial was not an abuse of discretion because "[t]he [trial] court was in the best position to determine the effect of [the victim's] emotional outburst on the jury. After listening to [the victim's] cries and having the opportunity to observe any reaction by the jury, the court concluded the event was not disruptive and had no effect"; notably, the court did not admonish the jury about the outburst); *Howard*, 147 Ill. 2d at 143-45 (where, during a witness's testimony, a spectator in the courtroom stood up, yelled that the defendant had killed her only child, and walked

out, there was no abuse of discretion in denying a mistrial; the trial court admonished the jury immediately, mentioned the testifying witness by name, and told the jury not to consider the spectator's outburst); *Whitehead*, 169 Ill. 2d at 401-02 (no error in denying mistrial where the jury was admonished immediately after the victim's mother rose from the witness stand and shouted toward the defendant), *overruled in part on other grounds*, *People v. Coleman*, 183 Ill. 2d 366 (1998); *People v. Johnson*, 20 Ill. App. 3d 926, 931-32 (1974) (where the trial court commented before the jury that a spectator was " 'signalling' " and defense counsel objected to that characterization and moved for a mistrial, the court did not err in denying that motion; also, the court did not need to "ma[ke] some statement to the jury regarding the incident or in some other manner attempt[ ] to 'cure' the prejudice caused by the [court's] initial statement"; any clarification "would simply have served to focus [the jury's] attention on the occurrence").

¶ 56 For these reasons, we hold that the trial court did not abuse its discretion in denying the motion for a mistrial.

¶ 57 B. Other-Crimes Evidence

¶ 58 Defendant's other argument on appeal is that the trial court abused its discretion by allowing the State to introduce other-crimes evidence. At the outset, we note that defendant challenges only J.M.'s testimony regarding prior acts of domestic violence. According to defendant, J.M.'s testimony should not have been admitted, because the incident occurred over five years earlier, bore only "minimal resemblance" to the instant case, and involved "different physical actions, different body parts," as well as "different relationship[s] *** and environments." In particular, defendant argues that defendant and K.F. were dating during the altercation, whereas defendant and J.M. were not; defendant threatened to kill J.M. but did not threaten to kill K.F.; J.M.'s testimony included two distinct acts of abuse, whereas the incident with K.F. involved only

the physical altercation in the car; and the incident with J.M. occurred in both the car and the garage and consisted of both beating and strangulation, whereas the incident with K.F. occurred only inside the car and did not include strangulation. For these reasons, defendant argues that the admission of J.M.'s testimony was more prejudicial than probative, in that it encouraged the jury to find defendant guilty "simply because it believed he was a bad person."

¶ 59 "We will not reverse the trial court's decision to admit other-crimes evidence unless we find that the court abused its discretion." *People v. Donoho,* 204 Ill. 2d 159, 182 (2003). A reviewing court finds an abuse of discretion if the trial court's evaluation is arbitrary, fanciful or unreasonable, or where no reasonable person would take the view adopted by the trial court. *Id.*

¶ 60 Our supreme court recently acknowledged the long-recognized rule that evidence relating to a defendant's propensity to commit crimes is not admissible in criminal trials because it tends to be "overly persuasive" to a jury. *People v. Heintz,* 2026 IL 131340, ¶ 38. In other words, there is danger that the jury may convict the defendant only because it feels he or she is a bad person deserving punishment. *Id.* Still, the legislature chose to provide, in section 115-7.4 of the Code, a limited exception to this general rule of inadmissibility for other-crimes evidence to show a defendant's propensity to commit offenses of domestic violence. See 725 ILCS 5/115-7.4 (West 2022). Such evidence may be considered for its bearing on any relevant matter. See *id.* § 115-7.4(a). Section 7.4(b) provides that, before evidence of the defendant's prior domestic violence offense may be admitted, the trial court must apply a test, weighing the probative value of the evidence against undue prejudice to the defendant. See *id.* § 115-7.4(b). Section 7.4(b) lists three factors the court may consider in weighing probative value against undue prejudice: the proximity in time between the two alleged acts of domestic violence, the factual similarity between the acts, and other relevant facts and circumstances. See *id.* § 115-7.4(b)(1)-(3).

¶ 61 The trial court did not abuse its discretion in allowing J.M.'s testimony regarding defendant's prior act of domestic violence. In reaching its decision, the court acknowledged the appropriate statutory factors and understood the need to employ a weighing test in determining whether to admit the evidence. Indeed, the court denied the State's request to present two other prior instances of defendant's conduct toward J.M. The court concluded that these incidents were not factually similar in that they involved stalking rather than acts of domestic violence. However, as to defendant's domestic battery conviction involving J.M., the court specifically found that "[the] facts and circumstances *** [were] not so prejudicial as to outweigh the probative value that they would have."

¶ 62 The domestic battery committed by defendant against J.M. was properly introduced to show his propensity to commit domestic battery. J.M.'s testimony was that, in August 2018, she was in an "off and on" dating relationship with defendant and had previously obtained an order of protection against him. According to J.M.'s testimony, defendant came to her home on August 14, 2018. An argument ensued, and she asked him to leave. Defendant then grabbed her by her throat, threw her against the garage wall, and lifted her body off the ground with his hands around her neck. J.M. testified that she could not breathe and thought defendant was going to kill her. Once defendant finally let go of her neck, J.M. fell to the ground. Later, J.M. drove defendant home, but, during the ride, defendant told her that he would kill her. Next, defendant threw the gear shift into park and grabbed J.M.'s neck a second time. J.M. responded by spraying defendant with mace.

¶ 63 The State suggests that "[t]he overriding similarity in these cases was a clear pattern in which [defendant] committed acts of violence toward his intimate partners." See *People v. Potts*, 2021 IL App (1st) 161219, ¶ 203 (finding that evidence of other crimes was properly admitted where both victims were "intimate partners" of the defendant). Defendant, however, argues that

the respective relationship statuses of J.M. and defendant, and K.F. and defendant, made the offenses factually dissimilar. He relies on the State's representation in its motion *in limine* that J.M. was defendant's "ex-girlfriend" at the time of the August 14, 2018, incident. Of course, defendant's violence against J.M. would still have been a domestic battery even if they were no longer in a dating relationship on August 14, 2018. See 720 ILCS 5/12-0.1 (West 2022) (defining " '[f]amily or household members,' " for purposes of the domestic battery statute, as including "persons who have or have had a dating or engagement relationship"). As for the similarities between the August 14, 2018, incident and the charged incident, we note that, at trial, J.M. did not testify that defendant was her ex-boyfriend on August 14, 2018; rather, she testified that her relationship with defendant was "off and on" at the time of that incident. See *People v. Wilbourn*, 2024 IL App (1st) 221608-U, ¶ 30 (propriety of evidence admitted under similar other-crimes statute (725 ILCS 5/115-7.3 (West 2022)) is ultimately judged based on the witness's testimony at trial); *People v. Drum*, 321 Ill. App. 3d 1005, 1008 (2001) (a ruling on a motion *in limine* may be revisited at trial). We cannot say J.M.'s relationship status with defendant was so different from K.F.'s relationship status with defendant that it was error to admit the incident involving J.M. See *People v. Kelley*, 2019 IL App (4th) 160598, ¶ 105 ("[T]he objective under section 115-7.4(b)(2) is not to identify factual differences just for the sake of identifying factual differences. The differences have to logically matter; they have to be relevant, in a commonsensical way, to the probative value of the previous offense as propensity evidence.").

¶ 64 As a final matter, even assuming the trial court abused its discretion in admitting the other-crimes evidence, any error would be harmless, given the overwhelming evidence against defendant. See *Heintz*, 2026 IL 131340, ¶ 51 (applying harmless error analysis to the admission of evidence under section 115-7.4 and explaining that "an evidentiary error is harmless if the other

evidence in the record overwhelmingly supports the conviction"); *People v. Heineman*, 2023 IL 127854, ¶ 95 ("Erroneous admission of evidence is subject to a harmless error analysis.").

¶ 65 K.F. testified that defendant "whacked [her] in the face" after she refused to give him a cigarette. She further testified that defendant pushed her on the left side of her ribs and forced her out of the car. She went to the emergency room for her injuries, which were documented in photos admitted into evidence. The photos showed bruising on K.F.'s arms, thigh, and back—consistent with how she described defendant's method of expelling her from the car. In addition, B.S. testified that defendant committed domestic battery against her in 2021. Similar to K.F.'s account, B.S. testified that, while in her car, defendant started hitting her on the side of her face and then grabbed her head and slammed it into the console "quite a few" times. Although defendant attempts to discredit K.F.'s testimony by reference to Fuchs's testimony, it was the jury's province to assess the credibility of the witnesses. See *People v. Jackson*, 2020 IL 124112, ¶ 64 (a reviewing court will not substitute its judgment for that of the trier of fact on issues involving the weight of the evidence or the credibility of witnesses). Given the strength of the State's evidence in this case, any alleged error in the admission of J.M.'s testimony was harmless.

¶ 66 III. CONCLUSION

¶ 67 For the reasons stated, we affirm the judgment of the circuit court of Kane County.

¶ 68 Affirmed.