2021 IL App (2d) 191127
No. 2-19-1127
Opinion filed December 23, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. CARLOS A. BEDOYA, Defendant-Appellant.	)	Appeal from the Circuit Court of Kane County. No. 17-CF-1370 Honorable Donald Tegeler Jr., Judge, Presiding.

JUSTICE JORGENSEN delivered the judgment of the court, with opinion.
Presiding Justice Bridges and Justice McLaren concurred in the judgment and opinion.

OPINION

¶ 1 After a jury trial, defendant, Carlos A. Bedoya, was convicted of eight counts of predatory criminal sexual assault of a child (720 ILCS 5/11-1.40(a)(1) (West 2020)), based on his conduct with victim I.M. The trial court sentenced him to eight consecutive 14-year terms of imprisonment (totaling 112 years' imprisonment). He appeals, arguing that the trial court abused its discretion in (1) allowing two other-crimes witnesses to testify about sexual offenses (725 ILCS 5/115-7.3 (West 2020)), where the offenses were factually dissimilar from the charged offenses and overly prejudicial given the closeness of the evidence, and (2) declining to declare a mistrial after a juror disclosed to other jurors, prior to trial, that a civil lawsuit had been filed against defendant. He requests that we reverse his convictions and remand for a new trial. We affirm.

¶ 2 I. BACKGROUND

¶ 3 A. Pretrial Proceedings

¶ 4 Before trial, on October 30, 2018, the State sought to introduce certain out-of-court statements. See *id.* § 115-10 (certain hearsay exceptions). At the hearing, Elizabeth H, I.M.'s mother, testified through an interpreter that she lived in Carpentersville with her children, including I.M. I.M. attended Golfview Elementary School from first through third grades. Elizabeth met defendant because he was I.M.'s teacher, and he became a family friend. Defendant visited Elizabeth's home, ate there, and spent one Christmas there. Defendant and I.M.'s father, who lived separate from Elizabeth in a different home, were very good friends, and defendant lived with him in the home's basement. I.M.'s father also lent defendant his car so that defendant could drive his daughters to their mother's home. Defendant was I.M.'s soccer coach and, at times, took I.M. to soccer practice.

¶ 5 Elizabeth found out from the news and Facebook that defendant was arrested in another case on similar charges. She spoke to I.M. about it, asking if he was sad. He replied that he was not and later approached Elizabeth in her bedroom, stating that defendant had touched his private parts. I.M. also related that this occurred at school while he was in second grade. He had gone to defendant for help with his low grades. Elizabeth filed a report and subsequently took I.M. to be interviewed at the Children's Advocacy Center.

¶ 6 Department of Children and Family Services (DCFS) child protection investigator Orlando Arroyo testified that he interviewed I.M. on July 20, 2017, when I.M. was 10 years old. The interview was played for the court.

¶ 7 The trial court ruled that I.M.'s statements to Elizabeth were admissible.

¶ 8 Also before trial, the State moved *in limine* to admit testimony of 10 witnesses (other than I.M.) to show defendant's propensity to commit the offenses. *Id.* § 115-7.3 (other-sex-crimes evidence). The State argued that the testimony concerned acts that occurred in temporal proximity to the charged offenses and that the degree of factual similarity of those acts was close to the charged offenses. It also noted that the witnesses were students at Golfview Elementary, where defendant was a teacher; they were males between kindergarten and third grade; all of the charged and uncharged conduct occurred during the 2015-16 or 2016-17 school years; and a majority of the conduct occurred in the school.

¶ 9 The trial court ruled that, given that it had allowed certain section 115-10 statements, it would allow testimony from only 2 of the 10 witnesses.

¶ 10 B. Jury Selection

¶ 11 After the jury was selected, but before opening statements, juror No. 91 informed the bailiff that her sister worked for the Boys and Girls Club of Carpentersville (club) in District 300, Golfview Elementary School's district, and that she had failed to mention it the prior day. The trial court confirmed with the bailiff the juror's statements. The State then informed the court that the fact that I.M.'s family was suing the club was going to come out at trial, as well as the fact that there was some after-school tutoring at the school that might be connected to the club.

¶ 12 The State moved, and defense counsel agreed, to strike the juror for cause.

¶ 13 The trial court examined juror No. 91, who confirmed that her sister worked for the club. She explained that she mentioned to her sister that she had been picked for a jury, and her sister stated, "I hope it's not for the Bedoya case." The juror further testified that her sister also related "[t]hat there is another case regarding this gentleman and she knows him, she's worked with him."

Juror No. 91 testified that she mentioned to other jurors that she "might be out of this" case and, specifically, that she told them that her sister worked for the club. The trial court excused the juror.

¶ 14 Defense counsel moved for a mistrial, arguing that the jury had been tainted. Counsel noted that I.M. would testify about the club, as would a potential State's witness. The trial court noted that it would individually question the remaining 11 jurors and 3 alternate jurors, without questions from counsel. It noted to counsel that it would ask each juror if they had any conversations with juror No. 91, if they overheard the juror, and, if so, the content of her statement and whether it would affect their ability to be fair and impartial. No objections were raised to this procedure. During questioning, four jurors (Nos. 73, 82, 110, and 70) stated that they did not hear anything. One juror, No. 119, overheard juror No. 91 state that she spoke to the bailiff about her sister being involved in the club and knowing something about another case. The juror stated that she could be fair. Another juror, No. 1, overheard juror No. 91 state that she knew the parties and express "doubt as to whether the charges were legit," but the juror said that the comments would not affect his/her[1] ability to be fair. Another juror, No. 9, stated that he overheard juror No. 91 state that she spoke to her sister and that her sister stated that defendant had a case with DCFS, but the juror claimed that he could still be fair and the information did not taint him. Another juror, No. 39, overheard juror No. 91 state that her sister worked for the club and was doing a background check on defendant. The juror stated that he/she could be fair. Next, another juror, No. 47, overheard juror No. 91 state that her sister worked for an agency and knew defendant and that she might be removed as a juror. The juror stated that he/she could be fair. Two jurors, Nos. 43 and 13, overheard juror No. 91 state that she knew someone in the club (or that her sister worked for the club) and that a civil suit had been filed. Jurors Nos. 43 and 13 stated that they could be fair, although juror No. 43 stated that

[1] The gender of some jurors could not be identified from the record.

the information may have tainted him/her "a little" and might affect his/her ability to be fair. Juror No. 43 was removed. Next, another juror, No. 103, stated that he overheard juror No. 91 state that she had connections to a school near Carpentersville. He could be fair. Another juror, No. 4, overheard juror No. 91 state that she might be removed because her sister was involved in the case. He/she could be fair. Finally, juror No. 32 overheard that there was a civil case against defendant. He/she could be fair.

¶ 15 The trial court declined to declare a mistrial and to impanel a new jury. (Only one alternate juror, No. 70, who had stated that he/she did not hear juror No. 91 say anything, remained.)

¶ 16 C. Trial

¶ 17 1. *The State's Case-in-Chief*

¶ 18 During opening statements, the State told the jury that it would hear that I.M.'s parents had sued defendant (a substitute teacher, a club after-school-program tutor, and a soccer coach), the school district, and the club.

¶ 19 a. Sergeant Abdiel Acevedo

¶ 20 Carpentersville police sergeant Abdiel Acevedo testified that, in July 2017, he investigated defendant's case and learned that defendant was born on July 30, 1955.

¶ 21 b. Pamela Carlos

¶ 22 Pamela Carlos is the principal at Golfview Elementary School, and she testified that defendant was a paraprofessional there. I.M. was a student at the school, as were E.H. and E.T.

¶ 23 c. Nilda Cabrera

¶ 24 Nilda Cabrera, a third grade teacher at the school, testified that I.M. was her student in 2015 and 2016, and defendant worked at the school at the same time. Defendant worked in her classroom as a paraprofessional, assisting students and supporting learning in the classroom.

¶ 25 d. Beth Poncot

¶ 26 Beth Poncot taught second, third, and fourth grades at the school between 2009 and 2017. She knew defendant as a paraprofessional and teacher's assistant. Poncot interacted with defendant one day during the spring 2015 semester while they were in the school library. Defendant worked in the large main area with students but left the area and moved to a darker area under windows in the teacher's book-room area. She did not see defendant with just one student. There was another adult, who, with Poncot, walked around the groups of tables.

¶ 27 e. E.H.

¶ 28 E.H., age eight at trial, testified that he went to kindergarten at Golfview Elementary School, where defendant would substitute teach. One time, when he was done with an assignment, E.H. went to defendant's desk to turn it in. Defendant told him to stay at the desk, and then defendant touched the outside of E.H.'s pants with his hands and tried to pull down his jeans.

¶ 29 Another time, while E.H. was taking a test, he went to defendant's desk to ask a question. Instead of answering the question, defendant gave E.H. the answers to the test. When E.H. tried to leave the desk area, defendant pulled on his hands and tried to pull down E.H.'s pants again. Also, defendant touched E.H.'s penis and put his mouth near it. Another time, E.H. had not tied up his pants that morning because it was too difficult. Defendant tried to put his hand in E.H.'s underwear. A friend and several other students sat in the back of the room. When the friend was done with his test, defendant let E.H. go. The students' desks did not face defendant's desk; instead, they faced a smart board.

¶ 30 E.H. also testified about a time when defendant came into the bathroom while E.H. was there and closed the door until E.H.'s friend came in. Defendant did not touch E.H. that time.

¶ 31 On cross-examination, E.H. testified that, in December 2017, he was interviewed by Arroyo about defendant but never mentioned defendant trying to put his mouth near his private area. A couple of weeks before trial, E.H. spoke to an assistant state's attorney and did not mention defendant trying to put his mouth on him. He also told her that he did not remember defendant ever touching his private part.

¶ 32 E.H. never told his teacher what happened, because he was nervous and shy in kindergarten.

¶ 33 f. I.M.

¶ 34 I.M., age 12 at trial, testified that he attended Golfview Elementary School for third grade. Defendant was his soccer coach and tutor. When defendant tutored I.M., they worked in the library and in an office across from the library. They spent time together outside of school and soccer, and defendant, who lived in I.M.'s father's basement, would come over to Elizabeth's house on occasion. I.M. also saw defendant at his father's house.

¶ 35 For tutoring, I.M. would meet defendant after school at his office. Two other kids would be there too. One time, during third grade, the other kids had left, and defendant "would start doing what he does, he would, he would touch me." No one else was in the room; ordinarily, defendant shared the office with another person. Defendant touched I.M.'s penis with his hands and his mouth. This occurred in the office, by defendant's chair. When defendant touched I.M.'s penis with his hand, he moved his hand in an up and down motion. It was "kind of quiet." Defendant would tell I.M., "don't be scared, it's just our little secret." Defendant put his mouth on I.M.'s penis; I.M.'s penis was inside defendant's mouth. Afterward, defendant drove I.M. home. I.M. did not tell anyone about the incident because he did not know if it was bad or good, defendant asked him to keep it a secret, and he was embarrassed.

¶ 36 Another time, also during third grade and after other kids left, defendant was on his phone and told I.M. he could play on his computer. Defendant showed him "adult content," which consisted of a picture (on his phone) of "what he would do to me, but like it would be a girl instead and then it would just be a guy." Defendant then said, "let's do this," he pulled down I.M.'s pants and put his mouth on I.M.'s penis. Defendant stated that, if I.M. told his mom, "they [*sic*] would be like very mad at you." This occurred during soccer season, and, afterward, defendant took I.M. to soccer practice. Defendant touched I.M. five times in his office.

¶ 37 Another time, the two were in the office across from defendant's office. I.M. did his homework and then defendant would take off I.M.'s pants and underwear, touch his penis, and move his hand up and down.

¶ 38 I.M. sometimes met defendant in the library, instead of defendant's office, for tutoring. They sat at a round table in the middle of the room. They played a game, such as chess or a math game, if he finished early with his homework. One time, they were in the back corner of the library. There were two boys in the library with them. The other kids left, and defendant "would take advantage of me when we were just two alone." One time, defendant touched I.M. in the library near the Spanish book section.

¶ 39 When I.M. went to soccer practice with defendant, sometimes his daughters were also in the car. One time, defendant and I.M. stopped at defendant's house on the way to practice. At this time, defendant lived in the basement of another house. They were running late and changed in defendant's room. It sounded like there was a party in another room. Defendant was looking at I.M. while I.M. changed and told I.M. to take off his underwear. "I did what he told me to do." Defendant told I.M. to come to his side of the bed. I.M. was worried about being late to soccer. He walked over to defendant, and defendant started touching I.M.'s penis with his mouth. Defendant's

mouth touched the penis for what felt like five minutes. Afterward, they finished getting ready and left for practice.

¶ 40 Sometimes, about three times, defendant took I.M. home from soccer practice. One time, while the two were in the car, they stopped in the Spring Hill Mall because I.M. needed to use the restroom. After I.M. finished, defendant asked if he could touch him. I.M. did not respond, and defendant took off I.M.'s pants and underwear and put I.M.'s penis in his mouth.

¶ 41 All of the incidents occurred while I.M. was in third grade. He did not tell anyone about them until fifth grade, when he told his mother. Defendant told him not to tell anyone or something bad would happen. Defendant gave I.M. and other kids "little treats," such as pencils and candy.

¶ 42 On cross-examination, I.M. testified that he saw defendant as part of the Catch-Up Program, which ran after school at about 2:15 or 2:30 p.m. and was separate from the club, which was located within the school. A large group of students attended the club after school, and, sometimes, defendant picked up I.M. from the club for tutoring.

¶ 43 I.M. and two other boys, one of whom I.M. identified by name, participated in the Catch-Up Program under defendant's supervision. After the tutoring, the other boys would leave to go to the club, and I.M., at defendant's direction, would stay with defendant and go to his office. Defendant's officemate was never there, and there were no other teachers in the hallway. This is where defendant would pull down I.M.'s pants and touch him, including moving his hand up and down I.M.'s penis.

¶ 44 I.M. did not tell Arroyo about defendant's hand moving up and down his penis, because he was shy. He could not recall if he told Arroyo that defendant told him not to be scared when he was touching him. I.M. told Arroyo that defendant touched him three times, not five.

¶ 45 g. Elizabeth H.

¶ 46 Elizabeth, I.M.'s mother, testified that I.M.'s date of birth is September 3, 2006. She came to know defendant through I.M.'s school and soccer coaching. Defendant became a good friend of the family, and she loved him a lot. Defendant also assisted with transportation, and Elizabeth loaned him a car. Defendant took I.M. to practices.

¶ 47 On July 19, 2017, Elizabeth came home from work and I.M. later approached her and told her that he had a secret. He stated that defendant had touched him. I.M. also said that he was afraid and ashamed, and he appeared sad. I.M. related that the touching began when he went for the tutoring and that defendant touched him on his private part. They both cried. The next day, Elizabeth told I.M.'s father, and she took I.M. to the Geneva police to be interviewed by a detective.

¶ 48 When Elizabeth picked up I.M. from school, he was usually with the other children at the club. However, there were "many times" that he was with defendant, and "they would call for him because he was with him." A woman at the school would tell Elizabeth that I.M. was with defendant.

¶ 49 One time, Elizabeth went to the school to pick up I.M. from the club, but he was not there. He was with defendant in a room with the door closed. Elizabeth knocked on the door, and defendant opened it. She saw I.M. playing on a computer. No one else was in the room. She further testified that I.M. would come home from school with pencil cases and Pokemon cards that defendant had given him as gifts.

¶ 50 Elizabeth's family sued defendant, the club, and the school district.

¶ 51 h. Investigator Arroyo

¶ 52 DCFS investigator Arroyo interviewed I.M. on July 20, 2017, when he was 10 years old, and a video and transcript of the interview were admitted into evidence. Arroyo also used an

anatomical drawing of a male child, which was shown to the jury, on which I.M. circled the area where he stated that defendant touched him, *i.e.*, the penis. Arroyo explained that he uses nonleading questions during interviews to prevent eliciting incorrect information.

¶ 53 On cross-examination, Arroyo testified that, during the interview, I.M. did not know where he lived, could not name where he went to school at the time of the interview (though he remembered Golfview), was unsure which first name his father went by, and stated that he lived with his aunt. Arroyo did not ask I.M. if he knew the difference between the truth and a lie (because it is an outdated practice), and he never asked him if other people were in the library when he was there with defendant.

¶ 54 i. E.T.

¶ 55 E.T., age 10 during trial, testified that he did not remember the name of the school he attended for first grade or the town in which he lived. He recognized defendant because defendant would come to his classes when his teacher was sick.

¶ 56 Defendant would talk to E.T. at E.T.'s desk and touch his "private part," *i.e.*, his penis, inside his underwear. Other students were in the room. Defendant touched E.T.'s penis many times. Defendant gave E.T. candy.

¶ 57 When defendant was in his class, E.T. did not go to physical education class. However, the other students in his class did so. "I needed to stay and he'd give me the papers to take them to the office." When defendant gave him the papers, defendant stated that he "wanted to take a picture of me, of my private part." E.T. did not want him to, and defendant let him deliver the papers. Eventually, E.T. told his sister about defendant touching him.

¶ 58 On cross-examination, E.T. testified that his desk was in the last row and there were no desks to one side. When his class went to physical education class, all the students went together.

There was a leader, and someone counted the students before they went there. Defendant did not go with the students to physical education class, but he picked them up. When the students arrived at physical education class, someone would count how many students were there.

¶ 59 2. *Defendant's Case-in-Chief*

¶ 60 a. Keyla Bedoya

¶ 61 Keyla Bedoya, defendant's daughter, testified that her parents are currently divorced and that she lives with her mother. Keyla, age 18 at trial, saw defendant a couple of times per week and almost every weekend. She saw him more often during the summer.

¶ 62 During the summer of 2015, Keyla was 14 years old, and defendant coached soccer during the summer in an outdoor league in Carpentersville. Keyla and her sister, Karla, went with defendant to every practice, which occurred a few times per week. Games were on Saturdays.

¶ 63 I.M. was on that summer team, and Keyla knew him because they spent a couple of holidays together and spent defendant's birthday at I.M.'s house. (They were invited over.) When she and Karla went to practices with defendant (who drove), they would sometimes pick up other kids who needed rides there. They would either wait outside or defendant would honk the horn and the players would come out of their houses. They would pick up two or three kids each time. The kids' parents would usually pick them up after practices.

¶ 64 Defendant also coached an indoor league. Keyla attended the games, but not the practices. I.M. was not on the indoor team.

¶ 65 Keyla did not remember picking up I.M. in the summer of 2015.

¶ 66 b. W.P.

¶ 67 W.P., in seventh grade during trial, testified that he attended Golfview Elementary for third, fourth, and fifth grades. In 2015, he was in fourth grade and his teacher was Mr. O'Connor. There

were 23 students in the class, and the procedure to go to physical education and music classes was that the students would line up and the teachers would take them from class to class. W.P. knew defendant because he was his soccer coach and substituted for Mr. O'Connor.

¶ 68 Defendant sometimes drove W.P. to soccer. When defendant picked up W.P., there would be three or four kids in the car, including defendant's daughters. W.P. did not know I.M. but recognized his picture. I.M. was not there on the rides to soccer.

¶ 69 At one point around 2016, defendant lived in W.P.'s house for 1½ years. He had his own room. W.P. spent one hour with defendant in the afternoons before his mother arrived home. They watched movies and played soccer. Also, defendant helped W.P. with his homework. Defendant gave W.P. gifts, such as a ball or shoes.

¶ 70 On cross-examination, W.P. testified that, after school, he attended the club, which met in the cafeteria.

¶ 71 c. Defendant

¶ 72 Defendant, age 64, testified that he obtained his bachelor's degree in 2000 and, before working at Golfview Elementary, he worked at high schools in Chicago and Rockford and at elementary schools in McHenry and Texas. Prior to this case, he had never been disciplined or fired.

¶ 73 Defendant met I.M. in 2014, when he was working as a paraprofessional and I.M. was a first grade student. In 2015 and 2016, defendant drove I.M. to and from soccer about three or four times.

¶ 74 In 2015, defendant became involved with the after-school Catch-Up Program, tutoring students twice per week. I.M., who was in third grade at that time, was one of his students. Defendant was assigned to be in the library after school got out at 2:15 p.m. There, he waited for

the students in the program. Around 2:30 p.m., the students arrived in the library. Other paraprofessionals and teachers were there helping other students. Defendant sat at a round table with four students, including I.M. The tutoring lasted for 45 minutes, after which the children went home or to the club. Sometimes, defendant stayed an extra 30 minutes to make copies or speak to other professionals. The librarian usually left around 4 p.m.

¶ 75 In 2015, at the end of the school year, defendant shared an office with a teacher who supervised him. Later, he did not have an office.

¶ 76 One day, Elizabeth came to his office. Defendant was there alone with I.M. He testified, contrary to Elizabeth's testimony, that his office door was open. Defendant had been there for five minutes with I.M., who was on the computer. He was there to retrieve papers to make copies. Defendant explained, "[h]e was always following me, I don't know why. But he wanted—and I always said to him, you have to go to Boys and Girls Club. Because they already came to me and say, he has to be with us; and I say, he knows that." Defendant stated that there were computers for every student at the Boys and Girls Club. When asked how often I.M. stayed with him when "the other kids were gone," defendant replied, "[n]ot many times."

¶ 77 I.M. became involved in soccer the summer after second grade, *i.e.*, 2015. At that time, his parents lived together in Carpentersville. Defendant drove I.M. and two other kids to soccer, and I.M. was the last child he picked up and the first he dropped off. Defendant testified that he was never alone with I.M. on the rides to and from soccer. He denied showing I.M. pornography, denied ever being alone with I.M. in the basement, denied ever getting undressed in front of him, and denied ever being alone with him in his car. Defendant also denied ever walking home with I.M., taking him to soccer practice from his home, and touching his penis.

¶ 78 Defendant had a friendly relationship with I.M.'s parents, and, after they broke up, he lived with I.M.'s father. I.M. never lived with his father, but he would visit.

¶ 79 As to E.H., defendant testified that he was his substitute teacher twice when E.H. was in kindergarten. E.H. sat at a table with three other students and was one of the best-behaved students. E.H. came to defendant's desk to show him what he was coloring, and defendant put a checkmark on it and said good job. He denied ever touching E.H.'s private part.

¶ 80 As to E.T., defendant testified that, when E.T. was in first grade, defendant was a substitute teacher two or three times in his classroom. E.T.'s desk was near the front of the classroom. The desks were grouped in blocks of four. Defendant did not recall E.T. coming back to the classroom while his class was at physical education class. Defendant denied taking a picture of E.T. or asking E.T. if he could and denied inappropriately touching him.

¶ 81 d. Investigator Arroyo

¶ 82 Arroyo interviewed E.T. on January 3, 2018. E.T. did not state that defendant had taken a picture of him or tried to do so. Nor did he state that defendant grabbed his penis. He did demonstrate a motion, but Arroyo could not recall it. At no point did E.T. tell Arroyo about going back and forth from physical education class.

¶ 83 On cross-examination, Arroyo testified that E.T. demonstrated how defendant touched his penis, and he used his hand to demonstrate the motion. E.T. was eight years old during the interview.

¶ 84 3. *State's Rebuttal*

¶ 85 Poncot testified that, once in the spring of 2015, during after-school hours, she saw defendant in the library and asked him what he was doing there. Defendant, who was with four or five children, responded that he was with the club, but he did not say why he was in the library.

No librarian was present. Poncot, who supervised the tutoring program, recalled this incident because teacher's assistants were not allowed to be with students unattended. She was with her students, but there were four or five unattended students in the library, including one or two whom she had dismissed. "I didn't know who they were with, what program or what was going on."

¶ 86 D. Verdict and Posttrial Proceedings

¶ 87 The jury found defendant guilty of eight counts of predatory criminal sexual assault of a child, specifically, touching I.M.'s penis with his mouth and hand in the school office "(w/ cell phone)" and library, at Spring Hill Mall, and in defendant's basement. The trial court denied defendant's motion for a new trial.

¶ 88 The trial court sentenced defendant to eight consecutive terms of 14 years' imprisonment (for a total of 112 years in prison). The court subsequently denied defendant's motion to reduce his sentence. Defendant appeals.

¶ 89 II. ANALYSIS

¶ 90 A. Other-Sex-Crimes Evidence

¶ 91 Defendant argues first that the trial court erred in admitting evidence of sexual offenses against E.H. and E.T., where the offenses were factually dissimilar to the charged offenses and overly prejudicial given the closeness of the evidence. For the following reasons, we conclude that there was no error in admitting the evidence.

¶ 92 A trial court's decision to admit other-crimes evidence will not be reversed absent an abuse of discretion. *People v. Donoho*, 204 Ill. 2d 159, 182 (2003). An abuse of discretion occurs when the trial court's ruling is unreasonable. *Id.*

¶ 93 Other-crimes evidence is inherently prejudicial, and its admission risks enticing a jury "to convict the defendant simply because it believes that he or she is a bad person deserving of

punishment." *People v. Perez*, 2012 IL App (2d) 100865, ¶ 45; see also *Donoho*, 204 Ill. 2d at 170. Thus, under the common law, other-crimes evidence normally is not admissible if offered only to demonstrate the defendant's propensity to commit the charged crime. *Donoho*, 204 Ill. 2d at 170. Rather, it is generally admissible only if offered to prove intent, *modus operandi*, identity, motive, absence of mistake, or any relevant fact other than propensity. *Id.* However, section 115-7.3 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7.3 (West 2020)) provides an exception to the general rule in criminal cases when, as here, a defendant is accused of predatory criminal sexual assault or certain other specified sex crimes, allowing admission for any purpose, including propensity.

¶ 94 Before admitting the evidence, the court must first find that the other-crimes evidence is relevant and, after considering the proximity in time and factual similarity to the charged offense or any other relevant facts and circumstances, that its probative value outweighs its prejudicial effect. *Id.* § 115-7.3(c).

¶ 95 Defendant argues that E.H.'s and E.T.'s testimony was factually dissimilar to the charged offenses and unduly prejudicial to him. He asserts that there are significant factual differences between the other crimes and the charged conduct. Defendant contends that the charged offenses did not occur exclusively at the school, where I.M. testified to incidents that occurred in defendant's basement and in the mall parking lot. He also notes that the alleged incidents involving I.M. that did occur at the school all took place when defendant was allegedly alone with I.M., whereas both E.T. and E.H. testified to alleged incidents where defendant touched them while other students were in their classrooms. Also, defendant observes that I.M. was several years older than E.T. and E.H. Finally, he points to E.T.'s allegation that defendant wanted to take a picture of his private parts, whereas I.M. made no such allegation.

¶ 96 In terms of the degree of factual similarity to the charged crime, when such evidence of prior bad acts is not being offered under the *modus operandi* exception, "mere general areas of similarity will suffice" to support admissibility. *People v. Illgen*, 145 Ill. 2d 353, 372-73 (1991). However, "as the number of dissimilarities increase, so does the prejudicial effect of the other-crimes evidence." *People v. Johnson*, 406 Ill. App. 3d 805, 811 (2010).

¶ 97 We conclude that the trial court did not abuse its discretion in admitting the other-crimes evidence. Contrary to defendant's claim, the evidence was sufficiently similar to the charged conduct and not overly prejudicial. E.T. and E.H., like I.M., were in the younger elementary grades when the alleged conduct occurred, and, most significantly, the conduct that E.T. and E.H. testified to was substantially similar to the charged conduct. E.H. testified that defendant touched the outside of his pants and tried to pull them down. He also touched E.H.'s penis and put his mouth near it. E.T. testified that defendant touched his penis inside his underwear many times. As to the charged conduct, I.M. testified that defendant touched his penis with his hand (and moved his hand up and down) and his mouth.

¶ 98 That the locations where the incidents took place were not the same is of little import in this case. Defendant had access to children at various locations at the school, through his coaching activities, where he lived, and at the mall while driving a child to and from soccer practice. See *Donoho*, 204 Ill. 2d at 185-86 (where "differences are a product of [the] defendant's access to the victims," differences are not significant, because they "were the circumstances under which he could arrange to be alone with them"). Defendant targeted minor boys of similar age and assaulted them by, among other things, touching their penises. We also reject defendant's argument that another significant dissimilarity is that the incidents against I.M. took place when defendant was alone with him, whereas E.T. and E.H. alleged that the touching occurred while they were in their

classrooms. This does not trump the fact that the boys were of similar ages and the conduct was substantially similar. *Id.* (the existence of some differences "does not defeat admissibility because no two independent crimes are identical" and "more compelling [is] the similarity of the nature of the abuse itself because it was a product of the defendant's choice").

¶ 99 The cases upon which defendant relies do not convince us that error occurred in this case. In *Donoho*, the defendant sexually assaulted and abused his two stepchildren. The trial court admitted evidence of the defendant's prior conviction based on a guilty plea to indecent liberties with a child arising from one incident (12 to 15 years prior) involving a 7-year-old girl and an 11-year-old boy. The supreme court held that there was no abuse of discretion in admitting the other-crimes evidence. *Id.* at 186. It concluded that, although 12 to 15 years had passed since the uncharged conduct, there were "substantial factual similarities" between it and the charged conduct to justify its admission. *Id.* Both incidents involved children in the 7-to-11-year-old age range, and both included children of both genders, where the defendant inserted his finger into the girl's vagina and forced both the boy and the girl to touch his penis. *Id.* at 185. The differences included the facts that, in the uncharged conduct, unlike the charged conduct, the defendant had no relationship to the children and there was only a single incident. *Id.* Also, the earlier incident involved the boy and girl at the same time, not separately as in the charged conduct. *Id.* Additionally, in the earlier conduct, he told the children that they were playing a game, whereas, in the charged conduct, he threatened to punish them if they told anyone. *Id.*

¶ 100 We reject defendant's argument that there was much more similarity in *Donoho* than in this case and that this warrants a different result here. As noted, the nature of defendant's acts here was very similar. In *Donoho*, the charged offense involved the defendant touching his stepson's penis by a tree outside of their house, while they were alone in the living room, and while they

were in the shower together. Also, when they were in the car on one occasion, the defendant touched the stepson's penis and had the stepson touch the defendant's penis. The stepdaughter testified that, while alone in a room, the defendant told her to pull down her pants and underpants. Then, he would pull down his own pants and touch around the stepdaughter's " 'crotch.' " *Id.* at 165. Sometimes, the defendant also made her touch his penis. The other-crimes evidence involved the defendant taking two minors, with their parents' permission, with him to church. The girl sat next to the defendant and the boy sat next to the passenger door. The defendant had them both take down their pants and several times put his finger in the girl's vagina. He made both children touch his penis several times, and, on the way home, put his finger in the girl's vagina and had the boy touch his penis. *Id.* at 166-67. Here, defendant points to the fact that the incidents against I.M. took place when defendant was alone with I.M., whereas both E.H. and E.T. testified to alleged incidents where defendant touched them while other students were present in their classrooms. Also, I.M. never claimed that defendant wanted to take a picture of his private part, whereas E.T. did so. (I.M. claimed that defendant showed him a picture of adult content on his phone.) In light of the nature of the acts here, specifically the touching of the boys' penises, and the fact that the allegations all involved boys close in age—we do not agree that the differences concerning the presence of other students and the showing of a picture are sufficiently significant.

¶ 101 Defendant also relies on *People v. Smith*, 406 Ill. App. 3d 747, 753 (2010), where the court held that the trial court did not abuse its discretion in excluding evidence of the defendant's alleged sexual abuse of his sisters and daughters to show his propensity to commit sex offenses. The charged offense involved allegations that the defendant rubbed his eight-year-old granddaughter's vaginal area outside her clothing. The reviewing court upheld the trial court's determination that the alleged abuse was too remote in time and/or factually dissimilar to the charged offense to be

admissible under the statute. *Id.* Specifically, the defendant's two sisters claimed that he had sexually assaulted them 35 to 42 years before the defendant allegedly abused his granddaughter, and three of the defendant's daughters alleged that he rubbed their vaginal areas under their clothing and/or digitally penetrated them 25 to 35 years before the charged offense. *Id.* The reviewing court noted that the "enormous time lapse" between the other crimes and the charged offense, "standing alone, render[ed] the prior offenses prejudicial" and that the prejudice was "compounded by the factual differences between the alleged prior offenses and the charged offense, especially since the prior offenses involve[d] uncharged and unproven allegations of sexual abuse that [wa]s even more heinous than the charged offense." *Id.* at 754. Further, the court noted that the trial court did not exclude all other-crimes evidence. *Id.* It had allowed evidence of the defendant's alleged sexual abuse of his other granddaughter, which had allegedly occurred five years before the charged offense and also involved fondling of the vaginal area over clothing. *Id.* at 754-55. Finally, the court noted that another factor favoring affirmance of the trial court's determination was the volume of other-crimes evidence proffered by the State, *i.e.*, the six other female relatives, which it characterized as an "avalanche" that threatened to lead to conviction based solely on the prior bad acts rather than proof of the charged offense. *Id.* at 755. It cautioned that a court "must admit only so much evidence as is reasonably necessary to establish propensity." *Id.* at 756.

¶ 102 *Smith* does not support defendant's position. The reviewing court's holding was based on the age of the other-crimes evidence and the fact that it involved allegations of digital penetration, unlike the charged conduct, which involved rubbing of the vaginal area outside the granddaughter's clothing. Here, in contrast, the other crimes occurred around the same time as the charged conduct, and both the charged conduct and the other crimes involved defendant touching

minor boys' penises. Further, the trial court here avoided admitting an "avalanche" of other-crimes evidence. It weighed the potential prejudice and admitted testimony from only 2 of the 10 witnesses whose testimony the State sought to admit.

¶ 103 In *Johnson*, another case defendant relies on, the reviewing court first held that the trial court erred in admitting other-crimes evidence, where there were "significant dissimilarities" between the uncharged sexual assault offense and the charged offense of aggravated criminal sexual assault and where the trial court did not assess the prejudicial effect of the evidence. *Johnson*, 406 Ill. App. 3d at 812. However, next, the court concluded that the improper admission of the other-crimes evidence was harmless given the strength of the evidence against the defendant, including the DNA evidence and the victim's identification of the defendant from a lineup. *Id.* at 818-19. As to the dissimilarities determination, the court noted that, although there were general similarities between the two assaults—both victims were walking past alleys and taken to an abandoned building, the assailant used physical force and threatened to kill the women, he vaginally and orally penetrated them with his penis, and both victims were adults—there were "significant dissimilarities"—the other-crime victim testified that there were two perpetrators instead of one as in the charged offense and that the perpetrator used a car during the offense, blew cocaine in her face and gave her alcohol during the assault, and anally penetrated her. *Id.* at 811-12.

¶ 104 *Johnson* is clearly unhelpful to defendant's case. The factual differences in the number of actors involved and the nature of the alleged acts were much greater than the differences here.

¶ 105 In summary, the trial court did not err in admitting the other-crimes evidence.

¶ 106 B. Jury Tampering/Mistrial

¶ 107 Defendant next argues that the trial court erred in refusing to grant a mistrial and impanel a new jury after one juror learned and informed other jurors about a civil lawsuit that had been filed against defendant and the Boys and Girls Club. For the following reasons, we reject this argument.

¶ 108 Generally, a mistrial should be granted where an error of such gravity has occurred that it has infected the fundamental fairness of the trial, such that continuation of the proceedings would defeat the ends of justice. *People v. Sims*, 167 Ill. 2d 483, 505 (1995). We review for an abuse of discretion a trial court's denial of a motion for a mistrial. *Id.*

¶ 109 As a matter of due process, a criminal defendant is entitled to a fair trial by an impartial jury. *People v. Walker*, 386 Ill. App. 3d 1025, 1029 (2008).

> "To warrant reversal of a trial court's denial of a motion for mistrial, it must reasonably appear that some of the jurors have been influenced or prejudiced such that they could not be fair and impartial. *** [J]urors' oral assurances that they could disregard the event and decide the case solely on the evidence are to be given important but not conclusive consideration." *Id.* at 1029-30.

"[T]he standard to be applied is whether the 'conduct involved "such a probability that prejudice will result that it is [to be] deemed inherently lacking in due process." ' " (Quotation marks omitted.) *People v. Holmes*, 69 Ill. 2d 507, 514 (1978) (quoting *Estes v. Texas*, 381 U.S. 532, 542-43 (1965)). However, where the extraneous information does not directly relate to the defendant's guilt and is cumulative, no prejudice will be found. *People v. Palmer*, 125 Ill. App. 3d 703, 711-12 (1984); see also *People v. Wurster*, 83 Ill. App. 3d 399, 410 (1980) (extraneous information involved collateral matter and, thus, possibility that the defendants were prejudiced was "too insignificant to justify a reversal of their convictions").

¶ 110 On examination outside the presence of the other jurors, juror No. 91 testified that her sister worked for the Girls and Boys Club and had related to her that there was "another case regarding" defendant and that her sister knew and worked with defendant. When asked what she told the other jurors, juror No. 91 testified that she mentioned to the other jurors that she "might be out of this case" and that her sister worked for the club. Juror No. 91was excused.

¶ 111 The parties clarified that neither had brought up the Girls and Boys Club during *voir dire*. The court confirmed that the club was being sued "by several of the alleged victims of" defendant. Defense counsel moved for a mistrial, arguing that the jury had been tainted, that I.M. would testify as to the club, and that a lot of information would be elicited concerning the club. Counsel also argued that juror No. 91's excusal would send a message to the remaining jurors "that what the Boys and Girls Club does have, it is important and that it would have an enormous effect on the outcome of this case." In opposing the motion, the State noted that there would be no witnesses who worked for the club and that there were no allegations that any of the abuse occurred at the club.

¶ 112 The trial court denied defendant's motion for a mistrial, but it individually questioned the remaining jurors and alternates, without questions from counsel. Of the jurors who were ultimately impaneled on the jury: three did not hear juror No. 91's comments; one overheard juror No. 91 state that her sister was involved in the club and knew something about another case; one juror overheard juror No. 91 state that she knew the parties and express "doubt as to whether the charges were legit"; another overheard juror No. 91 state that her sister related that defendant had a DCFS case; another juror related overhearing juror No. 91 state that her sister worked for the club and was doing a background check on defendant; another juror overheard juror No. 91 state that her sister worked for an agency and knew defendant and that she might be removed as a juror; one

juror overheard juror No. 91 state that she knew someone in the club (or that her sister worked for the club) and that a civil suit had been filed; one juror overheard juror No. 91 state that she had connections to a school near Carpentersville; one juror overheard juror No. 91 stated that she might be removed because her sister was involved in the case. Finally, one juror overheard that there was a civil case against defendant. All the jurors stated that they could be fair and impartial.

¶ 113 During trial, the State first brought up the lawsuit. During its opening statement, the prosecutor told the jury that I.M.'s parents had sued defendant, the club, and the school district. Defense counsel next mentioned the lawsuit during his opening statement, noting that Elizabeth had sued the same parties, seeking a "significant monetary award." During questioning, defense counsel first raised the suit during cross-examination of I.M. Later, counsel cross-examined Elizabeth about the lawsuit. During closing arguments, defense counsel noted the suit and that I.M. had "civil lawyers," who were present at the trial and taking notes, and asked where the "monetary interest" was in the civil case in reference to noting I.M.'s father's absence from the trial. During its rebuttal closing, the State questioned what E.H.'s and E.T.'s motive to lie was if I.M.'s motive was to further his mother's civil suit. The prosecutor noted that there was no evidence that the three boys knew each other.

¶ 114 Defendant notes that the jurors learned about the civil suit, one believed that defendant had a DCFS case against him, and another believed that he had been the subject of background checks. He argues that potentially prejudicial outside evidence reached the jury and that the jurors' indications that what they learned before trial would not affect their ability to be fair and impartial should not have weighed heavily in the trial court's assessment, because the jurors had not heard evidence or arguments in the case. Thus, they could not have determined whether their ability to be fair was compromised by the outside information.

¶ 115 Defendant further argues that the exposure to outside information was not harmless beyond a reasonable doubt. See *McGee v. City of Chicago*, 2012 IL App (1st) 111084, ¶ 28 (" 'The party challenging the verdict needs to show only that the information relates directly to something at issue in the case which the losing party did not have the opportunity to refute and that may have influenced the verdict' "; once this presumption has been triggered, "the burden shifts to the nonmovant to show that no prejudice occurred."). The information, defendant maintains, could have affected the outcome of the trial. The jurors received no clarity, defendant asserts, as to the status or results of the lawsuit or how it might establish defendant's culpability. Also, it was unclear to the jury, he believes, whether the lawsuit related to E.T., E.H., or I.M.'s allegations or whether it was related to a nontestifying complainant. The jury, he contends, may have been led to believe that there were more uncharged offenses besides the ones they heard the witnesses testify about at trial.

¶ 116 The State responds that there was no abuse of discretion. First, it contends that the nature of the information was collateral to the issues in this case, not critical to any fact question before the jury, and cumulative to testimony about defendant's participation in the Boys and Girls Club program and the lawsuit I.M.'s family filed against the club. The State posits that, to the extent that the information was relevant, it inured to defendant's benefit, as the defense theory was that I.M. had a motive to lie because of the civil suit. The State also contends that defendant's speculation about how the information would have affected the jury is unfounded. It argues that the mere possibility of another complainant was unlikely to add to the already damning testimony of the three victims. Also, any lack of clarity as to the status of the lawsuit would have been the same had the jurors heard only the trial testimony and arguments of trial counsel.

¶ 117 Second, the State argues that each remaining juror expressed his or her ability to disregard the information, decide the case on the facts presented in court and to remain fair and impartial. The trial court, according to the State, was in the prime position to decide each juror's partiality.

¶ 118 We conclude that the trial court did not abuse its discretion in denying defendant's motion for a mistrial. It was not unreasonable for the court to determine that there was no probability that defendant was prejudiced by the information that there was a civil suit filed against him or the club, that there was an alleged DCFS case concerning defendant, or that he was allegedly the subject of background checks. The facts that a lawsuit was merely *filed* against defendant—which was arguably the most serious of the extraneous information the jurors heard (or believed they heard)— that the case was unresolved, and that no additional details were provided by juror No. 91 (or the other jurors) greatly discount any prejudicial effect of that information. Turning to the alleged DCFS investigation or background checks of defendant, although this was not favorable extraneous information, it does not rise to the level of being so prejudicial that it denied him a trial by a fair and impartial jury. Indeed, a reasonable juror could have assumed that such investigations routinely occur for criminal defendants facing allegations similar to those with which defendant was charged.

¶ 119 *People v. Collins*, 351 Ill. App. 3d 175 (2004), a first-degree-murder case upon which defendant relies, is unhelpful. There, the reviewing court reversed and remanded for a new trial based upon a juror's visit to the crime scene after the first day of trial (because he had trouble understanding where people were at the scene). *Id.* at 181. The unusual fact in that case (and one that distinguishes it from this case) was that the juror testified that the visit aided him in determining the defendant's guilt or innocence. The court noted that there was "a myriad of subtle ways that [the visit] could have affected his verdict." *Id.* at 180. The juror considered the

information important and likely "used it for something," including evaluating witness credibility. *Id.* In reversing and remanding, the court noted that the burden shifted to the State to show lack of prejudice once a defendant showed that the extraneous information that reached the jury related to something at issue in the trial. *Id.* at 181. The court concluded that the juror's testimony showed that the State could not sustain its burden because the information directly related to the incident itself and likely to witness credibility. *Id.* Finally, the court rejected the State's argument that the information the juror received from his visit was cumulative to photographs of the scene and not prejudicial. *Id.* The court noted that the juror testified that the photographs at trial were difficult to view and that those available during deliberations came too late to assist him. *Id.*

¶ 120 We find *Collins* distinguishable because, again, unlike here, a juror in that case testified that the extraneous information aided him in assessing defendant's case. Also, the information—a viewing of the crime scene—was directly relevant to the incident and to witness credibility. *Id.*

¶ 121 Indeed, we agree with the State that the information here could be characterized as collateral and, to the extent that it was relevant, it was used to defendant's benefit by his counsel. I.M.'s involvement with the Boys and Girls Club and his family's lawsuit against the club did not, as defendant suggests, persuade the jury that he was a repeat offender with a propensity to commit the offense at issue. Defendant does not explain how the lawsuit could be interpreted as such. Nor was the information otherwise central to the determination of his guilt. Further, to the extent the information was relevant, it was to defendant's benefit, because defense counsel mentioned the lawsuit as support for his argument that I.M. had a motive to lie, as his family would financially gain from a successful civil suit. Finally, we note that, although not determinative on its own (*Walker*, 386 Ill. App. 3d at 1029-30), the jurors ultimately impaneled testified that they could be fair and impartial.

¶ 122 Under the facts and circumstances of this case, we cannot conclude that it "reasonably appear[s] that some of the jurors [were] influenced or prejudiced such that they could not be fair and impartial" (*id.* at 1029), and, thus, the trial court did not abuse its discretion in denying defendant's motion for a mistrial.

¶ 123 III. CONCLUSION

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

¶ 125 Affirmed.

No. 2-19-1127

Cite as:	*People v. Bedoya*, 2021 IL App (2d) 191127
Decision Under Review:	Appeal from the Circuit Court of Kane County, No. 17-CF-1370; the Hon. Donald Tegeler Jr., Judge, presiding.
Attorneys for Appellant:	James E. Chadd, Douglas R. Hoff, and Daniel T. Mallon, of State Appellate Defender's Office, of Chicago, for appellant.
Attorneys for Appellee:	Jamie L. Mosser, State's Attorney, of St. Charles (Patrick Delfino, Edward R. Psenicka, and Steven A. Rodgers, of State's Attorneys Appellate Prosecutor's Office, of counsel), for the People.