2016 IL App (2d) 141158-U
No. 2-14-1158
Order filed March 14, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. JOEL AUGUSTINE, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Du Page County. No. 12-CF-2046 Honorable George J. Bakalis Judge, Presiding.

JUSTICE BURKE delivered the judgment of the court.
Justices McLaren and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Defendant is not entitled to a new trial on his six sex offenses against a child because (1) the trial court did not err in admitting certain evidence and denying his bill of particulars and (2) defendant has forfeited his argument regarding the admissibility of certain evidence.

¶ 2 Defendant, Joel Augustine, lived with his girlfriend Bonnie, and her two daughters, D.J. and H.J., for more than 10 years. Defendant was charged with committing sex offenses against D.J. over a three-year period, beginning when she turned 12 years old. At trial, the court admitted evidence that defendant also assaulted D.J.'s friend, L.F., during a sleepover.

¶ 3 A jury found defendant guilty of three counts of criminal sexual assault (counts 1, 2, and 3) (see 720 ILCS 5/11-1.20(a)(3) (West 2012)); two counts of predatory criminal sexual assault of a child (counts 4 and 5) (720 ILCS 5/12-14.1(a)(1) (West 2008) (now 720 ILCS 5/11-1.40(a)(1) (West 2014))), and one count of child pornography (count 6) (720 ILCS 5/11-20.1(a)(4), (c) (West 2012)). The trial court imposed an aggregate prison term of 35 years, and defendant appeals.

¶ 4 Defendant argues that he is entitled to a new trial because the trial court erroneously admitted the following evidence: (1) a series of text messages between defendant and D.J.; (2) several photographs of D.J., including the image that was the basis for the pornography charge; (3) the testimony of two investigators regarding defendant's statements that he claims were involuntary; (4) the other crimes evidence regarding acts perpetrated against L.F., and uncharged acts against D.J.; and (5) the testimony by the State's witnesses regarding missing clothing that D.J. had worn in the pornographic photograph but was never turned over to the defense. Defendant also argues that the court erred in denying defendant's motion for a bill of particulars in which he objected to the date ranges specified in counts 3, 4, and 5. We affirm.

¶ 5 I. BACKGROUND

¶ 6 A. The Investigation

¶ 7 On October 11, 2012, L.F. reported that defendant had molested her during a sleepover at D.J.'s home. D.J. and H.J. were taken into protective custody and interviewed the next day by investigators Taras Haliw and Boris Vrbos. Later that day, Haliw and Vrbos met defendant in a parking lot behind a gas station in Roselle. Haliw testified that there was loud construction work nearby that made it difficult to converse, so he asked defendant to go to the Roselle police

station. Haliw stated that defendant asked whether he had to go and that Haliw replied "no." Defendant followed Haliw and Vrbos to the police station, where they interviewed him.

¶ 8 Vrbos asked defendant about allegations by D.J. and H.J. that he had touched them inappropriately. Haliw testified that defendant initially acted surprised and denied the allegation. Haliw testified that, when asked why the girls would fabricate such a story, defendant responded something to the effect of "[t]hey are really good girls" and "it might have happened, but I just don't remember because I was drunk."

¶ 9 Haliw further testified that, when told that H.J. had witnessed defendant's mouth on D.J.'s vagina, defendant insisted it only happened once, it was an accident and a bad mistake, when he had mistaken D.J. for Bonnie. Haliw testified that defendant insisted that he would not return to the home and that all he wanted was to apologize to the girls. Vrbos then pulled out a digital audio recorder and recorded an alleged apology and confession by defendant.

¶ 10 Following the interview, Haliw and Vrbos stepped out the room. Haliw observed defendant poking his head into the hallway, and he appeared agitated and nervous. Haliw told defendant to calm down and relax and asked Detective Michael Marotta to keep an eye on defendant.

¶ 11 Marotta testified that defendant was pacing in the interview room, and he asked defendant to move to an adjacent interview room with a couch. Defendant continued pacing and then began banging his forehead against a wall. Marotta handcuffed defendant, who then talked about his alcohol consumption. Defendant also said that he might have done what Haliw and Vrbos alleged and that he might have even "molested" L.F. Marotta transferred defendant to the booking area, where he repeatedly said he "might have done it." Marotta then told defendant

"Joel, you either did it or you didn't," after which defendant made a few more statements about the allegations.

¶ 12 Defendant was placed under arrest and his mobile telephone was seized. Haliw obtained a search warrant for the phone and delivered it to the Du Page County sheriff's forensic unit. Detective Thomas Brown of the forensic unit gave Haliw some photographs from the phone, and Haliw showed them to D.J. Haliw testified, over defense counsel's objection, that D.J. identified the clothing in the photographs. Haliw retrieved, photographed, and logged the clothing into evidence. Haliw admitted that the clothing was later lost.

¶ 13 Brown testified that he discovered thousands of text messages on the phone and produced a report of certain messages between the phone and D.J.'s device. There were 2,669 text messages, which were dated between July 4, 2012, and October 15, 2012. From the phone, Brown also recovered about 4,000 photographic images, some of which were in the cache or thumbnail databases, not stored in the default photograph location.

¶ 14 B. The Charges

¶ 15 On November 8, 2012, defendant was charged with six offenses: (1) criminal sexual assault by digital penetration of sex organ on October 11, 2012, (2) criminal sexual assault by mouth making contact with sex organ on October 11, 2012, (3) criminal sexual assault by mouth making contact with sex organ between September 17, 2012, and October 8, 2012, (4) predatory criminal sexual assault by digital penetration in sex organ between September 3, 2009, and December 31, 2009, (5) predatory criminal sexual assault by mouth making contact with sex organ between September 3, 2009, and December 31, 2009, and (6) child pornography on July 4, 2012.

On April 23, 2013, defendant filed a motion for a bill of particulars, arguing that counts 3, 4, and 5 were deficient because they each specified a range of dates on which he committed the offense. Defendant requested that "the State identify with specificity the dates and times that the alleged offense[s] occurred, rather than to allege the offense[s] occurred within a range of dates." Count 3 alleged that defendant committed criminal sexual assault "on or between September 17, 2012, and October 8, 2012." Counts 4 and 5 alleged that defendant committed predatory criminal sexual assault "on or between September 3, 2009, and December 31, 2009." On June 3, 2013, the trial court denied the motion, finding that the indictment properly alleged and informed defendant of the charges against him.

¶ 16 C. Defendant's Motion to Suppress Statements

¶ 17 Defendant moved to suppress statements he made to Haliw, Vrbos, and Marotta at the police station. Defendant alleged that when he entered the police station, he was effectively taken into custody and not free to leave, and therefore, his statements were involuntary and made without the benefit of his rights under *Miranda v. Arizona*, 384 U.S. 436 (1966).

¶ 18 The trial court found that the initial encounter in the parking lot between Haliw, Vrbos, and defendant was consensual and there was no coercion. The court further found that defendant's statements to the detectives at the police station were voluntary and did not require *Miranda* warnings until defendant "basically [admitted] to committing this act; so he has now admitted to committing at least criminal sexual assault." The court concluded that, once defendant made an admission of guilt, the detectives should have ceased questioning him until he waived his *Miranda* rights because he was not free to leave at that point. The court suppressed the recording and testimony concerning defendant's statements made during the recording,

concluding that defendant should have received warnings under *Miranda* as soon as he made the incriminating statements about placing his mouth on D.J.'s vagina.

¶ 19 However, the court found admissible defendant's statements to Marotta that he made after the recording and before Marotta said during booking that "you either did it or you didn't." The court found the statements during that period to be spontaneous, but deemed inadmissible the statements defendant made after Marotta made his comment.

¶ 20 D. State's Motion *in Limine* to Admit Other Crimes

¶ 21 The State moved to admit evidence of other crimes and bad acts, including the allegations and testimony of L.F., which were the basis of another criminal prosecution of defendant. Defendant argued that the probative value of the evidence was outweighed by its prejudicial effect. The trial court admitted the evidence, which we summarize below.

¶ 22 E. The Trial

¶ 23 1. H.J.

¶ 24 When the trial began on April 16, 2014, H.J. was 13 years old. She testified that she noticed inappropriate contact between defendant and D.J. starting in October 2011, though she could not recall specific dates. The contact occurred in the living room or the girls' bedroom. In the living room, defendant would place his hand under a blanket to touch D.J.'s breast or "private area" while sitting on the couch. In the bedroom, defendant would climb under the covers with D.J. in her bed. Defendant would then place his head in D.J.'s "private area." H.J. did not see what actually occurred under the covers.

¶ 25 2. D.J.

¶ 26 At the time of trial, D.J. was 16 years old. She testified that sometime between September 2009 and December 2009, defendant entered the bathroom while she was showering

and asked her to step out. After D.J. stepped out, defendant moved her legs apart and performed oral sex on her. D.J. started crying, and defendant stopped and told her to finish showering. After the first incident, defendant repeated the act every time D.J. was showering and Bonnie was not home. D.J. also testified that defendant occasionally touched her vagina with his finger while she was showering. D.J. described this as a sex "routine" in which defendant would approach her while she was showering and subsequently fondle her on a couch, in his bedroom, or on her bed. D.J. testified that the "routine" continued until October 2012, when she was 15 years old.

¶ 27 D.J. identified several photographs, including the State's exhibit 28, which she said depicted a close up photograph of her underwear being pulled aside and defendant's finger touching her vagina. D.J. also identified in exhibit 28 the black leggings she was wearing when the photograph was taken. D.J. did not recall the photographs being taken of her and she could not identify who shot them. Exhibit 28 is the image that is the basis for the child pornography change in count 6.

¶ 28 D.J. identified transcripts of text messages between her mobile phone and defendant's mobile phone. Over defense objection, D.J. read the transcripts into the record. On July 24, 2012, defendant and D.J. had a conversation via text messages in which defendant wrote he wished he was "kissing you all over" and, when D.J. said she did not want to see him, defendant responded angrily and asked if she wanted him to "leave you alone." D.J. testified that, if she did not text defendant at bedtime and when she awoke each day, he would be mad.

¶ 29 On July 25, 2012, defendant and D.J. exchanged texts in which defendant repeatedly referred to D.J. as "my love" and asked for a photograph when D.J. stated she was going swimming. On July 26, 2012, defendant texted that he could not wait to "see you and hold you,

squeeze you, kiss you and feed you [mud] pies." Defendant texted that D.J. would have a chance to "prove" that she loved him, which D.J. interpreted to mean submitting to the sex "routine."

¶ 30 On July 29, 2012, defendant's texts referred to him as "daddy" and to D.J. as "baby girl." On July 31, 2012, defendant asked whether he was D.J.'s "love," D.J. responded in the affirmative, and defendant countered by texting "[t]hen do you [*sic*] like you're supposed to when you come home." D.J. interpreted the statement as submitting to the sex "routine." On August 3, 2012, defendant asked D.J. whether she was "going to look good for me?" and whether she was having her period. D.J. testified that defendant often inquired about her menstrual cycle to coordinate the sex routine. Defendant accused D.J. of not loving him enough and texted that "you better try harder tonight than you did last night," which D.J. interpreted as a reference to the sex routine.

¶ 31 On August 7, 2012, defendant and D.J. exchanged texts about D.J. witnessing defendant masturbate on the couch the night before. D.J. called it "disgusting," and defendant asked whether he should leave on the lights next time so D.J. could "get a better view" and that she would "see it again tonight." On August 8, 2012, defendant texted that D.J. looked "sexy in your pic [*sic*]," and when D.J. simply responded "thanks," defendant texted "you must really hate me." Defendant referred to D.J. as "my girl," and when D.J. replied "yeah," he asked "in what way?" On the morning of August 9, 2012, defendant asked when D.J. would send him a photograph of herself. When D.J. said "[it's] coming," defendant replied "in your mouth tonight." D.J. explained that defendant's comment was sexual but added that he never placed his penis in her mouth. D.J. testified to subsequent text message exchanges during August 2012 in which defendant referred to her as "my love" and "baby girl." D.J. confirmed that her last text

message communication with defendant occurred on October 15, 2012, when she sent him a clothed photo of herself at his request.

¶ 32 3. L.F.

¶ 33 D.J. and L.F. each testified that they had a sleepover at D.J.'s home in late August 2012 to celebrate their birthdays. D.J. admitted that she and L.F. drank an alcoholic beverage from a pitcher that Bonnie had left out, and the girls fell asleep watching a movie. D.J. did not see any inappropriate conduct between defendant and L.F.

¶ 34 At the time of trial, L.F. was 16 years old. She testified that, on the night of the sleepover, she awoke to defendant placing his finger in her vagina. L.F. feigned sleep, but defendant attempted to place her hand around his penis. D.J. awoke and the girls went into D.J.'s bedroom. While L.F. was in bed with D.J., defendant entered the bedroom and sat on the bed next to L.F. While talking with D.J. and H.J., defendant placed his fingers in L.F.'s vagina again. Defendant asked L.F. to accompany him to the kitchen, which she did. In the kitchen, defendant pulled L.F. to him and started "making out" with her. H.J. interrupted and asked what was going on. L.F. returned to D.J.'s bedroom with defendant, who asked D.J. and H.J. if L.F. would be more "crazy" if she smoked marijuana. Defendant pulled out a baggie with some substance and offered it to L.F. to smoke. L.F. testified that she pretended to smoke the substance but did not inhale. L.F. and defendant sat down on the bed and he reached into her shorts and placed his finger in her vagina a third time. Defendant left the bedroom and did not return that night. L.F. went home the next day after lunch.

¶ 35 F. The Judgment

¶ 36 The jury found defendant guilty of all six counts, and defendant's various posttrial motions were denied on October 2, 2014. On October 23, 2014, the trial court imposed

consecutive prison terms of 5 years for each of the 3 criminal sexual assaults, 8 years for each of the 2 predatory criminal sexual assaults, and 4 years for the child pornography charge, resulting in an aggregate term of 35 years. This timely appeal followed.

¶ 37 II. ANALYSIS

¶ 38 Defendant argues that the trial court made several evidentiary errors that entitle him to a new trial. The trial court has discretion to determine whether evidence is relevant and admissible, and therefore, an evidentiary ruling will not be overturned unless it is arbitrary, fanciful or unreasonable. *People v. Hanson*, 238 Ill. 2d 74, 101 (2010). Evidence is relevant if it has " 'any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.' " *People v. Monroe*, 66 Ill. 2d 317, 322 (1977) (quoting Fed. R. Evid. 401). A court may exercise its discretion and exclude evidence, even if it is relevant, if the danger of unfair prejudice substantially outweighs its probative value. *Hanson*, 238 Ill. 2d at 102.

¶ 39 Defendant also argues that the trial court erred in denying a bill of particulars in which he challenged the lack of specificity of counts 3, 4, and 5. We conclude that none of defendant's claims warrants a reversal of the judgment for a new trial.

¶ 40 A. Text Messages

¶ 41 Defendant argues that he is entitled to a new trial because the trial court erred in admitting "a purported transcription of various text messages between defendant and D.J. without sufficient foundation and authentication." Defendant argues in passing that "D.J. could have, at best, speculated that defendant was the author of the text messages," and therefore, additional evidence of defendant's authorship was required for their admission.

¶ 42 To establish a proper foundation for admissibility, text messages are treated like any other form of documentary evidence. See *People v. Chromik*, 408 Ill. App. 3d 1028, 1046-47 (2011). A proper foundation is laid for the admission of documentary evidence when the document has been identified and authenticated. *Chromik*, 408 Ill. App. 3d at 1046. Authentication of a document requires the proponent to present evidence that the document is what the proponent claims it to be. Ill. R. Evid. 901(a) (eff. Jan. 1, 2011); *Chromik*, 408 Ill. App. 3d at 1046. The proponent need only prove a rational basis upon which the fact finder may conclude that the document did in fact belong to or was authored by the party alleged. See *People v. Downin*, 357 Ill. App. 3d 193, 203 (2005). If the trial court, serving a limited screening function, determines that the evidence of authentication, viewed in the light most favorable to the proponent, is sufficient for a reasonable juror to conclude that authentication of the particular item is more probably true than not, the trial court should admit the item. 1 Kenneth S. Broun, McCormick on Evidence § 53 (7th ed. 2013); see also Ill. R. Evid. 104(b) (eff. Jan. 1, 2011). The court's finding of authentication is "merely a finding that there is sufficient evidence to justify presentation of the offered evidence to the trier of fact and does not preclude the opponent from contesting the genuineness of the writing after the basic authentication requirements are satisfied." *Downin*, 357 Ill. App. 3d at 202-03. If the court, after serving its screening function, allows the evidence to be admitted, the issue of authorship of the document is then ultimately up to the jury to determine. *Downin*, 357 Ill. App. 3d at 203.

¶ 43 Documentary evidence, such as a text message, may be authenticated by either direct or circumstantial evidence. *Downin*, 357 Ill. App. 3d at 203; see also Ill. R. Evid. 901(b) (eff. Jan. 1, 2011). Circumstantial evidence of authenticity includes such factors as appearance, contents, substance, and distinctive characteristics, which are to be taken into consideration with the

surrounding circumstances. See *Downin*, 357 Ill. App. 3d at 203. Documentary evidence, therefore, may be authenticated by its contents if it is shown to contain information that would only be known by the alleged author of the document or, at the very least, by a small group of people including the alleged author. See *Downin*, 357 Ill. App. 3d at 203

¶ 44 In this case, D.J. authenticated the text messages by circumstantial evidence, testifying that she recognized defendant as the author based on the content of the messages, the telephone number from which they were sent, and her in-person conversations with defendant regarding the subject matter of the messages, which would only be known by defendant and D.J. See *Downin*, 357 Ill. App. 3d at 203. Defendant's phone number was confirmed by Haliw, and the text messages were further testified to by Brown, who described how he extracted the messages from defendant's phone. Under these circumstances, the trial court did not abuse its discretion in finding authentication, which left the issue of authorship of the text messages to the jury to determine. See *Downin*, 357 Ill. App. 3d at 203.

¶ 45 In a related argument, defendant asserts that the transcription of the text messages violated the best evidence rule. "The best evidence rule applies only when the contents or terms of a writing are in issue and must be established." *People v. Pelc*, 177 Ill. App. 3d 737, 742 (1988); see also Ill. R. Evid. 1002 (eff. Jan. 1 2011) ("To prove the content of a writing, recording, or photograph, the original writing, recording, or photograph is required, except as otherwise provided in these rules or by statute."). The best evidence rule did not bar the transcript of the text messages here because the State did not seek to prove the truth of their content. Instead, the State sought to prove defendant was pursuing an inappropriate sexual relationship with D.J. and used the text messages as circumstantial evidence of this intent. The

actual content of the text messages were not at issue, except to show that defendant viewed D.J. as his love interest.

¶ 46 Within his foundational argument, defendant claims that the State presented the text messages out of context, with many redacted or deleted. Defendant contends that the State improperly "cherry-picked" the exhibits to "present defendant in the worst possible light and invoke emotion and vitriol from the jury," and that the court exacerbated the error by allowing D.J. to read the text messages into the record as part of her testimony. Defendant concludes that the trial court should have required the State to present all of the text messages between defendant and D.J. However, defendant cites no authority to support his claim that he was prejudiced by the way the State presented the text messages, he does not identify what other messages should have been shown to the jury, and he does not explain why he did not attempt to cross-examine D.J. with them. The record shows that defendant and D.J. exchanged thousands of text messages over the three years that he was committing the sex offenses. Allowing the State to present only the relevant messages to show the inappropriate sexual relationship was not an abuse of discretion by the trial court.

¶ 47 B. Pornographic Image

¶ 48 Defendant was convicted of child pornography based on a photograph he took on July 4, 2012, which was admitted into evidence and marked as the State's exhibit No. 28. Defendant argues that the photograph lacked an adequate foundation because D.J.'s testimony was "severely lacking in reliability" in that she did not recall who took the photograph or when, where, or why it was taken.

¶ 49 Brown testified that the image was found on defendant's phone and explained how he could tell the date on which it was taken. D.J. testified unequivocally that the photograph

depicted her unclothed genitalia and that defendant was the person whose hand was pulling back her underwear. The testimony of Brown and D.J. laid an adequate foundation for the photographs' admission. Defendant's objection to the photograph goes to the weight to be given the testimony and the exhibit, not its admissibility.

¶ 50 Defendant also argues that "[t]he error of admitting Exhibit 28 was not limited to the one photograph" because other photographs also lacked an adequate foundation for admission. Defendant's entire argument is that the photographs should have been excluded because the witnesses did not remember being photographed. Defendant's argument is undeveloped, as he does not even identify the witnesses, what the photographs depict, or how he might have been prejudiced by their admission. Defendant has left it to this court to assist him by reviewing the testimony and photographs to construct a rational argument on the lack of foundation for their admission. A reviewing court is not simply a depository into which a party may dump the burden of argument and research. *People ex rel. Illinois Dept. of Labor v. E.R.H. Enterprises*, 2013 IL 115106, ¶ 56. A court of review is entitled to have the issues clearly defined and to be cited pertinent authority. A point not argued or supported by citation to relevant authority fails to satisfy the requirements of Rule 341(h)(7). *Vancura v. Katris*, 238 Ill. 2d 352, 370 (2010) ("Both argument and citation to relevant authority are required. An issue that is merely listed or included in a vague allegation of error is not 'argued' and will not satisfy the requirements of the rule."). Defendant's failure to comply with the rule's requirements results in forfeiture. See *E.R.H. Enterprises*, 2013 IL 115106, ¶ 56.

¶ 51 C. Defendant's Statements

¶ 52 Defendant next challenges the testimony of Haliw, Vrbos, and Marotta regarding his allegedly involuntary statements made at the police station. Defendant claims all his statements

should have been suppressed because he did not receive *Miranda* warnings, he did not have the benefit of counsel, and he was not free to leave. We disagree.

¶ 53 Suppression rulings present a mixed question of law and fact. *People v. Pitman*, 211 Ill. 2d 502, 512 (2004). On review of a trial court's ruling on a motion to suppress, we afford great deference to the trial court's credibility determinations and factual findings, and we will not disturb those findings unless they are against the manifest weight of the evidence. *People v. Slater*, 228 Ill. 2d 137, 149 (2008). A judgment is against the manifest weight of the evidence only when an opposite conclusion is apparent or when findings appear to be unreasonable, arbitrary, or not based on evidence. *People v. Lopez*, 2013 IL App (1st) 111819, ¶ 17. We review *de novo* the ultimate question of whether the motion to suppress evidence should have been granted. *Lopez*, 2013 IL App (1st) 111819, ¶ 17. A reviewing court may consider the testimony adduced at trial, as well as at the suppression hearing. *Slater*, 228 Ill. 2d at 149.

¶ 54 The threshold of our inquiry logically begins with *Miranda*, where the Supreme Court held:

> "[W]hen an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way and is subjected to questioning, the privilege against self-incrimination is jeopardized. *** He must be warned prior to any questioning that he has the right to remain silent, that anything he says can be used against him in a court of law, that he has the right to the presence of an attorney, and that if he cannot afford an attorney[,] one will be appointed for him prior to any questioning if he so desires." *Miranda*, 384 U.S. at 478-79.

¶ 55 *Miranda* instructs that the hallmark of custodial interrogation is "questioning initiated by law enforcement officers after a person has been taken into custody or otherwise deprived of his

freedom of action in any significant way." *Miranda*, 384 U.S. at 444. The finding of custody is essential, as the prophylactic rule was intended to assure that any inculpatory statement made by a defendant is not simply the product of " 'the compulsion inherent in custodial surroundings.' " *Yarborough v. Alvarado*, 541 U.S. 652, 661 (2004) (quoting *Miranda*, 384 U.S. at 458).

¶ 56 Our supreme court has stated courts should engage in a two-part inquiry to determine whether a person is in custody, necessitating *Miranda* warnings prior to questioning the individual. First, courts should look at the circumstances surrounding the interrogation. Second, courts should determine whether a reasonable person, innocent of any crime, would have felt at liberty to terminate the interrogation and leave given those circumstances. *People v. Braggs*, 209 Ill. 2d 492, 505-06 (2003).

¶ 57 When examining the circumstances of an interrogation, our supreme court in *Slater* identified a number of factors relevant in determining whether a statement was made in a custodial setting including: (1) the location, time, length, mood, and mode of the questioning; (2) the number of police officers present during the interrogation; (3) the presence or absence of family and friends of the individual; (4) any indicia of a formal arrest procedure, such as the show of weapons or force, physical restraint, booking or fingerprinting; (5) the manner by which the individual arrived at the place of questioning; and (6) the age, intelligence, and mental makeup of the accused. *Slater*, 228 Ill. 2d at 150. After examining and weighing these factors, courts must then make an objective determination as to whether, under the facts presented, "a reasonable person, innocent of any crime," would have believed that he or she could terminate the encounter and was free to leave. *Braggs*, 209 Ill. 2d at 506.

¶ 58 The court heard ample evidence that defendant's statements before the audio recording were made when he was not yet in custody. Haliw and Vrbos met defendant in a parking lot

behind a gas station. Defendant followed them to the police station after Haliw told defendant that he was not forced to go. In an interview room, defendant initially denied the allegations but eventually said "[t]hey are really good girls" and "it might have happened, but I just don't remember because I was drunk." Haliw testified that, when told that H.J. had witnessed defendant's mouth on D.J.'s vagina, defendant insisted it only happened once, it was an accident and a bad mistake, when he had mistaken D.J. for Bonnie.

¶ 59 The trial court determined that defendant was not in custody when he made his initial comments at the police station, and that determination is not against the manifest weight of the evidence. The court heard evidence that defendant went to the police station voluntarily, as he drove to the station himself, the interview took place in an unsecured area, defendant was told he was not under arrest, and he was not handcuffed or otherwise restrained.

¶ 60 The trial court ruled that, once defendant admitted the sexual conduct, he was not free to leave and should have received his *Miranda* warnings. Because the detectives failed to advise defendant of his rights, the court suppressed the audio recording of defendant's purported apology.

¶ 61 However, after the recording was made, defendant made additional statements to Marotta, who was watching him while Haliw and Vrbos spoke in the hall. The court deemed admissible certain statements to Marotta because they were spontaneous and not the product of interrogation. The court's findings are not against the manifest weight of the evidence. When defendant began banging his forehead against a wall, Marotta handcuffed him. Defendant spontaneously started talking about his alcohol consumption. He also said that he might have done what Haliw and Vrbos alleged and that he might have even "molested" L.F. Marotta transferred defendant to the booking area, where he repeatedly said he "might have done it." The

court did not err in admitting these statements because, although defendant was in custody, the statements were spontaneous and not the result of interrogation. See *Illinois v. Perkins*, 496 U.S. 292, 297 (1990) (in the absence of both custody and interrogation, an individual's privilege against self-incrimination is not threatened, and *Miranda* warnings are not required).

¶ 62 D. Other Crimes Evidence

¶ 63 1. L.F.

¶ 64 Defendant also argues that the trial court should have suppressed other crimes evidence regarding sex acts perpetrated against L.F. and uncharged conduct against D.J. The court admitted L.F.'s testimony that, on the night of the sleepover, defendant committed three acts of digital penetration of her vagina in D.J.'s bedroom. L.F. also testified that defendant tried to make her grab his penis and offered her marijuana to make her "more crazy." Defendant contends that he was prejudiced in that the evidence became "a focal point of the trial" because L.F.'s testimony was "grossly excessive in detail."

¶ 65 Generally, evidence of other crimes is inadmissible to show the defendant's propensity to commit a crime. *People v. Donoho*, 204 Ill. 2d 159, 170 (2003). Evidence of other crimes is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit a crime, such as *modus operandi*, intent, motive, identity, or absence of mistake. *People v. Pikes*, 2013 IL 115171, ¶ 11. Subsequent bad acts may be used as other-crimes evidence. See *People v. Bartall*, 98 Ill. 2d 294, 312-13 (1983).

¶ 66 The Illinois General Assembly, however, has created a limited exception to this general rule of inadmissibility for other-crimes evidence intended to show the defendant's propensity to commit crimes. *People v. Ward*, 2011 IL 108690, ¶ 25. If a defendant is tried on one of the enumerated sex offenses, section 115-7.3(b) of the Code of Criminal Procedure of 1963 (the

Code) (725 ILCS 5/115-7.3(b) (West 2012)) allows the State to introduce evidence that the defendant also committed another of the specified sex offenses. The statute expressly permits this other-crimes evidence to be admitted for any relevant purpose. 725 ILCS 5/115-7.3(b) (West 2012). As the Supreme Court recognized in *Michelson v. United States*, 335 U.S. 469, 475-76 (1948), propensity evidence is often highly relevant, making other-crimes evidence admissible under section 115-7.3(b) to show a defendant's propensity to commit sex crimes. *Ward*, 2011 IL 108690, ¶ 25. Before the other-crimes evidence may be used, however, the trial court must apply a balancing test, weighing the probative value of the evidence against the undue prejudice it might cause to the defendant. 725 ILCS 5/115-7.3(c) (West 2012). The admissibility of evidence rests within the discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *Pikes*, 2013 IL 115171, ¶ 12.

¶ 67 Section 115-7.3(c) provides that the relevant factors the trial court should consider when deciding whether to admit other-crimes evidence include: "(1) the proximity in time [of the other offense] to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense or (3) other relevant facts and circumstances." 725 ILCS 5/115-7.3(c) (West 2012).

¶ 68 We conclude that the trial court did not abuse its discretion in allowing L.F.'s testimony regarding defendant's sex acts perpetrated against her. The requirements of section 115-7.3(c) were met: defendant committed the acts against L.F. around the time that he was engaging in a pattern of assaults against D.J. and the sex acts against L.F. and D.J. were similar. See 725 ILCS 5/115-7.3(c) (West 2012).

¶ 69 Rather than arguing that the State failed to meet the requirements of section 115-7.3, defendant argues that "the testimony of L.F. was in far greater detail that what was necessary to

establish the particular purpose for the evidence and contrary to what is allowable for other crimes evidence." Defendant cites no authority, and we are not aware of any, to support his proposition that properly admitted evidence of other acts of abuse becomes inadmissible simply because the victim describes that abuse and the surrounding circumstances.

¶ 70 Defendant also misinterprets section 115-7.3 by arguing that other-crimes evidence may be admitted to show propensity only if the evidence is also admissible for some other purpose. Defendant contends that L.F.'s testimony was inadmissible to show propensity because it was inadmissible to show intent or absence of mistake. Defendant conflates the requirements of section 115-7.3 with the common law rules governing the admission of other crimes evidence for other relevant purposes, such as to show intent, motive, *modus operandi*, identity, and absence of mistake. See *Pikes*, 2013 IL 115171, ¶ 11.

¶ 71 Defendant further contends that the evidence was improperly deemed admissible under the "continuing-narrative exception," which allows evidence of other crimes when "part of a continuing narrative of the event giving rise to the offense [citation], is intertwined with the event charged [citation], or explains an aspect of the crime charged that would otherwise be implausible." *People v. Outlaw*, 388 Ill. App. 3d 1072, 1086-87 (2009). Defendant does not cite to any part of the record indicating that the trial court invoked the continuing-narrative exception or instructed the jury on that principle. We decline to serve as his advocate by combing the record for error. Regardless, the evidence was properly admitted under section 115-7.3, and therefore we need not address defendant's argument pertaining to the continuing-narrative exception.

¶ 72 2. D.J.

¶ 73 Defendant also argues that the trial court erred in admitting evidence of uncharged acts committed against D.J. Defendant objects to the following evidence: (1) defendant threatened to harm D.J. if she told anyone about the alleged abuse, (2) H.J. witnessed defendant's head under the covers near D.J.'s stomach in the bedroom and on the couch; (3) defendant directed D.J. to shave her pubic hair; (4) photographs of a partially-unclothed D.J., other than the photograph on which the pornography count was based; (5) defendant's punishment of D.J. for failing to perform sex acts; (6) photographs of defendant and D.J. depicting them touching each other, D.J. sitting on defendant's lap or shoulders, and defendant kissing D.J. on the cheek; (7) defendant's drinking habits; and (8) defendant exposing his penis while wearing boxer shorts. Defendant concludes that this evidence was inadmissible because the acts do not constitute an offense that would be admissible under section 115-7.3(b), and the evidence was irrelevant, cumulative, and more prejudicial than probative.

¶ 74 As the State points out, the record shows that the trial court specifically found that these acts did not fall under the other-crimes evidentiary exception of section 115-7.3. Instead, the court deemed the evidence admissible because it corroborated other evidence and was relevant to the charged offenses. See *Pikes*, 2013 IL 115171, ¶ 11 (evidence is admissible if it is relevant for any purpose other than to show the defendant's propensity to commit a crime, such as *modus operandi*, intent, motive, identity, or absence of mistake). Under the circumstances, we conclude that the court did not abuse its discretion in admitting the challenged evidence.

¶ 75 E. Missing Clothing

¶ 76 Defendant alleges that on April 15, 2014, the day before the trial started, the State disclosed for the first time that the police had collected, stored, and subsequently misplaced the clothing that D.J. was wearing in Exhibit 28, the photograph that was the basis for the child

pornography charge. Defendant further alleges that his trial counsel made an oral motion to "(1) exclude such evidence from the trial; (2) exclude any reference to such evidence; (3) [exclude] any reference that the evidence was purportedly in the possession of the State; and, (4) [exclude] any evidence of purported ownership of said evidence." Defendant argues on appeal that "[t]his late disclosure and eventual loss eliminated any possibility of access to said items by defendant," resulting in prejudice to him.

¶ 77 The only indication of such a motion for sanctions is part of a written order entered on April 15, 2014, in which the trial court stated "defendant's motion to exclude evidence is denied." Even assuming that the ruling refers to a motion for sanctions for the delayed disclosure, our review is hindered because the record does not contain a transcript of the hearing, and the written order does not state the court's reasons for its ruling. Under *Foutch v. O'Bryant*, 99 Ill. 2d 389 (1984), defendant, as the appellant, had the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error; and in the absence of such a record on appeal, it will be presumed that the order entered by the trial court conformed to the law and had a sufficient factual basis. See *Foutch*, 99 Ill. 2d at 391-92. Defendant could have supplemented the record with a bystander's report under Illinois Supreme Court Rule 323(c) (eff. Dec. 13, 2005) or an agreed statement of facts under Rule 323(d) (eff. Dec. 13, 2005), but he failed to do so. Either could have provided the reasons for the trial court's ruling. Doubts that arise from the incompleteness of the record will be resolved against defendant. See *Foutch*, 99 Ill. 2d at 392.

¶ 78 In this case, the record offers no indication of what relief defendant sought for the delayed disclosure, if any, let alone a factual or legal basis for the court's ruling. In any event, the misplacement of the clothing prevented its admission into evidence, which was part of the

relief that defendant says he requested. Furthermore, defendant offers no reason why he was prejudiced by the unavailability of D.J.'s clothing. Without an adequate record, we presume the trial court's ruling conformed to the law and had a sufficient factual basis.

¶ 79 F. Bill of Particulars

¶ 80 Finally, defendant argues that the trial court erred in denying his motion for a bill of particulars regarding counts 3, 4, and 5. Count 3 alleged a criminal sexual assault between September 17, 2012, and October 8, 2012, count 4 alleged a predatory criminal sexual assault between September 3, 2009, and December 31, 2009, and count 5 alleged a predatory criminal sexual assault between September 3, 2009, and December 31, 2009. In his motion, defendant requested that "the State identify with specificity the dates and times that the alleged offense[s] occurred, rather than to allege the offense[s] occurred within a range of dates."

¶ 81 The trial court may require the State to furnish a bill of particulars when an indictment fails to sufficiently specify the particulars of the charged offense to enable a defendant to prepare a defense. 725 ILCS 5/111-6 (West 2012). "The purpose of a bill of particulars is to give the defendant notice of the charge and to inform the defendant of the particular transactions in question, thus enabling preparation of a defense." *People v. Woodrum*, 223 Ill. 2d 286, 301-02 (2006). " '[W]here an indictment sufficiently informs the defendant of the offense charged against him there is no need for a bill of particulars ***.' " *People v. Lego*, 116 Ill. 2d 323, 337 (1987) (quoting *People v. Tsukas*, 406 Ill. 613, 616-17 (1950)). We review the trial court's decision on a motion for a bill of particulars for abuse of discretion. *Lego*, 116 Ill. 2d at 336-37. An abuse of discretion occurs when the trial court's ruling is "arbitrary, fanciful, [or] unreasonable," or where no reasonable person would take the view adopted by the trial court. *People v. Hall*, 195 Ill. 2d 1, 20 (2000).

¶ 82 The date of the offense is not an essential factor in child sex offense cases. *People v. Guerrero*, 356 Ill. App. 3d 22, 27 (2005) (citing *People v. Burton*, 201 Ill. App. 3d 116, 123 (1990)). In cases involving the sexual abuse of a child, flexibility is permitted regarding the date requirement necessary under the Code. *Guerrero*, 356 Ill. App. 3d at 27. As long as the crime occurred within the statute of limitations and prior to the return of the charging instrument, the State need only provide the defendant with the best information it has as to when the offenses occurred. *Guerrero*, 356 Ill. App. 3d at 27.

¶ 83 Count 3 alleged a two-week period and counts 4 and 5 alleged a four-month period. At the hearing on defendant's motion for a bill of particulars, the State informed the court that D.J. could narrow the time frame to only a four-month period for counts 4 and 5. The trial court found that the State's failure to indicate the exact date of the offenses did not require a bill of particulars but instead went to the credibility of the witness. Consistent with the ruling, defense counsel argued that D.J.'s inability to specify the dates of the offenses showed that she was not credible. The trial court did not abuse its discretion in ruling that the State was not obliged to allege specific dates for counts 3, 4, and 5, as the decision was not arbitrary, fanciful, or unreasonable.

¶ 84 Defendant suggests that the State's failure to specify exact dates for the offenses exposes him to future prosecution arising from the same conduct. However, a prior prosecution can be proven easily by reference to the record, thereby protecting a defendant from being placed in double jeopardy. See *Guerrero*, 356 Ill. App. 3d at 29 (citing *People v. Long*, 55 Ill. App. 3d 764, 773 (1977).

¶ 85 III. CONCLUSION

¶ 86 For the reasons stated, the judgment of convictions entered by the circuit court of Du Page County is affirmed.

¶ 87 Affirmed.