2017 IL App (5th) 150080-U

NO. 5-15-0080

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the
	)	Circuit Court of
Plaintiff-Appellee,	)	Wabash County.
	)	
v.	)	No. 12-F-67
	)	
WAYNE A. WELTON,	)	Honorable
	)	Larry D. Dunn,
Defendant-Appellant.	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Justices Welch and Barberis concurred in the judgment.

ORDER

¶ 1 *Held*: The defendant received a fair trial before a fair and impartial jury where none of the jurors selected were exposed to a prejudicial newspaper ad despite its wide circulation. The court did not abuse its discretion in admitting evidence of uncharged bad acts in a case involving sexual assault of a child where the evidence was relevant to show that he was grooming the 11-year-old complainant. The court did not abuse its discretion in allowing an expert witness to testify for the State even though she did not examine the complainant where her testimony was relevant and helpful to the jury and where the probative value of her testimony was not outweighed by any potential for prejudice. The evidence was sufficient to support the defendant's conviction.

¶ 2 The defendant, Wayne A. Welton, appeals his conviction for predatory criminal sexual assault of a child (720 ILCS 5/11-1.40 (West 2010)). He argues that (1) he did not

receive a trial before a fair and impartial jury due to the court's denial of his motion for a change in the place of trial; (2) the court erred in admitting evidence of uncharged misconduct; (3) the court erred in admitting testimony of an expert witness who did not personally examine the victim; and (4) the evidence was insufficient to convict him beyond a reasonable doubt. We affirm.

¶ 3 The defendant was the widower of the complainant's grandmother. Prior to the events at issue, the complainant, T.W., and her sisters thought of him as their grandfather and called him Pap. In June 2012, when the events at issue took place, 11-year-old T.W. and 10-year-old K.W. lived with their father, Jeff W., who owned and managed a local restaurant. This required him to work long hours. The defendant often babysat T.W. and K.W. while Jeff worked late at his restaurant. Prior to the incident at issue, both girls had a close relationship with the defendant. However, in the months leading up to the incident, T.W. was not as close to the defendant as she was when she was younger.

¶ 4 On the night of June 23, 2012, the defendant was babysitting T.W. and K.W. at his house while Jeff went out to play poker with some friends. T.W. called her older half-sister, 24-year-old Talley W., asking her to pick her up and take her home. Jeff was home in bed by this time. T.W. told Talley she could not sleep. Talley, who lived an hour's drive away, told T.W. to try to sleep. A few hours later, T.W. again called Talley. This time, T.W. told Talley that she woke up to find the defendant touching her. She later explained that the defendant put his finger inside her vagina. Talley called Jeff to tell him to pick up the girls. T.W. hid in the bathroom until Jeff arrived.

¶ 5 The incident was reported to police three weeks later. In addition to giving a statement to police, T.W. was interviewed by Sheryl Woodham, a forensic interviewer with the Guardian Center, a child advocacy center. The defendant was charged with predatory criminal sexual assault of a child (720 ILCS 5/11-1.40 (West 2010)).

¶ 6 In June 2013, the State's Attorney of Wabash County filed a motion for the appointment of a special prosecutor from the State Appellate Prosecutor's Office. She alleged that the appointment was necessary to avoid a conflict of interest or the appearance of a conflict. The court granted the motion.

¶ 7 In March 2014, the defendant filed a motion *in limine*. He sought to exclude any testimony about uncharged misconduct or prior bad acts. At issue was anticipated testimony that the defendant rubbed T.W.'s back, told her to take her bra off, told T.W. and K.W. dirty jokes, and called T.W. names. The court denied the motion as to the evidence that the defendant rubbed T.W.'s back and told her to take off her bra, finding that this evidence was relevant to show the defendant's intent and to explain T.W.'s state of mind (that is, why she was uncomfortable around the defendant). Initially, the court granted the motion as to the evidence that the defendant told the girls dirty jokes and called T.W. names, finding this evidence not to be relevant. The State filed a motion to reconsider the court's ruling concerning the dirty jokes and name-calling, which the court granted. In so ruling, the court explained that this evidence was relevant to the defendant's intent because it demonstrated that he saw T.W. in a sexual manner. The court also noted that the evidence could be seen as evidence that the defendant was "grooming" T.W. for sexual activity.

¶ 8 In April 2014, the defendant filed a motion to strike the testimony of the State's expert witness, Dr. Rachel Winters. Dr. Winters was expected to testify about what typically happens during a medical examination of a child after an allegation of sexual abuse, what such an examination could expect to reveal after digital penetration, and how the female body responds to stimulation. The defendant argued that Dr. Winters' testimony was irrelevant and that it would improperly bolster the credibility of T.W.'s testimony. In response, the State argued that her testimony was necessary to counter an adverse inference jurors might otherwise draw from the fact that T.W. did not undergo a medical examination and to explain T.W.'s testimony that there was "white stuff" in her underwear after the incident. The court denied the motion to strike.

¶ 9 On October 31, 2014, Jeff W. took out a full-page ad in the local newspaper. The ad ran on the second page of the first section of the Friday newspaper a little over two months before trial. The ad showed the defendant's mug shot and informed readers of the charges against him. The ad urged residents of Wabash County to "cast their vote on November 4 for the next circuit judge" and stated that the State's Attorney had to withdraw from the case due to a conflict of interest. The ad also stated that the family had obtained an emergency order of protection against the defendant and that the defendant had violated the terms of his bond multiple times. Finally, the ad included an invitation to a free fish fry catered by Jeff W.'s restaurant. It indicated that at the fish fry, court documents supporting the claims made in the ad would be available for guests to read.

¶ 10 In December 2014, the defendant filed a motion for a change of the place of trial, arguing that the prejudicial nature and wide circulation of the ad made it impossible for

him to receive a fair trial before a fair and impartial jury in Wabash County. He argued that the ad contained inadmissible and highly prejudicial information. He alleged that the ad was likely to have reached most potential jurors because the Friday circulation of the newspaper was 3,600, which was more than one-third of Wabash County's 11,947 residents. The court denied the motion, explaining that it would address the question of exposure to the ad during *voir dire*, and noting that its ruling could be revisited after *voir dire* if need be.

¶ 11 Jury selection began on January 5, 2015. The process took three days. Venire members were questioned both in groups and individually. Individual questioning took place with none of the other venire members in the courtroom. Numerous potential jurors were excused for cause by agreement of the parties. Many of these individuals knew witnesses or members of T.W.'s family. A few others indicated that they might have difficulty being fair and impartial because they had been victims of sexual abuse. Ultimately, 12 jurors and 2 alternates were chosen, none of whom had seen the ad placed by Jeff W.

¶ 12 T.W. first testified about her relationship with the defendant prior to the incident at issue. She testified that she had always been close to the defendant and her grandmother, Jean. Although T.W. could not remember when her grandmother died, other testimony revealed that she died in 2010, two years before the events at issue took place. T.W. testified that after Jean died, she remained close with the defendant, but their relationship "kind of became more distant." She explained that although most of the time she still got along "pretty good" with the defendant, other times they got into arguments. These

arguments occurred when T.W. got into trouble for "little things" like not cleaning up after herself. She testified that during these arguments, the defendant would call her names and raise his voice. T.W. noted that the arguments happened while her grandmother was alive, but they were "worse and more frequent" after she died. She noted that Grandma Jean usually intervened in arguments, telling the defendant to quiet down when he raised his voice to T.W.

¶ 13 T.W. described one other change in the nature of her arguments with the defendant that took place after her grandmother died—the defendant began calling her names when he argued with her. He often called her fat or an "ugly bitch" or a "stupid bitch." On one occasion, he called her a "fucking whore," although she did not remember exactly when this took place.

¶ 14 T.W. further testified that after her grandmother died, the defendant started telling her and K.W. dirty jokes. T.W. was asked to repeat the jokes he told them. She remembered two of the jokes, one of which he told multiple times. She testified that there were other jokes, but only two that she could remember. T.W. testified that both girls laughed at the jokes, but they made her feel uncomfortable. She further testified that the defendant only told dirty jokes when he was alone with her and K.W.

¶ 15 The girls often spent the night at the defendant's house. When they did, they usually both slept in his bed with him. T.W. explained that she slept next to the defendant, while K.W. slept at the foot of the bed. She testified that sometimes she slept in a spare bedroom, which usually happened if she fell asleep early. She further testified that she had trouble falling asleep. When she had difficulty falling asleep at the

defendant's house, he would rub her back to help her fall asleep. She did not think this was weird. On a few occasions, however, he also rubbed her butt while doing this.

¶ 16 T.W. testified about an incident that occurred shortly before the events at issue. She testified that the defendant urged her to take off her bra before going to bed. She argued with him, telling him that the bra was "made for nighttime," to which the defendant replied, "Oh bullshit." T.W. testified that later the same night, while the defendant was rubbing her back to help her get to sleep, he tried to undo her bra. T.W. pulled away from him and started to get up to go to the bathroom. She stated that the defendant got angry, pulled her down, and told her that it was time for bed. However, he did not try to undo her bra again after this. T.W. did not tell anyone about this incident because she thought that the defendant was "just trying to help [her] get comfy for bed."

¶ 17 T.W. testified that there were several previous occasions when she asked to be picked up early from the defendant's house because they were arguing. She noted that she did not like to be told what to do or to get into trouble for things she felt were not her fault. However, in spite of her arguments with the defendant and the dirty jokes and other behaviors that made her feel uncomfortable, there were many times she still enjoyed spending time with him. On those occasions, he played card games with the girls and took them out for ice cream.

¶ 18 T.W. testified that the day the incident at issue here took place began as one of the good days. The defendant took her and K.W. out for ice cream during the day, and T.W. was "okay with" the plan to stay at his house overnight. At around 7 p.m., she fell asleep in the spare bedroom. When she woke up, it was dark. T.W. became anxious because she

was afraid of the dark. She called her father to ask him to pick her up, but he did not answer the phone, so she called her older sister, Talley. T.W. could not remember the details of her conversation with Talley, but she understood that neither Talley nor Jeff was going to pick her up.

¶ 19 At this point, T.W. went into the defendant's room, where he and K.W. were sleeping. She got into bed with them, but was unable to fall asleep. She saw a spider on the ceiling a few minutes after getting into bed. She woke the defendant up and asked him to kill it. After the defendant killed the spider, he and T.W. went to the kitchen, had a snack, and played cards. They eventually went back to bed, and T.W. fell asleep.

¶ 20 T.W. testified that she awoke some time later. The defendant's knee was between her legs, and he was rubbing her thigh. She testified that she pretended to be asleep. She then testified that the defendant moved his hand up and down the length of her thigh three times. The first time, when he reached the top of her leg, he continued to rub her over the top of her underwear. The second time, he put his hand inside her underwear and briefly touched her vagina. The third time, he again put his hand inside her underwear. This time, he rubbed her vagina, then put his finger inside her vagina, took it out, and put it back inside. T.W. testified that the defendant then took his hand away from her, took off his CPAP mask, and smelled his finger. He then turned away from her and began "jacking off." She acknowledged that she could not see what he was doing, and she admitted that she was not certain that he was masturbating. She explained that she thought that was what he was doing because the bed was shaking, and that is what

happened when he masturbated another time. T.W. testified that the bed was shaking "badly."

¶ 21 T.W. stated that she pretended to be asleep and did not say anything to the defendant because she was scared. When she thought the defendant was asleep, T.W. got out of bed and locked herself in a bathroom that was off the kitchen. She testified that she used the bathroom and noticed something in her underwear that was "white and kind of like slimy." She then called Talley. T.W. testified that she began telling Talley what happened, but she told Talley that she had to go because she heard the defendant's footsteps approaching. T.W. testified that the defendant told her to come out of the bathroom so he could talk to her, but she told him she was sick. T.W. continued her conversation with Talley by texting. Eventually, the defendant told her he was going back to bed.

¶ 22 T.W. testified that she remained locked in the bathroom until Jeff called her and told her he was pulling into the driveway. She tried to wake K.W., but K.W. would not wake up. T.W. stated that she tried to carry K.W. to the car, but got as far as the kitchen before dropping her. K.W. then woke up and the two girls left the defendant's house together.

¶ 23 T.W. testified that when Jeff asked her what happened, she told him only that the defendant touched her; she did not feel comfortable telling him any of the details. She further testified that after this incident, her family avoided the defendant, who tried several times to talk to them. T.W. acknowledged that she never underwent a sexual

assault examination. She explained that this was because she was afraid of doctor's examinations.

¶ 24 Talley testified that on the night of June 23, 2012, T.W. called her at approximately 11 p.m. asking for a ride home. According to Talley, T.W. did not seem upset during that phone call; she just wanted to be taken home because she could not sleep. Talley called Jeff, who told her that he was feeling unwell and that he would pick up the girls in the morning. Talley called T.W. back and told her to try to sleep. At approximately 2:40 a.m., T.W. again called Talley. This time, she sounded "panicked and upset." Talley had to tell T.W. to speak more slowly because she could not hear what she was saying. T.W. then told Talley, "I just woke up to Pap touching me." Talley asked T.W. if she was "sure it was in a bad way." T.W. told her, "Yes, he hurt me." Talley then got off the phone so she could call Jeff.

¶ 25 Talley next described a series of text messages she had with T.W. Talley sent T.W. a message asking, "Are you sure it was in a bad way?" When she did not get a response, she sent another message saying, "Answer me, sis." T.W. replied, telling Talley that she did not get her first message. She also told Talley that there was white stuff in her underwear and she did not know what it was. T.W. then sent a message saying, "Pappy is up, and he's waiting for me to come out of the bathroom to talk to me. What do I do, sissy?" A printout of the text messages was entered into evidence.

¶ 26 Talley testified that the following day, she brought both T.W. and K.W. to her house. T.W. told her what happened in detail. What she told Talley was essentially

identical to what she testified to in court. Talley noted, however, that T.W. did not tell her anything about the defendant removing his CPAP mask and smelling his finger.

¶ 27 A recording of T.W.'s interview with Sheryl Woodham was played for the jury. Her description of the incident was again consistent with her trial testimony. However, she did not specifically tell Woodham that the defendant put his hand inside her underwear.

¶ 28 K.W. testified that when she and T.W. stayed overnight at the defendant's house, both girls wanted to go home every time. She explained that she always wanted to go home because she did not like spending nights away from her dad. She further testified that the defendant told dirty jokes, which made her feel uncomfortable. She could only remember one of the jokes, but she stated that he told that joke more than once, and he told other jokes as well. K.W. testified that the defendant never touched her inappropriately, and she never saw him touch T.W. inappropriately.

¶ 29 K.W. also testified about the night in question. She testified that she went to sleep in the defendant's bedroom, and T.W. came in later, although she did not remember when. She testified that T.W. woke her up later. T.W. was crying and seemed upset. All she told K.W. was that their father was on his way. She stated that T.W. carried her to the back door.

¶ 30 The defendant testified in his own behalf. He denied sexually abusing T.W. He also testified that he was unable to get an erection or masturbate. The defendant's girlfriend, Joyce Woods, also testified that the defendant was unable to get an erection.

She explained that they had attempted to have a sexual relationship but were unable to do so because of this.

¶ 31 The court gave the jury a limiting instruction addressing the evidence of the defendant's uncharged bad acts multiple times during the trial. Jurors first heard evidence that the defendant rubbed T.W.'s back, called her names, told her dirty jokes, and told her to take off her bra when the recording of T.W.'s interview with Sheryl Woodham was played. Prior to playing the recording, the court informed jurors that they would hear statements describing this conduct. The court explained that the statements were being admitted for the limited purposes of showing the defendant's attitude towards T.W., his intent to commit the crime, and explaining T.W.'s state of mind. The court instructed jurors that the statements should only be considered for these purposes. After the recording was played, the court repeated this instruction. The court gave the jurors the same limiting instruction after T.W. testified. Finally, the court repeated the instruction when it instructed the jury on the applicable law at the end of the trial.

¶ 32 The defendant moved the court to direct a verdict of acquittal both after the State rested and again after the close of all evidence. Both times, he argued that the evidence was insufficient to support a guilty verdict. The court denied both motions. The jury found the defendant guilty. The defendant filed a motion for a new trial, which the court denied. The court sentenced the defendant to 12 years in prison. This appeal followed.

¶ 33 The defendant first argues that he was not tried before a fair and impartial jury. This is so, he contends, because the ad placed in the newspaper by Jeff W. contained highly prejudicial information, much of which would be inadmissible at trial, and some

of which was misleading or inaccurate. He points out that the edition of the newspaper in which the ad ran was circulated to over one-third of all Wabash County residents (3,600 of 11,947). He argues that it was therefore "impossible to determine approximately how many potential jurors had been exposed to the newspaper ad." Thus, he asserts, it was impossible for him to receive a fair trial in Wabash County. We are not persuaded.

¶ 34 Both the State and federal constitutions guarantee to a criminal defendant the right to be tried before a fair and impartial jury comprised of jurors who are willing and able to decide the case based solely on the evidence presented at trial. *People v. Kirchner*, 194 Ill. 2d 502, 528 (2000). Jurors need not be "totally ignorant of the facts and issues involved in a case" to be fair and impartial. *Id*. at 529 (citing *People v. Sutherland*, 155 Ill. 2d 1, 15-16 (1992)). Jurors must simply be able to disregard any impressions or opinions they may have formed and to decide the case based on the evidence presented to them at trial. *Id*. (citing *People v. Coleman*, 168 Ill. 2d 509, 547 (1995)). Thus, jurors' exposure to publicity about a trial does not necessarily mean that they cannot be fair and impartial. *Id*.

¶ 35 In some cases, however, extensive publicity can make it difficult to impanel a fair and impartial jury. See, *e.g.*, *People v. Taylor*, 101 Ill. 2d 377, 387 (1984) (noting that the trial judge faced "a difficult—perhaps an impossible—task" in ensuring a fair and impartial jury in the face of extensive media coverage). As such, a criminal defendant may file a motion to change the place of his trial if he can show that there is "such prejudice against him on the part of the inhabitants" of the county in which his case is pending that he cannot get a fair trial in that county. 725 ILCS 5/114-6(a) (West 2012).

The motion should only be granted if there is a reasonable basis for the court to believe that the defendant cannot receive a fair and impartial trial unless the trial is moved. *People v. Olinger*, 112 Ill. 2d 324, 343 (1986). "As a practical matter[,] this means that a change of venue should be granted when it becomes apparent that it will not be possible to find 12 jurors sufficiently unfamiliar with the details of the case to withstand a challenge for cause." *Id.* (citing *Taylor*, 101 Ill. 2d at 387).

¶ 36 Even when there has been extensive media coverage, a court faced with a motion to change the place of trial has the option of taking the course of action followed by the trial court here—the court can initially deny the motion and then, if necessary, revisit the question after conducting *voir dire*. *People v. Little*, 335 Ill. App. 3d 1046, 1053-54 (2003). This is because the best indication of whether a fair and impartial jury can be impaneled is the responses given by venire members during *voir dire*. *Id.* at 1054. A ruling on a motion to change the place of trial is subject to reconsideration after *voir dire*, much like a ruling on a motion *in limine*, even on the court's own motion. *Id.* at 1053-54.

¶ 37 On appeal, the question is not how extensive or prejudicial the media coverage was. Rather, the question is whether the defendant received a fair and impartial trial by the jurors who were ultimately chosen. *Id.* at 1052. To answer this question, we must conduct an independent review of the entire record, including *voir dire*. *Kirchner*, 194 Ill. 2d at 529.

¶ 38 We first note that the defendant accurately describes the prejudicial nature of the ad at issue here. The ad contained prejudicial information that would not be admissible at trial, some of which was misleading or inaccurate. The ad informed readers that T.W.'s

family had to obtain an emergency order of protection against the defendant, revealed that the State's Attorney withdrew from handling the case due to a conflict of interest, and falsely stated that he had violated the terms of his bond. As the defendant asserted in his motion to move the trial out of Wabash County, the information that the State's Attorney withdrew to avoid a conflict of interest coupled with the statement in the ad urging county residents to vote for the next circuit court judge could easily be construed to mean that the defendant was being given preferential treatment or that justice was not being served in the case. Moreover, there is no way to know what information was provided to the individuals who accepted the invitation to the fish fry.

¶ 39 As the defendant correctly contends, exposure to highly prejudicial inadmissible information is enough in some cases to require that a potential juror be excused for cause even if the juror states that he or she is able to disregard the prejudicial information and decide the case based on the evidence presented at trial. See *Taylor*, 101 Ill. 2d at 391. We need not consider whether the ad was prejudicial enough to warrant such a result, however. As we have just explained, the issue is not the existence of the prejudicial ad or how widely it has been circulated, but whether the jurors ultimately selected were capable of being fair and impartial. *Little*, 335 Ill. App. 3d at 1052. For the reasons that follow, we find that they were.

¶ 40 Of the jurors selected in this case, five had not read, seen, or heard any media coverage about the defendant's trial. The remaining jurors were exposed to media coverage that fell into two categories—news stories that ran shortly after the defendant's arrest, which included the defendant's name and the charge against him, and stories that

ran shortly before trial, which included the defendant's name, the charge, and the fact that jury selection was about to begin. Local newspapers, radio stations, and television stations all ran similar stories at both times. These stories contained no other details about the case. Four of the jurors selected said they were exposed to one of the stories that ran just before trial was to begin. One of the jurors selected indicated that she had read one story in the newspaper around the time the defendant was arrested. Two jurors said they had seen or heard one of each type of stories. None of the jurors selected had any detailed knowledge concerning the case.

¶ 41 Most importantly, none of the jurors selected saw the ad. Only one juror was even aware of its existence. That juror, William Arnold, testified during *voir dire* that he overheard some of his coworkers discussing something in the newspaper that might have been submitted by Jeff W. He testified, "I don't know if it was a letter put in the paper or a letter to the editor." He went on to explain that Jeff W. might have submitted the letter anonymously, and his coworkers' "discussion was that it was him who put that in the paper." Arnold also said that his coworkers were discussing the "circumstances or the situations of the case." Asked to elaborate, he indicated that they were discussing the fact that the victim was Jeff's daughter, and someone "may have said that it was a relative." Arnold was asked if he remembered any other specific things that were said about the ad. He replied, "Nothing I haven't already told you." Arnold did not see or read the ad himself.

¶ 42 The defendant did not challenge Arnold for cause or exercise a peremptory challenge on him. Although the court did overrule the defendant's challenge for cause to

another prospective juror, the defendant used a peremptory challenge on that juror. Thus, there were no jurors seated over the defendant's objection. See *Olinger*, 112 Ill. 2d at 344 (noting that none of the jurors chosen were challenged for cause by either party, and concluding that under the circumstances, the jury chosen was fair and impartial). The defendant also did not request that the court revisit its denial of his motion to move the trial out of Wabash County at the end of *voir dire*, and he did not object to the panel of jurors ultimately chosen. See *People v. McPherson*, 306 Ill. App. 3d 758, 765 (1999) (noting that the defendant did not challenge the jury chosen before finding that he was not prejudiced by the court's denial of his motion to move the trial). We find nothing in the record to indicate that any of the jurors selected could not be fair and impartial. None were exposed to the ad, and none were exposed to any other detailed information about the trial. We therefore conclude that the defendant was tried before a fair and impartial jury, and we reject his argument to the contrary.

¶ 43 The defendant next challenges two of the court's evidentiary rulings—its decision to admit evidence that the defendant told T.W. dirty jokes and called her names and its decision to allow the testimony of Dr. Rachel Winters. The admission of evidence—including both types of evidence at issue here—is a matter within the discretion of the trial court. We will not overturn a court's evidentiary rulings absent an abuse of discretion. *People v. Watkins*, 2015 IL App (3d) 120882, ¶ 44. We consider both of these rulings in turn.

¶ 44 As we have discussed at length, there were four types of evidence of uncharged bad acts at issue in this case. T.W. testified that the defendant rubbed her back, tried to

take off her bra, told dirty jokes, and called her names. All four were the subject of a motion *in limine*. On appeal, however, the defendant challenges only the admission of the evidence that he told the girls dirty jokes and called T.W. names. We reject his claim that the court abused its discretion in admitting the evidence.

¶ 45 Evidence of other crimes or bad acts is not admissible if it is relevant only to show that the defendant is a bad person or has a propensity to commit crimes. *People v. Robinson*, 167 Ill. 2d 53, 62 (1995). The problem with such evidence is the danger that it might "overpersuade" the jury, thereby leading the jury to find the defendant guilty only because jurors believe he is a bad person. *Id*. However, evidence of other bad acts is admissible if it is relevant for any other purpose. *Id*. Such evidence may be relevant to prove the defendant's motive, intent, or absence of mistake. *Id*. at 62-63. Evidence is relevant if it has the tendency to make the existence of any material fact more or less probable than it would be without the evidence. *People v. Bedoya*, 325 Ill. App. 3d 926, 937 (2001).

¶ 46 In the context of child sexual abuse cases, courts have recognized that the abuse is often preceded by a period of "grooming" the child. *United States v. Chambers*, 642 F.3d 588, 593 (7th Cir. 2011). The term "grooming" refers to a process by which a defendant exposes the child to sexual material with the ultimate goal of forming "an emotional connection with the child and a reduction of the child's inhibitions in order to prepare the child for sexual activity." *Id*.

¶ 47 Even when evidence of other bad acts is relevant and, therefore, admissible, the court must weigh the probative value of the evidence against its potential prejudicial

effect. If the probative value of the evidence is substantially outweighed by its prejudicial effect, the court should exclude the evidence. *Robinson*, 167 Ill. 2d at 63. The court should also take appropriate steps to minimize the potential prejudice to the defendant by offering a limiting instruction and not allowing the evidence to become a focal point in the trial. See *Watkins*, 2015 IL App (3d) 120882, ¶ 50.

¶ 48 Here, the court found the evidence that the defendant told dirty jokes and called T.W. names was relevant as evidence of grooming and as evidence that demonstrated that the defendant perceived T.W. in a sexual manner. The defendant argues that the evidence that the defendant told two dirty jokes and called T.W. names was not enough to show that he was grooming T.W., and he argues that it was not relevant for any other purpose. We disagree.

¶ 49 We note that, contrary to the defendant's assertion that the evidence only showed that he told the girls two dirty jokes, both T.W. and K.W. testified that the defendant told them other dirty jokes, even though they were unable to remember all of the jokes. In addition, both girls testified that he told at least one of those jokes more than once. Moreover, the dirty jokes and name-calling were not the only evidence of grooming. The evidence that the defendant rubbed T.W.'s back and attempted to take off her bra along with the evidence that he told her dirty jokes and called her a whore was sufficient to allow jurors to find that he engaged in a process of grooming T.W. for sexual activity. The evidence was therefore admissible for this purpose.

¶ 50 We also believe that the court took appropriate steps to minimize the prejudicial effect of the evidence. Jurors were given a limiting instruction both before and after they

viewed the recording of T.W.'s interview with Sheryl Woodham, after T.W. testified, and prior to beginning deliberations. We find no abuse of the court's discretion in admitting evidence of the dirty jokes and bad names.

¶ 51 The defendant also challenges the court's decision to admit the testimony of Dr. Rachel Winters as an expert witness. We note that he does not challenge Dr. Winters' qualification as an expert. He argues only that her testimony was irrelevant and highly prejudicial. We disagree.

¶ 52 The testimony of an expert witness is admissible if the testimony (1) addresses matters within the witness's areas of specialized knowledge and experience that are not within the knowledge and experience of the average juror, and (2) will assist jurors in reaching a conclusion. *People v. Lerma*, 2016 IL 118496, ¶ 22. In deciding whether to admit expert witness testimony in a criminal case, the court must balance the probative value of the evidence against its potential to prejudice the defendant. *Id.* As noted earlier, this court will reverse the trial court's decision only if the court abused its discretion. *Id.*

¶ 53 Dr. Winters is a general practitioner with a focus on gynecology. She has performed over 150 sexual assault examinations, most of them on children. As noted, the defendant does not challenge her qualification as an expert witness. Dr. Winters testified that a sexual assault examination should be performed as soon as possible after any allegation sexual abuse. She noted that it is common for children alleging abuse to be frightened about the examination, but she stated that it is incumbent upon adults aware of the abuse to bring the child to a doctor for the examination in spite of the child's fear. She

also noted that a doctor performing an examination can take steps to make the child feel as comfortable as possible.

¶ 54 Dr. Winters testified that in cases involving digital penetration, such as this case, an examination performed more than 24 to 48 hours after the abuse is unlikely to reveal any physical signs of the abuse. She explained that this is because healing occurs quickly. She testified, however, that even if an examination is not performed during that window, one should be performed anyway.

¶ 55 Dr. Winters also testified about the reaction girls typically have to sexual stimulation. She explained that girls who are in even in the earliest stages of puberty, which typically begins between the ages of 9 and 12, often secrete vaginal fluid in response to any stimulation. She described the secretion as clear, but noted that it may appear to be whitish. Dr. Winters noted that it is possible for an individual to be aroused enough to secrete this type of fluid from having her back rubbed. Dr. Winters acknowledged that she never met or examined T.W.

¶ 56 The defendant argues that this testimony was irrelevant to any issue in the case because T.W. did not undergo a sexual assault examination and because Dr. Winters did not personally examine T.W. He further testified that her testimony concerning the typical response of a girl's body to stimulation did no more than improperly bolster the credibility of T.W.'s testimony that there was "white stuff" in her panties. See *People v. Binion*, 358 Ill. App. 3d 612, 625 (2005) (explaining that evidence which does nothing more than bolster the credibility of a witness is improper). We do not agree.

¶ 57 The court found that Dr. Winters' testimony about sexual assault examinations was relevant to allow the State to counter any adverse inferences that might be raised due to T.W.'s failure to have an examination performed. In addition, the court found her testimony concerning the secretion of fluid in response to stimulation relevant to explain T.W.'s testimony that she saw "white stuff" in her panties and allow the State to counter negative inferences that might be drawn from the fact that tests conducted on T.W.'s underwear did not show the presence of semen. We do not find these conclusions to be unreasonable or an abuse of the court's discretion. Moreover, we do not believe the testimony was particularly prejudicial to the defendant. Dr. Winters testified that it would have been appropriate for Jeff W. to bring T.W. for an examination in spite of her fears, and she testified that the defendant's act of rubbing T.W.'s back to help her sleep would have been enough to cause a reaction that included the type of secretion she described. We find no abuse of discretion in either of the court's evidentiary rulings.

¶ 58 Finally, the defendant contends that the court erred in denying his motions for judgment of acquittal and that his conviction cannot stand because he was not proven guilty beyond a reasonable doubt. We disagree.

¶ 59 As the defendant correctly points out, due process requires proof beyond a reasonable doubt of each element of the offense charged before an accused may be convicted of the offense. *People v. Young*, 128 Ill. 2d 1, 48 (1989) (citing *In re Winship*, 397 U.S. 358, 364 (1970)). The question before this court in a challenge to the sufficiency of the evidence is whether, viewing the evidence in the light most favorable to the prosecution, any reasonable trier of fact could have found all of the elements of the

offense beyond a reasonable doubt. *People v. Wheeler*, 226 Ill. 2d 92, 114 (2007). We must draw all reasonable inferences from the evidence in favor of the State. *Id*. at 116-17.

¶ 60 Our role is not to retry the defendant. *Id*. at 114. We recognize that the jury saw and heard the witnesses when they testified, and, as such, was in a better position than we are to assess the credibility of those witnesses. *Id*. at 114-15. We will reverse a conviction on the basis of insufficient evidence only if we find that "the evidence is so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of [the] defendant's guilt." *Id*. at 115.

¶ 61 The defendant contends that the evidence supporting T.W.'s accusation against him was "improbable and unsatisfactory." He argues that it was "improbable to believe that K.W. would have slept through the entire incident." He argues that it is also "improbable to believe that on this random night [the defendant] decided to sexually abuse" T.W. This is so, he contends, because there was no evidence that he groomed T.W. or that he previously molested her. The defendant further asserts that there was no evidence that he "attempted to mitigate T.W.'s accusation by apologizing to her or asking her to keep the alleged incident between T.W. and himself." Finally, he contends that his own testimony—in particular, his testimony that he was unable to get an erection—rendered T.W.'s story even less credible. We are not persuaded.

¶ 62 There are two main flaws in the defendant's arguments. First, many of his arguments concern the credibility of T.W. as a witness. As previously stated, the jurors in this case observed the witnesses, including T.W., and were therefore in a better position than this court to determine their credibility. *Wheeler*, 226 Ill. 2d at 114-15. We

acknowledge that the testimony that K.W. slept through the entire incident is inconsistent with T.W.'s testimony that the bed was shaking "badly" while the defendant masturbated. Although it does not negate T.W.'s story, it does at the very least lead to an inference that T.W. was exaggerating when she said that the bed was shaking. This was something jurors could consider in determining how much weight to give the testimony of T.W.; it did not render her testimony wholly improbable or inadequate to support the defendant's conviction. See *People v. Cookson*, 335 Ill. App. 3d 786, 792 (2002).

¶ 63 For similar reasons, we reject the defendant's contention that jurors could not have reasonably believed T.W. because her testimony was contradicted by his. We reiterate that it was the role of the jury, as finder of fact, to determine which witnesses to believe. *Wheeler*, 226 Ill. 2d at 114-15. Its apparent decision to believe T.W. over the defendant is entitled to great deference. *Id*. at 115.

¶ 64 The remainder of the defendant's sufficiency-of-the-evidence argument amounts to a claim that T.W. could not reasonably be believed because there was no evidence of grooming, prior similar incidents, or efforts by the defendant to attempt to "mitigate" T.W.'s accusation by apologizing or asking her to keep silent. This argument is equally unsound.

¶ 65 We first note that, as previously discussed, the State *did* present evidence that the defendant was grooming T.W. by rubbing her back and butt, telling her dirty jokes, and telling her to take her bra off. We acknowledge that T.W. interpreted some of these things innocently. She testified that she did not think it was weird that the defendant rubbed her back to help her sleep, and when he told her to take off her bra, she thought he was just

trying to help her get comfortable to go to sleep. However, the fact that an 11-year-old child did not understand all of these actions does not change the fact that the evidence, viewed as a whole, could lead reasonable jurors to conclude that the defendant was attempting to groom T.W. for sexual activity.

¶ 66 More significantly, however, the defendant's argument must fail because a conviction for predatory criminal sexual assault of a child does not require any of the types of evidence the defendant complains are absent here. All of the things he points to are circumstantial evidence that can support an allegation of sexual assault; however, none of them are elements of the offense. See 720 ILCS 5/11-1.40 (West 2010).

¶ 67 We emphasize that the testimony of a complainant in a sex offense case does not need to be supported by circumstantial evidence or corroborated by other witnesses in order to be found credible enough to support a finding of guilt beyond a reasonable doubt. *People v. Schott*, 145 Ill. 2d 188, 202 (1991); *People v. Williams*, 223 Ill. App. 3d 692, 696 (1992). Put another way, complainants in sex abuse cases are not held to a different standard than any other witnesses in criminal trials. See *Schott*, 145 Ill. 2d at 202-03. We note, however, that T.W.'s testimony in this case was supported by other evidence, most notably, the evidence that she made contemporaneous statements about the incident to her sister Talley and the evidence that the defendant attempted to groom her. In addition, T.W.'s story remained much the same when she told it to Talley, when she told it to police, when she told it to Sheryl Woodham, and when she testified at trial. Viewing the evidence in the record in the light most favorable to the prosecution, we find

that the evidence was sufficient to support the defendant's conviction beyond a reasonable doubt.

¶ 68 For the foregoing reasons, we affirm the defendant's conviction.

¶ 69 Affirmed.