

¶ 4

I. BACKGROUND

¶ 5 In January 2009, the State charged defendant with aggravated criminal sexual abuse, a Class 2 felony (720 ILCS 5/12-16(b), (g) (West 2010)). The State alleged that defendant committed an act of sexual conduct on T.D. (born August 13, 2000), a family member of defendant under the age of 18, in that defendant fondled the sex organ of T.D.

¶ 6

A. State's Motion To Bar Testimony

¶ 7 In March 2011, defendant filed an eleventh supplemental disclosure to the State, which indicated that defendant intended to call several witnesses to testify regarding false allegations T.D. had made about others in the past. Defendant claimed that Shealon Gadeberg would testify about a false allegation T.D. made regarding an alleged incident wherein Gadeberg and T.D.'s father, Jason Davis, made T.D. "touch tongues with others." Jason would testify regarding false allegations that T.D. had levied against him. Christopher Malone would testify that claims T.D. made that Jason made her touch his penis never occurred. In response, the State filed a motion *in limine* to bar all such testimony under the rape shield law (725 ILCS 5/115-7 (West 2010)). Defendant filed a response, and the trial court conducted a hearing on the matter.

¶ 8

Following argument from both parties, the trial court (1) denied the State's motion as it related to Jason and Malone but (2) granted the motion with regard to Gadeberg because that incident (a) was "too far removed from the fact and the circumstances that are in the case and the allegations"; (b) would amount to "attempting to impeach the minor with a prior incident of falsity"; (c) "would raise the question of comparing [Gadeberg's] credibility as it relates to T[.]D[.]'s credibility"; (d) would essentially add another unnecessary "layer"; and also because (e) Gadeberg was "more distantly related to the parties in the case."

¶ 9

B. Jury Trial

¶ 10

1. *Connie Davis' Testimony*

¶ 11 Connie Davis is defendant's wife, T.D.'s paternal grandmother, and Jason's mother. In October 2008, T.D. told Connie that defendant had "touched her." When Connie asked T.D. what she meant, T.D. responded, "Pawpaw touched me down there," as she pointed downward toward the ground. Connie denied telling Officer Gerry Woods that T.D. pointed to her crotch. T.D. told Connie the touching happened during foot-rubbing time. Connie explained that defendant used to rub her feet after work and that T.D. had gotten in the habit of asking "Pawpaw" to rub her feet as well.

¶ 12 Connie had never seen defendant behave inappropriately with T.D. Connie was confused by what T.D. told her because T.D. was her normal "bubbly" self. T.D. told Connie she had talked to another little girl about the touching but Connie could not remember the girl's name. After T.D. told Connie that defendant touched her, Connie took defendant into the bedroom where T.D. was playing on the computer to see how she would react. According to Connie, defendant told T.D. to "tell 'Mimi' the truth" and that he would never hurt T.D., to which T.D. responded, "I know that PawPaw" and then asked defendant to play a computer game with her.

¶ 13 Connie decided not to tell T.D.'s mother, Heather Rardin, of T.D.'s allegations—even though defendant wanted to—because Rardin was going through postpartum depression and T.D. never mentioned defendant touching her again. However, Connie testified she told defendant that he should not pick T.D. or her sister up, hold them, or be alone with them until she could figure out what was going on.

¶ 14 Connie further explained that Rardin had been married to her son Jason, who had custody of T.D. and her sister prior to Jason going to prison. After Jason lost custody, Connie testified that Rardin rarely allowed her and defendant to see T.D. However, after Connie confronted Rardin about the lack of visitation, Rardin agreed to let T.D. visit on the condition that neither Connie nor defendant allow Jason to communicate with her; they agreed to prohibit contact with Jason.

¶ 15 *2. T.D.'s Testimony*

¶ 16 T.D.—who was 10 years old at the time—testified that she used to spend a lot of time with "Mimi" and "PawPaw" but stated that "[defendant] touched me where I did not want him to touch me." T.D. specified that while she was lying across defendant's lap on the living room couch, defendant touched her in her "privates." She was wearing a nightgown and had a blanket over her waist. Defendant would "go in [her] pants" and "start rubbing and stuff." T.D. said this happened "a lot."

¶ 17 In October 2008, some people came to T.D.'s school to talk about "body safety." Afterward, T.D. stated she told her older cousin, Ali, and Connie about the incident with defendant. T.D. also testified that her father, Jason, showed her things she should not see at her age and on one occasion made her touch his private part. According to T.D., "Chris was about to come in" when this incident with Jason occurred.

¶ 18 *3. Forensic Interview With T.D.*

¶ 19 Pam Riddle testified that she recorded a forensic interview she conducted with T.D., which was shown to the jury. Riddle began the interview by asking T.D. to identify boy and girl body parts on a drawing. Riddle then confirmed that T.D. knew the difference between

"okay" and "not-okay" touches. T.D. explained that it would not be okay for someone to touch a girl's boobies, crotch, or bottom. When Riddle asked whether anyone ever touched T.D. on not-okay parts, T.D. responded, "Well it's kind of hard—I will probably start crying but my Mom says its okay to cry." T.D. then stated, "Umm, well, I'm going to start with my grandpa—I call him pawpaw ***. Umm, he was you know they rub your legs sometimes and, um, he, um, didn't really um like rub my legs—he like touched my bad spot, he like rubbed at it, and when I was fake *** napping *** and that's what he did, and he's done it for a year, and he doesn't do it anymore, and now my mom does not take me to their house anymore since he did that ***." T.D. told Riddle that this incident occurred on the living room couch.

¶ 20 T.D. explained further that the first time defendant touched her in a not-okay way was when she was seven, almost eight years old. The interview continued, as follows:

[RIDDLE:] Okay, so where did it happen the first time[,] do you remember?

[T.D.:] Ah he was rubbing my legs and he touched my—he's been touched my—he's been for a year touching my—right here this part [pointing toward crotch on drawing] and then rubbing it and I don't like that cause that's not good.

[RIDDLE:] When he would be rubbing on—you called it your crotch area—did he rub on the outside of your clothes or did he ever rub on the inside of your clothes?

[T.D.:] Inside—he like was like going to the inside.

[RIDDLE:] Going to the inside? Okay—would he go

underneath—like would your pants be on—or your clothes be on and then he put his hands inside or would your clothes sometimes be off?

[T.D.:] They would be on and he would um like his hand would be like—I don't know how to explain it like—

[RIDDLE:] Did his hand go under your underwear or not?

[T.D.:] Uh huh Yeah.

[RIDDLE:] So the skin of his hand touched the skin of your crotch [T.D.]?

[T.D.:] Yeah.

[RIDDLE:] Is that right?

[T.D.:] Uh huh.

[RIDDLE:] Okay Okay—The skin of his hand would be touching the skin of your crotch. What would his hand do?

[T.D.:] He would like rub it or like get like the little part of it the little tiny part of it like how you go to the bathroom um he would rub on that and then he would stop when my grandma came and then he would keep going ***.

* * *

[RIDDLE:] T.D.—did any part of his hand ever go inside of your crotch or not?

[T.D.:] Yeah—he was like—um—he was like um his hand

would go or his fingers would go like where that thing where you go to the bathroom.

[RIDDLE:] Um hum.

[T.D.:] [He] would like rub that near that and then he would stop when my Grandma was coming and then I had still had the blanket on me so he would keep going and keep going—I just couldn't say stop.

* * *

[RIDDLE:] And did his finger—part of his hand go inside of your—

[T.D.:] Yeah.

[RIDDLE:] Your where the pee comes out of your crotch.

[T.D.:] Um hum."

¶ 21 T.D. also told Riddle that defendant once put her hands down her own pants. Although T.D. stated that defendant never asked her to touch his privates, there might have been a time when T.D. was falling asleep in defendant's bed that he made her touch his private, but T.D. was not sure what her hand had touched.

¶ 22 T.D. told Riddle that her "real" dad, Jason, tried to make her touch his private once when he was "drunk" and that "Chris" was there or about to walk in during this incident. T.D. also stated that her dad taught her bad words and how to steal. Later in the interview, however, T.D. stated she was not sure if her dad taught her to steal. T.D. also said that her dad burned down his trailer by leaving a lit cigarette on his stove.

¶ 32

7. Defendant's Testimony

¶ 33 Defendant testified that he was "dumbfounded" when Connie told him about T.D.'s accusations. He told Connie to call Rardin. When defendant spoke to T.D. about her accusations, he stated that she seemed happy and acted normal the rest of the day. Defendant explained that after the accusation was made, he, T.D., and Connie ate dinner, watched a movie, and T.D. asked him to rub her feet like she always did. Defendant testified he never abused T.D.'s trust, harmed her in any way, or touched her inappropriately.

¶ 34

8. Defendant's Offer of Proof

¶ 35 At the close of the first day of trial and outside the presence of the jury, defense counsel stated the following as an offer of proof.

¶ 36 In December 2008, Rardin told Detective Gerry Woods that T.D. informed her when Jason lived on 20th Street in Charleston, he and his girlfriend at the time, Shealon Gadeburg, tried to make her, her sister K.D., and Gadeburg's one-year-old son touch tongues. T.D. refused but said that K.D. and the other child did touch tongues with others. Counsel stated that he would call Gadeburg to testify that this never happened. Counsel also stated he would have asked Rardin about this as well, and if needed to perfect impeachment, counsel would have called Rardin and Detective Mark Kohlbecker to testify about this matter. Counsel explained to the court that although he had Gadeburg under subpoena, he told her not to come to court because the court had previously ruled to bar her testimony. Counsel stated he could have Gadeburg in court the next day to testify if needed, to which the court responded, "It's your offer of proof. It's your decision of whether or not you think her testimony is necessary to perfect your offer of proof." Counsel responded that it was necessary.

¶ 37 The following day, after the jury retired to deliberate, defense counsel called Gadeburg to testify. Gadeburg, who briefly dated Jason a couple years earlier, testified that neither she nor Jason ever attempted to make T.D., K.D., or any other children touch tongues with any other person. Additionally, to her knowledge, no such tongue touching ever occurred.

¶ 38 Defense counsel then explained that defendant would call Rardin and T.D. to talk about this statement, and then, if necessary, Detectives Woods and Mark Kohlbecker to perfect impeachment, followed by Gadeburg, who would testify "that those tales didn't happen." Defense counsel stated, "[w]e believe that would be exculpatory evidence that would show bias in this case." After the State stood on its argument that the evidence was irrelevant to the present case, the trial court stated, "[o]kay, we'll have that, all of that, noted as an offer of proof."

¶ 39 *9. Jury Verdict and Further Proceedings*

¶ 40 Shortly thereafter, the jury found defendant guilty of aggravated criminal sexual abuse. The trial court sentenced defendant as previously noted.

¶ 41 This appeal followed.

¶ 42 **II. ANALYSIS**

¶ 43 Defendant argues that (1) the State failed to prove him guilty of aggravated criminal sexual abuse beyond a reasonable doubt because the victim's testimony was not credible and (2) the trial court denied him the right to present a defense by barring certain testimony. We address defendant's contentions in turn.

¶ 44 **A. Sufficiency of the Evidence**

¶ 45 Defendant contends that the State failed to prove him guilty of aggravated criminal sexual abuse beyond a reasonable doubt because T.D.'s testimony was not credible. We

disagree.

¶ 46 When the sufficiency of the evidence for a criminal conviction is in dispute, we must determine whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the defendant guilty beyond a reasonable doubt. *People v. Beauchamp*, 241 Ill. 2d 1, 8, 944 N.E.2d 319, 322 (2011). A reviewing court does not retry a defendant when considering a sufficiency of the evidence challenge. *People v. Smith*, 185 Ill. 2d 532, 541, 708 N.E.2d 365, 369 (1999). "The trier of fact is best equipped to judge the credibility of witnesses, and due consideration must be given to the fact that it was the trial court *** that saw and heard the witnesses." *People v. Wheeler*, 226 Ill. 2d 92, 114-15, 871 N.E.2d 728, 740 (2007). Thus, "a jury's findings concerning credibility are entitled to great weight." *Id.* at 115, 871 N.E.2d at 740. For a reviewing court to set aside a criminal conviction on grounds of insufficient evidence, the evidence submitted must be so unreasonable, improbable, or unsatisfactory that it justifies a reasonable doubt of defendant's guilt. *Id.*

¶ 47 Defendant asserts that T.D.'s testimony was incredible in the following ways: (1) T.D.'s testimony contradicted statements she made during her interview with Riddle at the Children's Advocacy Center; (2) T.D.'s interview with Riddle demonstrated that she was trying as best she could to remember a story and that her mother, and possibly others, had coached her for the interview; (3) the testimony of other witnesses directly contradicted T.D.'s statements and demonstrated that T.D. had falsely accused her father of abuse and other criminal activity; and (4) T.D.'s behavior following the allegations makes her testimony suspect.

¶ 48 *1. Alleged Contradictions Between T.D.'s Trial Testimony and Forensic Interview*

¶ 49 Defendant first asserts that during T.D.'s interview with Riddle, she mentioned defendant had abused her in his bedroom, but during her trial testimony, she "never mentioned any incidences of abuse outside of those that occurred in the living room." However, we note that at trial, T.D. was never asked whether defendant had abused her in any other room other than the living room; therefore, her failure to "mention" abuse that occurred in defendant's bedroom is not "notable" as defendant asserts nor inconsistent with her interview statements.

¶ 50 Defendant also posits that T.D. testified that her father, Jason, had shown her "stuff that [she] should not be shown at the age [she was,]" that Jason had forced her to touch his private, and that "Chris" was "about to come in" when Jason made her touch his private. In contrast, defendant asserts that during her interview with Riddle, T.D. stated she never touched Jason's private. We note that during her testimony, T.D. responded "yes" when defense counsel asked her whether Jason ever made her touch his private. No further questions were asked regarding this alleged incident with the exception of who else was there during this incident, to which T.D. responded that "Chris was about to come in."

¶ 51 During the forensic interview, T.D. told Riddle that Jason had grabbed her hand and tried to make her touch his private but she pulled back and did not touch it. T.D. also told Riddle she thought Chris saw Jason do this "because he just walked in," but she did not think Chris remembered. As the State points out, the jury could have found that T.D. misheard or misunderstood defense counsel's question regarding whether Jason had ever made her touch his private when she responded with a "yes." Further, the jury was not required to find that T.D.'s "yes" response was sufficient to contradict her much more extensive description of the incident during the forensic interview. Moreover, this alleged incident with Jason occurred when T.D.

was four years old and the jury could have found that whether Jason actually made her touch his penis six years earlier did not call into question T.D.'s credibility as to the abuse claims that took place when she was seven and eight years old.

¶ 52 *2. Alleged Coaching of T.D. in Preparation for Forensic Interview*

¶ 53 Defendant next asserts that statements made by T.D. during the forensic interview "strongly suggest that she was not only having a hard time distinguishing between what was true and untrue but also that she had been prepped by her mother and possibly others for her interview." Specifically, defendant posits that the following statements made by T.D. during the interview are evidence of coaching: (1) when asked whether anyone had ever touched her on her boobies, crotch or bottom before, T.D. responded "Well it's kind of hard—I will probably start crying but my mom says its okay to cry" followed by "I'm going to start with my grandpa"; (2) at one point during the interview, T.D. sighed and stated, "it's kind of hard to remember"; (3) at the end of the interview, T.D. "suddenly remembered" that some man had taken her picture in the park and she feared this man would think of her naked and post her picture online; (4) T.D.'s comment that, "we don't know yet" whether defendant has done anything to my sister; and (5) T.D.'s statement, "my mom said that they would have a doll for me to *** look at yeah I think she said that."

¶ 54 Although the record reflects that these comments were made, we are not convinced that this is evidence T.D. was coached by her mother or any other person. At most, the statements, "mom says it's okay to cry" and "mom said that they would have a doll for me to *** look at" suggest that T.D.'s mother told her what she might expect during the interview, not what to say during the interview. The statement, "It's kind of hard to remember" was merely whis-

pered during the part of the interview where T.D. was describing what Connie did after T.D. reported the abuse to her. As the State points out, it is reasonable that the jury could have found it unsurprising that T.D. might find it hard to remember Connie's actions involving others and that the "It's kind of hard to remember" statement did not relate to or undermine T.D.'s description of the abuse by defendant. Further, we note that T.D.'s statement regarding the man taking her picture was not "suddenly remembered" as defendant asserts, but was a responsive answer to Riddle's statement that T.D. only needed to tell her about incidents that made T.D. feel unsafe or uncomfortable. Last, the full context of T.D.'s "we don't know yet" statement was, "I think [defendant] has been doing it to my sister we don't know yet" and does not support a conclusion that T.D. was coached for the interview.

¶ 55 3. *Contradicting Testimony of Other Witnesses and False Allegations*

¶ 56 Defendant also asserts that the testimony of other witnesses contradicts T.D.'s statements and demonstrates that T.D. had falsely accused her father of abuse and other criminal activity, thus, making her testimony incredible. Specifically, defendant contends that the testimony of Ali Cline, Chris Malone, and Jason contradict T.D.'s statements. Additionally, defendant points out that after being shown a photograph of defendant's living room, T.D. testified it was an accurate depiction save for the fact the couches were different and there had been a white rug in the living room before. Connie, however, had testified they had the same living room furniture for eight years and there was never a white rug in the living room.

¶ 57 Although Ali testified that T.D. never told her of any inappropriate touching by their grandfather, the jury was not required to accept Ali's testimony over T.D.'s. Further, the fact Jason testified that he (1) never made T.D. touch his private, (2) was never naked around T.D.,

(3) never taught her to steal, and (4) was not the cause of his trailer fire does not necessitate finding T.D.'s testimony regarding abuse by defendant incredible. Contrary to defendant's assertion, Chris's testimony does not contradict T.D.'s. T.D. testified that during the incident where Jason tried to make her touch his private, "Chris was about to come in." During the forensic interview, T.D. stated she thought Chris saw the incident "because he just walked in," but she did not think he remembered. Last, as the State points out, the jury could find the discrepancy between T.D.'s and Connie's description of the appearance of the living room was a minor issue and, according to Connie's testimony, the photo introduced into evidence was "a little distorted looking" and the furniture and rug depicted in the picture were actually "more of a blue."

¶ 58 *4. T.D.'s Behavior Following Allegations of Abuse*

¶ 59 Last, defendant asserts that T.D.'s behavior during and following her allegations against defendant makes her testimony suspect because her behavior "did not seem appropriate given the gravity of the allegations." Specifically, Connie testified T.D. was her normal "bubbly" self and shortly after making the allegation against defendant, T.D. asked defendant to play a computer game with her. Additionally, defendant testified that the same night the allegation was made T.D. seemed happy, jumped up on the couch next to defendant, threw her feet across him and asked him to rub her feet.

¶ 60 We are not convinced that the testimony of defendant and Connie regarding T.D.'s actions following her allegations makes her testimony suspect. Even if T.D.'s actions were as defendant and Connie testified, T.D. was an eight-year-old girl whom defendant had been inappropriately touching for approximately one year. The jury could have believed that T.D. was

acting normal *because* this was normal for her; simply telling Connie about defendant's inappropriate touching does not change that.

¶ 61 After considering the evidence as a whole, we conclude that a fact finder could reasonably accept T.D.'s testimony. The issues presented by defendant were presented to the jury, which weighed the evidence and judged the credibility of the witnesses in this case.

Viewed in the light most favorable to the State, the evidence presented was not so unreasonable, improbable, or unsatisfactory that it created a reasonable doubt of defendant's guilt.

¶ 62 B. Barred Testimony

¶ 63 Defendant next asserts that the trial court denied him the right to present a defense by improperly prohibiting Gadeburg's testimony, which he deemed critical to challenging T.D.'s credibility. The State responds that (1) defendant's offer of proof was inadequate, thus resulting in forfeiture of this issue on appeal; and (2) the evidence was inadmissible because it was irrelevant and collateral specific-act impeachment.

¶ 64 "Evidentiary rulings are within the sound discretion of the trial court and will not be reversed unless the trial court has abused that discretion." *People v. Caffey*, 205 Ill. 2d 52, 89, 792 N.E.2d 1163, 1188 (2001). As the supreme court has repeatedly stated, "[o]n questions of the admissibility of evidence, we will not substitute our judgment for that of the trial court unless the record clearly shows the trial court abused its discretion." *People v. Cookson*, 215 Ill. 2d 194, 213, 830 N.E.2d 484, 495 (2005). "A trial court abused its discretion only when its ruling is 'arbitrary, fanciful or unreasonable' or 'where no reasonable man would take the view adopted by the trial court.'" [Citations omitted.] *People v. Santos*, 211 Ill. 2d 395, 401, 813 N.E.2d 159, 162 (2004).

¶ 65

1. *The Offer of Proof*

¶ 66 We first address whether defendant's offer of proof was adequate. When a defendant claims that the trial court improperly barred evidence, he must have provided the trial court with an adequate offer of proof. *People v. Pelo*, 404 Ill. App. 3d 839, 875, 942 N.E.2d 463, 493-94 (2010) (quoting *In re Estate of Romanowski*, 329 Ill. App. 3d 769, 773, 771 N.E.2d 966, 970 (2002)). "Such an offer of proof serves dual purposes: (1) it discloses to the [trial] court and opposing counsel the nature of the offered evidence, thus enabling the court to take appropriate action, and (2) it provides the reviewing court with an adequate record to determine whether the trial court's action was erroneous." *Pelo*, 404 Ill. App. 3d at 875, 942 N.E.2d at 494. "The failure to make an adequate offer of proof results in a [forfeiture] of the issue on appeal." *People v. Peebles*, 155 Ill. 2d 422, 458, 616 N.E.2d 294, 310 (1993) (quoting *People v. Andrews*, 146 Ill. 2d 413, 421, 588 N.E.2d 1126, 1131 (1992)).

¶ 67 Offers of proof may be (1) formal or (2) informal. *Pelo*, 404 Ill. App. 3d at 875, 942 N.E.2d at 494. The formal way of making an offer of proof is for counsel to offer the proposed evidence or testimony outside of the jury's presence, eliciting with specificity what the witness would testify to if permitted to do so. *Id.* "In lieu of a formal offer of proof, counsel may request permission from the trial court to make representations regarding the proffered testimony." *Id.* The trial court has discretion whether to allow an informal offer of proof. *Id.* "A trial court may deem an informal offer of proof sufficient if counsel informs the court, with particularity, (1) what the expert testimony will be, (2) by whom it will presented, and (3) its purpose. [Citation.] However, an informal offer of proof is inadequate if counsel (1) 'merely summarizes the witness' testimony in a conclusory manner' [citation] or (2) offers unsupported

speculation as to what the witness would say [citation]." *Id.* at 875-76, 942 N.E. 2d at 494.

¶ 68 In his reply brief, defendant first responds to the State's inadequate-offer-of-proof argument by citing *People v. Thompson*, 337 Ill. App. 3d 849, 854, 787 N.E.2d 858, 863 (2003), for the proposition that "[g]enerally, a party waives its right to challenge an issue on appeal by having failed to raise the issue in the trial court." Defendant contends that because the State did not argue defendant's offer of proof was inadequate before the trial court, but argued only that the tongue-touching incident was "irrelevant" and had "no bearing on the issues in this trial", the State has forfeited its right to challenge the adequacy of the offer of proof on appeal. We note that defendant's reliance on *Thompson* is clearly a wrong statement of the law in this context. This general rule of forfeiture is applicable to the State only when the prosecution is the party appealing. *Id.* Thus, the issue of whether the offer of proof was sufficient is not forfeited, and we will address whether defendant's offer of proof was adequate.

¶ 69 In making its offer of proof in the instant case, defense counsel called only Gadeburg to testify. Gadeburg testified that she had dated Jason a couple years ago and that neither she nor Jason ever tried to make T.D., or any other child, touch tongues with any other person. Further, she stated that to her knowledge, no such tongue touching ever occurred. Counsel then informed the trial court it would have called Rardin and T.D. to testify about the tongue-touching statement, and then if necessary, Detective Woods and Kohlbecher to perfect impeachment. Counsel read Kohlbecher's written report regarding Rardin's statement to Woods that T.D. told her of this incident into the record. The testimony of Rardin, T.D., Woods, and Kohlbecher would then be followed up with Gadeburg's testimony denying the occurrence of any such tongue-touching incident. Thus, defendant made (1) a formal offer of proof regarding

Gadeburg's testimony and (2) an informal offer of proof regarding what Rardin, T.D., Woods, and Kohlbecher would testify to—although we note counsel did not request permission from the trial court to "make representations regarding the proffered testimony" of these witnesses prior to doing so. See *Pelo*, 404 Ill. App. 3d at 875, 942 N.E.2d at 494. The trial court then stated, "[o]kay, we'll have that, all of that, noted as an offer of proof."

¶ 70 Recently in *People v. Roberson*, 401 Ill. App. 3d 758, 769-70, 927 N.E.2d 1277, 1288 (2010), this court dealt with a similar issue of whether an offer of proof was adequate. In *Roberson*, the defendant, a teacher, sought to present witnesses who would testify regarding false accusations the victim had made against other teachers. This court held that defense counsel's informal offer of proof was inadequate because it failed to (1) provide the names of the potential witnesses, (2) explicitly state what their testimony would be, (3) indicate when or to whom the false allegations were made, and (4) demonstrate the accuser was biased or had motive to lie about abuse by the defendant. *Id.*

¶ 71 In this case, the offer of proof was more specific than in *Roberson* because defense counsel (1) provided the names of potential witnesses; (2) indicated what the testimony of Gadeburg, Rardin, Woods, and Kohlbecher would be; and (3) indicated T.D. had made the false allegations against Gadeburg to Rardin. However, while counsel stated it would call T.D. to testify, the record is unclear what she would actually testify to. During T.D.'s forensic interview, this alleged tongue-touching incident never came up.

¶ 72 Even if we were to assume for the sake of argument that defendant's offer of proof was adequate, Gadeburg's testimony regarding the alleged tongue-touching incident was still inadmissible because it was irrelevant collateral specific-act impeachment that did not show T.D.

was biased or had a motive to lie about defendant.

¶ 73 2. *Trial Court's Evidentiary Ruling Barring Gadeburg's Testimony*

¶ 74 Defendant asserts that the tongue-touching evidence should have been admitted because (1) T.D.'s credibility "was critical to the State's case" where there was no physical evidence or third party witness; (2) the offer of proof showed T.D.'s tongue-touching accusation was more likely than not false; (3) the accusation was proof of an improper interest, bias, or motive to lie; and (4) the accusation supported the defense theory that T.D. was coached by her mother.

¶ 75 We first note that defendant does not cite any authority to support his assertion that the tongue-touching accusation supported the defense theory that T.D. was coached by Rardin, nor do we find any such support in the record. Further, defendant did not raise this issue in the trial court and has thus forfeited this argument.

¶ 76 Defendant cites *People v. Grano*, 286 Ill. App. 3d 278, 281-84, 676 N.E.2d 248, 252-55 (1996), and *Cookson*, 215 Ill. 2d at 197-98, 830 N.E.2d at 486-87, for the proposition that there are some instances where a defendant accused of sexual misconduct may introduce evidence to show the complainant's bias, interest, or motive to testify falsely. In *Grano*, the trial court prohibited the defense from introducing evidence that the complainant had made prior accusations of sexual misconduct against other men for impeachment purposes under the rape shield statute (725 ILCS 5/115-7(a) (West Supp. 1995)). *Grano*, 286 Ill. App. 3d at 287-88, 676 N.E.2d at 257. On appeal, the appellate court granted the defendant a new trial, holding that the rape shield statute was "intended to exclude the actual sexual history of the complainant, not prior accusations of the complainant." (Emphases in original.) *Id.* at 288-89, 676 N.E.2d at 257-

58. We agree that the rape shield statute did not apply to the evidence in *Grano*, nor does it apply in the instant case, where a prior accusation rather than the actual sexual history of T.D. is at issue. However, we note that *Grano's* general conclusion that, "[d]efense counsel should have been allowed to introduce the evidence in order to attack the credibility of the complainant" (*id.* at 288, 676 N.E.2d at 257) was unsupported by analysis or citation to authority and in our view was erroneous. Simply because evidence is being offered to attack the complainant's credibility does not make it admissible. See *Santos*, 211 Ill. 2d at 402-04, 813 N.E.2d at 162-64; *Cookson*, 215 Ill. 2d at 215-16, 830 N.E.2d at 496.

¶ 77 In *Cookson*, the trial court granted the State's pretrial motion *in limine* to bar evidence that the complainant, a seven-year-old female, had made a prior allegation of sexual abuse against her biological father, an allegation the Department of Children and Family Services determined to be unfounded. *Cookson*, 215 Ill. 2d at 211-12, 830 N.E.2d at 494. This court affirmed the trial court's decision to bar such evidence. *People v. Cookson*, 335 Ill. App. 3d 786, 788, 780 N.E.2d 807, 808 (2002). On appeal, the supreme court reaffirmed its prior holdings that "the proper procedure for impeaching a witness' reputation for truthfulness is through the use of reputation evidence and not through opinion evidence or evidence of specific past instances of untruthfulness." *Cookson*, 215 Ill. 2d at 213, 830 N.E.2d at 495. This rule, the court noted, "applie[d] with equal force to all witnesses, regardless of age," including cases involving sexual abuse allegations. *Id.* However, the court acknowledged the "long applied *** rule that a witness may be impeached by a showing of bias, interest, or motive to testify falsely" (*id.* at 214, 830 N.E.2d at 495) so long as " 'the evidence used [is] not [too] remote or uncertain.' " *Id.* at 216, 830 N.E.2d at 496 (quoting *People v. Bull*, 185 Ill. 2d 179, 206, 705 N.E.2d 824, 838

(1998)). The court ultimately concluded that the evidence related to abuse allegedly committed by the complainant's biological father was too speculative and did not establish her bias against the instant defendant, nor did it show that the complainant had an improper interest in the matter or a motive to falsely accuse the instant defendant. *Cookson*, 215 Ill. 2d at 216, 830 N.E.2d at 496-97.

¶ 78 Here, as in *Cookson*, and contrary to defendant's contention, neither evidence that T.D. had previously accused Gadeburg and Jason of trying to get her to touch tongues with other persons, nor Gadeburg's self-serving denial of those alleged accusations, established that T.D. had a "interest, bias, or motive to lie" about *this* defendant. *Cookson*, 215 Ill. 2d at 218, 830 N.E.2d at 498.

¶ 79 Whether T.D. accused Gadeburg and Jason of trying to get her to touch tongues with other persons, and whether that allegation was false, was irrelevant and collateral to whether T.D. had any potential bias against defendant. Defendant's attempt to admit such evidence was an attempt to impeach T.D.'s credibility by a specific act of untruthfulness, which, absent a showing of an interest, bias, or motive to lie about the instant defendant, is prohibited. See *Cookson*, 215 Ill. 2d at 215-218, 830 N.E.2d at 496-498; *Santos*, 211 Ill. 2d at 402-408, 813 N.E.2d at 162-66. Because defendant failed to show Gadeburg's testimony would establish T.D.'s bias against defendant, the trial court did not abuse its discretion in barring such testimony.

¶ 80 III. CONCLUSION

¶ 81 For the reasons stated, we affirm. As part of our judgment, we award the State its \$50 statutory assessment against defendant as costs of this appeal.

¶ 82 Affirmed.