2015 IL App (2d) 130981-U
No. 2-13-0981
Order filed September 10, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Du Page County.
Plaintiff-Appellee,	)	
v.	)	No. 06-CF-2780
ISRAEL JIMENEZ,	)	Honorable Kathryn E. Creswell,
Defendant-Appellant.	)	Judge, Presiding.

JUSTICE ZENOFF delivered the judgment of the court.
Presiding Justice Schostok and Justice Spence concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court did not abuse its discretion in preventing defendant from impeaching his alleged victim with evidence that she had made allegedly false accusations in the past: the prior accusations were against third parties, such that they were remote evidence of a bias against defendant, and in any event they were not clearly false.

¶ 2 After a bench trial, defendant, Israel Jimenez, was convicted of domestic battery (720 ILCS 5/12-3.2(a)(1), (b) (West 2006)) and sentenced to four years' imprisonment. On appeal, he argues that the trial court abused its discretion by refusing to admit certain impeaching evidence against the complaining witness. We affirm.

¶ 3 On September 26, 2006, defendant was charged with four counts of domestic battery, all based on his alleged encounter with Monica P. on August 9, 2006. The cause was delayed until 2013. Defendant raised the defense of alibi. On April 16, 2013, the State moved *in limine* to bar defendant from impeaching witnesses through evidence of specific acts of untruthfulness. (The State's motion also raised several other issues not pertinent here). On May 29, 2013, the trial court held a hearing. Defendant stated that Monica had filed petitions for orders of protection against John Guillen in 2009 and Benjamin Garcia in 2003. In neither case had any charges been filed. The court continued the cause so that defendant could obtain the pertinent police reports.

¶ 4 On June 4, 2013, defendant moved *in limine* to allow the impeachment of Monica through evidence that she had falsely stated that, at other times, she had been sexually assaulted. Specifically, the motion alleged, on or about May 23, 2009, Monica falsely reported that, at approximately 2 a.m. that day, Guillen had sexually assaulted her in a parking lot after they and Tammy Watson had been out drinking. After an investigation by the Hanover Park police and the State's Attorney's office turned up "inconsistent statements" from Monica and "statements to the contrary" from Guillen and Watson, no charges were brought. Defendant argued that the evidence was admissible to impeach Monica by "demonstrating a common design to use criminal prosecution as retribution against others." His motion attached copies of police reports dated May 24, 2009, in connection with Monica's accusation against Guillen.

¶ 5 On June 6, 2013, the trial court heard argument on defendant's motion (and thus also on the State's motion to bar impeachment by evidence of prior false accusations). Defendant's attorney told the court that he had spoken to Guillen and that Watson had returned his call after he left her a message. The trial judge then stated that she had read the police report on Guillen; it noted that Monica had told the police that the alleged assault had happened at about 2:30 a.m.,

but she had not reported it until "much later in the day." According to the police report, Monica went to the hospital, where bruises were observed on her legs and buttocks and a rape kit was performed. Also, an outcry was allegedly made to Watson; "[t]here was no mention of a rape, but the victim had indicated that she was sore and bleeding" and felony charges were declined. The judge then explained:

> "But given the physical evidence and the complaints of injury and pain, it would come down to he said/she said. And there is corroborating evidence, so I don't think—and I've gone back and I reviewed the law. I don't think that you're entitled to present that evidence at this trial. It would be basically a full-blown trial in the trial. And even though, you know, taking the best case scenario for the defense in this case, you can't show that you'd be able to demonstrate that those were false allegations. The felony charges can be declined for a number of reasons, but there were [*sic*] other corroborating evidence."

The judge noted that she had also read the police report on the Garcia matter, which actually took place in 2002. This report does not appear in the record on appeal. According to the judge, it stated that, after Monica drove Garcia from Hanover Park to Bartlett, they got into an argument; she called the police; Garcia called for a ride; and "that[] [was] the end of that." There was no mention of battery. The incident was more than 10 years old, and defendant could not prove that the accusations were false. The court denied his motion *in limine* and granted the State's motion.

¶ 6 We turn to the evidence at trial. Monica testified on direct examination as follows. In January 2005, she and defendant began dating. In May 2005, defendant began residing part-time in her Hanover Park apartment on Scott Lane. During July 2005, Monica moved to a townhome

on Liberty Street; defendant did not move with her, as she had recently broken off the relationship. He still came around occasionally.

¶ 7 Monica testified that, at about 11 p.m. on August 9, 2006, she was in the garage of her townhome, packing for her next move. The garage's overhead lights and two porch lights were on. A lamp on a post outside the townhome was also shining. Monica opened the garage door; defendant was outside. He came running toward her and loudly asked her where she had been. She said that she had been with her children; he told her that this was a lie. Defendant was angry and asked Monica whom she had been talking with; she asked what he meant. He told her that he thought that she had been talking to his two probation officers and the State's Attorney's office. She denied it. He turned and punched her in her left arm. She fell back onto her van and started screaming. Defendant apologized and said that he did not mean to hit her.

¶ 8 Monica testified that defendant then asked her again whom she had been speaking with; he added that the police were coming to his mother's home in Chicago and Monica must have given them that address. Monica said that she had not given anyone any information about defendant. He accused her of lying. Monica again said that she had talked to nobody. Defendant then punched her in the right eye. She was near the back of the garage by then, and the punch sent her falling against the dryer and the staircase along the side of the wall.

¶ 9 At that point, defendant suggested that they enter her van and talk. Monica declined. He again asked why she had spoken to his probation officers. Monica denied having done so. Defendant said that she was lying and needed to get the warrants against him dropped. She responded that she could not do that and had not even signed anything. He got upset and punched her in the chest. At that point, Monica shouted for Timmy, her 15-year-old son. Defendant punched her again and told her to shut up. Timmy came down the stairs. Defendant

backed out of the garage; Timmy ran after him. Monica did not see defendant after that. Anthony, Monica's 13-year-old son, then arrived but did not chase defendant.

¶ 10 Monica testified that, after defendant's attack, she did not report the incident to the police. She did not want any more trouble with defendant; he had already harassed her about charges for which she had not been responsible, and she did not want any more "pending cases." However, on August 14, 2006, Monica went to the State's Attorney's office, where photographs of her injuries were taken and she met with Assistant State's Attorney Cathy DeLaMar. The photographs were admitted into evidence at trial.

¶ 11 Monica testified that defendant had become "physical" with her several times before August 9, 2006. On the evening of August 11, 2005, as she was moving out of her Scott Lane apartment, they started arguing. The next morning, shortly after she had arrived at the Liberty Street townhome, defendant came in, started yelling at her, pulled her down, and kicked her several times. On September 16, 2005, as Monica was driving defendant and her son Andrew back from a meeting with an attorney, defendant told her to get the State's Attorney to drop the charges against him; she said no; and he hit her in the face. Defendant got out of the car and ran; and Monica spoke to a police officer. On November 8, 2005, while defendant and Monica were at her home, the police came over. Defendant asked her why the police were there. He told her not to let them in and prevented her from getting to the door. The police left. As Monica tried to get away from defendant, he became even angrier and repeatedly punched her in the ribs.

¶ 12 Monica testified on cross-examination as follows. Since November 2005, she had not wanted to go to the police or be involved with defendant in any way. Between November 2005 and August 9, 2006, however, she did meet with DeLaMar. She could not recall how many times. One was in January 2006. In April 2006, Monica was in court for defendant's sentencing

in a case and spoke with DeLaMar. On May 9, 2006, Monica called DeLaMar, expressing concern that defendant, against whom she had an order of protection, had been trying to call her. She gave DeLaMar an address where he might be residing.

¶ 13 Monica testified that, at some point, she became aware that, in late June, defendant had stopped reporting to the probation department. She might have been in contact with DeLaMar after that, but that was because probation officers had been contacting her at her home. Asked how many times before August 9, 2006, she had tried to give the State's Attorney's office information on defendant's whereabouts, Monica said more than once but fewer than five times. Asked what she had told DeLaMar on August 8, 2006, Monica testified that she did not remember. Before that date, the last time she had seen defendant was in July, on two occasions, but before then she saw or heard from him more or less weekly. At some point after the July meetings, he broke off contact with her completely.

¶ 14 Monica testified that, after the November 2005 incident, a police officer told her to call 911 immediately if defendant ever showed up at her home. She did not do so on August 8, 2006. Monica spoke to DeLaMar on August 8, 2006, but could not recall whether the conversation had been recorded. She did not recall apologizing to DeLaMar for lying to her in the past. She testified that she had never lied to DeLaMar.

¶ 15 In the remainder of her testimony, Monica stated as follows. She called DeLaMar in July 2006 because defendant had hit one of her sons, she had filed a complaint, and she wanted the State's Attorney's office to know what had happened. At the time, Monica had known that defendant's probation officers were looking for him. Defendant broke off all contact with her shortly after she filed the complaint. She saw him once between then and August 9, 2006. After

August 9, 2006, Monica did not call the police, because she did not know to where defendant had run and because she was getting sick of the fact that he continued to come around and harass her.

¶ 16 Monica testified that she did not recall the exact date of the July 2006 incident. She did call the police after that encounter. She did not call DeLaMar immediately afterward, because defendant had not actually done anything to her; she had merely seen him. She might have called defendant's probation officer. She did not see defendant drive a car in July 2006 and did not know whether he owned a car at that time. One of their July meetings was planned so that she could meet him with her children.

¶ 17 Anthony P. testified as follows. On August 9, 2006, he was living on Liberty Street with Monica and his six siblings. At about 11 p.m., he was with Timmy upstairs. He heard Monica call Timmy's name; he and Timmy ran to the garage. Monica was hurt, and defendant was running out of the garage. Anthony could see defendant's face and recognized him because he had known him a long time and the lighting was good. Anthony tended to Monica.

¶ 18 Anthony recalled the November 2005 incident and other ones involving Monica and defendant. He remembered that the police were called in November 2005, and he added that he called the police "every single time but that one time [August 9, 2006]." The State rested.

¶ 19 Defendant first called Liborio Alcanter, who testified on direct examination as follows. He lived in Columbus, Ohio, and owned a chain of 10 grocery stores in Ohio. He opened the first store in 2000 and opened store number 5, in Dayton, in June 2006. In 2006, defendant's brother, who had worked for Alcanter in Chicago 15 years earlier, asked Alcanter whether he had a job for defendant. Alcanter said yes and hired defendant to work in store number 5 in July 2006. He drove to the Chicago area, picked up defendant, then drove him to Ohio.

¶ 20 Alcanter testified that, at that time, his brother Baciolio lived in Dayton, Ohio. Defendant moved in with Baciolio and his daughters. Defendant was in charge of sales, and his work time was Monday through Saturday, from 8 a.m. to 6 p.m. each day. Baciolio drove defendant between his home and the store. Defendant worked for Alcanter for four years. During the first few months, defendant never missed work and Alcanter never drove him back to Chicago.

¶ 21 Alcanter testified on cross-examination as follows. Defendant started working for him in the first week of July and was in Ohio by Independence Day. Alcanter picked him up on a Monday, and he started Tuesday. Alcanter had no paycheck stubs or time sheets showing that defendant had worked for him in July and August 2006; defendant did not supply identification until eight months after starting work, and the law required Alcanter to keep such records for only five years. Alcanter had not asked for identification originally, as defendant's brother had worked for Alcanter and had recommended defendant. When defendant presented a state identification card, it gave his name as Luis Casiano.

¶ 22 Alcanter testified that he did not see defendant on August 9, 2006, as he was in Columbus and defendant was working and residing in Dayton. He had no time sheets showing that defendant had been at work that day, and Baciolio did not indicate anything to Alcanter. Alcanter would not remember all of the days in 2006 that his employees missed work. On redirect, Alcanter testified that Baciolio never told him that defendant returned to Chicago in the first couple of months that he was working in Ohio.

¶ 23 The trial court took judicial notice of a petition to revoke defendant's probation, which alleged that, on June 21, June 27, and July 6, 2006, he failed to report to the probation department as ordered. The parties then stipulated that, if called, DeLaMar would testify as follows. On August 8, 2006, when she and Monica met at the State's Attorney's office, Monica

stated that the last time that she saw defendant was July 16, 2006. She also apologized for lying to DeLaMar in May. During the interview, Monica was wearing a long-sleeved zippered shirt. DeLaMar could see her face and upper chest area but did not observe any bruising to those areas. DeLaMar did not receive any calls from Monica in the days after August 9, 2006. On August 14, 2006, she went to the courthouse and saw Monica in a courtroom to report the August 9, 2006, incident. DeLaMar saw the bruising depicted in the photographs introduced at trial.

¶ 24 Defendant testified as follows. Just before July 4, 2006, on a Monday, Alcanter met him on 26th Street in Chicago and drove him to Columbus. Until then, he had never met Alcanter. Defendant went to live with Baciolio. After about a year in Ohio, defendant obtained an Ohio state ID "on the street" under a false name, because "[he] had to work." Until being taken into custody late in 2012, defendant was "constantly" in Ohio.

¶ 25 Defendant testified that there were about 16 employees in store number 5, defendant's primary workplace. Baciolio drove defendant between work and home; defendant had no car. Employees signed in each morning. Defendant worked from 8 a.m. to 6 p.m., overlapping the two shifts that other employees worked, and became acquainted with numerous customers and clients. He left Alcanter's employ in late 2010 but remained in Ohio until he was taken into custody in 2012. He had no pay stubs or other documentation of his employment with Alcanter.

¶ 26 After arguments, the trial judge stated as follows. The photographs and the stipulation proved that, on August 14, 2006, Monica had obvious signs of injuries that she had not had on August 8, 2006. Her decision not to call the police did not mean that she was not a "true victim," given her and defendant's "tumultuous, abusive relationship." Monica had become "afraid to call the police," because, on August 9, 2006, defendant was already on probation for domestic battery. The judge found Monica and Anthony credible. Moreover, the photographs

corroborated Monica's account, and the evidence of the incidents of August 12, 2005, September 16, 2005, and November 8, 2005, demonstrated defendant's propensity to harm her. The judge rejected defendant's alibi defense. Alcanter was sincere but could not know defendant's whereabouts on August 9, 2006. Defendant was not credible; although he had undoubtedly been in Ohio, the judge credited the testimony placing him at Monica's residence on August 9, 2006.

¶ 27 Defendant moved for a new trial, arguing in part that the trial court had erred in refusing to admit evidence of Monica's allegedly false accusations against Guillen and Garcia. The trial court denied the motion. The judge noted that the evidence was not admissible for impeachment and that, from the information presented, "you could [not] even conclude that the statements or omissions by the victim are tantamount to impeachment or a lie." After the court sentenced defendant as noted, he timely appealed.

¶ 28 On appeal, defendant raises one contention: that the trial court erred in refusing to admit the evidence of Monica's allegedly false accusations against Guillen and Garcia. Defendant asserts that the evidence was relevant to impeach Monica by showing her "common design" to make false accusations of criminal sexual assault, in order gain retribution against others.

¶ 29 We note that, although the Illinois Rules of Evidence were in effect during defendant's trial (see Ill. R. Evid. 101 (eff. Jan. 1, 2011)), in neither the trial court nor here have the parties invoked the rule for impeachment of witnesses by evidence of untruthfulness. The rule states:

> "The credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness or untruthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise." Ill. R. Evid. 608 (eff. Jan. 1, 2011).

¶ 30 The extent to which the adoption of Rule 608 modified, instead of merely codified, the case law is not altogether clear. The rule did expand the scope of permissible impeachment in one respect: it allows the introduction of evidence of a person's opinion of the witness's truthfulness, as well as evidence of the witness's reputation in the community for truthfulness. See Michael H. Graham, Graham's Handbook of Illinois Evidence § 608.1 (10th ed. 2010). Of course, this case involves impeachment not by opinion evidence but, instead, by evidence of specific instances of the witness's untruthfulness. Rule 608 does not mention this form of impeachment at all, but we cannot say that the drafters intended to forbid it altogether.

¶ 31 As noted, the parties base their arguments not on Rule 608 or any other codified rule of evidence, but instead on case law, *all* of which predates the adoption of the rules. The State relies on *People v. Cookson*, 215 Ill. 2d 194 (2005). There, the defendant, who was charged with two sexual offenses against a minor, wanted to introduce evidence that the minor had accused another man, Aston, of sexually assaulting her at some point after the minor and her mother had left the defendant and moved away with Aston. The Department of Children and Family Services (DCFS) had decided that the accusation was unfounded. *Id.* at 197. The defendant sought to use the accusation to impeach the minor. *Id.* at 202. In an offer of proof, the defendant stated that, if called, Aston would acknowledge the accusation but deny it. *Id.* at 201-02.

¶ 32 The State argued that using the accusation as impeachment would be improper, because it was not " 'demonstrably false.' " *Id.* at 212. The State also argued that the accusation against Aston was not relevant to the charges against the defendant and would only confuse the jury. The defendant replied that the accusation was demonstrably false, because DCFS had concluded that it was unfounded and Aston had denied it. *Id.* The trial court refused to admit the statements, and the defendant was convicted. *Id.* at 197.

¶ 33 The appellate court held that the trial court had not abused its discretion in excluding the statements. *Id.* at 202; see *People v. Cookson*, 335 Ill. App. 3d 786, 791-92 (2002). On appeal to the supreme court, the defendant argued that the accusation against Aston should have been admitted because a preponderance of the evidence proved that it was false. *Cookson*, 215 Ill. 2d at 212-13. The State responded that the evidence was inadmissible because (1) a witness may not be impeached with specific collateral instances of untruthfulness; and (2) the accusation was not demonstrably false, and that standard, not the preponderance of the evidence, was the test. *Id.* at 213.

¶ 34 The supreme court affirmed the appellate court, holding that the trial court had not clearly abused its discretion in excluding the accusation. *Id.* The court continued as follows. It had "consistently held [that] the proper procedure for impeaching a witness[] *** is through the use of reputation evidence and not through opinion evidence or evidence of specific past instances of untruthfulness."[1] *Id.* The case before the court had not presented "any compelling basis for altering this rule in cases involving sexual abuse allegations," and the court "[took] this opportunity to reaffirm that principle." *Id.*

[1] The court's exact phraseology was, "the proper procedure for impeaching a *witness' reputation for truthfulness* is through the use of reputation evidence." (Emphasis added.) *Id.* The insertion of the verbiage that we have emphasized appears to have been an oversight, resulting in both the incorrect implication that witnesses' reputations for truthfulness are impeached (it is witnesses, or their testimony, that can be "impeached") and the tautology that a witness's reputation is "impeached" by evidence of his reputation. The intended meaning of the passage is clear enough, of course: a witness or his testimony may be impeached by evidence of his reputation for truthfulness (and not by opinion evidence or evidence of past untruthfulness).

¶ 35 In setting out what appears to have been a flat rule against impeachment by specific instances of untruthfulness (or by opinion), *Cookson* cited *People v. Kliner*, 185 Ill. 2d 81, 173 (1998); *People v. West*, 158 Ill. 2d 155, 162 (1994); and *People v. Williams*, 139 Ill. 2d 1, 21 (1990). *Cookson*, 215 Ill. 2d at 213. *Kliner* and *Williams* did not discuss impeachment by specific instances of untruthfulness; they cited the general rule from the Graham handbook and applied it to affirm the exclusion of impeachment by opinion. *Kliner*, 185 Ill. 2d at 173; *Williams*, 139 Ill. 2d at 21.

¶ 36 In *West*, in a prosecution for the aggravated criminal sexual abuse of a child, the defendant had attempted to impeach the complaining witness by asking another witness, the defendant's sister, whether the complainant had " 'ever exaggerated the truth to [the defendant's sister] before.' " *West*, 158 Ill. 2d at 161. The trial court sustained the State's objection. The supreme court agreed with the State that the defendant had improperly sought to elicit "opinion evidence or evidence of past instances of untruthfulness." *Id.* at 162. Accordingly, it rejected the defendant's invitation to hold, that, in cases involving children who are too young to have developed reputations, defendants may use "opinion evidence and evidence of specific acts of untruthfulness." *Id.* Quoting *Williams*, the court agreed with its statement, "In *all* cases, the proper procedure to introduce evidence of truthfulness is to ask the witness whether he knows the general reputation [for truthfulness in the community].' " (Emphasis in original. *Id.* at 162-63.) Thus, *Cookson*, and the opinions on which it relied, appear to have flatly excluded impeachment by evidence of specific acts of untruthfulness.

¶ 37 Yet, having apparently endorsed a flat rule against impeaching complaining witnesses by evidence of specific past instances of untruthfulness, the *Cookson* court then seemingly retreated. It noted that some jurisdictions do permit "defendants accused of sexual assault to introduce

evidence that their accuser has previously made false accusations of sexual assault." *Cookson*, 215 Ill. 2d at 213-14. Moreover, the court noted, "[a]lthough this court has suggested that type of evidence may be admissible, it has not addressed the requisite conditions for its admission." *Id.* at 214. Thus, the court would address under what conditions it would allow the use of collateral accusations of sexual assault to impeach a complaining witness in a prosecution for a sexual offense. *Id.*

¶ 38 It might be tempting to conclude that, having stated that it found no reason to depart from its apparently unconditional rule that impeaching a witness is to be undertaken "through the use of reputation evidence and not through *** evidence of specific past instances of untruthfulness" (*id.* at 213), the *Cookson* court immediately proceeded to depart from that unconditional rule. A different interpretation, however, is possible: that, although introducing evidence of the complaining witness's untruthful accusations is not, without more, proper impeachment, it may become so if the defendant can show that the evidence tends to show not merely that the complaining witness lied once but that she has a bias, interest, or improper motivation in the actual case at hand. Because *Cookson* went on to allow the use of specific-instance evidence to impeach a complaining witness if, and only if, the defendant can demonstrate that the evidence shows bias, interest, or motivation to testify falsely against the defendant, we read *Cookson* that way.

¶ 39 The court continued its analysis by citing the general principle that "a witness may be impeached by a showing of bias, interest, or motive to testify falsely." *Id.* However, the impeaching evidence must not be remote or uncertain, but must give rise to the inference that the complaining witness has something to gain or lose by his or her testimony. *Id.* at 214-15.

¶ 40 The court then cited one appellate court opinion allowing the defendant, whose stepdaughter had accused him of sexual abuse, to impeach her by evidence that she had previously accused him of sexual abuse. *Id.* at 215; see *People v. Howard*, 113 Ill. App. 3d 380, 385 (1983). The appellate court had reasoned that the rule that criminal defendants should have wide latitude to establish bias, prejudice, or a motive to testify falsely is " 'particularly important where *** the State's case rests almost entirely on the credibility of its witnesses.' " *Cookson*, 215 Ill. 2d at 215 (quoting *Howard*, 113 Ill. App. 3d at 385).

¶ 41 The court then turned to the case at hand. There, as in many cases involving charges of child sexual abuse, the complainant's credibility was crucial because there was no testimony from third-party eyewitnesses and no physical evidence linking the defendant to the abuse. *Id.* However, for three reasons, the evidence that the defendant had put forth in his offer of proof did not satisfy the general criteria for proper impeachment. First, the evidence that the complainant had accused *Aston* of sexually abusing her did not establish that she was biased against *the defendant*, especially as her accusation against the defendant had predated her accusation of Aston. *Id.* at 216. Second, the evidence of the complainant's accusation of Aston and his "self-serving denial" did not show that the complainant had an improper interest in the case at hand or a motive to lie about being abused by the defendant, especially as the trial court had decided that she could not have fabricated her accusation of the defendant for an ulterior motive.[2] *Id.* Although the jury might infer that the fact that the complainant lied about Aston made it more

[2] It is not clear to us exactly how this second rationale differs from the court's first rationale for concluding that the complainant's accusation of Aston did not establish a motivation to accuse the defendant falsely.

likely that she also lied about the defendant, the court had "already specifically rejected the use of evidence of specific past instances of untruthfulness to impeach a witness' truthfulness." *Id.*

¶ 42 Third, that DCFS had reversed the original finding that the accusation against Aston was " 'indicated' " was of no help to the defendant, because a consideration of the context in which the accusation was made and reviewed showed no reason to infer that the complaining witness had had any motivation to lie about the defendant. *Id.* at 217. It might be tempting to conclude that, having stated that it found no reason to depart from its apparently unconditional rule that impeaching a witness is to be undertaken "through the use of reputation evidence and not through *** evidence of specific past instances of untruthfulness" (*id.* at 213), the *Cookson* court immediately proceeded to depart from that unconditional rule. A different interpretation, however, is possible: that, although introducing evidence of the complaining witness's untruthful accusations is not, without more, proper impeachment, it may become so if the defendant can show that the evidence tends to show not merely that the complaining witness lied once but that she has a bias, interest, or improper motivation in the actual case at hand. Because *Cookson* went on to allow the use of specific-instance evidence to impeach a complaining witness if, and only if, the defendant can demonstrate that the evidence shows bias, interest, or motivation to testify falsely against the defendant, we read *Cookson* that way.

¶ 43 For these reasons, although Rule 608 specifically lists opinion evidence and reputation evidence, but not specific-instance evidence, as permissible forms of impeachment, we do not infer that the intent of the rule was to abrogate *Cookson*'s approval of the use of specific-instance impeachment under the limited circumstances that the opinion specified.

¶ 44 We now turn to the case before us. We must, of course, review the trial court's ruling deferentially and disturb its decision only if the record clearly shows that the court abused its

discretion. See *id*. We note also that, to the extent that the record on appeal is incomplete, we must resolve any doubts arising from that incompleteness in favor of the trial court's judgment. See *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984).

¶ 45 Defendant contends that Monica P.'s allegedly false accusations against Guillen and Garcia were proper impeachment, because they tended to prove that she was accusing defendant falsely as well. Defendant posits that the introduction of the allegedly false accusations, one made in 2002 and the other in 2009, tended to prove that Monica engaged in a "common design" of retaliating against men with whom she was angry by accusing them falsely of committing offenses against her. We do not find these arguments persuasive, and we cannot conclude that the trial court clearly abused its discretion in excluding the allegedly impeaching evidence.

¶ 46 The first thing that we note is that the allegedly impeaching accusations, like the one in *Cookson* but unlike the one in *Howard*, were made not against defendant, but against third parties with no apparent connection to him. Any intimation that Monica had a grudge against either Garcia or Guillen, or both, would have been remote evidence of a bias against defendant.

¶ 47 Second, as the trial judge noted, it is far from obvious that either accusation was false. Defendant relied on police reports to persuade the court that Monica had lied. We do not have the police report for the Garcia incident, and we must defer to the trial judge's conclusion that it did not establish, or even strongly suggest, that Monica falsely accused Garcia of anything. All we know is that, according to the trial judge, "she called the police." Although Garcia was not prosecuted, there could have been any number of reasons, including the absence of a complaint from a complaining witness.

¶ 48 We do have the report on the Guillen incident, as did the trial judge. We have no reason to disturb the judge's conclusion that the report and the authorities' decision not to prosecute

Guillen leave great doubt of whether Monica's accusation was false. The report did corroborate Monica's account to the police, as it noted that she had had an encounter of some sort with Guillen; that she had made an outcry of some kind to Watson; and that she had ended up at the hospital with bruises on her legs and buttocks, soreness, and bleeding. Reviewing the report, the judge explained that "it would come down to he said/she said" and would necessitate "a full-blown trial in the trial." We find no abuse of discretion here: indeed, disallowing evidence that was inconclusive on the issue of whether Monica had actually made a false accusation, an issue that might not be resolved even with a long and distracting "trial within a trial," was a very sound exercise of discretion. Whether Monica had actually made any false accusation against either Garcia or Guillen was murky at best, and neither one of them was on trial here.

¶ 49 Defendant's theory that two false accusations made in 2002 and 2009 showed that an accusation made in 2006 was part of a "common design" to use criminal prosecutions as a form of vengeance against others is surely a speculative reach, even had the trial court been able to say with any confidence that the accusations against Garcia and Guillen were indeed false. Moreover, as the trial judge noted, the State's case did not turn exclusively on Monica's credibility; the judge as finder of fact attached great weight to the photographic evidence proving that, shortly after August 9, 2006, Monica had numerous injuries that DeLaMar had not seen on August 8, 2006. Also, the judge found Monica's son Anthony highly credible, and he corroborated Monica's account.

¶ 50 Defendant relies in part on *People v. Grano*, 286 Ill. App. 3d 278 (1997), in which the defendant, who had been convicted of criminal sexual assault, argued on appeal that the trial court had erred in excluding, per the rape-shield statute (725 ILCS 5/115-7(a) (West Supp. 1995)), impeaching evidence that the complainant had stated falsely that she had had sexual

relations with three men other than defendant. The impeaching evidence would have included the testimony of three people to whom the complainant had made the remarks and the testimony of the three men that they never had sex with the complainant. *Grano*, 286 Ill. App. 3d at 287-88. This court agreed, reversed, and remanded for a new trial, holding that the rape-shield statute did not bar the impeachment. *Id.* at 288.

¶ 51 Having concluded that the statute did not bar the proposed impeachment, this court then addressed any problems presented by "the general rule that a witness' credibility may not be impeached by specific acts of misconduct." *Id.* We disagreed with the State that the general rule applied there. Although the State relied on *People v. Alexander*, 116 Ill. App. 3d 855 (1983), to argue against specific-instance impeachment, we distinguished that case on the basis that, in *Alexander*, the complainant never admitted that her prior accusations had been false and there had been no other proof that they had been false. *Grano*, 286 Ill. App. 3d at 288-89; see *Alexander*, 116 Ill. App. 3d at 861. In *Grano*, by contrast, the defendant sought specifically to prove, through testimony, that the allegations were false. *Grano*, 286 Ill. App. 3d at 289.

¶ 52 *Grano*, an opinion of the appellate court, predated *Cookson*, an opinion of the supreme court. Thus, we hesitate to rely on it as authority. In any event, it is distinguishable. Here, defendant had no admission from Monica that either of her accusations was false, and he did not seek to introduce evidence that would prove that they were false. (Although defendant's attorney told the court that he had telephoned Guillen and Watson, he never made an offer of proof as to what their testimony might be, and he appeared to let that possibility drop without further ado.) The trial judge was left with inconclusive police reports in both the Garcia and the Guillen incidents (and this court does not even have the benefit of the police report in the Garcia matter). Thus, *Grano* does not aid defendant even if it still controls.

¶ 53 Defendant also relies on *People v. Nicholl*, 210 Ill. App. 3d 1001 (1991), in which the defendant, who had been convicted of the aggravated criminal sexual abuse of a small child, argued on appeal that the trial court had erred in excluding his proffered impeachment. This would have consisted of (1) testimony that, after the defendant's alleged offense, the child had made a complaint against the defendant and DCFS later decided that the complaint was unfounded; (2) testimony that, on the date when the abuse allegedly occurred, the complainant was not in the defendant's presence; and (3) testimony that, on other occasions, the child would retaliate against his step-grandmother when he did not get his way by threatening to tell his mother and have her call the police. *Id.* at 1011.

¶ 54 This court agreed with the defendant. We noted that, although the complainant had made the allegedly false accusation after the date of the charged offense, this was not crucial, because a false accusation would still reflect on his credibility. Also, the case was "very close." *Id.*

¶ 55 In a later pre-*Cookson* case, *People v. Walls*, 346 Ill. App. 3d 1154 (2004), the Fifth District affirmed the defendant's conviction of aggravated criminal sexual assault. The defendant argued in part that the trial court had erred in excluding his proffered impeachment, which consisted of evidence that the complainant had accused her husband of domestic battery and then recanted the accusation. *Id.* at 1159. The appellate court was unpersuaded by the defendant's citation to *Nicholl*. The court emphasized that the false accusation in *Nicholl* had involved "the same victim and the same defendant," whereas in *Walls* the accuser was the same but the accused was a third person. *Id.* at 1160. Also, the charges in the two instances were "entirely different." *Id.*

¶ 56 Again, insofar as pre-*Cookson* case law is still good law, we find defendant's reliance on *Nicholl* unpersuasive. As in *Walls*, but unlike in *Nicholl*, the complaining witness was the

accuser but the accused was a third party (or two) who had no relation to defendant. Also, the accusations against Guillen and Garcia, to the extent that we can even tell from the record, were dissimilar to the charge against defendant. Thus, insofar as pre-*Cookson* authority controls, it actually weighs heavily against defendant and in favor of the trial court.

¶ 57 We cannot say that, to the extent that *Cookson* changed anything, the change is of any help to defendant, especially given our deferential review of the trial court's ruling. Here, Monica's allegedly false accusations were directed against third parties, not defendant. They were not close in time to the offense for which defendant was prosecuted in this case. Also, like the defendant in *Cookson*, but unlike the one in *Nicholl*, defendant offered no evidence that would have proved that the accusations against the third parties were false. Therefore, we cannot say that the trial court abused its discretion in excluding allegedly impeaching evidence that was simply too weak to raise any serious inference that the complaining witness "had any interest, bias or motive to lie about *this* defendant." (Emphasis in original.) *Cookson*, 215 Ill. 2d 218.

¶ 58 At the outset of his argument, defendant cites general authority for the broad statement that due process includes the right to present a defense, and at the end of his argument he states in one line that the trial court's exclusion of his attempted impeachment of Monica was not merely an abuse of discretion but a violation of due process. Because defendant does not develop this constitutional theme any further, we shall not do so for him and we deem any claim of a due process violation forfeited. See *Spinelli v. Immanuel Lutheran Evangelical Congregation, Inc.*, 118 Ill. 2d 389, 401 (1987) (argument raised solely by conclusional statement deemed forfeited). In any event, none of the authority that we have cited remotely suggests that the trial court's reasonable exclusion of proffered impeachment raises any due process concerns.

¶ 59 As part of our judgment, we grant the State's request that defendant be assessed $50 as costs for this appeal. 55 ILCS 5/4-2002(a) (West 2014); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 60 For the foregoing reasons, the judgment of the circuit court of Du Page County is affirmed.

¶ 61 Affirmed.