2016 IL App (2d) 140832-U
No. 2-14-0832
Order filed December 12, 2016

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS, Plaintiff-Appellee, v. BRANDON NIFORD, Defendant-Appellant.	))))))))))	Appeal from the Circuit Court of Kane County. No. 13-CF-877 Honorable Karen M. Simpson, Judge, Presiding.

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

ORDER

¶ 1 *Held*: The State proved defendant was guilty of predatory criminal sexual assault beyond a reasonable doubt; the trial court did not abuse its discretion by barring impeachment of I.G. with evidence of uncharged conduct; and the court did not abuse its discretion by employing special procedures during I.G.'s testimony at trial. Affirmed.

¶ 2 Defendant, Brandon Niford, was charged by indictment with the offense of predatory criminal sexual assault of a child, pursuant to section 12-14.1 of the Criminal Code of 1961 (720 ILCS 5/12-14.1 (West 2006) (now 720 ILCS 5/11-1.40(a)(1) (West 2012)), in that he, "a person 17 years of age or over, knowingly committed an act of sexual penetration with I.G., a child under the age of 13, in that he placed his penis in the anus of I.G." A jury found defendant

guilty, and the trial court sentenced him to 15 years imprisonment. On appeal, defendant contends: (1) the State failed to prove him guilty of predatory criminal sexual assault beyond a reasonable doubt because the State failed to show that defendant's sex organ sexually penetrated I.G.'s anus; (2) the trial court abused its discretion by barring impeachment of I.G. with evidence of uncharged conduct; and (3) the trial court abused its discretion by employing special procedures during I.G.'s testimony. We affirm.

¶ 3 I. BACKGROUND

¶ 4 Around April 12, 2013, when I.G. was 12 years old, she wrote a note that her uncle, defendant, raped her when she was about 5 or 6 years old. I.G. stated that the incident occurred while defendant was babysitting her and two of her younger siblings at defendant's apartment on Lilac Lane in Aurora. Defendant asked her siblings to leave the bedroom, and he pulled down I.G.'s pants and his pants and put his penis in her anus. I.G. wrote the note while she was at Mercy Behavioral Center (Mercy) for behavioral issues. She handed the letter to a staff member, who turned it in to DCFS. Defendant was interviewed by investigators on May 13, 2013, and he reported that, when I.G. was around 7 years old, he took her into his room when he was living on Lilac Lane in Aurora. Defendant stated that, while he was alone in his room with I.G., he pulled down her pants and his pants, stood behind her, and put his penis on her butt. Defendant thought his penis got hard after he placed it on her butt. Defendant was charged by indictment on September 18, 2013, with predatory criminal sexual assault.

¶ 5 A. Pretrial Motions

¶ 6 Before trial, both parties filed various motions. The State filed a motion seeking to employ special procedures during I.G.'s testimony during trial, including restrictions on the language and manner of questioning, the use of leading questions on direct examination, and

closure of the courtroom. The trial court granted this motion. The State also filed a motion *in limine* in which it sought to bar "irrelevant and prejudicial evidence and to prohibit improper impeachment" of I.G. Among the evidence the State sought to bar included evidence that I.G. stole money from defendant's car, that she stole money from a neighbor's purse and then denied it until the police came, and that she beat the family's dog.

¶ 7 Defendant sought to impeach I.G. with the incidents of stealing because he believed it bolstered his defense. Defendant theorized that these incidents "could turn out to be criminal charges" and therefore, were relevant to the victim's bias, motive, and ability to curry favor with the State. The State responded that, under *People v. Santos*, 211 Ill. 2d 395 (2004), I.G. could not be impeached with a specific act of which she had not been convicted. Following a hearing, the court granted the State's motion and barred any reference to stealing money from defendant's car. The court also barred the incidents relating to stealing the neighbor's purse and beating the family dog unless defendant could present supporting case law or show how it was relevant.

¶ 8 Prior to the start of trial, defendant filed a motion to reconsider and presented the court with case law tending to refute the holding in *Santos*. The court found the cases factually distinguishable because none dealt with sex offense allegations or a minor victim who was a witness.

¶ 9 B. Trial

¶ 10 The first witness to testify at trial was Jay Dunn, who had been a patrol officer with the Aurora Police Department and had been assigned as a special investigator with the Child Advocacy Center (CAC). He and Audrey Lenchner, a Department of Child and Family Services (DCFS) investigator, spoke with defendant at his work on May 10, 2013. Defendant asked them if they were there to speak with him about the allegations made by I.G., which he had heard

about from his sister, Juanita, who is I.G.'s mother. Defendant said that nothing happened and I.G. probably made up those allegations because she was angry with him.

¶ 11 Dunn and Lenchner met with defendant again at the Kane County Judicial Center on May 13, 2013. As defendant got into Dunn's car, defendant told him: "Jay, I'll be straight with you, there was one time when I pulled down [I.G.'s] pants and got behind her and [I.G.] said something to the effect 'Uncle Brandon, what are you doing?' " Defendant told Dunn that he stopped when he realized that he was doing something wrong.

¶ 12 That same day, defendant was taken into custody and interviewed again at the Kane County Sheriff's Office, with Lenchner present. During the interview, which was not recorded, defendant told the investigators that, when I.G. was about 7 years old, he took her to his room, pulled down her pants, and pulled down his pants. Defendant stated that he put his hard penis on her butt and attempted to put it inside, but I.G. turned around and asked what he was doing. Defendant thought, "whoa, whoa, whoa," and knew it was wrong. He told I.G. to put on her clothes and said he was sorry, that it would never happen again. Defendant knew it was a mistake and was wrong. He was living on Lilac Lane at the time with his wife, Jessica Bunsee, and her brother, Wesley. About four months before the May 13 interview, I.G. told defendant that she was going to tell her mother, but she never did. Defendant thought maybe that was why I.G. was having the problems she had.

¶ 13 Dunn testified that he had gone to Mercy on April 18, 2013, to retrieve the note written by I.G. while she was hospitalized there. He met with I.G. on January 31, 2014, and she confirmed that she had written the note.

¶ 14 The prosecution next presented Laurie Riehm, a licensed clinical social worker at StillWaters Behavioral Health Center. She was an expert in the field of the "dynamics of child

sex abuse, including disclosures." Riehm testified that child and adolescent sexual abuse victims disclose incidents of abuse in different ways. Younger children often make accidental disclosures while adolescents are more likely to make more purposeful disclosures. Disclosure becomes more difficult when the abuser is a family member because the child still may have affection for the abuser, the child and family may be dependent on the abuser, or there may be "backlash" against the child where the family may blame the child. Other family members go through stress and loss, and a child's placement in the home may be threatened.

¶ 15 Riehm testified that about 37% of child sex abuse victims will make an outcry within the first 48 hours, 75% will wait at least one year, 18-20% will wait at least five years, and as many as 30% will never report the abuse. She stated that it is not uncommon for there to be a delay if the offender is a family member. Children do not anticipate the difficulty after an outcry is made; the child often faces humiliation and alienation from the family, and normalcy is affected due to the stress of any investigation.

¶ 16 Over objection, Riehm testified that at least half of the children she works with will recant their allegations at least in part, and about 25% will recant fully. She suggested that the research was consistent with her experience. She further suggested that a child may recant because the child wants to minimize the intention of the abuser, protect the offender, or reinterpret the offender's intentions. The child may recant because the child may experience fear or alienation from the family because of the allegations, or the stress from the investigation and talking about the sexual experience. Even when the allegations of abuse can be confirmed, Riehm stated that a percentage of children will still recant and deny any abuse. A child may also recant because the allegations are untrue.

¶ 17 Immediately prior to I.G.'s testimony, the prosecutor told the court that Ms. Patricoski, a victim advocate from the CAC, would sit next to I.G. during her testimony. Defendant renewed his objection to the special procedures imposed during I.G.'s testimony.

¶ 18 I.G., who was 13 years old at the time of trial, testified that she has four younger siblings, one brother and three sisters. I.G. stated that her grandmother is Jessica, that she has three aunts, Deborah, Wanda, and Corinthian, and that defendant is her uncle. When I.G. was at Mercy, she wrote a note and gave it to Laura Buskirk.

¶ 19 In answering the prosecutor's questions, I.G. explained that she was at defendant's house and that he lived there with his wife, Jessica. I.G. remembered that her mother had to go somewhere, so she left her and two of her sisters at defendant's house. I.G. was alone in defendant's room with defendant. She thought her sisters were in the bathroom or outside playing. When asked what happened while she was in the room with her uncle, I.G. answered: "He raped me." I.G. stated that defendant pulled down her pants and she "guess[ed]" his pants were pulled down too. After that, he raped her. The prosecutor asked if any part of his body touched her body and what part did it touch. I.G. responded that his penis touched her butt; "the part poop comes out." She did not know what made him stop. I.G. testified that defendant did not say anything to her while this was happening, but the next day he apologized to her while he walked her to school. The prosecutor asked if I.G. said anything to defendant when he did this to her and I.G. responded that all she said was, "Uncle, what are you doing?"

¶ 20 I.G. did not tell anyone after this happened because she was scared, she was worried about her family, and she felt they would be worried about her. I.G. testified that her family would get together about once a month and that defendant would be there too. Defendant lived

with them two summers ago and he punished her once. I.G. said defendant yelled at her, but she denied that defendant called her a name or that he ever hit her.

¶ 21 I.G. explained that she was at Mercy for two weeks the previous April for cutting herself. She was not trying to kill herself and she had been hospitalized before but did not write any notes during previous hospitalizations. She wrote the note because she wanted people to know what happened and to know the truth. I.G. claimed that everything in the note was true.

¶ 22 I.G. did not remember telling Dunn and Lenchner that defendant stopped when her sisters came into the bedroom. Nor did she recall telling them defendant promised never to do it again or that defendant walked her to school the next day and apologized. I.G. stated again that she was worried about her family and sisters, but she did not ask what was going to happen to them or to defendant.

¶ 23 I.G. testified that she did not remember telling Dunn, Lenchner, or investigator Tracy Newcomer that defendant called her a "B" or a "ho." But she did remember that defendant called her names and she remembered telling her mother that she hated defendant because of the alleged offense but for no other reasons. I.G. told Newcomer that she was angry with defendant for disrespecting her and that he would say unkind things to her. When I.G. learned defendant had to go to jail because of her note, she felt bad. She told Newcomer that the note was not the truth and that defendant did not touch her inappropriately, that no one was pressuring her to say that, and she felt bad for lying when she realized how much trouble it caused defendant. However, at trial, I.G. stated all of that was a lie.

¶ 24 I.G. denied that Newcomer had identified herself as an investigator for defendant's attorney and she denied agreeing to tell Newcomer the truth. I.G. did not tell Newcomer she would lie because everyone was pressuring her. I.G. denied lying to the prosecutors.

¶ 25 I.G. was scared of defendant during the time between the alleged offense and the trial, but she never told her mother or grandmother. When she wrote the note at Mercy and the family learned about what had happened, they were worried about her.

¶ 26 I.G. stated that she recalled promising her mother that the allegations were a lie and that defendant did not do anything. She lied so the fighting in the family about her and defendant would stop. I.G. did not remember telling her mother that defendant only tried to touch "down there." She did not recall telling a friend, while they were walking with her cousin Raymond, that her uncle raped her. She did not recall telling Raymond that she made up the whole story because she wanted people to feel sorry for her. I.G. admitted that she told her grandmother that "he didn't do it," but that was a lie. I.G. stated that defendant never threatened her or told her not to mention it.

¶ 27 Laura Buskirk, a mental health counselor at Mercy in the child and adolescent unit, testified that, on April 12, 2013, she was working when I.G. gave her the note. Buskirk read the note and said there was enough information in the letter to contact DCFS. Buskirk explained that I.G. was at Mercy for self-injurious behavior and depression.

¶ 28 Marty McLaughlin, a case manager at Mercy, met with I.G. on April 16, 2013, to discuss the letter and the claim of sexual abuse. McLaughlin did not know exactly what had been said, but I.G. had told her that her uncle sexually abused her when she was 6 years old by anally penetrating her.

¶ 29 Harry Reed, an Illinois State Police retired interviewing specialist, assisted interviewing defendant at the CAC on May 13, 2013. Defendant admitted to Reed that one time he had asked I.G. to remove her clothing and he stood behind her. Defendant told him that I.G. was lying face down on the bed, and defendant rubbed his penis against her buttocks or "butthole area," but he

said that he did not penetrate her. However, when Reed asked if defendant penetrated I.G., defendant said "it was possible," but he did not remember doing that. Reed admitted that he "offered up" the possibility of penetration. He asked defendant, "is it possible," and defendant answered "yes, it is possible."

¶ 30 Timothy Bosshart, a Carpentersville police officer assigned to the CAC, testified that, on May 13, 2013, he "became aware" that Dunn was interviewing defendant. Because Dunn was alone, Bosshart went to the interview room. However, he admitted that the DCFS investigator and Reed were present. Bosshart heard Dunn tell defendant he could have a cigarette and defendant, Bosshart, and Dunn stood outside the front door while defendant smoked. As they were making small talk, a marked squad car arrived. Defendant asked if the squad car was there for him and Bosshart replied he did not know. Defendant told Bosshart that he knew he was going to jail because he had to pay for mistakes he made in the past.

¶ 31 Dr. Darryl Link examined I.G. on June 12, 2013. He was able to examine I.G.'s anus. Link found no visible tears, fissures, or scarring. However, Link stated that a normal examination did not rule out sexual abuse and he could not conclude I.G. had been anally penetrated or that defendant penetrated I.G. The State rested.

¶ 32 The first witness to testify for defendant was Audrey Lenchner, the DCFS investigator. She and Dunn had interviewed I.G. on April 18, 2013. This interview was recorded and the recording was played for the jury, along with a written transcript of the recording.

¶ 33 Juanita, I.G.'s mother and defendant's sister, testified that she and her children lived on Lilac Lane for about a month. She was aware of I.G.'s allegations. Juanita testified that the whole family would get together every weekend. I.G. would play, laugh, and argue with defendant and she never appeared uncomfortable or afraid of him.

¶ 34 Juanita testified further that she lived on Locust since August of 2012 with her children and Clifford Evans. Defendant and her sister, Corinthian, lived with them for a couple of months. Defendant would discipline her children by sending them to their rooms. Juanita stated that I.G. would appear angry when defendant disciplined her and she would tell Juanita how she felt about defendant. I.G. and defendant had a niece/uncle relationship; sometimes there was respect and sometimes not.

¶ 35 Juanita placed I.G. at Mercy for behavioral issues. Juanita was shocked to learn about the allegations. While I.G. was still at Mercy and after DCFS approached defendant at Juanita's house, she spoke with defendant about the allegations. To her, defendant looked like he was in shock. After I.G. was released from Mercy, she spoke to defendant again and he cried. During the summer of 2013, Juanita spoke with I.G. about the allegations. Juanita stated that they spoke about six or seven times.

¶ 36 Raymond, I.G.'s cousin, testified that he was walking with I.G. and two of her friends seven months before trial. Afterward, I.G. told him that their uncle really did not do anything to her; she just wanted people to feel badly for her. Raymond thought his cousin was untruthful "most of the time." Raymond stated that he loved both his uncle and his counsin and did not want to see his uncle in trouble.

¶ 37 Corinthian testified that, during the time I.G. was six to eight years old, the family would gather for barbecues, Sunday dinners, birthday parties, and "the like." Defendant and I.G. both attended the gatherings. To her, I.G. did not seem uncomfortable around defendant. Corinthian denied offering anything to I.G. to persuade her to change her story. Corinthian described defendant as sad and depressed. She frequently observed him under the influence. Corinthian thought her niece was not very truthful.

¶ 38 Jessica, defendant's mother and I.G.'s grandmother, testified that she dearly loved her son and granddaughter. Before I.G. made the allegations, there were family gatherings and outings. Both defendant and I.G. would be present, and everyone appeared comfortable. She stated that I.G. told her that defendant "didn't do that." Jessica asked her why she made up the allegations and I.G. said it was because she was angry and wanted defendant to leave because "[h]e was mean to me." After I.G. told her that, Jessica arranged for the defense investigator to come to the house. Jessica testified that she did not pressure I.G. to change her mind or talk about the allegations. She was not angry with I.G. for making the allegations, but Jessica wanted I.G. to "take them back" if they were untrue. She believed that I.G. was often untruthful.

¶ 39 Following deliberation, the jury found defendant guilty of predatory criminal sexual assault, and the trial court subsequently sentenced him to 15 years' imprisonment. Defendant timely appeals.

¶ 40 II. ANALYSIS

¶ 41 A. Sufficiency of the Evidence

¶ 42 Defendant first claims the State failed to prove him guilty of predatory criminal sexual assault beyond a reasonable doubt because the State failed to prove beyond a reasonable doubt that defendant's penis sexually penetrated I.G.'s anus.

¶ 43 In pertinent part, section 12-14.1 of the Criminal Code (720 ILCS 5/12-14.1 (West 2006) (now 720 ILCS 5/11-1.40(a)(1) (West 2012)) provides:

> "(a) The accused commits predatory criminal sexual assault of a child if:
>
> (1) the accused was 17 years of age or over and commits an act of sexual penetration with a victim who was under 13 years of age when the act was committed."

Sexual penetration is defined as:

> "any contact, however slight, between the sex organ or anus of one person by an object, the sex organ, mouth or anus of another person, or any intrusion, however slight, of any part of the body of one person or of any animal or object into the sex organ or anus of another person, including but not limited to cunnilingus, fellatio or anal penetration. Evidence of emission of semen is not required to prove sexual penetration." 720 ILCS 5/12-12 (West 2006) (now 720 ILCS 5/11-0.1 (West 2014)).

The legislature has defined sexual penetration more broadly than its ordinary and common meaning. *People v. Maggette*, 195 Ill. 2d 336, 347 (2001). The definition includes two broad categories of conduct. The contact clause "includes any *contact* between the sex organ or anus of one person by an object, the sex organ, mouth[,] or anus of another person." (Emphasis in original.) *Id*. The intrusion clause "includes any *intrusion* of any part of the body of one person or of any animal or object into the sex organ or anus of another person." (Emphasis in original.) *Id*.

¶ 44 Defendant asserts a sufficiency-of-the-evidence argument, claiming the State failed to prove beyond a reasonable doubt the element of sexual penetration. In defendant's words, "the trial evidence tended to show only that [he] put his penis on I.G.'s buttocks, possibly near the anus." During the jury instruction conference, defense counsel did not object to the instruction submitted to the jury, which mirrored the meaning of "sexual penetration," as set forth in the statute.

¶ 45 In the present case, sexual penetration may be shown under either clause of the statute. The definition of sexual penetration is met if the evidence shows "any contact, however slight, between the sex organ or anus of one person and *** the sex organ *** of another person," such as contact between defendant's penis and I.G.'s anus. The definition can alternatively be met if

the evidence shows "any intrusion, however slight, of any part of the body of one person *** into the sex organ or anus of another person, including, but not limited to, cunnilingus, fellatio or oral penetration." 720 ILCS 5/11-0.1 (West 2014).

¶ 46 Although the State included the "placed his penis in the anus" language in the indictment, it does not mean that intrusion becomes an essential element and that contact would not spport a conviction. The type of penetration in the indictment is mere surplusage and the State is not required to prove defendant's penis intruded into I.G.'s anus. This is because the *type* of sexual penetration is not an essential element of the offense of predatory criminal sexual assault. See, *e.g.*, *People v. Giles*, 261 Ill. App. 3d 833, 846 (type of sexual penetration not an essential element of the offense of aggravated criminal sexual assault).

¶ 47 Here, the evidence was sufficient to show intrusion and contact between defendant's penis and I.G.'s anus. The letter written by I.G., which she gave to her counselor, stated that defendant "put his thing in my butt hole." During her interview with law enforcement, I.G. stated that defendant put his penis "inside me in my butt." At trial, I.G. testified that defendant's penis touched the part of her "butt;" "[t]he part poop comes out." On cross-examination, she testified that defendant put his penis in her butt. Additionally, I.G.'s statements were corroborated by defendant's admissions to Dunn and Reed. Specifically, defendant told Reed that he rubbed his penis against I.G.'s buttocks or butthole area and it was possible that there was penetration.

¶ 48 When presented with a challenge to the sufficiency of the evidence, it is not the function of this court to retry defendant. *People v. Howard*, 2012 IL App (3d) 100925, ¶ 8. Rather, the relevant question is " 'whether, after viewing the evidence in the light most favorable to the prosecution, any rational trier of fact could have found the essential elements of the crime

beyond a reasonable doubt.' " *People v. Collins*, 106 Ill. 2d 237, 261 (1985) (quoting *Jackson v. Virginia*, 443 U.S. 307, 319 (1979)). The trier of fact has the responsibility to assess the credibility of the witnesses, weigh their testimony, resolve inconsistencies and conflicts in the evidence, and draw reasonable inferences therefrom. *People v. Slim*, 127 Ill. 2d 302, 307 (1989). A reviewing court will not substitute its judgment for that of the trier of fact on issues of the credibility of witnesses or the weight of the evidence. *People v. Jasoni*, 2012 IL App (2d) 110217, ¶ 19. We will not reverse a guilty verdict unless the evidence, viewed in the light most favorable to the prosecution, was so palpably contrary to the verdict, so unreasonable, improbable, or unsatisfactory as to create a reasonable doubt of the defendant's guilt. *People v. Lamon*, 346 Ill. App. 3d 1082, 1089 (2004). If any rational trier of fact could have reached the fact-finder's conclusion, a reviewing court should not substitute its judgment or reverse a verdict finding the defendant guilty. *People v. Harre*, 155 Ill. 2d 392, 397-98 (1993).

¶ 49 Defendant relies on *People v. Oliver*, 38 Ill. App. 3d 166 (1976), in support of his argument that I.G.'s testimony and statements were insufficient to show an act of sexual penetration involving his sex organ and I.G.'s anus. In *Oliver*, the complaining witness did not testify specifically to penis-anus touching and made an out-of-court statement that the defendant's penis " 'went along her cheeks.' " *Id*. at 170. Because the complaining witness did not testify precisely, the appellate court concluded that the evidence did not establish an act of sexual penetration to prove the defendant guilty of deviate sexual assault beyond a reasonable doubt. *Id*. Here, in addition to I.G.'s testimony specifically indicating that defendant's penis touched and entered her anus, the consistent repetition by the victim concerning penis-anus contact and corroboration by defendant distinguishes this case from *Oliver*.

¶ 50 Defendant points out the various inconsistencies in I.G.'s story, which cast doubt on I.G.'s allegations. Defendant comments on the inconsistencies of her testimony, the inconsistencies between her note and her statements to Dunn and Lenchner, the lack of unusual interaction with defendant from the time of the alleged incident and I.G.'s outcry, her motives for making the allegations, and I.G.'s prior recantation. These are issues of credibility which intrude upon the province of the jury who heard and considered the evidence. See *People v. Siguenza-Brito*, 235 Ill. 2d 213, 228 (2009).

¶ 51 Defendant acknowledges that questions regarding credibility and the resolution of inconsistencies in the evidence are matters for the jury to decide. However, he argues that the determination by the jury may still be overturned where the evidence is so improbable or unsatisfactory that it creates a reasonable doubt of the defendant's guilt. We will not usurp what in this case was entirely within the province of the jury.

¶ 52 It was for the jury to find that I.G.'s testimony was sufficiently consistent throughout the trial to support defendant's conviction. It likewise was for the jury to resolve the discrepancies that appeared during trial and defendant's attacks upon I.G.'s character. See *Id*. at 229. We note that the issue of penetration is a question of fact to be determined by the jury. *People v. Herring*, 324 Ill. App. 3d 458, 464 (2001). Any lack of detail in the victim's testimony affects only the weight of the evidence. *Id*. "[T]he trier of fact is entitled to draw all reasonable inferences from both direct and circumstantial evidence, including an inference of penetration." *People v. Raymond*, 404 Ill. App. 3d 1028, 1041 (2010). After reviewing the entire record in the light most favorable to the prosecution, we conclude there was sufficient evidence for a rational trier of fact to find that the State met its burden of proving penetration.

¶ 53 B. Impeachment

¶ 54 Defendant next argues that the trial court improperly limited his cross-examination of the victim by prohibiting him from questioning her about two incidents involving theft and one involving cruelty to the family dog. Defendant asserts that these incidents, which "could turn out to be criminal charges," denied him the opportunity to impeach I.G. on matters of bias, motive, and ability to curry favor with the State.

¶ 55 The parties disagree as to our standard of review. The State contends that we should view deferentially the court's decision to exclude this evidence. Defendant maintains that the trial court applied an erroneous rule of law by improperly limiting his impeachment of I.G., which subjects us to a *de novo* review. Reviewing courts generally use an abuse-of-discretion standard to review evidentiary rulings rather than review them *de novo*. *People v. Childress*, 158 Ill. 2d 275, 296 (1994).

¶ 56 At the hearing on the State's motion *in limine* to prohibit improper impeachment of I.G., the court asked if I.G. had been convicted of theft. The State responded that I.G.'s criminal history showed only a station adjustment for theft in 2013. Defense counsel responded that, "if there is a crime alleged, whether it's pending or not," a witness may "believe they're currying the favor of the State" and he should be given a wide latitude to attempt to show bias on cross-examination. Without comment, the court granted the State's motion *in limine* to bar impeachment of I.G. with evidence of conduct.

¶ 57 "The decision whether to admit evidence cannot be made in isolation. The trial court must consider a number of circumstances that bear on that issue, including questions of reliability and prejudice." *People v. Caffey*, 205 Ill. 2d 52, 89 (2001) (citing *Childress*, 158 Ill. 2d at 295-96). In this case, the trial court ruled based on relevance and whether these were attempts by defendant to impeach on collateral matters. Thus, the trial court exercised discretion

in making these evidentiary rulings, *i.e.*, the court based these rulings on the specific circumstances of this case and not on a broadly applicable rule. Furthermore, the record does not support defendant's contention that the court's exercise of discretion was frustrated by its application of an erroneous rule of law, that "the court erroneously considered the law not to permit the introduction of a pending charge for purposes of bias impeachment." Accordingly, we reject defendant's argument and review these evidentiary rulings with deference to the trial court.

¶ 58 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. Reid*, 179 Ill. 2d 297, 313 (1997). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *People v. Illgen*, 145 Ill. 2d 353, 364 (1991).

¶ 59 Cross-examination to show bias, interest, or motive to testify falsely is a matter of right. *People v. Triplett*, 108 Ill. 2d 463, 475 (1985). This right, however, is not unfettered. When impeaching by showing bias, interest, or motive, the evidence used must give rise to the inference that the witness has something to gain or lose by his testimony and, therefore, the evidence used must not be remote or uncertain. *Id*. at 475-76.

¶ 60 As set forth above, defendant's sole argument is that the incidents of theft and cruelty to the family dog are relevant to show I.G.'s bias, motive, and ability to curry favor with the State concerning these potential charges. Defendant points to a 2013 station adjustment as evidence. But nothing in the record indicates when, at least, the theft from defendant occurred. Nothing in the record shows that I.G. had any contact with the police or that any charges were pending when I.G. made her outcry, and defendant made no offer of proof.

¶ 61 In *People v. Schnurr*, 206 Ill. App. 3d 522, 529-30 (1990), we found that it was not error to limit cross-examination of a witness who voluntarily approached the police and who cooperated during the investigation of the defendant. *Id*. at 530. We observed that the defendant was "grasping at straws" when she attempted to question the witness about his probation because no charges were pending against the witness. With no charges pending, the police had no leverage over the witness when he reported the defendant's crime, and therefore, the possibility of bias or motive was not evident. Like in *Schnurr*, the police had nothing to offer I.G., and she had no motive to report the crime to curry favor with the State.

¶ 62 At trial, even though I.G. may have been under conditions of a station adjustment, there is no evidence that any violations were pending. Defendant asserts that the prosecution had leverage over I.G. because it could have filed juvenile petitions for two of the alleged criminal offenses, which could have been considered a violation of the station adjustment conditions for the third alleged offense. The impeachment value of this evidence was, at best, speculative. Questions about this would have revealed nothing of value. *People v. Tayborn*, 254 Ill. App. 3d 381, 389 (1993). Defendant cites *People v. Balayants*, 343 Ill. App. 3d 602 (2003), and *People v. Paisley*, 149 Ill. App. 3d 556 (1996), in support of his argument, which are distinguishable. In both cases, the defendants were precluded from questioning witnesses about pending charges. *Balayants*, 343 Ill. App. 3d at 605-06; *Paisley*, 149 Ill. App. 3d at 560. Also, in *Balayants*, the evidence was not remote and the possibility of bias or motive was evident. *Balayants*, 343 Ill. App. 3d at 606. That is not the situation here, where no charges were pending against I.G. when she wrote her outcry note or when she testified at trial.

¶ 63 While it is at least arguable that defendant should have been allowed to question I.G. about the theft from defendant as it related to her general bias against him, any potential error in

barring cross-examination would have been harmless. The evidence against defendant, including his admissions, was strong and, without any evidence of reputation, the trial court allowed defendant to impeach I.G. by presenting testimony from her family that I.G. previously recanted and was a liar. Thus, this potential error would have been harmless.

¶ 64 C. Special Courtroom Procedures

¶ 65 Defendant last argues that the trial court abused its discretion by granting the State's motion to employ the following special procedures during I.G.'s testimony: (1) closing the courtroom to spectators; (2) requiring the attorneys to use age-appropriate language; and (3) allowing the State to ask leading questions "to the extent necessary to develop the child's testimony." Defendant argues that he was deprived of a fair trial because the trial court gave no specific reasons for its decision to grant the State's motion for these special procedures.

¶ 66 It is well-settled that a trial court's decision on a motion *in limine* will not be reversed unless the trial court abused its discretion. *People v.* Caffey, 205 Ill. 2d 52, 89 (2001). An abuse of discretion will be found only where the trial court's ruling is arbitrary, fanciful, unreasonable, or where no reasonable person would take the view adopted by the trial court. *Illgen*, 145 Ill. 2d at 364.

¶ 67 1. Closing Courtroom

¶ 68 Section 115-11 of the Criminal Code of 2012 (725 ILCS 5/115-11 (West 2012)) permits a limited closure of a courtroom during the testimony of minors who are the victims of certain sex crimes. It provides that, in a prosecution for a criminal offense defined in section 11-1.40 (725 ILCS 5/11-1.40 (West 2012)), where the alleged victim of the offense is a minor under 18 years of age, the court may exclude from the proceedings while the victim is testifying, all persons, who, in the opinion of the court, do not have a direct interest in the case, except the media. The

State moved prior to trial for special procedures for child testimony including closing the courtroom during I.G.'s testimony. It argued that section 115-11 permitted exclusion of any uninterested spectators other than the media without compliance with the strict limitations prescribed by the United States Supreme Court. Over objections by defendant to certain paragraphs, the court granted the State's motion. Before I.G.'s testimony, the court cleared the courtroom.

¶ 69 In *People v. Falaster*, 173 Ill. 2d 220, 226 (1996), the Illinois Supreme Court held that an exclusionary order under section 115-11 is valid if it meets the requirements of the statute, and it does not need to meet the more stringent limitations established by the United States Supreme Court. The *Falaster* court noted that the courtroom was not completely closed, as only certain people were excluded, and the press was never excluded. *Id*. at 228. Thus, as long as a trial judge does not impose restrictions on attendance by the media, it need only comply with section 115-11 in restricting public access to a defendant's trial. In his appellate brief, defendant failed to cite *Falaster*, despite the fact that the holding rebuts his argument.

¶ 70 Here, I.G. was 13 years old at the time of trial and the closure of the courtroom occurred only during her testimony. There is no indication in the record before us that the trial court excluded anyone during I.G.'s testimony. It was defendant's burden to show error, and defendant made no record or offer of proof as to whom, if anyone was excluded. Therefore, we must presume that the trial court followed the requirements of the statute. Because we presume that the requirements of section 115-11 were met, defendant's right to a public trial was not violated. See *People v. Burman*, 2013 IL App (2d) 110807, ¶ 55 (citing *Foutch v. O'Bryant*, 99 Ill. 2d 389, 392 (1984)). Accordingly, the trial court did not abuse its discretion by ordering temporary closure of the courtroom during I.G.'s testimony.

¶ 71 2. Limiting Language

¶ 72 Defendant claims that the trial court abused its discretion by requiring that the attorneys use age-appropriate language when questioning I.G. because it had a "chilling effect" on the type of cross-examination he could employ where there was no showing that I.G. needed these accommodations.

¶ 73 Defendant cites no authority requiring the trial court to make a particularized finding of special needs. More importantly, defendant does not state specifically how he was prejudiced by this ruling; *i.e.*, how he would have cross-examined I.G. differently or more effectively absent the *in limine* order. While we believe the trial court would have been better served by withholding its ruling on this order until I.G. testified, and by making specific findings on the record, defendant points to nothing that would show the ruling was prejudicial. As such, any error was harmless.

¶ 74 3. Leading Questions

¶ 75 Defendant last takes issue with the trial court's decision permitting the State to ask I.G. leading questions "to the extent necessary to develop the child's testimony." The trial court allowed the State to ask leading questions as long as they were not suggestive. Defendant acknowledges that the trial court limited its decision by prohibiting the use of suggestive questions and admits that the cases relied upon by the State illustrate the trial court's discretion to permit the use of leading questions. Nevertheless, defendant contends that the trial court abused its discretion by allowing the State to use leading questions without a showing that I.G. had difficulty answering the State's questions.

¶ 76 Here, like the last issue, we believe that the trial court would have been better served by withholding its ruling on asking leading questions until I.G. testified, and by making specific

findings on the record, but defendant fails to show how he was prejudiced by the court's decision; he does not point to any specific instances of misuse. Thus, any error was harmless. Nonetheless, based on our review, when I.G. was describing the acts of sexual abuse, the State did not improperly employ leading questions.

¶ 77 III. CONCLUSION

¶ 78 For the preceding reasons, we affirm defendant's conviction of predatory criminal sexual assault. 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 2012); see also *People v. Nicholls*, 71 Ill. 2d 166, 179 (1978).

¶ 79 Affirmed.