2021 IL App (2d) 200701-U
No. 2-20-0701
Order filed September 20, 2021

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

THE PEOPLE OF THE STATE OF ILLINOIS,	)	Appeal from the Circuit Court of Boone County.
Plaintiff-Appellee,	)	
v.	)	No. 18-CF-362
DOUGLAS A. VALENTINE,	)	Honorable C. Robert Tobin, III,
Defendant-Appellant.	)	Judge, Presiding.

PRESIDING JUSTICE BRIDGES delivered the judgment of the court.
Justices Jorgensen and Brennan concurred in the judgment.

ORDER

¶ 1 *Held:* The evidence supported defendant's conviction of two counts of criminal sexual assault and four counts of aggravated criminal sexual abuse. The trial court did not err in granting the State's motion to bar testimony regarding an alleged prior false accusation of sexual assault by the victim, and for barring defendant from cross examining the victim regarding a relationship with another man. Defendant was not unduly prejudiced by the admission of other crimes evidence. Defendant failed to create a sufficient record for review of issue regarding whether Covid-19 safety protocols violated his sixth amendment rights. Defendant did not receive

ineffective assistance of counsel when trial counsel did not move for a directed verdict.

¶ 2 Defendant, Douglas A. Valentine, appeals his conviction of two counts of criminal sexual assault (720 ILCS 5/11-1.20(a)(4) (West 2016)) and four counts of aggravated criminal sexual abuse (720 ILCS 5/11-1.60(d) (West 2016)). He argues that the State failed to prove him guilty beyond a reasonable doubt; that the trial court erred when it granted the State's motion to bar testimony regarding victim M.B.'s prior allegedly false accusation of sexual assault against a third person; that the trial court erred when it barred defendant from cross examining M.B. regarding her relationship with another man pursuant to section 115-7 of the Code of Criminal Procedure of 1963 (725 ILCS 5/115-7 (2018)) (commonly referred to as rape shield statute), where cross examination was necessary under the confrontation clause of the sixth amendment (U.S. Const., amend. VI); that the trial court erred in admitting unduly prejudicial evidence of prior bad acts; that Covid-19 safety protocols violated defendant's sixth amendment rights; and that defendant received ineffective assistance of counsel when trial counsel failed to move for a directed verdict. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On November 29, 2018, a grand jury returned an eight-count indictment charging defendant with three counts of criminal sexual assault and five counts of aggravated criminal sexual abuse (cul-de-sac incident and Boone County Fair incident).

¶ 5 A. Pre-Trial Motions

¶ 6 Prior to trial, the State filed a motion to admit other crimes evidence pursuant to section 115-7.3 of the Code of Criminal Procedure of 1963 (Code of Criminal Procedure) (725 ILCS 5/115-7.3 (West 2016)). In that motion the State sought to admit evidence of additional crimes which occurred outside of Boone County. In Lake County defendant was charged with two counts

of criminal sexual assault and three counts of aggravated criminal sexual abuse, which occurred on or about August 20, 2018, at Six Flags Great America amusement park and a Walgreens drug store in Gurnee, Illinois (Six Flags incident). In Winnebago County defendant was charged with two counts of aggravated criminal sexual abuse, which occurred between June 1, 2018, and September 1, 2018, at defendant's home (stripper pole incident and doubles practice incident). All incidents involved defendant and M.B. and occurred during the same time period as the charged Boone County conduct, *i.e.*, between June and September 2018. The trial court granted the motion to admit this other crimes evidence over defendant's objection. The trial court reasoned that because the other incidents occurred within the same time period, involved the same victim, and were necessary to give context to the relationship between M.B. and defendant, they should be admitted under section 115-7.3 of the Code of Criminal Procedure. Defendant then asked that a limiting instruction be given related to the other crimes evidence, which the trial court denied, stating that they could be admitted for any purpose under the statute.

¶ 7 Defendant moved to reconsider, arguing that the conduct alleged to have occurred during the stripper pole incident did not rise to the level of the crimes identified in section 115-7.3 of the Code of Criminal Procedure. The trial court agreed that the conduct alleged in the stripper pole incident could not be admitted under section 115-7.3, but it ruled that it could be admitted under Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011).

¶ 8 In the State's seventh motion *in limine*, it moved to bar Ahmad Sheikhali from testifying regarding an alleged prior false allegation by M.B. that he had raped her after attending homecoming with her. The State argued that it was a specific instance of untruthfulness being offered as proof of M.B.'s character for untruthfulness, and thus inadmissible under Illinois Rule

of Evidence 405 (eff. Jan. 1, 2011). The trial court granted the State's motion over defendant's objection.

¶ 9 B. Trial Testimony

¶ 10 A three-day trial commenced on September 8, 2021. Duayne Beggs testified as follows. He was M.B.'s father, and defendant was a close friend of his whom he had met through Ski Broncs, a non-profit water ski club. He and his daughters joined Ski Broncs in 2011. Over the years, he and the defendant became closer friends. Defendant owned a construction and landscaping business and performed work around the Beggs's house. From 2016 to 2017 defendant began spending more time with the family. This corresponded with defendant rejoining Ski Broncs after leaving to join the Janesville team. Defendant participated in the Beggs's "Sunday fun days" at their pool, joined them for Thanksgiving, and came over to help decorate their tree for Christmas. Duayne described defendant as part of the family. On average defendant would be at the Beggs's house three or four times a week. Defendant did things with Duayne and his wife, Wendy Beggs, as well as with their daughters and their daughters' friends. Defendant would take his daughters places without Duayne or Wendy, especially M.B.

¶ 11 Duayne approved of defendant taking M.B. places. Defendant would sometimes pick M.B. up from Ski Broncs practice and do things like go shopping, rock climbing, or visit Six Flags. M.B. would usually tell Duayne what she and defendant were going to do rather than asking for permission. He allowed defendant to take his daughters places because he considered defendant to be part of the family. He believed that when he allowed defendant to go places with M.B., defendant would act as an authority figure and take care of her and protect her.

¶ 12 Duayne testified that he was an involved parent and would monitor his daughters' phones. At some point he installed an app on M.B.'s phone called Qustodio, which allowed him to monitor

the traffic on M.B.'s phone remotely. He did this in response to an incident in which M.B. snuck out of the house. M.B. was not supposed to have Snapchat and he did not know if she had the app. He knew she had Facebook and would monitor it.

¶ 13 Duayne recalled that in August 2018 defendant met with M.B. at the Boone County Fair. M.B.'s sister T.B. was going to the fair with her friends, and M.B. wanted to go too. Duayne allowed her to go even though she was grounded at the time, but she had to be back by a certain time. M.B. had been grounded because on her 15th birthday she told him she was going to see one of her friends, but instead she went to see a boy named Chase (who M.B. had affection towards), a member of Ski Broncs who was around 19 or 20 years old at the time. As such, she was not allowed to stay with T.B. until the fair ended, rather she would need someone to pick her up. The discussion regarding the fair took place at the Beggs's pool, and defendant asked if he could pick M.B. up from the fair. Duayne told him it was okay and gave defendant some money to give to her.

¶ 14 On September 30, 2018, defendant arrived at the Beggs's house. Duayne was watching TV with his second oldest daughter A.B. and her boyfriend. He noted that it was kind of odd for defendant to show up because they were not really doing anything. Duayne then went to his study for a bit and eventually got up to go find defendant and let him know it was time to leave. He went to the family room where A.B. and her boyfriend were watching TV, but defendant was not there. He then went upstairs, and defendant was in M.B.'s bedroom talking to her with the door open. He was alarmed to find defendant in M.B.'s room because "boys" were not allowed upstairs. He then went into his bedroom which was across the hall from M.B.'s room but did not say anything to defendant. The door to his bedroom was open at that point and Wendy was inside. Wendy was sitting in the dark and told him to be quiet as he went over to her. She wanted him to listen to the

conversation between M.B. and defendant, but he did not hear anything. He then went out and told defendant it was time to leave. Wendy told him that she had overheard somethings in M.B. and defendant's conversation which she thought were "red flags." Because of this defendant was not invited over the following Sunday, October 7 (2018).

¶ 15 On Columbus Day, October 8, 2018, the family was hanging out around the house. At some point M.B. left to hang out with some friends from Ski Broncs. Then Duayne, Wendy, A.B. and her boyfriend went for a walk around the neighborhood. When they arrived back at the house M.B. and her friends from Ski Broncs were talking outside. As he walked by the group they stopped talking, and he could sense something was wrong. He, Wendy, A.B., and her boyfriend then went into the house. Afterwards, he went back out to get Jason, a longtime friend of his and board member of Ski Broncs, to talk about Ski Broncs business. He and Jason went into his office, and he could see that Jason was "extremely nervous." Before they could talk about Ski Broncs, Jason told him, "You need to talk to your daughter [M.B.]."

¶ 16 Duayne then went outside to confront M.B. asking, "Do you have something you need to talk to us about?" She said yes and he, Wendy, and M.B. went into his office. M.B. said she would be more comfortable talking to Wendy, so he left. Afterward Wendy filled him in on their conversation, and they called the police an hour or two later. He waited because he was confused and could not believe what had happened, but A.B. and her boyfriend convinced him that calling the police was the right thing to do.

¶ 17 On October 11, 2018, he and Wendy took M.B. to the Carrie Lynn Center to be interviewed. After the interview he and Wendy met with Detective Fleming, who asked to search M.B.'s phone. They gave him permission to do so. He and Wendy were also interviewed separately.

¶ 18 M.B. testified as follows on direct examination. She met defendant when she first joined Ski Broncs in 2011. She did not interact with him much until 2016 when he rejoined Ski Broncs after leaving the Janesville team. As of the spring and summer of 2018 he was a "really good family friend" and would come over to "Sunday fun days." However, his relationship with her changed around the end of May (2018), when he asked her to go to Vertical Endeavors, an indoor rock-climbing facility. That was the first time she and the defendant spent time alone together. While they were sitting on a bench, taking a break from climbing, defendant said to her, "age is just a number" and "25 years is just how many times the earth has been around the sun."[1]

¶ 19 After Vertical Endeavors, the two then went to Woodfield Mall. In the car on the way to the mall, defendant grabbed M.B.'s arm and rubbed his beard against it saying, "[T]his is what it would feel like if I was [] teasing you."

¶ 20 Next, around the beginning of July 2018,[2] defendant invited M.B. to go shopping after Ski Broncs practice. She asked her dad if she could, and he said yes. However, she wanted to go home and shower first. Defendant offered to take her back to his place to shower, explaining that he needed to get some work done. He then drove them to his house. That was the first time she had been to his home. When they got to his house defendant showed her the shower, and he left to do his work. M.B. locked the door and proceeded to shower.

---

[1] At the time M.B. was 14 and the defendant was 39, making 25 years the difference between their ages.

[2] On redirect examination M.B. clarified that this actually occurred around the beginning of June.

¶ 21 Previously, M.B. had mentioned to defendant that she wanted a "stripper pole" to train at holding different positions for Ski Broncs, and he told her that he had one. After her shower defendant showed M.B. the pole, which was in a room off the living room. He then began showing her tricks he could do on the pole, and she tried to do the tricks as well. At first nothing else happened, but then he asked her to do a trick one more time, and he grabbed her by the waist and took her off the pole when she did. She tried to "fight him a little bit" but then he laid her on the ground and was on top of her face to face.

¶ 22 Defendant then began kissing her body over her clothes and running his hands over her body, mostly near her hips, thighs, and abdomen. At the time she was wearing shorts and a quarter-sleeve shirt. He then asked if she was "okay with it." She had her hands over her face and responded by repeating, "I don't know, I don't know." He asked if she wanted to keep going and she said yes. She said yes because, she "liked the attention." The encounter lasted for around 45 minutes to an hour. Her clothes remained on, but her pants became unbuckled. She did not quite remember how it ended, just that they needed to go. She testified that they did not go shopping that day. After they left defendant's home, they went to pick up food for M.B.'s parents and her sister, and then went to her home. In the car on the way back they talked a little about what happened. He asked her how it had felt, but she was "still trying to process it."

¶ 23 The next incident occurred around the middle of June 2018 and began with M.B. asking defendant if he wanted to "get high." She had two marijuana "blunts" and asked him over Snapchat if he wanted to smoke. He replied that he did. He drove to a cul-de-sac a few houses down, and she went out to meet him. They then drove further into the subdivision to an empty cul-de-sac and parked near some bushes. They then proceeded to smoke the marijuana. Defendant was in the driver seat and M.B. was in the passenger seat. When they were done, he put up the center console,

which was able to fold up into a third seat, and he picked her up in a cradle position and placed her on his lap with her back to the driver side door. They started to kiss, and he unhooked her bra from underneath her shirt. He then began fondling her breasts with his hand underneath her clothes. While this was happening, he was kissing her lips and neck. Eventually he laid her down on the passenger seat and took off her pants and underwear. She recalled she was wearing "joggers." He then placed his mouth on her vagina and placed his fingers inside her vagina. This lasted for around an hour to an hour and a half. She asked him to stop because it was getting late and was beginning to hurt. She then went home. Afterward she felt guilty, gross, and in pain as her vagina felt very dry and very sensitive.

¶ 24 The next incident with the defendant occurred at his home between July 1 and July 6, (2018). M.B. recalled this occurring within that date range because she went to help defendant and his doubles partner practice for the upcoming regional tournament. Defendant and his partner asked M.B. to help them practice and spot them. After Ski Broncs practice defendant drove M.B. and his doubles partner to his home. They went outside, and M.B. brought a mirror to help defendant and his partner practice. They performed different lifts and moves, and she spotted for them and critiqued their performance. She was there for a "good amount of time" and then defendant's partner's mother came to pick the partner up. M.B. was on her period, and after the partner left, she asked defendant to grab her a heating pad. After they had gotten the pad set up, she had the pad on her stomach and defendant began asking her different questions about her period. He asked if she ever got "horny" on her period, and she responded yes. He then asked if she wanted to mess around and she said yes, but that she wanted to keep her pants on because she was on her period. He then picked her up in a cradle position and carried her to his room and placed her on the bed. She was lying on her back with her head near the headboard. He was on top of her

kissing her. She recalled wearing pink spandex bottoms. Defendant then took off her shirt and bra. He kissed her and played with her breasts. He then tried to take her pants off, but she was "hesitant" and told him no. He responded by telling her that it was "nothing [he hadn't] dealt with before," that she did not need to be scared, and it was fine. She then let him take off her pants, but she kept her underwear on. He then kissed her inner thighs near her vagina, took off his pants, and rubbed his penis between her legs, but did not penetrate her. She did not recall how the encounter ended or how long it lasted.

¶ 25 The next incident occurred on August 10, 2018,[3] at the Boone County Fair. She had just turned 15 and went to the fair with her sister, her sister's boyfriend, and her sister's friend. While there she ran into her best friend. She then went off with her best friend, leaving her sister. She arranged to meet with defendant via text message, and he met M.B. and her friend at one of the rides. He brought her the money from her parents. At some point M.B.'s friend left, leaving her and defendant alone. M.B. and the defendant rode the Zipper and as the ride stopped and began unloading cars, he kissed her. She told him this was a bad idea because they did not look the same age. He responded that nobody could see them inside the cage. Around 10:30 p.m. they left the fairgrounds and went to defendant's truck. This was a white pickup truck, different from the one they had smoked marijuana in. Once inside he gave her the choice between going home or staying to "mess around." She chose to stay and mess around. He then drove the truck to an area of the parking lot that was empty, and they got in the back seat. They then began kissing. He unhooked her bra but did not take her shirt or bra off. He then touched her breast with his hand underneath

[3] Based on the M.B. and defendant's text messages it would appear this actually took place on August 12, 2018.

her bra and placed his fingers in her vagina. The incident did not last long, as she received a message from her dad asking when she was coming home. Defendant then took her home.

¶ 26 The next incident occurred on August 21, (2018), when she and defendant went to Six Flags in Gurnee, Illinois. Defendant invited M.B. and her sister T.B. to go to Six Flags, but she did not tell T.B. about it. She asked her parents for permission to go, and they allowed her to go. He picked her up in his red pickup truck. On the drive to Six Flags, he put the center console up and pulled her close to him. He had his hand on her inner thigh caressing her. They then began to discuss "road head," which she understood to be the act of performing fellatio while defendant was driving. She mentioned that she was not comfortable with that because she still had braces. He told her that he "didn't care" and that "the only thing [she was] doing wrong right now [was] not doing anything at all," which she took to mean that she was doing wrong by not touching him in any way. He eventually pulled down his pants while driving with one hand on the wheel. She then began to stroke his penis and eventually began to perform fellatio on him. While she was doing so, he tried to place his fingers in her vagina, "but it didn't really work." When they got to Six Flags defendant pulled the truck off into an exit that was closed where nobody would be driving. They then kissed and touched each other over their clothes. That lasted for no more than 10 minutes. They then went into the park. He tried to hold her hand while in the park, but she told him it was not a good idea because they did not look the same age. They left the park between 4 and 5 p.m.

¶ 27 After they left the park, they went to a Walgreens pharmacy in Gurnee to get Advil because he had "blue balls" and the rides had been really hurting him. They got the Advil and returned to the truck and parked facing some trees. They then began "messing around." There were no vehicles around the truck at the time. She was on top of the defendant's lap in a cradle position with her

back to the driver side door. He unhooked her bra and was kissing and sucking her breasts, leaving hickeys. He then put her in the passenger seat and took off her bra and shirt. She took off his shirt as they were kissing and touching one another. She was stroking his penis and he placed his fingers in her vagina. Their clothes came completely off. Eventually he flipped her over onto her stomach and he ejaculated onto her back. Afterward he grabbed a towel from the back seat and wiped them both off. They then went home. That was the last time something physical or sexual occurred between them, though he still came over to the Beggs's house.

¶ 28 After the Six Flags incident M.B. "was over it" and did not want to keep "messing around" because "it was too big a secret to keep holding on to and [she] knew [she] was going to eventually tell someone." She began distancing herself from defendant. Defendant reacted by becoming jealous of other guys she was talking to. There was a bonfire at her house, and he was asking her questions about some of the guys she had been talking to who were around her age. Towards the end of September, she and defendant had a conversation in his truck on the way home from somewhere. He asked her if she regretted anything they had done together, and she said she had.

¶ 29 M.B. went to homecoming that year, and defendant took her dress shopping. She had to get her phone fixed because she had shattered the screen, and he offered to get her phone fixed and take her shopping because a Battery Plus store was in the CherryVale Mall. M.B. tried on a dress that was black with a cutoff in the front. She liked the dress, and defendant offered to buy it for her, but only if she went back to his house. She refused the offer. She believed this occurred prior to September 23, (2018), because that is when she thought homecoming was.

¶ 30 On September 30, 2018, defendant came over to the Beggs's home. M.B. was upstairs in her room doing homework. She received a text message from defendant saying he came to hang out with her, and she invited him up to her room. They discussed homecoming and he said he

wished he could have gotten the dress for her and that it looked really good on her. He then said that the dress she did wear was very short and that it must have ridden up all night while she was dancing. She recalled him using the phrase "who ha." Her door was open during the conversation and her parents' room was right across the hall, but she did not know whether anyone was in there or not.

¶ 31 Later either that day or the next her mother confronted her, asking her if anything had happened between her and defendant. She told her no because she did not want her mother to hate her and did not know if her mother would believe her.

¶ 32 The next week on October 8, 2018, M.B. decided to tell her parents what had happened. She had told her friend Jason about her relationship with defendant, and he told her that if she did not tell her parents immediately, he would. She told her mom first because she felt more comfortable talking to her mom about it.

¶ 33 M.B. gave a victim sensitive interview (VSI) at the Carrie Lynn Center. Prior to this she prepared a written statement to help with the interview process. This statement was then given to the police.

¶ 34 M.B. testified that she and defendant communicated via text message, Snapchat, and Instagram. She and defendant would use Snapchat to have "sexual conversations" because the messages were not saved.

¶ 35 On cross examination, the defense sought to impeach M.B. on several details of her testimony.[4] Regarding the trip to Vertical Endeavors, where she had not previously disclosed the

[4] Defendant attempted to impeach M.B. using statements she gave in the VSI. However, the VSI was not included in the record on appeal. Accordingly, we do not have any way of

incident with defendant rubbing his beard on her arm to investigators and only mentioned it for the first time at trial. Defendant tried to impeach M.B. by arguing that in her VSI she stated that the "age is just a number" conversation took place in defendant's truck. M.B. reasserted that conversation did take place at Vertical Endeavors, and a different conversation took place in defendant's truck. M.B. explained that defendant asked if he could "go down and please [her]." She said no, and defendant tried to play it off as a joke. Defendant then said, "Well at least I taught you how to say one thing." She explained that she did not mention this on direct examination because she was "not good under pressure."

¶ 36 Regarding the stripper pole incident, in her VSI she did not state that defendant got on the stripper pole. On direct examination M.B. did not include that defendant moved her from the room with the stripper pole, but on cross examination she testified that after they got done talking, he asked if she wanted to keep going. She said yes, and he picked her up and carried her in a cradle position to his bedroom. Defendant tried to impeach M.B. by arguing that in her VSI she stated that defendant took her into a second bedroom, but she reasserted that it was his bedroom. Further, M.B. identified the day that she and defendant got Chipotle for her family as being the same day that the stripper pole incident occurred, but she denied going shopping. However, text messages between defendant and Duayne show that prior to going to Chipotle they were at Zumiez, a clothing store in the mall.

---

verifying much of the impeachment, and any statements which M.B. admitted to making will be described as being given in the VSI. Any statements she denied or did not recall giving will be described as such.

¶ 37 With regard to the cul-de-sac incident, in M.B.'s written statement she did not mention getting high or defendant placing his fingers in her vagina. On cross examination she testified that she had not seen defendant smoke marijuana before, but that they had talked about it. In her VSI she stated that her pants came off but did not say specifically that defendant took her pants off. M.B. testified that days prior to the cul-de-sac incident she was injured at a skiing event and received stitches in her "vaginal area" and admitted that it would have been uncomfortable to be touched in that area, and stated that it *was* uncomfortable. Defendant's trial counsel tried to further impeach M.B. by arguing that in her VSI she stated that "[She] really [didn't] remember his mouth on me at all," but M.B. did not remember saying that. On redirect examination she testified that she did not remember whether defendant's mouth touched her vagina during the cul-de-sac incident.

¶ 38 With regard to the doubles practice incident in her VSI, M.B. stated that the day she was at defendant's home helping with practice, she was not 100 percent positive that defendant's underwear came off. On cross examination she stated that she was not 100 percent positive then, but she was now.

¶ 39 During cross-examination M.B. admitted to lying in her VSI regarding how she communicated with defendant. She lied about how often they used Snapchat and about sending and receiving pictures for fear of getting in trouble.

¶ 40 Detective William Kaiser of the Boone County Sheriff's Department testified that on October 11, 2018, he assisted in the execution of a search warrant at the defendant's home. Pursuant to the search warrant, he seized defendant's Droid cellphone. While searching the home officers located a disassembled stripper pole in defendant's bedroom closet. Officers reassembled and photographed the pole in a room of the house that had a wooden box on the ceiling that

appeared to have been made to hold the pole. Officers also located and photographed three pickup trucks at the defendant's home, one red and two white.

¶ 41 Wendy Beggs testified as follows. Her family had met the defendant through Ski Broncs nearly a decade ago. Eventually they began spending time with him outside of Ski Broncs and they "welcomed him into [their] family." He would do things like come over to their house on Sundays, attend church together, and go to the apple orchard with them. Defendant referred to himself as a "big brother" to M.B., and Wendy trusted him to take care of M.B. On Sunday, September 30, 2018, defendant was at the Beggs's home. Duayne was in the office, M.B. was upstairs in her room and she, A.B., and defendant were downstairs watching worship service on TV. She and A.B. were seated, and defendant was behind them in the hallway on his phone. Eventually she noticed that he was not there anymore. She got up to see if he was in the office with Duayne, but instead heard defendant's voice coming from the second floor, which she thought was odd. As she went upstairs, she saw that defendant was in M.B.'s room. She went into her bedroom, which was across the hall, and sat in the darkness. She did not think that defendant saw her. She then proceeded to listen to M.B. and defendant's conversation.

¶ 42 There was tension in the voices, and it did not sound the same way as other conversations she had heard between them. She heard defendant say, "What the f***." It then seemed as if the topic of conversation changed, and she heard defendant say, "I really wanted to buy you that dress," and "It was short and when you danced, I'm sure everyone could see your who ha." The topic then switched again to the fact that M.B. had several pictures of her doubles partner on her bedroom wall. At that point Duayne entered the bedroom, and she motioned for him to be quiet, but that was the extent of the conversation she heard. Duayne then told defendant it was time to

leave. She did not confront defendant about the conversation, but it did raise several "red flags" to her.

¶ 43 The next day she asked M.B. to give her her cellphone. She went through every message between defendant and M.B. The quantity of messages between them made her "uneasy." After that defendant did not come to their home, and she did not allow M.B. to go places with him. The next week on October 8, 2018, Columbus Day, the family was spending time at home. Later in the evening she, Duayne, A.B., and her husband went for a walk. As they returned home from the walk, M.B. was in the driveway with Jason and other friends from Ski Broncs. As they went past, she felt "confronted by something heavy" and they were all quiet. Duayne invited Jason to the office to discuss Ski Broncs business, and she could tell Jason was "very unsettled." M.B. was then told to come into the house to talk. M.B. said, "I just want to talk to mom." Wendy then spoke with M.B. Afterward Duayne came in and M.B. spoke to them both. M.B. was frightened and embarrassed when she spoke to them, because she knew she had disappointed them. Afterward they called the police.

¶ 44 Defendant testified as follows. He had been a member of Ski Broncs on and off for around 20 years. He met the Beggs family through Ski Broncs around 2011 or 2012. Their friendship developed over time until by 2018 they had become "great friends." He had developed a friendship with each individual family member, and he would never have done anything to jeopardize it. He in no way had an inappropriate relationship with M.B.

¶ 45 He spoke about water skiing and explained that "doubles" was like figure skating on water skis. The male skier is tethered to the boat and the female skier is held over the male's head, and they will do different flips and spins. Because of this the female skiers are usually smaller so they

can be lifted more easily. This takes a lot of skill and time to develop, so skiers will start out fairly young.

¶ 46 Defendant described how he and M.B. went to Vertical Endeavors. The day before they went, M.B.'s sister contacted him to tell him that her parents were going to be out of town, and she asked him to get M.B. out of the house. He suggested Vertical Endeavors because he liked going rock climbing and had a membership there. M.B. had previously mentioned rock climbing, and he knew it was an activity she would cancel plans to do. M.B. agreed to go. He stated that he did have a conversation about M.B. regarding age, and he believed that conversation took place in his truck. The conversation was not sexual in nature and its purpose was to help build a comradery. He explained that water skiing required comradery, which could be difficult to develop given the age difference between the participants. After Vertical Endeavors, they went to the mall to get food and possibly to kill some time shopping. He testified that spending time together in this way made their relationship stronger.

¶ 47 Sometime in 2016 or 2017 he recalled being at Ski Broncs and seeing M.B. alone on the bleachers, and he thought that was odd and that something might be wrong, or she might be thinking about something. So, he went to talk to her, feeling it was his obligation as a member of the team to reach out to her.

¶ 48 He testified about the day of the stripper pole incident. He liked to shop and had taken T.B. shopping a few times before, and so he and M.B. discussed going shopping. That day he took her shopping, and she never mentioned wanting to take a shower. He did not suggest going to his home. They were at Ski Broncs practice, discussed going shopping, and then went shopping. They were at the mall for a couple hours, and Duayne texted them to get Chipotle. They did so and went back to the Beggs's house. Neither he nor M.B. went to his home.

¶ 49 M.B. had been to his house only two times. Once was to help him practice with his doubles partner, and once when he stopped to grab a jacket, but she did not go in the house on that occasion.

¶ 50 Defendant recounted the day of the cul-de-sac incident. He had been over to the Beggs's house earlier that day. Around midnight or 1 a.m. he received a message from M.B. to come over and get high. He was not excited about the message and was concerned about M.B. because she had been caught sneaking out of the house before. She told him that if he did not come over, she would invite someone else. He decided it was in M.B.'s best interest as a friend of her parents that he go over. He wanted to call her dad, but thought if he did that, she would hear the phone ring and know it was him calling. So, he thought he would go over and when he saw her walking down the street, he would call her dad. However, when he arrived, she was already outside, and he did not have the chance. They then drove to the empty cul-de-sac. She was mad because she had told him to wait in the cul-de-sac. He thought that she had been smoking before getting in the truck, and she proceeded to also smoke in the truck. The last time he smoked marijuana was when he was 18, and he did not smoke with her. While in the truck he played on his phone, and she plugged her phone into the radio to play music. They hung out and talked. When she finished the blunt, she folded up the center console and laid across the front seat with her feet on the passenger window ledge and her head on his right thigh.

¶ 51 They continued chatting and then suddenly she said, "Pussy," and pulled her pants down to her knees. He responded by saying, "What are you doing? Put your pants back on. What are you doing?" He thought about putting her pants back on but did not want to touch her. He did not know what she was wearing under her pants, or if she had underwear on because he did not want to look. He kept telling her to put her pants back on, and she said, "Why won't you touch me?" He said, "You're 14. I'm not touching you. We're friends. You're like a little sister. I'm not touching you."

She said, “I’ll let you fuck me,” and he told her no. It went on back and forth like that for a while before she put her pants back on. She was “pissed.” She had let her sister know she was going out, and her sister texted her to let her know it was time to come home. He offered to drive her home, and she said, “No. I’m just going to walk home.” He let her go and watched her walk away until he could not see her anymore, and then left. In deciding what to do about the incident, he tried to put himself in her shoes and thought it would be best to just move on and forget it. He thought she would feel embarrassed and did not want to hold it over her head or lecture her about it.

¶ 52 Defendant then described the day of the doubles practice incident. Prior to going to his house defendant, M.B., and his doubles partner were all at practice. They then went over to his house. They were close to either regionals or nationals and were trying to dial in their moves. He had a large mirror that could be moved around, and they set it up outside against a tree. M.B. helped them practice, coaching them through pointing fingers and toes. They were there for around two hours. Then his doubles partner’s mom came to pick her up. At that point M.B. told him she was on her period and having cramps. He offered her a heating pad, and she went to his living room couch. He then went to his office to work for 15 or 20 minutes. He did not have any sexual interactions with M.B. He did not take off any of his or her clothing. After a little bit she was feeling better but still did not feel great, and she asked him to carry her to the car, which he did. He described her as a little sister and remarked that it was common to carry people in ski practice.

¶ 53 Defendant admitted to having a stripper pole but stated that it was for exercise purposes rather than sexual purposes, and that M.B., never got on the pole. He had however, told M.B. about the pole. He and M.B. were talking about how at Peak Fitness (where M.B.’s mother worked) there were ribbons hanging from the ceiling that could be danced on. M.B. said that she wanted to be a stripper and learn to dance on a pole. He laughed and told her he had a stripper pole at his house.

¶ 54 He also described the day of the Boone County Fair incident. That day he was at the Beggs's home. He had asked T.B. if she wanted to go to the fair and she said that she and a group were going to go. He made plans to go with T.B., however, he learned that a friend of theirs named Sarah, whom he did not like, was also going to go with them, so he decided not to go. After T.B. and her friends left, he texted T.B. to let her know he was not going. He said Duayne came out with some money he was going to give M.B., but she had already left. Defendant then sent her a picture of her dad holding the money saying that she had forgotten it. M.B. then asked him to bring it to her, and he let her know he would bring it to her around 8:30. When he got there the whole group was there including Sarah. Because he did not want to walk around with Sarah; defendant, M.B., and M.B.'s friend, went their own way. They rode rides and ate food. They left the fair, and he dropped M.B. off at her house. Then about halfway to his house he received a text from Duayne asking if he and M.B. were on their way home, not realizing she had already been dropped off. Nothing inappropriate happened while they were in the car.

¶ 55 Defendant described the day of the Six Flags incident. He had asked T.B. about going to Six Flags a couple weeks before and had asked her father about going to Six Flags that weekend. That weekend Duayne said he did not have any "fun money" left and just to take the girls. T.B. then backed out and decided not to go. He left his house and went to the Beggs's house. He went inside and they debated whether or not to go because it might rain. He mentioned that he had brought towels just in case and they decided to go. On the drive to the park, M.B. said she wanted to learn how to give "blowjobs." He laughed and asked why. They talked about it for a little bit, and he told her that he hated them. He had a bad experience in his life and did not care for them. She told him she wanted to learn how to do them but that she needed someone experienced. She likened it to waterskiing, saying that if one person was experienced it works all right, but if you

have two inexperienced people it does not go well. She kept trying to get him to talk about it and to allow him to let her try it on him, but he said no. He then tried to steer the conversation in another direction, and they eventually got to the park. He did not do anything sexual with her at any point that day.

¶ 56 After they left the park, they both had a headache from the rides and went to a gas station for drinks and ibuprofen. They did not have ibuprofen, so they went across the street to a Walgreens. He did not ever tell M.B. he had "blue balls" and did not do anything sexual at the Walgreens.

¶ 57 Defendant described the time he took M.B. shopping for a homecoming dress. She was going to wear a hand-me-down and told him how she never got to wear her own dress. He thought it would be fun to take her dress shopping. He said he may have made a comment about dressing appropriately. At some point she tried on a black dress. Her phone was getting repaired, and she borrowed his phone to take pictures and asked him to send them to her. Ultimately, he did not buy her the dress, because he had learned that her parents were already paying to get another dress altered, and he did not want to buy it for her without their permission.

¶ 58 He described his relationship with M.B. as unique, sometimes she was a teammate, sometimes she was like a niece, and sometimes like a daughter. He texted her often because he was trying to give her attention so that she would not seek bad attention. He then went on to explain how several text messages regarding M.B.'s appearance were just an attempt by him to boost her self-esteem.

¶ 59 On September 30, (2018), defendant spoke with M.B. and her sister and learned that M.B. had come back from homecoming high. He was worried and wanted to make sure she was OK. Her friend had given her a birthday present of several cards where the envelopes said, "When you

get to this step, open this card," and the cards said things like "Congratulations, your first boyfriend," or "Congratulations, your first kiss." She had opened several envelopes that night, and he wanted to learn how far things had gone. He did not recall talking about her dress, but he might have. He was concerned about her getting a reputation.

¶ 60 Defendant said he had tried to talk to Duayne and Wendy about some of his concerns with M.B. on two separate occasions. On the first occasion, he presented his concerns to M.B.'s parents and they confronted M.B. letting her know what he had told them. M.B. then told him, "I'm never telling you anything again. I'm not talking to you again. You can't keep any secrets." So, he did not say anything for a while after that. On the second occasion, he had some concerns regarding M.B.'s homecoming date. He shared them with Duayne, who responded, "I'd rather live in ignorant bliss."

¶ 61 M.B. was next called as a rebuttal witness. She testified defendant had texted her about how he had bought a hot tub and pool and now she never comes over. She responded that she had never been over, because she was concerned her parents would see the message and realize she had been over to his house alone before.

¶ 62 Following closing arguments, the jury was instructed and began its deliberations. The jury found defendant guilty of two counts of criminal sexual assault and four counts of aggravated criminal sexual abuse, and not guilty of two counts of aggravated criminal sexual abuse. The counts on which defendant was found not guilty were based on defendant placing his mouth on M.B.'s vagina during the cul-de-sac incident.

¶ 63 Defendant filed a posttrial motion for an acquittal or in the alternative to grant a new trial. That motion was denied and the trial court sentenced defendant to two consecutive seven-year sentences for the criminal sexual assault convictions, and two concurrent five-year sentences for

the aggravated criminal sexual abuse convictions to run consecutively to the criminal sexual assault convictions, for a total of 19 years. Defendant timely appealed.

¶ 64 II. ANALYSIS

¶ 65 Defendant raises several issues on appeal: (1) the State failed to prove defendant guilty beyond a reasonable doubt, (2) the trial court violated his right to a fair trial in barring defendant from calling Sheikhali , (3) in barring defendant from cross examining M.B. regarding her relationship with Chase , (4) and in admitting other bad acts regarding conduct at defendant's home and Six Flags, and (5) that the Covid-19 safety protocols imposed during trial violated defendant's sixth amendment rights, and (6) defendant received ineffective assistance of counsel when counsel failed to move for a directed verdict.

¶ 66 A. Sufficiency of the Evidence

¶ 67 Defendant argues that M.B.'s testimony was not corroborated by physical evidence. Although M.B. claimed defendant assaulted her at his home and in two of his trucks, the State did not present any evidence that M.B.'s DNA or fingerprints were found at any of these locations. Further, although M.B. recalled specific clothing items she wore on many of these occasions, none of these items were taken or tested, nor were any of the defendant's towels tested for semen or DNA. Additionally, police did not canvass the neighborhood to see if anyone saw the defendant's pickup truck in the cul-de-sac on the night M.B. smoked marijuana in defendant's truck. Further, none of the text messages contained any sexually explicit content or pictures.

¶ 68 Defendant also argues that M.B.'s testimony was too unreliable to form the basis of defendant's conviction. Defendant highlights the various details of her testimony on which she was impeached. Defendant also highlights aspects of her testimony which he argues are incredible, such as asking defendant to smoke marijuana even though she had never seen him smoke, and

allowing defendant to touch her during the cul-de-sac incident despite recently receiving stitches near her vagina. Defendant further argues that it is not credible that he would have sexual relations with M.B. in the public parking lot of a Walgreens and the Boone County Fair.

¶ 69 In response, the State argues that M.B.'s testimony was credible and that the highlighted inconsistencies relate to collateral matters. The State maintains that her testimony was partially corroborated by the defendant's version of the events in that his account largely mirrored M.B.'s account except that he denied any sexual misconduct. The State likewise maintains that while the text messages between M.B. and defendant do not contain any sexually explicit content, they do demonstrate that an inappropriate relationship existed between M.B. and defendant and suggest that more explicit conversations occurred over Snapchat. The State further argues the discovery of the stripper pole corroborates M.B.'s testimony. With regard to the lack of physical evidence, the State argues that M.B.'s testimony is sufficient to support defendant's conviction. The State also argues that defendant's argument regarding M.B.'s stitches cuts both ways, as in his version of events despite having stitches, she pleaded with defendant to have sex with her.

¶ 70 When considering the sufficiency of the evidence, a reviewing court, viewing the evidence in the light most favorable to the State, must consider whether any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. *Jackson v. Virginia*, 443 U.S. 307, 318-19 (1979). A reviewing court will not substitute its judgment for that of the trier of fact on the credibility of witnesses or the weight of the evidence. *People v. Cooper*, 194 Ill. 2d 419, 431 (2000). Therefore, a conviction will be reversed only if the evidence is so unreasonable, improbable, or unsatisfactory that it justified a reasonable doubt of the defendant's guilt. *People v. Wheeler*, 226 Ill. 2d 92, 115 (2007). "The testimony of a single witness is sufficient to convict if the testimony is positive and credible, even where it is contradicted by the defendant." *People*

v. Gray, 2017 IL 120958, ¶ 36. It is for the trier of fact to determine how flaws in part of the testimony affect the credibility of the whole. *People v. Cunningham*, 212 Ill. 2d 274, 283 (2004). As such, even deliberate falsehoods or contradictory testimony will not automatically destroy the credibility of a witness. *Id.*; *Gray*, 2017 IL 120958, ¶ 47. "Where the record is not such that the only inference reasonably drawn from flaws in the testimony is disbelief of the whole, a reviewing court should bear in mind that the fact finder had the benefit of watching the witness' demeanor." *Cunningham*, 212 Ill. 2d at 284.

¶ 71 The State's evidence in this case consisted primarily of M.B.'s testimony, and as such, defendant's conviction rests largely upon her credibility as a witness. Examining the highlighted inconsistencies in M.B.'s testimony, we find that they largely deal with collateral details.

¶ 72 Regarding the Vertical Endeavors incident, the only detail M.B. contradicted herself on was the location where the "age is just a number" conversation took place. Otherwise, defendant highlighted only details which were omitted from her story at different points (*i.e.*, she did not include defendant rubbing his beard on her arm in the VSI, and she did not discuss defendant offering to "go down on her" in her direct examination).

¶ 73 As to the stripper pole incident, the only inconsistency highlighted is whether defendant and M.B. went shopping afterward. Defendant maintains that the text messages from June 2, 2018, show that M.B. and defendant went shopping at Zumiez and ordered Chipotle on the day the stripper pole incident occurred. Defendant's assertion that that day was the same day of the stripper pole incident is tenuous and not clearly established. However even assuming *arguendo* that it was the same day, nothing about those text messages contradicts M.B.'s allegations that she went to his home and they engaged in sexual conduct. M.B. testified that practice likely ended around 11 a.m. and they got to defendant's house around 11:20 a.m. It took her around an hour to shower and

dry her hair. She estimated that the encounter with defendant lasted around 45 minutes and then they left to get food for her family. Defendant maintains that under this timeline they would have been picking up food no later than 3 p.m., which he presents as a flaw in her testimony. However, if June 2, 2018, was the date of the stripper pole incident, then that timeline matches remarkably well with the text messages, which show defendant and M.B. at Zumiez around 5:03 p.m. and then at Chipotle around 5:28 p.m. Apart from whether defendant and M.B. went shopping, M.B. did omit from her VSI, that defendant used the stripper pole, and omitted from her direct examination that defendant took her to his bedroom.

¶ 74 Regarding the cul-de-sac incident, defendant suggests that it is remarkable that M.B. would ask him to smoke marijuana even though she had never seen him smoke before. However, even defendant's rendition of events included her inviting him to smoke marijuana with her, so we are not sure how this casts doubt on her testimony. Defendant also suggests that it is incredible that she would allow defendant to touch her after just receiving stitches. However, as the State points out, even defendant's version of events has M.B. asking him to have sex with her despite the stitches. Further, M.B. did testify that the touching began to hurt and that she was in pain afterwards.

¶ 75 There were fairly notable inconsistencies regarding whether defendant placed his mouth on M.B.'s vagina during the cul-de-sac incident, and it is noteworthy that the jury found defendant not guilty on the counts that involved defendant placing his mouth on her vagina. Apart from these, there were no other inconsistencies, only omissions. In her VSI, M.B. omitted that defendant took off her pants, instead only saying that her pants came off. Defendant also highlights how M.B.'s written statement did not include the fact defendant placed his fingers in her vagina or that they smoked marijuana. It is worth noting that this statement was not something prepared at the request

of law enforcement, but something M.B. prepared in anticipation of her VSI to aid in the interview process and was a little less than two pages long. It is not surprising that this account would be incomplete or missing details.

¶ 76 With regard to the doubles practice incident, the only inconsistency was that at the VSI, M.B. was not 100 percent positive defendant's underwear came off; however, at trial she was 100 percent positive.

¶ 77 As to defendant's argument that it is incredible that he would have engaged in sexual conduct in the public parking lots of the Boone County Fair and Walgreens. We do not agree that it is so improbable or contrary to human experience that a person would engage in sexual conduct in a public parking lot. Indeed, while such conduct is generally considered to be a *rara avis*, such a scenario is not unheard of. See *Duncan v. City of Highland Board of Police & Fire Commissioners*, 338 Ill.App.3d 731 (2003). Additionally, both incidents occurred in the evening; it is not implausible that the parking lot could have been relatively empty or that the incident occurred in a secluded portion of the parking lot where defendant may have felt safe enough to engage in such conduct.

¶ 78 Further, there was some evidence corroborating M.B.'s testimony and demonstrating that an inappropriate relationship existed. Her mother overheard defendant's conversation in M.B.'s room where defendant discussed M.B.'s homecoming dress and remarked how everyone could see her "who ha." Likewise, her father's observation of defendant in M.B.'s room was contrary to his rule against boys being upstairs. The fact defendant's testimony largely mirrored M.B.'s testimony, except that he placed M.B. in the role of being sexually aggressive towards him and denied that any sexual conduct took place, also corroborates her testimony. Additionally, as the State points out, there is evidence of an inappropriate relationship revealed in the text messages.

¶ 79 Specifically, in the text messages defendant discusses M.B.'s appearance at length, and their attraction for one another. Some examples include: M.B. saying to defendant, "You don't realize how much better she is then [*sic*] me because you aren't attracted to girls like her your [*sic*] attracted to girls like me," when discussing T.B. When M.B. said she did not like her body, defendant said, "Yeah me either. It's just too perfect. All the guys gawking and staring at you all the time is really annoying. And all the girls being jealous it just gets old." Defendant also told M.B., "When I catch you staring at my arms with your mouth open you don't really need to say anything. I know what you're honestly thinking." He also told her, "Hearing that I'm attractive from an attractive person means a lot!" There was also the following exchange of text messages:

M.B.: "Fuk u"

M.B.: "Fuckkkk uuu"

Defendant: "You wish"

M.B.: "Haha no u wish #drunk"

Defendant: "Oh I'll get you drunk"

While none of this content directly addresses any of the alleged criminal conduct, it does tend to show that defendant's relationship with M.B. was sexual in nature. Defendant tries to explain that these messages were either jokes or intended only to boost M.B.'s confidence. While it may not be unusual to want to help a teenage girl feel more secure about her appearance, the jury clearly could have found it unusual for a 39-year-old man to tell a 14-year-old girl that she is attractive, or to discuss how she is attracted to him. What is also noteworthy is the number of text messages sent between defendant and M.B. Out of a total of 9282 messages on defendant's phone, roughly a quarter, 2260, of them were between him and M.B. Overall the text messages and her parents'

testimony tend to corroborate for the jury that defendant entered into an inappropriate sexual relationship with M.B.

¶ 80 M.B.'s testimony was further corroborated by the police's discovery of the stripper pole and its mount in one of defendant's spare rooms. While defendant tried to explain that he and M.B. had previously discussed the stripper pole, his version of events does not explain how M.B. knew what room the pole was located in, since according to defendant, M.B. had only been inside of his house once and on that occasion she only went into his living room.

¶ 81 As such, we cannot say that M.B.'s testimony was so unreasonable, improbable, or unsatisfactory that it justified a reasonable doubt of the defendant's guilt.

¶ 82 B. Admissibility of Sheikhali's Testimony

¶ 83 Defendant argues that the trial court erred when it granted the State's seventh motion *in limine* barring Sheikhali from testifying.

¶ 84 Defendant proffered that Sheikhali would testify that M.B. asked him to go with her group to the homecoming dance. They went to the dance. He and M.B. danced, kissed, and went for a walk. On the walk they discussed engaging in sexual activities, but Sheikhali decided against it and returned to the dance before being picked up by his sister. Before leaving M.B. urged him to come back to her house with her sister and her sister's boyfriend to go swimming. He declined. The next day he was added to a Snapchat group with several girls where M.B. had claimed that Sheikhali raped her. Sheikhali, did not think anyone believed her, but he was worried and told M.B. he would sue her for defamation if she did not stop. She then apologized to him, and he blocked her number.

¶ 85 The trial court granted the State's motion *in limine* barring Sheikhali from testifying. The basis for the trial court's decision was that the proffered testimony was inadmissible under *People*

v. Cookson, 215 Ill. 2d 194 (2005), because the allegation involved a third party rather than defendant, and it was essentially being offered for no reason other than to say that because M.B. lied on a previous occasion, she must have lied regarding the charged conduct.

¶ 86 Defendant maintains that the testimony was admissible under *Cookson* to prove M.B.'s specific motive to lie or bias. Defendant claims that the testimony would demonstrate that M.B. levied false allegations against both defendant and Sheikahli for the motive of gaining attention from others and that she had a bias towards them because they rejected her attempts to engage in sexual conduct.

¶ 87 In response, the State argues that defendant failed to argue this basis for admissibility before the trial court, and thus defendant's argument should be deemed forfeited. Further, the State argues that defendant's assertion that M.B. made these allegations to garner attention for herself is unsupported by the proffer. Nowhere, is there evidence that she received attention for the incident involving Sheikhali. As such, the alleged motive is remote, uncertain, and speculative.

¶ 88 Where a defendant fails to object to an error at trial and include the error in a post-trial motion, defendant forfeits ordinary appellate review of that error. *People v. Johnson*, 238 Ill. 2d 478, 484 (2010). Defendant does not argue that he preserved these errors. Our review of testimony at trial shows that defendant did not object concerning any of the alleged errors now being raised. Defendant also did not raise the issue in his post-trial motion but now raises this claim for the first time on appeal. Thus, defendant failed to preserve this error for review and has forfeited those issues before us. However, plain error allows a defendant to bypass normal forfeiture principles where:

> "(1) a clear or obvious error occurred and the evidence is so closely balanced that the error alone threatened to tip the scales of justice against the defendant, regardless of the

> seriousness of the error, or (2) a clear or obvious error occurred and that error is so serious that it affected the fairness of the defendant's trial and challenged the integrity of the judicial process, regardless of the closeness of the evidence." *People v. Piatkowski*, 225 Ill. 2d 551, 565 (2007); citing *People v. Herron*, 215 Ill.2d 167, 186-87 (2005).

A defendant who fails to argue for plain-error review obviously cannot meet his burden of persuasion. *People v. Nieves*, 192 Ill.2d 487 (2000). Additionally, forfeiture is a limitation on the parties, not the court, and we may review forfeited issues in the interest of maintaining a sound body of law. *Klaine v. Southern Illinois Hospital Services*, 2016 IL 118217, ¶ 41.

¶ 89 The admissibility of evidence is within the discretion of the trial court, and its decision will not be disturbed absent an abuse of discretion. *People v. Pikes*, 2013 IL 115171, ¶ 12. "An abuse of discretion occurs only when the trial court's decision is arbitrary, fanciful, or unreasonable or where no reasonable person would take the view adopted by the trial court." *Seymour v. Collins*, 2015 IL 118432, ¶ 41.

¶ 90 The "proper procedure for impeaching a witness' reputation for truthfulness is through the use of reputation evidence and not through opinion evidence[5] or evidence of specific past instances of untruthfulness." *Cookson*, 215 Ill. 2d at 213. That being said, "a witness may be impeached by a showing of bias, interest, or motive to testify falsely." *Id.* "However, the evidence that is used must give rise to the inference that the witness has something to gain or lose by his or her testimony. Therefore, the evidence used must not be remote or uncertain." *People v. Bull*, 185

[5] Since *Cookson* our supreme court has adopted Illinois Rules of Evidence 405 (eff. Jan. 1, 2011) and 608 (eff. Jan. 6, 2015) which allow for the impeachment of a witness's reputation for truthfulness through opinion evidence.

Ill. 2d 179, 206 (1998).

¶ 91 We agree with the State the defendant has forfeited the argument that Sheikhali's testimony was admissible to demonstrate a particular motive or bias. "When a party offers evidence, it must also offer all possible theories under which the evidence may be admissible." *Salcik v. Tassone*, 236 Ill. App. 3d 548, 555 (1992). At the hearing on the State's motion *in limine*, defendant emphasized the similarity of the circumstances between Sheikhali's testimony and the case at hand, but never once mentioned that this demonstrated a motive to gain attention or a bias towards men who denied her advances. Likewise, defendant did not include these arguments in his motion for new trial. At the outset, we note that the State argues that defendant has forfeited this issue by failing to object in the trial court or to raise the issue in a post-trial motion. The State also argues that although defendant's claim could be reviewed for plain error, defendant has failed to argue plain error in his opening brief. Defendant acknowledges that this issue was not properly preserved, but disagrees with the State that he has also forfeited plain-error review. In the absence of a plain-error argument by a defendant, we will generally honor the defendant's procedural default. *People v. Hillier*, 237 Ill.2d 539, 545 (2010). However, although defendant did not argue plain error in his opening brief, he has argued plain error in his reply brief, which is sufficient to allow us to review the issue for plain error. *People v. Williams*, 193 Ill.2d 306, 348 (2000).

¶ 92 However, even under a plain error analysis, we do not see how the proposed motive or bias is not remote and uncertain. Claiming that M.B. wanted attention is not a specific motivation. Nor was that motivation evident in the proffer. As for defendant's claim that M.B. was biased towards Sheikhali and defendant for denying her advances, there is nothing demonstrating that the bias towards Sheikhali carried over to the defendant. See *Cookson*, 215 Ill. 2d at 216. Further, the two incidents were not close in time, occurring approximately a year apart. *Id*. As such, the proposed

bias is likewise remote and uncertain.

¶ 93 C. Cross Examination Regarding M.B.'s Relationship with Chase

¶ 94 Defendant also maintains that one of his theories of the case was that the detailed actions which M.B. described as occurring between her and the defendant actually took place between M.B. and Chase, and that M.B. accused defendant of assaulting her to avoid getting in trouble with her parents for being involved with Chase. Defendant argues that when he tried to cross examine M.B. with text messages (which were already admitted into evidence) detailing her relationship with Chase, the trial court erroneously sustained the State's rape shield objection in violation of defendant's sixth amendment rights to confront his accuser.

¶ 95 Moreover, M.B. had testified on direct examination that she went to Vertical Endeavors because defendant invited her. Defendant then tried to impeach her using a prior inconsistent statement that she went because she believed that if she stayed home, she would take advantage of her parents being gone to invite people over to the house. Defendant argues that the court erred by likewise barring this testimony under the rape shield statute, despite the answer involving no sexual conduct.

¶ 96 The State argues as follows. Defendant did not raise any of these issues in his motion for new trial and therefore forfeited the issue on appeal. Additionally, defendant never proffered what questions the defense intended to ask M.B. or what her answers would have shown. Further, that evidence of a prior sexual relationship with Chase would have been inadmissible under the rape shield statute. The trial court did admit evidence that M.B. had a relationship with Chase over the summer of 2018, that she had been caught and punished for sneaking out to meet with Chase, and M.B. lied during the VSI about certain things because she was scared about getting in trouble. It is clear this evidence permitted defendant to advance his theory of the case and impeach M.B.

without getting into irrelevant matters regarding M.B.'s prior sexual conduct.

¶ 97 Defendant also failed to raise this issue in a post-trial motion, and thus forfeited the issue for review. However, defendant request we consider his argument under the first prong of the plain error analysis.

¶ 98 The admissibility of evidence is within the discretion of the trial court and its decision will not be disturbed absent an abuse of discretion. *Pikes*, 2013 IL 115171, ¶ 12. Section 115-7 of the Code of Criminal Procedure (725 ILCS 5/115-7 (2018)) bars evidence of the prior sexual activity or the reputation of the victim except where constitutionally required. The confrontation clause of the sixth amendment guarantees defendant the right to confront his accuser. Accordingly, defendant's right to confront M.B. through cross examination supersedes the protections of the rape shield statute. See *People v. Gray*, 209 Ill. App. 3d 407, 416 (1991). However, "trial judges retain wide latitude insofar as the Confrontation Clause is concerned to impose reasonable limits on such cross-examination based on concerns about, among other things, harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

¶ 99 While cross examining M.B., defendant sought to question M.B. regarding her relationship with Chase. The court sustained the State's objections and defendant made the following offer of proof:

> "BY MS. ROTUNNO [(DEFENSE ATTORNEY)]:
>
> Q. And how you wanted to be with Chase?
>
> MS. LOMBARDO [(FIRST ASSISTANT STATE'S ATTORNEY)]: Objection.
>
> THE COURT: Yeah. It's sustained on that. Let's move on.
>
> BY MS. ROTUNNO:

Q. If Chase left his girlfriend, you'd want to date him?

MS. LOMBARDO: Objection.

THE COURT: Sustained. You guys want to approach on where you're going with this.

(Sidebar discussion held at the bench and outside the hearing of the jury.)

THE COURT: What's the relevance?

MS. ROTUNNO: Judge, I believe that many of her stories that she's telling about Doug are things that happened with Chase. I'm not going to go into any of those things —

THE COURT: Do you have any proof of any of those?

MS. ROTUNNO: I have text messages.

THE COURT: Because right now you're asking questions, just leaving it out there, but you're not able to perfect —

MS. ROTUNNO: I have text messages between her and Chase, reasons that —

THE COURT: Well, lets assume that's true, she wanted to have relations with Chase. What's that got to do with this?

MS. ROTUNNO: Judge, our whole position is that Mr. Valentine never had an inappropriate relationship with her and she used all of this to get the attention that she's getting and she got the attention she wanted in that period of her life and — I'll move on.

THE COURT: Why don't you move on. I think you can still argue that.

MS. ROTUNNO: Okay. Thanks."

¶ 100 While defendant maintained that there were text messages that would demonstrate what occurred between M.B. and Chase, he failed to give any explanation of what the contents of those messages would be and how they would prove any fact in consequence. An offer of proof "serves

no purpose if it does not demonstrate, both to the trial court and to reviewing courts, the admissibility of the testimony which was foreclosed by the sustained objection." *People v. Andrews*, 146 Ill. 2d 413, 421 (1992). We do not know from the record what these text messages were meant to show. Nor does defendant's brief on appeal make the issue any clearer as defendant still has not indicated either what text messages he is referring to or their contents.

¶ 101 Further, regarding the defendant's theory that Chase committed the alleged offenses, a defendant is permitted to present evidence that a different culprit committed the alleged actions. *People v. Maxwell*, 2011 IL App (4th) 100434, ¶ 78. "However, if the evidence is too remote or too speculative [citation], or if it fails to link a third person closely with the commission of the crime [citation], then the trial court should exclude the evidence." *People v. Bruce*, 185 Ill. App. 3d 356, 364 (1989).

¶ 102 The evidence that the sexual conduct at issue here took place with Chase rather than defendant, and that M.B. lied to avoid getting in trouble for seeing Chase, is too remote and speculative. M.B.'s testimony included many details that would not have been present had they occurred with someone other than defendant. The alleged conduct very specifically took place either at defendant's home or in his vehicles. M.B. described interacting with particular features of those locations, such as folding up the center console of the truck or doing tricks on the stripper pole in defendant's home. These were not generic encounters wherein a name could easily be swapped to make the story about someone else. Further, examining the text messages in the record did not reveal any evidence of explicit sexual conduct between M.B. and Chase, and especially did not reveal any messages outlining any conduct which matches up with any of the actions M.B. testified as occurring between herself and defendant. Further there is nothing to indicate that M.B. believed her parents suspected her of engaging in sexual activity with Chase. In fact, her mother

only asked her whether something was going on between her and defendant, not Chase. Additionally, when she confided in her best friend, Jason, and her other friends they were not in any position to punish her for spending time with Chase.

¶ 103 Consequently, because defendant failed to make a sufficient offer of proof, there is insufficient evidence to determine whether the trial court's exclusion of the evidence was error. See *People v. Wilder*, 146 Ill. App. 3d 586, 591 (1986). Additionally, the argument that M.B. performed the alleged sexual activities with Chase rather than defendant is too remote or speculative to supersede the protections of the rape shield statute.

¶ 104 Defendant also sought to question M.B. regarding why she went to Vertical Endeavors. M.B. testified that she went because defendant invited her. On cross examination defendant sought to confront her with her VSI statement, that if she stayed home she intended to take advantage of the fact her parents were away and "invite some guy over." The trial court sustained the State's objection. Defendant maintained that M.B. lied in her direct examination and this was appropriate impeachment. It was not. Defendant testified that he did invite M.B. to Vertical Endeavors, as she testified. The fact that she may have gone to avoid doing something else which would have gotten her in trouble with her parents does not render her statement false. Additionally, the VSI is not in the record on appeal, and we cannot verify its contents. "[A]n appellant has the burden to present a sufficiently complete record of the proceedings at trial to support a claim of error * * *. Any doubts which may arise from the incompleteness of the record will be resolved against the appellant." *Foutch v. O'Bryant*, 99 Ill. 2d 389, 391-92 (1984). Accordingly, we cannot conclude that the trial court abused its discretion in barring evidence of M.B.'s relationship with Chase.

¶ 105 D. Admissibility of Other Bad Acts

¶ 106 Defendant argues that in weighing whether evidence regarding the stripper pole incident,

the doubles practice incident, and the Six Flags incident should be admitted, the trial court failed to consider to what extent the bad acts would evolve into trials within a trial, confuse the jury, and become the trial's focal point. Defendant maintains that the uncharged acts became the focal point of the trial taking up approximately 60% of M.B.'s testimony and involving 15 uncharged acts as opposed to only 5 charged acts. Defendant argues that particularly, after initially deeming evidence of the stripper pole incident admissible under Section 115-7.3 of the Code of Criminal Procedure because the conduct did not amount to one of the statutes enumerated offenses, the court admitted the evidence under Illinois Rule of Evidence 404(b) without properly considering its more exacting standards. Defendant further argues that the trial court admitted the evidence of the stripper pole for the purpose of showing motive, which is improper in this instance because defendant was denying the alleged conduct ever took place.

¶ 107 The State argues as follows. Defendant's argument regarding the admission of the doubles practice incident and the Six Flags incident are forfeited because defendant did not raise those issues in his motion for new trial. Regarding the stripper pole incident, it was admissible because it showed the nature of the relationship between M.B. and defendant. This was the first instance of inappropriate physical conduct between defendant and M.B., and demonstrates the "grooming" process which defendant used to move from a trusted family friend, to engaging in sexual conduct with M.B. With regard to the doubles practice incident and the Six Flags incident, these events all occurred close in time to the charged conduct, all involved a single victim's testimony and were of similar gravity as the charged conduct, so there was little risk of confusing the jury. The State also urges us to reject defendant's statistical argument regarding the time of testimony.

¶ 108 Defendant argues that the admission of the doubles practice incident and Six Flags incident should be considered plain error under the "closely balanced" prong of the analysis.

¶ 109 Illinois Rule of Evidence 404(b) (eff. Jan. 1, 2011) provides that evidence of other crimes is generally inadmissible to prove the character of a person in order to show action in conformity therewith. Such evidence is admissible if it is relevant for any purpose other than to show the propensity to commit a crime. *People v. Thingvold*, 145 Ill. 2d 441, 455 (1991). "However, even where relevant, the evidence should not be admitted if its probative value is substantially outweighed by its prejudicial effect." *Pikes*, 2013 IL 115171, ¶ 11.

¶ 110 Evidence of prior bad acts may be relevant to show how a previously positive relationship between a defendant and a minor victim led to inappropriate sexual conduct. See *People v. Brown-Engel*, 2018 IL App (3d) 160368, ¶ 23. Without evidence of prior bad acts to provide context, instances of sexual abuse can appear to come out of nowhere, unduly straining the credibility of the victim. *Id.*; see also *People v. Perez*, 2012 IL App (2d) 100865, ¶ 50. Without the context of the stripper pole incident, the next instance of charged conduct would have been the cul-de-sac incident wherein M.B. invited defendant, an older family friend, to come get high with her; and where after smoking defendant proceeded to remove her bra, fondle her breasts, remove her pants, and place his fingers insider her vagina. Without the evidence of previous inappropriate conduct to explain how the relationship to defendant got to that point, M.B.'s account would indeed appear to have come from out of nowhere. Accordingly, we find that the probative value of the evidence outweighed any prejudice to defendant.

¶ 111 With regard to the admission of the doubles practice incident and the Six Flags incident, defendant failed to raise those issues in his motion for new trial and thus they are waived. Accordingly, we review for plain error. Section 115-7.3 allows evidence of a defendant's prior sexual activity with a child to be admitted for any purpose in prosecution for certain sexual offenses. *Perez*, 2012 IL App (2d) 100865, ¶ 46. In weighing the probative value of such evidence,

the court may consider "(1) the proximity in time to the charged or predicate offense; (2) the degree of factual similarity to the charged or predicate offense; or (3) other relevant facts and circumstances." 725 ILCS 5/115-7.3 (West 2018). "Other relevant considerations include "whether the other-crimes evidence will become the focus of the trial, or whether it might otherwise be misleading or confusing to the jury." *Perez*, 2012 IL App (2d) 100865, ¶ 47. Defendant admits that the first two factors weighed in favor of admission of the evidence.

¶ 112 Much like the stripper pole incident, the doubles practice incident and Six Flags incident provide meaningful context for the charged conduct. They demonstrate the course of M.B. and defendant's relationship. They show how the sexual conduct escalated and how ultimately M.B. came to distance herself from the defendant and divulge the conduct to her parents. Further, we cannot say that the addition of the two uncharged incidents (three including the stripper pole incident) led to a trial within a trial, or confusion among the jury. See *Id.* ¶ 54 (evidence of three or four uncharged incidents was sufficiently narrow in scope to avoid mini trials, even where volume of other crimes evidence exceeded that of the charged conduct). Accordingly, we do not find that the trial court abused its discretion, and therefore there is no plain error.

¶ 113 D. Covid-19 Protocols

¶ 114 The trial took place during the Covid-19 global pandemic, so several safety protocols were implemented to protect against contracting or spreading the virus. The jurors sat six feet apart in the gallery pews rather than in the jury box. Everyone in the courtroom wore masks unless they were speaking. As such, witnesses and examining attorneys were not required to wear masks throughout the trial, nor was defendant required to wear a mask while testifying.

¶ 115 Defendant argues that the safety protocols implemented during the jury trial, in response to the pandemic, violated his sixth amendment rights. Defendant maintains that having the jurors

sit in the pews inhibited the jurors' ability to effectively observe and discern the witnesses' demeanors as they testified. Defendant further argues that the fact that he and his attorneys had to wear masks prevented them from communicating effectively in the courtroom. He asserts that it likewise prevented jurors from observing his reaction to the evidence and testimony of other witnesses.

¶ 116 The State again argues that defendant failed to raise any challenge to the Covid-19 protocols either before or during the trial, only doing so in his motion for new trial. The State argues that defendant has therefore forfeited these arguments. Additionally, the State argues that defendant failed to make a sufficient record before the trial court to enable review. According to the State, there is nothing in the record indicating how far the jurors were from the witness versus where they would be during a typical trial, likewise there is nothing in the record demonstrating where defendant and defense counsel were in relation to each other or what difficulties they had in communicating.

¶ 117 The defendant argues that the issue is reviewable under the first prong of the plain error analysis.

¶ 118 We agree with the State that defendant has failed to make a sufficient record of these issues before the trial court. The defendant did not express any concerns regarding the juror's ability to observe the witnesses either before or during the trial. He did not ask the judge to inquire of the jury whether or not they were able to see and hear the witnesses. Nor is there anything in the record indicating that any of the jurors had any such issues. In short, the record lacks any indication that the jury's ability to observe the proceedings was compromised by sitting in the gallery, and to conclude otherwise calls for speculation. Likewise, there is nothing in the record indicating that the defendant had any meaningful difficulty communicating with his attorneys, or even that he

requested to be allowed to remove his mask to more clearly communicate with his attorneys. Because the defendant failed to make a record of these issues before the trial court, there is nothing upon which we could determine there to be error. As such, defendant has failed to show plain error.

¶ 119 Where a defendant raises an issue on appeal, they risk precluding that issue from review in a postconviction petition. See *People v. Blair*, 215 Ill. 2d 427, 443 (2005) ("The doctrine of *res judicata* bars consideration of issues that were previously raised and decided on direct appeal."). In oral argument defendant's appellate counsel expressed plans to raise an ineffective assistance of counsel argument relating to trial counsel's failure to object to the Covid-19 protocols at trial in a post-conviction petition. Because the record is insufficient, we do not reach the merits of the Covid-19 issue. However, we warn counsel that had we reached the merits, it would have likely precluded review of the issue of ineffective assistance of counsel in a post-conviction petition.

¶ 120 E. Ineffective Assistance of Counsel

¶ 121 Last, defendant argues that his trial counsel was ineffective when they failed to move for a directed verdict at the close of the State's case in chief. Where a claim for ineffective assistance was not raised in the trial court, review is *de novo*. *People v. Lofton*, 2015 IL App (2d) 130135, ¶ 24. To demonstrate ineffective assistance of counsel, a defendant must prove that (1) counsel's performance was deficient or fell below an objective standard of reasonableness and (2) that counsel's deficient performance prejudiced the defendant such that they were deprived of a fair trial, the result of which is unreliable. *Strickland v. Washington*, 466 U.S. 668, 687 (1984). "Defense counsel is not required to make losing motions or objections in order to provide effective legal assistance." *People v. Moore*, 2012 IL App (1st) 100857, ¶ 45. A directed verdict is appropriate when, after viewing all of the evidence in a light most favorable to the State, no reasonable juror could find that the State had met its burden of proving the defendant guilty beyond

a reasonable doubt. *People v. Shakirov*, 2017 IL App (4th) 140578, ¶ 81. At the close of the State's case in chief, M.B. had testified to each element of the charges against defendant. A directed verdict would not have been appropriate, such that defense counsel was not ineffective for failing to move for a directed verdict.

¶ 122 III. CONCLUSION

¶ 123 For the foregoing reasons, the judgment of the circuit court of Boone County is affirmed.

¶ 124 Affirmed.