

Following a jury trial, Scott Lawrence was convicted of four counts of class C felony Child Molesting.¹ On appeal, Lawrence argues that the trial court abused its discretion in disallowing certain evidence he sought to introduce at trial to impeach the credibility of the complaining witness and/or her mother.

We affirm.

B.M. was born in December 1994. A few years later, B.M.'s mother, Candance, married Lawrence. For several years prior to Lawrence's arrest in March of 2008, B.M., her mother, and Lawrence lived in a mobile home in Marion County. Lawrence had two children, including a daughter, M.L., from a previous marriage. B.M. and M.L. are very close in age and were close emotionally, considering themselves to be sisters rather than step-sisters. M.L. was a regular visitor to the household on weekends and holidays.

When B.M. and M.L. were approximately four years old, Candance told Lawrence's ex-wife that she had observed M.L. inappropriately touch B.M. while the two preschoolers were bathing together. B.M. has no recollection of this event and no formal report was ever filed.

In June 1999, when B.M. was four and a half years old, Candance reported that B.M. had been abused by her biological father. The allegation stemmed from a visit between B.M. and her biological father during which B.M. had taken a shower with her father and had washed his "body all over", including "his private parts." Exhibit Volume at 54. When questioned about the incident, B.M. indicated her knowledge of private parts and their

¹ Ind. Code Ann. § 35-42-4-3 (West, PREMISE through Public Laws approved and effective through

functions and reported that her “[d]addy does scary stuff” when she is in the shower with him. *Id.* A member of Lawrence’s extended family claimed that B.M. denied ever showering with her father. In any event, the report was “substantiated” by a family case manager “due to [B.M.’s] statement”. *Id.*

A few years later, when B.M. was seven years old, B.M. told her mother that a teacher at her elementary school had caused bruising to her legs. Candance filed a report in February 2002, and the incident was subsequently investigated. At the time of the report, police officers interviewed B.M. and took photographs of the bruises. When interviewed seven months later by an investigator with child protective services, B.M. denied that her teacher had given her the bruises. Regardless, the allegation of abuse was “substantiated” due to the photographic evidence of the bruises and B.M.’s initial statements. *Id.* at 52.

Sometime in 2007, Candance made an accusation that she was herself a victim of a rape. This allegation was apparently motivated by Lawrence’s discovery that Candance was having an extramarital affair. Candance later admitted that the allegation was false.

Near the end of November 2007, B.M. did not go to school and was home alone with Lawrence all day. At some point, Lawrence began wrestling with B.M. and took it “too far” when he put game pieces and ice cubes in her underwear. *Transcript* at 49. Lawrence also took B.M.’s pants off. Once the wrestling stopped, B.M. put her pants on and went to the restroom.

4/20/2009).

When B.M. returned to the living room, she sat on the couch and Lawrence came over and sat on her lap, straddling her with his legs. Lawrence, who was wearing sweatpants with holes in the crotch area, began rubbing his penis on B.M.'s stomach. Lawrence then directed B.M. to go to her room. While sitting on the bed in her room, Lawrence exposed his penis through one of the holes in his pants and forced B.M. to place her hand on it. After that day, Lawrence touched B.M.'s breasts on multiple occasions. During one incident, Lawrence entered B.M.'s bedroom and placed one hand beneath her shirt on her breast and one hand down her pants near her vagina. B.M. eventually told M.L. about these incidents, and M.L. encouraged her to tell her mother. Two days later, B.M. told her mother that Lawrence had been molesting her. Candance called the police the next day. B.M. was interviewed by a forensic child interviewer and also submitted to a physical examination.

On March 14, 2008, the State charged Lawrence with ten counts of child molesting, including four class A felonies and six class C felonies. In November 2008, Lawrence filed his notice of intention to offer evidence that B.M., as well as her mother, had previously provided false accusations of abuse. In January 2009, the State filed a motion in limine requesting that prior uncharged acts of misconduct and the history of reported abuse be excluded from evidence. The trial court held a hearing on Lawrence's evidentiary notice and the State's motion in limine, at the conclusion of which the court concluded that Lawrence could not present evidence of the B.M.'s prior accusations against M.L., her biological father, or her teacher. The trial court ruled, however, that Lawrence would be permitted to

inquire for impeachment purposes into Candance's past allegation of rape on cross-examination if such became relevant based upon her direct testimony.

A two-day jury trial commenced on February 2, 2009. During the trial, Lawrence made a record stating that he would have asked B.M. about the previous allegations of abuse directed toward her step-sister, biological father, and teacher that the trial court had ruled inadmissible. Lawrence also attempted to call his aunt to the stand and elicit testimony from her that she believed B.M. was lying about the allegations against him. The trial court ruled the witness would not be allowed to so testify. At the conclusion of the evidence, the jury found Lawrence guilty of four counts of class C felony child molesting. The jury could not reach a verdict on the remaining counts, and those allegations were later dismissed. On February 25, 2009, the trial court sentenced Lawrence to four years of imprisonment for each conviction, ordering three of the sentences to run concurrent to each other but consecutive to the fourth. The trial court suspended four years of the sentence and imposed a period of probation.

Lawrence appeals, arguing the trial court abused its discretion in excluding evidence of prior false accusations or inconsistent statements by B.M. and Candance he sought to offer at trial to impeach their credibility. Questions regarding the admission of evidence are within the sound discretion of the trial court, and we review the court's decision only for an abuse of that discretion. *State v. Seabrooks*, 803 N.E.2d 1190 (Ind. Ct. App. 2004). A trial court abuses its discretion only if its decision is clearly against the logic and effect of the facts and circumstances before it, or if the court has misinterpreted the law. *Id.*

Lawrence offers alternative bases for the admissibility of prior false accusations or inconsistent statements. Lawrence first argues that the trial court’s exclusion of evidence pertaining to prior false allegations of B.M. and Candance deprived him of his constitutional right to present a defense.² In support of his argument, Lawrence relies upon *State v. Walton*, 715 N.E.2d 824 (Ind. 1999).

In *Walton*, our Supreme Court considered whether the common law exception to the Rape Shield Rule survived the adoption of the Indiana Rules of Evidence. Specifically, the Court considered whether evidence of prior false accusations of rape made by the complaining witness were admissible. The Court analyzed the interplay between Evid. R. 412 and Evid. R. 608(b). The Court noted that Evid. R. 412 reflected the following basic principles of the Rape Shield Rule:

“[I]nquiry into a victim’s prior sexual activity is sufficiently problematic that it should not be permitted to become a focus of the defense. Rule 412 is intended to prevent the victim from being put on trial, to protect the victim against surprise, harassment, and unnecessary invasion of privacy, and, importantly, to remove obstacles to reporting sex crimes.”

State v. Walton, 715 N.E.2d at 826 (quoting *Williams v. State*, 681 N.E.2d 195, 200 (Ind. 1997)). The court then considered whether permitting the admission of such evidence under Evid. R. 412 is at odds with Evid. R. 608, which states, in relevant part: “[f]or the purpose of attacking or supporting the witness’s credibility, other than conviction of a crime as provided

² Every defendant has the fundamental right to present witnesses in their own defense. *Roach v. State*, 695 N.E.2d 934 (Ind. 1998). Yet this right is not absolute. *Id.* ““In the exercise of this right, the accused, as is required of the State, must comply with established rules of procedure and evidence designed to assure both fairness and reliability in the ascertainment of guilt and innocence.”” *Id.* at 939 (quoting *Chambers v. Mississippi*, 410 U.S. 284, 302 (1973)).

in Rule 609, *specific instances may not be inquired into or proven by extrinsic evidence.*” Evid. R. 608(b) (emphasis supplied). The Court noted that Evid. R. 608(b) provides no exception for prior false accusations. The Court nevertheless concluded that in the context of the Rape Shield Rule, as incorporated in Rule 412, “the evidentiary rule preventing evidence of specific acts of untruthfulness [Evid. R. 608(b)] must yield to the defendant’s Sixth Amendment right of confrontation and right to present a full defense.” *State v. Walton*, 715 N.E.2d at 827. The Court held that the common law exception permitting the admission of evidence of prior false accusations of rape by the complaining witness survived the adoption of the Rules of Evidence. Nevertheless, the Court noted that for evidence of prior false accusations of rape to be admissible, it must be shown that (1) the complaining witness admitted he or she made a prior false accusation of rape; or (2) the accusation is demonstrably false. *State v. Walton*, 715 N.E.2d 824 (citing *Stewart v. State*, 531 N.E.2d 1146 (Ind. 1988)). We have subsequently held that the common-law exception upheld in *Walton* is limited to a very narrow set of circumstances, i.e., prior false allegations of rape.

As an alternative basis in support of admissibility, Lawrence argues that the evidence he sought to introduce but which was excluded by the trial court was admissible under what has become known as reverse 404(b), i.e., a defendant can introduce evidence of someone else’s conduct if it tends to negate the defendant’s guilt. *See Garland v. State*, 788 N.E.2d 425 (Ind. 2003). In *Garland*, our Supreme Court held that a defendant may introduce such evidence “only when the exceptions of 404(b) apply.” 788 N.E.2d at 430. Evid. R. 404(b) provides:

Evidence of other crimes, wrongs, or acts is not admissible to prove the character of a person in order to show action in conformity therewith. It may, however, be admissible for other purposes, such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident

Lawrence maintains that the proffered evidence of prior accusations by B.M. and Candance was admissible as proof of knowledge, plan, intent, and motive and also relevant to show the relationship between the parties.

We first consider Lawrence's claim that the trial court abused its discretion in preventing him from attacking B.M.'s credibility with evidence that B.M. had made allegations of abuse and molestations in the past. The three specific incidents of conduct that Lawrence sought to use for impeachment purposes were that (1) B.M. had falsely accused her step-sister, M.L., of molestation when the girls were approximately four years old; (2) B.M., through her mother, had filed a complaint against her biological father accusing him of inappropriate touching while bathing or showering with him; and (3) B.M. accused a teacher of causing bruising to her legs.

We begin by noting that the common-law exception for prior accusations proven to be demonstrably false is limited to prior false accusations of rape made by the complaining witness. *See State v. Walton*, 715 N.E.2d 824; *Saunders v. State*, 848 N.E.2d 1117 (Ind. Ct. App. 2006), *trans. denied*. This very narrow exception is inapplicable to the prior accusations Lawrence sought to inquire about during his cross-examination of B.M.

Even if the exception were applicable, Lawrence would not prevail. With regard to the first allegation, the trial court concluded such did not constitute a prior *false* allegation. Indeed, B.M. testified that she had no recollection of being inappropriately touched by her

step-sister (M.L.) and no recollection of reporting the incident aside from what she had been told by her mother. Further, M.L. had no recollection of the incident or of the allegation. Rather, the allegation came directly from B.M.'s mother. Thus, the accusations involving M.L. could not be used to attack B.M.'s credibility as her credibility was not at stake because she simply had no memory of an incident that supposedly occurred when she was four years old. The trial court properly prohibited Lawrence from inquiring into this particular accusation during cross-examination of B.M.

With regard to the second allegation against B.M.'s biological father, the trial court again concluded that Lawrence had not demonstrated that it was a prior *false* allegation. This court has held that a prior accusation is demonstrably false where the allegations "have been disproved." *Candler v. State*, 837 N.E.2d 1100, 1103 (Ind. Ct. App. 2005). Here, the record supports the trial court's determination that the allegation was not demonstrably false. To be sure, the record shows Candance filed a complaint against B.M.'s biological father and the matter was investigated. After speaking with B.M., the report was deemed substantiated by investigators based upon B.M.'s statement. Although B.M. continued to visit with her biological father after the report was substantiated, the visits were supervised. Such continued visitation does not, as argued by Lawrence, demonstrate that the allegations were false. We further note that B.M.'s father was never tried and acquitted of the allegations. The trial court properly determined that the prior accusation against B.M.'s biological father was not admissible to impeach B.M.'s credibility.

We turn now to the third allegation regarding B.M.'s claim that a teacher caused bruising to her legs. The trial court noted that the allegation, although not prosecuted, was substantiated by investigators. Thus, the allegation did not qualify as a prior false accusation. Further, this allegation is wholly dissimilar from the incidents of molestations at issue. We agree with the trial court's assessment and conclude that the court did not abuse its discretion in excluding evidence of B.M.'s accusations against her teacher.

Because the common law exception was not applicable, the issue became whether Lawrence would be permitted to inquire into these specific instances of conduct. The evidence Lawrence sought to introduce was inadmissible under Evid. R. 608(b), which prevents a defendant from attacking a witness's credibility with extrinsic evidence of specific instances of conduct. The exclusion of testimony regarding B.M.'s prior accusations was pursuant to a well-established rule of evidence. The trial court did not abuse its discretion in precluding Lawrence from presenting such evidence. We also cannot conclude that the trial court's exclusion of such evidence infringed upon Lawrence's right to present a defense.

We also conclude that the evidence of the prior allegations is not admissible under Evid. R. 404(b). As noted above, under reverse 404(b), a defendant can introduce evidence of someone else's conduct if it tends to negate the defendant's guilt and if one of the exceptions of 404(b) applies. Under 404(b), evidence of prior bad acts may be admissible for purposes "such as proof of motive, intent, preparation, plan, knowledge, identity, or absence of mistake or accident." Here, the prior allegations do not demonstrate a pattern of conduct or evidence B.M.'s motive, intent, preparation, planning, or knowledge. Only two of the

prior allegations involved sexual contact, one of which occurred when B.M. was four years old and about which she no longer had any memory. The other allegations were substantially dissimilar from the instant allegations as to be relevant only to prove B.M.'s character, which is strictly forbidden by Evid. R. 404(b). The trial court did not abuse its discretion in excluding the evidence as the prior allegations Lawrence sought to put before the jury do not fall within one of the exceptions of 404(b).

Lawrence also sought to introduce evidence that B.M.'s mother, Candance, had previously made a false allegation of rape against a man with whom she was having an affair.

At the hearing on Lawrence's motion to present such evidence at trial, Candance admitted to having an affair and that she had falsely reported to police that she had been raped in an attempt to cover up the affair from Lawrence. Lawrence argued that this evidence was admissible under the *Walton* exception and under Evid. R. 404(b) to show motive, plan, and intent. The State responded that the evidence was irrelevant to the matter at issue and was unfairly prejudicial to the State. The trial court ruled that Lawrence could inquire into Candance's prior false accusation of rape on cross-examination if the matter became relevant based upon her direct-examination testimony. Ultimately, on cross-examination, Lawrence was not permitted to inquire into Candance's prior false accusation of rape. Lawrence maintains that the trial court abused its discretion in precluding him from impeaching Candance with this evidence.

We reiterate that Evid. R. 608(b) specifically states that “[f]or the purpose of attacking or supporting the witness’s credibility, . . . *specific instances may not be inquired into or*

proven by extrinsic evidence.” Evid. R. 608(b) (emphasis supplied). The prior false allegation of rape is a specific instance of conduct, and therefore, not admissible under Evid. R. 608(b). Moreover, under the *Walton* rationale, Lawrence cannot circumvent this rule because the common-law exception for specific instances of conduct and Evid. R. 412 are designed only to preclude evidence of the *complaining witness’s* prior sexual conduct. *See State v. Walton*, 715 N.E.2d 824. Candance is not the complaining witness.

Lawrence also fails to demonstrate how such evidence would be admissible under an exception listed in Evid. R. 404(b). The admissibility of evidence pursuant to the 404(b) exception is governed by a two-part test in which the trial court must “(1) determine that the evidence of other crimes, wrongs, or acts is relevant to a matter at issue other than the defendant’s propensity to commit the charged act and (2) balance the probative value of the evidence against its prejudicial effect pursuant to Rule 403.” *Hicks v. State*, 690 N.E.2d 215, 221 (Ind. 1997). Here, the evidence of Candance’s prior false accusation of rape was relevant only to show that Candance was of bad character. Such evidence would likely have served only to inflame the jury, thereby causing undue prejudice. Candance’s prior accusation of rape had no tendency to make the existence of a fact in this case more or less probable. Even if the allegation were admissible, it would have had no impact on the ultimate issue—whether B.M. was telling the truth. The trial court did not abuse its discretion in precluding Lawrence from inquiring into Candance’s prior false accusation of rape.

Lawrence also argues that the trial court should have permitted him to introduce evidence of a prior inconsistent statement made by B.M. Specifically, Lawrence wanted to point out that B.M. told M.L. that Lawrence's conduct had been going on for four months, but later stated that Lawrence's conduct began on her thirteenth birthday, which was December 30 (i.e., five weeks before she reported the molestations). Lawrence argued that the evidence was admissible under Evid. R. 613 through M.L.'s testimony on cross-examination. The State objected, arguing that the evidence was inadmissible hearsay as M.L. was going to testify as to what B.M. had told her. The record reveals, however, that the trial court permitted Lawrence to elicit this evidence from M.L. during his cross-examination of her. *See Transcript* at 270. Lawrence's claim therefore is without merit.³

Finally, Lawrence argues that the trial court erred in preventing his aunt from expressing her opinion that B.M. was lying about her accusations against him. Under Evid. R. 608(a), the credibility of a witness may be attacked by opinion or reputation evidence under a limited set of circumstances. Specifically,

[t]he credibility of a witness may be attacked or supported by evidence in the form of opinion or reputation, but subject to these limitations: (1) the evidence may refer only to character for truthfulness, and (2) evidence of truthful character is admissible only after the character of the witness for truthfulness has been attacked by opinion or reputation evidence or otherwise.

Evid. R. 608(a). "Like most jurisdictions, Indiana requires that an impeaching witness speak only about the impeachee's reputation within the 'community' at the time of the impeachee's

³ It appears that Lawrence has confused the trial court's ruling on M.L.'s cross-examination testimony regarding B.M.'s statement as to the timing of events with the trial court's ruling concerning a second inconsistent statement Lawrence alleged B.M. had made. Lawrence makes no specific argument with regard to the trial court's exclusion of this alleged second inconsistent statement.

testimony or within a reasonable time prior to trial.” *Norton v. State*, 785 N.E.2d 625, 629 (Ind. Ct. App. 2003) (citing 13 Robert Lowell Miller, Jr., INDIANA EVIDENCE § 608.103 (2d ed.1995)). We have emphasized:

“[E]vidence of reputation for veracity should not necessarily be limited to that within the person’s community of residence, but should include any community or society in which he or she has a well-known or established reputation. *That reputation must be a general reputation, held by an identifiable group of people who have an adequate basis upon which to form an opinion*, and the witness testifying to reputation must have sufficient contact with that community or society to qualify as knowledgeable of the general reputation of the person whose character is attacked or supported.”

Id. at 630 (quoting *Dynes v. Dynes*, 637 N.E.2d 1321, 1323 (Ind. Ct. App. 1994), *trans. denied*) (emphasis in original).

Here, Lawrence sought to have his aunt offer her *personal* opinion as to B.M.’s credibility, *not* B.M.’s reputation for truthfulness within the community. Specifically, the proffered testimony of Lawrence’s aunt was that B.M. “lied.” *Transcript* at 610. Such reputation testimony is not admissible under Evid. R. 608(a). The trial court did not abuse its discretion in excluding this evidence.

Judgment affirmed.

BAKER, C.J., and RILEY, J., concur.