



**In the
Court of Appeals
Second Appellate District of Texas
at Fort Worth**

No. 02-22-00298-CR

OTIS WESLEY LANG, Appellant

v.

THE STATE OF TEXAS

On Appeal from Criminal District Court No. 2
Tarrant County, Texas
Trial Court No. 1741328R

Before Kerr Bassel, and Womack, JJ.
Memorandum Opinion by Justice Kerr

MEMORANDUM OPINION

A jury found Otis Wesley Lang guilty on three counts of trafficking a person under eighteen to engage in or become the victim of sexual assault, prostitution, or prostitution promotion; and two counts of sexual assault of a person under seventeen. *See* Tex. Penal Code Ann. § 20A.02(a)(7)(C), (E), (F); § 22.011(a)(2). After the jury assessed his punishment, the trial court sentenced Lang to 25 years' confinement on each count and ordered the sentences to run concurrently. The trial court also imposed a \$2,500 fine on each count. In two issues, Lang contends that the trial court erred by excluding part of a sexual-assault-nurse-examiner (SANE) report and imposing fines that it did not orally pronounce in open court. We affirm the trial court's judgment.

I. Background

In the summer of 2019, Sally, Sharon, and Mara were 16 years old.¹ Sharon had just met and begun hanging out with a young man named Larry, who claimed that he wanted to be a pimp. While hanging out together on June 19, 2019, Larry and Sharon drove to pick up Sharon's friends Mara and Sally. Larry bought the girls alcohol and

¹We use pseudonyms when referring to people who were or may have been minors when the offenses at issue were committed. *See* Tex. R. App. P. 9.10(a)(3). To further protect these minors' identity, we also use pseudonyms when referring to adult family members or adults involved in the events at issue. *See* Tex. Const. art. I, § 30(a)(1); 2d Tex. App. (Fort Worth) Loc. R. 7.

said that he was taking them to his apartment. Instead, he took them to a motel where Lang was waiting.

As soon as they entered the room, Lang approached Mara, lifted her shirt, and grabbed her breasts. He also offered marijuana to the girls, and Sally and Mara smoked some with him. Lang told the girls that they could make a lot of money in prostitution. According to Sharon, he said that they could “live a life that other people can’t” and “made it sound like it was unicorns and rainbows.” He told the girls about cellphone apps that they could use for soliciting prostitution and asked whether they would be willing to take nude photographs to display on these apps.

At this point, Sharon asked Sally and Mara to accompany her to the bathroom. Once there, Sharon told them that she was uncomfortable with the situation and that she wanted to go home. Mara testified that she was also uncomfortable but “put those feelings aside and just went along.”

Sometime later, Lang took offense to something that Mara did while they were joking around, picked her up by the throat with one hand, and punched her twice in the head with the other. Mara immediately left the room, and Larry went after her. She told him that she would not go back in, and she called her mother to pick her up. Mara went to the hospital the next day and was diagnosed with a concussion.

After the altercation, Sharon and Larry left to get food. On their return to the motel room, they found Lang and Sally sitting on the bed and laughing. Sharon described them as “hugging each other[,] pretty much.” Sometime later, the group left

in Larry's car. As they drove around, Lang pointed out locations that the girls could use for prostitution. The group returned to the motel room and went to bed. Sharon shared a bed with Larry, and Sally shared a bed with Lang.

The next day, the group left to run errands. At one point, Sharon left with Larry while Sally stayed at the motel with Lang. Later that day, the group drove to an apartment building where Lang said that the girls had a "play," which Sharon understood as sex with a client that Lang had arranged. Lang provided condoms, and Sharon got out of the car. She expected Sally to accompany her, but Sally stayed in the car, and Lang drove off and parked across the street. Sharon testified that she had not agreed to participate in prostitution, so she pretended to knock on the apartment door and left. Sharon returned to the car and the group went to another motel. She asked Lang to take her home, and he refused. So, she called a friend to pick her up. Sharon begged for Sally to leave with her, but Sally remained with Lang.

After she left, Sharon sent text messages to Lang telling him to bring Sally home. Lang initially indicated that he did not know Sally but changed his response after Sharon replied with Lang's real name,² type of car, and license plate number. He said that he did not know where Sally was because he had dropped her off a long time ago. Sharon later learned, however, that Lang did not take Sally home, and she contacted Sally's mother Andrea.

²Lang called himself "O3."

Andrea testified that Sally had disappeared for several days between June 19, 2019, and July 4, 2019. She had thought that Sally was with Sharon but later learned that Lang had been picking her up and giving her methamphetamine to sell. At some point before July 4, 2019, Sally came home and was supposed to accompany her family to an Independence Day celebration. But she disappeared again.

At Andrea's urging, Sally returned home on July 8, 2019. As soon as Sally came home, she went to her room and began smoking methamphetamine. Andrea immediately called police to have her arrested. After Sally was taken into custody, Andrea learned that Sally had been with Lang and that he had brought her home on July 8, 2019.

Andrea exchanged text messages with Lang to determine where Sally had been between July 4, 2019, and July 8, 2019. Lang then came to Andrea's apartment complex and purportedly told her that he had picked up Sally from an abandoned apartment complex, given her a shower, washed her hair, and dressed her. Andrea noted that Sally was wearing strange, oversized clothes when she returned home on July 8, 2019. Lang also purportedly told Andrea that he had known Sally for two months. The record reflects that Sally, who had been in and out of juvenile detention multiple times, had been released from detention in May 2019. Sharon's testimony implied, however, that Sally met Lang for the first time on June 19, 2019.

Andrea testified that Sally called shortly after she was arrested on July 8, 2019, while Andrea was speaking with Lang. Sally was crying and begging to come home, and Lang told her that he loved her.

Andrea visited Sally in juvenile detention later in July 2019 and told her that Lang had come to her apartment. According to Andrea, Sally “immediately started crying and stood up and said, [‘M]om, please stay away from him. Please.[’]” Andrea contacted Lewisville Police Detective Richard Crociata to report that Lang had been seeing Sally for two months and had provided her with drugs. In response, Detective Crociata set up a forensic interview with Sally. Based on the interview, Detective Crociata set up a SANE exam. Deborah Ridge performed the SANE exam.

Sally died about a year before trial, and Sally’s sexual-assault allegation is memorialized only in Ridge’s SANE report.

Before Ridge testified about her interaction with Sally during the exam, the trial court held a hearing on the State’s objection to portions of Ridge’s SANE report reflecting Sally’s admission that she suffered from two sexually transmitted infections: herpes and chlamydia (the SANE STI evidence). The State argued that the SANE STI evidence was not relevant and more prejudicial than probative and sought to exclude the evidence under Texas Rules of Evidence 402, 403, and 412.

Lang argued that the evidence was admissible under Rule 107—the rule of optional completeness—and that excluding it would be a Sixth Amendment violation. Lang further argued that Rule 412 did not apply because the SANE STI evidence was

not reputation or opinion evidence. Rather, Lang asserted the evidence had “nothing to do with . . . any past sexual behavior” but was “simply part of the SANE examination.” The trial court asked Lang if he was arguing that Sally’s STIs came from some past sexual behavior because they did not come from him. Lang responded that he was not pointing to specific past sexual behavior. The State replied that the fact of Sally’s STIs “goes to a past sexual act,” thus Rule 412 applies. The trial court excluded the SANE STI evidence under Rule 412 unless the State opened the door to it.

Using her SANE report to refresh her memory, Ridge testified to Sally’s comments during the exam. According to Ridge, Sally said that she was missing from July 4, 2019, through July 7, 2019. Sally alleged that during that time, she had gone to a hotel and an apartment complex to sell drugs. At some point, Sally met Lang and had sex with him. She also alleged that Lang had paid her \$80 to perform oral sex on a client. She further alleged that a condom was used for one or both sexual encounters.

Because the SANE exam had been conducted more than 120 hours after the alleged assault, Ridge testified that the exam was nonacute—physical sexual-assault evidence could not be obtained. She also testified that it is not uncommon for children to delay an outcry for various reasons, including fear and embarrassment. Lang asked Ridge on cross-examination whether it is possible that a child may report a sexual assault to play the victim once she has gotten into trouble. Ridge agreed that

it was possible, which is consistent with a child's fear or embarrassment. She acknowledged that children sometimes recant outcries, but she did not know how prevalent this was. She also acknowledged that a lack of physical evidence in an exam could indicate that the sexual assault did not happen.

On cross-examination, Ridge confirmed her report's conclusion that "there was sexual assault[/]sexual activity by history." She testified that she had based this conclusion solely on Sally's "medical history." At a bench conference, Lang's counsel again sought to introduce the SANE STI evidence, arguing that Ridge had opened the door by relying on Sally's medical history as the basis for her conclusion that Lang had sexually assaulted Sally. The trial court ruled that the door had not been opened and denied Lang's request. The complete SANE report was admitted for record purposes.

The State also offered extraneous-offense evidence under article 38.37 of the Texas Code of Criminal Procedure. *See Castillo v. State*, 573 S.W.3d 869, 879–80 (Tex. App.—Houston [1st Dist.] 2019, pet. ref'd) (citing Tex. Code Crim. Proc. art 38.37, § 2(b) and holding that evidence of separate sex offenses against another child is admissible when defendant is tried for certain sex offenses against children). Specifically, Hailey Harper testified to her encounter with Lang in Las Vegas, Nevada, in 2009. Harper testified that she was sixteen when Lang, whom she met online, invited her to Las Vegas from her home in San Diego, California. She testified that she and a friend went to Las Vegas and that Lang forced her into prostitution and

selling drugs shortly after she arrived. She also testified that she had sex with Lang and that he manipulated her into thinking that he loved her. Lang was later arrested based on Harper's allegations and convicted in Nevada for pandering of a child (i.e., sex trafficking). *See* Nev. Rev. Stat. Ann. § 201.300(2)(a) (West 2019).

During trial below, Lang made an offer of proof on the excluded SANE STI evidence by questioning Andrea about Sally's STIs. Andrea testified that she had contacted Lang's mother alleging that she knew that Lang had sexually assaulted Sally because they had the same STIs. She admitted on cross-examination, however, that she had later learned that Lang did not have any STIs. She also confirmed that Sally had started taking medication for herpes before the spring of 2019 and admitted that she had no evidence of Lang's alleged sexual assault other than Sally's allegation.

After the State rested, Lang reasserted his objection to the SANE STI evidence's exclusion and made an additional offer of proof with a medical report purportedly showing that he did not have any STIs. Lang argued that the SANE STI evidence was necessary to rebut or explain the State's scientific or medical evidence reflected in Ridge's testimony and that of a psychologist who testified about human-trafficking trauma. The trial court reiterated its prior ruling excluding the SANE STI evidence, and Lang rested without offering any evidence.

In closing argument, the State pointed out Sally's sexual-assault allegation via Ridge's testimony. Lang argued that Sally might have played the victim when talking to Ridge because she realized that her repeated juvenile detentions were about to

result in confinement with the Texas Juvenile Justice Department. According to Lang, it was possible that the looming threat of confinement might have led Sally to claim that she was a victim of human trafficking. Lang did not connect this theory with Sally's sexual-assault allegation, but he did argue that physical and corroborating evidence was lacking.

The jury returned a verdict finding Lang guilty on three counts of trafficking a person under eighteen to engage in or become the victim of sexual assault, prostitution, or prostitution promotion; and two counts of sexual assault of a person under seventeen. The jury sentenced Lang to 25 years' confinement and assessed a \$2,500 fine on each conviction. The trial court orally pronounced the sentences but omitted the fines. The trial court's written judgments contain both the sentences and the fines. This appeal followed.

II. Discussion

In two issues, Lang contends that the trial court erred by excluding the SANE STI evidence and by assessing an unpronounced fine on each conviction.³

A. The SANE STI Evidence's Exclusion

Lang contends that the SANE STI evidence was admissible under Rule 107 to fully explain Sally's sexual and medical histories and that the State opened the door to

³Lang's first issue addresses only the sexual-assault convictions, but his second issue addresses the fines imposed on all five convictions. Thus, we do not address the three trafficking convictions in Lang's first issue.

this evidence with Ridge’s testimony. *See* Tex. R. Evid. 107 (“Rule of Optional Completeness”). He further contends that the trial court violated his Sixth Amendment confrontation right by preventing him from rebutting Sally’s sexual-assault allegation. *See* U.S. Const. amend VI (“In all criminal prosecutions, the accused shall enjoy the right to . . . be confronted with the witnesses against him”); *see also* Tex. R. Evid. 101(d) (requiring a court to admit evidence if constitutionally required).

We review the admission or exclusion of evidence for an abuse of discretion, which occurs only when the ruling falls outside of the zone of reasonable disagreement. *Henley v. State*, 493 S.W.3d 77, 82–83 (Tex. Crim. App. 2016).

1. Rule 107—The Rule of Optional Completeness

Texas Rule of Evidence 107 is an exception to the hearsay rule that permits a party to introduce otherwise inadmissible evidence that is necessary to “fully and fairly explain a matter ‘opened up’ by the adverse party.” *Walters v. State*, 247 S.W.3d 204, 217–18 (Tex. Crim. App. 2007); Tex. R. Evid. 107. “It is designed to reduce the possibility of the jury receiving a false impression from hearing only a part of some act, conversation, or writing.” *Walters*, 247 S.W.3d at 218. Thus, the omitted portion of the previously introduced evidence must be on the same subject and necessary to fully understand the evidence. *Hailey v. State*, 413 S.W.3d 457, 468 (Tex. App.—Fort Worth 2012, pet. ref’d). Mere reference to a document, statement, or act is not enough. *Walters*, 247 S.W.3d at 218.

The SANE report reflects the following “History (As stated by patient)”:

Somebody held me for one day. I was missing from July 4th–July 7th. On the 7th[,] [Lang] threw a soap bottle at my arm (points to right upper arm). I was in a hotel. I had called [Lang] to pick me up[,] and he took me back to his hotel. Between the 4th and 7th[,] I was in an abandoned apartment complex. I was selling meth and doing meth and crack. I did meth for the four days[,] and I did crack three times. I went there to sell meth. Like July 3rd was the last time me and [Lang] had sex, like penis in vagina and penis in my mouth. Me and [Lang] had been having sex for like a month ([Lang] is 34). My friend [Sharon’s] pimp is friends with [Lang]. [Lang] is a pimp. He pimped me out once. He asked if I wanted to do one client[.] [I]t was a quick visit[.] [T]hat’s what it is called for like fifteen minutes. So, I just performed oral sex, [and] he had a condom on. [Lang] gave me \$80 for the client. After that[,] I told him it wasn’t for me, so he said[, “] [Y]ou just like to sell drugs, okay.

Sally identified the dates of the incidents as “Client in June” and “[Lang] in June.”

Although the report indicates that a condom was used by the “assailant,” it also indicates that “the client” ejaculated “in the condom” and that Lang ejaculated “like on a towel.”

The SANE report’s medical-history portion contains blanks to capture information related to the examinee’s menstrual cycles, past pregnancies and outcomes, contraceptive use, emotional illnesses, genital surgeries, and past treatment for STIs. Relevant to Lang’s argument, Sally’s medical history states, “Past treatment for STI’s[:] Herpes, Chlamydia – treated per pt.” The SANE report lists acyclovir among the medications that Sally was allegedly taking, which the parties agree is used to treat genital herpes.

At trial, Lang questioned Ridge about why she obtains a medical history from examinees. She testified that the examinee’s history and medical history are necessary

to determine what treatment, if any, the examinee needs. She also noted that she obtains the examinee's history, apart from the medical history, as background for the exam's purpose; in this case, a sexual-assault exam. Ridge explained that it is important to know the examinee's developmental stage and whether she has received treatment for any physical or emotional illnesses when diagnosing the need for medical treatment. Ridge concluded that Sally required no treatment based on Sally's history and lab results.

Lang does not explain how the SANE STI evidence was necessary for the trier of fact to fully understand Ridge's testimony. *See* Tex. R. Evid. 107. And Lang's offers of proof demonstrate that the SANE STI evidence alone would not make Sally's sexual-assault allegation more probable or less probable. *See* Tex. R. Evid. 401(a); *Hailey*, 413 S.W.3d at 468 (holding that Rule 107 requires the omitted portion to be on the same subject and necessary to fully understand the statement).

Lang also does not explain how Ridge's testimony "opened up" the subject of Sally's STIs. *See Walters*, 247 S.W.3d at 218. Rather, he summarily contends that Ridge "raised the subjects of [Sally's] sexual and medical histories" and that "sexually transmitted diseases are part of an individual's sexual and medical histories." The record reflects, however, that Ridge did not address the SANE report's medical-history section until she was asked about it on cross-examination, and she did not mention Sally's sexual history at all. Specifically, the record reflects the following exchange:

Q. Okay. You said -- did you make any determination as to whether she had been sexually assaulted or had engaged in sexual activity?

A. Let me look at the -- I -- at the end of the exam we do what we call is just basically a basic impression. And[,] so I had documented that there was sexual assault and slash sexual activity by history, because everything that I'm doing, I'm taking it, you know, verbatim from the patient. And[,] so I, obviously, did not witness what the patient is telling me, so it is my history from the patient.

Q. Okay. And what history and other, besides her telling you that, did you use in coming to that conclusion?

A. Nothing except for history, her medical history.

Q. Okay. And what about her medical history caused you to believe she had been sexually active and assaulted?

A. Well, the medical history is her medical history she gave me of why she was there, which is what we were talking about. When it says ["]history as stated by patient,["] that is actually her medical history. We're not talking past medical history like, you know, allergies or something like that, we're talking what you're here for today.

At a bench conference immediately following this exchange, Lang argued that Ridge had opened the door to the SANE STI evidence by mentioning Sally's medical history. The trial court noted, however, that Ridge "didn't bring it up." We agree. Moreover, merely asserting that the SANE STI evidence is part of the SANE report is insufficient to justify admitting it under Rule 107. *See* Tex. R. Evid. 107 (permitting other evidence "necessary to explain or allow the trier of fact to fully understand the part offered by the opponent").

Additionally, the record contains no indication that the jury misunderstood Ridge's testimony. Although the jury asked for Ridge's testimony about "[Sally]'s

history of sexual relations with [Lang],” the trial court pointed out in its response that it “sounds like y’all just didn’t – somebody didn’t listen instead of [there being a] dispute [over an issue].” Nonetheless, the trial court had the court reporter read Ridge’s testimony. The jury asked no further questions. Accordingly, we conclude that the trial court’s decision to exclude the SANE STI evidence did not violate Rule 107. *See Hailey*, 413 S.W.3d at 468.

2. Confrontation Clause

“The Sixth Amendment right to confront witnesses includes the right to cross-examine witnesses to attack their general credibility or to show their possible bias, self-interest, or motives in testifying.” *Hammer v. State*, 296 S.W.3d 555, 561 (Tex. Crim. App. 2009) (citing *Davis v. Alaska*, 415 U.S. 308, 316, 94 S. Ct. 1105 (1974)). This right is not unqualified, and the trial judge has “wide discretion” to limit the scope of a defendant’s confrontation right. *Id.* “Most questions concerning cross-examination may be resolved by looking to the Texas Rules of Evidence.” *Id.*

Texas Rule of Evidence 412, known as the “rape shield” law, is one such rule. *Id.* at 566. It is designed to limit abusive, embarrassing, and irrelevant inquiries into a complainant’s private life and to encourage sexual-assault victims to report those crimes. *See Dees v. State*, Nos. 02-12-00488-CR, 02-12-00489-CR, 2013 WL 6869865, at *6 (Tex. App.—Fort Worth Dec. 27, 2013, pet. ref’d) (mem. op., not designated for publication) (per curiam). “Rule 412 creates ‘an extremely high hurdle’ that the proponent of the proposed evidence must clear before the trial court may, in its

discretion, admit specific instances of an alleged victim’s past sexual behavior.” *Rojas v. State*, No. 02-15-00144-CR, 2016 WL 6648748, at *3 (Tex. App.—Fort Worth Nov. 10, 2016, pet. ref’d) (mem. op., not designated for publication) (citing *Todd v. State*, 242 S.W.3d 126, 129 (Tex. App.—Texarkana 2007, pet. ref’d)).

Under Rule 412, specific instances of a victim’s past sexual conduct are admissible only if three conditions are met. Tex. R. Evid. 412(b). First, once the defendant informs the court outside the jury’s presence that he wants to introduce the evidence or ask questions about the complainant’s past sexual behavior, the trial court must “conduct an in camera hearing, recorded by a court reporter, and determine whether the proposed evidence is admissible.” *Id.* 412(b)(1). Second, the evidence must: (1) be necessary to rebut or explain scientific or medical evidence offered by the prosecutor, (2) concern past sexual behavior with the defendant and be offered by the defendant to prove consent, (3) relate to the victim’s motive or bias, (4) be admissible under Texas Rule of Evidence 609, or (5) be constitutionally required to be admitted. *Id.* 412(b)(2). Finally, the trial court must find that the evidence’s probative value outweighs the danger of unfair prejudice. *Id.* 412(b)(3).

Lang contends that the trial court violated his Sixth Amendment confrontation right by failing to hold an in camera hearing on the SANE STI evidence and failing to recognize that the entire SANE report was constitutionally required to be admitted.

a. The In Camera Hearing

Although the record reflects that the trial court did not conduct an in camera hearing on the SANE STI evidence, Lang did not object. Thus, he did not preserve error for our review. *See* Tex. R. App. P. 33.1(a)(1); *Jones v. State*, No. 01-22-00172-CR, 2023 WL 4239873, at *5 (Tex. App.—Houston [1st Dist.] June 29, 2023, no pet.) (mem. op., not designated for publication).

Regardless, Lang has not shown that he was harmed by this error. An in camera hearing is meant to be an adversarial proceeding in which the court can “hear and evaluate the probity of evidence of an alleged victim’s sexual history in a private setting before allowing that sensitive information to be interjected into the public domain.” *LaPointe v. State*, 166 S.W.3d 287, 295 (Tex. App.—Austin 2005, pet. dism’d). The record reflects that the trial court conducted an adversarial proceeding, albeit in a public setting, and thoroughly considered both Lang’s and the State’s positions on the SANE STI evidence. Lang does not explain how he was harmed by the trial court’s failure to do the same thing in a private setting.

b. The SANE STI Evidence’s Probative Value

Lang contends that the SANE STI evidence should have been admitted under Rule 412(b)(2)(E) because “the evidence was constitutionally required to be admitted at the risk of violating [his] confrontation rights.” Even if this were true, Lang must still show that the evidence’s probative value outweighed the danger of unfair prejudice to Sally. *See* Tex. R. Evid. 412(b)(3). He fails to do so.

Lang asserts that the SANE STI evidence was probative to show that he could not have had sex with Sally. After the trial court excluded the SANE STI evidence, Lang made two offers of proof: Andrea’s testimony that Sally had herpes and a medical report purportedly showing that Lang did not have any STIs (Lang’s STI evidence). He argues that “it is only reasonable to presume that if [he] had actually engaged in penis–vagina sex as claimed in the SANE report he would also have tested positive for herpes.”

Lang’s argument fails for two reasons. First, neither the SANE STI evidence nor Lang’s STI evidence concern the facts reflected in Sally’s sexual-assault allegation. Individually, they are irrelevant and inadmissible. *See* Tex. R. Evid. 401(a) (“Evidence is relevant if . . . it has any tendency to make a [consequential] fact more or less probable than it would be without the evidence.”), 402 (“Irrelevant evidence is not admissible.”); *Reed v. State*, 59 S.W.3d 278, 281 (Tex. App.—Fort Worth 2001, pet. ref’d) (holding that relevance requires “a direct or logical connection between the offered evidence and the proposition sought to be proved”). Yet, Lang contends that the SANE STI evidence was “constitutionally required to be admitted.” On the contrary, the SANE STI evidence alone would not make Sally’s sexual-assault allegation more probable or less probable than it was without the evidence. *See* Tex. R. Evid. 401(a). And even if the SANE STI evidence had been admitted, there was no assurance that Lang’s STI evidence would also have been admitted. *See* Tex. R. Evid. 104 (requiring trial court to decide evidence admissibility).

Second, Lang did not present any evidence at trial, nor does he argue on appeal, that infection from sexual intercourse was certain or even probable. Indeed, this court and several others have held that evidence of a complainant's STI, including herpes, has too little probative value to be admissible as proof that the defendant did not have sexual contact with the complainant. *See Hawkins v. State*, No. 03-95-00690-CR, 1997 WL 366788, at *1 (Tex. App.—Austin July 3, 1997, pet. ref'd) (not designated for publication) (holding that trial court did not abuse discretion by excluding evidence of complainant's genital herpes infection as having too little probative value to be admissible as proof defendant did not have sexual contact with complainant); *Smith v. State*, 737 S.W.2d 910, 915 (Tex. App.—Fort Worth 1987, pet. ref'd) (holding that defendant was unable to prove that complainant would have transmitted her gonorrhea infection to anyone with whom she had sexual contact); *Johnson v. State*, 651 S.W.2d 434, 437 (Tex. App.—Dallas 1983, no pet.) (holding that defendant's evidence was “at best speculative” that he would have contracted complainant's trichomonas infection by sexual contact with her); *see also Anderson v. State*, 8 S.W.3d 387, 393 (Tex. App.—Amarillo 1999, pet. ref'd) (holding that testimony indicating that chlamydia is difficult to detect in males and may be eradicated by human body's own immune system or antibiotics was sufficient to affirm jury verdict despite evidence of complainant's chlamydia infection and defendant's negative STI test); *Davis v. United States*, 865 F.2d 164, 168 (8th Cir. 1988)

(holding that evidence of complainant’s gonorrhea, even if admitted, “would have had little exculpatory value”).

Lang also did not address factors mitigating STI infection or detection. As previously noted, the SANE report indicates that Sally had herpes and chlamydia. But Andrea testified only that Sally had herpes, and Lang offered no evidence to address Sally’s chlamydia infection. *See Anderson*, 8 S.W.3d at 393. Although Lang’s medical report indicated that he did not have either infection, the SANE report indicated that Sally’s STIs were being treated with acyclovir and that the “assailant” used a condom. Sally identified two assailants: Lang and “the client.” Thus, it is unclear whether Lang, the client, or both used a condom. Neither Lang nor the State asked Ridge to clarify these statements.

In sum, the SANE STI evidence and Lang’s STI evidence are independently irrelevant to Sally’s sexual-assault allegation, and Lang offered no evidence addressing the infection probability or factors mitigating infection or detection. *See Hawkins*, 1997 WL 366788, at *1 (“[N]o evidence was offered concerning appellant’s likelihood of contracting herpes from the victim if she had sexual contact with him.”); *see also Rojas*, 2016 WL 6648748, at *3 (holding that the proponent of the evidence bears the burden under Rule 412). Accordingly, we conclude that the trial court did not abuse its discretion by finding that the SANE STI evidence was not admissible under Rule 412 because it had too little probative value to outweigh the danger of unfair prejudice. *See Hawkins*, 1997 WL 366788, at *1; Tex. R. Civ. P. 412(b)(3).

3. Harm Analysis

Even if we assume that the trial court abused its discretion by excluding the SANE STI evidence and committed constitutional error in doing so, as Lang asserts, we apply Texas Rule of Appellate Procedure 44.2(a) and hold that any such error was harmless beyond a reasonable doubt. *See* Tex. R. App. P. 44.2(a); *Davis v. State*, 203 S.W.3d 845, 850 (Tex. Crim. App. 2006).

“If there is a reasonable likelihood that the error materially affected the jury’s deliberations, then the error was not harmless beyond a reasonable doubt.” *Wesbrook v. State*, 29 S.W.3d 103, 119 (Tex. Crim. App. 2000); *see also Neal v. State*, 256 S.W.3d 264, 284 (Tex. Crim. App. 2008). We do not focus on the propriety of the trial’s outcome but on whether the constitutional error adversely affected the integrity of the process leading to the conviction. *See Wells*, 611 S.W.3d at 410; *see also Wesbrook*, 29 S.W.3d at 119 (“[T]he appellate court should calculate as much as possible the probable impact of the error on the jury in light of the existence of other evidence.”). To that end, we consider “any and every circumstance apparent in the record that logically informs an appellate determination whether ‘beyond a reasonable doubt [that particular] error did not contribute to the conviction or punishment.’” *Snowden v. State*, 353 S.W.3d 815, 822 (Tex. Crim. App. 2011) (quoting Tex. R. App. P. 44.2(a)). While the most significant concern must be the error and its effects, the presence of overwhelming evidence supporting the finding in question can be a factor in the evaluation of harmless error. *Wells*, 611 S.W.3d at 410. Other factors to consider may

include, if applicable, the nature of the error, the extent that the State emphasized it, its probable collateral implications, and how a juror would likely have weighed it “in the course of [jury] deliberations.” *Id.* at 410. We evaluate the entire record in a neutral manner and not in the light most favorable to the prosecution. *Id.* at 410–11.

Assuming that the damaging potential of excluding the SANE STI evidence was fully realized, the record still reflects sufficient evidence of Lang’s guilt:

- Sharon testified that Sally and Lang spent time alone together and slept together, and that she observed them laughing and “hugging each other[,] pretty much” in the motel on June 19, 2019, and June 20, 2019.
- Sharon also testified that Sally remained with Lang after Sharon left on June 20, 2019.
- Sally’s July 19, 2019 allegation that she and Lang had been having sex for about a month and last had sex on July 3, 2019, is consistent with other witness testimony that Sally met Lang on June 19, 2019, that Sally had disappeared for several days between June 19, 2019, and July 4, 2019, and that Lang had been picking her up during this period.
- Andrea testified that Lang told Sally that he loved her when she called shortly after Sally was arrested on July 8, 2019.
- Harper’s testimony that Lang trafficked her for prostitution, had sex with her, and manipulated her to think that he loved her followed the same fact pattern as that reflected in Sally’s allegation and the corroborating testimony.

Additionally, Lang thoroughly questioned the credibility of the corroborating witnesses and cross-examined Ridge on the SANE report and her opinion of Sally’s veracity. The jury was free to judge the weight and credibility of this testimony. *See*

Tex. Code Crim. Proc. Ann. art. 38.04; *Martin v. State*, 635 S.W.3d 672, 679 (Tex. Crim. App. 2021).

Although Lang contends that his guilt was “most assuredly not a given,” he does not contend that it was a close call. *See Hammer*, 296 S.W.3d at 561–62 (“Sexual assault cases are frequently ‘he said, she said’ trials in which the jury must reach a unanimous verdict based solely upon two diametrically different versions of an event, unaided by any physical, scientific, or other corroborative evidence.”). Citing *Steadman v. State*, 280 S.W.3d 242, 246 (Tex. Crim. App. 2009), and *Anderson*, 8 S.W.3d at 393, Lang contends that STI evidence may be relevant if it makes the sexual-assault allegation “more or less probable” and that the SANE STI evidence was “critical to [his] case.”

Although any evidence is relevant if it makes a consequential fact more probable or less probable, *see* Tex. R. Evid. 401(a), *Steadman* and *Anderson* are inapplicable because the evidence in these cases included testimony regarding infection probability. *See Steadman*, 280 S.W.3d at 248–49; *Anderson*, 8 S.W.3d at 393. Lang offered no such evidence. And, as previously discussed, the SANE STI evidence alone would not make Sally’s sexual-assault allegation more probable or less probable than it was without the evidence. *See* Tex. R. Evid. 401(a). Thus, we cannot conclude that it would have materially affected the jury’s deliberations. *See Wesbrooke*, 29 S.W.3d at 119. Accordingly, we hold that any error in excluding the SANE STI evidence was

harmless beyond a reasonable doubt, *see* Tex. R. App. P. 44.2; *Davis*, 203 S.W.3d at 850, and we overrule Lang’s first issue.

B. The Fine Assessment

In his second issue, Lang contends that the trial court erred by assessing a fine on each judgment because the trial court failed to orally pronounce the fines. According to Lang, the trial court’s oral pronouncement controls over the trial court’s written judgment, thus the fines must be deleted.

When, as here, a jury assesses punishment, the trial court’s judgment must reflect that the defendant has been punished in accordance with the jury’s verdict. Tex. Code Crim. Proc. Ann. art. 42.01, § 1(8); *see also Ette v. State*, 559 S.W.3d 511, 515 (Tex. Crim. App. 2018) (“Generally, a trial court has no power to alter a lawful jury verdict unless it is with the jury’s consent and before the jury has dispersed.”). Although a trial court’s oral pronouncement generally controls when it varies from the written judgment, *Ette*, 559 S.W.3d at 516, a written judgment should be modified if necessary to reflect the jury’s verdict, *Nelson v. State*, 149 S.W.3d 206, 212–13 (Tex. App.—Fort Worth 2004, no pet.); *see* Tex. R. App. P. 43.2(b).

The record reflects that the jury convicted Lang on five counts and assessed twenty-five years’ confinement and a \$2,500 fine on each conviction. The trial court orally pronounced that it would assess punishment “at 25 years” on each conviction, but it did not pronounce any fines. The trial court’s written judgments include the fines. Because the written judgments reflect the jury’s punishment verdict, the trial

court's erroneous oral pronouncements do not control. *See Ette*, 559 S.W.3d at 517 (holding that it “would improperly supplant the role of the jury” to allow the oral pronouncement to control over the jury’s verdict). Accordingly, we overrule Lang’s second issue.

III. Conclusion

Having overruled both of Lang’s issues, we affirm the trial court’s judgments.

/s/ Elizabeth Kerr
Elizabeth Kerr
Justice

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Tex. R. App. P. 47.2(b)

Delivered: January 25, 2024