

**In The**  
***Court of Appeals***  
***Ninth District of Texas at Beaumont***

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**NO. 09-17-00428-CR**  
**NO. 09-17-00429-CR**

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**BRENT LARAY TUCKER, Appellant**

**V.**

**THE STATE OF TEXAS, Appellee**

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**On Appeal from the 9th District Court**  
**Montgomery County, Texas**  
**Trial Cause No. 15-09-09853-CR (Counts 1 and 2)**

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**MEMORANDUM OPINION**

A jury convicted appellant Brent Laray Tucker of two counts of indecency with a child by contact, and the trial court assessed punishment at twenty years of confinement on each count and ordered that the sentences would run consecutively. In two appellate issues, Tucker complains about the admission of extraneous offense evidence and jury charge error. We affirm the trial court's judgments.

## BACKGROUND

Tucker was charged by indictment with two counts of indecency with a child by contact. Count one alleges that on or about July 31, 2015, Tucker did then and there, with the intent to arouse and gratify the sexual desire of the defendant, engage in sexual contact by touching the genitals of T.M.,<sup>1</sup> a child younger than seventeen years of age. Count two alleges that on or about August 13, 2015, Tucker did, then and there, with the intent to arouse and gratify the sexual desire of the defendant, engage in sexual contact by touching the genitals of D.C., a child younger than seventeen years of age.

During the trial, T.M. testified that when he was twelve years old, he used to play baseball with his friend, C.S. Tucker was dating C.S.'s mother, and Tucker helped with team practices. T.M. testified that he had slept over at Tucker's house twice, and the second time he slept over, Tucker assaulted T.M. T.M. explained that during the second sleepover, he played video games in the living room with C.S. and J.F., another friend from baseball, and Tucker and C.S.'s mom and brother were also there. According to T.M., C.S. and J.F. were on the mattress in front of the television, and T.M. was on the couch. Tucker kept asking T.M. to sit next to him on the couch,

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<sup>1</sup>To protect the privacy of the victims, we identify them by their initials. We refer to other witnesses who testified by using their initials or first name only.

and T.M. eventually did so. T.M. explained that he was sitting with his knees to his chest and his feet on the couch so that he could get a comfortable view of the television, and T.M. had a blanket over his legs and up to his chest.

According to T.M., when Tucker asked him if he wanted to lie down, T.M. responded affirmatively, and T.M. explained that his legs were on top of Tucker's legs because the couch was short. T.M. testified that when he stretched his legs over Tucker's legs, the blanket still covered his feet and abdomen. T.M. explained that Tucker's hand was underneath the blanket when Tucker started rubbing T.M.'s leg, and Tucker moved his hand under T.M.'s boxers and touched T.M.'s genitals. T.M. testified that at that point, he was "stunned and surprised," and T.M. was frozen and confused until he "snapped out of it and ran back to the other couch[.]" T.M. explained that the rubbing lasted a couple of minutes. According to T.M., he "freak[ed] out" and tried to figure out what had happened, but did not know what to do, so he stayed the night.

T.M. testified that when he told C.S. that Tucker had touched him, C.S. was very casual and said, "yeah, he does that sometimes to himself, to other people sometimes." T.M. further testified that J.F. had the same reaction as C.S., and J.F. said that Tucker had touched him in the past. T.M. explained that he was confused by C.S.'s and J.F.'s reactions because "you wouldn't think that it was, like, wrong

or bad.” T.M. also testified that Tucker drank from a lot of aluminum cans that night, and T.M. was “completely sure that it was beer.”

D.C., who was thirteen years old at the time of trial, testified that he used to be friends with C.S. and had spent the night with C.S. on one occasion. D.C. testified that Tucker was the only other person there. D.C. testified that he watched television with C.S. and Tucker and then went to sleep on a futon in the living room. According to D.C., C.S. slept beside him on the futon, and Tucker slept on the small couch. D.C. explained that after he fell asleep, there was “something messing, like, in my pants. And then, like I didn’t know what it was at first. And then I figured out it was a hand.” D.C. testified that when he felt a hand in his shorts, he was “freaking out[.]” and tried to push the hand away, but it just kept coming all the way up to his private area, and then the hand “started to come from the bottom of my . . . shorts, up.” According to D.C., the hand touched his private area skin to skin. D.C. testified that when he felt a hand around his waist, he sat up and asked Tucker why he was hugging his waist. D.C. testified that Tucker said, “I can hug you or - - yeah[.]” and then Tucker took his arm off D.C.

Tucker presented several witnesses in his defense. Christina, Tucker’s girlfriend and C.S.’s mother, testified that T.M. was at their home on July 31, 2015. Christina testified that T.M. was lying on the long couch, Tucker was sitting on the

loveseat drinking a beer, and C.S. and J.F. were on a futon mattress playing a video game. According to Christina, when it was T.M.'s turn to play the game, he sat on the loveseat with both of his legs up near his chest. Christina testified she went out on the back porch for a couple of minutes to talk on the telephone, and when she came back in the house, everyone was in the same position and Tucker was starting to nod off, so she told him to go to bed. Christina explained that when T.M. said he was cold, she told him to get a blanket, and T.M. pulled the blanket over his knees. According to Christina, T.M. stretched his legs across Tucker's lap with the blanket still covering his legs, and at that point, Christina told Tucker that he needed go to bed and that T.M. needed to get on the other couch. Christina explained that Tucker "startled up and dropped his beer."

Christina testified that she cleaned up the beer, Tucker went to bed, and nothing else happened. Christina found it "very strange" that T.M. would stretch his legs across Tucker's lap, especially with a blanket. According to Christina, T.M.'s legs were over Tucker's lap for about one minute. During cross-examination, Christina testified that after she learned that T.M. had reported that he had told C.S. about the alleged incident with Tucker, Christina questioned C.S., and C.S. stated that T.M. never told him anything about Tucker. When asked if T.M. was lying, Christina testified that she would not say that any child was lying, but Christina

maintained that she knew Tucker's hands were never under the blanket because she was in the room.

Christina further testified that on August 12, 2015, the night that D.C. spent the night, she did not get home until 1:30 or 1:45 in the morning. Christina explained that when she got home, Tucker was turning off the lights, C.S. was sleeping on the futon, and D.C. was sleeping on the loveseat. According to Christina, Tucker told her that D.C. was on the loveseat because he had a bad dream. Christina testified that Tucker's friend, James, was on the long couch that night, but Christina agreed that when she talked to the detectives the month following the incident, she did not report that James had been there. According to Christina, based on what she was told, D.C.'s version of what happened was exaggerated.

C.S. testified that J.F. and James were there the night D.C. slept over. According to C.S., he was asleep and did not see anything happen to D.C. C.S. also explained that adults do not sleep in the living room with the kids during sleepovers and that James slept in C.S.'s room. C.S. further testified that T.M. never told him that Tucker touched his private parts. C.S. also denied telling T.M. that Tucker touches his private parts when he is sleeping. According to C.S., he knows the alleged incident with T.M. never occurred because "nothing like that has ever happened." J.F. also testified that he spent the night at C.S.'s house when T.M. was

there, and that T.M. never told him that Tucker had touched him inappropriately. J.F. further testified that he never told T.M. that Tucker had touched him inappropriately.

James testified that he is twenty-eight years old and that he has known Tucker for ten years. James testified that he spent the night at Tucker's house on August 13, 2015, and D.C. also spent the night. James explained that he was in the living room the entire night, and D.C. and C.S. slept in the living room. According to James, D.C. was sleeping on the futon, and Tucker was a couple of feet away on the loveseat. James testified that D.C. awoke and quickly sat up because he was upset by a nightmare. James testified that at that point, Tucker sat next to D.C. and talked to him. James testified that he heard D.C. tell Tucker that he did not like staying over at people's houses because the last time D.C. stayed at someone's house, his cousin touched him inappropriately. James explained that Tucker asked D.C., if he wanted to call his parents or sleep in another room, but D.C. acted okay and moved to the loveseat. James testified that he was not surprised that Tucker did not remember that he was there that night because Tucker had been drinking. According to James, D.C.'s allegation is a "100 percent" lie because James would not have let anything happen in front of him.

Tucker testified in his defense and denied T.M.'s allegation that Tucker touched T.M.'s penis. Tucker explained that T.M. sat beside him on the couch and stretched his legs, which were covered with a blanket, over Tucker's lap, and Tucker's arms were resting on T.M.'s legs. Tucker testified that T.M. was lying when he said that Tucker had told T.M. to come sit by him and to get more comfortable. Tucker testified that his hands were never under the blanket. Tucker testified that he pushed T.M.'s legs off, but T.M. put his legs back over Tucker's lap, and Tucker explained that he was alarmed by the situation. According to Tucker, it was "very innocent" and there was "nothing wrong with it." Tucker testified that T.M. was lying. Tucker explained that after Christina told him to go to bed for the second time, Tucker got up and went to bed.

Tucker also denied D.C.'s allegation. Tucker explained that when he first gave his statement to the police, he forgot that James was at his house the night D.C. slept over. Tucker testified that he was watching television on the loveseat when D.C. "jarred up" and appeared frightened, and Tucker got down on the floor, put his arm around D.C., who was crying, and asked D.C. what was wrong. According to Tucker, D.C. told him that he felt like someone had touched his testicles, and Tucker told D.C. that "that couldn't have happened. There was no one next to you." Tucker testified that when he asked D.C. if he had ever been touched inappropriately, D.C.

told Tucker that his sixteen-year-old cousin had touched him, and Tucker told D.C. that he “would never have to worry about that over here, ever. I wouldn’t do that.” Tucker testified that after he talked to D.C., D.C. went to sleep on the loveseat. Tucker explained that in hindsight he should have called and told D.C.’s father immediately, but Tucker “took it as not a big deal[.]” According to Tucker, the next day D.C. stayed with them until around 4:00 p.m., and Tucker did not notice anything abnormal. Tucker maintained that he was not guilty of the allegations.

The record shows that, over defense counsel’s objection, the trial court allowed the State to cross-examine Tucker about an extraneous offense that allegedly occurred in the same house where the alleged offenses with D.C. and T.M. had occurred. The trial court found that Tucker had opened the door by testifying that he told D.C. that D.C. would always be safe in his house and that nothing had happened in his house. During cross-examination, the State asked Tucker if he knew A.W., and Tucker testified that when A.W. was between the ages of twenty and twenty-two, A.W. temporarily lived with Tucker in his current house. Tucker denied putting his hands down A.W.’s pants while A.W. was sleeping and touching A.W.’s penis, but Tucker admitted that were a couple of occasions when A.W. woke up and found Tucker in his bedroom. Tucker testified that A.W. would be lying if A.W. said that Tucker had touched A.W.’s penis.

On redirect, Tucker explained that A.W. was a troubled youth who had been kicked out of his house and needed a place to stay. Tucker testified that he did not know A.W. very well, but he let A.W. stay because he felt bad for A.W. Tucker testified that he did not know why A.W. would make up an allegation against him but stated that A.W. is a “hard core drug addict.” Tucker also testified that he and A.W. had an argument about Tucker having to pay A.W.’s expenses, and the argument led to a physical altercation during which A.W. hit Tucker. According to Tucker, A.W. went to prison and they no longer have a relationship. The defense then rested.

In rebuttal, the State presented extraneous offense testimony from A.W., who testified that he met Tucker when he was around nineteen years old. A.W. explained that during high school, his life was rough because he made many bad choices. A.W. testified that he and his friends would party and drink at Tucker’s house. According to A.W., when his parents kicked him out of the house, he stayed with Tucker, because he had nowhere else to go. A.W. testified that living with Tucker was “cool” at first because Tucker was a friend, but it became stressful because strange things happened at Tucker’s house, such as “waking up with [Tucker] being in my room or on my bed or touching me, stuff like that.” According to A.W., Tucker was “always

really intoxicated, never really remembered it, [and] never really talked about it either.”

A.W. testified that on one occasion, he woke up and Tucker was touching his penis. A.W. explained that he did not confront Tucker and continued to stay at Tucker’s house, because he had nowhere else to go and he feared being homeless and alone on the street. A.W. testified that he left Tucker’s house because A.W. was incarcerated for eighteen months. A.W. explained that he had theft and drug convictions, but he had not been in trouble since 2009, and his life was good. A.W. testified that while he was incarcerated, he obtained his GED and received treatment. According to A.W., Tucker’s girlfriend tried to contact him before the trial began, but A.W. never spoke to her.

The jury found Tucker guilty of indecency with a child as charged in counts one and two of the indictment. The trial court sentenced Tucker to twenty years of confinement on each count and ordered the sentences to run consecutively.

#### ANALYSIS

In issue one, Tucker argues that the trial court abused its discretion by admitting evidence concerning the alleged extraneous offenses involving A.W. According to Tucker, the alleged extraneous offenses were not similar to the charged offenses or committed within a close time period. Tucker argues that during its cross-

examination, the State attempted to open the door to extraneous offense testimony by asking him improper veracity questions. Tucker also argues that the trial court ignored several factors in conducting the required balancing test and erroneously determined that the probative value of the evidence outweighed its prejudicial effect. Tucker further argues that the error was harmful.

We review a trial court's admission of extraneous offense evidence under an abuse of discretion standard. *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003); *Montgomery v. State*, 810 S.W.2d 372, 391 (Tex. Crim. App. 1991) (op. on reh'g). We must uphold the trial court's ruling if it is within the zone of reasonable disagreement. *Wheeler v. State*, 67 S.W.3d 879, 888 (Tex. Crim. App. 2002). We will not disturb a trial court's ruling if it is correct on any legal theory of law applicable to that ruling. *De La Paz v. State*, 279 S.W.3d 336, 344 (Tex. Crim. App. 2009).

Rule 404(b) of the Texas Rules of Evidence provides as follows:

(1) ***Prohibited Uses***. Evidence of a crime, wrong, or other act is not admissible to prove a person's character in order to show that on a particular occasion the person acted in accordance with the character.

(2) ***Permitted Uses***. . . . This evidence may be admissible for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident.

Tex. R. Evid. 404(b). The list of enumerated purposes for which extraneous offense evidence may be admissible under Rule 404(b) is neither exclusive nor exhaustive.

*Montgomery*, 810 S.W.2d at 388. Extraneous offense evidence may be admissible if it has relevance apart from its tendency to prove a person's character to show that he acted in conformity therewith. *Id.* at 387.

Evidence of other crimes or wrongs may be admissible to rebut a defensive theory. *See Bass v. State*, 270 S.W.3d 557, 563 (Tex. Crim. App. 2008); *Moses*, 105 S.W.3d at 626; *Wheeler*, 67 S.W.3d at 887 n.22. To be admissible for rebuttal of a fabrication defense, "the extraneous misconduct must be at least similar to the charged one[.]" *Wheeler*, 67 S.W.3d at 887 n.22. The degree of similarity required for admissibility is "not one of exacting sameness" as is required when extraneous offence evidence is used to prove a "defendant's system." *See Dennis v. State*, 178 S.W.3d 172, 179 (Tex. App.—Houston [1st Dist.] 2005, pet. ref'd).

Relevant evidence is generally admissible. Tex. R. Evid. 402. Under Rule 403 of the Texas Rules of Evidence, a "court may exclude relevant evidence if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence." Tex. R. Evid. 403. "Rule 403 favors admissibility of relevant evidence, and the presumption is that relevant evidence will be more probative than prejudicial." *Montgomery*, 810 S.W.2d at 389. Once a trial court determines that extraneous offense evidence is admissible under Rule 404(b),

the trial court must, upon proper objection by the opponent of the evidence, weigh the probative value of the evidence against its potential for unfair prejudice. *Id.*; see Tex. R. Evid. 403. When undertaking a Rule 403 analysis, the trial court must balance

(1) the inherent probative force of the proffered item of evidence along with (2) the proponent's need for that evidence against (3) any tendency of the evidence to suggest decision on an improper basis, (4) any tendency of the evidence to confuse or distract the jury from the main issues, (5) any tendency of the evidence to be given undue weight by a jury that has not been equipped to evaluate the probative force of the evidence, and (6) the likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted.

*Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006); see also *Erazo v. State*, 144 S.W.3d 487, 489 (Tex. Crim. App. 2004). However, if the only value of extraneous offense evidence is to show character conformity, the balancing test required by Rule 403 is obviated because the "rulemakers hav[e] deemed that the probativeness of such evidence is so slight as to be 'substantially outweighed' by the danger of unfair prejudice *as a matter of law.*" *Montgomery*, 810 S.W.2d at 387 (quoting *United States v. Beechum*, 582 F.2d 898, 910 (5th Cir. 1978)).

The record shows that prior to trial, the State indicated that it intended to introduce evidence concerning three specific instances that involved an extraneous victim, whom the state characterized as a troubled youth, that occurred

approximately ten years ago. The State argued that the extraneous offense evidence was admissible under Rule 404(b) and that the circumstances surrounding the instances were strikingly similar to the charged offenses because they involved Tucker consuming alcohol and touching the genitals of a male. The defense objected to the admission of the evidence under Rules 403 and 404 of the Texas Rules of Evidence and argued that the extraneous instances were not similar because they involved an adult rather than a child. *See* Tex. R. Evid. 403, 404(b).

The record shows that during its cross-examination of Tucker, the State informed the trial court that it intended to cross-examine Tucker about the specific instances of conduct involving the extraneous victim because Tucker had opened the door by testifying about “nothing happening in his house,” which is the same house where the extraneous instances occurred, and by testifying that he told D.C. that D.C. would be safe in his house. Defense counsel objected, arguing that the character conformity evidence was not admissible under Rule 404(b) and was unfairly prejudicial under Rule 403. *See* Tex. R. Evid. 403, 404(b).

The State maintained that it was offering the evidence to rebut the false impression created by Tucker and multiple defense witnesses that Tucker would never be involved in this kind of conduct and also to rebut the defensive theories of fabrication, accident, or mistake. The trial court allowed the State to present the

extraneous offense evidence, finding that the defense had opened the door by creating a false impression through Tucker's and James' testimony, and finding that the probative value of the evidence outweighed any prejudicial effect.

Based on the record before us, we conclude that the issue of whether the extraneous offense evidence was admissible for the noncharacter-conformity purpose of rebutting Tucker's defensive theory is within the zone of reasonable disagreement. *See Bass*, 270 S.W.3d at 563. The issue of whether the extraneous offense evidence made Tucker's defensive theories less probable is also within the zone of reasonable disagreement. *See id.* Because the extraneous offense evidence rebutted Tucker's defensive theories and had relevance apart from character conformity, we conclude that the trial court did not abuse its discretion in determining that A.W.'s testimony was admissible under Rule 404(b). *See Bass*, 270 S.W.3d at 562-63.

Having concluded that the trial court did not abuse its discretion by finding that A.W.'s testimony was admissible, we must also determine whether the trial court abused its discretion by determining that the probative value of A.W.'s testimony was outweighed by any unfair prejudicial impact. *See Gigliobianco*, 210 S.W.3d at 641-42. Our review of the record shows that the trial court reasonably concluded that the State's need for the evidence was considerable since Tucker's

defensive theory challenged the credibility of the victims. *See generally id.* The trial court could have reasonably concluded that A.W.'s testimony did not tend to suggest that the jury decide the case on an improper basis or tend to confuse or distract the jury from the primary issues. *See generally id.* The trial court could have also reasonably concluded that A.W.'s testimony would not consume an inordinate amount of time or repeat evidence already admitted. *See generally id.*

Tucker argues that the inherent probative force is weak because the alleged extraneous offenses were not similar to the charged offenses and were remote in time. According to Tucker, the extraneous offense was not similar because it involved an adult. Our review of the record shows that there were significant similarities, as all the offenses involved Tucker drinking alcohol and putting his hand inside a male victim's pants and touching the victim's genitalia, and all the offenses occurred when the victim slept over at Tucker's house. Although the extraneous offense involved an adult, the record shows that A.W. was a troubled teenager who had been staying with Tucker because he had been kicked out of his house and had nowhere else to go. Although remoteness is a factor that can undermine the probative value of an extraneous offense, in this case, the trial court could have reasonably determined that the similarities between the extraneous offense and the charged

offenses strengthened the probative force of the evidence. *See Robisheaux v. State*, 483 S.W.3d 205, 219-20 (Tex. App.—Austin 2016, pet. ref'd).

Given our standard of review, the presumption in favor of admissibility, and the factors discussed above, we cannot conclude that the trial court abused its discretion by determining that the probative value of A.W.'s testimony outweighed the potential prejudice to Tucker. *See id.* at 221. Because the trial court's decision to admit the extraneous offense evidence is within the zone of reasonable disagreement, we conclude that the trial court did not abuse its discretion by overruling Tucker's objections to the extraneous offense evidence. *See De La Paz*, 279 S.W.3d at 344. We overrule issue one.

In issue two, Tucker complains that the trial court erred by overruling his objections to the court's limiting instruction. According to Tucker, the trial court gave a limiting instruction that expanded the scope for the use of A.W.'s testimony to include reasons not given by the State, allowing the jury to consider extraneous testimony as it relates to the issues of intent, opportunity, and identity. Tucker complains that the trial court's limiting instruction allowed the jury to consider A.W.'s testimony for an improper purpose and substantially affected his right to a fair trial.

We review alleged jury charge error using a two-step process. *Kirsch v. State*, 357 S.W.3d 645, 649 (Tex. Crim. App. 2012). First, we determine whether error exists in the charge, and if we find error, we review the record to determine whether the error caused sufficient harm to warrant reversal. *Id.* When, as in this case, the defendant properly objected to the charge, reversal is required if some harm to the defendant resulted from the error. *Hutch v. State*, 922 S.W.2d 166, 171 (Tex. Crim. App. 1996). In determining whether some harm resulted, “the actual degree of harm must be assayed in light of the entire jury charge, the state of the evidence, including the contested issues and weight of probative evidence, the argument of counsel and any other relevant information revealed by the record of the trial as a whole.” *Walker v. State*, 300 S.W.3d 836, 847 (Tex. App.—Fort Worth 2009, pet ref’d) (quoting *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1985) (op. on reh’g)).

The record shows that when the State approached the bench and indicated that it intended to cross-examine Tucker about extraneous conduct to rebut the defensive theories of fabrication, accident, or mistake, Tucker objected and requested a limiting instruction when the evidence was presented and in the court’s charge. The trial court granted Tucker’s request for a limiting instruction and stated that because Tucker had opened the door to claims that the children were fabricating their

allegations, the court would allow the testimony for the limited purpose of rebutting the defensive theories. Tucker objected to the limiting instruction including any purpose other than intent and to rebut fabrication by the complainants, but the trial court overruled Tucker's objection to those specific inclusions.

After the State cross-examined Tucker about the extraneous offense, the trial court instructed the jury that it could consider the evidence of crimes, wrongs, or other acts for the purposes of determining opportunity, intent, identity, and to refute a defensive theory of fabrication. The trial court explained that it was leaving opportunity and identity in the instruction because the defense had raised the issue of Tucker not having had an opportunity to commit the acts, as well as the issue that D.C. might have had some sort of "PTSD" flashback and that the person D.C. felt touching him was not Tucker. The trial court gave the same limiting instruction after A.W.'s testimony and in the court's charge. Tucker objected to the jury charge including the same extraneous offense language, arguing that the instruction should only include motive and fabrication. The trial court overruled Tucker's objection.

"Extraneous offense evidence may be relevant to more than one issue." *Taylor v. State*, 920 S.W.2d 319, 323 (Tex. Crim. App. 1996). While the defense argued that the trial court's instruction was overly broad because it had only raised the issues of motive and fabrication, the trial court found that the defense had also

raised the issues of opportunity and identity in its questioning of witnesses. *See Blackwell v. State*, 193 S.W.3d 1, 16 (Tex. App.—Houston [1st Dist.] 2006, pet. ref'd) (explaining that although the trial court's charge was not as narrowly tailored to the specific issues as it could have been, the charge correctly instructed the jury to limit its uses of the extraneous offense evidence to issues that were properly before it, and the jury could readily disregard other issues that amounted to mere surplusage because they were not pertinent); *Jones v. State*, 119 S.W.3d 412, 426-27 (Tex. App.—Fort Worth 2003, no pet.). Based on our review of the record, the trial court could have reasonably decided that the extraneous offense evidence rebutted Tucker's defensive theory that he had no opportunity to commit the offenses because he was not alone with either complainant, and also rebutted his defensive theory that D.C. had a dream or flashback about being inappropriately touched by his cousin. *See Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001).

Here, the limiting instruction and jury charge limited the extraneous offense evidence to issues that were raised by the evidence and properly instructed the jury to consider the extraneous offense evidence only for the purposes of determining opportunity, intent, identity, and to refute a defensive theory of fabrication. *See Blackwell*, 193 S.W.3d at 16. We conclude that the trial court did not err by including all four purposes in its limiting instruction and jury charge. *See Taylor*, 920 S.W.2d

at 323; *Blackwell*, 193 S.W.3d at 16; *Jones*, 119 S.W.3d at 426-27. Because there is no charge error, we need not conduct a harm analysis. *See Almanza*, 686 S.W.2d at 174. We overrule Tucker’s second issue and affirm the trial court’s judgments.

AFFIRMED.

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STEVE McKEITHEN  
Chief Justice

Submitted on January 31, 2019  
Opinion Delivered March 27, 2019  
Do Not Publish

Before McKeithen, C.J., Kreger and Horton, JJ.