

In The
Court of Appeals
Ninth District of Texas at Beaumont

NO. 09-19-00027-CR
NO. 09-19-00028-CR
NO. 09-19-00029-CR
NO. 09-19-00030-CR
NO. 09-19-00031-CR

RONALD WAYNE MITCHELL, Appellant

V.

THE STATE OF TEXAS, Appellee

On Appeal from the 359th District Court
Montgomery County, Texas
Trial Cause Nos. 16-10-12639-CR, 16-11-13117-CR, 16-11-13118-CR,
16-11-13119-CR & 16-12-14753-CR

MEMORANDUM OPINION

A jury found Ronald Wayne Mitchell (Appellant or Mitchell) guilty of multiple sexual assaults of a child, T.S.,¹ in trial cause numbers 16-10-12639-CR, 16-11-13117-CR, 16-11-13118-CR, 16-11-13119-CR, and 16-12-14753-CR.² In each case, the jury assessed punishment at fifteen years of confinement. The trial court granted the State's motion to cumulate and ordered the sentences to be served consecutively. Mitchell appeals his convictions, raising fifteen issues. We affirm.

Evidence at Trial

Testimony of Louise (T.S.'s mother)

Louise testified that she had three daughters, C.S., T.S., and J.G. Louise's only marriage was to Bobby, with whom she had one child, J.G., the youngest of her three children. Louise testified that she and Bobby divorced October 21, 2016. Louise testified that she became involved with Mitchell's Church, the Body of Christ

¹ We use initials to refer to the children, including the victim, and aliases for the church members (other than Mitchell and his wife). *See* Tex. Const. art. I, § 30(a)(1) (granting crime victims "the right to be treated with fairness and with respect for the victim's dignity and privacy throughout the criminal judicial process").

² The indictments alleged that the sexual assaults occurred in Montgomery County on or about December 6, 2015, in trial cause number 16-10-12639-CR, January 25, 2016, in trial cause number 16-11-13117-CR, March 25, 2016, in trial cause number 16-11-13118-CR, February 25, 2016, in trial cause number 16-11-13119-CR, and November 1, 2015, in trial cause number 16-12-14753-CR.

Ministry, in 2002 when a co-worker invited her to a prayer service. Louise testified that on the following night she went to the house of the church's pastor, Mitchell, for another prayer session. When she joined the church, the church met on the southside of Houston. Louise testified that, about a year later, Mitchell told the church that God told him to move the church north, so the church members began meeting at a clubhouse at an apartment complex in The Woodlands until they could obtain a building. About a year and a half to two years after that the church moved into a church building in Tomball.

Louise testified that in 2012 she, Bobby, and other church members began living in the Tomball church building and giving fifty percent of their income to the church because Mitchell believed God wanted them to live at the church to save it from "falling behind[]" financially. Louise testified that Mitchell told his parishioners that God said they needed to sever ties with their family members because being around family members "release[ed] demonic spirits in [them] keeping [them] unpure." According to Louise, when T.S. turned thirteen and no longer was required by court order to visit her father, she stopped seeing her father because Mitchell told her that God said she needed to stop seeing her father. Louise testified that T.S. did not visit her father again until Louise left the church in 2016.

Louise testified that in August 2015, two of her daughters, fifteen-year-old T.S. and sixteen-year-old C.S., moved from living at the Tomball church to live at Mitchell's home. According to Louise, Mitchell said that God told him that he was to be T.S.'s and C.S.'s spiritual father and mentor and that he was praying and God gave him the assignment for them to come live with him for twenty-one days. Louise testified she was hesitant to allow the girls to move into Mitchell's home because she did not want her girls away from her, but she allowed it because Mitchell said, "those were God's instructions to him." Louise testified that she and T.S. were given written instructions by Mitchell, which were "God's instructions" that forbid Louise from communicating with T.S. except about God, prohibited them from acknowledging each other as mother and daughter and being in the same room together, and requiring that Louise would still be financially responsible for T.S. Louise testified that although she believed God was telling her to follow these instructions, she "was conflicted on the inside because [her] mind was telling [her] that this do[es]n't sound right." The written instructions were admitted into evidence at trial.

Louise explained that although during that twenty-one-day period she saw T.S. and C.S. at church services at the Tomball church, Mitchell did not allow her to communicate with them because "the whole purpose was . . . for them to go spend

time with [Mitchell] so he could mentor them and also to break the fleshly connection that they had with me.” Louise testified that during the twenty-one-day time period, Mitchell’s wife moved to the Tomball church and slept on the sofa in the pastor’s office because “Mitchell said that she had dishonored the God in him [and] she had a spirit of rebellion.”

According to Louise, at the time her two daughters lived at Mitchell’s house, only Mitchell and Melanie, who lived in the apartment above his garage, also lived at the house. Louise testified that after the twenty-one-day period ended, she prayed and God said that T.S. and C.S. needed to stay a little longer, so she called Mitchell and he told her, “I know this is God. I’m in total agreement.”

Louise testified that in November 2015, Mitchell sold the Tomball church building, said that God said the church members needed to move into Mitchell’s home, and Mitchell used scripture to justify the move. Louise testified that the church members, including Louise, her husband, and her youngest daughter, moved into Mitchell’s house. According to Louise, around twenty-one people were living at the house and the restrictions Mitchell placed on them became worse. Of the several families that moved into Mitchell’s home, the couples were not allowed to share rooms because Mitchell told them God said they were not worthy to be married and that they needed to separate. According to Louise, Mitchell told them that God

said that children were not allowed to live in their parent's room because of the "fleshly connections with children and parents[,]” and the children were not allowed to call their parents “mom” or “dad[.]” Louise testified that while living in the house she rarely saw T.S. because T.S. was isolated from everyone but Mitchell, his wife, and C.S., and that T.S. was “constantly being judged for something[.]” and “her judgment was that she couldn't be around anyone [and] had to stay in the room.” Louise explained that she was not allowed to accompany T.S. to medical or dental appointments.

Louise testified that if she did not follow Mitchell's restrictions, the other members in the house would report her and she would be “openly rebuked[.]” Louise explained “you would be put on the spot[,]” Mitchell would ask why did you rebel against what God said, and Mitchell would issue a judgment “from God[.]” that sometimes would include “a five-day fast, no food, no water[.]” and no communication with others. According to Louise, this happened on many occasions to her, but she did not overtly question Mitchell's “judgments” because of fear. Louise testified that Mitchell issued judgments that required members to stay outside at night in a vehicle, and one member, Amanda, had to stay in the vehicle for seven to eight months and was only allowed to come inside to use the restroom or eat.

Louise testified that in June 2016, Louise's husband, Bobby, left the house and the church, had a disagreement over the phone with Mitchell, and Mitchell gave Louise money four or five days later and instructed her to divorce Bobby. Louise explained that she did not want to file for divorce, but Mitchell gave her the option of following Bobby or God and she "felt that if [she] went and left with [her] husband, [she] would not be following God[.]" Louise testified that she filed for divorce, but in September 2016, before the divorce was finalized, she left Mitchell's house and the church and she took T.S. and J.G. to live with her cousin.

Louise testified that, prior to her divorce being final, she tried to leave the house and she sent a text message to Mitchell that she "was coming to get [her] girls and to have [her] stuff and their stuff ready." She left a message that she would not be getting her oldest daughter, C.S., because C.S. was eighteen years old and could make her own decision. When she drove up the driveway, the church members and Mitchell were outside in front of the house. According to Louise, her youngest daughter, J.G., was able to get into Louise's van, and T.S. kept running away from Louise, the church members were standing in the way keeping Louise from getting T.S., and T.S. said, "no" and ran back into the house. Louise testified that while she was trying to get T.S., a church member turned off Louise's vehicle, took her house key off the keychain, and confiscated Louise's cell phone that was in another church

member's name. Mitchell tried to convince her to stay, and she told them that she would return but just wanted to take her youngest daughter to get some ice cream because she never got to spend any time with her. Louise testified that her youngest daughter told her that Mitchell had instructed T.S. to run away from Louise when Louise came to pick her up. When Louise returned to the house, the door was locked but the members let Louise in, they had a prayer session for her, Louise revealed that Mitchell had abused her one time, the members prayed and Mitchell repented, and eventually everyone went to bed.

Louise testified that the next day, instead of going to work, she went to her cousin's house and confided in her cousin. Her cousin took her to get a cell phone, and Louise returned to Mitchell's house. A few days later, Louise went to her cousin's and told her cousin she did not want to go back to Mitchell's house and that she wanted to get her children. Louise testified that she called the Magnolia Police, told them that she needed help getting her things and her children, and law enforcement met her at the entrance of the subdivision. Louise knocked on Mitchell's door, a church member opened the door, and Louise and a police officer entered the residence. According to Louise, she had to grab T.S. by the arm and pull her out of the house because T.S. was resisting. At one point, the police officer asked T.S. why she did not want to leave and T.S. responded, "because Jesus is here."

Louise testified that T.S. kept attempting to get out of the car until the police officer told her to stop or she would take her “to juvenile.”

Louise testified that she and Bobby divorced but they still communicated because he was the father of her youngest daughter. Louise testified Bobby told her he kept having a dream, which then prompted Louise to question T.S. about whether something had happened to T.S. while living with Mitchell. Louise testified that she asked T.S. if something happened. According to Louise, T.S. told her what had happened. When Louise asked why T.S. had never told her what had happened before, T.S. cried and said that Mitchell had told her that if she ever said anything, God would kill her on the spot and that she would be the reason “the movement did not come to pass.”

That same night, Louise and some of Louise’s relatives took T.S. to the Magnolia police station and Louise gave them a written statement. Louise and T.S. also went to the hospital for T.S. to have a SANE exam as directed by police. Louise also took T.S. to Safe Harbor for an interview. At trial, Louise explained that T.S. had attended weekly counseling sessions since November 2016 and that the counseling had helped T.S.

Testimony of T.S.

Sixteen-year-old T.S. testified that her first memory of Mitchell was when she was four years old and attended a church service where he was “praying for [her] mom, but [T.S.] thought he was hurting [her] mom.” According to T.S., she started crying and Mitchell came over to her and told her everything would be okay.

T.S. testified she moved into the Body of Christ Ministry church building in Tomball when she was about thirteen years old and that everyone who lived there moved there because “nobody could afford houses.” According to T.S. she lived in a room with her sisters, some other girls, and an adult female, and her mother and stepfather lived in a different room. T.S. testified that she attended school, Kingdom Academy, at the church and was taught by church members.

T.S. testified that at one point, while living at the Tomball church, Mitchell told her she was not allowed to talk to her mother because she and her mother were “hanging around each other and talking and laughing” and so “[they] had a fleshly connection and [they] had to be separate from each other.” T.S. explained that, around when she turned thirteen, she quit going to visit her biological father because Mitchell told her at the Tomball church that she could no longer see her father because “[they] couldn’t have any fleshly connections or [they] couldn’t have anything to do with the outside world.” Mitchell also would not let T.S.

communicate with her stepfather and her good friend L.C.³ at the Tomball church because they had a “fleshly connection” with T.S. According to T.S., if she communicated with people she was not supposed to, her punishment would often be whatever Mitchell told her God said, which was usually fasting for three to five days and sometimes without water. T.S. also testified that Mitchell made everyone, including her, throw away or burn all their photographs because scripture prohibited them having “gradient images[,]” and this made her angry and sad.

T.S. testified that in 2015, when she was fifteen years old, she was surprised to learn she was going to move into Mitchell’s house for twenty-one days “[f]or counseling and teachings.” According to T.S., while living at Mitchell’s house he would strike her often for “being rebellious or [because she] wasn’t listening to what God was saying or being silly[.]” T.S. testified that, at first, she lived with Melanie (Mitchell’s mother-in-law) in a studio apartment above Mitchell’s garage, her sister C.S. lived in a room separate from Mitchell in the house, and no one else lived at the house. T.S. testified that during this time Mitchell’s wife, Sandra, lived at the Tomball church because “she used to rebel against Ronald Mitchell and get in

³ L.C. was a minor at the time of Mitchell’s trial, and to protect L.C.’s identity, we identify her by using initials.

arguments and stuff[,]” and T.S. knew this because he would come to church and tell everyone in sermons and meetings.

T.S. testified that when T.S. moved into the house she was fasting, reading her Bible, memorizing scriptures, praying, doing homework with her sister C.S., but she was not allowed to talk to her mother. T.S. explained that the twenty-one days was extended because she “couldn’t be around anyone.” T.S. testified she later moved to the exercise room in the house and then she moved into another room with Sandra when the church members all moved into the house.

According to T.S., about a month or two after T.S. had moved into Mitchell’s house and when she was fifteen, she was at the altar praying and Mitchell asked T.S. to go to the store with him. T.S. testified that she and Mitchell began discussing a dream she had told him about earlier where she had been impregnated by an angel. T.S. testified that God was “birthing the ministry into [her,]” and Mitchell started saying things which made T.S. very uncomfortable. According to T.S., when they got back to the house, Mitchell told her God was okay with them marrying and they needed to fulfill the dream, he hugged her, gave her five dollars, and told her not to tell Melanie what was going on. T.S. testified that she thought it was “gross[.]” and “something that [she] just didn’t want to be involved in.” T.S. testified that a few

weeks later she was watching a movie with Mitchell and C.S., and Mitchell gave T.S. and C.S. wine to drink.

T.S. testified that a week or two after the vision, Mitchell asked if Melanie and T.S. wanted to go for a picnic at the park. While Melanie was upstairs making sandwiches, T.S. went downstairs, and Mitchell asked T.S. if she was ready, T.S. said, “no, [she] wasn’t[]” because she knew what he meant, but she went into his room anyway because she “really didn’t have a choice.” According to T.S., Mitchell had “[o]ld people music[]” playing, the room was dim with only two lamps on, he told her to lock the bedroom door, he told her to take her clothes off, and he only had on black underwear with a gray stripe around the waist. T.S. testified that when they had their clothes off, he made her put Vaseline on her private part and he started kissing her body. T.S. testified how Mitchell digitally penetrated her while she was lying on the bed. According to T.S., when she started to say that it was hurting and started to scream, he yelled at her to shut up because she was screaming and crying loudly. T.S. testified that she thought he was going to hit her and that after he stopped touching her, she put her clothes on and they went to the park. According to T.S., after they returned from the park, and before she went upstairs with Melanie, Mitchell told T.S. “[w]hat we did, that was God[]” and T.S. did not know what to

say, and she went back upstairs with Melanie but she did not say anything to Melanie about what had happened.

T.S. testified that, maybe about a month later and when she was living in the exercise room in Mitchell's house, Mitchell was cooking steaks and she was watching a Christian movie called "Paul." Mitchell told her what they were going to do later that night. According to T.S., later while she was in Mitchell's room, he told her to lock the door and get towels and lay them on the bed and put the pillows in a certain direction, and T.S. described the room setting as "the same[]" as before, with the music playing and the room dimly lit. T.S. described how this time when she entered his room he was already undressed, she undressed, and he told her to get on the bed in the same direction as the pillows, he used Vaseline as a lubricant, and this time he penetrated her with his penis while he was on top of her and she was lying on her back. At trial, T.S. described in detail the alleged sexual assault, what she was wearing during the alleged assault, and the size of the Vaseline jar. T.S. recalled that she screamed, and Mitchell told her to be quiet.

T.S. testified that on another occasion, she, Mitchell, and C.S. were making pizzas and she was watching the movie "Still Alice" in the living room. After T.S. ate and drank wine that Mitchell had given her, Mitchell told her to come to his bedroom, he had her lock the door, and take her clothes off. According to T.S., the

setting in the room was the same as the other times, he made her touch his penis, put her mouth on his sex organ, and he used Vaseline again and penetrated her while he was on top of her and she was on her back. T.S. again specifically described the alleged assault.

T.S. testified that on another occasion she and Mitchell were watching a different movie in his room with the door closed, and again T.S. had a cup of wine. According to T.S., after the movie Mitchell went into his bathroom for five or ten minutes, and when he returned to the room he turned the music on, turned off the light and turned the lamps on, and told T.S. to get towels. T.S. described for the jury how Mitchell penetrated her with his penis while she was lying on her back.

T.S. testified that when the remainder of the church members moved into Mitchell's home, Mitchell's sexual actions toward T.S. continued, but then he would take her to local hotels. T.S. testified that sometimes she would sit in the car while Mitchell paid for the room in cash in the hotel lobby. She identified some of the hotels for the detectives, and she also testified that Mitchell sexually assaulted her on out-of-town trips she went on with Mitchell. T.S. testified that she also went with Mitchell to Las Vegas, which she thought was in California, in August 2016, and that was the last time she had a sexual encounter with Mitchell. T.S. testified that she was sore after some of the sexual encounters, which would affect how she would

walk, and that Mitchell would tell her to “walk normal[.]” around the church members.

According to T.S., Mitchell’s wife Sandra would take T.S. to the Lone Star Clinic in Conroe to get “Depo” shots to prevent T.S. from getting pregnant. T.S. testified that when they would arrive at the clinic, Sandra would tell the front desk why they were there, and the clinic gave them paperwork to fill out. T.S. would fill out the paperwork and when she was asked who Sandra was, she lied and told the clinic that Sandra was her mother. Sandra paid cash for the first shot. T.S. testified that when they went to the same clinic for a second shot, the clinic tried to use T.S.’s insurance card and clinic personnel told T.S. they would have to go upstairs instead. T.S. testified she told Sandra what the clinic staff said, and Sandra and T.S. left without the shot instead of going upstairs. According to T.S., on the way home from the clinic Sandra called Mitchell using the speaker phone and told him what happened, and he called T.S. a whore and accused her of knowing what she was doing by handing the clinic the insurance card so that her mother would find out that she was getting the shots. T.S. testified that thereafter she received the shots at Walgreens. T.S. testified that her stepfather Bobby left the church because he was not getting along with Mitchell, and that T.S. heard Mitchell tell her crying mom at

a church service several days later that her mom would have to divorce Bobby because he left the church.

T.S. testified that the first time her mother tried to leave the church, Mitchell called T.S. into the living room and told her that her mother had left, he and her mother had gotten into an argument, and that her mother was coming to get her. T.S. testified that she was shocked and happy, but she was also scared because T.S. believed that if she left, she “was going to go to Hell.” According to T.S., Mitchell told her that if her mother was successful in taking T.S. from the house, she should run to a nearby store or gas station and call them so they can pick her up or she should try to find a METRO bus. T.S. testified that her mother’s things were put outside in front of the house and when her mother arrived the church members were outside. T.S. testified that Mitchell was asking her mother why she was leaving and “trying to ruin their lives[,]” and her mother just responded that she did not want any harm and just wanted to leave peacefully. T.S. testified that while she was standing at the front door, her mother and Mitchell “went off to the side[.]” to talk and she could not hear what they were saying. According to T.S., one of the church members nudged T.S. to say something, and when T.S. said weakly, “I don’t want to go[.]” because she really wanted to go, it showed a “fleshy connection” and she was sent inside the house. T.S. watched through a window and saw her mother leave with

J.G., T.S.'s younger sister, and T.S. was sad, but then her mother returned about an hour later.

T.S. remembered the day the police helped her get out of the church, which was "a week, maybe[]" after her mother first tried to leave the church. T.S. testified it was at night and she was sleeping and awoke to her mother and a female police officer in the house, and her mother was telling her to pack her things. According to T.S., when she said she did not want to leave, the police officer asked her why, and T.S. responded, "Because Jesus is here." T.S. testified she packed her belongings and her mother dragged her out of the house while she resisted. T.S. testified that she did not want to leave because Mitchell had taught the members that if they left the church they would go to Hell. Once in the car, T.S. tried to get out but got back in when the police officer told her she would go to "juvie[]" if she got out of the car. T.S. testified they went to her cousin's house and stayed there for a while.

T.S. testified that she did not tell her mother about what Mitchell had done to her until about a month later, when her mother was cooking in the kitchen and talking on the phone. According to T.S., her mother said Bobby had a dream that "the pastor was doing stuff sexually with" T.S. and C.S. and then her mother asked her a question about Mitchell and sexual abuse. T.S. testified that when she did not say anything in response, her mother became enraged and told her to tell her everything

that happened. After T.S. told her mother what had happened, T.S., her mother, and relatives had a meeting about what had happened, and her mother called the police. T.S. testified they drove to a police station, her mother made a report to the police, and then they went home. T.S. testified that she later had a medical exam and assisted the detective in locating the clinic she had gone to and in locating the Holiday Inn hotels where she and Mitchell had stayed. According to T.S., the sexual assaults in Mitchell's bedroom that she testified about occurred in November of 2015, and she agreed she told the nurse at the hospital, the detective, and the forensic interviewer at Safe Harbor that the sexual assaults happened every day and sometimes twice a day. T.S. agreed that although Mitchell had guns in his house, he never threatened her with the guns. According to T.S., she was suicidal when she lived with Mitchell because she "felt lonely, bad, [and] depressed all the time[,]” was "kept away from everybody[,]” and because of what Mitchell was doing to her.

Testimony of Kari Prihoda

Kari Prihoda, Program Director and Forensic Interviewer at Children's Safe Harbor, testified that she interviewed sixteen-year-old T.S. on October 27, 2016, for over two hours. Prihoda testified that she and T.S. discussed truth versus lies, T.S. promised to tell the truth, T.S. was able to provide a narrative of what happened with a significant number of details and events, and T.S.'s demeanor was calm and "soft-

spoken[.]” during the interview. Prihoda testified that towards the end of the interview, she consulted with Detective Gannucci, who was observing the interview from a closed-circuit television.

Testimony of the Sexual Assault Nurse Examiner (SANE)

The SANE testified that she examined T.S. on October 25, 2016, and that T.S.’s mother brought her in for the exam. According to the SANE, she obtained a history from T.S. and then performed the exam. The SANE testified that because T.S. had not been around the perpetrator in the ninety-six hours preceding the exam, no evidence was collected. The SANE testified that T.S. reported she was sexually assaulted many times from August 2015 to August 2016, and the SANE’s report noted T.S. reported oral and penetration of her female sexual organ. The SANE noted that T.S. appeared “intermittently tearful, hesitant to speak, talking with her eyes closed, hugging her stuffed animal, hiding and covering her face, looking down while relating history[.]” and the SANE explained that she included the notation about the stuffed animal because, considering T.S. was sixteen, this behavior “was so profound how much she was hugging [the stuffed animal], especially during the physical and genital assessment.” According to the SANE, T.S. had a one-centimeter well-healed tear to the hymen “at 6:00 O’clock[.]” the injury was at least eight weeks

old, and although she was not testifying as to who caused the tear or how it got there, the tear was consistent with the history T.S. provided.

The SANE testified, reading from T.S.'s medical records, as to what T.S. reported to her directly:

Patient states this all really started last summer when I was 15. We went to Body of Christ Ministry in Tomball. My Pastor, Ronald Mitchell, he liked me. I didn't like him like that, but he thought different. He told my mom he needed me to live with him for 21 days so he could mentor us in spiritual warfare. We didn't really have no place to live anyway and he knew that.

After the 21 days, we all, basically, moved in with him, me, my mom, and my two sisters. One day I was talking to him about a dream that I had about being married to an angel. He told me that was God's way of telling me I needed to marry him. He was really the angel in my dream. . . .

That's when he started talking about the S word; you know, sex. I got freaked out because he was in his 50s. And I was a virgin. He was pressuring me with his words and acting like not only was he disappointed, but that God was disappointed in me too, especially since God sent a message to me in my dreams about being married to an angel that was supposedly my Pastor. I told him no because I wanted to stay a virgin, but he told me it was too bad since he had already caught feelings for me. He said, I wouldn't go to Heaven if I didn't get in a relationship with him. And that God told him to have a relationship of sex with me. I told him I didn't want to have sex before marriage. And that's when he said that he had a dream where God told him that he needed to have more than one wife and I was to become one of his wives. That way it wouldn't matter if I wasn't a virgin anymore because I would be his wife.

I didn't want to be married to an old man, but he put the pressure on and I knew I would go to Hell if I didn't start doing what he was telling me to do. So, we started having sex. It was, like, around November 20th of last year, but I can't remember exactly when it all started.

....

He would put his stuff -- you know, his stuff (pointing towards female genitalia) into my pocketbook (pointing towards female genitalia). He would do this to me every day. Sometimes more than once a day. He would put his stuff into my mouth too. He put his stuff into my pocketbook so much that it hurt down there when I went to pee. He told me if I told anyone that my heart would stop beating because God would get angry with me. When I would tell him that I couldn't have sex because I was too sore down there, he would get really angry.

Then in April, his wife, Sandra, started taking me to the clinic to get the shot. You know, the contraceptive shot so I couldn't get pregnant. This went on in his house until other church members moved in and then he started taking us to motels. He would get so angry if a boy even looked at me. I was so scared to make him mad. I didn't even look at another person. People thought I was shy, but I was terrified to make eye contact with a boy because I knew it would make him angry and he would beat me. Sometimes he would get so angry that he would hit me, slap me around with his open hand, even smacking me in the face.

The sex and the beating stuff was, like, almost every day from November until just a few months ago in August after a bunch of us went on vacation to Vegas. I kept getting in trouble though. He would get angry and yell at me so bad I would cry and beg him to stop because I was so scared. He said he had been talking to God about leaving me alone, but how he couldn't because he had already took virginity and belonged to him now and we're supposed to be his wives.

Then things got weird at the church. Everyone started treating my mom bad so she would leave the church. It was awful. And she had no idea what was going on because we knew if we told her that we would go to Hell. It go[t] so bad at the church for my mom, like, they were trying to run her out. She prayed for strength. And finally at the end of August, we moved to Houston. My mom moved us here so we could start over.

Today I told my mom I am scared for her, my sister. When she asked me why, I finally told her the whole story and she cried and cried and now I'm here with you. Please help me.

The SANE also agreed that although she has done more than 5,000 exams and probably treated more patients than that, she specifically remembered T.S. The SANE testified why she specifically remembered T.S.:

Because she looked me square in the eye and asked me to help her. And then she asked me if I was going to be able to help her from going to Hell. And it was a profound moment for me to have her ask me that. And I told her that there was counseling that I would be able to help her with. And that -- that they would help her emotionally and spiritually because that was a big part of me taking care of all of her.

Testimony of Britney Colquitt

Britney Colquitt, a Treatment Specialist for Tri-County Behavioral Healthcare, testified that she met with T.S. on October 28, 2016, for a crisis assessment to determine if T.S. was safe to go home or needed to go to a hospital. According to Colquitt, T.S. appeared calm and cooperative, but sad, and she was believed to be in crisis and that she may be a harm to herself. Colquitt testified that her treatment notes indicated that T.S. reported five suicide attempts over a two-week period in August 2016, and although T.S. reported having suicidal ideations two weeks prior to the assessment, T.S. denied having such ideations at the time of the assessment. Colquitt testified that T.S. reported being molested by her pastor when she was fifteen and that the molestation stopped when her family recently moved. According to Colquitt, T.S. was experiencing “symptoms of anger, sadness, crying, anxiety, thoughts of self-harm, chills, headaches[,]” but that T.S. believed

she was better “since her family ha[d] moved from their previous environment.” Colquitt testified that T.S. believed she could stay safe and was interested in receiving outpatient services. Colquitt did not admit T.S. to a facility as she was not currently suicidal, she felt safe to go home, and her mother reported she could keep her safe. Colquitt went over a service plan and future services with T.S.’s family, referred T.S. and her mother for counseling, and followed up with her family after they left.

Testimony of Investigator Mark Wright

Investigator Mark Wright testified that he works as a Crime Scene Investigator and Latent Print Examiner for the Montgomery County Sheriff’s Office. Wright testified that he became involved in the case and executed a search warrant at Mitchell’s residence on November 1, 2016, regarding an alleged sexual assault in the master bedroom of the residence. Law enforcement retrieved red sheets from the master bedroom bed, a jar of Vaseline from the master bathroom vanity drawer, and a larger jar of Vaseline from the nightstand drawer in the master bedroom. Wright explained that he did not collect towels from the scene as they appeared to have been recently laundered and folded, and that it was likely that the DNA was lost after the towels were washed, so there was no expectation that bodily fluids could be located on the towels.

Wright testified that even though it was his understanding that the victim had not been to the scene in approximately two months, Wright still sent portions of the fitted and top sheets for semen and DNA analysis because “[s]ome people don’t launder as often as others[.]” and “[t]race evidence can stay on clothing or on bedding.” Wright explained that if an item is laundered, any DNA is “more than likely gone.” According to Wright, the testing found no DNA matching T.S. on the comforter or the portions of the sheets tested. According to Wright, during the execution of the search warrant he was advised that the victim had reported seeing weapons, so the detectives retrieved weapons they found at the scene. Wright testified that there were “gold rod[s]” throughout the house and altars in the house. Wright testified that a marriage certificate stating it “certif[ied] union . . . between[.] The Lord Jesus Christ and Apostle Ronald Mitchell and [Linda]” was found in the home, and it was admitted into evidence. Wright testified about some other documents recovered from the home and they were also admitted into evidence. One was titled “Sandra’s restrictions and judgments from God[.] And [Melanie]’s restrictions and judgments from God[.]” and another “God’s instructions to [Louise] and [T.S.]” Wright also identified two documents that were admitted at trial as documents recovered from the dashboard of a red truck on the property. Wright testified that one document said, “A dead man don’t think, talk, move. That’s who

[Linda] is a dead man in Jesus Christ.” Wright testified that the other document read as follows:

Are you aware that Pastor said I could shower tomorrow before Sister Stephens take me to my dentist appointment? It’s for 1:00 o’clock. We may leave at 12:15. So can you let me in at 11:00 to shower, wash my hair, and get dressed, please? Also, my fast ends in the morning, can I get some gumbo before I take my shower? Love you. Thank you.

Wright agreed that other evidence such as video cameras, computers, and laptops were also collected from the scene. No fingerprint testing was done on any of the items recovered from inside the residence.

Testimony of Detective Tom Gannucci

Detective Tom Gannucci with the Montgomery County Sheriff’s Office testified he was assigned the case in October 2016. Detective Gannucci testified that T.S.’s mother had already provided a written statement to law enforcement and a SANE exam was scheduled for T.S. Detective Gannucci testified he contacted the victim’s mother and scheduled a forensic interview with the child. Detective Gannucci testified that the recorded forensic interview of T.S. was conducted at Children’s Safe Harbor on October 27, 2016. Gannucci observed through a closed-circuit television the interview between T.S. and the forensic interviewer, Kari Prihoda. According to Detective Gannucci, T.S. was sixteen years old at the time of the interview. Gannucci testified that after observing the interview, he felt he had

many details corroborating T.S.'s mother's statement, and at that time Mitchell was suspected of sexual assault of a child. According to Detective Gannucci, T.S. drew a diagram of Mitchell's residence and identified the location of the pastor's bedroom where the alleged assaults occurred and identified the location of items T.S. had described, such as Vaseline from the bedroom's nightstand and bathroom and white towels. The Detective also noted on the diagram the location of guns in the residence.

Detective Gannucci also delivered a subpoena for medical records from Lone Star Clinic, where T.S. reported being taken to get birth control, to corroborate T.S.'s statements from the interview. Detective Gannucci testified he was able to confirm from the Lone Star Clinic records that when T.S. was fifteen, she first went to the clinic on October 26, 2015, and that Sandra took her for the purpose of getting contraception Depo shots. According to Gannucci, Sandra's name was listed on the records as T.S.'s mother with a phone number that could not be traced to T.S. or Sandra, and an address was listed that Gannucci agreed "was not a viable address[.]" A copy of Sandra's driver's license was in the records for the visit and Sandra's signature appeared on the patient's rights/responsibilities for HIPAA notice. Detective Gannucci testified that the medical records indicated that T.S. should return in three months for the next contraceptive shot. Detective Gannucci explained

that he confirmed from the medical records that T.S.'s last visit to the clinic was on January 25, 2016.

Detective Gannucci testified that "96 hours is usually a good window where we're hopefully going to gather some evidence[,]” but because T.S.'s SANE exam was performed more than ninety-six hours after the alleged sexual assault, no physical evidence was collected during the exam. Detective Gannucci testified he reviewed the SANE report and, although the report noted an injury, the fact that there was an injury did not necessarily mean that a sexual assault had occurred.

Detective Gannucci testified that he also obtained T.S.'s cell phone from Louise and statements from Louise, T.S.'s mother, and Albert H., C.S.'s father. A forensic interview and SANE exam of J.G., T.S.'s younger sister, were also completed. According to Gannucci, detectives completed supplemental reports as a result of the executed search warrant at Mitchell's, and other children living in Mitchell's home were interviewed. The interviews also confirmed facts from T.S.'s forensic interview, such as the trip to Las Vegas taken by Mitchell, Sandra, T.S., and other members. Gannucci testified that, as part of his investigation, he spoke with other Body of Christ Ministry members. An arrest warrant was issued for Mitchell and he was arrested on November 2, 2016.

On cross-examination, Gannucci agreed that although T.S. alleged that Mitchell had physically and sexually abused her “for the better part of a year starting on or about November 20th or 22nd of 2015[,]” when Louise showed up to remove T.S. from Mitchell’s home, Louise had to physically drag T.S. out of the house. Gannucci explained that his understanding of T.S.’s reluctance to leave was that “she was afraid that she was going to hell if she left.” Gannucci agreed that none of the church members who had gone on the Las Vegas trip said they saw anything inappropriate about Mitchell and T.S.’s relationship on the trip. Detective Gannucci testified that T.S. named C.S. as an eyewitness to some instances of Mitchell’s abuse, and Gannucci agreed that when he spoke to C.S. he got a lot of “[c]ontradictory information.” Detective Gannucci acknowledged that although T.S. had reported that Mitchell physically and sexually assaulted her on various trips taken with church members, Gannucci could not corroborate those reports. Detective Gannucci agreed that Louise had given members of the congregation permission to take her daughters for medical and dental check-ups but specifically denied giving permission for the members to put her daughters on birth control.

Testimony of Tina Birch

Officer Tina Birch with the Montgomery County Sheriff’s Office testified that she was on patrol on September 15, 2016, when she received a “civil assist[.]” call

from Louise, who needed help removing her child from a church where “everybody live[d].” According to Officer Birch, Louise wanted the officer to go to the residence “as a civil standby and just be there for her” so that there would not be a verbal or physical altercation. Officer Birch testified that when she went inside the home around midnight, there was a young boy reading his Bible in one room and, in another room, there were several adults sitting on a couch with a man sitting in front of them holding a wooden staff. Officer Birch testified that she spoke with a few people in the home and that everyone was quiet and only spoke if she spoke to them. Officer Birch testified that J.G. willingly left but the other daughter T.S. stated she did not want to leave. According to Officer Birch, she asked T.S. to step outside to talk to her in private about why T.S. did not want to leave but T.S. refused. Officer Birch testified that T.S. did not seem fearful of her mother but instead seemed fearful of going out of the house and said, “something to do with if she stepped outside the door then God would no longer save her.” Officer Birch testified that Louise pulled T.S. out of the house by her arm and into the van, and T.S. “was resisting her a little bit, but not like somebody who just really didn’t want to go home with mom or would have fought back.”

Officer Birch testified that she also assisted when the search warrant was served at Mitchell’s house. At one point she saw the same little boy she had seen

inside the home on the earlier occasion, and he was sitting in the back of a vehicle with an adult female as a result of law enforcement removing and separating the house's occupants while law enforcement executed the warrant. According to Officer Birch, they appeared scared and Officer Birch asked the boy where his mom and dad were, and he said his dad was at work and he pointed to some vehicles on the lot to indicate his mom's location. The adult female with him then responded, "Shhh" as if "to get him to be quiet and not talk." Officer Birch testified that her role on the property was to secure the occupants and so, for safety reasons, she alerted SWAT that there may be someone in one of the vehicles and they found a female in one of the vehicles.

Testimony of "Tammy R."

Tammy testified that she and her husband were members of the Body of Christ Ministry church starting in 1998 or 1999, and they left the church about ten years later. Tammy testified that the church required tithes that started at ten percent, but then "Apostle Mitchell" informed the members that God said they needed to tithe thirty-five percent. Tammy testified that she saw members "rebuked over the pole pit" and couples separated from their spouses as "judgments" for not doing what Mitchell required. According to Tammy, one time Mitchell told her and her husband that they "had a demon in [their] marriage[]" and that God said they needed to

separate for “deliverance[.]” Tammy testified that she did not want to separate from her husband but she wanted to obey God, so she went and lived with her sister for six months as instructed by Mitchell. Tammy testified that, on another occasion “a year or two” later, her husband got behind on the “church dues[.]” and the thirty-five percent tithe, and Tammy’s husband became angry because he did not want to borrow money to pay it, and then Mitchell required them to separate and told Tammy to move into Mitchell’s home until he decided the separation was over, which was about five to six months later. According to Tammy, while separated, she was only allowed to see her husband at church and only allowed to talk to him on the phone about their children.

Tammy testified that Mitchell called a meeting with all the couples and Mitchell told them that “he was given an assignment from God that [they] needed to get the devil out of [their] marriage[.]” and that each couple would have to meet with him and discuss what sexual positions they used with their spouse and intimate details about their sexual relations. Tammy testified that she did not want to tell Mitchell those details but did so because she wanted to obey God. Tammy testified that she and her husband had to go into Mitchell’s room, stand and tell him the sexual positions they used, and that Mitchell said the only position allowable by God was

“for the female to be lying down always at the bottom[] [a]nd the husband at the top.”

Tammy explained that they left the church in 2009 or 2010 when Mitchell told her she could not use powder or wear a weave in her hair to cover her thinning hair and balding because that was “vanity” and using powder made her a witch or a warlock, and she was not allowed in the church. According to Tammy, Mitchell taught his members that if they left the church they would not be raptured, and if their spouse left, they would have to divorce the spouse. Tammy testified that when she left the church, her husband still attended, she moved in with her brother because she was not allowed to see her husband or children, and she was “excommunicated[]” from the church.

Testimony of Bobby

Bobby testified that he began attending the Body of Christ Ministry in 2005 in Tomball, and that is when he met and married Louise, who was already a member. Louise had two daughters, T.S. and C.S., and Bobby and Louise had one daughter together, J.G. Bobby testified that around 2011 or 2012 their family moved into the Tomball church at Mitchell’s suggestion because church finances were dwindling because members had left. According to Bobby, Mitchell would require couples to “separate” if they were not helping each other spiritually or helping the ministry, and

he required Bobby and Louise to separate on two occasions. Bobby testified that “[e]very marriage [in the church] was the victim[.]” to these involuntary separations and that Bobby’s fear of going to Hell was what kept him from disagreeing with the separations and leaving the church. Bobby testified he would sleep in the sanctuary and was not allowed to talk to Louise unless it was about “bills or ministry.” Bobby testified that he and Louise were “separated” by Mitchell on one occasion for “about a year.” Bobby explained that if he did not do what Mitchell asked, he would face a judgment such as a separation or a fast from food or water for three to eight days and would be rebuked by the church members.

Bobby testified that when his grandmother passed away, he did not ask Mitchell if he could go to the funeral because he knew Mitchell would not let him, and Bobby went to the funeral without asking permission from Mitchell. Bobby testified that he saw women have judgments from Mitchell that required them to sleep in a truck. Bobby testified that he witnessed Mitchell giving all the children wine when they were celebrating and watching movies, but they would drink juice when “taking of bread, drinking of the blood.” According to Bobby the tithes required by Mitchell increased from ten percent to fifty percent as more people left the church, church members would have to fund the church and raise money for the church by standing on street corners and having bake sales. Bobby testified that the

church did not buy even one book for the children, and the members raised the money for the books.

According to Bobby, Mitchell at one point told Bobby and Louise that God revealed to him that T.S. and C.S. needed to move into Mitchell's house because of their "fleshly connection" with their mother, Louise. Bobby testified that during this time Mitchell revealed to church members in a church meeting that Mitchell's wife would move into the Tomball church and live in the pastor's office because she was "in rebellion" against him. Bobby testified that Mitchell would not allow Bobby and Louise to communicate with T.S. and C.S. while the girls lived with Mitchell.

Bobby testified that Mitchell told the church members that the church had a \$300,000 balloon payment that could not be paid, that God told him he wanted the church sold, and "all the members prayed and said that God said sell it." Mitchell told the members that the church was sold, and the members moved into Mitchell's home in 2015. Bobby testified that while living in Mitchell's home, Mitchell's restrictions on Louise and T.S. increased, and Bobby would go long periods of time without seeing T.S., T.S. stayed in her room, he and Louise would not be allowed to communicate with T.S., and he only got to see T.S. when she was called out of her room for a church meeting or for church.

According to Bobby, he left the church in June 2016. Bobby had been out of state for two weeks when he participated in a conference call with Mitchell, and Mitchell said he heard about the funeral Bobby attended and he accused Bobby of starting his own ministry and not following Mitchell. Mitchell told Bobby that as his judgment he would have to sleep in a truck when he returned. When Bobby told Mitchell he would not sleep in a truck, Mitchell told him that he needs to humble himself and become Mitchell's disciple and that if he would not, Mitchell wanted his key to the house. Bobby testified that someone brought him his belongings, Bobby returned his house key, and Bobby never went back to Mitchell's house. Bobby was served divorce papers by Louise five days after he left the church. Bobby testified that Louise left the church about three or four months later.

Bobby testified that in September or October of 2016, he contacted Louise about a dream he had about T.S. that caused him concern. Bobby testified that a second discussion about the dream resulted in Louise asking T.S. about Mitchell, T.S. then revealed to Louise the instances of sexual and physical abuse by Mitchell, and within twenty-four hours Louise filed a police report.

CD of Sermon and Testimony of Amanda

An audio CD of one of Mitchell's recorded sermons was admitted into evidence. Amanda testified that the sermon was recorded at the church sometime

between 2012 and 2015 when she, T.S., and other members lived at the Tomball church, she was present when the CD was made, and she received the CD from the Body of Christ Ministry. She identified Mitchell's voice as the speaker on the CD. Amanda testified that she turned the CD over to Detective Gannucci. The CD was played for the jury, which included the following statements by Mitchell:

Everybody is supposed to be raptured. Let me tell you, contrary to what a lot of church people believe, everybody that will be raptured will be a King and a Priest, a rue. And that goes together with they are -- They Ruled. They were Kings or Lords. These are the people who will get rapture. Saying -- seeing there's a great portion of the church who think that you can be a loser and be rapture all because of grace. And that's not what the Bible says. The Bible says they overcame. I don't see losers (inaudible). I can't get that out of that. I don't care how hard I look at it, I cannot get losers how to overcome. Overcome is a winner, with more than (inaudible). But if you practice this dishonor, you will destroy your own life is what God sent me to tell you. You cannot possess a position unless you honor it. If you dishonor a position, you will disqualify yourself for that position. That is a law. And the Devil knows it. This is why the Devil -- he aids to make people dishonor my instruction because I'm a King. I'm not trying to be a King. I'm not hoping to be a King. Right now, I'm a King. And anyone who dishonors my instruction of the authority, they disqualify themselves for being the King.

And from people to dwell in this place, in this territory of kingdom living, they must honor those who walk in it with him. They must honor the ways of this kingdom living. Those who are trying to get there, every effort they make to speak the truth, to follow instructions, to walk in righteousness. If you don't get there, you got to honor them and help them get there. And you come against what they're doing, you come against your success, also.

If I tell [Linda], Go tell [Brad] to go outside and pick up a piece of paper and bring it to me, and he said, I ain't got to do what you say, you see where the chain of dominic command prevents us all from

succeeding? Because God told me to tell her to tell him to go pick up that piece of paper. You dishonor the whole kingdom of God, not just [Brad].

Testimony of Theodore Hariton

Dr. Theodore Hariton, an obstetrician/gynecologist practicing forensic gynecology, testified as a consulting expert for the defense. Dr. Hariton testified that he reviewed the SANE report in this case. According to Dr. Hariton, he also went to the hospital where the SANE exam had been conducted, and he reviewed the digital photographs from the exam. Dr. Hariton testified that from the SANE's report he observed a transection or tear to T.S.'s hymen that could be consistent with a forced sexual encounter or a consensual sexual encounter and indicated some sort of penetration of the vaginal opening by a penis, a finger, a tampon, or another object. Dr. Hariton agreed that the report noted a one-centimeter transection to the hymen at 6:00 that appeared to be well healed. According to Dr. Hariton, a healed transection indicates that the penetration would be at least two to three weeks prior to the healing. Dr. Hariton testified that the transection most likely occurred between when T.S. turned thirteen and when she was almost seventeen, but he could not express an opinion about what object caused it, when it happened, or who did it.

Testimony of Sandra Mitchell

Sandra Mitchell testified for the defense. Sandra testified that she has been married to fifty-nine-year-old Mitchell for twenty-one years and is a member of the Body of Christ Ministry, the church Mitchell has pastored since they met. Sandra testified that Louise came to the church in 2002 and she had two toddler daughters at the time. According to Sandra, Louise had her daughters out of wedlock, was “irresponsible [and] a lot she didn’t know about life[,]” and Louise “came for help in pretty much every area.” Sandra explained that the church would provide secular and religious training to people who were struggling, and the church did this for Louise and her daughters. Sandra testified that the church helped Louise look for a job and take care of her children. Sandra testified that Bobby joined the church in 2005 or 2006, “over a period of time, they heard from God for [him and Louise] to get married[,]” and they had a daughter that also joined the church.

Sandra testified that in 2012 church members moved into the Tomball church. Tithes were increased from ten percent to thirty-five or fifty percent to cover the costs of the expenses of the members living at the church. Sandra explained that when a person in the church sinned, they would confess it to others, get individual counseling, and if they did not want to be helped “it goes before the church.” Sandra testified that married church members would separate during times of fasting and

prayer. Sandra testified that these were not forced separations but “was up to the couples.”

According to Sandra, Louise asked if C.S. and T.S. could live with the Mitchells and everyone agreed on them living with Mitchell, Sandra, and Melanie for twenty-one days for guidance and counseling. Sandra testified that Louise was always gone “doing things for herself[,]” and Sandra and other church members took T.S. and C.S. shopping and “taught them everything.” Sandra testified that T.S. was not denied interaction with C.S. or T.S.’s best friend, L.C. Sandra testified that she, Melanie, or other church members would take the girls to the doctor because Louise “wasn’t around or she would be asleep or just wouldn’t be there or just had plans of her own.” On cross-examination, Sandra acknowledged that the written instructions to Louise and T.S. that were presented to them while T.S. lived with Mitchell, which were admitted into evidence at trial, stated that the goal was for the fleshly connection between Louise and T.S. to be destroyed, Louise was not to acknowledge T.S. as her daughter, T.S. was not to acknowledge Louise as her mother, Louise and T.S. were not to be in the same room alone, that if Louise and T.S. needed to talk there had to be a chaperone with them so that only “ministry” was being communicated, and that another female member of the church was to provide T.S. with feminine products and hygiene necessities. According to Sandra the twenty-

one-day period was extended because the girls wanted to stay, and Louise asked if they could stay longer.

Sandra denied moving out of the house when T.S. and C.S. lived there and explained that she stayed at the church and went “back and forth[.]” between the church and the house. She testified that she would spend most nights at the church because the church was being sold and she would have to meet people there early in the morning and also because the Lord wanted her to sleep there “for deliverance” and as a self-imposed consequence for being a “Jezebel” and “[w]anting to have [her] own way[.]” which was “not tolerated.” According to Sandra, Mitchell did not make her confess to the church members, but it was common for the church members to meet, confess their sins, and to “judge ourselves so [they] won’t be judged.” Sandra testified as to the “judgments” written by Mitchell when she went to live at the Tomball church, which were admitted at trial, and she agreed they stated Sandra would have no special privileges like wine, television, secular music, and a cruise vacation; that she would no longer be referred to as “First Lady” because the Lord said she dishonored and betrayed the title; she could not live at Mitchell’s house again until God spoke it or showed it to Mitchell; that she had never respected her marriage to Mitchell; that there would be no mercy concerning the judgments; and

that her soul was in jeopardy. Sandra testified that she agreed to the judgments because they were God's word.

Sandra explained that abstinence from sex for married couples was not used as a punishment but would be part of "prayer and fasting when we consecrate." Sandra testified that the church never counseled couples regarding sexual positions, and marriage counseling would be done by her and Mitchell or in a group setting.

Sandra testified that the rest of the ministry moved into the Mitchells' home on November 21, 2015. Sandra agreed that the diagram of the house admitted at trial showed married couples not living in the same room, but she explained that after the couples' "prayer consecration, they moved back in with each other." Sandra testified that if anyone went to live in the truck outside the house, it "was because of a continuous operating evil," and when they were asked to leave they voluntarily chose to live in the truck. According to Sandra, individual church members who did not follow God's instructions would decide their own "judgment" and Mitchell would agree with the judgment.

Sandra testified that she, Mitchell, and church members would take vacations together, they went to Florida, Arizona, and Las Vegas, and that T.S. and C.S. went on those trips. Sandra testified that Mitchell used Vaseline for his eczema that he suffered from in 2015 and 2016. According to Sandra, Mitchell suffered from

erectile dysfunction, injected prescription medication into his penis for treatment, but that it would be impossible for Mitchell to have sex once or twice a day. Sandra testified that the church members living at the house would have wine occasionally with dinner, the “kids” did not have wine, but the teenagers would have wine for communion and sometimes with dinner with their parents’ permission.

Sandra testified that it was her understanding that either Louise or T.S. and C.S. had made the October 26, 2015 Lone Star Clinic appointment and Sandra took them to the appointment. According to Sandra, at the appointment T.S. filled out her own paperwork, T.S. asked for Sandra’s identification, Sandra gave T.S. her driver’s license, but Sandra did not sign the paperwork. Sandra testified that although the church taught abstinence to the children, she took C.S. and T.S. to get birth control because it was not guaranteed that they would not engage in sexual acts with others. Sandra testified that she was told the girls were already on birth control. Sandra acknowledged that the Lone Star Clinic records that were admitted into evidence at trial indicated that T.S. had not been on any type of birth control prior to the October 26, 2015 appointment. Sandra agreed that she took T.S. to Lone Star Clinic for the purpose of getting birth control, Depo-Provera shots, and that she took T.S. back three months later when she was due for her next shot.

According to Sandra, she counseled T.S. about being “starved for attention[.]” and “chasing boys[.]” Sandra testified that T.S. was afraid of Bobby, and that although she wanted to be close to her mother, Louise would push her away. Sandra described T.S. as always happy, and Sandra told the jury she never noticed a change in T.S.’s demeanor.

Sandra testified that Bobby had an argument with Mitchell after Bobby left the church and Bobby never came back. According to Sandra, Louise said she needed money to divorce Bobby and Mitchell gave her money. Sandra testified that Tammy was a member of the church for ten years and left the church in 2011 or 2012 because she was having an affair.

Testimony of Brad

Brad was a defense witness. He testified that he joined the Body of Christ Ministry Church in 2001 and is still a member. Brad testified that he, his wife Linda, and his stepsons lived at the Tomball church and later at Mitchell’s home. While living at Mitchell’s home, he did not live in the same room as his wife. A marriage license found during the execution of the search warrant was admitted into evidence and Brad agreed it was a marriage license between his wife and Mitchell and the church.

According to Brad, he did not believe the church would punish members who could not give the recommended tithe, and he believed Mitchell's requirement of obedience was based in scripture because the Bible commands to submit to those that have authority. Brad testified that members who sinned would be openly rebuked and sometimes separated, and if they continued to rebel, that would be "disfellowshipped" and asked to leave. Brad testified that members received judgments to stay in the truck until Mitchell gave them permission to come back in the house. Brad testified that anyone could leave the church whenever they wanted. According to Brad, the guns in Mitchell's home were not for use on anyone but were for exercising Second Amendment rights and protection.

Brad testified that he lived at the Mitchell residence when T.S. and C.S. lived there, although his interaction with them was "limited[.]" He described T.S. as happy and testified that she, as a normal teenager, would sometime have to be counseled and punished. Brad testified that the church tried to help Louise and Bobby with their problems, and Louise and Bobby would participate in group sessions with church members.

Brad agreed that his wife was the person found in the truck during the execution of the search warrant. He agreed that a document admitted at trial was a note that appeared to be in his wife's handwriting. He acknowledged that the note

indicates she was locked out, that she was requesting to be let in the house at a certain time to shower before her dentist appointment, that she was asking if she could eat because her fasting was over, and that Mitchell had given her permission to go back into the house.

Brad agreed that his brother left the church, he does not speak to his brother anymore, and former members who are “not following the word” will not be raptured. Brad also acknowledged that a document admitted into evidence was written by Mitchell and stated that former members of the Body of Christ Ministry would face “a special judgment of destruction.” According to Brad, the tithe required was ten percent “[b]ut the total amount can come to a larger percentage[.]” because as the church got smaller “it became more of a burden to sustain and continue to go on.” Brad agreed that some church members, including older children like T.S., would drink “special privileges wine[.]”

Testimony of L.C.

Sixteen-year-old L.C. testified for the defense and explained that Mitchell is her great uncle, Sandra is her great aunt, and Melanie is her grandmother. According to L.C., she has been a member of the Body of Christ Ministry for all of her life, her family was close with T.S.’s and C.S.’s family, T.S. used to be her best friend, and C.S. is her best friend. L.C. testified she had always attended Kingwood Academy

homeschool where she and others were taught by members of the church, but the students were not taught subjects like biology, mathematics, and English.

L.C. testified that T.S. and C.S. lived in Mitchell's house in 2015 and L.C. visited the girls anytime she wanted. L.C. testified that she would go to Mitchell's house for cookouts and celebrations and would watch television, play pool, and go outside. L.C. testified that in November 2015, she and her family also moved into the Mitchells' home along with other church members. According to L.C., she and T.S. spent time together in the house, T.S. was happy, and her demeanor never changed.

L.C. testified that some of the church members took a trip in August 2016 to California and visited Las Vegas on the trip. She shared a suite with her mother, sister, T.S., and C.S., and there was not any time when Mitchell could have been alone with T.S. L.C. described T.S.'s reputation for truthfulness as "[b]ad."

L.C. acknowledged that her mother and stepfather are leaders in the church, that her family members are significant members and leaders in the church, and that L.C. has never known anything different from the church. L.C. denied telling a detective during the execution of the search warrant that Mitchell would take T.S. out to eat and shopping—just the two of them. L.C. testified that neither she nor T.S. had cell phones while living at Mitchell's house. L.C. recalled meetings led by

Mitchell when judgments would be given. L.C. agreed she remembered when Sandra was called “First Lady” and then she was later not allowed to be called that title. L.C. agreed that sometimes church members would stay outside the house in the red truck but that the members did so willingly. L.C. agreed that one church member, Amanda, slept in the red truck for six months or more. L.C. acknowledged that while T.S. and C.S. were living at the Mitchells’ house and L.C. was living at the Tomball church, L.C. had no idea what was happening at the house.

Testimony of Jane

Jane testified for the defense. Jane testified that she started attending the Body of Christ Ministry in 1997 or 1998, when she was fourteen years old. She testified that the church was in Houston, then it moved to a clubhouse in The Woodlands, and then it moved to Tomball in 2005. According to Jane, around fifteen or sixteen members, including herself, moved into the Tomball church because members were “irresponsible . . . the cars were being taken, losing their homes[.]” and as members were leaving “[they] agreed to, basically, help support the ministry.” Jane testified that in November 2015 the Tomball church was sold, “Apostle Mitchell . . . opened his home up to us[.]” and all the members living at the Tomball church moved to Mitchell’s house.

Jane indicated which room she stayed in on a diagram of the house and testified that she would have seen anyone coming in and out of Mitchell's room and would have heard if things were going on in the room. According to Jane, it was not uncommon for Mitchell to share with the group an individual's self-imposed judgment or a judgment that was decided collectively. Jane described T.S. while T.S. was living at the Tomball church as "sad[,] not a bright little girl[,] [and] wanting to always be with boys." Jane testified that when she lived at the Mitchells' at the same time as T.S., T.S.'s attitude became more joyful because "she was getting the deliverance she needed[.]" Jane testified that T.S. was not locked in her room at Mitchell's house. Jane testified that she did not get to go on many of the vacations because she had to work, but that on the ones she did attend, T.S. was happy but sometimes sad and "was still going back and forth because she -- she wasn't stable."

Testimony of Melanie

The defense called Melanie, who testified that she is Sandra's sister. Melanie testified that she met Mitchell in 1987 at the Body of Christ Ministry in Houston. She testified she met him again in 1996 or 1997 when she, Sandra, and others began having a weekly Bible study with Mitchell at his apartment.

Melanie testified that she met Louise through Melanie's daughter, and Louise joined the Body of Christ Ministry when Louise was twenty or twenty-two years old.

According to Melanie, Melanie and her daughter began providing daycare for T.S. and C.S. until Louise got off work, and in 2005 the girls left daycare and began attending Kingdom Academy at the Body of Christ Ministry Tomball church. Melanie testified that she taught at Kingdom Academy from 2006 to the end of the school in 2009, and then she homeschooled C.S., T.S., and two other ministry children.

Melanie testified that in July 2015, T.S. lived with Melanie upstairs at Mitchell's home and C.S. lived in a room downstairs. Melanie testified that she taught T.S. personal hygiene, bought her clothes, and talked to her about her interaction with boys. According to Melanie, she took T.S. to dentist appointments and to one doctor appointment because Louise "was missing[.]" and Louise gave her permission. Melanie testified that T.S. had friends in the church and the church members went to the movies and to the park.

Melanie testified that T.S. helped with household chores and on one occasion when Mitchell and Sandra were not home, she caught T.S. "snooping[.]" She testified she sent T.S. downstairs to put something in the washing machine and after T.S. was gone for a long time, Melanie went downstairs, T.S. came out of the master bedroom, Melanie asked her why she was in there, and T.S. told her she was looking for detergent. Melanie told T.S. "You know no detergent is kept in there." On cross-

examination, Melanie was shown a photograph of the master bedroom closet taken during the execution of the search warrant and admitted that the picture showed at least nine bottles of detergent in the closet.

Melanie testified that T.S. sometimes was quiet, her demeanor did not change around Mitchell, she never told her she was afraid of Mitchell, and T.S. continued to go on vacations with Mitchell. Melanie testified that she knew that on at least one occasion Sandra took T.S. to the doctor but Melanie did not know if Louise gave Melanie permission to do so. Melanie testified that, as for the allegations that Mitchell was having sex with T.S. in 2015, it was “impossible.” When asked T.S.’s reputation as for truthfulness, Melanie testified, “She’s a liar.” Melanie admitted she was shocked to learn that Sandra took T.S. to the Lone Star Clinic to get contraceptive shots.

Testimony of Dr. Kit Harrison

Dr. Kit Harrison, a psychologist specializing in neuropsychology and forensic psychology, also testified for the defense. Dr. Harrison testified that he reviewed the forensic interviews of T.S. and C.S., the offense report, investigation records, Safe Harbor records, and mental health records. Dr. Harrison testified that the outcry in this case was in the minority of the four types of outcries in that the outcry originated when an adult came to the child as opposed to the child coming to an adult.

According to Dr. Harrison, the forensic interview by Kari Prihoda was skillfully performed and that as to the timeline of events provided by T.S. “[t]here [were] some red flags that popped up.” Dr. Harrison explained that he felt T.S.’s comment that she discussed what happened to her with her mother two weeks prior to the outcry and after the stepfather’s dream should have been followed up on by subsequent investigation but was not. Dr. Harrison testified that Prihoda uncovered there had been some family acrimony, unusual living arrangements, and possible opportunities for retaliation against Mitchell who T.S. perceived as responsible for a lot of family problems. Dr. Harrison also noted that T.S. reported being locked in a room for a year, which is significant “[b]ecause it implies kidnapping and abduction and segregating the child[,]” which subsequently could be easily documented and substantiated in most cases.

Dr. Harrison testified that he is critical of Safe Harbor placing children in counseling before an investigation is complete, which happened in this case, because “counseling is fixing something that you don’t know exists or not for sure.” Dr. Harrison testified that as a result of the counseling T.S. was diagnosed with Post-Traumatic Stress Disorder (PTSD), and it was assumed that it was due to the alleged molestation and not from other potential causes that were not followed up on. Dr. Harrison testified that T.S. was referred for a mental health psychological evaluation

as a result of the counseling because T.S. “started having weird symptomatology, including evidence of hallucinations and psychotic thought process[,]” and this was significant in that the psychologist who evaluated her investigated only mental health concerns and not the allegations. According to Dr. Harrison, the psychologist assumed T.S.’s problems were caused by Mitchell’s abuse.

On cross-examination, Dr. Harrison admitted he had not reviewed all the documents in the case. Dr. Harrison also agreed that Prihoda is one of the best forensic interviewers he has witnessed and that she has “unbelievable consistency[.]” Dr. Harrison agreed that during the forensic interview when T.S. mentioned going to the mall with her mother two weeks earlier, she did not say she mentioned the sexual abuse to her mother, but Dr. Harrison believed she implied to Prihoda that what she said to her mother had to do with what had happened to her.

Dr. Harrison agreed that hallucinations, anxiety attacks, and self-harm can occur with children who suffer from PTSD, and that, based on his review of the records, T.S. was put on medication for anxiety and depression. The counseling records also referenced T.S. being admitted to the hospital for an anxiety attack, panic, and wanting to commit suicide in 2017, and T.S. reported five suicide attempts. Dr. Harrison acknowledged that anxiety and depression are associated with PTSD and having experienced a traumatic event such as sexual abuse.

Dr. Harrison agreed that, more often than not, there is a delay in a child's outcry, often because the child does not feel safe coming forward, they think no one will believe them, they are afraid, or because they may have to talk about something they do not want to talk about. Dr. Harrison agreed that, depending on the child's beliefs, it is "entirely possible[]" that the child may not come forward or tell their friend about the abuse if they believe their mortal soul is at risk. Dr. Harrison agreed that disclosure can be a process and take time, often with the victim disclosing more later when they feel safe, sometimes the victim may not disclose everything in the forensic interview, and the disclosure can depend on the types of questions asked. Dr. Harrison testified that children are generally bad about temporal sequencing.

Dr. Harrison testified that in most cases there is no specific profile for offenders, but they are mostly males over forty years of age. He agreed that in an intrafamilial setting, the offenders groom the adults around the child because the offender does not want the adults to take away access to the child. According to Harrison, multiple stressors could have contributed to T.S.'s PTSD, including "family strife, attachment problems with both parents, family conflicts, which was massive. And then perceive[d] loss of relationship with all of her family in one form or another [which] was horribly traumatic."

Testimony of C.S.

C.S., T.S.'s older sister, also testified for the defense. C.S. testified that in 2013, she, her sisters, her mother, and stepfather moved into the Tomball church because they were evicted from their house and had nowhere to go. According to C.S., prior to moving into the church building, they were active in the church and Kingdom Academy, the homeschool at the church, and they felt safe moving into the church. C.S. testified that they relied on the church for support and spiritual support but also did fun things like go to the park and on vacations. C.S. agreed that the ministry was very serious in its pursuit of religion and serving the Lord.

C.S. testified that in May, June, and July of 2015 her mother and stepfather were arguing all the time, her stepfather was strict, and her mother "was not really there." According to C.S., in 2015, she and T.S. went to live at Mitchell's house because their mother was not around and she and T.S. "left to be taught how to take care of [them]selves and not be dependent upon others to do that." C.S. testified that members of the church consulted with C.S. and T.S. about the move and it was a mutual agreement because she and T.S. wanted to get away from their mother and stepfather. C.S. testified that after she and T.S. moved into Mitchell's house, they were still able to talk to their mother and stepfather, her mother understood why they wanted to leave, but their stepfather was not happy about it. C.S. testified that the

initial twenty-one-day period went well, and they learned how to cook and about personal hygiene from Sandra and Melanie. C.S. testified that at the end of the twenty-one days, her mother called the house and left a voicemail asking if the girls could stay longer, and the girls called back and said they wanted to stay.

C.S. testified that while living at Mitchell's house T.S. was not locked in her room, not isolated, and not prohibited from interacting with other people. According to C.S., she and T.S. talked all the time, went outside, did chores, and had fun at gatherings with church members. C.S. testified that her friend L.C. would come over to Mitchell's and that C.S., T.S., and L.C. would talk, eat popcorn, watch movies, and have sleepovers. C.S. testified that T.S. would get depressed when her biological father would not show up to pick her up when he was supposed to. C.S. testified that she had received a birth control shot prior to receiving the one that Sandra took her to get, that getting the birth control shot was her idea, and her mother approved.

C.S. testified that when the other members moved into Mitchell's house around Thanksgiving 2015, she and her sisters still did things together and go on the same trips with people from the ministry. C.S. testified that she was engaged at a young age to another boy in the ministry and the engagement was not forced upon her by the church. C.S. testified that T.S. had strong feelings for the boy C.S. was engaged to. C.S. testified that on the trip when they visited Las Vegas, Mitchell never

had the opportunity to be alone with T.S. because C.S. and T.S. were always together. C.S. testified that when they visited Las Vegas, she and T.S. stayed in the same unit as Sandra and Mitchell. C.S. testified that her mother frequently tried to get her to lie on behalf of T.S., and that C.S. got a restraining order and tried to file harassment charges.

C.S. testified that Mitchell issued judgments, but they would not require members to sleep out in the car. However, C.S. admitted Linda stayed in a car and that C.S. knew that Linda was found in the car during the execution of the search warrant. C.S. testified that she lived at the Mitchells' house from July 2015 to November 2016 but did not realize Amanda had to sleep outside in the truck for six months. C.S. admitted that in her prior testimony she had denied that Sandra ever took her to get birth control shots. C.S. testified that when she visited family members, she would take a bus to a clinic in Houston to get birth control shots.

C.S. testified that on the day before she testified for the grand jury, she filed harassment charges against her mother for asking her to lie on T.S.'s behalf. C.S. admitted at trial that she testified to the grand jury that her mother had been calling her and she did not want to talk to her, but that she did not mention to the grand jury anything about her mother asking her to lie, information that C.S. admitted would have been important to mention.

C.S. testified that in 2016 her mother and stepfather separated, her stepfather got engaged to another woman, and her mother was devastated. According to C.S., during this time she and T.S. spoke daily and were best friends and T.S. did not take her parents' separation well because her mother was so upset. C.S. testified that T.S. started doing better once they started taking vacations.

Issues on Appeal

In his first issue, Mitchell argues the trial court abused its discretion by denying Mitchell a hearing on his motion for new trial. In his second issue, he argues the trial court erred by excluding evidence that T.S. had engaged in prior sexual activity with her boyfriend, which Mitchell argues was in violation of Rule 412(b)(2)(A) of the Texas Rules of Evidence because the evidence was necessary to explain medical evidence of T.S.'s hymenal notch that the State offered as evidence of guilt. In issues three and four, Mitchell asserts that the trial court erred in excluding certain evidence because that evidence bore directly upon T.S.'s bias, prejudice, motive, animus, and credibility. In issues five and six, Mitchell argues the trial court erred in excluding certain portions of Dr. Harrison's testimony. In issues seven through nine, Mitchell argues he was denied effective assistance of counsel. In issues ten through fifteen, Mitchell argues that the trial court erred in admitting evidence in violation of Rules 403 and 404(b) of the Texas Rules of Evidence.

Exclusion of Evidence of Sexual Activity with Others

In issue two, Mitchell argues the trial court erred by excluding evidence at the guilt-innocence stage “that T.S. engaged in prior sexual activity with her boyfriend” in violation of Rule 412(b)(2)(A) because the evidence was necessary to explain medical evidence of T.S.’s hymenal notch offered by the State as evidence of Mitchell’s guilt. Prior to trial, the trial court granted the State’s motion in limine to preclude questions relating to any sexual conduct by T.S., precluded by Texas Rule of Evidence 412, or any other witness. During Appellant’s direct examination of Sandra Mitchell, Appellant attempted to solicit testimony that T.S. “was having sex with a person by the name of Alejandro” and argued that the testimony was admissible under Rule 412(b) to rebut the State’s scientific medical evidence that the hymenal notch was caused by Appellant. The State argued the evidence was improper under Rule 412 and was based on speculation and hearsay. The trial court sustained the State’s objection to the testimony.

On appeal, Mitchell argues that excluding this evidence violated his constitutional rights to due process and under the Confrontation Clause of the Sixth Amendment. He also asserts the evidence was relevant under Texas Rule of Evidence 401, admissible under Texas Rule of Evidence 412(b)(2)(A), and not subject to exclusion under Texas Rule of Evidence 403. According to Mitchell, the

constitutional error was not harmless beyond a reasonable doubt, or in the alternative, the non-constitutional error affected his substantial rights.

In a sexual assault case, opinion or reputation evidence of the complainant's past sexual behavior is prohibited. Tex. R. Evid. 412(a). Evidence of specific instances of the complainant's previous sexual conduct may be admitted[] if it is necessary to rebut or explain scientific or medical evidence offered by the State *and* its probative value outweighs the danger of unfair prejudice. Tex. R. Evid. 412(b)(2)(A), (b)(3) (emphasis added). “‘The function of the balancing test of Rule 412(b)(3) is generally consistent with that under Rule 403,’ but ‘the general balancing test under Rule 403 weighs in favor of the admissibility of evidence, while Rule 412(b)(3) weighs against the admissibility of evidence.’”

Alford v. State, 495 S.W.3d 63, 66-67 (Tex. App.—Houston [14th Dist.] 2006, pet. ref'd) (citations omitted). A trial court's ruling under Rule 412 is reviewed for an abuse of discretion. *Johnson v. State*, 490 S.W.3d 895, 908 (Tex. Crim. App. 2016) (citation omitted); *see also* Tex. R. Evid. 412. There is no abuse of discretion if the court's ruling is within the zone of reasonable disagreement. *De La Paz v. State*, 279 S.W.3d 336, 343-44 (Tex. Crim. App. 2009).

To preserve error for appellate review, including a constitutional error, the appellant must make a timely, specific objection to the trial court and obtain a ruling on the objection. Tex. R. App. P. 33.1; *Linney v. State*, 401 S.W.3d 764, 772-73 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd). The point of error on appeal

must correspond to the objection made at trial. *Linney*, 401 S.W.3d at 773 (citing *Broxton v. State*, 909 S.W.2d 912, 918 (Tex. Crim. App. 1995)).

Outside the presence of the jury, Mitchell argued the following:

. . . [Sandra's] testimony would be that during this time period, [T.S.] was having sex with a person by the name of Alejandro and had wanted to -- was trying to have sex with -- with Jonah. And we think that it is important to get in that information in front of the jury under Rule 412 to rebut the State's allegations that the injury was caused by Ronald Mitchell. So, we would argue that [u]nder (b)(1) and (2) that the evidence is necessary for us to rebut or explain scientific medical evidence offered by the prosecutor that the passage or behavior with the defendant is offered -- relates to the victim's motive or bias (b)(1), (2), (3); and also under (c) and (d). So, we would offer it under the exception of (b), and would cite *Johnson v. State*, 490 S.W.3d 895; *LaPointe v. State*, 225 S.W.3d[] 513; and *Boyle v. State*, 820 S.W.2d[] 122. And would argue that in this case, it's -- according to the State, it's a one witness case and the believability of the victim forms the foundation of the State's case.

And the Texas law favors the admissibility of this evidence as being relevant to her bias, which is her hostility towards the church and towards Ronald Mitchell and Sandra Mitchell. It goes to her motive and it goes to her interest in testifying that the way she did in front of this Court. So, under *Johnson v. State*, we think it's admissible.

Mitchell argued the evidence was admissible under Rule 412(b)(2)(A), without ever articulating a Confrontation Clause or constitutional due process argument. Making an objection or proffer under the Rules of Evidence does not preserve constitutional issues that are not raised. *See Reyna v. State*, 168 S.W.3d 173, 179 (Tex. Crim. App. 2005). We disagree with Mitchell's argument in his reply brief that his reference to *Johnson*, a case in which the defendant argued the evidence should have been

admitted under the Confrontation Clause and the Rules of Evidence, was sufficient to articulate and preserve his constitutional due process and confrontation arguments. Accordingly, Appellant did not preserve these arguments for appeal. *See Ferree v. State*, 416 S.W.3d 2, 7 (Tex. App.—Houston [14th Dist.] 2013, pet. ref'd).

Mitchell argues that the trial court abused its discretion in excluding evidence that T.S. had sexual relations with Alejandro because the evidence was necessary to rebut medical evidence offered by the State, “to wit, that her hymenal notch was consistent with Appellant penetrating [T.S.]” under Rule 412. In support of this argument, he cites to *Aguilera v. State*, 75 S.W.3d 60, 67 (Tex. App.—San Antonio 2002, pet. ref'd), *Miles v. State*, 61 S.W.3d 682, 687 (Tex. App.—Houston [1st Dist.] 2001, pet. ref'd), *Hood v. State*, 944 S.W.2d 743, 746-47 (Tex. App.—Amarillo 1997, no pet.), and *Reynolds v. State*, 890 S.W.2d 156, 157 (Tex. App.—Texarkana 1994, no pet.).

In the four cases cited by Mitchell, the courts of appeal concluded that evidence of the complainant’s prior sexual intercourse explained or rebutted the medical evidence proffered by the State. *See Aguilera*, 75 S.W.3d at 67; *Miles*, 61 S.W.3d at 687; *Hood*, 944 S.W.2d at 746; *Reynolds*, 890 S.W.2d at 157. In *Aguilera*, the nurse practitioner who examined the complainant testified that the lack of medical signs of any abnormality during the exam could be attributed to (1) the time

between the incident and the medical examination and (2) the age of the girl. *Aguilera*, 75 S.W.3d at 66-67. The nurse practitioner testified that the estrogen present in a teenage girl, who is of puberty age, can produce an intact hymen if time has lapsed between the incident and the exam. *Id.* at 67. The defense informed the court that it intended to introduce the portion of the complainant's medical history that stated she had voluntary sexual intercourse with her boyfriend. *See id.* The trial court excluded the evidence after it concluded that the evidence did not rebut medical evidence offered by the State because the nurse practitioner did not testify that anyone had sexual intercourse with the complainant and the nurse practitioner's testimony did not prove that the complainant was sexually abused. *Id.* The San Antonio Court of Appeals concluded the nurse practitioner's explanation of her examination findings was medical evidence and the evidence of the complainant's prior sexual intercourse rebutted the medical evidence because the nurse practitioner proffered the lapse in time from the date of the incident as an explanation for her findings. *Id.* In finding the trial court erred in excluding the evidence, the Court determined that the proffered explanation and the credibility of the complainant's testimony could be rebutted if the extent of the lapse in time was refuted by evidence of the complainant's sexual intercourse in the interim, and that the evidence was

highly probative in assessing the credibility of the nurse practitioner's medical explanation of the normal examination in view of the allegations. *Id.*

In *Miles*, the doctor performing the medical examination of the complainant in a sexual assault case testified that transections to the complainant's hymen most likely occurred because of penile penetration and that the medical evidence was consistent with the complainant's report that the defendant sexually assaulted her. 61 S.W.3d at 683-84. The defense attempted to introduce evidence regarding the complainant's previous consensual sexual activity with another boy, "Timmy," through the testimony of the complainant's cousin to show an alternate explanation for the injury and to rebut the doctor's report that stated that the complainant had sexual intercourse sometime prior to the examination. *Id.* at 684-86. In an in-camera hearing, the complainant testified that the only person she had sex with was the defendant, that she lied to her cousin when she had told her that she and "Timmy" had sex, and that she had never told anyone else that she and "Timmy" had sex. *Id.* at 685. The trial court determined the evidence was more prejudicial than probative and overruled the defendant's arguments that the evidence was admissible under Rule 412(b)(2)(A), Article 1, section 10 of the Texas Constitution, and the Sixth Amendment of the United States Constitution. *Id.* The defense made a bill of exceptions consisting of testimony from the cousin she said she lied to and another

cousin that the complainant told that she had sex with “Timmy.” *Id.* The First Court of Appeals concluded that the trial court abused its discretion in not allowing the defendant to cross-examine the complainant or introduce other evidence of prior sexual history because the complainant’s statements that she had sex with “Timmy” was critical evidence, the jury should have had the right to weigh her credibility against the defendant, and the excluded evidence was more probative than prejudicial. *Id.* at 687.

In *Reynolds*, the medical report noted that the “vaginal introitus appears to be slightly stretched[,]” and the complainant “denies any sexual abuse by other people or by other consensual [] sexual intercourse.” 890 S.W.2d at 157. The defense offered to prove through the complainant’s testimony and letter that the child had been sexually abused by other men *Id.* The trial court excluded the evidence. *Id.* The appellate court reversed, concluding that the evidence would have explained the medical evidence that tended to show that the complainant had a stretched vaginal introitus and would have refuted the indication in the medical report that the only sexual contacts were with the defendant. *Id.*

In *Hood*, the defendant argued that the trial court erred in not allowing the defendant to question the nurse examiner who examined the complainant about the complainant’s prior instance of sexual intercourse. 944 S.W.2d at 745. The nurse

testified that the complainant had two well-healed hymenal tears that were caused by penetration by an object and that the tears occurred sixty days or more prior to the examination. *Id.* In an offer of proof, the complainant conceded that the prior instance of sexual intercourse could have caused the tears and the nurse examiner testified that the complainant reported last having sex in the year prior to the incident for which Hood was tried. *Id.* The Amarillo Court of Appeals concluded the excluded evidence fell within the exception of Rule 412(b)(2) and its probative value outweighed its prejudicial value because the risk of prejudice was already interjected into the fray with other evidence of the complainant's "sexual escapades," the testimony that someone else could have caused the tears reinforced the defendant's testimony that he never sexually assaulted the complainant, and the temporal proximity of the prior act bolstered the probative value of the evidence. *Id.* at 746-47.

In the present case, the SANE testified that the hymenal tear was at least eight weeks old, and although the SANE agreed that the tear was consistent with the history T.S. provided, the SANE testified she was not opining as to who caused the tear or how it got there, and she testified that the tear was a result of "[a]ny type of pressure that would cause [the skin] to stretch beyond its capacity." As opposed to the cases cited by Mitchell above, the proffered evidence here was evidence

regarding T.S.'s purported out-of-court statements to other witnesses, not evidence T.S. reported during her medical exam or evidence that T.S. had the opportunity to explain or deny during a hearing. The SANE did not testify as to what or who caused the tear. We disagree with Mitchell's contention that the evidence was necessary to rebut or explain the State's medical evidence. The trial court's exclusion of the proffered evidence was within the zone of reasonable disagreement because the trial court could have concluded that the prejudicial value of the evidence outweighed its probative value. Issue two is overruled.

Exclusion of Certain Other Evidence

In issues three and four, Mitchell argues the trial court erred by excluding testimony at the guilt-innocence stage that T.S. would have testified that on the last date that Mitchell had sex with T.S., he also had sex with his wife and C.S. and that they were eyewitnesses, because it bore directly upon T.S.'s bias, prejudice, motive, animus, and credibility. The trial court granted the State's motion prohibiting any mention of "sexual acts or sexual misconduct by [Mitchell] relating to [C.S.]," or "asking specific instances of conduct about a witness[.]" According to Mitchell, the trial court thwarted his attempts to elicit testimony that C.S. was an eyewitness to Mitchell's sexual acts with T.S., directly contradicting C.S.'s testimony that no one was present during any of the alleged sexual acts.

According to Mitchell's citation to the reporter's record in his appellate brief, he notes that he tried to elicit testimony from Detective Gannucci that T.S. said C.S. was an eyewitness to the abuse, tried to elicit testimony from Bobby that he had reason to believe C.S. was a witness to Mitchell's sexual acts with T.S., and tried to elicit testimony from Sandra Mitchell that according to T.S.'s statement Sandra had sex with Mitchell and then Mitchell had sex with C.S. and T.S.

Mitchell made an offer of proof that T.S. would testify that in Las Vegas on the last date Mitchell was alleged to have had sexual intercourse with T.S., he had sex with Sandra in his hotel room, there was an adjoining door kept open and Sandra ushered in C.S. and T.S., who also had sex with Mitchell. He made an offer of proof through Bobby that Mitchell sexually assaulted C.S. before she was eighteen, that C.S. witnessed Mitchell sexually assaulting T.S. on at least two occasions, and that T.S. and C.S. had sex with Mitchell together. Mitchell also made an offer of proof that he would have elicited that T.S. told Prihoda during the forensic interview that C.S. was a witness to Mitchell sexually assaulting T.S.

Mitchell argues that the exclusion of this evidence violates his constitutional right to present a complete defense, the evidence is relevant under Texas Rule of Evidence 401, not subject to exclusion under Texas Rule of Evidence 403, and admissible as bearing directly upon T.S.'s credibility, bias, prejudice, and animus as

part of Mitchell’s Sixth Amendment rights to cross-examination and confrontation. According to Mitchell, the excluded evidence was material because it is proof of his “defensive theory that, given T.S.’s penchant for untruthfulness, her allegations against him were false.”

The right of cross-examination by the accused of a testifying State’s witness includes the right to impeach the witness with relevant evidence that might reflect bias, interest, prejudice, inconsistent statements, traits of character affecting credibility, or evidence that might go to any impairment or disability affecting the witnesses credibility. *Virts v. State*, 739 S.W.2d 25, 29 (Tex. Crim. App. 1987). Like our review of a trial court’s decision admitting or excluding evidence, we review the trial court’s decision to limit cross-examination under an abuse of discretion standard. *Sansom v. State*, 292 S.W.3d 112, 118 (Tex. App.—Houston [14th Dist.] 2008, pet. ref’d). An abuse of discretion occurs when the trial court acts without reference to any guiding rules or principles. *Id.*

A trial court may violate a defendant’s right of confrontation by improperly limiting cross-examination, but the scope of appropriate cross-examination is not unlimited. *See Hammer v. State*, 296 S.W.3d 555, 561 (Tex. Crim. App. 2009). A trial court, for example, may limit the scope of cross-examination to prevent harassment, prejudice, confusion of the issues, harm to the witness, and repetitive or

marginally relevant interrogation. *See id.* at 561 n.7 (citing *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986)). Notwithstanding the trial court's discretion in this area, jurors are entitled to have the benefit of the defense theory before them so that they can make an informed decision regarding the weight to accord the witness's testimony, even though they may ultimately reject the theory. *Sansom*, 292 S.W.3d at 119.

Only relevant evidence is admissible. Tex. R. Evid. 402. Relevant evidence is evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable than or less probable than it would be without it. Tex. R. Evid. 401. To be relevant, evidence must be material and probative. *Miller v. State*, 36 S.W.3d 503, 507 (Tex. Crim. App. 2001).

When undertaking a Rule 403 analysis, the trial court must, upon proper objection, balance or weigh the probative value of the evidence against unfair prejudice, confusion of the issues, misleading of the jury, and undue delay or needless presentation of cumulative evidence. *Gigliobianco v. State*, 210 S.W.3d 637, 641-42 (Tex. Crim. App. 2006); *see* Tex. R. Evid. 403; *see also Hernandez v. State*, 390 S.W.3d 310, 324 (Tex. Crim. App. 2012) (citing *Montgomery v. State*, 810 S.W.2d 372, 389-90 (Tex. Crim. App. 1991) (op. on reh'g)). In balancing probative value and unfair prejudice under Rule 403, an appellate court presumes

that the probative value will outweigh any prejudicial effect. *Montgomery*, 810 S.W.2d at 389. Rule 403 does not require that the trial court perform the balancing test on the record. *Distefano v. State*, 532 S.W.3d 25, 31 (Tex. App.—Houston [14th Dist.] 2016, pet. ref’d).

Assuming without deciding that Mitchell preserved his constitutional and Rule of Evidence complaints in each of the instances referenced by Mitchell where the trial court excluded the evidence,⁴ he has not shown the trial court abused its discretion in excluding the evidence. As to the excluded evidence regarding eyewitnesses to the sexual assault, T.S.’s direct testimony did not establish whether any third party witnessed any of the charged offenses. As the trial court noted outside the presence of the jury when it found the evidence more prejudicial than probative under Rule 403, the Las Vegas sexual assault was not one of the charged offenses that occurred in Montgomery County and “happening months different” than the charged offenses, the evidence was “going too far beyond[,]” and would have a

⁴ During the bench conference wherein the trial court denied Mitchell’s request to elicit through cross-examination of Bobby that Bobby had reason to believe C.S. was a witness to Mitchell’s sexual assault of T.S., Mitchell made a “constitutional objection under due process and due course of law and right to present a defense and the constitutional right to correct false impression that’s put forth by the State. . . . and *Crawford v. Washington* and confrontation[.]” Mitchell’s attorney also attempted to offer evidence through Sandra about T.S.’s alleged sexual encounters with others, but the trial court did not allow the testimony.

“tendency to confuse these issues.” The trial was lengthy and developing the testimony about what transpired during the Las Vegas incident would have taken further time to develop. Also, the jury still had the benefit of the defense’s theory that T.S. was not credible because the defense elicited testimony from both L.C. and Melanie that T.S.’s reputation for truthfulness was bad. *See* Tex. R. Evid. 608. We agree that the excluded evidence would confuse the issues, was not related to T.S.’s testimony on direct as to the charged offenses, did not constitute an improper limitation on cross-examination or violate Mitchell’s right of confrontation, and was more prejudicial than probative. We cannot say the trial court’s decision to exclude the evidence was outside the zone of reasonable disagreement. *See De La Paz*, 279 S.W.3d at 343-44. Issues three and four are overruled.

Exclusion of Portions of Dr. Harrison’s Testimony

In issues five and six, Mitchell argues the trial court erred by excluding expert testimony from Dr. Harrison at the guilt-innocence stage of the trial that T.S.’s prior sexual abuse and the multi-family setting in which T.S.’s abuse occurred were red flags relating to the general principles of psychology in this case. The trial court allowed Harrison to testify as to the general principles of child sexual abuse, limitations of forensic interview, T.S.’s psychological evaluation, and T.S.’s therapy records. According to Mitchell, Harrison should not have been precluded from

testifying that the setting in which the abuse occurred was a multi-family setting, and that prior abuse allegations that he believed were psychological red flags related to the general principles in this case should have been the basis of further interviews, counseling, and investigation. Mitchell argues that he was not allowed to elicit testimony from Harrison that T.S.'s prior sexual abuse by a third party could have been responsible for T.S.'s PTSD and that during the bill of exceptions he explained that Harrison would have testified that PTSD could have been the result of prior sexual abuse from the age four to ten, to correct the false impression that Mitchell's conduct was the only cause of her PTSD.

Under Rule 702 of the Texas Rules of Evidence, to be admissible, expert testimony must be both reliable and relevant to help the jury in reaching accurate results. *See Jordan v. State*, 928 S.W.2d 550, 553 (Tex. Crim. App. 1996); *Kelly v. State*, 824 S.W.2d 568, 572 (Tex. Crim. App. 1992). Regarding the "reliability" prong of Rule 702, we recognize that experts are permitted to testify in a limited fashion in child sexual abuse cases. *See Duckett v. State*, 797 S.W.2d 906, 911-17 (Tex. Crim. App. 1990). However, in such cases, the expert testimony may not be offered to support the proposition that the complainant is truthful or untruthful because such testimony is not relevant or helpful to under the second prong. *See*

Yount v. State, 872 S.W.2d 706, 711 (Tex. Crim. App. 1993) (“[E]xpert testimony that a particular witness is truthful is inadmissible under [Tex. R. Evid.] 702.”).

To be admissible, expert testimony must “assist” the trier of fact. Expert testimony assists the trier of fact when the jury is not qualified to “the best possible degree” to determine intelligently the particular issue without the help of the testimony. But, the expert testimony must aid - - not supplant -- the jury’s decision. Expert testimony does not assist the jury if it constitutes “a direct opinion on the truthfulness” of a child complainant’s allegations.

Schutz v. State, 957 S.W.2d 52, 59 (Tex. Crim. App. 1997) (footnotes and citations omitted).

The defense provided the following offer of proof, in pertinent part, related to what Harrison’s testimony would have been as to the multi-family setting and T.S.’s prior sexual abuse:

He would testify that the diagnosis of PTSD bolstered the credibility of the witness. . . .

[H]e would testify how PTSD contributed to reality distortions, intrusive recollections, distort current perception. That [T.S.] had denied a previous history of sexual abuse, which is a glaring . . . inconsistency that the study shows support in conclusion of false allegations in this case.

. . .

Another area that he would have [gone] into had he been able to go into, if he wanted to go into, is that a significant contributor to false allegations is that [T.S.] was still in contact with her past abuser. She was also in contact with a parent who was abusive, and a stepfather who was abusive. And that that contributes to false accusations and for the need for the child to maintain support in their current living system by claiming -- by making a false accusation against sexual assault of another person. . . .

[T]hat he would testify that in this case with a chaotic family/commune with multi[-]families, and in quotation “family cult” could impact children’s statements. That in this case, the implication with [T.S.] -- that the allegations with [T.S.] that she was living in a cult, motivates her through significant discussions. And through the records -- throughout the records that he reviewed, interfaces with his belief that there were motivations to make false statements.

We cannot find the trial court’s decision to exclude the testimony was so clearly wrong as to lie outside the zone of reasonable disagreement. *See Montgomery*, 810 S.W.2d at 391. According to the offer of proof, Dr. Harrison’s testimony as to these areas would have provided his opinion about whether T.S.’s accusations against Mitchell were false, which would supplant the jury’s role of determining the credibility of the witness. *See Schutz*, 957 S.W.2d at 59. Accordingly, the trial court did not abuse its discretion in precluding these portions of Dr. Harrison’s testimony. Issues five and six are overruled.

Claims of Ineffective Assistance of Counsel

In issues seven through nine Mitchell argues he was denied effective assistance of counsel during the guilt-innocence phase of the trial. He contends his trial counsel failed to object to the mid-trial limiting instructions when the State offered evidence of Mitchell’s extraneous acts and offenses and failed to object to the limiting instructions in the jury charge authorizing jurors to consider the evidence. According to Mitchell, the mid-trial limiting instructions failed to inform

the jury it could not consider this evidence for any purpose unless it first found that Mitchell committed these crimes beyond a reasonable doubt. Mitchell also asserts that the mid-trial limiting instructions and the limiting instructions in the jury charge authorized jurors to consider this evidence for purposes neither offered by the State nor raised by the evidence.

On appeal, Mitchell argues “[t]he State elicited a series of extraneous acts and offenses Appellant committed involving primarily T.S. and other individuals in its case-in-chief at the guilt-innocence stage of the trial[:]” Appellant beating T.S.; Appellant giving wine to T.S.; Appellant’s sexual intercourse with T.S. in Las Vegas, Colorado, and San Antonio; Appellant rebuking parishioners over the “pole pit[;]” Appellant requiring parishioners to discuss the sexual positions they used with their partners; Appellant requiring the parishioners to go without food or water; Appellant rebuking parishioners for not following his orders; and Appellant giving wine to older children as a special privilege.

The affidavits of Mitchell’s two trial attorneys attached to his motion for new trial state that the failure to object to the lack of a reasonable doubt burden-of-proof definition in the mid-trial limiting instruction, failure to lodge a 403 objection to the extraneous acts committed against T.S., failure to object to the overly expansive mid-trial limiting instruction containing all nine exceptions to Rule 404(b), and

failure to object to the jury charge instruction tracking the language of the mid-trial limiting instruction, did not result from “any trial strategy.”

To establish ineffective assistance, a defendant must satisfy the following test:

First, the defendant must show that counsel’s performance was deficient. This requires showing that counsel made errors so serious that counsel was not functioning as the “counsel” guaranteed the defendant by the Sixth Amendment. Second, the defendant must show that the deficient performance prejudiced the defense. This requires showing that counsel’s errors were so serious as to deprive the defendant of a fair trial, a trial whose result is reliable.

Strickland v. Washington, 466 U.S. 668, 687 (1984); *see also Perez v. State*, 310 S.W.3d 890, 892-93 (Tex. Crim. App. 2010). Allegations of ineffective assistance “must be firmly founded in the record, and the record must affirmatively demonstrate the alleged ineffectiveness.” *Thompson v. State*, 9 S.W.3d 808, 813 (Tex. Crim. App. 1999). “Appellate review of defense counsel’s representation is highly deferential and presumes that counsel’s actions fell within the wide range of reasonable and professional assistance.” *Bone v. State*, 77 S.W.3d 828, 833 (Tex. Crim. App. 2002).

“The two prongs of *Strickland* need not be analyzed in a particular order[.]” *See Ex parte Martinez*, 330 S.W.3d 891, 901 (Tex. Crim. App. 2011). And failure to satisfy either prong of *Strickland* is fatal. *See Ex parte Martinez*, 195 S.W.3d 713, 730 n.14 (Tex. Crim. App. 2006). We need not decide if Mitchell’s counsels’

performance was deficient because we agree with the State that—examining the record as a whole—Mitchell has failed to carry his burden to demonstrate prejudice. “The Court of Criminal Appeals has noted that the standard for showing prejudice on a claim of ineffective assistance of counsel is more demanding than the showing needed to prove harm under the Rules of Appellate Procedure.” *Thomas v. State*, 445 S.W.3d 201, 210 (Tex. App.—Houston [1st Dist.] 2013, pet. ref’d) (citing *Martinez*, 330 S.W.3d at 903). “To prevail, [appellant] must show a reasonable probability that but for his counsel’s deficient performance, the result of the proceeding would have been different.” *Id.* (citing *Bone*, 77 S.W.3d at 833).

The jury heard T.S. testify how Mitchell sexually assaulted her on multiple occasions. The jury heard the SANE testify regarding what T.S. reported to her and that her injury was consistent with the history T.S. reported. Furthermore, the jury heard similar evidence to the evidence challenged here as to Mitchell’s control over parishioners that was admitted into evidence without objection and about which Mitchell does not complain about on appeal. Based on the entire record and evidence presented to the jury, we conclude that the alleged errors by trial counsel would probably have had no effect on the jury’s verdict. *See Martinez*, 195 S.W.3d at 731. Issues seven, eight, and nine are overruled.

Hearing on Motion for New Trial

In his first issue, Mitchell argues the trial court abused its discretion by denying Mitchell a hearing on his motion for new trial. Mitchell's motion for new trial asserted that he was denied effective assistance of counsel at the guilt-innocence stage of his trial, and Mitchell requested a hearing on the motion. Attached to Mitchell's motion were affidavits from two of his trial attorneys.

We review a trial court's denial of a defendant's request for a hearing on a motion for new trial using an abuse-of-discretion standard. *Smith v. State*, 286 S.W.3d 333, 339 (Tex. Crim. App. 2009). A trial court abuses its discretion only if its ruling is clearly erroneous and arbitrary and is not supported by any reasonable view of the record. *Id.*; see also *Riley v. State*, 378 S.W.3d 453, 457 (Tex. Crim. App. 2012). A defendant does not have an absolute right to a hearing on a motion for new trial. *Smith*, 286 S.W.3d at 338. The purposes of a hearing on a motion for new trial are to decide whether the case should be retried and to “prepare a record for presenting issues on appeal in the even the motion is denied.” *Id.* A hearing is only required when the motion raises matters that cannot be determined from the record. *Id.* And, even when a defendant raises matters not determinable from the record, he is not entitled to a hearing on his motion for new trial unless he also “establishes the existence of ‘reasonable grounds’ showing that the defendant

‘could be entitled to relief.’” *Id.* at 339 (noting this requirement is imposed to avoid fishing expeditions at a motion for new trial hearing). Therefore, the motion for new trial must be supported by an affidavit from the defendant or another person specifically setting out the factual basis for the claim to be entitled to a hearing. *Id.* The affidavit need not establish a prima facie case, or even reflect every component legally required to establish relief. *Id.* (citing *Reyes v. State*, 849 S.W.2d 812, 816 (Tex. Crim. App. 1993)). An affidavit is sufficient “‘if a fair reading of it gives rise to reasonable grounds in support of the claim.’” *Id.* An affidavit that is conclusory, that is unsupported by facts or that fails to explain how the counsel’s alleged deficiency would have changed the verdict is not sufficient and does not warrant a hearing on the motion for new trial. *Id.* Accordingly, when a motion for new trial relies on a claim of ineffective assistance of counsel, as does Mitchell’s, the defendant’s motion “‘must allege sufficient facts from which a trial court could reasonably conclude *both* that counsel failed to act as a reasonably competent attorney *and* that, but for counsel’s failure, there is a reasonable likelihood that the outcome of his trial would have been different.” *Id.* at 341; *see also Strickland*, 466 U.S. at 694.

The motion must be supported by affidavit(s), specifically showing the truth of the grounds of attack. *King v. State*, 29 S.W.3d 556, 569 (Tex. Crim. App. 2000);

Edwards v. State, 37 S.W.3d 511, 514 (Tex. App.—Texarkana 2001, pet. ref'd). Texas Rule of Appellate Procedure 21.7 provides that the “court may receive evidence by affidavit or otherwise[]” at the hearing. Tex. R. App. P. 21.7. A trial court does not have to receive live testimony at the hearing. *Holden v. State*, 201 S.W.3d 761, 763-64 (Tex. Crim. App. 2006) (discussing rule 21.7). If the affidavit(s) do not supply reasonable grounds that would entitle the accused the relief sought, the trial court does not abuse its discretion in refusing to hold a hearing. *King*, 29 S.W.3d at 569; *Jordan v. State*, 883 S.W.2d 664, 665 (Tex. Crim. App. 1994).

In the record before us, the trial court’s Order on Motion for New Trial stated the following:

After considering the allegations in the Defendant’s Motion for New Trial . . . and the affidavits of [defense trial counsel] that were attached to the motion and timely filed of record, the Court finds that this motion was timely filed and presented, and heard within 75 days from sentencing and that[] it is therefore ordered that the foregoing Motion for New Trial be and is hereby denied without an evidentiary hearing.

The trial court could have ruled based on the sworn pleadings and counsels’ affidavits, which addressed the only issue that Mitchell argues was not determinable from the record.⁵ *See Holden*, 201 S.W.3d at 763.

⁵ Mitchell does not argue that his other claims of jury charge error and exclusion of evidence in his motion for new trial were based in the record.

On the record before us, we cannot say that the trial court abused its discretion in denying the motion. The trial court could have concluded that Mitchell failed to present facts that were adequate to demonstrate reasonable grounds existed to believe he could establish a basis for an ineffective assistance claim. As we discussed in our analysis of issues seven through nine, with respect to his ineffective assistance claim, Mitchell's motion failed to establish reasonable grounds to believe he could prove prejudice. *See Smith*, 286 S.W.3d at 341-45. We conclude that the trial court's ruling denying the motion for new trial and the decision to rule on the motion for new trial without holding an evidentiary hearing to obtain further evidence was within the zone of reasonable disagreement. *See id.*; *King*, 29 S.W.3d at 569; *Jordan*, 883 S.W.2d at 665. We overrule issue one.

Rule 403 and 404(b) Challenges to Evidence Admitted

In issues ten and eleven, Mitchell argues that the trial court erred in admitting evidence that Mitchell required parishioners to discuss the sexual positions they used with their partners in violation of Rules 403 and 404(b) of the Texas Rules of Evidence. In issues twelve and thirteen, Mitchell argues the trial court erred in admitting evidence that Mitchell made his parishioners go without food or water in violation of Rules 403 and 404(b). In issues fourteen and fifteen, Mitchell contends

the same rules were violated and the trial court erred when in admitting evidence that Mitchell gave wine to older children.

An appellate court reviews a trial court's ruling on the admission of evidence for an abuse of discretion. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019) (citing *Rodgers v. State*, 205 S.W.3d 525, 527 (Tex. Crim. App. 2006); *Powell v. State*, 63 S.W.3d 435, 438 (Tex. Crim. App. 2001)). Even if the trial court erred in overruling Appellant's objections, we will not reverse the judgment if the error is harmless. *See* Tex. R. App. P. 44.2. We review error in admitting extraneous offense evidence as non-constitutional error. *Casey v. State*, 215 S.W.3d 870, 885 (Tex. Crim. App. 2007). We will disregard non-constitutional error that does not affect a criminal defendant's substantial rights. *See* Tex. R. App. P. 44.2(b). "A substantial right is affected when the error had a substantial and injurious effect or influence in determining the jury's verdict." *Schmutz v. State*, 440 S.W.3d 29, 39 (Tex. Crim. App. 2014). In our determination of whether error adversely affected the jury's decision, we consider everything in the record, including testimony, physical evidence, jury instructions, the State's theories and any defensive theories, closing argument and voir dire. *Id.*

Generally, evidence of a person's character or character trait is not admissible to prove that on a particular occasion the person acted in accordance with the

character or trait, and 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. Tex. R. Evid. 404(a)(1), (b)(1). "Rule 404(b) sets out an illustrative, not exhaustive, list of exceptions to the prohibition against admitting evidence of extraneous offenses including 'proof of motive, opportunity, intent, preparation, plan, knowledge, identity, or absence of mistake or accident.'" *Daggett v. State*, 187 S.W.3d 444, 451 n.13 (Tex. Crim. App. 2005) (quoting Tex. R. Evid. 404(b)) (emphasis omitted); *see also Prible v. State*, 175 S.W.3d 724, 731 (Tex. Crim. App. 2005). The Court of Criminal Appeals has explained that "'Rule 404(b) is a rule of inclusion rather than exclusion.' The rule excludes only that evidence that is offered (or will be used) solely for the purpose of proving bad character and hence conduct in conformity with that bad character." *De La Paz*, 279 S.W.3d at 343 (footnotes omitted) (quoting *United States v. Bowie*, 232 F.3d 923, 929 (D.C. Cir. 2000) (discussing Fed. R. Evid. 404(b))).

"Whether extraneous offense evidence has relevance apart from character conformity, as required by Rule 404(b), is a question for the trial court." *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003). In determining the admissibility of extraneous offenses or uncharged acts, courts first determine whether the evidence is relevant to a material issue in the case and second whether the relevant evidence

should be admitted as an exception to Rule 404(b)(1). *Rogers v. State*, 853 S.W.2d 29, 32-33 (Tex. Crim. App. 1993) (discussing a prior version of the Rules of Evidence). A trial court's 404(b) ruling admitting evidence is generally within the zone of reasonable disagreement "if there is evidence supporting that an extraneous transaction is relevant to a material, non-propensity issue." *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011) (citing *Powell*, 63 S.W.3d at 438). We set forth the standard for a Rule 403 analysis above in our discussion of issues three and four.

Tammy testified that Mitchell had each couple discuss with him intimate details such as their sexual positions. Mitchell objected that the testimony was "impermissible 404 evidence[]" and "highly prejudicial[]" and asked for a running objection and limiting instruction. After the trial court provided the jury with a limiting instruction, Tammy testified that she and her husband had to go into Mitchell's room, stand and tell him the sexual positions they used, and that Mitchell said the only position allowable by God was "for the female to be lying down always at the bottom [a]nd the husband at the top."

One of Mitchell's defensive theories advanced at trial was that T.S. fabricated the allegations against Mitchell. Rebuttal of a defensive theory is "one of the permissible purposes for which relevant evidence may be admitted under Rule

404(b).” *Moses*, 105 S.W.3d at 626. T.S.’s description of the sexual assaults by Mitchell involved the sexual position of Mitchell being on top of her and no other. The trial court could have reasonably determined the evidence was admissible to rebut Mitchell’s claim of fabrication. *See Bass v. State*, 270 S.W.3d 557, 563 (Tex. Crim. App. 2008). Furthermore, we presume that the jury followed the trial court’s limiting instruction. *See Gamboa v. State*, 296 S.W.3d 574, 580 (Tex. Crim. App. 2009).

As to Mitchell’s arguments that the admission of evidence that he required parishioners to fast from food and water and that he gave wine to children violated Rule 404(b), he failed to preserve this alleged error. To preserve error involving the admission of evidence, one must contemporaneously object each time the objectionable evidence is proffered. *See Valle v. State*, 109 S.W.3d 500, 509 (Tex. Crim. App. 2003). To negate the need for continually objecting, though, one may solicit a running or continuing objection. *See id.* Nevertheless, a running objection does not generally preserve objections to similar evidence or testimony proffered by subsequent witnesses unless it explicitly references the testimony of other witnesses. *See Stafford v. State*, 248 S.W.3d 400, 410 (Tex. App.—Beaumont 2008, pet. ref’d) (purported error was not preserved because while defendant was granted a running objection to one witness’s testimony, the record did not indicate that he requested

his running objection to be applied to all witnesses testifying to the matter). Should the same evidence be admitted without objection elsewhere in the trial, then any purported error in admitting it is cured. *See Valle*, 109 S.W.3d at 509. Although Mitchell argues that he objected to Bobby’s testimony that Mitchell required parishioners to go without food or water, Louise also testified without objection that Mitchell would give judgments requiring fasting for five days without food or water, and Tammy testified without objection that Mitchell required fasting of his parishioners. Mitchell also argues that he objected to Bobby’s testimony that parishioners, including older children, were given “special privileges wine” but Mitchell failed to object on Rule 404(b) grounds to the similar testimony by defense witness Sandra that the teenagers were sometimes given wine or to Brad’s testimony that members and older children were given wine.

Mitchell’s brief on appeal also fails to include any substantive 403 analysis as to how *each* complained-of extraneous act (Mitchell requiring parishioners to discuss sexual positions, requiring them to fast without food or water, and providing wine to the older children) was substantially more prejudicial than probative under the facts of the case. Instead, Mitchell argues the “litany of extraneous conduct” is more prejudicial than probative because the evidence lacks meaningful similarities to the charged offense, the need for the evidence was minimal, the evidence was

calculated to lead jurors to convict on an improper basis, was given undue weight by the jury, and distracted the jury's attention from the main issue in the case. Mitchell did not make this argument during the trial, and his Rule 403 objections and arguments were made to the individual specific extraneous act evidence in isolation, which he does not articulate on appeal. Mitchell inadequately briefed the issues, and his complaint on appeal does not comport with the complaint he made at trial. *See* Tex. R. App. P. 33.1, 38.1; *Swearingen v. State*, 101 S.W.3d 89, 100 (Tex. Crim. App. 2003); *Cook v. State*, 858 S.W.2d 467, 474 (Tex. Crim. App. 1993); *Jackson v. State*, 424 S.W.3d 140, 155 (Tex. App.—Texarkana 2014, pet. ref'd).

Even assuming any or all the challenged testimony was admitted in error, we conclude that Mitchell has not shown that the alleged error had a substantial and injurious effect or influence in determining the jury's verdict. The jury heard other evidence regarding Mitchell's control over parishioners that was admitted without objection and was properly admitted. T.S. also explained how Mitchell sexually abused her on multiple occasions. The testimony of a child victim (seventeen years of age or younger at the time of the offense) alone is sufficient to support a conviction for sexual assault of a child. *See* Tex. Code Crim. Proc. Ann. art. 38.07(b)(1); *Garcia v. State*, 563 S.W.2d 925, 928 (Tex. Crim. App. 1978). Therefore, the jury could have found Mitchell guilty solely on T.S.'s testimony.

Louise testified T.S. made an outcry to her of Mitchell's sexual abuse. The SANE testified that T.S. told the SANE during the examination that Mitchell sexually abused her and that T.S.'s injury was consistent with the history she reported, and the forensic interviewer testified that T.S. told her during the interview that Mitchell sexually abused her. The record reflects the defense was given an opportunity to cross-examine the witnesses. After examining the entire record, we have fair assurance that the error(s), if any, did not influence the jury or had but a slight effect. *See Schmutz*, 440 S.W.3d at 39. Accordingly, we overrule issues ten through fifteen.

Having overruled all of Mitchell's issues, we affirm the trial court's judgments.

AFFIRMED.

LEANNE JOHNSON
Justice

Submitted on April 8, 2020
Opinion Delivered July 15, 2020
Do Not Publish

Before Kreger, Horton and Johnson, JJ.