NUMBER 13-18-00149-CR

COURT OF APPEALS

THIRTEENTH DISTRICT OF TEXAS

CORPUS CHRISTI – EDINBURG

ELOY MORIN A/K/A ELOY S. MORIN A/K/A ELOY SILGUERO MORIN, **Appellant,**

v.

THE STATE OF TEXAS, **Appellee.**

On appeal from the 103rd District Court of Cameron County, Texas.

MEMORANDUM OPINION

Before Chief Justice Contreras and Justices Longoria and Perkes Memorandum Opinion by Justice Perkes

Appellant Eloy Morin a/k/a Eloy S. Morin a/k/a Eloy Silguero Morin appeals his convictions of two counts of continuous sexual abuse of a child, a first-degree felony, *see* TEX. PENAL CODE ANN. § 21.02(b), (h) (counts one and two), and one count of indecency

with a child by sexual contact, a second-degree felony (count three).[1] *See id.* § 21.11(a)(1), (d). A jury imposed punishment at fifty years' confinement on counts one and two, and five years' confinement on count three. *See id.* §§ 12.32, 12.33. The sentences were ordered to run concurrently. By four issues, Morin argues the trial court erred by (1) designating the forensic interviewer as an outcry witness; (2) denying his motion to suppress; (3) admitting hearsay evidence; and (4) denying his request for mistrial. We affirm.

I. BACKGROUND

Morin was indicted on allegations that he sexually abused his biological daughter, M.M., and stepdaughter, I.V.,[2] multiple times over a period of thirty or more days in duration, when both children were younger than fourteen years of age. M.M. was four or five years old when the abuse first occurred; I.V. was between the ages of eleven and thirteen. At the time of trial, M.M. was twelve years old and I.V. was nineteen.

A. Outcry Hearing

On January 29, 2018, the trial court held an outcry hearing prior to trial. *See* TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(b)(2). The State called three witnesses: M.M., M.M.'s mother, and a forensic examiner who interviewed M.M.

M.M.'s mother, M.V., amicably separated from Morin in 2013, when M.M. was six or seven years old. M.M. primarily resided with M.V. and regularly visited with Morin

[1] At the start of trial, Morin pleaded not guilty to counts one and two, and he entered a plea of guilty to count three. In his brief, Morin requests "that his conviction be reversed," but does not specify which count.

[2] In sexual assault cases, we use initials to refer to complaining witnesses and their families to protect their privacy. *See* TEX. R. APP. P. 9.8 cmt. ("The rule [protecting the privacy in civil cases] does not limit an appellate court's authority to disguise parties' identities in appropriate circumstances in other cases.").

without issue for several years. M.V. then became concerned in March 2017 after M.M. subtly stated that she "didn't want to stay with [Morin]" because she "didn't like the way that her father would hug her." M.V. said she tried to press her daughter for more information later that same evening. "I asked her, 'What's happening to you? . . . [M.M.], trust me. I'm your mother. Tell me what happened . . . ." M.M. denied any abuse and instead, urged her mother to speak to I.V. "'because [Morin] did do something to [I.V.].'" According to M.V., that was the extent of M.M.'s disclosures. M.V. then spoke with I.V., who confirmed that Morin had sexually abused her when she was a child. M.V. thereafter contacted local law enforcement, who referred her to Monica's House, a children's advocacy center in Cameron County.

M.M. testified that she was at Monica's House when she first detailed any incidents of sexual abuse against herself:

> Q. Okay. What did you tell your mom?
>
> A. Well, I didn't tell her what actually happened to me; I just told her the day that I was asleep with my dad.
>
> Q. Okay. And what did you tell her about that?
>
> A. I just told her that my dad had grabbed me like really tight, and I didn't like it.
>
> Q. And so after you told your mom, was there somebody else that you spoke to about that incident?
>
> A. No; I just went to Monica's House.

Joana Frausto, a forensic interviewer at Monica's House, interviewed M.M. on March 29, 2017. Frausto testified that M.M. told her about several incidents, starting when she was four or five years old and ending when she was six or seven. Frausto said M.M. began by discussing "an incident that had happened just recently where [Morin] attempted to touch her breast. Later, she mentioned that he touched her in her bottom. Then she

went on saying how he would do that often. . . .” As the interview progressed, M.M. disclosed how, when she was around four years old, Morin “would go into her room,” climb into her bed, and proceed to vaginally or anally penetrate her with his penis. M.M. also told Frausto that she had witnessed her father sexually abuse her older sister on multiple occasions. On one such occasion, M.M. walked into the bathroom to find her sister on her knees, “touch[ing] [Morin’s] penis.”

Morin opposed the State’s designation of Frausto as an outcry witness, arguing that she was “not of the type that would be a trusted adult to whom the child would normally tell the truth.” The trial court determined the designation was appropriate, overruling Morin’s objection.

B. Motion to Suppress

The trial court thereafter held a hearing on Morin’s motion to suppress his statements to police on grounds that he was deprived of his right to have counsel present during questioning. Samuel Lucio, a detective with the Brownsville Police Department Sex Crimes Unit, executed a warrant for Morin on March 30, 2017. Morin was transported to the police station, where he was interviewed by Lucio and another detective, Miguel Martinez. Prior to the interview, Morin received a written copy of his *Miranda* warnings in Spanish, his native language. Lucio provided Morin with an explanation of each individual warning, and Lucio received a verbal confirmation of Morin’s understanding after each explanation. Morin waived his right to an attorney.

The interrogation spanned one hour, during which Morin was confronted with recorded statements made by M.M. and I.V. Though Morin maintained the allegations

involving M.M. were "pure lies," [3] Morin eventually confessed to touching I.V. inappropriately. Morin told Lucio that any sexual abuse involving I.V. occurred for less than a year in duration, and Morin attributed his behavior to his then-existing drug and alcohol addiction. Fifty-eight-minutes into the interview, Morin made mention of an attorney.[4]

Five minutes later, Lucio notified Morin that the police had "no more questions for [him]," and the interview was terminated.[5] The trial court held that Morin's statement was not an invocation of his right to have counsel present during the interrogation and denied Morin's motion to suppress.

C. Trial

M.M., M.V., Frausto, and Lucio gave much of the same testimony at trial. As part of its case-in-chief, the State also called I.V. and Sonja Eddleman, a forensic nurse examiner. In his case-in-chief, Morin called several witnesses, including family members,[6] and an expert witness to opine on how memory retrieval works. Morin also testified.

The jury returned a guilty verdict and assessed punishment on all three counts. This appeal followed.

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[3] Morin explained that he "grabbed [M.M.'s] stomach to hug her" on occasion, but he "did not grab her part." Morin vehemently denied ever penetrating M.M. vaginally or anally, as she alleged.

[4] The interview was conducted in Spanish. During the motion to suppress hearing, the State admitted a translated transcript of the interview into evidence. The translation, however, did not indicate who was speaking when the phrase "I'm going to get an attorney" was uttered. The trial court viewed the interview video recording and determined that Morin stated, "'Okay. I know what you're saying. I know what you're saying. I'll get an attorney and we'll see.'"

[5] In a phone call to family after the interview, Morin said, "I already told them. I told them, but I still need to get an attorney." A family member then informed him that counsel had already been retained for him. Defense counsel argued Morin's phone call to family showcased Morin's intent to earlier invoke his right to counsel. There were no additional questions from law enforcement following the conclusion of Morin's phone call.

[6] Morin has nine children, one of which testified on his behalf at trial. Morin's two sisters also testified.

II. OUTCRY DESIGNATION

A child's out-of-court statements regarding sexual abuse allegations is commonly referred to as an "outcry," and an adult who testifies about the outcry is commonly referred to as an "outcry witness." *Sanchez v. State*, 354 S.W.3d 476, 484–85 (Tex. Crim. App. 2011); *see* TEX. CODE CRIM. PROC. ANN. art. 38.072. Under article 38.072, for a trial court to admit outcry witness testimony, it must hold a hearing "outside the presence of the jury" and make the determination that "the [child's outcry] statement is reliable based on the time, content, and circumstances of the statement." TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(b)(2); *see Garcia v. State*, 792 S.W.2d 88, 91–92 (Tex. Crim. App. 1990).

A. Standard of Review

An appellate court reviews a trial court's outcry witness designation for an abuse of discretion.[7] *See Garcia v. State*, 792 S.W.2d 88, 91–92 (Tex. Crim. App. 1990); *Cervantes v. State*, No. 10-19-00019-CR, 2019 WL 6607003, at *4, ___ S.W.3d ___, ___ (Tex. App.—Waco Dec. 4, 2019, no pet. h.). A trial court abuses its discretion if it acts arbitrarily or unreasonably, without reference to any guiding rules or principles. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019) (citing *Montgomery v. State*, 810

[7] Morin urges this court to partake in a de novo review, arguing that the trial court's ruling necessitates a statutory construction. *See Bays v. State*, 396 S.W.3d 580, 590 (Tex. Crim. App. 2013). Morin cites *Bays* in support of his contention, but Morin's reliance on *Bays* is misplaced. *Id.* The Court in *Bays* opined whether article 38.072 permits a child's outcry statements "to be conveyed through other mediums, such as video or audio recordings." *Id.* (citing TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(a)–(b)). The Court determined article 38.072 was ambiguous in that limited respect, and therefore, engaged in a de novo review. *See id.*

However, where an appellant alleges a trial court erred in its designation of a proper outcry witness, as Morin does here, the standard of review is abuse of discretion. *See Garcia*, 792 S.W.2d at 91–92; *Rosales v. State*, 548 S.W.3d 796, 806 (Tex. App.—Houston [14th Dist.] 2018, pet. ref'd) ("We review the trial court's designation of an outcry witness for an abuse of discretion."), *cert. denied*, 139 S. Ct. 2014 (2019); *Castelan v. State*, 54 S.W.3d 469, 475 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.) (employing an abuse of discretion standard when reviewing whether a trial court erred in its determination regarding the proper outcry witness).

S.W.2d 372, 380 (Tex. Crim. App. 1990) (en banc)). Trial courts have broad discretion when deciding which witnesses qualify as outcry witnesses. *Garcia*, 792 S.W.2d at 92.

B. Applicable Law and Analysis

"Article 38.072 is a rule of admissibility of hearsay evidence," allowing for the admission of a child victim's out-of-court statements describing the alleged sexual or physical abuse under specified, enumerated circumstances. *Martinez v. State*, 178 S.W.3d 806, 810 (Tex. Crim. App. 2005) (discussing the limitations of article 38.072); *see* TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(a). Article 38.072 only applies to statements that (1) "describe the alleged offense," (2) "were made by the child . . . against whom the charged offense was allegedly committed," and (3) "were made to the first person, 18 years of age or older, other than the defendant, to whom the child . . . made a statement about the offense or extraneous crime, wrong, or act." TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(a); *see Sanchez v. State*, 354 S.W.3d 476, 484–85 (Tex. Crim. App. 2011).

The statute requires the trial court to hold a hearing outside the presence of the jury to determine whether the proffered "statement is reliable based on the time, content, and circumstances of the statement." TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(b)(2). Article 38.072 does not, however, "charge the trial court with determining the reliability of the statement based on the credibility of the outcry witness." *Sanchez*, 354 S.W.3d 487–88.

Morin's claim is two-fold. Morin argues the forensic interviewer was improperly designated as the outcry witness because (1) a forensic interviewer is not a "trusted adult" as is required to establish reliability, and (2) the "forensic interviewer [was] not the 'first person'" to whom the child made an outcry.

Contrary to Morin's first assertion, the trial court makes no determination on an outcry witness's credibility during an outcry hearing. *See Sanchez*, 354 S.W.3d at 88 ("[T]he narrow range of discretion that Article 38.072 allows a trial court means that the credibility of the outcry witness is not a relevant issue at a hearing to determine admissibility of an outcry."); *see also Carielo State*, No. 04-15-00741-CR, 2017 WL 2960409, at *3 (Tex. App.—San Antonio July 12, 2017, no pet.) (mem. op., not designated for publication) ("The outcry witness's biases may be such that a fact-finder would not believe the outcry statement as relayed by the witness, but that is not a matter that the legislature has given to the trial court's discretion.") (citations omitted). The outcry statute merely requires that the trial court find the statement by the child to be reliable. *See Bays*, 396 S.W.3d at 590; *Sanchez*, 354 S.W.3d at 487. And this determination must be based on the "time, content, and circumstances" of the child's statement, not the trustworthiness or credibility of the outcry witness. *See* TEX. CODE CRIM. PROC. ANN. art. 38.072, § 2(b)(2). Further, Morin points us to no authority which would establish that an individual's occupation as a forensic interviewer would preclude the individual from an outcry witness designation, and we find none. *See Rodgers v. State*, 442 S.W.3d 547, 552 (Tex. App.—Dallas 2014, pet. ref'd) (providing that the trial court did not abuse its discretion in designating a forensic examiner as an outcry witness); *Eldred v. State*, 431 S.W.3d 177, 185 (Tex. App.—Texarkana 2014, pet. ref'd) (same); *Robinett v. State*, 383 S.W.3d 758, 762 (Tex. App.—Amarillo 2012, no pet.) (same).

Morin next asserts that the child's mother was the proper outcry witness—not the forensic interviewer. Our precedence is similarly unequivocal on this issue: the first adult must be one to "whom the child makes a statement that in some discernible manner describes the alleged offense." *Garcia*, 792 S.W.2d 90–91; *see, e.g.*, *Thomas v. State*,

309 S.W.3d 576, 577–79 (Tex. App.—Houston [14th Dist.] 2010, no pet.) (concluding that a child victim's statements to her mother that appellant used his hands to touch her was insufficient to designate mother as outcry witness because it was a "general allusion" that failed to describe the alleged offense in a discernible manner); *Reyes v. State*, 274 S.W.3d 724, 728–29 (Tex. App.—San Antonio 2008, pet. ref'd) (providing that, although the child first acknowledged to social worker she had been abused, the trial court did not err when it concluded that such general acknowledgment did not provide sufficient detail).

Morin's contention is based on the following testimony elicited from Lucio at trial: "Well, after we interviewed—after—mom is the first outcry witness. In other words, the child told mom. That's the first person she told."[8] At the time of Lucio's testimony, the jury had already heard M.M., M.V., and Frausto testify. M.M. and M.V. each testified that M.M. vaguely insinuated to M.V. that she had been touched improperly by Morin, only divulging details of abuse to Frausto. Frausto thereafter testified in significant detail to the allegations as told to her by M.M. *See, e.g.*, *Castelan v. State*, 54 S.W.3d 469, 475–76 (Tex. App.—Corpus Christi–Edinburg 2001, no pet.) (determining that the child's grandmother was not a proper outcry witness because child's statement that defendant "put his thing in through the back" did not relay specific details of abuse); *Schuster v. State,* 852 S.W.2d 766, 768 (Tex. App.—Fort Worth 1993, pet. ref'd) (finding the psychologist was the proper outcry witness because, though the child told mother first, she provided no details to mother). Meanwhile, apart from Lucio's broad declaration of M.M.'s mother as the "first outcry witness," there is no evidence in the record that M.M.

[8] Morin immediately asked to approach the bench and following a brief bench conference, the trial court instructed the jury to disregard "Lucio's referral to [M.V.] as being the outcry witness" because "[M.V.] was not the first person that the child told in detail as to what happened."

discussed the allegations in any discernible detail with her mother. *See Garcia*, 792 S.W.2d at 90–91; *Castelan*, 54 S.W.3d at 475–76. Therefore, the trial court did not abuse its discretion in its designation of Frausto, the forensic interviewer, as the proper outcry witness. We overrule Morin's first issue.

III. CUSTODIAL INTERROGATION

By his second issue, Morin claims the trial court erred in denying his motion to suppress his statement made during the custodial interrogation.

A. Standard of Review

In reviewing the trial court's ruling on a motion to suppress statements made as a result of custodial interrogation, we apply a bifurcated standard of review. *Pecina v. State*, 361 S.W.3d 68, 78–79 (Tex. Crim. App. 2012); *Hernandez v. State*, 533 S.W.3d 472, 478 (Tex. App.—Corpus Christi–Edinburg 2017, pet. ref'd). We give almost total deference to a trial court's determination of historical facts and mixed questions of law and fact that rely upon the credibility of a witness. *Alford v. State*, 358 S.W.3d 647, 652 (Tex. Crim. App. 2012); *Pecina*, 361 S.W.3d at 79. We apply a de novo standard of review to pure questions of law and mixed questions that do not depend on credibility determinations. *State v. Kerwick*, 393 S.W.3d 270, 273 (Tex. Crim. App. 2013). "[I]n deciding whether an accused 'actually invoked his right to counsel,' reviewing courts must use an objective standard '[t]o avoid difficulties of proof and to provide guidance to officers conducting interrogations[.]'" *Pecina*, 361 S.W.3d at 79 (quoting *Davis v. United States,* 512 U.S. 452, 458–59 (1994)).

B. Applicable Law and Analysis

Miranda requires a defendant to be given specific warnings for statements that are the result of custodial interrogation in order to be admissible. *See Miranda v. Arizona*, 384

U.S. 436, 444–46 (1966) (establishing safeguards to protect a suspect's constitutional privileges during custodial interrogations). Under *Miranda*, a person must be warned prior to any questioning that they have the right to remain silent, that any statement they make may be used as evidence against them, and that they have the right to an attorney. *Miranda*, 384 U.S. at 444. To establish a waiver of rights, the State has the burden to demonstrate that the defendant knowingly, intelligently, and voluntarily waived his *Miranda* rights. *Joseph v. State*, 309 S.W.3d 20, 24 (Tex. Crim. App. 2010) (citing *Miranda*, 384 U.S. at 444); *see Stringer v. State*, 241 S.W.3d 52, 56 (Tex. Crim. App. 2007) (finding waiver where there is evidence of "intentional relinquishment or abandonment of a known right or privilege").

A defendant may revoke his waiver at any time during the interrogation. *State v. Ruiz*, 581 S.W.3d 782, 786 (Tex. Crim. App. 2019). However, "[t]o trigger law enforcement's duty to terminate the interrogation, a suspect's request . . . must be clear, and the police are not required to attempt to clarify ambiguous remarks." *Davis*, 512 U.S. at 461–62; *Davis v. State*, 313 S.W.3d 317, 339 (Tex. Crim. App. 2010). "Not every mention of a lawyer will suffice, of course, to invoke the Fifth Amendment right to the presence of counsel during questioning." *State v. Gobert*, 275 S.W.3d 888, 892 (Tex. Crim. App. 2009). Because the test is an objective one, we look to the totality of circumstances when determining whether any statement referencing counsel was really a clear invocation of the Fifth Amendment right. *Id.* at 893. "[W]e do not look to the totality of the circumstances, however, to determine in retrospect whether the suspect really meant it when he unequivocally invoked his right to counsel." *Id.* Following a suspect's invocation of his right to counsel, authorities must cease the interrogation until counsel arrives, unless the accused himself initiates any further communication. *Muniz v. State*,

851 S.W.2d 238, 252 (Tex. Crim. App. 1993) (citing *Edwards v. Arizona*, 451 U.S. 477 (1981)).

Morin first disputes that he "entered [into a] voluntary waiver" and argues that he "was prevented from []attaining awareness and comprehension of the information in the *Miranda* warnings,[] by his separation from the counsel retained for him by family."[9] Because Morin argues the voluntariness and awareness of his waiver, we engage in a two-part inquiry to determine: (1) whether his "relinquishment of the right [was] voluntary in the sense that it was the product of a free and deliberate choice rather than intimidation, coercion, or deception", and (2) whether his waiver was "made with full awareness of both the nature of the right being abandoned and the consequences of the decision to abandon it." *Joseph*, 309 S.W.3d at 25 (quoting *Moran v. Burbine,* 475 U.S. 412, 421 (1986)).

Morin, however, alleges no "intimidation, coercion, or deception" and we find none.[10] A review of the record indicates that: (1) Morin was arrested and transported to

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[9] It is irrelevant to our analysis that Morin may have been represented at the time of the interrogation because neither Morin nor the investigating officers knew of the representation. Morin's own statements confirm he did not know his family had hired an attorney on his behalf. The attorney allegedly retained by his family—an individual who did not ultimately represent Morin—testified at trial that he first went to the jail the day after Morin was interviewed by law enforcement, and he made no attempt to contact the jail prior to his arrival to inform the jail staff that Morin was represented. *See State v. Gobert*, 275 S.W.3d 888, 893 (Tex. Crim. App. 2009); *Muniz v. State*, 851 S.W.2d 238, 252 (Tex. Crim. App. 1993). As examined below, the awareness analysis does not ask whether Morin knew he had counsel, but rather, whether he knew he had a right to counsel. *See Joseph v. State*, 309 S.W.3d 20, 25 (Tex. Crim. App. 2010).

[10] During the suppression hearing, Detective Lucio confirmed as much:

Q. Did [Morin] knowingly and voluntarily waive his right to an attorney?

A. Yes, he did.

Q. Was the defendant—did the defendant—did you ever take any steps to intimidate the defendant?

A. No.

Q. Did you threaten the defendant in any way?

A. No.

Q. Did you withhold anything from the defendant?

A. No.

the police station, where he was read his rights and explained the consequences of waiving those rights in his native language,[11] (2) Morin affirmatively acknowledged via

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Q. Did the defendant ever tell you that he was exhausted and he needed to sleep?

A. No.

Q. Did he ever indicate at any time that he was tired or he wanted to take a break, or take a nap, or anything like that?

A. No.

. . . .

Q. Did the defendant ever indicate to you that he did not want to ask—that he did not want to answer questions?

A. No.

Q. Did the defendant voluntarily answer every question that you asked him?

A. Yes.

Q. Did he refuse to answer any questions?

A. Not to my recollection.

[11] Prior to discussing the allegations against Morin, Lucio told him, "Let me let you know what your rights are, and then you decide if you want to talk to me. Before you are asked any questions, you must understand your rights." Lucio proceeded to explain Morin his rights, receiving a verbal confirmation of understanding after each explanation:

[LUCIO:] Number one: You have the right to remain silent. Do you understand that right?

[MORIN:] Yes.

[LUCIO:] Number two: Anything you say may be used against you in court. Do you understand that right?

[MORIN:] Mm-hm.

[LUCIO:] Number three: You have the right to talk to an attorney to obtain advice before we ask you questions and to have him with you while you are being questioned. Do you understand that right?

[MORIN:] Mm-hm.

[LUCIO:] Yes? Okay. Number four: If you cannot afford an attorney and that is what you wish for, one will be appointed before you are asked any questions. Do you understand that right?

[MORIN:] Mm-hm. Of course.

[LUCIO:] Number five: If you decide to answer the questions now without the presence of an attorney, you still have the right to stop answering whenever you want. You also have the right to stop answering until you talk to an attorney. Do you understand that . . .

[MORIN:] Mm-hm.

[LUCIO:] . . . right?

[MORIN:] Yes.

repeated verbal confirmation that he understood his rights and, nonetheless, sought to waive those rights, (3) Morin's conduct throughout the duration of the interview demonstrated he possessed adequate comprehension abilities, and (4) the interviewing officers did not engage in intimidation or coercive practices, nor did they utilize physical or psychological pressure to elicit statements for Morin.

A review of the totality of the circumstances surrounding the interrogation supports the trial court's finding that Morin's waiver was made with full awareness of both the nature of the rights he abandoned as well as the consequences of his decision to abandon them. *See Joseph*, 309 S.W.3d at 26; *Leza v. State*, 351 S.W.3d 344, 349 (Tex. Crim. App. 2011) ("Once it is determined that a suspect . . . at all times knew he could stand mute . . . , and that he was aware of the State's intention to use his statements to secure a conviction, the analysis is complete and the waiver is valid as a matter of law." (quoting *Moran,* 475 U.S. at 422–23)); *Martinez v. State*, No. 08-17-00253-CR, 2019 WL 5616969, at *6, ___ S.W.3d ___, ___ (Tex. App.—El Paso Oct. 31, 2019, pet. filed) ("Where the State shows that *Miranda* warnings were given, that they were understood by the defendant, and that the defendant engaged in a 'course of conduct indicating waiver,' such as by further participating in an interview, the defendant's uncoerced statement

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. . . .

[LUCIO:] If you would like to read them again, you may read them again. If you understand them, put your initials there indicating that we have read them to you.

. . . .

This statement of my rights has been read to me, and I understand what my rights are. I am willing to discuss matters presented and answer the questions. I do not wish for an attorney at this time. I understand and know what I am doing. No promises or threats have been made to me and no pressure of any kind was used against my person. Is that correct? . . .

Lucio then asked Morin if he wanted him to read the document again. Morin responded, "No. It is fine like that."

establishes an implied waiver of his rights."); *Gately v. State*, 321 S.W.3d 72, 78 (Tex. App.—Eastland 2010, no pet.) (providing that voluntary waiver could be inferred where the defendant was advised of his rights, stated that he understood his rights, agreed with the interviewing detective that he wanted to speak to the detective, and willingly participated in the interview).

Morin also argues that his reference to an attorney near the end of his interview amounted to an invocation of his right to counsel and that any statements made thereafter should have been suppressed. As previously noted, Morin spoke unfetteredly for over fifty minutes during the interview, freely answering questions of him and providing a significant narrative. Morin then stated: "I am going to get an attorney, and . . . If she says . . . What she says is wrong, but I know, the woman has more power here" (ellipses in original).

Morin's statement referencing an attorney appears to be—as the trial court observed—in an anticipatory context of challenging his allegations in court rather than an unequivocal invocation of his right to have counsel present during an interrogation. *See Pecina*, 361 S.W.3d at 74–75; *In re H.V.*, 252 S.W.3d 319, 325 (Tex. 2008) (acknowledging that prior courts have determined the following statements to be insufficient for invocation of a defendant's right to have counsel present: "Maybe I should talk to a lawyer"; "I might want to talk to an attorney"; "I think I need a lawyer"; "Do you think I need an attorney here?"; and "I can't afford a lawyer but is there anyway I can get one?"); *see also Davis*, 313 S.W.3d at 338–41 (holding the statement "I should have an attorney" was not an unambiguous invocation); *Molina v. State*, 450 S.W.3d 540, 547–48 (Tex. App.—Houston [14th Dist.] 2014, no pet.) (holding statements "If I'm getting blamed for something like that . . . I'm going to just go ahead and call my lawyer," and "[i]f ya'll got

videos [and] if y'all got all that then I'll wait til my lawyer comes in," were not unambiguous invocations).

Under the totality of these circumstances, we conclude that Morin voluntarily waived his right to counsel during custodial interrogation and did not, during the custodial interrogation, unambiguously invoke his right to counsel. *See Pecina*, 361 S.W.3d at 74–75. Therefore, the trial court did not err in its denial of Morin's motion to suppress his statements. We overrule Morin's second issue.

III. HEARSAY

Morin next argues that the trial court erred in admitting hearsay testimony from M.V. and detectives Martinez and Lucio.[12]

A. Standard of Review and Applicable Law

The hearsay doctrine, codified in the Texas Rules of Evidence, "is designed to exclude out-of-court statements offered for the truth of the matter asserted that pose any of the four 'hearsay dangers' of faulty perception, faulty memory, accidental miscommunication, or insincerity." *Fischer v. State,* 252 S.W.3d 375, 378 (Tex. Crim. App. 2008) (citing TEX. R. EVID. 801, 802). There are numerous hearsay exceptions listed in Rules 803 and 804, each premised on the rationale that "some hearsay statements contain such strong independent, circumstantial guarantees of trustworthiness that the risk of the four hearsay dangers is minimal while the probative value of such evidence is high." *Id.* (citing TEX. R. EVID. 803, 804).

[12] Morin broadly argues that the trial court admitted hearsay "[o]ver and over throughout this trial . . . over timely objection". We limit our review to the specific incidents Morin directly cited in his brief. *See* TEX. R. APP. P. 38.1(i).

"As with all questions of admissibility of evidence, the appellate standard for reviewing the trial court's determination is abuse of discretion." *Saavedra v. State*, 297 S.W.3d 342, 349 (Tex. Crim. App. 2009). The trial court will be "reversed only if the decision is outside the zone of reasonable disagreement." *Salazar v. State,* 38 S.W.3d 141, 151 (Tex. Crim. App. 2001). In other words, "before the reviewing court may reverse the trial court's decision, it must find the trial court's ruling was so clearly wrong as to lie outside the zone within which reasonable people might disagree." *Taylor v. State,* 268 S.W.3d 571, 578 (Tex. Crim. App. 2008); *see also Pena v. State,* 353 S.W.3d 797, 814 (Tex. Crim. App. 2011).

In our hearsay analysis, however, we must first review the record for error preservation because we have a duty to ensure that a claim is properly preserved in the trial court before we address its merits. TEX. R. APP. P. 33.1(a); *Darcy v. State*, 488 S.W.3d 325, 327–28 (Tex. Crim. App. 2016); *Wilson v. State*, 311 S.W.3d 452, 473 (Tex. Crim. App. 2010). If the error is preserved, we then identify whether the complained-of statements are hearsay and, if so, whether they are subject to any exceptions that would nonetheless render them admissible. *See Long v. State*, 800 S.W.2d 545, 547 (Tex. Crim. App. 1990); *see also* TEX. R. EVID. 801–805. If an issue has not been preserved for appeal, we should not address the merits of the issue. *Wilson v. State,* 311 S.W.3d 452, 473 (Tex. Crim. App. 2010) (op. on reh'g) (per curiam). We may address preservation of error on our own motion. *Ford v. State,* 305 S.W.3d 530, 532–33 (Tex. Crim. App. 2009).

B. Analysis of Martinez's and Lucio's Statements

Morin specifically argues the trial court erred by "admitting hearsay testimony under the cover of 'what did your investigation show' or 'what did you learn.'" *See Schaffer*

v. State, 777 S.W.2d 111, 114 (Tex. Crim. App. 1989). Morin cites to several lengthy pieces of testimony, and we address each applicable portion of the record in turn.

1. Issues Not Preserved

Morin first complains of the admission of Detective Lucio's statement: "Well, from mom's interview, we learned that [M.M.] had told mom of inappropriate—that she felt that she was being—" Morin objected, interrupting the witness mid-statement, and the trial court asked the State for a response to Morin's objection. The State thereafter rephrased its initial question, absent a ruling from the court. Morin did not raise a second objection, and he did not object to the trial court's failure to rule on his initial objection. Morin has therefore failed to preserve this issue for review. *See* TEX. R. APP. P. 33.1(a)(1)(a) (requiring that the trial court rule on the complainants objection, either expressly or implicitly); *Martinez v. State*, 98 S.W.3d 189, 193 (Tex. Crim. App. 2003) ("[I]f, on appeal, a defendant claims the trial judge erred in admitting evidence offered by the State, this error must have been preserved by a proper objection and a ruling on that objection.").

Morin also complains of Martinez's testimony given in the following colloquy:

[STATE:]	So when you get arrest warrants for any type of defendants or suspects, what do you need in order to
[DEFENSE:]	I'll object to the relevance of this. His probable cause is not what's—is not a relevant factor in—
THE COURT:	That will be overruled. He's already answered it, anyway. Go ahead.
[STATE:]	What do you need to secure an arrest warrant?
[MARTINEZ:]	Probable cause.
[STATE:]	Okay. And if you can explain to the jury what that is.
[DEFENSE:]	Well, I'll object to the relevance. I mean,—
THE COURT:	Sustained.

[STATE:] So what was the reason why you secured an arrest warrant for Mr. Morin as to this criminal case?

[DEFENSE:] Objection to the relevance of that.

THE COURT: That will be overruled.

[MARTINEZ:] At that time, as part of my investigation, I had already—I believed I had enough probable cause.

[DEFENSE:] Let me interpose an objection. This officer is asked to evaluate the testimony, or evaluate the evidence. That's not—and we'd object to that. I mean, it's not his role. We would urge that that's not relevant because it reflects on what he believes was credible or not credible.

THE COURT: That will be overruled. Go.

[MARTINEZ:] Which—go ahead. I'm sorry.

[STATE:] Let me ask again. So what did you base your arrest warrant on?

[MARTINEZ:] The information that I had learned throughout my investigation from the statements of [M.M.] and—

[DEFENSE:] I renew my objection.

THE COURT: That will be overruled. You can have a running objection.

To preserve a complaint for appellate review, there must be a timely and specific trial objection to the complained of action of the trial court, and the objection must "comport with the issue raised on appeal." *Swain v. State*, 181 S.W.3d 359, 367 (Tex. Crim. App. 2005); *see* TEX. R. APP. P. 33.1(a)(1)(A); TEX. R. EVID. 103(a)(1). An objection stating one legal basis may not be used to support a different legal theory on appeal. *Heidelberg v. State*, 144 S.W.3d 535, 537 (Tex. Crim. App. 2004) (en banc); *Juarez v. State*, 461 S.W.3d 283 (Tex. App.—Texarkana 2015, no pet.) (holding that the appellant waived for appellate review his challenge to a police officer's testimony on double hearsay

grounds when his objection at trial was to "continuous hearsay"). Morin's objections at trial make no reference to hearsay, and therefore, he has failed to preserve error on that ground. *See* TEX. R. APP. P. 33.1(a)(1)(A); TEX. R. EVID. 103(a)(1); *Swain*, 181 S.W.3d at 367.

Morin also waived error where he timely objected, the trial court properly sustained the objection to Martinez's anticipated statements as hearsay, and Martinez nonetheless answered in contravention to the court's instruction that he not "repeat what [the complainant] said."[13] Morin made no objection to Martinez's subsequent statements, therefore, the initially objected to error—if any—is waived. *See Martinez,* 98 S.W.3d at 193 (providing that a party must continue to object to inadmissible evidence each time it is offered to preserve the issue for appeal); *Taylor v. State*, 109 S.W.3d 443, 449 n.25 (Tex. Crim. App. 2003) ("Where the same evidence or argument is presented elsewhere during trial without objection, no reversible error exists."); *see* TEX. R. APP. P. 33.1(a)(1)(A). Though two exceptions to the preservation by subsequent objection requirement exist, neither apply here. *See Haley v. State*, 173 S.W.3d 510, 517 (Tex. Crim. App. 2005) ("[T]wo exceptions apply to the requirement of subsequent objections: counsel may obtain a running objection or request a hearing outside the presence of the jury.").

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[13] The referenced colloquy is as follows:

[STATE:]	And during your conversation with [I.V.], what did you learn?
[MARTINEZ:]	Through my conversation with [I.V.], I learned that—
[DEFENSE:]	Judge, if this is to repeat what [I.V.] has told her, we would—
THE COURT:	Sustained. Don't repeat what she said. You can say in general, but don't go verbatim what she told you. All right. Go ahead.
[MARTINEZ:]	And that she was touched inappropriately by Mr. Morin.

Morin thereafter made no objection.

2. Issues Preserved

a. "[H]ow did she appear to you. . ."

Morin next complains of the following testimony offered by Martinez:

[STATE:] Okay. And how did she appear to you as she told you all of her concerns?

[MARTINEZ:] She appeared worried, as far as what would happen to her children. She appeared as if she had no idea that this had happened.

[DEFENSE:] Well, I'll object to this. He's speculating about what her state of mind is.

THE COURT: That's overruled. He can state his observations.

[MARTINEZ:] And she mentioned how she—

[DEFENSE:] I'll object to hearsay, Judge. And I would urge the Court that he can mention his observations, but to say that someone appeared that they had something on their mind would be inappropriate, and that's what—

THE COURT: He's not saying what's on her mind, just that she seems distracted and she's got something on her mind, so I'll allow it. This is part of his investigation. As part of his investigation, I'm going to allow what he found as part of his investigation, and what he did based on what was told to him so that he could investigate. So I'm going to find that it is not hearsay; it's merely that it was uttered as part of his investigation, and not for the truth of the matter.

[DEFENSE:] And I'd also ask that he not give anything that's not within his personal knowledge under Rule 602, Your Honor.

THE COURT: I will allow him to testify as to what his investigation showed, and what he did because of the reports that were made to him, and what he did to act upon it as part of his investigation.

[DEFENSE:] Yes, Your Honor.

THE COURT: Let's go.

[STATE:] Thank you, Your Honor.

[STATE:] When you conducted the interview with [I.V.], was there anybody else that was in the interview with you, conducting that interview?

[MARTINEZ:] With [I.V.], no.

With respect to this excerpt of testimony, Morin's initial objections based on speculation were not briefed, therefore we proceed only on a briefed hearsay objection to Martinez's statement "[a]nd she mentioned how she . . ." *See* TEX. R. APP. P. 38.1(i); *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012).

Following the trial court's ruling, which allowed the witness to testify only to "what his investigation showed," the State did not ask Martinez to expound on his initially objected-to hearsay testimony. Although testimony that "she mentioned how she—" can reasonably be construed as a prelude to a hearsay utterance, Martinez did not ultimately state what he had been told. Thus, no hearsay was admitted, and our analysis ends. *See Long*, 800 S.W.2d at 547.

b. "What did you learn . . ."

Throughout the course of this trial, the State prefaced several questions with the phrase, "What did you learn . . . ." Morin's objection to the excerpt below has been preserved and raised on appeal:

[STATE:] What did you learn about—without saying exactly what [I.V.] said, what did you learn about her relationship with Mr. Morin?

[MARTINEZ:] I learned that there didn't appear to be any issues between them.

[DEFENSE:] Well, I'd object to that. That's purely hearsay.
THE COURT: That will be overruled.

Typically, where law enforcement officers testify to information learned in the course of their investigation, their statements constitute "background evidence" and may be admissible. *Langham v. State*, 305 S.W.3d 568, 580 (Tex. Crim. App. 2010). Such evidence is often admissible "not because it has particularly compelling probative value with respect to the elements of the alleged offense, but simply because it provides the jury with perspective, so that the jury is equipped to evaluate, in proper context, *other* evidence that more directly relates to elemental facts." *Id*. (emphasis in original). Background evidence, however, exists within prescribed limitations; a witness may not "go into elaborate detail in setting the evidentiary scene." *Id.*; *see also Dunbar v. State*, No. 03-12-00315-CR, 2014 WL 2741237, at *5 (Tex. App.—Austin June 13, 2014, pet. ref'd) (mem. op., not designated for publication) ("Witnesses are generally allowed to explain that an out-of-court statement caused the witness to take a particular action so long as the testimony does not strongly imply the content of the out-of-court statement.").

The State additionally contends Martinez's statement was not introduced for the truth of any assertions and such questioning was necessary for the jury's understanding of Martinez's investigatory progression. *Cf*. TEX. R. EVID. 801(d) (defining hearsay as a "statement . . . offered in evidence to prove the truth of the matter asserted"). We agree. Martinez's statements are not hearsay. *See id.*; *cf. Schaffer*, 777 S.W.2d at 115. Therefore, the trial court did not abuse its discretion in overruling Morin's hearsay objection. *See Saavedra*, 297 S.W.3d at 349.

c. "[W]hat was her demeanor like . . . ?"

Lastly, Morin argues that the trial court improperly permitted Detective Lucio's hearsay response to the State's question of "[W]hat was [I.V.'s] demeanor like when she met with you?" Detective Lucio replied:

> She appeared, you know,—I mean, we asked her if she felt more comfortable with a female detective, and she stated no, that she was fine giving us the statement. We learned from her statement that she had been a victim of sexual abuse on multiple times between the ages of eleven and thirteen.

At that point, Morin objected to hearsay and was overruled. *See Poindexter v. State*, 153 S.W.3d 402, 408 n.21 (Tex. Crim. App. 2005) ("[T]estimony by an officer that he went to a certain place or performed a certain act in response to generalized 'information received' is normally not considered hearsay because the witness should be allowed to give some explanation of his behavior. But details of the information received are considered hearsay and are inadmissible . . . ."), *abrogated on other grounds by Robinson v. State*, 466 S.W.3d 166, 173 n.32 (Tex. Crim. App. 2015).

Assuming, without deciding, that the trial court erred when it admitted the disputed testimony, we conclude that any error was harmless. The erroneous admission of evidence is non-constitutional error. *Gonzalez v. State*, 544 S.W.3d 363, 373 (Tex. Crim. App. 2018); *see Casey v. State*, 215 S.W.3d 870, 884–85 (Tex. Crim. App. 2007). Unless the error affected Morin's substantial rights, we disregard any non-constitutional error as harmless. *See* TEX. R. APP. P. 44.2(b); *Easley v. State*, 424 S.W.3d 535, 539 (Tex. Crim. App. 2014). In other words, "error is reversible only when it has a substantial and injurious effect or influence in determining the jury's verdict." *Taylor*, 268 S.W.3d at 592; *see Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011) (noting that an appellate court "will not overturn a criminal conviction for non-constitutional error if the appellate court . . . has fair assurance that the error did not influence the jury, or influenced the jury only slightly"). In determining whether the error was harmless, we consider the nature of the evidence supporting the verdict, the character of the alleged error, how the error might be considered in connection with other evidence in the case, and whether the State

emphasized the complained of error. G*onzalez*, 544 S.W.3d at 373.

Lucio's statement that I.V. was "a victim of sexual abuse on multiple times between the ages of eleven and thirteen" was cumulative of other evidence in the record. I.V. testified that she was sexually abused by Morin; M.M. testified she witnessed Morin sexually abuse I.V.; Frausto testified M.M. said she witnessed Morin sexually abuse I.V.; and Morin admitted, to a lesser degree, that he sexually abused I.V.[14]

After reviewing the entire record, we conclude the admission of the complained-of statement did not have a substantial and injurious effect or influence in the jury's verdict. *See Taylor*, 268 S.W.3d at 592; *Pickron v. State*, 515 S.W.3d 462, 466 (Tex. App.—Houston [14th Dist.] 2017, pet. ref'd) (holding admission of complainant's statements, even if erroneously admitted as hearsay, would have been harmless because the testimony was cumulative of other evidence in the record); *see also Jaycox v. State*, No. 13-13-00639-CR, 2015 WL 5233200, at *4 (Tex. App.—Corpus Christi–Edinburg Sept. 3, 2015, no pet.) (mem. op., not designated for publication) (same). Therefore, even if the trial court abused its discretion in overruling Morin's hearsay objection, any error was harmless. *See Gonzalez*, 544 S.W.3d at 37; *Taylor*, 268 S.W.3d at 592. We overrule Morin's third issue with respect to Martinez's and Lucio's statements.

B. Analysis of M.V.'s Statements

Morin complains that the trial court erred by admitting M.V.'s hearsay statements. The applicable portion of the record reads as follows:

[M.V.:] [M.M.] looked nervous and she was crying.

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[14] At trial, Morin testified that he touched I.V. once on her breast when she was ten years old and once on her vagina "over the clothing." Morin retracted statements made during the interrogation. Morin said he gave the officers "false testimony" when he told them that he had touched I.V. "[l]ike once a month, more or less" for one year and that he would masturbate in front of I.V. or make her touch his penis.

[STATE:] And what was your response to her?

[M.V.:] I asked her that, why, what was happening.

[STATE:] And what did she say?

[DEFENSE:] Objection, Your Honor, under 802.

THE COURT: Okay.

[DEFENSE:] May we approach, Judge?

THE COURT: Yes.

(At the bench, on the record.)

THE COURT: You know this testimony is just leading her up to taking her to Monica's House, so I'm going to allow it so that you establish the fact that she was informed that something was wrong, and therefore, she took her in, not to show that something was, in fact, wrong, but that she told her mom something was wrong, and that's why her mom acted.

[DEFENSE:] Well, I think that—

THE COURT: I don't know if you want me to put all that on in front of the jury. I will explain it to them.

[DEFENSE:] Well, I think that they can get there, but they don't have to get there in this manner, with hearsay.

THE COURT: I understand, but the bottom line is, I'm going to allow it because it shows that she did say something happened, and therefore, she acted on it, not to show that something actually did happen, but just that that's why she did what she did.

[DEFENSE:] Well, I think at this point, she never said anything happened.

THE COURT: Exactly.

[STATE:] Exactly.

[DEFENSE:] Okay. So as long as we're all in agreement.

THE COURT: Well, that's my point. You know what she's going to say.

[DEFENSE:] I'm hoping.

THE COURT: She testified yesterday.

[DEFENSE:] Right.

THE COURT: All right. Let's go.

(End of bench discussion.)

. . . .

[STATE:] And what did [M.M.] say when you asked her what was wrong?

[M.V.:] She stared at me, and I stared at her, and then I told her, "[M.M.], trust me." And I asked her again if her father had done something to her.

[STATE:] And what made you think to ask [M.M.] that question?

[M.V.:] Because I didn't like the way that she woke up, startled, at the time when I approached her.

[STATE:] And what was her response after you asked her that question?

[M.V.:] [M.M.] said, "No, Mommy, he hasn't done anything to me, but you should talk to [I.V]." (Crying.)

[STATE:] And what did you do after she said that to you?

[M.V.:] First I asked her why, and then she told me—

[DEFENSE:] Objection, Your Honor. Pardon me.

THE COURT: Okay.

[DEFENSE:] Objection, Your Honor. We're going beyond the scope.

THE COURT: Sustained.

Despite the lack of subsequent objections on record, counsel may circumvent the requirement of subsequent objection by "obtain[ing] a running objection or request[ing]

a hearing outside the presence of the jury" under Texas Rule of Evidence 103. *Haley*, 173 S.W.3d at 517. Pursuant to *Haley*, Morin's request for a bench conference satisfies the "request [for] a hearing outside the presence of the jury" requirement. *Id.* Having determined that Morin preserved the issue for review, we are left to analyze whether the statements at issue are hearsay. *See* TEX. R. EVID. 801.

The State argues M.V.'s testimony was not hearsay, existed to establish perspective, and lacked any prejudicial detail. *See Langham*, 305 S.W.3d at 580; *Hernandez v. State*, 585 S.W.3d 537, 553–54 (Tex. App.—San Antonio 2019, pet. ref'd) ("[A] statement not offered to prove the truth of the matter asserted is not hearsay."). We agree the statement is not hearsay. Morin initially objected based on his expectation that M.V.'s testimony would go beyond providing the necessary background to establish why law enforcement intervened. We find it particularly persuasive that the trial court, the State, and Morin's counsel acknowledged the purpose and scope of M.V.'s testimony during the bench conference. Only following extensive questioning by the State[15]—when statements began to encroach on hearsay territory—did Morin object, and his objection was properly sustained. Therefore, the trial court did not abuse its discretion in overruling Morin's initial hearsay objection. *See Saavedra*, 297 S.W.3d at 349; *Haley*, 173 S.W.3d at 517. Morin's third issue on appeal is overruled.

IV. MISTRIAL

Morin next contends the trial court erred in denying his motion for mistrial based on a statement by Martinez regarding M.M.'s credibility. "A mistrial is an appropriate remedy in 'extreme circumstances' for a narrow class of highly prejudicial and incurable

[15] Questioning spanned four pages of the record before Morin lodged an objection.

errors." *Ocon v. State*, 284 S.W.3d 880, 884 (Tex. Crim. App. 2009) (quoting *Hawkins v. State*, 135 S.W.3d 72, 77 (Tex. Crim. App. 2004)). A mistrial should be granted only when less drastic alternatives fail to cure the prejudice. *Id.* at 884–85.

We review the trial court's denial of a motion for mistrial for an abuse of discretion, and we must uphold a trial court's ruling if it is within the zone of reasonable disagreement. *Coble v. State*, 330 S.W.3d 253, 292 (Tex. Crim. App. 2010); *Hawkins*, 135 S.W.3d at 76–77. In determining whether the trial court abused its discretion in refusing to grant a mistrial, we consider: (1) the severity of the misconduct (the prejudicial effect of the testimony); (2) the curative measures taken (cautionary instructions given by the judge); and (3) the certainty of conviction absent the prejudicial event (strength of evidence supporting the conviction). *See Mosley v. State*, 983 S.W.2d 249, 259 (Tex. Crim. App. 1998); *see also Flores v. State*, 513 S.W.3d 146, 166 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd) (applying the *Mosley* factors when defense counsel objected to a witness's comment regarding the complainant's credibility).

The first factor we look to is the severity of the conduct, which by necessity inquires into the prejudicial effect of the statement. *Hawkins*, 135 S.W.3d at 77–78 ("Prejudice is clearly the touchstone of the first factor in the *Mosley* test."). Here, in response to the State asking, "[H]ow did [M.M.] appear to you during that interview," Martinez responded that M.M. appeared "as being honest." The State's question to the detective, although open-ended, was not an explicit request for an opinion on the child's veracity or credibility. *See Flores*, 513 S.W.3d at 166 (finding that where the State "merely asked if the complainant's account of events was detailed," it was not an indication of intent to elicit an improper opinion of witness credibility).

The second factor we consider are the measures adopted to cure any misconduct. Morin immediately objected to the evidence, and the court sustained Morin's objection. The court then instructed the jury to disregard the detective's comment and provided a supplementary instruction to the jurors: "You are the sole judges to determine the credibility of the witnesses and the evidence that's before you. Any opinions that are given by the witnesses as to someone's honesty is to be disregarded. That, again, is up to you to determine their credibility; all right?" Morin moved for a mistrial and was denied. *See Young v. State*, 137 S.W.3d 65, 69 (Tex. Crim. App. 2004) ("Where the prejudice is curable, an instruction [to disregard] eliminates the need for a mistrial."); *State v. Doyle*, 140 S.W.3d 890, 893–94 (Tex. App.—Corpus Christi–Edinburg 2004, pet. ref'd) ("It is an abuse of discretion to grant a mistrial where less drastic means are available."); *see also Duarte v. State*, No. 13-16-00198-CR, 2017 WL 5184836, at *11 (Tex. App.—Corpus Christi–Edinburg Nov. 9, 2017, no pet.) (mem. op., not designated for publication) (finding no error where detective testified "there was no indication that [complainant child] was lying," appellant properly objected, the trial court instructed the jury to disregard the statement, and thereafter denied appellant's motion for mistrial); *Owens v. State*, 381 S.W.3d 696, 707 (Tex. App.—Texarkana 2012, no pet.) (finding no error where trial court denied mistrial after striking the detective's testimony that he "felt that [the child complainant] was telling the truth"). The jury is presumed to follow a trial court's instruction to disregard improperly admitted evidence. *Gamboa v. State*, 296 S.W.3d 574, 580 (Tex. Crim. App. 2009).

Finally, we consider the other evidence of guilt in our harm analysis. We first note that in sexual abuse cases such as this, the testimony of the child victim alone is sufficient to support the conviction. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07; *Gonzalez Soto v.*

State, 267 S.W.3d 327, 332 (Tex. App.—Corpus Christi–Edinburg 2008, no pet.). The jury heard both complainants testify in detail of the sexual abuse endured over a multi-year period. The certainty of Morin's conviction exists absent the statement by the detective regarding the credibility of one of the complainants. *See Mosley*, 983 S.W.2d at 259.

Therefore, we conclude the trial court did not err by denying Morin's motion for mistrial. *See Ocon*, 284 S.W.3d at 884. Morin's fourth issue is overruled.

V. CONCLUSION

We affirm the trial court's judgment.

GREGORY T. PERKES
Justice

Do not publish.
TEX. R. APP. P. 47.2(b).

Delivered and filed the
6th day of February, 2020.