

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
March 10, 2026 Session

FILED

06/10/2026

Clerk of the
Appellate Courts

STATE OF TENNESSEE v. DEMETRIONA CHAMEREE HARPER

Appeal from the Criminal Court for Davidson County
No. 2020-A-596 Jennifer Smith, Judge

No. M2025-00602-CCA-R3-CD

Defendant, Demetriona Chameree Harper, was convicted at a jury trial of rape of a child, aggravated sexual battery, and assault, for which she received an effective twenty-five-year sentence. On appeal, Defendant challenges the sufficiency of the evidence supporting her convictions for rape of a child and aggravated sexual battery, the trial court's admission of the recording of the victim's forensic interview, the trial court's exclusion of records from the Department of Children's Services ("DCS"), the trial court's limiting the defense's cross-examination of witnesses and presentation of proof, and the State's recording of a meeting between defense counsel and the defense investigator at the District Attorney General's Office. Upon review, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Criminal Court Affirmed

MATTHEW J. WILSON, J., delivered the opinion of the court, in which ROBERT W. WEDEMEYER, P.J. and CAMILLE R. MCMULLEN, J., joined.

Manuel B. Russ (on appeal) and Courtney Teasley (at trial), Nashville, Tennessee, for the appellant, Demetriona Chameree Harper.

Jonathan Skrmetti, Attorney General and Reporter; Ryan W. Davis, Assistant Attorney General; Glenn R. Funk, District Attorney General; and Chantley Frazier, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual and Procedural History

A Davidson County grand jury indicted Defendant on one count of rape of a child and two counts of aggravated sexual battery of the twelve-year old victim, which occurred

while the then twenty-year-old Defendant was babysitting him on October 10, 2019. The victim disclosed the sexual abuse to his mother and during a forensic interview, and Defendant admitted to a detective that she sexually abused the victim. Defendant's jury trial was held from November 13 through November 17, 2023. At trial, Defendant maintained that her confession to the detective was false and the result of coercive interrogation tactics. Defendant also sought to present as a defense that the victim's mother had coerced the victim into making the allegations after Defendant's mother threatened to contact DCS based on the conduct of the victim's mother toward the victim and his sister.

The State's Proof

According to the evidence presented at trial, the victim's mother was friends with Defendant's mother and aunt, and the victim and his family attended the same church as Defendant and her family. The victim's mother testified that she contacted Defendant's mother, Teresa Bowens, and arranged for Defendant to babysit the victim and his younger sister on the evening of October 10, 2019, while the victim's mother went on a date. The victim's mother recalled that October 10 fell on a Thursday and that her children were out of school on fall break. Defendant was to spend the night with the family in their three-bedroom apartment in Goodlettsville, and the victim's mother agreed that on the following morning, she would drive Defendant to the daycare where she worked, which was located a short distance from the apartment. Defendant had not watched the children previously.

The victim's mother testified that Defendant arrived at the apartment in the afternoon, and the victim's mother left for her date around "dusk." When the victim's mother left, the victim and his sister were sitting on a couch in the living room and "running around being children." Defendant, the victim, and the victim's sister were sleeping by the time that the victim's mother returned at approximately 10:00 p.m.

The victim's mother testified that she did not notice changes to the victim "right off." She later observed that the victim became more withdrawn, limited his interactions with his family, and stayed inside his bedroom. The victim's mother stated that she prayed and "heard clear as day, God said, just ask him. And so I did." On the morning of October 23, 2019, she asked the victim whether something happened when Defendant was at their apartment, and the victim responded that he did not want to talk about it and backed away from his mother. The victim then began crying and told his mother that he and Defendant had sexual intercourse. The victim's mother asked him whether he had wanted to do so, and the victim replied that he had not. The victim's mother testified that the victim had not been sexually active previously and that to her knowledge, the victim had never been exposed to sexually explicit material while under her care.

The victim's mother stated that she called 911 and that during the call, she was "devastated," shaking, and unable to focus. According to the audio recording of the 911 call, which was played to the jury and entered as an exhibit at trial, the victim's mother reported that her son had been raped on "Thursday or Friday" and demanded that a police officer be sent to her home. The victim's mother stated that the rape occurred in her home and that the perpetrator worked at a daycare. The victim's mother was crying and yelled, "Walk out of here." Upon questioning by the 911 operator, the victim's mother stated that she had been speaking to the victim, and the operator told her not to yell at the victim and that she needed to remain calm for the victim's sake. The victim's mother testified at trial that she was not upset with the victim but that she "needed him to go out of the room so if I did break, he couldn't see me break." In the recording, the victim's mother told the 911 operator that the victim "didn't come and tell me. God told me." The victim's mother said that the victim was "acting funny" and that she prayed about it. She stated that God tells her whenever something happens with her child and that God told her to ask the victim. The victim's mother said that when she approached the victim, she told him not to lie because she would pray and God would reveal it to her. The victim's mother stated that the victim told her what occurred and that the victim's sister had stated that the victim and Defendant would not allow her in the victim's bedroom on October 10.

A police officer arrived at the apartment shortly after the victim's mother called 911, and the victim's mother made a report. She also had the victim examined by his pediatrician. A detective with the Goodlettsville Police Department ("GPD") contacted the victim's mother, and the victim, his mother, and his sister went to the GPD where the detective spoke to the victim. The victim underwent a forensic interview at Nashville Children's Alliance on October 28, 2019, and a physical examination at Our Kids Center on November 7, 2019. The victim had undergone therapy and counseling since disclosing the sexual abuse. The victim's mother testified that she learned from a woman with whom she worked about the possibility of receiving victim's compensation. The victim's mother applied for victim's compensation, and the victim was awarded \$3,000, which was placed in a trust for the victim.

On cross-examination, the victim's mother testified that, initially, she provided the police with the incorrect date in which the abuse occurred but that she later provided the correct date. The victim's mother acknowledged that Defendant had been around the victim and his sister on prior occasions without incident. The victim's mother acknowledged that the victim initially did not tell her anything occurred, that God told her, and that she told the victim that he needed to tell her what was wrong because otherwise God would reveal it to her. The victim's mother stated that to her knowledge, Ms. Bowens never threatened to call the DCS on her.

GPD Patrol Officer George Henry went to the apartment where the victim lived on the morning of October 23, 2019, in response to a call reporting sexual abuse. Officer Henry testified that he spoke to the victim's mother outside the presence of the victim and his sister and that he did not speak to the victim or his sister. The victim's mother reported that on October 17, 2019, the victim was "fondled" by a babysitter. She stated that Defendant took the victim into the front bedroom, pushed him down on the bed, and fondled him. Officer Henry prepared a report, listing the offense as forcible fondling.

Courtney Jenkins, who was a forensic interviewer with Nashville Children's Alliance in October 2019, conducted a forensic interview with the victim on October 28, 2019, which was video and audio recorded. The victim's mother accompanied the victim to the forensic interview, but only Ms. Jenkins and the victim were present for the interview itself. Ms. Jenkins testified that initially, the victim said he did not want to discuss the abuse. She suggested that the victim write down what had occurred, and the victim agreed to do so. She then questioned the victim based on the information that he provided in the written statement. Ms. Jenkins testified that the victim disclosed that while in his bedroom, Defendant forced herself on the victim resulting in sexual penetration. Ms. Jenkins stated that during a forensic interview, she typically asked follow-up questions to determine the credibility and reliability of the disclosure. She noted that during the forensic interview, she asked the victim a question in which he responded "no" but that the victim then stated that he was not supposed to lie and provided her with information in response to her question.

Jill Howelett, a forensic social worker with Our Kids Center, testified that the victim underwent a forensic medical examination on November 7, 2019, based on a referral from the victim's pediatrician. The referral concerned "genital penile penetration by [the victim's] babysitter" that occurred on October 10, 2019. Ms. Howelett testified that she spoke to the victim, who seemed like a typical twelve-year-old child. She asked the victim what had occurred, but he said he did not want to talk about it. Ms. Howelett obtained information about the abuse from the victim's mother. According to the report from Our Kids Center, the victim's mother told Ms. Howelett that Defendant watched the victim and his sister for two hours while the victim's mother was away. The victim's mother stated that a few weeks later, "God told me something happened." She said that she could tell that something was different with the victim and asked him what was wrong. She stated, "That's when he told me." The victim's mother stated that Defendant "raped" the victim, and the victim's mother did not believe the victim "knows the extent to what happened."

Lori Littrell, a nurse practitioner with Our Kids Center and an expert in pediatric medical forensic examinations, testified that she conducted a forensic medical examination of the victim on November 7, 2019, based on a referral of sexual abuse that occurred approximately one month earlier. Ms. Littrell found no injuries to the victim, which she

testified was not unusual since the type of sexual contact alleged generally did not cause injury and any such injuries typically heal quickly. Ms. Littrell noted that in cases of child sexual assault, physical injury is “very rare.”

The victim, who was sixteen years old at the time of trial, testified that he met Defendant at church and that she was the daughter of his mother’s friend. He recalled that Defendant babysat him and his then five or six-year-old sister at their home on October 10, 2019. The victim and his sister were sitting on the couch in the living room and watching television when their mother left, and at some point, Defendant cooked a pizza for them. The victim stated that while he, his sister, and Defendant were sitting on the couch watching a movie with a blanket covering them, Defendant placed the victim’s hand on her buttocks over her clothing, and his hand remained on her buttocks for “a couple of seconds.” Defendant then told the victim’s sister that she and the victim were going to play video games.

The victim testified that he and Defendant went into his bedroom where he turned on his video game console. As the victim was walking toward his bed to sit down, Defendant, who was standing by the doorway, reached for him and told him to take off his pants. The victim’s sister came to the door, and Defendant told her to return to the living room and watch television. Defendant then pulled down the victim’s shorts and boxers, and the victim sat down on his bed. Defendant, who was wearing “pajama like clothes,” removed her pants, got on top of the victim, pushed him down on the bed, and put her hand on the victim’s penis to position it into her vagina. Defendant began “bouncing” on the victim for “a couple of minutes.” The victim tried to push Defendant off him but was unable to do so because she was much heavier than him. The victim did not believe Defendant ever made him touch her vagina with his hands. The victim said that afterward, Defendant “talked like nothing ever happened.”

The victim testified that he told his mother of the abuse “a couple weeks” later. The victim recalled that as he was sitting on the couch one morning prior to leaving for school, his mother called him into her bedroom, told him not to lie to her, and asked him what happened between him and Defendant. The victim initially denied that anything had occurred, and his mother stated that he was lying. The victim then disclosed the abuse, and his mother called the police.

The victim underwent a forensic interview at Nashville Children’s Alliance, and the recording of the forensic interview was entered as an exhibit at trial and was played for the jury. During the forensic interview, the victim, who was twelve years old at the time, stated that he did not want to talk about what had occurred with Defendant, but he agreed to write it down. According to the victim’s written statement, which was entered as an exhibit at trial, the victim, his sister, and Defendant were watching a movie when Defendant said she

and the victim were going to play “a wrestling game.” The victim stated that as he was turning on the game, Defendant turned off the light, pulled down the victim’s pants, and got on top of the victim.

Once the victim completed his written statement, the forensic interviewer questioned him based on the statement. The victim stated that his mother left at around 7:00 p.m. to visit “her friend.” At one point, the victim, his sister, and Defendant were wrestling, and once he and Defendant went into his bedroom, his sister remained in the living room. The victim said he was “confused why [his sister] had to stay.” The victim stated that he turned on the light and the video game console and that Defendant turned off the light and told him to “come here.” The victim said that while he was sitting on his bed, Defendant pulled down his pants, removed the pajamas that she was wearing, pushed the victim down on the bed, and sat on top of him. The victim stated that Defendant’s “vagina” touched his “stuff” and that Defendant was “bouncing” and “groaning.” The victim tried to move Defendant off of him, but she was too heavy. Defendant then got up and went into another bedroom, and she later “got on” her cell phone. The victim stated that his mother returned home at approximately 8:00 p.m. and that Defendant talked to his mother like “normal.”

On cross-examination, the victim acknowledged that he did not mention Defendant’s placing his hand on her buttocks in his written statement or during the forensic interview. The victim explained that his memory was “foggy” and that he was able to recall it after he “thought about it for a little bit.” He denied rubbing Defendant’s leg or digitally penetrating her vagina. The victim denied that his mother had told him what to say. He stated that he had a “good” relationship with his mother, and he denied that his mother yelled or cursed at him or struck him.

GPD Detective Stephen Hodges was assigned to investigate the allegations against Defendant. Detective Hodges testified that he received Officer Henry’s initial report and contacted the victim’s mother on October 23, 2019, to schedule an interview at his office. Detective Hodges spoke to the victim’s mother but did not interview the victim. Detective Hodges said, generally, he did not interview child victims. He explained that there was a protocol in place to prevent coaching or leading a child victim and that forensic interviewers at child advocacy centers were trained to interview children and to ask questions in a certain manner that was not typical of the manner in which law enforcement officers would ask questions. Detective Hodges observed the victim’s forensic interview at Nashville Children’s Alliance on October 28, 2019, from an observation room.

On the afternoon of October 28, after the victim’s forensic interview, Detective Hodges went to Defendant’s employment, informed her that her name had come up in an investigation, and asked her to accompany him to his office to speak to him about it.

Defendant agreed, and Detective Hodges drove her to the police department and interviewed her. Detective Hodges stated that prior to the interview, he informed Defendant that she was not required to speak to him and that she was free to leave at any time. Defendant's initial interview lasted one to one and one-half hours and was audio and video recorded, and the recording was played to the jury at trial.

The recording depicted Detective Hodges handing the twenty-year-old Defendant a waiver of rights form and giving her an opportunity to read the form. Detective Hodges then orally advised Defendant of her rights, and Defendant stated that she understood her rights. She said she was willing to speak to Detective Hodges, and she signed the waiver of rights form. Detective Hodges informed Defendant that she was not under arrest.

During the interview, Defendant stated that she and the victim's mother were "really close" and attended the same church and that Defendant's mother and the victim's mother were friends. Defendant said she babysat the victim and his sister on two occasions, once with her cousin at her aunt's home in 2018 and once "recently" at the children's home while the victim's mother was on a date. Defendant believed the most recent occasion occurred during the first week of October. Detective Hodges asked her whether October 17 seemed to be the correct date, and Defendant replied that it did but that she did not remember the exact date. Defendant recalled that the victim's mother sent her a text message on October 5, asking her to babysit the children. They planned for Defendant to babysit the children and to spend the night at the apartment, and the next morning, the victim's mother was to drive Defendant to the daycare where Defendant worked, which was located approximately five minutes from the apartment.

Defendant initially stated that the victim's mother left the apartment around 9:00 p.m. and was gone for approximately one hour. When Detective Hodges told her that the victim's mother said she was away from the apartment for two and one-half hours, Defendant stated that it seemed like she was gone for only one hour. Defendant said that nothing out of the ordinary occurred while she was babysitting the children and that they watched movies, played video games, ate pizza, and were "play fighting in the living room." Defendant denied ever being alone with the victim in his bedroom. Detective Hodges asked her why both the victim and his sister would claim that the victim and Defendant were alone in the victim's bedroom, and Defendant replied that they were mistaken. Defendant stated that at one point, she and both children were in the victim's bedroom where Defendant and the victim played video games while the victim's sister watched. Defendant said the victim's sister went into her bedroom to retrieve her dolls before returning to the victim's bedroom, but Defendant denied that she and the victim were alone for an extended period.

Detective Hodges informed Defendant that the victim alleged “something happened” between them, and Defendant denied anything occurred. Detective Hodges acknowledged telling Defendant that he had spoken to both the victim and his sister even though Detective Hodges had not done so. Detective Hodges also told Defendant that he had spoken to the victim’s mother, that Defendant was the last person to be interviewed, and that this was Defendant’s opportunity to tell her side of the story. Detective Hodges testified that he did not believe Defendant was being forthcoming when she denied the allegations. Detective Hodges told Defendant that the victim’s clothing had been collected and asked her whether her DNA would be found on the victim’s clothing. At trial, Detective Hodges acknowledged that DNA was not collected because the victim’s clothing and bedding had been washed prior to the victim’s disclosing the abuse. Detective Hodges agreed that once he made the statement about the DNA, Defendant began providing details about what had occurred.

Defendant stated that while she and the victim were playing a video game in his bedroom, the victim “kept nudging me, like, bothering me,” that she told the victim to stop, and that they continued playing the video game. Defendant then denied any sexual intercourse occurred but stated that the victim began rubbing her leg, that the victim continued even when she told him to stop, that he grabbed her buttocks and stood up as if he was going to pull down his pants, that Defendant called the victim’s sister into the bedroom, and that the victim sat back down on the bed. Detective Hodges told Defendant that he did not believe she was being truthful. In response to additional questioning, Defendant stated that she allowed the victim to digitally penetrate her and that she “touched him back” on his penis, but she continued denying that they had “full-on sex.” However, Defendant later admitted that she allowed the victim to get on top of her and penetrate her once with his penis, but she maintained that she then stopped the victim. Detective Hodges testified that Defendant’s statement was not consistent with the victim’s statement during the forensic interview.

Detective Hodges testified that near the conclusion of the interview, he asked Defendant to provide a sequence of the events from start to finish. Defendant stated that she and the victim’s sister sat on the couch with a blanket over them while watching a movie and that the victim sat down and began rubbing Defendant’s buttocks. According to Defendant, the victim suggested that they play video games, and while Defendant and the victim were in his bedroom playing video games, the victim’s sister returned to the living room and watched a movie. Defendant admitted that she allowed the victim to rub her inner leg, pull down her pants, and touch her vaginal area. She stated that the victim pulled down his pants and penetrated her vagina once with his penis while Defendant was lying down on the bed and that she told him to stop. Defendant said the victim pulled her on top of him and moved his hips but did not penetrate her again. At the conclusion of the

interview, Detective Hodges informed Defendant that he would drive her back to her place of employment.

Detective Hodges testified that he drove Defendant back to her place of employment, spoke to a prosecutor, had Defendant arrested forty-five minutes to one hour later, and interviewed her again following her arrest. The video recording of the interview showed Defendant and another officer entering the interview room approximately forty minutes after the initial interview ended. Detective Hodges entered the interview room approximately five minutes later. Defendant acknowledged that she recalled her rights and that she still wanted to talk to Detective Hodges. During the second interview, which lasted approximately seven minutes, Defendant repeated the same information that she had provided at the end of the initial interview.

On cross-examination, Detective Hodges testified that sometime after the preliminary hearing, the victim's mother told him that the abuse occurred on October 10 rather than October 17. Detective Hodges explained that the victim's mother knew that the abuse occurred while the children were out of school for fall break and that after she looked at the school calendar, she determined that the date of the abuse was October 10. Detective Hodges stated that in cases of child abuse or child sexual abuse, "[i]t is not uncommon in delayed reporting for the dates to differ or for one date to get reported and then another date end up coming to light later on."

Detective Hodges testified that he received training in indicators of untruthfulness, including body language, nonverbal communications, and statements that did not make sense, as well as training regarding indicators of coaching, such as the use of language that was not age appropriate. He stated that he observed no indication that the victim was untruthful during his forensic interview or that the victim otherwise had been coached.

Detective Hodges said that during the interview, he did not believe Defendant when she denied that anything had occurred and that Defendant's "body language contradicted her words." He said Defendant cried, shifted in her chair, and had a "defensive posture," in which she "kind of wrapped her arms under her chest and pulled them tight to her chest, which is a sign of anxiety." Detective Hodges also said Defendant's attitude was "not normal of someone who is innocent" of the allegations and explained that "[w]hen a normal person is presented with this kind of an allegation in an interview room, . . . it normally evokes some strong emotions and it normally becomes very heated in those rooms." Detective Hodges stated that because he did not believe Defendant was telling the truth, he utilized "every tool that [he] had," including deceit, in an effort to obtain the truth. He explained that he interrupted Defendant during the interview because he did not believe her and they "were going down the same path talking about the same stuff. And in my professional opinion, what she was telling me was not matching what I was seeing. And

so I was kind of redirecting the conversation.” He said Defendant began providing more accurate information once her statement began to evolve and she began providing more details. He said that in his professional opinion, Defendant “was having trouble coming to grips with actually . . . telling the full truth of what happened.”

Detective Hodges testified that he did not believe Defendant was lying when she admitted to the sexual abuse or that Defendant wanted to please Detective Hodges and give him what he wanted out of the interview. He stated, “I am not aware of an instance where somebody would describe vivid details of sexual intercourse with a minor to please another person. That is not something people normally are comfortable talking about.” He also stated that Defendant’s final version of the abuse included details about which Detective Hodges was unaware at the time. Detective Hodges noted that during this portion of the interview, Defendant was “making motions,” “describing kind of where they were on the bed,” “draw[ing] with her fingers on the desk . . . where his bed was and how it was positioned up against the wall, and “giving descriptions that were not in the victim’s forensic interview and that we had not discussed up until that point.”

Defendant’s Proof

Thomas Parker, a DCS case manager, testified that he received a referral regarding the victim in October 2019 and that he interviewed the victim at his school on October 30, 2019, during which the victim disclosed “genital-to-genital contact” with a babysitter. The victim told Mr. Parker that he and Defendant went into his bedroom to play a video game and that he turned on the light. The victim stated that Defendant turned off the light, removed the victim’s pants, pinned him to the bed, climbed on top of him without wearing her pants, and “put his stuff up inside her and was bouncing on it.” The victim said he did not tell his mother immediately after the abuse occurred because he was embarrassed and ashamed.

Mr. Parker then spoke to the victim’s mother on November 1, 2019, and she reported that the victim made a disclosure to her about Defendant. Mr. Parker testified that he also completed a home visit, that the victim appeared to have been well cared for, and that it did not appear that the victim was being abused by his mother.

Defendant, who was twenty-four years old at the time of trial, testified that she graduated high school with a 1.7 grade point average, had an individualized education plan, and had issues with “reading and comprehension.” She stated that she learned to read at the age of twenty while in jail but that prior to her arrest, her reading ability was limited to “simple books with big words.” She stated that because she had no encounters with police prior to her arrest for the instant offense, she never learned her rights. She said that she generally followed the directives of those in authority, that she will tell the truth when

asked, and that if the person does not believe her, she will “tell them what they want to hear.”

Defendant testified that when she was in high school, she moved in with her aunt and met the victim’s mother. During that time, Defendant’s cousin often babysat the victim and his sister in Defendant’s presence. Shortly before graduating high school, Defendant began living with her mother, who also was friends with the victim’s mother. Defendant stated that she witnessed the victim’s mother being “mean” to the victim and his sister. Defendant explained that she witnessed the victim’s mother striking the children and that the victim and his sister did not play with other children or go outside when their mother was around.

In October 2019, Defendant’s mother and the victim’s mother arranged for Defendant to babysit the victim and his sister. Defendant testified that while babysitting the victim and his sister, they watched movies, ate pizza, and played video games. She denied engaging in any sexual activity with the victim. She said she continued interacting with the victim and his family after she babysat, and Defendant and her family ate at a restaurant with the victim and his family on October 17.

Defendant testified that when Detective Hodges came to her work and asked her to go with him back to the police station, she believed he wanted to speak to her regarding a family member who was in a child custody battle. Defendant was “nervous” because she had never been interviewed by a police officer previously. She stated that although she did not understand her rights when advised by Detective Hodges, she did not object to talking to him. When Detective Hodges began asking her questions about the victim’s mother, Defendant began to question whether the victim’s mother took some action against the children because the victim’s mother “was mean to her kids.” Defendant told Detective Hodges that no sexual activity occurred between her and the victim.

Defendant explained that she agreed with Detective Hodges that October 17, 2019, was the date in which she babysat the children because she believed Detective Hodges “knew what he was talking about.” She also explained that she agreed with Detective Hodges that the victim’s mother was gone for two and one-half hours when Defendant initially stated that the victim’s mother was gone for one hour because “he’s law enforcement. And so I figured, okay, he knew what the time was.” Defendant acknowledged that whenever Detective Hodges presented her with a set of facts and questioned her about them, she would then change her story to adopt some of the details provided by the detective. She explained that she did so “[b]ecause at this point he wasn’t listening to me when I told him I didn’t do anything. And so I just started telling him what he wanted to hear.”

Defendant testified that she cried and grabbed her face during the interview due to her “frustrat[ion].” She explained that she was “frustrated” because Detective Hodges did not believe her and “then he would ask me something. And every time I got to answer, he interrupts me.” She said that after Detective Hodges continued to express his disbelief in her denials, she began to just agree with him. Defendant stated that she believed that if she told Detective Hodges what he wanted to hear, he would drive her back to her place of employment. Defendant said that she otherwise did not believe she could leave and that Detective Hodges refused to allow her to use her cell phone to call her mother. She testified that she admitted to sexually abusing the victim because “I felt like I had no choice. No matter how many times that I told the detective that I didn’t do anything wrong, he wasn’t believing me.”

On cross-examination, Defendant testified that Detective Hodges did not threaten her, assault her, make any promises to her, or handcuff her. She acknowledged that during the first interview, she did not ask Detective Hodges to drive her back to her work, and she did not tell Detective Hodges to stop questioning her “because I know I didn’t do anything wrong.” After the interview, Detective Hodges drove Defendant back to her work, and Defendant was able to call her mother. During the second interview, Detective Hodges did not threaten her, strike her, handcuff her, argue with her, or interrupt her frequently, and Defendant did not tell Detective Hodges that she admitted to something that she did not do.

Alan Hirsch, an expert in interrogations and false confessions, testified regarding Detective Hodges’s use of the “Reid technique” in questioning Defendant. Mr. Hirsch explained that the Reid technique utilizes two types of interrogation tactics, referred to as “confrontation” and “minimization.” During “confrontation,” the interrogator tells the suspect that the suspect is guilty and that the interrogator knows that the suspect is guilty, and the interrogator aggressively rejects any denials or claims of innocence. The idea behind “confrontation” is to communicate the futility of the suspect’s claim of innocence, and the interrogator claims to have evidence showing otherwise, which may be “exaggerated or fabricated.” The interrogator then moves on to “minimization,” during which the interrogator states or otherwise implies that if the suspect confesses, “it won’t be so bad.” Mr. Hirsch stated that the use of the Reid technique can break down both innocent and guilty people and that the Reid technique has been used in most confessions that were later determined to be false. Mr. Hirsch said it makes “perfect sense” that an innocent person would confess under the circumstances. He explained that if a suspect believes that there is nothing that he can do to convince the authorities of his innocence and that he will “get off fairly easy” by confessing, “it makes sense simply as a cost benefit analysis, whether conscious or unconscious, for [the suspect] to confess.”

Mr. Hirsch testified that Detective Hodges “made it abundantly clear throughout the interview” that he believed Defendant was guilty. Detective Hodges told Defendant that no one would falsely claim such sexual abuse alleged by the victim and that the victim provided vivid details of the abuse. Mr. Hirsch stated that Detective Hodges utilized several minimization themes in suggesting that Defendant made a “mistake,” that the claims were not serious, and that “it wouldn’t be bad if she acknowledged guilt.” Mr. Hirsch said Detective Hodges provided Defendant with two scenarios in that “[e]ither it’s exactly what the accuser said, it is all your fault, or he was largely responsible, he came on to you and it was consensual and so forth.” Mr. Hirsch explained that the purpose was for Defendant to choose between the two scenarios and that the expectation was that Defendant would choose the “less severe” alternative, which is what Defendant did. Mr. Hirsch noted that Defendant changed her account of the events multiple times and that even the Reid technique acknowledges that an account that continues to change is less reliable than a consistent account.

Mr. Hirsch stated that he did not interview Defendant and could not testify that Defendant’s confession to rape of a child or aggravated sexual battery was false. Rather, Mr. Hirsch’s conclusion was that Defendant’s confession “was produced by or came after a relentless use of the interrogation methods that we know contribute to false confessions.”

During closing arguments, the State set forth the instances upon which it was relying on each count in the indictment. The State said it was relying on the penile/vaginal penetration to support the charge of rape of a child in Count 1 of the indictment, the Defendant’s touching the victim’s penis to support the aggravated sexual battery charge in Count 2, and Defendant’s placing the victim’s hand on her buttocks while in the living room to support the aggravated sexual battery charge in Count 3. At the conclusion of the proof, the jury found Defendant guilty of rape of a child in Count 1, aggravated sexual battery in Count 2, and assault as a lesser included offense of aggravated sexual battery in Count 3. Following a sentencing hearing, the trial court imposed an effective twenty-five-year sentence to be served at one hundred percent.

Defendant filed a motion for new trial and multiple amended motions in which she raised numerous issues. Following a hearing, the trial court entered an order denying the motion and amended motions. Defendant filed a timely notice of appeal.

Analysis

On appeal, Defendant challenges the sufficiency of the evidence supporting her convictions for rape of a child and aggravated sexual battery, the trial court’s admission of the recording of the victim’s forensic interview, the trial court’s exclusion of DCS records, the trial court’s limiting the defense’s cross-examination of witnesses and presentation of

proof, and the State's recording of a meeting between defense counsel and the defense investigator at the District Attorney General's office.

I. Sufficiency of the Evidence

Defendant contends that the evidence is insufficient to support her convictions for rape of a child and aggravated sexual battery.¹ She maintains that the proof established that her confession was false and that the other proof failed to corroborate the victim's testimony. The State responds that the evidence is sufficient to support Defendant's convictions. We agree with the State.

We review a challenge to the sufficiency of the convicting evidence to determine whether, "after viewing the evidence in the light most favorable to the prosecution" and providing the State with "the strongest legitimate view of the evidence as well as all reasonable and legitimate inferences which may be drawn therefrom," "any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt." *Jackson v. Virginia*, 443 U.S. 307, 319 (1979) (citations omitted); *State v. Davis*, 354 S.W.3d 718, 729 (Tenn. 2011) (citations omitted); Tenn. R. App. P. 13. Our review "is identical whether the conviction is predicated on direct or circumstantial evidence, or a combination of both." *State v. Williams*, 558 S.W.3d 633, 638 (Tenn. 2018) (citing *State v. Dorantes*, 331 S.W.3d 370, 379 (Tenn. 2011)). Importantly, a guilty verdict removes the presumption of innocence and replaces it with one of guilt on appeal, shifting the burden to the defendant to demonstrate why the evidence is legally insufficient to support the conviction. *Davis*, 354 S.W.3d at 729 (citing *State v. Sisk*, 343 S.W.3d 60, 65 (Tenn. 2011)).

We must decline any invitation to revisit witness credibility or any purported discrepancies in the evidence because the jury, not this court, resolves all questions involving the credibility of the witnesses, the weight and value to be given to evidence, and the factual disputes raised by such evidence. *See Dorantes*, 331 S.W.3d at 379 (citing *State v. Campbell*, 245 S.W.3d 331, 335 (Tenn. 2008)). Accordingly, this court will neither reweigh nor reconsider the evidence when evaluating the sufficiency of the convicting proof. *State v. Stephens*, 521 S.W.3d 718, 724 (Tenn. 2017).

At the time of the offense, rape of a child was defined as "the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than three (3) years of age but less than thirteen (13) years of age." Tenn. Code Ann. § 39-

¹ Defendant does not challenge the sufficiency of the evidence relating to her assault conviction.

13-522(a) (2018).² “Sexual penetration” is defined as “sexual intercourse . . . or any other intrusion, however slight, of any part of a person’s body or of any object into the genital or anal openings of the victim’s, the defendant’s, or any other person’s body, but emission of semen is not required[.]” Tenn. Code Ann. § 39-13-501(7).

As applicable to the instant case, aggravated sexual battery is “unlawful sexual contact with a victim by the defendant or the defendant by a victim” where “[t]he victim is less than thirteen (13) years of age.” Tenn. Code Ann. § 39-13-504(a)(4). “‘Sexual contact’ includes the intentional touching of the victim’s . . . intimate parts . . . if that intentional touching can be reasonably construed as being for the purpose of sexual arousal or gratification[.]” Tenn. Code Ann. § 39-13-501(6). Intimate parts include “the primary genital area, groin, inner thigh, buttock or breast of a human being[.]” *Id.* at (2).

When viewed in the light most favorable to the State, the evidence presented at trial established that while Defendant was babysitting the twelve-year-old victim and his sister, Defendant touched the victim’s penis and had sexual intercourse with him. The victim testified that while in his bedroom, Defendant removed his pants, got on top of the victim while she was also without pants, touched his penis, and had sexual intercourse with him while he tried to push Defendant off him. The victim disclosed the sexual abuse to his mother, a forensic interviewer, and a DCS case manager. Defendant admitted to the police that she touched the victim’s penis and had sexual intercourse with the victim, but she maintained that the victim had instigated the incident.

Defendant asserts that her trial testimony and Mr. Hirsch’s testimony establish that her confession to the police was false and that the State failed to present evidence corroborating the victim’s testimony at trial. Defendant does not challenge the admissibility of her confession but argues that her confession is not credible in light of the interrogation method utilized by Detective Hodges. This court previously has recognized that although a defendant “contends that his confession to police was false and a result of police coercion, the truth of the statement and its afforded weight lies within the province of the jury.” *State v. Ridley*, No. M2015-01607-CCA-R3-CD, 2017 WL 359091, at *6 (Tenn. Crim. App. Jan. 24, 2017) (quoting *State v. Cook*, No. W2001-00381-CCA-R3-CD, 2002 WL 1558487, at *4 (Tenn. Crim. App. Jan. 9, 2002)). Defendant’s claim of lack of adequate corroboration to support the victim’s testimony likewise fails because Tennessee courts have held that the testimony of a minor victim alone is sufficient to support a conviction. *See State v. Elkins*, 102 S.W.3d 578, 582-83 (Tenn. 2002); *State v. Harris*, No. W2024-01945-CCA-R3-CD, 2026 WL 413301, at *4 (Tenn. Crim. App. Feb. 13, 2026),

² The current statute defines rape of a child as “the unlawful sexual penetration of a victim by the defendant or the defendant by a victim, if the victim is more than eight (8) years of age but less than thirteen (13) years of age.” Tenn. Code Ann. § 39-13-522(a) (Supp. 2024).

no perm. app. filed; State v. Pittman, No. W2024-00807-CCA-R3-CD, 2025 WL 2048406, at *3 (Tenn. Crim. App. July 22, 2025), *perm. app. denied* (Tenn. Jan. 15, 2026); *State v. Vasquez*, No. E2024-00317-CCA-R3-CD, 2025 WL 1203100, at *4 (Tenn. Crim. App. Apr. 25, 2025), *no perm. app. filed*.

Through its verdict, the jury chose to credit the victim's testimony and reject Defendant's testimony, and this court cannot revisit the jury's credibility determinations. Rather, we conclude that the evidence, when viewed in the light most favorable to the State, is sufficient to support Defendant's convictions for rape of a child and aggravated sexual battery.

II. Admission of the Forensic Interview

Defendant challenges the trial court's admission of the forensic interview of the victim pursuant to Tennessee Code Annotated section 24-7-123. As applicable to the instant case, this provision provides that a video recording of a forensic interview of a child under the age of eighteen in which the child makes statements describing an act of sexual contact performed with or on the child "is relevant in evidence at any stage of a criminal proceeding of the person for any offense arising from the sexual or physically violent contact if the requirements of this section are met." Tenn. Code Ann. § 24-7-123(a) (Supp. 2023).

Code section 24-7-123(b) lists the statutory provisions to be met before a trial court "may" admit a video recording of a forensic interview as provided in subsection (a). The child must testify, "under oath," that the offered video recording is a true and correct recording of the events contained in the video recording and the child is available for cross examination[.]” *Id.* at (b)(1). The video recording must be “shown to the reasonable satisfaction of the court, in a hearing conducted pretrial, to possess particularized guarantees of trustworthiness.” *Id.* at (b)(2). Subsection (b)(2) lists the factors that a trial court “shall consider” in determining whether a statement possesses “particularized guarantees of trustworthiness,” including “[a]ny apparent motive the child may have to falsify or distort the event, including, but not limited to, bias or coercion[.]” The forensic interview must have been conducted by a forensic interviewer who met the qualifications listed in subsection (b)(3) at the time the video recording was made, including employment by a child advocacy center that meets the statutory requirements set forth in Code section 9-4-213(a) or (b). Tenn. Code Ann. § 24-7-123(b)(3) (Supp. 2023). The recording must be “both visual and oral” and must have been “recorded on film or videotape or by other similar audiovisual means[.]” *Id.* at (b)(4). The entire interview of the child must have been recorded on the video recording, and the video recording must be “unaltered” and must “accurately reflect[] the interview of the child.” *Id.* at (b)(5). Finally, “[e]very voice heard on the video recording [must be] properly identified as determined by the court.” *Id.*

at (b)(6). The trial court “shall make specific findings of fact, on the record, as to the basis for its ruling under this section.” *Id.* at (d).

The record reflects that on November 1, 2023, the State filed a motion to admit the victim’s forensic interview into evidence in which the State requested that the trial court conduct a pretrial hearing to determine whether the forensic interview possessed a particularized guarantee of trustworthiness and whether the forensic interviewer and the child advocacy center meet the statutory qualifications. Defendant did not file a written response to the State’s motion.

On November 13, 2023, the date on which the trial was to begin, the trial court held a hearing prior to jury selection on the State’s motion. During the evidentiary hearing, the State presented the testimony of Barbara Tallent, the director of forensic services at Nashville Children’s Alliance, and Ms. Jenkins, the forensic interviewer who conducted the forensic interview of the victim at Nashville Children’s Alliance. Both witnesses offered testimony relating to whether Nashville Children’s Alliance met the requirements in Code section 9-4-213(a) or (b), whether Ms. Jenkins met the qualifications of a forensic interviewer in Code section 24-7-123(b)(3), and whether the video recording of the forensic interview possessed “particularized guarantees of trustworthiness” based on the factors in Code section 24-7-123(b)(2). At the conclusion of the hearing, Defendant’s counsel questioned whether Ms. Jenkins met the qualifications of a forensic interviewer set forth in Code section 24-7-123(b)(3) but also stated, “I will defer to the Court.” On November 14, 2023, the trial court entered a written order granting the State’s motion. The court found that based on the testimony of Ms. Jenkins and Ms. Tallent and the court’s review of the recording of the forensic interview, the requirements in Code section 24-7-123(b)(2) through (b)(6) were satisfied. The court concluded that the video recording of the victim’s forensic interview may be admitted into evidence at trial if the State satisfies the remaining prerequisites for admission in Code section 24-7-123(b)(1), and the court specifically stated that the victim must “testify at trial, subject to cross-examination, that the video recording is a true and correct recording of the events contained in that recording.”

During direct examination at trial, the victim identified the video recording of his forensic interview, identified himself in the recording, and affirmed that the recording fairly and accurately depicted the setup of the room where the interview occurred and where he and the forensic interviewer were seated during the interview. The State moved for entry of the video recording as an exhibit at trial, and Defendant did not object. Thus, the trial court granted the State’s request and admitted the video recording as an exhibit at trial.

On appeal, Defendant contends that the trial court failed to conduct a “pretrial” hearing as required by Code section 24-7-123(b)(2). Defendant maintains that “the hearing

was only conducted, in part, the first morning of trial immediately preceding the calling of witnesses, then throughout the course of the trial itself until the testimony of [the victim] wherein the trial court admitted the forensic interview during his testimony.” Defendant asserts that due to the trial court’s failure to hold a “pretrial” hearing, Defendant was prevented from presenting evidence that the victim’s mother coerced the victim into falsely accusing Defendant because Defendant’s mother had threatened to report the victim’s mother to DCS based on the behavior of the victim’s mother toward the victim and his sister.

As noted by the State in its brief, Defendant did not object to the admission of the forensic interview on this basis during the evidentiary hearing or at trial. Accordingly, Defendant has waived plenary review of his challenge to the admission of the victim’s forensic interview on this basis. *See* Tenn. R. App. P. 36(a) (“Nothing in this rule shall be construed as requiring relief be granted to a party responsible for an error or who failed to take whatever action was reasonably available to prevent or nullify the harmful effect of an error.”); *see also State v. Rodriguez*, No. W2022-00894-CCA-R3-CD, 2023 WL 3296376, at *5 (Tenn. Crim. App. May 8, 2023) (holding that the defendant waived his challenge to the admission of the forensic interview based on the qualifications of the child advocacy center or the trial court’s failure to make specific findings with regard to the center when the defendant did not challenge the admission of the forensic interview on this basis at trial).

Defendant did not file a reply brief responding to the States’s waiver argument or otherwise request review under plain error. “[A] party seeking plain error relief must generally raise and argue the issue in the party’s briefing, just as the party would do with all other issues in the ordinary course of an appeal.” *State v. Ruiz*, 716 S.W.3d 439, 453 (Tenn. Crim. App. 2024) (quoting *State v. Funk*, No. E2022-01367-CCA-R3-CD, 2023 WL 7130289, at *3 (Tenn. Crim. App. Oct. 30, 2023)). “[B]ecause the defendant bears the burden of showing an entitlement to plain error relief, his or her ‘failure to request this relief necessarily weighs against any such consideration on our own.’” *State v. Morgan*, 727 S.W.3d 182, 198 (Tenn. Crim. App. 2025) (quoting *State v. Gooch*, No. M2022-01395-CCA-R3-CD, 2024 WL 2814624, at *4 (Tenn. Crim. App. June 3, 2024), *perm. app. denied* (Tenn. Nov. 20, 2024)). Moreover, “[w]here a defendant fails to respond to a waiver argument, only particularly compelling or egregious circumstances could typically justify our *sua sponte* consideration of plain error relief.” *State v. Thompson*, No. W2022-1535-CCA-R3-CD, 2023 WL 4552193, at *5 (Tenn. Crim. App. July 14, 2023). Because no “particularly compelling or egregious circumstances” exist, we decline to consider plain error relief of Defendant’s claim.

III. Exclusion of DCS Records

Throughout the course of the trial, Defendant unsuccessfully sought to admit and to question witnesses about DCS records of prior incidents involving the victim and his mother, including a 2013 referral based on the victim's mother allowing her then-boyfriend, a convicted sex offender, to visit her residence and supervise the victim alone. Defendant contends that the trial court erred in excluding the evidence pursuant to Tennessee Rule of Evidence 412 as proof of the victim's knowledge of sexual matters and that the trial court's ruling violated Defendant's right to cross-examine the victim and the victim's mother regarding the records on this basis. Defendant also contends that the DCS records were relevant pursuant to Tennessee Rule of Evidence 401 "to further support her argument to the jury that the allegations of [the victim] about [Defendant] were fabricated because [the victim's mother] was orchestrating them out of vindictiveness" and that the trial court violated Defendant's right to cross-examine the victim's mother regarding the records on this basis. The State responds that the trial court did not err in excluding the records. We agree with the State.

A. Tennessee Rule of Evidence 412

On November 1, 2023, the trial court, on application of the defense, issued a subpoena duces tecum to DCS directing production of records relating to the victim and his mother to the trial court within seven days of the receipt of the order and a subpoena duces tecum to the Tennessee Board of Parole directing production of records related to the former boyfriend of the victim's mother to the trial court on or before November 13. On November 13, the day on which the trial was to begin, Defendant requested the trial court conduct an *in camera* review of the records to determine whether any exculpatory information was included in the records. The court noted that generally, it reviews such records "month and months and months before trial" and stated that although the court typically declines to review such records once the trial begins, the court would conduct an *in camera* review of the DCS records in this case since the case involved a child victim. On the morning of November 14, the court announced that trial counsel could have access to the prison records of the former boyfriend of the victim's mother. The parties agreed that the defense had been provided with the DCS records related to the instant charges in discovery. The court stated that while the DCS records included materials that predated the incident upon which the charges were based, those materials did not include any information that was exculpatory or could be used for impeachment purposes. While the record is unclear, Defendant acknowledged in a subsequent motion that the court granted Defendant access to the DCS records on November 14.

On that same day, Defendant filed a "Rule 412 Motion" seeking to present evidence of a 2013 DCS investigation of the victim's mother due to her allowing her then-boyfriend,

a convicted sex offender, to be around the victim unsupervised. Defendant sought to present evidence “on the issue of credibility of the victim” and “to prove or explain knowledge of sexual matters.” The State objected to the admission of the evidence based on relevancy. The court noted that it had already ruled that the information in the records was not relevant. The court also found that the Rule 412 motion was not timely and that “this is not newly discovered evidence nor is it newly arisen in the case. It does not meet the standard to file it during trial.”

On November 15, Defendant filed an “Amended Rule 412 Intent to Offer Proof,” in which she sought to admit the evidence to explain the victim’s “knowledge of sexual matters” pursuant to Rule 412(c)(4). Defendant argued that the motion was not untimely because she could not receive the DCS records until the trial court conducted an *in camera* review of the records and she did not receive the DCS records until November 14, 2023. Defendant also argued that the victim’s knowledge of sexual matters did not arise until the State elicited testimony from the victim’s mother on direct examination suggesting that the victim’s knowledge of sexual matters came from Defendant. Defendant maintained that admission of the evidence was necessary to protect her constitutional right to present a defense.

The trial court made an oral ruling denying the motion on the same day. The court found that the evidence that Defendant sought to introduce did not constitute specific instances of sexual conduct by the victim and that the evidence consisted of “suggestions and speculations,” none of which were admissible. The court also found that the proof, which involved the proximity of the victim to someone on the sexual offender registry, was known to Defendant “well in advance of the 10-day rule” because Defendant also subpoenaed the prison records of the former boyfriend of the victim’s mother. The court determined that “there is simply no reason why this motion could not have been filed in a timely manner.”

Defendant contends that the trial court erred in excluding the evidence pursuant to Tennessee Rule of Evidence 412 as proof of the victim’s knowledge of sexual matters. We conclude that the DCS records, which established that the victim had been in the presence of and under the supervision of a registered sex offender, did not constitute “sexual behavior” within the purview of Rule 12 when nothing in the records established that any sexual contact occurred. We further conclude that even if the information in the DCS records constitutes “sexual behavior,” such evidence was not relevant to the victim’s credibility or his knowledge of sexual matters, and Defendant failed to file a timely motion.

Tennessee Rule of Evidence 412, Tennessee’s rape shield rule, “was enacted to reflect the general view that evidence of prior sexual behavior is irrelevant or, if relevant, has little probative value compared to its prejudicial effect, unless the evidence is within

one of the enumerated exceptions.” *State v. Brown*, 29 S.W.3d 427, 429-30 (Tenn. 2000). The rule recognized that “despite the embarrassing nature of the proof, sometimes the accused can only have a fair trial if permitted to introduce evidence of the alleged victim’s sexual history.” Tenn. R. Evid. 412, Advisory Comm’n Cmts. (2005 amendment). The purpose of Rule 412 “is to exclude all evidence regarding the complainant’s prior sexual behavior unless the procedural protocol is followed and the evidence conforms to the specifications” of the rule. *Brown*, 29 S.W.3d at 430. The decision to admit or exclude evidence pursuant to Rule 412 is within the sound discretion of the trial court, and this court will not disturb the trial court’s evidentiary ruling absent an abuse of discretion. See *State v. Sheline*, 955 S.W.2d 42, 46 (Tenn. 1997); *State v. Nance*, 393 S.W.3d 212, 223 (Tenn. Crim. App. 2012).

Rule 412 defines “sexual behavior” as “sexual activity of the alleged victim other than the sexual act at issue in the case.” Tenn. R. Evid. 412(a). “This broad definition ‘deals with sexual intercourse as well as every other variety of sexual expression.’” *State v. Wyrick*, 62 S.W.3d 751, 770-71 (Tenn. Crim. App. 2001) (quoting *Sheline*, 955 S.W.2d at 47 n.6). “Sexual behavior,” however, does not include false allegations of rape because the information does not involve sexual expression, “which is the essence of ‘sexual behavior’ under Rule 412.” *Nance*, 393 S.W.3d at 225 (quoting Neil P. Cohen, et al., *Tennessee Law of Evidence* § 4.12[3][b], at 4-176 (5th ed. 2005)); see *Wyrick*, 62 S.W.3d at 771.

As applicable to the instant case, Rule 412(c) provides that “[e]vidence of specific instances of a victim’s sexual behavior is inadmissible” unless the evidence is (1) “[r]equired by the Tennessee or United States Constitution, or” (2) “[o]ffered by the defendant on the issue of credibility of the victim, provided the prosecutor or victim has presented evidence as to the victim’s sexual behavior, and only to the extent needed to rebut the specific evidence presented by the prosecutor or victim, or” (4) to prove or explain “knowledge of sexual matters” if “the sexual behavior was with persons other than the accused.” Tenn. R. Evid. 412(c)(1), (2), (4)(ii). Rule 412 “only permits evidence of specific instances of sexual conduct by the victim with someone other than the accused for the enumerated purposes stated therein.” *Cooper v. State*, No. E2022-01776-CCA-R3-PC, 2024 WL 4143828, at *31 (Tenn. Crim. App. Sept. 11, 2024), *perm. app. denied* (Tenn. Mar. 14, 2025). The sexual knowledge exception in Rule 412(c)(4)(ii)

will most frequently be used in cases where the victim is a young child who testifies in detail about sexual activity. To disprove any suggestion that the child acquired the detailed information about sexual matters from the encounter with the accused, the defense may want to prove that the child learned the terminology as the result of sexual activity with third parties.

Id. at *32 (quoting *State v. Lyle*, No. E2012-00468-CCA-R3-CD, 2013 WL 1281857, at *13-14 (Tenn. Crim. App. Mar. 28, 2013)).

A defendant who intends to offer evidence of specific instances of a victim's sexual behavior must "file a written motion to offer such evidence." Tenn. R. Evid. 412(d)(1). Furthermore,

[t]he motion shall be filed no later than ten days before the date on which the trial is scheduled to begin, except the court may allow the motion to be made at a later date, including during trial, if the court determines either that the evidence is newly discovered and could not have been obtained earlier through the exercise of due diligence or that the issue to which such evidence relates has newly arisen in the case.

Tenn. R. Evid. 412(d)(1)(i). The ten-day rule "is designed to provide the prosecution and the victim an opportunity to investigate the proposed proof and to contest the issue." *Lyle*, 2013 WL 1281857, at *13 (quoting Tenn. R. Evid. 412, Advisory Comm'n Cmts.).

The motion shall be filed under seal, shall be accompanied by a written offer of proof that describes the evidence and the purpose of introducing the evidence, and shall be served on all parties, the prosecutor, and the victim. Tenn. R. Evid. 412(d)(1)(ii), (iii), (d)(2). If the trial court concludes that the evidence satisfies Rule 412(c) and that "the probative value of the evidence outweighs its unfair prejudice to the victim, the evidence shall be admissible in the proceeding to the extent an order made by the court specifies the evidence which may be offered and areas with respect to which the alleged victim may be examined or cross-examined." Tenn. R. Evid. 412(d)(4). Thus, the intent of Rule 412 "is not to provide a defendant with unfettered use of the victim's past sexual behavior once any of the enumerated grounds for admissibility specified in the rule have been established." *Cooper*, 2024 WL 4143828, at *31 (citing Tenn. R. Evid. 412(d)(4)). "The policies behind the rape shield law require strict compliance with the procedures set forth" in Rule 412(d). *Lyle*, 2013 WL 1281857, at *13 (quoting *State v. Dishman*, No. 03C01-9610-CR-00361, 1998 WL 191447, at *15 (Tenn. Crim. App. Apr. 23, 1998)).

The DCS records reflect that in 2013, approximately six years before the incident in the instant case occurred, there were occasions in which the victim was in the presence of and was left in the supervision of the victim's mother's then-boyfriend, who was a registered sex offender. The records reflect that the victim was interviewed in 2013 as part of the DCS investigation and that the victim denied that any sexual contact occurred. Although Defendant relied on Rule 412 in seeking to admit evidence related to the 2013 DCS referral, we cannot conclude that the victim's supervision by a registered sex offender in and of itself constitutes "sexual behavior" as defined by Rule 412(a) when there is no

evidence that any sexual activity between the victim and the then-boyfriend of the victim's mother occurred.

Even if the evidence constitutes “sexual behavior” under Rule 412(a), Defendant has failed to establish that the evidence relates to the victim's credibility or his knowledge of sexual matters. *See* Tenn. R. Evid. 412(c)(2), (4)(ii). Specifically, Defendant failed to establish how the male registered sex offender's supervision of the victim on occasion in 2013 when no sexual abuse occurred accounts for the victim's knowledge of the distinct sexual acts that the victim testified Defendant committed against him in 2019. *See Cooper*, 2024 WL 4143828, at *33 (holding that evidence of a victim's prior sexual behavior did not explain the source of the victim's sexual knowledge when the prior sexual behavior was not “substantially similar” to the conduct for which the defendant was on trial); *Bailey*, 2016 WL 7742753, at *10 (concluding that the trial court did not err in excluding evidence of prior sexual abuse against the victim by a third party as evidence of prior knowledge of sexual matters due to the distinction between the prior sexual abuse and the conduct for which the defendant was on trial). We agree with the trial court's finding that the evidence Defendant sought to introduce consisted of “suggestions and speculations,” none of which were admissible in Defendant's trial.

Finally, the trial court found that Defendant's motion to admit the evidence pursuant to Rule 412 filed during the trial was untimely. Defendant maintains that the motion was timely because the information in the DCS records were newly discovered. She asserts that the DCS records were provided directly to the trial court pursuant to a subpoena duces tecum and that the trial court did not provide them to Defendant until after the trial court conducted an *in camera* review of the records once the trial began. The record reflects that the trial court issued the subpoena duces tecum upon application of Defendant less than two weeks before the trial was scheduled to begin. At trial, the trial court questioned Defendant's waiting until shortly before trial to request the records and seek an *in camera* review of the records, and the trial court stated that it generally conducted an *in camera* review of such records “months” in advance. Defendant offered no explanation regarding why she waited until shortly before trial to request a subpoena duces tecum of the DCS records. The trial court also found that the proof, which involved the proximity of the victim to someone on the sexual offender registry, was known to Defendant “well in advance of the 10-day rule” because Defendant also subpoenaed the prison records of the former boyfriend of the victim's mother. The trial court determined that “there is simply no reason why this motion could not have been filed in a timely manner.” The evidence does not preponderate against the trial court's findings. Defendant failed to establish that the information in the DCS records was “newly discovered and could not have been obtained earlier through the exercise of due diligence” or that “the issue to which such evidence relate[d] ha[d] newly arisen in the case.” Tenn. R. Evid. 412(d)(1). Thus, even if the DCS records included information related to the victim “sexual behavior” within the

meaning of Rule 412(a), Defendant's motion in which she sought to admit the evidence pursuant to Rule 412 was untimely.

Defendant claims that the trial court's ruling restricting her from questioning the victim and his mother about the 2013 allegations in the DCS records violated Defendant's constitutional right to cross-examine witnesses. Cross-examination is a fundamental right under the Confrontation Clause of the Sixth Amendment to the United States Constitution and article I, section 9 of the Tennessee Constitution. *See Pennsylvania v. Ritchie*, 480 U.S. 39, 51 (1987); *Brown*, 29 S.W.3d at 430-31. The denial of a defendant's right to effective cross-examination is "constitutional error of the first magnitude" and may violate the defendant's right to a fair trial. *State v. Hill*, 598 S.W.2d 815, 819 (Tenn. Crim. App. 1980) (quoting *Davis v. Alaska*, 415 U.S. 308, 318 (1974)). The Confrontation Clause, however, "guarantees only an *opportunity* for effective cross-examination, not cross-examination that is effective in whatever way, and to whatever extent, the defense might wish." *State v. Davis*, 466 S.W.3d 49, 68 (Tenn. 2015) (quoting *United States v. Owens*, 484 U.S. 554, 559 (1988)). A defendant's right to confront witnesses does not prohibit a trial court from imposing limits on cross-examination based on factors such as "harassment, prejudice, issue confusion, witness safety, or merely repetitive or marginally relevant interrogation." *State v. Reid*, 882 S.W.2d 423, 430 (Tenn. Crim. App. 1994). A defendant's right to confront and cross-examine witnesses also does not mean that "a defendant has a right to present irrelevant evidence." *Sheline*, 955 S.W.2d at 47.

"The propriety, scope, manner and control of the cross-examination of witnesses . . . rests within the discretion of the trial court." *State v. Dishman*, 915 S.W.2d 458, 463 (Tenn. Crim. App. 1995) (citing *Coffee v. State*, 216 S.W.2d 702, 703 (Tenn. 1948); *Davis v. State*, 212 S.W.2d 374, 375 (Tenn. 1948)). This court will not interfere with a trial court's exercise of its discretion regarding the examination of witnesses, "[a]bsent a clear abuse of discretion that results in manifest prejudice to the defendant." *State v. Hardison*, 680 S.W.3d 282, 315 (Tenn. Crim. App. 2023) (citing *State v. Johnson*, 670 S.W.2d 634, 636 (Tenn. Crim. App. 1984)).

Defendant contends the trial court's restriction of the defense's cross-examination of the victim and his mother regarding the 2013 DCS investigation involving the then-boyfriend of the victim's mother violated Defendant's right to a fair trial because the evidence was "necessary to challenge [the victim's] knowledge about sexual matters arising from a source other than [Defendant's] alleged conduct." However, a registered sex offender's supervision of the victim in 2013 where no sexual abuse occurred does not explain the victim's knowledge of the distinct sexual acts that the victim testified Defendant committed against him in 2019. Because the evidence on which Defendant sought to cross-examine the victim and his mother was not relevant to the victim's knowledge of sexual matters, the trial court's order restricting Defendant's cross-

examination of the victim and his mother on this basis did not violate Defendant's constitutional right to cross-examine witnesses. *See Sheline*, 955 S.W.2d at 47.

B. Tennessee Rule of Evidence 401

Defendant also contends that the trial court's restriction of her cross-examination of the victim's mother on the information in the DCS records was unconstitutional because the information in the DCS records was relevant to her defense at trial. Defendant asserts that her defense at trial was that the victim's mother orchestrated the allegations against Defendant "out of vindictiveness" because Defendant's mother "made comments" about how the victim's mother treated the victim and his sister. Defendant maintains that the information in the DCS records was relevant pursuant to Tennessee Rule of Evidence 401 because she "intended to use the DCS records to show that, on at least one prior occasion, [the victim's mother] had been on the receiving end of an inquiry into alleged abuse occurring in her residence and knew well the issues a report of abuse could cause."

The record reflects that trial counsel asked the victim's mother on cross-examination whether she recalled the victim being described as withdrawn in DCS records from 2018 and whether there would be a reason why it "would be listed somewhere" that the victim's mother "cuss[es] them out five times a week," and the victim's mother replied, "No." The trial court instructed trial counsel to stop referring to records that had been excluded. During a bench conference, trial counsel argued that the relationship between the victim's mother and her children "goes to motive and bias" and "has a lot to do with how you treat your children, whether he gave a true confession, whether he gave a true statement. I think it is very relevant for the jury to hear." The trial court disagreed and did not allow trial counsel to question the victim's mother about the DCS records.

The DCS records, which are included in the appellate record, are comprised of numerous pages of multiple referrals that occurred prior to the date of the instant offenses. Although Defendant made a general argument at trial regarding the trial court's limiting her cross-examination of the victim's mother regarding the DCS records, Defendant did not make an offer of proof identifying the specific information from the DCS records that she sought to question the victim's mother about and how the victim's mother would have responded to the questions. A party is not entitled to relief based upon the exclusion of evidence unless "the substance of the evidence and the specific evidentiary basis supporting admission were made known to the court by offer or were apparent from the context." Tenn. R. Evid. 103(a)(2). The failure to make an offer of proof, generally, precludes this court from considering the issue. *See State v. McCaleb*, 582 S.W.3d 179, 199 (Tenn. 2019) (holding that the State's failure to make an offer of proof regarding the excluded evidence precluded the trial court from making specific findings regarding the proposed testimony and precluded the appellate court from considering the issue); *State v.*

Hall, 958 S.W.2d 679, 691 n. 10 (Tenn. 1997) (“[G]enerally, if an offer of proof is not made, the issue is deemed waived and appellate review is precluded.”). Thus, Defendant has waived the issue due to her failure to make a sufficient offer of proof to allow this court to address the issue.

IV. Limitation of Evidence

Defendant maintains that the trial court erred in restricting her cross-examination of witnesses and limiting her defense proof. She specifically argues that the trial court erred in restricting her cross-examination of the victim’s mother about a recorded telephone call with Ms. Bowens, Defendant’s mother, during which the victim’s mother discussed the “divine guidance” that she said she received, in restricting her cross-examination of Detective Hodges regarding his use of the Reid technique in questioning Defendant, and in prohibiting Ms. Bowens from testifying about the way in which the victim’s mother disciplined the victim and his sister. The State responds that Defendant failed to establish that she is entitled to relief. We agree with the State.

A. Cross-Examination of the Victim’s Mother

At trial, the trial court precluded Defendant from questioning the victim’s mother on cross-examination regarding a recorded telephone call between the victim’s mother and Ms. Bowens that occurred prior to the instant offenses during which the victim’s mother made statements regarding her belief that God would look out for her and would take care of those who wronged her. Defendant contends that the statements served as threats against Ms. Bowens that “God would assist in retaliating towards people who crossed [the victim’s mother].” Defendant maintains that the victim’s statements were relevant pursuant to Tennessee Rule of Evidence 401 to her claim at trial that the victim’s mother forced the victim to fabricate the allegations against Defendant out of vindictiveness toward Ms. Bowens. Defendant also maintains that the trial court’s decision to preclude the evidence violated her constitutional right to cross-examine witnesses. The State responds that the statements of the victim’s mother did not constitute threats against Ms. Bowens when viewed in their context and, therefore, were not relevant, that the trial court’s exclusion of the evidence did not violate Defendant’s constitutional right to cross-examine witnesses, and that any error in the exclusion of the evidence was harmless beyond a reasonable doubt.

Evidence is relevant and generally admissible when it has “any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence.” Tenn. R. Evid. 401, 402. Relevant evidence, however, “may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of

cumulative evidence.” Tenn. R. Evid. 403. Questions regarding the admissibility and relevance of evidence generally lie within the discretion of the trial court, and the appellate courts will not “interfere with the exercise of that discretion unless a clear abuse appears on the face of the record.” *State v. Franklin*, 308 S.W.3d 799, 809 (Tenn. 2010) (citing *State v. Lewis*, 235 S.W.3d 136, 141 (Tenn. 2007)).

During the defense’s cross-examination of the victim’s mother, the trial court allowed Defendant to play the portion of the recording of the telephone call during which the victim’s mother arranged with Ms. Bowens for Defendant to babysit the victim and his sister. The court found the remaining portion of the approximately twenty-four-minute recording to be irrelevant. Later during the trial, the trial court found that the telephone call was “a conversation between two people about just unrelated matters. And half of the conversation was largely unintelligible. We could only hear one side of the conversation. It was very difficult to hear the other side of the conversation.” The court also found that the statements of the victim’s mother during the conversation “regarding her religious beliefs and her beliefs that God is concerned for her well-being and will look after her and will take care of things when people wrong her” had no bearing on her credibility. The court stated that the victim’s mother made the statements while referring to the repossession of a car and her employment, that the conversation was “cordial,” and that the statements, when viewed in their context, did not suggest that the victim’s mother was retaliatory but, rather, suggested that the victim’s mother “is quite passive and simply allows God to take care of things in the way that God sees fit.”

However, the trial court allowed defense counsel to ask the victim’s mother whether she ever stated that “anyone who sets out to maliciously hurt me[,] . . . it always comes back on them,” and the victim’s mother stated that she likely made that statement to Ms. Bowens. The victim’s mother also acknowledged stating that “you cannot do malicious things to me, God is sensitive about [my] needs” and that “it takes everything for [me] to walk away[,] but God tells [me] to.”

The record does not preponderate against the trial court’s findings. Because the statements of the victim’s mother, when viewed in their context, did not constitute threats and were in reference to matters involving her employment and her automobile, that portion of the recording of the telephone call was irrelevant and, therefore, inadmissible. *See* Tenn. R. Evid. 401, 402. Furthermore, because the evidence was irrelevant, the trial court’s exclusion of the evidence did not violate Defendant’s constitutional right to cross-examine witnesses. *Sheline*, 955 S.W.2d at 47 (providing that a defendant’s right to confront and cross-examine witnesses also does not mean that “a defendant has a right to present irrelevant evidence”). We conclude that the trial court did not abuse its discretion in excluding the remaining portion of the recording while also allowing Defendant to question the victim’s mother regarding other statements that she made to Ms. Bowens

about those who “maliciously hurt me.” Defendant is not entitled to relief regarding this issue.

B. Cross-Examination of Detective Hodges

Defendant next challenges the trial court’s restriction of her cross-examination of Detective Hodges regarding the Reid technique, his use of the technique in interviewing Defendant, and his knowledge of false confessions resulting from the use of the technique. The State objected to Defendant’s questioning at trial due to lack of foundation, arguing no evidence had been presented at that point in the trial suggesting that Defendant’s confession was false. The State said that once proof of a false confession was presented, Defendant could recall Detective Hodges regarding the Reid technique. The trial court agreed with the State and sustained the State’s objection.

Defendant, however, failed to make an offer of proof identifying the questions that she was seeking to ask and Detective Hodges’s responses to the questions. *See* Tenn. R. Evid. 103(a)(2). Therefore, Defendant has waived the issue on appeal. *See McCaleb*, 582 S.W.3d at 199; *Hall*, 958 S.W.2d at 691 n. 10. Regardless, at the point that Defendant sought to question Detective Hodges at trial, no evidence of a false confession had been presented, and, therefore, the testimony which Defendant sought to elicit was not yet relevant. *See* Tenn. R. Evid. 401. Furthermore, Defendant’s cross-examination of Detective Hodges at trial was extensive, spanning approximately three hundred pages of transcript, during which trial counsel reviewed the transcript of the detective’s interview of Defendant page by page and questioned him regarding the different methods that he employed in seeking to obtain a confession. Once Defendant testified at trial that her confession was false, she did not attempt to recall the detective to question him about the Reid technique. Rather, Defendant called an expert in interrogations and false confessions, who testified regarding the dangers of the Reid technique in general and as employed by Detective Hodges. Accordingly, Defendant failed to establish that the trial court’s decision was error and violated her constitutional right to cross-examine witnesses.

C. Ms. Bowens’s Testimony

Defendant challenges the trial court’s exclusion of Ms. Bowens’s testimony regarding the “corporal discipline” that the victim’s mother imposed on the victim and his sister. However, Defendant has waived this issue by failing to raise the issue in her motion for new trial or her amended motions. *See* Tenn. R. App. P. 3(e). Defendant did not request plain error review of the issue, and we, therefore, decline to review the issue for plain error. *See Morgan*, 727 S.W.3d at 198; *Ruiz*, 716 S.W.3d at 453.

V. Violation of Privileged Communications

Finally, Defendant contends that the State invaded attorney-client privilege by recording private conversations between trial counsel and the defense investigator while at the Office of the District Attorney General. Defendant maintains that the State's breach of attorney-client privilege violated her Sixth Amendment right to effective assistance of counsel and rendered her trial fundamentally unfair. The State responds that Defendant failed to show any intrusion into her attorney-client relationship or that any intrusion resulted in prejudice.

After Defendant was sentenced, she obtained new counsel who filed a motion for new trial and two amended motions, and she raised the issue of the breach of attorney-client privilege in an amended motion for new trial. Defendant alleged that during the time leading up to her trial, the District Attorney General's Office had a regular practice of making audio and video recordings of those who visited the office, including defense attorneys. Defendant maintained that during this time period, trial counsel and the defense investigator visited the District Attorney General's Office on at least one occasion to view the recording of the victim's forensic interview. Defendant said she recently learned that trial counsel and the defense investigator were recorded without their knowledge. Defendant stated that according to the State, the audio and video recording of the visit no longer existed and likely was not retained for any great period of time and that to the District Attorney General's knowledge, none of the prosecutors involved in Defendant's trial reviewed the recorded interaction between trial counsel and the defense investigator. Nevertheless, Defendant argued that by recording the interaction, the State invaded her attorney-client privilege in violation of the Sixth Amendment right to effective assistance of counsel and that as a result, the trial court should either dismiss the indictment or grant a new trial.

The State filed a response, arguing that the State did not violate attorney-client privilege. The State represented that for more than thirty years, the District Attorney General's Office had recorded defense attorneys while they reviewed the recordings of forensic interviews of child victims of sexual abuse. The State asserted that the viewing is recorded so that if a forensic interview is ever improperly and illegally copied and released, the State would be able to determine whether the defense attorney copied it. The State offered that trial counsel reviewed the recording of the forensic interview in a room with a visible camera, microphone, and server and that Defendant was not present with counsel. The State further asserted that the recording of trial counsel was never downloaded or reviewed.

Trial counsel testified that she and the defense investigator, Jennifer Greer, went to the District Attorney General's Office on two occasions prior to Defendant's trial. In June

or July of 2020, they went to the office to review the forensic recording of the victim. They were in a room by themselves for approximately one hour. Trial counsel stated that she and Ms. Greer discussed the forensic interview and trial strategy while watching the video, and trial counsel said she considered what they discussed to be confidential and privileged information. Trial counsel said she was unaware that their meeting was recorded. The second occasion occurred around November of 2021 during which trial counsel and Ms. Greer met with the District Attorney General. Trial counsel testified that she and Ms. Greer were alone in a room for five to ten minutes during which time they discussed Defendant's case. Trial counsel said their discussion included confidential and privileged information. On cross-examination, trial counsel testified that she did not have any record with her at the hearing memorializing her conversation with Ms. Greer and that if any memorialization existed, it would be included in Ms. Greer's notes or her report issued after the meetings.

The State presented the affidavit of Mondrae DeLeon, who served as a secretary in the Crimes Against Children ("CAC") unit of the District Attorney General's Office from September 2016 until May 2022. Ms. DeLeon stated that one of her duties was to arrange for defense attorneys to view the recordings of forensic interviews of children. The defense attorneys reviewed the recordings in a room in the District Attorney General's Office that was equipped with an audio-enabled video camera, a DVD player, a television, and a quad monitor. Ms. DeLeon explained that defense attorneys were recorded while viewing the forensic interviews and that in the event the forensic interview was disseminated, the State would be able to review the recording to determine whether the defense attorney was the source of dissemination. Ms. DeLeon stated that during her time as CAC secretary, "I was never aware of any improper dissemination. Therefore, I never downloaded any recordings, and no attorney ever asked to review any recordings. Additionally, I never requested the IT department to download or review a recording."

In its order denying Defendant's motion for new trial, the trial court found that the proof failed to establish that a breach of attorney-client privilege occurred. The court stated that the evidence failed to show that the State purposely sought to obtain confidential attorney-client information or trial preparation details "or, even assuming any such information was obtained, even if indirectly, that such information was used at trial or in any other manner to [Defendant's] detriment." The court further reasoned that the proof was "entirely speculative as to the nature of any communication that may have been had, a fact that underscores the more critical determination that [Defendant] failed to show any prejudice whatsoever from the claimed intrusion into defense planning and discussions, even if some intrusion occurred." Thus, the court denied Defendant's request for a new trial or dismissal of the indictment.

We need not determine whether the State's recording of the meetings between trial counsel and the defense investigator violated attorney-client privilege because we conclude

that Defendant failed to establish that any such violation of the attorney-client privilege resulted in prejudice. A Sixth Amendment violation based upon the State’s intrusion of the attorney-client relationship only occurs if prejudice is shown. *See Weatherford v. Bursey*, 429 U.S. 545, 554-56 (1977) (recognizing that “with respect to the right to counsel, it is that when conversations with counsel have been overheard, the constitutionality of the conviction depends on whether the overheard conversations have produced, directly or indirectly, any of the evidence offered at trial.”); *Sinclair v. Schriber*, 916 F.2d 1109, 1112 (6th Cir. 1990) (noting the Supreme Court’s holding in *Weatherford* that “to establish a violation of the Sixth Amendment right to counsel ensuing from government surveillance, a claimant must not only show that conversations with an attorney were surreptitiously monitored, but must also show that the information gained was used to prejudice the claimant’s defense in his criminal trial”); *State v. Davidson*, 509 S.W.3d 156, 233 (Tenn. 2016) (appendix) (holding that the interception and review of the defendant’s correspondence to his attorney did not violate the defendant’s Sixth Amendment right to counsel when the State’s actions did not result in prejudice); *see also United States v. Morrison*, 449 U.S. 361, 365 (1981) (providing that absent proof that “the constitutional infringement identified has had or threatens some adverse effect upon the effectiveness of counsel’s representation or has produced some other prejudice to the defense,” “there is no basis for imposing a remedy in that proceeding, which can go forward with full recognition of the defendant’s right to counsel and to a fair trial”). A showing of prejudice is required even when there is an intentional intrusion by the State into the attorney-client relationship. *See United States v. Steel*, 727 F.2d 580, 586 (6th Cir. 1984); *United States v. Hohn*, 123 F.4th 1084, 1109 (10th Cir. 2024).

Here, Defendant failed to produce any evidence establishing what trial counsel and the defense investigator discussed during the recorded conversations. Furthermore, no evidence was presented to establish that the State used any information obtained from the recordings against Defendant at trial. Rather, the evidence establishes that the recordings were never viewed by the prosecutor or anyone else with the State. Thus, we conclude that any alleged violation of the attorney-client privilege did not result in prejudice and did not violate the Sixth Amendment.

Conclusion

For the foregoing reasons, we affirm the judgments of the trial court.

s/ Matthew J. Wilson

MATTHEW J. WILSON, JUDGE