

Affirmed as Modified and Opinion Filed July 20, 2020



**In The
Court of Appeals
Fifth District of Texas at Dallas**

No. 05-19-00296-CR

**SOLOMON EDWARD MITCHELL, Appellant
V.
THE STATE OF TEXAS, Appellee**

**On Appeal from the Criminal District Court No. 2
Dallas County, Texas
Trial Court Cause No. F-1776145-I**

MEMORANDUM OPINION

**Before Justices Schenck, Osborne, and Reichek
Opinion by Justice Osborne**

Solomon Edward Mitchell appeals the trial court's judgment convicting him of aggravated sexual assault of a child younger than fourteen years of age enhanced by a prior conviction. The jury found him guilty, found the enhancement true, and assessed his punishment at forty-five years of imprisonment and a \$10,000 fine. Mitchell raises five issues on appeal arguing: (1) the evidence is insufficient to support his conviction; (2) his right to due process was violated when the trial court ordered him to undergo a competency examination and the record does not indicate that the examination occurred or that a finding was made that he was competent to

stand trial; (3) the trial court erred when it sustained the State's objection to the victim's mother's testimony that it was her belief the victim had been coached; (4) the trial court erred when it admitted State's Exhibit No. 13 during the hearing on punishment because there was insufficient evidence to link him to that prior misdemeanor conviction; and (5) the trial court erred when it admitted State's Exhibit No. 14 during the hearing on punishment because there was insufficient evidence to link him to that prior misdemeanor conviction. We conclude the evidence is sufficient and the trial court did not err. The trial court's judgment is affirmed as modified to correct an error in the judgment.

I. FACTUAL AND PROCEDURAL BACKGROUND

The victim lived with his grandmother and some of his siblings since he was approximately six years old because his mother had lost custody of her children due to neglect. Occasionally the victim's mother would reside with them. While the children lived with their grandmother, the victim's mother had a relationship with Mitchell, who is the presumed father of one of the victim's younger siblings. However, the victim's grandmother did not want Mitchell at her house, so the victim's mother would meet him at a nearby 7-Eleven.

When the victim was ten years old, he walked to the nearby 7-Eleven with his mother. On the way, they met Mitchell at a park. Mitchell went to the 7-Eleven with them. While at the 7-Eleven, the victim went into the bathroom and Mitchell followed him in. While the victim was urinating and had his pants "half way down,"

Mitchell stood behind him and told him there was a cockroach under the sink. When the victim bent down to look, Mitchell pushed him to the floor, held his hands down, and sexually assaulted him by putting his penis into the victim's anus. The victim cried and Mitchell told him not to tell his mother. The assault stopped when the victim's mother knocked on the bathroom door and told the victim to come out because she had gotten the Slurpees. The victim left the bathroom followed by Mitchell. He did not say anything to his mother about the sexual assault. When the victim got home, his grandmother recalled that he seemed happy and unfazed and did not appear to be injured. The victim told his siblings what had happened, but he did not tell his grandmother.

Approximately a week after the sexual assault, the victim started having rectal bleeding. The victim continued to have random rectal bleeding and, about a year after the sexual assault, he started "gushing blood" so his grandmother took him to the hospital. According to the victim, the hospital staff said it was because he was eating spicy food and, even though he was not eating spicy food, he just agreed. Once they returned home, the victim told his grandmother it was not because he was eating "hot stuff," but he did not tell her about the sexual assault.

At some point, the victim told his uncle about the sexual assault. His uncle had the victim tell his older, adult sister who was visiting her grandmother at the time. According to the victim's older sister, the victim was terrified and begged her

not to tell anyone. The victim's older sister reported the offense to the Dallas Police. Then, the victim was interviewed by a forensic interviewer.

Mitchell was indicted for aggravated sexual assault of a child younger than fourteen years of age. Before trial, the trial judge signed an order requiring an examination of Mitchell's competency to stand trial. However, the record does not contain a written motion, the examiner's written report, or an order that makes a finding as to Mitchell's competency to stand trial. The jury found Mitchell guilty of aggravated sexual assault of a child younger than fourteen years of age. Mitchell pleaded true to a prior felony conviction alleged for the purpose of enhancing his punishment. The jury found the enhancement true and assessed Mitchell's punishment at forty-five years of imprisonment and a \$10,000 fine.

II. SUFFICIENCY OF THE EVIDENCE

In issue one, Mitchell argues the evidence is insufficient to support his conviction. He claims that he was convicted solely on the victim's testimony which, by itself, was insufficient to support his conviction. Mitchell points to the absence of substantiating physical or medical evidence, the lack of corroborating eyewitness testimony or an outcry witness, and the fact that he did not confess. The State responds that the victim's testimony is sufficient and the jury is the sole judge of the facts and the weight to be given to the testimony.

A. Standard of Review

When reviewing the sufficiency of the evidence, an appellate court considers all of the evidence in the light most favorable to the verdict to determine whether the jury was rationally justified in finding guilt beyond a reasonable doubt. *See Jackson v. Virginia*, 443 U.S. 307, 318–19 (1979); *Metcalf v. State*, No. PD-1246-18, 2020 WL 1542324, at *4 (Tex. Crim. App. Apr. 1, 2020); *Brooks v. State*, 323 S.W.3d 893, 899 (Tex. Crim. App. 2010) (plurality op.). An appellate court is required to defer to the jury’s credibility and weight determinations because the jury is the sole judge of the witnesses’ credibility and the weight assigned to their testimony. *See Jackson*, 443 U.S. at 319, 326; *Metcalf*, 2020 WL 1542324, at *4; *Brooks*, 323 S.W.3d at 899. All evidence will be considered when reviewing the sufficiency of the evidence, whether direct or circumstantial, properly or improperly admitted, or submitted by the prosecution or defense. *Jenkins v. State*, 493 S.W.3d 583, 599 (Tex. Crim. App. 2016); *accord McDaniel v. Brown*, 558 U.S. 120 (2010) (per curiam); *Lockhart v. Nelson*, 488 U.S. 33, 41–42 (1988); *Jackson*, 443 U.S. at 319.

B. Applicable Law

A person commits the offense of aggravated sexual assault if he intentionally or knowingly causes the penetration of the anus of a child by any means and the child was younger than fourteen years of age. *See* TEX. PEN. CODE ANN. § 22.021(a)(1)(B)(i), (2)(B); *Lee v. State*, 186 S.W.3d 649, 655 (Tex. App.—Dallas 2006, pet. ref’d). The testimony of a child victim alone is sufficient to support a

conviction for aggravated sexual assault of a child. *See* TEX. CODE CRIM. PROC. ANN. art. 38.07(a)¹; *Martinez v. State*, 178 S.W.3d 806, 814 (Tex. Crim. App. 2005); *Tear v. State*, 74 S.W.3d 555, 560 (Tex. App.—Dallas 2002, pet. ref'd).

C. Application of the Law to the Facts

First, Mitchell claims there was no physical evidence that substantiated the victim's allegation. However, physical evidence is not required to establish a sexual assault occurred. *See Bargas v. State*, 252 S.W.3d 876, 888 (Tex. App.—Houston 2008, no pet.). There is no requirement that the victim's testimony be corroborated by medical or physical evidence. *See Robinson v. State*, No. 05–09–01329, 2011 WL 168736, at *4 (Tex. App.—Dallas Jan. 20, 2011, no pet.) (mem. op., not designated for publication); *Newby v. State*, 252 S.W.3d 431, 437 (Tex. App.—Houston [14th Dist.] 2008, pet. ref'd).

Second, Mitchell complains that there is the lack of corroborating eyewitness testimony or an outcry witness. He points out that none of the victim's siblings testified at trial even though the victim testified that when he returned home from the 7-Eleven, he told them what happened and asked them not to tell anyone. Mitchell also contends that the victim's uncle did not testify at trial despite the

¹ Article 38.07 provides in part (1) a conviction under § 22.021 of the penal code “is supportable on the uncorroborated testimony of the victim of the sexual offense if the victim informed any person, other than the defendant, of the alleged offense within one year after the date on which the offense is alleged to have occurred” and (2) the requirement that the victim inform another person of an alleged offense does not apply if at the time of the alleged offense the victim was seventeen years of age or younger. CRIM. PROC. art. 38.07.

victim's testifying that his uncle was the first person he told about the sexual assault. Because the victim fits into one of the article 38.07(b) exceptions—he was under seventeen years of age at the time of the offense—the State was not required to prove that the victim made any outcry. *Martinez*, 178 S.W.3d at 814.

Finally, Mitchell contends that the credibility of the victim was highly questionable to the point that the jury could not have found him guilty beyond a reasonable doubt and he did not confess or make any incriminating statements. He maintains that the evidence is unclear as to the date when the incident occurred, evidence shows that the victim sought out interaction and a relationship with Mitchell after the alleged sexual assault, and the victim's testimony about rectal bleeding was not credible given the explanations and timing.

The record shows that the victim testified he did not remember the year the incident occurred. He also told the detective that the sexual assault had occurred seven months earlier, and he told the forensic interviewer that it happened a year before. However, the penal code does not require that a child victim be specific about the dates the abuse occurred. *See Dixon v. State*, 201 S.W.3d 731, 736 (Tex. Crim. App. 2006).

As to Mitchell's complaints about the victim's having sought out interaction and a relationship with him after the alleged sexual assault and the victim's testimony about rectal bleeding, any inconsistent or vague details in the victim's testimony did not definitely favor or contradict the jury's verdict; they bear on the

victim's credibility. *Revels v. State*, 334 S.W.3d 46, 52 (Tex. App.—Dallas 2008, no pet.); *see also Flores v. State*, No. 05-16–00576-R, 2017 WL 3033414, at *10 (Tex. App.—Dallas July 18, 2017, no pet.) (mem. op., not designated for publication) (rejecting sufficiency challenge to conviction for aggravated sexual assault of a child because “[t]o the extent [the victim's] testimony was inconsistent and/or vague regarding the details surrounding the offense, this concerned her credibility as a witness, which was a matter for the jury in its role as the sole judge of the weight and credibility of the evidence”); *Gregg v. State*, No. 05–16–00557–CR, 2017 WL 2334239, at *3 (Tex. App.—Dallas May 26, 2017, pet. ref'd) (mem. op., not designated for publication) (concluding jury's decision to believe child sexual assault victim who recanted and then reasserted accusations during trial was not unreasonable); *Moody v. State*, 543 S.W.3d 309, 314 (Tex. App.—Eastland 2017, pet. ref'd) (per curiam) (mem. op.) (“inconsistencies” in testimony of child sexual assault victim “do not automatically lower evidence below the required standard”). It is the factfinder's responsibility to fairly resolve conflicts in the testimony, weigh the evidence, and draw reasonable inferences from basic to ultimate facts. The record shows that the child victim testified in detail about the sexual assault, and a child victim's testimony alone is sufficient to support a conviction for aggravated sexual assault of a child. *See, e.g., Revels*, 334 S.W.3d at 52.

After reviewing the evidence, we conclude that a rational jury could have found the elements of the charged offense beyond a reasonable doubt. Accordingly, we conclude the evidence is sufficient to support Mitchell's conviction.

Mitchell's first issue is decided against him.

III. COMPETENCY EXAM

In issue two, Mitchell argues his right to due process was violated because the trial court ordered him to undergo a competency examination and the record does not indicate that the examination occurred or that a finding was made that he was competent to stand trial. The State responds that Mitchell failed to preserve this issue for appellate review because he failed to object to the lack of a competency hearing and did not request a formal finding as to whether he was competent to stand trial.

To preserve error for appellate review, a defendant must make his complaint to the trial court by a timely request, objection, or motion that states the grounds for the ruling sought with sufficient specificity to make the trial court aware of the complaint. TEX. R. APP. P. 33.1(a)(1)(A). All error, even constitutional error, may be waived by the failure to properly put the trial court on notice of the objection or request. *Reyna v. State*, 168 S.W.3d 173, 177 (Tex. Crim. App. 2005). An appellant must object to a trial court's failure to make a competency determination in order to preserve the issue for appellate review. *See, e.g., Ramsey v. State*, 563 S.W.2d 616, 617 (Tex. Crim. App. 1978) (where appellant claimed to have filed written motion

for competency hearing but there is no motion in the record the issue of competency was not preserved); *Bonner v. State*, 520 S.W.2d 901, 906 (Tex. Crim. App. 1975) (where evidence sufficiently raises competency issue and trial judge fails to impanel jury to decide question, issue is not preserved for appellate review in absence of an objection); *Ghaffari v. State*, No. 05-98-01782-CR, 2000 WL 1141257, at *4 (Tex. App.—Dallas Aug. 14, 2000, pet. ref'd) (not designated for publication) (issue not preserved for appellate review when defendant failed to present to trial court his motion requesting hearing to determine his mental competency to stand trial); *see also Wani v. State*, No. 01-09-01153-CR, 2011 WL 2089680, at *2 (Tex. App.—Houston [1st Dist.] 2011, pet. ref'd) (mem. op., not designated for publication) (appellant failed to preserve error regarding competency to plead guilty); *Mapps v. State*, 336 S.W.3d 700, 702–03 (Tex. App.—Houston [1st Dist.] 2010, no pet.) (holding no preservation of alleged error to order on competency hearing because defendant failed to object before proceeding to trial); *Salahud-din v. State*, 206 S.W.3d 203, 208 (Tex. App.—Corpus Christi–Edinburg 2006, pet. ref'd) (same); *Boitnott v. State*, 48 S.W.3d 289, 293 (Tex. App.—Texarkana 2001, pet. ref'd) (holding no preservation of alleged error when defendant did not object to trial court's failure to make competency determination).

Before trial, the trial judge signed an order requiring an examination of Mitchell's competency to stand trial. The order does not specify how the issue of

Mitchell’s competency was raised except to state that “an attorney” filed a motion.² The trial court appointed an examiner and ordered her to report findings and opinions in writing to the trial court within thirty days. The record does not contain a written report of the competency examination ordered by the trial court. Also, neither Mitchell nor the State contend that the trial court made an affirmative determination on the record as to whether some evidence existed to support a finding that appellant was incompetent to stand trial. Although Mitchell argues his conviction should be reversed because the trial court failed to conduct a competency hearing, he concedes that he did not object or ask the trial court to rule on his competency.

In this appeal, there is no request, objection, or motion from Mitchell on which he has received an adverse ruling. To the contrary, the trial court granted “an attorney[’s]” motion regarding competency and an examination. We conclude that Mitchell has failed to preserve issue two for appellate review.³

² We also note that the trial court’s docket sheet does not reflect there was a hearing on the motion.

³ Mitchell also argues that he cannot forfeit any right he has to a competency evaluation under *Marin v. State*, 851 S.W.2d 275, 278–80 (Tex. Crim. App. 1993), *overruled in part on other grounds by Cain v. State*, 947 S.W.2d 262, 264 (Tex. Crim. App. 1997). We are aware that the Houston First District Court of Appeals noted in its opinions in *Wani* and *Mapps* that the appellants in those cases did not make an argument under *Marin*. *Wani*, 2011 WL 2089680, at *2; *Mapps*, 336 S.W.3d at 703. However, we note that in *Rodriguez v. State*, the Texas Court of Criminal Appeals rejected a similar argument where the defendant claimed that, under *Marin*, no objection was necessary to preserve his complaint about an examiner’s delay in examining him and in complying with a trial court’s order. 899 S.W.2d 658, 662 (Tex. Crim. App. 1995). Instead, the Court concluded that the defendant had forfeited his right to complain about the delay on appeal. *Id.*

IV. EXCLUSION OF TESTIMONY

In issue three, Mitchell argues the trial court erred when it sustained the State's objection to the victim's mother's testimony that it was her belief the victim had been coached. He maintains that the "crux of the trial" was the victim's credibility and his mother's testimony that she believed the victim had been coached was relevant to that determination. The State responds that the trial court properly sustained its objection because Mitchell's question at trial asked the complainant's mother whether she "had reason to believe that [the victim's uncle] may have coached" the victim, which called for her to speculate about an act she did not observe. Neither Mitchell nor the State address whether the alleged error was harmful.

A. Harm Analysis

Rule 44.2(b) of the Texas Rules of Appellate Procedure provides that any error, other than constitutional error, that does not affect substantial rights must be disregarded. TEX. R. APP. P. 44.2(b). A substantial right is affected when the error had a substantial and injurious effect or influence on the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997). Generally, no harm results when a jury is not instructed to disregard a witness's answer after a late objection is sustained. *See Dotson v. State*, No. 05-09-01034-CR, 2011 WL 1288640, at *4 (Tex. App.—Dallas Feb. 28, 2011, pet. dismissed) (mem. op., not designated for publication); *Drake v. State*, 860 S.W.2d 182, 186 (Tex. App.—Houston [14th Dist.] 1993, pet.

ref'd); *Wiltz v. State*, 827 S.W.2d 372, 374 (Tex. App.—Houston [1st Dist.] 1992), *rev'd on other grounds*, 863 S.W.2d 463 (Tex. Crim. App.1993).

B. Application of the Law to the Facts

Assuming without deciding that the trial court erred when it sustained the State's objection to the victim's mother's testimony about whether she believed the victim had been coached, we review the alleged error to determine whether it was harmful. The record shows the following occurred:

Defense Counsel: Do you have a reason to believe that [the victim's uncle] may have coached [the victim]?

Victim's Mother: Yes

State: Your Honor, I'm going to object calls for speculation.

Trial Court: Sustained.

Defense Counsel: I'll pass the witness.

The State's objection was made after Mitchell's counsel asked the question and the victim's mother answered, and the trial court merely sustained the objection; it did not instruct the jury to disregard the witness's answer. Further, we note that the victim told his uncle about the sexual assault and then his older sister while his uncle was present. Mitchell was able to cross-examine both the victim and the victim's older sister about these events.

Assuming without deciding that the trial court erred when it sustained the State's objection to the victim's mother's testimony with respect to whether she believed the victim had been coached, we conclude that the alleged error was not

harmful error. *See Dotson*, 2011 WL 1288640, at *4; *Drake*, 860 S.W.2d at 186; *Wiltz*, 827 S.W.2d at 374. Issue three is decided against Mitchell.

V. SUFFICIENCY OF THE EVIDENCE OF PRIOR CONVICTIONS

In issues four and five, Mitchell argues the trial court erred when it overruled his objection to State's Exhibit Nos. 13 and 14 during the hearing on punishment because there was insufficient evidence to link him to those prior misdemeanor convictions. He contends that he was not linked to those misdemeanor convictions because the fingerprints were not of a sufficient quality to make a comparison to Mitchell's known fingerprints, there was no photograph to match, and no attempt was made to match his driver's license, state identification number, or social security number. Also, he claims that he was harmed by the admission of these exhibits and requests a new punishment hearing because the State used them to argue for a greater assessment of punishment contending they showed a man who has repeatedly broken the law, lied to and evaded the police, and attempted to evade responsibility for his actions. The State responds there is sufficient information on State's Exhibit Nos. 11 and 12, which were admitted without objection, to link Mitchell to State's Exhibit Nos. 13 and 14.

A. Standard of Review

The standard of review for evaluating the sufficiency of evidence to link a defendant to a prior conviction during a hearing on punishment requires that the appellate court consider all the evidence in the light most favorable to the trial court's

finding and determine whether a rational trier of fact could have found the essential elements beyond a reasonable doubt. *See Henry v. State*, 509 S.W.3d 915, 919 (Tex. Crim. App. 2016); *Wood v. State*, 486 S.W.3d 583, 589 (Tex. Crim. App. 2016).

B. Applicable Law

Article 37.07 of the Code of Criminal Procedure permits proof of a defendant's "prior criminal record," but it does not require the production of a certified judgment to prove that prior criminal record. TEX. CODE CRIM. PROC. art. 37.07, § 3; *Flowers v. State*, 220 S.W.3d 919, 922 (Tex. Crim. App. 2007). In order to establish that a defendant has been convicted of a prior offense, the State must prove beyond a reasonable doubt that: (1) a prior conviction exists and (2) the defendant is linked to that conviction. *Henry*, 509 S.W.3d at 918; *Flowers*, 220 S.W.3d at 921. No specific document or mode of proof is required to prove these two elements. *Henry*, 509 S.W.3d at 918. The State may prove both of these elements in a number of ways, including documentary proof that contains sufficient information to establish both the existence of a prior conviction and the defendant's identity as the person convicted. *Id.* at 921–22. Examples of acceptable evidence include the admission or stipulation of the defendant, testimony by people present at the time of the defendant's conviction and who can identify the defendant as the person convicted, and documentary proof that contains sufficient information to establish that a prior conviction exists and the defendant's identity as the person

convicted. *Henry*, 509 S.W.3d at 918; *Wood*, 486 S.W.3d at 588; *Flowers*, 220 S.W.3d at 921–22.

The factfinder must look at the totality of the evidence adduced when determining whether a prior conviction has been proven. *See Henry*, 509 S.W.3d at 919; *Wood*, 486 S.W.3d at 589. The factfinder must consider the evidence as a whole, as each piece of evidence may provide little meaning if considered in isolation. *Henry*, 509 S.W.3d at 919; *see also Wood*, 486 S.W.3d at 589; *Flowers*, 220 S.W.3d at 923.

C. Application of the Law to the Facts

During the punishment hearing, Mitchell objected to the admission of State’s Exhibit Nos. 13 and 14 on the basis that, without a fingerprint match, the name and date of birth alone are insufficient to prove identity. The trial court overruled Mitchell’s objection and admitted State’s Exhibit Nos. 13 and 14 into evidence.

The evidence of Mitchell’s four prior convictions included: (1) Mitchell’s plea of true to a prior felony conviction for burglary of a habitation; (2) Mitchell’s fingerprint card (State’s Exhibit No. 8), which was admitted without objection; (3) a penitentiary packet and certified judgment relating to Mitchell’s prior felony offense of burglary of a habitation (State’s Exhibit Nos. 9 and 10), which were used to enhance Mitchell’s conviction and were admitted without objection; (4) two certified judgments for the misdemeanor offenses of possession of marijuana and evading arrest (State’s Exhibit Nos. 11 and 12), which were admitted without

objection; and (5) two certified judgments for separate misdemeanor offenses of failure to identify (State's Exhibit Nos. 13 and 14), which were admitted over Mitchell's objection.

Darrell Doty, an investigator with the Dallas County District Attorney's Office, testified that the fingerprints on State's Exhibit Nos. 9–12 were a positive match with the fingerprints on State's Exhibit No. 8. However, he also testified that the fingerprints on State's Exhibit Nos. 13 and 14 “were not of comparable value.” Investigator Doty testified State's Exhibit Nos. 11–14 all show the same name, race, gender, and date of birth. In addition, State's Exhibit No. 13 has the same address and identification number for Mitchell as State's Exhibit Nos. 11 and 12. However, State's Exhibit No. 14 lists a different address and identification number.

Taken together, these documents reflect that the same person convicted in State's Exhibit Nos. 9–12 was convicted in State's Exhibit Nos. 13 and 14. Fitting all of the evidence together, we conclude that these punishment exhibits sufficiently linked Mitchell to the prior convictions in State's Exhibit Nos. 13 and 14 such that the trial court could conclude that the totality of the evidence admitted contained sufficient information to establish both the existence of the prior convictions alleged and Mitchell's identity as the person convicted. Accordingly, we conclude the evidence was sufficient to link Mitchell to the prior misdemeanor convictions in State's Exhibit Nos. 13 and 14 and the trial court did not err when it admitted these exhibits into evidence.

Issues four and five are decided against Mitchell.

VI. MODIFICATION OF THE JUDGMENT

Although neither party raises the issue, we observe that the final judgment incorrectly states that the plea and finding on the first enhancement was “N/A.” The record shows that the State sought to enhance Mitchell’s conviction with a prior felony conviction, Mitchell pleaded true to the enhancement, and the jury found the enhancement true. An appellate court has the authority to modify an incorrect judgment to make the record speak the truth when it has the necessary information to do so. *See* TEX. R. APP. P. 43.2(b); *Bigley v. State*, 865 S.W.2d 26, 27–28 (Tex. Crim. App. 1993) (en banc); *Asberry v. State*, 813 S.W.2d 526, 529–30 (Tex. App.—Dallas 1991, pet. ref’d). We conclude the trial court’s final judgment should be modified to show that Mitchell’s conviction was enhanced by a prior conviction. Accordingly, the judgment is modified as follows: (1) “Plea to 1st Enhancement Paragraph: N/A” is modified to read “Plea to 1st Enhancement Paragraph: True”; and (2) “Findings on 1st Enhancement Paragraph: N/A” is modified to read “Findings on 1st Enhancement Paragraph: True.” *See* TEX. R. APP. P. 43.2(b); *Bigley*, 865 S.W.2d at 27–28; *Asberry*, 813 S.W.2d at 529–30.

V. CONCLUSION

The evidence is sufficient to support Mitchell’s conviction. Mitchell failed to preserve for appellate review his complaint that his right to due process was violated when the trial court ordered him to undergo a competency examination and the

record does not indicate that the examination occurred or that a finding was made that he was competent to stand trial. Even if the trial court erred when it sustained the State's objection to the victim's mother's testimony that it was her belief the victim had been coached, that error was not harmful. The trial court did not err when, during the hearing on punishment, it overruled his objections to State's exhibits relating to his two prior misdemeanor convictions.

The trial court's final judgment should be modified to show that Mitchell's conviction was enhanced by a prior conviction.

The trial court's final judgment is affirmed as modified.

/Leslie Osborne/
LESLIE OSBORNE
JUSTICE

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TEX. R. APP. P. 47

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**Court of Appeals
Fifth District of Texas at Dallas**

JUDGMENT

SOLOMON EDWARD MITCHELL,
Appellant

No. 05-19-00296-CR V.

THE STATE OF TEXAS, Appellee

On Appeal from the Criminal District
Court No. 2, Dallas County, Texas
Trial Court Cause No. F-1776145-I.

Opinion delivered by Justice
Osborne. Justices Schenck and
Reichek participating.

Based on the Court's opinion of this date, the judgment of the trial court is **MODIFIED** as follows:

(1) "Plea to 1st Enhancement Paragraph: N/A" is modified to read "Plea to 1st Enhancement Paragraph: True"; and

(2) "Findings on 1st Enhancement Paragraph: N/A" is modified to read "Findings on 1st Enhancement Paragraph: True."

As **REFORMED**, the judgment is **AFFIRMED**.

Judgment entered July 20, 2020