

THE UTAH COURT OF APPEALS

STATE OF UTAH,
Appellee,

v.

HAYDAR MOHAMED HASSAN,
Appellant.

Opinion
No. 20240292-CA
Filed August 27, 2026

Third District Court, Salt Lake Department
The Honorable Amber M. Mettler
No. 211908801

Erick Grange, Attorney for Appellant

Derek E. Brown and Marian Decker,
Attorneys for Appellee

JUDGE JOHN D. LUTHY authored this Opinion, in which
JUDGES MICHELE M. CHRISTIANSEN FORSTER and RYAN M. HARRIS
concurred.

LUTHY, Judge:

¶1 Haydar Mohamed Hassan was convicted on multiple charges for sexually abusing his stepdaughter, Anisa,¹ over the course of several years. He asserts on appeal that his trial counsel (Counsel) provided ineffective assistance in various ways and that the trial court abused its discretion by admitting bodycam footage of a police interview conducted at Anisa's high school. None of his contentions are availing, so we affirm.

1. A pseudonym.

BACKGROUND²

*Hassan Becomes Anisa's Stepfather and Sexually Abuses Her After
They Move to Utah*

¶2 Hassan met Anisa's mother (Mother) while both were Somali refugees in a refugee camp in Kenya. At that time, Mother was divorced with three children—Anisa, Anisa's older half-sister (Sister), and Anisa's older brother. Mother's uncle arranged for Mother's marriage to Hassan, although she later stated that she "didn't even want to marry him." In 2004, Hassan and Mother moved from Kenya to Salt Lake City with Mother's three oldest children and two younger children she then shared with Hassan.

¶3 The family continued to grow, and when Anisa was in the third grade, the family moved to Magna. One day in the family's Magna house, Anisa and two siblings were "picking [Hassan's] chest hair"—"a mandatory thing [the kids] had to do"—when Hassan sexually abused Anisa. He had told the children to sit and lie next to him in his bed in the master bedroom and "pick at his chest hair," and while they did this, he "insert[ed] his fingers inside [Anisa's] vagina." Anisa wore a gown that was "very open at the bottom," providing "very easy access," so Hassan was able to touch her inappropriately without removing her clothing. Neither Hassan nor Anisa said anything while Hassan had his fingers inside her vagina, and he kept his hand there for "two minutes or less." This touching made Anisa feel "weird" and "so uncomfortable." After Hassan removed his hand, the children continued "picking his chest hair" until they had finished. Mother was also in the room during this time, but she was sitting on a

2. "When reviewing a jury verdict, we examine the evidence and all reasonable inferences drawn therefrom in a light most favorable to the verdict, and we recite the facts accordingly." *State v. Popp*, 2019 UT App 173, n.1, 453 P.3d 657 (cleaned up). In so doing, "we present conflicting evidence only when necessary to understand issues raised on appeal." *Id.* (cleaned up).

mattress on the floor while the bed Hassan and the children were on “was very high,” so Anisa was not sure Mother saw the touching.

The Family Moves to West Valley City, Where Hassan Continues to Sexually Abuse Anisa

¶4 When Anisa was in sixth grade, the family—now comprising twelve children—moved to West Valley City. One day while living there, Hassan made a “hand gesture telling [Anisa] to come downstairs,” so Anisa went into the basement, where he “was waiting for” her. They went into the laundry room, and Hassan “pulled his pants down and then . . . had [Anisa] pull[] [her] pants down.” Hassan “bent [Anisa] over at [a] table” that was in the room. He stood behind Anisa and had her “touch[] his penis to pull it out,” and she felt “[h]is penis touching the back of [her] butt.” Then she felt his “slimy and wet” “penis inserting in [her] vagina from the back.” Neither Anisa nor Hassan said anything while his penis was inside her. Hassan then “had [her] pull[] up [her] pants and . . . told [her] to go back upstairs.”

¶5 On a different day, while Mother was cooking in the kitchen, Hassan gestured to Anisa to come to him. He took her to the master bedroom, where he “pulled [her] pants down and then laid [her] down” on his bed. He “rubbed his penis on [her] vagina.” He did not do this for long— “[i]t was . . . fast so he wouldn’t be caught . . . [and] so that nobody would come in.”

The Family Moves Again and the Abuse Persists

¶6 When Anisa was in ninth or tenth grade, the family moved to a different house in West Valley City. While Anisa was in high school, Hassan would sometimes check her out of school, take her on a drive, and force her “to touch his private part.” She would be “sitting in the passenger’s seat[,] and he would grab [her] hand and . . . put [it] by his penis,” sometimes under the clothing and sometimes over it. He would “guide [her] and make [her] . . . feel on his penis” by “squeezing it” and “stuff like that.” He would

also sometimes touch Anisa inappropriately in the car, including once when he parked next to a restaurant, gave Anisa his phone “to distract [her], and then . . . just [did] what he wanted to do,” which included “insert[ing] his fingers in [her] vagina.” It “[f]elt really disgusting, real weird” to Anisa. Anisa remained silent during the incident, as did Hassan. These instances when Hassan made Anisa touch his penis or molested her in the car happened “[a] lot.”

Mother Discloses the Abuse to a Community Elder

¶7 Anisa had been scared to tell Mother about the abuse because she “felt like [Mother] wasn’t going to believe [her] and [Mother] didn’t want to hear” about the abuse. But at some point, Sister and Anisa together told Mother that Hassan had sexually abused them.³ Mother “went and complained to an elder in the community” (Elder).⁴ Elder “told [her,] ‘This is very, very ugly.

3. Sister testified at trial that Hassan sexually abused her as well. *See infra* ¶ 14.

4. It appears that elders play an important role in the traditional system of Somali customary justice, including in Somali communities within the United States. *See* Brenton D. Peterson & Manar Zaki, Sababi Inst., *Reforming Somali Customary Justice: Pathways to Adapting Xeer Procedures and Practices* 4 (Dec. 15, 2023), <https://kpsrl.org/sites/kpsrl/files/2024-02/Reforming%20Somali%20Xeer%20-%20Practices%20and%20Procedures.pdf> [<https://perma.cc/78AS-8Q78>] (“The Somali system of customary justice, *xeer*, plays a central role in Somali society, offering a vital avenue for dispute resolution. Coexisting with formal state-backed courts, *xeer* operates through clan elders who draw on precedent, Sharia law, and bilateral oral agreements between clans to adjudicate disputes and prescribe resolutions.”); Kamal Suleiman et al., *Strategies and Sacrifices of Family Caregiving in the Somali-American Community: A Qualitative Study*, 24 BMC Health Servs. Rsch. art. (continued...)

Do not talk about it. We will talk amongst ourselves.” Mother “told him [she would] call the police and tell them, but he told [her] not to do” that and said the community elders would handle the situation. Eventually, other elders informed Mother that Elder had died, and the issue was “just dropped.”

Anisa Discloses the Abuse to a School Counselor

¶8 In 2016, while Anisa was in twelfth grade, Hassan attended a meeting with Anisa’s school counselor (Counselor) to discuss why Anisa was failing some of her classes. Mother was not present at the meeting. Anisa was upset to see Hassan at her school—she “hated him because of the things he would do to [her]” and believed that his actions were the reason she was struggling in school. After Hassan left, Anisa told Counselor that she hated Hassan. Counselor asked why, and Anisa said, “Because he sexually abuses me at home.” Counselor reported to on-campus police that she had received a report of abuse at Anisa’s home, and two officers came to the office to interview Anisa. During this interview, she did not answer their questions and instead remained silent, later stating that she was feeling “[v]ery sad and emotional . . . [b]ecause [of] what [she] had told” Counselor.

¶9 That night, police went to the family’s house. Hassan was not home at the time. Mother said Anisa “was lying,” which made Anisa feel “[u]nwanted” and “[w]eird.”

1186 (Oct. 4, 2024), <https://pmc.ncbi.nlm.nih.gov/articles/PMC11453006/> [<https://perma.cc/J5BP-3JRL>] (“Research on older Somalis in Canada and the US has revealed that even in their new North American communities, Somali elders have relied on their positions as counselors, decision-makers, and leaders to feel purpose and fulfillment in their old age.”).

*Anisa Moves to Pittsburgh, Visits Utah Some Years Later, and Reports
the Abuse to Police*

¶10 A protective order was issued against Hassan for Anisa, and Hassan did not return to the family's house for a time. But a week or two later, Anisa learned that Hassan planned to "come back home," so her extended family arranged for her to move in with her biological father in Pittsburgh. After she moved, Anisa "cut [Hassan] off completely from [her] life."

¶11 Several years later, after Anisa had married and had a child, she visited Utah to celebrate her daughter's third birthday. Anisa "wanted to visit [her] siblings and [Mother], but [she] couldn't go to [their] house because [Hassan] was always present there," and she refused to see him or allow him to see her daughter. Hassan would not allow Mother or the siblings to use the family car to visit Anisa. Anisa "got . . . mad" that her family was not permitted to attend her daughter's birthday party, and she argued with Mother and Sister "because they kept listening to what [Hassan] had to say" and would not come see her.

¶12 When Anisa returned to Pittsburgh, she decided she was ready "to go forward with" reporting the abuse, and in 2021 she reached out to police in Pittsburgh to file a report. Anisa's report led to Hassan being charged in Utah in August 2021 with several crimes. As relevant here, the State charged Hassan with aggravated sexual abuse of a child, rape of a child, object rape, and aggravated kidnapping.⁵

5. Originally, the State charged Hassan with five other counts, but at trial, after the State rested, it voluntarily dismissed those counts.

The jury acquitted Hassan of the aggravated kidnapping charge. Because the evidence forming the basis of that charge did not yield a conviction but is nevertheless relevant to an issue on appeal, we recite it separately below.

The Case Goes to Trial, Where Sister Testifies that Hassan Sexually Abused Her as a Child

¶13 The case proceeded to a two-day jury trial, held in May 2023. During the trial, Anisa, Sister, Counselor, and Mother (through an interpreter) testified in accordance with the facts related above. The detective who investigated Anisa's report in 2021 (Detective) also testified. Additionally, the State called as an expert witness a forensic-services manager with the Children's Justice Center, who testified about the reasons children delay disclosing sexual abuse.

¶14 In addition to testifying about Anisa's circumstance, Sister testified that Hassan had also sexually abused her when she was a child. She stated that one night in the family's Salt Lake City house when she was nine or ten, she was asleep in her bedroom when Hassan came into her bedroom, touched her "[e]verywhere [on her] body," and "penetrat[e]d her genitalia" "[w]ith his penis." Sister said she "couldn't say anything" because he was covering her mouth so that she "couldn't scream." She recounted that Hassan did not say anything to her during this time. She said that she eventually pushed Hassan and he got off of her, and that she then "start[ed] screaming" and heard footsteps coming from Mother's room. Mother also testified about this incident, saying that Hassan was leaving Sister's bedroom when she arrived. Mother stated that she saw him "holding onto his clothes" and she "started talking to him angrily," asking him what was going on. She said he replied, "I am sorry. It is not going to happen again. I apologize." But Sister testified that Hassan sexually abused her at night in her bedroom "[m]ore than one time."

¶15 Hassan testified in his own defense (also through an interpreter). He categorically denied sexually abusing Sister or Anisa. When asked to explain why Anisa might fabricate these allegations, Hassan explained that beginning in sixth grade, Anisa "started being late at the school [and] doing other undesirable things at the school" and that this was the source of "anger and

. . . problems” between the two. Regarding Sister, Hassan testified that she had returned to live with him and Mother after getting a divorce, that she had come “back with [a] different attitude, with [a] severe change in personality,” and that they had experienced difficulties since that time. When asked to explain why Mother might have lied about seeing him coming out of Sister’s room, Hassan said, “This is what I think, I am suspecting . . . [that] she was told that I have a wife in Africa. And that is really what is driving her rage. And that she’s suspected I am . . . with another woman in Africa, and she wants to basically punish me for that.”

Anisa Testifies About the Timing of the Laundry Room Incident

¶16 During Anisa’s testimony, when she was discussing the timing of the incidents at the family’s first West Valley City house, the following exchange occurred:

Prosecutor: These incidents that you just testified about at the West Valley house, the incident in the laundry room and the incident in the bedroom, do you recall which grade you were in?

Anisa: It was about seventh grade.

Prosecutor: Do you recall how old you were at that time?

Anisa: No.

Prosecutor: Do you remember when you turned fourteen years old?

Anisa: No, I just remember grades. . . .

Prosecutor: Do you remember which grade you were in when you turned fourteen?

Anisa: I was in, I believe, seventh or eighth grade.

¶17 On cross-examination, the following related exchange occurred:

Counsel: Now, I would like to return to the point in time that's about the seventh grade. And I'll represent to you that seventh graders are twelve and turn thirteen typically, traditionally during their seventh grade year. So that would have been about 2011. Is that correct?

Anisa: I don't know what year it would have been.

Counsel: Okay. But you don't believe that's inaccurate, the 2011/2012 school year?

Anisa: I believe that's accurate.

¶18 Anisa also testified that she was born in December 1998 and that she began kindergarten in the fall of 2004. And Hassan testified, "Whenever I have to go to the school where she was seventh grade, sixth grade, she would be eleven years old, twelve years old."

The Timing of Mother's Disclosure to Elder Is Discussed

¶19 The prosecutor also sought to clarify the timing of Mother's disclosure to Elder in relation to Anisa's disclosure to Counselor. When referring to Mother's disclosure to Elder, Anisa said,

[Mother] had called the . . . preacher or something, or counselor, like more of a counselor for them, but he was a . . . preacher. So she has called him and she

told him what we've told her because it was me and [Sister], we told her at the same time. And then she called the counselor, the . . . preacher, and then she told what happened to us.

¶20 Then the following exchange occurred:

Prosecutor: So when you first told your mom and the preacher, counselor got involved, do you remember speaking to the police at that time?

Anisa: Yeah.

Prosecutor: Where was that?

Anisa: Where?

Prosecutor: Where did you speak to the police?

Anisa: At my high school.

Prosecutor: Okay. Was this after the meeting with the counselor?

Anisa: Yes, the counselor has called the police to speak to me.

The court: Just, which counselor are we speaking of? Are you going to clarify?

Prosecutor: Yeah, so I want to clarify. You spoke earlier about the . . . preacher, so your mom went to a . . . preacher—

Anisa: On the call.

State v. Hassan

Prosecutor: Okay. After that, or in the immediate aftermath of that, did you speak to the police?

Anisa: Yes.

Prosecutor: Where?

Anisa: At my mom's house.

Prosecutor: Was this before or after the meeting with your counselor at school?

Anisa: After.

Prosecutor: So the meeting with the counselor at school happened before?

Anisa: I'm sorry. What?

Prosecutor: The meeting with your school counselor, was it before or after the preacher became involved?

Anisa: It was before.

Prosecutor: So the meeting with the counselor at school came before?

Anisa: After.

Prosecutor: Sorry. I want to be clear. The meeting with your counselor at school, at [your high school], was that before or after the preacher became involved?

Anisa: That was after.

State v. Hassan

Prosecutor: So the preacher was involved before?

Anisa: Yes.

Prosecutor: And then how much time elapsed before the meeting with the counselor at school?

Anisa: How much time—

Prosecutor: Was it a short amount of time or a long period of time, do you remember?

Anisa: With the counselor?

Prosecutor: How much time elapsed between when the preacher became involved and the meeting with the counselor at your school?

Anisa: Long.

Prosecutor: More than a few weeks?

Anisa: Like a year later.

Anisa Uses the Phrase "Frame Him"

¶21 After discussing Anisa's 2021 report to the Pittsburgh police, the prosecutor asked Anisa, "[A]t what point did you feel that you were able to come forward and talk about what happened? Do you remember when that was?" Anisa replied, "To [Mother] and [Counselor and Elder], that was the point. But like to actually frame him and get my justice was after my third birthday party for my daughter." The following exchange then took place:

State v. Hassan

Prosecutor: And when you say the episode with the birthday party upset you, it made you angry?

Anisa: Because they will listen to him. And like he would not allow them to, like, take the car come visit me, stuff like that while I was there.

Prosecutor: At any point did you ever lie to anyone about what Mr. Hassan had done to you?

Anisa: Never. No.

Prosecutor: Have you ever fabricated anything that Mr. Hassan did to you?

Anisa: No.

The State Plays Bodycam Footage of Anisa's Police Interview at School

¶22 During Anisa's testimony, the State sought to introduce bodycam footage taken when police interviewed Anisa at her high school after she disclosed to Counselor that Hassan was sexually abusing her. The video, which is about eight and a half minutes long, depicts a private office wherein a man (believed to be Anisa's principal) sits behind a desk and Anisa sits in a chair in front of the desk. Two male police officers enter the room, one officer shakes Anisa's hand, and the officers sit off to the side of Anisa and the principal (to her left and his right). One officer begins asking Anisa questions, including whether she met with Counselor that day and whether she has concerns about the wellbeing of her siblings. Anisa does not audibly respond to the officer's questions. The officer twice says he cannot help Anisa if she will not talk to him. After the second time the officer says this, Anisa shifts her body toward the empty wall on her right and uses

her headscarf to cover the side of her face that is toward the men. The officer continues to try to get Anisa to respond, but she sits silently. A couple of minutes into the video, Anisa takes a tissue from a box on the desk and wipes at her face, which is still covered by the headscarf. Toward the end of the video, the officer leans forward and the bodycam briefly captures Anisa's leg bouncing.

¶23 Defense counsel (Counsel) objected to the video's admission under rule 403 of the Utah Rules of Evidence, arguing that it had no probative value because it was uncontested that officers came to interview Anisa after she disclosed sexual abuse to Counselor and she did not answer the officers' questions. Thus, Counsel argued, "[i]t just shows emotionality." The State responded that the video was probative of Anisa's emotional state in 2016 and would allow "the jury to understand how conflicted and how difficult the situation was for [Anisa]." The State argued that the video had further significant probative value in light of Hassan's allegation that Anisa was fabricating these claims because she was angry at him "for other reasons." The trial court agreed with the State, ruling that the video was probative to rebut Hassan's fabrication defense. The court also stated that the case itself was emotional and that the video was not "more emotional than what [the jury had] already heard." Thus, the court did not believe there was "really any prejudice at all, let alone unfair prejudice." The court admitted the video.

Witnesses Testify About the Incident Giving Rise to the Aggravated Kidnapping Charge

¶24 In addition to the incidents described above, Anisa testified regarding another incident—the one that formed the basis for the aggravated kidnapping charge. Anisa said that when she was in seventh grade, she had a boyfriend and on one occasion went to spend the night at his house but Hassan found out and brought her home. She testified that once she was home, Hassan and Mother took her upstairs to their bedroom and yelled at her. Anisa recounted that Hassan got a rope, made her sit in a "squat

position,” and tied her hands and feet together with the rope. She said, “And then he told my siblings to go get the knife to threaten to slice my throat. . . . And then when they said that and everything, I got scared and I ran downstairs.” The prosecutor asked, “When you said you ran downstairs, what did that look like?” Anisa responded, “I managed to get the rope out of my hands ‘cause it wasn’t tied very tightly, and I ran downstairs.” The prosecutor followed up, “How about the rope on your feet?” Anisa replied, “[I]t was . . . kind of still on me, but like I still, like, got out and ran downstairs.” Anisa said that “they chased [her] downstairs” and caught her, that “they stripped [her] to [her] underwear[] and . . . bra,” and that Hassan started hitting her with a belt until she “got numb.” She claimed that Hassan “ordered [her] siblings to start beating [her],” which she said they did by “repeatedly punching [her] in the face . . . and hitting [her] with the belt to the point where [her] eye got swollen and [she] couldn’t see.” She said she did not go to school “for like a week” after this incident “because [her] eyes were so swollen and [she] had a black eye” that was “big and fat.” She explained that Hassan took her to a doctor about a week after the incident because her eye was still swollen but that Hassan “told [her] to lie to the doctor and say that one of [her] siblings just elbowed [her] in the eye when [they] were playing around,” which she did. Anisa testified that the “school cop” “took pictures of [her] abuse,” and she acknowledged that social workers conducted an investigation after this incident.

¶25 Counsel asked Sister “whether there was a time when [Anisa] was in the seventh grade that there was a conflict [between Anisa, Mother, and Hassan] over a boyfriend,” and Sister said there was. Counsel also asked whether Sister remembered Anisa having a black eye; Sister said she did, but she testified that Anisa got the black eye from a fight Anisa and Sister got into. When asked if Hassan hit Anisa, causing the black eye, Sister replied, “I don’t remember that part.” She also said she did not remember whether there was an incident where Hassan threatened to cut Anisa with a knife or forced her to strip to her

underwear and had the siblings beat her. But she did recall Anisa coming to her and saying that Hassan was “punching her.” Sister also remembered that Anisa disclosed that Hassan was “touching [her] body” and “forcing [her] to do something that [she did not] want to do.”

¶26 Mother, too, testified about the incident regarding the boyfriend and about Anisa’s black eye. Regarding the boyfriend incident, she admitted that Anisa was bound with a rope, recounting, “We used the rope so we [could] keep her away from that young man.” When asked who tied Anisa up, Mother said it was Sister, explaining that Mother was pregnant at the time and Sister said she did not want Mother to lose the child or get hurt while arguing with Anisa. Mother said that Sister tied Anisa up for “a short time” and that they told Anisa to avoid the boy and focus on her schooling. But Mother did not recall any threat of a knife or Hassan telling the other children to beat Anisa. Of the black eye, she said, “That injury came from [Anisa] having a fight with [Sister].”

¶27 Detective testified that there was a Division of Child and Family Services (DCFS) report filed in 2012 that “mentioned abuse and a black eye,” though it did not mention a threat with a knife. He also said there were medical reports from 2012 about a black eye. He did not recall seeing any photographs with the reports.

Witnesses Express Confusion About a Statement Attributed to Anisa

¶28 Detective was asked about a note in the 2021 police report, which said that Anisa told police “that the stepdaughter of Mr. Hassan who was abused is now deceased.” Detective replied that this note was not his and that he “was confused by that statement.” He testified that he had spoken to Anisa himself during the investigation and that she had not said anything to him about anyone being deceased.

¶29 Anisa was also asked about this statement, through the following exchange:

State v. Hassan

Prosecutor: Do you recall making a statement to a West Valley police officer that the person making [a claim of sexual abuse] was a stepdaughter of Mr. Hassan who is now deceased? Do you recall making that statement?

Anisa: Deceased?

Prosecutor: Yes.

Anisa: What?

Prosecutor: Yes. Did you make a statement to a police officer in 2021 that the person making the [claim] was a stepdaughter who was then deceased at the time of your conversation with the police in 2021. Do you recall saying that?

Anisa: I don't recall what you're saying.

Prosecutor: Okay. Would it surprise you to know that a West Valley City police officer recorded in his report that he was confused by the statement?

Anisa: I'm confused myself. Who is deceased? You said stepdaughter who is now deceased.

Prosecutor: Yes. You didn't tell the police that?

Anisa: No.

Prosecutor: Never?

Anisa: No.

The Jury Is Instructed Not to Convict Hassan Based on Other Acts

¶30 After the close of evidence, the trial court instructed the jury. One jury instruction—Instruction 42—included this directive:

[K]eep in mind that the defendant is on trial for the crimes charged in this case, and for those crimes only. You may not convict the defendant simply because you believe he may have committed some other acts at another time.

The Jury Convicts Hassan on Three Charges and Acquits Him on the Aggravated Kidnapping Charge

¶31 During closing argument, the State indicated which incidents were tied to which charges. Specifically, the prosecutor informed the jury that count one—aggravated sexual abuse of a child—was based on Hassan touching Anisa’s vagina during the chest-hair-picking incident on his bed in the Magna house; that count two—rape of a child—was based on Hassan penetrating Anisa’s vagina with his penis in the laundry room of the first West Valley City house; that count three—object rape—was based on Hassan digitally penetrating Anisa after checking her out of high school while the pair were in the car parked next to a restaurant; and that count four—aggravated kidnapping—was based on Hassan tying Anisa up with a rope after picking her up from her boyfriend’s house. The jury convicted Hassan on the first three charges and acquitted him of aggravated kidnapping.

ISSUES AND STANDARDS OF REVIEW

¶32 Hassan now appeals, asserting four claims of ineffective assistance of counsel. “When a claim of ineffective assistance of counsel is raised for the first time on appeal, there is no lower

court ruling to review and we must decide whether the defendant was deprived of the effective assistance of counsel as a matter of law.” *State v. Reid*, 2018 UT App 146, ¶ 17, 427 P.3d 1261 (cleaned up).

¶33 Hassan also argues that the trial court abused its discretion in admitting the bodycam footage of police interviewing Anisa at her high school. “We review the trial court’s determinations regarding the admissibility of evidence under an abuse of discretion standard.” *Anderson v. Thompson*, 2008 UT App 3, ¶ 25, 176 P.3d 464.

ANALYSIS

I. Ineffective Assistance of Counsel

¶34 Hassan contends that Counsel rendered ineffective assistance in four ways: (1) by failing to make a directed verdict motion asserting that Anisa’s testimony was inherently improbable; (2) by failing to move for a directed verdict on the rape of a child charge by asserting that the evidence did not establish that Anisa was under the age of fourteen at the time of the alleged crime; (3) by not asking the court to instruct the jury that it could not use evidence that Hassan sexually abused Sister as propensity evidence in support of the object rape charge; and (4) by not demanding a jury instruction clarifying that the jury could not convict Hassan based on evidence that he sexually abused Sister. To establish ineffective assistance of counsel, a defendant must show that “counsel’s performance was deficient” and that “the deficient performance prejudiced the defense.” *Strickland v. Washington*, 466 U.S. 668, 687 (1984). Defendants “must establish both deficient performance and prejudice, and if either is lacking, the claim fails and this court need not address the other.” *State v. Bush*, 2025 UT App 87, ¶ 20, 572 P.3d 449 (cleaned up), *cert. denied*, 585 P.3d 44 (Utah 2026).

¶35 To show deficient performance, a defendant “has the burden to overcome a strong presumption that counsel’s conduct falls within the wide range of reasonable professional assistance.” *State v. Hunter*, 2021 UT 44, ¶ 68, 496 P.3d 119 (cleaned up). “Deficient performance is not determined in a vacuum; rather, it involves asking whether the strategy counsel employed was that of a reasonable, competent lawyer” *State v. Wilkes*, 2020 UT App 175, ¶ 24, 479 P.3d 1142 (cleaned up). “The ultimate question is always whether, considering all the circumstances, counsel’s acts or omissions were objectively unreasonable.” *State v. Scott*, 2020 UT 13, ¶ 36, 462 P.3d 350 (cleaned up).

¶36 To demonstrate prejudice, “[t]he burden is on the defendant to demonstrate a reasonable probability that the outcome of his or her case would have been different absent counsel’s error.” *Id.* ¶ 43. “A reasonable probability is a probability sufficient to undermine confidence in the outcome of the proceeding.” *Id.* (cleaned up).

¶37 We address each of Hassan’s claims of ineffective assistance in turn.

A. Counsel’s Failure to Move for a Directed Verdict Based on the Argument that Anisa’s Testimony Was Inherently Improbable

¶38 We first consider Hassan’s assertion that Counsel should have moved for a directed verdict based on the argument that Anisa’s testimony was inherently improbable.

¶39 “Though [a trial] court must ordinarily accept the jury’s determination of witness credibility, when the witness’s testimony is inherently improbable, the court may choose to disregard it” when reviewing the sufficiency of the evidence. *State v. Robbins*, 2009 UT 23, ¶ 16, 210 P.3d 288. “[W]itness testimony is inherently improbable and may . . . be disregarded if it is (1) physically impossible or (2) apparently false”—or in other words, “incredibly dubious.” *Id.* ¶¶ 16, 18. “There are three

hallmarks of inherently improbable testimony that courts have often considered in their analysis: material inconsistencies, patent falsehoods, and lack of corroborating evidence.” *State v. Barnes*, 2023 UT App 148, ¶ 24, 542 P.3d 108 (cleaned up). While “our supreme court has warned against inflexible reliance on these three factors” and “courts must . . . keep in mind that the proper test is, and always has been, whether reasonable minds must have entertained a reasonable doubt that the defendant committed the crime,” “courts are still allowed—and perhaps even encouraged—to examine these three factors.” *Id.* (cleaned up). We examine each factor here.

1. Material Inconsistencies

¶40 Hassan asserts that Anisa testified inconsistently “about when [Counselor] or [Elder] first became involved after she disclosed the alleged abuse.” We disagree. It is true that in the above-recited exchange between Anisa and the prosecutor discussing the timing of the disclosures to Counselor and Elder, it appears that Anisa went back and forth on which disclosure occurred first. *See supra* ¶¶ 19–20. However, from the context of the surrounding discussion, this was clearly due to a misunderstanding. Anisa said, “[Mother] had called the . . . preacher or something, or counselor, like more of a counselor for them, but he was a . . . preacher. . . . [S]he called the counselor, the . . . preacher, and then she told what happened to us.” The prosecutor then asked Anisa about “the preacher, counselor,” but his subsequent reference to the “counselor” was apparently to Counselor because he referenced a “meeting with the counselor” and there was no evidence of a meeting with Elder. The court appears to have realized that two people were being referred to as “counselor” when it asked for clarification. But then the prosecutor asked twice whether the meeting with Counselor occurred before Elder became involved, and Anisa gave conflicting answers. After the prosecutor again clarified, Anisa consistently said that the meeting with Counselor came after Elder became involved. The prosecutor then asked Anisa how

much time elapsed between the events, and she clearly did not understand the question until it was repeated a third time, eventually answering that it was “like a year.” This exchange demonstrates that Anisa had difficulty understanding what the prosecutor was asking given (1) the use of “counselor” to refer to both Counselor and Elder, (2) the complex nature of the role Elder played—including acting like a counselor, and (3) English apparently being Anisa’s second language (as evidenced by Mother and Hassan relying on interpreters to testify, the fact that Anisa was going on six years old when the family moved from Kenya to the United States, and Anisa’s obvious confusion over some words, including “elapsed”). In short, this was not a true inconsistency, let alone a material one.

¶41 Hassan also claims that Anisa’s testimony was inconsistent as to “whether [he] touched her chest during the alleged incident where she claimed she was picking his chest hair.” Anisa testified that the sexual abuse began when Hassan “start[ed] touching [her] private parts[,] as in [her] vagina and [her] chest areas.” The prosecutor asked Anisa, “When was the first time you remember something like that happening?” And she replied, “I don’t remember exactly the first time, but I remember a period of time of what he had done and that was more in Magna” The prosecutor asked what Hassan did in Magna, and Anisa began describing Hassan inserting his fingers into her vagina while she “pick[ed] his chest hair,” using language that made it sound as if such incidents happened more than once. The prosecutor followed this up with questions about the Magna house, the growing family, the chest-hair picking, where those events took place, and what clothes Anisa would wear during these incidents. The prosecutor then asked, “And so when Hassan would ask you to pick at his chest hairs, what would happen next?” Anisa responded, “He would either touch my chest or just start touching on me, either outside the clothes or my butt. He would just feel on me.” Anisa then described the specific incident recited above, *see supra* ¶ 3, saying, “I remember the bedtime incident one time.” The prosecutor asked several questions about “that time,”

including, “Do you remember his hand touching you anywhere else?” And Anisa responded negatively. Then the prosecutor asked, “On any other occasion do you remember his hand touching you anywhere else?” This time, Anisa replied, “Yes.” The prosecutor asked where, and Anisa said, “On my butt and on my vagina.” The prosecutor asked, “The time he touched you on your butt, where was that?” Anisa replied, “In the laundry room,” and she then went on to describe the laundry room incident recounted above. *See supra* ¶ 4.

¶42 Anisa did not explicitly deny that Hassan touched her “chest” after initially saying he did so. And we see no inconsistency between her saying he sometimes touched her chest and her saying he did not do so during the particular “bedtime incident” she described. However, even if there was an inconsistency here, this is the sort of detail that is routinely left to the judgment of the jury to consider while determining credibility and finding facts. “Inconsistent testimony, conflicting stories, and varying degrees of credibility are the hallmarks of a trial. The inherent improbability standard is not satisfied where the appellant raises garden-variety credibility questions, such as . . . which version of a witness’s conflicting account to believe.” *State v. Corona*, 2025 UT App 93, ¶ 28, 574 P.3d 988 (cleaned up), *cert. denied*, 574 P.3d 525 (Utah 2025). “It is the jury’s prerogative to weigh the evidence, infer the material facts from it, and apply the law stated in the jury instructions to the facts.” *Id.* (cleaned up).

¶43 Hassan also asserts inherent improbability stemming from the statement in the 2021 police report indicating that Anisa told police “the stepdaughter of Mr. Hassan who was abused is now deceased.” Detective testified that the note was not his, that he “was confused by that statement,” that he had spoken to Anisa himself during the investigation, and that she had not said anything to him about anyone being deceased. Anisa made no such statement under oath, and she expressed confusion when asked about it at trial, testifying that she did not understand the

statement and had never made such a statement. The officer who noted this in the report did not testify at trial and was therefore unable to explain it. Accordingly, this was just one more piece of information for the jury to weigh when assessing Anisa's credibility. *See id.* ¶¶ 21–22 (“While [the chief witness’s] testimony may have contained some inconsistencies, we have pointed out that . . . it would be a rare case in which defense counsel could identify no inconsistencies in the account given by the State’s main witness. . . . The inconsistencies in the evidence must, at the very least, be substantial for a witness’s testimony to be considered inherently improbable.” (cleaned up)).

¶44 Hassan further contends that Anisa’s testimony “was inconsistent because the prosecutor moved to dismiss [five] charges of sexual offenses based on [Anisa’s] trial testimony.” The State is permitted to move to dismiss charges to align with the evidence presented at trial, *see* Utah R. Crim. P. 4(d) (“The court may permit an information to be amended after the trial has commenced but before verdict if no additional or different offense is charged and the substantial rights of the defendant are not prejudiced.”), and Hassan has not argued that he was prejudiced by the dismissal of the five charges. More importantly considering that Hassan raises this point in the context of inherent improbability, Hassan does not direct us to any earlier sworn statements Anisa made that provided the grounds upon which the five additional charges were based and that contradicted her trial testimony. Therefore, Hassan has not carried his burden of persuasion on this point. *See, e.g., Pinder v. Duchesne County Sheriff*, 2020 UT 68, ¶ 36, 478 P.3d 610 (“An appellant must provide sufficient argument for ruling in its favor. To do that, the appellant’s brief must assert contentions of error that occurred in the proceedings below *and* develop a reasoned argument for why the purported errors should be reversed. An appellant who fails to adequately brief an issue will almost certainly fail to carry its burden of persuasion on appeal.” (cleaned up)).

2. Patent Falsehoods

¶45 Hassan suggests that Anisa’s testimony that she ran down the stairs during the conflict over her boyfriend was patently false because, he asserts, it was physically impossible for her to run down the stairs in light of her testimony that she was tied up with a rope. Hassan is mistaken. Anisa testified that a single rope was used to tie her hands and feet together while she sat in a “squat position.” She explained that she “managed to get the rope out of [her] hands [be]cause it wasn’t tied very tightly” and that the rope “was . . . kind of still on” her while she ran downstairs. It is plausible that a person could be ambulant in such a situation, the rope being loose enough to untie at the hands and loosened at the feet by the freeing of the hands. Therefore, this detail was not physically impossible and, thus, not patently false.

3. Lack of Corroborating Evidence

¶46 Hassan argues that Anisa’s “claims of sexual abuse are uncorroborated.” He takes issue with the lack of DNA evidence and the fact that no exam was performed by a sexual assault nurse examiner (SANE). But Anisa testified that she was not ready to report the abuse to police until years after the abuse ended, and Hassan does not explain how DNA evidence of the abuse could have been obtained then or how a SANE exam would have been useful so long after the abuse. This type of evidence is not required for a jury to convict on these charges, nor does its absence inherently detract from Anisa’s credibility.

¶47 Hassan also emphasizes that Mother did not testify to seeing the abuse during the chest-hair-picking incident despite Anisa testifying that Mother was in the same room at the time. But this is easily explainable. Anisa testified that Mother was sitting on a mattress on the floor, while the bed Hassan and Anisa were on “was very high” and that she was not sure Mother could have seen the touching.

¶48 Hassan further contends that “no witness corroborated the alleged [sexual] abuse.” While it is true that no witness testified to seeing the alleged abuse, “corroborating evidence sufficient to defeat an inherent improbability claim does not have to corroborate the witness’s account across the board, in every particular. It just has to provide a second source of evidence for at least some of the details of the witness’s story.” *State v. Corona*, 2025 UT App 93, ¶ 25, 574 P.3d 988 (cleaned up), *cert. denied*, 574 P.3d 525 (Utah 2025). Here, multiple witnesses provided evidence supporting various details of Anisa’s testimony.

¶49 Sister testified that Anisa disclosed to her that Hassan was “touching [her] body” and “forcing [her] to do something that [she did not] want to do.” Mother testified that she spoke to Elder about Hassan’s sexual abuse, which conversation occurred after Sister and Anisa together told Mother that Hassan had sexually abused them. It was undisputed that Anisa disclosed sexual abuse to Counselor and that Counselor, as a mandatory reporter, reported to police that there was a concern about safety in Anisa’s home. *See generally* Utah Code § 80-2-602(1) (requiring that if a qualifying individual “has reason to believe that a child is, or has been, the subject of abuse or neglect, . . . the person shall immediately report the suspected abuse or neglect to [DCFS] or to the nearest peace officer or law enforcement agency”). And Detective corroborated Anisa’s disclosure of the abuse to Pittsburgh police. The various witnesses’ testimony regarding Anisa and Sister’s disclosure to Mother, Anisa’s disclosures to Counselor and law enforcement, Mother’s disclosure to Elder, and Elder’s response all supported aspects of Anisa’s overall account, even if they did not directly corroborate the abuse itself. *See Corona*, 2025 UT App 93, ¶ 25; *see also State v. Crespo*, 2017 UT App 219, ¶ 31, 409 P.3d 99 (“Because other circumstantial evidence existed to corroborate [a witness’s] account of the events, the *Robbins* improbability test does not apply.”); *cf. State v. Saddler*, 2004 UT 105, ¶ 24, 104 P.3d 1265 (“In addition, [a detective] was able to verify other, more innocent details provided by the

confidential informant This corroboration of innocent details further boosts the confidential informant’s credibility.”).

¶50 Furthermore, Mother testified that she once saw Hassan coming out of Sister’s bedroom in the middle of the night, that he was “holding onto his clothes,” and that he apologized and said it would not happen again. And Sister testified that Hassan sexually abused her at night in her room multiple times, including on the night Mother saw Hassan exiting her room. While Hassan is correct that “this evidence alone cannot sustain convictions for conduct that allegedly occurred against [Anisa],” it is properly considered corroborating propensity evidence further discrediting Hassan’s inherent improbability claim as to the aggravated sexual abuse of a child and rape of a child charges (though not as to the object rape charge, *see infra* ¶ 63).

¶51 Hassan also specifically asserts that Anisa’s testimony underlying the aggravated kidnapping charge was uncorroborated by other witnesses or by photos of the black eye. As an initial matter, we note that Hassan has pointed to no case law supporting an interpretation of our inherent improbability standard to require corroboration of each charged offense. In fact, the opposite is true: “our inherent-improbability case law does not require evidence corroborating the specific-offense conduct or elements of the offense.” *State v. Jok*, 2019 UT App 138, ¶ 25, 449 P.3d 610, *aff’d*, 2021 UT 35, 493 P.3d 665. Therefore, the corroborating evidence listed above is sufficient to defeat Hassan’s inherent improbability claim. And we further note that on this charge the jury acquitted Hassan, performing its job of weighing each charge separately and concluding that it could not find beyond a reasonable doubt that Hassan tied Anisa up with a rope, which is consistent with Mother’s testimony that it was Sister who tied up Anisa because Sister was concerned about Mother’s pregnancy.

¶52 But at any rate, there was evidence corroborating that both the boyfriend incident and the black eye injury occurred. Mother

and Sister each recalled there being a conflict concerning a boyfriend, and Mother admitted that Anisa had been tied up with a rope. Additionally, Mother and Sister agreed that Anisa had a black eye, though they linked the injury to a scuffle with Sister. In other words, Mother's and Sister's testimony corroborated basic facts regarding the incident underlying the kidnapping charge: that there was a family conflict regarding Anisa's boyfriend, that Anisa was tied up during this conflict, and that at some point Anisa got a black eye. Detective also testified that there was a DCFS report that "mentioned abuse and a black eye," further corroborating these events. And while Detective did not recall seeing photographs of the black eye, that does not mean no photos were taken some nine years earlier by someone whom Anisa believed was a "school cop." Thus, Detective's information provided "a second source of evidence for at least some of the details of the witness's story." *Corona*, 2025 UT App 93, ¶ 25 (cleaned up).

¶53 Again, disagreements between the witnesses as to the details of any particular incident—including, as regards the boyfriend incident and as emphasized by Hassan, whether a knife was involved, whether Anisa was stripped down to her underwear, whether Hassan and the siblings beat her, and who tied her up—are the types of disagreements that are at the core of a jury's factfinding role. *See id.* ¶ 28 ("The inherent improbability standard is not satisfied where the appellant raises garden-variety credibility questions, such as which witness to believe" (cleaned up)); *see also State v. Prater*, 2017 UT 13, ¶ 39, 392 P.3d 398 ("The question of which version of [multiple witnesses'] stories was more credible is the type of question we routinely require juries to answer."). Rather, "for [Hassan] to succeed on this element of inherent improbability, he must show that there was a complete lack of any additional circumstantial evidence supporting the verdict. He has failed to do so." *See Jok*, 2019 UT App 138, ¶ 25.

¶54 Finally, Hassan asserts that—beyond the three hallmarks associated with inherent improbability—“reasonable minds must have entertained a reasonable doubt that [Hassan] committed the crimes of which he was convicted,” *see id.* ¶ 19 (cleaned up), because Anisa testified that she “frame[d]” Hassan. But reasonable minds could have concluded that Anisa used this word mistakenly. As noted above, Anisa apparently spoke English as a second language and sometimes had difficulty understanding and answering questions posed to her. For example, at one point, Anisa asked the prosecutor what he meant by “precipitate,” and she seemed to struggle to understand other words, including “elapsed.”

¶55 Moreover, the context surrounding this statement supports that the word was used in misunderstanding. Anisa’s comment about “fram[ing]” Hassan came in response to the prosecutor’s question, “[A]t what point did you feel that you were able to come forward and talk about what happened? Do you remember when that was?” Anisa replied that she disclosed the abuse to Mother and Counselor in order to alert them to the situation, and then she said, “But like to actually frame him and get my justice was after my third birthday party for my daughter.” After this, Anisa reiterated that her inability to see Mother and her siblings for her daughter’s birthday made her angry. But this does not mean she fabricated the abuse to get back at Hassan for something else. Indeed, she said she wanted to “get [her] justice,” which is reasonably interpreted as referring to justice for enduring years of abuse and for Hassan continuing to exert indirect control over her by refusing to allow Mother and the siblings to visit her. The prosecutor then asked Anisa multiple times if she had “ever lie[d] to anyone about what Mr. Hassan had done to [her],” and she said, “Never. No.” Based on the language barriers and context, reasonable jurors could interpret Anisa’s use of “frame” as meaning “expose” and understand that Anisa did not mean that her testimony was fabricated.

¶56 Ultimately, we do not agree that reasonable jurors must have entertained reasonable doubts about Hassan’s guilt, and in our view reasonable counsel would have understood as much. Counsel did not perform deficiently in forgoing a directed verdict motion based on inherent improbability, because Counsel could have reasonably expected the court to deny the motion. *See State v. Corona*, 2025 UT App 93, ¶ 29, 574 P.3d 988 (“There was no inherent improbability here, and thus, counsel did not perform deficiently because reasonable counsel could have concluded that a *Robbins* motion and a directed verdict motion would have been futile.” (cleaned up)), *cert. denied*, 574 P.3d 525 (Utah 2025). Therefore, Hassan’s first claim of ineffective assistance is unavailing.

B. Counsel’s Failure to Move for a Directed Verdict on the Rape of a Child Charge

¶57 Second, Hassan argues that Counsel provided ineffective assistance by failing to move for a directed verdict on the rape of a child charge. Again, we disagree.

¶58 “A defendant may move for a directed verdict at the close of the [State’s] case-in-chief by pointing to the [State’s] failure to adduce evidence in support of an essential element of one of the [State’s] claims.” *Salo v. Tyler*, 2018 UT 7, ¶ 30, 417 P.3d 581. “To succeed on a directed verdict motion, [Hassan would have been] required to show that, when viewed in the light most favorable to the State, *no evidence existed* from which a reasonable jury could find beyond a reasonable doubt that he committed the crime.” *See State v. Spencer*, 2025 UT App 171, ¶ 23, 582 P.3d 847 (cleaned up), *cert. denied*, 585 P.3d 46 (Utah 2026).

¶59 Here, Hassan contends that a motion for a directed verdict on the rape of a child charge would have been successful because conviction for rape of a child requires that the victim be “younger than 14 years old,” Utah Code § 76-5-402.1(1)(a)(i), (2), and that the evidence could not prove beyond a reasonable doubt that

Anisa was under the age of fourteen at the time of the laundry room incident.⁶ As recited above, Anisa testified that the laundry room incident happened when she was in “about seventh grade” and that she did not recall how old she was at the time. Admittedly, these statements are ambiguous as to her age at the time of this incident. However, that is not all she said. On cross-examination, Counsel questioned Anisa about “the point in time that’s about the seventh grade,” an apparent reference to the time when the laundry room incident occurred. He said, “I’ll represent to you that seventh graders are twelve and turn thirteen typically, traditionally during their seventh grade year. So that would have been about 2011. Is that correct?” Anisa initially replied, “I don’t know what year it would have been.” However, Counsel asked the follow-up question, “But you don’t believe that’s inaccurate, the 2011/2012 school year?” to which Anisa answered, “I believe that’s accurate.” This testimony confirming that it was accurate to say that the point in time when the laundry room incident occurred was during the 2011/2012 school year was sufficient to support a finding that the laundry room incident happened between August 2011 and May 2012. Anisa also testified that she was born in December 1998 and that she began kindergarten in the fall of 2004. And Hassan himself testified, “Whenever I have to go to the school where she was seventh grade, sixth grade, she would be eleven years old, twelve years old.” Based on all of this evidence, the jury could reasonably infer that Anisa began seventh grade in 2011 and that she turned thirteen in December of that year—or, in other words, that Anisa was under fourteen

6. Hassan asserts that “the rape of a child charge could have been based on two alleged incidents—a laundry room incident and a master bedroom incident.” Because Anisa testified that both of these incidents occurred when she was in “about seventh grade” and the prosecutor informed the jury that the rape of a child charge was based on the laundry room incident, we limit our analysis to that incident.

years of age throughout the entire time between August 2011 and May 2012.

¶60 The circumstances here are not unlike those in *State v. Spencer*, 2025 UT App 171, 582 P.3d 847, *cert. denied*, 585 P.3d 46 (Utah 2026). There, the defendant was also charged with rape of a child and the victim did not directly testify regarding her age at the time of the rape. *Id.* ¶¶ 7, 9. But there, the State did not present evidence of the victim’s birthday. *Id.* ¶ 24. Nevertheless, the victim testified (1) of her age at trial; (2) that she did not know the season when the rape occurred but it was “cold”; (3) that she went to the doctor in May, which was “a couple of months” after the rape; and (4) that the rape occurred before her birthday in the year in question, which was around the time of the doctor appointment. *Id.* ¶ 9. We stated that “viewed in the light most favorable to the State, the evidence did allow a reasonable jury to find beyond a reasonable doubt that [the victim] was 13 when the sex occurred and thus that [the defendant] was guilty of rape of a child.” *Id.* ¶ 24. This conclusion applies here, too. The jury received evidence upon which it could infer—without speculating—that Anisa was under fourteen at the time of the laundry room incident, even if Anisa did not testify directly to her age at the time. This included testimony of Anisa’s birthdate and date of kindergarten entry, her agreement that the incident occurred during the 2011/2012 school year, and Hassan’s acknowledgment that she was eleven and twelve in sixth and seventh grade. *See Salt Lake City v. Carrera*, 2015 UT 73, ¶ 12, 358 P.3d 1067 (“In short, the difference between an inference and speculation depends on whether the underlying facts support the conclusion. A jury draws a reasonable inference if there is an evidentiary foundation to draw and support the conclusion. In the case of speculation, however, there is no underlying evidence to support the conclusion.”).

¶61 Because there was evidence upon which the jury could find Hassan guilty of rape of a child, the court was not likely to grant a motion for a directed verdict. Therefore, Counsel did not

perform deficiently for failing to move for a directed verdict on this charge.

C. Counsel's Failure to Request an Instruction Against Using Evidence of Sister's Abuse on the Object Rape Charge

¶62 Third, Hassan contends that Counsel provided ineffective assistance by failing to request a jury instruction explaining that the jury could not use evidence that Hassan sexually abused Sister as propensity evidence in support of the object rape charge.

¶63 Hassan is correct that the jury should have been instructed that evidence of Sister's abuse could not be considered as propensity evidence on this charge. Rule 404(c) of the Utah Rules of Evidence permits the admission of "other acts of child molestation" "prov[ing] a propensity to commit the crime charged" when "a defendant is accused of child molestation." Utah R. Evid. 404(c)(2)(A). "Child molestation" is defined as a sexual offense "committed in relation to a child under the age of 14." *Id.* R. 404(c)(1). Hassan was charged with object rape for digitally penetrating Anisa's vagina while the pair were in the car and parked next to a restaurant after Hassan checked Anisa out of high school. Because Anisa was in her late teens at the time, this charge was not for object rape of a child and was not a charge of child molestation. *Compare* Utah Code § 76-5-402.2 (object rape), *with id.* § 76-5-402.3 (object rape of a child). Accordingly, the jury should have been instructed that evidence of Sister's abuse could not be used—for propensity purposes—in reaching a verdict on this charge, even if it could be so used on two of the other charges.

¶64 But even assuming (without deciding) that Counsel performed deficiently by not requesting such an instruction, Hassan was not prejudiced by this deficiency. Again, to demonstrate prejudice, "the burden is on the defendant to demonstrate a reasonable probability that the outcome of his or her case would have been different absent counsel's error." *State v. Scott*, 2020 UT 13, ¶ 43, 462 P.3d 350 (cleaned up). Here, we are

not convinced that there was a reasonable likelihood of acquittal on this charge if the jury had been properly instructed. For starters, we disagree with Hassan’s characterization that Anisa’s “credibility was incredibly dubious at trial.” As discussed above, multiple witnesses corroborated various aspects of Anisa’s testimony. *See supra* ¶¶ 49–50, 52. And the verdict on the child rape and aggravated sexual abuse of a child charges confirms that the jury did not view Anisa’s testimony as wholly incredible.

¶65 As to the object rape charge specifically, Anisa provided her first-hand account of the relevant incident at trial, even identifying the restaurant Hassan parked next to. Additionally, Sister testified that Anisa disclosed to her that Hassan was “touching [her] body” and “forcing [her] to do something that [she did not] want to do.” Thus, even if the jury did not factor Sister’s abuse into its deliberations on this charge, Sister’s testimony would have corroborated Anisa’s, and any credibility Sister had would have reinforced Anisa’s credibility.

¶66 Anisa’s disclosure to Counselor further corroborated the specific object rape charge. Counselor testified that during a meeting about Anisa’s performance in high school, Anisa became “really upset,” was crying, and “disclosed some information . . . [about] something that happened at home,” which prompted Counselor to report to the police. Anisa testified that what she disclosed to Counselor was, “[H]e sexually abuses me” Notably, this testimony refers to abuse happening in the present tense, and the only abuse Anisa testified occurred during high school was the inappropriate touching in the car on days when Hassan would check her out of school. Additionally, the questions and remarks of the officers interviewing Anisa after her disclosure to Counselor—which the jury heard by way of the bodycam footage—chiefly focused on whether the children in Anisa’s family were currently safe at home, suggesting that the officers had likewise been informed of abuse that was ongoing at the time of the alleged object rape. For these reasons, Anisa’s disclosure to

Counselor most strongly corroborated the abuse that formed the basis of the object rape charge.

¶67 Moreover, to evaluate prejudice under the applicable standard for ineffective assistance of counsel, “we assess counterfactual scenarios—that is, what would have happened but for the [deficient performance].” *State v. Bell*, 2025 UT App 169, ¶ 23, 581 P.3d 1030 (cleaned up). “The counterfactual analysis requires us to consider a hypothetical—an alternative universe in which the trial went off without the error.” *Id.* (cleaned up). The applicable hypothetical scenario here is one where the jury was instructed that when considering the charges of aggravated sexual abuse of a child and rape of a child, it could use for propensity purposes the evidence that Hassan sexually abused Sister but that it could not use that evidence when considering the charge of object rape (and, for that matter, the kidnapping charge). Given the non-propensity evidence bearing directly on the object rape charge and the jury’s willingness to credit Anisa’s credibility on the other sexual abuse charges, we believe there is no reasonable likelihood of a more favorable outcome for Hassan on the object rape charge in this hypothetical scenario.

¶68 Given the foregoing, we are not persuaded that the jury, if instructed not to consider evidence of Sister’s abuse on the object rape charge, would have been reasonably likely to acquit Hassan on this charge. Because Hassan was not prejudiced by any deficient performance on this point, his claim of ineffective assistance fails.

D. Counsel’s Failure to Request an Instruction Forbidding Conviction Based Solely on Evidence of Sister’s Abuse

¶69 Hassan’s final ineffective assistance of counsel claim faults Counsel for not requesting a jury instruction specifically stating that the jury could not convict Hassan based on evidence that he sexually abused Sister. Hassan argues that Instruction 42, recited in relevant part above, *see supra* ¶ 30, “inadequately ‘instructed

the jury about the applicable law’ because it did not directly address the evidence that Hassan allegedly abused Sister.” (Quoting *State v. Liti*, 2015 UT App 186, ¶ 12, 355 P.3d 1078.)

¶70 “A party is not entitled to have the jury instructed with any particular wording. So long as they correctly state the law, the precise wording and specificity of jury instructions is left to the sound discretion of the trial court.” *State v. Hunt*, 2025 UT 54, ¶ 60, 582 P.3d 772 (cleaned up).

¶71 Instruction 42 informed the jury that Hassan was on trial only for the charged crimes and that the jury could “not convict [Hassan] simply because [it] believe[d] he may have committed some other acts at another time.” This correctly stated the law. The allegations regarding Hassan’s abuse of Sister clearly fell within the term “some other acts at another time,” so the jury was properly instructed that it could not convict based on what he was alleged to have done to Sister.⁷ Because Counsel could reasonably

7. Hassan specifically asserts that Counsel should have sought an instruction similar to the Model Utah Jury Instruction for evidence admitted under rule 404(b) of the Utah Rules of Evidence. See Model Utah Jury Instructions 2d CR411 (2019), <https://legacy.utcourts.gov/muji/?cat=2> [<https://perma.cc/EPK9-Z97D>]. But the evidence of Hassan’s abuse of Sister was admitted under rule 404(c) for the aggravated sexual abuse of a child and rape of a child charges. We have already acknowledged that Hassan was entitled to an instruction indicating that this evidence could not be used for propensity purposes in connection with the object rape charge, though we concluded Hassan was not prejudiced by this error. This error was based on a missing instruction and did not turn on the text of the included Instruction 42. Hassan’s desired language from the model instruction (which limits evidence to use for non-propensity purposes) would not have been appropriate to add to Instruction 42 because the evidence in question was properly available as propensity evidence on two of the charges.

believe that the court would deny a request to modify the accurate instruction, Counsel did not perform deficiently in failing to make such an effort. Additionally, Counsel could have reasonably decided not to highlight Sister's testimony by insisting on a jury instruction that called attention to it specifically, rather than an instruction that referred more generally to "some other acts at another time."

¶72 Accordingly, Hassan has not proved that he received ineffective assistance of counsel in this regard.

II. Admission of the Bodycam Footage

¶73 Hassan has also argued that the trial court abused its discretion by admitting the bodycam footage of police interviewing Anisa at her high school. We disagree.

¶74 "The trial court is afforded broad discretion to admit or exclude evidence, and we will disturb its ruling only for abuse of discretion." *Lawrence v. MountainStar Healthcare*, 2014 UT App 40, ¶ 16, 320 P.3d 1037 (cleaned up). "Likewise, trial courts have wide discretion in determining relevance, probative value, and prejudice. Therefore, we will not reverse the trial court's ruling on evidentiary issues unless it is manifest that the trial court so abused its discretion that there is a likelihood that injustice resulted." *State v. Tarrats*, 2005 UT 50, ¶ 16, 122 P.3d 581 (cleaned up).

¶75 Hassan contends that "[t]he trial court abused its discretion in admitting the video because it was irrelevant and, if it had any probative value, its probative value was substantially outweighed by the danger of unfair prejudice." Not so.

¶76 "Relevance is a very low bar for the admission of evidence." *State v. Swearingen*, 2023 UT App 155, ¶ 11, 542 P.3d 123 (cleaned up). "Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in determining the

action.” Utah R. Evid. 401. Here, the bodycam footage was relevant to whether Hassan committed the abuse Anisa alleged because it showed Anisa’s demeanor soon after she disclosed to Counselor that Hassan was abusing her. It also provided context for why she did not tell the officers about the abuse. Additionally, it was relevant because Hassan argued that Anisa had fabricated the abuse.

¶77 Under rule 403 of the Utah Rules of Evidence, “[t]he court may exclude relevant evidence if its probative value is substantially outweighed by a danger of . . . unfair prejudice.” “The type of prejudicial evidence that calls for exclusion is evidence that creates an undue tendency to suggest decision on an improper basis, commonly but not necessarily an emotional one.” *Anderson-Wallace v. Rusk*, 2021 UT App 10, ¶ 23, 482 P.3d 822 (cleaned up). Hassan asserts that this video satisfied this standard. But like the trial court, we deem the video to be less emotional than much of the other evidence presented in this case. The jury heard evidence that Hassan sexually abused Anisa many times over the course of many years, including by raping her and repeatedly digitally penetrating her. This behavior was likely to evoke emotion in jurors—emotion that was a natural reaction to an adult sexually abusing a child. The video does not depict Anisa sobbing, vocalizing emotionally, or otherwise being distraught. Rather, she merely fails to audibly respond to officers, turns away from them, and hides her face, while her leg bounces under her chair. While her use of the tissue suggests that she is crying, that much is not visible. We are simply unconvinced that this video had any chance of pushing the jury toward a conviction based on an improper emotional response, particularly in light of the inherently emotional nature of such a case. Therefore, the court properly determined that rule 403’s prejudice bar was not triggered, and it did not abuse its discretion in admitting the video.

CONCLUSION

¶78 Hassan has not demonstrated that he received ineffective assistance of counsel or that the trial court abused its discretion in admitting the bodycam footage. We affirm.
