NO. 14-24-00801-CR

IN THE COURT OF APPEALS
FOR THE
FOURTEENTH SUPREME JUDICIAL DISTRICT OF TEXAS
AT HOUSTON

NO. 2024-157-C2

IN COUNTY COURT AT LAW NO. 2
OF MCLENNAN COUNTY, TEXAS

JORGE ALBERTO SALAZAR,
APPELLANT

V.

STATE OF TEXAS,
APPELLEE

APPELLANT'S BRIEF

ORAL ARGUMENT REQUESTED

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TABLE OF CONTENTS

PAGE

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INDEX OF AUTHORITIES

CASES **PAGE**

STATUTES AND CONSTITUTIONS **PAGE**

RULES **PAGE**

TO THE HONORABLE JUDGES OF SAID COURT:

COMES NOW, Jorge Alberto Salazar, Appellant in this cause, by and through his Attorney and files this, his brief on original appeal.

STATEMENT OF THE NATURE OF THE CASE

Appellant was charged by indictment on January 18, 2024, with assault family violence strangulation (Count I), unlawful restraint (Count II), and assault family violence (Count III). (C.R. 8-9) On September 16, 2024, the State waived Count I and Count II, and proceeded to trial on Count III. (R.R. II, p. 4) Appellant entered a plea of not guilty to Count III as alleged in the indictment and began his jury trial. (R.R. IV, p. 6)

On September 16, 2024, after hearing the evidence and argument from both parties, the jury found Appellant guilty of assault as charged in the indictment. (R.R. VI, p. 98; C.R. 144) On September 16, 2024, after hearing evidence and argument during the punishment phase of Appellant's trial, the judge assessed Appellant's punishment at confinement in the county jail at 300 days. No fine was assessed. (R.R. VII, p. 6; C.R. 147)

The trial court's certification of Appellant's right to appeal was signed and filed on September 18, 2024. (C.R. 150) Appellant filed a timely notice of appeal on October 1, 2024. (C.R. 151) A motion for new trial was also filed on October 1,

2024. (C.R. 153) The trial court denied the motion for new trial after a hearing on November 14, 2024. (C.R. 172)

STATEMENT OF THE POINTS OF ERROR

POINT OF ERROR NUMBER ONE

THE TRIAL COURT ERRED IN DENYING AN EFFECTIVE CROSS-EXAMINATION OF THE COMPLAINING WITNESS REGARDING THE JAIL TEXT MESSAGES.

POINT OF ERROR NUMBER TWO

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING URIEL MEDINA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

POINT OF ERROR NUMBER THREE

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING NOE MEDINA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

POINT OF ERROR NUMBER FOUR

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING MARIA MUNGUIA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

STATEMENT OF FACTS

Appellant was charged with assault family violence. Count III of the indictment alleged that:

> "**Jorge Alberto Salazar**, in the County of McLennan and State aforesaid on or about the **23rd day of October, 2023,** did then and there intentionally, knowingly, and recklessly cause bodily injury to Emileigh Muniz, a person with whom the Defendant has or has had a dating relationship, as described by section 71.0021(b) of the Texas Family Code, by kicking and/or stomping on Emileigh Muniz and/or punching Emileigh Muniz." (C.R. 9)

October 17, 2023

Emileigh Muniz, the complaining witness, testified that on October 17, 2023, Appellant came to Muniz's apartment to pick up their baby, Lazary. She stated that she and Appellant were no longer together, and he was mad that she had slept with someone else. When he saw her phone, he grew upset and pushed her. "I was fighting back, kicking him, punching him, and he punched me a few times, and after a while… I pushed him off and he stopped." (R.R. V, pp. 55-56)

After the alleged assault, rather than telling people that Appellant had assaulted her, Muniz told multiple people that she had been beaten up by two females. She told the story to her co-worker, the staff at the hospital, and her mother. (R.R. V, p. 61) Muniz's manager, Alexis Chavez, testified that Muniz was late for

work on the day she told her about being assaulted. When Muniz arrived, Chavez testified Muniz was crying and stated that she was jumped by two black girls when she was taking the trash out. (R.R. IV, p. 15) Muniz also told Chavez the two girls came "out of nowhere" and "started [to] beat me up." (R.R. IV, p. 16) Chavez testified Muniz had bruises on her arm, knots on her face and behind her ears, and scratches on her back. (R.R. IV, pp. 15-16) Chavez stated she called her own mother to take Muniz to the hospital. (R.R. IV, p. 22) The hospital records, which were admitted into evidence as State's Exhibit 23, reflect the following:

> Emileigh Muniz is a 20 y.o. female patient presenting to the ED with c/o assault that occurred around 1600 today. Pt reports that she was jumped by two girls that were older and bigger than her, and states that they kicked, stomped, and punched her in the head. (R.R. VIII, p. 33)

Muniz told her mother about being assaulted by the girls and texted[1], "I know they were making fun of me." (R.R. V, p. 97) In response, her mother texted that they were "looking and looking for these [N-words]." (R.R. VIII, p. 117) Muniz's mother also stated she can't stop and "I want to kill them." (R.R. V, p. 98) Muniz texted back "yeah go ahead." (R.R. VIII, p. 117).

In court, Muniz testified that the story of getting beat up by females "was just an agreement" between her and Appellant. (R.R. V, p. 61) The text messages

[1] The State and Appellant's trial counsel used two versions of similar text messages. The one version was presented to the police by Muniz. The other version was provided by Appellant and contained text messages that had been deleted by Muniz. (R.R. V, p. 115)

themselves seemed to contradict Muniz's testimony because a review of the text messages showed that multiple times during their text conversations, Appellant did not seem to be aware of Muniz's version of the story, much less the assault. When Muniz texted Appellant and said that "I gotta go to hospital" and "my nose is broke," Appellant texted "why." (R.R. VIII, p. 112)

Later in the conversation, Appellant seemed to believe the story that Muniz had, in fact, been beaten up by two females. Appellant texted that "wish I couldve went to pick up lazary earlier, I had a feeling to head to your aparment earlier too man," indicating that he might have prevented the fight had he been home earlier. In response, Muniz stated "my mom knows bc Alexis and they finna search for them bitches." After telling Muniz he was praying for her, Appellant asked if her mother was looking "for emhoes?" Appellant then texted "damn of only someone lived next to you so they could've seen in the back to stop it" and "my dumb ass should've had went earlier." In response, Muniz texted "u were at work it's fine." Appellant texted "I hate fat hoes always tryna fight." (R.R. VIII, p. 113-114)

Muniz texted Appellant and said that her mother believed Appellant abused her, and Appellant texted "why would I do that to u." Muniz responded with "yeah." He also stated, "tell her ill never do tha to my baby mom wtf." (R.R. VIII, p. 115) A few messages later, Muniz stated that "my mom said she's gonna text u" and "just go along and act pissed." (R.R. VIII, p. 87) When Appellant asked about what,

Muniz replied “about the fat bitches I’m sure.” Again, Appellant asked “go along with what.” Muniz replied “no don’t get along with her just go along with the situation. That’s all needs to be said.” (R.R. VIII, pp. 87-88)

Later in the conversation, Appellant texted Muniz “you’re not ever fighting again,” and Muniz testified that she believed he meant she is not fighting the girls again. (R.R. V, pp. 103-104) Appellant and Muniz later exchanged texts when Muniz was discharged from the hospital and drove to his house to pick up Lazary. Appellant stated that he would bring her out when Muniz pulled up, and she texted “here.” (R.R. VIII, p. 121)

After Muniz picked up Lazary, she continued a text conversation with Appellant. She asked Appellant “so what are your plans now” and he replied, “nothing to do w you.” (R.R. VIII, p. 96; R.R. V, p. 106) In response, Muniz texted that “my life is over might as well do it myself.” (R.R. VIII, p. 97) Muniz admitted she was talking about killing herself. Muniz stated Appellant did not respond or seemed concerned with her suicide threat. (R.R. V, pp. 106-107) She also stated Appellant still wanted nothing to do with her, and he was not paying attention to her. (R.R. V, p. 109) At some point, Muniz asked, “so what u gon do to me then” and Appellant replied, “nothing bro damn.” (R.R. VIII, p. 98) Appellant’s last text message to Muniz on October 17th was “leave me alone, please. I don’t want to think about you.” (R.R. V, p. 109)

October 18, 2023

The next day, Muniz texted Appellant that she had received a call that "they looked more into my CAT scan because of how bad I looked and I have a bleeding in my brain. I'm going to die, 100 percent." (R.R. V, p. 110) She then texted Appellant "pls answer" a couple of times. (R.R. VIII, pp. 99-100) A few hours later, Appellant texted Muniz "hey you ok?" In response, Muniz stated she was "not ok, never will be, my left ear I can't hear." During cross-examination in court, Muniz admitted that there was no brain bleed, and she just wanted Appellant to pay attention to her. (R.R. VIII, pp. 101)

Muniz asked Appellant later in the afternoon if he wanted Lazary. (R.R. XIII, p. 103) But Appellant was at his friend's house. Muniz kept insisting that she wanted to see him, and he stated a "little bit later." Muniz made another suicidal comment, texting "at this point, I don't care anymore. I'm going to die anyways." Later, Appellant and Muniz went to a garage sale with Lazary, and then the three of them went to Appellant's mother's house. (R.R. V, pp. 120-123, 129)

After they left Appellant's mother's house, Muniz stated they had a conversation about the family. She stated she wanted time, and Appellant told her that he just wanted to marry her. Muniz testified that Appellant cheated on her for two years, and she was mad at him. (R.R. V, pp. 130-131) Appellant had also sent Muniz a text that night asking her to "please stop doing any other drug for now."

(R.R. VIII, p. 125) Muniz admitted that she would smoke weed around the baby. She replied "okay" and "like it matters anymore" because she was feeling suicidal at that point. Muniz stated Appellant called her several times that night, but she refused to answer her phone. (R.R. V, pp. 133-134) Appellant's last text of the night was "Emileigh wha do yu mean why u not answering?" (R.R. VIII, p. 106) Muniz did not respond to him that night.

October 19, 2023

The next morning, Appellant texted Muniz and said that he wanted to see Lazary. (R.R. VIII, p. 106) After Muniz sent a picture to him, she stopped responding to Appellant's text messages about seeing their daughter. (R.R. V, pp. 131-132). Muniz testified that Appellant kept trying to call her because he wanted to see Lazary, and he did not understand why she was mad at him. Muniz gave Appellant the address for her friend, Alexis, indicating that she was at Alexis's residence, which was a lie. (R.R. V, pp. 134-135) Muniz admitted that not allowing Appellant to see his baby was a way to hurt him. (R.R. V, pp. 138-139)

Muniz testified that Appellant "was a really good father to our baby" and he was very attached to her. If he felt like somebody was keeping him away from the baby, she stated that Appellant would act crazy and "say a bunch of stuff that never happened." (R.R. V, p. 132) Muniz stated she kept Lazary even though she knew it was going to upset Appellant, and it did. He sent text messages to her about getting

the baby, and she started blaming him for the assault in the texts. (R.R. VIII, p. 128)

Appellant stated he wanted to get Lazary now "or is gon get way worse." (R.R. VIII, p. 128) He also stated she was going to regret it. (R.R. VIII, p. 129) He stated she lied again, and he hated her. Appellant also figured out that Muniz was trying to set him up and send him back to jail (R.R. VIII, p. 130) Later, Appellant texted Muniz and told him, "I just wanna see my baby everyday im sorry for being rude." (R.R. VIII, p. 135)

At some point on October 19th, Muniz told her mother that Appellant was the one who assaulted her. Her stepfather called the police who came to their house. (R.R. V, p. 66) In addition to telling the police about the assault, Muniz told the police that Appellant unlawfully restrained her on October 18th. She claimed it lasted about four to five hours, and she was begging Appellant to leave her alone. She also claimed that he was verbally abusive and told her that she was his no matter what. (R.R. V, pp. 123-125)

Waco Police Department Officer Robert Bruce testified that he came to the house on October 19th and observed visible injuries on Muniz. (R.R. V, pp. 7-13) He stated her injuries appeared to have been caused within the last few days. Bruce testified that Muniz told him she felt like her life was in danger and Appellant would kill her. (R.R. V, pp. 16-17) Bruce also testified that Muniz told him she lied to the hospital staff because she was afraid for her life. He stated that it was not his job to

determine if she lied to the hospital staff and was lying to him. (R.R. V, p. 20) Muniz told Bruce that Appellant had strangled her and stomped on her with his steel-toed boot multiple times. (R.R. V, p. 25, 27) Muniz also told Bruce that she had knots on her head, but he did not see any. (R.R. V, p. 29) Bruce confirmed that Muniz also told him the story about the unlawful restraint on October 18th. (R.R. V, p. 34)

Muniz testified in court that contrary to what she told police, Appellant did not strangle her, stomp on her head, or stomp on her face. She also admitted that she did not have any welts on her head. (R.R. V, p. 152-154) Muniz testified that fighting "was a both of us kind of thing." (R.R. V, p. 160) Muniz also admitted in court that she lied about the unlawful restraint.

> Q. [Appellant's trial counsel] Do you realize that Jorge was arrested for that?
> A. [Muniz] Yes.
> Q. He was charged with a criminal offense for that?
> A. Yes.
> Q. That didn't happen, did it?
> A. No.
> Q. None of it happened, right?
> A. No.
> Q. It was a complete lie about the unlawful restraint?
> A. Yes. (R.R. V, p. 126)

In addition to the assault and unlawful restraint, Appellant was also arrested for terroristic threat for threatening to kill Muniz. But Muniz testified that it did not happen the way she and her parents said. She admitted to exaggerating things and "being a little dramatic." Muniz also admitted Appellant did not threaten to kill her.

(R.R. V, p. 146-148) In addition, Muniz told the jury that she had previously told Appellant's trial counsel that "it was all lies" and "everything was a lie." (R.R. V, pp. 158, 205)

Jail Messages

Muniz also lied to the jury about communicating with Appellant after his arrest. On cross-examination, she testified that she had not spoken to Appellant over video calls or text messages while he was in jail. When Appellant's counsel told Muniz that she had hundreds of pages of text messages between the two of them, Muniz admitted that she had lied to the jury and in fact she had spoken to Appellant while he was in jail. (R.R. V, pp. 162-163) Appellant's trial counsel tried to cross-examine Muniz on some of her text messages to Appellant regarding the pressure she felt from the State to testify, the words that she felt the State was putting in her mouth, a statement where she told Appellant he was innocent, multiple statements where Muniz apologized for her actions, and multiple statements where she told Appellant she wanted to be with him. (R.R. VIII, pp. 146-147) The trial court denied Appellant's attempts to cross-examine Muniz about the text messages. Appellant offered Defense Exhibit 3 into evidence, which includes the jail text messages, and preserved the error. (R.R. V, p. 177)

Defense Witnesses

The trial court also denied Appellant's efforts to present witnesses who could

testify that they had seen Muniz being violent toward Appellant. Counsel argued their testimony would show the nature of the relationship and the credibility of Muniz, but the trial court rejected those arguments. (R.R. VI, pp. 14-23)

Dynamics of Family Violence

The State used Muniz's propensity to lie as an example of the dynamics of family violence. Waco Police Detective Erin McCullough testified it was "common" for family violence victims to make up a story to tell friends and family about what happened to them. (R.R. V, p. 231) She stated the less power and control seen in the relationship, "the more likely that the victim is to make a report and be factual with what they're telling law enforcement and other authorities." She also described an abuser controlling a victim through "manipulation and just exerting that power and control over the relationship." (R.R. V, pp. 227-228, 233)

McCullough acknowledged people can say really ugly things to each other, but it's not necessarily consistent with family violence. McCullough also stated it was important to know the whole relationship. She acknowledged that occasionally the wrong person was arrested. McCullough also acknowledged that there could be cases where the victim keeps changing her story, but the police believe she was abused anyway. (R.R. V, p. 255-259)

SUMMARY OF THE ARGUMENTS

In his first point of error, Appellant argues that the trial court erred in denying a cross-examination of the complaining witness regarding her text messages to Appellant at jail. The complaining witness had sent text messages to Appellant regarding the pressure she felt from the State to testify, her fear that the State could put her in jail, and the words she felt the State was putting in her mouth. The complaining witness had also texted Appellant that he was innocent and apologized for her actions. In addition, she had sent text messages saying she wanted to be with Appellant. In denying the opportunity to the defense to cross-examine the complaining witness about these messages, the trial court abused its discretion and violated Appellant's right to cross-examination under the federal constitution.

In his second, third, and fourth points of error, Appellant argues that the trial court erred in denying his attempts to question Uriel Medina, Noe Medina, and Maria Munguia about the nature of Appellant's relationship with the complaining witness. As proffered by one of the witnesses and Appellant's counsel, the witnesses were going to testify about seeing the complaining witness's threats and violence toward the Appellant. By preventing the defense from being able to present this testimony as part of its case, the trial court abused its discretion.

POINT OF ERROR NUMBER ONE

THE TRIAL COURT ERRED IN DENYING AN EFFECTIVE CROSS-EXAMINATION OF THE COMPLAINING WITNESS REGARDING THE JAIL TEXT MESSAGES.

Abuse of Discretion

Appellate courts review a trial court's ruling regarding the admission or exclusion of evidence under an abuse of discretion standard. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). An appellate court will not reverse a trial judge whose ruling was within the zone of reasonable agreement. *Id.* A trial court abuses its discretion if it acts arbitrarily, unreasonably, or without reference to guiding rules or principles. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990).

Generally, the erroneous exclusion of evidence is non-constitutional error subject to a harm analysis. *Billodeau v. State*, 277 S.W.3d 34, 43 (Tex. Crim. App. 2009). Non-constitutional error requires reversal only if it affects the defendant's substantial rights. *Barshaw v. State,* 342 S.W.3d 91, 93 (Tex. Crim. App. 2011). In considering the harm, the focus is on whether the error had a substantial effect on the jury's verdict. *Id.* at 93-94. If the reviewing court has grave doubt about the harmlessness of the error, the conviction must be reversed. *Id.* at 94.

Right to Confrontation

The Sixth Amendment of the United States Constitution states that in all

criminal prosecutions, the accused shall enjoy the right to confront the witnesses against him, and the Fourteenth Amendment extends the right to State criminal proceedings. Article I, Section 10 of the Texas Constitution also guarantees the right to confrontation in all criminal cases.

The right to confront and cross-examine the State's witnesses in a public forum is one of a defendant's most important constitutional rights. *Koehler v. State,* 679 S.W.2d 6, 9 (Tex. Crim. App. 1984). The scope of cross-examination is within the control of the trial court in the exercise of its own discretion. *Toler v. State*, 546 S.W.2d 290, 295 (Tex. Crim. App. 1977). Courts can impose restrictions on cross-examination based on "harassment, prejudice, confusion of the issues, the witness' safety, or interrogation that is repetitive or only marginally relevant." *Delaware v. Van Arsdall*, 475 U.S. 673, 679 (1986).

However, courts have held "great latitude should be allowed the accused in showing any fact which would tend to establish ill-feeling, bias, motive and animus upon the part of any witness testifying against him." *Koehler,* 679 S.W.2d 6, 9. The Court found "any question asked of a witness on cross-examination, which might have a tendency to affect the witness' credibility, is always a proper question." *Id.* In the case of *Koehler*, the Court of Criminal Appeals reversed a murder conviction when the trial court improperly restricted cross-examination of an important prosecution witness relating to the witness' conduct toward the defendant in public.

Id. at 10. The witness attacked the defendant in public, and the Court found that the proffered cross-examination could have affected the jury's decision in judging her credibility. *Id.*

The Court of Criminal Appeals ruled the denial of an effective cross-examination of a witness violated the appellant's constitutional right to confrontation. *Harris v. State*, 642 S.W.2d 471 (Tex. Crim. App. 1982). The Court stated the policy underlying the Sixth Amendment is to give the accused an *opportunity* to cross-examine the witnesses against him. *Pointer v. Texas*, 380 U.S. 400, 406-407 (1965). The right of cross-examination is a fundamental right and "one of the safeguards essential to a fair trial." *Id.* at 404. To preserve error, the Court of Criminal Appeals stated the defendant is "not required to show that his cross-examination would have affirmatively established the facts sought; he must merely establish what subject matter he desired to examine the witness about during the cross-examination." *Koehler,* 679 S.W.2d at 9.

The United States Supreme Court reversed a mail fraud conviction after the trial court denied the defense attorney's questioning of a key prosecution witness regarding where he lived. *Alford v. United States*, 282 U.S. 687 (1931). The Court found the witness was biased because he was under the coercive effect of detention by federal officers and "his testimony was affected by fear or favor" relating to his detention. *Id.* at 693. When the trial court cut off the inquiry, the Supreme Court

found it was an abuse of discretion and prejudicial error. *Id.* at 694.

In another case, the Supreme Court reversed convictions for burglary and grand larceny after the trial court denied the cross-examination of a key witness for bias and prejudice. *Davis v. Alaska*, 415 U.S. 308 (1974). In that trial, defense counsel sought to show the existence of possible bias and prejudice based on the witness's juvenile probationary status. The Supreme Court stated that the cross-examination permitted was not enough to develop the issue of bias because the jury might have believed the State's objection that it was a "rehash" of prior cross-examination. *Id.* at 318. While the defense counsel was able to ask the witness *whether* he was biased, the Court stated that counsel was unable to make a record regarding *why* he was biased. *Id.* The Court added "serious damage to the strength of the State's case would have been a real possibility had petitioner been allowed to pursue this line of inquiry." *Id.* at 319.

The Court of Criminal Appeals reversed a murder conviction because it was an error to not allow cross-examination of a witness concerning a pending criminal charge. *Carroll v. State,* 916 S.W.2d. 494 (Tex. Crim. App. 1996). The Court said the constitutional right of cross-examination is violated when appropriate cross-examination is limited. "A defendant is entitled to pursue all avenues of cross-examination reasonably calculated to expose a motive, bias, or interest for the witness to testify." *Id.* at 497. The Court found a witness's pending charge created a

"vulnerable relationship" with the State at the time of the testimony, and the Court held the cross-examination should have been permitted. *Id.* at 501.

The Court of Criminal Appeals stated the "constitution is offended" if a state rule would prohibit an accused from cross-examining a witness concerning possible motives, bias, and prejudice to such an extent that he could not present a vital defensive theory. *Potier v. State*, 68 S.W.3d 657, 663-665 (Tex. Crim. App. 2002.) Texas Rule of Evidence 613 specifically allows a witness to be questioned about a prior inconsistent statement or a witness's bias or interest. After counsel lays the foundation, Subsection (3) states a witness must be given the opportunity to explain or deny the prior inconsistent statement or bias or interest. The Court of Criminal Appeals stated "the Texas Rules of Evidence do not contain a specific rule allowing the admission of bias or motive evidence (maybe because the right to impeach a witness on these bases is so obvious), but Rule 613 (b) presumes the right to admit such evidence because it deals with *how* the witness may be examined concerning bias or interest and *when* extrinsic evidence of that bias or interest may be admitted." *Hammer v. State,* 296 S.W.3d 555, 567 (Tex. Crim. App. 2009).

The Court of Criminal Appeals reversed an indecency of a child conviction when the trial judge excluded testimony, including previous false allegations that demonstrated the complainant's bias against the Defendant and her possible motive to testify falsely against him. *Hammer,* 296 S.W.3d 555, 567. The Court found that

the Rules of Evidence, especially Rule 403, "should be used sparingly to exclude relevant, otherwise admissible evidence that might bear upon the credibility of either the defendant or complainant in such 'he said, she said' cases." The Court echoed the language from *Koehler* which says that state and federal law require "great latitude" when the evidence deals with a witness's specific bias, motive, or interest to testify in a particular way. *Id.* at 562. *See Koehler,* 679 S.W.2d 6, 9. In addition, the Court held that "Rule 404(b) explicitly permits the defense, as well as the prosecution, to offer evidence of other acts of misconduct to establish a person's motive for performing some act – such as making a false allegation against the defendant." *Hammer,* 296 S.W.3d 555, 563.

The Court of Criminal Appeals reversed an aggravated sexual assault conviction because the trial court declined to admit evidence of the complainant's threats to neighbors that he would falsely accuse neighbors of molesting him when they angered him. *Billodeau v. State*, 277 S.W.3d 34 (Tex. Crim. App. 2009). The Court stated that under Texas Rule of Evidence 613(b), a Defendant is entitled to cross-examine a witness about false allegations to show a bias or motive. "The possible animus, motive, or ill will of a prosecution witness who testifies against the defendant is never a collateral or irrelevant inquiry, and the defendant is entitled, subject to reasonable restrictions, to show any relevant fact that might tend to establish ill feeling, bias, motive, interest or animus on the part of any witness

testifying against him." *Id.* at 42-43. The Court held that the defendant's inability to fully present his defense affected a substantial right and was harmful error. *Id.* at 43.

The Instant Case

The trial court denied an effective cross-examination of the complaining witness when the judge prevented Appellant's counsel from asking Muniz about text messages she sent to Appellant in jail. Initially the trial court stated, "I'll allow use of text messages from Ms. Muniz during her testimony without highlighting, without emphasis, and without commentary as to what they mean from anyone except Ms. Muniz." (R.R. V, p. 169) But then the judge changed his mind and denied the questioning about the text messages. "This has no relevance on the actual events of that day, it has relevance only to her testimony." (R.R. V, p. 173)

A witness's motivation to testify and tell the truth is relevant.

The trial court erred in its decision to exclude questions about Muniz's text messages because a witness's motivation to testify and tell the truth is relevant. Out of the presence of the jury, Appellant's trial counsel perfected a bill of exception and offered the text messages she wished to cross-examine the complainant about. The defense counsel relayed several of the messages in court, and other text messages are included from Defense Exhibit #3:

> "Six mf's surrounding me talking to me all at once like bro I don't need to speak to all yall…they tricked me tho they really did and even my mom said it they served me fr they really trying shi for what bro. My mom said they will do

> that they trick mfs and serve em if ion do what they said I serve time in jail which I'll fucking do fuck ts" (R.R. VIII, p 146)
>
> "I'm being forced to say shit. I'm not doing it. Fuck the consequences. I hate the law… They're putting words in my mouth." (R.R. V, p. 164) The full text states "Just kno bro im being fucking FORCED to do and say SHIT!!!!!!! AND IM NOT DOING IT!!!!! FUCK THEIR CONSEQUENCES!!! I hate the law!! This whole situation is fucked up it really fucking is bro I'm shaking, idk what to do anymore I tried and tried and tried but words are fucking put in my mouth and I they shut me up." (R.R. VIII, p. 146)
>
> "Yes bro they done played every fucking body cam footage possible throwing ts in my face not telling me tell the truth. 'Oh no but u said this and that' bitch stfu like fr 'oh we see this everyday we know what you're doing' OKAY BUT DO U REALLYYY BRO, the law really think they smarter than ppl bro they just regular ppl fr. Ian never been more sad, mad, in my life…" (R.R. VIII, p 146)

Not only were the text messages proof that Muniz had communicated with Appellant, which she had initially denied, but the text messages show the pressure the State was exerting on Muniz to stick to her initial story. According to the text messages, the State pressured Muniz to testify against Appellant, and the level of this pressure placed on Muniz was kept secret from the jury. In the texts, Muniz stated the State was putting words in her mouth and not saying she should tell the truth. She also stated, more disturbingly, that if she did not do what the State wanted her to do, she believed she could serve time in jail.

The trial court should have allowed questions about these text messages

because they addressed Muniz's motive to testify. Muniz also believed that the State could jail her if she did not cooperate. Her perception of the prosecutor's power created a "vulnerable relationship" with the State in the fact that she believed she needed to do what they told her or risk incarceration. The trial court should have permitted the defense to ask about Muniz's perception of her "vulnerable relationship" with the State as the Court of Criminal Appeals discussed in *Carroll*. 916 S.W.2d 494, 501.

The trial court should have also permitted a cross-examination about these text messages because they directly comment on Muniz's credibility. Muniz stated that "I'm being forced to say shit" and "words are fucking put in my mouth." Muniz texted that the State was not telling her to tell the truth, which could reasonably be interpreted as Muniz believed the State wanted her to lie. As previously ruled by the Court of Criminal Appeals, a question that shows the credibility of a complaining witness is always proper. *Koehler,* 679 S.W.2d 6, 9.

In addition, Muniz's text message undercuts the State's theory that she was recanting the other charges because of family violence dynamics. When Muniz texted "oh we see this everyday we know what you're doing. OKAY BUT DO U REALLYYY BRO, the law really think they smarter than ppl bro they just regular ppl fr," she indicated that the State refused to listen to her and inserted its own assumptions into the case about what happened. Muniz's motivation to testify and

tell the truth is relevant, and the trial court erred in excluding the defense's cross-examination of these text messages.

A witness's recantation is relevant.

The trial court erred in its decision to exclude questions about Muniz's recantation in the text messages because a recantation is relevant. Prosecutors are required under *Brady v. Maryland*, 373 U.S. 83 (1963), and Code of Criminal Procedure Art. 39.14 to share exculpatory information. Prosecutors are also required to see justice done under Code of Criminal Procedure Art. 2.01. It was important for the jury to hear about all of the recantations and exculpatory evidence.

During the conversation about admitting these text messages into evidence, Appellant's trial counsel stated that one of the messages she wanted to question Muniz about was a recantation made by Muniz in a text message. "She said that she was punched in the face and here she says that it didn't happen." In response, one of the prosecutors started saying, "It's also not a relevant issue." (R.R. V, p. 172) If the prosecutor is trying to exclude exculpatory evidence from the jury, she compromises her commitment to doing justice. The prosecutor's comment also confirmed Muniz's text messages where she indicated the prosecutors did not care about the truth.

The actual text message on July 16, 2024, stated, "I'm trying.. they don't wanna fucking listen to me tha u is innocent." (R.R. VIII, p. 147) During her testimony, Muniz admitted to Appellant's trial counsel that she had previously told

her that "*everything* was a lie." (R.R. V, p. 205)(emphasis added) The text message confirmed that earlier statement to Appellant's trial counsel and cast reasonable doubt on whether Appellant had assaulted her on October 17th. Muniz had lied about multiple other allegations she had made to the police, and it's reasonable to believe that she had lied about the assault on October 17th as well. The trial court erred in excluding the cross-examination relating to that message.

A complainant's apology is relevant.

The trial court also erred in its decision to exclude questions about Muniz's text messages because a witness's apology is relevant. Appellant's trial counsel referenced several of the text messages for the court. "[Muniz] was talking about how the prosecutors all force her to say things and how everybody keeps making her watch body cams and nothing – this didn't happen, it's all her fault, she's so sorry." (R.R. V, p. 166) Other text messages are included from Defense Exhibit #3:

> "I'm the one to blame 100%. And I'm sorry. I can't ever say that enough." (R.R. VIII, p. 147)
>
> "It could've all been avoided. I fucked up. So bad. I kno deep down u hate me fr and idk I jus kno u do. But it's ok I understand… I tried. 3 times for you. On lazary life I did. Idk wtf is wrong with these ppl they got no proof fr jus using the fucking body cam footage…and ik u ont trust my momma but aye she see ts killin me daily fr and she tried too tell em wassup they ain even fucking believe her bro." (R.R. VIII, p. 146)
>
> "I'm so sorry. I wish it was me in there instead. Suffering." (R.R. VIII, p. 147)

Appellant's trial counsel should have been able to cross-examine Muniz about *why* she was apologizing to Appellant. She had apologized for her part in their toxic relationship in her court testimony. (R.R. V, p. 205) But she apologized and blamed only herself in these messages. It's reasonable to assume she was apologizing for putting Appellant in jail based on the false charges she filed against him, including the assault. Appellant's trial should have also been permitted to ask Muniz questions about these text messages because the opportunity to bring out the truth is a fundamental right, as held by the United States Supreme Court. *Pointer*, 380 U.S. 400, 403-404.

False Impressions About Fear Are Relevant.

The trial court erred in its decision to exclude questions about Muniz's text messages that indicated she wanted to be with Appellant and was not afraid of him. The messages were listed in Defense Exhibit #3:

> "I love you mane like to death and seeing u get arrested on cam bro replays in my head and I can't Stop crying I haven't went to sleep til 4 this morning crying and crying. It's so much bro. I just want you out with us bro." (R.R. VIII, p. 146)
>
> "Life ain't the same and I cry to her almost everyday bout u. It's all Jorge. Ik u don't wanna hear it bc u will never truly forgive me but jus kno im stuck on you fr. U someone I can't ever replace. And don't want to." (R.R. VIII, pp.146-147)
>
> "If u get sent back Jorge we can always come to you. Anything is possible Ik this situation sucks." (R.R. VIII, p.

147)

> "Just wish u was here tired of being alone and not feeling really safe at that place. I just worry more about our baby yk." (R.R. VIII, p. 147)

The messages contradict the family violence expert who testified that Muniz was partially recanting because of her fear of Appellant. The messages also contradict the testimony of the officer who stated that Muniz told him she lied to the hospital staff because she was afraid of Appellant. He also testified that Muniz told him she felt like her life was in danger, and Appellant would kill her. The statements from the officer and expert left the impression that Muniz was scared because Appellant was dangerous. Muniz's text messages, on the other hand, counter those assumptions. Appellant's trial counsel should have had the opportunity to cross-examine Muniz to correct any false impression left with the jury.

Conclusion

In the instant case, Muniz was the *only* witness who could prove the State's case. Even though she had lied repeatedly about other false charges and had lied repeatedly about who assaulted her, the State still called her as a witness to prove up the assault. The jury should have been able to hear Muniz, in the text messages, complaining about the State's tactics, including potential jail time, to force her to testify. In her text messages, Muniz told Appellant that she felt tricked, she felt as if the State put words in her mouth, and she ultimately felt the State was not listening

when she was telling them he was innocent.

The Court of Criminal Appeals has held that the admission of bias, motive, or interest to testify evidence is especially important in "he said, she said" cases where there's only one witness to the alleged offense. *Hammer,* 296 S.W.3d 555, 561. Even though *Hammer* was an indecency of a child case, the same argument holds true in the instant case. If the State is relying on only one witness to prove its case, the need for thorough cross-examination of that one witness is even more necessary.

In addition, Muniz texted Appellant that he was innocent, and that she felt very sorry for what she had done. Appellant's trial counsel should have been able to cross-examine Muniz about her statements to find out what she meant about those messages. Lastly, Appellant's trial counsel should have been able to correct the false impression the State created about Muniz's fear of Appellant. Not only would Muniz's text messages have contradicted some of Muniz's testimony, but it would have contradicted some of the testimony from the State's family violence expert.

It is troubling that an alleged victim would accuse the prosecutors of pressuring her to stick to her story to secure a conviction, regardless of whether the story was the truth or not. It is even more troubling that the jury never heard about it. Muniz was adamant, in the text messages, that the State was not listening to her, and she stated Appellant was innocent. What more could Muniz, or any alleged victim in a case who lied to the police, do to get the truth out? If the prosecution will

not listen and a trial court prevents the defense from fully cross-examining a witness, the chances increase that an innocent person gets convicted.

The State may argue that Appellant's trial counsel asked plenty of questions of Muniz during its cross-examination, and the error is not prejudicial. But the cross-examination that occurred failed to develop Muniz's motivations to testify, her allegations that the State wanted her to lie, her declaration in writing that he was innocent, her apologies for her role in everything, and her lack of fear of Appellant. These pointed questions relating to the text messages were not a rehash of prior examination. Had the jury known about the text messages, there's a grave doubt the jury would have convicted Appellant.

By preventing Appellant's trial counsel from asking questions about the text messages in the presence of the jury, the trial court violated appellant's constitutional rights to confront and cross-examine the complaining witness under U.S. Const. amend. VI. The inability to fully present a defense affected a substantial right and is therefore harmful error. This point of error must be sustained.

POINT OF ERROR NUMBER TWO:

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING URIEL MEDINA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

POINT OF ERROR NUMBER THREE:

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING NOE MEDINA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

POINT OF ERROR NUMBER FOUR:

THE TRIAL COURT ERRED IN PREVENTING APPELLANT FROM ASKING MARIA MUNGUIA ABOUT THE NATURE OF APPELLANT'S RELATIONSHIP WITH THE COMPLAINING WITNESS.

These points of error will be grouped together because they involve the same statute and legal arguments.

Abuse of Discretion

Similar to the law under the first point of error, appellate courts review the exclusion of evidence for an abuse of discretion. *Tillman*, 354 S.W.3d 425, 435. The exclusion of evidence is non-constitutional error, subject to a harm analysis. Non-constitutional error requires reversal if it affects the defendant's substantial rights. *Barshaw v. State*, 342 S.W.3d 91, 93.

Art. 38.371, Texas Code of Criminal Procedure

Art. 38.371(a) of the Texas Code of Criminal Procedure refers to prosecutions

involving family violence. Subsection (b) states "in the prosecution of an offense described by Subsection (a), subject to the Texas Rules of Evidence or other applicable law, *each party* may offer testimony or other evidence of *all* relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed the offense described by Subsection (a), including testimony or evidence regarding the *nature of the relationship* between the actor and the alleged victim." (emphasis added) Subsection (c) states character evidence is still inadmissible under the Texas Rules of Evidence, so a trial court would have to review any bad act evidence under Rule 404(b) and 403 before it can be admitted.

Multiple appellate courts have found trial courts did not abuse their discretion by admitting "nature of the relationship" evidence. In *Jamerson v. State,* the First Court of Appeals in Houston found the trial court did not abuse its discretion by admitting the challenged extraneous-offense evidence because it was relevant to contextualize the relationship between defendant and his wife, and to rebut the defensive theory that the wife had fabricated the assault by strangulation. 2021 Tex. App. LEXIS 2946 (Tex. App. – Houston [1st Dist.] Apr. 20, 2021, no pet.) (mem. op., not designated for publication).

In *Hammond v. State*, the appellate court in Waco found the trial court did not abuse its discretion in admitting evidence since the girlfriend's testimony was not for the purpose of establishing defendant's bad character, but to show the nature of

the relationship between the girlfriend and defendant in how they interacted with each other on previous occasions. 2018 Tex. App. LEXIS 2728 (Tex. App. – Waco Apr. 18, 2018, no pet.) (mem. op., not designated for publication).

In *Trotter v. State*, the appellate court in Austin found the trial court did not abuse its discretion in allowing the State's evidence as to the nature of the relationship between the defendant and the alleged victim because the State is allowed to offer relationship evidence to refute the defense's theory that the victim was not credible. 2019 Tex. App. LEXIS 10135 (Tex. App. – Austin Nov. 22, 2019, pet. ref'd) (mem. op., not designated for publication).

In *Heathman v. State,* the appellate court in Austin found the trial court did not abuse its discretion in admitting testimony about threatening statements that defendant allegedly made to the complaining witness because the testimony was probative of the complainant's credibility and provided context to the nature of their relationship. 2022 Tex. App. LEXIS 999 (Tex. App. – Austin Feb. 10, 2022)

Rule 404(b)

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence and if the fact is of consequence in determining the actions. Under Rule 404, evidence of a crime or bad act is not admissible to prove character conformity, but it may be admissible for another purpose such as proving motive, opportunity, or intent. Although 404(b) limits the admissibility of specific

acts used to show only the defendant's character, it does not block the admission of relationship evidence. *Garcia v. State,* 201 S.W.3d 695, 703 (Tex. Crim. App. 2006). In the *Garcia* case, which involved a murder, the Court of Criminal Appeals stated the relationship between the Appellant and the victim was itself a material issue, and the circumstances surrounding the relationship was relevant evidence. *Id.* The Court also ruled a specific act, where the defendant pushed his wife out of a car, was admissible to illustrate the nature of their relationship. *Id.* While the case relied on Article 38.36 (a) of the Texas Code of Criminal Procedure instead of Article 38.371 of the Texas Code of Criminal Procedure, the nature of the relationship argument is the same.

Rule 403

Even if evidence is admissible under another Texas Rule of Evidence, Rule 403 states that evidence may be excluded if its probative value is substantially outweighed by a danger of unfair prejudice, confusing the issues, misleading the jury, undue delay, or needlessly presenting cumulative evidence. Rule 403 favors the admission of relevant evidence and carries a presumption that relevant evidence is more probative than prejudicial. Reviewing courts afford trial courts a high level of deference regarding admissibility determinations under Rule 403.

Point of Error Number Two

Appellant's trial counsel elicited testimony from Uriel Medina who testified,

outside the presence of the jury, that Muniz was violent with Appellant. Uriel Medina testified that he's known Appellant since middle school and knew Muniz. (R.R. VI, pp. 6-7) During the proffer, he stated he, Noe Medina, and Appellant were all chilling together one night, and Muniz was constantly texting back and forth with Appellant. The texts were on Uriel Medina's phone, and he testified that "[Muniz] was threatening [Appellant] that she was going to beat him up" when she saw him. When Medina dropped Appellant off at his mother's house, he stated Muniz got out of her car, "ran up on him and started throwing punches at him." He testified that Muniz was hitting Appellant in the face. He also testified that he has seen Muniz be "really angry towards [Appellant]" on other occasions. (R.R. VI, pp. 12-14)

Point of Error Number Three

Noe Medina was present during the incident that Uriel Medina testified about outside of the presence of the jury. During the motion for new trial hearing, Appellant's appellate counsel reiterated that Noe Medina would have been able to testify that Muniz was the primary aggressor in that incident. (S.R.R., p. 9)

Appellant's trial counsel argued that the nature of the relationship evidence should have been admitted because "we want to show that [Appellant] is not the violent one, he's not the one that hit Emileigh" which goes to her credibility (R.R. VI, pp. 16-18) Counsel also argued that the incident shows that Appellant did not hit Muniz back and proves he's not a fighter. In addition, Counsel argued "[Muniz's]

violence towards him and his reaction to that violence is relevant to whether or not she was telling the truth." (R.R. VI, pp. 19-23) In response, the judge sustained the objection and told Appellant's trial counsel that she may "not elicit testimony regarding any conduct of bad acts by the Complainant against the Defendant or anyone else." (R.R. VI, pp. 23-24)

Point of Error Number Four

Appellant's mother, Maria Munguia, testified about another act of violence by Muniz. In response to Appellant's trial counsel's question "without giving me any specific times, have you ever seen violence between Emileigh and Jorge," Munguia responded with "yes, I observed violence on her part toward Jorge." (R.R. VI, p. 42) The State objected to the specific instance of bad conduct, and the trial court overruled the objection to that specific question and answer. Based on the judge's previous ruling, however, Appellant's trial counsel could not ask anything more. During the motion for new trial, Appellant's appellate counsel supplemented the record adding that Munguia would have testified that she witnessed Muniz assaulting Appellant while she was holding their baby. (S.R.R., p. 9)

Instead of hearing about the incidents, jurors only heard that Appellant was not a violent person through the testimony of Uriel Medina and Noe Medina. (R.R. VI, pp. 25, 27) Munguia testified that Appellant was not violent with Muniz. (R.R. VI, p. 42) Those short character statements did little to correct the false impression

left with the jury that Appellant was the violent and controlling person in the relationship.

The trial court abused its discretion in excluding the testimony about Muniz's threatening and violent acts toward Appellant. The testimony was relevant under Article 38.371 to show the nature of the relationship, including the fact that Muniz was previously seen threatening and assaulting Appellant. Those threats and acts of violence, along with her previous testimony about lying and manipulating Appellant as well as keeping the daughter away from Appellant to harm him, show that she was the one controlling the relationship. The testimony also impeached Muniz's testimony when she stated their fights were mutual. The testimony would have showed that not only were the fights one-sided, but the fights were instigated by Muniz. The testimony would have rebutted the State's theory that Appellant committed the assault on October 17th.

As listed above, various courts of appeal have allowed similar testimony and evidence to show the nature of the relationship, to refute the opposing party's theory, and to show the credibility of a witness. The only difference in the instant case is that the defense was trying to offer the evidence instead of the State. The statute clearly allows either side to offer such testimony as it states, "*each* party may offer testimony or other evidence of all relevant facts and circumstances that would assist the trier of fact in determining whether the actor committed the offense..." Tex. Code

Crim. Proc. Art. 38.371(b) (emphasis added).

The testimony, relevant under Art. 38.371, was admissible under Texas Rule 404(b) to show Muniz's motive and intent to hurt Appellant with threats and actual violence when she was unhappy with him. Muniz had already testified she would threaten to kill herself and lie to Appellant to get his attention. Muniz also testified that she would keep their baby away from Appellant to hurt him. Making false allegations and putting him in jail, which she already admitted doing with the strangulation and unlawful restraint charges, would be the ultimate way to keep him away from his own child. In her own words, Muniz testified she was angry at Appellant for cheating on her. When he texted her to stop doing drugs around the baby, it's reasonable that her anger boiled over into revenge. Rule 404(b)(2) allows admitting extraneous-act evidence when the evidence rebuts a defensive theory of fabrication. *Laube v. State*, 2014 Tex. App. LEXIS 7076 (Tex. App. – Dallas June 30, 2014, no pet.)(mem. op., not designated for publication). The same should hold true in *supporting* the defensive theory of fabrication. These threats and acts of violence toward Appellant would have helped show why Muniz made up all of the charges. Similar to the complainant in the *Billodeau* case, Muniz falsely accused Appellant when she was angry at him. 277 S.W.3d 34. As stated above, the Court of Criminal Appeals in *Billodeau* held that the defendant's inability to fully present his defense affected a substantial right and was harmful error. *Id.*

The testimony would also be admissible under Texas Rule 403. The Texas Court of Criminal Appeals has instructed that when undertaking a Rule 403 analysis, courts must balance the following factors:

1. The inherent probative force of the proffered item of evidence,
2. The proponent's need for that evidence against,
3. Any tendency of the evidence to suggest a decision on an improper basis,
4. Any tendency of the evidence to confuse or distract the jury from the main issues,
5. Any tendency that a jury that has not been equipped to evaluate the probative force of the evidence would give it undue weight, and
6. The likelihood that presentation of the evidence will consume an inordinate amount of time or merely repeat evidence already admitted. *Gigliobianco v. State,* 210 S.W.3d 637, 641-642 (Tex. Crim. App. 2006).

Previous courts of appeal have found evidence of past domestic violence between a defendant and a victim was highly probative in family violence cases. *Baxter v. State*, 2023 Tex. App. LEXIS 8944 (Tex. App. – Fort Worth Nov. 30, 2023, pet. ref'd) (mem. op., not designated for publication); *James v. State*, 623 S.W.3d 533, 548 (Tex. App. – Fort Worth, April 22, 2021, no pet.). In *James,* the Court stated the extraneous-offense evidence was probative to rebut the defensive theory of fabrication. *Id.* The probative factor weighs in support of the trial court admitting the testimony about Muniz.

Previous courts of appeal have also found the proponent's need for the evidence was evident when there were no other eyewitnesses to the assault. *James,* 623 S.W.3d at 548. In addition, prior assaults and threats were "particularly relevant" when "the credibility of the witnesses was a central issue in the case." *McDonnell v.*

State, 674 S.W.3d 694, 703 (Tex. App. – Houston [1st Dist.], July 20, 2023, no pet.). The Court of Criminal Appeals held that knowledge of the witness attacking the defendant in *Koehler* could have affected the jury's decision regarding the witness's credibility, and a cross-examination relating to that violence should have been allowed. *Koehler,* 679 S.W.2d 6, 9. Similarly, Muniz's attack on Appellant should have been allowed because it affected her credibility. The need for the evidence weighs in support of the trial court admitting the testimony about Muniz.

Regarding the third through fifth factors, any tendency of the evidence to suggest a decision on an improper basis, to confuse the jury, or any tendency of the jury to give the testimony undue weight could have been solved with a limiting instruction. Regarding the sixth factor, the testimony from Uriel Medina outside of the presence of the jury did not take much time. The trial testimony was hundreds of pages long, and Uriel Medina's proffer only lasted three pages. It's reasonable to believe the testimony from Noe Medina and Maria Munguia would not have taken much time either.

The exclusion of the evidence was an abuse of discretion because the trial court acted arbitrarily, unreasonably, or without reference to guiding rules or principles, namely the law. Art. 38.371 specifically allows the nature of the relationship testimony, and the testimony would have been admissible under Texas Rules of Evidence 404(b) and 403. The exclusion of the evidence affected

Appellant's substantial rights because he was not allowed to present his entire defense. The error had a substantial and injurious effect on the verdict because the evidence showed Muniz, instead of Appellant, as the aggressor in the relationship. It also would have corrected the false impression Muniz left with the jury that she and Appellant always engaged in mutual combat. That statement, along with many others, showed she had lied. Her credibility was very much in question. In hearing the additional testimony that she had threatened and assaulted Appellant in the past, a jury may have decided she was too unstable to trust. A jury may have acquitted Appellant based on Muniz's lack of credibility. The second, third and fourth points of error must be sustained.

CONCLUSION

The dynamics of family violence were seen throughout their relationship, but as Muniz testified, she was the one manipulating Appellant. She was the one telling him she was dying, she was the one telling him she was going to kill herself, and she was the one keeping their child away from Appellant to hurt him. Muniz was also the one keeping Appellant in jail on at least two false charges. She told multiple people about the girls beating her up on October 17, and her story only changed after she got angry at Appellant a few days later.

McCullough testified about the dynamics of family violence and the aggressor's actions in "manipulation and just exerting that power and control over

the relationship." McCullough also testified it was important to know the whole relationship. In preventing a jury from learning about the entirety of the relationship between Appellant and Muniz, the trial court prevented the defense from showing the jury that Muniz was the true aggressor in the relationship. Her manipulation, her lies, and her motives led to an innocent man getting convicted.

The denial of testimony about Muniz's threats and violence toward Appellant only compounded the impact of the lack of a thorough cross-examination of Muniz. Had jurors known all the information regarding the text messages and the nature of the relationship, there's a good chance that Appellant would have been acquitted. The exclusion of evidence affected the substantial rights of Appellant, and all four points of error must be sustained.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, Counsel respectfully prays that this Honorable Court sustain Appellant's points of error and reverse and remand this case back to the trial court for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief contains 10,783 words, as calculated by the word count function on my computer.

/s/ Kelly Gier
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Appellant's Brief on Original Appeal was delivered emailed to Mr. Joshua Tetens of the McLennan County District Attorney's Office on April 17, 2025.

/s/ Kelly Gier
Kelly Gier

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