NO. 14-24-00162-CR

IN THE COURT OF APPEALS
FOR THE FOURTEENTH JUDICIAL DISTRICT OF TEXAS
HOUSTON, TEXAS

ALFREDO CRUZ, Appellant

VS.

THE STATE OF TEXAS, Appellee

On Appeal from the 268th District Court
Fort Bend County, Texas
Trial Court Cause No. 17-DCR-076512

APPELLANT'S BRIEF

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ORAL ARGUMENT IS NOT REQUESTED

IDENTITY OF PARTIES AND COUNSEL

Pursuant to TEX. R. APP. P. 38.1(a), the parties to this suit are as follows:

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STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Texas Rule of Appellate Procedure 39.7, Appellant does not request oral argument.

STATEMENT OF THE CASE

Appellant was indicted and tried for the felony offense of Sexual Assault of a Child. CR 30. Trial was had in the 268th District Court, The Honorable O'Neil Williams, Presiding. A jury found Appellant guilty and assessed punishment at 5 years confinement in the Texas Department of Criminal Justice - Institutional Division. CR 162.

The trial court granted Appellant's Motion for New Trial. CR 169, 185, and 192. On the State's appeal, this court reversed the trial court's judgment. CR 198, 233, 235. Following the refusal of Appellant's petition for discretionary review, mandate issued, and Appellant resumed serving his 5 year prison sentence on February 26, 2024. CR 23, 235.

Notice of Appeal was filed on February 26, 2024. CR 237. The undersigned counsel was officially substituted-in as attorney of Record on May 28, 2024. First Supp. CR 489.

This brief follows.

ISSUES PRESENTED

FIRST POINT OF ERROR

The trial court erred by admitting extraneous conduct evidence where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

SECOND POINT OF ERROR

The trial court erred by admitting SANE records and related witness testimony about the complainant's hearsay statements contained therein.

THIRD POINT OF ERROR

The trial court erred by admitting numerous extraneous bad acts where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice; the trial court erred by admitting SANE records and related witness testimony about the hearsay statements contained therein; and these errors were harmful in their cumulative effect.

STATEMENT OF FACTS

The complainant moved from El Salvador to live with her aunt in Fort Bend County when she was six years old. 3 RR 43-6. Appellant is married to complainant's aunt. *Id*. Also living in the house were Appellant's children as well as other family members and friends. *Id*.

At age 15, the complainant gave her swimming coach a note. 3 RR 105-06. Thereafter, the complainant talked to the school counselor, and, eventually, the police. 3 RR 112-13. Appellant was charged by indictment with sexual assault of a child by penetration of the complainant's sexual organ with his finger. CR 30.

Prior to jury selection, the trial court granted Appellant's motion in limine and thereby ordered that the State not "mention, refer to, or attempt to elicit in any manner, evidence of… guilt-stage extraneous crimes, offense, bad acts, or violation of the law by [Appellant]" without first approaching the bench. 1 CR 123; 3 RR 12-13. Moments later, the State raised this point again, and again argued the same position. 3 RR 19-24. And again, the trial court confirmed that this particular request by Appellant was granted, and further directed the State to not mention any extraneous offenses at all in its opening statement. 3 RR 24.

On the complainant's direct examination, the prosecutor sought to elicit testimony about numerous incidents involving Appellant. Some of these incidents seem to be other crimes while others seem to be bad acts that might be characterized as grooming behavior.

The prosecutor approached the bench as required when he was ready to inquire about alleged grooming behavior. 3 RR 65-6. During this bench conference the prosecutor again re-urged his position that he should be allowed to introduce testimony about numerous alleged incidents between Appellant and the complainant. 3 RR 66-8. Appellant opposed this position — arguing that some of these incidents were not properly noticed and that others were not relevant and that the probative value of this testimony was far outweighed by its prejudicial nature. *Id*. The prosecutor argued that some of the alleged conduct does not constitute an offense but rather proves grooming behavior. *Id*. The trial court acknowledged the

probative value of some testimony about bad acts to show grooming behavior. 3 RR 67. In the end, the trial court announces that he will permit testimony about two incidents outside of the testimony about the alleged offense in the indictment. 3 RR 68. The following exchange occurred:

The Court: Two incidents. Period.

Mr. Preismeyer: Understood, your Honor. Outside of the offense alleged?

The Court: Outside of the offense. Two. Period.

3 RR 68.

The trial court granted a running objection to evidence about any extraneous act. *Id*.

The first incident of grooming that the jury heard about involved an incident in the kitchen. 3 RR 69-70. The complainant testified that Appellant picked her up in a way such that her legs were on either side of his stomach. *Id*. The complainant testified that this was the first time they had physical contact beyond "regular hugs" and that this incident was "weird" and "odd" because "it was a little too into my personal space." 3 RR 70-2.

The prosecutor then attempted to elicit testimony about an incident in the garage. 3 RR 72. However, Appellant objected on grounds that he did not receive adequate notice. *Id*. The trial court sustains the objection and instructs the prosecutor to "pick another one" while reminding the prosecutor that he can elicit testimony about two extraneous incidents. ("You got two. Pick another one. Pick

another one."). 3 RR 74-5. The bench conferences goes on, and the trial court maintains his ruling and instructs the prosecutor to use another incident of which he gave proper notice. *Id*. Despite the trial court's ruling, the direct examination of the complainant went on to describe the time in the garage where Appellant entered the garage while she was in there. The following exchange then occurred between the prosecutor and the complainant:

> Q: And, Mary, while you were in that garage, was this another occasion where something weird would have happened?
>
> A Yes.
>
> Q: I want to take your attention, though, to a moment somewhere else in the house that something like this would have happened. Was there another part of the house that he would have done something?
>
> A: Yes.

3 RR 76-7.

The next incident discussed alleged facts that comprised the indicted offense. The complainant described a time when she was asleep in her cousin Erica's room. 3 RR 77-8. The complainant was 15 at the time and testified that she woke up to Appellant opening the bedroom door. 3 RR 78-9. The complainant testified that Appellant removed her pajamas and touched the inside of her vagina with his finger. 3 RR 79-83.

The prosecutor then asked the complainant: "were there other times that he wouldn't stop?" 3 RR 83. Appellant objected and the parties approached the bench

once again. The trial court stated "I told you two instances . . . you asked the question in a way that it could have been opened up to more than two incidents that I've allowed you to do." 3 RR 84-5. The prosecutor continued to advocate for his position that he learned of many instances of abuse, and should be allowed to introduce them to the jury. 3 RR 84-6. The trial court again stated: "You have another. One more. Two. . . please do not open the door to multiple other incidents. You have one more chance, one more of those incidents to talk about. That's the only reason I say come up. One more Craig." 3 RR 85-6. The prosecutor then informed the trial court and Appellant that the other incident he intended to discuss with the complainant occurred in the truck. 3 RR 86. The trial court later sustained Appellant's objection to testimony about this incident, reasoning that the notice given was untimely. 3 RR 88-9.

Over objection the prosecutor introduced testimony that Appellant then rubbed his penis on the complainant's vagina. 3 RR 91-7, 100-02. During a bench conference, the trial court again warned the prosecutor to "be careful" and reminded him that "you've got one more, if you need it." 3 RR 97.

The prosecutor then asked the complainant about "other times" that she was alone with Appellant. 3 RR 103. The prosecutor drew specific attention to other times when she was alone with Appellant in his vehicle. *Id*. The complainant testified about various times when she was alone with Appellant in his vehicle. Specifically, The complainant testified about trips to the grocery store, swim

practice, swim meets, school, and out of town swim competitions — testifying that she was alone with Appellant during all of these trips. 3 RR 103-04. The complainant was also asked if she was "worried about being alone with him" during all of these trips. 3 RR 104-05. From this point in the direct examination, the prosecutor moved directly into the complainant's outcry of abuse. 3 RR 105.

The direct examination next traversed the complainant's outcry, the beginning of the police investigation, and changes in the complainant's life. 3 RR 105-18. Then, the prosecutor asked the complainant one final question: "Mary, the time that we talked about in your bedroom, did that happen on two other occasions?" 3 RR 118. Appellant objected and the trial court asked the lawyers to approach the bench where the following exchange occurred:

The Court: Man.

Ms. Miller: I know.

The Court: Why did you do that?

Id.

The prosecutor then argued "I'm not even asking how many times" to which the trial court responded "You said did it happen two more — two other times…" *Id*.

Appellant then moved for a mistrial which the trial court denied. 3 RR 118-19. Appellant argued that he's entitled to a mistrial. 3 RR 119-20. Despite denying Appellant's motion for a mistrial, the trial court stated "Mr. Preismeyer, I don't know how to make the — I don't know how to make the jury forget." *Id*. The

trial court then stated that "If I issue them an instruction telling them to forget what they just heard, they're not going to forget that you asked that question." 3 RR 120. The court later reiterated that the jury heard about the incident in the bedroom and in the garage, and that the State was permitted to discuss one more incident. 3 RR 120-21. The court then clarified "but you just said two other occasions other than what we've already discussed." 3 RR 121. In the end, the court overruled Appellant's objection. *Id*. The State immediately passed the witness. 3 RR 122.

Lori Cummings saw the complainant at Harris Health where she worked as a "forensic nurse." 5 RR 19. Cummings' "medical forensic exam records" were admitted over objection as a business record containing statements made for purposes of medical diagnosis or treatment. 5 RR 32; 9 RR 2-15. Appellant objected to the hearsay statements within the record — arguing that the statements were not made for purposes of medical diagnoses but for law enforcement purposes. 5 RR 7, 10, 11, 16, 32. Appellant noted that the SANE exam occurred a month after the outcry — a point at which Appellant had already been arrested following a criminal investigation. 5 RR 7.

SUMMARY OF THE ARGUMENT

The trial court erred by admitting numerous instances of extraneous conduct pursuant to Article 38.37, Texas Code of Criminal Procedure, in violation of Texas Rule of Evidence 403 where the probative value was substantially outweighed by the danger of unfair prejudice. The admission of this testimony resulted in Appellant being tried as a child sexual abuser generally and not for the charge in the indictment. The trial court erred by admitting the complainant's hearsay statements within SANE records pursuant to Texas Rule of Evidence 803(4). These statements were made one month after the outcry, made to a "forensic" nurse, and made for law enforcement purposes in a criminal investigation. The cumulative effect of these errors, even if harmless when separately considered, is harmful considering the type and nature of the errors.

ARGUMENT AND AUTHORITIES

FIRST POINT OF ERROR

The trial court erred by admitting extraneous conduct evidence where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice.

Authorities

Standard of Review

A trial court's evidentiary rulings are reviewed for abuse of discretion. *Henley v. State*, 493 S.W.3d 77, 82–83 (Tex. Crim. App. 2016). An abuse of

discretion occurs when the decision falls outside the zone of reasonable disagreement. *Id.* at 83.

Applicable Law

Evidence is relevant if it has any tendency to make a fact more or less probable than it would be without the evidence; and the fact is of consequence in determining the action. TEX. R. EVID. 401. For evidence to be relevant, there must be a 'direct or logical connection' between the evidence and the fact the proponent is trying to prove. *Inthalangsy v. State*, 634 S.W.3d 749, 754 (Tex. Crim. App. 2021).

Generally, extraneous crimes, wrongs, or other acts are not admissible during the guilt phase of a trial in order to prove the defendant's character and that the defendant committed the charged offense in conformity with the character. TEX. R. EVID. 404(b); *Devoe v. State*, 354 S.W.3d 457, 469 (Tex. Crim. App. 2011). Exceptions exist, however; one exception is article 38.37 of the Code of Criminal Procedure which applies in certain sexual abuse cases, including sexual assault of a child. *See* TEX. CODE CRIM. PROC. art. 38.37. Article 38.37 also allows for extraneous conduct evidence that is offered to prove the state of mind of the defendant and the child; or the previous and subsequent relationship between the defendant and the child. *Id*. Still, the State must give the defendant notice of the State's intent to introduce in the case in chief evidence described by article 38.37 not later than the thirtieth day before the date of the defendant's trial. *See id.* art.

38.37, § 3; *see also* TEX. R. EVID. 404(b) (the prosecution must provide reasonable notice of the intent to offer extraneous-offense evidence in its case-in-chief upon request by a defendant).

Even if extraneous conduct evidence is admissible under Article 38.37, Texas Code of Criminal Procedure, it may still be excluded under Texas Rule of Evidence 403 if its probative value is substantially outweighed by the danger of unfair prejudice. *See Wheeler v. State*, 67 S.W.3d 879, 888 (Tex. Crim. App. 2002); *Perkins v. State*, 664 S.W.3d 209, 216 (Tex. Crim. App. 2022); TEX. R. EVID. 403. Even when extraneous offense evidence is admissible under Article 38.37, a trial court is required to conduct a Rule 403 balancing upon proper objection or request. *Distefano v. State*, 532 S.W.3d 25, 31 (Tex. App.—Houston [14th Dist.] 2016, pet. ref'd); *see also* TEX. R. EVID. 403.

The Rule 403 balancing test considers:

(1) how compellingly the extraneous offense evidence serves to make a fact of consequence more or less probable;

(2) the potential of the evidence to impress the jury in some irrational, but nevertheless indelible way;

(3) the time the proponent needs to develop the evidence, during which the jury will be distracted from consideration of the indicted offense; and

(4) the proponent's need for the evidence.

Perkins, 664 S.W.3d at 216.

An appellate court will reverse a trial court's ruling under Rule 403 "rarely and only after a clear abuse of discretion." *Id.* (quoting *Mozon v. State*, 991 S.W.2d 841, 847 (Tex. Crim. App. 1999)). The rule "envisions the exclusion of evidence only when there is a 'clear disparity between the degree of prejudice of the offered evidence and its probative value.' " *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009) (quoting *Connor v. State*, 67 S.W.3d 192, 202 (Tex. Crim. App. 2001)). The appellate court should uphold the trial court's ruling if it is within the zone of reasonable disagreement. *Inthalangsy v. State*, 634 S.W.3d at 754.

Argument

The extraneous conduct evidence at issue is testimony about "weird" or "grooming" behavior where the complainant stated that Appellant picked her up and hugged her in the kitchen and then something "weird" occurred in the garage; testimony about an extraneous offense where the complainant stated that appellant rubbed his exposed penis on her vagina; testimony that the complainant was scared to be alone with Appellant in the truck; and the unanswered question that referred to the testimony about the charge in the indictment: "Mary, the time that we talked about in your bedroom, did that happen on two other occasions?" 3 RR 69-72, 76-7, 78-83, 83, 91-105, 118.

All of the extraneous conduct testimony should have been excluded as irrelevant to the offense for which Appellant was put to trial. Further, the extraneous conduct testimony should have been excluded because the probative

value of this testimony was substantially outweighed by the danger of unfair prejudice.

When Appellant initially objected to the extraneous conduct testimony on these grounds, he pointed out that he was under indictment for several other offenses involving this complainant — including continuous sexual abuse of a young child. *See* 3 RR 13. However, he argued to the trial court, the prosecutor elected to try only one case — the case with only one allegation of sexual abuse in the indictment. CR 30. But there was no 'direct or logical connection' between the extraneous conduct testimony and the penal code violation that the prosecutor sought to prove.

Similarly, the extraneous conduct testimony should have been excluded because the probative value of this testimony was substantially outweighed by the danger of unfair prejudice. 'Probative value' in this context means more than 'relevant'; the term refers to how strongly the evidence serves to make more or less probably the existence of a fact of consequence to the litigation — coupled with the proponent's need for that item of evidence. *Valadez v. State*, 663 S.W.3d 133, 142 (Tex. Crim. App. 2022). Additionally, if the proponent has other compelling or undisputed evidence to prove the fact, then the evidence's probative value will weigh far less than it otherwise might. *Id*. Unfair prejudice means a tendency to suggest decision on an improper basis — for example, an emotional one. *Id*.

At least three of the four Rule 403 factors weigh against admission of this evidence. First, the prosecutor did not need these items of evidence. Specifically, the testimony that — outside of the testimony about the allegations that made up the indictment — Appellant rubbed his penis on the complainant's vagina, hugged her, and did other "weird" things was not essential to proving the allegation in the indictment given that the complaint testified to that fact directly. Second, the extraneous conduct testimony added significant time to the direct examination which surely caused confusion among the jurors since the complainant was not clear on timeframes or dates and the extraneous conduct was very similar to the charged conduct. Finally, this evidence was highly likely to affect the jury in an improper way, i.e., by unfairly prejudicing the jury against Appellant, given that the character of the evidence was inflammatory (testimony that Appellant rubbed his penis on the complainant's vagina) and confusing to the jury (imprecise testimony on dates, times, and the extraneous conduct testimony was very similar to the testimony about the offense for which Appellant was being tried.).

For these reasons, this court should find that the trial court erred by admitting the extraneous conduct testimony.

Harm

Finding that the trial court erred by admitting the evidence over a Rule 403 objection, this court must now consider whether the error requires reversal. The Texas Rules of Appellate Procedure provide that an appellate court must disregard

a non-constitutional error (such as this) that does not affect a criminal defendant's "substantial rights." TEX. R. APP. 44.2(b). Under that rule, an appellate court may not reverse for non-constitutional error if the court, after examining the record as a whole, has fair assurance that the error did not have a substantial and injurious effect or influence in determining the jury's verdict. *Johnson v. State*, 967 S.W.2d 410, 417 (Tex. Crim. App. 1998); *King v. State*, 953 S.W.2d 266, 271 (Tex. Crim. App. 1997).

The admission of the extraneous conduct evidence resulted in the Appellant being tried as an accused child sexual abuser and molester generally, and not just upon the charge alleged against him in the indictment. Worse, one of the multiple extraneous bad acts that the jury heard featured evidence about penis to vagina contact whereas the indicted offense alleged digital penetration only. Thus, there is no "fair assurance" that this error did not have a "substantial and injurious effect or influence" on the jury's verdict.

For these reasons, the court should sustain Appellant's first point of error.

SECOND POINT OF ERROR

The trial court erred by admitting SANE records and related witness testimony about the complainant's hearsay statements contained therein.

Authorities

Standard of Review

"A trial judge's decision on the admissibility of evidence is reviewed under an abuse of discretion standard and will not be reversed if it is within the zone of reasonable disagreement." *Tillman v. State,* 354 S.W.3d 425, 435 (Tex. Crim. App. 2011).

Applicable Law

" 'Hearsay' is a statement, other than one made by the declarant while testifying at the trial or hearing, offered in evidence to prove the truth of the matter asserted." TEX. R. EVID. 801(d). "Hearsay is not admissible except as provided by statute or [the Rules of Evidence] or by other rules prescribed pursuant to statutory authority." TEX. R. EVID. 802.

"Once the opponent of hearsay evidence makes the proper objection, it becomes the burden of the proponent of the evidence to establish that an exception applies that would make the evidence admissible in spite of its hearsay character." *Taylor v. State,* 268 S.W.3d 571, 578–79 (Tex. Crim. App. 2008).

Texas Rule of Evidence 803(4), an exception that allows for the admission of qualifying hearsay statements, provides that:

The following are not excluded by the hearsay rule, even though the declarant is available as a witness:

….

(4) Statements for Purposes of Medical Diagnosis or Treatment. Statements made for purposes of medical diagnosis or treatment and describing medical history, or past or present symptoms, pain, or sensations, or the inception or

general character of the cause or eternal source thereof insofar as reasonably pertinent to diagnosis or treatment.

TEX. R. EVID. 803(4). "This exception is based on the assumption that the patient understands the importance of being truthful with the medical personnel involved to receive an accurate diagnosis and treatment." *Bautista v. State,* 189 S.W.3d 365 (Tex. App.—Fort Worth 2006, pet. ref'd); *see Taylor,* 268 S.W.3d at 580.

To determine whether a child understands the importance of truthfulness when speaking to medical personnel, the reviewing court looks to the entire record. *See Green v. State,* 191 S.W.3d 888, 896 (Tex.App.—Houston [14th Dist.] 2006, pet. ref'd).

Argument

Here, the SANE records in State's Exhibit 4, although hearsay, were not excludable by a hearsay objection because they were accompanied by a business records affidavit. *See* 9 RR 2-15. However, the complainant's statements contained in the records are also hearsay. The trial court overruled Appellant's hearsay objection to the complainant's statements contained within the records on the ground that these statements were made for purposes of medical diagnosis or treatment. The trial court erred by admitting the SANE records in state's exhibit 4 with these statements. *See id*.

When hearsay contains hearsay, the Rules of Evidence require that each part of the combined statements be within an exception to the hearsay rule. *Sanchez v. State*, 354 S.W.3d 476, 485–86 (Tex. Crim. App. 2011); *see* TEX. R. EVID. 805.

Appellant acknowledges that oftentimes SANE reports are admitted as business records and the complainant's statements within the records survive a hearsay objection on the ground that these statements were made for purposes of medical diagnosis or treatment. However, in this case Rule 803(4) does not apply because the complainant's hearsay statements in the SANE records were not made for purposes medical diagnosis or treatment.

Lori Cummings examined the complainant at Harris Health. 5 RR 19. This is where the SANE records were created. Cummings identified herself as a "forensic" nurse. *Id*. Cummings identified these records as medical "forensic" exam records. 5 RR 32. The SANE exam occurred a month after the initial outcry of abuse — at a time when the complainant had been removed from the home, had not seen Appellant, a criminal investigation had taken place and concluded, and Appellant had already been arrested. This scenario is not like the very common situation in which a child is taken to the hospital immediately following an outcry of abuse. Instead, this questioning of the complainant by the "forensic" nurse amounts to another investigative measure — not purely for medical diagnosis or treatment.

For these reasons, this court should find that the trial court erred by admitting the SANE records in state's exhibit 4.

Harm

Having determined that the trial court erred in admitting these statements, this court must consider whether the error requires reversal. The Texas Rules of Appellate Procedure provide that an appellate court must disregard a non-constitutional error that does not affect a criminal defendant's "substantial rights." TEX. R. APP. 44.2(b). Under that rule, an appellate court may not reverse for non-constitutional error if the court, after examining the record as a whole, has fair assurance that the error did not have a substantial and injurious effect or influence in determining the jury's verdict. *Johnson v. State*, 967 S.W.2d at 417; *King v. State*, 953 S.W.2d at 271.

This error affected Appellant's substantial rights because the State's case rested solely on one witness's testimony. Thus, additional evidence (repetitive and cumulative) that served to improperly bolster the complainant's testimony caused irreparable harm and resulted in a substantial and injurious effect or influence on the jury's verdict.

Therefore, this court should sustain Appellant's second point of error.

THIRD POINT OF ERROR

The trial court erred by admitting numerous extraneous bad acts where the probative value of the evidence was substantially outweighed by the danger of unfair prejudice; the trial court erred by admitting SANE records and related witness testimony about the hearsay statements contained therein; and these errors were harmful in their cumulative effect.

Authorities

"The doctrine of cumulative error provides that the cumulative effect of several errors can, in the aggregate, constitute reversible error, even though no single instance of error would." *Schmidt v. State*, 612 S.W.3d 359, 372 (Tex. App. —Houston [1st Dist.] 2019, pet. ref'd). An appellant must show that the errors "synergistically achieve the critical mass necessary to cast a shadow upon the integrity of the verdict." *Linney v. State*, 413 S.W.3d 766, 767 (Tex. Crim. App. 2013) (Cochran, J., concurring); *Lumsden v. State*, 564 S.W.3d 858, 899 (Tex. App. —Fort Worth 2018, pet. ref'd). Plainly stated, this doctrine provides relief only where that phase of the trials fundamentally unfair. *See Jacobson v. State*, 398 S.W.3d 195, 204 (Tex. Crim. App. 2013); *Estrada v. State*, 313 S.W.3d 274, 311 (Tex. Crim. App. 2010).

Argument

Even if this court finds that neither of these errors were harmful, the cumulative effect of these errors nevertheless constitutes harmful, reversible error. The complainant's relatively brief direct examination might have captured the record for bench conferences. These bench conferences were necessary due to the repeated references to inadmissible extraneous conduct testimony. Although this court might not find that one instance of improperly admitted "weird" behavior, one extraneous sexual abuse offense, or several vague references to additional times when sexual abuse occurred were each harmful — but in the aggregate, these errors were harmful. Why does this render the trial fundamentally unfair? Because

the Appellant was tried and convicted not for the indicted offense but for "weird" behaviors, an extraneous indecency with a child allegation, and other not-so-vague references to additional times that the complainant was subjected to these behaviors.

Similarly, even if this court believes that improperly admitting the hearsay statements within the SANE records alone does not constitute a harmful error — together with the trial court's errors related to the extraneous conduct testimony, the cumulative effects of these errors was harmful. The admission of the complainant's hearsay statements was cumulative, repetitive, and improperly bolstered the direct testimony. All of these errors, together, rendered the trial fundamentally unfair.

PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant prays that this Court reverse the trial court's judgment and sentence, remand for a new trial, and grant any other relief that may be appropriate.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that on October 24, 2024, a true and correct copy of the above and foregoing Appellant's Brief was served on the Fort Bend County District Attorney's Office by electronic service through e-filing.

/s/ Daniel Lazarine
DANIEL LAZARINE

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