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14-24-00877-CR
FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS
7/7/2025 8:25 AM
DEBORAH M. YOUNG
CLERK OF THE COURT

No. 14-24-00877-CR

In the
Court of Appeals
for the
Fourteenth District of Texas
at Houston

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
7/7/2025 8:25:51 AM
DEBORAH M. YOUNG
Clerk of The Court

No. 1771197
In the 262nd District Court
Harris County, Texas

ALEX NICO CAMPOS
Appellant
V.
THE STATE OF TEXAS
Appellee

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APPELLANT WAIVES ORAL ARGUMENT

STATEMENT REGARDING ORAL ARGUMENT

Appellant waives oral argument.

IDENTIFICATION OF THE PARTIES

Pursuant to TEX. R. APP. P. 38.2(a)(1)(A), a complete list of the names of all interested parties is provided below.

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STATEMENT OF THE CASE

On June 23, 2023, Appellant was charged by indictment with aggravated sexual assault of a child under 14 alleged to have been committed on November 30, 2011. (CR 80). At the conclusion of the guilt/innocence portion of trial on November 6, 2024, the jury found Appellant guilty of the lesser charge of indecency with a child. (CR 144-45). After the punishment proceeding on November 13, 2023, the court sentenced Appellant to 13 years confinement in the Institutional Division of the Texas Department of Criminal Justice. (CR 146-48; RR V 79).

STATEMENT OF FACTS

In September 2020, Lisa Campos was driving in the car with her 17-year-old daughter, A.L., when Lisa began sharing traumatic things that happened to her in childhood. (RR III 22, 36). After Lisa revealed her story, A.L. began crying and told Lisa that Appellant, her uncle, had touched her. (RR III 22-23, 36, 71). Lisa then picked up A.L.'s sister, Y.L., from work. (RR III 23, 37). Lisa asked Y.L. if Appellant had touched her too. (RR III 23-24, 72, 132). Y.L. started crying and said that Appellant had sexually assaulted her. (RR III 24). Lisa immediately called her daughter, D.L., to ask her "if anything happened to [her]" because "things happened" to A.L. (RR II 170;

RR III 24-25, 37-38). D.L. also started crying and said that she had the same experiences with Appellant that her two sisters had. (RR III 25; RR IV 63-64).

At some point after speaking with D.L., Lisa called the police. (RR III 72-73). Police arrived at their home around 3:00 A.M. to speak with A.L. and Y.L. (RR III 73). Both sisters spoke with the officers together, and they went into detail about what Appellant had done to them. (RR III 73-74, 89-90, 134, 147). On a later date, A.L., Y.L., and D.L. each participated in a sexual assault examination and forensic interview. (RR III 32, 74-75; RR IV 11-15). On June 23, 2023, Appellant was indicted with the aggravated sexual assault of A.L., a child under the age of 14. (CR 80).

At the conclusion of voir dire on November 4, 2024, a hearing was held regarding extraneous evidence the State sought to admit under article 38.37 of the Texas Code of Criminal Procedure. (RR II 143-44). The State first asked the trial court to admit testimony of a complaining witness from a 2013 conviction during guilt/innocence to prove Appellant's bad character and that he acted in conformity with his character. (RR II 144). The judge denied the State's request because the evidence was more prejudicial than probative due to the age of the conviction. (RR II 146-47; RR III 154-55).

The State also asked to admit the testimony of Y.L. and D.L. (RR II 147-49). After both women testified at the pretrial hearing, defense counsel argued that their testimony should be excluded from guilt/innocence under Rule 403 of the Texas Rules of Evidence. (RR II 184-85). The trial court ruled that the testimony of Y.L. and D.L. were admissible under article 38.37 because it believed that a reasonable jury could find

that the events alleged by both women happened beyond a reasonable doubt. (RR II 187). The trial court also found that the evidence from Y.L. and D.L. was more probative than prejudicial under Rule 403. (RR II 189).

A.L. was 21 years old at the time of trial. (RR III 60). Despite this, her memory of the incident with Appellant was very uncertain. When testifying about the specific incident alleged in the indictment, A.L. first stated that Appellant's finger entered her vagina and then soon after stated that he never penetrated her with his hands. (RR III 85-86). She could not remember her age when the incident occurred, but only that it happened between 2009 and 2011. (RR III 65, 70). When testifying about the same incident during cross-examination, A.L. stated that Appellant only attempted to put his fingers into her vagina. (RR III 102). When asked by the prosecutor on redirect what Appellant was doing with his fingers, she said she did not remember. (RR III 107). The prosecutor then asked again what Appellant was doing with his hands under her pants, A.L. said that she "felt pressure and pain." (RR III 107-08).

On a second redirect, the prosecutor asked A.L. if she remembered telling the medical provider that her vagina was digitally penetrated by Appellant, and A.L. said yes. (RR III 111-12). The prosecutor then asked A.L. if she knew "what digital penetration of the female genitalia means," and A.L. said no. (RR III 112). A.L. believed that the medical provider explained what that meant, which was why she said yes at the time. (RR III 112).

Y.L. testified to three alleged incidents that occurred in her grandfather's home when she was a child. In one incident, she claimed Appellant put his fingers into her vagina when she was around nine years old. (RR III 120-23). Y.L. also testified to an alleged incident at her family's home where she was sitting on Appellant's lap, and he touched her breast under her shirt. (RR III 126-27). Y.L. stated that was the only incident that she remembered with Appellant in the family's home. (RR III 128). Then she stated that she remembered another incident where Appellant allegedly tried to make her touch his penis underneath his pants, but she pulled her hand away and left. (RR III 129-30). Y.L.'s medical records showed she was uncertain if Appellant touched her vagina or her butt, but Y.L. testified that she is now certain that it was her vagina. (RR III 148, 154).

At the end of the first day of trial, the trial court told both parties that it "really should have limited" the number of questions to the witnesses (A.L. and Y.L.) because "you're asking the same questions over and over again." (RR III 155). Then trial court then asked the State why the State was not charging Appellant based on all the allegations made by D.L. considering she was alleging more incidents than the other two sisters:

MS. BATISTA: Your Honor, Desiree is the oldest. Desiree does have the most incidents that happened with the defendant. She remembers the most, so we do believe that it will be the longest.

THE COURT: Is there a pending charge with her?

MS. BATISTA: No, Your Honor.

THE COURT: Why not?

MS. BATISTA: I'm not sure.

THE COURT: I'm just asking. If she has the most incidents, why isn't there a pending case?

MS. BATISTA: I'm not sure why it wasn't filed at the time when they filed all the other girls.

THE COURT: You can't ask that, but I'm just saying.

MS. BATISTA: I do know that she was in California when they reported everything, so I'm not sure if that affected their decision. But that's what I will tell the Court, that she does have the most to disclose.

THE COURT: Were these filed?

MS. BATISTA: Yes, these two were filed. Yes, Your Honor.

MR. VELA: She's basically a continuance sexual abuse of a child.

MS. BATISTA: And you did hear her testimony yesterday. Desiree was one of the ones that testified yesterday.

THE COURT: Okay. I can't remember which one she was.

MS. BATISTA: She's the one that penetration -- that he actually penetrated her.

(RR III 156-57).

D.L. testified to six alleged incidents of sexual abuse by Appellant. The first alleged incident she remembered was when she was about six years old and Appellant put his fingers in her vagina. (RR IV 48). She stated that around the same time frame, Appellant put his penis into her vagina and then remembers bleeding afterwards. (RR

IV 49-52). She recounted an incident where she said Appellant allegedly tried to put his penis in her anus, but she did not remember if she was penetrated. (RR IV 53-55, 75). In another alleged incident, D.L. said Appellant put his hands in her underwear but then quickly took his hand out when he realized she was on her period. (RR IV 56-59). In another alleged incident D.L. testified that Appellant tried to kiss her while she was in bed. (RR IV 59-60).

D.L.'s medical records showed that she had disclosed that Appellant's penis had entered her vagina and that Appellant's mouth went into her vagina. (RR IV 68-69; State's Exhibit 9). D.L. testified that Appellant put his face between her legs when they were at her grandfather's home. (RR IV 68-69). On cross-examination, defense counsel asked D.L. if Appellant put his mouth in her anus because that was what she told the nurse examiner. (RR IV 70). D.L. said that there must have been a mix-up because Appellant did not put his mouth on her anus. (RR IV 70).

After the testimony of D.L., the prosecutor again argued for the trial court to admit the testimony of the complaining witness from Appellant's 2013 case. (RR IV 86-93). The trial court again found the evidence to be more prejudicial than probative and declined to allow its admission. (RR IV 93). Then the conversation went back to D.L.'s testimony:

THE COURT: I don't see anything different that you've argued that removes the more prejudicial than probative introduction of that kind of evidence. That's my concern. You '] have many complainants.

MS. BATISTA: She is not a complainant, Your Honor, because as we believe in talking to the investigator, it may have occurred when the defendant was a minor under the age of 17. So that's why -- when she was six, I do believe defendant was under 17, so that is why charges weren't filed against Desiree. However, in regards to --

THE COURT: Wait a minute. Wait, wait, wait. You can get charged as a juvenile. I'm confused.

MS. BATISTA: Your Honor, by this time, he was way over the age of 17 when charges are filed.

THE COURT: Happens every day, Counsel.

MS. BATISTA: I understand. Again, I cannot speak to --

THE COURT: I'm familiar with juvenile cases. It happens every day.

(RR IV 88-89). The prosecutor continued to argue for the admission of additional extraneous information, and the trial court stated the following:

THE COURT: I can understand it, but she's got to take it down.

Let me just say this to you: My concern is you have gotten a lot of things before this jury. That's not my concern. My observation is you got a lot of things before this jury. No penile penetration by this defendant from Desiree. All right. I am very, very concerned that under the integrity of this case and with everything that's been presented here, I don't -- I'm sorry, I cannot see how introducing now a prior conviction, which I can't see any way around that by putting on that complainant, wouldn't be more prejudicial than probative. So because of that -- I understand your argument.

(RR IV 92). The trial court again denied the State's request to admit additional extraneous evidence.

After both parties closed, the jury found Appellant guilty of indecency with a child. (RR IV 128; CR 144-45). At the conclusion of the punishment hearing, the trial court sentenced Appellant to 13 years confinement in the Institutional Division of the Texas Department of Criminal Justice. (CR 146-48; RR V 79).

SUMMARY OF THE ARGUMENT

The trial court erred in admitting nine extraneous sexual abuse allegations from A.Y. and D.L. during the guilt/innocence phase of trial, despite only charging Appellant with one offense involving A.L. This evidence was not only highly prejudicial, but it also overshadowed the charged offense and created the impression that all three sisters were equal complainants. The State's extensive use of this evidence—both in presentation and argument—was unnecessary to prove A.L.'s allegation and unfairly influenced the jury by appealing to emotion rather than fact. As a result, the introduction of the extraneous allegations caused significant harm and undermined Appellant's right to a fair trial.

APPELLANT'S POINT OF ERROR

The trial court abused its discretion in admitting nine uncharged allegations under article 38.37 of the Texas Code of Criminal Procedure because any probative value of the extraneous evidence was substantially outweighed by the danger of unfair prejudice and confusing the jury.

Law and Standard of Review

A trial court's decision to admit or exclude evidence is reviewed by appellate courts under an abuse of discretion standard. *Henley v. State*, 493 S.W.3d 77, 83 (Tex. Crim. App. 2016). A trial court abuses its discretion when its decision to admit or exclude evidence falls outside the zone of reasonable disagreement. *Moses v. State*, 105 S.W.3d 622, 627 (Tex. Crim. App. 2003) (citing *Montgomery*, 810 S.W.2d at 391). A trial court's decision will be upheld if it is within the zone of reasonable disagreement. *Buntion v. State*, 482 S.W.3d 58, 71 (Tex. Crim. App. 2016).

Relevant evidence of a person's bad character is generally inadmissible to show that a defendant acted in conformity therewith. *Robbins v. State*, 88 S.W.3d 256, 259 (Tex. Crim. App. 2002). An exception to this general rule exists under article 38.37 of the Texas Code of Criminal Procedure, where in a trial of a defendant for specific sexual crimes against children, "evidence that the defendant has committed certain offenses against a nonvictim of the charged offense is admissible for any bearing it may have on relevant matters, including the character of the defendant and acts performed in

conformity with the character of the defendant." *Belcher v. State*, 474 S.W.3d 840, 844 (Tex. App.—Tyler 2015, no pet.); TEX. CODE CRIM. PROC. ANN. ART. 38.37 § 2(b).

Before the introduction of evidence that the defendant has committed a separate offense against a child other than the complainant, a trial court must determine that the evidence will support a finding be the jury that the defendant committed the extraneous act beyond a reasonable doubt and hold a hearing out of the presence of the jury for that purpose. TEX. CODE CRIM. PROC. ANN. ART. 38.37 § 2-a. Extraneous evidence under article 38.37 is admissible despite Rules 404 and 405 of the Texas Rules of Evidence. TEX. CODE CRIM. PROC. ANN. ART. 38.37 § 2(b).

The protections of Rule 403, however, allow a trial court to exclude relevant evidence "if its probative value is substantially outweighed by a danger of one or more of the following: unfair prejudice, confusing the issues, misleading the jury, undue delay, wasting time, or needlessly presenting cumulative evidence." TEX. R. EVID. 403; *Robisheaux v. State*, 483 S.W.3d 205, 211–12 (Tex. App.—Austin 2016, pet. ref'd). After a Rule 403 objection is made, the trial court must weigh the probative and prejudicial value of the extraneous evidence. *Santellan v. State*, 939 S.W.2d 155, 169 (Tex. Crim. App. 1997).

The factors a trial court must consider when conducting a Rule 403 balancing test include: (1) "[h]ow compellingly evidence of the extraneous misconduct serves to make more or less probable a fact of consequence"; (2) "the potential the other crimes, wrongs, or acts have to impress the jury in some irrational but nevertheless indelible

way"; (3) the amount of trial time the proponent needs "to develop evidence of the extraneous misconduct, such that the attention of the factfinder will be diverted from the indicted offense"; and (4) "how great is the proponent's need for the extraneous transaction." *Montgomery v. State*, 810 S.W.2d 372, 389-90 (Tex. Crim. App. 1990), on reh'g (June 19, 1991).

There is a presumption that relevant evidence is more probative than prejudicial. *Santellan*, 939 S.W.2d at 169. Only unfair prejudice provides the basis for exclusion of relevant evidence. *Montgomery*, 810 S.W.2d at 389. Unfair prejudice arises from evidence that has an undue tendency to suggest that a decision be made on an improper basis, commonly an emotional one. *Id.*

"[S]exually related bad acts and misconduct involving children are inherently inflammatory." *Pawlak v. State*, 420 S.W.3d 807, 809 (Tex. Crim. App. 2013) (citing Montgomery, 810 S.W.2d at 397). Additionally, "it is possible for the admission of character evidence, though not necessarily cumulative, to cross the line from prejudicial to unfairly prejudicial based on the sheer volume of character evidence admitted." *Pawlak*, 420 S.W.3d at 809-10 (citing *Mosley v. State*, 983 S.W.2d 249, 263 (Tex. Crim. App. 1998); *Salazar v. State*, 90 S.W.3d 330, 336 (Tex. Crim. App. 2002).

The admission of the extraneous testimony of Y.L. and D.L. during guilt/innocence was more prejudicial than probative.

The prosecutor's statement, "I'm going to ask my complainants to see if they want to come in," perfectly captures the prejudice that resulted from the admission of the extraneous evidence in Appellant's trial. (RR IV 107). Introducing the highly inflammatory, uncharged sexual abuse allegations of two sisters—while only charging one allegation from a third—unfairly skewed the jury's perception, making it seem as if all three sisters were complaining witnesses in this case. This excessive amount of extraneous evidence dominated the trial, overshadowing the charged offense and created a significant risk the verdict was based on emotion. Under Rule 403, the prejudicial nature of Y.L. and D.L.'s testimony during guilt/innocence substantially outweighed any probative value, and the trial court erred in admitting it over defense counsel's numerous objections. (RR II 184-85; RR III 114; RR IV 38, 62-63, 93); *see Montgomery*, 810 S.W.2d at 389 (an opponent has no further obligation "than level an objection that the trial court should exclude the evidence under Rule 403").

How compelling the extraneous evidence is in showing Appellant's guilt in the charged offense.

In analyzing the first *Montgomery* factor, the extraneous acts were highly compelling. Not only did the extraneous evidence support the allegation in the indictment, but they served as the State's primary means of persuading the jury of Appellant's guilt in a case where the only complaining witness, A.L., struggled to recall the facts surrounding her allegation. During trial, A.L. gave inconsistent testimony

regarding the nature of the alleged incident. First A.L. stated that Appellant's finger entered her vagina but then she later stated that he only attempted to penetrate her. (RR III 85-86, 102, 107-08). Another time, A.L. said she did not remember what Appellant was doing with his fingers. (RR III 107). Her uncertainty, coupled with the State's inability to present physical or corroborative evidence directly supporting the charged offense, made the prosecution's case on the charged incident tenuous.

Because of the weakness in its case, the State relied heavily on the testimony of Y.L. and D.L. to create the impression of a consistent pattern of abuse by Appellant. The two sisters alleged a combined nine incidents of uncharged sexual abuse by Appellant and were admitted under article 38.37 as extraneous offense evidence intended to show Appellant's propensity to commit the charged offense. These allegations, however, were not presented briefly or with any restraint. In looking to the record, the extraneous allegations occupied a significant portion of trial, consumed more testimonial time than the charged offense itself, and included highly inflammatory accusations, such as vaginal penetration by Appellant's penis, attempted anal penetration by Appellant's penis, and vaginal contact by Appellant's mouth. (RR III 120-23; RR IV 48-52, 53-55, 68-69, 75). These extraneous allegations were more severe than the conduct charged in the indictment.

Because the probative value of extraneous evidence under article 38.37 depends in part on the strength of the State's case on the charged offense, the compelling testimony of Y.L. and D.L. effectively overshadowed A.L.'s inconsistent testimony.

The jury was presented with a narrative in which the three sisters made simultaneous outcries to their mother, Lisa, and their allegations were investigated together by law enforcement and a forensic interviewer, which blurred the lines between the charged offense and the nine uncharged ones. Although the sisters' testimony technically conformed to the requirements of article 38.37, its probative value was not merely enhanced by the weakness of A.L.'s account—it became the State's de facto evidence of Appellant's guilt. The extraneous evidence did not merely support the charged offense, it supplanted it.

Thus, while the extraneous acts may have had some probative value, their weight in the jury's eyes, especially given the weakness of the charged allegation, rendered them far more prejudicial than probative, tipping this first factor against admissibility.

> Potential of the extraneous evidence to impress the jury in some irrational but nevertheless indelible way and the amount of time the State used in developing the evidence.

During the guilt/innocence phase, the jury heard that all three sisters—A.L., Y.L., and D.L.—made their outcries to the same person, their mother, on the same day. (RR II 170; RR III 22-25, 36-38, 71; RR IV 63-64). It also heard that A.L. and Y.L. spoke with police officers together and disclosed everything Appellant allegedly did to them (notably, those officers did not testify at trial). (RR III 73-74, 89-90, 134, 147). Deputy Hernandez investigated all three of the sisters' claims, and each sister was separately interviewed by a forensic examiner. (RR IV 11-15). The jury also saw medical

records for all three sisters and heard that their allegations occurred around the same time, in the same homes, and involved the same perpetrator. (State's Exhibits 7-9; RR III 85-86, 102, 107-08, 111-12, 120-23, 126-27, 129-30; RR IV 48-60, 68-70, 75). All three described similar abuse in the same locations within the homes they lived in with Appellant.

A.L. testified to two incidents, but her sisters added nine more extraneous allegations—six from D.L. alone. (RR III 120-30; RR IV 48-75). This avalanche of extraneous accusations created an undue prejudice against Appellant, particularly given the limited evidence supporting the charged offense. Even the trial court acknowledged the volume of extraneous testimony the State presented. (RR IV 92). Because the extraneous evidence outweighed the direct evidence, it risked shifting the jury's focus from facts to emotion.

The State had every right to choose to only indict the charge involving A.L. *See Neal v. State*, 150 S.W.3d 169, 173 (Tex. Crim. App. 2004) ("prosecutors have broad discretion in deciding which cases to prosecute"). However, Y.L. and D.L.'s allegations, which were investigated in the same manner and timeframe as A.L.'s, could have been included if the State believed they were provable beyond a reasonable doubt. Even the trial court questioned why D.L.'s case, despite involving the most serious allegations, was not being prosecuted. (RR III 156-57; RR IV 88-89). The prosecutor's inconsistent responses—first, claiming not to know why, then citing Appellant's age at the time of the alleged offense—only deepens this concern. (RR III 156-57; RR IV 88-89).

The failure to charge D.L.'s case despite its gravity strongly suggests the State lacked confidence in its ability to prove it. While extraneous evidence can be relevant, the sheer number of allegations and the time devoted to presenting them made it overwhelmingly prejudicial. Thus, the second and third *Montgomery* factors weigh heavily in favor of excluding this testimony under Rule 403.

The State's need for the extraneous evidence

The fourth factor weighs slightly in favor of admitting the extraneous evidence, albeit not to the extent it was presented. Y.L. struggled to recall specific details regarding the allegations. However, medical records from her forensic examination were admitted into evidence. (State's exhibit 7). These records helped clarify and corroborate Y.L.'s testimony.

Conclusion

While Rules 404 and 405 of the Texas Rules of Evidence don't preclude extraneous evidence from being admissible under article 38.37, there is no exception for Rule 403. *Bradshaw v. State*, 466 S.W.3d 875, 881 (Tex. App.—Texarkana 2015, pet. ref'd). The admission of extensive and emotionally charged extraneous allegations from Y.L. and D.L.—who were not named in the indictment—caused substantial harm to Appellant by fundamentally altering the jury's perception of the case. Rather than evaluating the credibility and evidence surrounding the sole charged offense involving A.L., the jury was inundated with nine additional uncharged accusations, most of which came from D.L.

An instruction was given by the court, requiring the jury to only consider the extraneous evidence if it believed beyond a reasonable doubt the evidence establishing that the acts occurred. (CR 140). It was further instructed that, if it believed beyond a reasonable doubt that Appellant committed the extraneous offenses, it could use this evidence to determine its bearing on relevant matters, including the character of Appellant and that he performed the acts in conformity with his character. (CR 140). Because the extraneous evidence overshadowed the direct evidence of the charged conduct, it would have been impossible for the jury to not have considered the extraneous evidence when coming to its verdict on the charged offense. The overwhelming volume and detail of this extraneous testimony, which spanned over 80 pages of the record and was emphasized repeatedly during the State's closing argument, created an indelible impression of Appellant's guilt that led the jury to convict based on emotion rather than the facts relevant to the charged offense. The prosecutor's own statement, "I'm going to ask my complainants to see if they want to come in," reveals a strategy aimed at presenting the jury with a collective image of three accusers, blurring the distinction between charged and uncharged conduct.

In a case where A.L. struggled with recalling the events that happened to her, the State's disproportionate reliance on Y.L. and D.L.'s uncharged allegations misled the jury and denied Appellant a fair trial. The record demonstrates that the extraneous evidence not only dominated the trial but also supplanted the relatively limited evidence

supporting the charged offense, making the error in its admission both substantial and harmful to Appellant.

PRAYER

WHEREFORE, Appellant respectfully prays that this Honorable Court sustains his point of error, reverses his conviction and sentence, and remands the cause for a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Rule 9.4(i)(2)(B) of the Texas Rules of Appellate Procedure, I hereby certify that appellant's brief, filed on July 6, 2025, has 4, 528 words based upon a word count under MS Word.

Mandy Miller

Mandy Miller

CERTIFICATE OF SERVICE

Appellant has transmitted a copy of the foregoing instrument to counsel for the State of Texas via eservice on July 6, 2025, at:

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