

IN THE COURT OF APPEALS

FIRST JUDICIAL DISTRICT

HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

NO. 01-24-00742-CR

ARMANDO JESUS PEDRAZA

V.

THE STATE OF TEXAS

FILED IN
1st COURT OF APPEALS
HOUSTON, TX
JUN 17, 2025
DEBORAH M. YOUNG,
CLERK OF THE COURT

On Appeal from the 230th District Court
Harris County, Texas, Cause No. 1635968
Honorable Chris Morton, Judge Presiding

BRIEF FOR APPELLANT, ARMANDO JESUS PEDRAZA

Cynthia Rayfield-Aguilar
701 N. Post Oak Rd., Ste. 116
Houston, Texas 77024
State Bar No. 08723200
Tel (713) 236-9226
Fax (713) 391-8522
c.rayfield@sbcglobal.net

Attorney for Appellant

Oral Argument Not Requested

IDENTITY OF PARTIES AND COUNSEL

Pursuant to Tex. R. App. P. 38.1(a), the following are parties or counsel to the judgment appealed from:

Presiding Judge: The Honorable Chris Morton
Judge, 230th District Court
1201 Franklin Street
Houston, Texas 77002

Appellant: Armando Jesus Pedraza

State of Texas Attorneys: John Hyde (at trial)
Lara Hogue (at trial)
Allison Darwin (at trial)
Jessica A. Caird (on appeal)
Harris County District Attorney's Office
1201 Franklin Street, Suite 600
Houston, Texas 77002

Attorneys for Appellant: Fabio Amador (at trial)
Tanya Pezina (at trial)
Michael Roman (at trial)
Harris County Public Defender's Office
1310 Prairie, 4th Floor
Houston, Texas 7700

Cynthia Rayfield-Aguilar (on appeal)
The Rayfield Law Firm
701 N. Post Oak Rd., Ste. 116
Houston, Texas 77024

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STATEMENT REGARDING REFERENCES TO THE RECORD

The clerk's record will be cited as "CR page number." For example: CR 16.

The reporter's record will be cited as "RR", followed by a volume number, followed by a page number. For Example: RR VI 15.

STATEMENT OF THE CASE

On June 26, 2023, Appellant was indicted for the offense assault of a family member by impeding the breathing or circulation, enhanced with a prior misdemeanor assault family member and a prior felony conviction. CR 46. A jury trial began on September 20, 2024. RR II 4. The trial ended in a guilty verdict September 24, 2024 (the jury found Appellant guilty of assault of a family member impeding breath as charged in the indictment). RR IV 24; CR 163. The Trial Court found both enhancements to be true and sentenced Appellant to 30 years in prison. RR IV 172; CR 163. Appellant timely filed notice of appeal on September 24, 2024. CR 180.

ISSUES PRESENTED

ISSUE ONE: Appellant was denied effective assistance of counsel during the punishment phase of the trial because Trial Counsel failed to object to hearsay testimony about a newspaper article detailing alleged facts about Appellant's criminal charges and he erroneously instructed Appellant that he could testify and still exercise his 5th Amendment right to remain silent. U.S. Const. amends. V, VI, XIV.

STATEMENT OF THE FACTS

Introductive Summary

On May 2, 2023, Appellant and the complaining witness, his girlfriend, got into an argument when she got home from work because he believed she was dating someone else. RR III 89-97. She testified that he carried her to the bedroom, threw her on the bed, got on top of her and began punching her face and choking her. RR III 98-103. She said that she got dizzy and could not breathe well. RR III 100, 106. The complainant left the next morning while Appellant was still in bed and called the police from the parking lot of a Family Dollar store. RR III 25-27. The police arrived and saw the complainant in a frantic state and noted injuries to her face; she told them Appellant assaulted her. RR III 30-33. Appellant was eventually arrested and indicted for assault of a family member by impeding breathing or circulation. CR 46. He was convicted by a jury and elected to be punished by the judge. CR 163. The judge sentenced him to 30 years in prison. RR IV 172; CR 163.

Guilt/Innocence Phase

The State's first witness was Deputy Chaka Long of the Harris County Sheriff's Office. RR III 22. Deputy Long testified that the complainant said Appellant assaulted her. RR III 33. The officer noted injuries (redness) to her face and took pictures of them. RR III 35-42. The complainant alleged that Appellant

choked her, but the officer could not see any marks or injuries to her neck area. RR III 43, 58-59. Officer Long and the complainant went to her house to see if Appellant was there. RR III 44. Appellant was not there, so the officer followed the complainant through the house while she packed a bag because she was afraid to stay there. RR III 45. Officer Long spoke briefly with Appellant on the phone, but Appellant hung up on him. RR III 49-51.

The next State's witness was Maria Esther Dominguez, the complaining witness. RR III 80. She said she and Appellant started dating in 2022 and moved in together soon after. RR III 81-86. She got home from work to find Appellant outside of the house; she noticed that his breath smelled of alcohol. RR III 90. Appellant proceeded to look through her phone and found a conversation with a male friend. RR III 97. Ms. Dominguez testified that this angers Appellant and that he went into a rage, carried her to the bed and threw her on it where he assaulted her by hitting her, choking her, and biting her. RR III 97-103. She said she couldn't breathe well and got dizzy. RR III 100, 106. On cross-examination she admitted that she did not immediately tell anyone that she had been choked and that her medical records reflect no bite wounds. RR IV 143-152.

The case went to the jury and they returned a verdict of guilty as charged in the indictment. RR IV 24.

Punishment Phase

Appellant was arraigned and pled true to both enhancement paragraphs before the judge. RR IV 27-29. The State's first witness was Diane Medina, a latent print examiner with the Harris County Sheriff's Office Crime Scene Unit. RR IV 33. Her testimony established Appellant's prior Harris County convictions of assault family member, driving while intoxicated and possession with intent to deliver cocaine; she further testified to Appellant's Minnesota convictions of drug possession and terroristic threats. RR IV 38-46.

The next State's witness was Officer Hunter Trujillo of the Pasadena Police Department. He testified about the facts in Appellant's assault family member prior conviction. RR IV 49-54. Officer Victor Garcia of the Harris County Sheriff's Office testified that Appellant violated his bond conditions in the present case by contacting the complainant by phone. This resulted in a motion to revoke bond. RR IV 64-65. Pasadena Police Department Officer Zachary Mabes testified that Appellant committed burglary of a motor vehicle while on bond in the present case. RR IV 76-77.

Maria Dominguez testified again during the punishment phase, stating that Appellant uses methamphetamine. RR IV 79-80. She then went on to describe the multiple times Appellant has been violent or threatening toward her. The first time Appellant hit her in the face and she called the police the next day when Appellant

came to her house after she told him to stay away from her. RR IV 82-86. She said she found out Appellant was on bond for assaulting another woman. RR IV 87. She stated that, while Appellant was on bond for assaulting her, he broke her cell phone by stepping on it in a jealous rage. RR IV 87-90. Ms. Dominguez also told the jury that Appellant called her while on bond for the present case and she reported this to the police. RR IV 91-92.

Finally, Ms. Dominguez testified that Appellant would get paranoid under the influence of methamphetamine and would walk around the house carrying a machete, even sleeping with it. She described one incident when Appellant was so paranoid that she had to take him to his cousin's house, and the police were called to take him to a drug treatment facility. RR IV 108-112.

Hearsay Testimony of Complaining Witness

At one point during her punishment testimony, the complainant testified extensively on direct examination without objection to alleged facts that she learned from reading a newspaper article online about Appellant's Minnesota criminal cases of drug possession and terroristic threat. Her testimony is as follows:

Q. Are you worried that Mr. Pedraza would do this to anyone else?

A. Yes.

Q. Why do you believe that?

A. Because it's a pattern. I mean, from -- from the research that I've done -- you know, from a case

where he held a woman hostage and her child.

Q. Do you know what case that is?

A. A Minnesota case, I think.

Q. How did you find out about that case?

A. I Googled.

Q. What did you Google?

A. His name.

Q. Why did you do that?

A. I just had a feeling. Out of curiosity, let me just look it up.

Q. And when you Googled his name, what did you find?

A. I found an article.

Q. What kind of article?

A. It was an article that explained, you know, what had happened to that woman and her child.

Q. Do you remember reading that article?

A. Yes, I do.

Q. Do you remember -- you said it was from Minnesota, correct?

A. Yes, I did.

Q. Do you remember when that article was written or made?

A. I don't remember the date.

Q. Do you remember the date that the article said that offense happened?

A. No, I don't remember the date. I remember what happened.

Q. What do you remember that that article said?

A. I remember that it stated that the woman was held captive at her house with her child, and that she was receiving -- she was getting beaten -- being beaten by him, and that he had bit her. It stated that he had a machete and begin to cut her in pieces with the machete.

It also said that her child there was, and the child was listening, and said that the child testified to that, as well.

Q. So this was part of court?

A. That's what the article stated.

Q. And this article, is this a news media article?

A. It's like a Houston Chronicle, but for them.
Q. So like a Minnesota Chronicle?
A. Yes.
Q. But it would be news media, right?
A. Yes.
Q. When you read that article, how did you feel?
A. It's like a bucket of water just poured all over me, like, huge anxiety.
Q. Do you remember when you read that article?
A. I was at work.
Q. Do you remember what date it might have been?
A. I don't.
Q. Any time of year? Was this before or after he choked you?
A. Before.
Q. Did you ever confront him about what happened?
A. Yes.
Q. What did he tell you?
A. He said that it wasn't true, that the reason why he was with that woman was because he was at his, I guess, friend or maybe cousin -- they were drug dealers. And he said that he got her hooked on drug, and she was homeless, and she didn't have anywhere to go, and she needed a place to stay, so he felt that he would do the right thing since it was his fault that she was on drugs. And for her son and somewhere to stay the night.
Q. Did he confirm that that news article was about him?
A. Yes.
Q. He just said that's not what happened?
A. Yes.
Q. Did he tell you that he went to prison for that?
A. I don't think so.
Q. Did you ask him?
A. I did.
Q. Did he tell you --
A. I believe he went to jail for that, but prison, I'm not sure. Is that the same thing?

Q. It would be different.
Do you know how long he might have gone to
jail or prison for?
A. No.

RR IV 103-107.

Appellant's Assertion of Fifth Amendment After Electing to Testify

Appellant and his Trial Counsel both told the court through Appellant's testimony that he was testifying, but that he was asserting his Fifth Amendment right to remain silent to all pending charges and to the charge he was convicted of in the present case. The first instance of this in record occurs during Appellant's direct examination by Trial Counsel as follows:

Q. Okay. And we talked before you came up here.
You haven't made up your mind or not, whether or not
you're going to appeal this decision, right, from the
trial?

A. That is correct.

Q. So we're not going to get into you taking any
responsibility or anything like that.

A. Thank you.

Q. You're still maintaining your innocence?

A. I will maintain my innocence at this time, yes,
sir.

Q. And, obviously, you have pending cases still
out of this court, right?

A. Yes, sir.

Q. Okay. So we're not going to talk about those
because those cases are still pending?

A. That is correct, yes, sir.

Q. And you'll take your Fifth Amendment right on
those cases not to incriminate yourself, correct?

A. Yes, sir.

Q. Now, that burglary case, that misdemeanor case,

that's still pending, right?

A. I believe it is, yes, sir.

Q. Yes. So you take the Fifth Amendment right on that, not to comment on those cases?

A. Yes, sir.

RR IV 127-128.

The second time this subject occurs is during cross-examination of

Appellant by the State as follows:

Q. Okay. Let's talk about what you were just convicted of, assault impeding, correct?

A. Yes.

Q. Again, you were here for all the testimony?

A. Yes, sir.

Q. You were here whenever Maria's photos, her injuries were shown to this jury, right?

A. That is correct.

Q. And you looked at these photos?

A. I looked at them.

Q. And let's look at some of those photos.

State's Exhibit 5 here --

A. Okay.

Q. -- do you recall she's got some bruising to her eye?

A. Yes, I see it.

Q. And did you cause that?

A. No, sir.

Q. Okay. Do you know how it happened?

MR. AMADOR: I'm going to object to this question. Again, Mr. Pedraza at this point still has a pending assault with previous conviction, and it's still pending, so these questions right now are having him self-incriminate. He's incriminating himself for a potential future trial.

THE COURT: He took the stand, man.

Overruled. You may proceed.

A. So what happened that night between --

Q. BY MR. HYDE: Hold on. We're going to go through this question at a time.

A. Okay.

RR IV 138-139.

A third instance happens during Appellant's cross-examination by the State as follows:

Q. This scratch on the back of her ear,
State's Exhibit 7, where did that come from?

A. I would plead the fifth because --

Q. Not how that works.

A. It's not how it works?

THE COURT: You're going to have to answer the question.

RR IV 140.

The Trial Court finally put an end to the matter during cross-examination of Appellant by the State as follows:

Q. Okay. She says that you picked her up over your shoulders and threw her into the bed, right?

A. That's a good one.

Q. You remember that?

A. Yeah, I remember that one.

Q. Okay. And you're saying that didn't happen?

A. I can't pick her up. I'm sorry.

Q. So then your testimony is that nothing happened?

A. No. My testimony is that nothing of what she's saying happened. My testimony is that I still maintain my innocence, okay, on all the pending charges that you have, and I would like to appeal the one that is just right now the verdict. So, yes, what I'm trying to tell you, in essence, is I think I need to take the Fifth here, but you're not allowing me to.

Q. No, not how that works. You elected to testify, and you have to answer these questions.

THE COURT: Let me make sure everybody is aware. He elected to testify. He can't testify about some things and then take the Fifth on other things. It is not allowed. You're going to have to answer the questions because you took the stand.

THE WITNESS: Okay.

RR IV 147-148.

Appellant had to testify extensively, over Trial Counsel's Fifth Amendment objections, throughout the punishment phase about allegations of violence made against him by the complainant.

Trial Court's Sentence

Both sides rested and closed and the Trial Court found both enhancement paragraphs to be true. The judge stated that he makes no findings as to the Minnesota case and sentenced Appellant to 30 years in prison. RR IV 167-172.

SUMMARY OF THE ARGUMENT

ISSUE ONE: Trial Counsel failed to object to hearsay statements during the complainant's direct examination in the punishment phase. The complainant testified extensively about an article she read online which detailed the allegations against Appellant in Minnesota. This evidence is hearsay, speculation, and unfairly prejudicial. Most importantly, Appellant was denied the right to confront and examine his accuser. Very damaging testimony about the allegations against Appellant in Minnesota was admitted into evidence without objection. For example, she testified that the article said Appellant cut the victim with a machete. In addition to this error, Trial Counsel also erroneously believed Appellant could testify and still plead his Fifth Amendment right to remain silent. Trial Counsel elicited testimony from Appellant that he was not going to testify about pending charges or the present charge of conviction. The Trial Court ordered Appellant to testify about all allegations of violence, whether pending or resolved. The Trial Court sentenced Appellant to 30 years in prison, which is far above the minimum sentence of five years. This is error by Trial Counsel that amounts to ineffective assistance of counsel.

ARGUMENT AND AUTHORITY

ISSUE ONE: Appellant was denied effective assistance of counsel during the punishment phase of the trial because Trial Counsel failed to object to hearsay testimony about a newspaper article detailing alleged facts about Appellant's criminal charges and he erroneously instructed Appellant that he could testify and still exercise his 5th Amendment right to remain silent. U.S. Const. amends. V, VI, XIV.

A. Standard of Review

To establish a claim of ineffective assistance of counsel, Appellant must show that (1) counsel's performance was deficient because it fell below an objective standard; and (2) the deficient performance prejudiced the defense. *Strickland v. Washington*, 466 U. S. 668, 689 (1984); *Lopez v. State*, 343 S.W.3d 137, 142 (Tex. Crim. App. 2011). The two-prong Strickland test applies to both guilt punishment phases of the trial. *Hernandez v. State*, 988 S.W.2d 770, 772-774 (Tex. Crim. App. 1999). Appellant must first prove by a preponderance of the evidence that counsel's performance fell below an objective standard of reasonableness under the prevailing professional norms. *Lopez*, 343 S.W.3d at 142. Once counsel's performance is shown to be deficient, Appellant then must show prejudice, meaning that there is a reasonable probability, or a probability sufficient to undermine confidence in the outcome, that the result of the proceeding would have been different but for counsel's errors. *Lopez*, 343 S.W.3d at 142. In assessing prejudice, the Court must "reweigh the evidence in aggravation against the totality

of available mitigating evidence." *Wiggins v. Smith*, 539 U.S. 510, 534 (2003); *Rivera v. State*, 123 S.W.3d 21, 32 (Tex. App. – Houston [1st Dist.] 2003, pet. ref'd).

The record on direct appeal is “in almost all cases inadequate to show that counsel's conduct fell below an objectively reasonable standard of performance and that the better course is to pursue the claim in habeas proceedings. But, when no reasonable trial strategy could justify the trial counsel's conduct, counsel's performance falls below an objective standard of reasonableness as a matter of law, regardless of whether the record adequately reflects the trial counsel's subjective reasons for acting as she did.” *Andrews v. State*, 159 S.W.3d 98, 102 (Tex. Crim. App. 2005). If trial counsel is not given the opportunity to explain his actions, then the appellate court may only find deficient performance if the challenged conduct was so outrageous that no competent attorney would have engaged in it. *Menefield v. State*, 363 S.W.3d 591, 592-593 (Tex. Crim. App. 2012). Finally, the court must consider the totality of the representation in deciding if counsel was ineffective. *Ex parte Felton*, 815 S.W.2d 733, 735 (Tex. Crim. App. 1991).

B. Argument

The State may introduce the underlying facts of an extraneous offense during the punishment phase of the trial. *Morris v. State*, 530 S.W.3d 286, 295

(Tex. App. – Houston [1st Dist.] 2017, pet. ref'd). The Texas Rules of Evidence apply in the punishment phase of the trial. Tex. R. Evid. 101(b). Trial Counsel's failure to object during punishment, to the extensive hearsay testimony of the complainant concerning a newspaper article she read online about Appellant's Minnesota criminal charges, was so outrageous that no competent attorney would have engaged in it. The complainant was allowed to testify that Appellant hit and bit the Minnesota complainant and cut her with a machete. Not only is this hearsay, speculation, and unfairly prejudicial, this is a denial of Appellant's right to confront and cross-examine the witnesses against him. The State offered no other evidence of the underlying facts of the Minnesota crimes; what possible sound strategy could Trial Counsel have for letting such aggravating evidence before the judge?

In addition to failing to object to the hearsay testimony, Trial Counsel also erroneously advised Appellant that he could testify at punishment and still plead the Fifth Amendment concerning questions about pending charges and the offense of the present conviction. As a result, the Trial Court heard evidence from Appellant concerning all allegations against him. While Appellant denied some allegations, he admitted others, and generally claimed he was innocent of any charges that he has not pled guilty to.

If a defendant elects to testify, he must answer all questions just as any other witness must do; this rule applies to both the guilt and punishment phases of a trial. *Felder v. State*, 848 S.W.2d 85, 99 (Tex. Crim. App. 1992); *see also Cantu v. State*, 738 S.W.2d 249, 256 (Tex. Crim. App. 1987) (held trial court was correct in overruling appellant's request to limit his testimony once he elects to testify). It is glaringly obvious from the record that Trial Counsel, and therefore Appellant as well, believed that Appellant could testify and still assert his Fifth Amendment right at will. This erroneous understanding of, and clearly erroneous advice about, the Fifth Amendment is so outrageous that no competent attorney would have engaged in it.

In summary, Trial Counsel's errors caused the judge to hear inadmissible hearsay about extraneous conduct from the complainant. In addition, Trial Counsel's incorrect belief and advice about the Fifth Amendment caused the judge to hear testimony from Appellant about all extraneous offenses and the offense of the present conviction. These combined errors on the part of Trial Counsel allowed the Trial Court to consider evidence that is aggravating in determining punishment. Evidence that Appellant was prejudiced, meaning that confidence in the outcome of the punishment phase is undermined, is demonstrated by the fact that the Trial Court sentenced Appellant to 30 years in prison for an offense with a minimum possible sentence of five years. Tex. Penal Code art. 22.01(b-3) and art. 12.42(b).

CONCLUSION AND PRAYER

THEREFORE, Appellant respectfully prays that his Court sustain Appellant's point of error advanced herein and remand the case for a new trial on punishment.

Respectfully submitted,

/s/Cynthia Rayfield-Aguilar
Cynthia Rayfield-Aguilar
TBA No. 08723200
701 N. Post Oak Rd., Ste. 116
Houston, Texas 77024
Tel (713) 236-9226
Fax (713) 391-8522
c.rayfield@sbcglobal.net

Attorney for Appellant

CERTIFICATE OF SERVICE

This is to certify that on May 19, 2025, a true and correct copy of the above and foregoing document was served on the State of Texas by serving the District Attorney's Office, Harris County, 1201 Franklin Street, Suite 600, Houston, Texas 77002 through the electronic filing manager.

/s/Cynthia Rayfield-Aguilar
Cynthia Rayfield-Aguilar

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i), the undersigned counsel certifies that this brief complies with the type-volume limitations of Tex. R. App. Proc. 9.4.

1. This brief contains 4,344 words printed in proportionally spaced typeface.
2. This brief is printed in a proportionally spaced serif typeface using Times New Roman 14-point font in text and produced by Microsoft Word software.
3. Upon request undersigned counsel will provide an electronic version of this brief and /or a copy of the word printout to the Court.
4. Undersigned counsel understands that a material misrepresentation in completing this certificate, or circumvention of the type-volume limits in Tex. R. App. Proc. 9.4 may result in the Court's striking this brief and imposing sanctions against the person who signed it.

/s/Cynthia Rayfield-Aguilar
Cynthia Rayfield-Aguilar

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Bar No. 08723200

c.rayfield@sbcglobal.net

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Case Contacts

Name	BarNumber	Email	TimestampSubmitted	Status
Cynthia Rayfield-Aguilar		c.rayfield@sbcglobal.net	5/19/2025 5:26:19 PM	NOT SENT