

**No. 01-24-00260-CR**

In the  
**First Court of Appeals**  
For the  
**State of Texas**

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS  
12/23/2024 10:04:00 AM  
DEBORAH M. YOUNG  
Clerk of The Court

—◆—  
**Cause No. 1773149**  
In the 182nd District Court  
Of Harris County, Texas

—◆—  
**LUIS ALEJANDRO VALENCIA**  
*Appellant*  
v.  
**THE STATE OF TEXAS**  
*Appellee*

—◆—  
APPELLANT'S BRIEF

—◆—  
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**ORAL ARGUMENT NOT REQUESTED**

## **STATEMENT REGARDING ORAL ARGUMENT**

Pursuant to TEX. R. APP. P. 38.1(e), Appellant does not request oral argument.

## **IDENTIFICATION OF THE PARTIES**

Pursuant to TEX. R. APP. P. 38.1(a), a complete list of the names of all interested parties is provided below.

Trial Judge:	Honorable Danilo Lacayo Presiding Judge, 182nd District Court Harris County, Texas
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Appellant:	Luis Alejandro Valencia TDCJ No. 02497107 TDCJ – McConnell Unit 3001 South Emily Drive Beeville, Texas 78102
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Counsel for Appellant:	Inger H. Chandler 1207 South Shepherd Drive Houston, Texas 77019
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## TO THE HONORABLE FIRST COURT OF APPEALS:

### STATEMENT OF THE CASE

On August 23, 2022, Appellant was charged by indictment with the felony offense of murder. (CR 43). A jury was selected on March 15, 2024, and sworn on March 18, 2024. (CR 262; 2RR 4-171). On March 22, 2024, the jury found Appellant guilty as charged in the indictment and assessed punishment at confinement in the Texas Department of Criminal Justice—Institutional Division for fifty-five (55) years and a fine of \$10,000. (CR 231, 238; 7RR 43; 8RR 66). That same day, the trial court certified Appellant’s right to appeal. (CR 243). Appellant filed timely notice of appeal on March 26, 2024. (CR 244-45).

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### ISSUE PRESENTED

*Sole Issue:* Did the trial court abuse its discretion in excluding, during the guilt-innocence phase of trial, character evidence and evidence of crimes, wrongs or acts of the decedent to establish the decedent as the primary aggressor and to inform the decedent’s motive and intent in exhibiting deadly force towards Appellant?

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## **STATEMENT OF FACTS**

On February 12, 2022, Appellant Luis Valencia shot and killed Erik Villeda (“Villeda”), in self-defense. Appellant had met Villeda’s wife, Johanna Vega (“Vega”), the night before the shooting at a Houston after-hours club, La Zona. (5RR 107-108, 136-38, 140; 6RR 19, 30, 70). Vega was upset with Villeda because he often went out, leaving her home alone to tend to their two children; on this particular day he was intoxicated on alcohol and cocaine. (5RR 136-38; 6RR 22, 37-38). According to Vega, Villeda was an aggressive person who loved to fight. (5RR 158; 6RR 34, 39). At the time of the shooting, Villeda was three months into a felony deferred adjudication probation for assaulting Vega, had a prior misdemeanor conviction for assaulting her, and was a documented gang member. (5RR 76). The jury did not hear this evidence. (5RR 76-83).

Vega exchanged Snapchat contact information with Appellant when they met at La Zona. (5RR 108). Vega later sent Appellant a “pin” via Snapchat, sharing her location at another after-hours club called Los Corrales. (5RR 25, 147-50). When Appellant arrived at Los Corrales, he waited in the parking lot for Vega to meet him so they could walk in together, as he was not a regular at the establishment. (5RR 9, 94; 6RR

79). Appellant sent a message to Vega to let her know he had arrived and flashed his headlights, which caught the attention of “security guard,” Brian Flutsch (“Flutsch”). (3RR 77-78, 83, 145-49).

Flutsch testified that when he approached Appellant’s vehicle, Appellant told Flutsch he was looking for a woman in a red dress and showed Flutsch a photo of Vega. (3RR 85-86, 147). Appellant identified himself by showing Flutsch his passport, license and a credit card in his name. (3RR 87). Flutsch went inside the club, then returned with Villeda.

Flutsch testified that Villeda approached Appellant’s vehicle and told Appellant that Vega was his wife. (3RR 91). According to Flutsch, Villeda was angry and told Appellant to step out of the vehicle. (3RR 91). It was clear to Flutsch that Appellant did not want an altercation. (3RR 94-96). Flutsch testified that Villeda was “pushing and kind of shoving” Appellant inside Appellant’s vehicle, but “barely bopping [Appellant’s] head back and forth.” (3RR 95). Flutsch denied that Villeda ever punched or choked Appellant. (3RR 95). Flutsch claimed that he lunged inside Appellant’s vehicle when he saw Appellant reach for a firearm and struggled with Appellant for the gun. (3RR 102).



Appellant testified that when Villeda angrily approached his vehicle in the parking lot of Los Corrales, he asked Appellant, “What are you doing picking up my baby mama?” (6RR 86). Villeda aggressively told Appellant he was facing “twenty-five (25) to life” and had “nothing to lose.” (6RR 86). Appellant testified that Villeda struck his left cheek, then choked him with both hands. (6RR 87). Appellant recalled that he had difficulty breathing and was getting dizzy. (6RR 88-89). Appellant testified that he was scared as Villeda assaulted and choked him, believed he could be killed, and feared for his life. (6RR 90-92). As Appellant testified, it “wasn’t a normal fight.” (6RR 92). Appellant reached for the gun he kept between the seat and console, and unloaded the magazine as Villeda ran in front of him. (6RR 93; 7RR 49).

Appellant was impeached by the State with a conviction for family-violence assault. (6RR 123-26).

The jury rejected Appellant’s self-defense claim and found him guilty of murder. (CR 231; 7RR 43). During the punishment stage of trial, Villeda’s sister provided victim-impact testimony. (8RR 7-22). Appellant and his mother testified about Appellant’s background, work history, and struggles with mental health. (8RR 23-51).

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## **SUMMARY OF THE ARGUMENT**

*Sole Point of Error:* The trial court abused its discretion in excluding, during the guilt-innocence phase of trial, character evidence and evidence of crimes, wrongs or acts of the decedent to establish the decedent as the primary aggressor and to inform the decedent's motive and intent in exhibiting deadly force towards Appellant. Accordingly, Appellant's conviction for murder should be reversed and remanded for a new trial.

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## **APPELLANT'S SOLE POINT OF ERROR**

The trial court abused its discretion in excluding, during the guilt-innocence phase of trial, character evidence and evidence of crimes, wrongs or acts of the decedent to establish the decedent as the primary aggressor and to inform the decedent's motive and intent in exhibiting deadly force towards Appellant.

The trial court abused its discretion when it excluded character evidence and evidence of crimes, wrongs or acts regarding the decedent, Erik Villeda. As a result, Appellant was precluded from asserting his claim of self-defense in a thorough and meaningful way.

Generally, evidence of a person's character may not be used to prove that the person "behaved in a particular way at a given time." *Tate v.*

*State*, 981 S.W.2d 189, 192 (Tex.Crim.App. 1998); *see* TEX. R. EVID. 404(a). This limit on character evidence, however, is not absolute. When a defendant in a homicide prosecution raises the issue of self-defense, he may introduce evidence of the victim's violent character under two separate theories: “communicated character” and “uncommunicated character.” TEX. R. EVID. 404(a)(2); *see Ex parte Miller*, 330 S.W.3d 610, 618 (Tex.Crim.App. 2009); *Torres v. State*, 117 S.W.3d 891, 894 (Tex.Crim.App. 2003). A defendant may also introduce evidence of a victim’s crimes, wrongs or other acts when offered for another purpose, such as proving motive, opportunity, intent, preparation, plan, knowledge, identity, absence of mistake, or lack of accident. *See* TEX. R. EVID. 404(b).

Under the “communicated character” theory, a defendant may offer reputation/opinion testimony or evidence of specific acts of violence by the victim – *and known to the defendant* – to demonstrate the “reasonableness of the defendant’s claim of apprehension of danger” from the victim. *Ex parte Miller*, 330 S.W. 3d at 618; *Fry v. State*, 915 S.W.2d 554, 560 (Tex.App.—Houston [14th Dist.] 1995, no pet.).

Under the “uncommunicated character” theory, a defendant may offer evidence of the victim's character trait for violence to demonstrate that the victim was, in fact, the primary aggressor. *Ex parte Miller*, 330 S.W.3d at 619; *Fry v. State*, 915 S.W.2d at 560. Rule 404(a)(2) is directly applicable to this theory. See TEX. R. EVID. 404(a)(2). It is **not** required that the defendant was aware of the victim's violent character. Under this theory, a witness testifies that the victim made an aggressive move against the defendant, then another witness offers opinion testimony about the victim's reputation for violence. See TEX. R. EVID. 405(a); see also *Ex parte Miller*, 330 S.W.3d at 619.

A third, separate rationale supports the admission of evidence a “victim’s prior specific acts of violence when offered for a non-character purpose—such as his specific intent, motive for an attack on the defendant, or hostility—in the particular case.” *Ex parte Miller*, 330 S.W.3d at 620; see TEX. R. EVID. 404(b). “As long as the proffered violent acts explain the outward aggressive conduct of the deceased at the time of the killing, and in a manner other than demonstrating character conformity only, prior specific acts of violence may be admitted even though those acts were not directed against the defendant.” *Torres v.*

*State*, 71 S.W.3d 758, 762 (Tex.Crim.App. 2002). “The proper predicate for the specific violent prior act by the deceased is some act of aggression that *tends* to raise the issue of self-defense, which the violent act may then help clarify.” *Torres*, 117 S.W.3d at 895 (emphasis in the original).

Appellant’s counsel made it clear during opening statements that the sole issue in the case was self-defense:

“Not guilty. That's what I'm going to be asking you to find at the conclusion of this case. Not guilty by self-defense. And we read you what self-defense is. Self-defense is when you are being attacked ... with deadly force and you respond with deadly force ... and that's what happened here. Pure and simple.”

(3RR 22).

To support his defense, Appellant sought the admission of specific “uncommunicated character” evidence and other crimes, wrongs or acts that had been committed by Villeda: 1) that Villeda had twice committed family-violence assaults against Vega; 2) that Villeda was on felony probation for assaulting Vega at the time of the shooting; and 3) that Villeda was a documented member of a criminal street gang. Each of these acts would not only have supported Appellant’s assertion that Villeda was the primary aggressor but would have also been admissible

to establish Villeda's motive and/or intent at the time of the altercation.  
*See* TEX. R. EVID. 405(a); *see also Ex parte Miller*, 330 S.W.3d at 619-20.

During the testimony of the homicide investigator, Appellant's trial counsel sought to introduce this evidence. (5RR 76-83). The following exchange occurred during the bench conference regarding its admissibility:

*THE COURT:* So, the defense wants to bring in evidence of prior specific bad acts of the decedent, specifically that he is a gang member and also two assault cases against a family member; is that correct?

*MR. BANKER:* Yes.

*THE COURT:* And is [sic] there any other bad acts that you wanted to bring in?

*MR. BANKER:* No.

*THE COURT:* Okay. And we're looking at the Texas Rules of Evidence 404, and specifically B, 2. And both sides have provided me case law. The defense has provided me *Torres v. State*, 117 S.W.3d 891. And just to be more specific, 894 through page 95, Texas Criminal Appeals 2003.

The State of Texas has provided me the case of *Rodney Wayne vs. State of Texas*, 473 S.W.3d 426, which is a 14th Court of Appeals Case. And also *State*

*vs. Fish*, 609 S.W.3d 170, Court of Appeals of Texas case, 14th District.

So, at issue here is whether the detective can testify as to those three prior bad acts or if you want to call them bad acts or extraneous offenses of being a gang member and two different assault cases. This does not address whether the defendant is going to testify as to those bad acts himself because he knows of those bad acts. So, this is very specific.

So, I know the defense has provided this *Torres* case and it talks about allowing that in. **However, in that case it seems to be that they were trying to figure out who was the first aggressor; whereas the Allen case and the Fish case speak of where the first aggressor is known. I think that's the difference.** And I'll have y'all have some argument on it. And correct me if I'm wrong. I've read these cases a few times already. I'm familiar with *Torres*, but I'm not familiar with these other two cases. But I'll let -- since it is your motion, sir, I'll let you go first.

**MR. BANKER:** Okay. If you might tell me, your issue is whether --

**THE COURT:** Well, the -- in this case, **based on what I'm hearing from both sides, it's clear that the complaining witness, the deceased, was the first**

aggressor by punching the defendant in the face. And I think that's uncontroverted; is that correct? Or am I mistaken?

MR. FIGLIUZZI: That's correct, your Honor. I mean, I don't know if the punch was the first thing to -- we're not disputing that the complainant was the first aggressor, whether it was a push first or a punch first. We're not disputing that he was the one who made the first physical contact.

THE COURT: And is that your take as well, defense?

MR. BANKER: Yes.

\* \* \*

MR. BANKER: -- additionally I would add that when you look at 404(b), okay, that's your classic evidence of other crimes, wrongs, or acts are not admissible to prove character. Now, we've -- but as you know this case so well, it can be admissible for other purposes such as proof of motive, opportunity, intent, and plan.

So, the second part of my argument here -- which I don't have a case that would be on point, but I'm making argument based on the statute -- is that this would be an extraneous-type evidence of crimes and wrongs that would prove that the motive of the deceased, the intent of the deceased,



and the plan of the deceased was to do  
deadly conduct against my client.

(5RR 76-83)(emphasis added).

The issue of whether a decedent's bad character is pertinent to show he was the first aggressor doesn't become relevant unless the defendant offers some evidence of aggression by the victim. *See Fry v. State*, 915 S.W.2d 554, 561 (Tex.App.—Houston [14<sup>th</sup> Dist.] 1995). Despite the assertions to the contrary during the aforementioned exchange, upon which the trial court based its ruling, the issue of whether Villedas was the primary aggressor *was* disputed at trial, especially to the extent that any aggression by Villedas rose to the level of the use or attempted use of deadly force. *Id.* (holding character evidence inadmissible to show decedent was primary aggressor, as decedent verbally threatening to kill defendant with his hand in his pocket did not constitute an act of aggression which would permit the use of deadly force).

The testimony regarding aggression by Villeda against Appellant described two very different scenes: one in which Villeda “partially shoved” Appellant and one in which Villeda attempted to choke Appellant to death. (3RR 92-101; 6RR 86-93). There was no greater issue as to Appellant's claim of self-defense than whether Villeda was the first to use

deadly force. Further, the State acknowledged that primary aggressor was at issue when it argued two different times that Appellant's conduct after the shooting was relevant and admissible to show Appellant's state of mind and to establish that *he* was the primary aggressor:

*MR. FIGLIUZZI:* I mean, Judge, he -- the fact that he's carrying a weapon along with ammunition shows his state of mind. The defense is making clear that this is -- they are claiming self-defense and that he wasn't the aggressor. *And clearly I think this gives a full picture to the jury of the state of mind of the defendant and the fact that he was the aggressor.* He's carrying ammunition and a knife at an airport.

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*MR. FIGLIUZZI:* So, your Honor, the handler issue -- I think it will become clear as more witnesses come on that this -- I don't want to say a setup, but this whole murder might have been orchestrated and planned. And part of that might have been because the defendant believed he had a handler who could have been an imaginary handler or it could have been the wife of the victim. *And, so, we believe it goes to motive and intent and to show that he was the aggressor.*

(4RR 38, 41)(emphasis added).<sup>1</sup>

Evidence of Villeda's character was relevant to show that Appellant's version of Villeda's acts of aggression – that Villeda was choking him and trying to kill him – was more credible and likely than Flutsch's minimized version. Further, evidence of Villeda's prior family-violence assaults involving Vega was relevant to show Villeda's intent and/or motive.

It was undisputed that Appellant had met and was communicating with Villeda's wife, the woman against whom Villeda had committed at least two assaults. Villeda's past violence against Vega, combined with his penchant for fighting and jealousy, was relevant to show Villeda's intent and motive in attacking Appellant. (4RR 104). Evidence that Villeda was on probation for assaulting Vega at the time of the shooting was relevant to contextualize Villeda's comment to Appellant that he was "facing twenty-five (25) to life" and "had nothing to lose." (6RR 86). Villeda was communicating to Appellant that he was a serious threat to his life.

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<sup>1</sup> It appears the State's theory of the case changed based on the prejudicial nature of the evidence sought to be admitted: Appellant was the primary aggressor when the evidence was harmful to the defense, but Villeda was the primary aggressor when the evidence was harmful to the State.

## **Harm Analysis**

A substantial right is affected when the error had a substantial or injurious effect or influence in determining the jury's verdict. *King v. State*, 953 S.W.2d 266, 271 (Tex.Crim.App.1997). The exclusion of character evidence is constitutional error if it effectively prevents the defendant from presenting his defensive theory. *Gonzalez v. State*, No. 14-13-00104-CR, 2014 WL 5089374, at \*3 (Tex. App.–Houston [14th Dist.] Oct. 9, 2014, no pet.)(mem. op., not designated for publication), (citing *Walters v. State*, 247 S.W.3d 204, 221 (Tex.Crim.App. 2007); *Potier v. State*, 68 S.W.3d 657, 665 (Tex.Crim.App. 2002)). Here, the exclusion of character and other crimes, wrongs and acts evidence precluded Appellant from fully developing and presenting his theory of self-defense.

Without the added context of Villeda's history of violence and his potential motive for wanting to hurt or kill Appellant, the jury was left with little upon which to base a self-defense analysis. The evidence before the jury regarding the moments before the fatal shooting consisted of the testimony of a witness who had lied to the police, the testimony of a man on trial for his life, and evidence of that man's prior conviction for family-violence assault. The evidence of Villeda's prior assaults was

needed to correct the jury's false impression that Appellant was the only party with assaultive history. It was needed to help develop the credibility of Appellant's fear. Most importantly, it was needed to bring context to Villeda's threat – that he was facing twenty-five to life and had nothing to lose by hurting or killing Appellant.

Because the trial court abused its discretion in excluding character evidence of Villeda, and because Appellant was harmed by said exclusion, Appellant's conviction should be reversed and remanded for a new trial.

### **CONCLUSION & PRAYER**

It is respectfully submitted that the trial court abused its discretion in excluding, during the guilt-innocence phase of trial, character evidence and evidence of crimes, wrongs or acts of the decedent to establish the decedent as the primary aggressor and to inform the decedent's motive and intent in exhibiting deadly force towards Appellant. Accordingly, Appellant's conviction for murder should be reversed and remanded for a new trial.

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on December 22, 2024.

/s/ Inger H. Chandler  
**INGER H. CHANDLER**

## **CERTIFICATE OF COMPLIANCE**

This is to certify that this brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 3,799 words according to the word count on Microsoft Word.

/s/ Inger H. Chandler  
**INGER H. CHANDLER**



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