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FOURTEENTH COURT OF APPEALS
HOUSTON, TEXAS
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NO. 14-24-00885-CR

IN THE FOURTEENTH COURT OF APPEALS
AT HOUSTON, TEXAS

FILED IN
14th COURT OF APPEALS
HOUSTON, TEXAS
6/9/2025 8:18:15 PM
DEBORAH M. YOUNG
Clerk of The Court

ALEJANDRO VASQUEZ,

Appellant,

vs.

THE STATE OF TEXAS,

Appellee.

Cause No. 1828563
351st District Court of Harris County, Texas
Honorable Natalia Cornelio

APPELLANT'S OPENING BRIEF

ORAL ARGUMENT
NOT REQUESTED

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Alejandro Vasquez

Dated: June 9, 2025.

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.

Complainant, Victim or Aggrieved Party

A.V. [1],

The State of Texas,

Trial Court

Honorable Natalia Cornelio,
351st District Court of Harris County, Texas

Appellant

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[1] The Complainant's name is redacted pursuant to Tex. R. App. P. 9.10(a)(3), and the pseudonym "A.V." as designated in the indictment will be employed to reference the Complainant in Appellant's briefing.

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IN THE FOURTEENTH COURT OF APPEALS
AT HOUSTON, TEXAS

ALEJANDRO VASQUEZ,

Appellant,

vs.

THE STATE OF TEXAS,

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Cause No. 1828563
351st District Court of Harris County, Texas
Honorable Natalia Cornelio, Judge Presiding

APPELLANT'S OPENING BRIEF

TO THE HONORABLE JUSTICE'S
OF THE FOURTEENTH COURT OF APPEALS:

Appellant Alejandro Vasquez, by and through his undersigned counsel of record, files this opening brief contending error and seeking reversal of the trial court's judgment and sentence in this matter.

STATEMENT OF THE CASE

Appellant was charged by indictment with the offense of indecency with a child by sexual contact of "A.V."[1] under Section 21.11 of the Penal Code, which was alleged to have occurred on or about May 1, 2020, in Harris County, Texas. (CR-77)[2]. The indictment further contained an enhancement allegation that Appellant was previously finally convicted of the offense of aggravated sexual assault of a child in Cause No. 1355332 in 262nd District Court of Harris County, Texas, on June 3, 2013, before the commission of the instant offense. (*Id.*).

Appellant entered a plea of not guilty. (CR-222). Appellant was tried by a jury in the 351st District Court of Harris County, Texas, with the Honorable Natalia Cornelio presiding. (*Id.*). The jury found Appellant guilty as charged in the indictment. (*Id.*). After pleading "true" to the enhancement allegation, the trial court assessed punishment at the statutorily mandated Life confinement in the penitentiary on

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[1] The Complainant's, as well as those witnesses who testified to be being sexually abused, names will be redacted pursuant to Tex. R. App. P. 9.10(a)(3). *See* Tex. Code Crim. Proc., art. 58.102(a) (permitting victim's use of initials).

[2] The single volume Clerk's Record will be referenced as "CR-[*page number*]", and the seven volume Court Reporter transcription of the proceedings as "[*volume number*]-RR-[*page or exhibit number*]".

November 15, 2024. (*Id.*). Appellant was represented at trial by attorneys Nicholas Ryan "Nick" Poehl and Heather Minette. (*Id.*).

No motion for new trial was filed in the trial court.

Timely written notice of appeal was tendered on November 15, 2024, and the trial court certified Appellant's right to appeal on that same date. (CR-228, 226, respectively).

This Court abated the appeal to the trial court for a determination as to Appellant's counsel-of-choice on March 4, 2025. Proceedings were conducted in the trial court on March 21, 2025, and a supplemental clerk's and reporter's record forwarded to and received by the Clerk of this Court on, respectively, March 24 & 25, 2025. The appeal was reinstated by the Court on March 27, 2025, and the undersigned substituted in as Appellant's counsel of record.

After reinstatement of the appeal, Appellant's brief in this matter was initially due before the Court on May 1, 2025. This Court has granted Appellant one 30-day and one 7-day extension in time in which to file his opening brief. Thus, any brief filed on or before Monday, June 9, 2025, will be timely.

STATEMENT REGARDING ORAL ARGUMENT

Appellant does not request oral argument in this matter. The issues are adequately addressed in Appellant's brief and oral argument would not significantly assist this Court in its decisional process. Tex. R. App. P. 39.1.

ISSUES PRESENTED

APPELLANT'S POINT OF ERROR NO. 1:

Whether the trial court abused its discretion and erred when it allowed the State to introduce un-noticed extraneous offenses *via* the testimony of A.V. and S.B. under Article 38.37 two days into the jury trial after the statutory deadline to provide such notice under both Articles 38.37 and 39.14 had expired?

APPELLANT'S POINT OF ERROR NO. 2:

Whether the trial court abused its discretion and erred when it admitted the noticed and un-noticed extraneous offense testimony under Article 38.37 of the Code of Criminal Procedure over Appellant's objection that the probative value of this evidence was substantially outweighed by its prejudicial effect in the guilt-innocence stage of trial?

STATEMENT OF FACTS

The relevant facts will be set forth *infra*, along with their respective arguments, as they pertain to the issues being presented in this brief. Tex. R. App. P. 38.1(g) ("Statement of Facts. The brief must state concisely … the facts pertinent to the issues or points presented.").

SUMMARY OF ARGUMENT

Appellant's Point of Error No. 1:

The trial court abused its discretion and erred in allowing the State to present evidence of extraneous acts that were not properly noticed, and in doing so, the error had a substantial injurious effect or influence on the jury's verdict and Appellant's substantial rights, which entitles Appellant to a new trial.

Appellant's Point of Error No. 2:

The trial court erred by admitting the extraneous offense testimony pursuant to Art. 38.37 of the Code of Criminal Procedure over Appellant's objection that the probative value of this evidence was substantially outweighed by its prejudicial effect in the guilt-innocence stage of trial. Three of the Rule 403 factors - the probative value of this evidence, its potential to impress the jury in an irrational manner, and the State's

need for this evidence - weigh in favor of excluding testimony. The erroneous admission of this evidence made the State's case significantly more persuasive and affected Appellant's substantial rights.

ARGUMENT

APPELLANT'S POINT OF ERROR NO. 1.

The trial court abused its discretion and erred when it allowed the State to introduce un-noticed extraneous offenses *via* the testimony of A.V. and S.B. under Article 38.37 two days into the jury trial after the statutory deadline to provide such notice under both Articles 38.37 and 39.14 had expired.

Statement of Facts:

Prior to trial, on October 2, 2024, the State gave Appellant's trial counsel written notice of extraneous offenses the State intended to offer during trial. (CR-85). This notice complied with the statutes and listed six offenses purportedly involving A.V., allegedly occurring on or about May 1, 2020, and listed six offenses purportedly involving N.B., allegedly occurring on October 27, 2009. Late in the afternoon on Day 2 of the trial, the State gave notice of its intent to use additional extraneous offenses in its case-in-chief. (CR-205-08). The notice added eight specified

allegations of sexual offenses committed against S.B., which allegedly occurred on or about May 1, 2005 – approximately 19 years ago. The trial court specifically found the State's second notice did not comply with the statute. Further, there was an agreement to "limit extraneous testimony to that for which was properly noticed under 383.7 [sic] and … the Defense explicitly waived a hearing and challenging the issue based on that agreement. (4-RR-49).

Trial Objection:

Counsel objected at the first testimonial reference to the un-noticed extraneous offenses (4-RR-50-51), requested a mistrial that was denied by the trial court (4-RR-46-47, 54-55), and there further appears to be a running objection. (4-RR-103).

Standard of Review:

This Court reviews the trial court's admission of evidence under an abuse-of-discretion standard. *De La Paz v. State*, 279 S.W.3d 336, 343 (Tex. Crim. App. 2009). The trial court's ruling is upheld if it was within the zone of reasonable disagreement. *Id*.

The erroneous admission of evidence in violation of the notice provision of Article 38.37 is reviewed under the standard for non-

constitutional error. *See* Tex. R. App. P. 44.2(b); *Barshaw v. State*, 342 S.W.3d 91, 93 (Tex. Crim. App. 2011); *Taylor v. State*, 268 S.W.3d 571, 592 (Tex. Crim. App. 2008); *Lara v. State*, 513 S.W.3d 135, 142-43 (Tex. App. – Houston [14th Dist.] 2016, no pet.), citing *Villarreal v. State*, 470 S.W.3d 168, 176-77 (Tex. App. – Austin 2015, *no pet.*); *see also Hernandez v. State,* 176 S.W.3d 821, 824-25 (Tex. Crim. App. 2005) (error in the admission of evidence in violation of the notice requirement of rule 404(b) is non-constitutional error); *Woods v. State*, 152 S.W.3d 105, 118 (Tex. Crim. App. 2004) (*en banc*) (addressing erroneous admission of evidence under 38.22). Rule 44.2(b) provides that "[a]ny other error, defect, irregularity, or variance that does not affect substantial rights must be disregarded." Tex. R. App. P. 44.2(b). A substantial right is affected when the error has a substantial and injurious effect or influence in determining the jury's verdict. *Rich v. State*, 160 S.W.3d 575, 577 (Tex. Crim. App. 2005) (quoting *Russell v. State*, 155 S.W.3d 176, 179 (Tex. Crim. App. 2005)); *Petriciolet v. State*, 442 S.W.3d 643, 653 (Tex. App.—Houston [1st Dist.] 2014, *pet. ref'd*). An appellate court "'will not overturn a criminal conviction for non-constitutional error if the appellate court, after examining the record as a whole, has fair assurance that the error

did not influence the jury, or influenced the jury only slightly.'" *Barshaw*, 342 S.W.3d at 93 (quoting *Schutz v. State*, 63 S.W.3d 442, 444 (Tex. Crim. App. 2001)). In considering the potential to harm, the focus is not on whether the outcome of the trial was proper despite the error, but whether the error had a substantial or injurious effect or influence on the jury's verdict. *Id*. at 93-94, citing *Wesbrook v. State*, 29 S.W.3d 103, 119 (Tex. Crim. App. 2000). A conviction must be reversed for non-constitutional error if the reviewing court has grave doubt that the result of the trial was free from the substantial effect of the error. *Barshaw*, 342 S.W.3d at 94 (citing *Burnett v. State*, 88 S.W.3d 633, 637 (Tex. Crim. App. 2002)). "Grave doubt" means that "in the judge's mind, the matter is so evenly balanced that he feels himself in virtual equipoise as to the harmlessness of the error." *Id*. at 94 (citing *Burnett*, 88 S.W.3d at 637-38).

In considering whether the trial court's error in admitting extraneous offense evidence based on the State's failure to provide adequate notice was harmful, the court considers the purpose of the notice provisions of article 38.37 and Rule 404(b): to avoid surprise and to allow the defendant to mount an effective defense. *See Pena v. State*,

554 S.W.3d 242, 248-49 (Tex. App.—Houston [14th Dist.] 2018, *pet. ref'd*), citing *Hernandez*, 176 S.W.3d at 825-26; *Lara*, 513 S.W.3d at 143; *Splawn v. State*, 160 S.W.3d 103, 111-12 (Tex. App.—Texarkana 2005, *pet. ref'd*)). "To determine whether an error has resulted in a substantial and injurious effect on the jury's verdict, an appellate court must":

> . . . [C]onsider everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, and the character of the alleged error and how it might be considered in connection with other evidence in the case. The reviewing court may also consider the jury instruction given by the trial judge, the state's theory, defensive theories, closing arguments, voir dire, and whether the state emphasized the error.

Barshaw v. State, 342 S.W.3d at 94.

Analysis:

The State was aware of the alleged extraneous offenses committed by Appellant but failed to timely disclose them and give notice to the Defense. At trial the State argued the Defense was aware of the extraneous offenses because it mentioned the un-noticed extraneous offenses early in the discovery process of the case or the alleged offenses were just recently brought to light. However, by its own admission, the State was aware of the information in the record and still failed to provide

adequate notice to the Defense. The Defense assumed the State never intended to use it. Obviously, the introduction of the extraneous offenses was harmful. The State would have been unable to secure a conviction without the introduction of the extraneous offenses.

The notice given by the State was unreasonable. The trial court acknowledged this fact during the bench argument. *See Hernandez v. State*, 914 S.W.2d 226, 234-35 (Tex. App.--Waco 1996, *no pet*.) (finding the notice unreasonable when notice was requested ten months before trial and written notice was given on the Friday afternoon before trial was to begin on the following Monday); *see also Neuman v. State*, 951 S.W.2d 538, 540 (Tex. App.--Austin 1997, *no pet*.) (holding notice given the morning of trial where rule 404(b) request was made six weeks before was not reasonable).

In *Webb v. State*, 36 S.W.3d 164 (Tex. App. – Houston [14th Dist] 2000), the State gave notice of extraneous offenses five (5) days before trial commenced. On appeal, the State argued the Defense should have been aware of the extraneous offenses because the complaining witness to an extraneous offense was listed on a subpoena. The appellate court found the State's Notice was unreasonable. The court next engaged in a

harm analysis. It concluded the introduction of the extraneous evidence was harmful to Webb. The court reasoned the extraneous offenses were similar in nature and likely bolstered the victim's testimony, as it does here.

Harm.

Once the Court determines the timing of the notice was unreasonable, it must engage in a harm analysis. *See Webb*, *supra*. After examining the entire record, the logical conclusion was the extraneous evidence was harmful. This evidence was introduced as the conclusion of the State's case. The second jury obviously evaluated and considered the extraneous offense.

Because Appellant was harmed by the introduction of the extraneous offenses, he respectfully requests this Court reverse his conviction remand this case for a new trial.

APPELLANT'S POINT OF ERROR NO. 2.

The trial court abused its discretion and erred when it admitted the noticed and un-noticed extraneous offense testimony under Article 38.37 of the Code of Criminal Procedure over Appellant's objection that the probative value of this evidence was substantially outweighed by its prejudicial effect in the guilt-innocence stage of trial.

Statement of Facts:

Prior to trial, the State filed its notice of intent to introduce evidence of extraneous offenses *via* the testimony of A.V. and N.B. pursuant to Art. 38.37, § 2 of the Code of Criminal Procedure in its case-in-chief. (CR-85). On Day 2 of the jury trial , the State filed its untimely notice of intent to introduce evidence of extraneous offenses *via* the testimony of S.B. (CR-205). This provision permits the State to elicit evidence of an extraneous offense committed against a child younger than fourteen "for any bearing the evidence has on relevant matters,[3]

[3] As defined in Article 38.37, § l(b), "relevant matters" includes "the state of mind of the defendant and the child and the previous and subsequent relationships between the defendant and the child."

including the character of the defendant and acts performed in conformity with the character of the defendant."[4]

Trial Objection:

Counsel objected at the first testimonial reference to the un-noticed extraneous offenses, requested a mistrial that was denied by the trial court, and there further appears to be a running objection. (4-RR-46-47, 54-55, 103). The trial court overruled Appellant's objection and permitted the testimony pursuant to Art. 38.37, § 2 of the Code of Criminal Procedure. (CR-54-44, 87-88).

Standard of Review:

The erroneous admission of evidence is reviewed for an abuse of discretion. *Henley v. State*, 493 S.W.3d 77, 82-83 (Tex. Crim. App. 2016). This deferential standard does not insulate judicial rulings from appellate review. *Montgomery v. State*, 810 S.W.2d 372, 392 (Tex. Crim. App. 1990) (*op. on rehr'g*) ("appellate supervision is available in cases of abuse of discretion."). "Abuse of discretion does not imply intentional wrong or bad faith, or misconduct, but means only an erroneous

[4] This provision permits the introduction of this evidence notwithstanding Rules 404 and 405 of the Texas Rules of Evidence.

conclusion." *Hebert v. State*, 836 S.W.2d 252, 255 (Tex. App. – Houston [1st Dist.] 1992, *pet. ref'd*). "A [trial] court by definition abuses its discretion when it makes an error of law." *Koon v. United States*, 518 U.S. 81, 100 (1996). "'Abuse of discretion' is a phrase which sounds worse than it is. The term does not imply intentonal wrong or bad faith, or misconduct, nor any reflection on the judge." *United States v. Walker*, 772 F.2d 1172, 1176 n. 9 (5th Cir. 1985). The trial court lacks discretion to determine what the law is or in applying the law to the facts, and has no discretion to misinterpret the law. *Walker v. Packer*, 827 S.W.2d 833, 840 (Tex. 1992); *see also Wilton v. Seven Falls Co.*, 515 U.S. 277, 289 (1995) (review for abuse of discretion is not "tantamount to no review at all"). This standard does not give the trial court the "right to be wrong" in admitting evidence. *Reese v. State*, 33 S.W.3d 238, 241 (Tex. Crim. App. 2000) (citation omitted).

Analysis:

A. The Rule 403 Factors and the Trial Courts Balancing Test.

Evidence is deemed to be unfairly prejudicial if it has "an undue tendency to suggest that a decision be made on an improper basis." *Montgomery v. State*, 810 S.W.2d at 389. Prejudice is not solely a function of whether the jury would likely convict Appellant just for being a criminal generally. *Hankton v. State*, 23 S.W.3d 540, 547 (Tex. App. – Houston [1st Dist.] 2000, *pet. ref d*). In conducting a Rule 403 balancing test, the trial court considers: (1) the probative value[5] of the evidence; (2) the potential to impress the jury in some irrational yet indelible way; (3) the time needed to develop the evidence; and (4) the proponent's need for the evidence. *State v. Mechler*, 153 S.W.3d 435, 440 (Tex. Crim. App. 2005). The prejudicial effect of evidence may be created or driven by its tendency, *inter alia*, to excite emotions against the defendant. *Casey v. State*, 215 S.W.3d 870, 883 (Tex. Crim. App. 2007) (citation omitted). The trial court's ruling that evidence is admissible "must be reasonable in view of all the relevant facts." *Reese v. State*, 33 S.W.3d at 241.

[5] **"[P]robative value means more than simply relevance."** *Gigliobianco v. State*, 210 S.W.3d 637, 641 (Tex. Crim. App. 2006) (emphasis added).

B. The Rule 403 Factors Weigh in Favor Excluding the Extraneous Offense Testimony.

1. The Probative Value of the Testimony.

The exceedingly remote nature of this testimony is a crucial factor that significantly lessens its probative value. *See Robisheaux v. State*, 483 S.W.3d 205, 220 (Tex. App. – Austin 2016, *pet. ref'd*) (remoteness of extraneous offenses undermines their probative value); *Gaytan v. State*, 331 S.W.3d 216, 226-27 (Tex. App. – Austin 2011, *pet. ref'd*) (trial court could have determined that "inherent probative force was significantly reduced" given remoteness of extraneous offense).

Its probative value is also weakened by the strength of testimony in the primary cases. *See Montgomery v. State*, 810 S.W.2d at 390 ("When the proponent has other compelling or undisputed evidence to establish the proposition or fact that the extraneous misconduct goes to prove, the misconduct evidence will weigh far less than it otherwise might in the probative-versus- prejudice balance."); *Booker v. State*, 103 S.W.3d 521, 534-35 (Tex. App. – Fort Worth 2003, *pet. ref'd*) (strength of State's case diminished probative value of extraneous offense).

And last, the probative value of the testimony was weakened because the "similarities" between it and these cases are generic to the

nature of any sex offense involving children. *See Lazcano v. State*, 836 S.W.2d 654,659 (Tex. App. – El Paso 1992, *pet. ref'd*) ("[W]e find these general 'similarities' to be wholly innocuous as such features would tend to be common in many cases."). As one appellate court has opined:

> Although the two offenses share some similarities, we find those similarities are not substantial enough to warrant the admissibility of the extraneous conduct testimony. [] Instead, the similarities are "more in the nature of the similarities common to the type of crime itself [] rather than similarities peculiar to both offenses" involved here.

Avila v. State, 18 S.W.3d 736, 741 (Tex. App. – San Antonio 2000, *no pet*.). For these reasons, this factor weighs in Appellant's favor. *See Williams v. State*, 27 S.W.3d 599,603 (Tex. App. – Waco 2000, *no pet*.) ("no inherent probative value" in evidence that was wholly dissimilar to charged offense).

2. The Evidences Potential to Impress Jurors in an Irrational Manner.

This factor favors exclusion because sexually-related misconduct and misconduct involving a child are inherently inflammatory.214 *Bjorgaard v. State*, 220 S.W.3d at 561 (Tex. App. – Amarillo 2007, *pet.*

dism'd). The State emphasized the testimony throughout its argument. Because this emphasis "appeal[ed] to the jury's emotional side and encourage[d] the jurors to make a decision on an emotional basis,"[6] and "caution must be used to avoid again convicting a defendant simply because he may have committed a crime before,"[7] this factor weighs in favor of exclusion. *See Taylor v. State*, 93 S.W.3d 497,507 (Tex. App. – Texarkana 2002, *pet. ref'd*) ("[T]his evidence was such as to encourage resolution of material issues on an emotional and improper basis rather than on the basis of the evidence on which the allegations of wrongdoing were grounded.").

3. The Time Needed to Develop the Evidence.

While it is arguable that this factor warrants admission, in a majority of cases where appellate courts have concluded that the probative value of evidence is substantially outweighed by its danger of

[6] *Erazo v. State*, 144 S.W.3d 487, 495 (Tex. Crim. App. 2004).

[7] *Bjorgaard v. State*, 220 S.W.3d at 561.

unfair prejudice, this factor seems to be the least significant in their analysis. *Taylor v. State*, 93 S.W.3d at 506; *Alexander v. State*, 88 S.W.3d 772, 778 (Tex. App. – Corpus Christi 2002, *pet. ref'd*).

4. The States Need for the Evidence.

There are three questions this Court should answer when addressing this factor: (1) Did the State have other available evidence to establish the fact of consequence that the exhibit was relevant to show? (2) If so, how strong is that other evidence? (3) Is the fact of consequence related to an issue that is in dispute? *Erazo v. State*, 144 S.W.3d at 495-96 (footnote omitted).

First, this inherently prejudicial evidence was not necessary to prove its cases. AV's testimony alone, if believed by the jury, would have been sufficient to convict Appellant. *Cf. Bjorgaard v. State*, 220 S.W.3d at 561 ("[A]mple evidence nonetheless existed to support conviction. This, in turn, meant that the need for the evidence of appellant's prior conviction was slight."). Moreover, the State's emphasis in final argument as to how powerful its evidence against Appellant evinces its lack of need to elicit this inherently prejudicial testimony. *See Russell v. State*, 113 S.W.3d 530, 548-549 (Tex. App. – Fort Worth 2003, *pet. ref'd*)

(State's lack of need for extraneous offense demonstrated in final argument when it argued evidence of charged offense was "overwhelming").

5. Conclusion.

These four factors underscore that whatever probative value the testimony had was substantially outweighed by its danger of unfair prejudice. *See Beham v. State*, 476 S.W.3d 724, 738 (Tex. App. – Texarkana 2015, no pet.) ("[W]e find the record firmly establishes that the danger of unfair prejudice inherent in the extraneous- offense evidence ... substantially outweighed the evidence's probative value."). As recounted above, Appellant need not demonstrate that all four Rule 403 "relevant criteria" warranted exclusion of the testimony for this Court to conclude the trial court abused its discretion admitting it. *Reese v. State*, 33 S.W.3d at 241. Having shown that at least "one or more such relevant criteria", *id.*, weighs in his favor, Appellant has shown that the trial court abused its discretion by admitting the testimony over his objection. *See id.* at 242-43 (concluding the trial court abused its discretion admitting evidence over defendant's Rule 403 objection even the first and third factors – probative value of the evidence and the time

needed to develop it respectively – fell on the State's side of the ledger, they were not enough to overcome the other two – the ability of the evidence to impress the jury in some irrational yet indelible way and the State's need for the evidence). Because the "minute peg of relevance" of the testimony is "entirely obscured by the dirty linen hung upon it," *United States v. Kahaner*, 317 F.2d 459, 471-72 (2nd Cir. 1963), its admission was an abuse of discretion.

Harm.

The erroneous admission of this testimony "loomed large," *George v. State*, 959 S.W.2d 378, 383 (Tex. App. – Beaumont 1998, *pet. ref'd*), made the State's case significantly more persuasive and Appellant's significantly less so – the hallmark of harm – and irreparably tainted the integrity of the jury's decision-making process. *See Peters v. State*, 31 S.W.3d 704, 723 (Tex. App. – Houston [1st Dist.] 2000, *pet. ref'd*). Over ninety years ago, the legendary Supreme Court Justice Benjamin Cardozo famously remarked why the erroneous admission of this testimony affected Appellant's substantial rights and compels a reversal of these convictions:

> **The reverberating clang of those accusatory words would drown all weaker sounds.** It is for ordinary minds,

> and not for psychoanalysts, that our rules of evidence are framed. They have their source very often in considerations of administrative convenience, of practical expediency, and not in rules of logic. **When the risk of confusion is so great as to upset the balance of advantage) the evidence goes out.**

Shepard v. United States, 290 U.S. 96, 104 (1933) (emphasis added). The judgments of conviction entered below must be reversed and the causes remanded for a new trial.

PRAYER

Based on the foregoing, Appellant requests that the Court reverse the judgment and sentence in this matter and enter a judgment of acquittal, and that it grant such other additional relief to which he may be legally and justly entitled.

Dated: June 9, 2025.

Respectfully submitted,

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/s/ *David A. Breston*

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Alejandro Vasquez

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing has been duly served upon counsel representing the Appellee State of Texas in this matter *via* hand delivery, email or the **electronic case filing system** on June 9, 2025.

LAW OFFICE OF
DAVID A. BRESTON

/s/ *David A. Breston*

David A. Breston
State Bar Number: 90001478

Counsel for the Appellant
Alejandro Vasquez

CERTIFICATE OF COMPLIANCE

The undersigned hereby certifies that the foregoing complies with the typed-volume limitations of TEX. R. APP. P. 9.4(i)(2)(B) in that it contains, ***including the exempt portions under the Rule***, no more than 4,371 words in Century Schoolbook 14 for the body of the brief and Century Schoolbook 12 for the footnotes based upon a word count using the Microsoft Word software.

LAW OFFICE OF
DAVID A. BRESTON

/s/ *David A. Breston*

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