Nos. 01-24-00647-CR & 01-24-00679-CR

In the Court of Appeals
for the 1st Court of Appeals District
Houston, Texas

PAUL COLEMAN,
APPELLANT,

V.

THE STATE OF TEXAS,
APPELLEE.

On Appeal from the 184th Judicial District Court
Harris County, Texas
Katherine N. Thomas, Judge Presiding
In Cause Nos. 1781470 & 1848625

APPELLANT'S OPENING BRIEF

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Harris County, Texas

TABLE OF CONTENTS

Index of Authorities

United States Supreme Court Cases

Constitutional Provisions

Texas Cases

STATUTES

RULES

TREATISES

STATEMENT OF THE CASE

Mr. Paul Coleman was charged with sexual assault of a child [1781470 CR 41] and trafficking a child [1848625 CR 18]. The cases were consolidated for a jury trial [2 RR 18] before Judge Katherine N. Thomas, presiding in the 184th District Court. Mr. Coleman pleaded not guilty to both charges [5 RR 10]. The jury found him guilty of both charges [6 RR 238] and he was sentenced to two automatic life sentences [7 RR 30–31] on August 21, 2024.

This appeal followed.

Issue Presented

1. **The right to put on a defense.** State "rules" that categorically and arbitrarily prohibit the defendant from offering otherwise relevant, reliable evidence that is vital to the defense violate violate the defendant's constitutional rights. The court did not allow the jury to hear a defense witness testify that Mr. Coleman did not commit the charged crimes because the State was able to induce the witness's invocation of the Fifth Amendment. Did the exclusion of the only exculpatory evidence proffered violate Mr. Coleman's rights to put on a defense and to due process?

STATEMENT OF FACTS

Mr. Paul Coleman was charged with two crimes committed against H.S., who was alleged to have been under 18 years of age at the time. The State alleged a trafficking offense from May 2, 2019 [1848625 CR 18] followed by an aggravated sexual assault of a child the following day [1781470 CR 41]. Tex. Penal Code §§ 20A.02(a)(7)(C); 22.221(a)(1)(B)(iii) (West 2019).

H.S. testified that she was born in April 2003 and first went into Child Protective Services custody shortly before her seventh birthday [6 RR 9, 12]. She stayed with her grandfather from the time she was seven until she was twelve when she returned to CPS custody [6 RR 14]. Her time in CPS included stays in mental hospitals, including the Austin State Hospital, which was the result of depression and a "serious suicide attempt" [6 RR 15, 48]. On cross examination, she discussed several mental health diagnoses and the medications she has been prescribed [6 RR 58–61].

H.S. testified that she first met her friend Sharon Wilson at a Residential Treatment Center where they both lived for a few months [6 RR 17–19]. After their time together, they didn't speak to each

other much, but re-connected on Instagram and messaged back and forth [6 RR 21–22, 67]. After communicating with Sharon one morning H.S. provided her address, and Sharon came to pick her up from the home sometime in the late morning or early afternoon [6 RR 66, 74]. Sharon arrived in a big gold truck and parked down the street [6 RR 23]. H.S. thought she was going to live with Sharon and Paul [6 RR 76]. H.S. walked out the door, past her foster mom who tried to stop her, and she started running to the end of the street where she turned right and where Sharon was parked [6 RR 23]. Sharon was alone in the truck [6 RR 23,25]. H.S. got in the back seat and Sharon told her to lie down—H.S. thought they were going to Sharon's apartment with her boyfriend [6 RR 24–25].

They went to a smoothie place and Paul got into the truck and sat in the passenger seat [6 RR 25–26]. H.S. eventually identified Mr. Coleman in court as the Paul she was discussing [6 RR 46–47]. They drove to what H.S. thought would be an apartment but was a hotel [6 RR 27]. She smoked a blunt at some point that day, so she can only be "pretty sure" about details of their arrival at the hotel [6 RR 30]. When they got to the hotel, she laid down on the bed because

she was tired [6 RR 31]. She remembered "[f]or a brief second, his genitals in my mouth." [6 RR 32] Then, whenever he was in the restroom, "he had touched my butt." [6 RR 33] She wanted to take a shower "[b]cause I felt disgusting. I felt nasty, like everything that happened previously." [6 RR 33] She agreed with the prosecutor that something else happened on the bed that made her feel gross [6 RR 33–34]. She agreed that the body part he pees with touched the body part she pees with, which made her feel uncomfortable, and is why she took a shower the next day [6 RR 34]. She explained that when that happened, he came into the very small bathroom after her and slapped her butt, but nothing else happened—she waited for him to exit the bathroom so she could take a shower [6 RR 35].

On direct examination, H.S. testified that she thought she was going to have to prostitute because of what they were saying, "that there were rules and, you know, this cost this much; if you do that it cost that much" (in reference to sexual positions) [6 RR 42–43]. On cross examination, she testified that no plan for prostitution had been discussed before they got to the motel, and when they were telling her about prices and rules, it was in reference to Sharon's role

as a prostitute, not her [6 RR 77–78]. Sharon was "putting on makeup and all that. And I was like, what are you doing? She was like, I'm about to go make money. I was like, how are you making money?" [6 RR 78]

At some point later, H.S. was alone in the room and called her friend Tanisha, describing what she saw outside the room [6 RR 36–37].

Deputy Michael Bailey of the Harris County Sheriff's Office was dispatched for a welfare check call at 15831 Second Street, which he said was a hotel in Harris County, Texas [5 RR 139]. He found a juvenile female who was not cooperative with him, so she was detained in his parole car [5 RR 140–41].

Yuri Saenz, a "Human Trafficking Sergeant," made the scene after Deputy Bailey and spoke with H.S. in the hotel room [5 RR 188, 205]. Saenz testified about her conversation with H.S. over the defense's objections, following an outcry hearing [4 RR 8–20; 5 RR 208]. She described H.S. as scared and crying [5 RR 205]. In addition to what H.S. testified to, Saenz testified that once they arrived at the hotel, H.S. learned Sharon had been prostituting, that

she would also be prostituting, and since she had never done it, Mr. Coleman told her she needed to practice and forced himself on her and had sex [5 RR 210]. Saenz testified that, after H.S. took a shower, he "was pretty much instructing her on how this was going to work, that she was going to be getting dates from clients that contact him or Sharon." [5 RR 211] Saenz explained that, based on her training and experience, a "date is a meeting between a person and a buyer that is there to make an exchange for sexual acts." [5 RR 212]

Saenz testified that H.S. told her "that on May 3, she was in the shower and then the defendant forced himself in the shower with her and again penetrated her with his penis in her vagina. Once they were done, he told her that he was going to come back and pick her up and take her to buy some clothes so he can take pictures of her to post on her sex ad that he created for her." [5 RR 214] She said H.S. told her "that she didn't want to do that. So that's when she called her girlfriend at the time." 5 RR 215.

Saenz took H.S. to Texas Children's [5 RR 215]. Sexual Assault Nurse Examiner Tuesday Sowers met with H.S. and completed a

history, but H.S. refused to let her do an exam [5 RR 27]. H.S. said she did not participate because something was said that made her feel "very uneasy, like I was in the wrong." [6 RR 44]. Sowers testified that, as part of the intake proceedings, H.S. told them "I had a pimp, and I was staying with him, and I got caught today by the police and I was by myself." [5 RR 93] H.S. told her that she needed a test because she had sex with the pimp on May 2 and May 3, 2019 [5 RR 93]. Saenz testified that H.S. told her she met with the pimp a few days ago through a friend and was supposed to start work sex trafficking but got caught [5 RR 94]. Saenz said she asked H.S. what part of his body touched her body, and H.S. reportedly stated "his penis went inside my vagina," and after a pause, "continued to say, 'but only for a few seconds, and I sucked his dick.'" [5 RR 94]

The State introduced hotel records purporting to show that Mr. Coleman was the person who rented the hotel room [5 RR 201–02; 8 RR 89–90]. The State also introduced evidence suggesting that analysis of sperm fractions from a bedsheet taken from the hotel room provided "very strong support for the proposition" that Mr. Coleman contributed to the DNA obtained [5 RR 276, 278, 286–87,

291] [8 RR 117–18, 122–24].[1] The State introduced evidence that also suggested H.S.'s DNA profile was associated with non-sperm fractions recovered from the bedsheet [5 RR 285–86, 288, 292] [8 RR122–24].

The State introduced evidence of Mr. Coleman's alleged prior deferred adjudication and conviction for aggravated sexual assault of a child under authority of Article 38.37 of the Code of Criminal Procedure. The judgment adjudicating guilt dated from July 2011 [5 RR 243–45; 8 RR 113]

Through Saenz the State elicited testimony over objection that Sharon Wilson told her "that she has been in the lifestyle since she was 16 years old, and that she was prostituting in the hotel . . . and has been about a week. But [H.S.] was not doing it." [5 RR 219]

The defense attempted to call Sharon Wilson to the stand but the State objected to her testimony. Outside the presence of the jury, Wilson testified that she was with Mr. Coleman and H.S. on the day in question, never saw them alone, that she and Mr. Coleman went

[1] Volume 8 of the Reporter's Record contains the trial exhibits. This brief cites to the *PDF page* in Volume 8 containing the relevant exhibit material rather than the exhibit number.

shopping while H.S. took a nap, and that he did not have sex with H.S. [6 RR 170–71]. She denied that they ever tried to traffic H.S. [6 RR 170–71]. She invoked the Fifth Amendment when she was asked how they got H.S. to the hotel [6 RR 174]. Over Mr. Coleman's objections, the court concluded that Wilson could not choose to answer Coleman's questions and then not answer the State's questions and ruled that Wilson could not testify at all if she planned to invoke her Fifth Amendment right in response to any of the State's questions [6 RR 174, 179].

The jury sent out two notes, one of which asked whether Mr. Coleman could be found guilty of trafficking but not sexual assault [6 RR 236]. The court referred the jury to the charge [6 RR 236–37]. The jury returned guilty verdicts on both charges [6 RR 238].

Mr. Coleman pleaded not true to two enhancement allegations, one allegation of a prior felony for aggravated sexual assault of a child from 2010 and a second conviction for aggravated sexual assault of a child from 2011 [7 RR 7–8]. The State also reoffered all evidence from the guilt phase [7 RR 8–9]. The State presented a latent print examiner to compare fingerprints from Mr. Coleman with

prior judgments [7 RR 9–29]. The court found that the enhancement paragraphs were proven true beyond a reasonable doubt and sentenced him to automatic life imprisonment for both cases [7 RR 30–31].

Summary of the Argument

Issue One

The court's refusal to allow the jury to hear Sharon Wilson's exculpatory testimony denied Mr. Coleman's rights to put on a defense and to due process. This decision was based on a rule that, in this case, categorically and arbitrarily prohibited Mr. Coleman from otherwise relevant, reliable evidence which is vital to his defense simply because the State was able to formulate relevant questions on cross examination to force Wilson's invocation of her Fifth Amendment rights. Application of this rule was constitutional error that prevented the jury from hearing testimony that exculpated Mr. Coleman on both charged offenses.

ARGUMENT

Issue One

1. The court prevented Mr. Coleman from presenting a witness with exculpatory testimony in violation of his Sixth Amendment right to present a defense and the Fourteenth Amendment's guarantee of due process.

> "[W]e're still asking to be able to call Sharon Wilson as a witness in this case. She is a very important witness. She is our only witness. Without putting her on, we really won't be able to put on a defense. It's denying us the right to due process. And we don't believe that simply because she has invoked her Fifth Amendment right that's a King's X to all the rest of her testimony." [6 RR 188]

Among other crucial guarantees, the Sixth Amendment provides the accused has the right "to have compulsory process for obtaining witnesses in his favor." U.S. Const. amend. VI. "The right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 18–19 (1967). "This right is a fundamental element of due process of law" and is "made obligatory upon the States by the Fourteenth Amendment." *Washington v. Texas*, 388 U.S. at 17–19 n.6; U.S. Const. amend. XIV.

When Appellant Paul Coleman had his day in court to face grave accusations and consequences, he had to make do *without* the Sixth Amendment's guarantee that he could put on a defense, and that result was catastrophic.

1.1. Coleman objected, invoking the Sixth and Fourteenth Amendments. The court heard proposed testimony. Accordingly, the issue is preserved and ripe for appellate review.

As recounted above, counsel objected to the exclusion of the testimony, invoking the Sixth Amendment right to a defense and the Fourteenth Amendment's due process clause [6 RR 188]. Moreover, the trial court and this Court have a record setting out the basic exculpatory testimony Wilson was prepared to provide the jury [6 RR 169–72]. Accordingly, the issue is preserved for this Court to assess under the constitutional error standard. What follows is a brief review of what happened in court.

At the outset of the hearing concerning Wilson's potential testimony, her appointed counsel and the trial court appeared to believe that she could testify with Fifth Amendment privileges asserted when necessary and the State was "not intending to get her to say she is currently a prostitute or anything at this time." [6 RR 155, 158, 161, 163–64].

The court was initially unsure whether it would grant a motion to strike all the testimony based on an invocation of the Fifth Amendment [6 RR 164], but then announced that her courtroom was "not Burger King. You can't just decide which questions you want to answer and which ones you don't." [6 RR 165].

During questioning from the defense outside the presence of the jury, Wilson testified that on May 3rd, she was with Coleman at all times that day, including time spent with H.S., and she never saw Coleman and H.S. alone together [6 RR 169]. Moreover, she testified that Coleman did not go into the room with H.S. [6 RR 169]. She said H.S. told her she was very tired and wanted to go to sleep, so Wilson told her that she could make herself comfortable in the room and go to sleep [6 RR 169]. Then, H.S. went to sleep and Wilson and Coleman went shopping [6 RR 170]. She testified that Coleman never went into the room, she never saw them have sex, and she never saw him go into the bathroom with H.S. [6 RR 170]. She also testified that she never saw him kiss her or try to traffic her [6 RR 170]. Finally, she said he never tried to groom her or say that he was going to buy her clothes, take photos, and set up a website [6 RR 171].

On cross examination, the State established her age, that she and H.S. were both minors when they met in CPS placement, and then asked how H.S. got to the hotel room [6 RR 172]. At that point,

Wilson's counsel objected and Wilson asserted her Fifth Amendment right not to answer [6 RR 172–74]. The court then remarked, to the apparent surprise of the defense, that they would not be moving forward with her testimony, explaining that "she doesn't get to choose to answer some of your questions and then not answer the State's questions." [6 RR 174]

Despite the efforts of a newly arrived Assistant District Attorney to strike a balance between Coleman's Sixth Amendment rights and the State's desire to cross examine, the court announced, "I can let you know I'm not doing that. So I don't want to waste your breath." [6 RR 178] After it became clear the decision was final, the defense made its final objection, invoking the ability to "put on a defense" and the denial of due process [6 RR 188].

Though trial counsel objected on constitutional grounds[2] and this claim is raised as a constitutional error under the Sixth and Fourteenth Amendments of the United States Constitution, the Court of Criminal Appeals has concluded that exclusion of defense evidence is reviewed as constitutional error "only if the evidence forms such a

[2] As quoted above, counsel told the court, "[w]ithout putting her on, we really won't be able to put on a defense. It's denying us the right to due process." [6 RR 188] The invocation of the ability to "put on a defense" coupled with a due process objection is sufficient context to make the court aware that this presented a Sixth and Fourteenth Amendment problem. Tex. R. App. P. 31.1(a)(1)(A); Tex. R. Evid. 103(1)(B); *Lankston v. State*, 827 S.W.2d 907 (Tex. Crim. App. 1992).

vital portion of the case that exclusion effectively precludes the defendant from presenting a defense." *Potier v. State*, 68 S.W.3d 657, 665–66 (Tex. Crim. App. 2002); Tex. R. App. P. 44.2(a).

Coleman's claim at trial and on appeal is just that—the judge's decision precluded him from presenting a defense. In the hearing outside the presence of the jury, Wilson provided testimony that was exculpatory to Coleman with respect to both charges he faced [6 RR 169–71]. By any measure, the excluded evidence comprised such a vital portion of the case that its exclusion precluded Coleman from presenting a defense. Accordingly, the court's error in preventing her testimony must result in a reversal of the conviction unless this Court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment. Tex. R. App. P. 44.2(a).

1.2. The Sixth Amendment guarantees Mr. Coleman the right to put on a defense.

The Sixth Amendment guarantees that when criminal defendants have a defense, they can present it to the jury.

As discussed at the outset, "[t]he right to offer the testimony of witnesses, and to compel their attendance, if necessary, is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecutions to the jury so it may decide where the truth lies." *Washington v. Texas*, 388 U.S. 14, 18 (1967). In that inquiry, the Supreme Court concluded the

Sixth Amendment was violated by two statutes forbidding those charged or convicted as coparticipants in the same crime from testifying for one another. Those "local rules" arbitrarily denied the defendant the right to present a competent witness to the fact finder whose testimony would be relevant and material to the defense. *Washington*, 388 U.S. at 22–23.

Several years later, the Court invalidated a Mississippi rule that prevented the defense from impeaching its own witness. *Chambers v. Mississippi*, 410 U.S. 284, 302–03 (1973). The rule was founded on the presumption that a party who calls a witness "vouches for his credibility." *Chambers*, 410 U.S. at 295. At trial, the rule prevented Chambers from treating a witness as adverse and eliciting testimony that the witness had repeatedly confessed to the crime. *Chambers*, 410 U.S. at 288–90. The Court found that Mississippi's longstanding "voucher" rule "plainly interfered" with the right to defend against the charges. *Chambers*, 410 U.S. at 298.

1.2.1. Texas law prevents either party from calling a witness for the jury to see and hear the witness invoke the Fifth Amendment and refuse to answer any questions. That's not what happened here.

It is usually error to call a witness so the jury can see the witness make a blanket assertion of the Fifth Amendment. *Washburn v. State*, 164 Tex. Crim. 448, 299 S.W.2d 706 (1956) (rejecting the State's

attempt to call a witness to take the Fifth); *Bridge v. State*, 726 S.W.2d 558 (Tex. Crim. App. 1986) (rejecting the defense's attempt to call a co-defendant with a pending appeal).

In *Bridge*, the Court's reasoning consisted of several sentences staked to the proposition that "an individual's constitutional privilege against self-incrimination overrides a defendant's constitutional right to compulsory process. *Bridge v. State*, 726 S.W.2d 558, 568 (Tex. Crim. App. 1986). The Court dismissed reliance on *Washington v. Texas* based on its prior *Rodriguez* case. *Id.* In *Rodriguez*, the Court did not cite *Washington*, but held it was not error to refuse the defense's request to call co-indictees to the stand so the jury could see them taking the Fifth because "the refusal alone cannot be made the basis of any inference by the jury" favorable to either party. *Rodriguez v. State*, 513 S.W.2d 594, 595–96 (Tex. Crim. App. 1974).

The Court of Criminal Appeals later tried to distinguish *Washington*'s rule striking down a statute providing for "arbitrary statutory exclusion of potential witnesses" with the Texas line of state cases from the early Seventies "insuring that a third party witness' invocation of the Fifth Amendment has a neutral effect on the accused and the State." The Court simply remarked that the "expansive dicta" in *Washington* "is not controlling here." *Mendoza v. State*, 552 S.W.2d 444, 450 (Tex. Crim. App. 1977).

This line of cases did not meaningfully wrestle with the constitutional implications of the rule. But they also do not apply to the situation here, where the defense witness would have provided strongly exculpatory testimony and only invoked the Fifth Amendment upon cross-examination designed by the State to provoke that invocation.

1.2.2. More recent Court of Criminal Appeals caselaw provides a roadblock followed by a path forward.

The *Keller* case cuts against Coleman's claim. *Keller* is an unauthorized use of a motor vehicle case in which the defense proffered a witness who would have testified that he sold the defendant the car and gave him title. The witness was in prison at the time for auto theft and refused to answer questions about where *he* got the car he allegedly sold to the defendant. *Keller v. State*, 662 S.W.2d 362 (Tex. Crim. App. 1984).

In this pre-*Crawford* case, the Court contrasted the costs of the witness invoking the 5th to both sides—for the defense it implicates a "possible" Sixth Amendment violation insofar as confrontation rights are jeopardized, whereas the Court cited a Wisconsin case for the proposition that the State's "right" to cross examine defense witnesses is necessary for accurate determinations of guilt or innocence and to prevent fraud on the court. *Keller v. State*, 662 S.W.2d 362, 364 (Tex. Crim. App. 1984). Over Judge Clinton's

dissent, the Court concluded that the trial court did not err in disallowing the witness's testimony when he "refused to answer a question on cross-examination which was germane to his direct testimony." *Id*. at 365. The Court did not consider the defense's right to present witnesses and to due process.

But more recently, the Court's analysis opened a path to greater deference to the Sixth Amendment's demands, recognizing that "[i]n some instances, the exclusion of a defendant's evidence can amount to a violation of the right to compel the attendance of witnesses in the defendant's favor." *Williams v. State*, 273 S.W.3d 200, 232 (Tex. Crim. App. 2008). Writing for the Court, Presiding Judge Keller said:

> The Sixth Amendment, made applicable to the states through the Fourteenth Amendment, is a firm guarantor of the constitutional assurance of compulsory process to obtain favorable witnesses. When an application of the local rules would be "fundamentally unfair" or constitutional rights directly affecting the ascertainment of guilt are implicated, the rules "may not be applied mechanistically to defeat the ends of justice." In other words, in an appropriate case, local rules, like those prohibiting hearsay, should yield to constitutional protections. But this does not mean that every erroneous exclusion of a defendant's evidence amounts to a constitutional violation.

Williams v. State, 273 S.W.3d 200, 232 (Tex. Crim. App. 2008) (internal citations omitted) (deciding it was not error to exclude hearsay in a capital case at the punishment phase of trial).

The Court identified two scenarios in which exclusion of evidence could lead to a constitutional violation. In the first, a state rule "categorically and arbitrarily prohibits the defendant from offering otherwise relevant, reliable evidence which is vital to his defense." In the second, the court's clearly erroneous ruling excludes otherwise reliable and relevant evidence that "forms such a vital portion of the case [that it] effectively precludes the defendant from presenting a defense." *Id*.

1.3. Coleman was prevented from presenting the jury with a different narrative, one that exculpated him on both charges and was not inconsistent with the physical evidence. To the extent that *Keller* stands in the way and insulates the court's decision from review, it must yield.

The Texas cases forbidding parties from calling witnesses so the jury can see them take the Fifth Amendment do not apply here since Coleman manifestly wanted Wilson to provide exculpatory testimony. Instead, *Williams* applies, whether the exclusion of vital defensive evidence is analyzed as flowing from a "state rule" or as a clearly erroneously ruling from the court.

Keller allows judges to disallow defense testimony "when the witness refused to answer questions on cross-examination which

were relevant to the subject matter of the inquiry or which related to the witness' direct testimony." *Keller v. State*, 662 S.W.2d 362, 365 (Tex. Crim. App. 1984). Under *Keller*, the defense witness may only assert the Fifth Amendment privilege in response to "collateral" questions, which the Court explained are those seeking "only to test the witness' general credibility, or relates to facts irrelevant to the issues at trial." *Keller*, 662 S.W.2d at 365.

Given the ease with which a prosecutor may craft merely *relevant* cross examination questions, *Keller*'s rule gives the State veto power over defense witnesses without regard to the defendant's right to put on a defense and due process. It is a rule that "categorically and arbitrarily prohibits the defendant from offering otherwise relevant, reliable evidence which is vital to his defense." *Williams v. State*, 273 S.W.3d 200, 232 (Tex. Crim. App. 2008).

The general rule against calling witnesses intending to force the invocation of the Fifth Amendment before a jury is based in a reluctance to risk unfavorable inferences to be drawn by the jury against the other side based on the refusal to testify. Wayne R. Lafave et el., 6 Crim. Proc. § 24.4(c) (4th Ed.). This concern animates a long line of Texas cases prohibiting the prosecution from calling witnesses who would take the Fifth. *Washburn v. State*, 164 Tex. Crim. 448, 452, 299 S.W.2d 706, 709 (1956)

But the Rules of Evidence already state that factfinders may not draw inferences from most claims of privilege, and there is no reason that a limiting instruction would not be appropriate and effective when a defense witness asserts the privilege in response to some of the State's questions. Tex. R. Evid. 513(a), (d). The law generally presumes that juries follow the trial court's instructions as they are presented. *Thrift v. State*, 176 S.W.3d 221, 224 (Tex. Crim. App. 2005).

Here, Sixth Amendment's right to compulsory process to present witnesses on behalf of the defense falls far short of the State's power, which includes the ability to offer immunity and thereby compel otherwise incriminating testimony. *State v. Hatter*, 665 S.W.3d 584, 590 (Tex. Crim. App. 2023). This asymmetry under Texas law in the scope of the Sixth Amendment right to compulsory process to present a defense could be alleviated by allowing crucial defense witnesses to testify when possible and assert their Fifth Amendment rights when necessary.

Keller's bar on defense witnesses who will assert the Fifth Amendment to "relevant" questioning from the State inverts the relationship between the accused's rights to a defense under the Sixth Amendment and to due Process under the Fourteenth Amendment to the prosecutorial discretion to grant immunity or not. It "categorically and arbitrarily prohibits the defendant from offering

otherwise relevant, reliable evidence which is vital to his defense." *Williams v. State*, 273 S.W.3d 200, 232 (Tex. Crim. App. 2008).

Wilson's testimony that she never saw Coleman take any action to traffic H.S. or have any sexual involvement with her rebutted evidence supporting both charges [6 RR 169–71]. The defense was prevented from presenting the jury with a different narrative, one that exculpated Coleman on both charges and was not inconsistent with the physical evidence.

To the extent that *Keller* stands in the way and insulates the court's decision from review, it must yield.

1.4. Conclusion: This restriction on Coleman's defense was constitutional error that contributed to the conviction.

Because a "local rule" interfered with Coleman's right to present a vital witness on his own behalf who would have provided relevant, exculpatory testimony, his rights to present a defense and to due process were violated.

This constitutional error cannot be shown beyond a reasonable doubt to have not contributed to the conviction. Tex. R. App. P. 44.2(a).

PRAYER

Appellant Paul Coleman prays that this Honorable Court reverse the trial court's judgments and remand the cases to the District Court.

Respectfully submitted,

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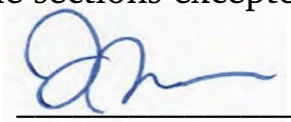

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