

**No. 01-24-00134-CR**

**IN THE COURT OF APPEALS  
FOR THE FIRST DISTRICT OF TEXAS**

FILED IN  
1st COURT OF APPEALS  
HOUSTON, TEXAS

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DEBORAH M. YOUNG  
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**DEMONTAE WILLIAMS**

*Appellant*

**v.**

**THE STATE OF TEXAS**

*Appellee*

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On Appeal from Cause No. 1700211  
From the 185<sup>th</sup> District Court of Harris County, Texas

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**BRIEF FOR APPELLANT**

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**Oral Argument Not Requested**

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### **STATEMENT OF THE CASE**

Demontae Williams was indicted for the offense of capital murder on February 26, 2021. CR at 819. Mr. Williams's case was tried twice. The first trial began with jury selection on March 28, 2023, and ended with a mistrial due to a hung jury on April 5, 2023. CR at 824-25. The second trial began February 13, 2024. CR at 827. It ended February 16 with a conviction for the indicted offense. CR at 829. On the same day, Mr. Williams was sentenced to life in prison without the possibility of parole and filed his notice of appeal. CR at 829.

### **STATEMENT REGARDING ORAL ARGUMENT**

Mr. Williams does not request oral argument. This case presents an application of well-established evidentiary principles. The straight-forward nature of the question presented suggests that oral argument would likely not assist the Court in reaching a decision in this matter.



## **ISSUES PRESENTED**

**Issue One: The Trial Court Erred in Excluding Evidence that Complainant Goddard was a Documented Gang Member, Which Tended to Show His Violent Tendencies and that he was the First Aggressor**

**Issue Two: The Trial Court Erred When It Denied Defense Counsel's Request to Question Witnesses About Complainant Goddard's Gang Membership and How it Affected Mr. Williams's Perception of the Threat Faced by Hall**

**Issue Three: The Trial Court Erred when its Evidentiary Rulings Denied Mr. Williams the Right to Present a Defense**

**Issue Four: The Trial Court Erred in Failing to Include Antagonist Sir Mitchell in the Jury Instruction Directing Jurors to Consider the Previous Relationship Between Mr. Williams and the Complainants**

## **STATEMENT OF FACTS**

As identity is not an issue in this offense, an abbreviated version of the facts follows. Demontae Williams had not planned to go to the club on October 20, 2020. 14 RR at 91. He only went because his cousin, Ambra, had asked him for a ride. 14 RR at 72. Ambra wanted to go to the club's open mic night so her husband could perform. 14 RR at 70. Although Ambra did not know Demontae's half-brother, La Dadrine "LD" Hall well – Demontae and LD had different father's and LD's father was not related to Ambra – LD came with Demontae to pick up Ambra and her husband. 14 RR at 69.

After arriving and entering the club, a man at the bar began yelling at Demontae and LD, saying "we're going to catch you after the show." 14 RR at 82. Surveillance from inside the club shows that Sir Mitchell approached Demontae and his brother, appearing to argue with the men. 15 RR at 130. Mitchell walked away to join Jailyn Page and Bryce Goddard, then returned to confront Demontae and Hall again, yelling and holding his hands up as if ready to fight. 15 RR at 129-30. When the security guard arrived and attempted to remove Hall from the area, Page took off his shirt, a signal that he was also ready to fight. 15 RR at 131.

When the brothers saw Goddard at the bar, they left the bar to join Ambra and the rest of their group. 15 RR at 162. Goddard gave a smirk, causing Demontae to worry something else was going to happen. 15 RR at 163. Mitchell told the brothers “Y’all never make it out of this club.” 15 RR at 166. Mitchell then approached Hall and got “nose to nose” with him, telling Hall that he was “not going to get out the club” and threatening to beat up Hall. 16 RR at 167. Demontae took these comments to mean that someone was going to get hurt. 15 RR at 176. Mitchell then went back to the bar area, removed his jacket, and returned to Hall. 15 RR at 168.

Demontae pulled his gun to get Mitchell to back off Hall, and at first it worked. 15 RR at 170. Demontae sat back down and put his gun away. 15 RR at 170. Hall then pulled a gun, just as Mitchell was reapproaching the pair. 15 RR at 170. Security arrived and began to escort Hall away when Demontae heard gunshots. 15 RR at 173. He could not tell where they were coming from or what direction they were going. 15 RR at 173. He could see that security seemed to be taking Hall towards the bathroom, in the same direction Goddard was heading. 15 RR at 173.

Security recalls Demontae telling him to let go of the Hall or he was going to shoot him, although Demontae denies that he ever threatened the security

guard. 14 RR at 186; 15 RR at 175. The guard was wearing a protective vest, which he had borrowed. 14 RR at 189. After he returned it to the owner, it was discovered that it been struck twice; however, the owner would not return the vest to the guard, and the guard could not say when the vest was struck. 14 RR at 189, 192. As security escorted Hall away, Hall brought out a gun and fired toward Page and Mitchell. 14 RR at 128. Demontae shot toward Goddard, who was struck as he approached Hall from behind. 14 RR at 130-31, 145.

A bystander, Christopher Jackson, was struck in the head by a stray bullet and killed. 14 RR at 135; 15 RR at 39. Jailyn Paige and Bryce Goddard also died of gunshot wounds. 14 RR at 54-56. Page suffered two gunshot wounds, one to the left flank and a fatal wound to the left abdomen. 15 RR at 18, 23. Goddard was killed by a gunshot to the arm, which traveled through his chest and exited his body. 15 RR at 30-31. He also sustained a second gunshot wound to the right thigh, which traveled to the left thigh and lodged in his body. 15 RR at 30, 34.

Sir Mitchell was shot but survived. 13 RR at 27, 65. Police who responded to the scene asked Mitchell who shot him but were told by Mitchell that “he does not speak to police.” 13 RR at 29. While being treated at the hospital, medical staff found a fired bullet on Mitchell’s person, but no weapons. 13 RR at 31, 33.

Mitchell was shot in his left shoulder, the back of the neck, as well as in his abdomen, right forearm, and both buttocks. 13 RR at 65.

A total of one projectile and nine cartridge casings were documented at the scene. No weapons were found in the areas where Page, Mitchell, or Goddard were shot. 14 RR at 136. A number of witnesses identified Demontea and Hall as the shooters. 14 RR at 114. Demontae and Hall later surrender themselves to law enforcement. 14 RR at 138.

Demontae was only 24 years old when this incident occurred. 15 RR at 145. He told that jury that shortly after arriving at the club, Hall told him that Bryce Goddard was there. 15 RR at 156. Hall was alarmed because a year prior, he had been shot by someone who had a relationship with Goddard. 15 RR at 157. Additionally, a month before the shooting at the club, Hall had a frightening encounter with Mitchell at a gas station. 15 RR at 158. Mitchell followed Hall into the gas station, and when Hall came out of the store, Mitchell's companions surrounded Hall. 15 RR at 160. A security guard had to intervene and diffuse the situation. 15 RR at 160.

## **SUMMARY OF THE ARGUMENT**

The trial court erred in refusing to allow the defense to question witnesses about Goddard's gang membership. Specifically, the court erred because this evidence showed Goddard's violent character and was relevant to whether he was the first aggressor. This evidence also affected the way Mr. Williams perceived the threat posed by Goddard towards Hall. Furthermore, by prohibiting the defense from presenting evidence of Goddard's gang membership, the court violated Mr. Williams's right to present a defense.

The trial court gave the jury instructions on self-defense. It also included an instruction following the language in Code of Criminal Procedure art. 38.36, instructing the jury to consider the prior relationships between Mr. Williams and Goddard and Page, but erred in not including Sir Mitchell, who was wounded in the incident but not named in the indictment, in that paragraph. Mr. Williams was harmed by this exclusion because the jury was not instructed to consider the previous relationship between himself and Mitchell. These errors harmed Mr. Williams; his conviction should be reversed and his case remanded to the trial court for a new trial.

## ARGUMENT

### **Issue One: The Trial Court Erred in Excluding Evidence that Complainant Goddard was a Documented Gang Member, Which Tended to Show His Violent Tendencies and that he was the First Aggressor**

When charged with an assaultive offense, evidentiary rules permit a defendant to offer evidence of a complainant's character for violence or aggression under two distinct theories – communicated and uncommunicated character evidence. *Ex Parte Miller*, 330 S.W.3d 610, 618 (Tex. Crim. App. 2009).

This issue focuses on the trial court's error under the "uncommunicated character" theory.

#### **I. Error Preservation and Relevant Facts**

Defense Counsel specifically stated that the evidence of gang membership was relevant "to show their dispositions, to show, you know, the general bent that goes with being a gang member and being violent," and "to show that he is a gang member and that he was participating in a violent act against my client; that would not be atypical of a person who was in a gang." 14 RR at 96.

Additionally, Goddard's status as gang member, and Mitchell's as a person closely affiliated with gang members, was necessary to show "that he's

generally known in the community to be violent...The fact that the way Sir Mitchell has responded to these questions, the fact that Bryce Goddard is a certified, whatever they call them, documented gang member, we believe it's relevant to show their connection, show who he hangs out with, show what kind of people they are, show that he's aggressive." 14 RR at 97, 142-44. The trial court sustained the prosecution's objection. 14 RR at 144.

The State called one of the lead investigators, Detective Elsbury who testified "Well, [the case] was going to be passed to us and they thought it was going to take more in-depth investigation into it. They also believed it may have been gang related and at that time our squad was tasked with investigating gang murders." 15 RR at 102. During his cross-examination, Defense Counsel asked to approach the Court:

**Defense Counsel:** Once again, Your Honor, talk about a gang investigation has come up. Part of our proof is that this defendant knows that one of those people was in a gang, that he'd seen him before in a photograph with –

**Court:** Sir Mitchell.

**Defense Counsel:** -- the guy in the hospital, yeah, with Mitchell.

**Court:** Uh-huh.

**Defense Counsel:** We think it's important to show that they made an investigation, they spoke of an investigation they made, then testified -- and the --Sergeant Arnold testified he did run them and



see if there were any gang members there. At that point we stopped the testimony. I think that it's important for the jury to know that Bryce Goddard is a documented gang member. I think we need a stipulation from the State that if Arnold were called to testify, he would testify as such, rather than call him back here and say that one thing.

**Court:** At this point the Court doesn't find that that is relevant or proper impeachment of the decedent.

**Defense Counsel:** Okay. Would State agree and stipulate that if Goddard -- if Detective Arnold were called that he would testify that he found that Goddard was a documented gang member or do we need to call him back just to say that?

**State:** If outside of the presence of the jury he's talking about making a bill of proof, I think Elsbury may be able to testify to that or Arnold. We can do that.

**Court:** I think that's what Mr. Williams is wanting to do is a bill of proof. So are you willing to stipulate that they would testify to that?

**State:** Yes.

**Defense Counsel:** So we don't have to bring him back.

**Court:** No, sir.

**Defense Counsel:** All right.

**Court:** Thank you.

*(End of discussion at the bench.)*

15 RR at 127-29.

## **II. Standard of Review**

A trial court's ruling on admissibility of evidence is reviewed for abuse of discretion. *Casey v. State*, 215 S.W.3d 870, 879 (Tex. Crim. App. 2007). A court abuses its discretion when its decision lies outside the zone of reasonable disagreement. *Id.* Harm is evaluated according to the standard for non-constitutional error. *Jackson v. State*, 314 S.W.3d 118, 130 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2010, no pet.).

An appellate court may not reverse for non-constitutional error if the court, after examining the record as a whole, “has fair assurance that the error did not have a substantial and injurious effect or influence in the jury's determinations as to the defendant's guilt or punishment”. *Id.*, citing *Casey*, 215 S.W.3d at 885.

## **III. Analysis**

“A defendant in a homicide prosecution who raises the issue of self-defense may introduce evidence of the complainant's violent character.” TEX. R. EVID. 404(a)(2); *Smith v. State*, 355 S.W.3d 138, 150 (Tex. App.—Houston [1<sup>st</sup> Dist.] 2011, pet. ref'd). Evidence of a complainant's prior violence is permissible when his actions are not unambiguously violent or aggressive, and the evidence can explain those actions. *Id.* Uncommunicated character evidence can include opinion or reputation testimony to prove the complainant acted in conformity

with his violent nature. *Id.* TEX. R. EVID. 404(a)(2), 405(a). When evidence of the victim's character is offered to show that he was the first aggressor, such evidence is admissible whether or not the defendant was aware of the victim's violent disposition. *Stone v. State*, 751 S.W.2d 579, 585 (Tex. App.—Houston [1st Dist.] 1988, pet. ref'd).

#### **IV. Harm**

Exclusion of evidence does not result in reversible error unless the exclusion affects a substantial right of the defendant. *Smith*, 355 S.W.3d at 151; TEX. R. APP. PROC. 44.2(b). To assess the likelihood that the jury's decision was adversely affected by the error, the reviewing court considers "everything in the record, including any testimony or physical evidence admitted for the jury's consideration, the nature of the evidence supporting the verdict, the character of the error, and how it might be considered with other evidence in the case." *Id.*, citing *Motilla v. State*, 78 S.W.3d 352, 355 (Tex. Crim. App. 2002).

When a victim's conduct was plainly aggressive and no explanation is necessary to show that the defendant reasonably feared for his life, then prior violent acts are not admissible. *Smith*, 355 S.W.3d at 150-51. The surveillance from inside the club did not capture a "plainly aggressive" move by Goddard. Goddard's actions are up to interpretation. The State described Goddard's behavior at the club as "trying to break up the fight." 13 RR at 8. But Defense

Counsel's interpretation of the surveillance recording is that after Mitchell initially confronted Hall, then backed off, "within minutes he's back again. Shirt off, fists flailing, Goddard's there with him, Jailyn Page is there with him." 13 RR at 15-16. What the State contends is Goddard coming "to maybe help disarm the active shooter that is murdering people," when he runs up to the security guard escorting Hall out of the club, the Defense sees as "Bryce Goddard running up behind" Hall. 13 RR at 9, 16.

The gang evidence was being offered to "remove the ambiguity or explain" Goddard's conduct. *Torres v. State*, 71 S.W.3d 758, 762 (Tex. Crim. App. 2002). Goddard following of Hall while Hall was detained by the security guard is not, to the uninitiated viewer, threatening. It is only revealed as a threat when the viewer understands Goddard's gang membership and associations with violent people, such as the man who previously shot Hall.

The excluded evidence of Goddard's gang membership would have assisted the jury in interpreting Goddard's actions. It would have certainly behooved the jury to know that Goddard was a gang member. When watching a man approach a known enemy from behind, as Goddard approached Hall, his intent unclear by his actions, the fact that the man in question is a member of a violent street gang informs the observer of his intent. With no other way to

divine what was in Goddard's mind or heart at that moment, the evidence the jury was deprived of was crucial and not available from any other source.

**Issue Two: The Trial Court Erred When It Denied Defense Counsel's Request to Question Witnesses About Complainant Goddard's Gang Membership and How it Affected Mr. Williams's Perception of the Threat Faced by Hall**

To support Mr. Williams's fear for the life of his brother, Defense Counsel attempted to explain to the jury the link between Goddard and a prior instance where Hall was the victim of violence. About a year before the night of the offense, Hall had been shot. Mr. Williams believed Goddard to be a gang member and associated with the man who shot Hall. 15 RR at 157, 161-62. This informed Mr. Williams's belief that Hall was in mortal danger when Mitchell, accompanied by Goddard, attempted to begin a fight with him inside the club the night of the shooting, and more so when he saw Goddard began to follow Hall after he was detained by security. 15 RR at 174.

**I. Standard of Review**

A trial court's ruling on the admissibility of evidence is reviewed for abuse of discretion. *Jackson*, 314 S.W.3d at 124.

**II. Error Preservation and Relevant Testimony**

Just before the lead investigator was called to testify, the court had the following exchange outside the presence of the jury:

**Court:** State, what is it that you'd like to put on the record?

**State:** Well, Judge, we would like to ask that the defense not be allowed at this point in time to ask any questions about any of the victims being potential gang members, documented, undocumented gang members because we just don't think there's any relevance to the case at this time.

**Court:** Okay. What's your response, defense?

**Defense Counsel:** Well, we think it is relevant, Your Honor, to show their dispositions, to show, you know, the general bent that goes with being a gang member and being violent.

**Court:** Uh-huh.

**Defense Counsel:** That they were up to violence that night when they threatened my client, when they gathered around him. One of them was identified as a documented gang member and the others were not. And there was some innuendo as to Sir possibly being a gang member but he didn't admit that he was so I wouldn't get into that. However, Bryce Goddard was supposedly a documented gang member, according to the police, and I'd like to bring that into evidence.

**Court:** Okay. For what purpose?

**Defense Counsel:** To show that he is a gang member and that he was participating in a violent act against my client; that would not be atypical of a person who was in a gang.

...

**Defense Counsel:** Just the fact that he was associated with this group of people, you know, who were making these threats.

**Court:** Okay.

**Defense Counsel:** And the prior situation between Sir and our client. All those things, we believe, would make it be relevant as to who he is, what kind of guy he is, the group he belongs to.

**Court:** Okay.

**Defense Counsel:** That he's generally known in the community to be violent.

**Court:** Okay. And, State, your response?

**State:** Your Honor, they're just not relevant to the case. It's just a past or other act and on -- here there's been no testimony about this being gang related, there's been no evidence of any kind of gang affiliation or that --

**Court:** Well, sure, not yet. I think defense is wanting to elicit that, though, so.

**State:** And none of that would matter for the purposes of this case if the defendant does not know them and does not know that they're gang members, so at this point it's not relevant.

**Defense Counsel:** Well, he -- he does know them to be gang members.

**Court:** Okay. Why don't we do this. At the point that you want to go into the gang membership, just approach and we'll get into it at that point. I don't know that we need to have this discussion right this second.

14 RR at 95-98.

Following a subsequent conference at the bench, the State's objection was sustained. 14 RR at 144.

### **III. Analysis**

This case involves a trial court limiting evidence by the defense in support of a defensive theory -- deadly force in defense of another. What Mr.



Williams knew or believed about Paige, Goddard, and Mitchell affected how he perceived the threat they posed the night of the shooting.

A. Communicated Character Evidence

Evidence of a victim's violence is admissible for purposes other than to show character conformity, such as to show the state of mind of the defendant. Tex. R. Evid. 404(b); *Mozon v. State*, 991 S.W.2d 841, 845 (Tex. Crim. App. 1999). Communicated character evidence allows a defendant to sponsor testimony about the reputation or special instances of conduct of another person to show that the defendant's apprehension of danger was reasonable. *Ex Parte Miller*, 330 S.W.3d at 618.

This is evidence of which the defendant is aware and therefore perceives a danger posed by another, regardless of whether the danger is real or not. *Id.* The defendant is not trying to prove the person is actually violent but is "proving his own self-defensive state of mind and the reasonableness of that state of mind." *Id.* at 619.

B. Mr. Williams's State of Mind

According to Mr. Williams, he believed the security guard was taking Hall not to the exit of the club to eject him, but to the bathroom area. 15 RR at 173. As Hall was being walked to the isolated bathroom area, Goddard began to

follow him. 15 RR at 173-74. From Mr. Williams's point of view, Goddard was coming up behind Hall. 15 RR at 174. At the time, due to Goddard's large jacket, it was impossible for Mr. Williams to determine if Goddard was armed. 15 RR at 174.

C. Rule 403 Balancing Test

Evidence of communicated character must pass Rule of Evidence 403's balancing test. *Mozon*, 991 S.W.2d at 846. When engaging the 403 balancing test, the court should look at "how compellingly the extraneous offense evidence serves to make a fact of consequence more or less probable" and "the force of the proponent's need for this evidence to prove a fact of consequence." *Id.* at 847; TEX. R. EVID. 403. Goddard's gang membership helped make a fact of consequence more probable by lending credence to the level of fear experienced by Mr. Williams. Because only Mr. Williams can speak of his perception of events at the time of the shooting, and because defense of another was his sole defensive theory, his need for the evidence was great.

The court should also consider any potential this evidence had "to impress the jury in some irrational but nevertheless indelible way," and the time needed to develop the evidence. *Id.* Gang membership is fairly well understood and is not so outrageous as to overcome the jury's rationality. The

evidence would not have been lengthy to present. The evidence passes the Rule 403 balancing test.

#### **IV. Harm**

Under Appellate Rule 44.2(b), an appellate court may not reverse for non-constitutional error if the court, after examining the record as a whole, has fair assurance that the error did not have a substantial and injurious effect or influence on the jury's determinations as to the defendant's guilt or punishment. *Jackson*, 314 S.W.3d at 130; TEX. R. APP. PROC. 44.2(b).

In making this assessment the reviewing court considers everything in the record: testimony, physical evidence, the nature of the evidence supporting the verdict, the character of the alleged error, and how the error might be considered in connection with other evidence in the case. *Motilla*, 78 S.W.3d at 355. Additionally, the court may consider the jury charge, the State's theory, defensive theories, closing arguments, and jury selection. *Id.* at 355–56. *Jackson*, 314 S.W.3d at 131.

Defense of another was the only defense offered at trial. The State discussed it during jury selection, as did the defense. 12 RR at 81-93, 115-125. In his opening statement, Defense Counsel told the jury to expect evidence of

gang affiliation and how it affected Mr. Williams's state of mind the night of the shooting:

You're going to hear from the evidence that on an occasion approximately one year before this terrible incident, L. D. was shot in the stomach by a guy named Baby Trap. That's his name. You're also going to learn from the evidence that Baby Trap was associated with a man named Goddard, the man whose picture you saw up on the screen, a documented gang member, as you will hear the police testify to.

You will hear testimony that a month before this incident occurred, at a convenience store, while Demontae sat in the car and his brother goes into the store, he tried to purchase whatever he was going in there for, he was confronted at the door by Sir, Sir Mitchell, one of the people whose picture you saw up there who did not die but who was shot, the man who you heard said that -- threw off his shirt to confront them.

You will hear that on the occasion that these -- this man and his brother went to the club, they didn't expect trouble. They didn't expect to see these guys. They had never been to the club before. This man had no intention of going but was called by his cousin to give him a ride up there so he went.

He gets to the club and they sit down and then all the sudden his brother turns to him and he says, "Oh, my God, they're here."

"Who?"

"Those guys, Goddard. The guys with the guy that shot me."

13 RR ay 14-15.

Closing arguments focused on Mr. Williams's belief that his brother was in mortal peril. Defense Counsel told the jury that the "State's proposition here is this was a fistfight so what's everybody upset about?" but the issue was Mr. Williams's perception was at the time. 16 RR at 16, 17. Defense Counsel

explained that it was Mr. Williams's relationship with his brother and the events in Hall's life that informed Williams's state of mind:

He told you as a child at 8 years old -- and all this is undisputed -- that he helped raise his younger brother, L. D. Hall, and his younger sister who was an infant at the time. Changed their diapers, fed them, throughout the summer when nobody was there to take care of them but him. And that bond was then created between them from an early age as protector, protector of his little brother, protector of his little sister, and that carried on throughout their lives as they grew older.

And during the course of their lives, you learned that as they grew older that L. D. had been shot, been shot in the stomach and was hospitalized and he found out about that and he went and visited his brother. Later on his brother told him about it, told him some guy named Baby Trap shot him.

...

Now, Bryce Goddard is a guy that L. D. Hall had seen in a photograph with Baby Trap, the man that shot him, and says to his brother when Goddard walks by, "Uh-oh, Goddard's here, the guy I saw in the photograph with Baby Trap, the guy that shot me." At that point, apprehension starts to creep in the mind of Demontae Williams like, uh-oh, what next.

...

But then they look and observe that at the bar not only is there Goddard but there is Jailyn and there is Sir Mitchell, the men that confronted them at the convenience store. And what are they doing and what is Sir Mitchell doing? Over there yelling profanities, talking trash. "We're going to get you after this show," according to what the witnesses heard him say.

People at the bar, Kevin and his sister, said they heard him shouting something, "We're going to get you after the show," not, "I'm going

to get you," not, "I'm going to come over there and fistfight." "We are going to get you after the show."

16 RR at 17-20.

After reminding the jury of the bond between Mr. Williams and his younger brother, and the responsibility Mr. Williams felt for Hall and Hall's wellbeing, he also reminded them of the time Williams almost lost Hall. What the jury did not get to hear was that one of the men who confronted the brothers in the club that fateful night, who began following Hall when he was detained by security, was known by Mr. Williams to be a gang member. Knowing that Mr. Williams believed Goddard to be a gang member colors how he perceived the threat imposed by Goddard and his friends. Gang members are known to be violent and carry weapons. Most people, including Mr. Williams, would likely believe that a gang member would follow through on a threat of harming them.

Defense Counsel urges the jury:

Because looking at the circumstances from his standpoint, knowing everything that he knows, knowing everything that he's heard about, knowing that he's in a club where he's a stranger, knowing that he's in a club where these guys are obviously not strangers, knowing that the security guard is not going to get them out but he's going to do something to them. Not protect them. Not stop those guys from yelling and stop Sir from yelling across, no, I'm not -- I know them, they're club members. You guys, I don't know you. Ain't no protection here for you.

16 RR at 23.

These arguments only really make sense when you know that at least one of the men in question is a gang member. Mr. Williams's did not know, but feared, who else might be a fellow gangster with Goddard.

The State capitalized on the jury's ignorance, asking them to "imagine if we actually lived in a world where whenever a teenager threw up fists, that gave anyone the right to shoot him...You could never leave the house because anytime a teenager threw up fists, there could be a mass shooting." 16 RR at 27-28. The prosecutor also says that Mr. Williams could have just left "the situation. He could leave the club." 16 RR at 30. The jury would be less inclined to believe the solution was so simple had they known that Mr. Williams believed that at least one of the men telling him he was not going to be leaving the club that night was a gang member. 16 RR at 20-21

The prosecution also refers to Goddard as not having a gun on him, "who had never shown any force." 16 RR at 33. Mr. Williams's belief about Goddard's dangerousness is intertwined with his belief that Goddard is a gang member. Gang members carry guns. The same looks, the same actions that might be innocuous coming from another person is very different when you know the person making them is affiliated with a dangerous and violent group. The

prosecutor takes advantage of the court's exclusion of the gang evidence when she feigns incredulity.

Additionally, what Mr. Williams described as Goddard following the security guard and his brother, the State describes as Goddard "running away." 16 RR at 34. If the jury knew Mr. Williams believed Goddard was a gang member in league with a man who previously shot his brother, it would be in a better position to judge which version Mr. Williams believed to be true. It would also prevent the State from using the exclusion of this evidence to persuade the jury to its version.

Excluding Mr. Williams's knowledge of Goddard's gang membership led to a dearth of information explaining the danger posed by Mitchell and the complainants. "The exclusion of the state of mind evidence had a tremendous effect on the ability of the defense to explain Appellant's perception of the events that evening as well as [his] conduct. It also prohibited the defense from being able to effectively utilize some of the evidence that the jury had before it." *Henderson v. State*, 906 S.W.2d 589, 598 (Tex. App.-El Paso 1995, pet. ref'd). Without this evidence, Mr. Williams's level of fear "seems unreasonable and irrational." *Id.* at 599. Mr. Williams was harmed by the trial court's error and his case should be reversed and remanded for a new trial.



### **Issue Three: The Trial Court Erred when its Evidentiary Rulings Denied Mr. Williams the Right to Present a Defense**

#### **I. Standard of Review**

This Court reviews “a trial court’s ruling under the Rules of Evidence for an abuse of discretion.” *Billodeau v. State*, 277 S.W.3d 34, 39 (Tex. Crim. App. 2009). A trial court abuses its discretion if the ruling falls outside the zone of reasonable disagreement. *Montgomery v. State*, 810 S.W.2d 372, 380 (Tex. Crim. App. 1990).

#### **II. Relevant Facts**

The portions of the trial relevant to this issue are the same as those in issues one and two. The trial court repeatedly refused to allow Defense Counsel to question witnesses regarding Bryce Goddard’s gang membership. 14 RR at 96-97, 142-44; 15 RR at 127-29.

#### **III. Analysis**

An essential component of procedural fairness is an opportunity to be heard. *Crane v. Kentucky*, 476 U.S. 683, 690 (1986). Whether it be through the Fourteenth Amendment or the Sixth, the United States Constitution ensures criminal defendants will have “a meaningful opportunity to present a complete defense.” *Id.*; *Miller v. State*, 36 S.W.3d 503, 506 (Tex. Crim. App. 2001). A defendant has a fundamental right to present evidence of a defense if the

evidence is relevant and is not excluded by an established evidentiary rule. *Miller* 36 S.W.3d at 507. A defendant has the right to present a vigorous defense and the jury should be allowed to hear all admissible evidence offered by the defendant that bears on any defensive theories. *Peace v. State*, No. 14-04-00233-CR, 2005 WL 2276883 \*7 (Tex. App. - Houston [14th Dist.] Sept. 20, 2005, pet. ref'd) (mem. op. not designated for publication).

Evidence is relevant if it has any tendency to make the existence of any fact that is of consequence to the determination of the action more or less probable than it would be without the evidence. Tex. R. Evid. 401. "Relevancy is not an inherent characteristic of any item of evidence but exists as a relation between an item of evidence and a matter properly provable in the case." *Beasley v. State*, No. 01-04-00989-CR, 2005 WL 3005593 \*4 (Tex. App.-Houston [1st Dist.] Nov. 10, 2005. pet. ref'd) (mem. op., not designated for publication) *citing Montgomery*, 810 S.W.2d at 375.

"Courts must examine the purpose for which the evidence is offered and whether there is a direct or logical connection between the evidence and the proposition sought to be proven." *Garza v. State*, 18 S.W.3d 813, 822 (Tex. App. – Fort Worth 2000, pet. ref'd). "Any evidence that helps discover the truth of a material issue is relevant, even though it is only a link in the chain of facts which

must be proved to make the proposition at issue appear more or less probable.”

1 Barbara E. Bergman & Nancy Hollander, *Wharton's Criminal Evidence* § 4.1  
(15th Ed. 2012).

The trial court's ruling effectively precluded Mr. Williams from presenting a vital part of his sole defense. Because the jury was denied knowing that Goddard was a gang member, they could not fully appreciate Goddard's violent tendencies or why Mr. Williams was so fearful of him and his group of friends.

#### **IV. Harm**

##### **A. Harm Under Rule 44.2(a)**

In general, harm analysis of evidentiary error is controlled by Texas Rules of Appellate Procedure 44.2(b), which requires that a defendant show his substantial rights were affected by the trial court's erroneous ruling. *Potier v. State*, 68 S.W.3d 657, 666 (Tex. Crim. App. 2002). However, when the trial court's clearly erroneous ruling results in the exclusion of admissible evidence that forms the vital core of a defensive theory and effectively prevents him from presenting that defense, the exclusion raises to the level of a constitutional violation to which the harm standard found in Texas Rules of Appellate Procedure 44.2(a) would apply. TEX. R. APP. PROC. 44.2(a); *Walters v. State*, 247

S.W.3d 204, 219 (Tex. Crim. App. 2007); *Potier*, 68 S.W.3d at 665; *Wiley v. State*, 74 S.W.3d 399, 405 (Tex. Crim. App. 2002); *Wilson v. State*, 451 S.W.3d 880, 886-87 (Tex. App.—Houston [1st Dist.] 2014, pet ref'd).

The reviewing court does not have to believe that the jury would have acquitted Mr. Williams but for the court's error, but if it cannot be said "with fair assurance that the excluded testimony would have had no effect, or but slight effect," on the defendant's case, then he was harmed. *Miller v. State*, 42 S.W.3d 343, 347 (Tex. App. – Austin 2001, no pet.). "On this record, appellant was harmed when the jury was not given the opportunity to hear testimony relevant to appellant's defense and assess its credibility along with the other evidence in the case." *Id.* at 347. "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" is a fundamental element of due process." *Washington v. Texas*, 388 U.S. 14, 19 (1967). *See also Potier*, 68 S.W.3d at 664-665.

B. Harm Under Rule 44.2(b)

Even if this court does not find the exclusion of this evidence rises to the level of constitutional harm, Mr. Williams's conviction should still be reversed because it affected his substantial rights. Rule 44.2(b) of the Texas Rules of Appellate Procedure provides that nonconstitutional error that does not affect

substantial rights must be disregarded. TEX. R. APP. PROC. 44.2(b). But if the appellate court has fair assurance that the error had more than a slight effect on the jury, the error is harmful. *See Turner v. State*, 252 S.W.3d 571, 585 (Tex. App.–Houston [14th Dist.] 2008, pet. ref’d).

A reviewing court must reverse a conviction for non-constitutional error if it has “grave doubt” whether the result of the trial was free from the substantial effect of the error. *Barshaw v. State*, 342 S.W.3d 91 (Tex. Crim. App. 2011). 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 on the jury’s verdict. *Id.* at 93-94. It is the responsibility of the appellate court to assess harm after reviewing the record, and the burden to demonstrate whether the appellant was harmed by a trial court error does not rest on either the appellant or the State. *Coble v. State*, 330 S.W.3d 253 (Tex. Crim. App. 2010).

Mr. Williams was harmed by the exclusion of this vital evidence. His conviction should be reversed and his case remanded to the trial court for a new trial.

**Issue Four: The Trial Court Erred in Failing to Include Antagonist Sir Mitchell in the Jury Instruction Directing Jurors to Consider the Previous Relationship Between Mr. Williams and the Complainants**

**I. Standard of Review**

The standard of review for jury charge error is abuse of discretion. *Brown v. State*, 955 S.W.2d 276, 279 (Tex. Crim. App. 1997). A court abuses its discretion when its decision lies outside the zone of reasonable disagreement. *Jackson*, 314 S.W.3d at 124.

**II. Preservation of Error and Relevant Facts**

Sir Mitchell was shot and injured during the same episode where the Complainants were killed. The court included an instruction based on Code of Criminal Procedure art. 38.36. TEX. CODE CRIM. PROC. ART. 38.36(a). The pertinent portion of the jury charge reads:

You are instructed that it is your duty to consider the evidence of all relevant facts and circumstances surrounding the deaths and the previous relationship, if any, existing between the accused and Jailyn Page and the accused and Bryce Goddard together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the alleged offense.

CR at 773.

During the conference on the jury charge, Defense Counsel requested that Mitchell be included in the above-referenced portion of the jury charge along with the complainants named in the indictment:

**MR. WILLIAMS:** We requested that Sir Mitchell's name be included in the charging paragraph as one of the persons that he was considering his actions when he acted as he did against Goddard and the other --and Jailyn.

**THE COURT:** And that will be denied.

16 RR 4-5.

Although Defense Counsel's request does not refer to the page number of the jury charge, the instruction on prior relationship of the parties is the only portion of the charge, other than the application paragraphs, that refers to both Complainant Goddard and Complainant Page. *See Charge of the Court on Guilt or Innocence*, CR at 772-82. Based on the record of the hearing, the trial court understood the request and denied it, preserving the issue for appeal. *Taylor v. State*, 939 S.W.2d 148, 155 (Tex. Crim. App. 1996)(Where the record makes clear that the trial court understood an objection and its legal basis, a trial court's ruling on that objection will be preserved for appeal, despite an appellant's failure to clearly articulate the objection).

In addition to the testimony regarding the night of the shooting, Mr. Williams testified that Mitchell had a previous altercation with Hall at a gas

station. Mitchell had engaged in a verbal argument with Hall, with Mitchell and his friends surrounding Hall and getting into a tussle, until a security guard diffused the situation. 15 RR at 160, 182. Moreover, Mitchell appeared to be at the club the night of the shooting with Goddard, who was a friend of the man who had previously shot Hall. 15 RR at 157.

### **III. Analysis**

#### **A. Code of Criminal Procedure Art. 38.36**

Code of Criminal Procedure Art. 38.36(a) allows that, in all prosecutions for murder, either party is permitted to offer:

Testimony as to all relevant facts and circumstances surrounding the killing, the previous relationship between the accused and the deceased, together with all relevant facts and circumstances going to show the condition of the mind of the accused at the time of the offense.

TEX. CODE CRIM. PROC. ART. 38.36(a).

This article allows admission of evidence if the evidence shows (1) relevant facts and circumstances surrounding the murder, (2) the previous relationship between the appellant and the deceased, or (3) the condition of the mind of the accused at the time of the offense. *Jernigan v. State*, 585 S.W.2d 701, 704 (Tex. Crim. App. 1979). “Facts and circumstances surrounding the killing which are probative of the material condition of the mind of the accused at the



time of the offense” are permitted under this article. *Fielder v. State*, 756 S.W.2d 309, 318 (Tex. Crim. App. 1988).

B. Acts of an Intended Target Included

In *Dixon v. State*, the complainant was killed by gunfire intended for another, when the defendant acted in defense of himself and his girlfriend. *Dixon v. State*, 634 S.W.2d 855, 856 (Tex. Crim. App. 1982). At trial, the defendant attempted to admit evidence of the relationship between himself and the intended target under Penal Code § 19.06 (now Tex. Code Crim. Proc. art. 38.36(a)), to show “what was on the Defendant’s mind when he saw the intended victim, to show the circumstances surrounding the shooting.” *Id.* The trial court refused admission of evidence of “specific acts of violence” attributed to the intended victim. *Id.*

The Court of Criminal Appeals ruled the evidence admissible, finding there was no reason why rules of evidence governing acts of a victim in a self-defense case should “not apply to acts of the intended victim as well as to the deceased. There seems to be no dispute that appellant’s testimony reflects that there was an act of aggression by the intended victim...and that appellant had knowledge of specific acts of aggression toward third persons by [the intended victim].” *Id.* at 857. If evidence of the relationship between a defendant and

intended victim is admissible under Section 38.36, the jury instructions implementing that rule should also include such evidence.

The unlawful deadly force against which the defendant may protect himself or others need not have been manifested by the victim – Mr. Williams “had a right to act in self-defense against [the victim] if he was in fear of death or serious bodily injury at the hands of either [the victim] or [another assailant].” *Brown v. State*, 651 S.W.2d 782, 784 (Tex. Crim. App. 1983). “Where there is evidence that more than one person attacked the defendant, the charge is too restrictive if it confines the right of self-defense to the acts of the complainant.” *Id.* By failing to instruct the jury to consider the relationship between Mr. Williams, his brother, and Mitchell, the court’s charge unduly restricts the jury’s assessment of the facts it may consider regarding the mental state of Mr. Williams when he acted in defense of his brother against multiple aggressors with a history of violence against the brother. Evidence showing prior assaults upon Mr. Williams’s brother by those injured in the fracas at the club, whether named in the indictment or not, is relevant to the reasonableness of Mr. Williams’s belief that use of deadly force was immediately necessary to protect his brother from the use or attempted use of deadly force by the named complainants or their accomplice.

While this Court has previously found no error in the trial court's refusal to submit an instruction under Art. 38.36 to the jury in *Milner v State*, there are crucial differences between *Milner* and the case at bar. *Milner v. State*, 262 S.W.3d 807, 808 (Tex. App.—Houston [1st Dist.] 2008, no pet.). The foremost of those differences being that *Milner's* trial court refused to instruct the jury on Art. 38.36. altogether. *Id.* at 808. The trial court in Mr. Williams's case did instruct the jury on Art. 38.36, as it applied to the named complainants in the case but refused to extend its application to Mitchell. While the *Milner* jury was free to consider all evidence presented at trial to inform their decision, Mr. Williams's jury was instructed to only consider the prior relationships between Mr. Williams and the complainants named in the indictment, effectively instructing the jury that it could not consider evidence about the relationship between Mr. Williams and anyone else, including Mitchell. At the very least, it would be misleading and confusing to the jury as to whether they could consider Mr. Williams's past relationship with Mitchell in rendering their verdict.

#### **IV. Harm**

The standard of review for jury charge error depends on whether the error was preserved. *Almanza v. State*, 686 S.W.2d 157, 171 (Tex. Crim. App. 1984). If it was not, then it is reversible only if it caused "egregious harm." *Id.* If

error was preserved, it is reversible if it caused “some harm.” *Id.* Mr. Williams’s request having been preserved, this Court must reverse if he suffered “some harm” from the denial of his requested instruction.

To assess harm, the whole record must be evaluated, including the jury charge, contested issues, weight of the probative evidence, arguments of counsel, and other relevant information. *Jordan v. State*, 593 S.W.3d 340, 347 (Tex. Crim. App. 2020), citing *Almanza*, 686 S.W.2d at 171.

A. Arguments of Counsel

In its opening statement, the State poised the jury to expect problems between co-defendant Hall and Mitchell, telling the jury that the conflict between the two groups – Mr. Williams and Hall on the one hand, Mitchell and Complainants Goddard and Paige on the other – began when Mitchell “throws off his jacket and he puts his fists in the universal sign for a fistfight.” 13 RR at 7.

Defense Counsel’s closing argument summarized the surveillance video from the interior of the club:

But then they [Williams and Hall] look and observe that at the bar not only is there Goddard but there is Jailyn [Paige] and there is Sir Mitchell, the men that confronted them at the convenience store. And what are they doing and what is Sir Mitchell doing? Over there yelling profanities, talking trash. "We're going to get you after this show," according to what the witnesses heard him say. People at the bar, [bartenders] Kevin and his sister, said they heard him

shouting something, "We're going to get you after the show," not, "I'm going to get you," not, "I'm going to come over there and fistfight." "We are going to get you after the show."

Well, so they hear that. They listen. They sit. They do nothing. They say nothing. And then Sir decides he'll come over to the table and he comes up to that table with Micha's momma sitting there, Micha's wife sitting there and his brother and the two of them and says to them, "You're not leaving this club. You're not leaving this club."

16 RR at 20-21.

The State also argued in closing about Mitchell's role in this offense, summing it up as yelling back and forth with Hall and throwing up fists. 16 RR at 29-30. Without the ability to consider all that came before, including the confrontation between Mitchell and Hall at the gas station, the jury is forced to consider Mitchell's role in a vacuum. It makes a difference whether Williams's reaction to Mitchell is informed by their prior relationship. This is precisely what an instruction on art. 38.36 directs the jury to consider. A proper jury instruction would have directed the jury to consider the prior relationship between Williams, Hall, and Mitchell during deliberations.

B. All Other Information

The jury viewed State's Exhibit 145, surveillance recording from inside the club, and listened as State's witnesses described what it showed. Many

times, Mitchell was discussed as the person instigating the confrontation between the two groups.

Detective Elsbury explained that Mitchell can be seen approaching the table where Mr. Williams and Hall were sitting – “Sir John [Mitchell] approached them, they discussed something, looked like they were having words between Demonte [Williams] and L.D. [Hall] and then Sir John went back to the bar.” 15 RR 130. Then, as Det. Elsbury viewed it, Mitchell begins “posturing a second time” in front of Mr. Williams and Hall and yelling at them. 15 RR at 130. Mitchell then removes his coat and assumes “a fighting position.” 15 RR at 113.

Detective Arnold also narrated the recording:

**Q (State):** ...Is that where we’re ultimately going to see some conversation and yelling back and forth take place?

**A (Arnold):** Yeah. You’ll see an individual engaging verbally with these guys down here and that’s where it begins.

**Q:** Okay. Is that Sir Mitchell?

**A:** That is Sir John Mitchell talking to these two individuals, Hall and Williams.

...

**Q:** Okay. Now, does Mr. Mitchell still seem to be engaging in conversation, yelling, whatever you want to call it? Words?

**A:** A little bit animated but he is yelling words back or talking back and that could be because of the volume in the bar. I don't know. The other two guys are just simply waiting by the bar, doing their own thing.

**Q:** Now, what do we see happening here with Mr. Mitchell?

**A:** He's removing his jacket, I believe.

**Q:** Okay. Now –

**A:** Yeah. He's taking his jacket off, he's tossing it behind the bar, he's taking a posture here with his fists up.

14 RR at 122-24.

The jury knew from witnesses and surveillance recordings from the scene that Mitchell was the one who started the yelling, took off his shirt, and “tried to start the fight.” 13 RR at 81. Mitchell threatened, “We’re going to catch you after the show,” and was accompanied by two other people when he put his fists up to start a fight. 14 RR at 82-83. Without Mitchell’s inclusion in the Art. 38.36 instruction paragraph the jury was left to decipher how to use this evidence, evidence which tended to show the reasonableness of Mr. William’s perception of danger at the hands of Mitchell and his associates.

**C. Weight of the Probative Evidence**

The record of Mr. Williams’s trial as a whole shows that there was no doubt as to the identity of the shooters. The only contested issue was defense of another. The failure of the instruction to reference Mitchell made rejection

of the defense more likely, causing “some harm” to Mr. Williams. His case should be reverse and remanded for a new trial.

**PRAYER**

Mr. Williams prays this Court find that the trial court erred by refusing Defense Counsel’s proposed jury charge. Furthermore, the trial court erred in not allowing the jury to hear evidence of Goddard’s gang affiliation. Mr. Williams prays this court reverse his conviction and remand his case to the trial court for a new trial.

Respectfully submitted,

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### **Certificate of Service**

A true and correct copy of the foregoing brief was e-filed with the First Court of Appeals, was served electronically upon the Appellate Division of the Harris County District Attorney's Office, and was also sent on the same date by first-class mail to:

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Miranda Meador

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Pursuant to Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with the type-volume limitations of Tex. R. App. Proc. 9.4(e)(i).

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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(j), may result in the Court's striking this brief and imposing sanctions against the person who signed it.

*/s/ Miranda Meador*

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MIRANDA MEADOR

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