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In the Court of Criminal Appeals of Texas

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COURT OF CRIMINAL APPEALS
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No. 14-18-00205-CR
In the Court of Appeals for the
Fourteenth District of Texas at Houston

Cause No. 1471491
In the 178th District Court of Harris County, Texas

SANTHY INTHALANGSY
Appellant
v.
THE STATE OF TEXAS
Appellee

APPELLANT'S REPLY BRIEF ON DISCRETIONARY REVIEW

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ORAL ARGUMENT GRANTED

STATEMENT REGARDING ORAL ARGUMENT

Upon granting the State's petition for discretionary review, this Court determined that it would permit oral argument in this case.

IDENTIFICATION OF THE PARTIES

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

Trial Judge:	Honorable Reagan Clark Visiting Judge, 178th District Court Harris County, Texas
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TO THE HONORABLE JUDGES OF THE COURT OF CRIMINAL APPEALS OF TEXAS:

STATEMENT OF THE CASE

On September 4, 2015, Appellant was charged by indictment with the felony offense of capital murder. (CR 37). A jury was selected on March 6, 2018 and sworn on March 7, 2018. (CR 325-30; 2RR 4-233; 3RR 84). On March 12, 2018, the jury found Appellant guilty as charged in the indictment and the trial court assessed his punishment at confinement in the Texas Department of Criminal Justice—Institutional Division for life without the possibility of parole. (CR 354, 356-58; 6RR 99, 101-102). That same day, the trial court certified Appellant's right to appeal and Appellant filed notice of appeal. (CR 359, 361-62; 6RR 102, 105).

On September 24, 2020, the Fourteenth Court of Appeals released a published opinion finding that the evidence was sufficient to support Appellant's conviction, but that the trial court committed reversible error in admitting extraneous-offense evidence relating to Sara "Cassie" Nelson's murder. *Inthalangsy v. State*, 610 S.W.3d 138, 144-48 (Tex.App.–Houston [14th Dist.] 2020, pet. granted). Accordingly, the Fourteenth Court of Appeals reversed the judgment of the trial court and remanded the case for a new trial. *Inthalangsy*, 610 S.W.3d at 148.

The State did not file a motion for rehearing or a motion for en banc reconsideration by the Fourteenth Court of Appeals; rather, the State timely filed a petition for discretionary review on October 20, 2020. This Court granted the State's petition on January 13, 2021.

STATEMENT OF FACTS

Appellant was convicted of capital murder for the intentional killing of Kris "Jimmy" Maneerut during the course of kidnapping Maneerut's girlfriend, Sara "Cassie" Nelson.

Lindapone "Linda" Paranphrasa was a local drug dealer in Northwest Houston and the girlfriend of Appellant. (4RR 72-73, 76, 107). In early May 2015, she was robbed of $70,000 during a drug deal with a man named "Lucky." (4RR 74). Linda blamed Cassie for the theft. (4RR 68).

On May 7, 2015, Cassie and Jimmy were staying at Frank Garza, Jr.'s ("Frank") home while Jimmy repaired Frank's father's vehicle. (3RR 162, 166). Syla "Monk" Sengchareum, another local drug dealer, learned from Frank that Cassie and Jimmy were staying at Frank's house. (3RR 175, 217; 4RR 68-69). Monk reported this information to Linda, as he knew Linda was looking for Cassie. (4RR 69, 76-80). Monk called Frank and claimed to have Xanax to sell him. (3RR 172-73, 218). Monk then led Linda, Appellant, and Amalinh

Phouthavong ("Amalinh"), who were riding in Linda's SUV, to Frank's home. (4RR 82). While Frank and Monk were in Monk's vehicle on the street, Appellant and Amalinh exited Linda's car. (3RR 179; 4RR 86). The two men went to the back of the SUV and then walked to the front door of Frank's home. (3RR 180; 4RR 86). Neither Frank nor Monk saw Appellant or Amalinh with a firearm. (3RR 206, 214; 4RR 123).

Within minutes, Frank and Monk heard a loud bang, which Frank thought was the front screen door flying open. (3RR 183; 4RR 87). Appellant and Amalinh exited the front of the home and walked to Linda's SUV with Cassie between them. (3RR 185; 4RR 87). Frank testified that Cassie did not appear to be upset when she exited the home; instead, she appeared nonchalant and confused. (3RR 185-86, 215-16). Frank further testified that Cassie was not being restrained – or physically touched at all – as she walked to the SUV. (3RR 185, 215). Monk testified that neither Appellant nor Amalinh were carrying a gun when they exited the home. (4RR 124). Appellant, Amalinh and Cassie then got into the backseat of the SUV and Linda drove away. (3RR 186-88; 4RR 88-90).

When Frank entered his home he found Jimmy with a gunshot wound to the face. (3RR 188-89). Jimmy was transported to the hospital via Life Flight, but later died from his wound. (3RR 148, 226-27; 4RR 193).

SUMMARY OF ARGUMENTS

State's First Ground for Review: The Fourteenth Court of Appeals properly applied Texas Rules of Evidence 401 and 402 in concluding that the extraneous-offense evidence of Cassie's murder was irrelevant and therefore inadmissible at Appellant's trial.

State's Second Ground for Review: The Fourteenth Court of Appeals did not err in failing to consider the admissibility of the extraneous-offense evidence of Cassie's death under Texas Rule of Evidence 404(b), as the Court properly concluded that the evidence was irrelevant, thus ending the Court's analysis.

State's Third Ground for Review: The Fourteenth Court of Appeals *did* conduct a meaningful assessment of the extraneous-offense evidence of Cassie's murder pursuant to Texas Rule of Evidence 403, despite having already concluded that said evidence was irrelevant, and held that, "the prejudice was unfair and substantially outweighed the non-existent probative value of Cassie's death."

REPLY TO STATE'S GROUNDS FOR REVIEW

The Fourteenth Court of Appeals properly concluded that the extraneous-offense evidence of Cassie's murder was irrelevant and therefore inadmissible at Appellant's trial. *Inthalangsy*, 610 S.W.3d at 148.

The day after she was seen leaving Frank's home with Appellant and Amalinh, Cassie's deceased body was found in a secluded area near a chemical plant. (4RR 227-32). Her cause of death was multiple gunshot wounds. (4RR 241-42; 5RR 40-48, 54). Appellant was charged by indictment with the murder

of Jimmy while in the course of kidnapping Cassie. (CR 37). Thus, Cassie's murder was an extraneous offense that was irrelevant to the crime charged. Over repeated objections, the trial court allowed the evidence of Cassie's death to be presented to the jury. (CR 305-307; 3RR 18-24, 95; 4RR 226-27; 5RR 178).

The evidence that Appellant murdered Cassie was speculative, at best. His DNA was not present on Cassie or at the scene. The weapon used to kill Cassie differed from the one that was used in the charged offense. The only evidence linking Appellant to Cassie was that he was seen with her the previous day. Despite this, the State took a copious amount of time to develop evidence of Cassie's murder. This included additional testimony by several witnesses, and the admission of several exhibits.

The State's inability to prove Appellant participated in Cassie's death beyond a reasonable doubt made the evidence thereof irrelevant, prejudicial and inadmissible. *See Miles v. State*, 468 S.W.3d 719, 724 (Tex.App.—Houston [14th Dist.] 2015), *aff'd on other grounds*, 506 S.W.3d 485 (Tex.Crim.App. 2016)("To determine whether evidence is relevant in a particular case, courts must 'examine the purpose for which the evidence is being introduced.' ... There must be a 'direct or logical connection between the actual evidence and the proposition sought to be proved.'")(quoting *Layton v. State*, 280 S.W.3d 235, 240 (Tex.Crim.App. 2009)).

RELEVANCE UNDER TEXAS RULES OF EVIDENCE 401 AND 402

An accused must be tried only for the offense with which he is charged. He may not be tried for a collateral crime or for being a criminal generally. *Stafford v. State*, 813 S.W.2d 503, 506 (Tex.Crim.App. 1991).

> Generally, evidence of extraneous offenses may not be used against the accused in a criminal trial.... While such evidence will almost always have probative value, it forces the defendant to defend himself against uncharged crimes as well as the charged offense, and encourages the jury to convict a defendant based upon his bad character, rather than proof of the specific crime charged.

Daggett v. State, 187 S.W.3d 444, 450-51 (Tex.Crim.App. 2005)(footnotes omitted).

In the instant case, the Fourteenth Court of Appeals acknowledged that extraneous offenses:

> …may not be received into evidence unless and until there is a clear showing that: 1) the evidence of the extraneous offense is material; *i.e.*, going to an element of the offense charged in the indictment or information, 2) the accused participated in the extraneous transaction being offered into evidence, and 3) the relevancy to a material issue outweighs its inflammatory or prejudicial potential[.]

Inthalangsy, 610 S.W.3d at 144-45 (citing *McCann v. State*, 606 S.W.2d 897, 901 (Tex.Crim.App. [Panel Op.] 1980), *holding modified by Harrell v. State*, 884 S.W.2d 154 (Tex.Crim.App. 1994)(en banc)(citing *Murphy v. State*, 587 S.W.2d 718, 721 (Tex.Crim.App. [Panel Op.] 1979) and *Ruiz v. State*, 579

S.W.2d 206 (Tex.Crim.App. [Panel Op.] 1979)). Clear proof means "proof beyond a reasonable doubt." *Inthalangsy*, 610 S.W.3d at 145 (*citing Harrell*, 884 S.W.2d at 158).

As the Court of Appeals aptly noted, "Cassie's death has no logical tendency to make a fact of consequence concerning her kidnapping more or less probable than it would have been without her death, particularly because there is no sufficient evidence connecting Appellant thereto." *Inthalangsy*, 610 S.W.3d at 146; *see* TEX. R. EVID. 401; *see also Montgomery v. State*, 810 S.W.2d 372, 391 (Tex.Crim.App. 1990)(en banc)("Where the appellate court can say with confidence that by no reasonable perception of common experience can it be concluded that proffered evidence has a tendency to make the existence of a fact of consequence more or less probable than it would otherwise be, then it can be said the trial court abused its discretion to admit that evidence.").

Further, the Court of Appeals concluded that the evidence was legally sufficient to prove Cassie had been kidnapped without the introduction of the irrelevant and prejudicial evidence of Cassie's murder, and, as such, the trial court abused its discretion when it overruled Appellant's objection under Texas Rule of Evidence 402. *Inthalangsy*, 610 S.W.3d at 146

The State suggests that the Fourteenth Court of Appeals failed to acknowledge the "low threshold" for relevance and points to several pieces of circumstantial evidence that may have allowed a jury to conclude, beyond a

reasonable doubt, that Appellant was involved in Cassie's murder. *See State' Brief on Discretionary Review* at 16-21. What is missing, however, is any link – circumstantial or otherwise – to Appellant himself. Cassie could have been killed by someone wholly unrelated to the capital murder… or someone else in Linda's crew… or Lord Voldemort, for all we know. But without a single link to Appellant, the evidence and circumstances of Cassie's death, while tragic, were simply far too speculative to be deemed relevant and admissible at Appellant's trial.

ADMISSIBILITY UNDER TEXAS RULE OF EVIDENCE 404(b)

As noted by the State in their brief on discretionary review, then-Justice Tracy Christopher[1] issued a published dissenting opinion in this case, disagreeing with the majority's conclusions regarding the admissibility of the extraneous-offense evidence of Cassie's murder. Justice Christopher took particular issue with her perceived failure of the Fourteenth Court of Appeals to consider the admissibility of the evidence under Texas Rule of Evidence 404(b)(2), which allows for the admissibility of extraneous-offense evidence for non-character purposes or as same-transaction contextual evidence. *Inthalangsy*, 610 S.W.3d at 149 (Christopher, J., dissenting).

[1] Now, Chief Justice Christopher of the Fourteenth Court of Appeals.

Justice Christopher cites to *Mayes v. State*, 816 S.W.2d 79 (Tex.Crim.App. 1991), for the proposition that "contextual evidence refers to those background situations where 'several crimes are intermixed, or blended with one other, or connected so that they form an indivisible criminal transaction, and full proof by testimony, whether direct or circumstantial, of any one of them cannot be given without showing the others.'" *Mayes*, 816 S.W.2d 86 n.4. But that is simply not the case here. The story of the murder of Jimmy Maneerut in the course of kidnapping Cassie Nelson can be told without ever referencing Cassie's subsequent death. Cassie's death is not required to establish an element of her kidnapping. Further, because the majority properly concluded that the evidence of Cassie's death was not relevant, an analysis under Texas Rules of Evidence 404(b) was unnecessary.

Nevertheless, there is a line of cases that have found offenses believed to be related to the crime charged, but committed after the facts at issue, are admissible as same-transaction contextual evidence. However, these cases are distinguishable from the instant case.

In *Santellan v. State*, the defendant was charged with killing his girlfriend while in the course of kidnapping her. 939 S.W.2d 155, 160-62 (Tex.Crim.App. 1997). After Santellan shot the complainant in a parking lot, he took her body to a hotel and had sex with her body. *Id.* The defense objected that the evidence relating to abuse of the corpse should be inadmissible under

Rules 404 and 403. *Id.*, at 167. Because there was no question that Santellan committed the extraneous offense, the Court of Criminal Appeals focused on whether the evidence was relevant. *Id.* ("Although [Santellan] did not clearly articulate an objection on relevancy grounds at trial, we have held that a Rule 404(b) objection entails a relevancy analysis."). The Court held that the extraneous evidence was part of the same transaction as the capital murder for which the defendant was being tried, and was relevant to his "motive, plan, and intent in perpetrating the crime." *Id.*, at 168.

In *Camacho v. State*, a case cited by Justice Christopher in her dissent, the defendant was charged with murdering David Wilburn while in the course of committing and attempting to commit the felony offense of burglary of a habitation owned by Sam Wright. 864 S.W.2d 524, 526 n.1 (Tex.Crim.App. 1993). Over objection, the trial court permitted evidence that Camacho also kidnapped and murdered Wright's wife and young son. *Id.*, at 531. The Court of Criminal Appeals found that evidence of the kidnapping and murders was "[s]ame transaction contextual evidence" and relevant to the defendant's state of mind when he entered Wright's home. *Id.*, at 531. [Internal citations and quotations omitted].

Evidence that Linda's crew kidnapped Cassie was clearly relevant and admissible as an element of the offense charged, as was the evidence of Cassie's prior claim of being held hostage by Linda's crew. However, evidence that she

was subsequently murdered and her body dumped in a secluded area – nearly sixty miles away from the capital murder site – was irrelevant to whether Appellant committed capital murder.

In both *Santellan* and *Camacho*, there was no dispute that the defendant committed the extraneous offense that was being challenged. That is not the case here. There is no evidence linking Appellant to Cassie's murder. His DNA was not recovered from her body or the scene. Additionally, there was no ballistics evidence linking Appellant to Cassie's murder. Two different guns were used to kill Jimmy and Cassie. (4RR 29-30). Viewed in a vacuum, there is not enough evidence to issue an arrest warrant for Appellant for the death of Cassie, much less meet the standard required for admission as an extraneous in the trial for another offense.

The Fourteenth Court of Appeals did not err in addressing the relevance of the extraneous-offense evidence of Cassie's murder before considering its admissibility under Texas Rule of Evidence 404(b)(2). The Court's conclusion that the evidence was irrelevant due to wholly insufficient ties to Appellant foreclosed the need for an analysis under Texas Rules of Evidence 404(b).

PREJUDICE UNDER TEXAS RULE OF EVIDENCE 403

The State further echoes the suggestion raised in Justice Christopher's dissent that the majority failed to "perform a meaningful analysis under Rule 403 to assess whether the probative value of the extraneous murder

substantially outweighed the danger of unfair prejudice." *Inthalangsy*, 610 S.W.3d at 150.

First, and once again, the majority did not delineate a Rule 403 analysis in their opinion because it was not necessary: the Court had already concluded that the evidence was irrelevant and therefore inadmissible. It is axiomatic that evidence that is not relevant has no probative value; therefore, irrelevant evidence will always be outweighed by unfair prejudice. That said, the majority *did* identify its concerns about the impact the extraneous-offense evidence may have had on the jury when it recognized that its admission violated Appellant's substantial rights. *Inthalangsy*, 610 S.W.3d at 147-48.

As Appellant argued in his brief to the Fourteenth Court of Appeals, "unfair prejudice" means an "undue tendency to suggest decision on an improper basis, commonly, though not necessarily, an emotional one." *Montgomery v. State*, 810 S.W.2d 372, 378 (Tex.Crim.App. 1990). Almost all evidence offered by the prosecution will be prejudicial to the defendant. Therefore, only evidence which is unfairly prejudicial should be excluded under Rule 403. *DeLeon v. State*, 77 S.W.3d 300, 315 (Tex.App.—Austin 2001, pet. ref'd). It is difficult to imagine anything more prejudicial than the introduction of evidence that an individual may have been involved in a second, extraneous murder the course of their capital murder trial.

The relevant factors in determining whether the prejudice of an extraneous offense substantially outweighs its probative value include: (1) how compellingly the extraneous-offense evidence serves to make a fact of consequence more or less probable; (2) the potential the evidence has to impress the jury "in some irrational but nevertheless indelible way;" (3) the time the proponent will need to develop the evidence, during which the jury will be distracted from consideration of the indicted offense; and (4) the force of the proponent's need for this evidence to prove a fact of consequence, i.e., whether the proponent has other probative evidence available to him to help establish this fact, and whether this fact is related to an issue in dispute. *Mozon v. State*, 991 S.W.2d 841, 846-47 (Tex.Crim.App. 1999); *Montgomery*, 810 S.W.2d at 390.

The first factor of the balancing test weighed against admitting the evidence because there was no relevance to any fact at issue in the trial. As discussed above, Appellant was charged with murdering Jimmy while in the course of kidnapping Cassie. (CR 37). Because there is no evidence that Appellant murdered Cassie, such evidence was not relevant to prove the capital murder.

The second factor also weighed in favor of excluding the evidence. While the State's evidence in the capital murder case was circumstantial, the Fourteenth Court of Appeals found that the evidence was sufficient to support

a conviction. The evidence of Cassie's murder, a young mother shot repeatedly and dumped in a river, undoubtedly had the propensity to affect the jury in an emotional way. It also had the potential to cloud the issues for the jury by distracting them from the charged offense and various lesser-included offenses that were included in the trial court's charge.

The time to develop the evidence was substantial. The State spent a significant amount of time during the trial on Cassie's murder. It called the responding officer, experts, and Cassie's father to develop this particular evidence. It also introduced several pieces of evidence to support the testimony. While some of the reports referenced the capital murder, as well, none were redacted to exclude evidence of Cassie's murder. Finally, the State emphasized Cassie's murder in its closing argument in the guilt/innocence stage:

> "Cassie gets shot eight times, wounds all over her body, blunt-force injuries, dumped where they couldn't be seen but where she would be found. What's the message there? This is what happens to people who steal from us."

(6RR 93-94).

Finally, the fourth factor also weighed in favor of excluding the evidence, though it is certainly clear from the record that the State believed they needed the extraneous offense evidence to prove their case. In order to secure a capital murder conviction, the State had to prove that Appellant, Amalinh and Linda intentionally killed Jimmy *in the course of kidnapping Cassie*. Because the

evidence of kidnapping on the day of the incident was weak – i.e., Frank testified that Cassie looked "confused" as she left his house with Appellant and Amalinh, that neither man was making physical contact with her, and that Cassie was "nonchalant" while walking with them to Linda's SUV – the state argued that they needed the evidence of Cassie's death to prove she had been kidnapped, suggesting that the kidnapping wasn't completed until Cassie's body was found. (3RR 185-86, 215-16; 6RR 53). TEX. PEN. CODE art. 20.01(2). What mustn't be forgotten, however, is the fact that there is no evidence that Appellant or his associates were responsible for the Cassie's death. Therefore, the State here was not only permitted to use a gruesome extraneous offense to shore up their theory of kidnapping, but also to infer a link between the two incidents that was never been established by the evidence.

Had the extraneous-offense evidence of Cassie's murder been deemed probative by the Fourteenth Court of Appeals, it is clear that the danger of unfair prejudice far outweighed its probative value.

CONCLUSION & PRAYER

It is respectfully submitted that the majority opinion in this case has not so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for this Honorable Court's power of supervision. TEX. R. APP. P. 66.3(f).

The Fourteenth Court of Appeals thoughtfully and methodically analyzed the facts Appellant's case, applied those facts to the appropriate rules of law, and correctly concluded that the extraneous-offense evidence of Cassie's murder was not only irrelevant and inadmissible, but a violation of Appellant's substantial rights.

Accordingly, Appellant prays that this Court will affirm the majority opinion of the Fourteenth Court of Appeals and remand Appellant's case for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing instrument has been delivered to the Harris County District Attorney's Office via e-filing on March 30, 2021.

/s/ Inger H. Chandler
INGER H. CHANDLER

CERTIFICATE OF COMPLIANCE

This is to certify that this brief complies with the typeface requirements of TEX. R. APP. P. 9.4(e) because it has been prepared in a conventional typeface no smaller than 14-point for text and 12-point for footnotes. This document also complies with the word-count limitations of TEX. R. APP. P. 9.4(i), if applicable, because it contains 4,197 words according to the word count on Microsoft Word.

/s/ Inger H. Chandler
INGER H. CHANDLER

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