No. 02-14-00237-CR

IN THE COURT OF APPEALS
FOR THE SECOND DISTRICT OF TEXAS
AT FORT WORTH

SHAUN RAY MULLINAX,
Defendant-Appellant,

v.

THE STATE OF TEXAS,
Plaintiff-Appellee.

On Appeal from the 271st Judicial District Court
Trial Court Case No. CR17033

DEFENDANT-APPELLANT'S INITIAL BRIEF

Robert L. Sirianni, Jr., Esq.
Texas Bar No. 24086378
The Law Offices of Robert Sirianni
201 N. New York Ave. Suite 200
P.O. Box 2047
Winter Park, Florida 32790
Tele: 407.388.1900
Fax: 407.622.1511
Robert@brownstonelaw.com
Counsel for Defendant-Appellant

November 3, 2014

IDENTITY OF PARTIES AND COUNSEL

As required by Texas Rule of Appellate Procedure 38.1(a), the following are parties and counsel to the trial court's judgment:

1. Mr. Shaun Ray Mullinax: Defendant-Appellant

2. Mr. Jerry Cobb: Trial Counsel for Defendant-Appellant, 121 W. Hickory Street, Suite 132, P.O. Box 1399, Denton, TX 76202

3. Mr. John Jay Lapham: Assistant District Attorney for the State of Texas, Jack & Wise Counties, 271st Judicial District, 101 N. Trinity, Suite 200, Decatur, TX 76234

4. Mr. Eric Fuchs: Assistant District Attorney for the State of Texas, Bexar County District Attorney's Office, Cadena-Reeves Justice Center, 300 Dolorosa, San Antonio, Texas 78205

5. The Honorable John H. Fostel: Trial judge

TABLE OF CONTENTS

INDEX OF AUTHORITIES

Cases

Other Authority

PRELIMINARY STATEMENT

Citations to the Clerk's Record will be abbreviated as "CR.," followed by the appropriate page number(s). Citations to the Reporter's Record will be abbreviated as "RR.," followed by the appropriate volume and page number(s).

This Court has jurisdiction over this appeal under Article V, Section 6, of the Texas Constitution, Article 44.02 of the Texas Code of Criminal Procedure, and Texas Rule of Appellate Procedure 25.2(a)(2). Pursuant to Texas Rule of Appellate Procedure 26.2(a)(1), the Notice of Appeal in this case was timely filed on June 11, 2014, within thirty days of entry of judgment. CR. 46.

STATEMENT OF THE CASE

A. NATURE OF THE CASE

This is a direct appeal from a criminal conviction by the 271st Judicial District Court after a jury found Mr. Mullinax guilty of knowingly causing bodily injury to a child 14 years of age or younger. CR. 5; RR. Vol. 3 at 20.

B. COURSE OF PROCEEDINGS AND DISPOSITION BELOW

On January 30, 2013, the State of Texas ("State") filed an Indictment charging Mr. Mullinax with intentionally and knowingly causing bodily injury to his son, Z. M., a child of 14 years of age or younger, by striking him with his hand. CR. 5. The indictment also contained an enhancement alleging that, prior to the commission of the charged offense, Mr. Mullinax was convicted of arson, a felony offense. *Id*.

Mr. Mullinax pled not guilty, and the lower court held a jury trial from June 3 to June 4, 2014. RR. Vol. 1 at 1. At the conclusion of the trial, the jury assessed as punishment a term of two years of incarceration in the Institutional Division of the Texas Department of Criminal Justice. RR. Vol. 3 at 28. The trial court sentenced Mr. Mullinax accordingly. RR. Vol. 3 at 29.

STATEMENT REGARDING ORAL ARGUMENT

Mullinax submits the issues are sufficiently clear such that oral argument is not necessary.

ISSUES PRESENTED

During cross-examination, the State questioned Mr. Mullinax regarding extraneous prior bad acts that were wholly unrelated to the charged offense. Those acts included arson and revocation of probation for consuming marijuana. The State introduced evidence that Mr. Mullinax was given a two-year prison sentence for the violation of probation.

In addition, counsel for the State elicited testimony about other uncharged and unsubstantiated instances of purported abuse. His son testified that on one occasion Mr. Mullinax wrapped his hands around his neck and threatened to strangle him. He also testified that Mr. Mullinax hit him once a month and that he feared for his life. During closing arguments, counsel highlighted those acts, urged the jury not to believe Mr. Mullinax because he was a "convicted felon," and argued that the jury had to convict Mr. Mullinax to save his, because Mr. Mullinax was "fighting like the dickens" to regain custody over his son.

Counsel for the State also impermissibly shifted the burden of proof. The prosecutor first argued in closing statements that, to find Mr. Mullinax not guilty, the jury would have to disbelieve the witnesses for the State. The prosecutor similarly argued that, to exonerate Mr. Mullinax, the jury would have to find that Child Protective Services was "wrong," law enforcement was "wrong," and the district attorney's office was "wrong."

Issue I: Did the trial court err in permitting the State to rely on inadmissible, highly prejudicial prior bad act evidence in securing a conviction?

Issue II: Did the State's improper jury arguments deprive Mr. Mullinax of a fair trial?

STATEMENT OF FACTS

On November 8, 2012, Z. M., a sixth grader, approached his school counselor and reported that his father became angry and struck him after he failed to do the dishes. RR. Vol. 2 at 104. The incident occurred the prior evening, after Z. M. had returned from football practice. *Id*. at 116. Z. M. played linebacker, as well as on the offensive and defensive line, and on several occasions returned from practice with bruises on his forearms. *Id*. at 174-75, 206.

The school counselor observed that Z. M. had bruises on his left arm and a bump on his head, but did not testify as to whether or not those injuries could have been sustained during football practice. *Id.* at 93. Z. M. called his mother, who was divorced from Mr. Mullinax. *Id*. at 132, 149. His mother drove from Floresville, retrieved Z. M., and took him the Wise County Sheriff's Office to file a report. *Id*. at 135-36.

On direct examination, Z. M. testified about a number of different uncharged and unsubstantiated instances where his father abused him, including one incident where his father pushed him on the bed, wrapped his hands around his neck, and

threatened to strangle him. RR. Vo. 2 at 108-12. Z. M. testified that his father would punch him once a month. *Id.* at 109. Z. M. also testified that he feared he would be seriously hurt or killed as a result of these uncharged acts. *Id*. at 111. Z. M. admitted on cross-examination that he never reported these instances, and no other witness substantiated his testimony regarding these uncharged allegations of prior abuse. *Id.* at 114, 117.

Z. M. testified that on the evening in question Mr. Mullinax struck him on the arm and the head. *Id.* at 107. The defense also introduced a recording of a telephone conversation where Mr. Mullinax offered a general apology to his son. *Id*. at 140. Mr. Mullinax did not specify in his apology what he did wrong. *See id*. at 209.

Mr. Mullinax testified in his defense. He denied ever abusing, hitting, or strangling his son on any occasion. *Id*. at 209. He admitted that he had disciplined his son with a belt and spanked him. *Id.* at 201. He also admitted that he disciplined his son on the night in question; however, he explained that he did so because Z. M.

had lied to him about having done his homework and cleaned the dishes. *Id*. at 206.

Mr. Mullinax testified that there was no way he could have struck his son on his left arm because, since Mr. Mullinax was left-handed, any injury would have

been sustained on Z. M.'s right arm. *Id*. at 204. Mr. Mullinax testified that he apologized to his son for the emotional distress the situation had caused, not because Mr. Mullinax had inflicted any physical injury on his son. *Id*. at 209.

On cross-examination, counsel for the State asked Mr. Mullinax whether he had been convicted of arson. *Id.* at 211. Mr. Mullinax admitted that he had. *Id.* Counsel for the State asked Mr. Mullinax whether he had been sentenced to two years of incarceration for violating his probation on that offense. *Id*. Mr. Mullinax admitted that he had. *Id.* Counsel for the State then asked Mr. Mullinax whether he had ever smoked marijuana. Mr. Mullinax admitted that he had. *Id*. at 215. Counsel for the State inquired as to whether smoking marijuana was one of the reasons that Mr. Mullinax had his probation revoked and was sent to the penitentiary. *Id*. Mr. Mullinax admitted that it was. *Id.*

On recross-examination, counsel for the State again raised Mr. Mullinax's conviction for arson, though the subject never arose on redirect-examination, and elicited testimony regarding the actual circumstances that led to his arrest and prosecution. *Id*. at 216. Defense counsel did not object to any of the references of prior bad act evidence introduced by the State. Because there was no objection, the evidentiary basis for introducing the extraneous prior bad acts was unclear. However, in its pretrial notice, the State explained that it intended to introduce the

prior bad act evidence to show that "the character and reputation for being truthful, law abiding, and peaceful of Shaun Ray Mullinax . . . are bad." CR. at 19.

During rebuttal arguments, the State highlighted the prior bad acts, and implored the jury to consider the fact that Mr. Mullinax was a convicted felon: "Do you believe a convicted felon who's got a lot to lose, or do you believe Z. M.?" RR. Vol. 3 at 16. The State also highlighted the other prior instances where Mr. Mullinax purportedly struck his son: "But it's not an isolated incident. It's not happened just once. It rose to the level that Z. M. was fearful of his life." *Id.* at 17.

The State then sought to shift the burden of proof by arguing that, to find Mr. Mullinax not guilty, the jury would have to disbelieve the witnesses for the State:

> If you were to find him not guilty, you're saying that Mr. Bates was mistaken or being untruthful when he said the Defendant called him and he said, I'm glad Z. M. had somebody to talk to so this would stop.
>
> Officer Golden, Deputy Reynolds -- Investigator Reynolds, they both believed that an offense has happened. CPS -- CPS would be wrong, law enforcement is wrong, the D.A.'s office is wrong, we're all wrong.

Id.

Then, the State argued that Mr. Mullinax should be convicted because finding him innocent would place Z. M. in danger:

> You're Z. M.'s safety net. You're his last hope to keep him from going back to his dad. His dad's fighting like the dickens to get him. You're Z. M.'s hope. Please don't let him down and find the Defendant guilty. Thank you.

Id. at 18. Defense counsel did not object to these comments.

In the jury charge, the trial court instructed the jury to only consider testimony regarding other prior offenses "in determining the state of mind of the defendant and the child and the previous and subsequent relationship between the defendant and the child, if any, in connection with the offenses, if any, alleged in the indictment in this case, and for no other purpose." CR. at 33.

The trial court sentenced Mullinax in accordance with jury's recommendation during the punishment phase. *Id.* at 28-29. This timely appeal follows.

SUMMARY OF THE ARGUMENT

The trial court committed reversible error when it allowed the prosecutor to rely on extraneous and highly prejudicial prior bad acts to secure a conviction. Arson, smoking marijuana, and violating probation have no connection whatsoever to the charged offense or any of its elements. But the trial court permitted the jury to consider these uncharged acts. The State also introduced evidence of other uncharged and unsubstantiated allegations of abuse, including an allegation that Mr. Mullinax *wrapped his hands around his son's throat and threatened to strangle him.*

Counsel for the State was candid about his motive for presenting the prior bad act evidence—its pretrial notice stated that the evidence was necessary to show that "the character and reputation for being truthful, law abiding, and peaceful of Shaun Ray Mullinax . . . are bad." In other words, the State sought to establish that Mr. Mullinax was a bad man, known for his criminality, and that he acted in conformity with his reputation on the occasion in question. Such evidence is inherently prejudicial and inadmissible under Texas Rule of Evidence 404(b).

The State then amplified the prejudice by featuring the prior bad act evidence prominently in its closing statements, stating that this was not an "isolated incident" and exhorting the jury to disbelieve the testimony of a "convicted felon." In a case with such sparse evidence of guilt, which turned entirely on the credibility of Mr. Mullinax and his son, the presentation of this evidence cannot be deemed harmless.

Equally troubling, the State sought to shift the burden of proof by arguing during rebuttal that, in order to find Mr. Mullinax not guilty, the jury would have to disbelieve the witnesses for the State. This is a misstatement of law. The jury could believe all of the witnesses for the State, yet still find that the State had not carried its burden of proof. Moreover, by arguing that CPS, law enforcement, and the district attorney's office all had to be "wrong" if Mr. Mullinax were not guilty, the prosecution suggested that these parties to the prosecution had some special

knowledge about Mr. Mullinax that was not presented to the jury. These arguments diluted the State's burden of proof and deprived Mr. Mullinax of a fair and impartial trial.

Finally, in the coup de grâce, the State impermissibly inflamed the passions of the jury by arguing that, because Mr. Mullinax was "fighting like the dickens" to regain custody of his son, the jury was Z. M.'s last "hope" and his "safety net." This argument, which rested on facts about the custody battle that were not in evidence and an inference that Mr. Mullinax has a propensity toward child abuse, is plainly improper. Even though defense counsel raised no contemporaneous objections, the foregoing errors had the cumulative effect of denying Mr. Mullinax a fair and impartial trial. Therefore, this Court should reverse his conviction.

ARGUMENT

I. THE TRIAL COURT ERRED IN PERMITTING THE STATE TO RELY ON INADMISSIBLE, HIGHLY PREJUDICIAL PRIOR BAD ACT EVIDENCE IN SECURING A CONVICTION.

A. Standard of Review

"A trial judge's evidentiary rulings are reviewed under an abuse-of-discretion standard." *Bowley v. State*, 310 S.W.3d 431 (Tex. Crim. App. 2010).

B. Argument on the Merits

The trial court judge abused its discretion in allowing the prosecution to rely on inadmissible prior bad act evidence to secure a conviction. Rule 404 of the

Texas Rules of Evidence prohibits the introduction of "other crimes, wrongs, or acts" to show "action in conformity" with the prior bad acts. TEX. R. EVID. 404(b). Evidence of "other crimes, wrongs or acts" are inadmissible unless the evidence has relevance apart from its tendency "to prove the character of a person in order to show action in conformity therewith." *Id*.

"Rule 404(b) acts as a safeguard against a prosecutor's attempt to convince the jury that a criminal defendant must be guilty of the crime charged because he is a bad person who has previously been convicted." *Taylor v. State*, --- S.W.3d --,- No. 07-13-00383-CR, 2014 WL 3906423 at 2 (Tex. App. Aug. 8, 2014) (citing *Robles v. State*, 85 S.W.3d 211, 213 (Tex. Crim. App. 2002)); *see also Zuliani v. State*, 903 S.W.2d 812 (Tex. App. 1995) (reversing conviction because of introduction of inadmissible prior bad act evidence).

Zuliani is instructive. In *Zuliani*, as here, the defendant was charged with child abuse. The prosecution in *Zuliani* introduced evidence of the defendant's prior assaults upon a young woman when she was sixteen to eighteen years old. *Id*. at 827. The trial court admitted the evidence to show motive or intent.

The appellate court reversed. It noted that motive was not an element of the crime, and further found that the assaults "did not explain why appellant would assault the child victim in this cause other than it showed his propensity to engage

in assaultive conduct—the type of character conformity evidence that Rule 404(b) prohibits." *Id*.

Here, neither the arson conviction, which happened in 2005 and was nearly 10 years old, nor the violation of probation for smoking marijuana had any nexus to the charged offense. The prosecution explained in its pretrial notice that the evidence was admissible to show that "the character and reputation for being truthful, law abiding, and peaceful of Shaun Ray Mullinax . . . are bad." CR. at 19. In other words, this evidence had no relevance aside from showing that Mr. Mullinax was a bad man, who had a reputation for criminality, and acted in conformity with his reputation on the evening in question. This evidence should have been deemed inadmissible. *See Cain v. State* 642 S.W.2d 806 (Tex. Crim. App. 1982) (two extraneous offenses bore no connection with the charged offense were not relevant to the defendant's case because there was no evidence that connected appellant with the offenses).

It is true that the trial court instructed the jury that it should only consider the prior bad acts "in determining the state of mind of the defendant and the child and the previous and subsequent relationship between the defendant and the child, if any, in connection with the offenses, if any, alleged in the indictment in this case, and for no other purpose." CR. at 33. But there is no conceivable connection between committing arson, smoking marijuana, and serving two years in the

penitentiary for violating probation, and the charged offense. It simply does not aid the jury in determining the state of mind or the previous relationship of Mr. Mullinax and Z. M. All this evidence served to do was unfairly prejudice the jury against Mr. Mullinax and convince them that this was a bad man who belongs in the penitentiary instead of at liberty with his son.

Equally troubling was the court's decision to allow the prosecution to elicit testimony that Mr. Mullinax (1) hit his son approximately once a month; and (2) wrapped his hands around his son's throat and threatened to strangle him. This testimony was hardly credible, given that the child never told anyone of the prior abuse, never exhibited signs of prior abuse, and never exhibited any indication that he had suffered prior abuse. And the prosecution capitalized on this testimony in closing statements, arguing that the incident on the night in question was "not an isolated incident. It's not happened just once. It rose to the level that Z. M. was fearful of his life." *Id.* at 17. Thus, the prosecution invited the jury to convict Mr. Mullinax not for his actions on the night in question, but for a number of other uncharged instances of abuse, which bore no indicia of reliability.

Then, in an egregious flourish, the prosecution sought to capitalize on the prior bad act evidence on rebuttal by arguing that the jury was Z. M.'s "last hope" and that it was incumbent upon the jury to convict Mr. Mullinax to save Z. M. from this bad man:

> You're Z. M.'s safety net. You're his last hope to keep him from going back to his dad. His dad's fighting like the dickens to get him. You're Z. M.'s hope. Please don't let him down and find the Defendant guilty.

RR. Vol. 3 at 18.

There was no evidence that Mr. Mullinax was "fighting like the dickens" to get Z. M., so the argument depends on facts not in evidence. In addition, the argument serves no purpose aside from inflaming the passions of the jury. Essentially, the State asked the jury to convict not because the evidence showed that Mr. Mullinax committed the charged offense beyond a reasonable doubt, but because he is a bad man who will inevitably hurt his son. Thus, the argument rests on the impermissible inference that Mr. Mullinax would act in conformity with his propensity for criminality, and harm Z. M. if the jury exonerated him. And this argument was the last thing the jury heard from either attorney before it deliberated.

It is true that counsel for Mr. Mullinax never objected to the introduction of this evidence or the impermissible closing arguments. However, where "serious and continuing prosecutorial misconduct that undermines the reliability of the factfinding process or, even worse, transforms the trial into a farce and mockery of justice, as occurred here, resulting in deprivation of fundamental fairness and due process of law, the defendant is entitled to a new trial even though few objections have been perfected." *Rogers v. State*, 725 S.W.2d 350, 360 (Tex. App. 1987).

Mr. Mullinax submits that this case presents an instance where the repeated attempts by the prosecutor to obtain a conviction based on prior bad acts, instead of evidence that Mr. Mullinax committed the charged offense, transformed the trial into farce, and deprived Mr. Mullinax a fair trial in violation of his constitutional right to due process. Thus, in spite of the fact that he failed to preserve his objections to the introduction of this evidence, this Court should reverse his conviction and remand for a new trial.

ARGUMENT

II. MR. MULLINAX DESERVES A NEW TRIAL BECAUSE THE IMPROPER CLOSING STATEMENTS SHIFTED THE BURDEN OF PROOF AND DEPRIVED MR. MULLINAX OF DUE PROCESS AND A FAIR AND IMPARTIAL TRIAL.

A. Standard of Review

"Generally, improper jury argument will not constitute reversible error unless, in light of the record as a whole, the argument is extremely or manifestly improper, is violative of a statute, or injects new facts, harmful to the accused, into the trial." *Cannon v. State*, 668 S.W.2d 401, 404 (Tex. Crim. App. 1984).

However, where the error is constitutional in nature, an appellate court must reverse the judgment of conviction unless it determine beyond a reasonable doubt that the prosecutor's and the trial court's errors did not contribute to the conviction. *See Abbott v. State*, 196 S.W. 3d 334, 344 (Tex. App. 2006).

B. Argument on the Merits

Mr. Mullinax deserves a new trial because the prosecutor shifted the burden of proof during closing statements and deprived Mr. Mullinax of due process and a fair and impartial trial. Jury argument is limited to: (1) summation of the evidence; (2) reasonable deduction from the evidence; (3) answers to argument of opposing counsel; or (4) a plea for law enforcement. *Guidry v. State*, 9 S.W.3d 133, 154 (Tex. Crim. App. 1999).

But even when answering opposing counsel or making a plea for law enforcement, a prosecutor cannot misstate the law regarding the State's burden of proof. *See, e.g.*, *Whiting v. State*, 797 S.W.2d 45, 48 (Tex. Crim. App. 1990) (reversing affirmance of conviction where prosecutor misstated State's burden of proof on defensive issue); *Abbott v. State*, 196 S.W.3d at 344 (reversing conviction where prosecutor misstated the law and shifted the burden of proof).

Here, the attorney for the State misstated the law and impermissibly shifted the burden of proof to Mr. Mullinax. Counsel for the State argued that, in order to find Mr. Mullinax not guilty, then the jury would have to disbelieve witnesses for the State. This is an erroneous and misleading statement of the law. The jury could believe all of the witnesses for the State, yet still find that the State had not carried its burden of proof.

On this point, *Gore v. State*, 719 So. 2d 1197, 1200 (Fla. 1998), which the Texas appellate court in *Abbott* cited approvingly, is instructive. The prosecutor in *Gore* argued to the jury as follows: "It's simple and it comes down to this in simplicity: If you believe his story, he's not guilty. If you believe he's lying to you, he's guilty. It's that simple." *Gore*, 719 So. 2d at 1200. The jury convicted the defendant.

The Florida Supreme Court reversed his conviction, and specifically condemned the prosecutor's erroneous and misleading enunciation of the law:

> The standard for a criminal conviction is not which side is more believable, but whether, taking all the evidence into consideration, the State has proven every essential element of the crime beyond a reasonable doubt. For that reason, it is error for a prosecutor to make statements that shift the burden of proof and invite the jury to convict the defendant for some reason other than that the State has proved its case beyond a reasonable doubt.

Gore, 719 So. 2d at 1200.

Here, counsel for the State committed the same error. First, as noted above, the prosecutor invited the jury to choose between which side it found more convincing, Mr. Mullinax or Z. M.: "Do you believe a convicted felon who's got a lot to lose, or do you believe Z. M.?" RR. Vol. 3 at 16.

Then, the prosecutor went even further, arguing that, to convict Mr. Mullinax the jury had to disbelieve witnesses for the State:

> If you were to find him not guilty, you're saying that Mr. Bates was mistaken or being untruthful when he said the Defendant called him

> and he said, I'm glad Z. M. had somebody to talk to so this would stop.
>
> Officer Golden, Deputy Reynolds -- Investigator Reynolds, they both believed that an offense has happened. CPS -- CPS would be wrong, law enforcement is wrong, the D.A.'s office is wrong, we're all wrong.

Id.

Here, too, the prosecutor presented a distorted and misleading statement of the law. The jury could have believed every single one of the witnesses for the State and still found Mr. Mullinax innocent because the State had failed to carry its burden of proof on every element beyond a reasonable doubt.

Moreover, by arguing that CPS, law enforcement, and the district attorney's office all had to be "wrong" if Mr. Mullinax were not guilty, the prosecution suggested that these parties to the prosecution had some special knowledge about Mr. Mullinax that was not presented to the jury. This, too, is improper, because it assumed facts not in evidence and invited the jury to convict based on esteem for Child Protective Services, law enforcement, and the local district attorney's office.

It is beyond dispute that a prosecutor may not use closing argument to introduce evidence before the jury which is outside the record and prejudicial to the accused. *Everett v. State*, 707 S.W.2d 638, 641 (Tex. Crim. App. 1986); *Jackson v. State*, 529 S.W.2d 544, 546 (Tex. Crim. App. 1975). Moreover, it is improper for a prosecutor to imply he has special knowledge of the facts of the

case because juries tend to attach "great weight" to such comments from prosecutors. *See Harris v. State*, 56 S.W.3d 52, 58 (Tex. App. 2001).

Here, during closing arguments, the prosecutor (1) relied on inadmissible prior bad act evidence; (2) repeatedly sought to shift the burden of proof; (3) implied that jury should convict Mr. Mullinax based on trust that law enforcement, Child Protective Services, and the district attorney's office could not all be wrong; and (4) improperly appealed to the passion of the jury by arguing that a conviction was necessary to save Z. M. from his father, who was "fighting like the dickens" to regain custody of his son.

Defense counsel for Mr. Mullinax never objected to these arguments. Nevertheless, since the arguments, coupled with the inadmissible and prejudicial prior bad act evidence, deprived Mr. Mullinax of his constitutional right to due process and a fair and impartial trial, this Court should reverse his conviction and remand this case for a new trial.

PRAYER FOR RELIEF

Based upon the foregoing arguments and legal authority, the Appellant, Mr. Mullinax, respectfully requests that this Honorable Court set aside the conviction delivered in this cause, remand for a new trial, and grant any such other and further relief as this Honorable Court deems just and proper.

DATED this 7th day of November, 2014.

Respectfully submitted,

/s/ Robert L. Sirianni, Jr.
Robert L. Sirianni, Jr., Esquire
Texas Bar No. 24086378
The Law Offices of Robert Sirianni
201 N. New York Ave. Suite 200
P.O. Box 2047
Winter Park, FL 32790-2047
Telephone: (407) 388.1900
Facsimile: (407) 622-1511
Robert@brownstonelaw.com
Counsel for Defendant-Appellant

CERTIFICATE OF COMPLIANCE PURSUANT TO RULE 9.4(i)(3)

The undersigned hereby certifies that pursuant to Rule 9.4(i)(3), the foregoing Initial Brief was created using Microsoft Word, is 19 pages in length, and contains 4,391 words, excluding the caption, cover page, statement regarding oral argument, table of contents, table of authorities, certificate of service, and certificate of compliance, and is filed as a PDF text-searchable document.

/s/ Robert L. Sirianni, Jr.
Robert L. Sirianni, Jr., Esquire

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished via U.S. First Class Mail, this 7th day of November, 2014, upon the following:

Patrick Berry
271st District Attorney
101 North Trinity, Suite 200
Decatur, TX 76234-1449

Undersigned also certifies that on this 7th day of November, 2014, the foregoing document has been served via electronic mail upon the Defendant-Appellant, who is not incarcerated:

Shaun Ray Mullinax
SMullinax81@gmail.com

/s/ Robert L. Sirianni, Jr.
Robert L. Sirianni, Jr., Esquire