

No. _____

In the
Supreme Court of the United States
OCTOBER TERM, 2025

VINCENTE R. ZAVALETA,
Petitioner,

v.

THE STATE OF TEXAS
Respondent.

PETITION FOR WRIT OF CERTIORARI
TO THE TEXAS COURT OF CRIMINAL APPEALS

PETITION FOR WRIT OF CERTIORARI

AMY R. BLALOCK
Attorney-At-Law
P.O. Box 765
Tyler, TX 75710
Texas Bar Card No. 02438900
Attorney for Petitioner

QUESTION PRESENTED FOR REVIEW

DID THE TRIAL COURT ERR BY OVERRULING MR. ZAVALETA'S OBJECTION TO THE INADMISSIBLE HEARSAY--A STATEMENT OF A DEAD WITNESS-- OFFERED BY STATE'S WITNESS MEGHAN RICHARDSON?

DID THIS TESTIMONIAL STATEMENT MADE BY A NOW-DEAD WITNESS TO A HEALTHCARE WORKER AND A LAW ENFORCEMENT OFFICER AND INTRODUCED TO THE JURY OVER MR. ZAVALETA'S OBJECTION VIOLATE MR. ZAVALETA'S CONSTITUTIONAL RIGHT TO CONFRONTATION?

IDENTITY OF PARTIES TO THIS PROCEEDING

Petitioner, pursuant to Rule 14, provides the following list of the parties:

Vincente R. Zavaleta, Petitioner;

The State of Texas, Respondent.

/S/ Amy R. Blalock

AMY R. BLALOCK

Attorney for Petitioner

TABLE OF CONTENTS

PARTIES TO THE PROCEEDINGS	I
QUESTIONS PRESENTED FOR REVIEW.....	ii
TABLE OF CONTENTS	iii
TABLE OF AUTHORITIES	iv
REPORTS OF OPINIONS.....	1
JURISDICTION.....	1
BASIS OF FEDERAL JURISDICTION IN THE COURT OF FIRST INSTANCE.....	1
CONSTITUTIONAL PROVISIONS.....	2
STATEMENT OF THE CASE	3
Procedural History	3
Statement of Facts	5
REASONS WHY CERTIORARI SHOULD BE GRANTED.....	7
CONCLUSION.....	19
RELIEF REQUESTED.....	20
CERTIFICATE OF SERVICE.....	21
APPENDIX.....	22

TABLE OF AUTHORITIES

CASES

<u>Berkley v. State</u> , 298 S.W.3d 712 (Tex. App.—San Antonio 2009, pet. ref’d) . . .	15
<u>Chapman v. California</u> , 386 U.S. 18 (1967)	17
<u>Coronado v. State</u> , 351 S.W.3d 315 (Tex. Crim. App. 2011)	13
<u>Coy v. Iowa</u> , 487 U.S. 1012 (1988)	17
<u>Crawford v. Washington</u> , 541 U.S. 36 (2004) <i>in passim</i>	
<u>Davis v. Alaska</u> , 415 U.S. 308 (1974)	13, 16
<u>Davis v. State</u> , 169 S.W.3d 660 (Tex. App.—Austin 2005)	15
<u>Davis v. Washington</u> , 547 U.S. 813 (2006)	14
<u>De La Paz v. State</u> , 273 S.W.3d 671 (Tex. Crim. App. 2008)	15
<u>Haggard v. State</u> , 612 S.W.3d 318 (Tex. Crim. App. 2020)	17
<u>Johnson v. State</u> , 433 S.W.3d 546 (Tex. Crim. App. 2014)	13
<u>Langham v. State</u> , 305 S.W.3d 568 (Tex. Crim. App. 2010)	14, 16
<u>Lilly v. Virginia</u> , 527 U.S. 116 (1999)	11
<u>Martinez v. State</u> , 327 S.W.3d 727 (Tex. Crim. App. 2010)	11
<u>Maryland v. Craig</u> , 497 U.S. 836 (1990)	13
<u>Melendez-Diaz v. Massachusetts</u> , 557 U.S. 305 (2009)	15
<u>Smith v. Arizona</u> , 602 U.S. 779 (2024)	12

<u>Vinson v. State</u> , 252 S.W.3d 336 (Tex. Crim. App. 2008)	13
<u>Wall v. State</u> , 184 S.W.3d 730 (Tex.Crim. App. 2006)	11
<u>Webb v. Texas</u> , 409 U.S. 95 (1972)	13
<u>Woodall v. State</u> , 336 S.W.3d 634 (Tex. Crim. App. 2011)	13

STATUTES

U.S. CONST. amend. VI	<i>in passim</i>
28 U.S.C. § 1257(a)	4, 12
TEX. CONST. art. 1, § 10	12
U.S. Const. amend. V	4

REPORTS OF OPINIONS

The decision of the Twelfth Court of Appeals for Texas is reported as *Zavaleta v. State*, No. 12-24-00339-CR (Tex. App.—Tyler, October 31, 2025, pet. ref'd.). It is attached to this Petition in the Appendix. The decision of the Texas Court of Criminal Appeals to deny Mr. Zavaleta's Petition for Discretionary Review, dated February 12, 2026, is also attached to this Petition in the Appendix.

JURISDICTION

The decision by the Court of Criminal Appeals of Texas affirmed the Twelfth Court of Appeals of Texas's judgment of conviction and sentence in the 7th District Court of Smith County, Texas.

Consequently, Mr. Zavaleta files the instant Application for a Writ of Certiorari under the authority of 28 U.S.C., § 1257(a).

BASIS OF FEDERAL JURISDICTION

IN THE COURT OF FIRST INSTANCE

Jurisdiction was proper in Smith County, Texas because Mr. Zavaleta was indicted for violations of state law by a Grand Jury for Smith County, Texas.

CONSTITUTIONAL PROVISIONS

The Confrontation Clause of the Sixth Amendment states that "[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him"). U.S. CONST. amend. VI.

The Fifth Amendment says to the federal government that “no person shall be. . . compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

The Due Process Clause provides “No person shall . . . be deprived of life, liberty, or property, without due process of law.” U.S. Const. amend. V.

STATEMENT OF THE CASE

1. Procedural History.

By an indictment filed March 28, 2024, Mr. Zavaleta was charged with one count of Aggravated Sexual Assault in Cause No. . [I CR 7-8]¹. This offense was alleged to have occurred on from on or about April 29, 2016. [I CR 7-8]. The indictment alleged the following:

THE GRAND JURORS, duly selected, organized, sworn and impaneled as such for the County of Smith, State of Texas, at the January-June Term, 2024, of the 114th Judicial District Court in and for said County, a quorum thereof being present, upon their oaths present in and to said Court that on or about APRIL 29, 2016, and anterior to the presentment of this Indictment, in the County of Smith and State of Texas, VINCENTE R ZAVALETA, did then and there intentionally and knowingly cause the penetration of the anus and mouth of Clara Grant, hereafter styled the complainant, by defendant's sexual organ, without the consent of the complainant, and the defendant did then and there by acts or words threaten to cause or place, the complainant in fear that death and serious bodily injury and kidnapping would be imminently inflicted on injured party, and the acts or words occurred in the presence of the complainant;

[I CR. 8-9].

¹Hereinafter, the abbreviation C. R. will be used as citation for the Clerk's Record and the abbreviation R.R. will be used as citation for the Reporter's Record.

This case proceeded to a jury trial. On October 15, 2024, the venire panel was then summoned and voir dire commenced. *See* RR Vol. 7.

The trial on guilt/innocence commenced on October 16, 2024. *See* RR Vol. 8. The indictment was read to Mr. Zavaleta in the presence of the jury and he entered a plea of “not guilty.” [8 RR 9]. Both sides presented opening statements. The State presented the testimony of witnesses through which various exhibits, including DNA test results, were admitted. After the State rested, the defense motioned for a directed verdict. The trial court denied the motion. The defense then presented its case. Once the defense rested, the State offered rebuttal evidence. Both sides then closed evidence. [12 RR 47].

The trial court held a charge conference. Both sides presented closing arguments. The trial court then gave the case to the jury. [12 RR 100]. The jury returned a “guilty verdict”. [12 RR 102].

The punishment phase of trial began immediately after the court received the jury’s verdict. *See* RR Vol. 12. Mr. Zavaleta elected to have the jury assess his punishment. [7 RR 10].

At the conclusion of the sentencing hearing, the jury assessed Mr. Zavaleta’s punishment at life imprisonment and imposed a \$10,000 fine. [12 RR 210].

On October 25, 2024, the trial court entered judgment in accordance with the jury's verdict of guilty and the jury's verdict on punishment for a term of life imprisonment.[I CR 131-132]. The judgment reflects that the offense was a first degree felony. [I CR 131-132]. The trial court's judgment recognizes 582 days of time credits for Mr. Zavaleta. [I CR 131-132]. Mr. Zavaleta timely perfected appeal by filing a written Notice of Appeal. [I CR 142].

The Twelfth Court of Appeals affirmed Mr. Zavaleta's conviction and sentence in an unpublished decision on October 31, 2025. *See Zavaleta v. State*, No. 12-24-00339-CR (Tex. App.—Tyler, October 31, 2025, pet. filed). The Court of Criminal Appeals denied Mr. Zavaleta's petition for discretionary review on February 12, 2026.

2. Statement of Facts

This is an aggravated sexual assault case that was tried to a jury. The sexual assault occurred in 2016. The assault was timely reported, but the case went “cold” until 2022 when the Texas Rangers began investigating it pursuant to a state wide initiative to test rape kits.. The victim in this case was Clara Grant. She was also known, at the time of the assault, as Clara Battles. Ms. Grant is deceased.

Law enforcement officer Joshua Cox responded to a call at a Bunny's gas station where a naked female, Clara Grant, sought help. Deputy Cox testified about

Ms. Grant's visible injuries which revealed she had been assaulted. Ms. Grant underwent a SANE examination by nurse Meghan Richardson where DNA samples were taken. During the examination, Ms. Grant relayed what happened to Ms. Richardson . Ms. Grant stated to the nurse that she was trying to go to the store when a man stopped and asked her if she wanted a ride. She accepted the offer of a ride. Instead of taking her to the store, the man took her to a remote area where he sexually, verbally and physically assaulted her.

The man left Ms. Grant in the remote area. He tied her up. She did not know where she was. She was able to escape her restraints and run for help.

Although DNA was collected from the crime scene, the sample came back from the lab testing as from an unknown profile. The sample, however, matched samples from other assaults from different years. Through familial testing, law enforcement was able to connect the assaults to Mr. Zavaleta. Law enforcement then obtained a search warrant for Mr. Zavaleta's DNA. The resulting testing revealed that his DNA matched the sample obtained from the assault on Ms. Grant in a result that was described as 479 septillion times greater probability that that profile belonged to Mr. Zavaleta as to somebody unknown.

After being admonished about his Fifth Amendment right to remain silent, Mr. Zavaleta testified at trial. Mr. Zavaleta has resided in Smith County for most of his

life. He is married with four children. He worked hard throughout his life to provide for his family. He denied attacking Ms. Grant. His family also testified on his behalf, and spoke of what a loving father and provider he was.

The jury returned a verdict of guilty. [I CR 120]. The jury subsequently assessed punishment at life imprisonment.

The Twelfth Court of Appeals affirmed Mr. Zavaleta's conviction and sentence in an unpublished opinion that was handed down on October 31, 2025. *Zavaleta v. State*, No. 12-24-00339-CR (Tex. App.—Tyler, October 31, 2025, pet. filed). No motion for rehearing was filed. The Court of Criminal Appeals denied Mr. Zavaleta's petition for discretionary review on February 12, 2026.

REASONS WHY CERTIORARI SHOULD BE GRANTED

I. THE TRIAL COURT ERRED BY OVERRULING MR. ZAVALETA'S OBJECTION TO THE INADMISSIBLE HEARSAY OFFERED BY STATE'S WITNESS MEGHAN RICHARDSON. THIS TESTIMONY ALSO VIOLATED MR. ZAVALETA'S CONSTITUTIONAL RIGHT TO CONFRONTATION.

II. ARGUMENT AND AUTHORITIES

The victim in this case, Clara Grant, also known as Clara Battles, is deceased.[8 RR 61-62]. Therefore, she did not testify at trial. Her statement, however, was admitted into evidence over the objection of Mr. Zavaleta. This violated his right to constitutional right to confrontation.

After Ms. Grant was assaulted, she made a statement to the SANE nurse with a law enforcement officer present during the exam. The SANE nurse is Megan Richardson. During Richardson's testimony, the State sought to admit State's Exhibit No. 10 which is the SANE report made as a result of her interview with Ms. Grant.

Mr. Zavaleta objected to the admission of the Exhibit and to Ms. Richardson's testimony regarding Ms. Grant's statements .These objections were based on a hearsay violation and a violation of Mr. Zavaleta's constitutional right to confrontation of a testifying witness.

The following colloquy occurred before the Exhibit was admitted:

MR. VANCE: I'm going to show you what I have marked here as State's Exhibit No. 2 [sic]. State's Exhibit No. 2, is this a fair and accurate copy of the report that you generated in regard to who you have listed here as Clara Battles?

WITNESS: Yes.

MR. VANCE: And you're the one that generated this report, right?

WITNESS: Yes.

MR. VANCE: Your Honor, at this time we'd offer into evidence marked State's Exhibit 10. It's been provided in discovery.

THE COURT: Any objection to State's 10?

MS. WARREN: Yes. I object on hearsay grounds and it goes against the confrontation clause, especially this case where the victim isn't here to testify against Mr. Zavaleta. She is the only one who can give an event [sic] of what happened. Contrary to what Ms. Richardson just testified, the police report here, Deputy Keegan

—
MR. VANCE: Your Honor, can we approach?

THE COURT: Yes.
(At the bench, on the record.)

MS. WARREN: Keegan says he was in the room and he asked questions. In his police report, it says he asked questions while the SANE exam was given.

MR. VANCE: Keegan is a she, number one. Number two, Keegan was in there and it's going to be her sworn testimony she never asked any questions during the --

MS. WARREN: It says in her report she did, and that matters to the confrontation clause analysis.

THE COURT: Is Detective Keegan here right now?

MR. VANCE: She is here.

THE COURT: The Court has heard her testimony. The Court is not inclined -- I don't believe that's a violation, what you are talking about. Your objection with regard to -- let me see this.

MS. WARREN: The point of the confrontation clause though, especially in this case when the charge is against this one victim, the only person who can give an account of what happened is that victim or this nurse. This is out -- now they're getting the whole account of the assault in there. So the fact that an officer was therefrom the very beginning from when she started the exam to the end and asked questions matters. That makes it testimonial.

MR. VANCE: I see no case law presented by Ms. Warren where it says the law enforcement presence without interrogation, which is an element of confrontation, warrants some sort of confrontation violation.

MS. WARREN: Your own officer admits to asking questions.

THE COURT: At this time, the Court is going to overrule the objection with regard to hearsay and confrontation. The Court will find that the alleged statements were made for the purpose of medical diagnosis. The Court will go ahead and overrule the objection with regard to hearsay. Your objection is noted. The Court at this time will admit State's Exhibit 10 over objections.

MS. WARREN: I would also like to note an objection that it's overly prejudicial.

THE COURT: The Court will find in 403 that the probative value is not substantially outweighed by the danger of unfair prejudice. The Court will admit State's Exhibit 10.
Mr. Vance, you may publish to the jury.

MR. VANCE: Thank you, Your Honor.(State's Exhibit 10 published.)

[9 RR 15-18].

As Nurse Richardson testified, counsel for Mr. Zavaleta renewed the objection.

The following colloquy occurred:

MS. WARREN: I'm going to object to hearsay. If you want me to have that as a running objection, I can.

THE COURT: I think your objection to hearsay has been noted. It's been overruled. The Court has found that statements contained in State's Exhibit 10 were not made for the purpose of medical diagnosis, and they are not testimonial within the context of the confrontation clause. Your objection is noted. You can have a running objection, if you'd like.

MS. WARREN: And for clarity of the record, I'm objecting not only to the content of that exhibit, but also to her testimony about what the victim told her related to that.

THE COURT: You have a running objection. Those objections are all overruled. [9 RR 19].

The trial court allowed the State to introduce Ms. Grant's statement to Ms. Richardson during the SANE exam in the presence of a law enforcement officer. Mr. Zavaleta objected to the Exhibit and the testimony on hearsay and confrontation clause grounds. The trial court overruled the objection and determined that the statement met the medical exception to hearsay. This was error.²

²The trial court's decision to admit evidence is reviewed for an abuse of discretion. *Martinez v. State*, 327 S.W.3d 727, 736 (Tex. Crim. App. 2010). "The trial court does not abuse its discretion unless its determination lies outside the zone of reasonable disagreement." *Martinez*, 327 S.W.3d at 736; *accord Casey*, 215 S.W.3d at 879. Mr. Zavaleta objected to the admission of the testimony on confrontation clause grounds since Ms. Grant is deceased and not able to be cross-examined. Although the Court defers to a trial court's determination of historical facts and credibility, the Court reviews a constitutional legal ruling, i.e. whether a statement violates the Confrontation Clause, de novo. *Wall v. State*, 184 S.W.3d 730, 742 (Tex.Crim. App. 2006); *see also Lilly v. Virginia*, 527 U.S. 116, 136-37 (1999) (explaining when reviewing the admissibility of out-of-court statements over a Confrontation Clause objection, courts should independently review whether the evidence satisfies the demands of the Constitution).

The Confrontation Clause

The Sixth Amendment's Confrontation Clause guarantees an accused the right to confront witnesses against him. *See* U.S. Const. amend. VI; *Smith v. Arizona*, 602 U.S. 779, 783 (2024).

Pursuant to the Sixth Amendment to the United States Constitution, an accused "shall enjoy the right . . . to be confronted with the witnesses against him" U.S. CONST. amend. VI. This right is made applicable to the states through the Fourteenth Amendment. A similar right appears in the Texas Constitution. TEX. CONST. art. 1, § 10 (stating that the accused "shall be confronted by the witnesses against him . . .").³ Article 1.25 of the Texas Code of Criminal Procedure also provides, "[t]he defendant, upon a trial, shall be confronted with the witnesses" TEX. CODE CRIM. PROC. ANN. art. 1.25. The key purpose of that right "is to secure for the opponent the opportunity of cross-examination[,] because that is 'the principal means by which the believability of a witness and the truth of his testimony are tested.'" *Johnson v. State*,

³Texas's confrontation clause, adopted as part of the Bill of Rights of the current 1876 Constitution, was lifted almost word for word from the Bill of Rights of the 1845 Constitution, which in turn was lifted almost word for word from the Declaration of Rights in the 1836 Constitution of the Republic of Texas. *Compare* Tex. Const. of 1845, art. I, § 8 ("In all criminal prosecutions, the accused . . . shall be confronted with the witnesses against him.") with Repub. Tex. Const. of 1836, Declaration of Rights, § 6, reprinted in *Laws of the Republic of Texas in Two Volumes*, vol. 1, p. 23 (1838)⁸ ("In all criminal prosecutions the accused . . . shall be confronted with the witnesses against him."); *see also* Janice C. May, *The Texas State Constitution* (2011), (noting that all of the rights listed in article I, section 10 of the current 1876 Constitution trace their origins to the 1836 Constitution).

433 S.W.3d 546, 551 (Tex. Crim. App. 2014); *see also Davis v. Alaska*, 415 U.S. 308, 315 (1974).

The Confrontation Clause guarantees an accused the right to confront and cross-examine adverse witnesses. U.S. Const. amends. VI, XIV; *Vinson v. State*, 252 S.W.3d 336, 338 (Tex. Crim. App. 2008). The principal concern of the Confrontation Clause is to ensure the reliability of the evidence against a criminal defendant by subjecting it to rigorous testing in the context of an adversary proceeding before the trier of fact. *Clark*, 282 S.W.3d at 930; *Maryland v. Craig*, 497 U.S. 836, 845 (1990). “[F]ace-to-face confrontation enhances the accuracy of factfinding by reducing the risk that a witness will wrongfully implicate an innocent person.” *Craig*, 497 U.S. at 846. The right of confrontation includes “not only the right to face-to-face confrontation, but also the right to meaningful and effective cross-examination.” *Coronado v. State*, 351 S.W.3d 315 (Tex. Crim. App. 2011).

Whether rooted directly in the Due Process Clause of the Fourteenth Amendment in the Compulsory Process or Confrontation clauses of the Sixth Amendment, the Constitution guarantees criminal defendants a meaningful opportunity to present a complete defense.” *Kittleson v. Dretke*, 426 F.3d 306, 318 (5th Cir. 2005); *see also United States v. Scheffer*, 523 U.S. 303, 329 n.16 (1998). “The Sixth Amendment right to present a complete defense encompasses a defendant’s

rights under the Confrontation Clause to rebut the [Government's] evidence through cross-examination.” *Id.* See also *Webb v. Texas*, 409 U.S. 95 (1972); *Washington v. Texas*, 388 U.S. 14 (1967); *Taylor v. Illinois*, 484 U.S. 400, 410 (1988). “[T]he exposure of a witness’ motivation in testifying is a proper and important function of the constitutionally protected right of cross-examination.” *Davis v. Alaska*, 415 U.S. 308, 316-317 (1974). “Although the right to cross-examination is not absolute, it is effectively denied when a defendant is prohibited from ‘expos[ing] to the jury facts from which jurors, as the sole triers of fact and credibility, could appropriately draw inferences relating the reliability of the witness.’” *Kittleson*, 426 F.3d at 319; see also *Davis*, 415 U.S. at 318). “The right to cross-examination includes the opportunity to show that a witness is biased, or that the testimony is exaggerated or unbelievable.” *Pennsylvania v. Ritche*, 480 U.S. 39, 51-53 (1987).

Admission of a hearsay statement made by a non-testifying declarant violates the Confrontation Clause if the statement was testimonial and the defendant did not have a prior opportunity to cross-examine the witness. *Crawford v. Washington*, 541 U.S. 36, 68 (2004); see also *Woodall v. State*, 336 S.W.3d 634, 642 (Tex. Crim. App. 2011) (“[T]o implicate the Confrontation Clause, an out-of-court statement must (1) have been made by a witness absent from trial and (2) be testimonial in nature.”).

A statement is "testimonial" when circumstances objectively indicate it was made for the primary purpose of "establish[ing] or prov[ing] past events potentially relevant to later criminal prosecution." *Davis v. Washington*, 547 U.S. 813, 822 (2006).

The clause bars testimonial statements of absent witnesses unless the witness is "unavailable to testify and the defendant had a prior opportunity" for cross-examination. *Crawford v. Washington*, 541 U.S. 36, 53-54 (2004). This prohibition applies to "testimonial hearsay," which means that it is confined to (1) testimonial statements (2) offered to prove the truth of the matter asserted. *See Smith*, 602 U.S. at 784-85. An out-of-court statement implicates the Confrontation Clause when it is: (1) made by a witness who is absent from trial and (2) testimonial in nature. *Woodall v. State*, 336 S.W.3d 634, 642 (Tex. Crim. App. 2011).

The SANE report should be considered testimonial

Testimonial statements are those "made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial." *Molina*, 632 S.W.3d at 543. Whether an out-of-court statement is testimonial is a question of law. *Langham v. State*, 305 S.W.3d 568, 576 (Tex. Crim. App. 2010). "Although we defer to the trial court's resolution of credibility issues and historical fact, we review de novo the ultimate constitutional question of whether the

facts as determined by the trial court establish that an out-of-court statement is testimonial.” *Id.*

A reviewing court should consider “whether ‘the surrounding circumstances objectively indicate that the primary purpose of the interview or interrogation is to establish or prove past events potentially relevant to later criminal prosecution. *De La Paz v. State*, 273 S.W.3d 671, 680 (Tex. Crim. App. 2008). The “primary purpose” is the “ ‘first in importance’ among multiple, potentially competing purposes” for a statement. *Langham v. State*, 305 S.W.3d at 579. “In the end, the question is whether, in light of all the circumstances, viewed objectively, the primary purpose of the conversation was to create an out-of-court substitute for trial testimony.” *Clark*, 576 U.S. at 245. “Where no such primary purpose exists, the admissibility of a statement is the concern of state and federal rules of evidence, not the Confrontation Clause.” *Id.* at 245–46.

Mr. Zavaleta recognizes that medical reports created for treatment purposes are usually non-testimonial. *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 312 n.2 (2009); *Berkley v. State*, 298 S.W.3d 712 (Tex. App.—San Antonio 2009, pet. ref’d); see also *Clark*, 576 U.S. at 246 (“[S]tatements to individuals who are not law enforcement officers ... are much less likely to be testimonial.”); *Davis v. State*, 169 S.W.3d 660 (Tex. App.—Austin 2005) (Onion, J.) (“A statement is more likely to be

testimonial if the person who heard, recorded, and produced the out-of-court statement at trial is a government officer.”).

The context of the SANE examination makes clear that Ms. Grant’s statements to Nurse Richardson during that exam were testimonial. Further, a deputy was present during the exam. [9 RR 42]. The consent form itself noted that it would be released to law enforcement, which is not typical for any other exams. [9 RR 43-44]. Evidence was collected during the exam. Ms. Grant’s statements were both “pretrial statements that [she] would reasonably expect to be used prosecutorially” and “made under circumstances that would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.” *Crawford*, 541 U.S. at 51, 53. There was “no ... ongoing emergency” and “the primary purpose of the interrogation [was] to establish or prove past facts potentially relevant to later criminal prosecution.” *Davis*, 547 U.S. at 822.

The State did not prove the SANE exam was in response to an ongoing emergency. Ms. Grant’s SANE exam took place after the alleged assault and after she had been seen by the triage medical staff for her injuries. The “primary purpose” of the SANE exam was to document and collect evidence for Appellant’s later criminal prosecution. The record indicates that Ms. Grant and Nurse Richardson knew that was

its purpose. Ms. Grants's statements to the nurse in the presence of law enforcement during the exam were testimonial.

Appellant never had an opportunity to cross-examine Ms. Grant about the truth of those statements. She's dead. The admission of those statements at his trial violated his constitutional right of confrontation.

Since the challenged statement is testimonial, the denial of physical, face-to-face confrontation is reviewed for harm. *Coy v. Iowa*, 487 U.S. 1012, 1021 (1988); *see Chapman v. California*, 386 U.S. 18, 23 (1967). Constitutional error is harmful unless a reviewing court determines beyond a reasonable doubt that the error did not contribute to the conviction. Tex. R. App. P. 44.2(a). The State has the burden to prove that the error is harmless beyond a reasonable doubt. *Haggard v. State*, 612 S.W.3d 318, 328 (Tex. Crim. App. 2020). If this Court is unable to conclude beyond a reasonable doubt that the error did not contribute to the conviction, it must reverse and order a new trial. *Langham v. State*, 305 S.W.3d 568, 582 (Tex. Crim. App. 2010).

The trial court fatally erred by admitting this blatant hearsay testimony. The admission of this testimony violated Mr. Zavaleta's constitutional right to confrontation. This case should be remanded for a new trial.

CONCLUSION

This Petition for Writ of Certiorari should be granted and the decision of the Texas Court of Criminal Appeals and the Twelfth Court of Appeals for Texas should be vacated, and the case should be remanded for proceedings consistent with this Court's opinion.

Respectfully submitted,

/s/ Amy R. Blalock

AMY R. BLALOCK

Attorney-At-Law

P.O. Box 765

Tyler, TX 75710

(903) 262-7520

amyblalock@outlook.com

Texas Bar Card No. 02438900

Attorney for Petitioner

RELIEF REQUESTED

FOR THESE REASONS, the Petitioner moves this Court to grant a Writ of Certiorari in order to review the Judgment of the Court of Criminal Appeals for the State of Texas.

Respectfully submitted,

/s/ Amy R. Blalock

AMY R. BLALOCK

Attorney-At-Law

P.O. Box 765

Tyler, TX 75710

(903) 262-7520

amyblalock@outlook.com

Texas Bar Card No. 02438900

Attorney for Petitioner

CERTIFICATE OF SERVICE

I certify that on the 17th day of July, 2026, I served one (1) copy of the foregoing Petition for Writ of Certiorari on the following individuals by mail (certified mail return receipt requested) by depositing same, enclosed in post paid, properly addressed wrapper, in a Post Office or official depository, under the care and custody of the United States Postal Service, or by other recognized means pursuant to the Rules of the Supreme Court of The United States of America, Rule 29:

Aaron Rediker
Smith County District Attorney's Office
100 N. Broadway
Suite 400,
Tyler, TX 75702

Vincente R. Zavaleta
TDCJ Number: 02524881
Bill Clements Unit
9601 Spur 591
Amarillo, TX 79107-9606

/s/ Amy R. Blalock
AMY R. BLALOCK

No. _____

In the
Supreme Court of the United States

OCTOBER TERM, 2025

VINCENTE R. ZAVALETA,

Petitioner,

v.

THE STATE OF TEXAS,

Respondent.

APPENDIX

Appendix

1. Order of the Texas Court of Criminal Appeals denying Mr. Zavaleta's Petition for Writ of Certiorari, February 12, 2026.
2. *Zavaleta v. State*, No. 12-24-00339-CR (Tex. App.—October 31, 2025, pet. filed).

APPENDIX—TAB 1

OFFICIAL NOTICE FROM COURT OF CRIMINAL APPEALS OF TEXAS
P.O. BOX 12308, CAPITOL STATION, AUSTIN, TEXAS 78711
FILE COPY



2/12/2026 **COA Case No. 12-24-00339-CR**
ZAVALETA, VINCENTE R **Tr. Ct. No. 475-0487-24** **PD-1015-25**

On this day, the Appellant's petition for discretionary review has been refused.

Deana Williamson, Clerk

STATE PROSECUTING ATTORNEY
STACEY SOULE
PO BOX 13046
AUSTIN, TX 78711
* DELIVERED VIA E-MAIL *

APPENDIX—TAB 2

NO. 12-24-00339-CR
IN THE COURT OF APPEALS
TWELFTH COURT OF APPEALS DISTRICT
TYLER, TEXAS

VINCENTE R. ZA VALETA,
APPELLANT

§ APPEAL FROM THE 475TH

V.

§ JUDICIAL DISTRICT COURT

THE STATE OF TEXAS,
APPELLEE

§ SMITH COUNTY, TEXAS

MEMORANDUM OPINION

Vicente R. Zavaleta appeals his conviction for aggravated sexual assault. He presents three issues on appeal. We modify the bill of costs and affirm.

BACKGROUND

On April 29, 2016, Clara Grant accepted a ride to Bunny's truck stop in Tyler from a stranger. Instead of taking her to the truck stop, he took her to a secluded area where he beat, anally raped, choked with a belt, and tied up Grant. He then left Grant in a private driveway. Grant eventually untied herself and walked, naked and bloodied, to Bunny's seeking help. The Smith County Sheriff's Office was notified, and Grant was taken to the hospital. At the hospital, Grant spoke with a sexual assault nurse examiner (SANE) wherein Grant described the sexual assault. The SANE completed Grant's physical examination in the operating room where Grant underwent surgery on her fractured arm. Law enforcement took a DNA sample, which did not initially lead to a match. The case eventually went cold. Grant passed away in December 2018.

In 2021, as part of the Sexual Assault Kit Initiative (SAKI), Texas Ranger Chris Baggett reopened Grant's case. He found similarities between Grant's case and two other sexual assaults in East Texas from 2003 and 2012, including the presence of the same unknown male DNA. Eventually, Baggett identified Appellant as a possible suspect. Subsequent DNA testing revealed that Appellant's DNA matched the DNA taken from Grant's assault.

Appellant was charged by indictment with aggravated sexual assault. He pleaded "not guilty," and the matter proceeded to a jury trial. At trial, Appellant testified on his own behalf and denied assaulting Grant. Ultimately, the jury found Appellant "guilty" as charged and sentenced him to life imprisonment and a \$10,000 fine. The trial court ordered Appellant's sentence run consecutively with the life sentence assessed in another victim's aggravated sexual assault case. This appeal followed.

ADMISSIBILITY OF EVIDENCE

In his first issue, Appellant urges the SANE nurse's testimony constituted inadmissible hearsay and violated his right to confrontation.

Hearsay

Appellant contends the trial court should have excluded the SANE nurse's report and testimony wherein she recounted Grant's description of the sexual assault. The State maintains that the statements fall under the exception applicable to statements made for medical diagnosis or treatment.

Standard of Review and Applicable Law

An appellate court reviews a trial court's ruling on the admissibility of evidence for an abuse of discretion. *Tillman v. State*, 354 S.W.3d 425, 435 (Tex. Crim. App. 2011). We will not reverse a trial court's decision to admit or exclude evidence unless the record shows a clear abuse of discretion. *Munoz v. State*, 288 S.W.3d 55, 57 (Tex. App.—Houston [1st Dist.] 2009, no pet.) (citing *Zuliani v. State*, 97 S.W.3d 589, 595 (Tex. Crim. App. 2003)). An abuse of discretion occurs only when the trial court's decision was so clearly wrong as to lie outside the zone of reasonable disagreement. *Id.*

Hearsay is an out-of-court statement offered for the truth of the matter asserted, and is generally inadmissible unless a statute, the rules of evidence, or other rules prescribed under

statutory authority provide otherwise. *See* TEX. R. EVID. 801, 802; ***Sanchez v. State***, 354 S.W.3d 476, 484 (Tex. Crim. App. 2011).

The hearsay exception under Rule 803(4) applies to any statement that: “(A) is made for—and is reasonably pertinent to—medical diagnosis or treatment; and (B) describes medical history; past or present symptoms or sensations; their inception; or their general cause.” TEX. R. EVID. 803(4). To establish this exception, the proponent of the evidence must show that (1) the out-of-court declarant was aware that the statements were made for purposes of medical diagnosis or treatment, and that proper diagnosis or treatment depended upon the veracity of the statements, and (2) the statements are pertinent to diagnosis or treatment, that is, it was reasonable for the care provider to rely on the statements in diagnosing or treating the declarant. ***Taylor v. State***, 268 S.W.3d 571, 587, 588-89, 591 (Tex. Crim. App. 2008); ***Fahrni v. State***, 473 S.W.3d 486, 497 (Tex. App.—Texarkana 2015, pet. ref’d); ***Prieto v. State***, 337 S.W.3d 918, 921 (Tex. App.—Amarillo 2011, pet. ref’d).

Regarding the first requirement, unlike statements made to non-medical professionals, which require affirmative evidence in the record on the issue of veracity, courts can infer from the record that the victim knew it was important to tell a SANE nurse the truth to obtain medical treatment or diagnosis. *See Franklin v. State*, 459 S.W.3d 670, 677 (Tex. App.—Texarkana 2015, pet. ref’d). With respect to the second requirement, the object of a SANE is to ascertain whether the victim has been sexually abused and to determine whether further medical attention is needed. ***Beheler v. State***, 3 S.W.3d 182, 189 (Tex. App.—Fort Worth 1999, pet. ref’d). Consequently, statements describing acts of sexual abuse are pertinent to the medical treatment of a victim. *Id.*

Analysis

Meghan Richardson, a SANE nurse, testified regarding her examination of Grant, which included statements Grant made describing the sexual assault. Her report was also admitted into evidence. Appellant objected to Richardson’s testimony and report based on hearsay. The trial court overruled his objection, expressly finding that the statements were made for the purpose of medical diagnosis or treatment.

Richardson testified extensively about her duties in performing sexual assault examinations. When asked why she obtains a patient history from victims during the examinations, Richardson stated that “the purpose is just like any history, is for treating and

diagnosing patients.” Richardson then recounted Grant’s history of the assault and the examination she conducted noting the various injuries she observed. At the conclusion of the examination, Richardson diagnosed Grant with “fear, anxiety, altered body image,” and testified that Grant needed “follow-up for gynecology, medical, and for repeat STD testing.” Grant also had a referral for trauma counseling.

Based on Richardson’s testimony that the history was obtained for the purpose of medical diagnosis and treatment, we hold that the State satisfied the requirements of Texas Rule of Evidence 803(4), and the trial court properly overruled Appellant’s hearsay objection. *See Wilson v. State*, No. 12-18-00328-CR, 2019 WL 6358157, at *3 (Tex. App.—Tyler Nov. 27, 2019, no pet.) (mem. op., not designated for publication). We overrule this portion of Appellant’s first issue.

Confrontation Clause

Appellant further argues that Richardson’s testimony regarding Grant’s statements detailing the assault violated his right to confrontation.

Applicable Law

The Sixth Amendment’s Confrontation Clause, applicable to the states through the Fourteenth Amendment, provides that “[i]n all criminal prosecutions, the accused shall enjoy the right . . . to be confronted with the witnesses against him.” *Crawford v. Washington*, 541 U.S. 36, 42, 124 S. Ct. 1354, 1359, 158 L. Ed. 2d 177 (2004); *Langham v. State*, 305 S.W.3d 568, 575 (Tex. Crim. App. 2010) (citing U.S. CONST. amend. VI). “[T]he most important instances in which the [Confrontation] Clause restricts the introduction of out-of-court statements are those in which state actors are involved in a formal, out-of-court interrogation of a witness to obtain evidence for trial.” *Michigan v. Bryant*, 562 U.S. 344, 358, 131 S. Ct. 1143, 1155, 179 L. Ed. 2d 93 (2011). Once a defendant raises a Confrontation Clause objection, the burden shifts to the State to prove either (1) that the proposed statement does not contain testimonial hearsay and thus does not implicate the Confrontation Clause or (2) that the statement does contain testimonial hearsay but is nevertheless admissible. *See De la Paz v. State*, 273 S.W.3d 671, 680–81 (Tex. Crim. App. 2008) (citing *Crawford*, 541 U.S. at 68, 124 S. Ct. at 1374).

“[T]estimonial statements are those ‘that were made under circumstances which would lead an objective witness reasonably to believe that the statement would be available for use at a later trial.’” *Adkins v. State*, 418 S.W.3d 856, 861–62 (Tex. App.—Houston [14th Dist.] 2013,

pet. ref'd) (quoting *Burch v. State*, 401 S.W.3d 634, 636 (Tex. Crim. App. 2013)). A court considers the totality of the circumstances in determining whether a statement is testimonial. *Clark v. State*, 282 S.W.3d 924, 931 (Tex. App.—Beaumont 2009, pet. ref'd).

As noted, we generally review a trial court's decision to admit evidence under an abuse-of-discretion standard. *Wall v. State*, 184 S.W.3d 730, 743 (Tex. Crim. App. 2006). But when, as here, the admission of evidence involves a constitutional legal ruling—in this case, whether a statement is testimonial or nontestimonial for Confrontation Clause purposes—we give almost total deference to the trial court's determination of historical facts, but we review de novo the trial court's application of the law to those facts. See *Langham*, 305 S.W.3d at 576; *Wall*, 184 S.W.3d at 742 (applying hybrid standard of review to issue of whether statement was testimonial).

Analysis

Because Grant's complained-of statements to Richardson—a medical professional—were made for the primary purpose of medical diagnosis and treatment, not developing facts for later litigation, they do not constitute testimonial hearsay. See *Melendez-Diaz v. Massachusetts*, 557 U.S. 305, 312 n.2, 129 S. Ct. 2527, 2533 n.2, 174 L. Ed. 2d 314 (2009) (stating that “medical reports created for treatment purposes” are not testimonial); *Malone v. State*, No. 02-10-00436-CR, 2011 WL 5118820, at *3 (Tex. App.—Fort Worth Oct. 27, 2011, no pet.) (mem. op., not designated for publication) (holding that a victim's statement to an on-scene EMT that the defendant had kicked her was not testimonial for Confrontation Clause purposes); *Martinez v. State*, No. 08-09-00065-CR, 2010 WL 2619647, at *4 (Tex. App.—El Paso June 30, 2010, no pet.) (op., not designated for publication) (holding similarly and collecting similar cases); see also *Lollis v. State*, 232 S.W.3d 803, 807 (Tex. App.—Texarkana 2007, pet. ref'd) (“[W]hen a forensic or investigatory motive predominates, the resulting statements are testimonial; when therapeutic or healing motive predominates, statements are not testimonial.”).

Appellant further argues that Grant's statements were testimonial because a law enforcement officer was present when she spoke with Richardson. However, when statements are overheard by, and not made to, someone associated with law enforcement, they are not rendered “testimonial.” *Davlin v. State*, 531 S.W.3d 765, 771 (Tex. App.—Texarkana 2016, no pet.); *Wilson v. State*, 195 S.W.3d 193, 203 (Tex. App.—San Antonio 2006, no pet.). Therefore,

Richardson's recitation of Grant's nontestimonial statements does not violate Appellant's right to confrontation. We overrule the remainder of Appellant's first issue.

CRUEL AND UNUSUAL PUNISHMENT

In his second issue, Appellant argues that his sentence violates the Eighth Amendment to the United States Constitution and Article I, Section 13 of the Texas Constitution because it is grossly disproportionate to his crimes. Specifically, he urges that the trial court should not have ordered his life sentence to run consecutively with his life sentence for a separate aggravated sexual assault.

Appellant did not raise a timely objection in the trial court regarding the issue of cruel and unusual punishment under the U.S. Constitution or the Texas Constitution; therefore, he failed to preserve any such issues. *See Rhoades v. State*, 934 S.W.2d 113, 120 (Tex. Crim. App. 1996) (waiver of rights under Texas Constitution); *Curry v. State*, 910 S.W.2d 490, 497 (Tex. Crim. App. 1995) (waiver of rights under United States Constitution); *see also* TEX. R. APP. P. 33.1(a); *Mays v. State*, 285 S.W.3d 884, 889 (Tex. Crim. App. 2009) ("Preservation of error is a systemic requirement that a first-level appellate court should ordinarily review on its own motion[,] and it is 'incumbent upon the Court itself to take up error preservation as a threshold issue.'"). For the reasons explained herein, despite Appellant's failure to preserve error, we conclude that his sentence does not constitute cruel and unusual punishment under the United States Constitution or the Texas Constitution.

"The legislature is vested with the power to define crimes and prescribe penalties." *Davis v. State*, 905 S.W.2d 655, 664 (Tex. App.—Texarkana 1995, pet. ref'd); *see also Simmons v. State*, 944 S.W.2d 11, 15 (Tex. App.—Tyler 1996, pet. ref'd). Courts have repeatedly held that punishment which falls within the limits prescribed by a valid statute is not excessive, cruel, or unusual. *See Harris v. State*, 656 S.W.2d 481, 486 (Tex. Crim. App. 1983); *Jordan v. State*, 495 S.W.2d 949, 952 (Tex. Crim. App. 1973); *Davis*, 905 S.W.2d at 664.

In this case, Appellant was convicted of the first-degree felony offense of aggravated sexual assault. *See* TEX. PENAL CODE ANN. § 22.021(e) (West 2019). The punishment range for a first-degree felony is imprisonment for life or any term of not more than ninety-nine years or less than five years. *Id.* § 12.32 (West 2019). Therefore, the life sentence imposed falls within the range of punishment set by the legislature. Therefore, Appellant's punishment is not

prohibited as cruel, unusual, or excessive per se. See *Harris*, 656 S.W.2d at 486; *Jordan*, 495 S.W.2d at 952; *Davis*, 905 S.W.2d at 664. Furthermore, the act of ordering that sentences will run consecutively does not constitute cruel and unusual punishment. *Stevens v. State*, 667 S.W.2d 534, 538 (Tex. Crim. App. 1984); *Baird v. State*, 455 S.W.2d 259, 259 (Tex. Crim. App. 1970). The trial court's order that Appellant's convictions run consecutively is not prohibited as cruel, unusual, or excessive per se. See *Harris*, 656 S.W.2d at 486; *Jordan*, 495 S.W.2d at 952; *Davis*, 905 S.W.2d at 664.

Nonetheless, Appellant urges this Court to perform the three-part test originally set forth in *Solem v. Helm*, 463 U.S. 277, 103 S. Ct. 3001, 77 L. Ed. 2d 637 (1983). Under this test, the proportionality of a sentence is evaluated by considering (1) the gravity of the offense and the harshness of the penalty, (2) the sentences imposed on other criminals in the same jurisdiction, and (3) the sentences imposed for commission of the same crime in other jurisdictions. *Solem*, 463 U.S. at 292, 103 S. Ct. at 3011. Texas courts and the Fifth Circuit Court of Appeals have modified the application of the *Solem* test in light of the United States Supreme Court's decision in *Harmelin v. Michigan*, 501 U.S. 957, 111 S. Ct. 2680, 115 L. Ed. 2d 836 (1991), to require a threshold determination that the sentence is grossly disproportionate to the crime before addressing the remaining elements. See, e.g., *McGruder v. Puckett*, 954 F.2d 313, 316 (5th Cir. 1992), *cert. denied*, 506 U.S. 849, 113 S. Ct. 146, 121 L. Ed. 2d 98 (1992); see also *Jackson v. State*, 989 S.W.2d 842, 845-46 (Tex. App.—Texarkana 1999, no pet.).

We are guided by the holding in *Rummel v. Estelle*, 445 U.S. 263, 100 S. Ct. 1133, 63 L. Ed. 2d 382 (1980), in making the threshold determination of whether Appellant's sentence is grossly disproportionate to his crime. In *Rummel*, the Supreme Court addressed the proportionality claim of an appellant who received a mandatory life sentence under a prior version of the Texas habitual offender statute for a conviction of obtaining \$120.75 by false pretenses. See *id.*, 445 U.S. at 266, 100 S. Ct. at 1135. In *Rummel*, the appellant received a life sentence because he had two prior felony convictions – one for fraudulent use of a credit card to obtain \$80.00 worth of goods or services and the other for passing a forged check in the amount of \$28.36. *Id.*, 445 U.S. at 266, 100 S. Ct. at 1134-35. After recognizing the legislative prerogative to classify offenses as felonies and considering the purpose of the habitual offender statute, the Supreme Court determined that the appellant's mandatory life sentence did not constitute cruel and unusual punishment. *Id.*, 445 U.S. at 285, 100 S. Ct. at 1145.

In the case at bar, Appellant’s offenses – two instances of aggravated sexual assault – are far more serious than the combination of offenses committed by the appellant in *Rummel*, and Appellant’s sentence is no more severe than the life sentence upheld in *Rummel*. Thus, it is reasonable to conclude that if the sentence in *Rummel* is not constitutionally disproportionate, neither is the sentence imposed upon Appellant. Moreover, the cumulation of Appellant’s sentences does not render his punishment constitutionally disproportionate. See *Arredondo v. State*, 406 S.W.3d 300, 306 (Tex. App.—San Antonio 2013, pet. ref’d) (concluding that juvenile appellant’s consecutive life sentences for homicide and nonhomicide offenses did not constitute cruel and unusual punishment). Because we do not conclude that Appellant’s sentence is disproportionate to his crimes, we need not apply the remaining elements of the *Solem* test. See *McGruder*, 954 F.2d at 316; *Jackson*, 989 S.W.2d at 845-46. Accordingly, we overrule Appellant’s second issue.

INCLUSION OF FINE IN BILL OF COSTS

In his third issue, Appellant contends the bill of costs should be revised to delete his fine. The State concedes the error.

Fines are punitive and intended to be part of the convicted defendant’s sentence. See *Armstrong v. State*, 340 S.W.3d 759, 767 (Tex. Crim. App. 2011). Court costs, however, are “compensatory in nature” and are “a non-punitive recoupment of the costs of judicial resources expended in connection with the trial of the case.” *Id.*; *Williams v. State*, 495 S.W.3d 583, 590 (Tex. App.—Houston [1st Dist.] 2016), *pet. dismiss’d*, 2017 WL 1493488 (Tex. Apr. 26, 2017).

The bill of costs includes the \$10,000 fine imposed by the trial court. A bill of costs must be in writing and contain “the items of cost.” TEX. CODE CRIM. PROC. ANN. art. 103.001 (West 2018). As noted above, fines are fundamentally different than court costs. Fines constitute punishment and are part of the defendant’s sentence whereas court costs are those financial obligations intended to recoup “the costs of judicial resources expended in connection with the trial of the case.” *Weir v. State*, 278 S.W.3d 364, 366–67 (Tex. Crim. App. 2009). In light of the above, we reform the bill of costs to delete the fine. See *Williams*, 495 S.W.3d at 591. Appellant remains obligated to pay the \$10,000 fine reflected in the judgment of conviction. See TEX. R. APP. P. 43.2(b). We sustain Appellant’s third issue.

DISPOSITION

Having overruled Appellant's first and second issues but having sustained his third issue, we *modify* the bill of costs to delete the \$10,000 fine and *affirm* the trial court's judgment.

BRIAN HOYLE
Justice

Opinion delivered October 31, 2025.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J., not sitting.

(DO NOT PUBLISH)



COURT OF APPEALS

TWELFTH COURT OF APPEALS DISTRICT OF TEXAS

JUDGMENT

OCTOBER 31, 2025

NO. 12-24-00339-CR

VINCENTE R ZA VALETA,

Appellant

V.

THE STATE OF TEXAS,

Appellee

Appeal from the 475th District Court
of Smith County, Texas (Tr.Ct.No. 475-0487-24)

THIS CAUSE came to be heard on the appellate record and briefs filed herein, and the same being considered, it is the opinion of this court that the bill of costs of the court below should be modified and the judgment affirmed.

It is therefore ORDERED, ADJUDGED, and DECREED that the bill of costs of the court below be **modified** to reflect that Appellant's \$10,000 fine be deleted and **in all other respects the judgment of the trial court is affirmed**, and that this decision be certified to the court below for observance.

Brian Hoyle, Justice.

Panel consisted of Worthen, C.J., Hoyle, J., and Neeley, J., not sitting.