Patsy Spaw

AUG 15 2023

CLERK OF THE COURT

THE SENATE OF THE STATE OF TEXAS
SITTING AS A HIGH COURT OF IMPEACHMENT

IN THE MATTER OF	§
WARREN KENNETH	§
PAXTON, JR.	§

HOUSE MANAGERS' RESPONSE TO PAXTON'S
MOTION TO EXCLUDE CAMPAIGN CONTRIBUTION EVIDENCE

To the Honorable Dan Patrick, President of the Court of Impeachment:

Warren Kenneth Paxton, Jr. ("Paxton") seeks to exclude any evidence of legal campaign contributions, in particular an October 2018 contribution for $25,000 from Natin "Nate" Paul ("Paul") to Paxton. In his Motion, Paxton invents bogus and perplexing reasons for why this evidence has no relation to the issues presented or the allegations that Paxton was abusing the Office of Attorney General ("OAG") in an effort to help his close friend and campaign donor. But there is no question that Paul's campaign donations are relevant and material to the Articles of Impeachment ("Articles").

Relevance is based upon the evidence's purpose. Putting Paxton's contortion of the allegations aside, evidence of Paul's campaign donations plainly meets this standard. It not only tends to make the charged bribery Articles more likely, but there is no risk that it will confuse the Senators or prejudice Paxton. The evidence is admissible.

LEGAL STANDARD[1]

Texas Rule of Evidence 401 states that to be relevant, evidence must have some tendency to make the existence of a material fact "more or less probable than it would be without the evidence."[2] The proper test for relevance is whether "a reasonable person, with some experience in the real world," would believe that a particular piece of evidence is helpful in determining the truth or falsity of any material fact.[3] In other words, "[t]here must be some logical connection,

[1] "All questions of evidence, including questions of relevancy, materiality, or repetition of evidence, and all incidental questions" should be decided by "observing the established Texas Rules of Evidence as nearly as applicable." Tex. S. Rule 12(b), S. Res. 35, 88th Leg., 1st C.S. at 40-52 (2023) ("Senate Rules").

[2] TEX. R. EVID. 401.

[3] *Montgomery v. State*, 810 S.W.2d 372, 376 (Tex. Crim. App. 1990) (orig. op.); *Hernandez v. State*, 327 S.W.3d 200, 206 (Tex. App.—San Antonio 2010, pet. ref'd).

either directly or by inference, between the fact offered and the fact to be proved …."[4] The fact at issue does not need to be the most likely inference from the evidence. Nor does the evidence have to make that fact more likely than not. Rather, the evidence must provide only a "small nudge" toward proving or disproving a fact of consequence.[5]

At times relevant evidence can be found to be inadmissible if its probative value is "substantially outweighed" by its prejudicial effect.[6] However, this remedy should be used "sparingly."[7] Texas Rule of Evidence 403 presumes that relevant evidence's probative value exceeds any danger of unfair prejudice, confusing the issues, or other counterfactors.[8] Thus, the rule excludes evidence only when there is a "clear disparity" between the evidence's degree of prejudice and its probative value.[9]

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[4] *Pittman v. Baladez*, 312 S.W.2d 210, 216 (1958); *accord Jurgens v. Martin*, 631 S.W.3d 385, 415 (Tex. App.—Eastland 2021, no pet.); *Clark v. Randalls Food*, 317 S.W.3d 351, 357 (Tex. App.—Houston [1st Dist.] 2010, pet. denied).

[5] *Hall v. State*, 663 S.W.3d 15, 31 (Tex. Crim. App. 2021), reh'g denied (Mar. 30, 2022), cert. denied, 143 S. Ct. 581, 214 L. Ed. 2d 344 (2023).

[6] TEX. R. EVID. 403.

[7] *See State v. Mechler*, 153 S.W.3d 435, 443–44 (Tex. Crim. App. 2005) ("All Rule 403 rulings are subject to three general considerations: 1) the trial judge should exercise his power to exclude evidence under Rule 403 sparingly; 2) the trial judge's discretion under Rule 403 is not an invitation to rule reflexively or without careful reasoning; 3) the trial judge may not exclude evidence merely because he disbelieves the testimony.").

[8] *See Hall*, 663 S.W.3d 15; *Hammer v. State*, 296 S.W.3d 555, 568 (Tex. Crim. App. 2009); *Shuffield v. State*, 189 S.W.3d 782, 787 (Tex. Crim. App. 2006); GOODE AND WELLBORN, 1 TEXAS PRACTICE: GUIDE TO THE TEXAS RULES OF EVIDENCE § 403.1 (4th ed.).

[9] *Paz v. State*, 548 S.W.3d 778, 795 (Tex. App.—Houston [1st Dist.] 2018, pet. ref'd).

ARGUMENT & AUTHORITIES

I. Evidence of Nate Paul's October 2018 campaign contribution is relevant.

Paxton fundamentally misunderstands the probative value of Nate Paul's October 2018 campaign contribution. Though this "antedated, lawful" $25,000 donation does not form the basis of an Article of Impeachment, it certainly has a tendency to make a fact in dispute more or less probable than it would be without the evidence. Rather than evidence of a *quid pro quo* of bribery itself, the contribution makes the evidence of the charged forms of bribery more likely.

For example, Article X alleges that Paxton benefited from Paul arranging renovations to Paxton's home, and that Paxton accepted this renumeration as a bribe for favorable legal assistance and/or special access to the Attorney General's office.[10] The evidence of contribution does not explicitly form the basis of this charge, but it is circumstantial evidence that makes this allegation "slightly more probable than it would appear without that evidence."[11] In this case, evidence of a sizeable *legal* contribution from Paul tends to establish that Paul not only knew Paxton and was his sponsor, but also that he was willing to expend significant amounts of money in that support.

It is often said, "[a] brick is not a wall," and this 2018 donation "need not prove conclusively the proposition for which it is offered."[12] Rather, because there is "some logical connection either directly or by inference"[13] between the $25,000 contribution and the charged offenses, this evidence is relevant.

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[10] Paxton Article of Impeachment X.

[11] 1 MCCORMICK ON EVID. § 185 (8th ed.).

[12] 1 MCCORMICK ON EVID. § 185 (8th ed.).

[13] *Pittman*, 312 S.W.2d at 216.

II. Evidence of Nate Paul's campaign contribution is neither prejudicial nor misleading.

In analyzing Texas Rule of Evidence 403, Paxton again misunderstands the purpose and relevance of Paul's 2018 campaign contribution. In so doing, he invents "unfair" and "confusing" arguments that the House Board of Managers ("House Managers") never intend to make.

To be clear, the House Managers do not contend that the 2018 contribution itself constituted any sort of bribe. Nor do the House Managers seek to engage in a debate over the propriety of legal campaign donations or their influence on elected officials' actions—either generally or here specifically. The contribution, however, does provide important context.

It is likely that Paul would have already been anticipating the forthcoming, December 2018 lawsuit with the Mitte Foundation, a Texas charitable trust, when he made his first contribution to Paxton in October 2018. Any lawsuit with the Mitte Foundation would have required notice to the Attorney General.[14] The timing of this contribution therefore suggests Paul generally wanted to ingratiate himself with the Attorney General ahead of this suit. And that Paul never again contributed to Paxton's campaign as he and Paxton's relationship deepened (and Paul's legal troubles grew), could give rise to an inference that Paul found other means to curry Paxton's personal favor, such as hiring his mistress and arranging for Paxton's home renovations. When placed in its actual context, this contribution is no more unfair or confusing than any other relevant, admissible piece of evidence.

It is important to consider the specialized knowledge of the jurors in this matter. They are not ordinary members of the public, as Paxton implies. Each is an elected official. As such, they can easily differentiate between lawful campaign donations (like they receive), and the illegal

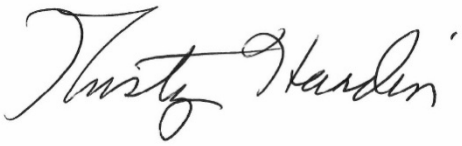
[14] TEX. PROP. CODE § 123.003.

bribes that form the basis for the Articles of Impeachment. These specialized jurors will not be confused, prejudiced or distracted by this singular piece of evidence.

CONCLUSION

Paxton's attempt to exclude admissible, relevant evidence should be denied.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on the following counsel for Paxton on August 15, 2023:

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