

STATE OF TEXAS

v.

KARMELO ANTHONY

In the 296th District Court

Collin County

**Anthony's Motion in Limine Regarding the
Admissibility of Pertinent Character-Trait Evidence,
Evidence under the "Ambiguous Aggressor Rule", and Evidence
under Tex. Code Crim. Proc. Art. 38.36**

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TO THE HONORABLE JUDGE OF THE COURT:

Defendant Karmelo Anthony files this Motion in Limine Regarding the Admissibility of Pertinent Character-Trait Evidence, Evidence under the “Ambiguous Aggressor Rule”, and evidence under Tex. Code Crim. Proc. Art. 38.36:

I. Motion

1. Introduction.

1. Anthony is charged by indictment with Murder under [Tex. Penal Code § 19.02\(b\)\(1\) & \(2\)](#). The grand jury alleged that on or about April 2, 2025, in Collin County, Anthony intentionally and knowingly caused the death of Austin Metcalf (“Austin”) by stabbing him with a knife, a deadly weapon, and further with the intent to cause serious bodily injury to Austin, committed an act clearly dangerous to human life by stabbing him with a knife, a deadly weapon, and caused his death. Anthony pleaded “not guilty” to the allegations in the indictment.

2. Anthony will raise a deadly force in self-defense claim under [Tex. Penal Code § 9.32](#). Anthony seeks to admit before the jury evidence of Austin’s pertinent character traits of being racist and making racist comments, bullying others, his violent nature, and his propensity to start fights.

3. Anthony also seeks to admit before the jury evidence about the same propensities in Hunter Metcalf (“Hunter”), Austin’s twin brother. Austin and Hunter each weighed about 210 pounds. Anthony weighed about 140 pounds. Hunter was under the tent when the incident occurred on April 2, 2025. The evidence will show that Hunter was the initial aggressor. Austin joined his brother Hunter to gang up

on Anthony. And Hunter engaged in the same prior behavior as Austin.

4. Anthony also seeks to admit the same evidence about Austin and Hunter under [*Torres v. State*, 117 S.W.3d 891, 895 \(Tex.Crim.App. 2003\)](#). Under *Torres*, where the evidence of aggression is ambiguous, previous specific acts of violence committed by the deceased are admissible in so far as they tend to explain the deceased's conduct and is probative of who was the aggressor in the altercation ("Ambiguous Aggressor Rule").

5. Finally, Anthony seeks to admit the same evidence about Austin and Hunter under [*Tex. Code Crim. Proc. Art. 38.36*](#), which allows the parties in a Murder prosecution to offer evidence about all relevant facts and circumstances surrounding the killing and the previous relationship existing between the accused and the deceased, and all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the killing.

6. Anthony asks this Court to make a ruling allowing each of the instances of proffers of evidence listed in this motion to be admitted as evidence before the jury during the guilt-innocence phase of the trial.

2. Layout of this Motion.

7. Anthony will first explain why a motion in limine is appropriate to address the issues presented. Then Anthony will state the law regarding pertinent character-trait evidence, the Ambiguous Aggressor Rule, and Art. 38.36. Because the evidence Anthony seeks to admit is admissible under one, two, or all three rules, Anthony will then proffer that evidence.

3. **Motions in limine are used to “manage the course of trials” by excluding anticipated prejudicial evidence before the evidence is offered and to proffer evidence that a party anticipates may draw objections before a jury.**

8. Anthony moves for an order in limine that will allow Anthony to present evidence of pertinent character-traits, under the Ambiguous Aggressor Rule, and Art. 38.36. Anthony is entitled to present such evidence. Although a motion in limine is normally used as an attempt to exclude anticipated prejudicial evidence before the evidence is offered, the Supreme Court of the United States has interpreted the motion as a tool for the trial court to “manage the course of trials.” *See Luce v. United States*, 469 U.S. 38, 41 n.4 (1984) (discussion of motions in limine in federal cases, the process of which is similar to Texas cases).

9. Further, under Tex. R. Evid. 104(c), hearings about the admissibility of evidence should be conducted out of the hearing of the jury. Rule 104(c) provides implicit authority to support a motion in limine about a subject upon which a party will present evidence. If an evidentiary issue is anticipated as it is here, the filing of a motion in limine is preferable to relying on trial objections in front of the jury. *See Geuder v. State*, 115 S.W.3d 11, 14 (Tex.Crim.App. 2003) (The purpose of a motion in limine is to obtain an order requiring an initial offer of objectionable evidence outside the jury’s presence); *see, e.g., Rojas v. Richardson*, 703 F.2d 186, 190 n.3 (5th Cir. 1983) (Motions in limine, fully briefed and argued at a time when they can be given adequate consideration by both counsel and the court, deserve to be encouraged, in preference to the cryptic objections hurriedly argued and hastily ruled on at trial,

unless the circumstances are such that a ruling can properly be made only at the trial.). Thus, Anthony brings these issues to the court's attention in this motion.

4. Anthony seeks to present pertinent character-trait evidence of the complainant and critical witnesses.

10. A defendant in a criminal case is entitled to offer evidence of a pertinent character-trait of the complaining witness and of his own pertinent character-traits. Under [Tex. R. Evid. 404\(a\)\(2\)\(A\)](#), *Exceptions for an Accused*, “[I]n a criminal case, a defendant may offer evidence of the defendant's pertinent trait, and if the evidence is admitted, the prosecutor may offer evidence to rebut it.” See [Ex parte Miller](#), 330 S.W.3d 610, 617 fn.14 (Tex.Crim.App. 2009) (“Evidence of a person's character or character-trait isn't admissible for the purpose of proving action in conformity therewith on a particular occasion, except...(3) Character of victim. In a criminal case and subject to Rule 412, evidence of a pertinent character-trait of the victim of the crime offered by an accused...”). [Tex. R. Evid. 412](#) is the Texas “Rape Shield Law” statute and isn't relevant to any contested issue in this case. See [Pinson v. State](#), 778 S.W.2d 91, 93-95 (Tex.Crim.App. 1989) (discussion Rule 412).

11. A character-trait is pertinent if it's a trait involved in the offense charged or defense raised. [Melgar v. State](#), 236 S.W.3d 302, 306-307 (Tex.App.-Houston [1st Dist.] 2007, pet. ref.); [Spector v. State](#), 746 S.W.2d 946, 950 (Tex.App.-Austin 1988, pet. ref.); [Stitt v. State](#), 102 S.W.3d 845, 849 (Tex.App.-Texarkana 2003, pet. ref.).

12. Numerous Texas appellate courts have held that a defendant may

introduce evidence of pertinent character-trait evidence. See [*Thomas v. State*, 669 S.W.2d 420, 423 \(Tex.App.-Houston \[14th Dist.\] 1984\)](#) (pertinent good character-trait in sexual assault case); [*Foley v. State*, 356 S.W.2d 686, 686-687 \(Tex.Crim.App. 1962\)](#) (pertinent character-trait evidence for sobriety in a DWI case), and [*Hamman v. State*, 314 S.W.2d 301, 305 \(Tex.Crim.App. 1958\)](#) (to exculpate himself, defendant may introduce evidence of his general good character in respect to the particular trait involved in the offense charged, such as pertinent character-trait for honesty in an embezzlement case).

13. Thus, a defendant in a homicide prosecution who raises self-defense may introduce evidence of the deceased's violent character. [*Tate v. State*, 981 S.W.2d 189, 192-193 \(Tex.Crim.App. 1998\)](#). The defendant may offer opinion or reputation testimony to prove the deceased acted in conformity with his violent nature. [*Tex. R. Evid. 404\(a\)\(2\)*](#), [*Tex. R. Evid. 405\(a\)\(1\)*](#) (When evidence of a person's character or character trait is admissible, it may be proved by testimony about the person's reputation or by testimony in the form of an opinion. On cross-examination of the character witness, inquiry may be made into relevant specific instances of the person's conduct.); [*Torres v. State*, 71 S.W.3d 758, 760 \(Tex.Crim.App. 2002\)](#).

14. And when a person's character or character trait is an essential element of a charge, claim, or defense, the character or trait may also be proved by relevant specific instances of the person's conduct. [*Tex. R. Evid. 405\(a\)\(2\)*](#); [*Biagas v. State*, 177 S.W.3d 161, 175 \(Tex.App.-Houston \[1st Dist.\] 2005, pet. ref.\)](#). If the defendant offers such evidence, the State may offer evidence in rebuttal. [*Tex. R. Evid. 404\(a\)\(2\)*](#); see

[*Moncrief v. State*, 707 S.W.2d 630, 632 fn.3. \(Tex.Crim.App. 1986\)](#) (In a homicide case, the defendant may introduce pertinent character-trait evidence to prove that the complaining witness was the aggressor, and if the defendant does so, the state is entitled to offer evidence of the complaining witness's peaceable character). Judge Teague explained at [635, fn.1](#):

“Personal-opinion testimony going to one or more...character-traits is to be distinguished from general reputation testimony going to one or more of the defendant's character-traits...

“General reputation testimony that goes to a particular character-trait that a defendant may have in the general community in which he lives is opinion testimony based on hearsay and need not be based on the witness' awareness of specific acts, or on his personal knowledge of the fact of the defendant's arrest for the alleged offense on trial, if the witness testifies that the reputation-character-trait's good. (Citations omitted.)

If a witness testifies that a defendant has a general reputation for a character-trait and testifies that the defendant's general reputation for having that trait's good, it's not necessary that the witness be personally acquainted with the defendant to speak of the defendant's general reputation which the witness knows, and the reputation of the defendant need not have been discussed by the witness with anyone prior to the date of the alleged offense. (Citation omitted.)

However, before a witness can testify that the defendant's general reputation for having a character-trait's bad, the witness must have actually discussed the matter with someone, and that person must have told the witness that the defendant's general reputation for having that particular character-trait was bad.” (Citation omitted.)

A “personal-opinion character” witness, on the other hand, is one who professes only to personally know one or more of the defendant's specific character-traits...

15. Anthony expects to present evidence of the violent character of Austin and Hunter, their propensity for violence, bullying, and evidence of racist statements

and behavior. As explained below, this includes racists acts like a juvenile graffiti case where they spraypainted “KKK kill all blacks” next to “Heil Hitler.”

5. Anthony seeks to present evidence under the “Ambiguous Aggressor Rule”

16. In [*Torres*, 71 S.W.3d at 760-761](#), the Texas Court of Criminal Appeals set these three general factors for the admission of evidence in the context of proving the deceased was the first aggressor, and that specific, violent acts are relevant apart from showing character conformity by demonstrating the deceased’s intent, motive, or state of mind.

17. First, specific, violent acts are admissible to show that the deceased had a motive or intent to be the first aggressor. The key issue here is the state of mind of the deceased. Thus, it need not be shown that the defendant had knowledge of the acts of violence of the deceased at the time of the homicide.

18. Second, before evidence of a specific, violent act is introduced, there must be some evidence of a violent or aggressive act by the deceased that tends to raise the issue of self-defense and that the specific act may explain. Often the evidence is ambiguous. Thus, evidence of reputation or prior specific acts of violence are admissible in so far as they tend to explain the deceased’s conduct. And when a defendant claims that the deceased was the first aggressor, prior specific acts of violence relevant to the ultimate confrontation may be offered to show a deceased’s state of mind, intent, or motive.

19. Third, it’s not necessary that evidence of the specific, violent acts be

directed against the defendant to be admissible. They may have been directed at third parties. Citing [*Lewis v. State*, 463 S.W.2d 186, 187-188 \(Tex.Crim.App. 1971\)](#) (evidence that the deceased often carried a knife and got in barroom brawls, along with a threat against the defendant, was admissible) and [*Tate v. State*, 981 S.W.2d 189, 193 \(Tex.Crim.App. 1998\)](#) (As long as the proffered violent acts explain the outward aggressive conduct of the deceased at the time of the killing, and in a manner other than demonstrating character conformity only, prior specific acts of violence may be admitted even though those acts were not directed against the defendant.)

6. Anthony seeks to present evidence under Tex. Code Crim. Proc. Art. 38.36.

20. In a prosecution for Murder, the State and defendant are permitted to offer testimony as to all relevant facts and circumstances surrounding the killing and the previous relationship existing between the defendant and deceased, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense. [*Tex. Code Crim. Proc. Art. 38.36*](#). If the defendant raises as a defense under Tex. Penal Code §§ 9.31, 9.32, or 9.33 to establish his reasonable belief that use of force or deadly force was immediately necessary, the defendant shall be permitted to offer: (1) relevant evidence that the defendant had been the victim of acts of family violence committed by the deceased, as family violence is defined by Tex. Fam. Code § 71.004; and (2) relevant expert testimony regarding the condition of the mind of the defendant at the time of the offense,

including those relevant facts and circumstances relating to family violence that are the basis of the expert's opinion. [Tex. Code Crim. Proc. Art. 38.36\(b\)](#).

21. Specific instances of misconduct or extraneous offenses are not permitted even in rebuttal by the State unless: (1) the character is at issue as an essential element of a defense to a criminal charge; or (2) one of the exceptions to the general rule of inadmissibility in Rule 404 apply. See [Harrison v. State, 241 S.W.3d 23, 27 \(Tex.Crim.App. 2007\)](#).

7. The evidence that Anthony proffers and seeks to admit under the rules for character-trait evidence, the “Ambiguous Aggressor Rule”, and under Tex. Code Crim. Proc. Art. 38.36.

22. Below are the proffers of evidence that Anthony seeks to admit before the jury during the guilt-innocence phase. Each of these proffers of evidence are admissible under the rules for character-trait evidence, the “Ambiguous Aggressor Rule”, or under Tex. Code Crim. Proc. Art. 38.36, or a combination of these rules.

23. Anthony asks this Court to make a ruling allowing each of the instances of proffers of evidence listed in this motion to be admitted as evidence before the jury during the guilt-innocence phase of the trial:

1. KKK, Kill All Black People, Heil Hitler, and N-word Graffiti

- Graffiti Photos

- Pictures of graffiti incident
- DSC03106.JPG and DSC03107.JPG - Graffiti - “KKK Kill all black people” and has various format of the N-word written
- DSC03116.JPG - Graffiti - “Heil Hitler” and upside-down cross

- Graffiti Bodycam Footage

- RBurch_39_040421200845_3.mp4 - Body cam footage of officers talking to Austin and Hunter at Sonic after graffiti incident
- Austin said, “we did some dumb stuff” and “we did some vandalism” - he said it was only him and not Hunter - Austin said he used green spray paint (is the one that said KKK kill all black people)
- Logan said, “they took it a little far with the racial slurs” and said he drew the dick only (said both Austin and Hunter painted graffiti)
- Logan’s mom said “I would rather him learn now, than in 5 years and I have to deal with a body bag or something”
- When the officer questioned Hunter, he admitted to spray painting the upside down cross and the racial slurs (including heil Hitler)
- RBurch_39_040421200847_4.mp4 - Body cam footage of officer taking pictures of graffiti

- Graffiti Repots

- State’s Exhibit 4 PDF: Officer report from graffiti incident
- State's Exhibit 1 - Anthony GJ.pdf - Austin criminal history summarized - Multiple assault causing bodily injury charges and one graffiti charge
- CCH Austin Metcalf 4 - Austin and Hunter received 12 months of probation through the Denton County Community Supervision and Corrections Department for the graffiti incident

2. Austin messages about killing student sitting on bench behind theirs at track meet

- Cellebrite – native messages (Page 7)
- Another student, Luke Paton, said that “one Edgar behind our bench was talking wild”
 - Edgar is slang for young ghetto Hispanic boy
 - Austin said “kill that mf”

3. **Hunter banned from teacher's classroom on April 1, 2025, a day before the incident**
 - Snapchat messages
 - Cristian said, "we grounded from stephens advisory until next week" and "Hunter kept kicking the door and mrs james got mad"
 - Hunter said "no we not I'm talking to her fuck that weak ass teacher"
4. **Hunter messages about jumping kids from Independence track team at a prior track meet**
 - Cellebrite – native messages
 - Hunter said "these shitty indy kids talking"
 - Referring to independence high school track students
 - Hunter then said "let's jump them"
 - Someone (unknown number) said "some one record it"
 - Hunter said, "I got it"
5. **Austin and other shotput throwers got in trouble on March 22, 2025 with coaches because they left the track meet early and were told they would not be going to district meet**
 - Coach Starr sent a message to all the throwers after the Lobo Stadium track meet on 3/22/25 – said that they were leaving early and losing so they probably wouldn't be going to the district meet
 - The coach also sent a message telling them to turn their things in on the following Monday
 - 4/2/25 was the district meet
6. **Austin followed several fight accounts on social media**
7. **During a February 3, 2025 conversation, Austin used the N-word and said, "fuck Edwin Parra" and Hunter said "we have two nihs words you gonna punt"**
 - 2/3/25 conversation between Austin and Hunter

- “Nihs” is short for “niggas”
8. **Austin using the N-word in his snapchat group chat on April 1, 2025**
 9. **During October 2023, Austin bullied Tehron, a black student, in class and used racial slurs**
 - Subpoena 2 – All records combiner (Final with Affidavit)(1)
 - 10/3/23 and 10/19/23 – The teacher sent an email saying that the football players in her class were using the N-word. Austin, after instigating for most of the class period especially towards Tehron, continued to speak in an inappropriate manner. Austin called another student a “black ass hoe” and bragged about how the coaches would not do anything because he is a starter on varsity. The teacher noted that Tehron gets picked on a lot in class by the other football players.
 10. **Hunter threatening to hit cheerleaders and the cheerleaders saying they are scared of Hunter and Austin**
 - Subpoena 2 – All records combiner (Final with Affidavit)
 - Hunter unprompted stood up and called on of the cheerleaders a “fat bitch” and said his “hands were bisexual” means he would not only hit guys but also girls. Felt that the Metcalf’s act out time and time again and felt like their behavior was getting out of hand. Hannah Lissiak also sent an email reporting the behavior. Talked about Hunter’s rage being triggered. Talked about being genuinely scared of the Metcalfs.
 11. **On March 3, 2025, Hunter was put on stay-away plan from another student, Xavier Foster**
 - Subpoena 2 – All records combiner (Final with Affidavit)(1)
 - March 3, 2025: The assistant principal asked that Xavier Foster and Hunter Metcalf were put on a stay-away plan and that they not be placed in groups together. And if they are put in a group together, a staff member must watch them at all times.
 12. **On January 20, 2022, Hunter started a fight with a player from the opposing team after the game**
 - Subpoena 2 – All records combiner (Final with Affidavit)(1)

- Page 2 – the incident on January 20, 2022: Hunter went after a player from the opposing team and pushed him. When the teacher broke up the fight, Hunter called the teacher a “fat-ass”

13. **During May 2018, Austin and Hunter bullied and assaulted Ashley Jenkins, and were arrested for assault**

- 2018 Metcalf-Jenkins Shoving Incident, Frisco PD 18055821.pdf
- Document Description: May 14, 2018 incident between Austin Metcalf and Ashley Jenkins (marked as Amberly Bergman in the grand jury testimony)
- On May 18, 2018, Ashlyn Jenkins, a student at Bright Elementary School, was participating in a game of "capture the flag" during PE class. While trying to tag Austin Metcalf, she accidentally touched his face. This angered Austin, who then forcefully shoved Jenkins to the ground using both hands, causing her to suffer bruises and pain in her shoulders.
- Jenkins went to the hospital, where she was diagnosed with a deep bruise (contusion) on her left shoulder as a result of the trauma.
- Kutney (mother) stated that Jenkins is frequently targeted for bullying by Austin and his twin brother, both at school and in their neighborhood. Kutney wanted to pursue charges against Metcalf for assault causing bodily injury. Kutney said that she felt like this was the last straw.
- On May 24, 2018, Austin was arrested for assault causing bodily injury.

14. **On May 7, 2024, Austin and Hunter assaulted Sadie Sevak**

- [2024 Metcalf-Metcalf-Sevak Assault Incident 2] Frisco PD 24002072.pdf
- Document Description: May 7, 2024 incident between Austin Metcalf, Hunter Metcalf, and Sadie Sevak.
- The incident began with an argument between Sadie Sevak and Austin after Sadie blew vape smoke in Austin's face. The argument escalated and moved outside the house.

- Hunter went outside to try to calm Sadie down, but Sadie punched him in the face. Hunter then put Sadie in a “Full Nelson” hold to restrain her.
- Austin also went outside and grabbed Sadie's arm in an attempt to calm her down, but Sadie accused him of assaulting her.
- A witness, Jackson Childers, confirmed that he saw Austin grab Sadie's arm, but did not see Austin assault her.
- Sadie's parents later contacted the police claiming Sadie was assaulted by Austin. Sadie alleged that Austin knocked her to the ground and punched her in the stomach.
- The police noted the conflicting accounts of the incident and the lack of physical evidence. Sadie still wanted to press charges against Austin for assault, so the incident was documented.
- Ultimately, the parents of Sadie and Hunter advised they did not want to pursue criminal charges, and the case was closed for informational purposes only.

15. **Austin and Hunter messages about getting kicked out of football game and wanting to beat up kids, saying they were “talking crazy” – the same phrase Hunter said about Karmelo Anthony**

- Cellebrite – native messages
- Someone named William messaged, “what happened today at the game???How come y'all left”
- Austin replied “got kicked out”
- William said “dang why? Y'all get in a fight or something?”
- Austin said “almost”
- Hunter said “they were talking crazy and we lost our cool”
- Austin then said “I was about to beat the shit out of these kids”
- Hunter then said, “it’s our fault” and “bro austin chill”

16. Report from teacher that Hunter lacks self-control and gains attention by misbehaving

- Hunter was released from special education. The teacher noted that Hunter lacks self-control and seeks attention from misbehaving.

17. October 2024 report from teacher that Hunter's aggression is at the cusp of becoming physical

- Teacher input_October 2024_H. Metcalf.pdf
- Teacher Alan Sickler noted that Hunter shows signs of aggression towards other students, including inappropriate language directed at others. Sometimes his aggression is at the cusp of becoming physical, especially with students who are also on the football team. He can also belittle other for not being “manly” enough and exhibits strong elements of misogyny.

18. Report from teacher that during 2022, Hunter was twice suspended from school since his last review, one for profanity towards a teacher and one for posturing to fight

- REEVAL~1.PDF
- Two 2022 suspensions – one was for “posturing to fight” and the other was for “profanity towards a teacher”

19. Hunter's disciplinary records from February 2022 to December 2024 show six occurrences during which he told a teacher to fuck off, shut up, or other profanity

- From Hunter's disciplinary records
- 12/6/24 - argued and said profanity at teacher, kicked desks and chairs that were in his way, threw his backpack towards the table he was moving
- 2/28/24 - told the teacher to fuck off – teacher reported that he is regularly rude
- 9/5/23 - cursed at teacher when asked to put his phone away
- 3/27/23 - yelled at teacher when asked to hand his phone over
- 12/15/22 - Hunter called the teacher by her first name and was disrespectful

- 2/8/22 - Hunter told the teacher to fuck off and shut up – was given ISS

20. **Hunter's attendance records from 2014-2022 show that he was suspended every year for seven years in a row**

- **2014-2015 School Year:** Out of school suspension on April 2, 2015
 - Attendance2025-06-05-094230.pdf
- **2015-2016 School Year:** In-school suspension on March 1, 2016
 - Attendance2025-06-05-094158.pdf
- **2016-2017 School Year:** Out-of-school suspension, December 14-15, 2016
 - Attendance2025-06-05-094128.pdf
- **2017-2018 School Year:** Out-of-school suspension on November 14, 15, and 29, 2017, and from December 7-15, 2017, January 3, 12, 2018, and on March 5, 2028, he was in disciplinary alternative education program
 - Attendance2025-06-05-094058.pdf
- **2018-2019 School Year:** Out-of-school suspension on January 18, 2019
 - Attendance2025-06-05-094025.pdf
- **2020-2021 School Year:** Out-of-school suspension on May 21, 2021
 - Attendance2025-06-05-093858.pdf
- **2021-2022 School Year:** in-school suspension on January 21 and February 8, 2022.
 - Attendance2025-06-05-093823.pdf

21. **Austin's disciplinary records from April 2022 to May 2024 show seven occurrences where he called a teacher a bitch or used other profanity**

- May 9, 2024 - Austin became agitated and cursed at a teacher, calling her a fat-ass bitch
- February 29, 2024 - Austin cursed twice in class and called one of his classmates a bitch. He was sent to the disciplinary office
- February 15, 2024 – Austin called a teacher a bitch, left class without permission, and again called the teacher a bitch
- April 12, 2023 - Austin was asked to stop using profanity in class. The teacher noted that it was distracting other students. Austin said he couldn't control it and wasn't aware that it was coming out of his mouth.

- March 1, 2023 - Austin was told to stop talking and ignored the teacher, said being so told is “fucking bullshit” and was sent to the disciplinary office
- May 18, 2022: Austin cursed at a teacher and received partial-day ISS
- April 22, 2022: Austin mouthed off to a teacher and received a partial-day ISS

22. Austin’s attendance records from the 2023-2024 school year show that he was suspended twice

- Austin Received ISS on May 9 and 13, 2024
 - Austin Metcalf Attendance 2023-24.pdf

23. School records show that Austin was ejected from a football game for pushing a kid and yelling at a referee

- Subpoena 2 – AM HM Emails to Coaches
- Austin said a kid punched him. He retaliated verbally and pushed the opponent. Austin continued to yell at the official and was awarded unsportsmanlike conduct

24. Notes from Austin’s support coordinator from November 2024 to February 2025 show Austin’s anger and rage issues

- Data from Austin Metcalf Student Support Coordinator Notes.xlsx
- November 8, 2024: Austin saw a counselor regarding his anger and rage during football game. Anger management techniques were discussed
- November 15, 2024: Austin again saw the counselor about anger management techniques.
- December 17, 2024: Austin saw the counselor to discuss resolving conflict.
- January 14, 2025: Austin saw the counselor to discuss managing emotions.
- February 21, 2025: Austin reviewed self-care and emotional regulation. He seemed upset and frustrated.

25. During a verbal altercation on December 6, 2023, Austin called another student a bitch and stormed out of class

- Subpoena 3 - All Records Combined (Final with Affidavit) (1).pdf
- December 6, 2023: teacher noted that Austin slammed on his desk, called the other student, Heather Brown, a bitch.
- When Heather said, “she understood why he and his girlfriend didn’t get along” the teacher noted that Austin exploded with anger.

26. On October 3, 2023 Austin gets into a verbal altercation with another football player in front of the school building

- Austin disciplinary records
- On October 3, 2023, Austin and another football player got into a fight that escalated quickly, causing a hallway disruption

27. Austin got suspended after he and another student were talking about bringing a gun to school the following day

- From Austin’s disciplinary records
- Austin and another student were talking about “what does your gun sound like” and the other student said, “you’ll find out tomorrow” and “I’ll do it tomorrow.” Austin also made a comment about a threat.

28. Austin got banned from attending basketball games for a season after yelling profanity at a player on December 1, 2021, and was told he couldn’t attend other sports events unless accompanied by a parent or was participating

- From Austin’s disciplinary records
- On December 1, 2021 at a girl’s basketball game, Austin yelled “get the fucking ball.”
- Austin was told he wouldn’t be allowed at any basketball games for the rest of the season and may attend other sports events only if accompanied by a parent or was participating.

29. Austin’s testimony on December 9, 2024 that he made to a church group about being consumed by anger, lust, and addiction

- From Cellebrite -> Memos -> Notes -> Note #13 (12/9/24)
- This is a note on Austin’s phone about testimony he used for church group exercise. Austin explained that he was recovering from lust, anger, and addiction.
- Austin noted he was consumed by anger and that it controlled his life and shaped who he was.

- Austin also noted that he was addicted to drinking to not feel empty and to escape the anger that defined him.
 - Austin said that when he joined the church, God took the weight, the fire, and the blood bubbling sensation away from his chest
 - Austin noted that the flame still “lights” from time to time.
30. **On December 24, 2024, Austin or Hunter was standing over their other, grabbing her throat aggressively**
- Cellebrite - file uploads #620 - 12.24.24
 - Either Austin or Hunter are very angry and aggressively grabbing their mother’s throat.
31. **Message from another football player saying Austin and Hunter need to control their emotions, and Austin responding by telling him to “suck my dick”**
32. **March 24, 2022 video from Austin’s phone shows Austin laughing at and filming a black student who told him to stop, then Austin hit the black student in the face**
- Cellebrite -> Storage & Vaults -> File Uploads #3134 (3/24/22)
33. **March 21, 2022 video from Austin’s phone shows Austin in a classroom throwing a water bottle at a black student**
- 30 Cellebrite -> Storage & Vaults -> File Uploads #3144 – 3.21.22
34. **March 18, 2022 video from Austin’s phone shows Austin filming a black student eating a banana in the locker room, then another student appears and shoves that student’s head into his crotch**
- Cellebrite -> Storage & Vaults -> File Uploads #3171 (3/18/22)
35. **August 24, 2023 video from Austin’s phone shows Austin making fun of a black kid’s outfit, then the black kid saying “back up” as Austin got close to him**
- Cellebrite - file uploads #1032 - 8.24.23
 - Austin making fun of a black kid’s outfit and the black kid saying “back up” – Elyon White
36. **November 8, 2023 video from Austin’s phone shows Austin hitting a student sitting next to him in class on the back of the head**
- Cellebrite - Storage & Vaults - File Uploads #733 - 11.8.23

37. Video from Austin phone showing Austin fighting another kid with boxing gloves on
38. Video from Austin phone showing Austin bare-fist-fighting someone in his room while someone counts down
39. January 20, 2023 videos from Austin's phone shows Austin cheering on his friend Jason as he tackles and chases a black kid around a house and says "get over here you black jew"
- Cellebrite -> Storage & Vaults -> File Uploads #1738 – 1.20.23
 - Cellebrite -> Storage & Vaults -> File Uploads #1739 – 1.20.23
40. Video from Austin phone - Austin saying, "I'm going to slap the shit out of Patrick" and then slapping him and then saying, "I'm going to slap the shit out of Christian" and then slapping him
41. February 12, 2023 video from Austin phone showing Austin hitting one his friends on the head twice while he makes fun of him
- Cellebrite -> Storage & Vaults -> File Uploads #1693 – 2.12.23
42. February 5, 2023 video from Austin phone showing Austin yelling "I'm going to slap the fuck out of my dad and he isn't going to do shit about it"
- Cellebrite -> Storage & Vaults -> File Uploads #1705 – 2.5.23
43. February 22, 2022 video from Austin phone showing Austin kissing his friend, his friend telling him to stop, then Austin yelling "kiss me faggot" and then grabbing his friend's head and hands
- Cellebrite -> Storage & Vaults -> File Uploads #3532 – 1.22.22
44. November 4, 2024 video from Austin phone showing Austin using his hand to make a fake gun and pointing it at the back of a black person's head
- Cellebrite - file uploads #168 - 11.4.24
45. February 5, 2022 video from Austin phone showing Austin grabbing a kid's face and repeatedly shoving into his crotch
- Cellebrite -> Storage & Vaults -> File Uploads #3148 (2/5/22)
46. Austin choking another kid in the weightroom

47. December 30, 2021 from Austin phone showing Austin flexing and angrily screaming
 - Cellebrite -> Storage & Vaults -> File Uploads #3645 - 12.30.21
48. Austin using N-word talking about another student named Kyaan
49. Austin using the N-word, and his friend made a racist joke
50. Austin using the N-word (hard R)
51. Austin calling his dad the N-word when he was upset
 - Page 506-508 – Austin calling his Dad the N-word and asking his dad “can you read” when his dad didn’t understand what Austin was saying
 - Page 590-592 – Austin calling his Dad the N-word after his dad told him and Hunter to take medication for their ADHD
52. Austin holding with a butterfly knife, saying “come fuck with me now”
53. Anthony once saw Austin or Hunter get into a fight with a kid at a basketball game and can describe knowing that at least one of them are aggressive and prone to start fights.

8. Why the evidence that Anthony proffers and seeks to admit fall under rules for character-trait evidence, the “Ambiguous Aggressor Rule”, and under Tex. Code Crim. Proc. Art. 38.36.

24. First, it’s critical to note that the evidence will show that Anthony has a self-defense claim that’s for the jury to determine whether it’s valid and thus justified for him to act in self-defense. A person is justified in using nondeadly force “when and to the degree” the person “reasonably believes the force is immediately necessary” for protection against the complainant’s use or attempted use of unlawful force. [Tex. Penal Code § 9.31\(a\)](#). “Reasonable belief” is the belief held by an ordinary and prudent person in the same circumstances as the defendant. [Tex. Penal Code § 1.07\(a\)\(42\)](#); [Werner v. State](#), 711 S.W.2d 639, 645 (Tex.Crim.App. 1986) (discussion of

the “reasonable person”). A jury must view the reasonableness of the person’s actions from the person’s standpoint. [*Ex parte Drinkert*, 821 S.W.2d 953, 955 \(Tex.Crim.App. 1991\)](#). “Unlawful” means criminal or tortious. [Tex. Penal Code § 1.07\(a\)\(48\)](#).

25. If a person’s belief is reasonable, **actual danger** isn’t required, and the person may use force to protect against an **apparent danger**. [*Jones v. State*, 544 S.W.2d 139, 142 \(Tex.Crim.App. 1976\)](#) (emphasis added) (if the evidence raises the issue of apparent danger, in instructing the jury on the law of self-defense a court must tell it that a person has a right to defend from apparent danger to the same extent as he would had the danger been real—provided he acted upon a reasonable apprehension of danger as it appeared to him from his standpoint at the time); see [*Torres v. State*, 7 S.W.3d 712, 715 \(Tex.App.-Houston \[14th Dist.\] 1999\)](#) (same); [*Hamel v. State*, 916 S.W.2d 491, 493 \(Tex.Crim.App. 1996\)](#) (same); and [*Broussard v. State*, 809 S.W.2d 556, 559 \(Tex.App.-Dallas 1991\)](#) (A person has the right to defend herself if acting on the reasonable apprehension of danger as it appeared at the time).

26. And if the person reasonably believed that the complainant’s use of force was unlawful, it is irrelevant whether the use of force was in fact unlawful or even real. [*Dyson v. State*, 672 S.W.2d 460, 462-463 \(Tex.Crim.App. 1984\)](#). (since the defendant used deadly force, there must be some evidence to satisfy Tex. Penal Code §§ 9.31 and 9.32 showing that the defendant reasonably believed deadly force was immediately necessary to protect himself against another’s use or attempted use of unlawful force. That the defendant was **not** in fact attacked is immaterial: “A person has a right to defend from apparent danger to the same extent as he would (have)

had the danger been real; provided he acted upon a reasonable apprehension of danger as it appeared to him at the time.”).

27. Next, each of these proffers of evidence are admissible under the rules for character-trait evidence, the “Ambiguous Aggressor Rule”, or under Tex. Code Crim. Proc. Art. 38.36, or a combination of these rules. Austin and Hunter each weighed about 210 pounds. Anthony weighed about 140 pounds. Hunter was under the tent when the incident occurred on April 2, 2025. The evidence will show that Hunter was the initial aggressor. Austin joined his brother Hunter to gang up on Anthony. And Hunter engaged in the same prior behavior as Austin.

28. Thus, the proffered evidence shows the **pertinent character-trait** of violence, bullying, and evidence of racist statements and behavior of Austin and Hunter since it’s opinion or reputation testimony that proves they acted in conformity with their violent and racist natures. [Tex. R. Evid. 404\(a\)\(2\)\(A\)](#); [Tex. R. Evid. 405\(a\)\(1\)](#); [Miller, 330 S.W.3d at 617](#); [Tate, 981 S.W.2d at 192-193](#).

29. The proffered evidence is also admissible under the “**Ambiguous Aggressor Rule**” under [Torres, 117 S.W.3d at 895](#) because: (1) these are specific, violent and racist acts that show that Austin and Hunter had the motive and intent to be the first aggressor, it shows their state of mind on April 2, 2025 while under that tent, and it’s not necessary that Anthony knew of the acts of Austin and Hunter at the time of the killing; (2) there will be some evidence presented of violent or aggressive acts by Austin and Hunter that tends to raise the issue of self-defense and that the specific act may explain, which includes evidence of reputation or prior

specific acts of violence that explain the conduct of Austin and Hunter and their state of mind, intent, or motive; and (3) it's not necessary that evidence of the specific, violent and racist acts of Austin and Hunter were directed against Anthony. Many were in fact directed at third parties.

30. Finally, the proffered evidence is also admissible under [Tex. Code Crim. Proc. Art. 38.36](#) because this is a prosecution for Murder, and both the State and Anthony are permitted to offer testimony as to: (1) all relevant facts and circumstances surrounding the killing, and (2) the previous relationship existing between Anthony, Austin, Hunter, together with all relevant facts and circumstances going to show the condition of the mind of the defendant at the time of the offense.

31. Prior to April 2, 2025, Anthony only once saw Austin or Hunter get into a fight with a kid at a basketball game and can describe knowing that at least one of them are aggressive and prone to start fights. However, given the detailed past behavior of Austin and Hunter in their violence, bullying, and racist behavior, and that Anthony was a much smaller black kid who was under the tent that day, minding his own business and speaking to another kid before being confronted by Austin and Hunter, Art. 38.36 should allow the proffered evidence to be admitted before the jury.

II. Conclusion and Prayer

Anthony prays that the Court grant this Motion in Limine Regarding the Admissibility of Pertinent Character-Trait Evidence, Evidence under the “Ambiguous Aggressor Rule”, and evidence under Tex. Code Crim. Proc. Art. 38.36, and make a ruling allowing each of the instances of proffers of evidence listed in this motion to be

admitted as evidence before the jury during the guilt-innocence phase of the trial.

Respectfully submitted,

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Michael Mowla

III. Certificate of Service

I certify that on May 4, 2026, a copy of this document was served on the Collin County DA's Office by efile.

/s/ Mike Howard
Mike Howard

IV. Notice of Hearing at Pretrial Hearing

This motion will be heard at the pretrial hearing set for **May 8, 2026 at 8:30 a.m.** in the 296th District Court of Collin County, 2100 Bloomdale Road, Suite 20012, McKinney, TX 75071.

/s/ Mike Howard
Mike Howard