STATE OF WISCONSIN

IN SUPREME COURT

No. 2013AP2686-CR

STATE OF WISCONSIN,

Plaintiff-Respondent-Petitioner,

v.

LUIS C. SALINAS,

Defendant-Appellant.

ON PETITION FOR REVIEW FROM A DECISION OF THE WISCONSIN COURT OF APPEALS REVERSING A JUDGMENT OF THE BROWN COUNTY CIRCUIT COURT, THE HONORABLE MARC A. HAMMER, PRESIDING

BRIEF AND APPENDIX OF PLAINTIFF-RESPONDENT-PETITIONER

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STATEMENT ON ORAL ARGUMENT AND PUBLICATION

As with any case this court has accepted for review, oral argument and publication are appropriate.

STATEMENT OF THE ISSUES

1. Crimes may be joined in one trial if they are connected as part of a common plan. Here, the court of appeals reversed Salinas' conviction because it decided that allegations that he sexually assaulted his girlfriend's child, and that he intimidated his girlfriend and her child, were not similar acts or connected as part of a

common plan. Did the court of appeals too narrowly construe the joinder statute?

2. Improper joinder is subject to harmless error review. Here, the evidence of sexual assault and victim intimidation was overwhelming. Did the court of appeals err in concluding that the joinder of the charges was not harmless?

STATEMENT OF THE CASE: FACTS AND PROCEDURAL HISTORY

On October 26, 2009, upon a report of violence, police were dispatched to a home in Green Bay (Pet-Ap. 102). At the home, police met with MS, who lived in the home with her boyfriend, Salinas, their six-year-old son, and VG, her daughter from a previous relationship (Pet-Ap. 102). MS told police that she and Salinas had been arguing and that she told him that she was breaking up with him (Pet-Ap. 124). MS said that Salinas then said that he was going to kill her (Pet-Ap. 124). MS said that she turned to leave the house, but Salinas grabbed her and began to choke her (Pet-Ap. 124). MS told police that she was able to get away from Salinas, but that he then grabbed a knife and threatened to kill himself and their son (Pet-Ap. 106, 124). MS said that VG had been able to leave the house in order to call the police (Pet-Ap. 106, 124). Based on these events, Salinas pled no contest to strangulation and suffocation and battery with the use of a dangerous weapon, both as crimes of domestic abuse (Pet-Ap. 125). The charge of the physical abuse of a child was dismissed, but read in at sentencing (Pet-Ap. 102). The court sentenced Salinas on May 11, 2010 (Pet-Ap. 125). Both MS and VG gave statements at the sentencing hearing in which they indicated that they wanted Salinas to come home (Pet-Ap. 102).

Two days after sentencing, VG, who was then sixteen years old, told police that when she was thirteen years old, Salinas began to sexually assault her (Pet-Ap. 102). VG told police that Salinas raped her repeatedly from the time she was thirteen until Salinas was arrested for strangling MS (Pet-Ap. 102). Based on these allegations, the State charged Salinas with the repeated sexual assault of a child, as well as second-degree sexual assault and second-degree sexual assault of a child under sixteen years of age (Pet-Ap. 118-20).

In August 2010, police reviewed telephone calls Salinas made from jail (Pet-Ap. 103, 125). Based on this review, the State alleged that Salinas attempted to call MS's phone number 524 times from the time he was taken into custody on October 26, 2009,[1] until he was sentenced in May 2010 (Pet-Ap. 125-26).[2] The State alleged that from April 11, 2010, through May 11, 2010, Salinas attempted to call MS 158 times, but only four of these calls were completed (Pet-Ap. 122). The State also alleged that during one of these calls, MS said to Salinas, "I didn't pay my daughter to write you or dictated the letter to her" and Salinas replied, "You were going to pay her last time so she could go to court and say you know what" (Pet-Ap. 122). In that same call, according to the State, Salinas told MS, "Look my darling, you are going to piss me off and I'm going to send someone there and you are not going to like it" (Pet-Ap. 123).

After police reviewed the phone calls, police met with MS and VG (Pet-Ap. 123-24). MS told police that Salinas had repeatedly requested that VG write him a letter and that when VG refused to do so, Salinas threatened to kill himself (Pet-Ap. 123). MS stated that VG then broke down and wrote Salinas a

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[1] The complaint mistakenly lists the date as October 2010 (Pet-Ap. 125).

[2] At trial in March 2012, the State said the relevant time period was October 26, 2009, through September 26, 2010 (134:186).

letter (Pet-Ap. 123). MS said that Salinas told her to offer VG anything in order to get VG to testify in court that Salinas had not hit her (Pet-Ap. 123). MS said that due to Salinas's pressure, she bought VG a phone card so that she would go to court (Pet-Ap. 123). MS told police that VG went to court to speak favorably of Salinas so that "it would not be worse for" MS (Pet-Ap. 123). MS told police that Salinas had pressured her to change her version of the events that occurred in October 2009 (Pet-Ap. 123). VG also told police that Salinas had pressured her to change her story and that she did not want to do so (Pet-Ap. 124). Salinas was then charged with two counts of misdemeanor victim intimidation (Pet-Ap. 121-26).

Over Salinas's objection, the court granted the State's motion to join the sexual assault charges with the victim intimidation charges (120; 121). Following a jury trial, Salinas was convicted on all counts (A-Ap. 129-131).[3]

Salinas appealed, arguing that the court erred in permitting the charges to be joined. The State disagreed, arguing that the charges were permissibly joined and that any error was harmless.

The court of appeals, in a *per curiam* decision, reversed the judgment of conviction, determining that the circuit court erred in permitting only one trial on the charges. *State v. Salinas*, No. 2013AP2686-CR, unpublished slip op. ¶¶21-27 (Wis. Ct. App. Apr. 21, 2015) (Pet-Ap. 109-11). The court of appeals concluded that the charges that Salinas had pressured VG and MS to change their story about his abuse was not similar or connected to his sexual abuse of VG. *Id.* The court further found that the joinder was not harmless because it allowed the

[3] The judgments of conviction are in Salinas's appendix filed in his court of appeals' brief.

State to present evidence of Salinas's threats against MS and their shared son in what was otherwise a "a classic 'he-said, she-said' case with no physical evidence or witnesses." *Id.* ¶¶34, 36 (Pet.-Ap. 115-16).

The State petitioned this Court for review and this Court accepted review on September 14, 2015.

SUMMARY OF ARGUMENT

The State's argument is straightforward. The joinder statute should be broadly construed to favor initial joinder. Here, the court of appeals concluded that Salinas's criminal behavior toward the victims was not evidence of a common plan so joinder was inappropriate under the statute. The court of appeals' decision reads the statute too narrowly.

Moreover, the court of appeals erred in deeming this child sexual assault case a "classic 'he-said, she-said" such that the evidence of Salinas's guilt was not overwhelming and the error in joinder was not harmless. And further, the court erred by failing to recognize that the evidence of Salinas's other bad acts in October 2009 would have been admissible as contextual evidence.

ARGUMENT

I. The court of appeals decision conflicts with the well-established rule that joinder of charges is to be liberally allowed.

A. Standard of review and relevant law.

"Whether charges are properly joined in a criminal complaint is a question of law." *State v. Hamm*, 146 Wis. 2d 130, 138, 430 N.W. 2d 584 (Ct. App. 1988) (citation omitted). An

appellate court reviews a question of law de novo. *See State v. Warbelton*, 2009 WI 6, ¶18, 315 Wis. 2d 253, 759 N.W. 2d 557.

Joinder of charges is addressed in Wis. Stat. § 971.12(1), in relevant part, as follows:

> Two or more crimes may be charged in the same complaint, information or indictment in a separate count for each crime if the crimes charged, whether felonies or misdemeanors, or both, are of the same or similar character or are based on the same act or transaction or on 2 or more acts or transactions connected together or constituting parts of a common scheme or plan.

"A broad interpretation of the joinder provision is consistent with purposes of joinder, namely trial convenience for the state and convenience and advantage to the defendant." *Francis v. State*, 86 Wis. 2d 554, 558, 273 N.W. 2d 310 (1979).

"To be of the 'same or similar character' under sec. 971.12(1), Stats., crimes must be the same type of offenses occurring over a relatively short period of time and the evidence as to each must overlap." *Hamm*, 146 Wis. 2d at 138 (citing *State v. Hoffman*, 106 Wis. 2d 185, 208, 316 N.W. 2d 143 (Ct. App. 1982)). "It is not sufficient that the offenses involve merely the same type of criminal charge." *Id.*

"In determining whether the offenses are based on acts or transactions connected together a significant consideration is whether joinder would serve the goals of trial economy and convenience." *Francis*, 86 Wis. 2d at 560.

> [T]he phrase 'connected together or constituting parts of a common scheme or plan' has been interpreted to mean *inter alia* that the crimes charged have a common factor or factors of substantial factual importance, *e.g.*, time, place or *modus operandi*, so that the evidence of each crime is relevant to establish a common scheme or plan that tends to establish the identity of the perpetrator.

Id.

"[J]oinder [of charges] will be allowed in the interest of the public in promoting efficient judicial administration and court fiscal responsibility in conducting a trial on multiple counts in the absence of a showing of substantial prejudice." *State v. Hall*, 103 Wis. 2d 125, 141, 307 N.W. 2d 289 (1981).

Improper joinder is subject to harmless error review. *State v. Leach*, 124 Wis. 2d 648, 671, 370 N.W. 2d 240 (1985); *State v. Davis*, 2006 WI App 23, ¶21, 289 Wis. 2d 398, 710 N.W. 2d 514.

B. The court of appeals ignored well-established law in concluding that the circuit court erred in permitting the joinder of charges.

Although the court of appeals acknowledged that the joinder statute is to be construed broadly, its application of the statute here was wrongly narrow. *Salinas*, slip op. ¶20 (Pet-Ap. 109). The court of appeals rejected the circuit court's approval of the State's joinder request, concluding that joinder was inappropriate under any of the three prongs set out in Wis. Stat. § 971.12(1). *Salinas*, slip op. ¶¶21-28 (Pet-Ap. 109-12). The court stated that the sexual assault charges and the intimidation "were not of the same or similar character because they were not the same type of offenses and there is little or no overlapping evidence." *Salinas*, slip op. ¶22 (Pet-Ap. 110). The court also said joinder was inappropriate because "[t]here was no connection between the jail phone calls and the sexual assault allegations." *Id.* ¶24 (Pet-Ap. 111). The court stated, "The coercive phone calls were related *only* to sentencing in the domestic abuse case." *Id.* (emphasis added) (Pet-Ap. 111). Finally, the court concluded that the charges were not part of a common plan because "Salinas was not charged with victim intimidation related to the sexual assault allegations, and V.G. did not allege Salinas had threatened to physically harm her." *Id.* ¶25 (Pet-Ap. 111). Although the court of appeals' decision

criticized the State's position in support of joinder as painting with too broad of a brush, *id.* (Pet-Ap. 112), the State submits that the court of appeals' rejection of the joinder here is a far too narrow reading of both the facts and the law at issue.

In the early morning hours of October 26, 2009, Salinas hit fifteen-year-old VG with an open hand and forced her to have sex with him (134:64, 84-86). After the assault, VG went to sleep and awoke to hear Salinas arguing with her mother, MS (134:87). MS was angry because Salinas confessed to her that he had hit VG (134:87-88, 136-37). VG then saw Salinas strangling MS so VG ran out of the house to call the police (134:88-89). Salinas was arrested and taken to jail (134:90). Just days after Salinas was sentenced for the physical abuse, VG revealed to her boyfriend, and ultimately to MS and then to police, that Salinas had been sexually assaulting her since she was thirteen years old (134:96-98). After VG revealed the sexual abuse, police discovered that while Salinas had been in jail for the physical abuse he had made numerous phone calls to MS in order to influence MS's and VG's statements at his sentencing for the physical abuse; this conduct led to the intimidation charges (134:91-93, 146-49). The sexual assault and intimidation charges were then joined (120; 121).

Here, the State contends that the joinder was permissible because the charges are connected by Salinas's common plan to abuse, manipulate, intimidate and harm MS and VG. Crimes are "connected together" for purposes of the joinder statute when they contain the same modus operandi, which tends to establish a common scheme or plan. *See Francis*, 86 Wis. 2d at 560-61. The court of appeals' statement that "[t]here was no connection between the jail phone calls and the sexual assault allegations" ignores reality. *Salinas*, slip op. ¶24 (Pet-Ap. 111). VG lived in a home in which she had been sexually assaulted for three years. While MS and the State were not aware of the sexual assaults when Salinas was calling home over 500 times,

Salinas and VG were well aware of what he had done to VG. Salinas's manipulation and threats over the phone mirror the threats that both MS and VG testified that he made to them at home. VG's allegations were that she lived under Salinas's control; she was subjected to his physical and sexual abuse. Just because Salinas made the jail phone calls in an attempt to get MS and VG to testify favorably before VG reported the sexual abuse does not completely divorce the intimidation from the sexual assaults. The court of appeals' decision nearly puts Salinas's actions in separate vacuums; reality is much more fluid. Salinas repeatedly abused VG, MS heard Salinas had hurt her daughter and became upset with him, Salinas then turned physical toward MS, VG then reported that abuse, Salinas next attempted to silence his victims, and VG then came forward to report all of the abuse.

The court of appeals' conclusion that all of these acts were not intertwined, and therefore not part of a common plan, in part because "the sexual assault allegations and charges did not arise until after the domestic abuse case sentencing hearing had concluded" misses the point. *Salinas*, slip op. ¶24 (Pet-Ap. 111). While the court of appeals correctly noted that the sexual abuse *charges* did not arise until after Salinas had been sentenced on the domestic abuse charges, the sexual assaults *occurred* well before the October 2009 batteries. This was an ongoing, fluid pattern of abuse perpetrated by Salinas against MS and VG. Moreover, *when* VG disclosed the sexual assaults, and *when* the State charged Salinas, is not relevant to whether the underlying crimes are part of Salinas's plan to mistreat and manipulate MS and VG.[4] These charges were joined because

[4] It is not unreasonable to infer that VG finally disclosed the sexual assault allegations after the sentencing hearing because Salinas was both in custody but due to return to their shared home shortly. After VG disclosed the abuse, the police discovered the intimidating phone calls (Pet-Ap.103).

they were all part of Salinas's common plan to harm MS and VG, as well as to exert his power and control over them.

It is worth repeating that the joinder statute is to be construed broadly in favor of joinder. *See State v. Locke*, 177 Wis. 2d 590, 596, 502 N.W.2d 891 (Ct. App. 1993). Given the liberal construction that this Court must apply, the circuit court properly permitted the joinder of the intimidation and sexual assault charges because the crimes are multiple acts connected together as part of Salinas's overarching, common plan to control, manipulate and abuse both MS and VG. The court of appeals' conclusion to the contrary misapplied joinder law. Here, the joinder statute was satisfied in favor of joinder. *See* Wis. Stat. § 971.12(1).

II. The court of appeals ignored the overwhelming evidence of Salinas's guilt in its conclusion that the State failed to show that any error in joinder was harmless.

A. Law related to determining the harmlessness of misjoinder.

"The potential problem as a result of a trial on joint charges is that a defendant may suffer prejudice since a jury may be incapable of separating the evidence relevant to each offense or because the jury may perceive a defendant accused of several crimes is predisposed to committing criminal acts." *Leach*, 124 Wis. 2d at 672. "As to the first concern, there is no prejudice from misjoinder when the several counts are logically, factually and legally distinct, so that the jury does not become confused about which evidence relates to which crime and considers each of the separately." *Id.* "As to the second concern, misjoinder may also be harmless when evidence of the defendant's guilt of each offense is overwhelming." *Id.* at 673.

B. The evidence of Salinas's guilt was overwhelming.

Because the charges – intimidation and sexual assault – were so obviously factually and legally distinct, there can be no question on whether the jury was confused as to the evidence. *See id.* at 672. The only question then, if this Court finds that the circuit court erred in allowing the joinder, is whether the evidence of Salinas's guilt was overwhelming. *See id*. at 673. In order to conclude that the joinder was not harmless, the court of appeals ignored the overwhelming evidence of Salinas's guilt, as well as the fact that the State would have been permitted to introduce evidence of the domestic abuse incident in order to tell a complete story of the events. *Salinas*, slip op. ¶35-37 (Pet-Ap. 115-17).

First, it does not appear that the court of appeals addressed the evidence of intimidation, which is probably because the evidence that Salinas intimidated both MS and VG is indisputably overwhelming. The jury heard that Salinas had called MS's phone number over 500 times while in jail from October 26, 2009, through September 26, 2010 (134:186). Natalia Sidon of the Green Bay Police Department testified that she translated some of these calls and that in one call Salinas said, "If I get out, you are going to be sorry, my darling" (134:189-92). VG and MS both testified to Salinas's manipulation (134:91-93, 149). VG and MS both spoke at the domestic abuse sentencing as a result of Salinas's manipulation (134:151-54, 188). Thus, any error in the joinder of the charges was certainly harmless as it pertained to the intimidation crimes.

Second, the joinder was also harmless as to the sexual assault charges. The court of appeals concluded that the error was not harmless because the child sexual assault allegations (1) were a "classic 'he-said, she-said'" situation; (2) involved no eyewitnesses or physical evidence; and (3) were not brought to

police attention until Salinas was about to be released from confinement. *Salinas*, slip op. ¶36 (Pet-Ap. 116-17). The court concluded that because of these reasons – and because VG could not recall "where in the house the sexual assault occurred" when she could remember other details – Salinas "had a viable fabrication argument." *Id.* (Pet-Ap. 116). This is an unfair recitation of the evidence and a mischaracterization of a child sexual assault case.

At trial, VG testified that the assaults started when she was thirteen years old (134:68-69). VG testified that she was wearing sweatpants the first time that Salinas raped her and purple pajama pants the last time he raped her (134:69, 87). She testified that he would usually not ejaculate inside her, but instead do so into a rag and then make her wash the rag (134:79-80). She testified that the assaults would happen when her mother was out of the house (134:79-80). She testified that they happened in different rooms in two different houses in which they lived (134:67-82). VG stated that the last time that Salinas assaulted her, before he was arrested for strangling her mother, he hit her first when she refused to have sex with him (134:83-90). VG testified that Salinas told her that if she told police about the assaults, the police would take both her and her brother away from MS (134:81).

MS testified that for the previous two years Salinas would not let her take VG with her to do errands out of the house (134:158). MS testified that when she did errands, she would leave VG behind with Salinas (134:158). MS testified that she worked away from home a lot and that Salinas took care of the children when she was working (134:132-33). MS testified that in the fall of 2009, Salinas forced her to take VG out of school in order to send her to Mexico, but that VG never went to Mexico (134:158-59). MS testified that Salinas admitted that he hit VG on October 26, 2009 (134:135-36).

VG's boyfriend testified that he was with VG on May 13, 2010, when she became "very grim and shy, a bit scared and shaky" (134:171, 173-75). Her boyfriend testified that he asked VG to tell him what was wrong, and VG eventually confessed that Salinas had been sexually assaulting her for years (134:175-76). VG's boyfriend testified that he convinced VG that she needed to tell her mother about the abuse (134:177-78) VG's boyfriend testified that he was with VG when she told her mother about the assaults and was with her when she went to the police (134:178).

Although Salinas testified that the sexual assaults did not occur (134:242-43), given the other evidence, it is unreasonable to suggest that the evidence of victim intimidation – including the physical abuse – affected the verdict on sexual assault. While there were no eyewitnesses to the assaults, or physical evidence, there is rarely this type of evidence in child sexual assault case; the lack of this evidence does not make the State's case weak. *Salinas* slip op. ¶36 (Pet-Ap. 116-17). In addition, the more reasonable inference from the timing of VG's disclosure is that she (a) finally felt safe enough to confess to someone that she had been abused because Salinas was confined and (b) learned that he would be released soon so that she knew she had to take steps to protect herself. And for the court of appeals to isolate one statement of VG's from cross-examination – that she could not remember in which room one of the assaults occurred – after she had given numerous details about houses, rooms and clothes that were involved in all of the sexual assaults, is an unfair characterization of the evidence.

Further, the court of appeals concluded that "[t]he evidence concerning the domestic abuse incident with M.S. was not relevant to the charges of sexually assaulting V.G.", but the State disagrees. *Salinas*, slip op. ¶34 (Pet-Ap. 115). This evidence is contextual other acts evidence. *See State v. Jensen*,

2011 WI App 3, ¶¶77-82, 331 Wis. 2d 440, 794 N.W.2d 482; *State v. Shillcutt*, 116 Wis. 2d 227, 341 N.W.2d 716 (Ct. App. 1983).

The State would have sought to admit the other acts events of October 26, 2009, to provide context for what turned out to be Salinas's last sexual assault of VG. It is within a trial court's discretion to admit evidence. *State v. Bauer*, 2000 WI App 206, ¶5, 238 Wis. 2d 687, 617 N.W.2d 902. To determine whether other acts evidence should be admitted, a court employs a three-step analysis. *State v. Sullivan*, 216 Wis. 2d 768, 783, 576 N.W.2d 30 (1998). A court asks (1) whether the evidence is offered for a permissible purpose under § 904.04(2) and (2) whether the evidence is relevant under § 904.01. *See id*. at 783-90. The party seeking to admit the other acts evidence has the burden to establish these first two prongs of the *Sullivan* test are met by a preponderance of the evidence. *See State v. Marinez*, 2011 WI 12, ¶19, 331 Wis. 2d 568, 797 N.W.2d 399. Once the first two prongs have been established, the burden shifts to the opposing party to establish that the probative value of the evidence is outweighed by prejudice or confusion. *See id.*

"[A]n accepted basis for the admissibility of evidence of other crimes arises when such evidence furnishes part of the context of the crime or is necessary for a full presentation of the case." *Shillcutt*, 116 Wis. 2d at 236 (internal quotations omitted). In order to understand the entire story of the sexual assaults of VG, the State needed to start with the events of October 2009. Under the State's theory of the case, Salinas had been sexually assaulting VG for years. The only reason Salinas stopped raping VG was because he was arrested for strangling MS. The argument that led to Salinas assaulting MS stemmed from MS learning that Salinas had hit VG. Thus, that day and its events are critical to the State's theory and VG's story; it is necessary to provide a "full presentation of the case." *See Jensen*, 331 Wis. 2d 440, ¶84. The State has therefore shown that the first prong of the other acts inquiry is satisfied.

The second prong of the other acts test acts whether the evidence sought to be introduced is relevant. *Sullivan*, 216 Wis. 2d at 783-90. Relevant evidence is evidence that has any tendency to make a fact that is consequential to the jury's verdict more or less probable. *See* Wis. Stat. § 904.01. Here, whether Salinas sexually assaulted VG was the issue. The evidence of the events of October 26, 2009, helped to explain the timeframe of events, VG's delayed reporting and why VG would have been more likely to disclose the assaults after that date. These explanations had the potential to directly affect facts the jury was asked to decide. Thus, the evidence satisfied the test for relevancy.

Because the State satisfied the first two prongs of the other acts test, the burden would then shift to Salinas to show that the value of the evidence – which the State submits is high in a child sexual assault case like this where it is necessary to paint the entire picture of events – is outweighed by undue prejudice to him. *See Marinez*, 331 Wis. 2d 568, ¶19. The question in assessing the third prong of *Sullivan* is whether the admission of the other acts evidence will improperly influence the verdict. *See State v. Johnson*, 184 Wis. 2d 324, 340, 516 N.W. 2d 463 (Ct. App. 1994). The concern is whether the jury would conclude that because the defendant committed previous crimes, he must have committed the one at issue. *See State v. Payano*, 2009 WI 86, ¶89, 320 Wis. 2d 348, 768 N.W. 2d 832. Here, there can be no such concern.

The evidence of the sexual assault crimes was so different from the crimes that led to the domestic abuse charges. It is far more than a stretch to suggest that because the jury heard that Salinas harmed and threatened MS and their shared son, that he necessarily sexually assaulted VG. If the crimes were similar, the concern of prejudice would be heightened. But here, they were so different, and the evidence of the sexual assaults so compelling with detailed testimony from the victim, that any

concern of prejudice was low. The court of appeals' conclusion that Salinas met his burden to show substantial and undue prejudice *outweighing* relevant and permissible evidence is in error.

Finally, if context evidence, like the kind the State would have sought to introduce here, is not considered other acts evidence and the other acts analysis is not applicable, this same evidence would nevertheless have been admissible as panorama evidence. *See Jensen*, 331 Wis. 2d 440, ¶85; *State v. Dukes*, 2007 WI App 175, ¶28, 303 Wis. 2d 208, 736 N.W. 2d 515 Panorama evidence, when it is not characterized as other acts evidence, is admissible if it is relevant and not unfairly prejudicial. *See Dukes*, 303 Wis. 2d 208, ¶¶28-31. For the same reasons the evidence was relevant and not unduly prejudicial under the other acts analysis, the evidence was relevant and not unduly prejudicial under this analysis. All of the evidence of the domestic assault was "inextricably intertwined" with the sexual assault; it was therefore admissible panorama evidence. *See Dukes*, 303 Wis. 2d 440, ¶85.

Thus, because the evidence of Salinas's guilt was overwhelming, and because the domestic abuse evidence would have been admissible as contextual other acts evidence, or panorama evidence, its inclusion at trial as part of the joined charges was harmless error.

CONCLUSION

For the foregoing reasons, the State respectfully requests this Court reverse the decision of the court of appeals.

Dated this 14th day of October, 2015.

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CERTIFICATION

I hereby certify that this brief conforms to the rules contained in Wis. Stat. § 809.19(8)(b) and (c) for a brief produced with a proportional serif font. The length of this brief is 4,820 words.

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Katherine D. Lloyd
Assistant Attorney General

CERTIFICATE OF COMPLIANCE WITH WIS. STAT. § (RULE) 809.19(12)

I hereby certify that I have submitted an electronic copy of this brief, excluding the appendix, if any, which complies with the requirements of Wis. Stat. § (Rule) 809.19(12). I further certify that this electronic brief is identical in content and format to the printed form of the brief filed as of this date.

A copy of this certificate has been served with the paper copies of this brief filed with the court and served on all opposing parties.

Dated this 14th day of October, 2015.

_____

Katherine D. Lloyd
Assistant Attorney General