NO. AP-75,634

IN THE COURT OF CRIMINAL APPEALS
OF TEXAS AT AUSTIN

ADRIAN ESTRADA,
Appellant,
VS.
THE STATE OF TEXAS,
Appellee.

Trial Court Cause No. 2006CR2079
Appeal from the 226th Judicial District
Bexar County, Texas

The Honorable SID HARLE, Judge, presiding

BRIEF FOR APPELLANT

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ORAL ARGUMENT
REQUESTED

INTRODUCTION

At the sentencing phase in this case, the State presented absolutely no evidence that Adrian Estrada would pose a threat of future danger. In fact, Mr. Estrada, 22, was known as peaceful and respectful, had no prior criminal record, and was a model inmate during a year-long pretrial incarceration. *See* Point 1. Instead, the prosecution persuaded the jury to find that Mr. Estrada would be a future danger by presenting false expert testimony on this crucial issue. In contradiction of clear Texas Department of Criminal Justice policy, the State's "expert" testified that Mr. Estrada would **not be subject to stringent conditions of custody** for the remainder of his life, if given a sentence of life imprisonment without parole. *See* Point 2. After hearing this false testimony, as well as the State's improper argument that Mr. Estrada posed a future danger because of violent conduct it believed he **would have committed had he not been apprehended and convicted,** *see* Points 1, 23, the jury found that Appellant would be a future danger and sentenced him to death.[1] Thus, the State obtained a death sentence by overreaching, a theme replayed throughout this prosecution.

The case began when Appellant's former girlfriend, pregnant, 17-year-old Stephanie Sanchez, was found dead in her San Antonio home on December 12, 2005. That same day, police detectives took Mr. Estrada to the police station, accused him vigorously of murder, and then continued custodial interrogation despite his repeated requests to cease the interrogation and go home, in violation

[1] The jury arrived at its death verdict only after sending one note asking what to do if it could not agree on the issue of future dangerousness and another asking if Mr. Estrada would ever be subject to less restrictive custody status. The trial court did not provide such clarification; the death sentence followed.

of *Miranda v. Arizona*, 384 U.S. 436 (1966). *See* Point 8.

At the guilt-innocence phase, the State repeatedly introduced irrelevant, yet highly prejudicial, evidence, including an emotion-packed 911 recording in which the victim's family members screamed uncontrollably. *See* Point 14. Equally improper and prejudicial were the State's opening argument and summation, which were replete with highly inflammatory arguments. *See* Points 17.

Adrian Estrada is the only person on death row who would not be there but for the killing of a woman pregnant with a non-viable fetus. His appeal is the first this Court will hear in which a defendant has been sentenced to death for this crime. And his appeal is among the first this Court will hear of a death sentence imposed since life without parole became the mandatory alternative sentence for a capital murder conviction. In the event that this Court does not grant relief on the numerous trial errors established herein, other constitutional violations require relief, including constitutional problems with the statutes under which he was convicted and sentenced to death. See Points 6, 33-39, 42-44, *infra*.

As demonstrated below, based on each of these and many other errors, this Court should reverse the trial court's judgment and order appropriate relief.

STATEMENT OF FACTS[2]

Statement Obtained by Police Ignoring Request to Cease Custodial Interrogation

On December 12, 2005, two San Antonio police officers and Detective

[2] The facts outlined below include the relevant background for many of Appellant's points of error. As necessary, additional facts are set forth in the pertinent points of error.

("Det.") Elizabeth Greiner came to Adrian Estrada's home. 18 RR 8-9, 21-22.[3] Mr. Estrada was then 22 years old.[4] His mother and older sisters were telling him to get an attorney, as was his pastor, who was then on the telephone. 18 RR 9. Det. Greiner told the family that "we wanted to speak with him," and "I just wanted to talk to him." 18 RR 21-22. Mr. Estrada was "offer[ed] a ride" to the police station, 18 RR 21-22, in an unmarked police vehicle, and driven there for an interrogation lasting "a little over five hours." 18 RR 12. On the way to the police station, Mr. Estrada spoke with his pastor on a police cell phone; the pastor again advised him to get a lawyer, but Det. Greiner ended the call by telling the pastor not to interfere. 18 RR 10-11; 29 RR State's Ex. 1 at 4.

The police "snuck" Mr. Estrada into the police station through "the back." App. 2 at 11 (10:04).[5] They placed him in "Room 4," a small interrogation room, where a camera (apparently hidden) was already recording. 29 RR State's Exhibit 2 (showing interrogation room, captioned "Room 4"). Although he had been told on the way to the police station that he would be "free to leave" and that the police

[3] References to the 18th volume of the Reporters Record are to the suppression hearing concerning this statement, as pertinent to Points 8-12, *infra*. The statement introduced at the guilt phase of the trial, State's Exhibit 2A, differed from the statement introduced at the hearing, State's Exhibit 2, only in that 2A was redacted to remove irrelevant and prejudicial references to the age of Mr. Estrada's then girlfriend, Stephanie Vargas, who was 16. The State did not follow through with its promise to redact all such references, creating reversible error. *See* Appellant's Point 16, *infra*; 18 RR 48-49; 20 RR 13-16.

[4] 29 RR State's Exhibit 1 at 1 (police report stating Mr. Estrada's date of birth as July 9, 1983).

[5] Citations to "App. 2" refer to Appellant's Appendix 2, filed under separate cover. The appendix is a professionally-prepared transcript of the police interrogation of Mr. Estrada. All time cites refer to the time on the internal clock in the State's DVDs showing the interrogation. *See* 29 RR State's Exhibits 2 & 2A. Although State's Exhibit 2A is a minimally redacted version of State's Exhibit 2, the internal clock reads exactly the same in both DVDs. Therefore, with the exception of redactions, *see* Point 16, *infra*, an event cited at, for example, 10:04 may be found on either DVD at that time. The internal clock was an hour and fifteen minutes fast. 18 RR 20; SCR1 3. The interrogation commenced on the evening of Dec. 12, 2005. *Id.* All times noted from 9-12 are pm that day; times from 12 to 3 are am on Dec. 13, 2005.

would take him home if he wished, 18 RR 11-12, Mr. Estrada was not told he was free to move around the police station. Instead, officers brought him beverages, App. 2 at 2, and escorted him to the bathroom. App. 2 at 268-69 (1:45-1:51).[6]

Det. Greiner began the interrogation. App. 2 at 2 (9:58). Mr. Estrada stated he been romantically involved with Ms. Sanchez, a member of the youth group he led as a youth minister. App. 2 at 33-34. Their relationship had problems, *Id.* at 60, and Mr. Estrada eventually started seeing a different member of the group, Stephanie Vargas. App. 2 at 145-46 (11:37). He later learned that Ms. Sanchez was pregnant and he likely the father. App. 2 at 93-94. He did not, initially, make any statements confessing to harming her. *Id.* at 156-57 (11:44:54).

Det. Curtis Walker eventually entered. App. 2 at 178 (12:36). Sitting between Mr. Estrada (seated in a corner) and the door, Det. Walker gestured with his fingers and hands, smacked them on the table for emphasis, and raised his voice frequently as he launched a series of allegations. State's Exhibit 2 at 12:57:17-1:04:27. He told Mr. Estrada that he had no doubt that Mr. Estrada committed homicide, that eyewitnesses identified him and his car, that he was the investigation's prime suspect and "central figure," that the police possessed enough evidence to charge him already and would do so in a probable cause statement, that he was a "cold blooded killer," and that he would be going to prison for a long time, where he would have a "boyfriend." App. 2 at 199-214

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6 Det. Greiner stated, "[You] need to go to the bathroom, I'll make sure no one's there, and I'll get one of the guys to walk you down the hall." App. 2 at 268-69. An unidentified male police officer entered the room a few moments later to escort Mr. Estrada to the bathroom. *Id.*

(12:53:50-1:04). Det. Elizabeth Greiner previously had advised Mr. Estrada that he was not under arrest, that he could leave at any time, and that he would be provided a ride home. 18 RR 11-12.

Once Det. Walker began to pressure him, Mr. Estrada said, ". . . I'm ready to leave," and, I'm gonna leave right now." App. 2 at 214-15 (1:03-1:04). Det. Walker responded by asking, "Do you want to talk to Det. Greiner before you leave or something?" *Id.* Mr. Estrada responded, "No." *Id.* He then requested a ride home, as he had been promised. *Id.* Det. Greiner returned to the room because she became aware Mr. Estrada was attempting to end the interrogation. 18 RR 23-24. Det. Walker explicitly told Det. Greiner, "Yeah, he's wanting to go home." App. 2 at 215 (1:04). Det. Greiner responded, "Oh okay. I was coming in to tell him what [Ms. Vargas] had to tell me." App. 2 at 215 (1:05). Mr. Estrada repeated his request to "go home." App. 2 at 216 (1:05). In response Det. Greiner asked, "You don't want to hear what she has to say?" App. 2 at 216-17 (1:05) 18 RR 16-17, 38-38. Mr. Estrada finally relented and the interrogation continued. *Id.*

Appellant then stated he went to Ms. Sanchez's house because he wanted to talk with her, and they had talked at her kitchen table. App. 2 at 230 (1:19). He told her that he was "tired of everything" and did not love her. App. 2 at 231 (1:20). She did not want to accept this, and "started getting out of control." App. 2 at 232 (1:20). He tried to leave; she tried to block him, slapping him in the face. App. 2 at 232-33, 239 (1:26). Distraught over their breakup and not wanting him to leave, she tried to stab him with a large knife from her kitchen. App. 2 at 226

(1:16), 239-43. Appellant said he then choked her as she continued to scream and curse and say she wanted to kill him; she dropped the knife, and he stabbed her repeatedly with it. App. 2 at 244-47 (1:31).[7] He stated, "I couldn't take it anymore, she wanted me … she was going to keep ruining my life." App. 2 at 226 (1:16). Crying, Mr. Estrada said, "I didn't go over there intending to do that." App. 2 at 229 (1:18).[8] He stated nothing about the fetus, and no desire to harm it.

During the interrogation, Mr. Estrada cried,[9] said he regretted his acts which were not "justifiable,"[10] and cooperated with the police.[11]

Having obtained this inculpatory statement and abundant other evidence, the police said they would take Mr. Estrada home, 20 RR 21, after going to his sister's home to collect the shirt he had been wearing. App. 2 at 273 (1:57), 275, 294-95 (2:43); 18 RR 31-32. Telegraphing their belief that Mr. Estrada was cooperative and not dangerous, the police said they would take him wherever he wanted, App. 2 at 287-88 (2:08), and finally drove him home. 18 RR 32. The police were not worried: they retired to a diner to await a warrant. 20 RR 21.

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[7] Medical evidence established repeated stabbing of Ms. Sanchez's neck and back. 20 RR 91-92.

[8] Mr. Estrada stated that he used the knife with which Ms. Sanchez tried to cut him, which came from her kitchen where she was cooking. State's Exhibit 2 at 239-40. He said he discarded the knife on the street. State's Exhibit 2 at 247-48. The crime scene detective said that knives were missing from the kitchen's knife set. 19 RR 127-28. There is no evidence that Mr. Estrada came armed to Ms. Sanchez's home.

[9] *See* 29 RR State's Exhibit 2A at 1:10:47-1:20; 1:26:14-1:26:44; 1:33:32-1:34:10; 2:10-2:45 (all showing crying); App. 2 at 223, 224, 225, 290, 294-295 (all noting crying).

[10] *See* App. 2 at 223 (responding to Det. Greiner's suggestion that he acted in self defense, Mr. Estrada said it was not "justifiable"); 261 (it was a "mistake I made that I regret so bad . . .").

[11] Soon after Det. Mussey tried to contact Mr. Estrada, hours after the homicide, Mr. Estrada returned his call. 19 RR 201-202. During the interrogation, the police repeatedly praised Mr. Estrada for being forthcoming and cooperative. *See* App. 2 at 275-76 ("You're cooperating, you've told me where everything is, you know . . . ."); 276 ("And you wanted to keep talking and you've cooperated . . ."); 282 ("Well, it – you've been cooperative. We're more than willing to cooperate with you, okay."). *See also generally* State's Exhibits 2, 2A, 4.

The State introduced Mr. Estrada's confession into evidence. 19 RR 225.

Other Guilt-Phase Evidence

Over defense objection, the prosecution commenced its case by introducing into evidence a nearly seven-minute audiotape of the 911 call Ms. Sanchez's family members made upon discovering her body. 18 RR 44-46;19 RR 22; 30 RR State's Exhibit 5 (CD recording of 911 call). On this recording, family members scream and cry uncontrollably and unintelligibly, scream that the father of the victim is "going crazy," and appeal to fellow family members to administer first aid.[12] At trial, one of the family members testified to essentially these same facts, including the administration of CPR and attempts to give her aid. 19 RR 63-72.

Neighbor Rosizela Figueroa testified that she saw a green Camaro in the Sanchez driveway on the December 2005 day of a 17-year old neighbor's death. 19 RR 29, 34-35. She identified a photograph of a black car belonging to Adrian Estrada as the car she saw that day. 19 RR 29-30, 34-35. Neighbor Blanca Valenzuela testified that she saw a black Trans Am backed into the driveway of the deceased young woman that day. 19 RR 40-43. She identified Adrian Estrada as the driver, and said that she had seen him about 15 times with her, often on Tuesday nights when bible study was held at her home. 19 RR 40-43. He was with a girl who sat in the passenger side of the car, who had long hair. 19 RR 47. She said she saw Appellant walk out of the house that afternoon. 19 RR 48, 50.

[12] Although the State responded to defense objections to this evidence by insisting it needed to introduce the 911 call for the fact that blood flowed from the victim's mouth, purportedly pertinent to later medical testimony, 18 RR 46-47, Jonathan Vargas, the State's own witness, testified to precisely this fact at trial. 19 RR 72. *See* Point 14, *infra*.

On December 12, 2005, emergency medical services personnel responded to the home of Stephanie Sanchez. 19 RR 78-79. Medical evidence established that she had been stabbed repeatedly in the neck and back. 20 RR 91-92.

The State introduced evidence of Mr. Estrada's cell phone records, showing he was in the general vicinity of Ms. Sanchez's home that day, 20 RR 46-48, 63-65; 30 RR State's Exhibits 56, 60, 61, a video recording of Mr. Estrada purchasing a shirt at Walmart that day, 20 RR 52-53; 30 RR State's Exhibit 57, and police testimony stating that officers could not find the shoes and knife Mr. Estrada said he had discarded from his car on a city street many hours earlier. 20 RR 20-21.

Ms. Sanchez's physician testified that Ms. Sanchez had previously had an abortion in 2004 and a miscarriage in July of 2005. 21 RR 8-9; 29 RR State's Exhibits 41, 43. Her third pregnancy appeared to be developing normally, 21 RR 15-16, and the non-viable fetus was approximately 13 weeks old on December 12, 2005. 21 RR 17-19. DNA evidence established that it was 92,000 times more likely that Mr. Estrada was the father than a person selected at random. 21 RR 91.

Ms. Sanchez's mother, Mary Vargas, approved of the relationship between her daughter and Mr. Estrada. 19 RR 160-61. She said Mr. Estrada "was never violent" and "never . . . disrespectful." 19 RR 196. She knew about the abortion, and that Appellant had driven her daughter to have the procedure. 19 RR 163. When Ms. Sanchez became pregnant again and miscarried, Mr. Estrada met the Sanchez family at the hospital. 19 RR 172. Ms. Vargas believed that they broke up after the miscarriage, but were still talking. 19 RR 174. The two spent a day

together, and Ms. Sanchez became pregnant again some weeks later. 19 RR 176-77. Ms. Vargas also testified to conversations between her family and the church pastors; initially, they told the church Appellant impregnated their daughter; then they said he had not, allegedly at Appellant's request. 19 RR 179-80.

Ms. Vargas also testified to "victim-impact" evidence, including Ms. Sanchez's aspirations to work as a missionary after graduation. 19 RR 154-59.

Appellant moved for a directed verdict on the charge of murder of the fetus because the State presented no evidence that he knowingly or intentionally caused the death of the fetus, rather than recklessly or negligently. 21 RR 102-03. The State responded by relying solely on a theory of "transferred intent," *i.e.*, his intent to kill Ms. Sanchez sufficed for both counts of murder. 21 RR 103. Although the court would later deny the State's request for a transferred intent instruction, 21 RR 136-40, it overruled the defense motion for a directed verdict. 21 RR 104.

State's Guilt-Innocence Summation: During its summation, the State speculated that the killing was spurred by a disagreement over whether Ms. Sanchez would get an abortion, 22 RR 52-53; argued that Appellant "knowingly killed the baby" because "he already got rid of one baby" when he "took her down there for the abortion," 22 RR 52; speculated that the stab wounds in the neck were "for mom," and the second set were for "baby," 22 RR 55-56; asserted that the victim's home was "filled with the dreams and hopes of a 17-year-old mother to be," 22 RR 22; argued that Mr. Estrada had failed to state that he did not intend to kill the fetus. 22 RR 16-17. It concluded by contending the jury would commit

a crime by not returning a verdict of capital murder. 22 RR 56.

The jury convicted Mr. Estrada of capital murder. 22 RR 59.

Sentencing Phase

Attempting to prove future dangerousness, the State relied solely on the capital conviction and on Appellant's sexual misconduct, while a youth minister, with two young women from the El Sendero Church. Analisa Reyes testified that Appellant subjected her to unwanted sexual touching and fondling during separate incidents in November of 2004 and April of 2005, but not intercourse. 23 RR 13-23. He was 21 and she 15. 23 RR 13; 29 RR State's Exhibit 1 at 1.

Stephanie Vargas testified she had had a consensual sexual relationship with Appellant. 23 RR 60-62. She said she was in love with him at the time. *Id*. They started dating in the summer of 2005; he was 22, she 16. 23 RR 34, 36.

Peaceful, Respectful, and Non-Violent: Corrections officers testified that Mr. Estrada's disciplinary history during his year of pretrial incarceration was exemplary. 23 RR 123. He was "very polite[,] . . . good-natured," got along well with others and didn't "strong arm" anyone. *Id.* 127.

Mr. Estrada had previously been employed at the San Antonio College Library. 23 RR 132. His supervisor, Linda Casas, a librarian for 28 years, described his work as follows, "It was great. I mean he earned the respect from the other – his other coworkers," who unlike Mr. Estrada, "were "all [college] students, and they all worked great together." *Id.* 133. Ms. Casas explained, "I would leave them alone for three to four hours knowing that the job was being

done." *Id.* Part of his job involved helping students who approached the library counter with the computers and databases. 23 RR 136. Ms. Casas never saw Mr. Estrada be violent or disrespectful to anyone, or be quick to anger. *Id.* at 134.

Weir Labatt is a former city councilman who employed Adrian's mother as a housekeeper for 26 years. 23 RR 137. He knew Adrian since his birth. *Id.* at 138. He explained that Adrian was raised by his mother, and had no father. *Id.* As a child, Adrian used to come to the Labatt home with his mother. *Id.* When Adrian's mother became a citizen two years before trial, Mr. Labatt was there and he saw Adrian proudly supporting his mother. 23 RR 139. Mr. Labatt related that Adrian had participated in football, track, and ROTC. *Id.* Mr. Labatt's wife gave Adrian a guitar, and he became a very good player. 23 RR 140. Adrian had recently helped the Labatt family clear cedar at their home and telephoned when Mr. Labatt's mother-in-law passed away. *Id.* Mr. Labatt knew that Adrian dreamed of becoming a firefighter, but a prosecution objection to this evidence was sustained. *Id.* Adrian was "never violent or disrespectful." 23 RR 141. Mr. Labatt was aware that Adrian had no prior criminal record. *Id.* He observed that Adrian "was a very nice, attractive, clean cut, well-behaved young man." *Id.*

The defense also presented the testimony of expert Larry Fitzgerald, a former spokesman for Texas Department of Criminal Justice (TDCJ), who explained the security employed in the incarceration of inmates sentenced to life imprisonment without parole. 23 RR 149-53. Mr. Fitzgerald explained that the best possible classification for an inmate sentenced to life imprisonment without

parole is "G3," which imposes restrictive limits on the inmate's prison jobs, where he can be housed, and the movement permitted. *Id.* at 149-51. This classification prohibits inmates from ever having a job outside the perimeter walls of the prison and from leaving the prison without armed escort. 23 RR 150. An inmate sentenced to life imprisonment without parole would **never** be eligible for a less restrictive status than G3. *Id.* at 149-50, 174-75.

Peace Officer A.P. Merillat, who investigated crimes within TDCJ for the Special Prosecution Unit, testified in rebuttal. 23 RR 176. His testimony contradicted Mr. Fitzgerald's. Officer Merillat stated that if an inmate has "an aggravated sentence, which capital life is an aggravated sentence, **you have to remain in the G-3 position for 10 years before you can be considered for promotion from that level.**" 23 RR 181 (emphasis added).

This "expert" rebuttal testimony was demonstrably false. TDCJ had, in fact, already adopted and promulgated classification procedures for life-without-parole sentences,[13] procedures which clearly and unequivocally stated that "offenders convicted of Capital Murder and sentenced to 'life without parole' will not be classified to a custody less restrictive than G3 throughout their incarceration." *Unit Classification Procedure* 2.0, Texas Department of Criminal Justice at 2 (Appellant's Appendix 1 (filed under separate cover) at 3).[14] The

[13] The law went into effect on September 1, 2005. *See* TEXAS PENAL CODE ANN. § 12.31.

[14] *See also Fewer restrictions not an option: Life without parole offenders face a lifetime of tight supervision Criminal Justice* CONNECTIONS, January/February 2006 Issue (available at http://www.tdcj.state.tx.us/mediasvc/connections/JanFeb2006/agency2_v13no3.html) (last checked October 29, 2008) (reporting in January of 2006 that inmates "sentenced to life without parole are not

State did not stop Mr. Merillat's materially false and highly misleading testimony. Signaling the importance of this issue, the jury later submitted a jury note questioning which "expert" testimony was correct on this question. 2 CR 546-47.

State's Sentencing Phase Summation: Future Danger?

In its penalty-phase summation, the State argued future dangerousness. 24 RR 10-13. Its argument, however, was hypothetical and speculative – Mr. Estrada would have harmed Stephanie Vargas **if** he had not been arrested in this case **and if** the two had eventually broken up. 24 RR 12-13. *See also* 24 RR 9 (arguing that Appellant poses the "type of danger . . . that parents can't protect their children from," even though incarcerated capital murders have no access to children).

Jury Note Evincing Serious Questions About Future Dangerousness

The jury charge required a decision on, *inter alia*, special issue 1 – whether "there is a probability that the defendant, Adrian Estrada, would commit criminal acts of violence that would constitute a continuing threat to society." 2 CR 548-53. Attempting to answer this issue, the jury sent two notes to the court. In the first, the jury asked "what happens if we can't come to a decision on issue 1?" 2 CR 544-45. In the second, it asked, "Based on the testimony of Fitzgerald and Merilatt, is there a possibility that the defendant would be eligible for a less restrictive status after 10 years (or some other period of time)?" 2 CR 546-47 (parenthetical in original). Although TDCJ had already promulgated a policy

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eligible for a less restrictive custody than General Population Level 3 (G3) . . . and that "'G3 is the highest custody level an offender can receive'") (quoting Classifications and Records Operations Manager Becky Price)). Appellant explains why judicial notice of the TDCJ policy is appropriate in note 39, *infra*.

specifically answering this question in the negative, *see* note 14, *supra*, the prosecutor did not apprise the jury of this fact which it needed to do its job. Instead, it allowed the court to answer, "You have the law and the evidence." 24 RR 42; 2 CR 540-41. Approximately four hours later, the jury returned a death verdict, finding that Mr. Estrada posed a threat of future danger. 24 RR 42-43.

POINTS OF ERROR:

ADRIAN ESTRADA POSES NO THREAT OF FUTURE DANGER

1. Remorseful, Peaceful, Non-violent, And A Model Prisoner Subject to Lifetime Incarceration if Not Executed, Adrian Estrada Poses Absolutely No Threat of Future Danger and the State's Showing of Future Dangerousness Was Legally Insufficient.

Corrections officers who guarded Adrian Estrada during his year-plus pretrial incarceration testified that he was peaceful and law-abiding. Character witnesses who knew him for years testified that he was peaceful, respectful, helpful, and caring. Police officers, who could have arrested him after his statement, instead, praised him for his cooperation and released him into the community. Mr. Estrada cried profusely during his video-taped interrogation, and cooperated. The State provided no expert testimony stating he would pose a future danger, nor any character evidence against him. If his conviction is affirmed, Mr. Estrada will never walk the streets again and will die in prison either from old age or by execution. In these circumstances, he poses no threat of future violence to anyone. The state's proof of future dangerousness was legally insufficient.[15]

[15] *See* U.S. Const. amend. XIV; *Jackson v. Virginia*, 443 U.S. 307, 323 (1979).