



**In the  
Court of Appeals  
Second Appellate District of Texas  
at Fort Worth**

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No. 02-23-00010-CR

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JACOB TURNER, Appellant

v.

THE STATE OF TEXAS

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On Appeal from Criminal District Court No. 1  
Tarrant County, Texas  
Trial Court No. 1684372D

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Before Kerr, Birdwell, and Walker, JJ.  
Memorandum Opinion by Justice Walker

## MEMORANDUM OPINION

A jury convicted Appellant Jacob Turner of continuous violence against the family, and the trial court sentenced him to five years' incarceration in the Institutional Division of the Texas Department of Criminal Justice. Turner now appeals, arguing in two points that the trial court abused its discretion by finding Kathryn Jacob qualified to testify as an expert witness and by finding her testimony relevant. Based on this court's binding precedent controlling the issues Turner raises, we will affirm the judgment of the trial court.

### I. INTRODUCTION

The State charged Turner with continuous violence against the family. *See* Tex. Penal Code Ann. § 25.11(a). Specifically, the State alleged in the indictment that on two occasions, Turner intentionally or knowingly caused bodily injury to his wife “by striking her with [his] hand or by kicking her.” The jury found Turner guilty of the offense as charged in the indictment, and Turner does not challenge the sufficiency of the evidence supporting his conviction. Rather, he contends that he “was harmed by the introduction of the testimony of the insufficiently qualified witness.” We will incorporate the necessary facts of the case into our analysis of Turner's points.

### II. EXPERT TESTIMONY

We review the trial court's determination as to the admissibility of expert testimony for an abuse of discretion. *Rhomer v. State*, 569 S.W.3d 664, 669 (Tex. Crim. App. 2019). Under the abuse-of-discretion standard of review, we will uphold the

trial court's decision as long as it was within the "zone of reasonable disagreement." *Beham v. State*, 559 S.W.3d 474, 478 (Tex. Crim. App. 2018).

### **A. ADMISSIBILITY OF EXPERT TESTIMONY**

Rule of Evidence 702 governs the admissibility of expert testimony. Tex. R. Evid. 702. That rule allows a witness who is "qualified as an expert by knowledge, skill, experience, training or education" to "testify in the form of an opinion or otherwise if [her] scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue." *Id.* Under Rule 702, three conditions must be met before expert testimony is admissible: (1) the expert must be qualified; (2) the evidence must be reliable; and (3) the evidence must be relevant. *Rhomer*, 569 S.W.3d at 669. Here, Turner has not challenged the reliability of Jacob's testimony,<sup>1</sup> but he does challenge its relevance and Jacob's qualifications.

#### **1. Relevance**

Evidence is relevant if: (a) it has any tendency to make a fact more or less probable than it would be without the evidence; and (b) the fact is of consequence in

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<sup>1</sup>In the argument on his first point, Turner makes the conclusory statement, "Under Rule 702, the State[,] as the proponent of the expert testimony, failed to show by clear and convincing proof that the proffered evidence is reliable and helpful to the jury in deciding the ultimate issue." Without more, we do not consider the reliability of Jacob's expert testimony to be an issue "raised" in this appeal. *See* Tex. R. App. 38.1(i), 47.1. If Turner intended to raise the issue of Jacob's reliability, then he has forfeited it due to inadequate briefing. *See Lucio v. State*, 351 S.W.3d 878, 896 (Tex. Crim. App. 2011).

determining the action. Tex. R. Evid. 401. To be relevant, an expert's testimony must assist the trier of fact and be sufficiently tied to the case's facts. *Tillman v. State*, 354 S.W.3d 425, 438 (Tex. Crim. App. 2011). Even when the general subject matter is within the average juror's comprehension, a trial court need not exclude expert testimony so long as the witness has some specialized knowledge on the topic that will "assist" the jury. *Id.* at 441 (quoting *Coble v. State*, 330 S.W.3d 253, 288 (Tex. Crim. App. 2010)). In other words, the question under Rule 702 is not whether the jurors know something about the subject but whether the expert can expand their understanding in a relevant way. *Id.* Rule 702 only requires that expert testimony meet the simple requirement of being "helpful" to the jury on an issue in dispute, by either validating or calling into question the jurors' own inclinations, including prompting the jurors to reconsider their preconceived notions. *Jordan v. State*, 928 S.W.3d 550, 556 (Tex. Crim. App. 1996).

## **2. Qualification**

Qualification is evaluated by a review of the expert's training and experience. *Rhomer*, 569 S.W.3d at 672 n.1. The specialized knowledge that qualifies a witness to offer an expert opinion may be derived from specialized education, practical experience, a study of technical works, or a combination of these things. *Id.* at 669. The expert's background must be tailored to the specific area of expertise in which she desires to testify, and the proponent of the expert's testimony has the burden to show that the witness is qualified on the matter in question. *Id.* If a witness has a

sufficient background in a particular field, then the trial court must determine whether that background goes to the very matter on which the witness is to give an opinion. *Id.*

An expert does not need to use scientific methods to be qualified, and there is no requirement that the expert's specialized knowledge, training, or experience be based on scientific principles. *Id.* at 670. "That is, with regard to qualifications, there is no litmus test, no particular license or degree that an expert must possess to qualify." *Kingsbury v. State*, 625 S.W.3d 686, 691 (Tex. App.—Fort Worth 2021, no pet.).

## **B. TRIAL**

### **1. Tina's<sup>2</sup> Testimony**

At Turner's trial, his wife testified about the history of their relationship. She testified that they had met in Lubbock when they were working together, "were friends for quite a few months," had begun dating in 2015, and had had a son together and then gotten married in 2017.

The couple moved around a lot during their relationship. Early on in their relationship, Tina followed Turner to Florida, where his ailing mother lived. In addition to working at Jersey Mike's, Tina took care of Turner's mother. She coped with the stress of the situation by drinking and abusing drugs, including marijuana,

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<sup>2</sup>We use a pseudonym to protect the complainant's privacy.

oxycodone, and other opioids. She testified that she had seen Turner using marijuana and taking oxycodone but that she had “also seen him pursuing methamphetamines and like cocaine.” She said that he was different when he was taking the drugs, “especially the oxycodone. He would . . . take so much he . . . would just pass out, and it was like impossible to wake him up. And that’s when it would get really frustrating, like trying to help take care of his mom.” Whenever she had arguments with Turner about work, help with his mother, or trying to wake him up, he would curse at her and tell her to leave him alone. Some days were worse than others. He called her a “stupid bitch” and “lazy.”

She testified that she “backed off” the alcohol and drugs when she got pregnant and that they “had that nice little burst for a little while of being happy with a new baby,” but the arguments did not stop entirely. Tina testified that, for a lot of their relationship, she “always had a steady job,” whereas Turner’s employment and income were more sporadic and unreliable. She also testified that he would keep her credit card and did not even give her an allowance. As she put it, she would have to come up with “a legitimate reason” to spend money, but he got to spend money however he wanted. He would berate her if she ever wanted to go out and do anything; “it was like [she] wasn’t allowed to go alone, but he didn’t want to go,” effectively preventing her from going anywhere. He did not like being around her family very much and had “actually kind of caused big problems” between Tina and her father a couple of times.

The couple moved back to Texas in September 2018. Tina also testified that they had “gone through quite a few vehicles” in their relationship, and she “was never really allowed to drive any of them.” Turner would hide the keys from her. He intentionally bought a stick shift, knowing that she did not know how to drive it. She perceived that he had done that so that he would not have to hide the keys from her anymore. She “begged him for quite a long time, ever since he bought the car,” to teach her how to drive it. She testified that he had shown her how to drive the stick shift “once in a parking lot for like ten minutes.” She said that she had wanted to practice with him so that she would not “mess anything up,” but he kept refusing to practice with her. Finally, one night, while Turner was asleep, Tina tried to drive the stick shift and “broke” it.

In May 2021, Turner and Tina were living in Fort Worth. On May 7th, they got into an argument over money and their car. Tina testified that, as Turner got “angrier about things, . . . he kept walking by and . . . kind of jabbing at [her] randomly.” He jabbed her so hard in her left side that he broke one of her ribs. He also kicked her legs “a lot” and hard enough to leave bruises.<sup>3</sup> She still went to work

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<sup>3</sup>Tina testified that this was not the first time that Turner was physical with her. She believed that the first time he had ever hit her was in 2020. She testified that they had been arguing in the living room, she had tried to walk away from him, and he had followed her into the bedroom and “all of a sudden just[ hit her] in the nose.” She recalled another occurrence, “like a month or so later,” in which they had been arguing and she had again tried to “leave the situation” by going into the bedroom. She testified that he came up behind her and pushed her “real[ly] hard,” causing her to

that night and finally ended up calling her sister and asking her sister if she could come and pick her up. Tina testified that she had never called her sister to come and get her in that way before because she “didn’t want to make [her] family’s opinion of [Turner] worse.”

Her sister came over and picked Tina up. Tina then went with her sister to spend the night at her sister’s house. Tina tried to take her son with her, but as they were trying to get outside and into the car, Turner came up to his sister-in-law “and asked to just please hold [his son] for a second and just to give him a hug.” She relented, but when she leaned the child over to let Turner give him a hug, Turner grabbed him and went back inside. Tina pleaded with Turner to let her take him with her, but she eventually left without him.<sup>4</sup>

Tina had to go to work again on May 8th. She went back to the house to get her “stuff together” and to check on her son. Turner was there, and they argued some more. Tina had no money because she had given Turner all the money she had made working the night before. He refused to give her any of the money back, and she went to work without eating. When Tina later came home from work, Turner demanded the money she had earned that day. Tina tried to refuse, but when Turner hit her head on the corner of “this little bookcase thing,” and she “had like a big golf-ball sized welt for the next couple of days.”

<sup>4</sup>Tina explained that she did not really believe that Turner would physically harm their son and that her sister had to go to a memorial service the next morning, “so I just had to just go at that point.”



started walking by and poking, striking, and kicking her again, she relented. Again, Tina went to the bathroom to give Turner a chance to calm down. When she emerged, she told Turner that if he hit or kicked her one more time, then she would have to call the police. Turner jumped up quickly and punched Tina “real[ly] hard right in the nose.” Tina retreated back into the bathroom, locked the door, and called both 911 and her sister.

Tina told the 911 dispatcher that Turner was “abusing” her, he was “not in the right state of mind,” that she did not want to press charges, and that she wanted Turner to go to the hospital for mental treatment. She called him an “amazing” person and said that she loved him “more than air.” Tina also explained that Turner had hit her and that she had defended herself and may have left a mark on Turner’s right cheek. A recording of Tina’s 911 call was admitted into evidence and played for the jury without objection. She explained that she had changed her mind about pressing charges against Turner and why she had been afraid to call the police sooner:

Q. You said that you didn’t want to prosecute then.

Has that changed?

A. Yes.

Q. Why has that changed?

A. Hindsight, for one. You know, I -- I was scared of kind of what the repercussions would be at the time, and so I was just like -- I was already just really scared to call the police in the first place, but felt like what I needed to do at this point.

Q. Why were you afraid to call the police?

A. What if he's just going to go for one night, and then the next couple of days, like what is that going to look like?

Q. Are you afraid he might retaliate?

A. Yes.

Q. Is that one of the reasons you never really called the police?

A. Yeah.

Photographs that showed bruising on Tina's face, arm, and legs were also admitted into evidence and presented to the jury without objection. She testified that she remembered "putting [her] hands up a couple of times when he was coming by and like poking at [her] and stuff like that," but she did not recall "striking him at any point." She maintained that she never intended to hit Turner. She also testified that she felt that he used their son to control her:

I mean, he belittles my parenting a lot of the time. And I think he is just trying to make any attempt to just make me feel small and crappy. And I've gotten a lot stronger in the last like year and a half and been realizing more that like that's not who I am. I don't have to believe the things that he says. And so I've become a lot -- I've been getting better about not even bothering responding to a lot of things. And that -- I think that's the one area that he feels like really still gets under my skin and does upset me.

She admitted that she had used marijuana and consumed alcohol on both May 7th and 8th, including drinking "two shots of Tequila" before coming home from work on the 8th. On cross-examination, Tina testified that Turner and she are

in the middle of a contested divorce and that the main issue in the divorce is custody of their son.

Tina agreed with Turner that, back on the night of May 8, 2021, she had been adamant with the police that she did not want to prosecute and that she felt Turner was an “outstanding” father. Tina explained that she wanted him prosecuted by the time of trial after “being away from him for a year and a half, . . . standing more on [her] own two feet[,] being more confident, and understanding [in] hindsight[] that [she] was trying to rationalize a lot of things at the time” that she was no longer trying to rationalize to herself.

## **2. Kathryn Jacob’s Testimony**

The State interrupted Turner’s cross-examination of his wife to take up “a scheduling matter” with the trial court. Because she was not going to be available the following day, the trial court allowed the State to call Jacob “out of order.” Jacob testified that she was the president and CEO of SafeHaven of Tarrant County, which she described as the county’s only state-designated family violence center. She also testified that she had a bachelor’s degree and a master’s degree in social work and was working on a doctoral degree in social welfare.

When the State started to ask Jacob about the term “cycle of violence,” Turner asked to take Jacob on voir dire, which the trial court allowed. On voir dire, Jacob testified that she did not know the Turners personally and that she was not testifying about anything that actually happened in this case. Turner then objected “as to

relevance . . . and under 403.” The trial court overruled Turner’s objection and gave him a running objection.<sup>5</sup>

Jacob proceeded to testify:

A. The cycle of violence is a tool that we use when we work with domestic violence victims. It’s an illustration that helps explain what domestic violence looks and feels like to people who haven’t experienced it. There are three phases.

. . . .

Q. And what is the first phase?

A. The honeymoon or courtship phase.

Q. And just generally speaking, in your employment -- this tool that you use every day in your employment with your education within the community on this subject, what does that mean?

A. That is the time where the relationship is at its best. It’s when the couple gets along, when they -- at the beginning of their relationship when they are falling in love or can -- really getting into the relationship with one another.

Q. And is there another phase after that honeymoon or courtship phase?

A. There is.

Q. And what is that?

A. It’s called tension building. Clients that we work with often define that as walking on eggshells. So they know something is going to

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<sup>5</sup>Turner lodged several more objections as Jacob testified. We hold that he preserved his complaint regarding the relevance of her testimony for our review. *See* Tex. R. App. P. 33.1(a); Tex. R. Evid. 103(a)(1); *Martinez v. State*, 98 S.W.3d 189, 193 (Tex. Crim. App. 2003).

happen, they know there might be an incident soon. The tension is building within the relationship.

Q. And you said clients that you work with. And just to be clear, that's not [Tina]? You don't know that name from Adam?

A. I don't.

Q. But that might be clients that come into SafeHaven for services, or education, or just help?

A. Yes. Our organization works with thousands of survivors every year.

Q. And after that tension-building phase, what is the next phase in this cycle?

A. The next phase is an incident. So that incident can be an act of physical or sexual violence, or emotional or financial abuse.

Jacob then testified that “[t]he Power and Control Wheel is a tool that was developed in the 1980s in Duluth, Minnesota. It shows tactics that abusers use to maintain power and control in a relationship. Those tactics sometimes lead to physical and sexual violence.”<sup>6</sup> She explained that the Domestic Assault Intervention Program in Duluth developed the Power and Control Wheel “through interviews with over 200 domestic violence survivors. They identified that the root of all domestic violence is power and control. That is why ‘power and control’ is at the center of the

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<sup>6</sup>Jacob said that the State's exhibit containing the Power and Control Wheel would aid the jury in understanding her testimony. The trial court admitted the exhibit “for demonstrative purposes” only. See *Hartsock v. State*, 322 S.W.3d 775, 778–79 (Tex. App.—Fort Worth 2010, no pet.) (explaining demonstrative evidence). Turner objected to the exhibit at trial but does not complain on appeal about its admission.

wheel.” She then testified about some of the tactics that were “identified by the spokes of the wheel”: using emotional abuse, using children, using economic abuse, using intimidation, and using isolation. She further testified that 911 is not called very often; that the most under-reported crime is domestic violence; that “[q]uite often, domestic violence victims do not call” 911; that typically when a victim calls 911, it is because she is in fear of her life; and that it “commonly takes six to nine attempts for a domestic violence victim to permanently leave their relationship.”

### **3. Further Testimony**

The next day, Turner resumed his cross-examination of Tina, and she testified that she “believed at the time” she called 911 in May 2021 that Turner’s abuse was not in his character and that she did not consider herself an abused wife “at that point.”

On redirect examination, Tina reaffirmed that she did not want Turner prosecuted at the time that she called the police but that she had changed her mind by the time of trial. Turner then cross-examined Tina about her “defending” herself and causing an injury to his face that night. A photograph depicting a small mark on Turner’s right cheek was admitted into evidence without objection.

The State then called several more witnesses, including the officer who was dispatched out to the Turners’ house on May 8, 2021. Officer Cloud testified about the difficulty he had had trying to figure out what had happened when he arrived on scene:

Q. So at this point in your investigation, what's going on -- what was your understanding of what the situation might be after talking to [Tina] and the other parties on the scene?

A. So when I originally talked to [Tina], I didn't get a whole lot of information. When I talked to [Turner], I didn't get a whole lot of information other than he picked her up, she somehow assaulted him, and he couldn't tell me how. It wasn't until I spoke to the brother-in-law to where I gathered all the information that -- that kind of led us to wanting to ask more questions and trying to figure out what exactly happened the night we were there, plus the previous night.

....

Q. Okay. So then you established -- after you established that he picked her up from work and then they came back home, were you able to get any further happenings from [Turner] or about the incident?

A. I was not. I kept trying to pursue the line of questioning of what happened, why we were called out there, and he said something vaguely about an argument, he stepped in and he had mentioned being assaulted. When I tried to ask more questions about it, he wasn't forthcoming with the information.

On cross-examination, the officer testified that it was "fair to say" that Tina "was acting pretty erratic" and said that she had consumed alcohol that night. Turner chose not to testify in his defense.

## **C. APPLICATION**

### **1. Relevance**

In his first point, Turner contends that the trial court abused its discretion in finding Jacob's expert witness testimony relevant to the issues in this case. Turner contends that Jacob "admitted on several occasions that she did not know the facts of the case" and that she "further made no attempt in her testimony to 'fit' her theories

to the facts of the case.” Our resolution of this issue is controlled by our decision in *Kingsbury*.

In *Kingsbury*, we upheld the admission of Jacob’s expert testimony about the dynamics of domestic violence, including the cycle of violence and the Power and Control Wheel. 625 S.W.3d at 703–04. We reasoned generally “that no abuse of discretion occurs when an expert witness is allowed to testify about domestic violence in general and the typical behaviors of abuse victims even though the witness has no personal knowledge of the defendant and victim.” *Id.* at 693.

We also said that “the relevance, or ‘fit,’ of the expert’s testimony about principles and theories can be addressed by the expert’s discussion of hypotheticals mirroring the case’s facts.” *Id.* at 692 (quoting *Tillman*, 354 S.W.3d at 441). Here, Jacob discussed hypotheticals about an abuser making a victim feel bad about herself; calling her names; making her feel like she’s crazy; playing mind games with her; humiliating her; making her feel guilty; making her feel like the violence is her fault; making a victim feel guilty about the children; making all of the decisions about the couple’s finances and enforcing those decisions over someone who has not agreed to them (such as that one person must give the other person the money she makes and then ask permission to do things with that same money); making her afraid by using intimidation; isolating a victim; and keeping her from her friend group to maintain power and control in a relationship. These hypotheticals “mirrored” the facts that were developed through Tina’s testimony.



Additionally, Jacob’s testimony about mental illness and substance abuse exacerbating already difficult situations in a violent relationship—and about addiction and mental health issues enhancing their domestic violence or serving “as a catalyst to domestic violence”—was sufficiently tied to the facts of the case to be helpful to the jury. *See Tillman*, 354 S.W.3d at 440–41; *Jordan*, 928 S.W.2d at 555. The jury had heard substantial testimony about Turner’s mental health and both Tina’s and his history of substance abuse.<sup>7</sup>

Further, Jacob’s expert testimony assisted the jury by contextualizing the violence in the Turners’ relationship. And, it helped the jury understand why Tina had stayed in her relationship with Turner for so long, why she did not report the initial instances of domestic violence in 2020, why she was afraid to call 911, and why she changed her mind about prosecuting Turner.<sup>8</sup>

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<sup>7</sup>In addition, the jury later heard testimony about Tina’s history of mental illness.

<sup>8</sup>We note one important distinction between Turner’s case and *Kingsbury*. In *Kingsbury*, after the complainant and the responding officer had testified, the State offered Jacob outside the jury’s presence as an expert in the dynamics of family violence, and the trial court held a Rule 705 hearing before overruling Kingsbury’s objections and allowing Jacob to testify to the jury. 625 S.W.3d at 696–98; *see* Tex. R. Evid. 705(b). In the present case, Turner did not request a Rule 705 hearing, but he does not complain on appeal that the trial court erred by failing to hold one before it overruled his objections and allowed Jacob to testify. His appellate complaints are limited to the trial court’s findings that Jacob was qualified to testify as an expert witness about domestic violence and that her expert testimony was relevant.

As an appellate court, we must review the trial court's ruling in light of what was before that court at the time the ruling was made. *Rodgers v. State*, 205 S.W.3d 525, 528–29 (Tex. Crim. App. 2006). But when an issue “has been consensually re-litigated by the parties during trial” and the trial court receives additional evidence, “it would be unreasonable to ignore trial evidence in our review of the [trial court's] decision only to be confronted by the evidence in our consideration of whether the error was harmless.” *Rachal v. State*, 917 S.W.2d 799, 809 (Tex. Crim. App. 1996).

This case presents an unusual problem. At the time Turner made his initial relevance objection to Jacob's testimony, the State had not established the relevance of her testimony. In fact, at that point, there was no evidence in the record of what the substance or content of her testimony was going to be. The record, therefore, did not support the trial court's initial ruling that Jacob's expert testimony was relevant *at the time it was made*, but once Jacob testified, the relevance of her testimony became apparent and supported the trial court's ruling. While the better practice would have been for the State to have offered Jacob's expert testimony and proved up its relevance to the trial court outside the jury's presence, Turner did not request a Rule 705 hearing. Instead, Turner chose to take Jacob on voir dire and object to her testimony in the presence of the jury. In the unique circumstances presented here, we conclude that the trial court did not abuse its discretion by overruling Turner's relevance objections and allowing the State to present Jacob's expert testimony to the jury. *See, e.g., State v. Lerma*, 639 S.W.3d 63, 68 (Tex. Crim. App. 2021) (“A trial court

abuses its discretion only when no reasonable view of the record could support its ruling.”); *see also In re Commitment of Hale*, No. 02-21-00373-CV, 2023 WL 2325199, at \*8 (Tex. App.—Fort Worth Mar. 2, 2023, pet. denied) (mem. op.) (upholding a trial court’s ruling admitting expert testimony where the ruling “was ultimately, albeit belatedly, supported by the record”). Accordingly, we overrule Turner’s first point. *See Kingsbury*, 625 S.W.3d at 704.

## 2. Qualification

In his second point, Turner argues that the trial court abused its discretion in finding Jacob qualified to testify as an expert witness in the field of domestic violence. The State responds that Turner’s claim on appeal does not comport with the objection made at trial, and thus, the claim is unpreserved. To preserve a complaint for our review, a party must have presented to the trial court a timely request, objection, or motion sufficiently stating the specific grounds, if not apparent from the context, for the desired ruling. Tex. R. App. P. 33.1(a)(1); *Montelongo v. State*, 623 S.W.3d 819, 822 (Tex. Crim. App. 2021).

The complaint made on appeal must comport with the complaint made in the trial court or the error is forfeited. *Clark v. State*, 365 S.W.3d 333, 339 (Tex. Crim. App. 2012); *Lovill v. State*, 319 S.W.3d 687, 691–92 (Tex. Crim. App. 2009) (“A complaint will not be preserved if the legal basis of the complaint raised on appeal varies from the complaint made at trial.”); *Pena v. State*, 285 S.W.3d 459, 464 (Tex. Crim. App. 2009) (“Whether a party’s particular complaint is preserved depends on

whether the complaint on appeal comports with the complaint made at trial.”). To determine whether the complaint on appeal conforms to that made at trial, we consider the context in which the complaint was made and the parties’ shared understanding at that time. *Clark*, 365 S.W.3d at 339; *Resendez v. State*, 306 S.W.3d 308, 313 (Tex. Crim. App. 2009); *Pena*, 285 S.W.3d at 464.

The State points out that, when Jacob started to testify about the term “cycle of violence,” Turner objected “to this answer” and stated that “she’s not established herself as a witness under this that is qualified to answer this question.” The trial court overruled Turner’s objection, but Turner did not ask for a running objection. The State contends that Turner “does not complain on appeal that Jacob was not qualified to answer the question” but rather that she “was not qualified to testify as an expert witness at all.”

A party must object to an expert’s qualifications at trial or the complaint is forfeited. *Martinez v. State*, 22 S.W.3d 504, 507 (Tex. Crim. App. 2000). The State contends that “Jacob’s qualifications as a whole were not challenged at trial.” But the State’s contention misses this objection that Turner made when Jacob began to testify about the “Power and Control Wheel”:

[Defense counsel]: Your Honor, we object to this question and answer. There’s no basis for this testimony. It’s purported to be scientific testimony, and there’s just no basis for it. *There’s no background that she has shown to make her a competent witness to testify as to this.*

THE COURT: And that objection is overruled, and you may answer.

A. The Power and Control Wheel --

[Defense counsel]: And, Judge, may I have a running objection to that?

THE COURT: You may. [Emphasis added.]

The cycle of violence and the Power and Control Wheel comprised the essence of Jacob's expert testimony. Accordingly, we will review the merits of Turner's second point, although we will ultimately conclude that Turner's second point has no merit.

Jacob testified that the "cycle of violence" is a "tool" that she uses in her work with domestic violence victims. She testified that she had a bachelor's degree in social work from Creighton University and a master's degree from Fordham University, also in social work. Jacob testified that she had attended the specialized training in Duluth, Minnesota, on the Power and Control Wheel and that the wheel is "commonly used" in SafeHaven's "accredited program for domestic violence offenders," which she testified was accredited through the "community justice assistance division" of the Texas Department of Criminal Justice. Jacob testified that she had worked for the Appalachia Service Project, a group that does emergency home repair for impoverished families in Appalachia, "on issues of domestic violence in rural communities." She testified that after that, she had worked briefly for a crisis line and employee assistance program, to which about half of the calls were domestic violence calls.

Jacob then moved to Texas, where she ran the Salvation Army’s Domestic Violence Shelter in Dallas. After that, she was recruited to be the executive director of the Housing Crisis Center in East Dallas, where she “worked primarily with chronically homeless veterans and domestic violence survivors exiting emergency shelter.” Jacob testified that she was then recruited to become the president and CEO of SafeHaven of Tarrant County, a role she had been in since 2015. Jacob also explained that she had testified as an expert on the dynamics of family violence or domestic violence in over fifty cases. We have previously concluded that a trial court did not abuse its discretion by finding that a witness with similar training, experience, and accomplishments in the domestic violence field was qualified to offer expert testimony about domestic violence, including the cycle of violence and the power-and-control dynamic. *See James v. State*, 623 S.W.3d 533, 553 (Tex. App.—Fort Worth 2021, no pet.).<sup>9</sup> We have also ruled that a trial court does not abuse its discretion by allowing an expert witness to testify about domestic violence in general and about the typical behaviors of victims of abuse even though the witness has no personal knowledge of the defendant and victim. *Id.* at 552.

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<sup>9</sup>In *Kingsbury*, we similarly concluded that the trial court did not abuse its discretion when it determined that Jacob was qualified. 625 S.W.3d at 702. However, courts should not “grandfather in” expert testimony in a particular field or by a particular witness simply because the court has admitted expert testimony in that field or by that witness in the past; “each record must be examined on its own merits.” *Coble v. State*, 330 S.W.3d 253, 276 & n.56 (Tex. Crim. App. 2010).

Turner cites three cases in which Texas courts have upheld a trial court’s exclusion of expert witness testimony,<sup>10</sup> but all three are distinguishable. In *Fox v. State*, the trial court excluded the testimony of an expert witness, whom the defense had offered to testify regarding (1) the proper protocols for interviewing a child who has been abused; (2) developmental stages of a child; and (3) behavioral patterns of an abused child. 115 S.W.3d 550, 565 (Tex. App.—Houston [14th Dist. 2002], pet. ref’d). The expert witness testified that she had “worked on only 15 to 25 cases of child abuse while at Child Protective Services in 1990–1991, and that she had worked on only 20 to 30 child-abuse cases during her private practice [as a social worker] for the last five years.”<sup>11</sup> *Id.* Her private practice did not concentrate solely on children, and at the time of trial, she did not have any child-abuse victims as clients. *Id.* The court of appeals found that, because the expert witness “had so little experience in dealing specifically with abused children and little experience in the techniques typically used to interview abused children, the trial court did not abuse its discretion in finding her not qualified to testify as an expert witness.” *Id.* at 566. As our preceding discussion reveals, Jacob’s experience in the specific area in which she testified as an expert—the

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<sup>10</sup>The distinction, while not dispositive of this point, is important. Here, Turner is arguing that the trial court abused its discretion in *admitting* expert witness testimony.

<sup>11</sup>The expert witness also “had been a social worker in the public sector for ten years,” although the court of appeals’ opinion did not further detail her specific experience during those ten years. *Fox*, 115 S.W.3d at 565–66.

dynamics of domestic violence—was far more extensive, and it spanned a longer time period than the excluded expert’s experience in *Fox*.

In the other two cases on which Turner relies, the qualifications of an expert witness were not even at issue. *See Weatherred v. State*, 15 S.W.3d 540, 543 (Tex. Crim. App. 2000) (holding that trial court “could have reasonably concluded that appellant failed to carry his burden of showing that the proffered expert testimony was scientifically *reliable*” (emphasis altered)); *Jordan v. State*, 950 S.W.2d 210, 212 (Tex. App.—Fort Worth 1997, pet. ref’d) (concluding that appellant had “failed to present sufficient evidence of the validity of the scientific theories underlying [the expert’s] opinion or the validity of the techniques used to apply the theories”). *Weatherred* and *Jordan* are thus inapposite on this issue.

Jacob was qualified to testify as an expert witness in the dynamics of domestic violence. Here again, the evidence in the record *at the time the trial court made its rulings* did not support the rulings the trial court made. But Jacob’s subsequent testimony—admitted without objection—supported the trial court’s implicit finding that she was qualified. Based on the same reasoning discussed in our analysis of Turner’s first point, as well as our precedent in *Kingsbury* and *James*, we conclude that the trial court did not abuse its discretion by allowing Jacob’s expert testimony over Turner’s objection that Jacob was unqualified,<sup>12</sup> and we overrule Turner’s second point.

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<sup>12</sup>Turner makes no attempt to distinguish his case from *Kingsbury* or *James*, nor does he offer any argument for overruling them.



### III. CONCLUSION

Having overruled all of Turner's points, we affirm the trial court's judgment.

/s/ Brian Walker

Brian Walker  
Justice

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Delivered: September 7, 2023