No. 14-24-00085-CR

In The Court of Appeals
For the Fourteenth District of Texas

Quinnton Allen
Appellant

v.

The State of Texas
Appellee

On Appeal from Cause Number 1775878
From the 185th District Court of Harris County, Texas

Brief for Appellant

ORAL ARGUMENT REQUESTED

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STATEMENT REGARDING ORAL ARGUMENT

This case presents the question of whether the admission of evidence obtained during an illegal search tainted the integrity of this trial, and the decisional process will be significantly aided by oral argument.

STATEMENT OF THE CASE

Mr. Allen was indicted for the murder of Luis Espinoza on September 10, 2022. (C.R. 44). The indictment was amended on January 20, 2024. (C.R. 44; 315). Trial commenced on January 30, 2024. (3 R.R. 1). On February 2, 2024, a jury found Mr. Allen guilty of Murder. The same jury assessed punishment at Lifetime confinement in the Texas Department of Criminal Justice — Institutional Division. (C.R. 396). Notice of appeal was filed on February 2, 2024. (C.R. 402).

ISSUES PRESENTED

1. The trial court erred in permitting a warrantless, non-consenting search of Mr. Allen's satchel that violated his 4th amendment rights, and the error was not harmless beyond a reasonable doubt.

STATEMENT OF FACTS

On June 18, 2022, Luis Espinoza entered Chapman Food Market, located on the corner of Chapman and Fairbanks. (5 R.R. 132, 140). At the same time, an unidentified black male, wearing a white shirt and a black crossbody satchel was on the premises and exited westbound on Fairbanks. (5 R.R. 140, 152, SX 116). Mr. Espinoza left the store and drove westbound down Fairbanks in a white Jeep Cherokee. (5 R.R. 39, 132). A black male wearing a white shirt, and black crossbody satchel approached the driver's side of the vehicle when it was at the intersection of Cochran and Fairbanks. (5 R.R. 39, 149). The black male pulled a gun from the satchel and fired several times at the vehicle before leaving as the passenger in another vehicle. (5 R.R. 40, 43). The Jeep Cherokee slowly rolled through the intersection and crashed into a pole. (5 R.R. 58). Mr. Espinoza was unresponsive at the scene and was transported to Ben Taub Hospital. (5 R.R. 108). Espinoza had six gunshot wounds, including a fatal gunshot wound that pierced both his lungs. (6 R.R. 105, 113, 122, 127).

The only witness, Michael Martinez, was unable to identify the shooter. (5 R.R. 40, 60, 64). Surveillance video from a nearby convenience store captured a partially obscured view of the incident, and while the male can be seen on the video, he cannot be seen reaching toward his bag or firing a gun at any point. (5 R.R. 176-177; SX 112; SX 114). During the initial investigation, officers located seven cartridge casings from a 9mm Luger on the scene. (5 R.R. 16, 18).

The following day, Mr. Espinoza's sister, Maria Casteneda, informed law enforcement that she heard that Mr. Allen may have been involved and provided a link to his Instagram page. (5 R.R. 93). Several days later, on June 26, 2022, A black male entered Chapman food market who looked similar to the male that was in the store on June 18. (SX 126). The man was the passenger in a silver Hyundai, with three stickers on the edge of the driver's side of the windshield, midway up the glass. (5 R.R. 197; SX 123). Detective Ricardo Rivera retrieved Mr. Allen's identification from a database and confirmed the resemblance of Mr. Allen to the

surveillance video from inside Chapman Food Market. (6 R.R. 16-17).

Because Mr. Allen had been implicated via rumor and resembled the man in the security footage, Detective Rivera wanted to speak with him. Detective Rivera learned that Mr. Allen would be at a government office and went to the location with two other officers to speak with him about his potential involvement. (5 R.R. 201). Upon arriving at the location, officers saw a Silver Hyundai Elantra that appeared to be the same one from the convenience store on July 26, due to the placement of the stickers on the windshield. (5 R.R. 202; SX 128).

Officers approached the driver and sole occupant of the vehicle, Tiffanee Law. (5 R.R. 202). Ms. Law had driven Mr. Allen to the location and said he was inside the building. (5 R.R. 203). Officers told Ms. Law she could either consent to a search or they could impound her vehicle for several days until they were able to obtain a search warrant. (4 R.R. 22; 5 R.R. 204). Not wanting to lose custody of her vehicle for multiple days, Ms. Law gave her

consent to search the vehicle. (6 R.R. 29). Officers retrieved a closed black satchel from the front passenger seat that they believed belonged to Mr. Allen.[1] (6 R.R. 34; SX 131). Ms. Law informed officers that was not her property, and confirmed the satchel belonged to Mr. Allen. (6 R.R. 34; SX 131).

Despite knowing the property belonged to Mr. Allen, officers did not seek out Mr. Allen for consent to search his property and searched the satchel. (4 R.R. 19-20, 24; 5 R.R. 210). Inside the satchel was a 9-millimeter Smith & Wesson handgun. (5 R.R. 210). A firearms examiner determined that casings recovered from the scene were fired using the gun found in the satchel. (6 R.R. 207).

Motion to Suppress

Trial counsel filed a motion to suppress the search of the vehicle and the search of Mr. Allen's satchel. (C.R. 308-310). Before opening arguments, the trial court conducted a hearing based on the motion to suppress. (4 R.R. 15-32). Officer Ricardo Rivera

[1] The item is interchangeably referred to as a bag or satchel throughout testimony. For clarity, the item will be referred to as a satchel in this brief.

testified during the motion that police saw the satchel inside Ms. Law's vehicle and believed it belonged to Mr. Allen, and their goal was to search the satchel.

> Q. Okay. As far as any other property was in -- that was in the vehicle, did she tell you that that belonged to anyone else?
> A. Ricardo Rivera HPD. Yes. Through conversation, she said that an item belonged to Mr. Allen.
> Q. Okay. What item was that?
> A. It was a black [satchel].
> Q. Okay. And where was this black [satchel] located?
> A. It was in the passenger seat.
> (4 R.R. 19).

Knowing that the satchel belonged solely to Mr. Allen, law enforcement did not ask Mr. Allen for consent to search, despite knowing his exact location at the time.

> Q. It is. It is. And at that time Mr. Allen was not at the vehicle or near the vehicle or anything like that; is that right?
> A. No, sir.
> Q. Okay. It's your understanding that he was inside in the [government building]?
> (4 R.R. 20).

Inside the satchel, police found only Mr. Allen's ID, Mr. Allen's debit card, and a firearm. (5 R.R. 212-213).

The trial court ruled in favor of Mr. Allen, suppressing the search of his satchel. (4 R.R. 32). The following day, the State requested the trial court reopen the matter and provided the trial court with *State v. Copeland* 399 S.W.3d 150 (Tex. Crim. App. 2013). (5 R.R. 7). The State contended that the holding in *Copeland* meant that Ms. Law's consent to search extended to all property located in her vehicle. (5 R.R. 8- 10). The Court reversed its ruling and denied the motion to suppress. (5 R.R. 13). During the trial, counsel continued to object to the search of the satchel. (5 R.R. 206, 210, 215).

SUMMARY OF THE ARGUMENT

1. The Trial Court erred in permitting a warrantless, non-consenting search of Mr. Allen's Satchel. The trial court erred in permitting a warrantless search of Mr. Allen's satchel, when officers were aware prior to the search that the satchel belonged solely to Mr. Allen. Ms. Law did not have actual or common authority over the satchel to consent to a search on Mr. Allen's behalf. Because officers were aware, prior to the search, that the satchel did not belong to Ms. Law, they were aware that she did

not have the legally required authority to actually consent to a search. The officers did not obtain consent from Mr. Allen or a search warrant for his property and instead violated his 4th amendment rights by searching the satchel.

The erroneously admitted evidence was not 'harmless beyond a reasonable doubt'. With no witness to identify Mr. Allen, and grainy surveillance, the ballistics match on the firearm was the State's most important piece of evidence in the instant case. When constitutional error is not harmless beyond a reasonable doubt, the judgment and conviction must be reversed.

ARGUMENT AND AUTHORITIES

POINT OF ERROR NUMBER ONE

THE TRIAL COURT ERRED IN PERMITTING A WARRANTLESS, NON-CONSENTING SEARCH OF MR. ALLEN'S SATCHEL.

A. Standard of Review

A trial court's ruling on a motion to suppress is reviewed for abuse of discretion under a bifurcated standard. *Amador v. State*, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007). Legal significance of the facts is reviewed de novo; "including the determination of whether a specific search or seizure was reasonable." *State v. Rodriguez*, 521 S.W.3d 1, 8 (Tex. Crim. App. 2017) (citing *Kothe v. State*, 152 S.W.3d 54, 62-63 (Tex. Crim. App. 2004)). Whether a third party had authority to consent to the search of another's property is a mixed question of law and fact that is reviewed de novo. *Hubert v. State*, 312 S.W.3d 554, 560 (Tex. Crim. App. 2010).

B. Warrantless 4th Amendment Searches

The Fourth Amendment guarantees "[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures[.]" U.S. CONST. AMEND. IV.

The importance of the Fourth Amendment has remained the same throughout the centuries; it prohibits police officers from having unbridled discretion to rummage at will among a person's private effects. *State v. Granville*, 423 S.W.3d 399, 405 (Tex. Crim. App. 2014). A Fourth Amendment claim may be based on a trespass theory of search (for personal effects), or a privacy theory of search (a breach of an expectation of privacy). *Ford v. State*, 477 S.W.3d 321, 328 (Tex. Crim. App. 2015). If the State obtains information by physically intruding on persons, houses, papers, or effects, a trespass search has occurred. *United States v. Jones*, 565 U.S. 400, 404-05 (2012). If the State obtains information by violating a person's reasonable expectation of privacy, regardless of the presence or absence of a physical intrusion into any given enclosure, a privacy search has occurred. *Florida v. Jardines*, 569 U.S. 1 (2013); *Kyllo v. United States*, 533 U.S. 27, 40 (2001). A search, conducted without a warrant, is unreasonable, subject to "jealously and carefully drawn exceptions." *Georgia v. Randolph*,

547 U.S. 103, 109 (2006); *Carmouche v. State*, 10 S.W.3d 323, 327 (Tex. Crim. App. 2000).

Consent may be a valid exception, if it is positive, unequivocal, and given without duress or coercion. *Meeks v. State*, 692 S.W.2d 504, 509 (Tex. Crim. App. 1985). A person has standing to contest a search under the Fourth Amendment if he has a legitimate expectation of privacy in the place searched. *Rakas v. Illinois*, 439 U.S. 128, 144 (1978); *Granados v. State*, 85 S.W.3d 217, 222-23 (Tex. Crim. App. 2002). The defendant bears the burden of establishing that he had a subjective expectation of privacy in the place searched that society recognizes as reasonable. *Granados*, 85 S.W.3d at 223.

Several factors are relevant to the determination of whether a given claim of privacy is objectively reasonable: (1) whether the accused had a property or possessory interest in the place invaded; (2) whether he was legitimately in the place invaded; (3) whether he had complete dominion or control and the right to exclude others; (4) whether, prior to the intrusion, he took normal

precautions customarily taken by those seeking privacy; (5) whether he put the place to some private use; and (6) whether his claim of privacy is consistent with historical notions of privacy. *Calloway v. State,* 743 S.W.2d 645, 650 (Tex. Crim. App. 1988). This list of factors is non-exhaustive, and no one factor alone is dispositive of a legitimate expectation of privacy. *Brown v. State*, 212 SW 3d 851 (Tex. App.—Houston [14th Dist.] 2006).

C. A Third Party Must have Joint Access to Consent to a Search of Personal Property, Regardless of the Property's Location

Consent from a third party is only valid if he and the absent, non-consenting person share common authority over the property. *U.S. v. Matlock*, 415 U.S. 164 (1974)[2]; *Hubert v. State*, 312 S.W.3d 554, 560 (Tex. Crim. App. 2010); *State v. Rodriguez*, 521 SW 3d 1 (Tex. Crim. App. 2010); *Becknell v. State*, 720 S.W.2d 526, 528 (Tex. Crim. App. 1986); *Fancher v. State*, 659 S.W.2d 836, 839 (Tex. Crim. App. 1983).

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[2] In *Matlock,* the defendant's girlfriend gave officers consent to search their shared bedroom, and confirmed that she and the defendant shared use of all the items in the room. It was her "common authority" that gave her the ability to consent to the search.

Often in search and seizure issues the person asked for consent to search has 'apparent authority'. The apparent authority doctrine states that "when officers have acted in good faith upon the consent given by an owner in conducting a search, the evidence seized cannot be excluded merely because the officers made a reasonable mistake as to the extent of the owner's authority." *McNairy v. State*, 835 S.W.2d 101, 105 (Tex. Crim. App. 1991)(en banc), abrogated in part on other grounds by *Turrubiate v. State*, 399 S.W.3d 147 (Tex. Crim. App. 2013). An officer conducting a consensual search must make reasonable inquiries when "ambiguous circumstances" arise. *Id*.; *Pair v. State*, 184 S.W.3d 329, 334 (Tex. App.—Fort Worth 2006, no pet.). When an item does not reasonably appear to be included within the consent obtained, the searching officer must stop and make inquiries as to the continued effectiveness of the consent. *McNairy*, 835 S.W.2d at 105.

Law enforcement may not circumvent a person's 4th amendment rights by substituting convenience for actual

authority. "When the police intentionally bypass a suspect who is present and known by them to possessed a superior privacy interest, the validity of third-party consent is less certain." *May v. State*, 582 S.W.2d 848 (Tex. Crim. App. 1979). (Citing *U.S. v. Impink*, 728 F. 2d 1228 (9th Cir. 1983).

The review is an objective standard: "would the facts available to the officer at the moment of the search warrant a man of reasonable caution in the belief that the consenting party had authority over the premises and its contents?" *Rodriguez*, 521 S.W.3d 1 (citing *Limon v. State*, 340 SW 3d 753 (Tex. Crim. App. 2011); see also *Illinois v. Rodriguez*, 497 U.S. 177, 188 (1990)(citing *Terry v. Ohio*, 392 U.S. 1, 21-22 (1968)). If not, then a warrantless search without further inquiry is unlawful. *Id*. at 188-89.

It is the State's burden to establish that the third party had a legitimate expectation of privacy in the thing to be searched, or had joint authority to use the item searched. *Boyle v. State*, 820 S.W.2d 122, 143 (Tex. Crim. App. 1989)(en banc)(holding third persons may only give valid consent to search when they exercise

equal control over and have authority to use the property being searched and recognizing that the rule is applicable to motor vehicle searches); *Stokvis v. State*, 147 S.W.3d 669, 672 (Tex. App.—Amarillo 2004, pet. ref'd). (holding that the driver's consent to search his truck did not extend to the passenger's purse, which was left on the passenger seat, because "the State failed to prove that [the driver] had a legitimate privacy interest in, exercised equal control over, or had the authority to jointly use the purse"); *May v. State*, 582 S.W.2d 848, 851 (Tex. Crim. App. 1979)(holding that consent of the passenger to search the vehicle which belonged to his parents did not extend to a lunch box which the officer knew belonged to the defendant, who was the driver).

D. The Court in Copeland specifically notes its holding does not apply in third party consent cases

During the motion to suppress, the State submitted *Copeland* to the trial court, which seems to have been rather persuasive to the trial court since it reversed its ruling after being given this case. The State also briefly discussed *Jimeno* in rebuttal.

The instant case is distinguishable from the holdings in *Copeland* and *Jimeno*. In *Copeland*, the question was: Can a passenger in a car, who was not the owner, override the owner's consent to a general vehicle search where drugs were found in the center console? *State v. Copeland*, 399 S.W.3d 159 (Tex. Crim. App. 2013). The Court found that the non-owner passenger could not override the consent because society typically expects the driver has the superior right to the vehicle, and the passenger assumes the risk that the driver might consent to a search of common areas. *Id.* The Court specifically noted that the *Copeland* holding did not apply when third-party consent principles were in play and that their holding was, "in line with *Matlock*, we have stated that, in order for a third person to validly consent to a search, that person must have equal control and equal use of the property searched." *Id.* at Fn7.

Similarly, *Jimeno* does not apply to the instant case because it does not involve third party consent. *Florida v. Jimeno*, 500 U.S. 248 (1991). In *Jimeno*, the question was if a consensual search of

a vehicle included unlocked containers within the vehicle. *Id.* *Jimeno* was the sole occupant, had been the sole occupant, and did not tell police that the paper sack in question belonged to another party. *Id.* Nor did the facts indicate the police already had reason to believe the paper sack did not belong to *Jimeno*. *Id.* Neither case should have been persuasive to the search problem in the instant case, when there is a body of caselaw on point for the requirements of valid third-party consent.

E. Officers Were Aware Ms. Law Had No Actual or Apparent Authority Over the Satchel Prior to the Search.

Ms. Law had the ability to consent to a search of her vehicle, but not Mr. Allen's satchel. Ms. Law was the driver and owner of the silver Hyundai, and the black satchel was in her passenger seat. Absent any other details, it would be reasonable for law enforcement to believe she had apparent authority over the satchel. However, the facts of the instant case place it squarely into the rules surrounding third party consent because prior to speaking with Ms. Law, officers suspected the satchel was not hers, and belonged solely to Mr. Allen. Officers were open that

their entire goal in obtaining Ms. Law's consent to search the vehicle was to search the satchel. Further, Ms. Law informed officers prior to the search that the satchel was not hers, and belonged to Mr. Allen.

The moment Ms. Law confirmed what officers already knew, that she was not the owner of the satchel, they also became doubly aware that her consent to search her vehicle did not extend to someone else's private, unshared property. There was no discussion about Ms. Law's use of the satchel, because officers already knew it was not her property and did not need to ask questions to alleviate any ambiguity. Indeed, nothing inside the satchel indicated Ms. Law had common use of it, as the only items inside were the firearm, which officers did not believe was associated with Ms. Law, and Mr. Allen's identification cards, which by their very nature are not Ms. Law's property.

Rather than ask Mr. Allen for consent to search the satchel, which he very likely may have refused, officers attempted to bypass the need for Mr. Allen's consent by asking Ms. Law while

Mr. Allen was in a meeting. But they legally could not substitute Ms. Law's consent for Mr. Allen's consent because they knew the satchel was not Ms. Law's property.

F. Overruling the Motion to Suppress was Constitutional Error that was not Harmless Beyond a Reasonable Doubt.

When a trial court denies a motion to suppress and the evidence admitted was obtained via a violation of the defendant's 4th amendment rights, it is constitutional error, guided by TEX. R. APP. P. 44.2(a). *Hernandez v. State*, 60 S.W.3d 106, 106 (Tex. Crim. App. 2001). "The court of appeals must reverse a judgment of conviction or punishment unless the court determines beyond a reasonable doubt that the error did not contribute to the conviction or punishment." TEX. R. APP. P. 44.2(a). The reviewing Court must focus "not upon the perceived accuracy of the conviction or punishment, but upon the error itself in the context of the trial as a whole, in order to determine the likelihood that it genuinely corrupted the fact-finding process." *Hernandez,* 60 S.W.3d at 108. The Court must determine if the error "adversely affected the integrity of the process leading to the conviction," not whether "the

jury verdict was supported by the evidence." *Langham v. State*, 305 S.W.3d 568, 582 (Tex. Crim. App. 2010) (quotation omitted).

Harmless error is a conclusion that the error could not have affected the jury. *Snowden v. State*, 353 S.W.3d 815, 819 (Tex. Crim. App. 2011). If the error "contributed" at all to the defendant's conviction or punishment, regardless of the weight of the other evidence, the court must reverse. *Langham* 305 S.W.3d at 582. The Court may consider: "the nature of the error, emphasis on the error by the State, the probable implications of the error, and the weight the jury would likely have assigned to the error in the course of its deliberations." *Wells v. State*, 611 S.W.3d 396, 410 (Tex. Crim. App. 2020). (citing *Snowden,* 353 S.W.3d at 822). "An analysis for whether a particular constitutional error is harmless should take into account any and every circumstance apparent in the record that logically informs an appellate determination whether beyond a reasonable doubt [that particular] error did not contribute to the conviction or punishment." *Snowden,* 353 S.W.3d at 822.

Prosecutorial emphasis on erroneously admitted evidence during final argument has consistently been held to be a compelling indicator that the error was not harmless beyond a reasonable doubt. *See Love v. State*, 543 S.W.3d 835, 857-58 (Tex. Crim. App. 2016)(erroneous admission of text messages was not harmless beyond a reasonable doubt where State repeatedly alluded to them during final argument in urging jurors to convict); *Erazo v. State*, l67 S.W.3d 889,890-91 (Tex. App.—Houston [14th Dist.] 2005, no pet.)(op. on remand)(Error found when "the State imparted its final thoughts to the jury [regarding erroneously submitted evidence] just before its deliberations"); *Brown v. State*, 978 S.W.2d 708,715 (Tex. App.—Amarillo 1998, pet. ref d)("[T]he harm arose immediately before the jury was to retire and deliberate. Thus, its potential effect was not as attenuated as it would have been had the misconduct occurred elsewhere."); *Scott v. State*, 227 s.W.3d 670, 694 (Tex. Crim. App. 2007)(because jurors probably placed great weight on the erroneously admitted evidence given the State's repeated emphasis on it during final argument, the

error was not harmless beyond a reasonable doubt). Erroneously admitted evidence is not harmless beyond a reasonable doubt when it is likely to "move the jury from a state of non-persuasion to one of persuasion." *Sanchez v. State*, 383 S.W.3d 2ll, 216 (Tex. App.—San Antonio 2012, no pet.).

The Court must review the record in a neutral manner to determine if the error contributed to the conviction, and does not examine the record in the light most favorable to the verdict. *Friend v. State*, 473 S.W.3d 470,482 (Tex. App.—Houston [1st Dist.] 2015, pet. ref d). If the Court is unsure whether the error affected the outcome, it should treat the error as harmful. *United States v. Lane*, 474 U.S. 438, 449 (1986).

G. Denial of Mr. Allen's Motion to Suppress Contributed to his Conviction

The trial court's erroneous denial of Mr. Allen's motion to suppress was not harmless beyond a reasonable doubt. First, the evidence submitted over objection was a handgun with ballistics that matched the shell casings at the scene. (6 R.R. 180-220; SX 272, 308, 309). Without any witness identification, and only grainy

surveillance to view, the satchel and firearm within were the only truly concrete pieces of evidence that tied Mr. Allen to the scene.

Second, the weight of the satchel and firearm were significant at trial. As a result of the other evidence being weak, the satchel and firearm were a large focus of the trial. The State submitted 28 exhibits related to the satchel and firearm.[3] The firearms examiner's testimony about the ballistics match was the last witness the state presented to the jury. 6 R.R. 180-220.

Third, the State heavily emphasized the firearm and the satchel in closing arguments. In the State's open, the firearm is the first piece of evidence the state mentions in closing. Six sentences into closing argument. (7 R.R. 8).

"There is absolutely no evidence that any other weapon was used other than this 9-millimeter firearm." (7 R.R. 7-8). Four sentences later, the firearm is mentioned again. "Quinnton Allen was the only one that walked up to that white Jeep and days later

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[3] Omitted in this count are exhibits that likely would have been submitted if the suppression had been granted, such as the photos from the initial scene documentation.

this firearm was in Quinnton Allen's possession. And you know that the seven casings that were found at the murder scene were all shot from Quinnton Allen's gun." (7 R.R. 8).

During the State's closing rebuttal, the firearm and bag are again emphasized as the reason to convict Mr. Allen: "And I don't need DNA or fingerprints. This was in his possession. This was in that bag." 7 R.R. 25. The State calls the video "merely corroborating" evidence to support the weight the jury should give to the satchel and firearm. 7 R.R. 27. A large portion of the State's closing rebuttal is focused on the satchel and firearm. The State mentions it a couple times during a review of the evidence as a whole, and then puts extra emphasis on the satchel and firearm:

> You heard the evidence, that the defendant carries this bag. Carries this bag because it's kind of like a holster. This bag is where he stores his gun. It's a hard fact that he's known to carry this bag. In fact, he posts pictures on his Instagram of himself with this bag. He posts pictures of himself hanging out at the store. That's his spot. He's wearing the same exact bag that you see on video. Carrying the bag where he had the gun, where he used that gun to murder our victim and he was arrested. When he was arrested, he had that bag. Same bag we see on video and you hear from -- you heard from the evidence that's all his bag, right? Michael Martinez says he saw the defendant standing next to the victim

> closer than I am to you and he saw the defendant reach in his bag, pull out a gun and shoot at Luis at close range seven times. Four days later officers arrest him. He still has the bag. He still had the gun in his purse. Oh, along with his credit cards and his ID. He had the gun before the murder, he had the gun on the day of the murder, didn't get rid of it. He kept it. Four days after he brutally murdered the victim, he kept the gun. He still had it in his black bag. It's absurd to think and believe anything else. 7 R.R. 26
>
> .....
>
> …[F]our days later he's arrested, he's got the bag. Inside that bag, that gun is the murder weapon and this gun matches all seven of these casings. Ryan Hookano told you these seven casings came from this gun. And I know I've repeated that over and over but that's what it is. That's what it comes to. It's his gun. It's his bag. 7 R.R. 26-27.

The State understood the satchel and the ballistics match were their keys to a conviction, demonstrated by the other evidence being called "merely corroborating" in relation to the satchel and firearm, and the state telling the jury that "That's what it comes to. It's his gun. It's his bag."

In the instant case, the State's emphasis on the erroneously admitted evidence occurred during the rebuttal portion of its final argument immediately prior to deliberations.

Given the State's repeated emphasis on the satchel and firearm, jurors likely placed great weight on the error, creating constitutional error that was not harmless beyond a reasonable doubt. The effect of the erroneous admission of the satchel and firearm were likely to "move the jury from a state of non-persuasion to one of persuasion." *Sanchez,* 383 S.W.3d at 216.

All of these factors indicate that the erroneous admission of the satchel and firearm "served as the tipping point for the jury's guilty verdict." *Friend,* 473 S.W.3d at 486. This error cannot be harmless beyond a reasonable doubt. The trial court's error in admitting evidence obtained in violation of Mr. Allen's 4th amendment rights disrupted the jury's orderly evaluation of the evidence and requires a reversal of this conviction. "When fundamental constitutional protections are violated, however innocently, we must uphold the integrity of the law." *McCarthy v. State*, 65 S.W.3d 47, 56 (Tex. Crim. App. 2001).

CONCLUSION AND PRAYER

For the reasons stated above, Mr. Allen prays that this Honorable Court sustain his point of error, reverse the judgement of conviction entered below, and remand the cause for a new trial.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing brief was electronically served via Texas e-file on the Harris County District Attorney on the day the brief was filed.

/s/BreAnna Schwartz
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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 9.4(i)(3), undersigned counsel certifies that this brief complies with all form requirements of TEX. R. APP. PROC. 9.4.

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/s/BreAnna Schwartz
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