Case No. 14-24-00973-CR

IN THE COURT OF APPEALS

FOR THE FOURTEENTH JUDICIAL DISTRICT

HOUSTON, TEXAS

STATE OF TEXAS

vs.

SAMUEL DEMARIS

ON APPEAL FROM THE COURT CRIMINAL COURT AT LAW #11
HARRIS COUNTY, TEXAS
TRIAL COURT NO. 2486295
THE HONORABLE SEDRICK WALKER, JUDGE PRESIDING

APPELLANT'S BRIEF

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ORAL ARGUMENT REQUESTED

REQUEST FOR ORAL ARGUMENT

Because of the nuanced and not-oft encountered legal issues involved in this case, oral argument would be of benefit to flesh out these issues for the Court, and Mr. Demaris respectfully requests his counsel be permitted to orally argue the issues presented herein, in accordance with Texas Rule of Appellate Procedure 39.7.

IDENTITY OF PARTIES AND COUNSEL

The undersigned counsel of record for Mr. Demaris certifies that, to his knowledge, the parties listed below have an interest in the outcome of this appeal. These parties are as follows:

Appellant:	Mr. Samuel Demaris
Appellate Counsel:	C. Stephen Stewart 1415 North Loop West, Suite 616 Houston, Texas 77008
Appellant's Trial Counsel:	C. Stephen Stewart 1415 North Loop West, Suite 616 Houston, Texas 77008 Randal Everett Yates 1415 North Loop West, Suite 616 Houston, Texas 77008
Appellee's Counsel:	Jessica A. Caird Assistant District Attorney Harris County District Attorney's Office 1201 Franklin St., 6th Floor Houston, Texas 77002
Appellee's Trial Counsel:	Panos Melisaris, Assistant District Attorney (same address as above) Ryan Free, Assistant District Attorney (same address as above)
Trial Court Judge:	Honorable Sedrick Walker County Criminal Court at Law #11 1201 Franklin St., 10th Floor Houston, Texas 77002

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STATEMENT OF THE CASE

Samuel Demaris was charged, by information, with the offense of driving while intoxicated. C.R. at 8. The Court held a pre-trial hearing on September 16, 2024, at which it addressed numerous legal issues, including a State's *voir dire* slide that represented the beyond a reasonable doubt standard as a percentage. R.R. vol. 2.

Demaris entered a not-guilty plea, and his jury trial began on September 18, 2024. R.R. vol. 4. at 78. After a two-day trial, the jury returned a guilty verdict. R.R. vol. 5. At the conclusion of a punishment hearing, the trial court sentenced Demaris to one year confinement, probated for a period of 15 months. R.R. vol. 7 at 12. The trial court entered the written judgment on September 19, 2024, and certified his right to appeal on that same date. C.R. at 159-161.

Demaris filed a *Motion for New Trial* on October 19, 2024, raising a number of issues, including that the jury engaged in misconduct and received outside information for conducting individual experiments at home – and that the jury admitted these facts following deliberations when the trial judge, prosecutor, and defense counsel visited with the jurors in the jury room.

The trial court heard Demaris' *Motion for New Trial* on December 3, 2024, and denied it on that same date. C.R. at 185. Demaris filed his Notice of Appeal on December 12, 2024. C.R. at 186.

ISSUES PRESENTED

I. The jury engaged in misconduct that deprived Demaris of a fair and impartial trial, where the jurors conducted individual experiments, and the trial court erred in denying the motion for new trial.

II. The jury received other evidence after retiring to deliberate, when the jurors conducted individual experiments, and the trial court erred in denying the motion for new trial.

III. Demaris was deprived of due process of law when the State was permitted to represent the beyond a reasonable doubt standard as a percentage.

STATEMENT OF FACTS

Demaris was charged with the offense of driving while intoxicated. C.R. at 8. After pretrial motions hearings, the case proceeded to trial.

During voir dire, the State utilized a giraffe puzzle to illustrate that proof beyond a reasonable doubt could exist in the minds of jurors, with a substantial and specific percentage of puzzle pieces missing. R.R. vol. 2 – DX 16-17; R.R. vol. 3 at 42-43. Trial counsel objected to the State's use of this slide and argument on due process grounds. R.R. vol. 2 at 26-32.

During a pretrial motions hearing, the trial court ruled that, based on the State's discovery violations, the State would not be permitted to introduce evidence of the blood testing result in the case. R.R. vol. 4 at 28-46.

Patrol Sergeant Johnny Valencia testified during the trial and before the jury. Sgt. Valencia testified that he was conducting patrol on November 29, 2023, at around 6:33 a.m., when he saw Demaris' car roll through the red light at the intersection at South Gessner and South Braeswood. R.R. vol. 4 at 84-85, 89-90. Sgt. Valencia turned on his lights and directed Demaris to pull into a nearby parking lot. *Id.* at 90. Sgt. Valencia observed the vehicle move at approximately 5 miles per hour, and strike the curb while stopping. *Id.* at 92-93.

Sgt. Valencia got out of his patrol car, and without his body camera recording and his dash camera only making a brief and immaterial recording, approached Demaris' vehicle. *Id.* at 94.

When Sgt. Valencia approached the driver's side door, he observed Demaris appear to be sleeping. *Id.* at 93-94. Sgt. Valencia tapped on the windshield and woke Demaris. Sgt. Valencia testified that Demaris woke up, rolled down his window, and that Sgt. Valencia could smell a strong odor of alcohol coming from the cab of the vehicle and that Demaris had slurred speech. *Id.* at 96-97. Sgt. Valencia stated that Demaris said he was coming from a friend's house and had earlier gone to a club. *Id.* Sgt. Valencia requested that another unit come to the scene to assist in administering field sobriety tests. *Id.*

Sgt. Valencia asked that Demaris get out of the car, and Sgt. Valencia stated that he observed the smell of alcohol coming from Demaris' person, that Sgt. Valencia felt Demaris had unsteady balance, and asked Demaris how much he had to drink, to which Demaris replied "not much." *Id.* at 98-99. Deputy Pham arrived on scene (who had a camera, but which missed capturing important portions of video), to assist with the investigation. *Id.* at 100-01.

Sgt. Valencia administered standardized field sobriety tests on Demaris, who agreed to take them. *Id.* at 104-05.

After a hearing outside the presence of the jury, the trial court agreed that Sgt. Valencia failed to properly administer the horizontal-gaze-nystagmus ("HGN") test, destroying the reliability of the results, and prohibited the State from introducing evidence of the HGN test to the jury. *Id.* at 108-197.

Before the jury, Sgt. Valencia testified that his last standardized field sobriety test refresher course was back in 2006. R.R. vol. 5 at 11-12. Sgt. Valencia testified that it was extremely cold outside, but that Demaris performed the walk-and-turn test and the one-leg-stand field sobriety tests. *Id.* at 24-26. Sgt. Valencia testified that he observed four out of eight clues on the walk-and-turn test. *Id.* at 42-43. Sgt. Valencia stated he observed three out of four clues on the one-leg-stand test. Based on the totality of these circumstances, including Demaris' performance on the field sobriety tests, Sgt. Valencia formed the opinion that Demaris was intoxicated and placed him under arrest. *Id.* at 50.

On cross-examination, Sgt. Valencia admitted that the last time he had SFST training was in 2006, and that he was not sure if he trained on the 2004 or 2006 manual – but had not had any training since. *Id.* at 58-60. Sgt. Valencia could not recall which manual he trained on, had not seen the latest manual, and was not familiar with it. *Id.* at 62.

Sgt. Valencia admitted that he had never performed field sobriety testing on a tired person, did not ask if Demaris had any medical problems – like injuries to

his hips, knees, or back, and that these questions were not on the field sobriety cheat sheet that he used. *Id.* at 98. Sgt. Valencia admitted he was not sure whether these were required under the new manual, but also admitted these were requirements under even his old manual, but that he failed to ask. *Id.* at 99.

With regard to the walk-and-turn test, Sgt. Valencia admitted that he counted a clue on the walk-and-turn test for Demaris for stepping off the line during the instruction phase, but also admitted that he, Sgt. Valencia, had done the same when he was giving the instructions to the jury, and that a normal human would do the same in standing that way. *Id.* at 100-102. Sgt. Valencia also admitted he counted a clue for failing to walk heel-to-toe, but that he did not realize that the manual permitted there to be a gap between steps. *Id.* at 102-107. Sgt. Valencia also recognized that he stated earlier on direct that Demaris' balance was bad – but that after watching the video, he admitted that his balance looked really good. *Id.* at 103-104. Sgt. Valencia also admitted that Demaris walked down the line without stepping off, even where he took an extra step. *Id.* at 109.

With regard to the one-leg-stand test, Sgt. Valencia admitted he made a mistake in instructing Demaris regarding the clues, and in demonstrating how to perform the test. *Id.* at 110-113.

Sgt. Valencia also admitted that he did not have a real good working grasp of the field sobriety testing, since he had not trained since 2006. *Id.* at 141.

The State also presented the testimony of Jason Gaswint, a toxicologist with the Harris County Institute of Forensic Sciences, who testified very generally about the effects of alcohol on the human body. *Id.* at 162-184. Gaswint admitted that Demaris was a heavyset man. *Id.* at 181.

In its case-in-chief, the Defense called retired police Sergeant (and DWI expert) Don Egdorf. *Id* at 188-209. Sgt. Egdorf testified that he had conducted over 5000 DWI investigations in his 23-year career, and that he was an SFST instructor and a drug recognition expert instructor. *Id.* at 189-90.

Sgt. Egdorf recognized that overweight individuals (like Demaris) could have a hard time performing the field sobriety tests, and that the validation studies illustrated that the results could be affected for folks who were overweight. Id. at 191-92. Sgt. Egdorf also recognized that sleepiness could mimic the signs of intoxication. *Id.* at 193. Sgt. Egdorf also testified that Demaris' speech got better as the videos went on, showing that it was likely him becoming more coherent after having woken up (as opposed to being intoxicated). *Id.* at 194-95. Sgt. Egdorf also testified that fatigue could affect field sobriety testing results. *Id.* at 195.

These were the only three witnesses called during the trial.

Following the close of the defense-case-in-chief, the trial court held a charge conference, read the charge to the jury. The juror charge specifically instructed the

jurors that they were not to conduct any experiments, and that all evidence was to come from the courtroom. C.R. at 153, 156. Both sides then gave closing argument. R.R. vol. 6 at 68-91.

During closing arguments, both the Defense and State heavily emphasized the administration and performance of the field sobriety tests – as they were heavily relied upon as part of the State's evidence. R.R. vol. 6 at 70, 72-75, 77, 79, 85-87, 90.

Following several juror notes, and an *Allen* charge after the jury repeatedly came back split 5-1, the jury returned a guilty verdict. *Id.* at 117.

Following deliberations, the trial court judge, prosecutors, and the defense attorneys all met with the jurors in the jury room. C.R. at 174; R.R. vol. 9 at 17-19, 23-24, 30. While there, the jurors admitted in front of the trial court judge, prosecutors, and defense attorneys that they had each conducted the field sobriety tests individually, at home, before deliberations. *Id.* This became a later point raised and presented in Demaris' filed Motion for New Trial. *Id.*

The following day, the trial court held a punishment hearing, the trial court sentenced Demaris to one year confinement, probated for a period of 15 months. R.R. vol. 7 at 12. The trial court entered the written judgment on September 19, 2024, and certified his right to appeal on that same date. C.R. at 159-161.

Demaris filed a *Motion for New Trial* on October 19, 2024, raising a number of issues, including that the jury engaged in misconduct and received outside information for conducting individual experiments at home – and that the jury admitted these facts following deliberations when the trial judge, prosecutor, and defense counsel visited with the jurors in the jury room. C.R. at 174; R.R. vol. 9 at 17-19, 23-24, 30.

The trial court held a hearing on the motion on December 3, 2024. During the hearing, the State conceded on the record that the jurors made the admission to conducting experiments – stating: "The jurors admitted to conducting their own experiments. I'm not going to address that because that was statements that they made in the jury room." R.R. vol. 9 at 30.

The trial court denied Demaris' motion for new trial on December 3, 2024. *Id.* at 43; C.R. at 185. Demaris filed his Notice of Appeal on that same date. C.R. at 186.

SUMMARY OF THE ARGUMENT

The trial court erred in denying Demaris' *Motion for New Trial*, where he established that the jurors each individually conducted experiments in this case – performing the field sobriety tests at home – despite the trial court specifically prohibiting them from doing so. This resulted in the jury receiving other evidence – which Demaris was unable to confront, and for which he had no counsel to confront – that was damaging to Demaris' defensive theory, and that deprived him of a fair and impartial trial. This also constituted jury misconduct.

Demaris was also deprived of due process of law when the State was permitted to represent the beyond a reasonable doubt standard during voir dire as a percentage – by using a graphic that had a percentage of missing puzzle pieces. This quantification of the beyond a reasonable doubt standard is violative of the established case law that prohibits defining the standard in such a manner, and proved harmful where the jury was also misdirected regarding the standard in the State's closing argument, and where their jury note reflected a lack of understanding regarding the applicable test.

These issues are presented herein.

ARGUMENT AND AUTHORITIES

I. The jury engaged in misconduct that deprived Demaris of a fair and impartial trial, where the jurors conducted individual experiments, and the trial court erred in denying the motion for new trial.

The jurors in this case individually conducted experiments, in violation of the instructions given to them by the trial court, and that misconduct deprived Demaris of a fair and impartial trial – and the trial court erred in denying his motion for new trial.

TEX. R. APP. PROC. 21.3(g) provides:

> "The defendant must be granted a new trial . . . for any of the following reasons:
>
> (g) when the jury has engaged in such misconduct that the defendant did not receive a fair and impartial trial . . . ."

TEX. R. APP. PROC. 21.3(g).

Indeed, it is improper for a juror to perform experiments or demonstrations in the jury room, and such misconduct requires the granting of a new trial where some new fact, hurtful to appellant, is discovered by the examination and experiment. *McLane v. State*, 379 S.W.2d 339, 342 (Tex.Crim.App. 1964); *Melgar v. State*, 593 S.W.3d 913, 923 (Tex. App.—Houston [14th Dist.] 2020, pet. granted, sub. dism.); *Douthit v. State*, 482 S.W.2d 155, 160 (Tex.Crim.App. 1971); *Ex parte McWilliams*, 634 S.W.2d 815 (Tex.Crim.App. 1980); *Ingram v. State*, 363 S.W.2d 284, 285 (Tex.Crim.App. 1962).

This standard is met in this case.

After deliberations, Defense counsel, the prosecution, and even the trial court judge visited with the jurors in the jury room – where they admitted that they had each conducted, and performed, the field sobriety testing – the walk-and-turn test and the one-leg-stand – at home prior to entering deliberations. C.R. at 174; R.R. vol. 9 at 17-19, 23-24, 30. The results and interpretation of the field sobriety testing was hotly contested throughout the trial, and was integral to the State's case. It was a point of contention throughout the testimony of Sgt. Valencia and was the subject of both the Defense and State's closing arguments.

The jurors' individualized experimentation, conducted by each of them, was damaging – as the ability of the jurors to successfully perform the testing refuted the defensive theory as to why Demaris could not successfully perform the tests – despite his not being intoxicated. It also would have necessarily failed to follow the standardized procedure, not having been conducted by a certified practitioner, and would reduce the strenuousness and difficulty level of the test – having a damaging effect for Demaris, and depriving him of a fair and impartial trial. A specific juror's natural ability to perform the test, and their performances on the test, may differ wildly from that of Demaris – who the testimony revealed was heavyset and not within the parameters of those whom the field sobriety testing had been standardized.

Moreover, the jury charge in this case specifically instructed the jury not to engage in such experimentation, and explained that all evidence was to come from the courtroom. C.R. at 153, 156. The jurors failed to follow these specific instructions, and informed the parties and the trial court of that fact. The failure to follow the clear instruction was misconduct. The violation of these instructions also deprives Demaris of a fair and impartial trial.

Despite this, the trial court failed to follow the requirements of TEX. R. APP. PROC. 21.3(g), which requires that a defendant must be given a new trial when such misconduct occurs. The trial court abused its discretion in denying the motion for new trial.

Demaris requests that this Court find that the jurors engaged in misconduct, when they engaged in experimentation of the field sobriety testing, that this experimentation was damaging and influential to the jurors, and that this misconduct deprived him of the right to a fair and impartial trial.

Demaris requests that this Court find that the trial court erred in denying his Motion for New Trial, and requests that this Court vacate and reverse the judgment in this case and remand the case for further proceedings. Demaris requests any and all such further relief to which he may be entitled in law or in equity.

II. The jury received other evidence after retiring to deliberate, when the jurors conducted individual experiments, and the trial court erred in denying the motion for new trial.

The jurors in this case individually conducted experiments, in violation of the instructions given to them by the trial court, and which resulted in the jury receiving other evidence – and the trial court erred in denying his motion for new trial.

TEX. R. APP. PROC. 21.3(f) provides:

> "The defendant must be granted a new trial . . . for any of the following reasons:
>
> (f) when, after retiring to deliberate, the jury has received other evidence . . . ."

TEX. R. APP. PROC. 21.3(f).

The rule providing for a new trial when the jury receives other evidence was designed to guarantee the integrity of the fundamental right to trial by jury – to be confronted by witnesses by restricting the juror's consideration to evidence that was properly introduced during the trial. *Carter v. State*, 753 S.W.2d 432, 435 (Tex. App.—Corpus Christi–Edinburg 1988, pet. ref'd); *Bearden v. State*, 648 S.W.2d 688, 693 (Tex.Crim.App. 1983); *Marinez v. State*, 654 S.W.2d 500, 502 (Tex.App.—Corpus Christi 1983, no pet.)

It is fundamental in Texas (and in every State), that trial by jury in a criminal case requires that the evidence developed against a defendant shall come from the

witness stand in a public courtroom where there is full judicial protection of the defendant's right of confrontation, of cross-examination, and of counsel. *See Carter*, 753 S.W.2d at 435; *see also Parker v. Gladden*, 385 U.S. 363 (1966).

These axiomatic principles are violated when the jurors receive outside evidence – the evidence is unable to be tested, Demaris cannot confront or explain it, his counsel cannot cross-examine it, and such evidence cannot be put in its proper place – withstanding defense scrutiny. Additionally, it shows that the specific instructions the jurors were given were not followed – reflecting a breakdown in process.

And here, the jurors received such outside evidence -- where the jurors admitted that they had each conducted, and performed, the field sobriety testing – the walk-and-turn test and the one-leg-stand – at home. C.R. at 174; R.R. vol. 9 at 17-19, 23-24, 30.

As discussed in Section I-A, supra, and incorporated herein, the jurors' individualized experimentation, conducted by each of them, was damaging, and constituted receiving outside evidence. This outside evidence of the jurors' ability to successfully perform the testing refuted the defensive theory as to why Demaris could not successfully perform the tests –despite his not being intoxicated. It also would have necessarily failed to follow the standardized procedure, not having been conducted by a certified practitioner, and would reduce the strenuousness and

difficulty level of the test – having a damaging effect for Demaris, and depriving him of a fair and impartial trial. A specific juror's natural ability to perform the test, and their performances on the test, may differ wildly from that of Demaris – who the testimony revealed was heavyset and not within the parameters of those whom the field sobriety testing had been standardized. And whether a minor or maximum degree of damage, it constituted receiving outside evidence.

Despite this, the trial court failed to follow the requirements of TEX. R. APP. PROC. 21.3(f), which requires that a defendant must be given a new trial when the jurors receive other evidence. The trial court abused its discretion in denying the motion for new trial.

Demaris requests that this Court find that the jurors received outside evidence, when they engaged in experimentation of the field sobriety testing, that this experimentation was damaging and influential to the jurors, and that this receiving of outside evidence deprived him of the right to a fair and impartial trial.

Demaris requests that this Court find that the trial court erred in denying his Motion for New Trial, and requests that this Court vacate and reverse the judgment in this case and remand the case for further proceedings. Demaris requests any and all such further relief to which he may be entitled in law or in equity.

III. Demaris was deprived of due process of law when the State was permitted to represent the beyond a reasonable doubt standard as a percentage.

Demaris was deprived of due process of law under the Fourteenth Amendment to the U.S. Constitution when the State was permitted to represent the beyond a reasonable doubt standard as a percentage during voir dire proceedings.

Due process requires proof beyond a reasonable doubt for criminal convictions. *In re Winship*, 397 U.S. 358, 361 (1970) ("[W]e explicitly hold that the Due Process Clause protects the accused against conviction except upon proof beyond a reasonable doubt of every fact necessary to constitute the crime with which he is charged.").

The Texas Court of Criminal Appeals has instructed that it is the better practice to give no definition of reasonable doubt at all to the jury. *Paulson v. State*, 28 S.W.3d 570, 573 (Tex. Crim. App. 2000). Representing the beyond a reasonable doubt standard as a percentage serves to define it – improperly.

That is precisely what occurred in this case with the State's puzzle piece giraffe voir dire slides. R.R. vol. 2 – DX 16-17; R.R. vol. 3 at 42-43. During voir dire, the State used these puzzle piece slides to show the jury that even with a substantial percentage of puzzle pieces missing, the jury could make out a picture of a giraffe – constituting proof beyond a reasonable doubt. R.R. vol. 2 – DX 16-17; R.R. vol. 3 at 42-43.

Other courts have recognized that this type of representation is a flawed way to demonstrate the process of proving guilt beyond a reasonable doubt. As the California Supreme Court stated:

> "The use of an iconic image like the shape of California or the Statue of Liberty, unrelated to the facts of the case, is a flawed way to demonstrate the process of proving guilt beyond a reasonable doubt. These types of images necessarily draw on the jurors' own knowledge rather than evidence presented at trial. They are immediately recognizable and irrefutable. Additionally, such demonstrations trivialize the deliberative process, essentially turning it into a game that encourages the jurors to guess or jump to a conclusion.
>
> A criminal trial is regulated by rules of procedure. A jury may only decide the issue of guilt based on the evidence presented at trial, with the presumption of innocence as its starting point. Although the jurors may rely on common knowledge and experience in evaluating the evidence, they may not go beyond the record to supply facts that have not been proved. Facts supporting proof of each required element must be found in the evidence or the People's burden of proof is unmet. It is thus misleading to analogize a jury's task to solving a picture puzzle depicting an actual and familiar object unrelated to the evidence."
>
> *People v. Centeno*, 60 Cal. 4th 659, 669–70 (2014).

In *People v. Wilds*, a New York appellate court similarly found:

> "In the course of the trial, the trial court instructed the jury that they did not need to have all of their questions answered in order to convict the defendant. For the purpose of attempting to simplify this charge, the trial court used the analogy of a jigsaw puzzle of Abraham Lincoln. Thus, the trial court stated, in pertinent part: "So the point of all of this is that some of your questions may never be answered. So what. It's not a jigsaw puzzle, it's not a game you are going to get all the pieces which the Prosecution feels it has to give you in order to make out a case beyond a reasonable doubt. If it makes out its case beyond a reasonable doubt even though some questions are

> unanswered, even though there [are] some blank spaces in the jigsaw puzzle you will say so you are convinced beyond a reasonable doubt that this is a portrate *[sic]* of Abraham Lincoln. Prove it. Guilty. And if you can't tell what the picture is, too many blank spaces then you say not proven. Not guilty." The defense objected to the charge.
>
> Further, we believe that the average American juror would recognize a jigsaw puzzle of Abraham Lincoln long before all of the pieces are in place. Obviously, this is not the quantum of proof required in a criminal case. Accordingly, after reviewing those instructions, we find them to be error, since they diminished the People's burden of proof and permitted the conviction of the defendant, based upon a standard less than that of beyond a reasonable doubt."

People v. Wilds, 141 A.D.2d 395, 397–98 (N.Y. App. Div. 1988); *see also People v. Katzenberger*, 178 Cal.App. 4th 1260, 1269 (2009); *People v. Otero*, 210 Cal.App. 4th 865, 874 (2012); *cf. Silva v. State*, 2024 WL 3507508, at *1-2 (Tex. App.—Houston [14th Dist.] July 23, 2024, no pet.) (finding that trial counsel failed to preserve the appellate complaint).

The use of these slides serves to both define and reduce the State's burden of proof – trivializing the proof beyond a reasonable doubt standard, and also compelling the jurors to search for a conclusion that properly answers "what does this puzzle show" in a way that meets the State's burden of proof, instead of giving and administering the presumption of innocence in the analysis. Additionally, like these outside state court cases show, they also illustrate that the jurors may rely on more than just their experience, but supply their own facts, where the State's factual presentation may be lacking. Again, this waters down the proof beyond a

reasonable doubt standard. Worse, the use of this graphic representation, wherein a certain and significant percentage of puzzle pieces are missing, serves to provide a definition in the form of a percentage – specifically deemed improper under applicable case law. The reduction of this standard harms Demaris.

Finally, it should be noted that in closing arguments, the State again tried to water down and reduce its burden of proof in the following colloquy:

> "Prosecutor: I want you to when you're deliberating remember one thing. The standard is not beyond a reasonable doubt, beyond one doubt, beyond any doubt. Think of the elements. Like I said, this case is so, so simple. Don't make it complicated like the Defense wants you to make it complicated. They want to confuse you about SFSTs. They want to confuse you like the eye test –
>
> Mr. Stewart: Your Honor, I would like to – that's a legal objection. The standard is beyond a reasonable doubt on each element.
>
> The Court: I'll sustain the objection.
>
> Mr. Stewart: Thank you. I'd ask that the jury be told that, sir.
>
> The Court: Repeat what you said, sir. I didn't hear you.
>
> Mr. Stewart: I ask that the jury be told that the standard is beyond a reasonable doubt on each element. They have to prove each element individually, like the elements –
>
> The Court: Ladies and gentlemen, the information regarding the burden of proof is in your instructions. Please continue."

R.R. vol. 6 at 87.

This was a flagrant misstatement of the law, and was in line with the State's goal – starting in voir dire – of reducing its burden – by trying to show the least amount of puzzle pieces necessary to get the jurors to leap to conclusions and guess at what the missing factual puzzle pieces might be in the trial – and there were significant pieces missing in this case: missing alcohol test results, incomplete field sobriety testing (the improperly conducted HGN eye test the prosecutor mentioned in his arguments), missing video evidence, etc.

Demaris requests that this Court find Demaris was deprived of due process of law when the State was permitted to represent the beyond a reasonable doubt standard as a percentage during voir dire proceedings.

Demaris requests that this Court vacate and reverse the judgment in this case and remand the case for further proceedings. Demaris requests any and all such further relief to which he may be entitled in law or in equity.

PRAYER

Demaris respectfully requests that this Court find that he has established the grounds of error presented above, and that his conviction should be vacated. Demaris requests that this Court reverse his conviction, set aside his sentence, and remand this case to the trial court for a new trial or a new hearing on his motion for new trial. Demaris prays for any and all relief to which he may be entitled, in law or in equity.

Respectfully Submitted,

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CERTIFICATE OF COMPLIANCE

This brief contains approximately 4,557 words, and is therefore, in compliance with the word limit established by Rule 9.4 of the Texas Rules of Appellate Procedure.

/s/ C. Stephen Stewart
C. Stephen Stewart

CERTIFICATE OF SERVICE

A true copy of the foregoing has been electronically delivered to the Jessica A. Caird with the Harris County District Attorney's Office on this the 16th day of June, 2025.

/s/ C. Stephen Stewart
C. Stephen Stewart

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