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FIRST COURT OF APPEALS
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NO. 01-24-00803-CR

IN THE COURT OF APPEALS

FOR THE

FIRST DISTRICT OF TEXAS

HOUSTON, TEXAS

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DEBORAH M. YOUNG
Clerk of The Court

ARMANDO BATISTA, III, APPELLANT

VS.

THE STATE OF TEXAS, APPELLEE

BRIEF FOR THE APPELLANT

TRIAL COURT CAUSE NUMBER 23CR0354
IN THE 122ND DISTRICT COURT OF
GALVESTON COUNTY, TEXAS

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ORAL ARGUMENT REQUESTED

LIST OF PARTIES

Presiding Judge	Honorable Jeth Jones
Appellant	Armando Batista, III
Appellee	The State of Texas
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Attorney for Appellant (Appeal only)	Mr. Joel H. Bennett 17047 El Camino Real, Ste. 120 Houston, Texas 77058
Attorney for Appellee (Trial only)	Ms. Casey Kirst Mr. Adam Poole Galveston County Criminal District Attorney's Office 600 59TH Street, Suite 1001 Galveston, Texas 77551
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NO. 01-24-00803-CR

IN THE

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FOR THE

FIRST DISTRICT OF TEXAS

HOUSTON, TEXAS

ARMANDO BATISTA, III, Appellant

v.

THE STATE OF TEXAS, Appellee

Appealed from the 122ND District Court
of Galveston County, Texas
Cause No. 23CR0354

BRIEF FOR APPELLANT

TO THE HONORABLE COURT OF APPEALS:

Now comes Armando Batista, III, by and through his attorney of record Joel H. Bennett, of Sears, Bennett, & Gerdes, LLP, and files this brief.

STATEMENT OF THE CASE

Appellant was charged by indictment with Murder. CR—

7. Appellant pled not guilty to the charge and a trial by jury began on October 14, 2024. CR-82; RR2-4-6. After hearing the evidence and argument of counsel, the jury found Appellant "guilty" as alleged in this indictment. RR6-117, CR-94. Prior to trial, Appellant elected to have the Jury assess punishment and after hearing evidence and argument of counsel on the issue of punishment, the Jury sentenced Appellant to ninety-nine (99) years in the Texas Department of Criminal Justice—Institutional Division and no fine. RR7-4-5 and CR-102. Judgment and Sentence was entered and signed on October 17, 2024, as well as the trial court's certification of Defendant's right to appeal. CR—103-107, 108. Notice of Appeal was timely filed on the same day. CR—432.

APPELLANT'S FIRST ISSUE

THE TRIAL COURT ERRED IN DENYING APPELLANT'S MOTION TO SUPPRESS THE SEARCH OF HIS CELL PHONE. THE WARRANT FAILED TO ESTABLISH PROBABLE CAUSE TO BELIEVE EVIDENCE OF THE CRIME WOULD BE ON THE PHONE. THERE WAS NO NEXUS BETWEEN THE CELLPHONE AND THE MURDER. THE SEARCH WAS NOTHING MORE THAN A FISHING EXPEDITION.

STATEMENT OF FACTS

Appellant filed a Motion to Suppress the search of

his cellphone. CR-72-73. In the motion, Appellant asserted that the search warrant lacked probable cause for the warrant to be issued and authorize the search of his cellphone; the affidavit only makes conclusionary statements; lacks specific details that Appellant's cellphone was used, connected to, operational, or present during the alleged offense; lacks specific details about what information is to be on the cellphone that is associated with this case; or that Appellant's cell phone was possessed or possesses evidence of the murder investigation. CR-72.

At the hearing on the motion, Appellant argued there was no nexus between the murder and the necessity to search Appellant's cell phone. Appellant argued that the language was boilerplate language that the suspect's cell phone could potentially present some evidence for the case. There was no specific information or specific details that Appellant possessed the cell phone at the time of the murder or used the cell phone at any point in time before, during, or after the murder occurred. Appellant further argued that there were no facts presented that gave the magistrate probable cause to

seize and search the phone. RR3-5-6.

The State agreed that there does need to be a nexus to warrant entry into the phone. But the State argued that there does not have to be a showing that the person used or even possessed the phone. The State's position was there just has to be probable cause that there is going to be something on the phone that is connected to the case. The State relied on the assertion in the warrant claimed there might be communication between Appellant and witness Thomas. The State argued that that alone is sufficient nexus. RR3-6-7.

The trial court denied the Appellant's motion. RR3-7. The trial court then asked what the jury would hear concerning the search of the phone. RR3-7. The State informed the court that the report will contain photos.

The search warrant and affidavit for the search warrant were admitted as Exhibit "A" during the hearing on the Motion to Suppress. RR8-7-11. In the affidavit for the search warrant, the officer made the follow assertion about the relevance of the cellphone, "Affiant believes, and has good reason to believe that the Android device found in possession of Suspect Batista,

contains communication between Witness Thomas and Suspect Batista III. Further, it is believed, through training and experience, that persons sometimes communicate their crimes via social media, apps and other forms of communication via cellular devices. Affiant further believes through training and experience that tracking data is sometimes contained on cellular devices." RR8-10, paragraph 40.

Based upon the quoted language, the search warrant authorized a search for and seizure of:

1. Photographs/videos
2. Text or multimedia messages
3. Call history or call logs
4. All emails
5. Instant messaging
6. All other forms of communication of which the phone is capable
7. Internet browsing history
8. Any stored Global Positioning System (GPS) data
9. Contact information including email addresses, physical addresses, mailing addresses, and phone numbers

10. Any voicemail messages contained on the phone
11. Any recordings contained on said phone
12. Any social media posts or messaging and all images associated thereto
13. Any documents and or evidence showing the identity of ownership and identity of the users
14. Computer files or fragment of files
15. All tracking data and way points
16. CD-ROM's
17. CD's
18. DVD's
19. Thumb drives
20. SD cards
21. Flash drives
22. Any other equipment attached to or embedded in the device that can be used to store electronic data, metadata, and temporary files.

SUMMARY OF ARGUMENT

The trial court committed reversible error in failing to granted Appellant's Motion to Suppress the search of his cellphone. The affidavit failed to show sufficient nexus between Appellant's phone and the

murder. The boilerplate information relied upon by the State is less persuasive that other boilerplate language that has already been ruled to be insufficient to warrant a search.

ARGUMENT AND AUTHORITIES

The search warrant authorized the cellphone to be searched for twenty-one (21) separate items and devices and one catch all request. The affidavit for the search of the phone failed to provide any nexus between the phone and the requested search. The law is clear that mere possession of a phone is insufficient to warrant an intrusion into a person's cell phone.

A trial court's ruling on a motion to suppress evidence under a bifurcated standard of review. *Amador v. State, 221 S.W.3d 666, 673 (Tex. Crim. App. 2007).* Almost total deference is given to a trial court's rulings on questions of historical fact and application of law to fact questions that turn on an evaluation of credibility and demeanor, but a trial court is reviewed *de novo* application-of-law to fact questions that do not turn on credibility and demeanor. *Amador, 221 S.W.3d at 673.*

A trial court's application of the law of search and seizure is reviewed *de novo*. *State v. Ross*, *32 S.W.3d 853, 856 (Tex. Crim. App. 2000)*. Review of an affidavit supporting a search warrant is not *de novo* as great deference is given to the magistrate's probable cause determination. *Illinois v. Gates*, *462 U.S. 213, 236-37, 103 S.Ct. 2317, 76 L.Ed.2d 527 (1983)*; *Rodriguez v. State*, *232 S.W.3d 55, 61 (Tex. Crim. App. 2007)*. In this case, there was an affidavit for the search warrant and a signed warrant. There was no testimony taken at the hearing and therefore any probable cause determination is made from the "four corners" of the affidavit.

Appellant will point out up front, that there was no GPS data introduced from the search of his cellphone and presumably no GPS data recovered during the search of the cellphone. This case is not about whether or not the State had probable cause to obtain GPS data from his phone. Any such argument would be moot, as no such evidence was introduced at trial.

The affidavit for the search warrant is a little over three pages in length. In the affidavit, it sets

forth the facts of the murder, the facts that lead to the arrest of Appellant, and that Appellant was in possession of a cell phone at the time of his arrest.

This affidavit and warrant requested and granted general rummaging of Appellant's cellphone without any probable cause for such an expansive intrusion. The entirety of the facts alleged to produce probable cause to support the search of the phone is about three (3) sentences of boilerplate/conclusionary statements:

"Affiant believes, and has good reason to believe that the Android device found in possession of Suspect Batista, contains communication between Witness Thomas and Suspect Batista III. Further, it is believed, through training and experience, that persons sometimes communicate their crimes via social media, apps and other forms of communication via cellular devices. Affiant further believes through training and experience that tracking data is sometimes contained on cellular devices." Based upon these three sentences, the affidavit requested and the warrant authorized the search of and for twenty-one separate items and one catch all request. Almost all of these items were not

even mentioned in the probable cause affidavit and the affidavit contained no factual nexus to support such search.

Both the United States Supreme Court and the Texas Court of Criminal Appeals have held a person has a significant and reasonable expectation of privacy in the contents of their cell phone. "In 2014, the United States Supreme Court addressed the warrant requirement for cell-phone evidence in *Riley*,...*See 573 U.S. at 378–81, 134 S. Ct. at 2480–82*. The Court first described the term 'cell phone' as a 'misleading shorthand' for a device that is a minicomputer that can be used as a phone, camera, video player, rolodex, calendar, tape recorder, library, diary, album, television, map, or newspaper. *Id. at 393, 134 S. Ct. at 2489*. It observed that one of the most notable distinguishing features is the cell phone's immense storage capacity from which '[t]he sum of an individual's private life can be reconstructed through a thousand photographs labeled with dates, locations, and descriptions.' *Id. at 394, 134 S. Ct. at 2489.*". *Martinez v. State, 689 S.W.3d 30, (Tex. App.-Fort Worth*

2025, pet. ref'd).

The Texas Court of Criminal Appeals described how a person's cellphone contains a vast amount of personal data that is protected from unreasonable search and seizure by law enforcement. The Court of Criminal Appeals discussed the privacy interest and wrote:

> "The Fourth Amendment states that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures shall not be violated.' The term 'papers and effects' obviously carried a different connotation in the late eighteenth century than it does today. No longer are they stored only in desks, cabinets, satchels, and folders. Our most private information is now frequently stored in electronic devices such as computers, laptops, iPads, and cell phones, or in 'the cloud' and accessible by those electronic devices. But the 'central concern underlying the Fourth Amendment' has remained the same throughout the centuries; it is 'the concern about giving police officers 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).

The Texas Court of Criminal appeals in *Granville*, recognized this reasonable expectation of privacy. "Courts have held that (1) a person has a subjective expectation of privacy in the contents of his cell phone, and (2) this expectation of privacy is one that society recognizes as reasonable and legitimate. *State v. Granville, 423 S.W.3d at 405–06.*

More recently in *Stocker v. State*, the Fourteenth Court of Appeals emphasized that the State has no right to a general rummaging of a person's cellphone. The Court of Appeals held, "***Neither article 18.0215 nor the Fourth Amendment permit law enforcement to embark on 'a general, evidence-gathering search' of a cell phone for personal information.*** *See State v. Granville, 423 S.W.3d 399, 412 (Tex. Crim. App. 2014); see also Butler v. State, 459 S.W.3d 595, 601 n.3 (Tex. Crim. App. 2015)* (acknowledging that both the United States Supreme Court and the Texas Court of Criminal Appeals have recognized that cell phone users have a reasonable

expectation of privacy in content of their cell phones).". *Stocker v. State*, ___ *S.W.3d* ____, *2025WL1033949. p. 5 (April 8, 2025) (opinion after remand)(Emphasis added)*. Yet, that is exactly what the State was permitted to do against Appellant. The warrant in this case authorized the State to search for over 21 specific items/devices without any factual basis or belief to support such a search.

At the hearing on Appellant's Motion to Suppress, the State relied solely on the boilerplate language that there might be communication between Appellant and witness Thomas. There is not a single fact articulated in the affidavit to support such inference. In fact, the affidavit discusses the conversations with witness Thomas and at no point was there any assertion that he and Appellant discussed the event by phone call, text messages, social media, or any other form of communication. In fact, witness Thomas gave his phone to law enforcement and granted them consent to search his phone. Any potential communication between the two parties was readily available to the State and yet there was still no factual support for this statement.

The affiant swore under oath that he had good reason to believe and did believe that the phone "contains communication between witness Thomas and Suspect Batista III". RR8-10. Why? There are no facts in the affidavit to support such belief. Law enforcement, including the affiant, spoke with witness Thomas on multiple occasions and at no point in the affidavit is it discussed that he and Appellant communicated about the event after it occurred. In his second of three sentences attempting to establish a nexus between the phone and the crime, the affiant wrote, "it is believed, through training and experience, that persons sometimes communicate their crimes via social media, apps and other forms of communication via cellular devices." This type of rank speculation has already been rejected by the Court of Criminal Appeals.

In *State v. Baldwin*, *664 S.W.3d 122, 134 (Tex. Crim. App. 2022)*, the Court of Criminal Appeals held that boilerplate language about cellphone use among criminals ***is not*** sufficient to establish probable cause are required. The Court of Criminal Appeals emphasized

that specific facts connecting the items to be search to the offense. The issue in *Baldwin* was boilerplate language about criminals communicating with each other. The warrant in this case is even less compelling that the language discussed in *Baldwin*.

In Appellant's case, the boilerplate language asserts that the suspect is communicating with a witness, not another suspect. *Baldwin* discusses how suspects may communicate amongst themselves about a crime or crimes. This affidavit differs greatly. It alleged that a suspect and a witness could discuss a crime. A very different scenario.

The rationale applied to two suspects communicating to coordinate an offense has zero application to a suspect communicating with another individual who was not a participant in the crime. The rationale in *Baldwin* was insufficient; the boilerplate language in this case is even less compelling.

The only basis for the warrant relied upon by the State during the hearing on Appellant's motion was the 'communication between Appellant and witness' argument. This type of boilerplate and unsupported language cannot

be sufficient to support the search of Appellant's phone. There is no nexus between the phone recovered from Appellant upon arrest and the boilerplate language used to get the warrant. The trial court erred in its ruling.

Tex. Code of Crim. Proc. § 18.01(b) states, "No search warrant shall issue for any purpose in this state unless sufficient facts are first presented to satisfy the issuing magistrate that probable cause does in fact exist for its issuance. A sworn affidavit setting forth substantial facts establishing probable cause shall be filed in every instance in which a search warrant is requested." The affidavit in Appellant's case was sufficient to support an arrest warrant for Appellant but it completely lacks in any substantial facts establishing probable cause to search Appellant's cellphone. As discussed earlier, Appellant, just like any person, has a substantial and justified expectation of privacy in the contents of his phone.

Tex. Code Crim. Proc. § 18.0215 is the specific statute regarding the search of a cellphone. Under subsection (c)(5), the statute reads:

"A judge may issue a warrant under this article only on the application of a peace officer. An application must be written and signed and sworn to or affirmed before the judge. The application must:

...

(5) state the facts and circumstances that provide the applicant with probable cause to believe that:

(A) criminal activity has been, is, or will be committed; and

(B) searching the telephone or device is likely to produce evidence in the investigation of the criminal activity described in Paragraph (A)."

As the Fourteenth Court of Appeals discussed in *Stocker v. State* (after remand), a nexus requirement exists demanding a "fair probability" that searching the device is "likely to produce evidence" in the investigation of criminal activity. "Mere possession of a device by a suspect generally is not enough. *See State v. Baldwin, 664 S.W.3d 122, 134 (Tex. Crim. App. 2022).*" *Stocker v. State, ___ S.W.3d ____, 2025WL1033949. p. 6.*

Where is the nexus to support a search of all of Appellant's photographs and videos? There is none. Where is the nexus to support a search for all computer files or fragment of files? There is none. Where is the nexus to support a search for the internet browsing history from the cellphone? There is none. This same question could be asked for almost every single item requested in the affidavit. The answer is the same-there is no nexus shown in the affidavit for the warrant. As previously stated, neither article 18.0215 nor the Fourth Amendment permit law enforcement to embark on 'a general, evidence-gathering search' of a cell phone for personal information. *See Granville, supra, and Stoker, supra*. If law enforcement's desire to gain access to GPS data from a cellphone is sufficient to access the entirety of the data contained in the phone, this conclusion necessarily allows law enforcement to gain access to any personal writing of a suspect contained within a phone. Search warrants for person writings of a defendant are not permitted. Such a holding would be Unconstitutional.

Both *Baldwin* and *Stoker* both confirm that the mere possession of a cellphone is insufficient to warrant the

search of a defendant/suspect's phone. The facts supporting an arrest warrant or facts connecting a defendant/suspect to a crime or crimes by themselves cannot be sufficient either. If that alone was sufficient, then law enforcement would automatically be able to search the cellphone of any person arrested upon a finding of probable cause for the arrest. This is not the law. Such a reading would cause the exception to swallow the rule and make the obtaining a warrant nothing more than a formality.

In the affidavit for the warrant and the warrant itself specifically list the items for which law enforcement requested and was granted permission to search. The missing element is that there is no basis in the affidavit to support a search for almost all of the listed items. There is a complete lack of nexus between the cellphone, the murder, and the requested search. From the facts in the affidavit, there is no evidence that Appellant possessed the phone during any relevant time. There is no evidence that Appellant and a witness communicated about the event before, during or after the event. There was no GPS data presented at

trial—only two photos that are completely unrelated to the alleged reason for the search.

There was a complete lack of nexus between the requested search of the cellphone and any evidence or facts that would support the detailed, requested search by law enforcement. The warrant authorized a general rummaging of the cellphone by law enforcement. This is improper. "***Neither article 18.0215 nor the Fourth Amendment permit law enforcement to embark on 'a general, evidence-gathering search' of a cell phone for personal information.***". *Stocker v. State*, ___ *S.W.3d* ____, *2025WL1033949. p. 5 (April 8, 2025) (opinion after remand)(Emphasis added)*. Appellant's Motion to Suppress the search of his cellphone, due to the lack of nexus between the cellphone and the requested search, specifically of all his photographs and videos, should have been sustained.

As it has been explained by the Court of Criminal Appeals, the information contained in a person's cellphone "...may involve the most intimate details of a person's individual life, including text messages, emails, banking, medical, or credit card information,

pictures, and videos. A cell phone is unlike other containers as it can receive, store, and transmit an almost unlimited amount of private information. The potential for invasion of privacy, identity theft, or, at a minimum, public embarrassment is enormous." *State v. Granville, 423 S.W.3d at 408-09*. This type of personal information should be given and is given great protection by both the United States Supreme Court and the Texas Court of Criminal Appeals.

If the search of Appellant's phone is allowed under the facts of this case, the law then becomes that if a person is charged with an offense, that person owns a phone, then law enforcement can search the phone. In more physical terms, the search of Appellant's cellphone for any and all files or portions of files, including photographs, equates to law enforcement being granted a warrant to search for a long gun but finding contraband in a jewelry box. Law enforcement cannot expand the search beyond what the probable cause allows. This cannot and should not be the law.

The trial court erred in finding that the search warrant affidavit provided a nexus to search Appellant's

cellphone without any factual basis supporting the search for the enumerated items.

Since the trial court erred in overruling Appellant's Motion to Suppress the search of his cellphone, a harm analysis must be conducted. As the error in this case is the denial of a motion to suppress a search conducted in violation of the Fourth Amendment, the harmless-error rule applies under *Tex. R. App. Proc. 44(a)*.

"We review the harm resulting from a trial court's erroneous denial of a motion to suppress evidence obtained in violation of the Fourth Amendment under the constitutional harmless-error standard of Texas Rule of Appellate Procedure 44.2(a). *See Tex. R. App. P. 44.2(a);* *Hernandez v. State*, *60 S.W.3d 106, 108 (Tex. Crim. App. 2001)*. Under Rule 44.2(a), we must reverse the conviction unless we conclude 'beyond a reasonable doubt that the error did not contribute to the conviction or punishment.' *Tex. R. App. P. 44.2(a)*. This Court has previously observed that we begin our analysis under this standard presuming reversal is required and that the burden is on the State to show

the error is harmless. *See Morris v. State, 554 S.W.3d 98, 124 (Tex. App. – El Paso 2018, pet. ref'd).*"

Lopez v. State, 615 S.W.3d 238, 265 (Tex. App. 2020).

Officer Chris Whipple of the Galveston Police Department received a call for service for East beach area of an individual who was incapacitated. RR4-29-30. He saw victim slumped over on the jetties, with a black chair next to him; it appeared that he had been sitting in the chair as it was over on his side. RR4-30-31. He ran out to where he was but there were no signs of life. He performed CPR until EMS arrived. RR4-32-33. As he was arriving to the scene, he passed a white sedan which was traveling in the opposite direction and it the only car they passed on the way in. RR4-35.

Michelle Sollenberger was a detective involved in this case. RR4-61. Two days after the incident, she spoke with Keenan Thomas on the phone who said he was a witness to the event. RR4-70. She and detective Murdock drove to Pearland to meet with him in person. RR4-70. During two interviews of him that evening, they showed Mr. Thomas a photograph after showing him

the photo, GPD now had a person of interest in the case, Armando Batista. RR4-73-74. Later on, detective Sollenberger GPD received Mr. Thomas' cell phone provide by Keenan Thomas to the police. RR4-74. She performed a full extraction of phone with Cellebrite. RR4-75. State # 11 is a flash drive with the data extracted from Keenen Thomas' phone. RR4-78.

Keenan Thomas was fishing in Galveston on the date of this incident with Appellant, he knew him as Mondo Batista. RR4-96. They came to Galveston in Keenan's mother's vehicle, which is a white Toyota. RR4-97. Something happened between 5:30 to 6:00. RR-4-100. Keenan was at his car making a phone call and he had a clear view of what happened. RR4-101. Appellant was talking to the man, but Mr. Thomas was not able to hear what they were saying. RR4-102. Appellant came back to the car and told Keenan that the man disrespected him and was very racist to him in the conversation. RR4-102. Appellant went into the car and took out a bandana and a knife. RR4-103. Keenan asked him what he was doing and Appellant said he was going to take care of some business because he was disrespected. RR4-

103. Appellant then walked back to the beach, put his bandana around his face, went back and stabbed the victim repeatedly in his upper left side of his body. RR4-103.

When Appellant walked away from the car with the knife and bandana, Keenan took out his phone and got ready to record it. RR4-105. He recorded it because he knew the situation was going to be bad and he did not want to be part of it. RR4-105.

Keenan testified that he was getting immunity for his testimony. Mr. Thomas had been convicted of robbery, aggravated robbery, another two charges of aggravated robbery, he is currently charged with Online Solicitation of a Minor, and he was getting immunity for his testimony. RR4-105-106. Additionally, he is getting a plea deal for his Online Solicitation of Minor case; he was going to plead guilty for a 5 year sentence. RR4-106-107.

As they were driving off, Appellant was a little nervous and put the knife in his backpack. RR4-109. Appellant told him to take the La Marque exit. RR4-110. They drove and Appellant told him to stop the car;

Keenan got out with him; Appellant took the knife out of his backpack and placed it under this metallic-like material thing. RR4-111. Mr. Thomas took the police to the location where the knife was hidden. RR4-118.

Jacaranda Solis is a forensic scientist in Biology and DNA section of DPS. RR5-36. She did the DNA testing which determined that the DNA swab of the knife was 2.84 million times more likely have the DNA of Mr. Titov than an unknown person. RR4-54.

Jeff Murdock was the lead detective for Galveston Police Department on this case. RR5-65. He spoke with a witness who had a video on his phone. RR5-77. The video shows a male sitting in a chair; a male walked behind him, retrieved something from his waistband, and struck the man in the back several times. RR5-79. The guy who did it was wearing a Hustle Hard shirt, some sort of bonnet on his head, and a face covering. RR5-80. He also had some type of birthmark on his arm. RR5-81. In the video the man removes his face covering and you can see the profile of the person. R5-82.

State's Exhibit # 20 a photograph taken from Appellant's phone alleged to have him wearing the same

shirt seen on the video from Thomas' cellphone. RR5-85-86. State's Exhibit 21 is the other photograph taken from Appellant's phone showing a person, presumably Appellant, wearing a similar type of face covering as seen in the video from Thomas' cellphone. RR8-86.

The facts of the case boil down to the testimony of one witness and a video from the witness' cellphone. The two photographs that were obtained through the search of the photographs contained on Appellant's cellphone were used by the State to try to prove to the jury that Appellant was the person in the video. The two photographs were very persuasive pieces of evidence used by the State to argue that Appellant was the person in the video. Showing Appellant in similar clothing as to the person in the video clearly contributed to the finding of guilt of Appellant. The effect of this type of evidence cannot be considered harmless and the error clearly contributed to his conviction. The error cannot be found to be harmless.

For all the foregoing reasons, Appellant's Sole Issue should be sustained, the punishment in this case

be reversed, and the case remanded for further proceedings.

CONCLUSION AND PRAYER

WHEREFORE, PREMISES CONSIDERED, the Appellant, Armando Batista, III, prays that the Judgment of the Trial Court be reversed and remanded for further proceedings consistent with this Court's opinion.

Respectfully submitted,

SEARS, BENNETT, & GERDES, LLP

__/s/ Joel H. Bennett_____

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ATTORNEY FOR ARMANDO BATISTA, III

CERTIFICATE OF SERVICE

I hereby certify that Appellant's Brief has been served upon the Galveston County Criminal District Attorney's Office on this the 2nd day of June, 2025 by email to rebecca.klaren@co.galveston.tx.us.

__/s/ Joel H. Bennett_____
Joel H. Bennett

Certificate of Compliance

In compliance with TRAP 9.4(i), I certify that the word count in this reply brief is approximately 5180 words.

_/s/_Joel H. Bennett_____
Joel H. Bennett